Cover Story

Face to Face with

Lord Ken Macdonald QC

Former Director of Public Prosecutions for England & Wales and presently Warden of Wadham College, Oxford

OFFSHORE

INSOL International: Standard Case Management Directions for an Insolvent Trust

MEDICAL ETHICS

The Withdrawal of Artificial Nutrition and Hydration from a Patient in a Persistent Vegetative State

INSURANCE

Political Risk Insurance on the Rise along the Belt & Road: A Viable Alternative to Investment Arbitration?
IP & Innovation: Propelling Change, Growth and Connectivity

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Recognition Period: 1 July 2016 - 30 June 2017
Deadline: 20 October 2017

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- Young Lawyer Special Award* New

LAW FIRM AWARDS
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- Law firm – Distinguished Pro Bono Law Firm Award

* Applicants with 5 years PQE or below (as at 30 June 2017) who participated in pro bono and community work of not less than 100 hours within the Recognition Period will automatically run for this Award. The Award will be given to the applicant(s) with the highest number of service hours.

Online application and submission: www.hklawsoc.org.hk

ENQUIRY
Tel: 2846 0526 / 2846 8804
E-mail: wendyfung@hklawsoc.org.hk
Website: www.hklawsoc.org.hk
INSOL International Association of Restructuring, Insolvency & Bankruptcy Professionals is a world-wide federation of national associations for accountants and lawyers who specialise in turnaround and insolvency. Recently, INSOL International’s Board of Directors approved a set of model standard case management directions (“CMDs”) for insolvent trusts that were proposed by the INSOL Technical Research Committee.

As explained by the author of our Offshore feature (p. 26), the concept behind the CMDs was to create a flexible model form of directions for insolvent trustees when they initially come before the Court, encompassing any special direction necessary due to the nature of a trust. These CMDs are now being suggested for use in a number of jurisdictions, and have been provided to key stakeholders, with the intention of working to standardise insolvency templates around the world and make insolvency procedures more universal. The CMDs are currently being reviewed by a host of academics and professionals and are open to comment by interested parties. You can find relevant information on how to access the CMDs and submit comments in the Offshore section inside.

Elsewhere in the October issue, the Insurance article (p. 38) looks at the growth potential for the local Hong Kong market for insurers to offer political risk insurance policies and discusses the salient features of institutional insurance policies, such as those offered by the World Bank’s Multilateral Investment Guarantee Agency (“MIGA”). The Medical Ethics piece (p. 33) examines the particular problems raised by the question of when and in what circumstances it is legitimate to withdraw treatment, by way of artificial nutrition and hydration, from a patient in a persistent vegetative state (“PVS”), contrasting the legal situations in England & Wales and Hong Kong.

Additionally, the Letter to Hong Kong Lawyer (p. 14) examines the recently enacted Apology Bill through the mediation perspective while the Practice Skills (p. 66) contribution humourously identifies eight ways to avoid ruining your reputation in the course of drafting legal documents. The President’s Message (p. 6) and the contribution from the Secretariat (p. 12) both discuss the Law Society’s exercise of its statutory power to intervene in the practice of certain non-compliant law firms and its invitation to law firms to join its Panel of Intervention Agents. Both note the Law Society’s intention to host seminars to share the general nature of intervention work with interested firms, as the Law Society is keen to recruit more law firms to join its Panel.

Cynthia G. Claytor
Editor, Hong Kong Lawyer
Legal Media Group Thomson Reuters
cynthia.claytor@thomsonreuters.com
Clarity on the impact of the Arbitration (Amendment) Bill 2016, and the Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Bill 2016, passed in June 2017, in this practical guide endorsed by Geoffrey Ma GBM QC SC, the Chief Justice of the Hong Kong Court of Final Appeal.

This Fourth Edition of Arbitration in Hong Kong – A Practical Guide examines all the forthcoming amendments to the Arbitration Ordinance, especially the two sets of amendments just passed this June 2017, clarifying:

- Third-party funding of arbitration, mediation and related proceedings now permitted under the arbitration laws and related alternative dispute resolutions; and
- Disputes over intellectual property rights (IPRs) can now be resolved through confidential arbitration, now no longer contrary to the public policy of Hong Kong to enforce arbitral awards involving IPRs.

Editor-in-Chief: Geoffrey Ma GBM QC SC
- Chief Justice of the Hong Kong Court of Final Appeal

General Editor: Denis Brock, Partner, O’Melveny & Myers
- Author of the Hong Kong chapter of Enforcement of Foreign Judgment, and ADR in Business (chapter on the Appeal of International Law Firms)
- He has more than 15 years’ experience practicing litigation and dispute resolution practice in Hong Kong and Asia
Major Initiatives Ahead

Our Council comprising 20 members meets once every two weeks. The scope of work of the Law Society is wide ranging and our meeting agenda is usually very full. Apart from its biweekly meetings, the Council also convenes periodic strategy planning meetings to brainstorm on key issues. We recently held a strategy planning meeting on Saturday, 2 September, and I would like to express my gratitude to my fellow Council members, who contributed a full day of their valuable time.

We reflected on the past, evaluated the present and discussed the future. We focused on four main areas – use of technology, talent retention, other entrants to the legal service market and regulatory cost control.

Technology
The legal service market has been evolving rapidly. There are a multitude of factors driving the changes, which can all be linked to rapid advances in technology. Technology breaks down communication barriers, shortens distances and connects the world. An increasingly globalised economy facilitates international and cross-border transactions. This phenomenon imposes different demands on lawyers, including the need to be mobile, build international networks and develop cross-border skills.

Millennials, who grew up in the age of technological connectedness, are entering the workforce or reaching their prime working years. Their affinity for technology to a large extent shapes their behaviour. They are more dedicated to wellness. They stress work-life balance and demand more flexibility in work arrangements. They not only affect the workforce of the legal service industry, as legal service users themselves, they also affect the way legal services are delivered. They are used to instant access to price comparisons, product information and peer reviews, which are made possible through a variety of technology fuelled platforms and devices. Clients are therefore increasingly sophisticated with more access to information. They become more demanding in pressing for affordable, accessible, certain, transparent and value for money legal service providers.

To sustain the profession, including those resistant to technological changes, solicitors must be prepared to adapt to this new era. We will make it our top priority to develop a roadmap outlining what the Law Society must do to better assist practitioners with taking advantage of currently available and viable technological solutions.

Talent Retention
Upon a review of a snapshot of the profile of the solicitors’ profession in the past two decades from 1996 to 2016, the proportion of qualified solicitors not staying on in private practice seems to be on an upward trend. There are myriad reasons for this, including insufficient work in law firms as a result of intensifying competition in the legal service market, a mismatch of work opportunities that are available and the type of work the practitioners are interested in, as well as the attractiveness of flexible work arrangements and work life balance in sectors other than law firms. To sustain a healthy development of the legal service market, talent retention is crucial. Law firms are strongly encouraged to put in place measures that address the changing needs of the new entrants to the profession. To this end, the Law Society will be actively exploring ways to attract a continual supply of legal talent to service the market.

Competitive Market
The legal services market is becoming crowded with the proliferation of different types of service providers, in addition to traditional law firms. This inevitably leads to a more competitive environment for solicitors in private practice. The Law Society will regularly update the profession on the development of the changes in legal service delivery around the world and closely monitor the local situation from the regulatory perspective to ensure the public is adequately protected.
October 2017  •  PRESIDENT’S MESSAGE  會 長 的 話

會長的蒞

重要舉措 成就未來

律師會理事會由20名會員組成，每兩週召開會議。理事會會議議程通常十分全面。除了每兩週一次的會議外，理事會還會定期召開策略規劃會議，集思廣益，思考關鍵問題。我們最近在9月2日(星期六)舉行了戰略規劃會議，我感謝理事會成員，獻出了整天的寶貴時間。

我們在會議上反思過去、評估現在、討論未來，專注於四個主要領域——使用科技、挽留人才、其他進入法律服務市場者和監管成本控制。

科技

法律服務市場發展迅速。推動變革的因素眾多，與一日千里的科技發展息息相關。科技打破溝通障礙、縮短距離、連繫世界。經濟日益全球化，促進了國際和跨境交易。這種現象對律師構成各種各樣的要求，包括需要具備流動性、建立國際網絡和發展跨境技能。

在科技中成長的千禧世代正進入勞動市場或達到事業黃金時期。他們通曉科技，很大程度上塑造了他們的行為。他們更注重心身健康，強調工作與生活平衡，要求工作安排更靈活。他們不僅影響著法律服務行業的勞動力，而且本身也是法律服務使用者，也影響到法律服務的提供方式。他們習慣即時透過各種技術平台和設備來比較價格、產品信息和評價。因此，客戶取得的信息越來越多，要求亦越來越高。他們追求可負擔、便利、確定、透明和物有所值的法律服務提供者。

為令這個行業持續發展，包括抗拒科技變革在內的律師必會適應這個新時代的法

律執業者條例》行使其法定權力，介入了4間律師行的執業。由於該等律師行的相關記

錄不完整，故2016年的干預工作較前幾年耗用了律師會更多資源。由於介入成本較

高，2016年錄得實質性赤字。

介入律師行執業事態嚴重，理事會只會在接受必要時，才會行使這種法定權力。此過程涉及監管費用，但這是為了保障公眾利益。理事會考慮了控制監管成本的不同方法，並將相應實施。

進行介入工作時，一間律師行將擔任介入代理。律師會定期向會員發出通訊，邀請律師行申請列表介入代理人。會員反映或有興趣，但由於缺乏這方面的經驗，有些律師行提交申請緩慢。因此，律師會正計劃舉辦有關研討會，與有興趣的律師分享工作的一般性質。

我將進一步報告上述重大舉措的進展。與此同時，會員如有任何意見或建議，歡迎惠賜電郵至president@hklawsoc.org.hk。

Thomas So, President
Olga Boltenko  
*Counsel, International Arbitration Practice, CMS Hasche Sigle Hong Kong LLP*

Ms. Boltenko is a counsel with the International Arbitration practice of CMS Hasche Sigle in Hong Kong. She specialises in investment arbitration. Prior to joining CMS, she was a senior associate with Clifford Chance in Singapore. She acted as legal counsel in investor-state disputes under the auspices of the Permanent Court of Arbitration, and as tribunal secretary in dozens of commercial disputes, both ad hoc and institutional (including SIAC, ICC, HKIAC, SCC), in a wide array of industries including oil and gas, infrastructure, construction, telecommunications and pharmaceuticals. She is listed as arbitrator on the HKIAC list of arbitrators and on the CIETAC and the KLRCA panels of arbitrators.

Ian Mann  
*Harneys, Partner*

Ian Mann is head of Harneys’ Offshore Litigation and Restructuring Department in Hong Kong and is a leading offshore litigator, senior tactician and thought leader.  
Mr. Man specialises in restructuring, insolvency, shareholders’ disputes and contentious trusts and has experiences in cross-border and conflict of laws dilemmas. He has been involved in every major recent restructuring involving offshore entities in the region and some of Asia’s highest value contentious estate litigation. A barrister by training, Mr. Man is an experienced advocate and regularly appears on behalf of elite families, usually being retained long-term for strategic offshore litigation advice.  
Mr. Man is consistently ranked as top tier in his field by Chambers and Legal 500 and was recognised as one of the world’s leading asset recovery, restructuring & insolvency and private client lawyers by Who’s Who Legal 2016. He is one of only five offshore lawyers ranked as outstanding in both the 2016 and 2017 ALB Offshore Client Choice Lists.
Lucy Hickmet
Harneys, Associate

Lucy Hickmet is a member of the firm’s Litigation and Restructuring Department in Hong Kong, having joined the firm in 2013. She has experience in general commercial litigation and practices in the areas of litigation relating to shareholder disputes, unfair prejudice claims and insolvency and restructuring; she has a particular focus on contentious trusts. She is a contributor to Bermuda Commercial Law, the authoritative guide to Bermuda’s commercial laws.

Robert Clark
Deacons, Partner

Robert Clark is one of Hong Kong’s premier commercial disputes lawyers, regularly featured in the top tier of litigation and arbitration lawyers. He is active in both litigation and international arbitration (HKIAC, SIAC, ICC, CIETAC).

He has particular experience in employment and media work (for South China Morning Post, Google, YouTube and other international publishers), professional negligence (for the Hong Kong Solicitors Indemnity Fund Limited and Essar Insurance Services Limited, the Hospital Authority and other commercial indemnity insurers) and insolvency disputes.

Silvia L. Coulter
LawVision Group, Principal

Silvia Coulter is a founding Principal of LawVision Group and leads the firm’s Client Development and Strategic Growth Practice.

Prior to co-founding LawVision Group, Ms. Coulter chaired the Client Development Practice at Hildebrandt. She is a recognised leader in law firm business development strategy and is a frequent speaker at legal industry conferences and law firm retreats. She has spent 20 years as a consultant to the industry and has served as chief marketing and business development officer at two Global 50 firms. She is an adjunct faculty member of the Law Firm Management Master’s Degree Programme at the George Washington University College of Professional Studies.

Silvia L. Coulter
LawVision Group負責人

Silvia Coulter是LawVision Group主要創始人，帶領公司為客戶籌謀策劃，尋求發展。

參與創辦LawVision Group之前，Silvia在Hildebrandt擔當領導角色，負責協助客戶開拓業務。她是公認的領袖人才，擅長帶領律師行發展業務，並且經常在法律行業的會議上及律師行退修活動中發表演說。她在律師界擔任顧問達20年，曾為兩間名列全球前50大企業工作，主管營銷及業務發展。她是The George Washington University轄下專科學院的兼職教員，負責教授有關律師行管理的碩士學位課程。
**Children’s Commission for Hong Kong**

In July 2017, the Hong Kong Committee on Children’s Rights ("HKCCR") released a Paper entitled “Children’s Commission for Hong Kong” and a Wish List for Children’s Commission in Hong Kong for an indication of support from stakeholders.

The above Paper summarises the international minimum standards and overseas experiences on a Children’s Commission as follows:

- The Commission must at least be legislatively mandated and should be accorded with such powers as are necessary to enable them to discharge their mandate effectively
- The Commission’s establishment process should be consultative, inclusive and transparent, initiated and supported at the highest levels of the government, the legislature and civil society
- The United Nations Committee states that it is the duty of States to make reasonable financial provision for the operation of the Commission
- The Commission should ensure that their composition includes pluralistic representation
- The Commission must have power to consider individual complaints and petitions and carry out investigations
- The Commission should be geographically and physically accessible to all children
- The Commission has a key role to play in promoting respect for the views of the children in all matters affecting them as, articulated in article 12 of the Commission on the Rights of the Child ("article 12")
- The Commission should devise specially tailored consultation programmes and imaginative communications strategies to ensure full compliance with article 12
- The Commission must have the right to report directly, independently and separately on the state of children’s rights to the public and to parliamentary bodies

The Wish List on the other hand sets out the following proposed mandates to be given to the Children’s Commission:

- conducting investigations and providing remedies for child rights violations
• setting up a Child Data Bank and a Research Institute for Children in Hong Kong
• setting up a Child Impact Assessment mechanism
• mainstreaming children’s rights into the Government policy system
• setting up a Child Consultation System to hear children’s voice
• requesting a clear budget for children and their rights
• pushing for a Children’s Policy and a Children’s Ordinance
• ensuring a strategic plan of actions on Children’s rights
• ensuring child rights specific education and professional Training

With the assistance of the Family Law Committee, the Council has reviewed the Paper and the Wish List. The Law Society indicates support for a Children’s Commission in Hong Kong with independence and legal mandates in accordance with the international minimum standards. The Law Society also supports the proposed legal mandates to be given to the Children’s Commission as set out in the Wish List.
Intervention Work

Intervention into the practice of a law firm is a serious measure and the exercise of such power by the Law Society is strictly governed under the law. The circumstances upon which the Council can do so are specifically provided in s. 26A of the Legal Practitioners Ordinance ("LPO"). They include situations like breaches of the Solicitors’ Accounts Rules, suspected dishonesty, bankruptcy, incapacity by illness or age, abandonment of practice and so on. When the Council is satisfied that the severity of the situation calls for an immediate cessation of the practice to protect clients’ interests, it will have no alternative but to intervene into the practice.

During the ten-year period from 2006 to 2015, the Law Society exercised its powers to intervene into 12 law firms under s. 26A of the LPO, which was about one intervention per year on average. However, in 2016 alone, there were four interventions, and up until September 2017, there have been two interventions. It is unfortunate that in the recent two years, the Law Society found it necessary to exercise its power of intervention more frequently, but these are isolated cases and should not be taken as indicative of any general trend.

The purpose of an intervention into a practice is to close it down at once to protect clients’ interests. The practice ceases to exist from the commencement of the intervention and it can no longer act for its clients. The role of the Law Society therefore is not to step into the shoes of the firm and continue its operation, but to wind up its affairs, return files to clients or their new solicitors, preserve clients’ money that becomes vested in the Council, verify claims and distribute to the rightful owners.

The Law Society engages law firms (Intervention Agent) to do the intervention work. A Panel of Intervention Agents is maintained and renewed at regular intervals. As soon as the Council resolves to intervene into a firm, action has to be taken immediately. The appointment of an Intervention Agent will thus often be on an urgent basis. The Panel firms must have the capacity, at short notice, to have in place sufficient manpower, including both qualified and unqualified staff, to handle a large volume of work especially in the initial stage of an intervention. Further, if there is a need to take the drastic measure of intervention, the records of the practice are likely to be in disarray, incomplete or even non-existent.
To be able to organise and understand the range of files handled by the intervened firm and to accord appropriate priority in dealing with them, the Panel firms not only have to be experienced in general practice, but also familiar with the provisions of the LPO, in particular on solicitors’ accounts and practice management.

The Law Society is keen to recruit more law firms to join the Panel of Intervention Agents.

However, as interventions have until recently been few and far between, not many law firms have accumulated previous experience in this type of work. Having been alerted that this may have discouraged some firms from applying to join the Panel, the Law Society will organise sharing sessions to introduce what intervention entails. Hopefully, with a fuller understanding of the scope of work, more firms will be interested when we recruit for the Panel renewal next time. The sharing sessions and recruitment for the Panel will be announced in members’ weekly Circulars in due course.

### Upcoming Deadline

The 2016/17 CPD/RME practice year will expire on Tuesday, 31 October 2017. Compliance with CPD and RME obligations is a condition precedent for solicitors to renew their 2018 practising certificates and a condition precedent for trainee solicitors to apply for admission as solicitors. The upcoming CPD and RME courses are posted on the website of Hong Kong Academy of Law at www.hklawacademy.org.

### Monthly Statistics on the Profession

(updated as of 31 August 2017):

<table>
<thead>
<tr>
<th>Category</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Members (with or without practising certificate)</td>
<td>10,628</td>
</tr>
<tr>
<td>Members with practising certificate</td>
<td>9,283</td>
</tr>
<tr>
<td>(out of whom, 6,894 (74%) are in private practice)</td>
<td></td>
</tr>
<tr>
<td>Trainee Solicitors</td>
<td>930</td>
</tr>
<tr>
<td>Registered foreign lawyers</td>
<td>1,342</td>
</tr>
<tr>
<td>(from 32 jurisdictions)</td>
<td></td>
</tr>
<tr>
<td>Hong Kong law firms</td>
<td>884</td>
</tr>
<tr>
<td>(48% are sole proprietorships and 41% are firms with 2 to 5 partners, 16 are limited liability partnerships formed pursuant to the Legal Practitioners Ordinance)</td>
<td></td>
</tr>
<tr>
<td>Registered foreign law firms</td>
<td>82</td>
</tr>
<tr>
<td>(10 are limited liability partnerships formed pursuant to the Legal Practitioners Ordinance)</td>
<td></td>
</tr>
<tr>
<td>Civil Celebrants of Marriages</td>
<td>2,081</td>
</tr>
<tr>
<td>Reverse Mortgage Counsellors</td>
<td>445</td>
</tr>
<tr>
<td>Solicitor Advocates</td>
<td>49</td>
</tr>
<tr>
<td>(44 in civil proceedings, 5 in criminal proceedings)</td>
<td></td>
</tr>
<tr>
<td>Student Members</td>
<td>232</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>

### 業界每月統計資料

(截至2017年8月31日):

<table>
<thead>
<tr>
<th>Category</th>
<th>数量</th>
</tr>
</thead>
<tbody>
<tr>
<td>会员（持有或不持有執業證書）</td>
<td>10,628</td>
</tr>
<tr>
<td>持有執業證書的會員</td>
<td>9,283</td>
</tr>
<tr>
<td>（當中有6,894位（74%）是私人執業）</td>
<td></td>
</tr>
<tr>
<td>禮儀律師</td>
<td>930</td>
</tr>
<tr>
<td>註冊外地律師</td>
<td>1,342</td>
</tr>
<tr>
<td>（來自32個司法管轄區）</td>
<td></td>
</tr>
<tr>
<td>香港律師行</td>
<td>884</td>
</tr>
<tr>
<td>（合資格經營比例48%，2至5名合夥人的律師行佔41%，16間為按照《法律執業者條例》組成的有限法律責任合夥律師行）</td>
<td></td>
</tr>
<tr>
<td>註冊外地律師行</td>
<td>82</td>
</tr>
<tr>
<td>（10間為按照《法律執業者條例》組成的有限法律責任合夥律師行）</td>
<td></td>
</tr>
<tr>
<td>婚姻監禮人</td>
<td>2,081</td>
</tr>
<tr>
<td>安老按揭輔導法律顧問</td>
<td>445</td>
</tr>
<tr>
<td>訴辯律師</td>
<td>49</td>
</tr>
<tr>
<td>（民事程序：44位，刑事程序：5位）</td>
<td></td>
</tr>
<tr>
<td>學生會員</td>
<td>232</td>
</tr>
<tr>
<td>香港律師行與外地律師行</td>
<td>37</td>
</tr>
<tr>
<td>（包括內地律師行）在香港聯營</td>
<td></td>
</tr>
</tbody>
</table>
Mediation Perspective on the Apology Bill

In the August issue of *Hong Kong Lawyer*, Damien Laracy and Fontaine Lai explored the effect and scope of the recently enacted Apology Bill in an interesting insight. The Bill’s scheme and intent is “to promote and encourage the making of apologies with a view to preventing the escalation of disputes and facilitating their amicable resolution”. Of particular interest is how the legislation has been drafted to ensure that an apology does not amount to an admission of liability or fault.

The Ordinance defines an apology widely, and includes apologies by conduct and implied admission, but there are specific exclusions relating to court filings.

Except for the area of defamation, where in a case without any prospect of a successful defence, an immediate apology may be made to limit damages, apologies play little part in litigation. And, of course, a court cannot order a party to make an apology.

Rather, an apology is non-monetary (or even emotional) compensation and may be made as part of a mediation settlement. Some may regard an apology as simply a way of reducing damages and if that is the view of the recipient of the apology it may have no practical effect.

It might be timely to remind those who advise in this field of the required features of an apology according to classic mediation theory. This holds that an apology should be: (i) sincere, (ii) voluntary, (iii) in language acceptable to the addressee, (iv) made at an appropriate time, and (v) specific. With regard to timing, an apology made at an early stage and unconditionally is perhaps more likely to carry a settlement-inducing impact than one made during the calculations of a negotiation.

Carl Schneider in an article in *Mediation Quarterly* has stressed that for an apology to be effective it should not be accompanied by excuses or explanations or have conditions attached.

Roger Fisher, co-author of the well-known *Getting to Yes*, added his own thoughts on the subject in his book *Beyond Reason* co-written with Daniel Shapiro. Fisher and Shapiro state that apologies should (i) recognise the emotional impact, (ii) express regret, and (iii) commit not to repeat.

All this suggests that an apology has to be carefully worded. It is asking a lot, and may not be practical, to include this in a simple and sometimes necessarily brief apology. It can be argued that the word “sorry” has its own power and removes the brazen element of what is complained of. Nevertheless, it should be remembered that a grudging apology or one that is clearly tactical made solely with a view to reducing damages may not have the desired effect.
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Face to Face with

Lord Ken Macdonald QC

Former Director of Public Prosecutions for England & Wales and presently Warden of Wadham College, Oxford

By Cynthia G. Claytor

Lord Ken Macdonald QC, former Director of Public Prosecutions for England & Wales and presently Warden of Wadham College, Oxford, discusses his career and comments on his recent Ming Pao article, *The Rule of Law is not a Movable Feast*, in which he outlines the essential features of a rule of law system.

Lord Ken Macdonald QC, former Director of Public Prosecutions (“DPP”) for England & Wales and presently Warden of Wadham College, Oxford, was drawn to a career in law by his love for debate and his desire to pursue a career that had social worth. “Justice seemed to be paramount among other societal values – it binds everything together,” he said. Given his early disposition, his gravitation towards a career in the law is fitting.

Over the nearly four decades that he has practised, his avid interest in justice and criminal justice policy has motivated him to pursue a variety of complex criminal work. As an advocate, he has worked on both sides of the justice system, achieving the highest levels of excellence in both criminal defence and prosecutorial work. And not only as a lawyer and judge, but also as a scholar and civil servant, he has remained a stalwart advocate for protecting civil and human rights and safeguarding the essential features of a rule of law system.

Here, Lord Macdonald engages in a remote discussion with *Hong Kong Lawyer* about his legal career and then elaborates on some of the views he expressed in his recently published article, *The Rule of Law is Not a Movable Feast*, which appeared in Ming Pao on 5 September 2017.

**Opposite Sides of the Same Coin**

In 1978, Lord Macdonald was admitted to practise law in England & Wales, starting his career at the bar as the first pupil of Helena Kennedy QC, now herself a member of the House of Lords. As a barrister, much of his time was spent defending leading IRA and Middle Eastern terrorist suspects. He also defended major drug dealers and alleged fraudsters, and was also a junior in the Matrix Churchill case over the alleged smuggling of arms to Iraq. In 2000, he was among a group of barristers who set up Matrix Chambers in anticipation of work flowing from the UK’s then-new Human Rights Act.

In 2001, he was appointed a Recorder of the Crown Court. In 2003, he was elected Chairman of the Criminal Bar Association, and later that year he was appointed DPP, becoming the first prominent defence lawyer in England & Wales to be appointed to that post.

When the opportunity to become DPP came about, Lord Macdonald said that it was just “irresistible”. To work in criminal law at this level and to have the opportunity to shape an agency which is so integral to the delivery of criminal justice – it seemed like the best job in the country, he explained.

In spite of the fierce criticism he faced upon appointment due to his lack of prosecutorial experience, upon taking office, Lord Macdonald insisted, to the contrary, that his defence experience would be a huge advantage to him. “I saw prosecution work as being connected to human rights and due process, just as defence work was. Fair prosecutors acting under the law are guarantors of fair trials just as defence lawyers are,” he said. “I had no doubt that I would be able to leverage my experience to succeed in this new role.”

In a 2004 article that appeared in *The Guardian*, Lord Macdonald was quoted as saying: “[I]f you’ve played for Tottenham [football team], you can’t play for Arsenal. The truth is, whichever side you’re on, if you have practised criminal law in the courts [at the highest levels] for many years, you know the system inside out.”
As he predicted, he was very successful in prosecuting serious crime during his tenure as DPP, while also receiving praise for remaining outspokenly attached to due process, fair trials and defendants’ rights.

However, that is not to suggest that Lord Macdonald’s time in office was without challenge. When discussing difficult cases, he noted that his term as DPP was marked by a series of major terrorism cases. “I felt it critical that we met this challenge while respecting fundamental human rights. We were firm in these cases and relentless in pursuing them. But we always obeyed the rules and juries respected this. Our conviction rates were very high and there were no major successful appeals during that period,” he said. His success, without a doubt, was due to him being able to leverage his rare insight into the thinking and modus operandi of those who perpetrate politically motivated violence, which he gained as a barrister by defending the accused in many of the leading terrorism trials brought in England & Wales during the 1980s and 1990s.

As DPP, he established the Counter Terrorism Division, the Organised Crime Division, the Special Crime Division and the Fraud Prosecution Service. He also played a major role across Whitehall in the development of criminal justice policy, especially in relation to international treaties and jurisdictional issues, mutual legal assistance, extradition, terrorism and grave cross-border crime. Upon completing his term as DPP, Lord Macdonald returned to private practice at Matrix Chambers. In between 2009–2012, he was the trustee of Index on Censorship, the leading free expression advocacy group. In 2010, he was appointed Deputy High Court Judge and became a member of the House of Lords. In 2011, he was appointed Chair of Reprieve, the anti-death penalty organisations, in succession to Lord Bingham of Cornhill. In 2012, he became Warden (Head) of Wadham College, Oxford. In addition to practising in England & Wales, Lord Macdonald is also regularly admitted to the Hong Kong Bar to conduct cases before the Hong Kong courts.

**Essential Features of Rule of Law System**

Turning to his Ming Pao article, *The Rule of Law is Not a Moveable Feast*, the first point of discussion was his statement that: “[i]n a rule of law system, it is obviously not just the law that counts. After all, a tyranny can easily create oppressive laws to build dictatorship. So the law must be borne out of democratic accountability and loyalty to human rights. That’s how it earns respect: it’s how a government of laws rather than of men avoids tyranny and promotes human happiness.”

Expanding on this, he explained that the rule of law is not just about the law. “This is because tyrannies can also have laws. A true rule of law system is one that combines three elements: legality, democracy and human rights. This means a system in which the law respects human rights and has democratic legitimacy. That is to say the laws are created through democratic process and respect the inalienable rights of citizens. But once they are created in this way, they must be respected. In a rule of law system, you cannot pick and choose which laws to obey. Legality requires loyalty to the law. Obviously this is not always so easy. Sometimes one group or another might feel that a particular law is unfair. But you can’t pick and choose. In a rule of law system, laws should be changed by legislation, not by force.”

**Independent Judiciary**

Continuing, Lord Macdonald explained that rule of law cannot survive without an independent judiciary. “This is why it is vital the judiciary is made up of judges who are able and willing to issue unpopular decisions when the case and law necessitates doing so.” The judiciary’s job is to adjudicate disputes between citizens and between citizens and the State. “Obviously it cannot do this in a way that commands public respect unless it is seen to be impartial and independent, and possessed of integrity. Independence and impartiality mean that judges cannot simply follow the public will. Sometimes they have to stand against it, because justice makes that demand. If judges are not prepared to stand up in this way, the whole system collapses. I wrote the article in Ming Pao because I strongly felt that the senior Hong Kong judiciary is both independent and loyal to due process under the law. It seems very counterproductive, given the sensitivities of Hong Kong’s constitutional position, to attack that very institution that does the most to uphold the rule of law here. People should be careful what they wish for,” he said.

**Right to Appeal a Sentence: UK versus Hong Kong**

In both the UK and Hong Kong, the Attorney General or Secretary for Justice,
respectively, can refer cases to Courts of Appeal to reconsider a criminal sentencing decision.

In England & Wales, the Unduly Lenient Sentence procedure is a scheme that permits anyone to ask the Attorney General to review a criminal sentencing decision. Where the senior law officer deems appropriate, the case can be referred to the court of appeal for reconsideration. The proceedings will always take place in public, with a represented defendant, before the senior, independent judiciary. It is a process of open justice, respectful of rights and according to law, Lord Macdonald explained.

Reflecting on his time as DPP, he noted that during his tenure he would advise the then-Attorney General to exercise this jurisdiction when he felt a sentence warranted it.

In Hong Kong, a sentence may be appealed if, in the Secretary for Justice’s view, it is manifestly inadequate and the interests of justice require it to be appealed. If he does so, the case will be considered in the Hong Kong Court of Appeal, before senior, independent judges, sitting in public. The defendant will be fully represented. Again, this process unfolds strictly according to law.

The main difference between this right as it exists in the UK and Hong Kong is that jurisdiction is only available in England & Wales for serious crimes. Albeit the UK’s Unduly Lenient Sentence scheme was recently expanded to cover an additional 19 terror-related offences, including supporting extremist organisations, encouraging acts of terror or failing to disclose information about a terrorist attack, Lord Macdonald added.

Sentencing Not an Exact Science

In discussing the UK’s Unduly Lenient Sentencing procedure, incumbent UK Attorney General Jeremy Wright recently noted that sentencing exercises are not an “exact science”. While judges generally get it right, in cases where there may have been an error in the sentencing decision, the right to appeal a sentence ensures that this decision is reviewed, and appealed, when necessary.

Although in cases where judges do get it wrong, the revision of sentencing decisions can often be unpopular, especially when Courts of Appeal in both the UK and Hong Kong increase sentences when some sections of the public feel that they should not. “Usually, if the court had made the opposite decision, it would simply mean a different section of the public would be outraged,” Lord Macdonald said.

This is why it is vital that judges pay no attention to public opinion when they adjudicate. If courts judged according to public feeling, a frightening new form of tyranny would be borne: mob rule. There would be no rule of law at all, he explained.

That being said, it is equally important that the decision to exercise this right be strictly legally motivated and an appeal never be brought for improper reasons. “That, in itself, would amount to an attack on the rule of law. All prosecution decisions must be strictly free from political influence. When politicians seek to influence the legal process, or to bend judges to their will, they undermine both the rule of law and public confidence in it. This is when judges need the courage to stand up to impropriety on the part of the executive,” he said.

Additionally, it is critical that this procedure unfold openly so that public confidence in the justice system is not undermined. “It is obviously critical to public confidence in justice that the processes of justice are open to public gaze. This provides reassurance that the rules are being followed and that adjudications are fair. Justice and daylight go together,” he said.

“Fortunately, the UK and Hong Kong each possess a senior judiciary both willing and able to fulfil this critical role. They should be supported in doing so,” he added.

Free Speech

In recent months there has been much discussion in the UK and Hong Kong about the Courts of Appeal’s review of various sentencing decisions and the policy underlying the procedures that grant the courts the jurisdiction to do so. Commenting on these discussions, Lord Macdonald explained that there is no problem with people taking issue with the ruling of judges and expressing their disagreement forcefully. That is the underlying tenet of free speech.

However, what he finds gravely concerning is when disagreements stray into attacking a legitimate and universally recognised process of law, such as a prosecutor’s right of appeal, or the personal integrity of judges deciding the case. He believes that in such instances, it is not really that legal process or those judges being attacked, it is the law itself.

Why does he believe this is dangerous? “Well, people engaged in these rhetorical assaults risk undermining the very values they claim to defend,” he explained. “It’s a slippery path best avoided.”

Challenges Ahead

Commenting on the challenges that lie ahead for the UK and Hong Kong, Lord Macdonald said, “the challenge for all countries that profess allegiance to the rule of law is to maintain a system of laws that are legitimate and rights compliant, upheld by courts that are impartial and open to public scrutiny, so that public confidence and respect for the law underpins all social and economic relations. This provides the contrast between tyranny that imposes its will by force, and a rule of law society capable of achieving its ends by popular consent.”

“The rule of law depends on legality, democracy and human rights. These are interdependent values and each must be nurtured. Laws that lack democratic legitimacy will fail to command allegiance, and laws that fail to respect human rights serve only tyranny.”
專訪

麥當納勛爵QC

英格蘭及威爾斯前刑事檢控專員、現任牛津大學瓦德漢學院院長

作者 Cynthia G. Claytor

英格蘭及威爾斯前刑事檢控專員御用大律師麥當納勛爵與本刊詳談他的事業生涯，評論他最近在《明報》的撰文《The Rule of Law is not a Movable Feast》，文中他概述了法治制度的基本特徵。

英格蘭及威爾斯前刑事檢控專員御用大律師麥當納勛爵當初選擇投身法律界，是因為他熱愛辯論，而且渴望從事具社會價值的工作。他說：「公義似乎是社會價值中至關重要的一環，它把一切聯繫起來。」以他早期的經歷來看，他投身法律事業似乎最合適不過。

執業近40年以來，對司法和刑事司法政策的濃厚興趣，促使他從事各種複雜的刑事工作。他曾在司法系統的兩邊工作，刑事辯護和檢察工作均表現卓越。作為律師和法官，也作為學者和公務員，他一直堅持捍衛公民權和人權，維護法治制度的基本特徵。

麥當納勛爵與《香港律師》詳談其法律事業，也闡述了他於2017年9月5日在《明報》發表的文章《The Rule of Law is Not a Movable Feast》中的一些觀點。

硬幣的兩面

麥當納勛爵於1978年獲取英格蘭及威爾斯執業資格後，成為Helena Kennedy御用大律師旗下首位實習大律師，後者現已當上上議院議員。成為大律師後，他大部份時間均為愛爾蘭共和軍和中東恐怖分子辯護。他亦在涉及向伊拉克走私武器的Matrix Churchill案中，擔任初級大律師。2000年，他與一群大律師成立了Matrix Chambers，處理當時剛通過的《人權法令》帶來的工作。

2001年，他被任命為皇室法庭特委法官。2003年，他獲選為刑事律師協會主席，同年後期獲任命為刑事檢控專員，成為首位出任此職的英格蘭及威爾斯傑出辯護律師。

由於缺乏檢控經驗，他獲任命時備受猛烈批評。上任後，麥當納勛爵堅持，辯護經驗將是他的巨大優勢。他說：「正如辯護工作一樣，我認為檢察工作與人權和正當程序密不可分。正如辯護律師一樣，依法行事的檢察官保障審判的公正。我能夠利用此經驗，在這個新角色中取得成功，這點我毫不懷疑。」

然而，這並非表示麥當納勛爵的任期內風平浪靜。他指出，任職刑事檢控專員期間發生了多宗重大恐怖主義案件。他說：「我認為必須在尊重基本人權的同時，應對這個挑戰。面對這些案件，我們堅定不移地進行追究，但始終遵守規則，而陪審團亦尊重這一點。我們的定罪率很高，在該段時間內沒有重大的成功上訴案例。」

在擔任刑事檢控專員期間，他成立了反恐怖主義科、有組織犯罪科、特別罪案科和欺詐檢控科。他亦在白廳制訂刑事司法政策上，特別是在國際條約和司法管轄權問題、司法相互協助、引渡、恐怖主義和嚴重的跨界犯罪方面。
完成刑事檢控專員任期後，麥當納勛爵返回Matrix Chambers私人執業。在2009–2012年期間，他擔任言論自由倡導團體Index on Censorship的受託人。2010年，他獲任命為高等法院法官，並成為上議院議員。2011年，他獲任命為反死刑組織的緩刑主席，接替Lord Bingham of Corrhill。2012年，他成為牛津大學瓦德漢學院院長。除了在英格蘭和威爾斯執業外，麥當納勛爵還經常在香港法庭處理案件。

法治制度的基本特徵

談到他在《明報》文章《The Rule of Law is Not a Moveable Feast》,麥當納勛爵首先闡述他的說法：「在法治制度內，法律不是唯一的根據。畢竟，暴政可輕易製造惡法，建立獨裁政權。所以，法律必須立足於民主問責制，忠於人權，才能贏得尊重。法治而非人治的政府這樣避免暴政，促進人類幸福。」他解釋說，法治不僅關乎法律。「這是因為暴政也可以有法律。真正的法治制度結合三個要素：法律、民主、人權，即一個法律尊重人權、具民主合法性的制度。也就是說，法律是通過民主進程建立，尊重公民不可被剝奪的權利。一旦這樣建立了，就必須得到尊重。在法治制度內，你不能選擇服從哪些法律。合法性必須忠於法律，當然這並非總是那麼容易。有時一群人或許覺得某項法律不公平，但你不能選擇。在法治制度中，法律應該通過立法修改，而非用武力強行改變。」

獨立的司法機關

麥當納勛爵續道，沒有獨立的司法機關，法治就不能生存。因此，當案件和法律有此需要時，司法機關的法官必須能夠而願意作出不受歡迎的決定。

司法機關的工作是裁決公民與公民之間及公民與國家之間的爭端。他說：「司法機關必須被認為公正、獨立、有誠信，才能得到公民尊重而履行其職責。獨立，公正意味著法官不能簡單地遵循公眾的意願。有時法官為了公正，必須違反公眾的意願。若法官不準備這樣站出來，整體制度就會崩潰。我在《明報》撰文，因為我深信香港的司法機關獨立，忠於法律規定的正當程序。鑑於香港敏感的憲制地位，攻擊最盡力秉持法治的機關，會適得其反。人們應想清楚他們想要什麼。」

對判刑提出上訴的權利：英國與香港

在英國和香港，律政司可將案件提交上訴法庭重新考慮刑事判決。

在英格蘭和威爾斯，「判刑過輕程序」計劃允許任何人要求律政司覆核刑事判刑。若高級法官認為合理，可向上訴法院提出複議。訴訟由始至終公開進行，被告由律師代表，在高等、獨立的司法機關席前審訊，麥當納勛爵解釋，這個司法公開，尊重權利，依法進行。

回顧他當刑事檢控專員期間，當他覺得判刑有此需要時，他也會建議時任律政司行使此司法權。

在香港，若律政司司長認為判刑過輕，而為了司法利益有此需要，可對判刑提出上訴。是者，案件將在香港上訴法院由高等、獨立的法官審理。被告獲獲充分的律師代表。這個過程亦嚴格依法進行。

在香港，若律政司司長認為判刑過輕，而為了司法利益有此需要，可對判刑提出上訴。是者，案件將在香港上訴法院由高等、獨立的法官審理。被告獲獲充分的律師代表。這個過程亦嚴格依法進行。

這項權力在英國與香港的主要區別在於，在英格蘭和威爾斯，此司法權只能針對嚴重罪行。雖然英國的「判刑過輕程序」計劃最後擴展至涵蓋另外19種與恐怖主義有關的罪行，包括支持極端主義組織、鼓勵恐怖行為或不披露有關恐怖襲擊的資料。

判刑並非精確科學

現任英國律政司Jeremy Wright最近在討論「判刑過輕」條款時指出，判刑並非「精確科學」。法官通常判刑正確，但在判刑可能出現錯誤的案件中，上訴權確保判刑必要時獲得覆核和上訴。

在法官確實判刑錯誤的案件中，修改判刑通常不受歡迎，特別是當英國和香港上訴法院決定加刑，而部份公眾覺得不應加刑時。他說：「若法院作出相反的決定，通常另一部份公眾就會感到憤怒。」

因此，法官在裁決必須漠視民意。若法庭根據公眾的感覺來判斷，就會帶來可怕的新式暴政：暴民統治。這法治根據就不復存在。

話雖如此，同樣重要的是，行使這項權利的決定純粹出於法律動機，而不會因不正當理由提出上訴。他說：「這樣本身就相當於攻擊法治。所有複核決定必須不受政治影響。當政客試圖影響法律程序，或迫使法官遵循其意願，就破壞了法治和公眾對法治的信心。法官此時必須勇敢地抵抗行政部門的不當做法。」

此外，這個程序必須公開進行，使公眾對司法系統的信譽不會受到損害。他說：「上訴過程公開對公眾監督，對維護公眾對司法的信心至關重要。這樣可確保程序遵守規則，裁決公平。公正與公開同時並行。」

他補充說：「可幸，英國與香港均擁有願意而有能力履行此關鍵作用的高級司法機關。他們理應得到支持。」

言論自由

近幾個月來，就上訴法庭覆核各種判刑決定及賦予法院司法權的政策程序，在英國和香港出現了熱烈討論。就此，麥當納勛爵解釋，人們對法官的裁決有異議，強烈表達相反意見，這並無不妥，是言論自由的基本原則。然而，他最深切關注之處，是異議變成攻擊一個合法而普遍認可的法律程序，例如檢察官的上訴權，或判決案件的法官的個人誠信。他相信，在這種情況下，上訴權的制度便歸標准程序或法官，而是法律本身。

他認為這樣的危險之處在於，「進行這些口舌攻擊的人，有時會破壞他們聲稱要捍衛的價值。這是一條濕滑的路，最好避而遠之。」

今後的挑戰

谈到英國和香港今後面臨的挑戰，麥當納勛爵表示：「所有忠於法治的國家面對的挑戰，是維持一個合法合權、獲公正的法庭捍衛、受公眾監察的法律制度，使得公眾對法律的信心和尊重貫穿社會經濟各個環節。暴政強行施加意志，與法治社會通過人民意願實現其目標，形成對比。」

「法治取決於合法性、民主和人權。這些是相互依賴的價值觀，每個都必須小心培育。缺乏民主合法性的法律，將不能得到效忠，不尊重人權的法律，只能稱為暴政。」
Law Society Received a Delegation from the Qianhai Region

A delegation by the Authority of Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone visited the Law Society on 4 August. Mrs. Cecilia Wong and Mr. Steven Leung, respectively the Chairlady and a Member of Mediation Committee, received the delegation. They discussed a variety of relevant matters in relation to mediation for commercial disputes in Hong Kong.

Delegation from the Renmin University of China Law School Visits the Law Society

A seven-member delegation from the Renmin University of China Law School led by its newly appointed Dean Professor Wang Yi visited the Law Society on 25 August. Council member C.M. Chan and members of the Greater China Legal Affairs Committee Catherine Mun and Gary Yin received the delegation. They shared with the delegates the latest developments of Hong Kong’s legal services market, the Law Society’s experience in professional education, risk management education and future cooperation opportunities. Representatives of the Law Society will conduct lectures in the Law School in Beijing on subjects including common law and international arbitration at the end of this year.

前海代表團訪問律師會

深圳市前海深港現代服務業合作區管理局代表團於8月4日探訪律師會。調解委員會主席黃吳潔華律師及成員梁錫濂律師接待了該代表團，並與他們討論了香港商業糾紛調解的各種相關事宜。

中國人民大學法學院訪問律師會

中國人民大學法學院新任院長王軼教授率領7人的代表團於8月25日訪問律師會。陳澤銘理事、大中華法律事務委員會委員文理明律師和饒詩傑律師跟代表團會面，分享香港法律服務市場發展近況、律師會在專業教育與風險管理教育課程的相關經驗，以及交流雙方未來的合作空間。律師會代表將於本年末到北京為法學院的學生授課，講解普通法與國際仲裁等課題。
Taiwan Bar Association Celebration Ceremony and Legal Seminar

Mr. Lawrence Yeung, member of the Greater China Legal Affairs Committee (“GCLAC”), attended a legal seminar organised by the Taichung Bar Association in Taichung on 3 September and delivered a presentation on the topic “Client handling strategies and risk control”. In addition, President Thomas So, former President and Council member Stephen Hung, and Vice Chairman of GCLAC James Wong were invited to attend the Taiwan Bar Association Celebration Ceremony for its 70th anniversary on 9 September. In his speech, President So expressed the Law Society’s expectation of a closer cooperation with Taiwanese lawyers.

Hong Kong Shipping Finance and Arbitration Legal Forum

The Hong Kong and Mainland Legal Professional Association Limited and Legal Profession Committee of the Hong Kong Chinese Enterprises Association jointly organised the Hong Kong Shipping Finance and Arbitration Legal Forum at the Craigengower Cricket Club on 26 August. Vice President Melissa Pang spoke on the close relationship between shipping finance and legal services to 120 forum participants on behalf of the Law Society which is a supporting organisation.

台灣律師節慶祝大會暨法律研討會

大中華法律事務委員會委員楊先恒律師代表律師會前往台中，參加台中律師公會於9月3日舉辦的法律研討會，以「與客戶的應對進退及案件風險控管」為題發表專題演說。另外，適逢台灣律師聯合會成立70周年，蘇紹聰會長、熊運信前會長暨理事，以及大中華法律事務委員會副主席黃江天律師應邀出席台灣律師聯合會於9月9日舉行的台灣律師節慶祝大會，與台灣律師交流。蘇會長在活動中致賀辭，並期望與台灣律師的合作更加密切。

香港航運金融與仲裁法律論壇

香港與內地法律專業聯合會及中國企業協會法律專業委員會於8月26日假紀利華球會舉辦香港航運金融與仲裁法律論。律師會為次活動的支持機構，彭韻僖副會長代表律師會出席活動並致辭，向120名與會人士分享航運金融與法律服務的緊密關係。
The Hong Kong Academy of Law

The Hong Kong Academy of Law (“Academy”) organised 42 seminars in August.

Of 42 seminars, five seminars had an audience of over 120. These seminars were:

1. “Bilingual Legal Practice Risks” conducted on 15 August;
2. “Professional Conduct 2017” conducted on 16 August;
3. “Third Party Funding for Arbitration” conducted on 22 August;
4. “Intestate Succession (Module 1)” conducted on 24 August; and
5. “Hong Kong e-Legislation” conducted on 28 August.

The seminar “Third Party Funding for Arbitration” held on 22 August provided practitioners with a brief introduction to the Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Bill 2016 and the offerings of third party funders in Hong Kong.

The speakers included Mr. Tom Glasgow, Investment Manager (Asia) of IMF Bentham and Ms. Ruth Stackpool-Moore, Director of Litigation Funding and Head of Harbour Litigation Funding. Mr. Denis Brock, Senior Solicitor of the High Court, HKSAR, Council Member and Member of the Arbitration Committee of the Law Society was the moderator.

The seminar entitled “Intestate Succession (Module 1)” held on 24 August was presented by Mr. Wong Tak Shing, Partner of Wong Shum & Co.

Mr. Wong Tak Shing spoke at the seminar entitled “Intestate Succession (Module 1)” on 24 August.
Programme for Members’ Children: Visit to the Fire and Ambulance Services Education Centre cum Museum

On 19 August, around 40 members and their children attended a guided visit organised by the Member Benefit Committee to the Fire and Ambulance Services Education Centre cum Museum located at the Fire and Ambulance Services Academy at Tseung Kwan O. Both tour guides were retired firemen, who shared their real life experiences with the participants. Members had the opportunity to see some of the oldest fire-fighting equipment that was once used.

Participants also had the chance to tour the Academy and learn about their latest training facilities. The tour guides also explained the evolution of the firemen uniforms and equipment at the “Uniform and Equipment Exhibition Area”. The visit concluded with a demonstration on the use of fire extinguisher and fire hose reel.

Tour guide explaining different types of training held inside the Academy.

Group photo of members and children in front of a fire brigade.

Participants also had the chance to tour the Academy and learn about their latest training facilities. The tour guides also explained the evolution of the firemen uniforms and equipment at the “Uniform and Equipment Exhibition Area”. The visit concluded with a demonstration on the use of fire extinguisher and fire hose reel.
INSOL International: Standard Case Management Directions for an Insolvent Trust

By Ian Mann, Partner
Lucy Hickmet, Associate

Harney, Westwood & Riegels
INSOL International Association of Restructuring, Insolvency & Bankruptcy Professionals is a world-wide federation of national associations for accountants and lawyers who specialise in turnaround and insolvency. The Board of Directors of INSOL has approved a set of model standard case management directions for an insolvent trust (“CMDs”), as proposed by the INSOL Technical Research Committee (the “Technical Committee”).

These CMDs are now being provided to a number of jurisdictions in the hope that they will be incorporated into civil procedure rules by Court issued Practice Directions, or adopted via legislative change.

The concept behind these CMDs was to create a flexible model form of directions for insolvent trustees when they initially come before the Court, encompassing any special directions necessary due to the nature of a trust. It is now suggested for use in multiple jurisdictions, and is being provided to key stakeholders, with the intention of working to standardise insolvency templates around the world and make insolvency procedures more universal and efficient.

The Technical Committee has been developing these CMDs since 2015, and has provided them to academics and professionals in various jurisdictions for comment and revision prior to approval. The Technical Committee welcomes any comments aimed at further improving and developing these CMDs.

**Insolvent Trusts**

A trust is not a separate legal personality so cannot itself become insolvent. This term is used as a shorthand reference to circumstances where a trustee has insufficient trust assets to meet the liabilities it has assumed in its capacity as a trustee.

These draft CMDs are proposed for use where that situation arises.

In these circumstances, it is necessary for the trustee to “wind up” the trust so as to realise and apply any assets towards payment of liabilities owed to third party creditors.

**Right of Subrogation**

Parties may be dealing with the trustee either in its own right (in which case they will have claims against the trustee in that personal capacity), or as the trustee of a trust. In the latter case, creditors would still take action against the trustee, but will need to rely on the principle of subrogation in order to enforce against the trust assets.

The principle of subrogation applies where one person, in this case the creditor, is put in the place of another, here the trustee, so that it can enforce the latter’s rights. In this context, the right which the creditor will wish to rely on to satisfy its debt, is the trustee’s right of indemnity from trust assets. This is of particular relevance in the context of trading trusts, as the corporate trustee of a trading trust may have very few or no assets of its own that are not held on trust.

As Lewin on Trusts (19th Edition) particularises at [21-018] to [21-055], the right of subrogation:

- prevents the beneficiaries from avoiding liabilities which properly fall on the trust fund;
- entitles the creditors to enforce their liabilities against trust property to the extent that the trustee would be so entitled; the creditors have no right of subrogation unless the trustee is entitled to an indemnity from the trust assets. The trustee’s right of indemnity may arise in the trust deed and/or by relevant applicable legislation as is the case in many established common law jurisdictions such as England & Wales, and widely recognised trusts jurisdiction such as Jersey and Guernsey;
- in cases where the liability of the trustee is limited to the trust fund, or part of the trust fund, will be limited to the trust fund or part of the trust fund to which the trustee’s indemnity applies;
- in cases where the trustee itself is insolvent, entitles creditors to enforce an unsecured claim against the trust property where it would not be possible to enforce the claim against the trustee.

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personal due to the trustee’s insolvency; and

• where a trustee has a right of indemnity in relation to a debt incurred by the trustee which carries interest, the creditor, in proceedings against the trust fund upon default by the trustee, would be entitled to recover that interest along with the initial debt.

Directions
In the event that the trustee is either insolvent or entitled to rely on an indemnity to the assets of the trust fund (whether by agreement or by statute), and there is a shortfall in the assets of the trust, the question arises as to what steps a trustee can take to wind up the trust so as to realise and apply the assets towards payment of liabilities owed to third party creditors.

Some, including the learned authors of Levin on Trusts, suggest that, in these circumstances, the most appropriate step would be for the trustee to seek directions from the court. These CMDs attempt to provide a mechanism for so doing, and to address the further practicalities involved in the winding up of a trust.

Levin suggests directions might need to be sought in respect of:

• the order of priority for payment of liabilities, and whether the priority should be by reference to when the liability occurred or the amount of the liability;

• whether the trustee is entitled to have recourse to the trust fund for the purpose of meeting any liabilities that are unlimited;

• whether the trustee is entitled to pay ordinary administration costs out of the trust fund;

• whether the trustee is entitled to remuneration and if so what;

• whether any litigation is to be embarked on; and

• whether the answers to any of the above, changes with effect from the date upon the trust estate can be said to have become insolvent.

A similar approach was taken in the decision of the Jersey Royal Court, in the estate case of Re Hickman [2009] JRC 040. In that case, an executor applied for directions in respect of the procedure for dealing with the insolvent estate of a deceased person. The directions provided for the following provisions:

• publication of a notice requiring creditors to submit claims;

• forfeiture for claims not submitted by a certain time;

• how to deal with preferential claims;

• inspection of claims by creditors with an opportunity to file opposing evidence;

• the admission or rejection of creditors’ claims by the executor;

• an appeal procedure for rejected claims; and

• for payment of the executors fee out of the insolvent estate.

The Jersey Royal Court subsequently stated in the Representation of the Z Trusts 2015 (2) JLR 175 that in the case of an insolvent trust, it did not consider that a regime of the kind adopted in Re Hickman should always be followed, but rather that the court should be flexible in its approach, having regard always to the best interests of the creditors as a body, and taking into account the nature, number and type of creditor claims.

The court will also need to consider who is best placed to implement that regime, whether the trustee alone (assuming the role of “liquidating trustee” under the supervision of the court), the trustee with assistance of an insolvency practitioner appointed to liquidate the trust assets (who could handle the creditor claims adjudication process as a result of any perceived conflict on the part of the trustee against whom the claims are brought), or an independent insolvency practitioner appointed by the court (reducing the trustee to a bare trustee, similar to the court’s ability (rarely used) to appoint a receiver of a trust). In the Z Trusts cases, the court decided to follow the first option, to leave the trustees to conduct the winding up of the trusts under the supervision of the court, rather than appointing an insolvency practitioner, principally in the interest of costs, and indicated that this would ordinarily be the case.

Scope of CMDs
These CMDs are intended to apply to the following scenarios:

• typical complex trust structures in common law jurisdictions such as Australia, Hong Kong and Singapore, recognised trusts jurisdictions such as Jersey and Guernsey, and jurisdictions such as the British Virgin Islands, Cayman Islands and Bermuda, to name a few;

• instances in such jurisdictions where a trustee is entitled to rely on a cap of indemnity;

• insolvent trusts with jurisdictional challenges, for example, where creditors reside in different parts of the world; and

• where parties to the insolvent trust are subject to the UNCITRAL Model Law, trans-globally.

Some jurisdictions have statutory protections that limit the liability of the trustee to the value of the trust property. That is the case in Guernsey and Jersey for example. These CMDs aim to answer the questions that arise in such cases where the liability of a trustee is qualified.

These CMDs are a new idea in themselves, however there have been other attempts to create models, templates or best practice guides in the global insolvency and restructuring field, such as the Judicial Insolvency Network (“JIN”) Guidelines. It is hoped that CMDs will have a similar standardising effect.

The Hon. Mr. Justice Jonathan Harris, who sits as a judge in the Court of First Instance, Companies Court of Hong Kong, had a key role in developing the
JIN Guidelines and it is therefore hoped that the Hong Kong legal and insolvency community will be willing to embrace these CMDs.

In October 2016, judges from 10 different jurisdictions met in Singapore for the inaugural Judicial Insolvency Network Conference. Judges from key jurisdictions for international insolvency matters participated: Australia (Federal and New South Wales), British Virgin Islands, Canada (Ontario), the Cayman Islands, England & Wales, Hong Kong SAR (as observer), Singapore, and the USA (Delaware and the SDNY).

High on the agenda of the esteemed conference participants was the preparation of draft Guidelines to provide practical assistance for Judges and insolvency practitioners alike in dealing with difficult issues which cross-border insolvencies and restructurings commonly face. This publication reported in an interview with Justice Harris in May 2017 that he considered the JIN Guidelines to have been drafted “with the aim of improving the efficiency and effectiveness of cross-border proceedings relating to insolvency or adjustment of debt opened in more than one jurisdiction (parallel proceedings) by enhancing coordination and cooperation amongst courts under whose supervision such proceedings are being conducted”.

The Hong Kong Lawyer in May reported Mr. Justice Harris as considering that it was likely that Hong Kong would adopt the JIN Guidelines, and in June 2017 they were adopted. It is therefore hoped that these CMDs will be afforded similar consideration.

The implementation of these CMDs would doubtless assist to cement Hong Kong’s position as a regional insolvency hub because it would make it a jurisdiction at the forefront of industry best practices.

High-Level Objectives

These CMDs attempt to address the issues that arise for creditors when trusts, settlors or beneficiaries become insolvent.

CMDs

These CMDs have been drafted to allow a practitioner to adopt and amend them as necessary in the particular circumstances. They are intended to provide a practical flexible roadmap allowing for amendments which may need to be considered in the context of each case and with reference to specific trust deeds and relevant legislation.

You can access these CMDs here: http://harneyoffshorelitigation.com/model-directions-insolvent-trust/.

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國際破產從業員協會：關於無償債能力信託的標準案件管理指示

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國際破產從業員協會(與重組、無償債能力及破產管理專業人士有關的國際組織)是一個為專門處理特變情況及無償債能力事宜的會計師和律師而設的全球性專業組織聯會。該協會的董事會通過了一套由該協會轄下的技術研究委員會(下稱「技術委員會」)所提出，為無償債能力信託而編訂的案件管理指示標準範本(下稱「案件管理指示」)。

該協會目前正將「案件管理指示」提供給某些司法管轄區，期望這些司法管轄區能將此等指示載入其法院所發出的實務指示中，作為其民事程序規則的一部分，又或是藉著立法修訂而將其納入法制中。

「案件管理指示」背後的理據，是為初次在法院出庭的無償債能力受託人，設訂一套具靈活性的範本格式指示，當中包含基於某一信託之性質而需要作出的特殊指示。現時我們建議在全球多個司法管轄區使用這些指示，並將其提供給主要持份者，目的是將將全球的破產模式予以標準化，從而使破產程序成為更通用和有效。

技術委員會從2015年開始制訂「案件管理指示」，並將它們提供給各個不同司法管轄區的學術和專業人士，以供其在通過這些指示之前，先作出評論和修改。技術委員會歡迎任何人士就進一步改良和發展「案件管理指示」而給予意見。

無償債能力信託

信託並非一個獨立法人，因此它自身不能成為無償債能力。這個名詞只是一個簡稱，適用於受託人沒有充足信託資產，以承擔其作為受託人所須承擔的法律責任這情況。

我們建議當適當機會來臨時，嘗試使用「案件管理指示」擬本。

在此等情況下，受託人必須為有關的信託進行「清盤」，從而將資產變現和運用，以抵償其所欠下的第三方債權人債務。

代位求償權

處理有關事宜的受託人，它可以是基於個人的身份(在這情況下，當事方可以根據該受託人的個人身份而向其提出申索)，又或是基於它作為某一信託的受託人身份。倘若兩種情況，債權人仍可以向該受託人提出申索，但前提是需要根據代位求償原則，向相關的信託資產強制執行其權利。

代位求償原則是指某一個人(這裡指債權人)取代另一個人的位置(這裡指受託人)。
讓它得以強制執行後者的權利。在這情況下，債權人所意欲依據，從而讓其債項獲得償還的權利，是受託人在信託資產方面所享有的彌償權利，而這項權利對於業務信託(trading trusts)方面而言尤其重要，因為業務信託的公司受託人自身只擁有非常少，或甚至不擁有任何並非由信託持有的資產。

正如Lewin on Trusts (第19版) [21-018]至 [21-055]中所指出的，收益求償的意義為：

- 防止受益人逃避承擔該等應當由信託基金承擔的法律責任；
- 讓債權人有權在受託人所享有的權利範圍內，針對信託財產強制執行其在有關債務上所享有的權利，除非受託人對該等信託資產享有彌償權利，否則債權人並不能享有代位求償權。正如許多發達的普通法司法管轄區(例如英格蘭及威爾士)，以及獲廣泛承認的信託司法管轄區(例如澤西島和根西島)的情況一樣，受託人的彌償權利可以藉著信託契據及/或相關的適用法規而產生。
- 如果受託人的法律責任只局限於該信託基金，又或是其中的一部分，那麼有關的法律責任，便會局限于該受託人之彌償權利可在當中適用的信託基金，又或是它的其中一部分的範圍內；
- 如果受託人自身無償債能力，則債權人可以基於受託人無償債能力，無法向其個人強制執行有關申索，而有權針對信託財產來強制執行其無抵押申索；以及
- 受託人如就某項它所招致的並附有利息的債項而享有彌償權利，在針對相當然信託基金而提起的法律程序中，債權人有權在追討期初債項時，同時要求獲得相關利息。

#### 指示

如果受託人無償債能力，又或是受託人有權據其在信託基金的資產中的彌償權利(不論是通過協議還是成文法規)，而有關的信託資產亦出現資金短缺情況時，那麼，一個相關的問題將會是：受託人可以採取什麼步驟來將有關信託清盤，從而將用作抵債欠下第三方債權人之債務的資產進行變現和運用？

有些人認為(包括Lewin on Trusts的學識淵博作者)，受託人在該等情況下最適宜採取的步驟，是尋求法庭的指示。如Lewin on Trusts所指出的，「案件管理指示」嘗試為此舉提供一個機制，以處理在對某一個信託進行清盤時所出現的實際問題。

#### 「案件管理指示」的適用範圍

「案件管理指示」擬在以下的情況適用：

- 例如下列各個司法管轄區的典型複雜信託結構中：澳大利亞、香港和新加坡等普通法司法管轄區；澤西島和根西島等獲認可信託管轄區；以及英屬維爾京群島、開曼群島和百慕大等司法管轄區；
- 受託人在那兒有權依據某一彌償上限的司法管轄區；
- 檢查債權人所提交的申索，以及享有提交相反證據的機會；
- 遺囑執行人同意或拒絕接納債權人所提出的申索；
- 為被拒絕接納的申索提供上訴途徑；及
- 以無償債能力遺產來支付遺囑執行人費用的費用。

Jersey Royal Court其後在Re Hickman [2009] JRC 040這起遺產案件中，Jersey Royal Court所作的裁決，也是採用了類似的途徑。在該案件中，遺囑執行人就如何處理死者的無償債能力遺產，而有權針對有關信託進行清盤，而無須進行的彌償債務申索審裁程序，提出申請，並表示它將會成為以後的慣常做法。
面對司法管轄權方面的挑戰（例如：債權人散居於全球各地的不同地方）的無償債能力信託；及
無償債能力信託各個在全球範圍內的當事方，均須遵守《聯合國國際貿易法委員會國際商事仲裁示範法》的規定。
若干司法管轄區制訂了法定的保障措施，將受託人所需承擔的法律責任，局限于有關的信託財產價值的範圍內，而澤西島和根西島即屬此等情況。『案件管理指示』的目的，是為了回應受託人在該等情況下承擔有限法律責任所產生的問題。
『案件管理指示』本身是一個嶄新的概念，但目前也有其他組織，嘗試制定適用於全球破產及重組領域的模塊、範式或最佳實務指引（例如：《司法破產網絡指引》（Judicial Insolvency Network Guidelines）），而我們期望『案件管理指示』也能產生相同的標準化效用。
香港原訟法庭的公司法法官夏利士法官於2017年5月所接受的一次訪問中提到了此刊物，當時他指出，該《指引》的草擬目的：「是當破產清盤或債務調整的訴訟在超過一個司法管轄區提起的時候（並行法律程序），加強各地監督該等法律程序進行的法庭之間的協調和合作，提升跨境訴訟的效率和效益」。
夏利士法官於5月號的《香港律師》中表示，該《指引》可能會被香港接納；到了2017年6月，香港正式接納了該《指引》。因此，我們亦期望『案件管理指示』會同樣獲得香港的接納。
毫無疑問，『案件管理指示』的實施，將有助加強香港成為亞洲區的破產管理中心，並成為在行業最佳實務方面，處於前列的一個司法管轄區。
高層目標
『案件管理指示』的宗旨，是協助解決當信託、財產授予人或受益人成為無償債能力時，債權人所須面對的問題。
案件管理指示
「案件管理指示」的草擬，讓從業人員可在所需的特定情況下，採取和修訂有關指示。其目的是為從業人員提供一份切實可行、具靈活性、可予修訂的路線圖，以供他們在處理每宗個案，以及在涉及特定信託契據和相關法例的情況下，作為其參考之用。
讀者可透過下列網址閱讀『案件管理指示』:
http://harneysoffshorelitigation.com/model-directions-insolvent-trust/。

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The Withdrawal of Artificial Nutrition and Hydration from a Patient in a Persistent Vegetative State

By Robert Clark, Partner
This article examines the particular problems raised by the question of when and in what circumstances it is legitimate to withdraw treatment, by way of artificial nutrition and hydration, from a patient in a persistent vegetative state (“PVS”). In England & Wales, the law has progressed from a judiciary addressing the problems in Airedale N.H.S. Trust v Bland [1993] AC 789 in the House of Lords (“Airedale”), through the Mental Capacity Act 2005. This is compared with the situation in Hong Kong and the application of the Mental Health Ordinance (Cap. 136).

England & Wales

The seminal judgment of the House of Lords in Airedale, put briefly, concerned a patient, Anthony Bland, who was very significantly and seriously injured at the Hillsborough football disaster in April 1989. Mr. Bland’s lungs were crushed and punctured and the supply of oxygen to his brain was interrupted. He sustained catastrophic and irreversible damage to the brain which had left him since April 1989 in a PVS.

In his judgment, Lord Keith summarised Mr. Bland’s situation. He explained that the deprivation of oxygen had destroyed the cerebral cortex of the brain which was a watery mass. This meant that Mr. Bland had no cognitive function or sensory capacity: he could not see, hear, feel or communicate. However, Mr. Bland’s brain stem continued to operate to sustain his heartbeat, breathing and digestion. In medicine and at law, if the brain stem retains its function a person is not clinically dead. Medical opinion was that Mr. Bland would never recover his cognitive function, but through maintenance of artificial feeding and hydration his then current state of existence could continue for years.

The situation of Mr. Bland was a consequence of the immediate medical treatment provided following the catastrophic injuries he suffered at the Hillsborough disaster. In other words, the administration of artificial nutrition and hydration was medical treatment administered to ensure that he was kept alive immediately following the disaster.

When the case came before the House of Lords, Mr. Bland had been in a state of PVS for almost four years. The consensus between both his parents and the medical carers who were responsible for his treatment was that Mr. Bland would not “want to be left like that” and that the continuation of such treatment did not confer any further benefit on him.

In these circumstances, however, the concern of all was that to withdraw treatment would inevitably lead to Mr. Bland’s death. In this situation the medical carers, through the Airedale N.H.S Trust, made application to the courts for a declaration that care could be withdrawn. In view of the fact that death would follow, there was concern that this could expose the carers to criminal implications (ie, there existed mens rea and actus rea and it was feasible that to withdraw treatment leading to certain death could implicate the carers in, at least manslaughter, if not murder).

All three courts, at first instance, the Court of Appeal and the House of Lords, concluded that the object of medical treatment and care is to benefit the patient:

“It is, of course, true that in general it would not be lawful for a medical practitioner who assumed responsibility for the care of an unconscious patient simply to give up treatment in circumstances where continuance of it would confer some benefit on the patient. On the other hand a medical practitioner is under no duty to continue to treat such a patient where a large body of informed and responsible medical opinion is to the effect that no benefit at all would be conferred by continuance. Existence in a vegetative state with no prospect of recovery is by that opinion regarded as not being a benefit, and that, if not unarguably correct, at least forms a proper basis for the decision to discontinue treatment and care.”

The House of Lords agreed that existence in a PVS was of no benefit to Mr. Bland and considered whether it had to apply the principle of sanctity of life regardless.

“The principle is not an absolute one. It does not compel a medical practitioner on pain of criminal sanctions to treat a patient, who will die if he does not, contrary to the express wishes of the patient … It does not compel the temporary keeping alive of patients who are terminally ill where to do so would merely prolong their suffering. On the other hand it forbids the taking of active measures to cut short the life of a terminally ill patient. In my judgment it does no violence to the principle to hold that it is lawful to cease to give medical treatment and care to a PVS patient who has been in that state for over three years, considering that to do so involves invasive manipulation of the patient’s body to which he has not consented and which confers no benefit upon him.”

Accordingly the House of Lords concluded that the withdrawal of treatment (consisting principally of the artificial nutrition and hydration) which would inevitably lead to the death of Mr. Bland could in fact lawfully be withdrawn.

Subsequent to Airedale, the legislature in England & Wales enacted the Mental Capacity Act 2005. This, in effect, codified Airedale and contains three important elements:

1. That an act done or decision made for or on behalf of a person who lacks capacity must be done, or made, in that person’s best interests.
2. A person lacks capacity if at the material time he is unable to make a decision for himself because of an impairment of or a disturbance in the functioning of the mind or brain.
3. Where the determination relates to life sustaining treatment the person making the decision must not, in
considering whether the treatment is in the best interests of the patient, be motivated by a desire to bring about the patient’s death.

The purpose of these elements of the Mental Capacity Act 2005 is to enable (or empower) a doctor to administer or withdraw treatment without the need to go to court for a declaration.

**Hong Kong**

We have not identified a case in Hong Kong in which Airedale has been followed. However, the Hospital Authority’s (“HA”) guidelines on life sustaining treatment in the terminally ill issued on 22 September 2015 provide a regime consistent with Airedale. For example, the HA agrees that it is ethically and legally acceptable to withhold or withdraw life sustaining treatment where the treatment is futile. The HA confirms that doctors who initiate certain life sustaining treatment should be allowed to withdraw it when the treatment is futile. Futility in the physiological sense is relatively straightforward to identify, but the HA recognises that in other clinical situations the decision involves balancing the burdens and benefits of the treatment towards the patient and asking the question of whether the treatment, though life sustaining, is really in the best interests of the patient.

The HA’s guidelines also confirm that artificial nutrition and hydration are to be classified as medical treatment and that for a patient in a persistent vegetative state or a state closely resembling it, a declaration from the court should be sought. The last substantive amendment to the Mental Health Ordinance (Cap. 136) (the “Ordinance”) was in 1997 (post-dating Airedale, but pre-dating the Mental Capacity Act 2005). It would appear that the draftsman of the 1997 amendments did not fully address the problems identified by Airedale and did not, at least as comprehensively, deal with them as did the legislature in England & Wales. In 2006, the Law Reform Commission of Hong Kong published a report which dealt with two matters, the first relating to decisions in respect of the medical treatment of persons who are in a PVS.

There are two problems with the Ordinance, the first is identified by the Law Reform Commission in its 2006 report: that the Ordinance is unclear as to whether a person who is in a PVS or other state of coma could be regarded as “mentally incapacitated”. More specifically, “mental illness” is not defined in the Ordinance.

The Law Reform Commission also concluded that the common law regime is uncertain, in part because the court only retains an inherent jurisdiction to make a declaration, but has no jurisdiction to approve or disapprove the giving (or withdrawal) of medical treatment to a mentally disordered patient.

The Law Reform Commission then proceeded to recommend that the definition of “mentally incapacitated person” be amended for the purposes of, amongst others, Part IVC so as to include persons “who are unable to communicate [their] views and wishes because [they] are unconscious or for any other reason.”

The second problem with the Ordinance relates to the definition of “treatment” for the purposes of Part IVC of the Ordinance. Treatment covers both “medical treatment” and “dental treatment”. “Medical treatment” is defined to include:

“any medical or surgical procedure, operation or examination carried out by, or under the supervision of, a registered medical practitioner and any care associated therewith.”

Part IVC of the Ordinance contains a regime that is “proposed to empower a doctor to administer treatment without a guardian’s consent in the event of emergency or where it is necessary and in the best interests of the person to receive the treatment” according to Hong Kong Hansard (emphasis on “administer treatment”).

Section 59ZB of the Ordinance provides that Part IVC applies to the treatment of a mentally incapacitated person who has attained the age of 18 years and is incapable of giving consent to the carrying out of the treatment.

Aside from the problem with the definition of mentally incapacitated person identified by the Law Reform Commission, the second problem with Part IVC is that it deals only with the administration of treatment, rather than the withholding or withdrawal of life sustaining treatment such as artificial nutrition and hydration.

So it would appear that even if there were an amendment to the Ordinance and the definition of “mentally incapacitated” person clearly included a person in a PVS, the Ordinance does not address the situation that Airedale dealt with, namely the withdrawal of medical treatment. The HA guidelines are completely correct in requiring the doctor to apply to court. But even then the Ordinance does not assist in a referral to the court. The court would necessarily need to fall back upon the common law itself and Airedale as its guidance.

**An Ethical Solution?**

Legally in the words of Lord Keith:

“In the eyes of the medical world and of the law a person is not clinically dead so long as the brain stem retains its function.”

An approach might be to reflect upon the situation of a patient in a PVS, who is the subject of administered nutrition and hydration and, after a period of time, consider whether that person could be regarded as no longer clinically alive. An alternative proposition might be to reflect upon whether a person is clinically dead if the brain stem retains its function, but the cerebral cortex does not. Thus the principle of the sanctity of life would not be violated by the withdrawal of treatment leading ultimately to the body ceasing to function.

英格蘭及威爾士

上議院在Airedale一案所作出的，並對以後的法律發展具有深遠影響的判決，簡而言之，是與一名病人Anthony Bland有關。Bland於1989年4月在Hillsborough的一起足球場災難事故中嚴重受傷，肺部因強大的力量衝擊而被撞穿，導致腦部無法獲得正常氧氣供應，因而遭受無法復原的嚴重損害。從1989年4月開始，Bland先生便成為處於「持續性植物狀態」的病人。

Bland先生所處的情況，是由於他在Hillsborough的災難事故中遭受嚴重傷害，即時接受治療後所形成的結果。換言之，供給Bland先生人工營養和水份，是為了確保他恢復治療後所形成的結果。換言之，供給Bland先生人工營養和水份，是為了確保他在該災難事故發生後，生命可立即得以維持下去的一種治療方法。當該案到達上議院的席前進行審理時，Bland先生事實上處於「持續性植物狀態」已差不多4年。Bland先生的父母親與負責治療Bland先生的醫護人員一致認為，Bland先生不會「願意見到自己變成這個樣子」，而繼續進行治療亦不會給他帶來更大好處。

然而，所有人在此情況下都關注的一件事，就是假如撤除對Bland先生的治療，詐詐即使用Bland先生的治療，將無法避免地令他喪失生命。面對此等情況，相關醫護人員透過Airedale N.H.S 信託向法庭提出申請，要求法庭作出法院可以撤除對Bland先生的有關治療的宣告。由於撤除治療會導致Bland先生死亡，這令人關注到，醫護人員是否可能會因此面臨刑責(即博士，當中存在犯罪意圖和犯罪行為，而撤除治療導致病人因此去世，可能意味著有關的醫護人員即使沒有干犯謀殺罪，也有可能干犯了誤殺罪)。

所有三個英國法庭(包括：原訟法庭、上訴法庭、上議院)均認為，為病人提供醫療和護理，是為了使病人從中受惠。若病人處於「持續性植物狀態」，這將不會為他帶來任何好處，因此需要考慮是否在不論任何情況下，都必須適用「生命是神聖的」這項原則。
「該項原則並非是絕對的。它並沒有以刑事制裁作為強制手段，也並沒有硬性規定醫生必須為病人進行治療（否則他將會因此死亡），即使這樣做會損害病人的生命。這項原則只是規定，醫生在未獲得病人同意的情況下，不得採取其他手段，以確保病人的生命不會因此而終結。」

上訴院因此認為，撤除治療（主要是給人工營養和水份）儘管無可避免地會導致Bland先生去世，但此舉並沒有違法。

在法院作出Airedale一案的判決後，英格蘭及威爾士的立法機關通過了《2005年精神上行為能力法》，目的是將該案的判決編纂為成文法則，當中並包括下列三項重要元素：

1. 為無行為能力的人作出或代表其作出的任何行為或決定，必須以該人的最佳利益為出發點。
2. 任何人若因心智或腦部機能受損或遭遇外傷，不能在關鍵時刻為自己作決定，他便被視為無行為能力。
3. 某項決定如果是與維持生命治療有關，作出有關決定的人，他在考慮有關治療是否符合病人的最佳利益時，不得受到結束該名病人生命的欲望所驅使。


《條例》中存在兩個問題，而法律改革委員會在其於2006年發表的報告書中所指出的第一個問題，就是對處於「維持生命治療狀態」的病人進行治療的解決方式。

《條例》第59ZB條訂明，第IVC部適用於對年滿18歲的在精神上無行為能力的人，進行某項該人並無能力為自己作出同意的治療。《條例》的第二個問題，是與《條例》第IVC部所述的「治療」的定義有關。治療包含「醫療」和「牙科治療」，而「醫療」被界定為包括：

「由註冊醫生進行或在註冊醫生指導下進行的任何內科或外科程序，手術或檢查以及任何有關的現護。」

《條例》第22條訂明，第IVC部適用於對年滿18歲的在精神上無行為能力的人，進行某項該人並無能力為自己作出同意的治療。除了法律改革委員會所指出的，關於精神上無行為能力的人之定義是甚麼外，《條例》第1V部存在的另一個問題是：當中只提及施行治療，並沒有提及維持生命治療（例如供給人工營養和水份）的不提供或撤除。

所以，實際的情況是，即使《條例》作出了修訂，使得關於「精神上無行為能力的人」之定義，明確包含處於「維持生命治療狀態」的人；但《條例》並沒有處理Airedale一案所提出的問題，即是：關於撤除治療的問題。醫生要求醫療人員向法庭尋求指引，這完全正確。即便如此，《條例》並沒有就轉呈法院裁定作出相關規定，法庭因而仍須以普通法及Airedale一案的判決作為依據。

倫理上的解決方法？

Lord Keith指出：

「從醫學與法律的角度看，任何人只要其腦幹仍維持功能，便不能被視為臨床死亡。」

其中的一個處理方式是：察看處於「維持生命治療狀態」，並需要接受營養和水份供給的病人的病情，並於若干時間後，再評估他是否可被視為臨床死亡的病人。另一個處理方式是：某人的腦幹機能倘仍得以維持，但其大腦皮質已失去功能，在這種情況下，察看其是否可被視為臨床死亡。因此，「生命是神聖的」這項原則，並不會因撤除對該名病人的治療（並最終導致其腦幹機能停止運作）而受到損害。
Political Risk Insurance on the Rise along the Belt & Road: A Viable Alternative to Investment Arbitration?

“And the day came when the risk to remain tight in a bud was more painful than the risk it took to blossom.” – Anais Nin
The Origins: Hochtief’s Struggle in Argentina

In 1991, Hochtief AG – a major German contractor – won a concession over one of the largest infrastructure projects in Argentina (see Award, ICSID Case No. ARB/07/31, December 21, 2016). Hochtief was to construct and operate a 608-meter long four-lane cable-stayed bridge linking the cities of Rosario, in Santa Fe province, and Victoria, in Entre Ríos province, through a crossing over the Paraná river. Argentina was to pay regular subsidies towards the project.

In 1998, Argentina spiralled into a major economic crisis. The crisis permeated all aspects of the country’s life, and resulted in economic, financial, institutional, political, and social collapse. When the crisis peaked, Hochtief’s project was well advanced – Hochtief’s bridge was hanging with its ends loose over the Paraná river when the Argentinean Government changed its laws, stopped contributing to the project, and eventually terminated the concession. Hochtief sued Argentina at ICSID for expropriation. In December 2014, following several years of legal battles on jurisdiction and merits, a prominent tribunal comprising Chris Thomas QC, Judge Charles Brower, and Professor Vaughan Lowe QC, issued its decision on liability (see Decision on Liability, ICSID Case No. ARB/07/31, December 29, 2014).

The Hochtief tribunal’s decision is informative in many respects, but its treatment of Argentina’s political risk insurance objections deserves particular attention. Prior to bidding for its concession, Hochtief took out a political risk insurance policy with the German Government under a German Government programme that provides Federal guarantees for direct investment in foreign countries. Having seen its project expropriated, Hochtief applied for compensation under the Guarantees, receiving over €11 million prior to suing Argentina at ICSID.

Argentina objected to the admissibility of Hochtief’s claims before ICSID on the basis that, because the German Government paid the compensation, Germany was subrogated to the rights of Hochtief under the BIT, so Hochtief could no longer pursue its claims. The Tribunal rejected Argentina’s admissibility objection, finding the BIT requires a transfer of rights to claim by provision of law or by a legal act, and that no such transfer happened when Hochtief purchased its political risk insurance.

The Hochtief tribunal further found that a political insurance payment is a benefit which an investor arranges on its own behalf, and for which it pays. Political risk insurance does not reduce the losses caused by a host State’s actions in breach of the underlying BIT. In essence, political risk insurance is an arrangement made with a third party in order to provide a hedge against potential losses. The Hochtief tribunal found that there was no principle of international law that would require such an arrangement to reduce the breaching host State’s liability.

The Hochtief liability decision is one of the rare investment decisions that address political risk insurance objections. However, political risk insurance is by no means a new concept in the world of investment law. Investment in volatile jurisdictions can involve setbacks that include bribery, corruption, or even the total collapse of local economies, wholesale rejection of contracts, political crises and coups and even claims relating to violations of human rights. Despite the ever-present security concerns in conflict-affected states, investors value business opportunities that promise generous returns on their investments, as long as the anticipated returns are high enough to outweigh the increased risks. Political risk insurance has developed alongside foreign direct investment as a way to hedge against a variety of such risks.

Hong Kong is a relatively new market for insurers offering political risk insurance policies. However, the local market is expected to grow, as Hong Kong solidifies its position as an important regional hub for China’s Belt & Road Initiative, a reliable jurisdiction through which foreign investors can channel funds into other Asian jurisdictions that can at times be volatile.

Institutional Insurance: MIGA

The World Bank’s Multilateral Investment Guarantee Agency (“MIGA”) was one of the first international institutions to offer political risk insurance to investors venturing into conflict-affected or volatile jurisdictions. To benefit from MIGA’s insurance policies, a foreign investor must be a national of a MIGA member-State and must seek insurance for an investment into a developing country. In line with that policy statement, MIGA has developed five types of insurance products. MIGA insures investors against losses relating to currency inconvertibility and transfer restrictions, expropriation, war, terrorism and civil disturbance, breach of contract, and non-honouring of financial obligations.

Currency Inconvertibility & Transfer Restrictions

In terms of currency inconvertibility and transfer restrictions, MIGA’s involvement is engaged if the host State imposes transfer restrictions such that the foreign investor is not in a position to convert local currency into hard currencies and transfer it to its country of origin. In those situations, MIGA would pay compensation in the hard currency specified in the contract of guarantee with the investor.

In this respect, most investment lawyers would argue that the majority of treaties contain provisions on transfer of investments and returns. The Hong Kong-Australia BIT, for example, provides in its Art. 8 that “each Contracting Party shall in respect of investments guarantee to investors of the other Contracting Party the right to transfer abroad their investments and returns”. Similar transfer provisions are included in virtually every
existing BIT. These provisions often require that the investor be able to convert currency of the funds prior to transfer. The question begs what value MIGA’s policies add to investors if the relevant investment treaties already contain the required guarantees.

For a foreign investor to benefit from the treaty’s transfer provisions however, the investor needs to engage the treaty’s dispute resolution mechanism, go through years of arbitration and/or litigation, and obtain an award confirming (hopefully) that the host State is in breach of the treaty’s transfer provisions and that it owes compensation to the investor. This would be a brilliant outcome, but not the end of the story. The investor would then have to enforce the award against the host State.

MIGA does not require an award to find that the host State has effectively blocked repatriation of funds. MIGA will compensate the investor for the host State’s conduct without the trouble of having the insured investor go through arbitration and enforcement proceedings.

**Expropriation**

MIGA’s expropriation coverage is wide-ranging. It encompasses everything from nationalisation to “creeping” expropriation. Here again, MIGA does not require an award in the investor’s favour to pay compensation. If equity investment is expropriated, MIGA compensates the insured investor based on the net book value of the insured investment. When funds are expropriated, MIGA pays the insured portion of the blocked funds. For loans and loan guaranties, MIGA insures the outstanding principal and any accrued and unpaid interest. MIGA pays compensation upon assignment of the investor’s interest in the expropriated asset to MIGA.

For all practical means, from the investor’s perspective, getting compensation for expropriation from MIGA is faster and cheaper than investment arbitration. By resorting to MIGA, the foreign investor safeguards its relationship with the host State by avoiding fierce (and often very public) confrontation before an investment tribunal, amongst other benefits.

**War, Terrorism & Civil Disturbance**

Under the umbrella of its policy for insuring risks against war, terrorism and civil disturbance, MIGA protects insured investors from destruction of tangible assets or from total business interruption caused by politically motivated acts of war or civil disturbance in a host State. For tangible asset losses, MIGA compensates the investor’s share of the lesser of the replacement cost and the cost of repair of the damaged or lost assets, or the book value of such assets if they are neither being replaced nor repaired. For total business interruption, MIGA’s compensation is based, in the case of equity investments, on the net book value of the insured investment or, in the case of loans, the insured portion of the principal and interest payment in default.

Again, the added value of MIGA’s war, terrorism and civil disturbance insurance is that the investor is not required to produce a treaty award in its favour to seek compensation.

**Non-Honouring of Financial Obligations**

MIGA’s insurance against non-honouring of financial obligations protects against losses resulting from a failure of a sovereign, sub-sovereign, or state-owned enterprise to make a payment when due under an unconditional financial payment obligation or guarantee related to an investment. This coverage is applicable in situations when a financial payment obligation is unconditional and not subject to defences. Compensation would be based on the insured outstanding principal and any accrued and unpaid interest. Here again, MIGA does not require an arbitral award to compensate the insured investor for his losses.

**Breach of Contract**

MIGA’s breach of contract insurance is the only insurance policy that requires the insured investor to engage a contractual dispute resolution mechanism as a pre-condition for compensation. MIGA would expect the investor to invoke the dispute resolution mechanism set out in the underlying contract. If, after a specified period of time, the investor is unable to obtain an award due to the government’s interference with the dispute resolution mechanism (denial of recourse), or has obtained an award but the investor has not received payment under the award (non-payment of an award), MIGA would pay compensation.

**Government-Backed & Private Insurers**

In addition to MIGA insurance, which does have its own threshold and membership issues, it is open to foreign investors to purchase political risk insurance from other government-backed and private insurers.

SinoSure (a Chinese State-owned export and credit insurance corporation) has become particularly important in the context of Beijing’s Belt & Road Initiative. SinoSure insures a large part of Chinese investment abroad. Its investment insurance policy is designed to underwrite investors’ economic losses caused by political risks in host States. By virtue of its role, SinoSure also takes the majority of losses when the insured investment goes sour.

A number of private insurers in the region have followed MIGA and SinoSure, and have developed their own sophisticated insurance policies. Zurich Insurance Group, AIG, AXA, Prudential, Allianz, and many other large multinational insurance companies offer more and more elaborate and comprehensive political risk insurance schemes.

Against this backdrop, it is particularly interesting to see whether AIIB, Asia’s major financing institution designed to
Interplay of Political Risk Insurance & Investment Arbitration

Political risk insurance is a sophisticated tool to hedge risks of undue government interference with investments in fragile economies and developing states. It is costly, but it guarantees compensation in cases of expropriation, adverse regulation, political instability, or physical destruction of investments. A number of private insurers are adjusting their political risk insurance products to offer coverage of denial of justice and breach of investors’ legitimate expectations, as well.

Most political risk insurance products do not require the insured investor to obtain a treaty award to receive compensation. Public insurers, such as MIGA, have the additional leverage of resolving disputes with local governments before the disputing parties reach a point of no return and before a full treaty dispute crystallizes.

Investment treaty arbitration remains the most efficient tool to recover lost investments where political risk insurance is not available and where all other options fail. If Hochtief v Argentina is followed, treaty tribunals are unlikely to regard political risk insurance as an arrangement that affects the level of compensation or view political risk insurance as an obstacle to admissibility of an investor’s claims.

Political risk insurance and investment arbitration should be seen as complementary concepts that exist to increase investors’ confidence in exporting capital to developing markets.
對於Hochtief通過「解決投資爭端國際中心」提出申索，阿根廷就該申索的可接受性提出異議，理由是Hochtief已經獲得德國政府給予賠償，因此它在《雙邊投資協定》(Bilateral Investment Treaties, 簡稱BIT)下的地位，已經由德國政府所取代，故它無權向阿根廷提出申索。然而，仲裁庭否定了阿根廷政府就該申索的可接受性所提出的異議，並裁定倘若要適用《雙邊投資協定》中的規定，便首先必須藉法律條文或法定行為來轉讓有關的申索權利。

然而，Hochtief購有該公司的政治風險保險時，並沒有發生任何該等權利的轉讓。審理Hochtief一案的仲裁庭繼而裁定，政治保險是投資者為其自身利益而作出的一項安排，而投資者須為該項安排支付代價。此外，在東道國作出違反《雙邊投資協定》的行動時，政治風險保險不會減輕有關行動所帶來的損失。事實上，該保險是投資者與第三方所訂立的一項安排，旨在對沖投資者所可能蒙受的損失。審理Hochtief一案的仲裁庭裁定，目前並沒有任何國際法規定當事人必須作出如此的安排，以減輕違約的東道國所須承擔的法律責任。

機構保險: 雙邊投資擔保機構

世界銀行轄下的「雙邊投資擔保機構」（簡稱MIGA），是全球其中一個最早為在局勢不穩地區進行投資的企業提供政治風險保險的國際機構。外國投資者如要獲得「雙邊投資擔保機構」提供保險保障，必須具備以下條件：它是「雙邊投資擔保機構」成員國的國民；以及，它為了要在發展中國家進行投資而尋求保險保障。

Hochtief一案的仲裁庭裁定，政治保險是投資者為其自身利益而作出的其中一項安排，而投資者須為該項安排支付代價。審理Hochtief一案的仲裁庭裁定，目前並沒有任何國際法規定當事人必須作出如此的安排，以減輕違約的東道國所須承擔的法律責任。

仲裁庭就Hochtief一案的法律責任所作的裁決，是就某一方對政治風險保險提出異議而作出的其中一項較為罕見的投資裁決。然而，在這情況下，「多邊投資擔保機構」將會介入其中。在這情況下，「多邊投資擔保機構」會根據其與該投資者所訂立的擔保協議，以強勢貨幣向該投資者作出支付，作為給予它的賠償。

就此而言，大多數的投資法律師都認為，許多協定皆載有投資和回報方面的轉移規定。例如，香港與澳大利亞之間所訂立的《雙邊投資協定》的第8條訂明，「就投資而言，任何棉約方必須保證，其他棉約方的投資者皆有權將其投資及回報轉移到別的國家。」事實上，類似的轉移規定亦見於現行每一份《雙邊投資協定》中。該等投資協定的條文通常會規定：投資者在轉移其資金以前，必須獲准將該資金兌換成外幣。倘若投資者因東道國的行為所蒙受的損失，而無須該投資者先行提起任何仲裁或強制執行程序。

徵收

「雙邊投資擔保機構」便於外國政府的徵收行動提供了廣泛的保障，當中包含從國有化到「漸進式」徵收這範圍內的幾乎每一個項目。同樣地，「雙邊投資擔保機構」也並不要求外在它作出賠償之前，必須首先存在任何須向投資者作出賠償的裁決。

倘若被徵收的資金屬於股權投資，那麼「多邊投資擔保機構」給予已投保的投資者的賠償金額，將會按已投保的投資項目之帳面淨值來計算。倘若被徵收的資金屬於投資者的資金，那麼「多邊投資擔保機構」將會按被攔阻匯出的資金的已投保部份作出賠償。倘若所涉及的是貸款和貸款擔保，「雙邊投資擔保機構」便於償還債務後，再被投資者強制執行有關裁決。

從投資者的角度而言，如果它們因外國政府的徵收行動，而須就其所蒙受的損失尋求賠償，那麼它們當會認為，與透過投資仲裁尋求賠償比較，尋求「多邊投資擔保機構」的保障所得到的另一個好處，是免於與東道國對簿公堂，在庭上進行激烈(而且經常是公開的)爭辯，從而得以維持雙方的友好關係。

戰爭、恐怖主義和內亂

「多邊投資擔保機構」便於外國政府的徵收行動提供了廣泛的保障，當中包含從國有化到「漸進式」徵收這範圍內的幾乎每一個項目。同樣地，「雙邊投資擔保機構」也並不要求外在它作出賠償之前，必須首先存在任何須向投資者作出賠償的裁決。倘若被徵收的資金屬於股權投資，那麼「多邊投資擔保機構」給予已投保的投資者的賠償金額，將會按已投保的投資項目之帳面淨值來計算。倘若被徵收的資金屬於投資者的資金，那麼「多邊投資擔保機構」將會按被攔阻匯出的資金的已投保部份作出賠償。倘若所涉及的是貸款和貸款擔保，「雙邊投資擔保機構」便於償還債務後，再被投資者強制執行有關裁決。

從投資者的角度而言，如果它們因外國政府的徵收行動，而須就其所蒙受的損失尋求賠償，那麼它們當會認為，與透過投資仲裁尋求賠償比較，尋求「多邊投資擔保機構」的保障所得到的另一個好處，是免於與東道國對簿公堂，在庭上進行激烈(而且經常是公開的)爭辯，從而得以維持雙方的友好關係。
障。假使投資者遭受有形資產方面的損失，「多邊投資擔保機構」將會就該等受損或喪失的資產的重置費用或維修費用（視乎哪一項費用的所涉金額較少），又或是就該等資產的帳面價值（如果沒有進行任何重置或維修），按該名投資者在當中所佔的份額作出賠償。倘若出現全面性的業務中斷，而當中涉及的是股權投資，那麼「多邊投資擔保機構」將會根據已投保的投資項目之帳面淨值來向投資者作出賠償。倘若當中涉及的是貸款，該機構將會根據所拖欠的本金金額和利息的已投保部分作出賠償。

同樣地，投資者從「多邊投資擔保機構」所獲取的政治風險保障，亦是對被投資損失的對衝工具。在尋求該機構作出賠償時，無須提供任何裁定其在有關協定下勝訴的判決證明。

不履行財務義務

「多邊投資擔保機構」所提供的，與不履行財務義務有關的保險，其所保護的銀行保險所獲得的額外好處是，它們在尋求該機構作出賠償時，無須提供任何裁定其在有關協定下勝訴的判決證明。

違約

「多邊投資擔保機構」所提供的違約保險，是為被保險人所設立的另一項重要保險。投資者必須先行向訂有爭議解決機制的投資項目作出初步的法律程序，然後向「多邊投資擔保機構」提出賠償申請。投資者必須證明該等投資項目已 точно在斟酌期內作出違約，並且投資者必須提供充分的證明，以証明該項違約的真實性。

由政府支持的或私人經營的保險公司

除了由「多邊投資擔保機構」所提供的保險險，已投保的投資項目所遭受的損失，亦可以向其他私人保險公司尋求賠償。政府支持的保險公司，例如「中國信保」，亦可以為投資者提供額外的保障。除了「中國信保」外，亦有一些私人保險公司，例如「亞洲基礎設施投資銀行」（簡稱AIIB）和「世界銀行」，亦可以為投資者提供額外的保障。此外，投資者亦可以向其他私人保險公司尋求額外的保障，例如「亞洲基礎設施投資銀行」（簡稱AIIB）和「世界銀行」。

政治風險保險與投資仲裁的相互作用

政治風險保險是一項有效的風險對沖工具，特別是當投資者在脆弱的經濟環境和發展中國家進行投資，並遇到當地政府的不適當干預的情況下。投資者亦可以向有關政府提出仲裁，並尋求賠償。公眾保險公司（例如「多邊投資擔保機構」）所設立的另一項功能，就是當爭議雙方之間的衝突還未發展到無可挽回的地步，以及在相關投資協定下的爭議還未完全明朗化以前，先行與當地政府解決有關爭議。

倘若投資者無法獲得政治風險保險所提供的保障，又沒有其他途徑可供邀請，根據相關投資協定進行仲裁，不亞於投資者進行政府仲裁，仍不失為一項最有效的追討投資損失工具。如前述投資協定的仲裁庭遵循Hochtief v Argentina一案的裁決，它們將不亞於在政治風險保險為一項對賠償額構成影響的安排。又或是將其視為對投資者所提出之申索予以接納的任何障礙。

政治風險保險與投資仲裁，應當被視為兩個相輔相成的手段，而它們的存在，將有助於投資者的信心，以積極態度向發展中國家投資。
INDUSTRY INSIGHTS

ARBITRATION

Revision of the HKIAC 2013 Administered Arbitration Rules

Founded in 1985, the Hong Kong International Arbitration Centre ("HKIAC") was established by businesspeople and professionals in an effort to meet the growing need for dispute resolution services in Asia. During its 30-year history, the HKIAC has experienced tremendous success and emerged as the leading dispute resolution organisation in Asia and one of the leading arbitration institutions globally. According to the Queen Mary, University of London 2015 International Arbitration Survey, HKIAC is the third most preferred and used arbitral institution worldwide and the most favoured arbitral institution outside of Europe.

HKIAC prides itself on always being at the forefront of innovative arbitration practice, which has been recognised, for instance, by the Global Arbitration Review’s innovation award of 2014. An important milestone was the adoption of the current version of HKIAC’s Administered Arbitration Rules, which came into force on 1 November 2013 (the “2013 Rules”). The 2013 Rules made important contributions to the development of best practices in international arbitration by introducing unprecedented provisions on multi-party and multi-contract arbitrations (including joinder, consolidation and single arbitration under multiple contracts). The 2013 Rules have been well-received by users and are widely recognised as one of the market-leading sets of arbitration rules.

Revision of the 2013 Rules

The HKIAC has recently appointed a Rules Revision Committee (the “Committee”). Considering that the number of arbitrations brought under the Administered Arbitration Rules has grown significantly since 2013, and the 2013 Rules have been working well in practice, the Committee does not contemplate a wholesale revision. However, drawing upon HKIAC’s experience in implementing the 2013 Rules for almost four years, and to ensure that the HKIAC remains at the forefront of arbitration developments globally, the Committee nevertheless considers that certain amendments would further strengthen the Rules.

Major Proposed Amendments

Major amendments proposed by the Committee at this stage include:

- Online Document Repository;
- Multilingual Procedures;
- New Grounds for Joinder;
- Expanded provisions for single arbitration under multiple contracts;
- Concurrent Proceedings; and
- Third Party Funding.

Among the proposed changes, the new set of default procedures on the conduct of arbitral proceedings in two or more languages are particularly worth highlighting. Considering that arbitrations in Hong Kong frequently are bilingual (English and Chinese), the new proposed procedures will greatly facilitate the conduct of such bilingual proceedings. If adopted, the HKIAC would be the first institution in the world to adopt procedures for multilingual arbitrations.

The new proposed provisions on disclosure of third party funding (“TPF”) and revised confidentiality provisions to allow disclosure of information to a third party funder are also noteworthy. The Committee is also considering whether an express provision should be added to the Rules to allow the arbitral tribunal to award costs of third party funding as part of costs of arbitration. The provisions on TPF are introduced against the background of the TPF amendments to the Arbitration Ordinance (Cap. 609), which were adopted on 14 June 2017.

Consultation Process

A public consultation process on the proposed amendments was launched on 29 August 2017, and practitioners will be invited to weigh in on the proposed amendments throughout the amendment process. Members of the Law Society are encouraged to make use of this opportunity to contribute.

- Nils Eliasson, Partner, Shearman & Sterling
仲裁
修訂2013年香港國際仲裁中心機構仲裁規則

香港國際仲裁中心（「HKIAC」）於1985年由香港商界人士及專業人員創立，目的是滿足亞太地區解決爭議服務日益增長的需求。經過30年耕耘，HKIAC碩果纍纍，冒起成為亞洲區首屈一指的爭議解決機構，全球領先的仲裁機構之一。根據Queen Mary University of London的2015年國際仲裁調查（2015 International Arbitration Survey），HKIAC在全球最喜愛及最常用仲裁機構之列，排名第三，在歐洲以外地區，更是最受歡迎的仲裁機構。

HKIAC感到自豪的是自己總是站在最前方，推動創新的仲裁實踐，並且屢獲表揚，例如2014年獲GAR頒授創新獎。HKIAC現行的機構仲裁規則在2013年11月1日生效（「2013年規則」），是HKIAC發展上的一個重要里程碑。2013年規則首次引入針對多方當事人、多方合同仲裁的新規定（包括追加當事人、合併仲裁、多份合同下啟動單個仲裁等），為國際仲裁發展最佳實踐作出了重要貢獻。2013年規則一直贏得使用者的好評，獲普遍認可為領先仲裁實踐發展的規則之一。

修訂2013年規則

HKIAC最近成立了規則修訂委員會（「委員會」）。考慮到自2013年起，在《機構仲裁規則》下提起的仲裁案件數量顯著增加，2013年規則在實際運用中也得到良好的反響，因此委員會不擬全面修訂2013年規則。但是，在汲取了HKIAC實施2013年規則近四年的經驗後，並且為了確保HKIAC保持在全球仲裁發展的最前方，委員會認為進行部分修訂能夠進一步強化規則。

主要修訂建議

委員會現階段建議的主要修訂包括以下七項：

- 線上檔案儲存系統；
- 替代性爭議解決方式（如“仲裁—調解—仲裁”）；
- 多語言程序；
- 追加當事人的新情形；
- 擴大多份合同單個仲裁的適用範圍；
- 同步程序；及
- 第三方資助。

在眾多修訂建議之中，新引入的一套使用兩種或兩種以上仲裁語言的默認程序特別值得一提。考慮到在香港仲裁通常會以雙語（中文和英文）進行，新建議的程序將大大便利這類雙語仲裁程序。如果這項建議獲採納，HKIAC會是全球第一家採納多語言仲裁程序的機構。

同樣值得留意的是，新建議有關披露第三方資助的條款，以及修訂保密條款以允許當事人向第三方資助人披露信息。委員會亦正在考慮是否應該在規則加入條款明確允許仲裁庭判給有關第三方資助的費用，以作為仲裁費用的一部分。第三方資助的條款是以《仲裁條例》（第609章）對第三方資助問題的修訂為背景，該條修訂於2017年6月14日獲採納。

諮詢過程

就修訂建議向公眾徵詢意見的程序已於2017年8月29日展開，HKIAC會在整個修訂過程邀請從業人員就修訂建議發表意見。律師會會員不妨趁機抒發己見。

- Nils Eliasson合夥人，謝爾曼·思特靈律師事務所

CIVIL JUSTICE REFORM

Furthering the “Underlying Objectives” and the “Golden Rule”

One aspect of reciprocity is to treat others as you would hope they would treat you. Sometimes known as the “Golden Rule”, the principle of reciprocity has been quoted in (for example) some ancient texts and in certain rules governing international relations. While “reciprocity” is not specifically mentioned in the wording of the "underlying objectives" of the Rules of the High Court, adopted in April 2009, it is arguably there in spirit.

Since April 2009, the courts in Hong Kong have from time to time handed down judgments reminding parties and their legal representatives of their duty to assist the courts in the furtherance of the underlying objectives of the civil court rules.

More recently, Law Society of Hong Kong Circular 17–772(PA), dated 18 September 2017 (“Underlying objectives of Order 1A, RHIC”), drew members’ attention to two recent cases in which the courts have again reminded court users of their obligation to observe the underlying...
objectives; Asgain Co Ltd v Cheng Ka Yan, HCMP 1019/2017, 31 August 2017 (a judgment of the Court of Appeal) and Glory Sky Finance Ltd v Chen & Anor, HCMP 2482/2014, 29 August 2017 (a decision of the Registrar of the High Court).

The first case concerned the parties’ apparent failure to agree a short extension of time, in circumstances that the Court of Appeal considered were unjustified. The second case concerned (among other things) a party’s submission of a court order for sealing despite a request by the other party’s legal representatives that the order should not be perfected pending a review by the court.

“Cost effectiveness”, “reasonable proportion”, “procedural economy” and “fairness” (among other principles) are mentioned in the underlying objectives of the court rules. These principles have statutory force and disobedience can attract sanctions. While “reciprocity” is not expressly mentioned it too sometimes merits consideration.

While endeavouring to obtain the best results for clients, practitioners are ultimately officers of the court and have a duty to assist the courts in furthering the underlying objectives of the court rules.

- Warren Ganesh and David Kwok, RPC

CIVIL PROCEDURE

“Doctors’ Notes”

Rather than appealing a judgment of the High Court of Hong Kong, a party can apply to have it set aside pursuant to the Rules of the High Court O. 35, r. 2 (“Judgment, etc., given in absence of party”). This (not so well-known provision) applies in exceptional circumstances. In practice, such circumstances are likely to be a party’s serious illness and the court exercises a discretion in deciding whether to set aside a judgment.

So it was in the second instalment of Karla Otto Ltd v Bayram & Anor, HCA 821/2011, 18 May 2017. The background to the case is set out in an Industry Insights in April 2017 (“Tainted Love”).

Readers may recall that the defendants comprehensively lost at trial and were found liable to repay the plaintiff a substantial sum of money. The first defendant’s late attempt to adjourn the trial was unsuccessful. Apparently, the first defendant (writing from an address stated to be in London) had been ill in the run-up to the trial and unable to travel to Hong Kong. The first defendant had faxed to the court a brief doctor’s note (the doctor being based in Berlin) stating that he was unable to travel due to “acute illness”. At trial, the doctor’s note appears to have had little evidential value and the trial proceeded in the defendants’ absence.

Dissatisfied with this, the defendants made a late application to set aside the judgment on the basis that the first defendant’s absence was because of illness. The first defendant had faxed to the court a brief doctor’s note (the doctor being based in Berlin) stating that he was unable to travel due to “acute illness”. At trial, the doctor’s note appears to have had little evidential value and the trial proceeded in the defendants’ absence.

Disappointed with this, the defendants made a late application to set aside the judgment on the basis that the first defendant’s absence was because of illness. This time a second doctor’s note was produced suggesting a “flu” diagnosis. Applying a principled based discretion to the facts, the second judge dismissed the defendants’ application. In short, the second judge appears to have shared the trial judge’s scepticism about the value of the doctor’s notes in the circumstances.

“Doctors’ Notes” can come in a variety of shapes and sizes. It is one thing to
produce a doctor’s note to justify (for example) a day off work, college or school. However, a medical certificate produced to a court, tribunal or regulator usually requires more detail.

A practical lesson to be drawn is that when seeking to adjourn a trial in Hong Kong, on the basis of an individual’s serious illness, a court expects to see an authentic and timely medical certificate that gives adequate details of the illness. Such details are more convincing if they include confirmation (where appropriate) that, based on a physical examination, an individual is unfit to travel overseas not just for the first day of trial but the whole trial. The party seeking an adjournment should in other respects be ready for trial.

Concerns about the confidentiality of an individual’s health should (in part) be eased by the knowledge that doctors’ notes contain “personal data”. Therefore, those to whom such notes are sent in Hong Kong should hold them in accordance with applicable personal data principles; including, subject to limited exceptions, Personal Data (Privacy) Ordinance (Cap. 486) Data Protection Principle 2 (accuracy and duration of retention of personal data), Principle 3 (use of personal data) and Principle 4 (security of personal data).

-Warren Ganesh, Senior Consultant, RPC

Editorial Note: Also see Industry Insights, October 2013 (“Video Testimony and ‘doctors’ notes’”).

EMPLOYMENT
Amendment to Employment Contract Void Due to Lack of Consideration

In Wu Kit Man v Dragonway Group Holdings Limited, HCLA15/2016, the Court of First Instance (“Court”) held that an addendum amending an employee’s contract of employment by requiring the employer to pay the employee a bonus of HK$350,000, was void as the addendum was only beneficial to the employee and

民事訴訟程序

「醫生紙」

訴訟一方如果不服香港高等法院的判決，可以依據《高等法院規則》第35號命令第2條規則（「在一方缺席的情況下作出判決等可予作廢」）申請將判決作廢，而不是提出上訴。這條（不太多人知曉的）規則適用於例外情況，實踐中，例外的情況相當可能是一方病重，法庭行使酌情權決定是否將判決作廢。

Karla Otto Ltd v Bayram & Anor(HCA 821/2011, 2017年5月18日)第二部分就是這樣了。案件背景記述於2017年4月《業界透視》（‘腐朽的愛’）。

讀者也許記得，兩名被告人經審訊後全面敗訴，被裁定須向原告人償還巨款。第一被告人很遲才申請押後審訊，結果失敗。很明顯，第一被告人(信件顯示發信地址是倫敦)在臨近審訊時一直生病，因此無法到香港。第一被告人傳真給法庭一張內容簡單的醫生紙(醫生在柏林駐診)，指他「病重」，不能外遊。審訊時，醫生紙的證據價值似乎是微不足道，審訊在兩名被告人缺席的情況下進行。

兩名被告人不服判決但很遲才申請將判決作廢，而申請理由是第一被告人因為生病缺席審訊，這次呈示的是另一張醫生紙，內容是第一被告人被確診患上「流感」。第二名法官運用以原則為基礎的酌情權決定事實。簡言之，第二名法官似乎與原審法官同樣懷疑第二被告人的醫生紙在當時情況的價值。

「醫生紙」的樣式不一而足。用醫生紙向（譬如說)公司或學校告假是另一回事。呈交法庭、審裁處、監管機構的醫生證明書通常需要包含更詳細的資料。

有人會擔心個人健康資料受保密的程度，這個擔心應該（部分）可以因為知道醫生紙包含「個人資料」而消除。因此，在香港，如果有人向你提交醫生紙，你應當按照適用的個人資料原則處理：除非有例外情況：《個人資料(私隱)條例》(第486章)保障資料原則第2原則(個人資料的準確性及保留期間)、第3原則(個人資料的使用)、第4原則(個人資料的保安)。

- 莊偉倫資深顧問，RPC

編者按：請亦參閱2013年10月《業界透視》（以視像系統作供及「醫生的筆記」）。
the employee had not provided sufficient consideration for the addendum to be binding.

**Background & Decision**

Wu Kit Man (“Wu”) was hired by Dragonway Group Holdings Limited (“Dragonway’) in May 2015 to assist with preparing Dragonway for listing on the Hong Kong Stock Exchange. In October 2015, the parties signed an addendum stating that:

“*If the Company or its holding company ceased the listing plan or you leave the Company for whatever reason before 31 December 2016, a cash bonus of HK$350,000 will be offered to you within 10 days after the cessation or termination and in any event no later than 31 December 2016.*”

Wu left Dragonway on 21 December 2015 and had successfully argued at the Labour Tribunal that the addendum was valid and binding and she was entitled to the cash bonus of HK$350,000. Dragonway appealed on three grounds. First, it argued that the Labour Tribunal had failed to consider the underlined part of the bonus clause which required the bonus to be paid “in any event no later than 31 December 2016” and therefore Wu’s claim had been submitted prematurely. In rejecting this ground, the Court found that it was clear the phrase “in any event no later than 31 December 2016” was intended to ensure that even if Wu left less than 10 days before 31 December 2016, she would still receive her bonus no later than 31 December 2016. The relevant time limit for the bonus was 10 days, not 31 December 2016.

Second, Dragonway argued that Wu had not disclosed her previous criminal record before accepting Dragonway’s offer of employment, and due to this misrepresentation, her employment contract and the addendum were void. In rejecting this ground, the Court reiterated that under common law, employees are under no obligation to disclose a criminal record.

Third, Dragonway argued that the addendum lacked consideration and therefore was not a valid contract. In accepting this ground, the Court stated that if any amendment to a contract only benefits one party, the amendment would be invalid due to lack of consideration. The Court held that the addendum which granted Wu the right to receive the bonus did not require Wu to fulfil any further conditions to receive the bonus. Rather, it only required her to continue to carry out her existing role which was to assist with preparing Dragonway for listing. On that basis, the addendum lacked consideration and was invalid, and Wu was ordered to repay the cash bonus of HK$350,000.

**Take-Away Points**

To avoid any dispute over consideration, any amendments to an employment contract should be executed as a deed, as a deed does not need consideration to be binding on the parties.

Employers are often concerned with ensuring they are providing appropriate consideration to the employee so that a contract is valid. This case is a good reminder to employers to be equally aware of whether the contract benefits the employer as well as the employee (eg, is the employee taking on more responsibilities, etc.). If in doubt, use a deed as explained above.

Finally, if you want to ensure prospective employees disclose any criminal records, you must ask the employee directly, as there is no common law duty to disclose such records. Alternatively, you can include disclosure of any criminal record as a condition in the employment contract.

- Rowan McKenzie, Partner, and Susan Kendall, Partner, Baker McKenzie, Hong Kong

*The authors would also like to recognise the contributions of Natasha Hall, Professional Support Lawyer, Baker McKenzie, Hong Kong.*
「這個條款很清晰，目的是確保即使胡女士在2016年12月31日不足十日前離職，她仍然會不遲於2016年12月31日收到特別酬金。特別酬金的有關時限是十日，不是2016年12月31日。」

第二、龍威集團辯稱胡女士接受龍威集團的聘用要約之前，並無披露自己有刑事紀錄案底，而由於她失實陳述，她的僱傭合約及修訂文件無效。原訟庭拒絕接納這個理由時重申，在普通法下，僱員沒有責任披露定罪紀錄。

第三、龍威集團辯稱修訂文件缺乏代價支持，因此不是有效的合約。原訟庭接納這個理由時說明，如任何合約修訂只對其中一方構成利益，則該修訂將因缺乏代價支持而無法成為有效的合約。原訟庭裁定，授予胡女士收取特別酬金權利的修訂文件，並不要求她要履行任何其他條件才收到特別酬金。相反，它只要求她繼續履行現有職能，那就是，協助龍威集團籌備上市。在這個基礎上，修訂文件因為缺乏代價支持而無效，胡女士被命令償還現金分紅350,000港元。

樑主通常在意於一件事，就是確保自己有向僱員提供足夠的代價，使合約因而有效。這宗案件有效地提醒僱主，要知道合約是否對僱員有利之外，同樣要知道它是否對僱主有利（例如僱員承擔更大責任）。如有疑問，依循上文的解釋，用契據立約。

最後，如果你要確保僱員披露曾有的刑事紀錄案底，就必須直接向僱員查問，因為在普通法下，僱員沒有責任披露定罪紀錄。要不然，你可以在僱傭合約訂明聘用條件包括任何刑事紀錄案底的披露。

為免出現任何關於代價的爭議，修訂僱傭合約應該以契據方式進行，因為契據不需要有代價支持才對雙方具有約束力。僱主通常在意於一件事，就是確保自己有向僱員提供足夠的代價，使合約因而有效。這宗案件有效地提醒僱主，要知道合約是否對僱員有利之外，同樣要知道它是否對僱主有利（例如僱員承擔更大責任）。如有疑問，依循上文的解釋，用契據立約。

市場反應

**Market Reaction**

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

“Establishment of this integrated platform is an important step in the PBOC’s continuing efforts to more closely supervise the operations of non-bank payment institutions. Basic standards applicable to these institutions were put in place in 2010, through the promulgation of the 2010 Measures for the Administration of Payment Institutions from Direct Connection Mode to Network Platform Processing. The notice requires third-party non-bank payment institutions such as Alipay and Tenpay to settle online client payment transactions through a centralised network platform, that is, the Non-bank Payment Institution Network Payment Settlement Platform, from 30 June 2018. The new platform is operated by the Network Connection Settlement Company Limited, a company established in 2017 by the PBOC (as the largest stakeholder) and other 44 entities and associations including Alipay, Tenpay and UnionPay.

The move follows recent attempts to limit financial risks in the growing online payment sector by curbing the issuance of new payment business licences for non-bank payment institutions and limiting their ability to use client funds to finance their own investments.

The notice also requires all banks and non-bank payment institutions to access the network platform and prepare to migrate their payment settlement activities to the platform by 15 October 2017.

**市場反應**

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

“統一平台的建立是中國人民銀行在繼續努力更密切監督非銀行支付機構運營的一個重要步驟。這些機構適用的基本標準已在2010年通過《支付機構網絡支付業務管理辦法》制定。這項新規定要求第三方非銀行支付機構（如阿裡寶和騰訊支付）從2018年6月30日起，通過中央網絡平臺解決網上客戶交易。新的平臺由網聯清算有限公司運營，公司由中國人民銀行（作為最大股東）和其他44個機構和協會組成，包括阿裡寶、騰訊支付和統一支付。

這項措施遵循了最近限制金融風險的努力，旨在遏制網上支付產業的不斷擴張。最近的措施包括限制非銀行支付機構發放新的業務執照以及限制他們使用客戶資金來支持自己投資的資金。

這項規定還要求所有銀行和非銀行支付機構接入網絡平臺並準備將其支付結算活動遷移到平台，並在2017年10月15日前完成。”
Services of Non-Banking Institutions. We anticipate that the PBOC enforcement will be strengthened through the supervision of this new platform.”

Action Items
General Counsel for banks and non-bank payment institutions will want to closely study the notice and work together with business partners to comply with the migration initiative. Counsel need to be aware that the period for migrating payment functions to the new platform begins 15 October 2017 and all payments must be settled through the platform from 30 June 2018.

- Practical Law China

法律顧問備忘錄

央行要求非銀行支付機構通過新平台結算網絡交易

2017年8月4日，中國人民銀行（「央行」）支付結算司發布《關於將非銀行支付機構網絡支付業務由直連模式遷移至網絡平台處理的通知》。”

該通知要求，從2018年6月30日起，支付寶和財付通等第三方非銀行支付機構通過新平台結算網絡交易。新平台由網聯清算有限公司營運，該公司由央行(最大持份者)及其他包括支付寶、財付通、銀聯在內的44家實體於2017年成立。

市場回應

美富律師事務所北京及上海代表處合夥人麥保羅

「央行不斷努力加緊監督非銀行支付機構的運作，設立綜合平台是完善監督機構運作的重要一步。通過2010年制定的《非金融機構支付服務管理辦法》，適用於這些機構的基本準則早已在同一年設定。我們預期央行能夠通過這個新平台的監督工作，加強執行規定。」

後話

銀行及非銀行支付機構的法律顧問，會想細讀該通知，並與業務夥伴一起遵從遷移倡議。法律顧問需要知道，遷移支付功能到新平臺的期限由2017年10月15日開始，2018年6月30日起，所有支付必須通過平臺結算。

- Practical Law China

GC AGENDA

SPC, MOJ and CBRC Jointly Clarify Enforceability of Notarised Debt Instruments

On 13 July 2017, the Supreme People’s Court (“SPC”), Ministry of Justice (“MOJ”) and China Banking Regulatory Commission (“CBRC”) jointly issued the Notice on Fully Utilising the Enforceability of Notarial Certificates for Banking Financial Claims Risk Prevention and Control.

Under Chinese law, a Chinese notary is entitled to certify a debt instrument to accord compulsory enforceability to the document under the following conditions:

• The debt instrument contains a right to payment of money, goods or valuable securities.
• The rights and liabilities are clear, and the creditors and debtors have no doubt about the payment obligation in the debt instrument.
• The debt instrument makes it clear that the debtor is willing to accept enforcement in accordance with law when the debtor fails to perform or properly perform its obligations.

A creditor to a notarised debt instrument of this type can apply to a competent people’s court for direct enforcement, after obtaining an execution certificate from the notary but without the need to pursue litigation before enforcement.

To enhance the efficiency and lower the cost of realising non-performing bank loans, the notice clarifies the circumstances when a notary can certify a debt instrument, the obligations of notaries and banks (that is, the creditors that seek to directly enforce debt instruments) in certifying and enforcing notarised debt instruments, and the scope and legal effect of enforceable notarised debt instruments.

Under the notice, the scope of bank debt instruments eligible to apply for this enforceability notarisation is:

• Various types of financing contracts, including various types of credit contracts, loan contracts, bills of acceptance and other types of paper financing contracts, financial leasing contracts, factoring contracts, open letters of credit and credit card financing contracts (including credit card contracts and various instalments contracts).
• Debt restructuring arrangements, repayment contracts, repayment commitments, and so on.
• All kinds of security agreements and guarantees.
• Other debt instruments that also meet the statutory conditions for enforceability notarisation.

Market Reaction

Shirley Wang, Partner, Zhong Lun Law Firm, Beijing

“The notice expands the scope of enforceability of notarial certificates to protect financial creditors’ rights. In addition, the notice provides a clearer
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legal basis for the people’s courts to enforce relevant notarial certificates, and to improve the efficiency of realising the claims of financial creditors, while reducing costs.”

Action Items

General Counsel for banks operating in China should become fully aware of the added protections afforded under the notice, as well as the obligations imposed on banks in relation to their efforts to directly enforce notarised debt instruments. Likewise, counsel for companies who are parties to any bank debt instrument should study the notice and be fully aware of the direct enforceability of a notarised instrument.

- Practical Law China

法律顧問備忘錄

最高院、司法部、中國銀監會
聯合闡明公證債權文書的強制執行效力

2017年7月13日，最高人民法院（「最高院」）、司法部、中國銀行業監督管理委員會（「中國銀監會」）聯合發布《關於充分發揮公證書的強制執行效力服務銀行融資債權風險防控的通知》。

根據中國法律，中國公證機構有權證明具有以下條件的債權文書，賦予強制執行效力：

- 債權文書具有給付貨幣、物品或有價證券的內容。
- 債權債務關係明確，債權人和債務人對債權文書有關給付內容無疑義。
- 債權文書中載明債務人不履行義務或不完全履行義務時，債務人願意接受依法強制執行的承諾。

這一類公證債權文書的債權人，從公證機構取得執行證書之後，如無需要在強制執行之前進行訴訟，可向具管轄權的人民法院申請直接強制執行。

為了提高效率，降低不履行銀行貸款的變現成本，該通知闡明公證機構可以證明債權文書的真實性，公告機構及銀行(即銀行直接強制執行債權文書的債權人)證明及強制執行公證債權文書時的義務，以及可強制執行公證債權文書的範圍及法律效力。

根據該通知，合資格向公證機構申請是項強制執行效力的銀行債權文書：

- 各類融資合約，包括各類授信合同、借款合同、委託貸款合同、信託貸款合同等各類貸款合同，票據承兌合同，融資租賃合同，保理合同，開立信用證合同，信用卡融資合同(包括信用卡合約及各類分期付款合同)等。
- 債務重組合同、還款合同、還款承諾等。
- 各類擔保合同、保函。
- 符合公證機構賦予強制執行效力的法定條件的其他債權文書。

市場回應

中倫律師事務所北京辦公室合夥人王湘紅
「該通知擴大公證書強制執行效力以保障金融債權人權利的範圍。另外，該通知給人民法院更為明確的法律基礎，有利強制執行相關的公證書，並且提升實現金融債權人權利要求的效率，同時降低成本。」

後話

在中國營運業務的銀行的法律顧問，應該越來越深入了解該通知所能增加的保障，以及所向銀行施加關於銀行直接強制執行公證債權文書工作的義務。同樣地，公司如果銀行債權文書的一方，其法律顧問應當細讀該通知的內容，清楚了解公證文書的直接強制執行效力。

- Practical Law China

PROFESSION

Inadvertent Disclosure: “Experience Counts”

The Hong Kong Solicitors’ Guide to Professional Conduct, Chapter 8.03, Commentary 6:

“Where it is obvious to a solicitor that documents have been mistakenly disclosed to him on discovery or otherwise he must immediately cease to read the documents, inform the other side and return the documents without making copies.”

The general principles concerning a legal representative’s obligations on receipt of another party’s privileged documents are rooted in case law and should not be controversial. In this respect, Hong Kong case law applies English case law. Therefore, the recent decision of the English Court of Appeal in Atlantisrealm Ltd v Intelligent Land Investments (Renewable Energy) Ltd [2017] EWCA Civ 1029, should be of interest.

In brief, during the course of litigation between the parties, the defendant’s solicitors mistakenly included a privileged email among several thousands of documents disclosed to the plaintiff’s...
solicitors. It appears that the junior solicitor handling the disclosure exercise at the plaintiff firm was genuinely unaware of the defendant solicitors’ error. However, his more experienced colleague did appear to spot that the privileged email had been inadvertently disclosed by the defendant’s solicitors. On appeal an issue arose as to whether it should have been obvious that the email was inadvertently disclosed when the junior solicitor had not realised the defendant solicitors’ error but his more experienced colleague had. In this “two solicitors situation”, could it be said that the person inspecting the document had appreciated the other side’s error? There appeared to be a dearth of authority on point.

Unsurprisingly, the English Court of Appeal found that the privileged email had been disclosed as a result of an error that should have been obvious to the plaintiff’s solicitors. The email was the only privileged document disclosed out of hundreds that had been excluded. Furthermore, a couple of months after inspection of the defendant’s documents and after discussing the email between themselves, the plaintiff’s solicitors had raised the issue of the email in correspondence with the defendant’s solicitors. The more senior solicitor’s experience was a relevant factor.

Of particular interest are the closing paragraphs of the Court of Appeal’s judgment. The judgment acknowledges that mistakes on disclosure or discovery happen, even with electronic processes, and puts an emphasis on co-operation between the parties’ lawyers when privileged documents are inadvertently disclosed as a result of an obvious error. The judgment also reminds lawyers in any common law jurisdiction of their duty to act honestly whether giving disclosure of documents or inspecting documents. The judgment is highly persuasive in Hong Kong, given the same underlying principles on discovery. The trend of cases in Hong Kong has been to assist parties where they have inadvertently disclosed privileged material and where interlocutory relief is appropriate in the circumstances (for example, see: Industry Insights, “Inadvertent Disclosure of Privileged Documents and ESP”, August 2015; and Charles Hollander QC on “Documentary Evidence in Hong Kong”, para. 23–007).

The possibility of inadvertent disclosure is also provided for in Practice Direction SL1.2 (“Pilot Scheme for E-Discovery”); in particular, the desirability of having protocols for the “clawback” of any inadvertently disclosed material.

- David Smyth, Partner, RPC

專業導論
在無意中披露：「計入考慮經驗的深淺」

《香港事務律師專業操守指引》第8.03章評析6：
「假如在文件透露程序中或其他情況下，事務律師明知對方錯誤地向他披露了某些文件，則他必須立即停止閱讀該些文件、告知對方以及退還該等文件，且不得為該等文件印製副本。」

法律代表在收到對方受保密權保護的文件時會產生某些責任，在案例法之中，關於這些責任的一般原則是根深蒂固的，應該無可爭議。在這方面，香港案例法應用的是英國案例法。因此，我們應當有興趣看看英國上訴法院最近在Atlantisrealm Ltd v Intelligent Land Investments (Renewable Energy) Ltd [2017] EWCA Civ 1029的判決。

簡單地說，控辯雙方進行訴訟期間，被告人的事務律師向原告人的事務律師披露數千份文件時，錯誤地一併披露了一份受保密權保護的電郵（「特權電郵」）。看來，原告人律師行處理披露文件的初級事務律師真的不察覺被告人事務律師犯了錯。然而，他更資深的同事看來的確發現到特權電郵是被告人的事務律師在無意中披露的。

上訴時產生一個爭議點：初級事務律師不知道被告人事務律師犯了錯，但他更資深的同事卻知道，那麼，電郵在無意中被披露一事應該是顯而易見的嗎？在這種“有兩名律師的場合”（two solicitors situation），我們還可以說檢視文件的人意識到另一方犯了錯嗎？這個說法似乎沒有論據可言。

不出所料，英國上訴法院裁定特權電郵是因為一個錯誤而被披露的，而這個錯誤對原告人的事務律師來說，應該是顯而易見的。在數百份不被包括在披露電郵之列的電郵之中，該電郵是唯一被披露的受保密權保護的文件。兩個月之後，原告人的事務律師在檢視完被告人的文件，原告一方也彼此談論過這份電郵之後，在一次與被告人事務律師的通訊中，就該電郵提出了問題。資深事務律師更為豐富的經驗是相關的要素。

上訴法院判決書的結語尤其富有情趣。

法院承認，即使使用電子方式處理文件，也不時會有錯誤披露或透露文件的情況，強調如果受保密權保護的文件在無意中被披露，而錯誤又相當明顯，兩方律師應當合力糾正。法官亦提醒所有普通法管轄區的律師，他們不管是披露文件的，還是檢視文件的，都有責任誠實地行事。由於有相同的文件透露基本原則，這宗案件的判決在香港很具說服力。觀乎香港的案例，一直以來，如果受保密權保護的資料是在無意中被披露的，而批予非正審助助在當其時是恰當的，法庭傾向於宣告兩方提供援助（例如，見2015年8月《業界透視》：「不慎披露特權文件與第六感」，及御用大律師Charles Hollander撰寫的「Documentary Evidence in Hong Kong」第23–007段）。

實務指示SL1.2（「電子文件透露的試驗計劃」）亦有就無意中披露文件的可能情
Court of Appeal Confirms that Trading While Possessing Price Sensitive Information not an Offence if Motivated by Other Reasons

In Securities and Futures Commission v Yu Hau Ying Charles and Wong Nan Marian (CACV154/2016) (the “CA Decision”), the Court of Appeal (“CA”) recently upheld that dealing in securities while withholding or not disclosing price sensitive information (“PSI”) does not constitute insider dealing provided that the dealing was not in any part caused by the PSI.

The Securities and Futures Commission (“SFC”) commenced proceedings against various senior officers of Asia Telemedia Limited (“ATML”) at the Market Misconduct Tribunal (“MMT”) for alleged insider dealing. The MMT held that the trades were not caused by the PSI and upheld the statutory defence in s. 271(3) of the Securities and Futures Ordinance (“SFO”).

The SFC appealed to the CA on the ground, amongst others, that the MMT had erred in applying the defence in s. 271(3). The SFC’s main argument was that the withholding and non-disclosure of the PSI constituted a “use” of the PSI and the statutory defence did not apply. The CA rejected such argument and rejected the subsequent application for leave to appeal to the Court of Final Appeal. This affirmed the decision of the MMT and clarified the scope of the defence in s. 271(3) of the SFO.

Practical Implications
Handling PSI and Disclosure Obligation

Listed companies are obliged to disclose PSI to the public as soon as reasonably practicable after the information has come to their knowledge. Trading in listed securities while possessing PSI may constitute an offence. Section 271(3) provides a statutory defence if that person who traded while possessing PSI proves that the purpose of the trade was not or did not include obtaining a profit or avoiding a loss by using the relevant information. However, the application of this statutory defence is fact-sensitive and limited in scope.

Financial Standing of Business

The SFC Guidelines on Disclosure of Inside Information provides a non-exhaustive list of circumstances where disclosure of PSI is required. These include changes in financial condition (eg, cashflow crisis and filing of winding up petitions). In this case, the relevant PSI included a series of statutory demands received over several years. Although ATML appeared to be managing the statutory demands and there was no risk of the company being wound up, the MMT held that the information constituted PSI because the people accustomed to or those who would deal in ATML’s shares would likely regard the information as price sensitive.

On a final note, the SFC sought to advance a new argument in the appeal, that withholding or non-disclosure constituted a “use” of the PSI for the purpose of dealing. Although this was rejected by the Court, it shows that there will be close scrutiny on whether there is...
“use” of the PSI. The SFC will look at the purpose or motives for withholding the PSI and the consequences. Given that most business objectives are to make a profit or avoid a loss, directors should be extremely cautious when withholding PSI whilst trading as there is a fine line distinguishing between how PSI is used and its purpose.

Actions to Take
If you represent listed companies or their directors, it is essential that you help them review their internal control procedures in respect of the handling of PSI including the following:

• Directors should be familiar with the relevant SFC Guidelines, be aware of what constitutes PSI and seek legal advice if in doubt.
• Upon receipt of a statutory or other demands or a threat for legal proceedings, the board must take the situation seriously and seek legal advice in relation to any disclosure obligations.
• All officers possessing PSI must refrain from dealing in the relevant securities in order to avoid the offence of insider dealing.
• Listed companies should review their internal control procedures to ensure compliance with their disclosure obligations in respect of PSI.
• Listed companies should review their internal flow of information and limit access to potential PSI including adopting a proper system of recordkeeping to retain all communication records which could be important evidence in any legal or regulatory proceedings.
• Legal advice should be sought whenever there is any intention to invoke the statutory defence under s. 271(3) of the SFO.

Cynthia Tang, Partner, and Bryan Ng, Partner, Baker McKenzie

監管

上訴法庭確認只要買賣證券是出於其他理由，掌握股價敏感資料的同時買賣證券不是罪行

在最近的Securities and Futures Commission v Yiu Hoi Ying Charles and Wong Nan Marian (CACV154/2016)(「上訴法庭的判決」)，上訴法庭維持市場失當行為審裁處(「審裁處」)的裁決。審裁處裁定，假如證券買賣怎麼都不是股價敏感資料引致的，隱瞞或不披露該等資料不構成內幕交易。

證券及期貨事務監察委員會(「證監會」)指控亞洲電信媒體有限公司(「亞洲電信」)多名高級人員進行內幕交易，針對他們在審裁處展開法律程序。審裁處裁定，涉案交易不是股價敏感資料引致的，接納《證券及期貨條例》(「《條例》」)第271(3)條的法定免責辯護。

證監會向上訴法庭提出上訴，理由是其中包括審裁處錯誤應用第271(3)條的免責辯護。證監會主要爭論，隱瞞及不披露股價敏感資料構成「利用」該等資料，因此法定免責辯護不適用。上訴法庭不接受這個論點，並拒絕證監會其後提交的上訴至終審法院的許可申請。如此，上訴法庭認為這宗案件涉及「非常特別的事實」(very peculiar facts)。

實際影響

處理股價敏感資料及具有披露責任

上市公司掌握着股價敏感資料的時刻，需要保持警惕，因為事實上，法定免責辯護的適用程度依然有限。雖然各人員成功證明他們沒有利用股價敏感資料賺取利潤或避免損失，但在通常情況下，這是很難證明的。審裁處裁定各人由於「細價股」股價出現炒賣升浪才進行股份交易，認為他們唯一的動機是「把握亞洲電信股價突如其來被炒高的機會」。上訴法庭認為這宗案件涉及「非常特別的事實」(very peculiar facts)。

最後一提，證監會在上訴中試圖提出新理由，指出就買賣上市證券而言，隱瞞或不披露股價敏感資料構成「利用」該等資料。雖然上訴法庭不接受這個理由，但它顯示，是要仔細審視一番是否有人「利用」股價敏感資料。證監會會察看隱瞞股價敏感資料的目的或動機及後果。現時大多數的營商目的都是賺取利潤或避免損失，進行買賣的同時隱瞞披露股價敏感資料的董事，應當萬分謹慎，因為對於股價敏感資料來說，怎麼利用和利用的目的是有細微差距的。

未雨綢繆

你如果是上市公司或上市公司董事的代...
REGULATORY

What China’s Recent ICO Ban Means for Greater-China-Based Virtual Currency Businesses

In early September, China’s central bank declared that initial coin offerings (“ICOs”) are illegal, sending shockwaves throughout the virtual currency industry. The People’s Bank of China (“PBOC”), along with six other regulatory agencies, called ICOs “essentially a form of unapproved illegal public financing behavior,” and evaluated these transactions as “financial fraud and pyramid schemes.”

Despite the market’s reaction to China’s outright ban (with Bitcoin’s value dropping around 15 percent immediately after the ban), the crackdown is hardly surprising. The Chinese government has always demonstrated mixed feelings towards ICOs and virtual currency, particularly given its tight capital controls on physical currency. Its intolerance seemed to peak when 90 percent of the ICOs are reported as fraudulent, flawed, or get-rich-quick schemes.

The implications of China’s blanket ban can be multifold for Hong Kong and mainland China-based virtual currency businesses, especially for those who have invested in ICOs and the virtual currency exchanges that facilitate the sales. Legal advisors should be fully aware of, and well prepared for, the ramifications.

An immediate issue of concern could be from regulator’s demand to return funds already raised through ICOs to investors. A list of 60 major ICO exchanges that have held ICOs was prepared by the Chinese government for local financial regulatory bodies to inspect and report on. Those exchanges, along with token issuers, will be exposed to heightened scrutiny from regulators on the execution of the government’s instructions. The exchanges may even attract the attention of regulators outside of China, such as those in the US and UK, who have a track record of conducting parallel probes triggered by local government investigations.

In addition, China’s outright ban sets the stage for a global regulatory crackdown on ICOs. The US Securities and Exchange Commission (“SEC”), for instance, said in July that ICO issuers must adhere to federal securities laws, and, just this month, an SEC co-director criticised illicit ICOs, comparing those seeking to improperly leverage the offerings to “roaches”. Singapore, Korea and Japan also laid out new rules this summer, highlighting the risk of money laundering and fraud that investors face when buying into a digital token sale. Notably, the Hong Kong Securities and Futures Commission, in a statement, appears to be following in the footsteps of other regulators by underscoring the need for any digital token sales to adhere to securities laws.

Many things are still unclear about the ban. It is unclear, for example, whether it only applies to Chinese-domiciled organisations, or if it would also include non-China-based ICOs that sell to Chinese investors. While the US SEC could theoretically exercise its long-arm
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Feel free to write in to us with more short contributions on latest industry developments and trends. Simply contact the editor at: cynthia.claytor@thomsonreuters.com

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ADMINISTRATIVE LAW

**Deng Suet Yan v Hong Kong Housing Authority** [2017] HKEC 1416
Court of Appeal
Civil Appeal No. 4 of 2017
Lam V-P, Cheung and Kwan JJA
7 July 2017

**Appeal Panel (Housing) – decision upholding decision of Housing Authority to issue notice to quit – whether breach of Tameside duty to investigate by Appeal Panel (Housing)**

X was a tenant of a public housing unit. The Housing Authority served a notice to quit on X for failure to retain regular and continuous residence in the unit. X’s appeal to the Appeal Panel (Housing) (the “Panel”) was dismissed. The Panel rejected laboratory test reports adduced by X showing that a volatile organic compound in the air and the water in the unit exceeded certain standards as adequate to prove the unit was uninhabitable; and noted that X had decided to live in mainland China. X’s application for judicial review of the Panel’s decision was dismissed for lack of merit. X appealed, on the ground of inter alia a failure to investigate X’s case, in breach of the Tameside duty by the Panel.

**Held,** dismissing the appeal, that:

- The Panel had asked the right questions and considered the relevant evidence. On a proper analysis, it was more a matter of the Wednesbury rationality of the Panel’s assessment of the evidence than its discharge of the Tameside duty. The Panel had no duty under the Housing Ordinance (Cap. 283) to conduct its own inquiry. Its function was simply to hear and decide an appeal under s. 20 thereof. It had no duty to advise a party of his failure to adduce sufficient evidence to support his appeal or to direct him to obtain further evidence; and probably no power to direct investigations by third parties.

- It was reasonably open to the Panel, on the available evidence, to conclude that X’s case on the habitability of the unit was not established. Accordingly, there was no breach of the Tameside duty by the Panel.

其內容表示該單位內的空氣和水份含有具揮發性的有機化合物。委員會亦表示留意到X已決定在內地居住。X不服委員會的裁決，提出司法覆核申請，但以缺乏理據為由而被駁回。X現提出上訴，理由之一為委員會未有對X的案情進行調查，從而違反Tameside一案所訂明的責任。

裁決 — 駁回上訴：

- 委員會已提出正確的問題，亦已考慮相關證據。按恰當分析，所涉問題並不在於委員會有否履行Tameside一案所訂明的責任，而是在於委員會對於證據的評估是否屬於Wednesbury一案所指的合乎常理。委員會並無責任根據《房屋條例》(第283章)自行作出查詢。其責任僅限於審理和裁決根據該條例第20條提出的上訴。委員會沒有責任提醒上訴人未有提交充分證據以支持上訴又或指示該人獲取更多證據，而且大概亦無權指示由第三方進行調查。

- 根據呈堂證據，委員會大可合理地斷定X未能證明其關於單位是否適合居住的案情成立。據此，委員會沒有違反Tameside一案所訂明的責任。
Expert evidence – personal injuries claim – whether, given earlier consent order prohibiting expert evidence on liability, court had jurisdiction to grant leave – whether “sufficient cause” to vary or revoke previous order under O. 38 r. 44 – Rules of the High Court (Cap. 4A, Sub. Leg.)

P sustained personal injuries in a traffic accident and brought an action against D1–2 alleging negligence in carrying out road works on the newly paved road concerned. The Master made a consent order that no expert evidence on liability was to be adduced (the “Consent Order”). Subsequently, the Personal Injuries Judge noticed a clear dispute on the facts and directed the parties to explain why expert evidence on the condition of the relevant road surface was not obtained. In response, P sought leave to adduce expert evidence including that of M, a chartered civil engineer specialising in road works. D objected, arguing that such evidence was unnecessary and in any event, by reason of the Consent Order, the Court did not have jurisdiction to grant the application.

Held, dismissing P’s application, that:

- The expert opinion evidence obtained on the questions posed, such as whether D had followed proper procedures in carrying out the road works, was not required to assist the Court to determine those issues. These were matters of common sense and fact. It was clear that M was unable to say what the condition of the road was at or near the time of the accident on the available objective evidence and the Court would need to determine this issue from the evidence of P and other witnesses.
- However, had the Court acceded to P’s application, it would have ruled in his favour on the jurisdiction point, invoking the power under O. 38, r. 44 of the Rules of the High Court (Cap. 4A, Sub. Leg.), to review an earlier case management decision relating to expert evidence.
- The critical factor, which was fact sensitive, was what constituted “sufficient cause” to revoke or vary the previous order made or direction given under O. 38, r. 44. Here, had M been able to provide an expert opinion on the condition of the road surface at the time of the accident, that would have been admissible and “sufficient cause” for the Court to invoke the rule to vary the Consent Order and to grant leave to the parties to adduce expert evidence on this issue.

仲裁裁決 — 駁回原告人的申請：

- 對於例如被告人曾否依照恰當程序進行道路工程等爭議點，法庭作出裁斷時毋須借助專家意見或證據。此等爭議點均要按照涉案事實運用常理解答。M顯然無法根據所得的客觀證據指出涉案意外發生當時或前後的路面狀況為何，而法庭將要根據原告人和其他證人的證供解答該問題。
- 然而，法庭如要受理原告人的申請，將在司法管轄權問題上作出對原告人有利的裁決，並運用《高等法院規則》(第4章，附屬法例A)第38號命令第44條規則下的權力，覆核早前關於專家證據的案件管理決定。
- 就此而言，具關鍵性(且因個別案情而定)的因素是何等情況構成第38號命令第44條規則所指的「充分因由」，以支持撤銷或更改早前命令或指示。在本案中，假如M條能夠就涉案意外發生時的路面狀況提供專家意見，則該意見將獲接納為證據，亦將構成「充分因由」，以支持法庭引用上述規則更改同意令和准許與訟各方就該項爭議點提出專家證據。

民事證據
Nature of transaction – whether outright sale of interest in premises or in nature of secured bridging loan – characterisation of transaction matter of law not fact – specific performance sought by way of counterclaim on basis transaction was outright sale – as judge held it was not outright sale, specific performance rightly refused – whether transaction void for uncertainty (due to integral buy-back element not yet agreed upon) or in truth loan transaction – first instance judgment on claim for rescission based on misrepresentation affirmed

On their face, the agreements which they signed were for the sale by P of his interest in shop premises to D1. P refused to complete. He sued for rescission and damages. D1 counterclaimed for specific performance. Holding that the transaction was not an outright sale but was instead in the nature of a secured bridging loan and that P had entered into the agreements as a result of misrepresentations, the Judge dismissed the counterclaim and gave judgment for P on the claim, declaring that P was entitled to rescind and had rescinded the agreements. Costs were awarded to P. D1 appealed.

Held, dismissing the appeal, that:

(Per Lam V-P, Cheung JA agreeing)

- Since there was a dispute as to the nature of the transaction, the Court had to – and the Judge was right to – resolve that issue before examining other issues.
- The characterisation of a transaction was ultimately an issue of law. But the resolution might involve some findings of fact. There was scope for actionable representations of opinion presently held in that regard.
- On the evidence, the Judge’s holding that the transaction was not an outright sale should be upheld.
- The Judge was therefore correct to refuse relief on the counterclaim which was put forward on the basis of an outright sale. It did not matter whether the transaction was held to be void for uncertainty (due to the integral buy-back element not yet having been agreed upon) or was held to be in truth a loan transaction.
- None of D1’s additional points was a real obstacle to the Judge’s holding that the true nature of the transaction was that of a secured bridging loan.
- The Judge was right to dismiss the counterclaim.
- On the evidence, the Judge’s decision on misrepresentation, which was implicit in the Judge’s judgment, and affirm the Judge’s conclusion on that basis.

(Per Godfrey Lam J)

- It was unnecessary to decide whether the transaction should be characterised in law as a sale coupled with an option to repurchase or as a loan secured by a mortgage. Whatever the correct legal classification of the transaction, it was plainly very different from a sale and purchase simpliciter.
- The main ground advanced on the appeal was that the Judge had misunderstood P’s case and had given judgment for him on a false premise. That ground was to be rejected. But if necessary, the Court of Appeal could make express findings on P’s case on misrepresentation, which was implicit in the Judge’s judgment, and affirm the Judge’s conclusion on that basis.

(Per Lam V-P, Cheung JA and Godfrey Lam J agreeing)

- The submissions made on D1’s behalf in the appeal on costs failed to have regard to the position on costs adopted by the parties before the Judge, namely that costs should follow the event.

合同法


原告人與第一被告人簽署兩份合約，從合約表面上看，原告人是要把自己在商舖物業的權益售予第一被告人。原告人拒絕完成交易。他提出起訴，要求撤銷合約並申索損害賠償。第一被告人藉反申索要求強制履行合約。原審法官裁定，涉案交易不是賣斷交易，性質上倒是有抵押的過渡貸款，原告人是因為被告人在失實陳述下訂立合約的，因此駁回反申索，判原告人申索勝訴，宣告原告人有權撤銷且已經撤銷
合約。原告人獲判給訟費。第一被告人上訴。

裁判 — 駁回上訴：
（上訴法庭副庭長林文瀚、上訴法庭法官張澤祐贊同）
• 由於兩方爭議交易的性質，法庭審查其他爭議之前，必須解決這項爭議——原審法官做法正確。
• 交易的特性描述終歸是法律的問題。不過，解決問題可能涉及一些事實裁斷。目前這方面可進行訴訟的意見陳述是適用空間的。
• 原審法官裁定涉案交易不是賣斷交易，根據證據，這個裁決應予以維持。
• 因此，原審法官拒絕就反申索（基於是賣斷交易而提出的）批予濟助是正確的。交易是因為不確定性（由於不可或缺的回購元素尚未議定）而被裁定無效還是被裁定的確是貸款交易並不重要。
• 原審法官裁定交易性質上確實是有抵押的過渡貸款。第一被告人的附加論點實際上並不阻礙原審法官作出裁決。
• 原審法官駁回反申索是正確的。
• 失實陳述是原審法官判原告人申索勝訴的基礎，根據證據，原審法官關於失實陳述的判決應予以維持。
• 沒有理據支持原審法官關於估值的裁斷。

（原訟法庭法官林雲浩的意見）
• 無必要決定交易應否在法律上被描述為可選擇回購的銷售，或者有按揭抵押的貸款。不論交易在法律上究竟屬於哪種類別，交易明顯與一般的買賣大有分別。
• 上訴時提出的主要理由是，原審法官誤解原告人的案情，基於一個假的前提判原告人勝訴，該理由不能接納。不過如有需要，上訴法庭可以以失實陳述為基礎，明確地就原告人的案情作出裁斷——這個裁斷隱含在原審法官的判決之中，在那個基礎上維持原審法官的結論。

（上訴法庭副庭長林文瀚、上訴法庭法官張澤祐、原訟法庭法官林雲浩贊同）

COURTS & JUDICIAL SYSTEM

Ng Cho Chu Judy v Chan Wing Hung [2017] HKEC 1633
Court of Appeal
Civil Appeal No. 139 of 2016
Kwan, Barma and McWalters JJA
28 July 2017

District Court – jurisdiction – jurisdiction under s. 36 to hear application for declaratory relief as to beneficial ownership of real property – s. 36 to be liberally construed as jurisdiction-conferring provision empowering District Court to hear “pure” title cases – District Court Ordinance (Cap. 336)

In an action against D in the District Court, P sought summary judgment and declaratory relief that, pursuant to a deed of trust in respect of a property registered in the sole name of D, P was a beneficial joint tenant of the property. D challenged the jurisdiction of the Court to hear the case. The Deputy Judge held that, on a liberal interpretation, the Court had jurisdiction over a “pure” title case, as here, since s. 36 of the District Court Ordinance (Cap. 336) (the “DCO”) was a jurisdiction-conferring provision (see [2016] 1 HKLRD 1073). Section 36 provides that “The Court has jurisdiction to hear and determine any action which would otherwise be within the jurisdiction of the Court and in which the title to an interest in land was disputed if the monetary limit of the rateable value of the land was not exceeded. In 2000, s. 32(1) of the DCO, which confers jurisdiction in cases founded on contract and tort, was amended by removing the proviso that “… the Court shall not, except as is provided in this Ordinance or by any other enactment, have jurisdiction to hear and determine – … b) any action in which the title to any hereditament is in question.” D appealed, arguing that none of the provisions in the DCO, in particular, s. 36, conferred jurisdiction on the District Court to hear the application.

Held, dismissing the appeal, that:
• The words in s. 36 “which would otherwise be within the jurisdiction of the Court and” should be construed in the context and history of s. 32(1). Before s. 32(1) was amended, those words in s. 36 made it clear that there was an exception by way of the proviso in s. 32(1), and s. 36 conferred jurisdiction on the District Court to hear and determine an action in which the title to any hereditament arose which was within the monetary limit.
Thus, on a liberal interpretation, s. 36 was a jurisdiction-conferring provision which reflected the legislative intent that the District Court have jurisdiction to hear and determine “pure” title cases within the relevant monetary limit. The legislature could not have intended, in removing the proviso in s. 32(1), to change s. 36 to a non-jurisdiction-conferring provision. Although some violence was done to the wording of s. 36 by a liberal construction, this was justified to give effect to the legislative intent that “pure” title cases should not be treated any differently from other land cases.

P had established a prima facie case and since, on the evidence, D’s case was not believable, P was entitled to summary judgment.

CRIMINAL EVIDENCE

HKSAR v Yau Chung Man
[2017] HKEC 1826
Court of Appeal
Criminal Appeal No. 411 of 2015
Lunn V-P, McWalters JA and Zervos J
24 August 2017

Hearsay – admissibility – directions to the jury

Customs Officers intercepted a parcel arriving in Hong Kong finding that it contained 1.07 kg of cocaine. A name, address and telephone number was written on paper affixed to the parcel. A Customs Officer telephoned the number on the paper posing as a staff member of the delivery company, and talked to a female (“L”) who identified herself as the named recipient on the paper. The Officer later testified at trial that L had said in the telephone conversation “…actually this parcel belongs to Mr. Yau ….” and requested that Mr. Yau collect the parcel instead. The Officer later received a call from the Defendant to discuss the arrangements for the parcel pick-up. The Defendant identified himself to be a friend of L and had authorised him to collect the parcel. After complying with the Officer’s requirement to produce authorisation documents signed by L, the Defendant met with the Officer, took delivery of the parcel and was then arrested.

During trial, no objection was taken by defence counsel to the admissibility of what the Officer said L had told him. In
In her summing up, the Judge described in detail the Officer’s testimony including the Officer’s evidence that L had said that the parcel belonged to the Defendant. The Judge directed the jury they should be careful with this evidence and left it open to the jury to treat L’s assertion (that the parcel belonged to the Defendant) as true.

**Held**, allowing the appeal and ordering a retrial.

- The Court of Appeal reiterated the long-standing common law rule against hearsay evidence. The evidence of the testimony of an Officer in relation to L’s statement, was essentially second-hand and out-of-court, could not be tested and should not have been admitted in proving the defendant’s knowledge about the content of the parcel.

- L’s statement that the parcel belonged to the defendant went to the critical issue of the defendant’s knowledge of the content of the parcel were dangerous drugs, if the statement was accepted. Hence, consideration as to the purpose for which the evidence was being adduced was important.

- It was insufficient for the Judge to leave it open for the jury to accept the evidence as a fact that the parcel belonged to the defendant and to use it to prove the defendant’s knowledge of dangerous drugs in the parcel. The Judge should instead have specifically directed the jury not to use it to prove its truth. The Judge also failed to correct the prosecution counsel’s invitation to the jury to treat the hearsay statements of L as evidence of truth of the facts asserted by her. Notwithstanding neither prosecution nor defence counsel objected to the admissibility of the statements of L, the failure to properly address how to treat the evidence of L amounted to a material misdirection.

This case was prepared by Morley Chow Seto.
Insider dealing – whether s. 213(2)(b) engaged – whether consent order to be made under s. 213(2)(b) restoring counterparties to pre-transaction position and/or compensating counterparties – reservations expressed about how s. 213(2)(b) operated, including exact nature of sums to be paid to counterparty – Securities and Futures Ordinance (Cap. 571)

The Market Misconduct Tribunal (“MMT”) found D had engaged in insider dealing contrary to s. 270(1)(e) of the Securities and Futures Ordinance (Cap. 571) (the “SFO”). The Securities and Futures Commission (the “SFC”) and D sought by consent inter alia an ancillary order for payments by D to counterparties to the share trades in question to restore all counterparties to their pre-transaction positions and/or compensate them under s. 213(2)(b) of the SFO. The SFC argued that: (a) provided the consent order sought fell within s. 213, the Court should approve it regardless of whether or not it was considered appropriate; and (b) under s. 213(2)(b), in order to calculate the amount to be paid by way of restitution the Court should assume the counterparty had retained the shares and could have sold them when the share price rose.

Held, granting the order sought by consent, that:

• Before making an order under s. 213(2)(b) of the SFO, the court must be satisfied that a person had contravened any of s. 213(1)(a)(i) to (v), including where there was no dispute that there had been such contravention. The application should comply with Practice Direction 3.5 (Applications in Writing in the Companies Court). The parties must adduce supporting evidence in the most easily and efficiently assessed form possible. In practice, this would comprise a set of agreed facts identifying those parts of the appended report in which such facts had been found by the MMT to be proved. The defendant would file a short affidavit confirming he or she agreed the agreed facts.

• Here, a contravention of the relevant provisions of the SFO had been established and s. 213(2)(b) was engaged. However, the Court harboured reservations as to how s. 213(2)(b) operated and whether an order that D pay a counterparty who sold her shares the difference between the sale price and a valuation of the shares at the market price once the inside information became known, was a windfall to the seller rather than restitution as s. 213(2)(b) envisaged. If it applied as submitted by the SFC, the sum D had to pay seemed to fall into a separate category. Notwithstanding, the Court did not have the benefit of full argument on this issue and given the parties’ agreement and that the order sought was one that the Court could make, such order would accordingly be made.
最大的方式提交法庭。在實踐中，這包含一套經議定的事實再附加報告，由這套經議定的事實指出報告之中審裁處斷定該等事實有待證明的部分。被告人會提交簡單誓章，確認他或她同意經議定的事實。

案中已經確立有人違反了《條例》中相關條文，因此第213(2)(b)條適用。然而，法庭對施行第213(2)(b)的方法有保留，而裁定被告人向已售給她股份的對手方付款，金額相等於股份售價與股份估值（按內幕消息傳出時的市價計算）的差額，這筆付款對於賣方是否一筆意外之財，而不是復還到第213(2)(b)條所預期狀況的所需款額。如果該條文是按照證監會所指的方式應用，被告人必須支付的款額似乎屬於不同的類別。話雖如此，深入爭論這個問題對法庭沒有好處，由於雙方已有協定，並且所尋求的命令是法庭可以作出的，法庭會照著雙方的意思，作出所尋求的命令。

TRUSTS

Primecredit Ltd v Yeung Chun Pang
Barry [2017] HKEC 1533
Court of Appeal
Civil Appeal No. 246 of 2016
Lam V-P, Cheung and Kwan JJA
21 July 2017

Constructive trust – common intention constructive trust – family home – not uncommon in context of Hong Kong Chinese family for parents to acquire property in name of child and yet retain control and beneficial ownership during their lifetime

H and W had five children. The youngest, S, was their only son. Their first flat was in W’s sole name. When it came to buying a second family flat (the “Property”), W’s evidence in an affirmation was that, as the first flat was in her name, she was not eligible for a Home Ownership Scheme and so the application was made in H and S’s name and there was a common intention “among the family” that the Property would only pass to S, as the only male descendant, when she and H had passed away. The purchase was funded by selling the first flat and taking out a bridging loan. H and W contributed to the mortgage repayments. H and S held the Property as joint tenants. S became the sole legal owner in 2012 upon H’s death. The Property was acquired when both H and W were in their 50s and it was their matrimonial home until H’s passing. W continued to reside there. Upon H’s passing, P then sought to enforce a charging order against S, in relation to an unrelated loan taken out by S, seeking vacant possession of the Property and an order for sale. At first instance W’s claim that she was a beneficial owner of the Property was rejected, finding inter alia that W’s evidence on common intention was nebulous. W appealed.

Held, allowing the appeal as W was a beneficial owner, that:

Resulting trust

(Per Kwan JA, Lam V-P and Cheung JA agreeing) A resulting trust had been made out. This case concerned a couple in their 50s with limited financial resources, who had spent a substantial part of their resources on the purchase of the Property as their matrimonial home, W being aged 51 at the time of the purchase could look forward to a number of years ahead, while S was only 21 at the time, had not completed his studies, nor was he married. Even allowing for the Chinese traditional thinking of leaving real property to the male descendant, this would likely happen on the demise of the parents, it would not be so likely for an immediate gift to be made to S in these circumstances.

Common intention constructive trust

(Per Cheung JA, Lam V-P agreeing) The beneficial interest of W could also be asserted under the second limb of common intention constructive trust (objective inference from conduct of parties). Even where there was no express agreement between W and S, the intention of W at the time of acquisition, namely that she intended the Property to pass to S as the only male descendant after she and H had passed away, must be a relevant factor. The proper inference to be drawn was that W was the beneficial owner of the Property during her lifetime. There was nothing incredible or inherently improbable about such an intention particularly in the context of a Hong Kong Chinese family where it was not uncommon that parents acquired a property in the name of their children and yet retained control and beneficial ownership of the property during their lifetimes. More importantly, there was W’s financial contribution.
For full summaries and judgments, please refer to Westlaw and Hong Kong Law Reports & Digest at www.westlaw.com.hk.

Primecredit Ltd v Yeung Chun Pang
Barry [2017] HKEC 1533

上訴法庭
民事上訴案件2016年第246號
上訴法庭副庭長林文瀚
上訴法庭法官張澤祐
上訴法庭法官關淑馨
2017年7月21日

法律構定信託 — 基於雙方共同意向而產生的法律構定信託 — 家庭居所 — 香港華人家庭以子女名義購買物業而父母在生之時仍然保留控制權和實益擁有權的，不是不尋常的事

H和W有五名子女，S排行最小，是家中獨子。他倆第一個居住單位是單以W個人名義購買的。W在誓章供詞指出，當他們要購買第二個居住單位（“該物業”）時，因為第一個居住單位是以她的名義購買，她不符合居者有其屋申請資格，所以以H和S的名義申請購屋單位，而全家(among the family)的共同意向是，當她和H去世之後，該物業只會傳給S，因為他是家中唯一子嗣。買款是靠出售第一個居住單位及樓換樓過渡貸款籌集得來的。H和W一同供款償還按揭款項。H與S以聯權共有形式持有該物業。2012年H去世後，S成為唯一合法擁有人。該物業是H和W在50多歲時購買的，H去世之前，一直是二人的婚姻居所。W繼續住在那裡。H去世後，P就S取得的某筆與本案無關的貸款，尋求對S強制執行押記令，發出原訴傳票要求該物業的空置管理權及出售令。初審時，W聲稱自己是該物業的實益擁有人，原審法官不接受，斷定(其中包括)W關於共同意向的證供含糊不清。W上訴。

裁決 — 上訴得直，W是實益擁有人：

歸復信託

(上訴法庭法官張澤祐、上訴法庭副庭長林文瀚贊同) W的實益權益亦可根據雙方有共同意向而產生的法律構定信託的第二種情況(從雙方行為作客觀推斷)主張。即使W和S沒有明確協議，W在購買該物業時的意向，即是她打算該物業是在自己和H去世後傳給唯一子嗣S，一定是相關的因素。恰當的推斷是，W在生之時是該物業的實益擁有人。這個計算並不叫人感到難以置信或者認為本身並不可能，特別是在香港華人家庭中，父母以子女名義購買物業而在生之時仍然保留物業的控制權及實益擁有權，不是不尋常的事。更重要的是，W有份出錢購買該物業。

(上訴法庭副庭長林文瀚、上訴法庭法官張澤祐贊同) W基於法律構定信託而擁有實益權益。現代處理法律構定信託的方法是按情況全面評定雙方的共同意向。在家事範圍內，特別是關於婚姻居所的事情，法庭評定共同意向時，不會因為一方完全直接出錢買樓而受到限制。在華人社會裡，特別是老一輩的華人，甚少有與家人清楚討論產權的，法庭必須多加考慮情況不同，問題有別。

(上訴法庭法官關淑馨不贊同) 原審法官有權認為，證明三方在共同意向方面達成協議或共識的證據，含糊不清，不尋常的事。
Richard Bates’ inspired takedown of the use of the “and/or” construct when drafting legal documents in last month’s issue of Hong Kong Lawyer prompted me to submit a short column of my own, detailing the manifold ways I’ve seen lawyers in this jurisdiction shoot themselves in the foot, repeatedly, in the course of drafting legal documents.

What follows is a distilled list of drafting tips based on many years of editing the work product of junior associates in this city. Read, and reflect on your sins.

1. Go wild with archaic language.
Hong Kong trainees tend to emerge from law school with an instinctive command of formal English circa 1907, perhaps because this is the year in which the Law Society was founded. This is the first step on the road to drafting that clients can’t readily understand.

Here are some words to avoid at all costs: “whereas”, “thus”, “hereunto”. If you refer to “the above-captioned matter,” in an email, the email had better include a picture with a caption in it. If you find yourself typing “hereinbefore” (ever), seek professional help. Jin Yong and Charles Dickens got paid by the word. You do not. Use plain English, and your clients will thank you.

2. Use Elegant Variation.
Let me tell you a secret about drafting: it is basically writing computer code that does not get compiled and run until someone has already lost a ton of money (or is about to). You know who doesn’t get points for stylistic elegance? Programmers. Good drafting uses as few words as possible to convey an idea that is accurate and unambiguous. The same concept should always be stated the exact same way. Use a defined term if necessary. Be consistent.

Here are the rules for using a defined term. Do you need to refer back to a concept multiple times? Use a defined term. Does it only show up in one section? Define it in the text. Does it recur across multiple sections? Put it in the defined terms schedule.

There is one true way of recording defined terms: in a schedule, at the back, with all terms defined in the text cross-referenced, just as God intended. If you put them at the front of a contract, people will waste time reading them before reviewing the substantive terms. Every. Single. Time.

5. Misplace Exceptions.
There are two schools of thought on drafting exceptions, one of which is garbage. Smart lawyers state the rule and then list the exceptions. Bitter, angry lawyers fuelled by misery and caffeine state the exception and then the rule. You don’t want to be a bitter, angry lawyer, do you?

6. Use Giant Paragraphs.
Paragraph breaks are your friend. Let’s say you want a rule to apply to three classes of shares. You could write “This rule applies to shares of Class A, Class B and Class C.” Better, you could write: “This rule applies to shares of the following classes:
(a) Class A;
(b) Class B; and
(c) Class C.”

Why is this better? Three reasons. First, it is easier to scan the text and spot whether the class you are concerned with at that specific time is included in
If you are interested in learning how to further improve your contract drafting skills, check out Ken Adams’ fantastic contract drafting blog at www.adamsdrafting.com.

Second, if you need to change the clause, during negotiations for example, it is easy to spot the change.

Third, it is 2017, and you should be starting to think about writing for computers. Getting into the habit of breaking ideas out into discrete paragraphs will result in work product that is easier for an algorithm to parse. In the next few years, this will become highly relevant.

Also, have you ever seen US-style drafting? Google “end of the world clause” and shudder at the Paragraph Without End.

7. Repeat numbers in words and numerals.
This gives you two (2) opportunities to make a mistake every time you include the number.

8. Use commas indiscriminately.
Many years ago, Ken Adams* drew attention to the Canadian regulatory decision CRTC 2006-45 involving Rogers Cable Communications Inc. and Aliant Telecommunications Inc. (also known as the “million dollar comma” case). An agreement was stated to be effective “from the date it is made and shall continue in force for a period of five (5) years from the date it is made, and thereafter for successive five (5) year terms, unless and until terminated by one year prior notice in writing by either party.”

The use of the final comma was interpreted by the Canadian telecoms regulator as creating a right to terminate at any time on one year’s notice. The decision was later overturned after years of litigation because, obviously, the clause wasn’t intended to do that (ultimately, the parties had to turn to the French language version of the model form contract that the contract in question was based on to resolve this).

But while Rogers was able to win this point in the end, the important part of the last paragraph is “after years of litigation”. If your client has to litigate for years before a regulator decides that you meant what you meant then no, sorry, you did not draft a good contract. The orthodox wisdom on this, by the way, is to put the termination right in a second sentence that expressly does not apply to the initial five-year term.

Conclusion
Avoid these eight cardinal drafting sins and you will already be better than approximately 94.3 percent of draftspeople. Go forth, and may the God of Drafting go with you.

* If you are interested in learning how to further improve your contract drafting skills, check out Ken Adams’ fantastic contract drafting blog at www.adamsdrafting.com.
法律草擬的八宗罪

作者 Peter Davies, Asia Legal Tech Correspondent

1. 狂用古老語言

香港的實習律師從法律學院出來，都傾向使用大概1907年的正統英語，或許因為律師會在那一年成立。這是文件令客戶難以理解的第一步。

盡量免用whereas、thus、hereunto等字詞。如果你在電子郵件中寫「the above-captioned matter」，電郵最好包含帶有標題的圖片。如果你發現自己正在打hereinbefore，請尋求專業人士的協助。金庸和狄更斯拿到了稿費，而你沒有。用簡單的英語，客戶會感激你。

2. 風格優雅，變化多端

讓我告訴你關於法律草擬的秘密：它基本上無異於電腦代碼，直至有人花一大筆錢(或即將花一大筆錢)，否則無法編譯和運作。你知道誰不會因為風格優雅受到讚賞？程式設計員。好的草擬者盡可能用最少的文字表達準確無誤的概念。相對的概念應該以模一模的方式說明。如有必要，使用定義術語。貫徹始終。

3. 濫用定義術語

以下是使用定義術語的規則：你需要多次引述同一個概念嗎？使用定義術語。它只在一箇部分出現一次嗎？在文本中定義它。它重複出現在多個部分嗎？把它放在定義術語表。

4. 濫用定義術語(第二部份)

載述定義術語只有一種方式：用表格，在最後，文中所有定義術語互相參照。如果把定義術語表放在合約前面，人們在讀合約條款本身前，就浪費時間讀定義術語，次次如此。

5. 例外情況錯位

草擬例外情況有兩種思路，而其中一種是垃圾。聰明的律師先說出規則，然後列出例外情況。喝得太多咖啡、苦悶而生氣的律師先列出例外情況，然後才說出規則。你不想成為苦悶而生氣的律師，對嗎？

6. 段落過長

分段是你的朋友。假設你想一項規則適用於三類股份，你可以寫「此項規則適用於A類、B類和C類股份」，但這樣寫就更好：「此項規則適用於以下類別的股份：(a) A類；(b) B類；及(c) C類。」

為什麼？三個原因：首先，更便利查看確定在特定時間內某種股份是否受規則涵蓋。事實上，英國金融行為監管局的證據顯示，相比起擠在一段的信息，人類處理數行的信息的能力較佳（見金融行為監管局《Occasional Paper No. 2: Encouraging Consumers to Claim Redress: Evidence from a Field Trial》，2013年4月）。

第二，若要更改條款，例如在談判中，就更容易點出變更。

第三，現在是2017年，應該開始思考電腦寫作，習慣將想法分解成不同的段落，會令作品更容易進行電腦解析。在未來幾年，這點的重要性將大大提高。

另外，有看過美式草擬嗎？在Google搜尋一下「end of the world clause」，那沒完沒了的段落令人不寒而慄。

7. 重覆文字和數字

這樣你每次提及數字時就有兩(2)次機會犯錯。

8. 濫用逗號

許多年前，Ken Adams*關注到加拿大監管機構CRTC 2006-45判決，該案涉及Rogers Cable Communications Inc.及Alant Telecommunications Inc.(也稱為「百萬美元逗號案」)。協議內容為：「from the date it is made and shall continue in force for a period of five (5) years from the date it is made, and thereafter for successive five (5) year terms, unless and until terminated by one year prior notice in writing by either party.」

根據加拿大電信監管機構的詮釋，最後一個逗號表示其中一方有權隨時終止協議，只需提前一年通知。這個決定後來經過多年的訴訟，終於被推翻，因為很明顯這並非條款的原意（最終雙方必須以合約原本的法文版本來解決這個問題）。

儘管Rogers最終能夠勝訴，但上一段的重點是「經過多年的訴訟」。如果你的客戶需要訴訟多年才能令監管機構確定你所指為何，那麼很抱歉，你草擬的合約不夠好。傳統智慧就是在第二句後用句號，明確地表示不適用於最初的五年期限。

結論

避免這八宗罪，你已寫得比約94.3%草擬者好。願草擬之神與你們同在。

* 如有興趣了解如何進一步改善合約草擬技巧，可瀏覽Ken Adams的合約草擬博客www.adamsdrafting.com

www.hk-lawyer.org
KEN ADAMS DRAFTING CLEARER CONTRACTS

13 November 2017, 9am to 5pm - Hong Kong

Asian Legal Business (ALB) is proud to present internationally renowned contracts expert Ken Adams for one day only in Hong Kong. This hands-on seminar explores how to draft contracts that express deal terms clearly and effectively, saving you time and money, enhancing your competitiveness, and mitigating risk. Rather than simply lecturing, Ken uses interactive exercises, encouraging participation and addressing practical considerations related to the drafting process. This seminar is valuable for both junior and senior legal professionals, with tips that apply to all contracts drafted in English, whatever the governing law.

Target audience
- Lawyers
- In-house counsel
- Paralegals and managers in law firms and corporations
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- Why revising your contract process can improve contract language

Special offer: FREE BOOK
Participants will receive a complimentary copy of Ken Adams’s book, A Manual of Style for Contract Drafting. The seminar explores issues addressed in detail in this one-of-a-kind book that has become a valued resource for the legal profession.

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Contact for more details:
Siti Hawamah Binte Abu Bakar
+65 6417 4517
sitihawamah.binteabubakar@thomsonreuters.com

8.30am
Registration

9.00am
- The state of contract drafting
- Costs and causes of deficient drafting
- Goals for the program

9.20am
The Front and Back of the Contract
- Title and introductory clause
- Function and layout of recitals
- Traditional recital of consideration
- Concluding clause
- Role of exhibits and schedules

10.20am
Categories of Contract Language
- Different categories of contract language and their function
- How to distinguish between categories
- Why does it matter?

10.30am
Refreshment Break

10.45am
Categories of Contract Language, cont.

11.45am
Layout
- How to present sections, subsections, and enumerated clauses
- Using Adams’s enumeration scheme
- Issues of typography

12.05am
Using Defined Terms
- Two kinds of definitions
- Role of the definition section
- Using an index of defined terms

12.30pm
Networking Luncheon

1.30pm
Ambiguity and Vagueness
- Different kinds of ambiguity
- How to avoid them
- How to use vagueness

2.10pm
Select Usages
- Problematic words and phrases
- Clearer alternatives

3.00pm
Refreshment Break

3.15pm
Drafting as Writing
- Some general principles of good writing that apply to contract drafting

3.30pm
Bringing It All Together
- Redrafting sample provisions

3.40pm
Effecting Change
- The individual
- The organization

5.00pm
End of event

Ken Adams, Author
As the leading authority on contract language, Ken Adams has successfully coached people around the world in drafting clearer contracts. His groundbreaking book A Manual of Style for Contract Drafting has sold tens of thousands of copies internationally since it was first published by the American Bar Association in 2004. The Legal Writing Institute has announced that Ken is to receive the Golden Pen Award for 2014, “to recognize his exemplary work in contract drafting.” As part of its “Legal Rebels” project, in 2009 the ABA Journal named Ken one of its initial group of fifty leading innovators in the legal profession. And the ABA Journal included Ken’s blog in its 2013, 2012, 2010, and 2009 “Blawg 100”—its list of the hundred best law blogs. Ken is an adjunct professor at Notre Dame Law School. For more information about Ken and his activities, go to www.adamsdrafting.com.
For several years now, law firms have found a benefit to outsourcing specific administrative and operational functions including some IT and finance tasks. Firms are now looking at ways to minimise marketing expenses through outsourcing. Some of these areas include intelligence – competitive, market, client, and industry – and database management, public relations and event management.

Most firms know we are in a mature legal industry. While the past few years have certainly been interesting and challenging, the tipping point has yet to come. Most law firms have focused on carefully managing growth and enhancing overall profitability. Are we there yet? Not exactly, but fortunately there is more that firms can do.

Clients continue to be more demanding and sophisticated. Initiatives geared towards lowering overall legal costs (eg, rate “push back” and consolidation of the number of firms being worked with) are putting extra pressure on incumbent law firms. This pressure is expected to continue for the foreseeable future, and will be particularly prevalent on more commoditised services.

Firm leadership has no choice but to aggressively deal with this reality. One of the best strategies to deploy is a firm-wide client planning strategy. Unless it comes from the top, its sustainability is quickly diminished. Most firms have embarked on this process, but while there are client team initiatives in place, we suggest that client teams need to become a key part of the firm’s overall strategy for driving talent acquisition and retention, revenue generation, succession planning, and new service development.

What would be the impact if your firm’s top client cut their billings to you by 40 percent? What if they were acquired by a company that has a relationship with your top competitor? What if they issued an RFP designed to consolidate the number of firms they work with?

The ability to take advantage of these situations is dependent upon anticipation and planning. We all know that time is money, particularly in a law firm. If lawyers aren’t spending their time billing, there may be a palpable impact on revenue. Enter the new client relationship manager model: the Strategic Account Manager.

Most firms will state that they engage in key client planning, but our research has found that most efforts are token at best, with the primary benefits being an increased awareness of keeping key clients happy, and a focus on the firm’s goals (eg, grow revenue, pitch new opportunities) versus aligning with the client’s goals. Additionally, many client teams are run by partners who have little or no training in managing an account team, and not a lot of time for doing so. Ongoing execution of the plan, something lawyers also historically struggle with, is what makes client planning work. If firm leadership is leading the client retention and planning effort, and part of that strategy is hiring experienced professionals trained at managing clients and growing revenue, then firm leadership is directly impacting firm revenue in a positive way.
What should your client planning strategy look like? Who drives it?

Our research in client-planning best practices – utilised by leading professional services firms and corporations – has made one thing perfectly clear: the most successful approaches include hiring Strategic Account Managers (“SAMs”) who have years of experience driving retention and growth of important clients. While the thought of even having a salesperson in a law firm still makes some shudder, market leaders are now hiring experienced SAMs to manage the relationship aspect of one or more of the firm’s strategic accounts.

Jim Cranston, one of the first business development executives at Pillsbury Winthrop Shaw Pittman LLP, a former strategic account executive from PwC and Andersen, and now a Principal Consultant at LawVision Group, commented on his experience:

“Key client managers/BDMs have proven to be invaluable in solidifying relationships with firm clients. In some cases partners have said that the account manager has made a significant difference in growing the client relationship by:

• representing the firm and coordinating a global relationship;
• meeting and talking to dozens of key executives;
• strategising opportunities; and then
• coordinating the right firm resources at the right time.

It’s an enormous amount of work but adds significant value to the firm’s top clients.”

Here are some suggestions of key focus areas for SAMs:

Treat the client-planning program as a major piece of the firm’s strategic architectural structure. Make sure there is high visibility throughout the firm and broad communication about SAM professionals’ areas of responsibility. Measure the results on a monthly basis. Include a financial analyst (or Chief Financial Officer), Chief Marketing Officer, and Information Resource Director (Library) as part of their planning team. There is no more room in law firms for these various team members to act as silos. The impact each will have on helping SAM leaders retain the firm’s most valuable revenue sources will be critical and obvious as soon as they begin to work with the firm.

Instead of creating a mission to maximise revenue from the client, focus on developing a “trusted advisor” relationship with the client. Reaching trusted advisor status typically means:

• more single-sourced opportunities, less competition (lower cost of sales);
• less emphasis on price (higher margins); and
• long-term commitments (visibility into future revenue streams).

Create a client-planning program playbook that includes:

• a client plan template;
• team structures with defined roles, ownership, and expectations (from both firm and client side);
• communication plans that define when and how internal and external (client) communications will happen; and
• account team governance (rules of engagement).

Realise that unique skill sets are required to develop high-impact client relationships. Sometimes the attorney with the origination credit lacks the skills to grow the relationship. The successful SAMs will be key to optimising lawyer time and potential client opportunities. SAMs’ roles should include building client profiles for the strategic accounts they manage, to include:

• What are the client’s strategies, objectives, and plans, for this year, as well as two and three years out?
Information-gathering must also focus on how the client views the relationship with your firm. Client loyalty surveys are efficient tools for gathering this information. The best person to conduct these surveys is either the SAM or an outside consultant, or a combination with the firm Chair. Armed with feedback from both a survey and meetings to answer the above questions, a SAM professional will build a strong account plan for implementation.

**Will this really work in a law firm?**

Our view is resoundingly “YES!” Other executives now more closely connected to firms with strong client account backgrounds and experience share the same view. For instance, Dean Whiteford, a client development executive with more than 20 years of experience working with professional services firms (including Big 4 firms PwC and Deloitte) in developing and driving key client programmes and teams, adds his perspective about SAMs (aka client development executive; sales executive; etc.)

“The key to systematically developing client relationships and delivering services is the commitment to a well-developed, client-focused strategic plan, and then the focus and persistence to ensure that priorities and goals are met. One of the big challenges for professional services firms in implementing client targeting and growth strategies is time, and the conflicting priorities for partners and their teams. Folks get busy, and certain priorities get dropped, or focus gets unavoidably lost in the mix. This is where a team of professional client account managers play a key and strategic role. Their responsibility is keep the ‘big picture’ in mind, and work to help partners meet time, efficient deployment of resources, and other commitments to keep the focus on developing new relationships with clients, and growing and cross-selling new services.

My experience across my years with PwC and Deloitte has been has been very, very, consistent – if the firm, or practice, makes the necessary commitment to clearly define and articulate the firm’s client development strategy, the firm commits the necessary resources (both partners and key staff, supported by talented key account management professionals), and results follow. Time and again, I have seen spectacular growth results across teams.”

Rick Davis, First Choice Advisory Team at RSM and a former Director of Strategic Accounts at E&Y believes that “client lead or account manager, whatever the title, their role is like a free safety on a football team – they see the whole playing field and have a nose for getting to the ball! The role of an effective account leader, for their team members, is a firm hand in the back and a flashlight out front!”

It will be a big step for law firms to take. When consideration is given to managing some of the most important strategic client accounts a firm has with a salaried, highly-experienced sales professional – whose only responsibility is to retain and grow client “share of wallet” for the firm – most firm leaders will say, “Why didn’t we do this long before now?” Once again, leaders out in front will be wise to hold their lead. It will work; the firm will see the rewards.

大多數律師事務所都知悉，我們現在是處於一個成熟的法律行業期。雖然過去數年的情況令人關注和充滿挑戰，但它的臨界點仍未到來。雖然許多律師事務所過去一直將重點放在增長的謹慎管理，以及利潤的整體提升方面，然而，我們是否已經達成這些目標呢？絕非如此。可幸的是，律師事務所現時仍有許多可以繼續完善的地方。

客戶的要求不斷增加，而且亦越來越難應付。要求降低整體法律費用的提議（例如，要求調整收費率及整合其所聘用的律師事務所數目），給已在市場確立其地位的律師事務所帶來更大壓力。在可以預見的將來，此等壓力會持續增大，特別是在較為商品化的服務方面。

然而，律師事務所的領導層別無選擇，唯有以更積極進取的態度來面對這現實，而其中一項最重要的策略，就是為律師事務所部署整全的客戶規劃策略。這項策略的實行，除非是由上而下，否則它的可持續性會迅速減退。大多數的律師事務所都展開了這項程序。雖然當中提出了有關客戶團隊的主張，但我們認為，客戶團隊必須成為律師事務所整體策略的一個重要組成部分，從而得以尋覓和挽留人才、創造收入、推行接班人計劃及發展新服務。

如果貴律師事務所的最大客戶決定將法律顧問費用削減40%，那將會出現什麼後果？又或是，如果它們被另一間公司收購，而該公司與貴律師事務所的最主要競爭者存在一定關係，後果將會如何？如果它們發出一份需求建議書，目的是為了將其所聘用的律師事務所加以整合，那又如何呢？

我們是否能夠把握和利用此等形勢，視乎我們能否預先作出計算和進行相關規劃。我們都曉得，時間就是金錢，這對律師事務所來說，更是如此。律師倘若不能有效地将其時間運用在賺取服務收費方面，這將會對律師事務所的收入造成重大影響，而現在就是機會建立一個客戶關係管理的新模式，名為：專案客戶經理。

貴律師事務所的客戶規劃策略應當如何？它由誰來負責推動？

根據我們在客戶規劃最佳實務方面所作的研究（其獲主要的專業服務公司和機構所使用），很清晰的一點是：最成功的處理方法，包括聘請在維繫重要客戶和推動客戶增長方面，具有多年經驗的專案客戶經理。一些律師事務所會對其機構內有推銷員這一崗位而感到不以為然，但事實上，市場領導者現時都在聘請富經驗的專案客戶經理，來負責管理一家或多間律師事務所的專案客戶關係。

Jim Cranston是Pillsbury Winthrop Shaw Pittman LLP的第一批業務發展行政人員中的一員，以及羅兵咸和安達信會計師事務所的前任專案客戶行政人員，而他現時是LawVision Group的首席顧問。他就其過往的經驗作出如下評論：

「專業客戶經理在鞏固律師事務所的客戶關係方面起十分重要的作用。」

多數律師事務所都表示，它們已進行了主要的客戶規劃工作，但我們的研究顯示，這些律師事務所採取的行動，大多數都只是像徵性的，而當中的主要利益，是加強留意如何令客戶對所提供的服務感到滿意，以及關注律師事務所的目標（例如：如何令收入增長、尋找新的機遇等），而不是尋求與客戶的目標一致。此外，許多客戶團隊都是由律師事務所的合夥人來領導，而這些合夥人在管理客戶團隊方面經驗不足，他們也沒有將太多時間投入於這方面。事實上，我們必須持之以恆地推動客戶規劃工作（律師對於這方面的工作，傳統上都是有所抗拒），才能使它逐漸見到成效。律師事務所的領導層倘若能帶領大家，朝向客戶的維繫和規劃等方面的工作，而他們的師事務所的領導層，便可說是將其律師事務所領往一個令收入增長的正確方向。
在適當的時間，協調適當的律師事務所資源。雖然他們的工作量十分龐大，但卻能夠為律師事務所的最大客戶增添重大的價值。以下對專案客戶經理所關注的主要範疇的一些提議：

將客戶規劃方案，視作律師事務所的策略性總體結構的其中一個重要部分，並需要每個月量度其結果。當中需要加入財務分析師(或首席財務總監)、首席營銷總監、和信息資源總監(圖書館)，以作為其規劃團隊的其中部分成員。律師事務所各團隊的成員今後不能再各自為政。只要他們付出努力，每一名成員都能夠協助專案客戶經理的領導層，為律師事務所的最重要收入來源，作出重大而明顯的貢獻。

律師事務所的使命，並非為了要從客戶身上攫取最大利潤，而是應當將重點放在發展和客戶之間的「可信賴顧問」關係上。達至可信賴顧問的地位，意思是指：

• 更多的單一來源機會，較少的競爭(更低的銷售成本)；
• 較少強調價格(更高的利潤率)；及
• 長期承諾(展望未來的收入來源)。

真的可以在律師事務所如此實行嗎？

我們的看法肯定是：「可以！」。其他具有強大顧客帳戶背景和經驗，現時與律師事務所的關係更加密切的行政人員，他們也具有同樣的看法。例如，Dean Whiteford，一位在專業服務公司工作(包括四大會計師事務所中的羅兵咸和德勤會計師事務所)，專門負責發展和推動主要客戶計劃和團隊，並擁有超過20年工作經驗的客戶發展行政人員，也分享了他對專案客戶經理的看法(作為一名客戶發展行政人員、銷售行政人員，等等)。

「要能夠有系統地發展客戶關係和提供相關服務，其關鍵之處，在於致力訂立健全及以客戶為本的策略性計劃，再將焦點集中並持續推行，確保能夠達至所訂下的優先次序和目標。專業服務公司在執行客戶的目標命中和增長策略方面，它的其中一項重大挑戰是時間，以及合夥人與團隊在優先次序方面的衝突。大夥兒都在忙碌地幹，但一些優先次序無法達成，而在混雜的情況中，焦點也無可避免地失去。在這情況下，便需要由專業客戶經理團隊來扮演重要和具策略性的角色。他們的責任是察看大局，協助合夥人達成時間方面的要求，有效地配置各項資源，致力於將重點放在發展與客戶之間的關係上，以及促進和交叉銷售各項新服務。」

我本人在羅兵咸與德勤會計師事務所工作多年，但所經歷到的事情都是十分一致的－如果該事務所或該業務範疇作出了所需的承諾，無論是清潔界定和表達該事務所的客戶發展策略，它們便會提供必要的資源(包括合夥人及主要職員，以及由傑出的客戶管理專業人員來提供支援)，而效果便會很快產生。一次又一次地，我目睹各個團隊都有顯著的業務增長。「

Rick Davis(RSM的首席顧問團隊，以及E&Y的前任策略性客戶總監)認為：「客戶主管或客戶經理(不論其職銜如何)所扮演的角色，都是有如足球隊的守門員－他們觀察整個賽場，並且可以很快地抓住來球！一名優秀的客戶領導者，他在其團隊成員中所扮演的角色，是一方面在背後牢牢地控制著，但同時又指明前方的路向！」

律師事務所需要跨出一大步。在考慮到將一家律師事務所的最重要策略性客戶，交給一名受薪、具有豐富經驗的銷售專業人員來管理時(而他的唯一責任，是為律師事務所保留和增加客戶的「錢包份額」)，許多律師事務所的領導層都會說：「為何我們不一早便開始這樣實行？」再一次地，在這方面遙遙領先的人，他們將會是這場比賽的贏家。這是明智的抉擇，勇於實行的律師事務所，必然會得到應得的回報。

Newly-Admitted Members

EDGAR LYNSEY MARGARET
LATHAM & WATKINS
瑞生國際律師事務所

FORWARD SIU FAN VIOLA
何小帆

GRAVES KATHARINE ANNABEL LUCY

LAM CHING MAN
林正文
TANG, WONG & CHOW
鄭王周廖成利律師行

LAU WAI YIN 劉慧賢

LAU YAN YAN 劉欣欣

NG TAK HEI 伍德晞
LAM KEITH LAU & CHAN
劉林陳律師行

TAN QINGCHENG RYAN
陳慶成

WONG KAR KEI 黃嘉祺
YUEN PETER & ASSOCIATES
阮葆光律師事務所

CHEN HUILING 陳薈凌
DENTONS HONG KONG
德同國際律師事務所

COUPER DAVID GERARD
KIRKLAND & ELLIS
凱易律師事務所

DORRANS PAUL THOMAS

HO SIU HEI 何兆曦
LAM KEITH LAU & CHAN
劉林陳律師行

IP WAI KEE 葉瑋琳
DEPARTMENT OF JUSTICE

LAU CHEUK MUN CHRISTINE 劉卓敏
KWOK YIH & CHAN
郭葉陳律師事務所

LEE CHING SZE 李靜思
LI, WONG, LAM & W.I. CHEUNG
張永賢、李黃律師事務

LEE LAP KEN KENNETH 李立勤

LEE MAN HEI 李文晞

LI JING 李靜
KING & WOOD MALLESONS
金杜律師事務所

NG PING 吳萍

NG WANG KWAN 吳宏坤

QIU CHEN 邱晨
REED SMITH RICHARDS BUTLER
禮德齊伯禮律師行

SUEN OI NING 孫霭寧

TANG HOI YAN 鄧炫炘

YEUNG KAI CHING 楊啟晴

TC & CO.
崔曾律師事務所
**Partnerships and Firms 合夥人及律師行變動**

<table>
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**Changes received as from 1 August 2017**

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• LINNING ALAN HUGH
  joined Mayer Brown JSM as a partner
  as from 22/08/2017.
  李顯能
  自2017年8月22日加入孖士打律師行為合夥人。

• MacGEOCH ANDREW PHILIP BUSHILL
  joined Haley Ho & Partners as a
  partner as from 01/08/2017.
  麥建安
  自2017年8月1日加入凱利何律師事務所為合夥人。

• MO CHUN LING CHARLES
  ceased to be a partner of Winston &
Strawn as from 01/09/2017 and joined
  Luk & Partners as a partner on the
  same day.
  巫振凌
  自2017年9月1日不再出任溫斯頓律師事務所合夥人一職，並於同日加入陸繼鏘律師事務所為合夥人。

• MOK CHI YING JONATHAN
  ceased to be a partner of Mayer Brown
  JSM from 01/09/2017.
  莫子應
  自2017年9月1日不再出任孖士打律師行為合夥人一職。

• MURNING DOUGLAS STUART
  ceased to be a partner of Kirkland &
  Ellis as from 31/08/2017.
  自2017年8月31日不再出任凱易律師事務所合夥人一職。

• PAYNE ANDREW
  ceased to be a partner of DLA Piper
  Hong Kong as from 01/08/2017.
  自2017年8月1日不再出任歐華律師事務所合夥人一職。

• PUN WAI YIN ALISON
  commenced practice as a partner of
  Chiu & Co. as from 17/08/2017.
  潘慧妍
  自2017年8月17日成為新開業趙凱珊律師行合夥人。

• SIU CHUN PONG RAYMOND
  ceased to be a partner of F. Zimmern
  & Co. as from 01/09/2017 and remains
  as a consultant of the firm.
  蕭鎮邦
  自2017年9月1日不再出任施文律師行合夥人一職，而轉任為該行顧問。

• TONG CHOY TING STELLA
  ceased to be a partner of M.C.A. Lai
  Solicitors LLP as from 07/09/2017.
  湯彩廷
  自2017年9月7日不再出任賴文俊(有限法律責任合夥)律師行合夥人一職。

• WARDE CONOR THOMAS
  ceased to be a partner of Clyde & Co.
  as from 01/08/2017 and remains as
  a consultant of the firm. Mr. Warde
  ceased to be a consultant of Clyde & Co.
  as from 08/08/2017 and joined
  Mayer Brown JSM as a partner on the
  same day.
  自2017年8月1日不再出任其禮律師行合夥人一職，而轉任為該行顧問。Warde律師於2017年8月8日不再出任其禮律師行顧問一職，並於同日加入孖士打律師行為合夥人。

• WONG WAI YI
  ceased to be a partner of Ford, Kwan &
  Company as from 30/08/2017.
  黃慧儀
  自2017年8月30日不再出任梁錦濤，關學林律師行合夥人一職。

• WONG YAN MAN WALTER
  commenced practice as a partner of
  YM Lawyers LLP as from 19/08/2017.
  王人文
  自2017年8月19日成為新開業人文律師事務所有限法律責任合夥合夥人。

• YEE FU KEUNG ALLAN
  ceased to be a partner of Norton
  Rose Fulbright Hong Kong as from
  01/09/2017.
  余富強
  自2017年9月1日不再出任諾頓羅氏富布萊特香港合夥人一職。
Thinking Outside the Bachs: A Conversation with Jeffrey Sham, Barrister-at-Law and Conductor of the University of Hong Kong (“HKU”) Law Alumni Choir

Jeffrey Sham, Barrister-at-Law and Choir Conductor, prides himself on his ability to remain composed as an advocate and a maestro, drawing parallels between what is expected of him on and off the stage. In this issue, he speaks with Hong Kong Lawyer about his background in music and how he has leveraged his personal and professional talents to connect with other musical mavens within Hong Kong’s legal community through conducting the HKU Law Alumni Choir.

Mr. Sham was called to the Bar in 2010. He read law at the University of Surrey in England from 2005 to 2008 and completed his Postgraduate Certificate in Laws at the University of Hong Kong in 2009. He specialises in both civil and criminal work, especially in the areas of company law, contractual disputes, personal injury and commercial fraud, and is also a CEDR Accredited Mediator, Fellow of the Hong Kong Institute of Arbitrators and a Member of the Chartered Institute of Arbitrators.

Where did you develop your passion for music?
Throughout my youth, I received classical vocal training from Ms. Yim Wai and Mr. Joe Chan and competed in many music competitions, where I won numerous prizes at the annual Hong Kong Schools Music Festivals both in vocal singing and in instrumental playing.

I also studied choral conducting under Mr. Geoffrey Ko, an expert in oratorio. While at secondary school, I was the student conductor of St. Paul’s Co-educational College, where I gained invaluable experience in both choral and orchestral conducting. This experience really set the stage for me to take up the role as the conductor of the University of Hong Kong Law Alumni Choir and the Hop Yat Church Choir.

In addition to singing and playing the double bass, I also play the violin...
big events always have huge dinners with many distinguished guests and even more distinguished speakers. Ms. Lucy Yen who was the head of the HKU Law Alumni Association at the time, wanted to make a change and not to have just another talk-eat-talk event. The idea to form the HKU Law Alumni Choir was born.

From there, it was really Lucy who took the lead in inviting alumni to join the ad hoc choir to perform at the celebration dinner. At the time, the coordinator for the singers was Ms. Cleresa Wong. Afterwards, since we had such a great time before a jury of our peers (and were not booed offstage!), we decided to make this a permanent thing and to formally establish a real choir.

**How many members do you currently have and how often do you practice?**

It may surprise you, but we actually have some 280 HKU Law alumni and students on the mailing list. About a third of them will be involved in the concert this year. Most will be singing and others will be in the orchestra. Some are extremely versatile and do both, but not at the same time.

We practise once or twice every week leading up to our annual concert every November. We have pretty good attendance when it’s close to the concert, but sometimes I do feel like I’m herding cats!

**What is the general musical background of members who join?**

Many of us received choral training/experience while at secondary school or university and some are still having vocal lessons. Others have had less exposure to formal music in the past and we help them by preparing recordings for their voice part. You can also find almost anything on YouTube!

**How many times does the Choir perform per year? Any big upcoming performances?**

We have one big annual concert in November each year. This year’s concert is on 5 November 2017 at the acoustically brilliant and brilliantly expensive Lee Shau Kee Grand Hall right at our own HKU.

Our theme this year revolves around songs that have won or have been nominated for Academy Awards. There are classics and also recent favourites, like “Skyfall”, which, if you remember, comes from a movie about a business trip. Tickets this year will start selling on
Cityline in early October. I hope you will forgive me for promoting our concert here. However, I hope you will come and support us – sponsorship is tax deductible.

We also have smaller scale family events, guest performances and holiday activities from time to time.

Where is the most memorable place the Choir has performed?

It has got to be Loke Yew Hall in HKU – the oldest and the greatest. Lawyers like to think of themselves as being part of history, and they are right sometimes. However, performing in Loke Yew Hall really surrounds you with that kind of feeling. It’s a special place for all HKU students.

How do you select the music the Choir will perform?

Our choir sings together for fun, not for accolades. So I always try to choose songs which the audience will love to hear, and that will be fun for our members to sing. That being said, I also try to find arrangements which are challenging for all of voice parts – I certainly don’t want our members to sleepwalk through! In the end, it is about balance, since we have a great mix of amateur and professional musicians.

With lawyers being known as a contentious bunch, have there ever been any quibbles over music or soloist selections, or the like?

There is no right of appeal from our subcommittee.

Has or will the Choir try anything new and innovative?

We choose themes each year which can include both well-known and lesser-known tunes. The audience should feel familiar and yet expand their aural horizons. A few years ago, we even tried a mini-opera “Trial by Jury” which was a great success.

Do you collaborate with other musicians?

We usually have an orchestra and band, which is also made up of fellow HKU Law alumni and students. We haven’t collaborated with outside musicians yet, but we will see!

What was the most challenging repertoire the Choir has performed?

We don’t have hard or easy repertoires. We do have a wide variety of songs each year covering different time periods and styles. Some of the modern stuff with irregular rhythms or discordant notes can be pretty challenging though.

If the Choir could open for any artist on tour right now, who would it be?

Right now, we are quite proud that we have kept our identity of HKU Law, so we would probably see where that artist graduated from!

Do you or other members ever get nervous before a performance?

I would never admit to any nervousness because I am the conductor. People expect a certain image or attitude from conductors which is actually similar to what they expect from leading Counsel in Court. I’m sure some of our members do feel nervous sometimes, but there is safety in numbers!

What value do you get from staying in touch with the HKU Alumni network?

You’d be surprised at how different some people are when they are at work or at a networking event, versus when they are at choir. The Choir brings together old friends for impromptu reunions and lets alumni and students across the years make new friendships.

Are there any other interesting tidbits you would like to share about the Choir or its members?

We do have famous (and less famous) lawyer singers, but contrary to the public impression of famous lawyers, to their credit, I can say for sure we do not have any prima donnas! Our members let down their hair, put down their egos, and don exciting and tasteful costumes. Our MC is always known for funny and original jokes and dance moves.

How can one join the Choir?

As long as you are studying or have completed any HKU Law Faculty course, you can join us. Assuming you weren’t drummed out of the programme, of course...

Soloists Ms. Janette Sham, Mr. Jeffrey Sham & Mr. Simon Au.
為大律師和合唱團指揮，沈智輝先生對於自己擔任訟辯人及音樂大師，並在舞台上下作出平衡而能神態自若，感到相當自豪。在這一期月刊，他向香港律師談及關於他在音樂方面的背景，以及他如何利用其個人和專業才能，通過指揮香港大學法律畢業生合唱團和其他香港法律界的其他音樂人士聯繫。

沈先生於2010年獲認許為大律師。他於2005年至2008年在英國薩里大學讀法律，並於2009年完成了香港大學學士後法律證書。他專門從事民事和刑事工作，特別是在公司法、合約糾紛、人身傷害和商業欺詐領域，也是CEDR認證調解員、香港仲裁司學會資深會員和特許仲裁員協會會員。

你在何處發展對音樂的熱情？

在我年青時，我接受了Ms. Yim Wai及Mr. Joe Chan的古典聲樂訓練，並參加了許多音樂比賽，在一年一度的香港學校音樂節上，我贏得很多歌唱和樂器演奏奬項。

我也在清唱劇專家Mr. Geoffrey Ko的指導下學習合唱指揮。在中學期間，我是聖保羅男女中學的學生指揮，我在合唱和管弦樂演奏指揮中獲得了寶貴的經驗。這個經驗真的為我擔任香港大學法律畢業生合唱團及合一堂合唱團的指揮，做了充足準備。

除了演唱和演奏低音提琴，我還演奏小提琴和鋼琴。我以優等成績通過了皇家音樂學院聯合委員會的考試，並因此在演奏、小提琴和鋼琴獲得八級和在低音提琴獲得DipABRSM。幾年來，我也是香港醫學會管弦樂團的主要低音提琴演奏者。
香港大學法律畢業生合唱團何時成立，是誰想到要成立它呢？

一切都從2009年香港大學法律學院40週年紀念開始。你可以猜到，這些類型的大型活動總是與許多貴賓和更多的傑出演講者一起吃飯。當時香港大學法律畢業生會會長Ms. Lucy Yen想作出改變，不要再只是舉行另一次飲食閒聊的活動。於是組建香港大學法律畢業生合唱團的理念誕生了。

就從那裏開始，Lucy率先邀請畢業生加入臨時合唱團，在慶祝晚宴上表演。之後，由於我們在同輩之前作出這麼不錯的表演（並沒有在舞台下發噓聲），所以我們決定讓這成為永久性的事情，正式成立一個真正的合唱團。

你們目前擁有多少名成員及你們多久練習一次？

這可能會讓你感到驚訝，但我們實際上有大約280位香港大學法律畢業生及學生在郵寄名單上。其中約三分之一將參與今年的音樂會。大多數人將會唱歌，而其他人將會在管弦樂團中演出。有些人是非常多才多藝，兩樣都參與，但並非在同一時間。

我們每個星期進行一次或兩次練習，直至我們每年11月的年度音樂會。當我們接近音樂會時，我們有很好的出席率，但有時候我覺得我正在放牧一群頑皮的小貓！

參加的會員的一般音樂背景是怎樣？

我們中的許多人在中學或大學時有接受合唱訓練或經驗，有些還在上聲樂課。其他人過去對正式音樂的接觸程度較低，我們通過準備錄音來幫助他們的聲樂部分。你也可以在YouTube上找到幾乎任何東西！

合唱團每年演出多少次？即將有任何大型演出？

我們每年11月份都會舉行一場大型年度音樂會。今年的音樂會將於二零一七年度十一月五日在香港大學李紹基會議中心大會堂舉行。

我們今年的主題是關於已經獲得或被提名為奧斯卡金像獎的歌曲。有經典的，還有最近受歡迎的，如“Skyfall”。如果你還記得的話，這首是來自關於商務旅行的電影。今年門票將於十月初在Cityline開始銷售。我希望你不介意我在這裡推廣我們的音樂會。請來支持我們－贊助可以扣稅。

合唱團表演最難忘的地方在哪裡？

那一定是香港大學最古老和最偉大的陸佑堂了。律師們喜歡認為自己是歷史的一部分，有時他們是正確的。然而，在陸佑堂的表演，那種感覺真的圍繞著你。這是香港大學所有學生的特殊場所。

你如何選擇合唱團將要演奏的音樂？

我們的合唱團一起唱歌是為了歡樂而不是為了榮譽。所以我總是嘗試選擇聽眾會喜歡聽的歌曲，這樣會讓我們的成員唱得很開心。話雖如此，我也試圖尋找對所有音部分有挑戰性的安排－我當然不希望我們的成員夢遊胡混過去！最後，這是關係平衡，因為我們有一個業餘和專業音樂家的大組合。
律師被稱為愛爭議的一群人，有沒有對音樂或獨奏選擇等進行任何挑剔？
我們的小組委員會沒有給予上訴權。

合唱團是否已經或將會嘗試任何新的創意？
我們每年選擇主題曲可以包括知名和不太出名的曲調。觀眾應該感到熟悉，並擴大他們的聽覺領域。幾年以前，我們甚至嘗試了一個小規模的歌劇“陪審團審判”，結果取得了巨大成功。

你和其他音樂家合作嗎？
我們通常有一個管弦樂團及流行樂隊，也是香港大學法律畢業生及學生組成。我們未有與外界音樂家合作，但我們會視乎情況。

合唱團所表演過的最具挑戰性的曲目是什麼？
我們沒有困難或容易的曲目。我們每年有各種各樣的歌曲涵蓋不同的時期和風格。然而一些具有不規則節奏或不一致音符的現代材料可能是相當具有挑戰性的。

如果合唱團現在可以為任何藝術家開放，那將會是誰？
現在，我們非常自豪我們保留了香港大學法律的名譽，所以我們可能會看那位藝術家是在哪所大學畢業了！

你或其他成員在演出前是否會緊張？
我永遠不會承認任何緊張，因為我是指揮。人們期望指揮會有某種形象或態度，實際上類似於他們在法庭對領導律師的期望。我確信我們的一些成員有時候會感到緊張，但這是很小數而已！

通過與香港大學校友網絡保持聯繫，你獲得什麼價值？
當你看到他們在工作或在人際網絡活動中，與他們在合唱團時表現不同，你會感到驚訝。合唱團是聚集了老朋友的即興團聚，讓多年的校友和學生來建立新的友誼。

有沒有其他有關合唱團或其成員的有趣事情你想分享？
我們有名聲的(及不那麼著名的)律師歌手，但與著名律師給予公眾的印象相反，值得表揚的是，我可以肯定地說，我們沒有任何主角！我們的成員放下頭髮，放下自我，穿上令人興奮和有品味的服飾。我們的司儀總是有趣和原創的笑話及舞蹈動作聞名。

如何參加合唱團？
只要你在學習或完成任何港大法律學院課程，你都可以加入我們。當然，是假設你沒有被趕出該課程...
Upcoming Seminars hosted by the Chinese University of Hong Kong, Faculty of Law

Halloween Lunchtime Seminar
Following last year’s very successful first Halloween lunchtime seminar which was entitled “The Law of the Zombie Apocalypse”, the Dean of the Faculty of Law at the Chinese University of Hong Kong, Professor Christopher Gane, will be presenting another Halloween seminar.

This year’s seminar is entitled, “Witches, Devils and Demonic Possession and the Law,” and will be held at 12.30 pm on Friday 27th October in the Moot court of the Graduate Law Centre, The Chinese University of Hong Kong.

Greater China Legal History Seminar Series 2017/18 and 2018/19
The Chinese University of Hong Kong Faculty is also organising a new series of seminars on Greater China Legal History.

Following on from the very successful series of Friday lunchtime seminars discussing Chinese custom and customary law the Faculty of Law is organising a series of seminars entitled Greater China Legal History. These will be held on Friday lunchtimes, 12.30 – 2 PM, in the Moot Court at the Graduate Law Centre, the Faculty of Law, The Chinese University of Hong Kong, 2/F, Bank of America Tower, 12 Harcourt Road, Central.

13 October 2017: Philip Dykes SC – “Oathgate” and the History of the Law and Official Oaths
24 November 2017: Douglas Clark – “Gunboat Justice”: Extraterritoriality and the Making of Modern China and Japan
12 January 2018: Malcolm Merry – Chinese Land Customs before the Small House Policy
2 February 2018: Steven Gallagher, Lutz Christian Wolff and LIN Siyi – The History of a Mystery: The Development of the Law of Unjust Enrichment in Hong Kong, China and Germany
16 March 2018: Michael Meissner – The Evolution of Compliance as a Risk Management Tool: The HK Perspective
13 April 2018: Geraint Howell – The History of Consumer Law in Hong Kong: Just a Series of Failed Endeavours?

CPD credits are available upon application and subject to accreditation by the Law Society of Hong Kong (currently pending).

All are welcome!
If you would like to attend Mr Dykes’ seminar, please register by 9:00 AM, 13 October 2017. Registration is limited and will be accepted on a first served basis.
If you are unable to register, please contact law@cuhk.edu.hk.
New Student Orientation 2017

CityU Law School organised a series of orientation activities for the new LLB, JD, PCLL, LLM and LLMArbDR students on 29 August. The New Student Orientation aimed to acquaint new students with the campus, give them an overview of academic and university life and introduce them to the University resources, facilities and opportunities.

Prof. Geraint Howells, Dean of the Law School, warmly welcomed the new students at the orientation. In his speech, he advised the students to take advantage of the opportunities that the School provides. To LLB and JD students, he strongly recommended that they take part in independent research, the G-LEAP exchange programme, legal placement programme and international mooting competitions. Legal education is not just about learning to be a lawyer, Professor Howells advised, so students should enjoy their study, keep an open mind, gain international exposure and look out for opportunities. He also hoped that the students could make the most out of their time at CityU and give back to the community after graduation.

Later on, the LLB, JD and PCLL programme directors addressed the students respectively. Prof. Alexander Loke, the LLB Programme Director, asked the new students to think of their value-added as lawyers in an age of advanced search engines like Google. Dr. Mark Kielsgard, the JD Programme Director, encouraged the freshmen to study hard, complete reading assignments before the lectures, attend and participate in the classes and tutorials, prepare coursework and assignments earlier, and ask teachers questions if they do not understand. The PCLL Programme Director Ms. Stella Leung advised the new LLB and JD students to discover what they really like and dislike and find out whether law is their true calling. “Your law degree will not go wasted even if you do not end up going into the PCLL programme and practicing the law. It is a very good degree that opens doors for you and changes your way of thinking,” she said.

After the luncheon, the students were introduced to international mooting and advocacy, the Law library, lawbies.net, professional development and e-learning. Ms. Bonita Chan, the Chairlady of the Alumni Association of CityU School of Law, was invited as a guest speaker to address the students. She advised them to study hard and pay extra attention to core subjects, attend lectures and tutorials, improve language skills in both English and Chinese, get internships during summer vacations, and participate in the activities organised by the Hong Kong Law Society.

The Orientation for LLM and LLMArbDR students was held in the evening. The Dean, Prof. Geraint Howells elaborated on the streams of the LLM programme, the LLM for Chinese Judges programme and our collaboration with the University Paris 1. The LLM Programme Director Dr. Ding Chunyan explained the programme features, curriculum, assessment, resources and facilities. LLM Maritime and Transportation Law Stream and LLMArbDR students met their programme directors afterwards.

Welcome to CityU School of Law! The exciting new journey has now begun.
LEGAL TRIVIA #42

This month, we test readers’ knowledge of the Basic Law. The questions have been prepared by Douglas Clark, Barrister-at-Law. Suggestions for questions to appear in next month’s journal are most welcome.

1. **The Basic Law** was promulgated by a decree signed by which person?
   - A. Deng Xiaoping
   - B. Chris Patten
   - C. Yang Shangkun
   - D. Tung Chee-hwa

2. **True or False**: The English translation of the **Basic Law** is treated as being equally authentic as the Chinese text.
   - A. True
   - B. False

3. Which of the following mainland laws is **not** listed as applying in **Hong Kong** under the Basic Law?
   - A. Nationality Law
   - B. Resolution on the National Day of the People’s Republic of China
   - C. Law on Judicial Immunity from Compulsory Measures concerning the Property of Foreign Central Banks
   - D. Law on National Defence

4. **Who is given authority to issue Hong Kong currency under the Basic Law**?
   - A. HSBC
   - B. Standard Chartered Bank
   - C. Bank of China
   - D. The Government of Hong Kong
   - E. All of the above

5. **What types of foreign ships need central government approval to enter Hong Kong waters?**
   - A. All foreign ships
   - B. Foreign warships
   - C. Ships carrying dangerous goods

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

6. Under the **Basic Law**, the **Chief Executive of Hong Kong** is accountable to whom?
   - A. The Central People’s Government
   - B. The HKSAR
   - C. The people of Hong Kong

7. May a **Chief Executive** serve more than two terms in office?
   - A. Yes
   - B. Yes, provided they are not consecutive
   - C. No

8. Under the **Basic Law**, may members of the Executive Council be foreign nationals?
   - A. Yes
   - B. No
   - C. Up to 20 percent may be foreign nationals

9. Under the **Basic Law**, may judges be recruited from overseas jurisdictions?
   - A. No
   - B. Yes, but they must be Hong Kong permanent residents.
   - C. Yes, provided they are from common law jurisdictions.
   - D. Yes, without any restrictions.

10. Which body has the power to **amend the Basic Law**?
    - A. The National People’s Congress
    - B. The Standing Committee of the NPC
    - C. Hong Kong Legislative Council

**Answers to Legal Trivia Quiz #41**

1. B. *Res ipso loquitor* means “the thing speaks for itself”.
2. C. An accused is required to have committed an *actus reus* and had the *mens rea* (mental state) to do so.
3. A. *Inter alia* means “among other things”.
4. B. *In camera* hearings are held in private.
5. C. *Lex* means *law*.
6. B. *Animus possidendi* is used in adverse possession cases to refer to an intention to possess.
7. C. *Non est factum* means “it is not [my] deed”.
8. B. If a judge suggests an argument is a *tabula in naufragio* (a plank in a shipwreck), it is time to move to a better point.
9. C. *Functus Officio* means that an official no longer has power to deal with a matter.
10. A. *Habeas Corpus* literally means “that you have the body”.

We would like to congratulate Ada Chan, Group Legal Counsel, Shun Hing Electronic Trading Co. Ltd., the winner of our Legal Quiz #41.
法律知識測驗 #42

本月的測驗測試讀者對《基本法》的認識。
問題由馬錦德大律師編製。歡迎建議下期問題。

1. 《基本法》由何人簽署的法令頒佈？
   A. 鄧小平
   B. 彭定康
   C. 杨尚昆
   D. 董建華

2. 是非題：《基本法》的英文譯本被視為與中文本具有同等效力。
   A. 是
   B. 非

3. 根據《基本法》，以下哪些內地法律未列為香港適用法律？
   A. 國籍法
   B. 中華人民共和國國慶日決議
   C. 中華人民共和國外國中央銀行財產司法強制措施豁免法
   D. 國防法

4. 根據《基本法》，誰有權發行香港貨幣？
   A. 滙豐銀行
   B. 渣打銀行
   C. 中國銀行
   D. 香港政府
   E. 以上均是

5. 什麼類型的外國船舶需要中央政府許可才能進入香港水域？
   A. 所有外國船舶
   B. 外國軍用船
   C. 載有危險品的船

6. 根據《基本法》，香港行政長官對誰負責？
   A. 中央人民政府
   B. 香港特別行政區
   C. 香港市民

7. 政治長官可否連任兩屆以上？
   A. 可以
   B. 可以，只要不連續
   C. 不可以

8. 根據《基本法》，行政會議成員可否擁有外國籍？
   A. 可以
   B. 不可
   C. 最多20%的成員可擁有外國籍。

9. 根據《基本法》，法官可以從海外司法管轄區聘用嗎？
   A. 不可
   B. 可以，但他們必須是香港永久性居民。
   C. 可以，只要他們來自普通法司法管轄區。
   D. 可以，無任何限制。

10. 哪個機構有權修改《基本法》？
    A. 全國人民代表大会
    B. 全國人大常委會
    C. 香港立法會

法律知識測驗#41的答案

1. B. Res ipsa loquitur 的意思是 “the thing speaks for itself”（不言而喻）。
2. C. 被告必須犯有actus reus和mens rea(精神狀態)。
3. A. Inter alia意指「其中包括」。
4. B. In camera 聆訊閉門進行。
5. C. Lex指法律。
6. B. Animus possidendi用於逆權侵佔案件,指侵佔的意圖。
7. C. Non est factum指「非(我)訂立的契約」。
8. B. 如法官說你的論據是tabula in naufragio(沉船上的一塊木板)時，你是時候提出較佳的論點了。
9. C. Functus Officio指官員再無權力處理一個問題。
10. A. Habeaus Corpus直譯是「你有身體」。

競賽規則：
讀者如欲贏取一瓶由Global Vintage Wines Centre提供的2007年Ch. La Croizille葡萄酒，請將問題答案寄交cynthia.claytor@thomsonreuters.com。
首位能提供最多正確答案（答錯的題目不得多於三題）的讀者將成為優勝者。湯森路透就得獎者所作的決定是最終及不可推翻的。
A Review of Annotated Leading Patent Cases in Major Asian Jurisdictions, Kung-Chung LIU (eds), City University of Hong Kong Press, 2017

The recently published textbook *Annotated Leading Patent Cases in Major Asian Jurisdictions* is a useful and, for the most part, concise review of major patent cases around Asia, written by academics or practitioners from various Asian jurisdictions. The book fills a hole in general jurisprudence about patent cases in Asia and will be of interest to patent practitioners and academics not only in the jurisdictions covered but to any patent litigator involved in cross-border enforcement of patents.

Almost all Asian jurisdictions, including Hong Kong, China, Japan, India, Malaysia, Taiwan, Singapore and the Philippines are covered. The book is divided into chapters covering specialised IP courts, compulsory licensing, the intersection of patent law and competition law, injunctions, damages and choice of jurisdiction in cross-border patent litigation.

Each topic is covered well, albeit it is not possible in a review of this length to comment in detail on each section. There are, however, some interesting tidbits for practitioners in Hong Kong and China. Prof. Ichiro Nakayama covers the interesting history of how the Japanese courts took for themselves the right to decide on the validity of patents, despite Japan, like China and Germany, having a bifurcated system for deciding infringement and validity.

Also interesting is the analysis by Prof. Yahong Li of Hong Kong University of the only major patent case to go to trial in Hong Kong in recent years, *SNE v Hsin Chong*. In her commentary, Prof Li notes, given there is no specialist IP court, that the Hong Kong court obviously struggled with the technical aspects of the case. The current system for dealing with the validity of short term patents is described as in need of reform due to the unnecessary time and costs involved with litigating what should be simple cases. (Reforms have now been passed that should come into force in 2019). In spite of the problems with the system, Prof Li does not think a specialised IP court is necessary in Hong Kong due to the low volume of patent cases in Hong Kong. She states that there have only been six cases in 20 years. This seriously understates the number of cases – this reviewer and many other practitioners have handled far more. It is true there have only been six cases that resulted in a written decision. However, there have been many more that have died a slow (and sometimes painful) death while stuck in the merciless cogs of Hong Kong’s ill-equipped and brutally expensive civil litigation system. Hong Kong desperately needs a specialist list for handling IP cases.

Qualcomm, which pioneered the development of 3G mobile standards, features in three chapters where its licensing practices in China and Korea are discussed. One chapter features a detailed analysis of China’s National Development and Reform Commission case against Qualcomm where a record breaking fine of almost US$1 billion and other corrective remedies were imposed. In Korea, a fine of US$853 million was imposed for similar breaches. The chapters are salutary warning of the difficulties faced by SEP holders in licensing their technologies – difficulties that are already affecting the development of new standards.

The chapters on the factors that courts consider when deciding whether or not to grant injunctions and the calculation of damages provide useful information on the way in which courts approach these difficult questions. The chapter on injunctions considers issues in India of balancing the effect of the injunction and the public interest in general; in pharmaceutical cases; and, in cases of compulsory licensing. The Korean law as to whether injunctions should be granted for FRAND encumbered SEPs is also considered. The difficult considerations around balancing damages and the infringer’s profit in a number of countries are also explored.

The final section of the book considers how courts deal with cross-border cases, and of particular interest in Hong Kong, how Chinese courts deal with disputes involving patent holders without a domicile in China. Dr. Jia Wang specifically considers the (in)famous *Huawei v Interdigital* case where Interdigital, which had no business presence in China, was found liable for a breach of the Chinese Anti-Monopoly law for acts done outside China.

Douglas Clark
Douglas Clark is an IP barrister and an adjunct professor at the University of Hong Kong where he teaches IP law. He previously practiced as a solicitor in Shanghai and has handled many cross-border patent disputes. He is the author of *Patent Litigation in China* and contributing author and general editor of *Hong Kong Intellectual Property Law*.
The editors have gone to great pains to ensure that each chapter follows a set format that covers: summary, legal context, facts, reasoning of the decisions, legal analysis, and commercial or industrial significance. The purpose of this structure is to give readers both the overview of the legal context under which the individual cases were adjudicated and how those cases are to be deciphered legally and commercially. The authors succeed in this goal.

The scholarship and writing for each contribution is of a high standard. The methodology and approach is interesting and makes the book easy to read. It is a nice supplemental to general works on litigation in the countries covered.

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

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

Serena Tang, Associate Director, In House Corporate
Serena has over 7 years of recruitment experience, specialising in the recruitment of in-house lawyers where her industry focus is across in house corporate, assisting all types of commercial clients in Hong Kong. Serena has long standing work relationships with the executive-level legal and human resources professionals across a variety of industries with multinationals, state-owned enterprises, as well as domestic private and listed companies. Graduating from the University of Wisconsin, Serena gained experience in management consulting prior to joining Michael Page in 2010.

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

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

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

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

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

**Legal Counsel**
- 3-7 PQE
- Sizable Financial Institution

A very sizable financial institution is seeking to take on a legal counsel to join the legal team supporting a fund under one of their subsidiaries, with a focus on a range of funds and asset management matters. You will advise and negotiate all related terms and documents, as well as work closely with the business in advising on fund matters. The successful candidate will have obtained at least 3 years’ PQE of funds, private equity or venture capital experience, with a good understanding of local regulatory guidelines and recent developments. Ability to work in a team environment and strong interpersonal skills are required. Both English and Chinese language skills are mandatory. Ref: 3950009

**PRC Counsel**
- 3-7 PQE
- Reputable Financial Institution

Our client has an established brand name in Asia and is currently keen to take on a new PRC Counsel for its sizable legal team of 7 lawyers. You will take on a broad range of work across three key areas including corporate, funds and financing, with exposure to PRC/cross border matters. The successful candidate will be a PRC qualified lawyer with at least 3 years’ experience obtained in either one of the areas including corporate, funds or finance. Strong communication skills is useful and fluency in English and Mandarin is required. Ref: 3988009

**Legal Counsel**
- 3-7 PQE
- Sizable Bank

Our client is a sizable bank and the legal team supporting the commercial banking arm is seeking for 2 new lawyers to join. You will look after a range of banking matters including DCM, note programmes, derivatives and general banking matters. Reporting to the General Counsel, you will work in a tight knitted team environment across a variety of banking work, and occasionally assisting on ad hoc matters including general agreements or privacy law/competition law matters. The ideal candidate will possess at least 3 years’ experience in banking matters, though lawyers with a strong corporate background and genuine interest to take up banking work will also be considered. You will be a team player with good work attitude. Both English and Chinese language skills are required. Ref: 3951006

### COMMERCIAL

**General Counsel**
- 10 PQE
- US Company

This is a strategic leadership position overseeing the legal function for the Asia Pacific region leading a small team of qualified lawyers. You will be responsible for providing legal advice to the senior management group as well as being involved in the negotiation of commercial agreements with clients who are major players in the financial services industry. The ideal candidate will have an excellent academic background ideally from the Ivy League and 10 years’ PQE from sizeable companies. Written and spoken English and Mandarin are required. Ref: 3947499

**In House Litigator**
- 5+ PQE
- Hong Kong Listed Group

A sizeable Hong Kong listed company with an international portfolio of business is seeking an experienced specialist in litigation to join their small in house team. You will take ownership of any litigation case in Hong Kong or in their China and overseas business. You will manage relationships with external counsel and be responsible for managing relevant processes and risks for the group. The ideal candidate will possess at least 5 years’ PQE with a proven track record managing a variety of civil litigation cases including wills & probates, trusts and charities. Prior in house experience is an advantage but not a must. Strong English, Cantonese and Mandarin language skills are essential. Ref: 3946496

**M&A and PE Solicitors**
- 1-3 PQE Associate
- 5-6 PQE Senior Associate

The corporate team of a UK firm is expanding and looking at adding two new headcounts. The team specializes in international M&A and private equity work and joining the firm you will be involved in multi-jurisdictional projects, providing structuring, governance and strategic advice to corporate, institutional and private equity clients. The ideal candidates are a junior (1-3 PQE) and a senior (5-6 PQE) associate qualified in Hong Kong and trained in an international law firm in Hong Kong or other common law jurisdiction with excellent academics. Proficiency in Chinese is highly desirable but not a must. Ref: 3951998

**Associate/Senior Associate**
- Banking & Finance (Shipping)
- 3-6 PQE

Our client is a leading international law firm and a market leader in the banking & finance space now looking for an experienced associate to join the team in Hong Kong. This role would fit a Hong Kong or UK qualified solicitor with solid experience in a variety of banking and project finance work with particular focus in the ship finance and aircraft finance space. This role will give you the opportunity to work in an award winning team and directly alongside one of the leading partners in the industry. The ideal candidate is a UK or HK solicitor with at least 3 years working experience in this field. Chinese language skills would be a plus but are not required. Ref: 3951567

### PRIVATE PRACTICE

**Legal Counsel**
- 3-7 PQE
- Corporate/Regulatory

Our client is a sizable US law firm now hiring a mid-level associate to be based in the firm’s Hong Kong office. In this role you will be responsible for advising Hong Kong listed companies on M&A transactions with a specific focus on general compliance matters and other securities regulations. The team has a diverse client base from a broad range of sectors including healthcare, mobile gaming, TMT but also advises asset management, investment management companies and private equity funds on SFC licensing and regulatory compliance matters. The ideal candidate is a HK qualified solicitor with experience with Hong Kong public takeovers, cross-border mergers and acquisitions or IPOs and securities and investment projects in China or Hong Kong. Mandarin proficiency is a must. Ref: 3948857

**Shipping Legal Counsel**
- 5+ PQE
- Sizeable Hong Kong Company

Our client is a Hong Kong based reputable company in the logistics services industry with business presence and investments around the world. Due to business expansion, they are inviting a general commercial lawyer to be part of their sizable in house team. In this role, you will be responsible for shipping and logistics related matters as well as general commercial, litigation and corporate transactions. The successful candidate will have a minimum of 5 years’ PQE being well versed in commercial contracts with solid technical legal knowledge. Fluency in spoken and written English and Chinese (Cantonese and Mandarin) is required. Ref: 3951951

**Associate**
- Corporate/Regulatory
- 2-5 PQE

Our client is a sizable US law firm now hiring a mid-level associate to be based in the firm’s Hong Kong office. In this role you will be responsible for advising Hong Kong listed companies on M&A transactions with a specific focus on general compliance matters and other securities regulations. The team has a diverse client base from a broad range of sectors including healthcare, mobile gaming, TMT but also advises asset management, investment management companies and private equity funds on SFC licensing and regulatory compliance matters. The ideal candidate is a HK qualified solicitor with experience with Hong Kong public takeovers, cross-border mergers and acquisitions or IPOs and securities and investment projects in China or Hong Kong. Mandarin proficiency is a must. Ref: 3948857

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

HEAD OF LEGAL  HONG KONG  13+ YEARS
A leading insurance company is looking for a Head of Legal with at least 13 years of experience to join its team in HK. You will have experience advising on/drafting life insurance related matters as well as managing a team. Fluent written & spoken English & Chinese required. HKL6708

SHIPING / COMMERCIAL  HONG KONG  8-15 YEARS
Conglomerate focused on maritime services seeks a senior level lawyer with experience in contentious & non-contentious shipping & insurance matters. Commonwealth qualification & prior experience in Asia are essential. Chinese language skills are not required. HKL6666

LITIGATION  HONG KONG  5-8 YEARS
Rare opportunity for a litigator to join a HK conglomerate. You will handle contentious matters arising from the operations of the Group & will also have the chance to work on commercial matters. Solid commercial litigation experience and fluent Cantonese & Mandarin are essential. HKL6631

DERIVATIVES  HONG KONG  4-8 YEARS
Well-known financial conglomerate in Asia seeks a derivatives lawyer. You should have relevant experience from a reputable law firm/another financial institution. Structured finance experience would be a bonus. Mandarin skills are essential. Attractive remuneration on offer. HKL6732

M&A/PE  HONG KONG  4-7 YEARS
Bulge bracket bank seeks an addition to its legal team to focus on its private funds investment work. You should ideally have top tier M&A/PE experience with another reputable bank/international law firm. Chinese language skills would be an advantage but not essential. HKL6732

REGULATORY – AVP  HONG KONG  3-5 YEARS
Investment bank seeks an AVP to join its regulatory team. This role has an APAC coverage & will involve providing analysis & implementation of new regulations. You will be at least 3 years’ qualified in HK/a Commonwealth jurisdiction. Chinese language skills are not essential. HKL6609

TECHNOLOGY/COMMERCIAL  HONG KONG  2-4 YEARS
Exciting opportunity to join a growing technology company. You will handle commercial/technology related contracts, KYC & corporate governance matters. Ability to work independently, strong drafting skills & US qualification are essential. Chinese language skills are not required. HKL6531

Private Practice

FINANCE PARTNER  HONG KONG  10-20 YEARS
US law firm seeks a banking partner. You will be an experienced senior finance lawyer at a reputable international law firm in HK. You should have a broad general banking & finance practice & experience working with PRC clients. Fluent Mandarin language skills required. HKL6403

REGULATORY DEFENCE  HONG KONG  4-10 YEARS
UK firm seeks a senior disputes lawyer with solid contentious regulatory experience. You will have regulatory investigations & enforcement actions experience & be able to advise clients on investigations & interviews conducted by regulatory authorities. Fluent Chinese is required. HKL6717

CORPORATE  HONG KONG  6-9 YEARS
Global international law firm in Hong Kong is looking for a Senior Associate to join its Corporate team. This role will be predominantly focused on IPOs with some M&A matters. You must be Hong Kong qualified and have strong IPO and M&A experience. Mandarin is essential. HKL6655

FUNDS  HONG KONG  3+ YEARS
Top tier firm seeks a funds associate with 3 to 5 years PQE, solid training from a peer firm and be admitted in a Commonwealth jurisdiction. Lawyers with M&A or finance experience will also be considered. Chinese language skills are preferred but not required. HKL6355

DEBT CAPITAL MARKETS  HONG KONG  2-5 YEARS
Well-known international firm is looking for a junior to mid-level DCM associate to join its HK office. You will have experience in MTN programmes/hybrid securities/REITs. Pleasant team & working environment on offer. Fluent Mandarin & strong Chinese drafting skills are required. HKL6598

CORPORATE M&A  HONG KONG  2-3 YEARS
US law firm looks for a junior lawyer with experience in cross-border M&A matters. You will have gained solid experience from an international law firm & have native/ fluent Mandarin language skills, including the ability to draft in Chinese. NY rates & COLA on offer. HKL6889

EMPLOYMENT  HONG KONG  1-5 YEARS
International law firm seeks a junior to mid-level employment lawyer to join an expanding employment practice. You will have between 1-5 years’ experience in contentious/non-contentious employment matters or be looking to retrain. HK qualification is a must. HKL7672

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

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| **COMPLIANCE DIRECTOR: GLOBAL TRADE & FCPA**  
**GLOBAL TECHNOLOGY COMPANY**  
WDM/619490  
Global technology firm specialised in the design, development and sale of high-tech communications devices is seeking a compliance director with a specialisation in global trade regulation who can also lead the FCPA programme for their team regionally. This role will be highly visible and an executive within the firm serving as the subject matter export of mission critical initiatives concerning export regulations, sanctions and anti-bribery/corruption initiatives.  
**Key Requirements:**  
- A minimum of 10 years’ experience in either a law firm covering global trade or global firm  
- Expert knowledge of relevant import/ export laws including sanctions  
- Strong hands-on experience in advising on matters of corruption, bribery, or other white collar misconduct on a regional scale  
- Good understanding of operations in high-tech industry  
- Fluency in English and Mandarin is essential  
| **LITIGATION ASSOCIATES**  
**LEADING OFFSHORE LAW FIRM**  
OAA/617230  
A leading offshore law firm requires two commercial disputes lawyer to join the litigation team in Hong Kong. You will work on a wide range of commercial litigation, restructuring and insolvency matters sourced from Asia involving Cayman Islands and British Virgin Islands entities, structures and issues. Most work has an international or cross-border flavour to it and the team are regularly advising on high profile matters for blue chip international clients.  
**Key Requirements:**  
- Four to nine years’ PQE with a top commercial law firm. Barristers looking to change to working in a law firm are of interest. Applicants with an English qualification are preferred.  
- First class general commercial litigation experience. Insolvency and restructuring experience is preferable  
- No prior BVI or Cayman legal experience is necessary  
- Chinese language skills are not essential |

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| **DEBT CAPITAL MARKETS LAWYER**  
**GLOBAL INVESTMENT BANK**  
OAA/622490  
A global investment bank seeks a debt capital markets lawyer to join the legal team of nine people in Hong Kong. This is a new role to support the growth in this business line. It will report directly to the General Counsel and work very closely with a director who specialises in fixed income law.  
**Key Requirements:**  
- Three to eight years’ of PQE with a top law firm  
- A strong knowledge of debt products  
- A desire to work in a team where you will be required to support the business as it develops new lines and products  
- Fluency in English and Mandarin is essential  | **SENIOR LEGAL COUNSEL**  
**GLOBAL INSURANCE COMPANY**  
ZRW/599660  
A leading global life insurance company is looking for a seasoned insurance lawyer to provide legal advice and support on revamping insurance documentation and policies, as well as developing high net worth markets and products. This role reports to the deputy general counsel and you will be part of a legal team of four counsels.  
**Key Requirements:**  
- Five to eight years’ PQE, ideally Hong Kong qualified  
- Experience in insurance law & the relevant documentation  
- Fluency in English, Cantonese and Mandarin is essential  |

| **LEGAL COUNSEL**  
**TOP PRC SECURITIES FIRM**  
ZRW/591400  
A top PRC securities firm with dynamically growing business across Asia is looking for a legal counsel with DCM/ ECM/ fixed income/ general corporate finance/ asset management experience. Their lines of business span across a wide spectrum of structured products as well. The role reports to the head of legal. Generous package is offered.  
**Key Requirements:**  
- Two to seven years’ PQE, ideally Hong Kong qualified  
- Experience in DCM/ ECM/ fixed income/ general corporate finance/ asset management, mixed experience in law firms and in-house is ideal  
- Fluency in English, Cantonese and Mandarin is essential  | **STRUCTURED PRODUCTS COMPLIANCE ADVISORY**  
**TOP TIER BANK**  
QPD/615100  
Our client is a top tier institution offering one of the most dynamic platforms here in Asia and across the globe. This role will advise the business directly on all compliance matters, from product generation to distribution. You will work on the business floor and also with regulators. This is a unique and exciting opportunity to join a top bank in a role with wide exposure. You must have in depth structured product advisory experience.  
**Key Requirements:**  
- A minimum of eight years product compliance or legal experience in a global investment bank  
- Structured product knowledge is an asset  
- Experience dealing with front office is a plus  
- High motivation and diligence person is preferred |

**TO FIND OUT MORE ABOUT THESE EXCITING LEGAL CAREER OPPORTUNITIES, PLEASE CONTACT:**  
| Megan Craighead | +852 2103 5377  
| Ricky Mai | +852 2103 5370  
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#### Private Practice

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- **TMT**
  - International firm’s TMT practice wants to hire a TMT partner to help build out its practice across the region. Great opportunity for a TMT lawyer seeking a more focused and dedicated TMT practice. (HKL 15849)

- **Corporate M&A**
  - International law firm is considering junior-mid level associates. Candidates will have trained with an international firm gained solid experience/desire to focus on corporate transactions. Mandarin is required. (HKL 15833)

- **Real Estate**
  - This international law firm seeks an experienced lawyer with financing and M&A transactional experience. You will represent major property developers and investors on a wide range of RE related transactions. Client management skills and fluency in Cantonese and English required. (HKL 15822)

- **Insurance**
  - This is an exciting opportunity for an insurance dispute resolution lawyer to join this thriving international practice. Work involves advising across a range of sectors on contentious insurance matters. Fluency in Chinese is important. (HKL 15832)

- **Dispute Resolution**
  - International US law firm is looking for litigators to join their dispute resolution practice. You will be working with household names on matters ranging from international commercial disputes, arbitration and regulatory investigations. (HKL 15772)

- **Banking/Finance**
  - This global law firm seeks a lawyer with experience gained in Hong Kong. Working with a highly rated partner, you will advise on a wide range of transactions, such as acquisition finance, syndicated lending, pre-IPO financing and more. Fluency in Mandarin and English required. (HKL 15848)

- **M&A**
  - Top tier US law firm is considering junior M&A associates for its team. Candidates will be trained from an international firm with solid corporate experience. US pay scales on offer and excellent career prospects. Mandarin is required. (HKL 15833)

### In-house

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- **Greater China Counsel**
  - Global insurance company is looking for a senior legal counsel to provide legal support to their business across Greater China. You will advise on a range of legal issues, including corporate, M&A, employment, insurance and reinsurance matters. You must be qualified in either Hong Kong, Taiwan or China. Mandarin is required. (HKL 15794)

- **FMCG**
  - UK listed company with significant growth plans for Asia Pac has headcount to appoint its first in-house counsel in Hong Kong to support the regional management team covering Asia Pac. Work will involve negotiating a range of commercial agreements and providing general in-house advice. Great opportunity to support a dynamic and young executive team. (HKL 15027)

- **ASEAN Legal Counsel**
  - A leading regional F&B Company is looking for a legal counsel to oversee their fast expanding business in Singapore and the ASEAN region. You should have good commercial and M&A experience, dealing with laws in different countries across SE Asia. Singapore or common law qualified lawyers with proficiency in Mandarin required. (HKL 15718)

- **Employment Lawyer**
  - A high profile conglomerate seeks a commercially astute lawyer to assist in a range of employment and commercial litigation matters. Employment advice will span both contentious and non-contentious matters, while dispute issues will include contractual, suppliers, personal injuries, IP and discrimination claims. (HKL 15675)

- **Legal Counsel**
  - Our client is a leading logistics business and is looking to hire a senior shipping lawyer to support their fleet management operations. Experience preferred in shipping, insurance, vessel management. Open to all common law qualified lawyers. Open to lawyers qualified in HK. (HKL 15624)

- **Legal Counsel**
  - Conglomerate in the travel and aviation business seeks a commercial lawyer with experience in international investment to join their new legal team. You will focus on a range of investment work for their business teams including take-overs, and venture capital. Strong command of Mandarin and English required. (HKL 15806)

- **Something Different**
  - A leading information service provider is seeking junior lawyers to join their legal product division. Successful candidates are expected to oversee strategic accounts across the region by providing training and product demos. You will need solid business acumen and good presentation skills. Chinese language is required. (HKL 15733)

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  - Email: c.park@alsrecruit.com

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  - Email: w.chan@alsrecruit.com
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Banking & Finance
3-5 PQE Hong Kong
This eminent firm seeks a lawyer to join their practice, assisting renowned partners and high profile clients. You will work on big ticket deals, including corporate lending, equity-backed financing, restructuring and mainstream syndicated lending. Common law qualification required, Mandarin essential. HKL4720

Equity Capital Markets
3-7 PQE Hong Kong
This leading UK law firm seeks a lawyer to join their award-winning Corporate Finance practice to provide assistance on a variety of capital raising, compliance and governance issues. You will be admitted in a common law jurisdiction with relevant experience in M&A or HK IPO. Mandarin preferred. HKL4714

Capital Markets
1-3 PQE Hong Kong
A fantastic opportunity for a lawyer to become part of this renowned practice with this UK law firm. Your work will include focusing on a range of IPO and innovative M&A transactions on a global scale assisting an established partner. You will be admitted in a common law jurisdiction. HKL4686

Banking & Finance
2-6 PQE Hong Kong
Brilliant opportunity for an experienced individual to become part of a market leading practice, working on corporate lending, trade finance, acquisition finance, and syndicated lending. You will have exposure to either general B&F, ship/aviation finance with common law qualifications. Mandarin preferred. HKL4708

Disputes Resolution
1-5 PQE Hong Kong
Our client seeks a junior-mid level associate to join their exceptional team. This practice specialises in litigation matters that are high in profile, value and complexity, and has particular expertise in multi-jurisdictional disputes, including employment law, regulatory investigations, trust related claims and shareholder disputes. HKL4719

Corporate
1+ PQE Hong Kong
Globally recognised firm seeks common law qualified associates to join this market leading practice. You will work on a range of IPOs, M&A, PE downstream, finance, general corporate and commercial advisory matters in a collegiate team for highly regarded, likable individuals. NY Bar will also be considered. HKL4692

Employment
1-5 PQE Hong Kong
Excellent opportunity for a Chinese speaking lawyer with exposure to employment law to join the top tier practice of this global law firm. You will advise multinational clients on contentious and/or non-contentious employment matters. You will be dynamic and self-motivated with strong interpersonal skills. HKL4729

Leveraged Finance
2-3 PQE Hong Kong
This UK law firm is looking for a junior-mid level leveraged finance lawyer to work within a top international global finance team alongside a reputable partner. They have the number one client list in the region and there is a fast track to partnership for the right lawyer. You will be HK or UK qualified. HKL4696

Arbitration
3-5 PQE Hong Kong
Stellar opportunity for a common law qualified lawyer to join this leading arbitration practice of a US firm as it continues to go from strength to strength. You will work on a mix of litigation, complex and high profile arbitrations alongside a reputable partner. The ideal candidate will have construction & commercial disputes experience. HKL4724

Intellectual Property
5+ PQE Hong Kong
Our client is ranked as one of the leading IP practices in the region and they are now seeking a mid-senior level IP lawyer to join the HK team and advise on a broad range of issues closely related areas such as cyber security, data protection. You will be common law qualified, Mandarin skills an advantage. HKL4712

Debt Capital Markets
4-7 PQE Hong Kong
Our client is seeking a US qualified lawyer to join their industry leading team and partners. You will work on MTN programmes and advise sponsors & issuers on a variety of global DCM transactions, and corporate finance matters. The ideal candidate will have DCM experience from leading practices. Mandarin a must. HKL4716

Banking & Finance
2+ PQE Hong Kong
This UK law firm seeks a junior lawyer to work alongside renowned individuals. You will work on big ticket deals, including corporate lending; equity-backed financing, restructuring and mainstream syndicated lending. The ideal candidate will have previous experience preferably with an international firm. HKL4699

REITs
3-5 PQE Hong Kong
An international law firm is looking for a mid-level associate with REITs experience in the Financial Services team in Hong Kong. Experience on REITs and listed companies matters is preferred. M&A expertise, particularly on real estate related M&A transactions and Chinese language capability is essential. HKL4744

Real Estate
Partner Designate Hong Kong
Fantastic opportunity for a senior real estate lawyer to take their career to the next level. You will work with formidable individuals, acting for household names, developers and financial institutions on a range of corporate M&A, financing and leasing matters. You will have gravitas and experience gained with a leading practice. HKL4705

Asset Finance
1+ PQE Shanghai
An individual with exposure to ship, aviation or project finance is sought to join this market leading practice to work on leasing and financing transactions. Candidates will have experience gained at a strong finance practice within a recognised firm, proficiency in Mandarin a plus. HKL4688

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
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