Unlocking the Deadlock Mechanism

Complexities in Hong Kong Surrogacy Law

How Fire Safety Directions Affect a Vendor’s Ability to Sell His Property

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Inside your May issue
五月期刊內容

4 EDITOR’S NOTE
編者的話

6 PRESIDENT’S MESSAGE
會長的話

8 CONTRIBUTORS
投稿者

10 FROM THE COUNCIL TABLE
理事會議題

13 LETTER TO HONG KONG LAWYER
給《香港律師》的信

16 FROM THE SECRETARIAT
律師會秘書處資訊

18 COVER STORY
封面專題

Face to Face with Winnie Tam SC
專訪譚允芝SC

24 LAW SOCIETY NEWS
律師會新聞

34 CORPORATE
企業

Unlocking the Deadlock Mechanism
解鎖僵局

40 LAND LAW
土地法

How Fire Safety Directions Affect a Vendor’s Ability to Sell His Property
消防安全指示對賣方出售其物業的能力有何影響
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Technology is the topic of the year. However, reproductive technology, in particular surrogacy, is commonly misunderstood. For couples who cannot or choose not to have children naturally, they might ask someone to carry and deliver a pregnancy for them rather than opting for adoption. This is known as surrogacy. Although there is no such thing as a free lunch, the Family feature discusses potential criminal ramifications and risks vis-à-vis commercial surrogacy. (p. 46)

People are constantly thinking about how to invest and make money, which is why joint ventures have become increasingly popular. A joint venture is where two or more parties or businesses work together (as one) and share their resources to achieve a commercial objective. However, disagreements between business partners are unavoidable, and the more business partners there are, the harder it becomes to resolve conflicts. The Corporate feature examines the requirement for deadlock mechanisms in joint venture agreements. (p. 34)

The booming property market in Hong Kong has always been a topical issue. The Land Law feature explains how fire safety directions affect a vendor’s ability to sell his or her property. (p. 40)

The Leisure section features Emma de Ronde who plays field hockey for the Hong Kong Football Club and won the first division league of the Hong Kong Hockey Association (HKHA) two years straight. (p. 87)

Finally, all good things must come to an end - this will be my last issue as Editor of Hong Kong Lawyer. I am grateful to have had an inspiringly large audience, and I hope in return we have kept you entertained and well informed.
Agenda

9.00am Welcome and introductions

9.15am Hype and reality
• What is “blockchain”, “distributed ledger” and “smart contract” technology?
• Where and how is it being applied in practice?
• Will the technology survive the Bitcoin crash and ICO scandals?

9.45am “Smart”, “Connected” and “Data driven” contracts
• What is a “smart” contract?
• Legal, regulatory and data protection issues. Are “smart” contracts legally valid and enforceable?
• Jurisdiction, governing law and enforcement

10.45am Morning Tea-Break

11.00am IoT, distributed ledger and supply chains
• The key to “frictionless” international trade and border clearance?
• Free zones and “virtual” free zones
• Data pipelines and “end-to-end” tracing
• Whose system? Government procurement, or government access?
• Confidentiality and data protection. Can distributed ledgers ever meet data protection law requirements?

12.00pm Cyber security and hacking risks
• Blockchain and DLT: “hack-proof” or “hack-evident”?
• Is blockchain really “immutable”?
• Genuine hack or exploitation of vulnerable code?

1.00pm Networking Lunch

2.00pm Business structures and “decentralized autonomous organisation”
• What is a DAO?
  (i) In concept
  (ii) In practice
• Can DAOs be identified, regulated and taxed?
• Will DAOs bend to the law, or will the law bend to DAOs?

3.00pm Afternoon Tea-Break

3.15pm Contract law, contractual drafting and interpretation
• Drafting for “hybrid” smart contracts
• Creating and enforcing valid guarantees, indemnities and performance bonds
• Can a judge or arbitrator “read” a smart contract?

4.15pm Commercial applications and use cases
• Shipping and logistics
• Manufacturing
• Asset tracing and supply chain management
• Land and corporate registration
• Creating and managing digital identity: government services, investigation and law enforcement and consumer protection

4.45pm Q&A

Testimonials

“Yes, a good demystification of blockchain contracts.”
JOHN SIMPSON, MANAGING PARTNER, INCE & CO

“Malcolm Dowden is clearly an expert and a good teacher.”
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International Commercial Court and Article 8 of Lawyers Law

The Council of the Law Society pays a courtesy visit to the relevant authorities and institutions in Beijing every year. The visit offers a valuable opportunity for Council members to have a face-to-face interactive exchange with Mainland officials on the issues facing the solicitors’ profession in Hong Kong.

15 Council members joined the Beijing visit this year on 9 and 10 April.

As always, there is so much to do, but so little time. Within the limited time frame of our stay in Beijing, we focused most of our discussions on exploring new opportunities for our members in the Mainland. These discussions were naturally centered around the Belt and Road Initiative and the development of the Great Bay Area.

It was reported in the press earlier this year that a new dispute resolution system to handle commercial disputes arising from the Belt and Road Initiative would be introduced in the Mainland. The proposal was for the Supreme People’s Court to set up three international commercial courts in separate cities, namely, one in Xinjiang to handle the Land-based Silk Road Economic Belt, a second one in Shenzhen to deal with cases from the Maritime Silk Road and a third as headquarters in Beijing.

There appears to be a recent trend in establishing international commercial courts. Examples can be found in four jurisdictions including the Dubai International Financial Centre Courts, the Qatar International Court, the Abu Dhabi Global Market Courts and the Singapore International Commercial Court. One unique feature of these courts is that they operate differently from the domestic courts in the same jurisdiction. They permit judges from foreign jurisdictions to serve on the Bench. The commercial disputes heard in these courts often involve foreign litigants and transnational and cross-border disputes. The rules and procedures adopted in the proceedings often have little or no connection to those adopted in the domestic courts in the same jurisdiction.

Further, foreign lawyers have greater rights of audience than in the domestic courts, so in some cases, the parties, counsel and judges may all be from different jurisdictions.

The obvious justification for the establishment of such an international court is that the traditional judicial system that is used to serving a single domestic jurisdiction is no longer sufficient to deal with the rise of international disputes involving multi jurisdictions.

Hong Kong practitioners trained in the common law system that most international investors are familiar with will have a significant role to play. During our visit to the Supreme People’s Court in Beijing on 10 April, we conveyed our keen interest in and what Hong Kong solicitors can offer in the development of the international commercial courts in the Mainland. According to the Supreme People’s Court, the proposal on the international commercial courts is being finalised and is expected to be published around June 2018. The Law Society will keep a close watch on the development.

“One Country, Two Systems” is a unique concept that allows two different legal systems to co-exist. There is a strong consensus in Hong Kong that there should be continual respect between the two legal systems, while the distinctiveness of the common law tradition should be maintained in Hong Kong under the Basic Law. This harmony can only be achieved with a thorough mutual understanding of how and why each other’s system works. The maintenance of this harmony is crucial, in particular when there will be increasing collaboration between the two jurisdictions, for instance, in the development of the Great Bay Area.

With respect to the legal sector, an effective way to facilitate a deeper understanding of each other’s system is to qualify into the legal profession of the other jurisdiction. In Hong Kong, the Overseas Lawyers Qualification Examination (‘OLQE’) is in place to enable a legal practitioner qualified outside Hong Kong to sit an examination on specified subjects to gain admission as a Hong Kong solicitor without having to go through the trainee solicitor route as in the case of a law graduate. This gives due recognition to the overseas legal qualification and experience of the candidates. In the process of studying and training for admission as a Hong Kong solicitor, an overseas lawyer will become fully conversant with the laws and legal practice requirements of Hong Kong.

There is no similar reciprocal arrangement for Hong Kong solicitors to qualify as Mainland lawyers. The Law Society has been advocating the application of Article 8 of PRC’s Lawyers Law or other similar mechanism to put in place an OLQE equivalent for Hong Kong solicitors who have relevant experience in the much needed practice areas of, for instance, international law, securities law and others. There is no better way to incentivize Hong Kong people to actively gain a better understanding of the Mainland legal system.

We reiterated this proposal to the Ministry of Justice (‘MoJ’) during the recent Council’s visit to Beijing with specific reference to the Great Bay Area where there will be increasing collaboration among members of the legal profession in the two jurisdictions. The practice of a Hong Kong solicitor as a Mainland lawyer qualified under Article 8, we proposed, can be limited to the Great Bay Area at the initial stage. The MoJ has noted the proposal
律師會理事會每年均會禮節性拜訪北京的有關部門和機構。拜訪為理事會成員提供寶貴機會，與內地官員就香港律師行業面對的問題進行面對面的互動交流。

今年4月9日至10日，15位理事會成員前往北京進行拜訪。

一如往年，次拜訪時間短促，行程繁忙。我們在北京逗留的時間有限，大部分討論集中於內地的新機遇，當然圍繞一帶一路和大灣區的發展。

根據今年較早時的報導，內地將推出一個解決一帶一路商業爭議的新機制。根據建議，最高人民法院將在三個城市設立三個國際商事法庭：一個在西安，負責處理陸上絲綢之路經濟帶；一個在深圳，處理海上絲綢之路的案件；另一個是總部，位於北京。

建立國際商事法庭似乎是近期的趨勢，已有四個司法管轄區先有設立：杜拜國際金融中心法院、卡塔爾國際法院、阿布扎比全球市場法院和新加坡國際商業法院。這些法院的一個獨特之處在於其運作模式與當地的法院有所不同，允許外國法官出任法官，所聆訊的商業爭議往往涉及外國訴訟人及跨國和跨境糾紛。訴訟採用的規則和程序與當地法院採用的規則和程序甚至毫不相干。此外，相比起本地法院，外地律師在這些法院享有更大的出庭發言權，因此在某些情況下，當事人、律師和法官可能來自不同的司法管轄區。

設立國際法院，是由於單一司法管轄區的傳統司法系統，已不足以處理日益增加的涉及多個司法管轄區的國際爭議。在大多數國際投資者熟悉的普通法體系中接受訓練的香港律師，將扮演重要角色。我們在4月10日拜訪北京最高人民法院時，表達了對此建議的強烈興趣，及香港律師對發展內地國際商事法院能作出的貢獻。據最高人民法院稱，關於國際商事法院的建議正在敲定，預計將於2018年6月左右出台。律師會將密切關注有關進展。

「一國兩制」的獨特概念允許兩種不同的法律體系共存。香港有強烈共識，兩個法律制度之間應繼續互相尊重，而普通法傳統應根據《基本法》繼續在香港保留。
Xin Fang
Mayer Brown JSM, Senior Associate

Xin Fang holds a First-Class Honours Master’s Degree in Corporate Law from the University of Cambridge. She has worked at Mayer Brown JSM since 2010, focusing on international mergers and acquisitions, joint ventures and private equity transactions.

Emma de Ronde
Norton Rose Fulbright, Partner

Emma de Ronde is a Norton Rose Fulbright partner based in Hong Kong. She is a corporate partner who has extensive experience in cross border M&A, international equity capital markets and corporate advisory work. She is highly regarded as a dynamic and commercially minded deal maker, and has a reputation for being pragmatic and getting a deal across the line. In 2013, Emma was named in Financial News 40 under 40: The rising stars of legal services. In 2015, Emma was named in the Asian Legal Business 40 under 40. In 2017, Emma was recognised in the 2017 Client Choice Awards for General Corporate advice.
Marcus Dearle
Berwin Leighton Paisner in association with Haley Ho & Partners, Partner

Marcus Dearle is a partner and Global Head of Family Asset Protection at Berwin Leighton Paisner in association with Haley Ho & Partners. He is qualified in Hong Kong SAR, England & Wales and the BVI. He is Vice Chair of the IBA Family Law Committee and a Fellow of the IAFL. In April 2018 Bryan Cave merged with Berwin Leighton Paisner to form Bryan Cave Leighton Paisner.

Prisca Cheung
Sir Oswald Cheung’s Chambers, Barrister-at-law

Prisca Cheung is a barrister at Sir Oswald Cheung’s Chambers. She has completed her legal studies at the University of Oxford, and was a recipient of the Middle Temple Advocacy Scholarship. Prisca’s practice covers a wide range of civil and commercial cases, with an emphasis on land and probate matters. She has worked and advised on areas including tax, the Securities and Futures Ordinance (Cap 571), judicial review, insurance and matrimonial. Prisca is a contributing editor to the Hong Kong Civil Procedure (Part H: Companies and Winding-up), and is a committee member of the Greater China Affairs Committee of the Hong Kong Bar Association.

Camilla Worthington
Lewis Sanders Legal Recruitment, Head of Private Practice

Camilla graduated from Edinburgh University with an MA (Hons) in Economics and Economic History in 2003. Camilla trained and qualified at Manches in London. Subsequently she spent nearly 5 years at Nabarro specialising in Real Estate Litigation. At Lewis Sanders, Camilla heads up the Private Practice team working with lawyers at associate, counsel and partner level. She handles both in-house and private practice recruitment across the region.

Camilla Worthington
Lewis Sanders Legal Recruitment
私人執業部主管

Camilla在2003年畢業於愛丁堡大學，獲得經濟及經濟史榮譽碩士學位。Camilla在倫敦曼徹斯接受培訓並取得資格。隨後，她在Nabarro工作了近5年，專攻房地產訴訟。在Lewis Sanders，Camilla帶領私人執業團隊與律師、顧問和合夥人一起工作。她負責整個地區的機構內部及私人執業的招聘工作。
Public Engagement - Establishment of a Commission on Children

The Chief Executive in her 2017 Policy Address announced that the Government planned to set up a Commission on Children in mid-2018 to amalgamate the efforts made by relevant bureaux/departments and child concern groups on children’s issues. A Preparatory Committee chaired by the Chief Executive was convened in September 2017 to advise the Chief Executive on the status, terms of reference, structure, composition and initial work plan for the Commission on Children.

In November 2017, the Government launched a public engagement to seek views on the following issues relating to the Commission on Children:

a) the expected role, functions and composition of the Commission;
b) the structure of the Commission, eg the types and focuses of working groups to be set up under the Commission;
c) the priority areas or issues to be addressed by the Commission on Children in the first two years;
d) any suggested independent research studies or reviews to be commissioned by the Commission to facilitate its work;
e) any funding schemes to be set up under the Commission, and if so, their objectives, criteria for funding and target applicants; and
f) the themes and approach for the Commission to undertake promotional and public education initiatives.

In response to the above engagement, the Law Society has made a written submission to advocate, among other things, the priorities that the proposed Commission should focus on. Such include raising the awareness of children’s rights, building a children’s central databank and promoting child-focused thinking. The Law Society considers that in the long run, Hong Kong should have an independent Commission on Children, with its own mandate as recommended by United Nations Convention on the Rights of the Child.

CONSULTATION ON THE PROPOSED AMENDMENTS TO THE CODE ON UNIT TRUSTS AND MUTUAL FUNDS

The Securities and Futures Commission (‘SFC’) on 18 December 2017 launched a consultation on its proposed amendments to the Code on Unit Trusts and Mutual Funds (‘Code’) (‘Consultation Paper’). The amendments aim (i) to update the regulatory regime for SFC-authorised funds and (ii) to address risk posed by financial innovation and fast-moving market developments.

The consultation mainly includes proposals to:-

a) increase the minimum capital requirement for management companies from HK$1 million to HK$10 million; provide flexibility to allow management companies with multinational presence to leverage group resources in meeting the five-year public fund investment management experience; and enhance the requirements for trustees and custodians and for audit review.

b) expand the types of derivatives which plain vanilla funds may invest in, and introduce an overall limit of 50 percent on the use of derivatives for a plain vanilla public fund; enhance safeguards on the use of derivatives and securities lending, repo and reverse repo transactions.

c) introduce new chapters in the Code for listed open-ended funds and closed-ended funds, and enhance existing requirements on money market funds to align with the standards issued by the International Organization of Securities Commissions.

SFC proposes to also codify various existing requirements and practices, including, among others, requirements for the general obligations of management companies, eligibility of trustees and custodians, valuation of fund assets, liquidity risk management and streamlined measures for handling scheme changes. Furthermore, under the proposal, there will be a 12-month transition period from the date when the amendments become effective upon its gazettal (‘Effective Date’) in order to allow for compliance with amendments to the Code (unless otherwise indicated as being immediately effective from the Effective Date).

With the assistance of the Investment Products & Financial Services Committee, the Law Society has provided its views on those consultation questions. The details of the submissions are available at: http://www.hklawsoc.org.hk/pub_e/news/submissions/20180227b.pdf

CONSULTATIONS ON OTC DERIVATIVES AND CONDUCT RISK

On 20 December 2017 the Securities and Futures Commission (‘SFC’) issued a consultation paper to refine the over-the-counter (‘OTC’) derivatives regime in Hong Kong and to propose conduct requirements to address risks posed by group affiliates (the ‘Consultation Paper’).

As a result of the consultation conclusion released by SFC on the primary legislation for the regulation of OTC derivatives in 2013 and the enactment of the Securities and Futures (Amendment) Ordinance in April 2014, Schedule 5 to the Securities and Futures Ordinance (Cap. 21) (‘SFO’) was amended to introduce (i) the dealing in or advising on OTC derivatives (Type 11); and
(ii) the providing of client clearing services for OTC (Type 12) as regulated activities ('RAs') under the SFO. Market participants engaging in these activities should obtain a license(s) from the SFC.

After the introduction of Type 11 and Type 12 RAs, SFC noted some comments from the market on the scope of these RAs and proposed to refine their scope to provide clarity on the OTC derivatives licensing regime, for example, to narrow the scope of certain RAs so that they do not capture corporate treasury activities of non-financial groups, certain portfolio compression services and overseas clearing members and their agents.

The Consultation Paper also includes proposals on risk mitigation, client clearing, record keeping and other conduct requirements for OTC derivatives transactions, as well as licensing fees, insurance, competence and training requirements under the new OTC derivatives licensing regime. It further proposes to require licensed corporation to properly manage their financial exposures to group affiliates and other connected persons according to the same risk management standards they would apply in respect of exposures to independent third parties undertaken by the licensed corporations on an arm's length basis in order to minimise interconnectedness risk.

The full submission of the above is at:

CONSULTATION FROM THE STOCK EXCHANGE OF HONG KONG LIMITED

CONSULTATION ON “A LISTING REGIME FOR COMPANIES FROM EMERGING AND INNOVATIVE SECTORS”

The Stock Exchange of Hong Kong Limited (‘SEHK’) had on 23 February 2018 launched a public consultation on “A Listing Regime for Companies From Emerging and Innovative Sectors” (the ‘Consultation Paper’).

The proposals in the Consultation Paper closely follow the “Proposed Way Forward” set out in the New Board Concept Paper Conclusions published in December 2017. The latest proposals from SEHK includes drafting the Main Board Listing Rules to (a) permit listings of biotech issuers that do not meet any of the financial eligibility tests of the Main Board of SEHK; (b) permit listings of companies with weighted voting rights structures; and (c) establish a new concessionary secondary listing route for Greater China and international companies that wish to have a secondary list in Hong Kong.

The above consultation was considered by Council with the assistance of the Company Law Committee of the Law Society. The proposed amendments to the Listing Rules are supported. A copy of the submissions can be found on the Law Society’s website:

香港聯合交易所有限公司的諮詢文件

新興及創新產業公司上市制度的諮詢文件

香港聯合交易所有限公司(「聯交所」)於2018年2月23日發表了新興及創新產業公司上市制度的諮詢文件(「諮詢文件」)。

諮詢文件中的建議遵循2017年12月發表的《建議設立創新板諮詢總結》中的「未來發展方向」。聯交所的最新建議包括在《主板規則》新增章節(a)容許尚未通過任何主板財務資格測試的生物科技發行人來港上市；(b)容許不同投票權架構的公司在港上市；及(c)新設便利第二上市渠道接納中華及海外公司來香港作第二上市。

理事會在公司法委員會的協助下審議該諮詢文件，律師會支持對《上市規則》的建議修訂。律師會意見書的全文可瀏覽：
The Chinese Redemption: From Food Scandals to Leading Global Food Safety Policy

Melamine in the infant formula, Fipronil Dutch eggs, and mad cow disease: Hong Kong’s and China’s counterattack in food safety crises

Food scandals, involving Hong Kong, China, and their trade partners ASEAN and the European Union (EU), have become frequent. The reactions of regulators are a major concern for market actors. A conference organized by CUHK Law, the Consulate General of Italy in Hong Kong and Macao, and the Marco Polo Society gathered leading expert to address legal issues of food security and food safety, and their implications on trade and investment, and on consumers. Discussions were focused on barriers and bans to food imports, food labelling, international agreements in the food sector, online food sale, and recognition of geographical indications (GIs).

Professor Mercurio (CUHK) discussed Hong Kong labelling laws of pre-packaged food products, arguing that the laws address in a sensible manner the problem of information contained on labels which do not comply with the Hong Kong food safety standards, taking into account the small size of the market and low level of locally produced food products. However, Mercurio found default in the enforcement process - which relies on supermarkets and other retailers to manually delete, from labels, information which contravenes Hong Kong rules - for being inconsistent and perhaps even discriminatory against imported products, which, in turn, may breach obligations under the WTO framework.

China has tackled food scandals with a comprehensive approach. Domestically Chinese authorities have significantly improved and tightened the legal framework. New laws and regulations apply extremely high standards, and the enforcement is catching up. China is also playing an important role in international standard

1 By Dini Sejko and Flavia Marisi

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Research Assistant, The Chinese University of Hong Kong, Faculty of Law and Ph.D. Candidate at Ghent University
setting within the Codex Alimentarius Commission, a body with 188 Members worldwide that works to harmonize food safety standards. China hosts and leads two important committees: on pesticides residues, and on food additives.

China’s greater attention and interest to better regulate the food sector results in a cooperation with the EU on negotiating an Agreement on GIs. The two parties published, in June 2017, a list of 100 GIs from each side including products such as Yantai apple, Hengxian jasmine tea, Panjin rice, Champagne, Feta and Gorgonzola, which are mutually recognized, with a view to protecting consumers by identifying products as originating in a given place.

Notwithstanding the existence of common grounds and goodwill between China and the EU, troubles persist when dealing with the acceptance of certain European-produced food, i.e. soft cheese and beef, whose import in China might still be problematic. In fact, recently EU traders faced a confusing situation that disrupted trade. Soft cheeses such as Gorgonzola, Camembert, Brie, and Roquefort were banned for several months until last October, even though they already were in the list of protected GIs. Only after the EU delegation provided clarifications, the Chinese authorities lifted the ban. On the other side, the outcome has not been as positive on the import of European beef. Due to the mad cow disease, which first appeared in the United Kingdom in the 1980s, China is particularly cautious about EU beef imports and many EU Member States still face a ban. The issue of beef import is only one of the hot topics in the EU-China trade relations determined by the non-reciprocity of market access. Currently, EU Member States have to individually negotiate access to the Chinese market and this creates unbalances between EU producers.

The success of e-commerce through online platforms might pose threats to the reputation of food goods and affect consumers if not duly regulated. The use of misleading domain names such as paninogiusto.com and paninogiusto.net have had owners who were not associated with the referred company, and might have deceived consumers. Professor Chaisse (CUHK) indicates that abusive registrations of domain names in the food and beverage sector have provoked more than 2,000 disputes. Institutions, such as the Asian Domain Name Dispute Resolution Centre based in Beijing and Hong Kong, help to successfully solve these disputes.

China’s and Hong Kong’s reactions in food safety crises demonstrate a decisive approach in addressing food safety concerns at the regulatory level, both domestically and internationally. However, implementation and enforcement are still not smooth, and may sometimes be even problematic for importers of foreign food. A greater reference to international standards might help to prevent these inconsistencies, while at the same time fostering trade and investments, benefiting food producers and consumers.

For more information, see: www.law.cuhk.edu.hk/FoodandLaw_conf
News from Hong Kong Society of Notaries

At its Annual General Meeting on 11th October 2017, the Hong Kong Society of Notaries appointed 13 Councilors for the coming term. In February 2018, Mr. Chu Kuo Fai and Ms. Lam Yuet Ming Emily were further co-opted as Council Members.

The Society is pleased to announce that Mr. Robin Miles Bridge and Ms. Elsie Oi Sie Leung, GBM, JP, have been elected as members to the Roll of Honour for their distinguished service to the Society, its Council and the development of the notarial profession in Hong Kong.

The Society currently has 372 members, the majority of which have over 15 years post-admission qualification as solicitors. Notaries Public are primarily concerned with the preparation and authentication of documents for use abroad, serving a vital role in international trade.

The last Notaries Public examination was held in 2015 when 22 out of 201 candidates who sat for examination passed the qualifying examination. We plan to hold our next qualification examination in February or March 2019. Solicitors with 7 years’ post-qualification experience will be eligible to sit for examination. A training course on notarial practice and bills of exchange will be held in August 2018.

Details of the examination and the training course will be announced in May 2018 through the Law Society of Hong Kong and in our website at www.notaries.org.hk.

香港國際公證人協會新聞稿

香港國際公證人協會於2017年10月11日假座香港會舉行會員週年大會，並委任了13名新一屆理事。

於2018年2月，諸國輝先生及林月明女士被增選為本會理事。

本協會欣然宣佈Robin Miles Bridge（喬立本）先生及梁愛詩女士，大紫荊勳賢、太平紳士，已獲選列入公證人榮譽名冊，以表揚彼等對本協會、本協會理事會及香港公證專業發展的傑出貢獻。

本協會現時有372名會員，大部分會員均擁有15年以上的律師執業資格。國際公證人的主要工作是編製及驗證供海外使用的文件，在國際貿易上有極其重要的角色。

最近一次國際公證人考試於2015年舉行，當時共有201人到考，其中22名考生通過該資格試。本協會擬於2019年2月或3月舉行下一次資格考核試。具備7年執業資格的律師將符合應考資格。一個有關公證實務及匯票的培訓課程將於2018年8月展開。

有關考試及培訓課程之詳情將在2018年5月透過香港律師會公佈，並將刊載於本協會網站www.notaries.org.hk。
**Commitments by the Legal Sector in FTAs**

Articles 114 and 115 of the Hong Kong Basic Law provides that Hong Kong shall maintain the status of a free port, pursue the policy of free trade and safeguard the free movement of goods and capital. Article 116 further provides that Hong Kong shall be a separate customs territory, and may, on its own, using the name “Hong Kong, China”, maintain and develop relations and conclude and implement agreements with foreign states and regions or international organisations in the appropriate fields.

Pursuant to these provisions, the Hong Kong Government has been promoting a free, open and stable multilateral trading system as well as exploring opportunities to secure, maintain and improve market access for Hong Kong’s exports.

Hong Kong has been a member of the World Trade Organisation (‘WTO’) since its establishment in 1995. Article 116 of the Basic Law provides the basis for Hong Kong to continue to maintain its separate WTO membership after 1997 using the name “Hong Kong, China”.

Free trade agreements (‘FTAs’) with Hong Kong’s trading partners is a way to secure favourable conditions for exports of goods and services from Hong Kong to the Mainland and international markets.

Hong Kong has signed six FTAs, respectively with Mainland China (June 2003), New Zealand (March 2010), the Member States of the European Free Trade Association (EFTA) (June 2011), Chile (September 2012), Macao (October 2017) and the Association of Southeast Asia Nations (ASEAN) (November 2017). Hong Kong is now negotiating FTAs respectively with Georgia, Maldives and Australia.

The FTA negotiation with Georgia and Maldives were launched in May 2016. Both are emerging markets. Entering into FTAs with them is expected to help further expand Hong Kong’s FTA network into regions including Eurasia.

One year later in May 2017, the FTA negotiation between Hong Kong and Australia was also officially launched. Australia was Hong Kong’s 19th largest trading partner while Hong Kong was Australia’s 13th largest trading partner in 2016. Both have a heavily service-oriented economy. Better market access for trade in services was featured as a key element of the negotiation.

As stated publicly on the official website of the Foreign Affairs and Trade Department of the Australian Government, its objectives in

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**FROM THE SECRETARIAT**

律師會秘書處資訊

Ms. Heidi Chu, Secretary General
秘書長朱潔冰律師

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法律界對自由貿易協定的承諾

香港《基本法》第一百一十四條及第一百一十五條規定，香港特別行政區保持自由港地位，實行自由貿易政策，保障貨物和資本的流動自由。第一百一十六條進一步規定，香港為單獨的關稅地區，可以「中國香港」的名義與外國、地區或國際組織保持和發展關係，及在適當的領域簽訂和實施協定。

根據這些規定，香港政府一直推動建立一個自由、開放和穩定的多邊貿易體系，探索保持和改善香港出口市場准入的機會。

自世界貿易組織於1995年成立以來，香港一直是其成員。《基本法》第一百一十六條為香港在1997年後以「中國香港」的名義，保持世貿組織單獨締約成員的身份提供基礎。

與貿易夥伴達成自由貿易協定，是鞏固香港向內地和國際市場出口貨物和服務的有利條件。


與格魯吉亞和馬爾代夫的自由貿易協定談判於2016年5月啟動，與這兩個新興市場簽訂自由貿易協定，有望進一步將香港的自由貿易區網絡擴展至歐亞大陸地區。

一年後在2017年5月，香港與澳洲的自由貿易協定談判也正式啟動。澳門是香港第19大貿易夥伴，而香港是澳洲2016年的第13大貿易夥伴。兩地均擁有高度服務型經濟，更開放的服務貿易市場准入，是談判的關鍵要素。
the FTA negotiation with Hong Kong are, among others, to create conditions for greater trade in services by locking in market openness for continued access to the Hong Kong market and providing new commercial opportunities for service suppliers; to reduce or remove local presence requirements and to ensure internal regulations, recognition of qualifications, licensing, or registration, and other related measures are not disguised restrictions on trade in services and information about them is publicly available, to the extent possible.

The Law Society has been invited to give views on locking the current level of market openness for access by overseas lawyers to the Hong Kong legal service market and committing not to introduce any trade restrictive measures that are incompatible with the existing level of openness in the future unless specific reservations have been made. Before responding, the Law Society will gauge the views of the profession via a survey. If members have views, please respond to the survey. Further, in the President’s Message of the March 2018 issue of Hong Kong Lawyer titled “An open regulatory regime for foreign lawyers”, views have also been invited from members on the operation of the foreign lawyer regulatory regime in Hong Kong. Your views are welcome as they are most valuable in formulating the Law Society’s position.

Market access is two-way. It covers not only access to the Hong Kong legal service market by overseas lawyers but also access to overseas market by Hong Kong lawyers. If our members have encountered any specific market access or practice challenges in any particular jurisdictions including regulatory issues, customs procedures or cross-border supply of services, you are most welcome to let us know. All these practical experiences and specific case examples are very helpful in illustrating the areas that the relevant authorities will need to work on.

### Monthly Statistics on the Profession
(updated as of 31 March 2018):

<table>
<thead>
<tr>
<th>Category</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Members (with or without Practising Certificate)</td>
<td>10,844</td>
</tr>
<tr>
<td>Members with Practising Certificate</td>
<td>9,451</td>
</tr>
<tr>
<td>(out of whom, 7,105 (75%) are in private practice)</td>
<td></td>
</tr>
<tr>
<td>Trainee Solicitors</td>
<td>1,179</td>
</tr>
<tr>
<td>Registered Foreign Lawyers</td>
<td>1,506 (from 34 jurisdictions)</td>
</tr>
<tr>
<td>Hong Kong Law Firms</td>
<td>893 (47% are sole proprietorships and 42% are firms with 2 to 5 partners, 21 are limited liability partnerships formed pursuant to the Legal Practitioners Ordinance)</td>
</tr>
<tr>
<td>Registered Foreign Law Firms</td>
<td>85 (14 are limited liability partnerships formed pursuant to the Legal Practitioners Ordinance)</td>
</tr>
<tr>
<td>Civil Celebrants of Marriages</td>
<td>2,107</td>
</tr>
<tr>
<td>Reverse Mortgage Counsellors</td>
<td>446</td>
</tr>
<tr>
<td>Solicitor Advocates</td>
<td>54</td>
</tr>
<tr>
<td>(49 in civil proceedings, 5 in criminal proceedings)</td>
<td></td>
</tr>
<tr>
<td>Student Members</td>
<td>213</td>
</tr>
<tr>
<td>Registered Associations between Hong Kong law firms and registered foreign law firms (including Mainland law firms)</td>
<td>37</td>
</tr>
</tbody>
</table>

正如澳洲政府外交部和貿易部官方網站的公佈，澳洲與香港的自由貿易協定談判，目的是通過鎖定開放市場，為服務貿易創造條件，繼續獲得香港市場准入，並為服務供應商提供新的商機；減少或消除當地的要求，並確保內部法規、認可資格、許可或註冊以及其他相關措施不會成為對服務貿易的限制，並且盡可能公開有關服務貿易的信息。

律師會獲邀就鎖定目前海外律師進入香港法律服務市場的開放程度提出意見，並承諾除非有具體的保留，未來不會引入任何與現行開放程度不相符的貿易限制措施。回覆前，律師會將通過調查聽取業界的意見。會員如有任何意見，請就調查作出回覆。此外，2018年3月號的《香港律師》“會長的話”一欄以《對外地律師的開放規管制度》為題，也邀請了會員對香港外地律師的監管制度運作提出看法。會員的意見對律師會制定立場甚具價值，歡迎會員提出。

市場准入是雙向的，不僅涵蓋外地律師進入香港的法律服務市場，亦涵蓋香港律師進入海外市場的渠道。若會員在任何特定司法管轄區遇到任何市場准入或執業問題，包括監管問題、海關程序或跨境服務供應，歡迎告知我們。這些實踐經驗和具體案例，均有助向有關部門展示需要改善的領域。
Educaton

Winnie was educated at St Paul’s Co-educational College in Hong Kong before she read law at the University of Hong Kong. At first, Winnie decided by way of elimination that she wanted to become a barrister. “I decided to become a barrister as soon as I had completed my summer internship with a law firm, mainly doing conveyancing work, which was considered the most lucrative work in the mid 1980s. Most of my classmates wanted to become solicitors. But I have always been a contrarian growing up, so I was already telling myself it was not for me. The internship confirmed it beyond doubt.” Winnie also had an offer to join a major City firm to do “China trade”, as it was called in those days but turned it down because she didn’t find it interesting. “I did not fancy always travelling to China in those days so I declined. I quite enjoyed public speaking and debating, and writing and organising arguments, although in those days there were no opportunities in school to develop these skills. In the first half of my pupilage, it became obvious to me that I was in the right profession. I very much enjoyed the action in court where one has to respond instantly to all sorts of happenings.”

After graduation, she practiced for two years at the Chambers of Gilbert Rodway QC, and managed to save some money in order to enable her to pursue further studies abroad. She was accepted to read LL.M. at University College London. During that time, she was also seconded to a set of chambers in London specialising in intellectual property law. When it was time for the term-end examination, Winnie was invited to return to Hong Kong so she could take up a patent case on an urgent basis. The case later became the first patent trial in Hong Kong. “I do not have much regret about not completing the exams, but in hindsight, I learned that I could have asked for the exams to be deferred! I did not know at the time, and I happily gave it up in favour of “doing the real thing” in court.”

Intellectual Property

Winnie is the first woman intellectual property specialist to be appointed Senior Counsel of the Hong Kong Bar by the Chief Justice. “My interest in IP springs from my lifelong interest in music. Even as a school girl with no resources, I was already making amateur attempts in music composition. I became aware of music copyright and found it quite fascinating.” At the University of Hong Kong, IP was offered as two half elective subjects for the first time in her third year. As it turned out, she was unable to fit the course into her timetable, but she was determined to pursue it even by self-study. In the end, she wrote a dissertation paper on music copyright on her own as part of the graduation requirements. “To me, IP is a subject that is very close to the daily lives of ordinary people, at least when compared with banking, corporate law, commercial law, personal injuries and crime. I felt it come to life when I started studying it, and it has never stopped evolving alongside the progression of human society. New issues keep arising, calling for new ways of application of the law and reforms. That is why I love it so much to this day.”

When she started at the Hong Kong Bar as a pupil, she felt that she should train in general practice in order to gain a broader experience to enable her to commence practice. So she pursued pupillage not in IP, but in general civil law and in crime. She was determined to go to London to pursue a further year of specialised training in IP from renowned practitioners who wrote some of the best textbooks on the subject. Moreover, international commercial litigation involves conflict of laws – a subject that had always been very interesting to Winnie. With the increase in cross-border trade and commerce, it has only become more and more relevant, particularly with the rise of arbitration as a favoured means of dispute resolution in international
commercial dealings, with or without IP elements.

THREE TIPS

Winnie shared three tips for succeeding as a lawyer. “First, I would say keep your eyes and ears open, and embrace changes, instead of dodging reality or resisting the waves of change. Maintaining this mindset at all times is very important, as changes always happen faster than you think. Once you have developed lethargy or a fear of change, it will take so much longer for you to get back to a neutral position before you can get up and running to catch up! Second, do not confine your professional interests to one or two areas. Be open-minded about developing new areas of practice, even though you may feel very cosy in the one or two areas you have been successful in. Third, pursue areas of law that you are really interested in, rather than those you would only do because they are lucrative. Interest sustains passion. Without passion, your pursuit becomes a drag especially when it becomes less rewarding in material terms than you thought it might be.”

In her own life, Winnie lives by three mottos that are most helpful to her. The first is with regard to how she conducts herself. The second has to do with how she chooses her words when it comes to human relationships: “it is easy for people with training as an advocate to forget they are not always in verbal combat.” The third has to do with how she thinks about things around her, for her own emotional health. The three mottos are: 1) never stop learning; 2) 話到口中留半句，理從是處讓三分 which means “never utter hurtful words in harsh criticism - give a little concession even though you may be entirely in the right”; and 3) when you cannot change the undesirable things that happen around you, you can change the way you look at them.

CHALLENGES

Winnie says her greatest challenges have come during her stint as Bar Chairman between the years 2015 and 2017. During tumultuous times, when the wider public was more interested in hearing the Bar’s opinion on political matters, she managed to balance the inevitable need of the association to deal with politics against the even more pressing need to do real work in expanding practice opportunities for the Bar, and more importantly, in creating an awareness for the need to change the mindsets of barristers when it came to practice development.

But her current role brings with it its challenges as well. “My present position as Chair of the Communication Authority will present significant challenges, but I am yet to feel the brunt of it after the initial two months. I am sure they will come.” The role of the Communications Authority is that of a watchdog, guarding the interest of the public as users of telecommunication and broadcasting services, advancing and balancing the interests of members of the related industries, regulating the conduct of licensees, ensuring the fair distribution of resources (eg allocation of bandwidth) and shaping policies on all the above duties. “I see my role as a moderator of what sometimes will be seen as conflicting duties and views, where I hope to be guided by the principle of fairness. On the shaping of policies, I hope to be open-minded, cautious, yet progressive.”

PASSION FOR PUBLIC SERVICE

Winnie is truly passionate about public service. She has been involved with the West Kowloon Cultural District Board for more than a year now. “Although I
consider myself very much an amateur musician, having raised two musical children, my passion in supporting fledgling artists in the performing arts has never waned. My position as one of the trustees of the HKJC Music and Dance Funds also enabled me to see the needs of young artists with high potential at close range, and to bring about reforms in the relevant rules to better focus on providing for their needs.” Winnie has also been involved as a board member of the Tourism Board in the past few years. “It also broadened my perspective of Hong Kong, and I was able to view it from the lens of visitors and potential visitors.” She is additionally involved in Advisory Committee on Corruption of the ICAC. “My work in ICAC initially in the Operations Review, started over ten years ago.” Finally, she is also on the Judicial Officers Recommendation Commission as a representative of the Bar.

Winnie shared her view on the proposed development of the Greater Bay Area. “I would say this is the most grounded proposal for the development of Hong Kong in recent years. With the backing of the mainland and Hong Kong governments, the opportunities are enormous for Hong Kong professionals. For lawyers, some form of collaboration or association with mainland firms may be seen to be advantageous if not essential as a start, but before law firms and individual practitioners jump at the opportunity to collaborate, it is highly important to take the opportunity to achieve a good mutual understanding of each others’ style of practice, capabilities, and strengths and weaknesses. The association, in order to be successful and sustainable, will have to be complementary and not exploitative, substantial and not superficial.”

ADVICE FOR LAWYERS

When asked about the most pressing issues facing the legal profession in Hong Kong and how those issues should be addressed, she said: “For both branches of the profession, it is about building the ability and flexibility to adapt to the fast-changing practice environment. We should not fear fair competition, but should embrace them and find our own respective positioning that will enable our potential to be realised. For those who face difficulties in finding their positions in the legal services market, they must find the courage to move on to greener pastures elsewhere. A broad outlook, adaptability, industry, and courage are what I consider to be some of the most important qualities for lawyers, or indeed all professionals, of this generation.”

Are Hong Kong lawyers well prepared for the rapid developments in the world economy and the growing collaboration and competition with legal practitioners from different jurisdictions? “Some are more prepared than others. Those who are unprepared and unable to compete will be blaming others for their misfortune, such as insufficient government funding, etc. In fact the profession itself should bear the primary responsibility of creating its own sustainability. Our interactions with mainland practitioners will continue to heighten. While most of them are very humble and claim to have much to learn from Hong Kong lawyers, especially in their standard of professionalism and concepts of rule of law, in truth many of them are even more advanced than we are in terms of professional exposure and global outlook because of their hunger for knowledge and overseas exposure. The window of opportunity for Hong Kong lawyers to stay in the position of leadership is forever dwindling.”
教育
谭允芝资深大律师毕业於聖保羅男女中学後，在香港大学修读法律。毕业後，她决定当大律师。「我在大学完成夏季实习後，便马上决定当大律师。那家律师行主要从事房地产交易，在80年代中是最赚钱的业务。我大多同学都想当事务律师。我自小已喜欢与别不同，所以我一直告诉自己事务律师工作不适合我。实习期证实了这一点。」她亦获聘加入一间大型律师行处理「中国贸易」，但她因为没有兴趣而拒绝了。「当时我不想经常去内陆公幹，所以拒绝了。我喜欢公开演讲和辩论、写作和组织论衡，尽管那时学校没有机会发展这些技能。在大律师实习期的前半段，我感觉自己选对了职业。我非常喜欢上庭，上庭须要立即回应各种情况。」

她在Gilbert Rodway QC的大律师行执业了两年，才前赴外国深造。她获伦敦大学录取修读LL.M。「在英期间，她成功争取到伦敦一所专门从事知识产权法律的大律师行实习。到了期末考试时，她获邀请回港，紧急处理一宗专利案件。该案后来成为香港首個在香港高等法院经正审和上诉的专利案件。「当时我没有对不能完成硕士考试感到遗憾，但事后看，我其实可以要求考试延期！当时我不知道，而且我很乐意放弃考试，在法庭上参与实战。」

知识产权
她是第一位获委任为资深大律师的香港女性知识产权专家。「我对知识产权的兴趣源自我對音乐的爱好。即使在学时期资源短缺，我已开始创作音乐。我开始注意音楽版权，发现這個议题非常有趣。」

在港担任见习律师时，她觉得应该进行一般执業，以获取更广泛的経验。因此，见习期時她並非从事知识产权方面的工作，而是一般民法和刑事法。她决心前往伦敦，跟随编著知识产权教科书的著名大律师，进一步学习知识产权专业。此外，她亦一直對国际商務訴訟的法律糾紛甚有兴趣。随着跨境商貿日増，這個議題越来越受關注，特别是在国际商業交易中，不論是否涉及知识产权，仲裁已成為解决爭議的優先方法。

三个提示
她分享了成為成功律师的三个提示。「首先，睁开眼睛，打開耳朵，接受新事
物，而不要逃避現實或抗拒時代的變遷。隨時保持這種思維非常重要，因為變化總是來得比想像中快。一旦陷入不思進取，害怕時代變遷，便需要更長時間才能振作起來趕上腳步；其次，不要把專業興趣局限在一、兩個領域。即使你在一、兩個已成功開發的領域感到非常愜意，也要對開發新的執業領域持開放態度；第三，從你真正感興趣的領域，而不是因為該領域有利可圖。保持興趣和熱情。假如缺乏熱情，工作就會變成一種負累，尤其是當其物質回報比你想像中少時。」

她有三個格言。第一個格言是關於她如何自處；第二個格言是關於處理人際關係時的言行。「受過訟辯訓練的人很容易忘記他們不總是在法庭上爭辯。」第三個格言是她如何為了情緒健康看待周圍事物。這三個格言是：1) 學無止境；2) 話到口中留半句，理從心處讓三分；3) 你不能改變周遭的事物，但你可以改變自己看待事物的心境。

挑戰

她說最大挑戰是在2015-2017社會年動盪期間擔任大律師公會主席。當時公眾就政治事件尋求大律師公會的意見，但她並沒有只顧處理政治事務，而是更努力為大律師拓展機會，更重要的是建立外界對大律師專業能力的認識和改變大律師在對業務發展的反動思維方式。

她目前的角色也甚具挑戰性。「我現在擔任通訊事務管理局主席，將面臨重大挑戰，雖然履新只有兩個月，我暫時還未感受到衝擊，但我相信挑戰會接踵而來。」

熱心公職

她一直熱心公職，一年多前開始參與西九文化區管理局的工作。「我認為自己是個業餘音樂愛好者，培養了兩個熱愛音樂的孩子後，我支持新晉表演藝術家的熱情從未減退。作為香港賽馬會音樂和舞蹈信託基金的信託人之一，我使我能親身了解具潛力的年輕藝術家所面對的挑戰，對相關規則進行改革，以便更好地滿足他們的需求。」她回憶在過去幾年也擔任旅遊發展局成員。「這擴闊了我對香港的了解，在遊客和潛在遊客眼中的香港。」她還代表大律師公會加入司法人員推薦委員會。

譚允芝資深大律師亦分享了她對大灣區發展計劃的看法。「我認為這是近年對香港發展最切合實際的建議。在國家和香港政府的支持下，香港的專業人士擁有巨大機遇。對律師而言，與內地律師行以某種形式合作或聯營，或許被視為有利甚至必須，但律師行和大律師個人把握合作機會前，必須了解彼此執業的風格、能力、優點和缺點。成功而可持續發展的夥伴關係必須是互補不足而非互相搾取利益，多作實質的合作而非形式上的聯繫。」

寄語律師

被問及香港法律界面對的最迫切的問題為何，以及如何解決這些問題時，她說：「為了適應迅速變化的執業環境，必須努力建立法律專業的能力和靈活性。我們不應害怕公平競爭，反而應該擁抱競爭，找出自己的定位，實現本身的精神。在法律服務市場中遇到困難者，必須勇於發掘新市場。我認為開闊的視野、強大的適應力、勤奮和勇氣是這一代律師或所有專業人士最重要的素質。」

香港律師是否準備就緒，應付世界經濟的急遽發展，與來自不同司法管轄區的法律執業者增進合作和競爭？「有些人比其他人更有準備。那些沒有準備的人，難以與人競爭，反而怨天尤人，如埋怨政府資助不足等等。事實上，這個行業應該負起推動自身行業可持續發展的主要責任。我們與內地執業者的互動將繼續加強。雖然他們大多非常謙虛，聲稱有很多要向香港律師學習之處，特別是專業水平和法治觀念，但事實上他們當中很多在專業實力和全球視野方面比我們更進步，因為他們渴望追求知識和汲取海外經驗。香港律師保持領先的空間正在逐漸收窄，同業不得不加倍努力。」
Workshop on the Use of Modern Technology for Dispute Resolution and Electronic Agreement Management

On 3 and 4 March, Vice-President and Chairman of InnoTech Committee Amirali Nasir took part in a two-day Workshop organized by the Department of Justice ('DOJ') under the auspices of the APEC Economic Committee and its Friends of the Chair on Strengthening Economic and Legal Infrastructure ('SELI') on the Use of Modern Technology for Dispute Resolution and Electronic Agreement Management (particularly ODR) held in Port Moresby, Papua New Guinea.

At the invitation of DOJ, the Vice-President spoke at one of the workshops on “Use of Modern Technology for Dispute Resolution and Contract Management in Member Economies: Experience Sharing” and shared the Hong Kong experience on the use of modern technology for dispute resolution and contract management as well as future developments, including eBRAM.
The Hong Kong Academy of Law

The Law Society and the Hong Kong Academy of Law organised a total of 32 seminars in March, four of which had an audience of over 100.

One of four seminars was “Corporate Governance, Competition Law and the Board Room” which discussed compliance risk management of competition law and key questions for corporate governance. The speaker was Ms. Suzanne Rab, Barrister, U.K. Over 160 participants attended the seminar.

Another of the four seminars was “A new UK Corporate Governance Code: A complete re-work or much ado about nothing?”. This seminar assessed the new requirements of the UK Corporate Governance Code and discussed how likely they would improve the state of corporate governance in the UK. The speaker was Professor Arad Reisberg, Head of Brunel Law School and Professor of Corporate Law and Finance, Brunel University, London. Over 130 participants attended the seminar.

Both seminars were organised by the Law Society jointly with the Hong Kong Institute of Certified Public Accountants and The Hong Kong Institute of Chartered Secretaries.

In-House Lawyers: Sweat & Glory Series 2018

Equality in Workplace

On 26 March, the In-House Lawyers Committee (‘IHLC’) organised a seminar under the In-House Lawyers: Sweat & Glory Series 2018 with the topic “Equality at Workplace”. The seminar was attended by around 50 members comprising in-house members from a variety of backgrounds. The panel discussion was moderated by Ms. Michelle Tennant, Vice President, Senior Counsel at Deutsche Bank AG.

Speakers on this panel included Professor Alfred Chan, Chairperson of the Equal Opportunities Commission, and Mr. Peter Reading, Legal Counsel of the Commission. IHLC would like to express its heartfelt thanks to the panelists who shared with us on topics covering various aspects related to equality in workplace.

From left: Ms. Maggie Tsui, IHLC Chairlady, Mr. Peter Reading, Ms. Michelle Tennant (moderator) and Professor Alfred Chan.

香港法律專業學會

律師會及香港法律專業學會於3月舉辦了合共32場講座，其中有4場吸引了超過100人出席。其中一場以「公司管治、競爭法和董事會」為題，討論了競爭法的合規風險管理及公司管治的關鍵問題，講者是英國大律師Suzanne Rab女士。講座吸引了超過160人出席。

另一場以「英國公司管治新準則」為題，評估了英國《公司管治守則》的新要求，並討論改善英國公司管治狀況的可能性，由英國倫敦布魯內爾大學布魯內爾法學院負責人兼企業法及財務學教授Arad Reisberg教授主講。超過130人出席講座。

這兩場講座均由律師會、香港會計師公會和香港特許秘書公會聯合舉辦。
Korean and Japanese Internship Programmes

The Law Society devotes much effort in creating international exchange opportunities for our young members to maintain continuous professional development and build international connections. One way to fulfill this objective is through organising internship programmes between Hong Kong and overseas jurisdictions.

2018 marked the 5th year of the two-week internship programme between Hong Kong and Korea. Starting from 3 January, five Korean interns, including lawyers and law students, started their two-week internship training in local law firms and one Hong Kong solicitor commenced the two-week internship training in Korea.

The 4th year of the two-week Hong Kong-Japan internship programme also took place in March. Four Japanese interns started their two-week internship training in local law firms from 7 to 22 March, while one Hong Kong solicitor underwent her two-week internship training in Japan from 5 to 20 March.

An orientation and visit to the legal organisations (eg Legislative Council and High Court) were organised by the International Legal Affairs Committee (‘ILAC’), providing all Korean and Japanese interns a better understanding of the Hong Kong legal system. The Korean interns also joined the Ceremonial Opening of the Legal Year 2018 at City Hall on 8 January, in which they were able to mingle with the local legal practitioners.

The internship programmes were well-received. Thank you for the continuous support provided by the Ministry of Justice of the Republic of Korea, the Korean Bar Association, the Japan Federation of Bar Associations and the Hong Kong law firms who participated in the internship programme.

韓國及日本實習計劃

香港律師會致力為年青會員創造國際交流機會，以保持專業發展及建立國際聯繫。其中一個方法，是與海外司法管轄區展開交流實習計劃。

今年已是香港與韓國第5年合辦為期兩週的實習計劃。由1月3日起，5名韓國律師和法律學生開始在香港的律師行實習，而一名香港律師亦同時在韓國實習兩週。

第4屆港日實習計劃於3月舉行，為期兩週，4名日本律師於3月7日至22日在香港的律師行實習，而一名香港律師則於3月5日至20日在日本實習兩週。

國際法律事務委員會舉辦了簡介會和參觀法律機構（如立法會和高等法院），讓韓國和日本的實習生進一步了解香港的法律制度。韓國實習生也出席於1月8日在大會堂舉行的2018法律年度開啟典禮，與本地法律界人士交流。

實習計劃備受好評。感謝韓國司法部、大韓辯護士協會、日本辯護士聯合會及參與實習計劃的香港律師行一直以來的支
持。

A farewell dinner was organised for the Korean interns and participating Hong Kong law firms on 18 January to conclude the Korean internship programme.

韓國實習計劃於1月18日舉行的歡送宴會作結。
Visits by Delegations from the Greater China region

The Law Society received two visiting delegations from Greater China in March 2018. Led by its President Mr. Kuo Ching-Pao, the Kaohsiung Bar Association visited the Law Society on 19 March and exchanged views with Vice President Melissa Pang and other Law Society representatives. The Law Society was invited to attend the 69th anniversary celebration of the Kaohsiung Bar Association in September. Mr. Lu Weidong, Director of the Shanghai Municipal Bureau of Justice, visited the Law Society on 20 March. Immediate Past President Stephen Hung and Mr. Neville Cheng, Vice Chairman of the Greater China Legal Affairs Committee introduced to Mr. Lu the role and functions of the Law Society and the development of the legal services industry in Hong Kong.

Council Member C M Chan spoke at the 2018 Chinese Enterprise Rights Protection Summit.

The 2018 Chinese Enterprise Rights Protection Summit hosted by the China Federation of Industrial Economics was held from 10 to 11 March in Nantong City, Jiangsu Province. Council Member C M Chan spoke to more than 200 participants on “The role of Hong Kong in the investment and the protection of enterprises’ rights under the Belt and Road Initiative”. Ms. Daphne Lo, Member of the Standing Committee on External Affairs, joined a roundtable discussion and shared her insights on how the legal industry can facilitate in outbound investment for risk prevention and protection of enterprises’ rights. Other Law Society representatives who attended the Summit included Mr. Henry Wai, Vice Chairman of the Greater China Legal Affairs Committee and its Member Mr. Lawrence Yeung.

2018 Chinese Enterprise Rights Protection Summit

2018中國企業權益保護高峰論壇

2018中國企業權益保護高峰論壇於3月10日至11日在江蘇省南通市舉行。陳澤銘理事以「香港法律界在『一帶一路』投資與企業權益保護可扮演的角色」為題，向200多位參加者發表演說。對外事務常務委員會委員盧鳳儀律師則在其中一個圓桌會議上，跟其他與會嘉賓一同探討法律業界在企業進行海外投資時，可在法律風險預防與權益保護方面擔當的角色。其他出席論壇的律師會代表還包括大中華法律事務委員會副主席韋業顯律師和委員楊先恒律師。

Delegation from the Kaohsiung Bar Association visited the Law Society.

高雄律師公會訪問律師會。

大中華地區代表團訪問律師會

律師會於2018年3月接待了兩個來自大中華地區的訪問團。高雄律師公會在郭清寶理事長的帶領下於3月19日來訪，他們跟彭韻僖副會長等律師會代表交流，並邀請律師會參加該會將於9月舉行的69周年慶典。上海市司法局局長陸衛東先生則於3月20日來訪，熊運信前會長和大中華法律事務委員會副主席鄭宗漢律師向他簡介香港律師會的角色和功能，以及香港法律服務業的發展概況。
Access to Justice Meets InnoTech!

The Law Society successfully held its first-ever hackathon on 7 & 8 April. The event, on the theme of Access to Justice (‘A2J’), was also the first hackathon in Asia to be led by a professional regulator, and also the first A2J-focused legaltech event in Asia.

The “A2J InnoTech Law Hackathon” (the ‘Hackathon’) was a two-day competition for talents to collaborate and develop innovative technology-enabled solutions in a cross-disciplinary approach. The aim was to close the justice gap by seeking to address issues in community justice and access to legal services faced by the general public, legal service providers and community service organisations in Hong Kong.

The Hackathon was organised by the InnoTech Committee (‘ITC’), with support from the Global Shapers Community Hong Kong and the Legal Innovators. The Law Society was also proud to have support from the Legal Aid Department (‘LAD’) for this inaugural event. Microsoft was the technology and prize sponsor.

Around 200 participants took part in the Hackathon, including professionals, entrepreneurs, software engineers, UX designers and students, from across the legal, computer science and start-up sectors.

The event was also supported by over 20 mentors, drawn from across the LAD, local and international law firms, non-profit organisations, technology start-ups, venture capital firms, and Microsoft, who all generously gave their time to guide participants on their ideas, solutions and pitches during the Hackathon and at the preparatory events.

Preparatory Events

An initial briefing session was organised for participants and mentors on 22 March at the Law Society Function Room, during which the three problem scenarios were released. Participants were required to develop a solution for one of the three scenarios, which included:

1. Taichung Bar Association Annual General Meeting and the 70th Anniversary Ceremony
2. A delegation of the Law Society attended the Taichung Bar Association Annual General Meeting and the 70th anniversary ceremony on 24 March. Members of the delegation included Vice President Melissa Pang, Immediate Past President Stephen Hung, Council Member Robert Rhoda, Mr. Ambrose Lam and Mr. Lawrence Yeung, Members of the Greater China Legal Affairs Committee. They also visited the Legal Affairs Bureau of Taichung City Government to understand its functions and structure.

3. Preparatory Events

An initial briefing session was organised for participants and mentors on 22 March at the Law Society Function Room, during which the three problem scenarios were released. Participants were required to develop a solution for one of the three scenarios, which included:

- Technical workshop provided by Microsoft on 27 March.
- Briefing session for participants on 22 March.

The Organising Committee was thankful for the support of the Legal Innovators represented by Mr. Arvin Wong (first from left) and Mr. David Lam (second from left), and Global Shapers Community Hong Kong represented by Dr. Jan Engels (first from right) throughout the preparation of the event.

台中律師公會會員大會暨慶祝成立70週年慶典

香港律師會代表團出席了台中律師公會於3月24日舉辦的「台中律師公會會員大會暨慶祝成立70週年慶典」。代表團成員包括彭韻僖副會長、熊運信前會長、羅睿德理事、大中華法律事務委員會委員林新強律師和楊先恒律師等。他們此行亦參觀了台中市政府法制局，了解該局的職能和架構。
Bridging the public and legal professionals; Giving minorities a helping hand; and Facilitating access to legal aid services.

Following the briefing session, Microsoft arranged a technical training workshop for participants at its Cyberport offices on 27 March. Microsoft introduced its Azure technologies (including Web Apps, Bot Services and Cognitive Services) and gave participants access to these tools in order to help them design and develop their solutions for the Hackathon.

The Two-Day Hackathon

It was a busy yet productive weekend for the participants during the two-day Hackathon as they put their heads together at Cyberport to make the last effort for the best solution. Winners have been identified after careful deliberation among the judging panel which had a difficult task given there were many impressive proposals. Stay tuned for the next issue of Hong Kong Lawyer to learn more about the winning teams’ innovative ideas and highlights of the two-day event!

Reported by: Jolene Reimerson and Joyce Chow
Another Happy Race Podium Finish for the Distance Running Team!

The Law Society Distance Running Team competed in this year’s Rotary Hong Kong Ultramarathon on 4 March. As in past years, the charity event was held at Lung Wo Road, Central and attracted many teams and individual athletes.

Despite the humid and warm weather, the eight-member strong Law Society team successfully completed the 50km relay race. Encouraged by supportive cheers along the way, the team collectively ran well over 20 laps of the road with eight super smooth relay baton handovers.

With a finishing time under 4 hours and 10 mins, our fabulous efforts earned the team second runner-up place in the community service competition. With big smiles, we proudly received the shiny Rotary cup and medals on the podium. Well done to all team members for the amazing running performance!

Our team included Past President Simon Ip, Mr. Patrick Chan, Mr. Calvin Lau, Mr. Colin Cheng, Mr. Cho Kin-Fung, Mr. Sonny Lam, Distance Running Convenor Ms. Catherine Lau and Distance Running Captain Mr. John Y.C. Lee.

Thank you to Rotary International District 3450 and the Hong Kong Amateur Athletic Association for jointly organising the event, which aims to inspire people to make a positive contribution to the community and to create awareness of the importance in maintaining good mental health.

See you at the next team event or fun workouts!

Reported by: John Lee

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YSG: Connected 2018 Kick-Off Event

On 23 March, around 150 members joined us at the kick-off event of CONNECTED 2018 mentorship programme organised by the Young Solicitors’ Group (‘YSG’). Participants had a casual and relaxing evening while meeting and socialising with their fellow groupmates, as well as enjoying some snacks and drinks. We thank all participants, especially all our mentors for your time and 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 that provides mentees (trainee solicitors) with the opportunity to be mentored by senior members (practitioners with PQE 8 years or above), to learn from their assigned buddies (young practitioners with less than 8 years PQE), and to network with fellow mentees. Since its launch in 2011,
“CONNECTED” has become one of the most popular events of YSG. Through various activities organised throughout the year, the CONNECTED programme provides a platform for participants to engage with each other, have fun, learn, all the while building long-term friendships with each other. Please stay tuned for the next CONNECTED official event which will be held in the summer.

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 Member Services Department at adms@hklawsoc.org.hk.

Reported by: Janice K.C. Chang
Golf Tutorial for Beginners at Mission Hills

On 24 March, the Law Society Golf Team successfully organised a golf tutorial at a golf club in Shenzhen. This tutorial gave our members, especially those who were new to the game, a great opportunity to play a full round of golf accompanied by our experienced members.

16 participants were divided into four flights where they practiced short games and warmed up at the driving range. Each flight was led by one or two mentor(s) who shared their golfing skills with their mentees and educated them about golf etiquette. Below summarised some of the many learning outcomes of this tutorial which were only achievable with an on-green practice:

1. how to set up and make proper alignment with a target;
2. how one should dig into the grass and turf to make a divot when hitting the ball; and
3. how to putt the ball into the hole on a green which was full of undulations.

We expressed our sincere gratitude to all our mentors for their support and guidance. After the tutorial, we all stayed to enjoy a fabulous BBQ dinner together. The tutorial ended with joy, fruitfulness, and most importantly, the cherished memories with our fellow golf team members. Let’s meet again!

Reported by: Mr. Dennis Chan

Home Visit to Elderly

On 24 March, the Community Talks and Service Working Group (‘WG’) under Community Relations Committee (‘CRC’), with the support of Hong Kong Society of the Aged (‘SAGE’), organised a home visit to the elderly at Tai Wo Hau. More than 40 solicitor volunteers and their families and friends put their love and caring into action by participating in this event.

Volunteers visited 42 households, chatting with them and bringing them a goodie bag with staple food items. The volunteers identified some special needs of the elderly during the visit and shared their observations with SAGE for their follow-up.

The WG would like to express sincere gratitude to the volunteers on their devoted service.

Ms. Sauw Yim, WG Chairlady and Ms. Patricia Wijaya, CRC member, were among the volunteers supporting the event.
Visit to Correctional Facility for Phase 9 “Legal Pioneer” Mentorship Programme

A total of 31 students from Tuen Mun Catholic Secondary School, Queen Elizabeth School Old Students’ Association Secondary School, Christian Alliance Cheng Wing Gee College and Holy Trinity College attended a visit to Cape Collinson Correctional Institution together with Law Society members and mentors for the “Legal Pioneer” Mentorship Programme on 6 April.

“Legal Pioneer” Mentorship Programme is a flagship programme of the Law Society that has now entered its 9th phase, whereby mentees participate in visits and engage in group projects covering a selected legal theme, aiming at enriching their legal knowledge and providing a platform for social and personal growth through a supportive relationship with their mentors.

During the visit, students had the opportunities to see the facility of the Correctional Institution, including inmates’ dormitories, dining halls and workplaces, and also met with an inmate who has shared his own experience. Participants expressed that they were deeply touched by this personal sharing session.

More than 40 solicitor volunteers and their families and friends, participated in the event.

「法律先鋒」師友計劃第九期懲教所探訪活動

來自屯門天主教中學、伊利沙伯中學舊生會中學、香港九龍塘基督教中華宣道會鄭榮之中學及寶血會上智英文書院的31名學生與律師會會員及「法律先鋒」師友計劃的導師於4月6日探訪歌連臣角懲教所。

「法律先鋒」師友計劃是律師會的重點計劃之一，現已踏入第九期。活動旨在透過考察探訪和參與法律主題小組項目豐富學生的法律知識，並及義務律師導師的支持，為學生提供社交及個人發展的平台。

學生在探訪期間有機會參觀懲教所的設施，包括在囚人士寢室、飯堂和工作間，並安排了一位在囚人士分享他的經歷。參加者均表示深受在囚人士的分享而感動。
Unlocking the Deadlock Mechanism

By Xin Fang, Senior Associate

Mayer Brown JSM
Do we really need detailed deadlock mechanisms? It’s very difficult to anticipate what will happen in ten or twenty years’ time, can’t we sort it out then? This is not an uncommon question from parties intending to form a joint venture. The future may be hazy, but the risk of deadlock is clear.

Deadlock is an inherent risk of joint ventures because all joint ventures will involve some kind of shared control (except in extreme scenarios where one or more of the investors are minority shareholder(s) with such small shareholding that does not warrant them to have any form of control). A joint venture is formed when two or more commercial parties pool their resources to operate a business together. In return for their contributions, each party acquires some kind of control over the joint venture. Where the joint venture takes the form of a company, control may be positive (in the form of voting rights and board seats) or negative (in the form of veto rights). Regardless of the form of control, what is likely to happen is that no one party would have full control over all the strategic and important management issues of the joint venture. When control is shared, deadlocks are inevitable.

Therefore, it would be wise for the parties to adopt, at the outset, an appropriate contractual framework for addressing deadlocks. Before drafting a deadlock mechanism, it is important to understand the fundamental dilemma within the mechanism and how it affects each part of the structure – these are the issues considered in this article. For the sake of discussion, this article will examine a joint venture set up as a private company by two parties, each holding roughly the same number of shares in the company.

The Fundamental Dilemma

All deadlock mechanisms should aim at addressing a fundamental dilemma. On the one hand, since the success of a joint venture usually depends on the input of both parties, each party would naturally want to lock the other party in the partnership and prevent it from triggering a deadlock too lightly or engineering a deadlock to get out of the deal. If this is the more important concern, the parties could increase the threshold for triggering the deadlock mechanism or even add a punitive element. On the other hand, if there is a fundamental disagreement regarding business operations, no party would want to be dragged into a business it no longer has faith in or be stuck with a reluctant and disgruntled partner. Parties who place more emphasis on this aspect would favour a more balanced and neutral approach.

The tension between these two competing interests underlies every aspect of the deadlock mechanisms and explains the positions adopted by the parties. The fundamental dilemma first manifests itself in the definition of “deadlock”.

Defining “Deadlock”

The deadlock mechanisms are triggered when a dispute falls within the contractual definition of “deadlock”. Parties who wish to make it harder to kick off the process prefer to define “deadlock” narrowly. Frequently this means setting out an exhaustive list of matters and defining “deadlock” as a disagreement over one of the listed matters.

Obviously, the narrowing-down effect of the list depends largely on its length and how specific each listed matter is described. A broad description such as “disagreement over the business of the joint venture company” simply defeats the purpose. Accordingly, this approach requires the parties to spend considerable time in negotiating the list, which may distract them from the more important component of the deadlock mechanisms – the consequences of deadlock.

It is therefore not surprising that parties are becoming increasingly relaxed about the definition of “deadlock”. They may simply define “deadlock” as having occurred when one party boycotts a general meeting or board meeting, or blocks a resolution on two consecutive occasions. Some parties have sought to qualify this broad definition by adding conditions such as the parties must act in good faith, or the disagreement is, in the reasonable opinion of one party, materially adverse to the operations of the joint venture company. Other parties prefer to focus the discussion on the consequences of deadlock, which is the most powerful deterrent of abuse.

Consequences of Deadlock

Escalation

Nowadays the escalation provision is a staple in the deadlock toolbox. It seeks to salvage the relationship and continue the joint venture by encouraging parties to reach a compromise. A good escalation provision should, therefore, establish a formal structure to facilitate amicable and constructive communication between the parties.

For instance, the escalation provision could require each party to prepare and circulate to the other party a memorandum setting out its position on the disputed matter and its reasons for adopting that position. In preparing such a memorandum, the parties are forced to rationalise their stance. This discourages a party from engineering a deadlock, which may be exposed by this process. It also provides each party with an opportunity to lay out supporting facts and details which the parties might have lost sight of during heated debates. If the memorandum is properly prepared, it would serve as a useful basis for further discussions.

An escalation provision would typically require each party to escalate the dispute to a senior management officer in its organisations, and stipulate a timeframe for both sides’ senior management officers to discuss and resolve the deadlock, if possible. The existence of an escalation provision curbs arbitrary behaviour at the joint venture level, because the managers of the joint venture company would not wish to escalate matters to their seniors without good cause.
More importantly, the unique position of the senior management officers as both outsiders and insiders increases the likelihood of a satisfactory resolution. They are outsiders in the sense that they were not directly involved in the dispute. Therefore, they could start discussions with a clean slate, unburdened by any bad feelings that might have accumulated from previous exchanges, and free to depart from any entrenched positions. They would also be able to offer a more detached and objective perspective on the disputed matter.

The senior management officers are insiders of each party’s organisation. They are familiar with the commercial objectives and concerns of the relevant party, as well as the operations of the joint venture. As such, they are better equipped than completely independent outsiders to deal with deadlocks involving business decisions and commercial judgment (which are the more likely causes of deadlock).

Needless to say, there are deadlocks that reflect a fundamental difference in interest and vision, which cannot be resolved even with the best escalation provision. In these circumstances, a breakup is inevitable and in the interest of all parties.

**Breakup**

There are many varieties of breakup provisions. They could be designed as a facilitator of amicable separation, a backdoor exit, a clamp to squeeze out the minority, to name just a few. As such, they should be the focus in resolving the fundamental dilemma between preventing an abuse of the deadlock mechanisms and allowing parties to exit in the event of a genuine deadlock.

The basic form of the breakup provision resolves the dilemma in favour of fairness between the parties. Take for instance the buy-sell mechanism, which is the most commonly used means of separation. These provisions allow one party to buy out the other party or sell all of its shares to the other party; the joint venture is put to an end by consolidating control in one party. If the provisions are not well thought out, they may increase the chance of the deadlock mechanisms being abused by the parties. A party (Party A) may abuse the mechanisms by engineering a deadlock to force the other party (Party B) to buy it out at an inflated price, or squeeze out Party B at an undervalue. Such behaviour can be discouraged by putting in place mechanisms that motivate Party A to offer a fair price.

The Russian Roulette is a good example of buy-sell procedures that encourage fair pricing. Simply put, Party A starts the process by offering to buy all of Party B’s shares in the joint venture company at a fixed price per share. Party B must then elect either to accept the bid at the proposed price or buy all of Party A’s shares at the same price per share. Since Party A’s offer could be reversed at Party B’s sole discretion, if Party A makes an offer that is below the market price, Party B is very likely to jump at the opportunity to buy out Party A at a bargain price. Hence Party A is, in theory, motivated to put forward a fair price for the shares.

However, the fairness of the Russian Roulette may be compromised if Party B has only a small shareholding in the joint venture company or is financially weaker than Party A. In these circumstances, Party A is incentivised to offer a low price because it knows that it is very costly for Party B to reverse the offer and Party B may not have the financial means to do so, and hence it is very likely that Party B will have no choice but to sell its shares to Party A at a low price.

To some extent, measures can be put in place to mitigate the effect of unequal shareholding or financial abilities. For example, an independent third party could be brought in to determine the fair market value of the shares. The fair market value thus determined could either be taken as the price of the shares per se or the price floor of any offer under the buy-sell procedures.

The buy-sell procedures discussed above seek to address the fundamental dilemma in a balanced manner. The parties could of course decide that it is more important to prevent abuse or generally deter parties from initiating the buy-sell procedures too lightly. One way to do this would be to apply a pre-agreed discount to the value of the initiating party’s shares (if the non-initiating party elects to buy these shares) and apply a pre-agreed premium to the value of the non-initiating party’s shares (if the non-initiating party elects to sell its shares). This mechanism increases the cost of the initiator and hence provides strong incentive for it to reach an amicable resolution with the other party.

A more drastic approach in favour of deterrence is to stipulate liquidation as the means of separation. In most cases, the value of a joint venture company on a breakup basis would be lower than that on a going-concern basis, so both parties have much to lose on a liquidation. In order to avoid this lose-lose consequence, both parties are strongly incentivised to reach a sensible compromise or find a mutually beneficial means to exit the joint venture, such as a joint sale to a third party. For the weaker party in a joint venture, the right to resort to liquidation may help it to bring the stronger party to the negotiation table and give it more bargaining power.

**Conclusion**

Do parties really need detailed deadlock mechanisms? The answer is surely a definite “yes”. All joint venture agreements are forward-looking documents, so agreeing on how to deal with a future deadlock is no different from agreeing on other matters. Naturally, discussing a breakup is less appealing than discussing future business plans, but it is a discussion worth having. Deadlock is a fact of life in many joint ventures and a prolonged deadlock hurts everyone involved. Deadlock mechanisms accept this reality. A well drafted deadlock provision can address both the need to deter an easy exit as well as the need to provide a definite exit route when it is better for the parties to go their separate ways. ■
解鎖僵局

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「有必要現在就約定一個詳細的僵局機制嗎？誰也不知道十年、二十年後會怎麼樣，難道不能到時再商量？」合資項目中的一方提出這樣的疑問並不稀見。未來確實難以預測，但僵局的風險卻顯而易見。

由於合資企業的控制權經常由多方共同持有，因此僵局是大部分合資企業的固有風險。合資企業是個資源整合的平台，合資方們將各自的資源投放到一個共同設立的企業，藉此獲得部分企業控制權。控制權的形式各式各樣，有表決權、否決權、任免權等等。每一方獲得的控制權未必相等，但重點是，沒有任何一方對合資企業的管理享有絕對的控制權。當控制權由幾方共同擁有時，僵局是不可避免的。

既然如此，合資各方應該盡早商定一個解決僵局的機制。在制定僵局機制之前，必須先了解僵局機制的核心矛盾，以及對僵局機制的各個組成部分的影響——這是本文的主題。為了方便討論，本文將以一間由兩個主體共同持股的合資公司為分析的對象。

僵局機制的核心矛盾
每個僵局機制都必須面對一個兩難的決定。一方面，由於合資公司的成功時常依賴合資方的共同投入，因此每一方自然想確保對方的參與，避免對方草率地啟動僵局機制，甚至故意製造僵局，藉此退出合資企業。為此，雙方可能傾向於為僵局的啟動機制設定較高的門檻，甚至對退出者作出懲罰。

另一方面，當雙方對企業的發展方向或其他重大議題存在根本性的分歧，無法繼續合作時，應當有一個退出機制以便雙方井然有序地終止他們的合作關係。如果雙方更重視這一點，他們可能會採用一個比較溫和及對等的僵局機制。

由此可見，合資方談判的立場，以及最終的僵局機制，都取決於雙方如何衡量這兩個方面。

僵局的定義
一般來說，當合資方之間的爭執符合協議中定義的「僵局」，任何一方均可啟動協議中的僵局機制。如果想提高啟動機制的難度，可以收窄「僵局」的定義為「僵局」。這個做法能否真正縮小「僵局」的範圍取決於雙方對僵局機制的描述。將僵局機制廣泛地形容為「對合資公司運營方面的分歧」顯然達不到收窄「僵局」的目的。因此，若要有效地收緊定義，雙方必須花費大量的時間商討「僵局」應包括哪些特定事項，以及對該等事項的闡述。這個漫長的談判過程很可能會分散他們的注意力，令雙方無法集中精力討論僵局機制中更重要的一個環節——僵局的後果。

難怪越來越多的合資方開始對「僵局」的定義採取更開放的態度。他們有時會將「僵局」廣義地定義為一方連續兩次缺席股東大會或董事會會議，或否決某個決議。若要收窄這個廣泛的定義，有些合資方會在定義中增加一些條件，比如說有關一方必須真誠行事，或者有正當理由相信該爭議對合資公司的運營有重大不利的影響。有些合資方則傾向於將談判的焦點放在僵局的後果上，畢竟這才是遏制濫用僵局機制最有效且最有力的手段。
僵局的後果

爭議升級

爭議升級條款側重於調解合資雙方之間的矛盾，旨在修補他們的關係並繼續合資企業的運營。因此，爭議升級條款應當建立一個正式的商討程序，以促進雙方友好地進行建設性的溝通。

比如說，爭議升級條款可以規定每一方必須給對方出具一份備忘錄。備忘錄應列明該方在爭議事項中的立場，並且闡述其採取該立場的原因。撰寫備忘錄時，各方必須理性地解釋自己的立場。

若一方故意製造僵局，他可能無法在備忘錄中自圓其說，因此這個程序有助於減少僵局機制被濫用的風險。此外，相比激烈討論中的你來我往，各方可以在備忘錄裡更加詳細地闡述自己的觀點，並提供論據。一份認真編寫的備忘錄可以推進雙方下一步的討論。

退出機制

退出機制既可以防止合資方輕易啟動或濫用僵局機制，也可以在僵局真正發生時幫助雙方井然有序地結束合作關係。不同的退出機制可以影響、甚至引導合資方的行為。因此，退出條款往往成為談判的焦點。

我們就以最常見的退出機制 —— 買斷/賣斷機制 —— 為例。這個機制允許一方收購對方在合資公司裡的所有股份（即買斷對方的股份），或者迫使自己在合資公司裡的全部股份賣給對方（即賣斷自己的股份）。當公司股權集中在一方的手中，該公司就不再是一個「合資」公司。因故買斷/賣斷機制時若沒有經過深思熟慮，可能會增加合資方濫用僵局機制的風險。例如，一方（甲方）可以故意製造一個僵局，逼使另一方（乙方）以高價買斷對方的股份或者逼使乙方以低價將其股份賣給甲方。若要減少這類投機行為，可以在買斷/賣斷機制中加入一些驅使甲方公平出價的條款。

「俄羅斯輪盤賭」式的買斷/賣斷機制就是一個鼓勵公平出價的機制。簡而言之，甲方可以向乙方發出通知書，表明自己願意按通知書中訂明的每股價格收購乙方在合資公司裡的全部股份。收到通知書後，乙方有權選擇按照上述價格將自己的股份賣給甲方，或者以同樣的價格收購甲方的股份。如果甲方的出價很低，乙方自然會抓住這個機會買斷甲方。由於買賣的主動權完全在乙方，因此理論上甲方更願意提出一個對雙方都公平的價格。

然而，如果乙方是一個小股東或者經濟實力不如甲方，那麼「俄羅斯輪盤賭」式的買斷/賣斷機制未必公平。在這種情況下，合資雙方應當考慮在買斷/賣斷機制中加入一些驅使甲方公平出價的條款。

結論

合資雙方是否需要約定一個詳細的僵局機制？當然需要。所有的合資協議書都是展望性的，因此約定如何處理未來可能會出現的僵局事件和約定其他事項沒有根本性的區別。討論僵局雖然沒有討論未來商業計劃那麼吸引人，卻是一個值得投入時間的討論。僵局是大部分合資企業必須面對的一個問題，而長時間的僵局有損合資雙方的利益。一個適當的僵局機制可以在遏制濫用的同時，為雙方在無法繼續合作時提供一個確切的退出方式。
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How Fire Safety Directions Affect a Vendor’s Ability to Sell His Property

By Prisca Cheung, Barrister-at-law

Sir Oswald Cheung’s Chambers
A. Introduction
Unauthorised building works and building orders have long been the subject of conveyancing litigation. Building orders are not, however, the only form of government notices that may affect the title to a property. Fire safety directions issued under s. 5 of the Fire Safety (Buildings) Ordinance, Cap. 572 (the Ordinance), though often overlooked, are in fact equally common in individual properties and buildings. Such directions usually relate to improvement or alteration works regarding a property and/or building’s means of fire escape, access for firefighting and/or measures inhibiting the spread of fire.

The importance and potential severity of such directions are not to be overlooked. Section 5(8) of the Ordinance provides that a failure to comply amounts to an offence and may result in the imposition of a Prohibition Order under s. 7(7) prohibiting occupation of the building concerned. Contravention of a Prohibition Order may lead to a monetary fine and imprisonment for three years.

This article will suggest that the mere existence of fire safety directions, regardless of whether they pertain to one’s individual property or to the common areas of a building at which one’s property is situated, may affect an owner’s ability to sell his property by potentially constituting an encumbrance on his title to the property in the form of potential monetary and/or criminal liability (Section B). Depending on the particular facts of each case, fire safety directions may also affect a vendor’s ability to honour his contractual obligations under the sale and purchase agreement (Section C).

B. An encumbrance on a vendor’s title to his property
This section will focus on how fire safety directions may affect a vendor’s ability to give good title to his property if either his property and/or the common areas of the building at which his property is situated is laden with fire safety directions. For the sake of completeness, readers will of course note that independent of a vendor’s duty to give good title is his duty to show good title to the property. This however is not a topic apt for general discussion in this article, as the duty to show good title necessarily depends on how requisitions were dealt with in a specific conveyancing context.

B1. Monetary Liability to pay or contribute sums beyond reasonable expectation
Fire safety directions often require compliance works to be carried out to the property or the common areas of the building in question. The possible liability as purchaser to pay or contribute to unpaid bills for building repairs which are of an extent beyond a reasonable person’s expectation may constitute a blot on the vendor’s title: see Sihombing and Wilkinson, Hong Kong Conveyancing Law and Practice, Volume I(A) at V [142.1]. This statement is true not only as regards building repairs of the particular property, but also those relating to the common parts of the building the property concerned is situated at.

In Chi Kit Co. Ltd & Another v. Lucky Health International Enterprise Ltd [2003] 3 HKCFAR 268 (‘Chi Kit’), the vendor failed to disclose to a prospective purchaser the existence of a personal injury claim that had been brought against the incorporated owners of the building. Eventually a judgment of over HKD25 million was entered against the incorporated owners. The Court of Appeal held that there was a blot on the title of the property by reason of the liability arising from the judgment. Bokhary PJ and Mason NPJ held that in such circumstances, the caveat emptor principle did not apply as “the [caveat emptor] maxim should not be applied so that it leaves a purchaser exposed to a serious detriment the risk of which, is solely within the knowledge of the means of knowledge of the vendor.”

See also the case of All Ports Holdings Ltd v. Grandfix Ltd [2001] 2 HKLRD 630 (CA) (‘All Ports Holding Ltd’) at §§ 20-22, where the Court of Appeal held that the existence of an extraordinary liability to contribute funds to the incorporated owners could constitute a defect in title.

All Ports Holdings Ltd was however distinguished in E-Global Ltd v. Trenda Ltd [2013] 5 HKC 192 (‘E-Global’) at §§ 24 – 28, where Deputy Judge Burrell held that a notice from the Fire Services Department requiring alterations to be made to a multi-storey building which had not been complied with did not constitute a blot on the vendor’s title. The reasoning of the Judge was based on the following facts of the case:

1) Extensions of time for compliance had been granted on a regular basis (§ 10);

2) There were over 400 units in the building between whom any costs of compliance would have to be shared (§ 11);

3) Common sense dictated that the directions, which required the replacement of doors and installation of signs on the building, did not require urgent compliance and did not compromise the safety of the occupants of the general public (§ 12);

4) Due to the size of the building, in the time since the directions had been
issued, there had to have been many sale and purchase transactions in respect of units in the building (§ 12); 5) The Fire Services Ordinance, Cap. 95, contained no provision for registration of such directions against the titles of co-owners (§ 12).

It is suggested that E-Global was decided based on the particular facts of that case. One should therefore be very careful not to treat it as a definitive and all-encompassing authority that fire safety directions will never constitute a blot on the vendor’s title. Instead, one must look at the particular circumstances and facts pertaining to the fire safety directions in question, paying particular attention to factors such as:

1) The complexity of the works to be done in compliance with the fire safety directions. If the compliance works required to be undertaken are in the form of substantial and costly building and construction works for example, it is questionable whether works of such a nature can be said to be “ordinary running expenses” or “contributions in relation to the cost of renewal of particular parts of the property”: c.f. Chi Kit at p. 284, where the Court observed that “contributions in relation to the cost of renewal of particular parts of the property, though not necessarily expected, are within the contemplation of a reasonable purchaser...There is no occasion why, in the ordinary course, a purchaser should need protection against a liability to contribute to expenses of this kind.”

2) Any possible complexity in the allocation of costs for compliance c.f. E-Global, where the costs of compliance could simply be divided proportionately amongst owners of 400 or so units in the building in accordance with their respective shares.

3) The nature of the compliance works required. In E-Global, the directions were more in the nature of an “ongoing need to upgrade fire safety measures” and pertained to “the replacement of doors and installation of signs on the building”, which were matters so “trivial” that it was deemed impractical to require a surveyor or other professionals to prepare an estimate of costs (see § 20 of judgment). There may however be cases distinguishable from E-Global, where compliance with the particular fire safety directions issued cannot be said to be in the form of “ongoing need to upgrade fire safety measures” but, instead, substantial construction works to build something that did not exist, for example, to build new sprinkler heads, to install fire alarms, etc.

Another observation about E-Global is that the learned deputy judge observed at §§ 12 and 26 that fire safety directions in general would not impact a vendor’s ability to give good title as the Ordinance did not contain a provision for registration of fire safety directions, and that such directions were not registrable against a property. It is however noteworthy that in so observing, the deputy judge had not dealt with the dicta of A Cheung J (as the Chief Judge then was) in Wise Wave Investments Ltd v. TKF Services Ltd [2007] 4 HKLRD 762 at § 89, where the judge explained by pointing out that in Chi Kit, it was not the possibility of a charge that affected the vendor’s ability to give good title but “rather, the title problem was said to arise from the mere liability to make contribution by the new owner after completion to the incorporated owners for payment of the astronomical judgment debt.”

In the more recent case of Gigabillion Asia Pacific Ltd v. Sino Dynamic International Ltd [2015] 2 HKLRD 100, Cheung CJC again explained at §21 that as held in Chi Kit, an “encumbrance” that affects title is not limited to some claim to the property or a charge which may be imposed upon the property. A mere liability, or a mere (but real) risk of a liability to make a substantial contribution may, by itself, constitute an encumbrance as it is the liability to pay a huge amount of contribution that is wholly outside the contemplation of a reasonable purchaser that binds the unit and therefore can constitute a blot on the title or an encumbrance. The liability also binds successive owners of the unit so long as the contribution remains unpaid. It would therefore appear that the registrability of fire safety directions against a property does not provide a complete answer insofar as title is concerned.

B2. Criminal Liability

E-Global also referred to the absence of imminent fire safety concerns. Although the deputy judge did not elaborate on its relevance in the judgment and whilst there is a lack of authorities and guidelines on how and under what circumstances fire safety directions would be enforced, what is clear is that a failure to comply amounts to an offence under s. 5(8) of the Ordinance particularly when there is an imminent fire safety concern, and may result in the imposition of a Prohibition Order under s. 7(7) of the Ordinance prohibiting occupation of the property concerned. Contravention of a Prohibition Order may potentially lead to imprisonment. It is therefore noteworthy that, in purchasing a property that is either subject to fire safety directions itself or is situated in a building whose common areas are subject to fire safety directions, a purchaser may, depending on the facts, also be purchasing a potential criminal liability should enforcement action be taken. This would constitute an encumbrance on the title of the property; Wong On v. Lam Shi Enterprises Ltd (unrep., MP 2549/1995, [1995] HKLY 811) per Le Pichon J at §17 that the possibility of a potential criminal liability or a potential claim affected a vendor’s ability to show good title; later followed in Sun Lai Fong Keller v. Leung Wing Kit [2009] 1 HKLRD 436, 440.
C. CONTRACTUAL LIABILITY

Depending on the facts, compliance with fire safety directions may also affect a vendor’s ability to honour his contractual obligations under the sale and purchase agreement. This of course depends on the facts of each case and this section will therefore only highlight a few potential problematic areas. Without seeking to be exhaustive, compliance works may, for example, affect the usable area, size or layout of the property in question, thereby affecting the vendor’s ability to sell the property “as is” to the purchaser. A Prohibition Order prohibiting occupation of the property in question may also affect a vendor’s ability to give vacant possession of the property. If the property is sold subject to an existing tenancy, the Prohibition Order could affect the tenancy and, depending on the terms of the contract, this might in turn affect the vendor’s ability to sell the property subject to the tenancy concerned. All of these are issues that may constitute a breach of contract on the part of the vendor.

D. CONCLUSION

In conclusion, an array of potential problems may be caused by the existence of fire safety directions. Although often overlooked, it would appear that this area of the law is more complex than what appears at first blush, and vendors of properties that are either laden with fire services directions themselves or situated in buildings subject to fire safety directions should be advised that there may potentially be difficulties in their ability to sell their properties unless these directions are complied with before the sale. Special contractual provisions may also have to be tailored in the sale and purchase agreement to minimise if not eliminate the problems that may arise.
其物業提供妥善業權的能力構成什麼影響。讀者當然曉得，從完整的角度看，賣方除了須為其物業提供妥善業權外，也須證明該物業擁有妥善業權。然而，由於證明妥善業權的責任，涉及須如何就特定的物業轉易進行相關的業權查詰，因此這一議題並不適合在本文作一般性的討論。

B1. 與支付或分擔費用有關的金錢上責任超出合理預期

消防安全指示通常要求對有關物業，或是對有關大廈的公用地方，進行符合消防安全規定的工程。買方在支付或分擔大廈維修的未清償費用方面所可能需要承擔的法律責任，如果超過一名合理人士的預期，這也許會對該賣方的業權構成瑕疵：參看Sihombing and Wilkinson, Hong Kong Conveyancing Law and Practice, Volume 1(A) at V [142.1]。這一說法的正確性，並不屬於該物業本身的建築維修，也包括該物業所在大廈的公用地方的建築維修。

在Chi Kit Co. Ltd v. Another v. Lucky Health International Enterprise Ltd [2003] 3 HKCFAR 268（下稱 ‘Chi Kit’）一案中，法庭在該案中裁定（援引Chi Kit一案）分擔業主立案法團所須支付的費用，屬於非一般性的責任，而它可導致產生一項在業權上的缺陷。

然而，法庭在E-Global Ltd v. Trenda Ltd [2013] 5 HKC 192 at §§ 24－28（下稱 ‘E-Global’）一案中，對All Ports Holdings Ltd一案作出區別。暫委法官在該案裁定，「與更新某部分物業所需的費用分擔」？：比較Chi Kit at p. 284。法庭在該案中指出，「如果更新某部分物業所需費用有關的分擔，僅靠並非必然能夠預料得到，但並仍屬於合理業主的預期範圍內…在正常的情況下，沒有必要就此類費用的分擔責任為買方提供保障。」

2) 在分配合規工程的費用方面，任何可能的複雜性：比較E-Global—案。在該案中，進行符合消防安全規定的工程所需的費用，只須根據該大廈約400個單位的業主之各自份額，並按比例進行分配。

3) 所須進行的合規工程之性質。E-Global案中的消防安全指示，其性質乃屬「需要持續加強消防安全措施」，而所須進行的工程，是更換某單位的大門和安裝大廈標誌，此皆為「輕省」的工作，故要求測量師或其他專業人員就在有關費用作出估計，實屬不切實際（參看本判決第20段）。然而，其他一些案件的情況有別於E-Global案，而其所須遵守的消防安全指示，亦並非「需要持續加強消防安全措施」，而是需要進行一些原來沒有的重要工程，例如：安裝新的自動嘔水裝置和火警警報器。E-Global案的另一個問題，是具偉和法官在第12及26段中所稱的，消防安全指示一般不會對賣方提供妥善業權的能力構成影響，因為《條例》並沒有就消防安全指示的登記作出規定，而該等指示亦不能針對某項物業進行登記。但需要注意的是，具偉和法官並沒有考慮張

很明顯，賣方若知悉其物業可能存在須分擔費用的重大責任，他需要向買方披露相關情況：Chi Kit, at p. 285D－H。終審法院常任法官包致金及非常任法官梅師賢在該案裁定，「買者自慎」(caveat emptor)原則在該等情況下並不適用，因為「倘若導致買方須面對蒙受嚴重傷害的風險，而該風險是完全在賣方所知悉或有能力知悉的範圍內，則不應適用該[買者自慎]原則。」另參見All Ports Holdings Ltd v. Grandfix Ltd [2001] 2 HKLRD 630 (CA) （‘All Ports Holding Ltd’） at §§ 20－22。
舉能法官（當時的高等法院首席法官）在Wise Wave Investments Ltd v. TKF Services Ltd [2007] 4 HKLRD 762 at § 89一案中所提出的附帶意見。張舉能法官在該案中指出和解釋，對Chi Kit一案的賣方提供妥善業權的能力構成影響的因素，並非基於一項可能產生的押記，「而是由於在相關物業交易完成後，新業主須就業主立案法團所需支付的巨額判定債務分擔責任，從而導致業權問題的產生。」

張舉能法官在較為近期的一宗案件Gigabillion Asia Pacific Ltd v. Sino Dynamic International Ltd [2015] 2 HKLRD 100中再次解釋（at §21），根據Chi Kit一案的裁決，一項對業權構成影響的「產權負擔」，並不限於對某一物業所提出的申索，又或是對某一物業所可能施加的押記。就重大費用分擔而須承擔的法律責任，或就重大費用分擔的法律責任而須承受的風險，其本身亦可以構成一項產權負擔，原因是：分擔一筆巨額的，並完全超出一名合理買家所預期的費用，此中的法律責任對該物業及具有約束力，並可因此構成業權的瑕疵或產權負擔。此外，如果所需分擔的費用仍然未獲清償，則該物業的接續業主亦須同樣受該法律責任所約束。故此，為針對某項物業而作出的消防安全指示登記，並不能為業權所受影響的程度提供完全的答案。

B2. 刑事法律責任

E-Global一案也提及當中不存在迫在眉睫的消防安全問題。根據Chi Kit一案的裁決，一項對業權構成影響的「產權負擔」，並不限於對某一物業所提出的申索，又或是對某一物業所可能施加的押記。就重大費用分擔而須承擔的法律責任，或就重大費用分擔的法律責任而須承受的風險，其本身亦可以構成一項產權負擔，原因是：分擔一筆巨額的，並完全超出一名合理買家所預期的費用，此中的法律責任對該物業及具有約束力，並可因此構成業權的瑕疵或產權負擔。此外，如果所需分擔的費用仍然未獲清償，則該物業的接續業主亦須同樣受該法律責任所約束。故此，為針對某項物業而作出的消防安全指示登記，並不能為業權所受影響的程度提供完全的答案。

C. 合約責任

遵從消防安全指示，也可能會對賣方履行在買賣協議下之合約責任的能力構成影響。當然，這須視乎每宗案件的實際情況而定，故本部分只會舉出一些有潛在問題的情況。進行符合消防安全規定的工程，可能會對例如：相關物業的實用面積、大小、或佈局（只舉其中數例）等構成影響，從而影響賣方「按現狀」出售其物業予買方的能力。此外，禁止占用相關物業的禁止令，亦可能會影響買方交付該物業之空置管有權的能力。如果該物業連同一項現有租約出售，則該禁止令亦將會同時對有關的租賃構成影響，並因此（視該合約之條款而定）會影響買方出售該連同現有租約之物業的能力。凡此種種問題，都有可能會導致賣方違約。

D. 結論

總括而言，消防安全指示的發出，會導致產生一連串的潛在問題。雖然人們常常忽視該等指示，但它們所衍生的法律問題，確實比我們原来所想像的複雜。賣方的物業本身若受制於消防安全指示，又或是其物業位處的大廈若受制於消防安全指示，法律執業者應當讓這些業主知悉，除非他們在出售其物業前先行遵從有關的消防安全指示，否則將會在出售該物業方面遇困難。此外，他們也需要為其買賣協議擬訂專門合約條款，以盡量（若非完全）避免可能出現的問題發生。
Complexities in Hong Kong Surrogacy Law

By Marcus Dearle, Partner

Why have the Hong Kong family courts effectively been cut out from the regulation of surrogacy cases – particularly in connection with the making of parental orders? Are Hong Kong surrogacy lawyers and their clients at risk of committing criminal offences in contravention of s. 17 Human Reproduction Technology Ordinance, Cap. 561?
Hong Kong surrogacy law is complex. It differs in a number of material respects from UK law, particularly on the question of how surrogacy arrangements are regulated and the criminal penalties which might follow. A major issue is that regulation is considerably stiffer in Hong Kong than in the UK.

The three key pieces of legislation of relevance are the UK Surrogacy Arrangements Act 1985 (‘SA Act’) and the Hong Kong Human Reproduction Technology Ordinance, Cap. 561 (‘HRTO’) and the Parental and Child Ordinance, Cap. 429 (‘PCO’).

Surrogacy has virtually been driven underground in Hong Kong. This is illustrated by the fact that (a) according to the latest list dated 12 April 2018 published by the Hong Kong Council on Reproductive Technology, none of the fifteen fertility clinics licensed to carry out assisted reproductive technology treatment in Hong Kong is currently licensed to provide “surrogacy arrangement” treatment under the HRTO and (b) in the 25 years since 1993, when the legislation in Hong Kong which provides for the making of parental orders pursuant to s. 12 PCO came into force, it is estimated, staggeringishly, that only a handful of parental orders have ever been made in Hong Kong. A parental order is a court order which makes the intended parents (‘Ips’) the legal parents of a child born through surrogacy arrangements and permanently extinguishes the parenthood of the surrogate mother and (if applicable) her spouse.

In the UK, in stark contrast, hundreds of parental orders are made every year. A vital factor is that the parental order framework and procedure ensures that the UK court oversees surrogacy arrangements and it is an important mechanism to ensure that the arrangements for the welfare of the children are satisfactory. The framework also serves as a useful tool to protect against and deter child trafficking. Essentially the same important framework exists in Hong Kong in the procedure for the making of parental orders – but as we have seen it has rarely ever been deployed.

Why have so few parental orders been made in Hong Kong resulting in many children in Hong Kong falling outside the safety net and protection of the Hong Kong family court? One answer has to be the over-restrictive and counter-productive rules in Hong Kong - which do not exist in UK law - and in particular the straight-jacket of s. 17(1)(d) HRTO which makes it a criminal offence for Ips and lawyers from making applications for parental orders when the Ips have for instance made payments of any amount to agents or middle men in any part of the world for the purposes of locating a surrogate mother at the outset of the process in contravention of s. 17(1)(a) HRTO.

Section 17(1) of the HRTO states:

No person shall –

a) whether in Hong Kong or elsewhere, make or receive any payment for –

i) initiating or taking part in any negotiations with a view to the making of a surrogacy arrangement;

ii) offering or agreeing to negotiate the making of a surrogacy arrangement; or

iii) compiling any information with a view to its use in making, or negotiating the making of, surrogacy arrangement;

b) seek to find a person willing to do any act which contravenes paragraph (a);

c) take part in the management or control of a body of persons corporate or unincorporate whose activities consist of or include any act which contravenes paragraph (a); or

d) carry out or participate in any act in furtherance of any surrogacy arrangement where he knows, or

thought reasonably to know, that the arrangement is the subject of any act which contravenes paragraph (a).

We have to face the reality of the situation. It is clear that in the overwhelming majority of cases where Hong Kong resident Ips are engaging in surrogacy arrangements at home or abroad, contravention of s. 17(1)(a) involving illegal payments to agents is probably going to be unavoidable if they are to locate a surrogate mother who is prepared to carry a child for them through a surrogacy arrangement. As the author warned in his article in the Family Law Journal, “Avoiding the Pitfalls” in November 2001 (Fam.L.J. 2001, 11 (Nov); 8-11), “the desperation to have a child sometimes outweighs all other considerations”.

UK surrogacy law, in contrast, provides a more realistic and pragmatic framework. UK resident Ips or surrogate mothers do not commit a criminal offence by making payments to agents or middle men under UK law and they are consequently not committing a criminal offence simply by making an application for a parental order in contrast to the situation in Hong Kong where they would be committing a criminal offence.

It is of concern that some family law and also medical practitioners in Hong Kong are unaware of s. 17 HRTO and the definition of “payment” in s. 2(1) HRTO and assume that the law is exactly the same in Hong Kong as it is in the UK. It is not.

The author raised the issue of potential criminal liability of lawyers whilst speaking at several conferences globally since 2015 and of the potential criminal liability of Ips recently on BBC World News on 21 February 2018.

**Where is the confusion? Some more detail**

The SA Act only creates criminal liability on any commercial surrogacy arrangement which took place within the UK. The HRTO creates criminal
liability anywhere in the world.

The SA Act only intends to outlaw agencies and middle men in the negotiation of surrogacy arrangements on a commercial basis – not Ips or Surrogate mothers.

The Ips and the surrogate mother are not criminally liable in the UK even if the payments had been made in the UK by virtue of s. 2(2) of SA Act.

The s. 2(2) SA Act provision is absent in the HRTO. This means that in contrast to UK law, Ips and surrogate mothers residing in Hong Kong are likely to be criminally liable under the HRTO which seeks to prohibit all commercial surrogacy payments made in Hong Kong or elsewhere – with the exception of certain payments made predominantly in connection with the payment for medical procedures and certain expenses incurred by the surrogate mother.

The HRTO also creates further criminal offences which do not appear in the SA Act.

In particular, s. 17(1)(d) HRTO prohibits anyone from carrying out or participating in any act “in furtherance of any surrogacy arrangement” where “he knows, or ought reasonably to know”, that the arrangement for example involved illegal payments being made to an agency for the purposes of finding a surrogate mother - which extends the scope of criminal liability to cover persons who are not in any way involved in the making/negotiation of the commercial surrogacy arrangement itself – for example to lawyers and other third parties who are advising and assisting with an application for a parental order in Hong Kong.

Criminal liability in the UK (under the SA Act) and Hong Kong (under the HRTO) for setting up commercial surrogacy arrangements must not be confused with the rules governing the lawful payment of expenses (including medical expenses) to the surrogate mother in connection with the procedure involved in the making of parental orders under s. 12 PCO which are allowable in both jurisdictions.

The meaning of “payment” referred to in s. 17 HRTO is defined in s. 2(1) HRTO: s. 2(1) sets out - as referred to above - certain payments which are exempted from being treated as an illegal “payment” under s. 17 (and therefore allowable) - for example payments made to the surrogate mother for any reproductive technological procedure or bona fide medical expenses.

It should be stressed that payments for example made to agents at the time the surrogacy arrangement was being negotiated for the purposes of locating the surrogate mother are not included as exempted payments in s2(1) HRTO.

Section 2(1) HRTO defining “payment” in full is as follows:

Payment in money or money's worth but does not include any payment for defraying or reimbursing -

(a) the cost of removing, transporting or storing an embryo or gamete to be supplied;
(b) any expenses or loss of earnings incurred by a person and attributable to the person supplying an embryo or gamete from the person’s body;
(c) in the case of a surrogacy arrangement, any expenses incurred by the surrogate mother for -
   i) any reproductive technology procedure; or
   ii) bona fide medical expenses arising from pregnancy and delivery of a child born pursuant to the arrangement.

Some legal practitioners in Hong Kong appear to be misinterpreting the words, “unless authorised or subsequently approved by the court” set out in s. 12(7) PCO as an indication that the court has power to authorise all payments of whatever nature (including payments to agents) retrospectively and are ignoring s. 17 HRTO completely. This is wrong: as is clear from s. 2(1) HRTO, s. 12(7) PCO does not override s. 17 HRTO. The criminal offence and liability remains.

Section 12(7) is only relevant in any event to payments made by or received by the Ips post-birth and well after the surrogacy arrangement was negotiated in the context of the “making of the” parental “order” so that, for example, the court can ascertain whether or not there was any financial inducement paid for the benefit of the surrogate mother and/or her husband in return for their co-operation in providing the necessary consent for the “making of the’ parental “order”: Exactly the same provision exists in the UK legislation under s. 54(8) of the Human Fertilisation and Embryology Act 2008, where, as in Hong Kong, the court has jurisdiction retrospectively to authorise payments or expenses in the context of the “making of the” parental “order”.

**Expert opinion from Hong Kong criminal specialists on the interpretation of s17 HRTO**

In 2016, because of his concern that s. 17 HRTO was continuing to be overlooked by practitioners, the author through his firm instructed Hong Kong leading counsel specialising in criminal law specifically to advise on the “potential criminal liability of a legal practitioner in Hong Kong who is aware that money has been illegally paid to an agent to find a surrogate mother and who furthers the surrogacy arrangement by, for example, advising the client in connection with a parental order” (‘the Scenario’).

The Advice dated 18 November 2016 analyses in detail what “in furtherance of a surrogacy arrangement” under s. 17(1)(d) HRTO means including whether the act of “advising the client in connection with a parental order” is an act in furtherance of the surrogacy arrangement and what “knew or ought reasonably to know” means in this context.

In the Advice a clear view was set out that in the Scenario provided: “the practitioner ought reasonably to know that there are acts which contravene s. 17(1)(a) of the HRTO”.

The Advice also confirmed: “it is likely
that the legal practitioner in the Scenario risks being criminally liable (either as a principal or as a culpable aider, abettor, counsellor or procurer) under s. 17(1)(d) if he, aware that money has been illegally paid to an agent to find a surrogate mother, proceeds to advise the client in connection with a parental order”.

**Surrogacy case law in Hong Kong?**


The D case concerns an application for transfer to the High Court in a case where the parties were applying for a parental order. The judgment refers to s. 17 HRTO and the fact that, “s. 12 PCO allows expenses reasonably incurred or otherwise “authorized or subsequently approved by the court”” (paragraph 24). That statement in the author’s view is possibly being erroneously interpreted by some practitioners in Hong Kong as an indication that the court in Hong Kong can retrospectively authorise ALL payments made, even, for example, payments made to agents for the purposes of locating a surrogate mother contrary to s. 17(1)(a) HRTO.

In the S v. J (Surrogacy: Wardship) case, the Ips (a husband and wife) were in dispute over an application for a parental order. Two children had been born to two separate surrogate mothers in India on the same day on 7 September 2013. The wife refused to join the husband’s application for a parental order. The Director of Immigration intervened in the case. The Official Solicitor assisted as Amicus. The judge criticised the wife and ordered the wife to pay the costs of the hearing (paragraph 44) which, with the involvement of two leading counsel, would have been substantial. The judge stated, “Despite all the time given to her, the Wife apparently did not understand the significance of getting a parental order. She had declined legal aid...”

But no mention is made in the judgment about whether or not payments had been made at the outset to any middlemen for the purpose of locating either or both surrogate mothers. Indeed, surprisingly, it does not refer to s. 17 HRTO or the HRTO anywhere at all.

**Key warnings for Hong Kong resident Ips and/or surrogate mothers and legal practitioners**

Practitioners should warn all clients (including surrogate mothers and Ips) that they should not make any payment at all to any surrogacy agent/or third party anywhere in the world including for the purpose of locating a surrogate mother and they should first obtain legal advice in Hong Kong from a surrogacy expert before starting any treatment.

1) They should also warn all clients that a Hong Kong lawyer will not be able to provide any legal advice at all if any such payment has been made to an agent/third party anywhere in the world - otherwise he will be likely to be furthering an illegal surrogacy arrangement under Hong Kong law contrary to s. 17(1)(d) HRTO.

2) The first question a practitioner in Hong Kong should ask if he is requested to advise on surrogacy issues is whether or not any money has been paid anywhere in the world in contravention of s. 17 HRTO including for the purposes of locating a surrogate mother. He should not turn a blind eye or avoid asking questions about payments; that will not work because he is likely to be caught by the “ought reasonably to know” provision in s. 17(1)(d) HRTO.

3) If the answer is in the affirmative, then he will not be able to advise any further at all. It is immaterial whether the Hong Kong lawyer does not charge a fee or he advises outside the jurisdiction, as he will still be likely to be in contravention of s. 17(1)(d) HRTO. It is essential not to confuse the provision in s. 17(1)(d) HRTO with s. 2(1) SA Act where the UK lawyer does not commit an offence if he does not charge a fee.

**Need for reform**

Surrogacy law in Hong Kong is not working. The HRTO – and particularly s. 17 – is in need of review and reform. Article 20 of the Bill of Rights Ordinance, Cap 383 states: “Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.” It is the author’s view that the provision of a parental order is such a “measure of protection” and a right for every child born through surrogacy arrangements and residing in Hong Kong. The IBA Family Committee might well intervene in a future case involving a parental order to ensure that the rights of the child are brought to the fore.
香港的代孕法所面對的複雜情況

在香港進行的代孕，事實上現時已被驅入地下，因為：(a)根據香港人類生殖科技管理局於2018年4月12公佈的最新資料，現時在香港領有執照，可開展輔助生殖技術治療的生育診所共有17間，但它們皆未獲准根據《人類生殖科技條例》提供「代母安排」治療；以及 (b)據估計，自1993年（它是根據《父母與子女條例》第12條作出「獲判定為父母的命令」的法例生效的年份)至今這25年間，香港法院只曾作出數目極少的「獲判定為父母的命令」(parental orders)。這項由法院作出的命令，使「擬作為父母的人」可據此成為透過代母安排而出生的嬰孩的合法父母，並永久性地終止該代母及其配偶(若適用)的父母親身份。

在香港的代孕法面臨相當複雜的問題。它在許多重大層面上，與英國的法律有所不同，特別是在為代母安排的商議所作出的付款，以及對此可能施加的刑罰等方面。主要的問題所在，是香港所實施的規管，比英國所實施的要嚴厲許多。

在香港作代孕案件的律師及當事人，是否會面臨觸犯《人類生殖科技條例》(第561章)第17條下的刑事罪行風險？香港家事法庭對於代孕案件為何無法進行有效的處理－特別是在作出「獲判定為父母的命令」方面？香港處理代孕案件的律師及其當事人，是否會面對觸犯《人類生殖科技條例》(第561章)第17條下的刑事罪行風險？
a) 在香港或其他地方為以下事項而作出或接受付款 —
  i) 提出或參與任何以作出代母安排為出發點的商議;
  ii) 要約或同意商議作出代母安排;或
  iii) 以將資料使用於作出或商議作出代母安排為出發點,而搜集該等資料;
 b) 謀求尋覓願意作出違反(a)段的作為的人;
 c) 參與管理或參與控制屬法團或不屬法團的團體,而該團體的事務包含或包括任何違反(a)段的作為;或
 d) 在知道或理應知道某項代母安排是某項違反(a)段的作為的標的之情況下,進行或參與任何促進該項安排的作為。

我們必須考慮發生該等情況的真正原因。很明显,於本地或外國進行代母安排的「擬作為父母」的香港居民,他們要尋找願意通過代母安排而代其懷孕的代母,在絕大多數情況下,都無可避免地需要向代理人非法支付款項,而違犯第17(1)(a)條的規定。正如作者於2001年11月在Family Law Journal所發表的“Avoiding the Pitfalls” (Fam.L.J. 2001, 11 (Nov), 8-11)一文中提出的警告那樣:「人們對子女的渴求,有時會凌駕所有其他考慮因素」。與此相比,英國的代孕法較能提供一個更為務實和可行的架構。根據英國法律下,英國「擬作為父母」的居民或代母,並不會因曾向代理人或中間人付費而觸犯刑事罪行,亦不會僅因提出「獲判定為父母的命令」申請而觸犯刑事罪行;然而,這情況在香港卻有可能發生。令人關注的是,香港的一些家事法範疇的法律執業者和醫療工作者,並沒有充分意識到《人類生殖科技條例》第17條的含義,以及該條例第2(1)條對「付款」所下的定義。這項規定將有關的刑事法律責任範圍擴大,從而將並無參與訂立/商議有關的商業代母安排的人士也涵蓋在內 — 例如,那些在香港就「獲判定為父母的命令」提供意見,並協助提出有關申請的律師和其他第三方。

香港的一些法律執業者似乎誤解了《父母與子女條例》第12(7)條中的「獲法院授權或獲法院其後准許者除外」這句話的意義,以為它表明法院有權溯及既往地批准作出不論任何性質的支付(包括向代理人所作出的支付),而完全忽略了《人類生殖科技條例》第17條的有關規定。這一看法是錯誤的:事實上,《人類生殖科技條例》第2(1)條明確表示,《父母與子女條例》第 12(7)條並不凌駕《人類生殖科技條例》第17條,而有關的刑事罪行和法律責任依然存在。第12(7)條只是與在子女出生及就代母安排的商議進行之後,「擬作為父母的人」所作出或獲得的付款有關(目的是為了使「法院作出」獲判定為父母的「命令」),從而使法院得以確定,是否曾經有人提供任何使代母及/或其丈夫受惠的金錢報酬,以換取他們的協助,在為了使「法院作出」獲判定為父母的「命令」方面,給予必要的同意。英國的2008年《人類生殖科技條例》第 17條中所提及的「付款」,其定義見該條例第2(1)條。
精與胚胎學法》第54(8)條，與香港的規定完全相同，亦即是說，法院擁有司法管轄權，在為了使「法院作出」獲判定為父母的「命令」方面，可溯及既往地批准支付有關的款項或費用。

刑事法專家對解釋《人類生殖科技條例》第17條的專家意見

作者關注到法律執業者持續忽視《人類生殖科技條例》第17條的規定，因此在2016年透過其律師事務所，委託香港的刑事法資深法律顧問，就以下的情景提供專家法律意見：「如果一名香港法律執業者知悉，曾經有人為了物色代母而非法付費給代理人，而該名法律執業者亦藉著向其當事人提供與「獲判定為父母的命令」有關的法律意見，從而促進有關的代母安排，在這一情景下，該名法律執業者是否可能面對刑事法律責任」（以下稱「該情景」）。

該名資深法律顧問於2016年11月18日提供了有關的「法律意見」，並就《人類生殖科技條例》第17(1)(d)條中的「促進一項代母安排」的含義（包括就某項「獲判定為父母的命令」提供法律意見，是否屬於促進代母安排的作為），以及在該等情況中，「知道或理應知道」的含義等進行了詳細分析。

該「法律意見」針對「有關情景」提出了一個明確的看法，就是：「在該情景的法律執業者理應合理地知道，當中存在違犯《人類生殖科技條例》第17(1)(a)條的作為。」

此外，該「法律意見」亦確認：「在該情景的法律執業者很有可能面對《人類生殖科技條例》第17(1)(d)條下的刑事法律責任風險(無論是作為主犯,還是作為協助、教唆、慫使或促致等的從犯)，如果他知悉曾經有人為了物色代母而向代理人非法付費，並繼而向其當事人提供法律意見。」

香港有代孕法的案例嗎？


2) 法律執業者亦應提醒所有當事人，如果他們已在世界任何地方的代理人/第三方作出任何此等付款，則香港的律師將不能夠向他們提供任何法律意見，否則將很可能違反《人類生殖科技條例》第17(1)(a)條的規定，在世界任何地方作出了此等付款(包括為了物色代母)。法律執業者不應不計這一同問題視為不適當，又或是逃避其提問的責任，因為為《人類生殖科技條例》第17(1)(d)條中的「理應合理知道」很可能會適用於其身上。

3) 若有任何香港法律執業者被當事人要求就代孕的法律問題提供意見，他們所提出的第一個問題應當是：是否有人違反了《人類生殖科技條例》第17條之規定，在世界任何地方作出了此等付款(包括為了物色代母)？法律執業者不可不計這一同問題視而不見，又或是逃避其提問的責任。因為故為《人類生殖科技條例》第17(1)(d)條中的「理應合理知道」很可能會適用於其身上。

4) 如果當事人的答案是肯定的話，那麼法律執業者便不應能夠強制當事人向其提供法律意見。至於該法律執業者是否不應，或又是他在香港司法管轄範圍以外的地方提供法律意見，這都並不義務所在，因為他們仍然有可能觸犯《人類生殖科技條例》第17(1)(d)條之規定。然而，至關重要的，是我們不可將《人類生殖科技條例》第17(1)(d)條與英國的《代母安排法》第2(1)條混為一談，因為如果是在英國，只要當地的律師沒有對此收費，他們便不算違法。

修訂法例的需要

香港的代孕法確是未如人意，我們實在需要對《人類生殖科技條例》(尤其是第17條)進行檢討和修訂。《人權法案條例》(第383章)第二十條訂明：「所有子女有權享受家庭、社會及國家為其未成年身分給予之必需保護措施，不因種族、膚色、性別、語言、宗教、民族源或社會階級、財產或出生而受歧視。」作者認為，「獲判定為父母的命令」既是一項「保障措施」，也是所有透過代孕而出生和居於香港的子女所應當享有的權利。對於未來涉及「獲判定為父母的命令」方面的案件，國際律師協會的家事委員會將予以介入，以確保子女的權利獲得充分保障。
ARBITRATION

Solicitors Beware: Not All Arbitration Agreements between Solicitor and Lay-client are Enforceable

Solicitors should not expect an automatic referral to arbitration because they had signed an arbitration agreement with their clients.

In Fung Hing Chiu Cyril v. Henry Wai & Co (a firm) [2018] 1 HKLRD 808 a costs dispute arose between the lay-client (‘Mr. Fung’) and his previous firm of solicitors. The firm started arbitration proceedings pursuant to an arbitration clause. Mr. Fung started taxation proceedings in court.

Mimmie Chan J ultimately ruled that the firm could rely on the arbitration agreement to stay the court proceedings. But the following three points should be noted:-

• Mr. Fung was (a) expressly found not to be “dealing as a consumer”, and (b) in any event he provided his written consent to arbitration after the parties’ differences had arisen. This meant that he did not have the protection pursuant to s. 15(1) of the Control of Exemptions Ordinance, Cap. 71 (‘CECO’). If the Court’s factual finding had been different, the arbitration agreement would have been unenforceable. So for eg if a lay-client goes to solicitors with personal issues such as divorce, preparation/litigation of wills or family trusts, residential tenancy issues (non-professional landlords and tenants), etc. he could still have recourse to the Courts despite signing an arbitration agreement.
• The phrase “in the course of business” is used to define “dealing as a consumer” under s. 4 of CECO. Since the English Court of Appeal in R & B Customs Brokers Co Ltd v. United Dominions Trust Ltd [1988] 1 WLR 321, “in the course of business” has meant that the transaction in question had to be “integral”. Incidental matters are not included. This narrow meaning helps protect consumers. To this end, it is questionable whether para. 50 of Fung Hing Chiu Cyril is reconcilable with R & B Customs Brokers Co Ltd. It is perhaps a stretch to say that an investment company’s dispute in regards to its tenancy is “integral” to its business. The business concerned are investments. The tenancy litigation is incidental to the business.
• Walker J in Assaubayev v. Michael Wilkinson & Partners Ltd [2014] 6 Costs LR 1058 at §8 held that there are three types of jurisdiction the court has to tax its solicitors’ bills. The first relates to its statutory jurisdiction. The second relates to its supervisory jurisdiction. The third relates to ‘ordinary’ jurisdiction. An arbitrator cannot exercise the court’s supervisory jurisdiction. In this regard, as cited by Mimmie Chan J at para. 24, Assaubayev has expressly recognized that although an arbitrator’s findings would prima facie bind the parties, “it may be that the doctrine of issue estoppel is inapplicable in so far as the appellants seek to invoke the court’s own [supervisory] jurisdiction.” Further, it is perhaps arguable that a hearing by the Court on its supervisory jurisdiction is technically not an appeal. This presents an interesting case management issue, and serious thought should be given whether a court ought to insist the parties proceed with arbitration first every time in such instances. One way around the s. 20 Arbitration Ordinance argument would be to view that the “matter” wz. the supervisory jurisdiction of the Court is not the “subject of an arbitration.”

KEVIN LIU and RAYMOND CHU, Bernacchi Chambers. Kevin and Raymond were both involved as representing the Plaintiff in Fung Hing Chiu Cyril v Henry Wai & Co (a firm) [2018] 1 HKLRD 808.
分交易」，及(b)不管如何，在雙方出現分歧後提供同意仲裁的書面同意書。這意味，他不受《管制免責條款條例》(第71章)第15(1)條的保護。倘若法庭的事實裁斷是另一回事，仲裁協議就會無法予以強制裁行。譬如說，一名不懂法律的客戶找律師處理私人問題，例如離婚，擬備遺囑或遺囑訴訟或家族信託、住宅租賃問題(非專業業主及租客)，他雖然簽了仲裁協議，但仍可向法庭求助。

- 《管制免責條款條例》第4條的「在業務過程中」是用來界定「以消費者分交易」的。自從英國上訴庭(the English Court of Appeal)在R & B Customs Brokers Co Ltd v. United Dominions Trust Ltd [1988] 1 WLR 321作出結論以後，「在業務過程中」就意味著有關交易必須是「不可或缺」的「附帶事宜」不被包括在內。這個狹窄的解釋對消費者有幫助。為此，Fung Hing Chiu Cyril案第50段和R & B Customs Brokers Co Ltd案是否相容就成疑問。投資公司有關租賃的爭議也許可以勉強說是其業務「不可或缺」的部分。案中相關的是投資業務。租賃訴訟是業務附帶產生的。

- 法官Walker在Assaubayev v. Michael Wilkinson & Partners Ltd [2014] 6 Costs LR 1058 at §8裁定，有三類司法管轄權是法庭必須評定律師訟費單的。第一類與其法定司法管轄權有關。第二類與其司法監督權有關。第三類與「正常」司法管轄權有關。仲裁員不能行使法庭的司法監督權。就此而言，正如陳美蘭法官在第24段所引述，Assaubayev案明確地認同，法庭對其司法監督權舉行的聆訊不是一次上訴。這帶出一個有趣的個案處理問題，並且有關人士當應認真考慮每次遇上這類情況，法庭是否都應該首先堅持要各方當事人進行仲裁。一個關

於《仲裁條例》第20條的爭論點是認為「事宜」，即法庭的司法監督權，不是「仲裁的標的」。

- Bernacchi Chambers的廖健衡(Kelvin)及吉鴻鎌(Raymond)在Fung Hing Chiu Cyril v Henry Wai & Co (a firm) [2018] 1 HKLRD 808是原告訴人的代表大律師。

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CIVIL PROCEDURE
Indemnity Costs - Impact of Poor Litigation Conduct

In a recent judgment (Wang Ho Yin Patrick v Fu Chun Lung & Ors. [2018] HKDC 301) handed down by H.H. Judge Andrew Li, the Court highlighted the importance of good litigation conduct once again to practitioners.

Background
After the Plaintiff withdrew an otherwise misconceived application to vary the terms of a Tomlin Order in which the Court observed, “no citation was provided by P in the margin of the Summons as to what rules the Summons was supposed to be based on … it is quite clear to me that P’s application has been totally misconceived and without any proper legal or factual foundation”.

Held the Plaintiff in this case, being himself a litigation solicitor at the Plaintiff’s firm (see para 10), was slapped with an Indemnity Cost Order after the Court found against him on not just one (1) ground, but all four (4) grounds available (any one of which alone is already enough to justify the awarding of Costs on Indemnity basis).

Ground 1: A Totally Unmeritorious Application
The Court reaffirmed that the fact that the Plaintiff took out a totally unmeritorious application going way beyond mere procedure defects is, by this ground alone, already sufficient to award costs against the Plaintiff on indemnity basis.

Ground 2: A Summons Taken Out in An Oppressive Manner (Manners & Conduct)
In respect of the 2nd Ground, it is noteworthy that the Court will explore the particular conduct in which negotiations were conducted.

Here, the Court found that the Plaintiff’s threat of “Contempt Proceedings” only after the 1st round of negotiations oppressive. In the Court’s own words “I do not see how P’s client (who was P himself) “sincerity for settlement” could have been exhausted when the negotiations had hardly begun.”

Furthermore, the Court again took a stern view against the Plaintiff’s refusal to even agree on simple directions in which, in the Learned Judge’s Decision, reaffirmed a rebuke made by the Registrar that P “did not have to come to court to obtain those directions” and to that extend the Registrar considered that P was “in the wrong”.

This ruling is a stern reminder to practitioners that where a directions
hearing can be avoided, it is good practice to deal with it by consent, failing which, may result in sanctions from the Court.

As a result of the anti-CJR conduct as exhibited by the Plaintiff, the Court too allowed indemnity on this ground.

Ground 3: Outcome No Better than Any of D1’s Prior Offers
An often-overlooked ground in application for Indemnity Costs, it is noteworthy that where offers had been made but ignored, a withdrawal will automatically put the applicant at a position no better than if earlier offers were accepted.

It was found in this case that “as a result of the withdrawal of the Summons on that date of the hearing, P was no better off than any of D1’s offers made at various stages of the negotiations which consisted of a number of concessions made by D1 with a view to amicably settle the matter.” The resulting wasted costs from Plaintiff’s belligerent conduct therefore resulted in yet another ground being found against the Plaintiff for indemnity.

Ground 4: P’s Unreasonable Behaviour
Lastly, this ground cannot be better elucidated than in the words of H.H. Judge Andrew Li where it was held that “this application had to come as far as the hearing (only to find that P’s counsel would abandon it half way through) was as a result of P’s (both in his capacity as the handling solicitor and lay client in the case) refusal to curtail the dispute by consent and constant attempts to refer to matters which occurred prior to the entering of the Tomlin Order… In my view, this could have been totally avoided had P acted reasonable and with a sense of proportionality and judgement.”

Take Away Points
This case only goes to highlight the importance of professional courtesy where, if left unobserved, can very well lead to very severe consequences. In summary:

1. Cite the proper legal authority in the margins of a Summons (merely citing Inherent Jurisdiction is unacceptable).
2. Be sincere during negotiations. This case illustrates how the Court will look into conduct of parties to ascertain whether offers were sincere.
3. Always endeavor to seek common ground - no matter how minor. The refusal to even work out directions resulted in the Court’s rebuke against the Plaintiff for being “in the wrong”. Directions hearings are to be avoided.
4. Consent Summons are always your friend. Beauty of Consent Summons is that it can be entered into at any stage (so long as parties are willing).
5. Always be courteous. The Plaintiff’s mannerisms were deemed as “an affront to professional courtesy”.

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-practitioners are therefore reminded of the imperative to avoid falling into the same pitfalls as the Plaintiff (whom himself is a litigator), it can be easily seen how good manners and courtesy pays off in the long run.

Joshua Chu, Associate, Robinsons Lawyers (Hong Kong)
Anna Lau, Associate, Robinsons Lawyers (Hong Kong)
法官認定，「被告人於談判的不同階段提出過和解建議，退讓了好幾步，以期和平解決此事，但由於原告人在聆訊當日撤銷傳票，他的處境不會比被告人的任何建議為佳。」因此，原告人的敵對行為導致虛耗訟費，而虛耗訟費造成另一項命令原告人支付彌償訟費的理由。

理由4：原告人的不合理行為

最後，要闡明這個理由，沒有比區域法院法官李樹旭的說話來得更合適。法官裁定「聆訊(最後由原告人代表律師中途放棄)是在登錄湯林命令之前，原告人(同時以經辦律師及案中不懂法律的當事人的身分)拒絕藉雙方同意平息爭議，並且不斷試圖轉介事件才進行的，因此是項申請是必定提出……本席認為，倘若原告人行事合理，有相稱感和判斷力，這原本是可以完全避免的。」

重點

此案的作用只是強調專業禮數的重要，如果不持守專業禮數，就很有可能釀成嚴重後果。總的來說：

1. 在傳票頁邊援用適當的合法權限(只援用固有司法管轄權是不能接受的)。
2. 談判期間要態度誠懇。此案說明法庭會怎樣查看各方當事人的行為，以確立建議是否真誠提出的。
3. 事無大小都努力尋求共識。原告人甚至拒絕定出指示，法庭因為原告人「理虧」而指責。指示聆訊可免則免。
4. 同意傳票永遠是你的朋友。同意傳票勝在可以在任何階段提出(只要當事人願意便可)。
5. 時刻有禮。原告人的做法被視為「冒犯專業禮數」。

因此，法律從業員務必要避免重蹈原告人(他本身是訴訟人)的覆轍，顯而易見，訴訟行為良好和講究禮數最終是有回報的。

- 朱喬華助理律師，羅本信律師行(香港)
- 劉敏廷助理律師，羅本信律師行(香港)

CIVIL PROCEDURE

Taxation and Costs

It pays to read the Law Society of Hong Kong circulars circulated to members each week. They contain important information that affect a lawyer’s practice. The headings of some circulars may sound a bit technical at times but even within these circulars there is important information. Take, for example, the recent circular titled “High Court Taxation – Consolidated Circular, Updated April 2018” (18-241(PA)).

Besides informing members about updates to High Court taxation practices, there is reference (at paragraph 10) to solicitors’ hourly rates, which were increased for work done as from 1 January 2018 (also see “Recovery of Solicitor Hourly Rates”, Industry Insights, January 2018; and the President’s letter to members for January 2018). The increased rates represent a significant development in the litigation landscape of Hong Kong that litigants and insurers will have to come to grips with. Court decisions on actual recovery rates tend to have little precedent value. The point (made in paragraph 10 of the circular), which is easy for busy practitioners to overlook, is that solicitors’ hourly rates are for the court’s guidance. These rates can be adjusted up or down as taxing masters consider appropriate on a case by case basis – albeit, the rates are important benchmarks and a starting point (the pre-2018 “range” of rates having gone).

At paragraph 11 of the circular is a very important reminder:

“Members are reminded that the Court will only award costs at the rate agreed with the client. It is therefore important to provide the court with evidence of such agreement, or the firm’s retainer letter which should be given to the client upon receipt of instructions and contain details of the following …”. (italics added)

There then follows a non-exhaustive list which includes details of the instructions and services provided and the charging rate for individual fee-earners and any support staff.

As for Counsel’s fees, good practice is to obtain money on account (Guide to Professional Conduct, principle 4.07 and 12.04).

A letter of engagement (no later than seven days after receiving instructions) is mandatory in criminal matters (Solicitors’ Practice Rule 5D). In civil matters, a letter of engagement is good practice (Guide to Professional Conduct, for example, principle 4.01 and 5.01) – one can envisage a time when it will become mandatory.

The absence of a letter of engagement (incorporating a provision for the periodic review of a solicitor’s charge-out rates) may well give rise to difficulties on taxation. For example, a receiving party cannot recover a sum in excess of their liability to their own solicitors (the “indemnity principle”). The absence of a letter of engagement (that is properly dated) begs the question how a receiving party’s solicitors can provide evidence of an agreement with their client as to costs (let alone justify recovery of the increased rates).

- David Smyth and David Kwok, RPC
民事訴訟程序

訟費評定和訟費

閱讀香港律師會每週發給會員參閱的通告是有好處的。通告載有對律師執業有影響的重要資料。有些通告的標題看起來較為專業，但是，這些通告裡面有重要的資料。最近一份標題為「High Court Taxation – Consolidated Circular, Updated April 2018」(高等法院訟費評定 – 綜合通告, 2018年4月更新資料)的通告(18-241(PA))就是一例。

除了通知會員高等法院評定訟費的常規之外，通告有提到職的每小時收費率(第10段)；適用於2018年1月1日或之後完成的工作的每小時收費率已經調高(請亦參閱2018年1月《業界透視》的「追回律師每小時收費率」、會長2018年1月致會員的信)。

已調高的收費率是香港民事訴訟制度的重大發展，訴訟人和承保人必須正視。

法院關於實際追回收費的決定，往往少有作為先例的價值。

律師的每小時收費率是給法庭作指引用的(通告第10段)，忙碌的法律執業者很容易忽略這點。訟費評定官可根據每宗案件的情況，將收費率調高或調低到他認為合適的水平——雖然收費率是重要的基準，也是一個起始點(2018年之前的收費率「範圍」已成過去)。

通告第11段是一個非常重要的提醒：

「現提醒會員，法院只會判給以律師與當事人議定的收費率計算的訟費。因此，向法院提供這樣的協議或律師事務所的聘用函是一件重要的事，文件應當在收到指示後立即交給當事人，內容應當包含下列各項的詳細資料……」。(斜體後加以示強調)

接續第11段的是一份可增補的列表，當中包括指示的詳情和所提供服務的詳情，還有費用賺取者及任何支援人員的收費。

至於大律師的費用，預先支付款是妥善的做法《香港律師會專業守則》原則4.07及12.04)。

CONSTRUCTION

“Pay when Paid” Clause in Construction Contract (Summary)*

The Development Bureau of the HKSAR released the public consultation report in April 2016 in regard to the proposed Security of Payment Legislation in Hong Kong. For this consultation, the Bureau submitted four questions about “pay when paid” provision in the proposed legislation. They are i) whether “pay when paid” clause should render ineffective by law; ii) whether “pay when paid” clause should render ineffective even for the reason of insolvency in the higher supply chain; iii) whether payment conditional on certification or performance of obligations under another contract should render ineffective; and iv) whether nominated sub-contractors shall be exempted. Two recent cases in Australia and Malaysia touch upon some of these issues. The Australia High Court handed down a judgment that contingent or dependent payment on the operation of another contract is ineffective under the relevant South Australian SOP Act. The Malaysia Court of Appeal dismissed an appeal on the adjudicator’s decision that if the cause of non-payment was insolvency in the higher supply chain, it was sufficient to render a conditional payment provision ineffective under the Malaysian SOP Act.

One of the key purposes of SOP legislation is to safeguard cash flow in the construction industry. The prohibition of “pay when paid” provision in construction contracts appears to be widely construed and effectively operated in different jurisdictions. The law drafting and judicial interpretation of this provision in the HK SOP legislation may vary in some degree following the stakeholder’s demand and expectation.

- Albert Yeu, FCIArb MRICS MICE

* The full text was circulated via Hong Kong Lawyer eNewsletter and posted on Hong Kong Lawyer website.
**CORPORATE**

**Finding the Right Listing Venue: Hong Kong, New York, Elsewhere or Nowhere?**

To many, the success of a company is determined by how fast the company can be listed on a major securities exchange. However, stakeholders should not push a company to seek a public listing at all costs without considering whether such a step is the appropriate way forward.

**Going Public is not the Inevitable Choice**

Going public may not be the best option in some circumstances. The IPO process tends to be expensive and typically takes many months to complete. In addition, many IPOs have failed for a variety of reasons, including a mismatch in pricing expectations, market turbulence and unforeseen regulatory changes. Finally, pre-IPO investors may encounter difficulties in exiting in, or after an IPO, especially when their resale ability is restricted by statutory limitations and/or contractual lock-ups. Hence, pre-IPO investors may get a better and quicker return by selling the company to a strategic buyer (i.e., a trade sale).

An IPO may arguably also not be suitable for companies that are undergoing a stage of growth or restructuring. A listed company typically needs to adhere to certain transparency and disclosure requirements, which may create restrictions on management’s ability to make and execute certain decisions. Moreover, there may be impatience on the part of investors with projects that could take years to come to fruition, thereby putting pressure on the company to produce short-term profits at the expense of long-term growth.

Finally, not all founders are suitable to run a listed company. While they might be good businessmen, their approach may diverge from what is typically expected of management in a listed company. If a company in this situation must go public, it may be prudent for the founder to consider divesting some of his/her power to a professional CEO as part of the listing process.

**Venue Considerations**

Once a company has decided to go public, the next question is where it should list. Like the decision of going public, the decision on where to list depends on the specific needs and characteristics of the company and its controlling shareholders.

A company is better off in a venue where there are stock analysts willing to cover the stock and investors willing to understand the company’s business. A successful IPO is typically only the first step. Continued investor interest in the stock is essential to the company’s ability to complete follow-on offerings and shareholders’ ability to resell in the secondary market.

The company’s activities also play a part in the decision on where to list. A company active in deal-making may prefer New York to Hong Kong. Chapter 14 (on notifiable transactions) and Chapter 14A (on connected transactions) of the HKSE listing rules impose extensive stockholder approval and disclosure requirements. In contrast, the Nasdaq and NYSE listing rules require stockholder approval only in very limited circumstances and allow “foreign private issuers” (‘FPIs’), a status for which most foreign companies would qualify, to substitute the U.S. requirements with rules of their “home jurisdictions” in many situations. FPIs are also exempt from the proxy rules under US securities laws. Unlike domestic companies, shareholder circulars prepared by an FPI on almost any subject other than privatizations are exempt from review by the US Securities and Exchange Commission (‘SEC’).

A controlling shareholder active in stock trading may not like New York. Under US securities laws, any sale by a controlling shareholder of her shares in the public market would be subject to Rule 144 volume limitations, unless his/her resale...
has been registered with the SEC. Resale registration of this nature often creates a market overhang. Further, unless the company qualifies as an FPI, the short swing profit rules also require affiliates of a domestic company to surrender their short-term trading profits to the company.

A controlling shareholder who wants flexibility may prefer New York to Hong Kong. There is no counterpart of the Hong Kong Takeovers Code in the United States. She can realize her control premium in off-market sales because the buyer does not need to make a general offer to buy the shares at the same price from the remaining shareholders. She can also privatize the company more easily, because she can vote on a privatization plan she initiated. The approval threshold is also much easier to satisfy.

Other Options

Other offshore listing options are available and are likewise chosen depending on the needs and characteristics of the company. For example, some companies choose to list their stock in one venue (or not list their stock at all) and their debt securities in another. The more popular choices for the latter include the Singapore Stock Exchange and the Luxembourg Stock Exchange. Some smaller companies choose to list their stock on the OTCBB, one of the over-the-counter markets in the United States, or AIM, a sub-market of the London Stock Exchange, in the United Kingdom. Companies are also not limited to listing at one venue. Some companies are listed in more than one market, often in the form of depositary receipts in the non-primary market. Given the large number of viable alternatives outlined above, clients seeking a “backdoor listing” should be reminded that such alternatives do exist.

- Virginia Tam, Partner, K&L Gates (Hong Kong)
與美國本土的公司不同，外國私人發行人編製的股東通函，可說是不論任何主題（除了是關於私有化的除外），一律不用經美國證券交易委員會(「SEC」)審閱。

活躍於股票買賣的控股股東可能不喜歡紐約。根據美國證券法，控股股東在公開市場的任何股份出售，均受制於規則第144條的交易量限制，除非他／她已經向SEC登記轉售。這種性質的轉售登記通常產生市場過剩。此外，短線利潤規則亦規定，除非符合FPI的資格，否則本土公司的聯屬公司必須向該公司交出短期買賣利潤。

想有靈活度的控股股東可能喜歡紐約勝過香港。美國沒有與香港《收購守則》相等的守則。控股股東可以場外出售股份，變現其控制權溢價，原因是買方不需要作出全面收購建議，以等價買入其餘股東的股份。控股股東也可以更容易將公司私有化，原因是她可以投票支持由自己提出的私有化計劃。批准門檻也是更容易達到的。

其他選項

還有其他離岸上市方案可供選擇，同樣地，選取甚麼方案取決於公司的需要和特色。例如，有些公司選擇在一個地點將公司股份上市(或股份完全不上市)，在另一地點將債務證券上市。較受歡迎的債務證券上市地點是新加坡交易所和盧森堡證券交易所。有些規模較小的公司選擇在美國的場外交易議價板將股份上市——交易議價板是美國場外交易市場之一。有些則選擇在英國的另項投資市場將股份上市——另項投資市場是倫敦證券交易所的次級市場。公司亦不限於只能有一個上市地點。有些公司在多過一個市場上市，通常是以預託證券形式在非集資市場進行。上文概述了大量可行的方法，尋求「借殼上市」的客戶應獲告知這種方法的確存在。

- 謝敏亮合夥人，高蓋茨律師事務所(香港)

EMPLOYMENT LAW

#Me Too in the Office – Workplace Misconduct in the Spotlight

Employee misconduct and fraud can encompass a wide range of activities, from absenteeism at one end of the scale, to the other end of the scale, insider dealing, theft and financial statement fraud. Such conduct transgression often goes undetected, and only being highlighted by the occasional whistle-blower or if the employer has robust internal controls.

Conduct, culture & accountability

As attention is focused on what is “appropriate” in terms of workplace behaviour, in the wake of the #MeToo movement, employee conduct transgression is increasingly under the spotlight of financial institutions and their regulators. Conduct, culture and accountability are more than ever the watchwords for corporate life.

• Conflict of interests

There have been several high-profile incidents internationally that have drawn attention to misconduct or the appearance of misconduct in the workplace. In March 2017, Charlotte Hogg, a former Chief Operating Officer and Deputy Governor of the Bank of England, resigned after being accused of failing to disclose a conflict, saying her conduct “fell short of the very high standards required.” Whilst there was no evidence that she had deliberately concealed her brother’s position, it was noted that she had failed to comply with the relevant code of conduct for years despite receiving many procedural reminders to do so. The code, which Ms Hogg had been responsible for implementing, set out standards of governance for the Bank that were commensurate with those standards of the institutions it was regulating.

• Insider dealing

There are also the classic forms of insider dealing. A novel twist came about in August last year, when it was revealed that a technology consultant of a prominent investment bank had been passing insider information to the father of his girlfriend. The information included information about mergers and acquisitions that were yet to be announced and which the older man traded on. Acting US Attorney Joon Kim was reported as saying, “the defendants took advantage of an insider at an investment bank to make millions in illegal profits, trading more than 50 times in advance of confidential corporation information.” Five other men who also traded on the information were arrested in California, Florida and New Jersey, accused of making around US$5 million from the scheme.

• Absenteeism

In Hong Kong, abuse of sick leave is particularly acute during the festive seasons. Whilst there is no reason to question legitimate sick leave, difficulties arise where there are repeated unexplained absences. Often, the unexplained absences occur on a Monday or Friday, or on
either side of a public holiday. The cost of absenteeism to a business can be substantial, with businesses having to take on additional cover and use temporary labour. The morale of colleagues can also be affected when a particular employee is known to be abusing their position in this way.

Whistle-blowing channels
One way of tackling abuses is to make channels available for employees to report conduct transgression in confidence. Unlike many other countries, there is no comprehensive legislative regime in Hong Kong that offers protection to whistleblowers. Instead, there is a patchwork of different provisions under various laws that offer protection to whistleblowers from dismissal or the threat of discrimination when they make a disclosure. Where a disclosure is made in relation to corruption, bribery of the proceeds of drug trafficking, employees are protected from dismissal. Similarly, an employee who makes a disclosure or complaint under any of the Hong Kong anti-discrimination ordinances also benefits from protection.

Cultivating the right culture
Cultivating a culture that has zero tolerance to employee fraud and misconduct is essential to eliminating the “bad apples.” Board members and senior management should be seen to be putting into practice the company’s code of ethics and anti-fraud policy. Companies should also update their fraud response plan at regular intervals. The plan should be widely available within the company to underline the value that management places on a clean corporate culture.

In straightened economic times, no business can afford to jettison five per cent of revenue through misconduct, fraud or malpractice. The key to dealing with employee misconduct and fraud in the workplace is to have rigorous policies in place and create a clean corporate culture that encourages employees to blow the whistle on colleagues who misbehave.

- Anita Lam, Counsel, Clifford Chance

僱傭法

辦公室#MeToo – 專談工作場所的不當行為

僱員的不當行為和欺詐行為所包含的活動範圍可以很廣泛，由缺勤到內幕交易、竊密及財務報表欺詐，統統包括在內。這些行為上的過失通常不被察覺，只偶爾才有告密者將過失曝光，或者要是僱主設有稳健的內部監控，根本無人知道。

行為、文化及問責性
隨著#MeToo運動興起，人們重點關注怎樣才算是「合宜」的工作場所行為。金融機構及相關監管機構日漸聚焦於僱員的行為，惟他們行差踏錯。「行為、文化、問責」比起過往更加是企業永遠合用的口號。

• 利益衝突

國際間出現過多宗矚目事件，令人關注到不當行為或在工作場所出現的不當行為。2017年3月，英倫銀行（Bank of England）前首席營運長兼副行長Charlotte Hogg辭職，此前，他被指控沒有申報其兄長在巴克萊（Barclays）任職，而巴克萊是受英倫銀行所監管的銀行之一，英國國會財政委員會批評她未有披露利益衝突，指她的行為「未達到副行長職位所需的很高標準」，Hogg之後下台。無證據證明她故意隱瞞其兄長在巴克萊工作，但她被指沒有理會多次收到的程序提示，多年來並不符合相關的操守守則。Hogg有責任落實守則，守則列明銀行的管治標準，這些標準與銀行所監管機構的適用標準相類。

• 內幕交易

工作場所有典型的內幕交易行為。去年八月發生了一宗新的欺詐案，一家著名投資銀行的技術顧問被揭發一直把內幕消息轉交給女朋友的父親。所轉交的包括關於合併及收購但尚未公佈的資料，女朋友的父親根據資料進行買賣。據報，美國代理律師Joon Kim稱：「眾被告人利用投資銀行的知識者，在機密的公司資料公布之前，買賣超過50次，非法圖利數百萬美元。」另五名同樣根據資料進行買賣的男子分別在加州、佛羅里達州及新澤西州被捕，並被控從中圖利大約500萬美元。

• 缺勤

在香港，濫用病假的情況在節日期間特別嚴重。雖然無人有理由質疑合理的情況，但接連無故缺勤就有問題了。僱員通常在星期一或星期五無故缺勤，又或者在公眾假期開首或結束的日缺勤。如果缺勤問題嚴重，公司就得承擔額外保險及使用臨時工人的成本，所以的的成本可以非常龐大。當有僱員被知道以這種方式濫用職權，員工士氣亦可能受到影響。

舉報渠道

應付濫用情況的一種方法，是開闢渠道，方便僱員舉報不當行為。與其他很多國家不一樣，香港的立法制度並不全面，沒有給告密者提供保障。反而，各項法律下有不同條文，東湊西拼的，保障告密者免被解僱或恐被歧視。凡披露的事情與貪污舞弊、賄賂、販毒得益有關，僱員受保障免被解僱。同樣地，根據任何香港反歧視條例作出披露或投訴的僱員亦獲得保障。

培養正確的文化

要消滅“壞份子”就得培養一種對僱員的欺詐及不當行為零容忍的文化。

董事局成員及高級管理層應以身作則，謹守公司的操守守則及反欺詐政策。公司亦應定期更新反欺詐應變計劃，並在公司內部廣泛推行，對僱員強調管理層所看重的清廉企業文化。

在經濟好轉的時期，沒有公司負擔得起收益通過不當行為、欺詐或不良行為而損失5%。處理工作場所中僱員的不當行為和欺詐行為的關鍵是，制定嚴格政策，建立清廉的企業文化，鼓勵僱員舉報行為不當的同事。

- 林尹菁顧問律師，高偉紳律師行

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PROFESSION

Ad hoc Admission of Overseas Counsel 2017–18

In 2017 we reported that contested applications by overseas counsel for ad hoc admission to the Hong Kong Bar, pursuant to s. 27(4) of the Legal Practitioners Ordinance (Cap. 159), appeared to be gaining some ground (Industry Insights, May 2017), after experiencing something of a rough patch (Industry Insights, December 2016).

Interestingly, until the recent case of Shân Warnock-Smith QC, [2018] HKCFI 689, the application for ad hoc admission in Dinah Rose QC (the subject of the May 2017 Industry Insights) was the last one of which either writer is aware that produced a reported judgment.

The application in Shân Warnock-Smith QC was unsuccessful. In brief, the applicant sought permission to represent the appellants in substantial appeal proceedings arising out of a case to do with the provision of private banking, investment management and trust services. The court proceedings out of which the appeal arises are undoubtedly complex.

However, the court (as is customary, a single judge of appeal sitting at first instance) was not persuaded that the application met the guidelines for ad hoc admission, with the public interest being the ultimate aim. Particularly, the issues arising in the appeal were not considered to be unusually difficult or complex (in the context of the test for ad hoc admission). Of these applications, twenty-one were not opposed by the Bar; the highest ratio that either writer can recall. Whether these two matters are related is not clear. What is clearer is that the trend with new admissions by local barristers (and “net growth”) remains stable – one might even describe it as “healthy” (Bar’s Report of Standing Committee on Local Admissions 2017).

So far, 2018 appears to have been a relatively quiet year for applications for ad hoc admission. That carries on a trend from 2017. The Bar’s “Report of Standing Committee on Overseas Admissions 2017” confirms that there were only twenty-three applications for ad hoc admission in 2017; the lowest number that either writer can recall in almost ten years. Of these applications, twenty-one were not opposed by the Bar; the highest ratio that either writer can recall. Whether these two matters are related is not clear.

What is clearer is that the trend with applications by English Silks for ad hoc admission is generally declining, while (in contrast) their presence in arbitrations in Asia is increasing.

Amid all of this, the trend with new admissions by local barristers (and “net growth”) remains stable – one might even describe it as “healthy” (Bar’s “Report of Standing Committee on Local Admissions 2017”). That is a good thing.

- David Smyth and Warren Ganesh, RPC

專業導論

専案認許海外大律師2017–18

海外大律師可以《法律執業者條例》(第159章)第27(4)條為依據，申請在專案的原則上，被認許為大律師。我們在2017年報導過，這些備受爭議的申請經歷過重重難關之後(2016年12月《業界透視》)，現在似乎越來越多成功個案(2017年5月《業界透視》)。

在最近的Shân Warnock-Smith QC [2018] HKCFI 689案之前，Dinah Rose QC案(2017年5月《業界透視》探討的案件)是筆者所知最新的一宗涉及專案認許申請的案件(未經彙編)。

在Shân Warnock-Smith QC案的申請以失敗告終，簡單地說，申請人要求獲准在重要案件中代表上訴人，該訴訟是由一宗涉及私人銀行、投資管理及信託服務提供的案件引起的。毫無疑問，引起上訴的法庭程序是複雜的。

然而，法庭(按照慣例，初審時由單一法官審理)最終基於對公眾利益的考慮，不認為有關申請符合專案認許大律師資格的指引。特別是，上訴引發的爭論點不被認為是異常困難或複雜的(以專案認許大律師的測試作為背景)，也不被認為是所具性質會對本地法律的發展具有實質影響。

在某些方面，在Shân Warnock-Smith QC的申請不是與Lord QC(HCMP 1397/2013)及Hapgood QC(HCMP 101/2013)等案件的不一樣。例如，儘管申請人的專業知識不是問題，但法律程序(與要求專案認許有關的)所牽涉的法律原則，似乎主要涉
In **Securities and Futures Commission v. Lee Kwok Wa & Ors**, [2018] HKCA 108, the Court of Appeal gave permission to three appellants to pursue their appeal to the Court of Final Appeal (CFA). Background to the case is set out in Industry Insights for March 2016 and December 2017.

The question in the appeal stated by the Court of Appeal to be of “great general or public importance” (s. 22(1)(b) of the Court of Final Appeal Ordinance) turns on the proper meaning of the phrase “in a transaction involving securities” in s. 300 of the Ordinance (note emphasis above).

While a person who contravenes s.300(1) is stated to commit “an offence” it is important to note that in this case the proceedings arise out of the SFC’s use of s. 213 of the Ordinance. The question is whether the meaning of “transaction involving securities” is a restrictive one or whether the SFC can obtain ancillary relief such as restoration orders under s. 213(2). The SFC has an interest in obtaining ancillary relief orders in civil proceedings and it could be said that the SFC has a need to obtain ancillary relief orders in civil proceedings.

SFC v. Lee Kwok Wa & Ors arises out of civil proceedings. It is thought to be the first case to test the parameters of s. 300. The judgment of the Court of Appeal granting permission to appeal to the CFA directed that the exact question for determination be reformulated but in essence, the issue for determination is likely to turn on what is the conduct (the actus reus) caught by the meaning of the words “in a transaction involving securities”.

Thus far, in matters of s. 213 proceedings, the courts in Hong Kong have adopted a liberal and purposive approach and, in the event that the appeal fails, one suspects that the SFC will be looking to put s. 300 to more use (through proceedings pursuant to s. 213). The Tiger Asia case really was a landmark one.

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**Regulatory and Compliance**

**Section 300 of SFO – Appeal Headed to Top Court**

**Section 300(1) of the Securities and Futures Ordinance (Cap. 571)**

“A person shall not, directly or indirectly, in a transaction involving securities, futures contracts or leveraged foreign exchange trading —

(a) employ any device, scheme or artifice with intent to defraud or deceive; or

(b) engage in any act, practice or course of business which is fraudulent or deceptive, or would operate as a fraud or deception.”

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www.hk-lawyer.org 63
《證券及期貨條例》的相關條文的行為。第213條被稱為「第三條道路」，證監會可靠它取得（其中包括）回復原狀令及濟助（第213(2)條）。

SFC v. Lee Kwok Wa & Ors案是循民事法律程序產生的。它被認為是第一宗測試第300條範圍的案件。上訴法庭批准上訴至終審法院，判決書指示重新編定等待裁定的準確問題，不過基本上，等待裁定的問題很可能取決於「涉及證券……的交易中」的涵義所包含的是甚麼行為（犯罪行為）。

終審上訴非常重要，因為第300條不局限於涉及香港上市證券的交易（不像《證券及期貨條例》第291條－「內幕交易」）。在這宗案件，受質疑的交易被指涉及在臺灣證券交易所上市的證券。

至今，關於第213條法律程序的事宜，香港法庭已採納靈活並考慮立法目的的方法，而一旦上訴失敗，任何人都會推想證監會將依靠更多使用第300條（透過以第213條為依據的法律程序）。Tiger Asia案實在是一面里程碑。

莊偉倫及叶子彬，RPC

TORT

Supreme Court Inconsistency in Result

In the late 1970s and up to 1981 a series of particularly unpleasant sex attacks and murders took place in Yorkshire England. A total of 13 women were killed and seven others survived attack.

Due to his mode of operation the attacker became known as the Yorkshire Ripper. After a huge, although incompetent, man hunt the perpetrator, Peter Sutcliffe was (re-)arrested by chance.

The last of the women to be murdered was a 20 year old student, Jacqueline Hill.

Her mother brought an action against the police, alleging negligence, and said if they had performed as they should have done then her daughter would have been alive. This eventually found its way to the (then) House of Lords which gave judgement in Hill v. Chief Constable of West Yorkshire [1989] AC53 which was construed as holding that the police had a general immunity from suit in respect of anything done by them in the course of investigating or preventing crime. In other words, they did not owe a duty of care, in the absence of special circumstances, to protect the public from harm through the (non)performance of their function of investigating crime.

There the matter rested until the 8th February 2018 when the (now) Supreme Court of the UK gave judgement in Robinson v. Chief Constable of West Yorkshire Police.

Mrs. Robinson, a lady of 76, walked past a man, who turned out to be a drug dealer, who was immediately tackled by two other men, who were police drug squad officers.

In the attempt to arrest the drug dealer Mrs. Robinson was knocked to the ground. In consequence she was injured and brought a claim for personal injuries. The Supreme Court held that Mrs. Robinson’s case involved an application of established principles of the law of negligence. They held that the decision in Hill was not authority for the proposition that the police enjoy a general immunity from suit in respect of anything (not) done by them in the cause of investigating or preventing crime.

The effect of Hill was that the police did not owe a duty of care, in the absence of special circumstances, to protect the public from harm through the performance of their function of investigating crime. However that did not prevent the police from being generally under a duty of care to avoid causing personal injury where such a duty would arise according to ordinary principles of the law of negligence.

In the case of Mrs. Robinson there was a positive act by the police, not an omission, and as such there was a duty of care on the officers at the time effecting arrest.

However the Robinson decision did not affect the decision in Hill as to the (lack of) a duty of care upon the police to properly investigate crime, with the view to preventing other people being injured (or worse) by the perpetrator. To that extent Hill remains good law.

Eleven days after the decision in Robinson, the Supreme Court handed down its decision in Commissioner of Police of the Metropolis v. DSD [2018] UKSC11.

This case arose out of the activities of a man, John Worboys, otherwise known as the black cab rapist, who was eventually convicted of 19 counts of sexual assault, including rape, between 2003 and 2011.

DSD was one of the later victims. She brought proceedings against the police, alleging failure to conduct effective investigations into Worboys (previous) crimes. She alleged that the failures constituted a violation of her rights under Article 3 of the European Convention on Human Rights (‘ECHR’) which provides no one shall be subject to torture or inhuman or degrading treatment or punishment.

The case was defended as to the extent to which there was a positive obligation on states (here represented by the police) effectively to investigate reported crimes perpetrated by private individuals. At both first instance and at the Court of Appeal it was held there was a positive
obligation to investigate and that in this case the obligation had been breached, with compensation being awarded to DSD.

An appeal was brought to the Supreme Court which was not successful. The Supreme Court held that to be an effective deterrent laws which prohibit conduct (constituting a breach of Article 3) must be rigorously enforced and that serial failures to investigate will be sufficient to establish a claim.

Thus English law finds itself in the position of having decided or confirmed, in the same month, that a police force's serial failures to effectively investigate a stream of crimes, that proved to be committed by the same person, does not give rise to a duty of care, and therefore not negligent, and yet does give rise to a violation of human rights.

In Hong Kong, Hill appears to be accepted as good law. The writer is not aware of any actions successfully brought against the police for failure to competently investigate. The extent to which, post 1997, the courts might be willing to adopt the reasoning in Robinson is for the future. There is no direct equivalent in Hong Kong law to Article 3 of the ECHR although analogous provisions might be used by lawyers in the future.

- Nicholas Millar, Solicitor

侵權

最高法院不一致的判決

上世紀70年代末至1981年，英國約克郡發生了一連串駭人聽聞的性侵和謀殺案。一共13名女子被殺，另有7名被性侵後死裡逃生。

由於手法殘暴，該名施襲者被稱為「約克郡屠夫」。雖然進行過大規模搜捕亦未能將他緝捕歸案，但天網恢恢，在一次偶然機會下，行兇者Peter Sutcliffe終於(再次)被捕。

最後一名被殺女子是Jacqueline Hill，一名20歲學生。她母親聲稱警方疏忽，認為如果警方當時做了他們本應做的事，她的女兒就會存活。她入稟法庭控告警方：Hill v. Chief Constable of West Yorkshire [1989] AC53。

案件最終在(當時的)上議院審理。上議院的判決被詮釋為，上議院裁定，就警方在調查罪案或防止罪案發生的過程中所做的任何事而言，警方享有免被起訴的一般豁免。換句話說，在情況並不特殊的情況下，他們對公眾並不負有謹慎責任，即沒有責任(不)履行他們調查罪案的職能以保護公眾免受傷害。

案件到這裏告一段落，一直到2018年2月8日(現時)英國最高法院(Supreme Court of the UK)在Robinson v. Chief Constable of West Yorkshire Police案作出判決之後，才出現不一致的判決。

Robinson女士，年76歲，行經一名男子身旁時，那男子瞬間被另兩名男子攔截，那男子原來是毒販，而另兩名男子則是警方的緝毒人員。

緝毒人員試圖擒捕毒販的時候，Robinson女士被人撞倒地上。她因此受傷，之後就人身傷害提出申索。

最高法院裁定，Robinson女士的案件涉及已確立的疏忽法的原則的應用。他們裁定，Hill案的判決不是支持警方在調查罪案或阻止罪案發生的过程中所(不)做的任何事上享有免被起訴的一般豁免這觀點的判例。

Hill案的影響是，在情況並不特殊的情況下，他們不負有謹慎責任，即沒有責任履行他們調查罪案的職能以保護公眾免受傷害。然而，警方因不這樣一般不負有避免引起人身傷害的謹慎責任，這種責任會按照疏忽法的一般原則產生。

在Robinson女士的案件中，警方所作的是主動的作為，不是不作為，由此看來，在追捕疑犯時，警員是負有謹慎責任的。但說到警方恰當地調查案件時所負有的(不)阻止其他人被行兇者傷害(或更差的對待)的謹慎責任，Robinson案的判決沒有影響Hill案的判決。就這方面而言，Hill案仍然好的法律。

Robinson案的判決作出後11天，最高法院頒發其在Commissioner of Police of the Metropolis v. DSD [2018] UK SC11的判決。

這宗案件源於男子John Worboys的所作所為，他被稱為「黑的士強姦犯」，最後被裁定2003年至2011年間包括強姦罪在內的11項性侵犯罪名成立。

DSD是較後期的受害人之一。她聲稱警方沒有有效地調查Worboys(過去的)罪行，針對警方提出法律程序。她聲稱這個「沒有」，構成違反《歐洲人權公約》賦予她的權利，有預先規定，任何人不得受到酷刑或其他人道或有辱人格的待遇或懲罰。

答辯內容關乎國家(在這案警方是代表)有效地調查個人被舉報干犯的罪行時所負積極義務所達到的程度。原審庭和上訴庭都裁定有積極義務調查，在這案有義務被違反。DSD獲判賠償。

在最高法院提出的上訴以失敗告終。最高法院裁定，有有效防止行為(構成違反第三條的行為)的阻嚇性法例必須是嚴格執行的法例，申索因為警方接連未有調查而足以被確立。

因此，英國法院發現自己在一個月裡要去判定或確定，警方接連未有有效地調查——連串有證據證明由同一人所犯的罪行，但這不產生謹慎責任，因此警方不是疏忽，但卻的確違反了人權。

在香港，Hill案似乎被接納為好的法律。筆者並不知悉任何針對警方未有妥善調查而獲判勝訴的訴訟。1997年之後，法庭在多大程度上可能願意採用羅賓森案的論據是將來的問題。儘管律師將來可用類似的條文，但香港法例沒有任何一條是與《歐洲人權公約》第三條直接相等的。

- Nicholas Millar 律師

Feel free to write in to us with more short contributions on latest industry developments and trends. Simply contact the editor at navin.g.ahuja@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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本欄所提供的資訊僅屬一般資訊，並不構成相關法律的完整陳述，亦不應被依賴為任何個案中的法律意見或被視為取代法律意見。
As possibly one of the first law firms in Hong Kong to make the move to Microsoft Office 365, a cloud-based service, for legal document management, I’m happy to share our experiences with my fellow practitioners. For those considering this move, I hope to make the case that the benefits are worthwhile.

After about eight months in the proverbial cloud, I must say that our firm (comprising of 8 lawyers and some 12 supporting staff) is happy with the technological leap forward. Reverting to our old ways now seems unthinkable.

**BEFORE OFFICE 365**

Prior to Office 365, we resembled many other law firms in Hong Kong. We were using a somewhat dated version of Microsoft Office, with which we were reluctant to spend the effort on upgrading. Our email service was hosted by our domain registrar, and everyone in the office was using Microsoft Outlook on their PCs for email and contacts management (mostly client information such as office addresses, phone numbers, and email addresses), resulting in multiple copies of individual pieces of information residing in decentralised PCs. As a result, in addition to the great deal of duplicated information, there was also a lot of unnecessary effort involved.

Our firm’s case documents lived in a file server connected to a Network Attached Server (NAS). We diligently managed daily data backups and maintained the IT infrastructure ourselves. Fortunately, we managed to avoid disaster including fire, flood, and ransomware attack.

**WHY WE MADE THE MOVE**

While we discovered many unforeseen benefits after switching to Office 365 (to be discussed later), I was initially compelled to consider it for the following reasons.

**Mobility**

The sheer frustration of accessing documents remotely was the primary driving force. I am a lawyer who travels frequently to attend client matters, and remote access to law firm file information is vital. However, outside of the office, using a VPN/cloud-NAS to access documents stored on a file server is typically slow and clumsy. Online editing is generally unavailable, with documents needing to be downloaded, edited, and then uploaded again. With Office 365, I can access and edit documents from anywhere using my laptop, iPad, web browser, or simply my mobile phone.

**Access for external consultant-lawyer**

Some solicitors practise on a self-employed consultancy basis. They focus on introducing client business to the law firm but are generally not required to work full-time on legal-technical matters. However, they still need to be appraised of the matter progress. Therefore, occasional unfettered access to the matter files is essential for maintaining business relationships with clients. With Office 365, I can provide them with controlled off-site access to the files they need, without a lot of emailing back and forth.

For more information, please visit [www.bornsolutions.com](http://www.bornsolutions.com)
**Flexibility**
Travel to the office during regular peak hours is a pain. If there is an option to work from home-office then my time will be better spent. For my part, I work on a home-office basis, and take breaks when desired. Occasionally, I like to take an afternoon nap (which is not feasible as a matter of office etiquette!) or use the clubhouse pool in-between virtual meetings. I can now handle the same caseload with a more relaxed mind and a healthier body.

If I need to meet a client in the office, I can travel during non-peak hours – which is an absolute pleasure. In any case, most clients try to avoid physical meetings these days if possible, preferring to use electronic means such as email or video conferencing. Microsoft’s Skype For Business – part of the Office 365 suite – offers superior video and audio quality, as well as more business features than the free Skype Personal version.

**HOW WE MADE THE MOVE**
Our move to Office 365 was quick and painless. As a subscription-based Software as a Service (SaaS), we could have signed up and begun using it within minutes. However, there were some system configuration, setup, and migration factors, for which we used the help of a Microsoft-accredited Office 365 Onboarding Service Specialist (“OSS”) with experience in SharePoint – the component of Office 365 that is the document management platform.

From inception to completion, with the assistance of the OSS, we went through the following tasks in 3 months:
1) Office 365 subscription plan selection.
2) General configuration of the Office 365 tenant, including domain setup.
3) Setup for each user account covering partners, consultants, trainees, and support staff.
4) Email and contacts information migration (from the desktop MS Outlook to Office 365 Mail) and cutover management.
5) SharePoint design, configuration, and development.
6) Legacy data – extract, transform, load (ETL).
7) Document migration from our NAS to Office 365.
8) Training sessions for users and the administrator

Tasks 1 through 4 were relatively clear-cut given the specialist experience of the OSS, with an affordable one-time service fee chargeable on a per user basis. For task 1, we opted for the Office 365 Business Premium package. Post completion, we also subscribed to a managed services support package, provided by the OSS, which adds HK$38 per month to the base license fee per user. With it, we receive unlimited support over the phone or through instant messaging, and off-site assistance via remote access.

We paid the OSS for their work on tasks 5 through 7, principally according to the volume of data and setup involved. With our specific requirements, it came to under HK$90K, and training was complimentary.

Overall, the fees are reasonable for a project of this size, the transition was smooth and on schedule, and the OSS remains helpful in responding promptly to our post-completion requests for assistance.

**WHAT WE ENDED UP WITH**
The main components of Office 365 are:

- **Exchange Online** – For email, contacts, and calendars accessed from Outlook on a PC or Mac, and Outlook Web using a browser or from any mobile device.
- **Skype for Business** – instant messaging, voice and video calling, online meetings, etc.
- **SharePoint Online** – Collaboration sites for document and information storage, as well as sharing in one centralised location.
- **OneDrive for Business** – Private document storage for each user and sharing with others on permission basis.
- **Office Apps** – That run on a PC or Mac, as well as mobile versions for tablets and phones. A browser-based version of each Office application can be used to access and edit documents from any browser.

We set up SharePoint to act as our legal document management system, but we also set up sites to contain the rest of our documents, using a simple site structure resembling the following:

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Presented by: MS Office 365 Onboarding Service Specialist

Legal Portal
This is a landing page that is used for firm-wide announcements, news, interesting links, etc.

Case Centre
Special attention was paid to the setup of the Case Centre to enable us to register client and case information on the site. It also allows us to access file-related case documents in a familiar client/case folder structure. These registers are now the single source of truth for client and case details. We can now quickly find cases using a keyword search (client, case type, etc.) and navigate directly from there to any case folder. From a management point of view, the partners can quickly find the business portion by practice areas (litigation, commercial, etc.) or by lawyers for a defined time period.

Precedents
On the Precedents page, we set up a document library for each of the lawyers and trainees, where they could individually manage their own precedent documents. Read-only permission in each library for other team members was also set up. Making great use of Microsoft Azure, authorised users can now search and view those precedents on screen, but are not permitted to print, download, or forward them unless given dedicated permission from the owner.

Other
Other pages, such as Finance, Admin, HR and Partners were set up for departments with access restricted to those responsible for their content. Any documents created on or uploaded to these sites are only accessible by those with specific access to the pages.

HOW WE BENEFITED
Here are just some of the features of Office 365 that provided significant benefits and productivity gains – in some cases unforeseen.

Finding things, fast
At times, searching for a relevant case or legal precedent documents on our traditional NAS was cumbersome. It typically involved navigating a folder structure that someone else had devised, while visually scanning unnecessarily long file names. It was often required that you actually open and view the documents to confirm if you had the right file.

Now, with information and documents stored in SharePoint, we are able to enter a few words into a search box, and the search, which encompasses the entire site collection (client matters, precedents, finance, etc.), looks at document names, keyword tags, as well as within the documents themselves. In milliseconds, Google-like search results are listed in order of relevance.

Secure file sharing and collaboration
Previously, email attachments were the only way we could share and collaborate on a document. With Office 365, I can now invite an external party, such as an outside counsel, to access and review documents that reside in our file repository; instead of constantly emailing back and forth, for example those bulky Bundles of Agreed Documents. I can also give them permission to edit the document, with automatic versioning to help me track changes. I can even place a time limit on when their access to the document automatically expires. Furthermore, with documents stored in Office 365, co-authoring in MS Word enables us to work on a document together, at any time, without interfering with each other’s changes.

Online and offline access
Sometimes I’m not anywhere near my computer but need access to a document – I might even need to revise it. With Office 365, I can do so from any browser and at any time, such as during an ad hoc client meeting at Starbucks Café when I don’t have my laptop.

Conversely, there are times when I want access to specific client files while I am travelling but not connected to the internet. It happened to me with an urgent client matter while holidaying on the Cote d’Azur, where in France, as opposed to the United States, they apparently ban online office work at the beach! With Office 365, I can simply select the folders I want to have access to while offline, and the contents is then synced to the hard drive of my laptop. With or without an internet connection I can work on the documents, and whenever I am online again, the changes will be automatically synced to Office 365.

File versioning
With Office 365, each time a team member edits a document, the previous version of the document is saved and a new version number is generated. We can now see any document’s editing history, including all changes that have been made, by whom, and when. If an unwanted change is made, any previous version of the document can be viewed and restored. If a document becomes corrupted, there’s no need to revert to a backup somewhere – I can simply restore the last good version.

Backups
Below are a number of factors that reduce the need for us to make our own backups of the files:

1) All deleted files are placed in the site recycle bin where they remain recoverable for 90 days, after which they are moved to a second-stage recycle bin where they are recoverable for an additional 90 days by the site administrator.

2) Microsoft performs a full backup of our data every 12 hours, along with an incremental backup every 5 minutes. These backups are kept for 14 days. In the event of serious data loss, I can make a service request for Microsoft to restore the entire previous state of Office 365 within a chosen five-minute timeframe.

3) Our data stored in Microsoft’s datacentre is a protected SQL Server (database) replication, and further copies through peer replication between datacentres.

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Saving in fees

While there are many different Office 365 packages to choose from, the most commonly chosen is the one with a base price of just HK$97 per user per month. The number of subscriptions, as well as the choice of package, can be adjusted according to the manpower requirements of the firm. During the summer, we have an influx of interns, so we increase the subscription volume. When summer is over, we simply reduce it and pay lesser fees. Gone are the days of purchasing a perpetual licence for Microsoft Office Professional at roughly HK$3,000 per user, with additional fees payable upon upgrade.

Risk Management

All practitioners are aware of our general duty to keep client matter information confidential and not to divulge information to third-parties, unless it is with the client’s consent.

One way to maintain the integrity of the data stored on the cloud is to encrypt the electronic data files prior to them being transmitted to the Office 365 platform. SharePoint and OneDrive engage SSL/TLS connections over the internet with 2048-bit keys. For data at rest, both disk-level and file-level encryption is used. BitLocker is used to encrypt all data on disk (e.g. database files) while each file (or file chunk with large files) is encrypted using its own encryption key. Both types of encryption use encryption keys that are stored in physical locations separate from the data. And both use Advanced Encryption Standard (AES) with 256-bit keys, which is US Federal Information Processing Standard (FIPS) 140-2 compliant. Theoretically, it will take an unauthorised person hundreds of years to decrypt such files, even if they made use of the most powerful computers and algorithms available.

From a best practice point of view, it is desirable to include a statement in a law firm’s retainer letter, making clients aware of your law firm’s use of third-party cloud storage.

In Conclusion and the Way Forward

Our move to Office 365 has had a positive impact on our firm in general, and on myself in particular. I am no longer worried about the state of our hardware, backups, or software upgrades. While our files are securely accessible from anywhere, they are safe from ransomware attack or any other disaster. When it comes to combating computer malware, I don’t think any lawyer or IT service provider in town can do a better job than Microsoft. Norton/Kaspersky internet security software is now history for my firm.

Initially, we were apprehensive about moving to the cloud. But after careful analysis of the risks, the chief concern was how our team would adapt to the new system. After a short parallel run in the initial phase – to iron out typical user inertia towards change – everyone now continues to create and manage documents using familiar tools and has been provided with more flexibility in how and where to work. Not to mention that the several typhoons last year did nothing to interrupt my firm’s business operations.

I could have continued as I always had, but technology and people are changing, and I wanted to move with the times. In any case, the younger, always-connected workforce – who have grown up with smartphones, social media, and search engines – expect to have anywhere anytime access to the latest information. I want to acquire and retain these bright young people on my staff and enable them to do their best for the firm.

Looking forward, making use of Office 365, I want to implement a flexi-office or home-office mode of work for the law firm to the fullest extent possible. Ideally, every team member will, by default, work from home, with the physical office serving the prime purpose of being a meeting place with client. Hopefully, this will save rental costs by reducing redundant office space. It’s not even that much of a remote possibility. If TaoBao can empty the previously bustling streets of shoppers in mainland China, then Office 365 could be instrumental in lowering law firms’ demands for office space.

Overall Office 365 has offered my firm higher productivity and staff retention capability, which in return has reduced cost and increased revenue. For my part, I thoroughly enjoy working between the cloud and the swimming pool. But wife stands to benefit the most, now that I can spend more time at home with her.

By Andrew Law, Robinsons, Lawyers

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ADMIRALTY

Noor Maritime Ltd v. Calandra Shipping Co Ltd [2018] HKEC 685
Court of First Instance
Admiralty Action No 84 of 2017
Queeny Au-Yeung J in Chambers
31 January, 19 March 2018

Civil procedure — admiralty proceedings — application of guidelines for imposing condition requiring payment into court — costs

P’s vessel, The Rainbow, sank with cargo fuel and effects on board but no loss of life after colliding with D’s vessel, The Calandra, which was on a ballast voyage and was damaged but later repaired. One of the resulting sets of proceedings was an action in which P claimed in personam against D which cross-claimed against it in personam. The Master ordered that P file a defence to the cross-claim by a certain date, failing which it would be barred from doing so. After that date, P issued a summons for an extension of time to file a defence to the cross-claim. Such an extension was granted, but the Master granted it on the condition that P paid USD700,000 into court. P appealed to a judge in chambers against the imposition of the condition.

Held, allowing the appeal to set aside the condition and ordering that P be barred from filing a defence to the cross-claim unless it did so by 4 pm on 16 April 2018 and that P bear the costs of the appeal, that:

• The guidelines as to the imposition of a condition requiring payment into court were those set out in Schenker International (HK) Ltd v. Natural Dairy (NZ) Holdings Ltd [2014] 1 HKLRD 274 applied. (See para. 21.)
• Applying those guidelines, the imposition of the condition was disproportionate to a single breach. It had the effect of preventing a just resolution of the dispute in accordance with the substantive rights of the parties. (See para. 44.)
• Since P was being given more time, it should bear the costs of the appeal summarily assessed and allowed at HKD100,000. (See paras. 55–56.)

Appeal

This was an appeal by the plaintiff against an order by a Master requiring a payment into court as a condition of granting an extension of time for filing a defence to a cross-claim by the defendant. The facts are set out in the judgment.
在某個日期之前提交交相申索答辯書，原
告人不這樣做就會被禁止這樣做。原告人
在該日期之後發出傳票，要求延展提交
交相申索答辯書的期限。延展期限的要求
獲批，不過聆案官施加條件，要求原告人
將700,000美元繳存法院。原告人針對條
件的施加提出上訴，由法官在內庭進行聆
訊。
裁決 一一判上訴得直，取消條件，施加除
非命令，規定原告人在2018年4月16日
下午4時正前提交相交申索答辯書，否則
會被禁止這樣做；並且命令由原告人承擔
上訴訟費：

• 關於施加條件要求將款項繳存法院的
指引，就是那些在Schenker案列出的
指引(引用Schenker International (HK)
Ltd v. Natural Dairy (NZ) Holdings Ltd
[2014] 1 HKLRD 274)。(見第21段)
• 引用那些指引，條件的施加與單次的
違反並不相稱。施加條件妨礙按照
訴訟各方的實質權利，公平地解決爭
議。(見第44段)
• 原告人由於有更充裕時間，所以應
承擔上訴訟費。法庭批准上訴訟費
100,000港元，訟費是以簡易評估方
式評定的。(見第55—56段)

上訴
這是一宗上訴案。被告人向原告人提出交
相申索。聆案官命令原告人將款項繳存法
院，以作為延展提交交相申索抗辯書期限
的條件。原告人針對聆案官的命令，提出
上訴。案情已在判決書詳細列出。

CIVIL PROCEDURE

Cheuk Shu Yin v. Law Yeuk Kan (No 2)
[2017] HKEC 2890
Court of Appeal
Civil Appeal No 17 of 2013
Lam V-P, Cheung and Chu JJA
8 August 2017

Civil procedure — costs —
summary assessment — litigant
costs as a whole appeared to be disproportionate, then the court must be satisfied that each item of work was necessary and its cost was reasonable (Poon Shu Fan v. Wong Tin Yan [2012] 5 HKLRD 512 applied). (See para. 5.)

• Here, the issues in the appeal were not complicated. Ds’ overall costs were disproportionate and were assessed at $38,482. Inter alia:

(a) Ds’ costs of preparing for the appeal were allowed at the rate of $100 per hour as sought.

(b) Ds’ claim for photocopy charges of $2,835 was excessive and allowed at only $1,200 as submissions and attachments of not more than 300 pages must be submitted in quadruplicate (300 pages x 4 sets x $1).

(c) The claim for attendance on Ds of 100 hours was plainly excessive. Ds were father and daughter and it was unnecessary and unreasonable for them to have spent 100 hours communicating about the appeal. Given that it spanned over three years, 40 hours would be reasonable and thus the amount was $4,000. As for attendance on P based on the correspondence between the parties, three hours and so $300 was reasonable.

(d) Ds’ claim for attendance on their solicitors totalling 73 hours at $146,000 was disallowed, as no Notice to Act had ever been filed by Ds or their solicitors; and only 10 hours of Ds’ time for consulting their lawyers was allowed at $100 per hour, amounting to $1,000.

(e) Ds’ claim for $59,200 for 592 hours for the preparation and perusal of documents and preparation for the hearing was manifestly excessive and was reduced to $25,000.

(f) Ds’ bare claim for $57,400 for travel expenses was excessive and only $5,000 was allowed. (See paras. 6–17.)

Assessment of costs

This was a summary assessment of the defendants’ costs following the dismissal of the plaintiff’s appeal in a probate action. The facts are set out in the judgment.

民事訴訟程序

Cheuk Shu Yin v. Law Yeuk Kan (No 2) [2017] HKEC 2890

上訴法庭

民事上訴案件2013年第17號

上訴法庭副庭長林文瀚

上訴法庭法官張澤祐

上訴法庭法官朱芬齡

2017年8月8日


上訴法庭駁回原告人的上訴，命令她支付被告人的上訴訴費$277,817，原告人反對，建議應為$1,973。法庭根據文件循簡易程序評定訴費。

裁決 — 兩名被告人的上訴訴費被裁定為$38,482：

• 由於兩名被告無律師代表，《高等法院規則》(第4A章，附屬法例)第62號命令第28A條規則的規定適用，相關原則如下(引用霍兆榮對廉政公署(未經彙編，CACV 341/2005，[2006] HKEC 746)案)：

(a) 有工作收入的無律師代表的訴訟人，如果需要在他工作時間內辦理與訴訟有關的事情，他可獲得的最高訴費為一般事務律師就該項工作所獲批費用的三分之二。

(b) 如果無律師代表的訴訟人是沒有工作的、或可於工餘時間處理與訴訟有關的事情的，他其實沒有實質蒙受金錢上的損失，在普通法的訴費補償原則(indemnity principle)下不可以獲得訴費，但基於第62號命令第28A(3)條規則的規定，他可獲得不可多於以每小時$200元計算的訴費，而所准許的時數是一位律師就該項目需要用上的時間。

(c) 如果無律師代表的訴訟人沒有工作但聲稱蒙受金錢上的損失，他需以誓章證明他的聲稱屬實，包括證明他的學歷資格、工作履歷、收入的損失等。(見第4段)

• 根據《實務指示14.3》第13—14段，法庭在循簡易程序評定訴費時，只會作出粗略的評估，並考慮案件及法律程序的性質和情況，以及《高等法院規則》第1A號命令所述的基本目標後，盡量確保判給的訴費款額並非不相稱及／或不合理。法庭會從整體訴費的總額及個別項目的兩個角度進行評估。若然整體而言訴費的總額並非不相称，則法庭會接納所有合理地產生的訴費項目並批予合理金額。若然整體而言訴費款額看似不相稱，則法庭必須信納訴費的項目是必要的及金額是合理的(引用Poon Shu Fan v. Wong Tin Yan [2012] 5 HKLRD 512)。(見第5段)

• 本上訴的議題並不複雜。兩名被告人的訴費總額並不相稱，法庭評定訴費總額為$38,482。其中包括：

(a) 兩名被告人做上訴的準備所涉費用獲批，每小時收費為所要求的$100。

(b) 兩名被告人申索的$2,835影印費是過高；由於他們必須提交的陳詞及附件並不超過300頁，以一式四套計算，准予的影印費只有$1,200(300頁x 4套 x $1)。
The issue at trial was the Applicant’s knowledge that she was carrying dangerous drugs at the time of her interception and arrest. In a cautioned video recorded interview admitted into evidence at trial, the Applicant had said that she was suspicious that she might be carrying dangerous drugs but that she did not know that she had been carrying dangerous drugs. In evidence at trial the Applicant had said that any incriminating admissions were not true and were the result of “extensive coaching by the police”.

When summing up and directing the jury on the question of knowledge, the Judge said that:

“...the defendant made what amounts to admission that she did know or suspected what she was transporting was dangerous drug, there were also many denials by her that she knew what was in the white plastic bag.” [Italics added.]

The Judge had also said that in the “later part of the interview [the Applicant] made admissions which indicate that she did know what she was carrying”. (It was conceded by the Prosecution at the appeal that there was no evidence that the Applicant admitted that she knew that she was carrying dangerous drugs).

Although the Judge invited any submissions from Counsel at the conclusion of the summing up, no submissions were advanced in respect of these directions.

Held, allowing the appeal, that:

- The Judge’s direction elided the difference between the two mental states of suspicion and knowledge and led to the possibility that the jury might have proceeded on the impermissible line of reasoning that proof of either mental state was sufficient to prove the Applicant’s guilt.
- Although Counsel for the Applicant at trial had said in his closing speech that “suspicion is not enough”, a jury takes its directions from the Judge and correct references to the law by counsel for either party do not cure the Judge’s omission.
- The Judge had been required to give a simple direction that proof of suspicion only in the Applicant that she was carrying dangerous drugs was insufficient to prove knowledge of possession of dangerous drugs.
- The failure to do so amounted to a material misdirection by omission. A re-trial was ordered.

Morley Chow Seto
危險藥物 – 販運 – 知道

經審訊後，申請人被裁定販運危險藥物，即572克可卡因，罪名成立。原審時的爭議點是，當申請人被截停及拘捕的時候，她是知道自己攜帶著危險藥物的。申請人在警誡錄影會面表示，當時她懷疑自己可能攜帶著危險藥物，但亦表示當時並不知道自己一直攜帶著危險藥物；會面紀錄獲接納為呈堂證據。申請人在原審時作供稱，任何可導致入罪的供認都不是真的，全是「警員廣泛教導」（extensive coaching by the police）的結果。

法官作總結詞並就「知道」的問題指揮陪審團的時候表示：
「……被告人所作出的相當於承認她確實知道或懷疑自己當時所運送的是危險藥物，她也多次否認自己知道白色膠袋盛著的是甚麼東西。」[斜體後加以示強調。]

法官亦表示，「在會面較後部分，[申請人]作出承認，表示她確實知道自己當時所帶的是甚麼東西。」(在申請人上訊時，控方承認並無證據證明申請人承認自己知道當時所帶的是危險藥物)。

裁定

一審判決

- 法官的指示省略了懷疑和知道兩種精神狀態的分別，以致陪審團有可能循不當的思維方向，推論任何一種精神狀態的證明都足以證明申請人有罪。
- 儘管申請人的大律師在原審時已在他所的結案陳詞表示「懷疑並不夠」，但陪審團所得的指示是法官給他們的，而任何一方大律師對法律的正確提述亦補救不了法官的遺漏。
- 法官必須給予一個簡單的指示，那就是，只是證明申請人懷疑自己當時攜帶著危險藥物，不足以證明她知道自己曾有危險藥物。
- 不這樣做等同於因為遺漏而造成嚴重錯誤的指示。法庭下令重審。

麥樂賢周焯瑩司徒悅律師行

Criminal Practice and Procedure

HKSAR v. Wiwik Lestari
[2018] HKCA 166
Court of Appeal
Criminal Appeal No. 227 of 2016
Hon Lunn VP, Macrae and Pang JJA
27 March 2018

AND

HKSAR v. Tse Hin Yeung
[2018] HKCA 196
Court of Appeal
Criminal Appeal No. 185 of 2017
Hon Lunn VP, Macrae and Pang JJA
29th March 2018

Appeal grounds – appeal procedure

In Wiwik Lestari, Counsel for the Applicant had advanced 10 grounds of appeal. The Court had not found it necessary to invite the Prosecution to reply to any of the arguments advanced in grounds 1 to 9, as for reasons set out, none had any merit. The Court had been burdened with 4 box files of authorities in support of meritless grounds of appeal.

The Court of Appeal reminded Counsel of their duty in a criminal appeal to settle grounds which are properly arguable. It is not the function of Counsel to settle as many grounds of appeal as can be thought of regardless of whether they are realistically and properly arguable, as though the number of grounds is some sort of indicator of their ability or industry. Such a practice may lead Counsel to “lose sight of the wood for the trees” and obscure what might otherwise be a good ground of appeal, as happened in this case.

The one ground of appeal on which the appeal was allowed lay undiscovered until the argument was well underway before the Court. Appeal Counsel are experts in their field and are expected to bring professionalism, realism and common sense to the performance of their duty.

In Tse Hin Yeung, the Court of Appeal again expressed its concern about a prevailing culture amongst certain appeal counsel of averring that there was an unfair and unbalanced summing up almost as a matter of routine in any set of grounds of appeal against conviction, regardless of its merits. The Court considered that is it perhaps time that the procedure of applying for leave to appeal before a Single Judge is extended to all appeals, and not simply those where the sentence is 7 years’ imprisonment or less.

Morley Chow Seto
FAMILY LAW
Lit Wing Yee v. Tang Cheuk Lun
[2017] HKEC 2887
Court of First Instance
High Court Action No 850 of 2016
Louis Chan J in Chambers
21 February, 16 March 2017

Civil procedure — stay — action for recovery of debt from spouse — wrong in principle to stay action pending determination of ancillary relief proceedings
Family law — divorce — ancillary relief — Family Court had no power to order one party to discharge liabilities in contract, tort or trust outside ancillary relief to other party — Matrimonial Proceedings and Property Ordinance (Cap. 192) ss. 3, 4, 5, 6, 6A

P petitioned for divorce and applied for ancillary relief against her husband, D. P also brought the present action against D to recover an alleged debt of $1,844,891 with interest, relying on loan receipts signed by D (the ‘Action’). D's application to stay the Action pending the determination of the ancillary relief application was refused. D appealed.

Held, dismissing the appeal, that:

- Sections 3, 4, 5, 6 and 6A of the Matrimonial Proceedings and Property Ordinance (Cap. 192) empower the Family Court to award ancillary relief on a relevant petition, but not to order one party to the marriage to discharge to the other party liabilities in contract, tort or an unrelated trust. (See paras. 20, 27, 35.)
- Similarly, the Family Court had no power to order a third party to transfer back assets to a party to the marriage who owned the beneficial interest therein or to order the third party to discharge liabilities in contract, tort or a trust outside ancillary relief. (See paras. 33–34.)
- Thus, even if P sought and obtained a determination in the ancillary relief application that D owed her $1,844,891, this sum would only be added to the net financial resources of P’s assets and D’s liabilities. The Family Court had no power to order D to pay the debt to P as this was an issue of loan contracts between the parties, unrelated to ancillary relief. So if the Action were stayed, P would be unable to obtain a judgment to recover the debt from D and this would be unfair to P. It was therefore wrong in principle for D to seek a stay of the Action. (See paras. 36, 39.)

Appeal
This was an appeal by the defendant-husband against the order of Master Caroline Chow refusing to stay an action...
brought against him by the plaintiff-wife for the recovery of a debt pending the determination of her ancillary relief application. The facts are set out in the judgment.

家事法
Lit Wing Yee v. Tang Cheuk Lun [2017] HKEC 2887

民事訴訟程序 — 攔置 — 向配偶追討欠債的訴訟 — 攔置案件以待附屬濟助的裁決，在原則上是錯誤的 — 家事法 — 離婚 — 附屬濟助 — 家事法庭無權命令一方向另一方履行合約、侵權或附屬濟助以外的信託責任 — 《婚姻法律程序與財產條例》(第192章)第3、4、5、6、6A條

原告人申請離婚並向她丈夫，即被告人，要求附屬濟助。原告人亦以被告人簽立的借據為憑，提起本案，向被告人追討她所指的$1,844,891欠債和利息(「案件」)。

被告人申請暫時擱置案件以等候附屬濟助的裁決，但申請被拒。被告人提出上訴。

裁決

—駁回上訴:

• 《婚姻法律程序與財產條例》(第192章)第3、4、5、6、6A條授權家事法庭就相關呈請頒發附屬濟助，不是授權命令婚姻一方向另一方履行合約、侵權或不相關的信託責任。(見第20、27、35段)

• 同樣地，家事法庭無權命令第三者把資產轉回給擁有該資產實益權益的婚姻的一方，或命令第三者履行合約、侵權或附屬濟助以外的信託責任。(見第33-34段)

• 因此，即便原告人要求法官裁定被告人有欠她$1,844,891，而法官又裁定被告人確實欠她這款項，這款項只會在計算原告人和被告人各自的淨經濟資源時，算到原告人的資產和被告人的負債上。家事法庭無權命令被告人償還欠債給原告人，因為這是雙方的貸款合約問題，與附屬濟助無關。假若案件被暫時擱置，原告人就不能獲取法庭的判決，以從被告人處取回欠債，因此把案件暫時擱置，會對原告人造成不公。是故，被告人要暫時擱置案件的申請，原則上是錯誤的。(第36、39段)

上訴

這是一宗上訴案。原告人(妻子)興訟向被告人(丈夫)追討欠債，被告人申請暫時擱置案件，以等候附屬濟助的裁決；聆案官周敏慧女士拒絕申請；被告人就聆案官的命令提出上訴。案情已在判決書詳細列出。

TAXATION

Wong Wing Wah v. Collector of Stamp Revenue [2018] HKEC 644
District Court
Miscellaneous Proceedings No 3454 of 2017
Judge Liu Man Kin
16 March 2018

Taxation — stamp duty — leave to appeal out of time — whether applicant prevented by illness from lodging appeals within time — whether requirements under s. 14(1B) and (5B) of the Stamp Duty Ordinance (Cap. 117) satisfied

Civil procedure — originating summons — practitioners issuing summons under s. 14(1B) and (5B) of the Stamp Duty Ordinance (Cap. 117) satisfied

District Court (Cap. 336H, Sub. Leg.) O. 7 r. 2(1), (1B), (2) — Practice Direction 5.8, para. 1

Words and phrases — “prevented” — “hardship”

On 4 and 17 August 2017 respectively, the Collector of Stamp Revenue (the ‘Collector’) issued to X two notices of assessment (‘Notices’ A and B) and demand for stamp duty chargeable for two assignments over two properties (‘Properties’ A and B). Under two trust deeds executed by X, she held the Properties on trust for THW who would pay all stamp duty (the ‘Trust Deeds’). Pursuant to s. 14(1) of the Stamp Duty Ordinance (Cap. 117) (the ‘SDO’) X had one month from the date of assessment to lodge an appeal. In August 2017, X was struggling with whether to have surgery, in pain and on medication. On 1 September 2017, X’s solicitors wrote to the Collector to indicate her wish to appeal against the assessment in Notice A, provide bank guarantees as security for payment of the stamp duty and apply for an extension of time to appeal (the ‘Notice A Letter’). Between 4 and 9 September 2017, X was hospitalised for surgery and then on sick leave until 17 November 2017. On 14 December 2017, X applied for an extension of time to appeal against the Notices under s. 14(5B) of the SDO because she had been prevented by illness from bringing the appeals within time; and leave under s. 14(1B) to allow the appeals to be brought on the security of bank guarantees for payment of the stamp duty.

Held, dismissing the application, that:

• Whether to exercise the discretion to grant an extension of time for appeal under s. 14(5B) of the SDO involved a three-stage test (Wan Wah Shing v. Collector of Stamp Revenue [2005] 4 HKLRD 674 applied): (a) the court must be satisfied that the applicant suffered from illness, had been absent from Hong Kong or had any other reasonable
cause;
(b) the applicant must show that one or more of the three factors above prevented her from bringing an appeal within the statutory time limit; and
(c) even if the above two criteria were satisfied, the court had a residual discretion as to whether to grant an extension of time. (See para. 20.)

• The word “prevented” in s. 14(5B) meant “unable to”. An applicant seeking an extension under s.14(5B) must demonstrate that he was unable to lodge an appeal within time due to illness, absence from Hong Kong or other reasonable cause (Chow Kwong Fai v. Commissioner of Inland Revenue [2005] 4 HKLRD 687 applied). (See paras. 22–23.)

• In order to fulfil the factors in s. 14(5B), the applicant must show that payment of stamp duty assessed would impose hardship on him, that non-payment was reasonable in all the circumstances and security to the court’s satisfaction was given for the duty to be postponed. The court must consider a party’s subjective stance in forming an objective view on all the circumstances as to whether hardship was established (Wan Wah Shing v. Collector of Stamp Revenue [2005] 4 HKLRD 674 applied). (See para. 24.)

• X had not shown that she was prevented by illness from lodging appeals against the assessments within time. Despite being ill, in August 2017, she had instructed solicitors to write the Notice A Letter. Although Notice B was sent to X’s home address and, she claimed, remained unopened because she was ill, Notice B was also sent to her solicitors so that she would also have been able to give instructions thereon. Thus, there was no ground to exercise the discretion under s. 14(5B) in X’s favour. (See paras. 31–35.)

• As for s. 14(1B), “hardship” meant “financial hardship”. Even if the Notice A Letter was a formal application to postpone payment of stamp duty, it was made outside the 14-day time limit under s. 14(1A), hence the Collector could not accede to X’s request. No similar request had been made for Property B. Further, X had not adduced evidence of the “hardship” she would suffer if she had to pay the stamp duty so that the Court could not consider her financial circumstances; or evidence that THW would be unable to pay the stamp duty under the Trust Deeds. (See paras. 37–39.)

• (Obiter) X should not have commenced these proceedings by an originating summons in expedited form (Form 10), but used the general form (Form 8) instead. Under O. 7 r. 2(1)(1B) of the Rules of the District Court (Cap. 336H, Sub.Leg.) (RDC), practitioners were only to use Form 10 if it was prescribed under a written law. There was no such law regarding applications under s.14(1B) and s.14(5B). Under para. 1 of Practice Direction 5.8, non-compliance might delay the proceedings or result in the summons being dismissed and might also have costs consequences (International Automotive Components Group SRO v. Xuke Trading Ltd [2017] 3 HKC 137 applied). (See paras. 40–41, 43–45.)

Application

This was an application by the intended appellant for an extension of time to appeal against two notices of stamp duty assessment; and leave to allow the appeals on giving security for the payment of the stamp duty. The facts are set out in the judgment.

稅務

Wong Wing Wah v. Collector of Stamp Revenue [2018] HKEC 644
區域法院
區院雜項案件2017年第3454號
區域法院法官廖文健
2018年3月16日

課稅 — 印花稅 — 逾期上訴的許可 — 申請人是否由於疾病而未能在時限內提出上訴 — 是否符合《印花稅條例》(第117章)第14(1B)及(5B)條的規定

民事訴訟程序 — 原訴傳票 — 法律執業者根據第14(1B)及(5B)條發出傳票，就必須使用普通表格(表格8)而不是使用速辦表格(表格10) — 錯用表格可令法律程序
受到延誤，傳票被撤銷，還會增 加訴費 — 《區域法院規則》(第 336H章，附屬法例)第7號命令 第2(1)、(1)(B)、(2)條規則 — 實 務指示 5.8第1段

字眼及用語 — 「未能」— 「困 苦」

印花稅署署長(「署長」)向X發出兩份評 稅通知書，要求X就兩項物業(「物業」A 及B)的轉讓繳付可予徵收印花稅，兩份通 知書分別在2017年8月4日及17日發出(「 通知書」A及B)。根據兩份由X執行的信 契契據，她是以信託形式代THW持有物 業A及B，THW會支付所有印花稅(「該信 契契據」)。根據《印花稅條例》(第117 章)第14(1)條，X有1個月時間提出上訴， 期限由評稅作出日期當日開始計算。X在 2017年9月1日，X的律師寫信給署 長，表明X想就通知書A的評稅提出上訴及 提供銀行擔保作為繳付印花稅的保證。 2017年9月4日至9日，X入院做手術，手術 後放病假，一直到2017年11月17日為止。 2017年12月14日，X根據《印花稅條例》 第14(5B)條提出延展針對通知書A的上訴期限，原因是她由於疾病而未能在期限內 提出上訴。(見第22–23段) 3) 為求符合第14(5B)條訂明的因素，申 請人必須證明，繳付經評定印花稅會對 他造成困苦，也必須證明不付款是相 對合理的，並且他已就延遲繳付稅款 提出令法庭滿意的保證。法庭根據整 體情況，從客觀角度決定造成困苦之 說是否確立的時候，必須考慮訴訟方 的主觀立場(引用 Wan Wah Shing v. Collector of Stamp Revenue [2005] 4 HKLRD 674)。(見第24段) 4) X未能證明她由於疾病而未能在期限內 提出上訴。她雖然患病，但在2017年8月指示律師撰寫通知書A信函。儘管通知書A也寄到X的住址的，而X也聲稱因患病而一直 沒有拆閱，但通知書A亦有寄給她的 律師，因而她本來就能夠就通知書A 作出指示。因此，沒有理由根據第14(5B)條行使酌情決定權，容許X在較長期間內提出上訴。(見第31–35段) 至於第14(1B)條，「因苦」指「財政困難」。即使通知書A信函是正式就 延遲繳付印花稅提出的申請，它也是 超逾第14(1A)條指定的14天期限提出的，因此署長不能答應X的要求。X一直沒有就物業A提出類似的申請。此外，X未能舉證證明她因為必須支 付印花稅而承受「困苦」，以致法庭 不能考慮她的財政情況；她也未能舉 證證明THW會兌付根據該信託契據支 付印花稅。(見第37–39段) 6) (附帶意見)X原本不應該以速辦表格 (表格10)，而是應該使用普通表格( 表格8)，發出傳票以展開有關法律程 序。根據《區域法院規則》(第336H 章，附屬法例)第7號命令第2(1)(B) 條規定的規定，法律執業者只在成文 法訂明的情況下，才可使用表格10。 第14(1B)及14(5B)條都沒有是與申 請有關的法例。根據實務指示5.8第1 段，錯用表格可令法律程序受到延 誤，傳票被撤銷，還會增加訴費(引用 International Automotive Components Group SRO v. Xuke Trading Ltd [2017] 3 HKC 137)。(見第40–41、43–45段)
Rise of Short Term Contracts in the Legal Market

By Camilla Worthington, Head of Private Practice

Over the last 10 years Law Firms, Financial Institutions and Multinationals have experienced not only a challenging environment for financial growth but also fundamental changes within the legal market itself. These changes have been driven by a broader shift from a sellers’ market and an increased client demand for greater efficiency, predictability and cost control in the delivery of legal services.

Originally in the legal market, contract lawyers were primarily used for litigation support on large-scale cases, due diligence and short-term cover for maternity leave. However, with changing client demand, in-house legal teams are utilizing contract lawyers for more substantive work to enable them to be more competitive on costs whilst maximizing resources and revenues.

Contract lawyers can now perform the function of a full time in-house counsel. There is increased demand for temporary lawyers across various practice areas including M&A, derivatives, real estate, regulatory, compliance, employment and litigation.

In line with this demand, there is now greater awareness from candidates to work on a more flexible basis. Those who are most likely to consider contracting range from working parents who wish to balance childcare and work with flexibility around school holidays, lawyers who have recently relocated from overseas, sole practitioners supplementing work flow, lawyers in between jobs and those who simply enjoy the flexibility of contract positions.

What does contracting mean for businesses?

Companies are experiencing an increasing range of benefits from hiring contract lawyers. It is common place that workloads vary and are not always consistent and it is often not viable for lawyers to be hired in anticipation of workloads increasing. Over the last 10 years many companies, particularly the investment banks, have experienced head count freezes.

There can be situations where a company is not certain as to the type of individual and skill set required, particularly if it is a new business area or the first time hiring an in-house lawyer. Hiring a contract lawyer can provide an opportunity to “try before you buy”. The contract position can always be transferred into a permanent position if the individual is a good fit and on the flip side, it is easy for both parties to walk away at the end of the contract. The use of contractors also enables companies to retain talent and services without a capital outlay or ongoing employment obligations.

What does contracting mean for a Candidate?

The initial reaction of some candidates to the idea of contracting is often
one of hesitation. The thought of being without a permanent income can be unnerving. However, there are many advantages to taking on such a position. Contracting can offer lawyers a huge range of benefits, which for many makes becoming a contractor an attractive option compared to being employed on a permanent basis.

Contracting provides increased flexibility enabling individuals to achieve a greater work/life balance, sign up for classes that support continuing education or pursue other interests. Candidates are able to gain exposure to a different practice area to make themselves more marketable, for example corporate lawyers retraining as funds lawyers, or banking lawyers to derivatives via contracting. The thought of returning to work after a period of leave or transitioning from one practice area to another can be daunting. Contracting can be a good way to ease this transition as it offers an opportunity to experience different organizations and types of work.

Contracts can be varying in length. One assignment might be for six months another for four weeks. When one assignment ends there is the option to move straight onto another or to take a break. In Hong Kong where many employees are working long hours, this flexibility is becoming more and more attractive. Working as a contract lawyer can also provide lawyers with the opportunity to keep legal skills and legal knowledge up to date. The exposure to different in-house teams is invaluable and can also enhance the contractors personal and professional network. For lawyers who are new to the market or are returning to work after a career break, contracting can provide an excellent opportunity to make connections in the legal community. You are likely to work with numerous legal professionals and these connections can prove very helpful particularly if ultimately you are looking for a permanent position.

The use of contract lawyers is continuing to expand and evolve in the market across Asia. LinkedIn predicts that contractors will represent 43 percent of the workforce by 2020, up from just six percent in 1990. While some of this growth can be seen in short term staffing replacements, there have been strong indicators that multi-national corporations are now looking towards contractors as a highly skilled and flexible resource, hiring candidates on the strength of their ability to deliver in specific practice areas. There is no doubt that lawyers will be a key part of this growing contracting workforce.

It is clear that the benefits to contracting have not been lost on the legal industry. While the law firms in Hong Kong are behind the curve in terms of this trend, we expect them to embrace a more flexible working model over the next five years.

At Lewis Sanders we see contracting as an increasingly attractive option for our clients. We are excited to be expanding our capability in the contracting market by providing a contracting service both with and without payroll services. Business that are most likely to survive and prosper in the new legal market environment are those most able to anticipate and adapt to the changes around them and the use of contractors will play a key part in this.
去10年，律師行、金融機構和跨國企業經歷了充滿挑戰的財務環境，亦經歷了法律市場的根本變化。這些變化來自市場從賣方轉至買方及客戶對法律服務的效率、可預測性和成本控制的需求日益增加。

在法律市場上，合約律師以往主要負責支援大型案件訴訟、盡職調查和應付產假的短期職位。然而，隨著客戶需求變化，企業內部法律團隊正聘用合約律師進行更多實質工作，從而在成本上更具競爭力，同時最大限度地善用資源和收入。

合約律師現在可以執行全職企業內部律師的職能。各行業對臨時律師需求增加，所涉領域包括併購、衍工具、房地產、監管、合規、就業及訴訟。

相合聘用對企業意味著什麼?
企業僱用合約律師的好處越來越廣。工作量不穩定，時有多寡，聘請律師等待工作量增加往往並不可行。過去10年，許多企業，特別是投資銀行，均面臨人手凍結。

有時企業並不確定所需的人選類型和技能，特別是針對新業務領域或首次聘請內部律師時。聘請合約律師可提供一個「購買之前試用」的機會。如果人選合適，合約職位可轉為永久職位；相反，合約結束時雙方亦易於結束僱佣關係。以合約方式聘請也令企業能夠在無需資本支出或持續僱傭義務的情況下挽留人才和服務。

合約聘用對求職者意義著什麼？
一些求職者對合約職位最初的反應往往是猶豫不決，沒有長期固定收入的想法可能會令人不安。但是，出任這樣的職位有很多好處。合約聘用可為律師提供廣泛的福利，對於許多人來說，出任合約職位較永久聘用更具吸引力。

合同聘用提供更大的靈活性，令個人能夠實現更大的工作與生活平衡、持續進修或報讀其他興趣班。求職者能接觸不同的執業領域，使自己更具市場競爭力，例如公司律師通過合約聘用，再受訓成為基金律師、從事衍生工具的銀行律師。假期後返回工作，或從一個執業領域轉換到另一個領域，能令人望而生畏。合約聘用提供經驗不同組織和工作類型的機會，可以緩解這種轉變帶來的不安。

合約期長短不一。一項任務可能需時4個星期，另一項任務可能需時6個月。任務結束時，可以選擇直接轉到另一個項目工作，或者選擇休息。香港許多僱主的工時很長，這種靈活性變得越來越有吸引力。

擔任合約律師也可為律師提供機會，保持法律技能和法律知識。接觸不同的企業內部團隊是非常寶貴經驗，也可以增強合約律師的個人和專業網絡。對於新進入市場或休假後重返工作崗位的律師而言，合約聘用有助在法律界建立聯繫。您很可能會與眾多法律專業人士合作，若您隨時尋找長期職位，這些聯繫可能會非常有用。

聘用合約律師的比例在亞洲市場上不斷擴大。LinkedIn預測，到2020年，合約職位將佔勞動力的43%，而1990年只有6%。儘管其中一些職位增長為短期代工，但有跡象顯示，跨國企業視合約僱員為高技術、高靈活性的資源，因應求職者的能力聘請，並期待他們在特定執業領域發揮技能。毫無疑問，律師將是不斷增長的合約僱員隊伍的關鍵一環。

合約聘用的長處在法律行業內亦一樣。雖然香港律師行尚未跟上這個趨勢，我們預計，律師行將在未來5年採用更靈活的工作模式。

Lewis Sanders認為合約聘用是對客戶趨勢進展的選擇。我們很高興能夠通過提供合約聘用服務，擴大市場能力。能夠在新的法律市場環境中生存和發展的企業，最能預測和適應周邊變化，使用合約聘用將在這方面發揮關鍵作用。
PROFESSIONAL MOVES

Newly-Admitted Members

CHAN CHUN TAT
陳俊達
Daly, Ho & Associates
帝理何律師行

DAI YINGHUI
戴穎輝
LIU, CHAN & LAM
廖陳林律師事務所

KWOK KIN FEI
郭健妃
HAPPY

CHAN SHEK YAN
陳碩訢
SKADDEN, ARPS, SLATE, MEACHER & FLOM
世達國際律師事務所

DONG YUE
董岳
BAKER & MCKENZIE
貝克・麥堅時律師事務所

LAW YUEN KIN
羅元健
MAK PATRICK & TSE
麥家榮律師行

CHENG HO FUNG
鄭可豐
OLDHAM, LI & NIE
高李嚴律師行

HO CHEUK YEE
何卓怡
PAYNE CLERMONT VELASCO
彭林韋律師事務所

LEE JIN-HO IVAN
李展浩
WHITE & CASE
偉凱律師事務所

CHEUNG WAI SUM
張蔚深

JI HOUSHI
姬厚實
TSANG, CHAN & WOO SOLICITORS & NOTARIES
曾陳胡律師行

LEE TSUN TAT
李駿達
ASHURST HONG KONG
亞司特律師事務所

CHU KIU WAH
朱喬華
ROBINSONS, LAWYERS
羅本信律師行

KONG KA LAM
江家林

LEUNG HO WAI
梁浩為
SIMPSON THACHER & BARTLETT
盛信律師事務所
Editorial Note: the firm name that appeared next to Chu Yan Yee, in the March 2018 issue of Hong Kong Lawyer was incorrect.

編按: 2018年3月號的《香港律師》內朱恩儀的律師樓名稱出錯，敬希垂注。
 Partnerships and Firms
合夥人及律師行變動

changes received as from 1 March 2018
取自2018年3月1日起香港律師會所提供之最新資料

- AU WING HANG ALEX
  commenced practice as the sole practitioner of Wing Hang Lawyers as from 16/03/2018.
  阿區永恒
  自2018年3月16日獨資經營永恒律師事務所。

- BI RAN
  joined Ashurst Hong Kong as a partner as from 05/03/2018.
  畢然
  自2018年3月5日加入亞司特律師事務所為合夥人。

- BOW CHEUK WAI
  ceased to be a partner of Deacons as from 01/04/2018.
  鮑卓緯
  自2018年4月1日不再出任的近律師事務所合夥人一職。

- CHAN EDMUND KWOON BUN
  ceased to be a partner of Baker & McKenzie as from 01/04/2018.
  陳冠斌
  自2018年4月1日不再出任貝克及麥堅時律師事務所合夥人一職。

- CHAN KA FUNG
  became a partner of Vincent T.K. Cheung, Yap & Co. as from 01/04/2018.
  陳家鋒
  自2018年4月1日成為張業司徒陳律師事務所合夥人。

- CHENG HENRY MING CHUN
  ceased to be a partner of Kirkland & Ellis as from 31/03/2018.
  鄭銘浚
  自2018年3月31日不再出任凱易律師事務所合夥人一職。

- CHING YUEN MAN ANGELA
  ceased to be the sole practitioner of Ching & Solicitors as from 15/02/2018 and the firm closed on the same day.
  程婉雯
  自2018年2月15日不再出任Ching & Solicitors獨資經營者一職，而該行於同日結業。
• CHONG HON KAY HANK ceased to be a partner of Baker & McKenzie as from 01/04/2018.
莊漢祺
自2018年4月1日不再出任貝克•麥堅時律師事務所合夥人一職。

• CHOW JOCELYN EVE CHUK-FUN became a partner of Ellen Au & Co. as from 28/03/2018.
周卓勳
自2018年3月28日成為區殿霞律師行合夥人。

• CHU HO YAN ceased to be a partner of Li, Kwok & Law as from 01/04/2018.
朱皓欣
自2018年4月1日不再出任李郭羅律師行合夥人一職。

• CHUNG KWOK KEUNG TOMMY ceased to be a partner of Gallant as from 01/04/2018 and joined Tsang, Chan & Wong as a consultant as from 03/04/2018.
鍾國強
自2018年4月1日不再出任耀棣律師事務所合夥人一職,並於2018年4月3日加入曾宇佐陳遠翔律師行為顧問。

• FONG WAI NA became a partner of Squire Patton Boggs as from 01/04/2018.
方慧娜
自2018年4月1日成為翰宇國際律師事務所合夥人。

• GRAMS RICHARD S ceased to be a partner of Fitzgerald Lawyers as from 05/04/2018.
關偉傑
自2018年4月5日不再出任德龍律師事務所合夥人一職。

• HO WING HANG HOWARD ceased to be a partner of Ellen Au & Co. as from 28/03/2018 and commenced practice as the sole practitioner of Howard Ho & Co., Solicitors as from 12/04/2018.
何顯恒
自2018年3月28日不再出任區殿霞律師行合夥人一職,並於2018年4月12日獨資經營林顯恒律師事務所。

• KO WAI SHUN WILSON became a partner of Wellington Legal as from 27/03/2018.
高偉舜
自2018年3月27日成為趙國賢律師事務所合夥人。

• LAM KWOK MING ceased to be a partner of Keith Lam Lau & Chan as from 31/03/2018 and joined Guantao & Chow Solicitors and Notaries as a partner as from 01/04/2018.
林國明
自2018年3月31日不再出任劉林陳律師行合夥人一職,並於2018年4月1日加入觀韜律師事務所(香港)為合夥人。

• LAM SAN KEUNG commenced practice as the sole practitioner of Ambrose Lam & Co. as from 26/03/2018 and remains as a partner of Lam, Lee & Lai.
林欣芳
自2018年4月1日獨資經營林欣芳律師事務所,並繼續擔任林李黎律師事務所合夥人一職。

• LAW KAM WAH ceased to be a partner of Squire Patton Boggs as from 01/04/2018.
羅金華
自2018年4月1日不再出任翰宇國際律師事務所合夥人一職。

• LEUNG MAN CHI became a partner of Wilkinson & Grist as from 04/04/2018.
梁敏芝
自2018年4月1日成為高露雲律師事務所合夥人。

• LI DING became a partner of Gallant as from 01/04/2018.
李丁
自2018年4月1日成為高露雲律師事務所合夥人。

• LI MING YAN became a partner of Robertsons as from 03/04/2018.
李明茵
自2018年4月3日成為羅拔臣律師事務所合夥人。

• LIU CHI KEI CHARLIE ceased to be a partner of Wilkinson & Grist as from 18/03/2018 and joined Boase Cohen & Collins as a consultant as from 19/03/2018.
廖智基
自2018年3月18日不再出任高露雲律師行合夥人一職,並於2018年3月19日加入布高江律師行為顧問。

• LIU CHUNG YUE JOHNNY became a partner of Vincent T.K. Cheung, Yap & Co. as from 01/04/2018.
廖耀宇
自2018年4月1日成為張葉司徒陳律師事務所合夥人。
• **LO KAR YU**
  ceased to be a partner of Hui & Lam LLP as from 01/04/2018 and joined S.K. Wong & Co. as a consultant as from 03/04/2018.

  羅嘉裕
  自2018年4月1日不再出任許林律師行有限法律責任合夥合夥人一職，並於2018年4月3日加入黃萃群律師行為顧問。

• **MA SIU LAM**
  ceased to be a partner of K.M. Lai & Li as from 01/04/2018 and remains as a consultant of the firm.

  馬兆林
  自2018年4月1日不再出任黎錦文李孟華律師事務所合夥人一職，而轉任為該行顧問。

• **MARSHALL WILLIAM FRANCIS**
  commenced practice as the sole practitioner of William Marshall & Co. as from 05/03/2018.

  自2018年3月5日獨資經營William Marshall & Co。。

• **MC KENNA BRIAN FRANCIS**
  became a partner of Mayer Brown JSM as from 29/03/2018.

  鄧國全
  自2018年3月29日不再出任李郭羅律師行合夥人一職。

• **NARAYAN RAM**
  joined Kirkland & Ellis as a partner as from 22/03/2018.

  那雷言
  自2018年3月22日加入凱易律師事務所為合夥人。

• **NG YU HUNG CHRISTOPHER**
  ceased to be a partner of Chu & Lau as from 30/03/2018 and joined J. Chan & Lai as a consultant as from 03/04/2018.

  吳裕雄
  自2018年3月30日不再出任劉漢銓律師行合夥人一職，並於2018年4月3日加入陳錦全，黎永康律師事務所為顧問。

• **ROBINSON IAN**
  ceased to be a partner of Robinsons, Lawyers as from 14/03/2018 and remains as a consultant of the firm.

  羅本信
  自2018年3月14日不再出任羅本信律師行合夥人一職，而轉任為該行顧問。

• **SO KIT YEE KITTY**
  ceased to be a partner of Kitty So & Tong as from 01/04/2018 and remains as a consultant of the firm.

  蘇潔兒
  自2018年4月1日不再出任蘇潔兒，唐淑萍律師行合夥人一職，而轉任為該行顧問。

• **SUM KWAN NGAI RONALD**
  ceased to be a partner of Troutman Sanders as from 11/04/2018 and joined Locke Lord as a partner on the same day.

  岑君毅
  自2018年4月11日不再出任長盛國際律師事務所合夥人一職，並於同日加入洛克律師事務所為合夥人。

• **TAN LUHUA**
  joined Ambrose Lam & Co. as a partner as from 03/04/2018.

  譚露華
  自2018年4月3日加入林新強律師事務所為合夥人。

• **TANG KWOK CHUEN**
  ceased to be a partner of Li, Kwok & Law as from 29/03/2018.

  鄧國全
  自2018年3月29日不再出任李郭羅律師行合夥人一職。

• **TONG YUK YIN LORETTA**
  ceased to be a partner of Eric Lai, Jason Cheung & Co. as from 01/04/2018 and remains as a consultant of the firm.

  唐育賢
  自2018年4月1日不再出任賴發強，張濟成律師行合夥人一職，而轉任為該行顧問。

• **TSANG KIN PATRICK**
  ceased to be a partner of William Sin & So as from 01/04/2018 and joined Rowdget W. Young & Co. as a partner as from 03/04/2018.

  曾健
  自2018年4月1日不再出任冼國雄，蘇福禎律師行合夥人一職，並於2018年4月3日加入楊振文律師行為合夥人。

• **TSANG YAT WAH**
  ceased to be a partner of Mayer Brown JSM as from 01/04/2018 and commenced practice as the sole practitioner of Derek Tsang Law Office on the same day.

  王鵬
  自2018年4月1日不再出任冼國雄，蘇福禎律師行合夥人一職，並於同日獨資經營曾日華律師行。

• **WANG PENG**
  ceased to be a partner of Shearman & Sterling as from 01/04/2018 and joined Skadden, Arps, Slate, Meagher & Flom as a consultant on the same day.

  王鵬
  自2018年4月1日不再出任謝爾曼思特靈律師事務所合夥人一職，並於同日加入世達國際律師事務所為顧問。

• **WONG PIE YUE CLERESA**
  ceased to be a partner of Wilkinson & Grist as from 01/04/2018 and remains as a consultant of the firm.

  黃碧如
  自2018年4月1日不再出任賴發強，張濟成律師行合夥人一職，而轉任為該行顧問。

• **YU PUI HANG**
  commenced practice as the sole practitioner of Henry Yu & Associates as from 18/03/2018.

  余沛恒
  自2018年3月18日獨資經營余沛恒律師事務所。
My name is Emma de Ronde, I am a corporate partner at Norton Rose Fulbright Hong Kong, having moved to Hong Kong in 2014. I am married with a 4 year old son, Benjamin. I have always enjoyed playing sport from school age.

I started playing when I started secondary school in the UK at the age of 11 and played throughout my school career and then joined the university team at Kings College London.

After we finished university, myself and a few of the other team members who had graduated at the same time decided to start a Kings College "old girls" squad and we joined the Kent League in the South East of England. When we started, which was around 2002, we had to start in the bottom division – over the years we worked up way up and ended up playing in the premier division growing the ladies squad to two teams. I played with the First XI squad for 10 years, after which I gave up, to have Ben and then moved to Hong Kong.

After arriving in Hong Kong, a friend asked if I would join a sixes tournament during the summer at the Hong Kong Football Club. After playing with them, I tried out for the Hong Kong Football Club ladies hockey squad and started playing for the Ladies C team two years ago. We have won the first division of the Hong Kong Hockey Association for the last two years!

Norton Rose Fulbright is a sponsor of the Hong Kong Football Club Hockey Division and I supported that initiative. We were approached by the Hong Kong Football Club about sponsorship and took it to our business development team. They liked the concept because hockey appeals to a wide base of people, both local and expat and men and women, adults and children.

Hockey in London and in Hong Kong

Playing in the humidity and heat is a different ballgame (sorry about the pun) altogether! In London I played in freezing temperatures and a lot of rain – playing a physically demanding sport when it is 35 degrees out and 100% humidity is incredibly challenging. We start training in August which is never fun!

It does mean when it comes round to winter and the temperature drops you feel very fit! In London I played with a lot of players around the same age as me. In Hong Kong the players are mixed in age, we play with some of the cubs (14-16) and the oldest players in our team are over 40 – players change as they get older (and gain experience) and you have to adapt the team to the different skill sets among the younger and older players.
Hockey and the Law

As any team sport, hockey requires players to work together, trust each other and succeed as a team. Much like in a law firm, successful teams are those who work well together and know how to support one another.

You feel a great comraderie playing as a team and you are all “in it together”, similar in a way to office dynamics. One of the reasons I love playing so much is that when you play 100 percent of your mind and focus is on the game, there is no room to think about other worries in day-to-day life. In that sense, it is a great stress reliever – something very important if you want to survive in a legal career!

My hockey mantra is “Play to enjoy and always give it your most.”

The older I get, the more I recognise the impact of mindset on sport performance, of course physical fitness and skill play a big part but as a team we can play very differently depending on the mood of the team.

It is important to go into a match positive but hungry to win and mindset of the team plays such a big part in the outcome but also the nature of the game. It also helps to be physically fit and strong – I spent a long time after having a baby building up my core strength which I think is just as important to being a good player as the cardio fitness.

I hope to carry on playing as long as I can – some of the ladies in other teams are well into their 50s and one of the men’s teams has players in their 70s – if I can last that long I will be doing well!
倫敦和香港的曲棍球圈

在潮濕和高溫的環境中打球是截然不同的層次！在倫敦，我在寒冷多雨的環境下打球，在氣溫35度、濕度100%的戶外進行體能運動非常具挑戰性。我們在8月開始訓練，感覺一點不輕易！

但那表示當冬季到來，溫度下降，你會覺得自己狀態極佳！在倫敦，我和許多同齡的球員一起打球。在香港，球員年齡有長有幼，年輕的隊員14-16歲，到隊中年紀最大的球員超過40歲。球員隨著年齡增長而變化（經驗增長），你必須適應年輕和年長球員的不同球技。

曲棍球與法律

正如任何團隊運動，打曲棍球需要與隊員合作，互相信任。就像在律師行工作一樣，成功的團隊亦必需共同合作，互相支持。

有團隊精神的隊伍令人有歸屬感，與在辦公室的互動相似。我喜歡打曲棍球的原因之一，是全神貫注打球時，再沒有空間思考日常生活中的其他煩惱，所以打球可說是紓緩壓力的好工具。在法律事業中，這個工具非常重要！

我的曲棍球座右銘是「盡情享受，全力以赴」。

年紀越大，我越認識到思維對體育運動的影響，當然，體能和技巧亦很重要，但作為一支球隊，球隊的情緒對發揮有很大影響。

比賽時抱著正面積極的態度非常重要，亦要有追求勝利的渴望，球隊的思維方式對比賽結果和比賽本身也扮演重要角色。體能強健亦有幫助。我生下孩子後花了很長時間訓練核心肌群，我認有氧運動對優秀的球員同樣重要。

我希望能一直打曲棍球，其他球隊一些女隊員已50多歲，有一支男子隊的球員已經70多歲。希望我能像他們一樣，一直打球到老！

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Guest Lecture on “Back to Basics?” by the Right Honourable Lord Reed

The Faculty of Law of The Chinese University of Hong Kong (“CUHK Law”) held a guest lecture entitled “Back to Basics?” which was delivered by the Right Honourable Lord Reed, Justice of The Supreme Court of the United Kingdom, at its Graduate Law Centre on 22 March 2018.

The lecture drew a full house of participants including academicians, legal practitioners, students and members of the public to attend. Encompassing various fundamental issues including the essence of law and the role of court in this ever-changing society, the lecture highlighted the recent developments in areas of law such as tort and contract and discussed the ensuing border implications.

The lecture by Lord Reed provoked the rethink of one basic but captivating question – the essence of law.

Asia FDI Forum IV on “Special Economic Zones – Issues and Implications for International Law & Policy”

Launched by CUHK Law in 2015, the series of Asia FDI (“Foreign Direct Investment”) Forum provides a multi-stakeholder platform anchored in Hong Kong for participants from academia, government, the private sector and civil society to discuss regional investment trends, highlight specific features of investment treaties and policies, analyse Asia’s relationship with other regions of the world, and explore the various legal and policy implications of the emergence of new actors, issues and norms which shape the future of Asia FDI. Themes of the past three Forums were “Sustainable Development and Foreign Investment in Asia”, “China’s Three-Prong Investment Strategy: Bilateral, Regional, and Global Tracks” and “China-European Union Investment Relationships: Towards a New Leadership in Global Investment Governance?”.

On 22-23 March 2018, CUHK Law co-organised the Asia FDI Forum IV on “Special Economic Zones (SEZs): Issues and Implications for International Law & Policy” with the World Economic Forum, KoGuan Law School of Shanghai Jiao Tong University, and Columbia Center on Sustainable Investment. The Forum consisted of six plenary sessions addressing topics

第四屆亞洲外國直接投資論壇「經濟特區的國際法和政策問題及其影響」

由香港中文大學法律學院於2015年推出的亞洲外商直接投資（FDI）系列論壇，為學術界、政府、私營機構和民間組織的參與者提供一個以香港為基地的多持份者平台，討論區域投資趨勢、投資條約和政策的具體特點，分析亞洲與世界各地的關係，探討影響亞洲外商直接投資未來發展的參與者、問題和規範的各種法律和政策影響。過去三屆論壇的主題分別為「可持續發展和亞洲的外國投資」、「中國的三方投資戰略：雙邊、區域和全球軌道」和「中歐聯盟的投資關係 — 通向全球投資的新領導」。

2018年3月22日至23日，中大法律學院與世界經濟論壇、上海交通大學凱原法學院及哥倫比亞大學可持續投資中心聯合主辦了第四屆亞洲外商直接投資論壇，題為「經濟特區的國際法和政策問題及其影響」。論壇由6個全體會議組成，主題分別為「全球經濟
on “Global Experiences with Special Economic Zones”, “Asian Trends in SEZs”, “China and SEZs: Evolution, Types, and Future Issues”, “SEZs and Economic Transformation”, “Investor-State Arbitration and SEZs-related Disputes” and “International Trade Disputes (WTO and Commercial Arbitration)”, with a special attention to the evolution of SEZs in China, the challenges they bring, and how the legal framework can develop. More than 30 prominent local and international academics, legal practitioners, policy makers and representatives of the private sector gathered to speak and share their expertise on SEZs and their interplay with International Investment Law from the economic, political, and legal perspectives. The Forum attracted a diverse audience including members from the judiciary of Hong Kong, international ministries, the media, legal practitioners and students to attend.

Details of the Asia FDI Forum IV and past Forums can be found at http://www.law.cuhk.edu.hk/AsiaFDIForumIV.

Greater China Legal History Seminar on “The Historical Development of the Civil Law Tradition in China” by Professor Lei Chen

This CPD seminar delivered by Professor Lei Chen, Associate Dean of School of Law and Director of Centre for Chinese and Comparative Law at City University of Hong Kong, on 16 March 2018 attracted more than 70 academics, legal practitioners and law students to attend. Professor Chen provided an interesting analysis of why China adopted a civil law system in preference to a common law system. He explained the development of the modern civil law system in China from its starting point in 1986 through the introduction of specific laws in the early 21st century up to the present day, and how the civilian system in China will probably develop in the near future.

For information about the next Greater China Legal History seminar of “The History of Consumer Law in Hong Kong: Just a Series of Failed Endeavours?” held on 13 April 2018, please visit the CUHK Law website (www.law.cuhk.edu.hk).
Upcoming Conferences at CUHK Law

1. Conference on “Directions in Legal Education 2018” (1-2 June 2018)

This international conference will bring together experts from academia and practice to explore new pedagogical approaches in legal education and how to better prepare students for their future legal careers. It will feature keynote speakers namely Professor Paul Maharg, Distinguished Professor of Practice – Legal Education at Osgoode Hall Law School, York University, Toronto and Professor Julian Webb, Professor of Law and Director of the Legal Professions Research Network at Melbourne Law School, the University of Melbourne, alongside educators from law schools across the globe, practitioners and other interested stakeholders.


2. The Fifth WINIR Conference on “Institutions and the Future of Global Capitalism” (14-17 September 2018)

The 21st century will see major disruptions to the global balance of politico-economic power. China will soon become the world’s largest economy; India is another rising giant. These and other developments – including growing inequality in several major economies – contest the Western institutional model of economic development and mount new institutional challenges at the global level. There is a recognised need for new or enhanced international orders, to sustain peace and international trade, as well as to address the problem of climate change. Meanwhile, an extended period of global integration has fuelled local discontent and led to a rise of nationalism and separatism. The international challenges of the 21st century place institutional development and reform at the top of the agenda.

The Fifth WINIR (“World Interdisciplinary Network for Institutional Research”) Conference on “Institutions and the Future of Global Capitalism” jointly organised by WINIR and CUHK Law on 14-17 September 2018 will explore these institutional challenges. For further details, please refer to the CUHK Law website (www.law.cuhk.edu.hk).
The School of Law marked its 30th Anniversary with a Gala Dinner Celebration

To celebrate the 30th Anniversary of its establishment, the School of Law of City University of Hong Kong ("CityU") held its Gala Dinner at The Excelsior, Hong Kong on 3 March 2018. Legal Professions in Hong Kong, academic staff, students and alumni from City University gathered to share the joyful moments of this special occasion.

The Gala Dinner was kicked off by the welcome speech of School Dean, Professor Geraint HOWELLS. Professor Howells first welcomed all officiating guests and alumni who participated in this event. He recalled how he was impressed by the incredible creativity of the School of Law when he first joined the School. “In recent years, the School of Law offers a wide range of legal programmes including Chinese Judges Programme, legal placement course and professional development training, joint degree programme and etc. For the Chinese Judges Programme, we see ourselves with a mission to act as a bridge between common law and Chinese law and promote the understanding of similarities and differences between the two legal systems. Generations of staff have all shared the same dedication to contribute to Hong Kong and make every joint effort to stay ahead of education and research in Hong Kong,” he said. Professor Howells is very proud of the students and alumni for their regular success in international competitions, their enterprise in seeking to publish their work and their achievement in working at high levels of the professions.

The Honourable Chief Justice Geoffrey MA congratulated the School of Law on its 30th Anniversary. He stated that Hong Kong is firmly recognized as an established common law jurisdiction. Judges, lawyers and the level of legal education in Hong Kong have made up a good reputation of our legal system, which is internationally respected. Recalling the past, Hong Kong have gone all out to overcome the challenges and difficulties encountered. At present, the challenges faced by the rule of law in Hong Kong requires the concerted effort of all legal professions to deal with. The quality of the law, the independence of the judiciary, the application of the legal system and the spirit of law and the recognition and respect for individual rights are fundamental to the rule of law. Chief Justice Geoffrey MA emphasized that every one of us should have the obligation to understand these four important principles of law.

As a token of appreciation, CityU President Professor Way KUO presented the "School of Law 30th Anniversary Commemorative Book" to Chief Justice Geoffrey MA and delivered his vote of thanks to the distinguished guests. He thanked all sectors of the community for their continuous support to CityU and the School of Law.

The Law School Alumni Association, CityU had also arranged a wonderful magic show and singing performance to congratulate the School of Law on its 30th Anniversary.

At last, we wish the School of Law a happy 30th birthday; may the School keep up the good work and strive for greater success in the future.
HKU launches Asia's First FinTech Online Course

The University of Hong Kong (HKU), along with collaborators SuperCharger, Cyberport, CFTE, UNSW Sydney, Microsoft and ACMI, is delighted to launch the Asia's first FinTech MOOC (Massive Open Online Course). The course “Introduction to FinTech” (https://www.edx.org/course/introduction-to-fintech) is a six-week online course on Financial Technology, providing a foundational understanding of the forces that are shaping the world of financial services. At the opening of its innovation lab eXellerator on 16 April 2018, Standard Chartered announced its plan to purchase at least 1000 MOOCs for its internal FinTech training.

The original idea came from discussions among Douglas Arner (Kerry Holdings Professor in Law, HKU), Janos Barberis (HKU PhD student and founder of one of Asia’s leading FinTech accelerators, SuperCharger) and Huy Nguyen Trieu (CEO of the Disruptive Group and Co-Founder of the Centre for Finance, Technology and Entrepreneurship). The course will cover: an introduction to FinTech; payment and infrastructure; traditional and alternative finance; data analytics, AI and monetization; RegTech; and customer interface; and is taught by a combination of academic and practitioners as well as feature prominent guest speakers to illustrate the content with practical business examples.
HKU’s Success in the Herbert Smith Freehills Competition Law Moot and the Philip C. Jessup International Law Moot Court Competition

Continuing its success in the Herbert Smith Freehills Competition Law Moot hosted by King’s College London from June 2017, the HKU Moot Team was awarded Top 1st Oralist in the Philip C. Jessup International Law Moot Court Competition held in Washington D.C. in April 2018.

The 2017 Competition Law Moot Team consisted of Lam Yi Yeung (PCLL), Lee Pui Yin Grace (PCLL), Fan Yu Wing Brian (LLB) and Suhail Bindra (LLB), who were coached by Mr Thomas Cheng and Mr Kelvin Kwok. The Team won the First Place in oral finals in London and took home three oralist awards for its sound performance in the preliminary rounds.

The HKU Jessup Team this year consists of 5 PCLL students – Ko Lun Jason, Lee Chun-Hin Brian, Sat Sakinah, So Tsz Ching Natalie, and Sum Hiu-Yan Michelle. In February 2018, the Team captured the Hong Kong Regional Champion, together with the Best Memorial Prizes for both Applicant and Respondent. In April 2018, the Team represented Hong Kong in the Washington DC international rounds. The Team won all 4 preliminary rounds and ranked 11th out of 121 teams. The Team later lost to United States in the advanced rounds. The Faculty is delighted that Natalie So, Brian Lee, and Jason Ko ranked 1st, 17th and 75th respectively in the International Rounds Top 100 Oralists.

Congratulations go to all team members. The Faculty would like to express its sincere gratitude to the coaches, the guest judges and all those who supported the HKU moot teams.

大在Herbert Smith Freehills競爭法模擬法庭比賽及Philip C. Jessup國際法模擬法庭比賽取得佳績

繼2017年6月在倫敦國王學院主辦的Herbert Smith Freehills競爭法模擬法庭比賽取得佳績後，香港大學模擬法庭隊於2018年4月在華盛頓舉行的Philip C. Jessup國際法模擬法庭比賽中榮獲訟辯員第一名。

2017年競爭法模擬法庭隊由Lam Yi Yeung (PCLL)、Lee Pui Yin Grace (PCLL)、Fan Yu Wing Brian (LLB)和Suhail Bindra (LLB)組成，由Thomas Cheng先生和Kelvin Kwok先生負責指導。該隊在倫敦的訟辯決賽取得第一，並在預賽中獲得了三項訟辯獎。

香港大學今年的Jessup隊伍由5名PCLL學生組成，包括Ko Lun Jason、Lee Chun-Hin Brian、Sat Sakinah、So Tsz Ching Natalie和Sum Hiu-Yan Michelle。2018年2月，該隊獲得了香港區域冠軍，以及申請人及辯方最佳書面陳述獎。2018年4月，該隊代表香港參加華盛頓國際巡迴賽，贏得全部4輪初賽，在121支參賽隊伍中排名第11，後來在高級賽中敗於美國隊。該學院很高興Natalie So、Brian Lee和Jason Ko在國際回合100強訟辯員中分別排名第1、第17和第75。

祝賀所有隊員。學院衷心感謝導師、客座評審和所有支持香港大學模擬法庭隊的入士。
A large Hong Kong law firm is now hiring a Counsel or a Corporate Finance – Counsel to join its leading corporate practice in Hong Kong. They are looking for another senior solicitor to take on a hands-on managerial role. In this business and they are looking for another senior solicitor.

The successful candidate will be responsible for supporting business advice to the business. The successful candidate will be for handling legal matters relating to corporate M&A for MNCs. Fluency in both English and Chinese languages is required, and a passion to learn and to pick up new work. The ideal candidate will have strong communication ability with good levels of driven. Ability to work independently and efficiently is key. Excellent language skills in English / Cantonese / Chinese (spoken) required. Ref: 3963724

A reputable and global investment bank is seeking for a seasoned corporate M&A / PE lawyer with keen interest to strategize 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.

To apply, visit www.michaelpage.com.hk.
**Private Banking / Wealth Management Lawyer**

- 10+ PQE
- Reputable Bank

A reputable and global investment bank is seeking for a seasoned lawyer to support their private banking business, in anticipation of some new project roll outs over 2018. This is an Executive Director level role reporting into the Managing Director of Legal, with a direct report of a mid level counsel. You will provide legal advice to the business and support on project implementation and execution, where you will review all related documents, look after mandate drafting, terms negotiations and partake in other advisory work. You will be a senior lawyer with familiarity with PB products such as OTC, derivatives, RMBS products, lending solutions, ideally having supported private bank / wealth management businesses in the past. Fluency in English, Cantonese and conversational Mandarin is required. Ref: 3974145

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**Private Equity / Venture Capital Lawyer**

- 7+ PQE
- Reputable FinTech Platform

A growing FinTech firm with a reputable parent company is seeking to take on a group counsel to join the existing legal team of 3 lawyers. Reporting to the General Counsel, you will work in a tight knit team with a focus on leading transactions including private equity and financing deals, with some exposure to funds and venture capital work. The ideal candidate will possess at least 7 years’ PQE being common law qualified, with strong PE / financing experience, being results driven. Ability to work independently and efficiently is key. Excellent language skills in English / Cantonese / conversational Mandarin is required, and a passion to work in house as well as to appreciate challenge is a plus. Ref: 3991111

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**Funds / M&A Lawyer**

- 3 – 8 PQE
- Private Equity Fund

A private equity with AUM of over US$10 billion is seeking for an additional legal counsel to join the Hong Kong office, being a newly created role. You will report to the existing General Counsel and work in a small team as well as office, with a focus on funds and private equity matters. As it is a lean team, you will also gain exposure to stakeholder management work across their China and overseas offices, as well as any ad hoc matters which may come your way. The ideal candidate will possess at least 3 years’ PQE with funds exposure, or if without, be a seasoned corporate M&A / PE lawyer with keen interest to learn and to pick up new work. The ideal candidate will be mature and hands-on with the flexibility of handling a variety of work. Strong language skills in English and Chinese (spoken) required. Ref: 3963724

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**Corporate Counsel**

- 5 + PQE
- Listed Energy Group

Our client is a fast growing education group with operations in Asia Pacific. Due to business expansion, they are now looking for an experienced lawyer to join their legal function at the holding level. You will be reporting to the Chairman and be responsible for handling legal matters relating to corporate M&A transactions, listing rule compliance, management of external counsels and regulators, and provide legal advice to the business. The successful candidate will be a 5+ PQE lawyer with Hong Kong or PRC qualification. International law firm training with some in-house experience in listed companies preferred. Strong language skills in both written and spoken Mandarin Chinese and English is required. Ref: 3989169

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**Legal Counsel**

- 4 + PQE
- MNC in the FMCG Industry

Our client is a reputable FMCG brand with offices around the globe. They are currently looking for an in-house counsel to look after their Greater China operation. You will be reporting to the General Manager of the region and functionally report to the Regional Counsel. You will be responsible for supporting business units on daily legal matters including but not limited to drafting, reviewing and negotiating commercial contracts, providing training to the business, liaising with external counsels and regulators and other legal matters. The ideal candidate will be a 4+ PQE lawyer with Hong Kong or PRC qualification; international law firm trained with in-house experience from large MNCs. Fluency in both English and Chinese languages is required. Ref: 3982770

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**General Counsel and Named Company Secretary**

- 8+ PQE
- GEM Board Listed Company

Our client is an industry leader and a company listed in on the Hong Kong GEM board with operational headquarters in Mainland China. As the General Counsel, you will report to the Chairman and the Board of Directors. You will work closely with the corporate strategy team to provide legal advice on investments and corporate transactions particularly around land acquisition and development in China. You will be responsible for ensuring compliance to listing rule and relevant statutory requirements and supervise a small qualified team to manage the full range of company secretarial work including the preparation of board minutes, interim and annual reports etc.. You should be a Hong Kong qualified solicitor with at least 8 years’ PQE with relevant experience. Fluency in Mandarin is required. Ref: 3990419

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**Litigation Partner**

- 10+ PQE
- International Law Firm

A well-known international law firm is now seeking partner candidates for their Hong Kong office. The ideal candidate is a senior Hong Kong solicitor with diversified experience ideally in both contentious and non-contentious work. Though flexible based on the applicant’s existing practice, the role should focus on commercial and contractual disputes, shareholders disputes as well as regulatory investigations. Although the firm’s existing and well established practices ensure a steady flow of litigation work, candidates with existing book of business are encouraged to apply. Excellent English and Mandarin are a must. Ref: 3988849

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**Corporate Finance – Counsel**

- 7 -12 PQE
- HK Law Firm

A large Hong Kong law firm is now hiring a Counsel or a Partner to manage the Corporate Finance division. The firm already has three partners with significant books of business and they are looking for another solicitor to take on a hands-on managerial role. In this leadership role you will manage IPO projects and other transactions as well as manage a team of ten including trainees and associates. The position can offer partnership (or partnership track) and long term progression within the firm. No book of business is required. Ref: 3990953

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**Corporate Associate**

- 4 + PQE
- US Law Firm

Our client is currently looking for an outstanding Associate to join its leading corporate practice in Hong Kong. They would like candidates with stronger experience in M&A transactional work, with a smaller emphasis on IPO and general corporate compliance work. You will be advising leading property developers, investment banks and corporate clients, with the opportunity to grow these client relationships. The ideal candidate will have at least 4 years’ PQE with solid hands-on experience. This person will need to have strong communication ability with good levels of Mandarin and English. This firm encourages organic career development for those looking to develop within them. Ref: 3981959

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To apply, visit [www.michaelpage.com.hk](http://www.michaelpage.com.hk) quoting the reference number or contact our consultants.
This is a selection of our current vacancies; for more information in complete confidence, please call the Hong Kong office on +852 2503 2500 or email us at sandra@atticus-legal.com or nigel@atticus-legal.com

**Funds**

**4+ PQE Hong Kong**

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 hedge funds, PE fund formation work. Corporate M&A lawyers keen to transition will also be considered. You will be admitted in a common law jurisdiction. Chinese required. HKL4946

**Banking & Finance**

**2.5 PQE Hong Kong**

This global firm seeks an ambitious mid-level banking associate to join their collegial team to work on big ticket deals, including debt capital markets, equity-backed financing, restructuring and syndicated lending. Common law qualification required, Mandarin essential. HKL4771

**Capital Markets**

**3-6 PQE Tokyo**

Our client is seeking a corporate associate for their Tokyo office with extensive Capital Markets experience. The ideal candidates will have strong academics and prior experience gained from an international law firm. US bar qualification required. Fluency in Japanese is a must. HKL4942

**Corporate**

**4+ PQE Hong Kong**

This leading US law firm seeks a disputes lawyer with solid financial services regulatory experience gained from an international law firm. You will work with eminent partners within a collegiate team on high profile matters. Common law qualification required, Mandarin an advantage. HKL4825

**Project Finance**

**3+ PQE Singapore**

This is an excellent opportunity to join this highly regarded projects practice, working with recognised partners on a range of infrastructure and PFI/PPP matters. You will be common law qualified, ideally with experience gained from an international firm. Mandarin language skills would be preferable but not essential. HKL4956

**Disputes PSL**

**4+ PQE Hong Kong**

This global law firm with a leading regional practice is seeking a know-how manager to provide training and knowledge management support to a leading team of lawyers. You will have solid experience in litigation / arbitration matters. Part-time/jobshare arrangements available. HKL4934

**Funds**

**3+ PQE Singapore**

This is a stellar opportunity for an ambitious lawyer to join the Funds team. You will work for high profile clients on a variety of private investment funds. This will include PE, VC, real estate, hedge funds, mezzanine funds and distressed asset funds as well as funds-of-funds and secondaries. HKL4966

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

<table>
<thead>
<tr>
<th>Practice</th>
<th>Location</th>
<th>PQE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ECM</strong></td>
<td>Hong Kong</td>
<td>8-15 PQE</td>
</tr>
<tr>
<td>City firm seeks an experienced ECM lawyer to join and head their listed companies’ team. Excellent opportunity for a senior ECM lawyer to undertake a new role, gain better working hours and adopt an advisory role within an international firm. (HKL 16516)</td>
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<tr>
<td><strong>Litigation and Insolvency</strong></td>
<td>Hong Kong</td>
<td>7+ PQE</td>
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<tr>
<td>International law firm seeks a senior insolvency specialist to join their practice. You will have a good mix of disputes experience, including dealing with insolvency cases and advising insolvency practitioners on liquidations and corporate restructurings. (HKL 16526)</td>
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<tr>
<td><strong>Banking &amp; Finance</strong></td>
<td>Hong Kong</td>
<td>4-8 PQE</td>
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<tr>
<td>City firm seeks a banking finance lawyer to join their well-established tier 1 team. You should be qualified in a common law jurisdiction and possess solid experience in structured finance and general financing gained from an international firm. (HKL 16514)</td>
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<tr>
<td><strong>PSL – M&amp;A/IPO</strong></td>
<td>Hong Kong</td>
<td>3-6 PQE</td>
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<tr>
<td>City firm seeks an experienced professional support lawyer to work within their corporate/ECM department. An excellent opportunity for a private practice lawyer to move into a support role within a leading firm. (HKL 16489)</td>
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<tr>
<td><strong>Oil &amp; Gas Lawyer</strong></td>
<td>Hong Kong</td>
<td>3-6 PQE</td>
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<tr>
<td>International firm with a tier 1 reputation in the energy sector seeks a mid-level lawyer with oil and gas experience to support its clients across APAC. Work is mostly upstream and will involve M&amp;A. No language skills required. (HKL 16512)</td>
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<tr>
<td><strong>Dispute Resolution</strong></td>
<td>Hong Kong</td>
<td>2-4 PQE</td>
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<tr>
<td>US law firm seeks junior to mid-level litigators to join their disputes practice. Team works on a broad range of international disputes including commercial disputes, arbitration and regulatory investigations. Strong academics and Mandarin required. (HKL 16304)</td>
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<tr>
<td><strong>ECM/DCM</strong></td>
<td>Hong Kong</td>
<td>NQ-3 PQE</td>
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<tr>
<td>One of Hong Kong’s most successful corporate practices is urgently seeking junior Mandarin speaking lawyers who are interested in developing a career in the corporate finance sector. Lawyers without corporate finance experience who are looking for a change will be considered. (HKL 16533)</td>
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## In-house

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<thead>
<tr>
<th>Practice</th>
<th>Location</th>
<th>PQE</th>
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</thead>
<tbody>
<tr>
<td><strong>Employment Counsel</strong></td>
<td>Shanghai</td>
<td>8+ PQE</td>
</tr>
<tr>
<td>Fortune 100 company seeks a PRC employment specialist to support its HR team across Greater China. General commercial lawyers with PRC employment experience who are keen to specialise in this sector will be considered. The work is very wide ranging and will suit an outgoing and business savvy lawyer. (HKL 16251)</td>
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<tr>
<td><strong>Senior Legal Counsel – Greater China</strong></td>
<td>Hong Kong</td>
<td>8 + PQE</td>
</tr>
<tr>
<td>Fortune 100 company seeks a senior PRC qualified lawyer for its Hong Kong office. You will manage a small team and advise on general commercial matters as well as IP and IT matters. Lawyers from private practice or in-house will be considered. Competitive salary on offer. (HKL 16428)</td>
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<tr>
<td><strong>Senior Legal Counsel</strong></td>
<td>Shanghai</td>
<td>8 + PQE</td>
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<tr>
<td>US MNC seeks a general commercial lawyer for its Shanghai office. This will be a stand-alone role requiring a lawyer with significant PRC experience who can work independently. Work will involve managing general commercial and employment matters. (HKL 16537)</td>
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<tr>
<td><strong>Associate General Counsel</strong></td>
<td>Hong Kong</td>
<td>5-10 PQE</td>
</tr>
<tr>
<td>Global asset management house seeks a lawyer to join their APAC legal team. You will advise senior management across the region, with a focus on funds distribution and corporate commercial matters. You should have experience in the asset management industry. Proficiency in Mandarin and Cantonese required. (HKL 16530)</td>
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<tr>
<td><strong>Legal Counsel - Data Privacy</strong></td>
<td>Hong Kong</td>
<td>5+ PQE</td>
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<tr>
<td>A global conglomerate with a strong presence in Hong Kong seeks a data protection specialist to join their expanding legal team. You will have a good knowledge of HK/EU data protection laws and practices, and be familiar with the GDPR. No language skills requirements. (HKL 16524)</td>
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<tr>
<td><strong>Asset Finance Lawyer</strong></td>
<td>Hong Kong</td>
<td>3-6 PQE</td>
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<tr>
<td>A global corporation with an excellent brand name seeks an asset finance lawyer to oversee financing transactions including trading, leasing and acquisitions. Private practice and in-house lawyers will be considered for this role. (HKL 16481)</td>
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<tr>
<td><strong>Legal Counsel - Employment</strong></td>
<td>Hong Kong</td>
<td>1-5 PQE</td>
</tr>
<tr>
<td>Opportunity for a junior lawyer to join a global insurance company and specialise in employment law. No employment experience necessary, but need a keenness to be trained in this area. Fluency in Cantonese is important. (HKL 15972)</td>
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To apply, please send your updated resume to als@alirecruit.com, or contact one of our Legal Consultants in Hong Kong:

- Andrew Skinner
  - Tel: +852 2920 9100
  - Email: a.skinner@alirecruit.com

- William Chan
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  - Email: w.chan@alirecruit.com

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

- Jason Lee
  - Tel: +65 6557 4158
  - Email: j.lee@alirecruit.com

www.alirecruit.com
In-House

**HEAD OF LEGAL & COMPLIANCE HONG KONG 10-15 YEARS**
A European fund manager is looking for a Head of Legal & Compliance to join its team in Hong Kong. You must be HK-qualified and have solid asset management experience, preferably including retail funds and SFC liaison experience. Business level Cantonese skills are a must. HKL7113

**FINANCIAL CRIMES HONG KONG 10-15 YEARS**
Well-known global bank is looking for a senior lawyer with experience advising on financial crimes-related matters. You should have familiarity with laws & regulations in relation to sanctions & AML. Collegiate environment, attractive remuneration and excellent benefits on offer. HKL7010

**DATA PRIVACY HONG KONG 10-15 YEARS**
Global luxury retailer seeks a mid to senior Data Privacy lawyer to join its team. You will have extensive experience relating to data privacy, regulatory & compliance matters. Chinese language skills not needed. Attractive remuneration on offer. HKL7079

**GENERAL COUNSEL HONG KONG 8-12 YEARS**
A listed company and a major player in the sports industry, with operations across China & Hong Kong, is looking for a General Counsel. You are required to have familiarity with HK listing rules, transactional & general commercial experience and business level Mandarin. HKL7129

**LISTED TECH COMPANY HONG KONG 5-8 YEARS**
Reputable technology company listed in Hong Kong is looking for its key legal counsel. This role will involve a mix of corporate work, including transactional & listing compliance matters. Mandarin & Chinese reading & writing skills are essential. HKL7050

**EQUITY DERIVATIVES HONG KONG 4-7 YEARS**
Global investment bank seeks a Commonwealth qualified lawyer for its expanding Asian equities business. You must have derivatives & ISDA experience, together with an awareness of transactional issues arising in Asian jurisdictions. Chinese language skills are preferred. HKL7054

**CORPORATE/M&A HONG KONG 4+ YEARS**
A leading power producer in Asia seeks a legal counsel to join its team. In this role you will work closely with the business units on M&A transactions as well as liaising and interacting with regulators and advising on Hong Kong listing rules. Fluency in Mandarin & English is required. HKL7048

Private Practice

**LITIGATION PARTNER HONG KONG 15-25 YEARS**
An international firm in Hong Kong is looking to hire a senior litigation partner who is well established in Hong Kong and has a strong network of contacts. Portable business and contacts preferable. Mandarin helpful but not a prerequisite. HKL7102

**FCPA HONG KONG 6+ YEARS**
Prestigious US firm is looking for a US qualified FCPA lawyer to join its team in Hong Kong. You will have extensive investigations experience and fluent Mandarin language skills. This role offers excellent career development opportunities and an attractive remuneration package. HKL7103

**M&A HONG KONG 5-8 YEARS**
Top Wall Street firm is seeking a mid-senior level corporate lawyer for a pure M&A role. You should be from a top US or magic circle firm and be UK, Australian or US qualified. Strong Mandarin skills are required. Excellent career prospects on offer. HKL7094

**COMPETITION HONG KONG 3-7 YEARS**
Premier PRC firm seeks a mid-senior level competition lawyer. You will advise blue chip clients on a broad range of competition/anti-trust matters. Those with solid competition law experience from overseas are welcome to apply. Chinese language skills are not required. HKL7114

**M&A HONG KONG 3-5 YEARS**
A leading international firm is looking for a mid-level M&A associate to join its Hong Kong office. You must be qualified in Hong Kong or the Commonwealth with solid experience gained in M&A transactions. Fluency in Mandarin & English is required. Collegiate working environment on offer. HKL7048

**BANKING HONG KONG 5+ YEARS**
Excellent opportunity for a senior banking lawyer to join a top offshore firm as part of a leading team. Great career prospects and a friendly culture. You should be Commonwealth qualified and enjoy client facing work. HKL7112

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, Chris Chu, cchu@lewissanders.com +852 2537 7415 or Camilla Worthington, cworthington@lewissanders.com +852 2537 7413 or email recruit@lewissanders.com

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