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First Deemster and Clerk of the Rolls, Isle of Man

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電郵騙案：採取緊急行動以追討被詐騙款項

The New Hong Kong Insurance Regulatory Regime
香港的新保險業監管制度

Recent Actions by US Regulators Expose Local Virtual Currency Businesses to Pandora’s Box of Legal Risks
美國監管機構近期所採取的行動，使得本地虛擬貨幣業務面對潘多拉盒子裡的各樣法律風險

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Do you know the real reasons why lawyers and staff are leaving your firm? Do they want a better work-life balance? Or maybe they just aren’t cut out for the job? Should you care about the real reasons why people are leaving?

The business justification for conducting exit interviews is to learn and improve any systematic, organisational or interpersonal issues that may be adversely impacting your firm. On the softer side, exit interviews are a great way to demonstrate to all lawyers that your firm cares about them, their experience and making the firm a better place. Collecting exit interview information from departing lawyers is a good way to ensure law firm leaders are informed about what is happening at their firm. For tips to help you establish and get the most out of an “exit interview” process, check out the Practice Management article (p. 72).

Elsewhere in the September issue, the FinTech feature (p. 44) examines recent actions taken by US regulators that pose myriad possible legal consequences for virtual currency businesses operating in Hong Kong and the Mainland. The Insurance feature (p. 38) outlines how solicitors and market participants can be proactive in addressing the necessary changes brought about by the new insurance regulatory regime, as the new Insurance Authority formally took over from the Office of the Commissioner of Insurance as the industry’s regulatory body in late June 2017.

Also included is the Practice Skills article (p. 70), which examines whether the meaning of the construct “and/or” is really as clear as it is often assumed to be and whether it is a good idea to use it when drafting pleadings or other legal documents. The President’s Message (p. 5) provides a timely and in-depth critique of the Hong Kong Government’s proposal to introduce new legislation to more stringently combat money laundering and better align the jurisdiction’s laws with worldwide regulations promulgated by the Financial Action Task Force.

Ending on a lighter note, the Leisure section (p. 80) features an interview with Mark Roberts, a lawyer-turned-painter, who speaks about his passion for painting with watercolours and his decision to pursue a second career as a professional artist after leaving the law.
Everyone, including the legal profession, has a responsibility to combat money laundering and terrorist financing. It is important to stay vigilant and protect ourselves from being used by criminals to launder the proceeds of crime through the local financial system.

The Hong Kong Government is considering introducing new legislation to more stringently combat money laundering and better align the jurisdiction’s laws with worldwide regulations promulgated by the Financial Action Task Force ("FATF"), an organisation based in Paris of which Hong Kong is a member. The FATF assesses how effectively its members are implementing its regulations by performing periodic checks referred to as mutual evaluations. Hong Kong is scheduled to have its next evaluation in 2018 and our Financial Services and the Treasury Bureau is very keen to impress FATF.

The legal profession is self-regulatory and under the statute, the Law Society may exercise regulatory and disciplinary powers over the profession. In support of the effort to protect the global financial system against money laundering and terrorist financing, we issued a Practice Direction in as early as 2007 detailing, inter alia:

(a) the mandatory requirements for law firms on client identification and verification, client due diligence exercises, record keeping;

(b) the current relevant legislation on money laundering and terrorist financing;

(c) the basic policies and procedures required of law firms;

(d) the relevant legal issues on legal professional privilege, client confidentiality, litigation, civil liability and confidentiality agreements;

(e) examples of suspicious transaction indicators and risk areas; and

(f) suspicious transaction reporting.

The Practice Direction had immediate advisory effect when it was issued. On 1 July 2008, certain parts of it, notably the guidance on client identification and verification, customer due diligence, record keeping and staff training, became mandatory. Any law firm, solicitor or foreign lawyer practising in Hong Kong who fails to comply with the mandatory provisions will face disciplinary proceedings, in addition to the risk of being subject to severe consequences of criminal prosecution and loss of reputation as a result of any involvement in or facilitation of money laundering or terrorist financing activities.

With the implementation of the Practice Direction, the Law Society has put in place, for a decade by now, a legal anti-money laundering ("AML") mechanism which is binding, enforceable and authoritative for our members. The mechanism satisfies the international standards on customer due diligence and record keeping and is enforceable by sanctions which are effective, proportionate and dissuasive.

Despite the above, the Government apparently still wants to extend the strict regulations it has imposed on the banks and financial services industry in 2012 with respect to customer due diligence requirements and attendant penalties. The Bill seeks to impose new obligations on the Law Society to regulate the profession and the FATF’s standards and requirements without acknowledging that Practice Direction P already takes these into consideration. Although the Government recognises the Law Society’s good work, it does not seem to give credit to our past efforts. If it overrides our independent self-regulatory function and imposes the same standards on all professions, including accountants and estate agents, it will ignore the peculiarities of each profession and the Law Society’s existing regulations.

There is no evidence or indication that there is an increasing risk that solicitors and foreign lawyers will be involved in money laundering or terrorist financing activities, or that the Practice Direction is not serving its purpose. Subjecting solicitors and foreign lawyers to the regulatory regime of the Anti-Money Laundering and Counter Terrorist Financing (Financial Institutions) Ordinance ("AMLO") will be out of proportion to the risk engendered by solicitors and foreign lawyers in Hong Kong in relation to money laundering and terrorist financing.
There is no doubt on the tremendous effort that the FATF has undertaken to set the global AML standards. Nevertheless, in deciding whether to adopt the standards, consideration must be given to the peculiarity of the local situation to ensure that the standards are appropriately applied in a cost effective manner.

Less than a year ago, I asked members to share their experiences on opening bank accounts in Hong Kong, as there were widespread reports that businesses were facing undue difficulties in doing so. The experiences shared ranged from members’ own encounters to observations through their handling of matters on behalf of their clients or employers. The general sentiment was that many of the account opening procedures and requirements adopted by banks were unnecessarily excessive and complicated, inflexible and time consuming. Without having access to a bank account, a business cannot successfully function here. The frustrating experience in one of the preliminary steps in establishing a business here is driving business owners away from Hong Kong.

While we fully appreciate the need of financial institutions to tighten compliance measures to address concerns about money laundering and terrorist financing, we are also aware of the obstacles to genuine businesses, which are hurting Hong Kong as an international financial centre and a legal service hub.

The legal profession is the only profession which already has enforceable AML regulations. The existing mechanism has been working well. There is no basis to upset the status quo by tightening measures that are disproportionate to the AML risks encountered by the legal profession. Further, the codification of customer due diligence and record keeping requirements will unnecessarily escalate regulatory costs on legal practices and create more obstacles for law firms to expand and attract new clients.

The Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Bill 2017 was gazetted on 23 June. The Law Society has vigorously objected to the inclusion of solicitors and foreign lawyers as one of the DNFBPs (designated non financial businesses and professionals). However, with its focus solely on the FATF evaluation, the profession’s view had been ignored. The Government pressed ahead with the Amendment Bill on the basis that it did not consider that the current regime could satisfy the FATF requirements, despite the general concern that an across-the-board implementation of stringent statutory AML requirements could adversely affect the business environment of Hong Kong.

The Law Society is studying the Amendment Bill carefully and will be making further representations to the Government and the LegCo as appropriate. Members are also encouraged to study the Amendment Bill and forward any comments you may have.

Many member firms have their own strict customer due diligence requirements in place. Changing them or adapting them will be burdensome and costly. Members who feel that their views are not being listened to by the Government are invited to approach and write directly to the Financial Services and the Treasury Bureau.

Thomas So, President
規管還是扼殺？

所有人均有責任打擊清洗黑錢和恐怖分子融資，包括法律界。我們必須保持警惕，以免被犯罪分子利用，透過本地財政制度清洗犯罪收益。

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無論執業指引的指引或對律師行的基本政策和程序要求，現行的機制運作良好，無理由以收緊措施破壞現狀，亦與法律專業面對的反清洗黑錢風險不相稱。此外，把客戶盡職調查和備存記錄要求納入法例，將不必要地提高法律執業的監管成本，並為律師行擴大業務、吸引新客戶創造更多障礙。

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「特別組織」毫無疑問不遺餘力制訂全球反清洗黑錢標準。然而，在決定是否採納該標準時，必須考慮本地情況的特殊性，以確保標準以最具成本效益的方式適當落實。

不足一年前，我請會員分享在香港開設銀行賬戶的經驗，因為有廣泛報導指企業在這方面面對困難。會員分享了親身經驗或代表客戶或僱主處理事宜時的觀察。會員反映的一般情況是，銀行開戶手續和要求不必要地繁複、缺乏彈性而耗時。企業無法開立銀行賬戶，就無法在香港成功運作。在香港建立業務的準備步驟令人沮喪，令企業放棄在香港建立業務。

雖然我們完全明白金融機構有需要收緊合規措施，以解決清洗黑錢和恐怖分子融資的問題，但我們也清楚，這些措施對真正的企業構成障礙，損害香港作為國際金融和法律服務中心的地位。

法律界是唯一已經具強制執行反清洗黑錢的行業。現行的機制運作良好，無理由收緊措施破壞現狀，亦與法律專業面對的反清洗黑錢風險不相稱。此外，把客戶盡職調查和備存記錄要求納入法例，將不必要地提高法律執業的監管成本，並為律師行擴大業務、吸引新客戶創造更多障礙。

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Nick Luxton
Gilt Chambers, Barrister
Nick Luxton is a barrister at Gilt Chambers, practising in commercial law, insurance and maritime law. Mr. Luxton was called to the Bar after almost 15 years' experience as a solicitor handling commercial disputes in Australia and Hong Kong. He has experience in fraud matters, insolvency disputes, contract claims, employment law and banking law, together with related injunction applications. He regularly appears in admiralty actions in the Hong Kong High Court and in maritime arbitrations.

Peter Gregoire
AIG Insurance Hong Kong Limited, General Counsel
Mr. Gregoire is the General Counsel of AIG Insurance Hong Kong Limited, responsible for all legal, regulatory and corporate governance issues at the company. He double-hats as commercial lines legal counsel for AIG across the APAC region. Mr. Gregoire is also an Honorary Lecturer at Hong Kong University where he served as a part-time tutor for the Commercial Dispute Resolution Elective on the PCLL course. In his spare time, he writes fiction and has published two novels.
Benjamin Sauter  
*Kobre & Kim LLP, Principal*

Benjamin Sauter, a US-based lawyer at Kobre & Kim LLP, routinely represents companies in high-stakes litigation involving commodities, futures, swaps, and other securities and derivatives. His representations often involve clients confronting regulatory and criminal enforcement proceedings. He is part of the Digital Currency & Ledger Defense Coalition, a group of over 50 lawyers dedicated to protecting US blockchain innovators.

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John Han  
*Kobre & Kim LLP (Hong Kong), Principal*

John Han is a dual-qualified Hong Kong and US civil litigator at Kobre & Kim focusing on cross-border disputes and government enforcement actions involving the US, Hong Kong, and China. He regularly represents Hong Kong and China-based institutions in US regulatory and criminal enforcement proceedings and civil litigation involving complex financial instruments including securities, derivatives, and commodities.

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Benjamin Sauter  
*高博金律師事務所 主要負責人*

韩星是Kobre & Kim的擁有雙重資格香港和美國民事訴訟人，專注於涉及美國、香港和中國的跨境糾紛和政府執法行動。他經常代表香港和中國的機構，處理涉及美國監管和刑事執法的程序，以及涉及複雜金融工具(包括證券、衍生工具和商品)的民事訴訟。
Consultation on the Securities and Futures (Open-ended Fund Companies) Rules and Code on Open-ended Fund Companies

The Securities and Futures Commission (“SFC”) on 28 June 2017 launched a consultation on the “Securities and Futures (Open-ended Fund Companies) Rules and Code on Open-ended Fund Companies” (“Consultation Paper”). In the Consultation Paper, the SFC proposed rules and codes to regulate the open-ended fund company (“OFC”) structure in Hong Kong. These rules and codes were introduced following the promulgation of the Securities and Futures (Amendment) Ordinance in June 2016, which inter alia empowers the SFC to make subsidiary legislation and to issue codes and guidelines in relation to the regulation of OFCs.

The draft Securities and Futures (Open-ended Fund) Companies Rules 2017 (“OFC Rules”) was set out in the Consultation Paper. The OFC Rules provide for statutory requirements on matters such as company formation and maintenance, the key operations of the OFC, the functions of the Companies Registry (“CR”), the segregated liability feature for umbrella and sub-funds structures and cross-investments of sub-funds of OFCs, arrangements and compromises as well as offences applicable to OFCs and their key operators. Also included in the Consultation Paper was a set of proposed Code on OFC Companies (“OFC Code”). The OFC Code contains a set of general principles with which all OFCs and their key operators will be expected to comply in the management and operation of their OFCs.

One of the main features in the OFC Rules and OFC Code is the proposal of a one-stop approach in the OFC application. Under this proposal, the applicant for an OFC only needs to submit all the documents and fees required by the SFC and the CR to the SFC. The SFC’s registration would take effect upon the issuance of a certificate of incorporation by the CR. In short, the applicant would only have to deal with the SFC for all registration processes.

The above consultation was considered by the Council with the assistance of the Investment Products & Financial Services Committee of the Law Society. The Council reviewed and endorsed the draft submission prepared by the Committee to respond to the Consultation Paper. In the submission, the Law Society expressed support for the introduction of OFC to the Hong Kong regime. Subject to proper implementation of rules and regulations, the OFC structure in Hong Kong should be a welcome development to position Hong Kong as a full-service international asset management centre and preferred fund domicile.

Consultations on “The New Board Concept Paper” and on the “Review of The Growth Enterprise Market (GEM) and Changes to the GEM and Main Board Listing Rules”


The New Board Paper introduced the proposal of setting up a new listing board in Hong Kong (“New Board”) under SEHK to accommodate companies that are currently not eligible to be listed in either the main board of SEHK (“Main Board”) or Growth Enterprise Market (“GEM”). Under the proposal, the New Board will be divided into two segments, namely, “New Board PRO” and “New Board PREMIUM”. New Board PRO will be targeted at earlier stage companies that do not meet the financial or track record criteria for GEM or the Main Board. It will only be open to professional investors, and accordingly it will adopt a “lighter touch” approach to initial listing requirements. The New Board PREMIUM is for companies that meet the existing financial and track record requirements of the Main Board, but which are currently ineligible to list in Hong Kong because they have non-standard governance structures. New Board PREMIUM will be open to both professional and retail investors; therefore a more stringent regulatory approach has been proposed.

The GEM Paper proposed changes to both the GEM and Main Board Listing Rules to address recent concerns on the quality and performance of GEM applicants and Main Board issuers. Major proposals under the GEM paper include: (i) repositioning GEM from being a stepping stone to Main Board to become a “stand-alone” board such that GEM applicants, if they want to transfer to the Main Board, will need to appoint a sponsor and issue a “prospectus-standard” listing document; (ii) retaining the current practice of not requiring a GEM applicant that can meet the Main Board admission requirements to list on the Main Board instead of GEM; and (iii) increasing the minimum public float value of a GEM issuer’s securities from HK$30 million to HK$45 million, and from HK$50 million to HK$125 million for a Main Board issuer’s securities. Other amendments have also been proposed in the GEM Paper to reflect currently acceptable market standards.

With the assistance of the Company Committee, the Law Society has prepared submissions to respond to the two consultation papers. The Law Society expressed full support for steps that would be taken to improve the integrity and attractiveness of the GEM and Main Board as well as combating shell planting. However, the SEHK should keep an open mind on the removal of the transfer mechanism from GEM to Main Board. As to the introduction of New Board, the Law Society expressed reservation.

The Law Society’s submissions on the above can be found at the links below:
Code of Good Practice in Recruitment of Trainee Solicitors

It normally takes seven years to qualify as a solicitor in Hong Kong through the trainee solicitor route. Out of this period, nearly one-third (ie, two years) must be spent in a traineeship with a law firm.

A traineeship provides a Trainee Solicitor with the opportunity to learn basic skills and characteristics associated with the practice of law and the legal profession. This important stage in the solicitor qualification process allows not only a Trainee Solicitor to observe and develop the technical proficiency of experienced lawyers, but also gives the Principal an opportunity to nurture and role model the attitudes, habits and virtues that characterise the long-respected traditions of the profession. The traineeship experience can significantly shape the development of professionalism for new entrants, who will become the future leaders of our profession.

Competition among law firms for suitable trainees, and among PCLL graduates for attractive training offers, is fierce. On one hand, to secure the best candidates, law firms started recruitment earlier. On the other hand, to get into their dream firms, candidates renege on training offers they have accepted for other offers that appear more attractive to them.

To assist both law firms and candidates to achieve an effective, open and fair recruitment process, the Law Society published a Code of Good Practice in the Recruitment of Trainee Solicitors (“Code”), which has been available since 2013.

Law firms are advised to make offers (written or verbal) for employment of trainee solicitors no earlier than 1 August of the year which is two years prior to the intended year of commencement of the training contract, and to give applicants at least two weeks to accept an offer. Once an applicant has accepted an offer, he or she must inform all other employers who have made an offer or extended an invitation to attend an interview, make no further applications for a training contract and reject any further offers (para. 9 of the Code).

To a certain extent, a traineeship can be determinative of one’s career path in law. Applicants must carefully consider an offer before accepting it. If more time is required, they should seek agreement from the law firm to extend the deadline for reply.
On the other hand, as stated in the Code, law firms should give candidates at least two weeks to confirm whether or not they wish to accept an offer and sympathetic consideration should be given to a request for a time extension provided there is a good reason. However, there have been informal reports by students that they were given only a very short period to reply and in some cases, confirmation was required on the same day an offer was made. This is grossly unfair to the candidates. It may rush them into making a decision which they feel unsure about, making them more vulnerable to being attracted to subsequent offers.

Nevertheless, candidates must note that once accepted, an offer becomes a commitment to a legal obligation. Reneging on it sheds doubt on the personal integrity to honour commitments, wastes all the resources the recruiting firm has spent on the recruitment process, deprives other candidates of the opportunity of an offer from the firm and disrupts the operation of the firm which has to reallocate manpower and resources to fill the sudden vacancy.

Despite the provisions in the Code, since its publication in 2013, the Law Society has received three notifications from law firms on candidates breaking the trainee employment contract for other offers. To ensure that any such conduct is drawn to the attention of the Law Society at the time when a trainee applies to register his or her trainee solicitor contract, the Application for Registration of Trainee Solicitor Contract has been amended with effect from 5 June 2017 to require an applicant to declare whether he or she has complied with para. 9 of the Code.

All circumstances including non-compliance with the Code will be taken into account when the Law Society considers whether an applicant is suitable for registration as a trainee solicitor.

Most of the international firms have structured recruiting exercises and they recruit two years before the commencement of the training contracts when potential candidates are in their penultimate year of the undergraduate law programme. The Law Society has provided the three law schools with a copy of the Code so their law students can remain informed. The Code, the Application for Registration of Trainee Solicitor Contract and other relevant documents are contained in the Information Package for Trainee Solicitors posted on the Law Society website. All law students about to go through the recruitment process are strongly advised to review the Code carefully.
Monthly Statistics on the Profession
(updated as of 31 July 2017):

<table>
<thead>
<tr>
<th>Category</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Members (with or without practising certificate)</td>
<td>10,592</td>
</tr>
<tr>
<td>Members with practising certificate</td>
<td>9,237</td>
</tr>
<tr>
<td>(out of whom, 6,892 (75%) are in private practice)</td>
<td></td>
</tr>
<tr>
<td>Trainee Solicitors</td>
<td>994</td>
</tr>
<tr>
<td>Registered foreign lawyers</td>
<td>1,337</td>
</tr>
<tr>
<td>(from 32 jurisdictions)</td>
<td></td>
</tr>
<tr>
<td>Hong Kong law firms</td>
<td>882</td>
</tr>
<tr>
<td>(48% are sole proprietorships and 41% are firms with 2 to 5 partners, 15 are limited liability partnerships formed pursuant to the Legal Practitioners Ordinance)</td>
<td></td>
</tr>
<tr>
<td>Registered foreign law firms</td>
<td>80</td>
</tr>
<tr>
<td>(9 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>221</td>
</tr>
<tr>
<td>Registered Associations between Hong Kong law firms and registered foreign law firms (including Mainland law firms)</td>
<td>36</td>
</tr>
</tbody>
</table>

Upcoming Deadlines

- Solicitors to whom s. 5 of the Practising Certificates (Special Conditions) Rules (Cap. 159 Sub. Leg.) (“Special Conditions Rules”) apply must give at least six weeks’ notice to the Law Society before applying for their practising certificates. To ensure that the 2018 practising certificates will be issued in time, the Notice of Intention to apply for a Practising Certificate required under the Special Conditions Rules should be declared and returned to the Law Society by 6 October 2017.

- The professional indemnity cover for Hong Kong law firms for the 2016/2017 indemnity year will expire on 30 September 2017. The contribution for the 2017/2018 indemnity year which commences on 1 October 2017 must be paid on or before 30 September 2017.

截止日期將至

- 《執業證書(特別條件)_規則》(第159章附屬法例)(「特別條件規定」)第5條對其適用的律師，須於申請執業證書之前的最少6星期前，向律師會發出通知書。為確保2018年執業證書及時發出，申請執業證書的律師，須就其根據特別條件規定所發出的擬申請執業證書通知書作出聲明，並於2017年10月6日前將通知書交回律師會。

Pro Bono and Community Work Recognition Programme 2017

CALL for SUBMISSIONS/NOMINATIONS
Recognition Period: 1 July 2016 - 30 June 2017
Deadline: 9 October 2017

INDIVIDUAL AWARDS
• Gold Award / Silver Award / Bronze Award
• Young Lawyer Special Award* (New)

LAW FIRM AWARDS
• Gold Award / Silver Award / Bronze Award

DISTINGUISHED AWARDS
• Individual – Distinguished Pro Bono Service Award
• Individual – Distinguished Community Service Award
• Law firm – Distinguished Pro Bono Law Firm Award

* Applicants with 5 years P.C.E. or below who participated in pro bono and community work of not less than 100 hours within the Recognition Period will automatically run for the Young Lawyer Special Award. The Award will be given to the eligible applicant 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
In 1965, together with his parents and three elder sisters, the Hon. David Doyle, First Deemster and Clerk of the Rolls of the Isle of Man, moved to Hong Kong. His parents were from the Isle of Man, a little island of some 572 square kilometers in the middle of the Irish Sea. In the 1960s, the Isle of Man’s economy was struggling. With few jobs available, many Manx people left the Island to build their careers abroad.

Deemster Doyle’s father moved his family to Hong Kong so he could take a job with the Hong Kong Telephone Company. “On the Isle of Man and in England, he had been climbing up the telephone poles,” the Deemster explained. “In Hong Kong, he expeditiously climbed up the career ladder and ultimately became the Chief Engineer of the Hong Kong Telephone Company in 1975.”

The Deemster spoke fondly of his childhood in Hong Kong. He lived on Old Peak Road and recalls passing many a day at Big Wave Bay, swimming and attempting to surf, eating ice creams, drinking 7UP® and Green Spot and trying to stay away from the sea urchins. He remembers boat trips around the islands, walking his dog around Tai Tam reservoir, the Dragon Boat races, Chinese New Year, days off from school during typhoons, having curfews during the riots and playing and watching lots of football. He even met the famous Brazilian footballer, Pelé, at the Hong Kong Hilton and got his autograph.

He also remembers many exciting and safe landings at the old Kai Tak airport, in the early days on BOAC’s VC10s, with the approach past Lion Rock and seeing people in their flats brushing their teeth. He was also able to go up around Hong Kong air space in a small aircraft, which encouraged him to take flying lessons in his 20s.

“Hong Kong is special to me and I frequently feel a strong pull to come back. Although my home is in the Isle of Man, I still feel that a part of me belongs in Hong Kong,” he said.

Since leaving in the 1980s, the Deemster has followed the developments in Hong Kong with great interest. When he was a practising Manx advocate (1984–2003), he had numerous clients in Hong Kong. As a Deemster, he has returned to Hong Kong on a number of occasions and at times, he has cited Hong Kong case law as persuasive precedent as a sitting Manx judge. The Deemster spoke to us remotely about his career in law and the benefit of the continued exchanges between the two island jurisdictions.

A Rebellious Streak

When reflecting on his decision to pursue a career in law, the Deemster noted that he had recently found an old yellow programme entitled in blue “The Royal Hong Kong Jockey Club: Saturday 1 April 1978 $2” when rummaging through a stack of family papers. It seemed to immediately transport him back to that Saturday afternoon in Hong Kong, when his family mingled amongst the likes of Sir Oswald Cheung CBE QC JP and Sir Denys Roberts KBE QC JP, two honorary Race Day Stewards.
As they arrived, Sir Douglas Clague, another Manx family in Hong Kong, warmly greeted them as a Race Meeting Steward, and before the day was out, Sir Douglas and his wife Peggy had signed the now-faded programme with the following message:

“To David – Why not law in the Island? Lot of future don’t you think?”

“I’d like to say that such comments inspired me to become a lawyer and then a judge in the Isle of Man, but the truth is that they simply nurtured a seed that had already been planted in my mind a few years earlier by my father,” he said.

“I remember my father, when I was a rebellious teenager in Hong Kong, having that awkward but essential fatherly talk which most fathers have with their children at some stage. We were sitting on the balcony admiring the view of Hong Kong and discussing what I was going to do with my life. His parental advice went along the following lines:

’Son, whatever you do with your life be kind to others, don’t forget where you came from, try and make a contribution, put more in than you take out, and most importantly do what you do to the best of your limited ability whether you are cleaning the streets or whether you end up as the Prime Minister. Oh, and do not be a lawyer or an accountant. They are simply financial parasites which live off the problems of others.’

I took most of that advice but rebelled against the last bit. I didn’t want to enter politics and I didn’t have the brains or numerical ability to be an accountant, so I chose to do a law degree,” he said.

From the Bar to the Bench
Deemster Doyle was called to the English Bar in 1982. Afterwards, he worked in the litigation department of Slaughter and May in London, and then, in 1984, returned to the Isle of Man to become a Manx advocate, as he had always intended.

Subsequently, he became a partner at Dickinson, Cruickshank & Co. and later was appointed head of the firm’s Commercial Department. In September 2002, he was appointed part-time Deputy High Bailiff (similar functions to an English District Judge) and Coroner of Inquests. He remained with Dickinson, Cruickshank & Co. (now known as Appleby) until March 2003 when he retired from private practice to take up the position, following an open competition, of Second Deemster. In December 2010, Deemster Doyle was appointed by Her Majesty Queen Elizabeth II as the First Deemster and Clerk of the Rolls, again by open competition. In January 2015, he was appointed a part-time Judge of Appeal of the Courts of Appeal of Jersey and Guernsey by Her Majesty the Queen.

“I thoroughly enjoyed my time in private practice and I miss the comradery and relative freedom, and I suspect that my family misses the long summer holidays! But life on the judicial bench, although somewhat lonely and isolated on occasions, has provided me with a great sense of personal satisfaction. I nearly always drive to work early in the morning looking forward to the challenges of the day ahead and I never drive home at night thinking ‘that was a dull day’. Judicial life is never boring.

It is frequently packed with surprises, challenges and new legal issues to determine. It is sometimes stressful, and it is right to acknowledge that and to take steps to deal with it, but it is always worthwhile. I know I am extremely fortunate to love my life, my family, my work and the island I live on,” the Deemster said.

Not So Different
Hong Kong and the Isle of Man are both internally self-governing island communities which are heavily influenced by those close to them – in the Isle of Man’s case the United Kingdom and Ireland, and in Hong Kong’s case China, the Deemster explained. “Our constitutional structures are however a little different. The Isle of Man is in effect an internally self-governing dependency of the British Crown. We are not, and never have been, a part of the UK. We enjoy our internal independence. We are not a member of the European Union but, as we do a lot of trade within the British Isles and Europe, Brexit will inevitably have an impact on us and indeed the rest of the world, including Hong Kong. The British Crown retains responsibility for the Isle of Man’s defence and for ensuring the good government of the Island. We have our own Parliament (Tynwald which
is the oldest continuous parliament in the world dating back to 979 AD). We have our own legislature and our own executive government which respect the rule of law and the separation of powers. We have our own judiciary and we have our own laws. Our High Court judges are known as Deemsters. The first written reference to Deemsters can be traced back to the early 1400s but the office of Deemster is probably much older dating back to the Norse Kingdom and the origins of Tynwald in the 10th century,” he said.

Continuing, he explained that there are very many similarities between Hong Kong and the Isle of Man, with the most important being a mutually strong work ethic and a desire to uphold the rule of law.

However, in terms of population density and number of lawyers, the Deemster noted that Hong Kong far exceeds the Isle of Man. The population of the Isle of Man is around 85,000 and its fused legal profession comprises 240 practising advocates. He also noted that in special circumstances, English counsel can be temporarily licensed to deal with cases before the courts of the Isle of Man. By contrast, Hong Kong has a lot more lawyers, with over 10,000 practising solicitors.

**Challenges Ahead**

Both the Isle of Man and Hong Kong face similar challenges in many areas, Deemster Doyle explained, but for present purposes, he commented on just two: young people and the rule of law.

“We both must ensure that our respective jurisdictions remain attractive places for young people to live and work. It is trite, but the future of a jurisdiction largely depends on its young people. Hong Kong and the Isle of Man must continue to ensure that the reasonable aspirations of their young people can be fulfilled. It is only in that way that our economies and communities will remain fresh and vibrant.”

“Hong Kong and the Isle of Man also face a challenge in ensuring that our communities are not complacent and that they appreciate the value of the rule of law to the fair and just existence and progression of a community. I do not speak of the value in solely economic terms. Yes, the rule of law is the vital backbone of economic growth but it is much, much more than that. It directly impacts on the quality of all our lives. It goes to the core of a fair and civilised existence.

Justice Tang, Permanent Judge of the CFA, in a speech to law graduates on 19 March 2016 captured the importance of young people and the rule of law to the future of a jurisdiction when he stated:

“I hope that you, who are the future guardians of our system, will be vigilant. Do not think that small encroachments on the rule of law or on human rights do not matter. Or that because they do not concern you directly, you should not be bothered. Just as, if the air is polluted, we all suffer, if the rule of law is undermined we all suffer too. The future belongs to you … Stand up for genuine rule of law and effective protection of our fundamental human rights[.]”

Hong Kong is very fortunate to have independent judges who promote and protect the rule of law in its best interests. The big challenge for the legal professions and the public in the Isle of Man and Hong Kong will be to support the judiciary in upholding the rule of law.

**Role of Comparative Law**

As the conversation switched to more general topics of importance, Deemster Doyle reflected on the utility of comparative law. He noted a lecture that he delivered at Harvard Law School in 2007, where he stressed the value of countries looking to developments in foreign jurisdictions to assist them in developing their own domestic law.

However, he acknowledged that it is not
always easy to stay on top of everything that is happening worldwide, which is why he finds judicial conferences so useful. “Firstly, all judges in common law jurisdictions deal with similar issues on a daily basis, and we have a lot to learn from each other. Secondly, it is important to raise the Island’s profile and enhance its reputation as a good place to do business and as a respecter of the rule of law. Thirdly, it recharges the judicial batteries and is, frankly and somewhat selfishly, a refreshing break away from the immediate and seemingly constant pressures of the day job. Fourthly, it helps in putting issues within their proper perspectives. Fifthly, in a job which is frequently lonely and isolated, there is comfort and support to be obtained in discussing issues with other judges from other jurisdictions. There is a lot of mutual respect between judges and we can all assist each other in being effective and energised judges,” he said.

Giving Lectures
Deemster Doyle is also a firm believer in judges giving talks to others interested in the law and judges promoting and protecting the rule of law locally and internationally. In addition to hosting visits to the Isle of Man Courts of Justice, the Deemster also gives lectures to trainee advocates, as well as secondary students and others on the island. Additionally, he visits judges and others interested in the law in jurisdictions overseas, as well as hosting visits of foreign judges and others at the Isle of Man Courts of Justice. “I believe that meeting with other judges, travel and the international exchange of ideas are very important. Travel increases knowledge and understanding and is vital particularly for judges in compact island jurisdictions who might otherwise be confined to a local and sometimes somewhat insular court room. International connectivity is extremely useful for me because the vast majority of the cases I deal with at first instance and appellate level have an international element, and visiting judges in other jurisdictions is just part of building up better international understanding and judicial cooperation. The role of judges today must include interaction with other judges, lawyers and the public and stepping beyond their national boundaries to learn from, and collaborate with, the rest of the world,” he said.

**Essential Features of Judicial Role**

Elaborating on his statement about the role of judges, the Deemster highlighted what he believes to be the essential features of the judicial role, which he previously outlined in a 2017 lecture at Oxford. Succinctly, he explained:

- Judges decide the legal issues of the day in accordance with the law and the judicial oath. Judges must be impartial and independent and cases should be determined fairly and justly within a reasonable time. This involves active case management beginning as soon as the claim or application is filed with the court.
- Judges develop the common law, but any judicial development of the law must be in conformity with justice, common sense, the spirit of the law, principle and policy. It must also take into account the competing needs for certainty and flexibility and the avoidance of illegitimate legislating from the bench. Judges should develop the law in a way which is considered most appropriate for the needs, requirements and interests of their home country and the wider international community of which that home country is a part.
- Judges must embrace change and new technology.
- Judges may highlight the benefits of the judge’s home country.
- Judges give guidance on local law and procedural issues.
- Judges develop local jurisprudence in the best interests of their home country taking into account its responsible place within the world.
- Judges promote the rule of law both locally and internationally.
- Judges, where appropriate, refer to issues of policy relevant to the judge’s home country.
- Judges get involved in legal education and, where appropriate, law reform.
- Last, but not least, judges should be continually focused on the needs of all court users.

These are standards to which he hopes all judges will aspire when administering justice in their respective jurisdictions.
法官David Doyle在香港長大，是現任人島(Isle of Man)首席法官及司法機構首長。他接受本刊專訪，分享自己的法律生涯，回想不斷穿梭於人島和香港之間的好處。

法官David Doyle，人島(Isle of Man)首席法官及司法機構首長，1965年與三位家姐隨父母移居香港。他父母來自人島，人島是個小島，位於愛爾蘭海中央，面積572平方公里左右。上世紀60年代，人島經濟不振，工作機會少之又少，島上人很多都離開，遠赴海外建立事業。

法官Doyle的爸爸帶同家人移居香港，在香港電話公司找到一份工作。「在人島和英國，他爬的是電話線杆，」法官Doyle說，「在香港爬的是事業階梯。他爬得很快，1975年爬到最高位置，成為香港電話公司總工程師。」

法官Doyle細細回味在香港的童年時光。他住在舊山頂道，常去大浪灣游泳、滑浪、食雪糕、飲七喜、飲綠寶,… …，見到灘上有海膽要兜路走。他還記得試過坐船環島遊，繞行大潭水塘遛狗，觀看很多場足球賽，還有，香港有龍舟競賽、農曆新年，懸掛颱風時學校會停課，暴動會戒嚴。他甚至在香港希爾頓遇見過巴西著名足球員比利，向他索取了親筆簽名。

他亦記得，很多次乘搭英國海外航空公司V C 10s早機返港，飛機飛越獅子山不久，就見到大厦單位內有人在擦牙，經歷一番驚險刺激的場面之後，才平安降落舊啟德機場。他也坐過小型飛機翱翔香港上空，從此得了鼓勵，在20多歲時上飛行駕駛課程。

「對我來說，香港是個特別的地方，我經常覺得有一股很強的吸力拉我回到這裏來。雖然人島是我的家，但我始終覺得自己有一部分是屬於香港的。」

自從80年代離開之後，法官Doyle很有興趣知道香港的發展情況。他在人島執業做辯護律師的時候(1984–2003)，有很多香港客戶。他做人島法官之後，偶爾有幾次返回香港，審理案件的時候，試圖援引香港案例法，以香港案例作為具有說服力的判例。法官Doyle分享他的法
律生涯，回想幾十年前的點點滴滴，以及不斷穿梭於兩個司法管轄區之間的好處。

生性反叛
回想自己決定在法律領域發展事業的時候，法官Doyle提到最近在家翻找東西時，從一大疊文件中找到了一份黃色的日程表，上面印有藍色的標題：「英皇御準香港賽馬會：1978年4月1日(星期六)$2」(The Royal Hong Kong Jockey Club: Saturday 1 April 1978 $2)。日程表仿佛帶他重返香港那一天星期六的下午。當天，他一家與馬會董事，包括張奧偉爵士CBE QC JP和羅弼時爵士KBE QC JP，會聚一堂，有講有笑。他們到場時，另一位同樣舉家從人島來港居住的祈德尊爵士，以競賽董事的身分，親切地上前歡迎。活動結束之前，祈德尊爵士和太太Peggy在現在已經褪色的日程表上留言簽名：

大衛：為何不在人島讀法律呢？你不覺得在那裏前途一片光明嗎？
法官Doyle說：「我會說，這句話激勵我要成為律師，有朝一日做人島的法官，但實情是，我爸爸早在幾年前已在我心底埋下種子，激發我立志成為律師，這句留言是再次激勵我而已。」「我記得在香港，當我是反叛青年的時候，爸爸像大多數人的爸爸一樣，到了某個時候，諄諄告誡兒子，言辭有點笨拙，但滿有慈父心腸。我們坐在露台，一邊欣賞香港的景色，一遍傾談我的人生計劃。他一臉慈容，語重深長地對我說：『不論你要在將來的日子做些甚麼，要友善待人，不要忘記你從哪裏來，總要努力貢獻，付出的要比收取的多，最重要的是，你要將來掃街也好，做首相也好，都要盡己所能去完成的事。還有，不要做律師或會計師。他們只不過是金子銀子的寄生蟲，依靠人家的問題過日子。』」
「我 obed from the text.」

未來的挑戰
法官Doyle解釋，香港和人島有很多領域所面對的挑戰都是相類似的，不過，他今次只就兩點給予意見：年青人和法治。
法官Doyle在1982年獲認許為英國大律師。後來，他在倫敦司力達律師樓訴訟部工作，1984年返回人島做辯護律師，按照自己的計劃，完成一直想要做的事。接著，他成為Dickinson Cruickshank & Co的合夥人，之後再獲委任為商業部門的總管。2002年9月，他獲委任為非全職副司法長官(Deputy High Bailiff, 職能與英國地方法院法官的相近)兼死因裁判官(Coroner of Inquests)。他一直到2003年才離開Dickinson Cruickshank & Co(現稱為Appleby)，結束私人執業生涯，在公開招聘中脫穎而出，擔任人島次席法官。2010年12月，他再次通過公開招聘，獲英女皇伊利沙伯二世委任為首席法官及司法機構首長。2015年1月獲英女皇陛座為澤西及格恩西島非全職上訴法庭法官。
法官Doyle接續說，香港和人島有很多相似之處，最重要的一點是同樣有敬業的精神，渴望維護法治。但他指出，香港的人口密度和律師數目遠遠超過人島。人島人口35,000左右，不分設大律師和事務律師的法律專業有240名執業辯護律師。他亦指出，在特殊情況中，英國大律師可獲暫准在人島執業，處理法庭案件。香港有10,000名執業事務律師，數目遠比人島的多。
要支柱，但它的價值遠不止於此。法治直接影響我們所有人的生活質素。它觸及社會存在公平、文明的核心。

終審法院常任法官鄧楨(鄧國楨)2016年3月19日向法律畢業生發表的演說中，正正提到年青人和法治對未來司法管轄區的重要性：

「我希望你們，香港制度未來的守護者，打醒精神。不要以為輕微侵犯法治或人權無傷大雅。又或者事不關己，就己不勞心。就像天空污染了一樣，我們全部都是受害者。要是法治被削弱，我們全部身受其害。未來是屬於你們的……為真正的法治站起來，為有效保護我們的基本人權站起來。」

香港很幸運，有獨立的法官推進並保護法治，為香港謀求最大利益。支持司法機構維護法治是人島和香港的法律專業和社會大眾的一大挑戰。

比較法的角色

當談及一些更常見的重要話題時，法官Doyle想到比較法的重要性。他提及自己2007年在哈佛法律學院講課，在課堂上強調，國家值得借鏡外地司法管轄區的發展，以幫助發展本身國的法律。

不過他承認，我們總不能輕易地掌握天下萬事，而這正是他認為法官會議之所以大有用處的原因。他說：「一、所有普通法司法管轄區的法官，每天處理相近的問題，我們有很多可以彼此學習的地方。二、人島必須提升形象，增加知名度，讓人知道人島是做生意的好地方，也是尊重法治的地方。三、它給司車人員充電，坦白說，或許是有點兒自私地說，法官會議給我們透氣的機會，離開一下每天似乎不斷積累的工作壓力。四、它有助於在恰當的觀點範圍內提出問題。五、從事經常叫人感到寂寞，孤伶伶的工作，當與其他司法管轄區的法官討論爭議的時候，就可以得到安慰和支持。法官各有所長，互相敬重，我們大家可以彼此幫助成為效能高，有活力的法官。」

教學培訓

法官Doyle亦有一套堅定的信念，確信法官要向其他法律愛好者講學，也要在自己所地和國際間推進並保護法治。除了招待訪客參觀人島法庭之外，他亦向辯護律師實習生，以及島上中學生等授課。

此外，他前往海外司法管轄區，探訪當地法官及其他法律愛好者，以及招待外國法官等參觀人島法庭。他說：「我相信，與其他法官會面、出國、在國際間交流理念，都是非常重要的。出國可以增進知識，加深了解，小島司法管轄區的法官尤其需要出國走一走，因為島上法庭的工作空間有限，有時甚至有點兒與世隔絕的感覺。我處理的原審案件及上訴案件之中，絕大部分包含了國際元素，所以對我來說，保持國際聯繫是萬分重要的，而探訪其他司法管轄區的法官只是增進國際了解，促進司法合作的一個環節。法官今天的職責，必定包括與其他法官、律師、社會大眾互動交流，跨越國家界限，學習全球各地之長處，大家彼此合作。」

法官職責非常重要的特色

法官Doyle詳談他關於法官職責的說法，特別提到他認為法官職責所絕對必要的特色。 — 他2017年在牛津講授法官職責絕對必要的特色時，已概述過一遍，現簡要說如下：

• 法官按照法例及司法誓言，就眼前法律爭議點作裁定。法官必須公正獨立，案件應當在合理時間內得到公平公正的裁定。這需要在撤案人一提交申索或申請，就開始積極處理案件。

• 法官發展普通法，但司法機關或人員發展的法律，必須符合公義、常理，以及法律、原則、政策的精神。但亦必須考慮到法官所需要的，既要確定無疑，但又要保留空間，還需要遵守合理的例，法官發展法律的方式，應當是被認為最適合祖國的需要、規則及利益的方式，也是最適合祖國所處更遼濶國際社會的需要、規則及利益的方式。

• 法官必須樂意接受改變和新技術。

• 法官就本地法律和程序問題給予指引。

• 法官顧及祖國的全球責任，發展符合祖國最大利益的本國法理。

• 法官在本地和國際間推進法治。

• 在適當情況下，法官參考與自己祖國有關的法律政策。

• 最後，法官應當在所有法庭使用者的需要為關注重點。

他希望這些是所有法官在各自司法管轄區秉持公義時所渴望達到的標準。
One-Day Conference in Gdansk

At the invitation of the Hong Kong Economic and Trade Office – Berlin (“HKETO”), our representatives Vice President Amirali Nasir and Council member Cecilia Wong spoke at a one-day conference in Gdansk, Poland on 29 June.

The conference (co-organised by HKETO, Consultative Office of the Hong Kong Trade Development Council in Warsaw and the Bar of Attorneys in Gdansk (“Gdansk Bar”)) was entitled “China – Hong Kong – Poland: Opportunities for Polish Businesses” and attracted Gdansk lawyers and entrepreneurs who are interested in doing business with Hong Kong/China businesses. It is worth noting that Poland was the only European country to have achieved uninterrupted GDP growth from 2009 through 2016. Hong Kong’s total exports to Poland grew by 10 percent to US$1.3 billion while its imports from Poland increased by 9 percent to US$345 million in 2016.

Under the witness of Ms. Zhao Xiuzhen, Consul General of the People’s Republic of China in Gdansk, a Memorandum of Understanding (“MOU”) was signed with the Gdansk Bar at the occasion. The Law Society looks forward to fostering a closer relationship with the Gdansk Bar and creating more opportunities for professional exchanges among our respective members.

The conference was well-attended by over 100 legal practitioners and businessmen.

The Law Society and the Gdansk Bar signed a MOU during the conference.
IHLC: Company Visit to Midea Group in Shunde

On 7 July, over 20 members comprising in-house lawyers and private practitioners joined a company visit to the headquarters of Midea Group (“Midea”) in Shunde. Midea is a manufacturer of household electrical appliances. Owning a number of public companies and operating offices in approximately 200 countries, it is the largest white goods production and export base in China. The tour started with a visit to the showroom of Midea, where different products of the company were displayed, followed by a brief stop at the history gallery introducing the development of Midea from its establishment around half a century ago. After a lunch gathering with their legal team, representatives of Midea shared their experiences and challenges working as in-house lawyers in the mainland. Legal practitioners from both jurisdictions then exchanged ideas and views on their daily legal practices. The event was concluded by a visit to Midea’s Innovation Exhibition Hall where the latest technology and innovative products were showcased.

The 2017 Annual Conference of In-House Lawyers will be held on Friday, 29 September. Prominent speakers will share their experience on different topics. We look forward to seeing you there soon!

Participants visited Midea’s Innovation Exhibition Hall which showcased the company’s latest technology and innovative products.
Exchanges with Mainland Students

On 6 July, the Greater China Legal Affairs Committee (“GCLAC”) under the Standing Committee on External Affairs received a delegation from Shantou University Law School. Mr. Henry Wai, Vice Chairman of GCLAC, and Mr. Lawrence Yeung, member of GCLAC, spoke to approximately 20 law students about the functions and role of the Law Society and the legal system in Hong Kong. Upon the invitation of The Legal Education Fund Limited, President Thomas So attended its seminar on 10 July and delivered a keynote speech on Professional Ethics and Integrity to over 40 law students from China University of Political Science and Law, Zhejiang University, Shanghai University of International Business and Economics and Nanjing University. The speech was well received by the students, who enthusiastically raised questions. Ms. Catherine Mun and Ms. Alexandra Lo, members of GCLAC, also attended the event to interact with the students.

Visits by Mainland Delegations

On 10 July, the Law Society, the Guangdong Lawyers Association and the Macau Lawyers Association jointly organised a seminar to discuss their cooperation under the Belt and Road initiative and the Bay Area Development Plan. On 20 July, a delegation from the Department of Justice, Guangdong and the Guangdong Lawyers Association visited the Law Society. President Thomas So, Vice President Melissa Pang, Mr. Fred Kan, Chairman of the Belt and Road Committee, as well as Vice chairpersons and members of GCLAC received the delegation and further discussed efforts to collaborate on infrastructure projects in the region.

On 2 August, the Union of Beijing Business Services visited the Law Society. Mr. Neville Cheng, Vice Chairman of GCLAC, and Mr. Lawrence Yeung, member of GCLAC, met with the delegates to discuss potential areas of collaboration between Beijing and Hong Kong.

Additionally, a 15-member delegation from Chengdu Lawyers Association, led by its Vice President Mr. Li Zhengguo, also visited the Law Society on 2 August, taking the opportunity to discuss with the Law Society its experience on lawyer assessment, maintenance of legal rights, discipline and professional conduct and external affairs. President So, Vice President Pang, Immediate Past President Stephen Hung, Mr. James Wong, Vice Chairman of GCLAC, and Mr. Yeung received the delegation.
內地代表團來訪

香港律師會與廣東省律師協會和澳門律師公會於7月10日進行座談會，討論三地在「一帶一路」倡議和大灣區發展下的合作。其後，廣東省司法廳和廣東省律師協會於7月20日訪問律師會，律師會代表包括蘇紹聰會長、彭韻僖副會長、一帶一路委員會主席簡家駿律師，以及多位大中華法律事務委員會的副主席和委員，進一步就上述議題進行洽商。

另外，北京商務服務業聯合會以及成都市律師協會亦於8月2日訪問律師會。大中華法律事務委員會副主席鄭宗漢律師和委員楊先恒律師跟北京商務服務業聯合會代表會面，探討京港兩地之間的交流合作；而成都市律師協會會長鄭宗漢則率領15人律師代表團來訪，藉此次機會了解香港律師會在律師考核、維護法律權利、紀律及執業操守，以及對外事務的經驗。參與會面的律師會代表包括蘇紹聰會長、彭韻僖副會長、熊運信前會長、大中華法律事務委員會副主席黃江天律師和委員楊先恒律師。

POLA Summit in Sri Lanka

The Presidents of Law Associations in Asia (“POLA”) is a forum for the leaders of law societies and bar associations from across the Asia-Pacific region to exchange ideas and information. The Law Society of Hong Kong is a member of POLA and the President attended the 28th POLA Summit in Colombo, Sri Lanka from 22 to 24 July. Representatives of law societies and bar associations in Asia, including Hong Kong, Australia, New Zealand, Singapore, Malaysia, India, Mainland China, Taiwan, Japan, Korea and Mongolia, all updated one another on the major legal developments in their home jurisdictions. This was a valuable opportunity for participants to forge new friendships and explore possible areas of collaboration on issues of mutual interest. Most of the participants were also along the Belt and Road and keen to foster closer ties paving the way for future co-operation under the Initiative.

亞洲法律協會會長會議在斯里蘭卡舉行

「亞洲法律協會會長」是一個讓亞太區法律協會領袖互相交流，彼此分享的平台。作為成員之一，律師會會長於7月22日至24日出席在斯里蘭卡科倫坡舉行的第28屆亞洲法律協會會長會議。與會者包括香港、澳洲、新西蘭、新加坡、馬來西亞、印度、中國內地、台灣、日本、韓國、蒙古在內的亞洲法律協會代表，透過論壇了解各個地區的發展，藉此寶貴機會，建立友誼，並就共同關心的議題探討合作的可行性。大多數與會者來自「一帶一路」沿線國家，藉此機會為迎接「一帶一路」倡議下的發展，建立更密切的連繫。

President Thomas So was invited to present on the topic “Attracting Foreign Investment – the Hong Kong Experience” at the Summit.

會長蘇紹聰律師獲邀在會議上就「吸引外商投資 – 香港的經驗」題目演講。
Members' Forum and Dinner Gathering

The annual Members' Forum serves as a major platform for Council members to mingle with our general members. The Forum this year was held on 28 July. Well attended by around 70 participants, it afforded an invaluable opportunity for the Council to hear the views of members on different issues of interest to the profession.

Every year, a topic will be set for focal discussion at the Forum. The topic this year was "Use of Awards and Citations in Practice Promotion". At the Forum, members shared their views on the pros and cons of using the awards and citations given out by commercial operators for the purpose of practice promotion, and the impact of such awards on practitioners or law firms.

Members also actively participated by volunteering other comments and suggestions during the “Dialogue session” or to Council members seated at their tables.

Council members taking a selfie with participants at the Forum.

President Thomas So (second from right), Vice President Melissa Pang (first from right) and Vice President Amirali Nasir (third from right) listening to members’ questions during the “Dialogue session”.

理事會成員在論壇上與參加者自拍。

會長蘇紹聰律師(右二)、副會長彭韻僖律師(右一)及黎雅明律師(右三)在「對話環節」聽取會員的問題。

Mr. Shum Hin Han presented her views to the participants as the winner of the grand prize.

大獎得獎者岑顯恆律師向與會者講解她對議題的看法。

會員論壇暨晚宴

每年一度的會員論壇暨晚宴，是理事會與會員交流的主要平台。今年的論壇於7月28日舉行，吸引了70多位會員出席。理事會成員藉此寶貴機會，聽取會員對業界不同議題的意見。

每年的論壇均設專題討論。今年的題目是「在宣傳執業業務時援引獎項或表揚訊息」。在論壇上，各會員就獎項對律師或律師行帶來的影響，以及律師行援引商業經營者頒發的獎項宣傳業務的利與弊，分享了他們的看法。

會員亦積極參與了「對話環節」，向席上的理事會成員提供其他意見和建議。
The 6th Culinary Vacation: Experience Taipei through Cuisine

Following the success of its culinary vacations in Lyon, Chengdu, Naples, Barcelona and Seoul since 2011, the Cookery, Food and Wine Appreciation Interest Group led a party of 45 foodies on 21–23 July to embark on a food-packed exploration of Taipei's most loved culinary traditions, as well as the city's latest food trends.

The three-day tour kicked off with a dinner in a 1920s-esque, avant-garde re-done colonial house, now a restaurant specialising in vintage Taiwanese cuisine that showcased a taste of the history, the art of local dishes, and the charm of a bygone era. Every dish was made from fresh and organic ingredients and elegantly presented.

No trip to Taipei would be complete without a trip to at least one of its night markets. The group attended the famous "Millennium Feast", a seated themed-dinner whereby over 20 signature dishes selected from the Ning Xia Night Market were brought to the dining table for tasting.

We also gathered late at night at a Taiwanese pub bedecked with rustic and vintage home décor, where grilled seafood, handmade sausages, and other delectable dishes were served with Taiwanese beer.

The highlight of the tour was the two-day cooking programme in which participants put on their aprons to whip up local specialties including xiao long bao, oyster omelette, stir fried pumpkin rice noodles and innovative "molecular gastronomy" dishes, under the guidance of Chef Dai Yu Yi, an award-winning chef.

The tour concluded with a dinner at one of Taipei's trendsetting restaurants, which was on Asia's Best 50 Restaurants 2017 list. It is a restaurant which crafts fine dishes from local Taiwanese ingredients and brings the concepts of haute cuisine to Taipei in a chic and comfortable atmosphere.

Members who are interested in joining the events organised by the Cookery, Food and Wine Appreciation Interest Group, please feel free to contact Wendy Fung of the Member Services Department at wendyfung@hklawsoc.org.hk.

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Members of the Cookery, Food and Wine Appreciation Interest Group at the cooking class.

第6屆美食之旅：台北美食體驗

烹飪、美酒佳餚鑑賞小組過往於里昂、成都、那不勒斯、巴塞羅那和首爾舉辦的美食之旅均大獲好評。今年，小組率領45位饕客，於7月21日至23日到台北，品嚐當地的傳統佳餚和探索最新美食潮流。

在這為期三天的旅程中，小組成員先在一家由20年代殖民地建築改建而成的餐廳享用晚餐。該餐廳供應古早台灣菜和地道佳餚，展現了傳統的味道，每道菜均採用新鮮的有機食材，擺盤優美典雅。

台北之旅怎能缺少前往夜市的行程？小組成員享用了著名的寧夏夜市千歲宴，一次過品嚐20多款地道夜市招牌菜。

逛過夜市後，小組成員在一家帶有鄉村風格的台灣酒吧聚聚，邊吃燒海鮮、手工香腸和其他小吃，邊喝台灣啤酒。

美食之旅的亮點是為期兩天的烹飪課程。小組成員穿上圍裙，跟從獲牌名廚戴於益師傅學做地道美食，包括小籠包、蚵仔煎、南瓜炒米粉和創新的分子料理。

回港前，小組成員在台北一家人氣潮流餐廳吃晚飯。該餐廳是2017年亞洲50最佳餐廳之一，餐廳環境時尚，氣氛舒適，以台灣當地食材，烹製精美的菜餚，將高級美食的概念帶到台北。

有興趣參加烹飪、美酒佳餚鑑賞小組活動的會員，歡迎電郵至wendyfung@hklawsoc.org.hk與會員服務部聯絡。
YSG: 2nd Event of “CONNECTED” 2017 – Brewery Tour!

The Young Solicitors’ Group (“YSG”) organised the 2nd “CONNECTED” event on 15 July. More than 80 mentors and young members spent a relaxing and fun afternoon at an award winning local brewery.

The highlight of the event was the mentors’ sharing session during which Mr. Nick Chan, Mr. Alan Lau, Mr. Hugo Ngaw and Mr. Victor Yip shared their thoughts on the challenges that the legal profession is facing, what skills set young solicitors should develop in view of the challenges, and interesting ways to manage work-life balance. Participants then enjoyed a brewery tour learning about the brewery’s philosophy while tasting some refreshing locally brewed beer.

By way of background, “CONNECTED” is a mentorship and buddy programme first launched in early 2011 to provide a platform for newly admitted members to meet with more senior members of the profession in developing a professional supporting network. YSG holds a number of CONNECTED events throughout the year to encourage participants to regularly communicate with their mentors.

We will hold our next CONNECTED 2017 event in September! Members who are interested in joining the events organised/arranged by the YSG, please feel free to visit http://www.hklawsoc.org.hk/pub_e/ysg, add our Facebook page (https://www.facebook.com/young.solicitorsgroup) or contact Assistant Director, Member Services at adms@hklawsoc.org.hk.

年青律師組「法友聯盟」2017第二項活動：參觀啤酒廠

年青律師組於7月15日舉辦了「法友聯盟」2017的第二項活動。80多位良師和年青會員在一間本地得獎啤酒廠渡過了一個輕鬆愉快的下午。

是次活動的亮點是良師分享會，陳曉峰律師、劉錦倫律師、柯曉宇律師及葉善可律師與參加者分享他們對法律業界面對的挑戰的看法，年青律師應建立什麼技能來面對挑戰，以及達致工作與生活平衡的有趣方法。參加者隨後被安排導賞參觀釀造啤酒的過程，從而對此作出了解；並品嚐了令人精神一振的本地啤酒。
YSG: Joint Professional Networking Party 2017–Jungle of Parties

On 30 June, the Young Solicitors’ Group (“YSG”), together with other member bodies of the Young Coalition Professional Group (“YCPG”) of Hong Kong Coalition of Professional Services, co-organised a Joint Professional Networking Party in Lan Kwai Fong. This was one of the most anticipated events of YCPG and was well attended by over 350 members and friends from 10 professional institutes.

The theme for the event is "Jungle of Parties", and participants dressed in exotic party animal/plant/adventurer costumes to match the theme. All participants were excited to mingle with friends from other institutes while enjoying drinks and canapés. To spice up the event, there was a lucky draw with attractive prizes, as well as two best-dressed awards, which were presented after a catwalk performance.

YSG regularly organises networking events with other professional bodies with a view to serve young members with different interests. The events provide a platform for young practitioners from different professions to mingle with one another and explore potential collaboration opportunities.
Email Scams: Urgent Action for Recovery of Funds

By Nick Luxton, Barrister

Gilt Chambers
According to the South China Morning Post, international fraudsters used Hong Kong bank accounts to steal almost HK$1.5 billion in commercial email scams in 2016. This included a single transaction of HK$500 million, stolen from a foreign bank (see International email scams involving Hong Kong hit HK$1.5 billion for the year so far, South China Morning Post, 12 December 2016). So far this year, email and phone scams have cost over HK$580 million (see Dedicated Hong Kong police unit set up to handle phone scams, South China Morning Post, 21 July 2017).

In such email scams, the fraudsters hack into the email accounts of targeted companies (often outside Hong Kong) to learn about their businesses, before using the information obtained to impersonate employees and suppliers, in order to arrange transfer of funds. According to the Latest Trend of Email Scams – CEO Email Scam published by the Hong Kong Police Force, email scams typically take the following forms:

- **Sale contract scam**: fraudsters know from stolen emails about transactions between company A (the seller) and company B (the buyer). The fraudsters, pretending to be company A, send fictitious emails to company B, claiming that company A’s bank account has changed and requesting transfer of funds to the new bank account in Hong Kong.

- **CEO scam**: pretending to be senior management officers of victim companies, fraudsters send fictitious emails to staff in the finance department, seeking the transfer of funds to overseas business partners or to make business investments on an urgent basis. The finance department staff are requested to transfer funds to a bank account in Hong Kong.

Hong Kong solicitors may be contacted by foreign companies, wishing to take action to recover stolen funds which have been transferred to Hong Kong bank accounts. This article discusses strategies solicitors can employ to (i) prevent onward transfer of funds, (ii) obtain information concerning the location of funds, and (iii) make recoveries for clients.

**Report to Hong Kong Police**

Solicitors for the foreign company should consider reporting the email scam to the Hong Kong Police immediately on discovering the fraud. This may lead to the Joint Financial Intelligence Unit (“JFIU”) issuing a “no consent” letter to the relevant bank, which informs the bank that the JFIU does not consent to dealings in the Hong Kong account which received the funds (s. 25A(2)(a), Organized and Serious Crimes Ordinance (Cap. 455)). However, the “no consent” letter does not operate at law as a freeze of the Hong Kong account or protect the foreign company’s interest in the funds contained in the account. It remains for the relevant bank to decide whether to honour the instructions of their customers despite receipt of the “no consent” letter (Interush Ltd v Commissioner of Police [2015] 4 HKLRD 706, paras. 50–52) (although, in practical terms, the bank will invariably comply with its obligations under anti-money laundering legislation). However, solicitors should not rely on the Hong Kong Police to make a recovery on their client’s behalf.

**Proprietary and Mareva Injunctions**

Solicitors should advise foreign companies to consider taking urgent action in the Hong Kong Courts to prevent dealings in the Hong Kong account and seek recovery of its funds. The foreign company, as plaintiff, can apply on an ex parte basis for both a proprietary and Mareva injunction.

A proprietary injunction is issued to preserve assets to which the plaintiff has a proprietary claim. If the plaintiff has been induced by an email scam to transfer funds, the recipient may hold such funds on constructive trust for the plaintiff. In JS Microelectronics Ltd v Achhada [2016] HKEC 694, para. 60, it was stated:

“[W]here property is received or obtained by fraud, equity imposes a constructive trust on the fraudulent recipient or on a recipient who knowingly retains or receives the property of which the plaintiff has been unjustly deprived. The trust property is recoverable and traceable in equity.”

By contrast, a Mareva injunction is designed to protect the plaintiff against the dissipation
of the defendant’s assets against which it might otherwise execute judgment. A Mareva injunction does not depend on the plaintiff having a proprietary claim against the assets which are to be controlled. It has been said that a proprietary injunction is a “better relief” than a Mareva injunction if the property has not been dissipated. Where there is a risk that such dissipation has occurred, it is prudent to also apply for a Mareva injunction as “top up” protection (Falcon Private Bank Ltd v Borry Bernard Edouard Charles Ltd [2012] HKEC 953, para. 78).

A proprietary injunction has the following advantages when compared with a standard Mareva injunction:

- The threshold for obtaining a proprietary injunction is lower. In an application for a proprietary injunction, the court will readily find that the balance of convenience favours the preservation of the fund pending trial. Further, it is not necessary to demonstrate a real risk of unjustifiable dissipation of assets, as is required for a Mareva injunction. Finally, the plaintiff only needs to show a serious issue to be tried on the merits (see Pacific Rainbow International Inc v Shenzhen Wolverine Tech Ltd [2017] HKEC 869, paras. 37–39).

- With respect to the funds which are subject to a proprietary injunction (and which are allegedly held on constructive trust), the defendant is not ordinarily entitled to use the funds for its legal costs or ordinary business expenses (Wharf Ltd v Lau Yuen How [2010] 1 HKL RD 783). By contrast, such an exception for the use of the defendant’s assets is incorporated into the standard form of Mareva injunction in Hong Kong.

- The plaintiff may obtain disclosure orders against the defendant which assist in determining where the plaintiff’s funds have been transferred.

**Disclosure Orders**

The standard form of Mareva injunction allows for the Court to order that the defendant disclose its assets, giving the value, location and details of all such assets (Practice Direction 11.2). However, in Pacific King Shipping Holdings Pte Ltd v Huang Ziqiang [2015] 1 HKLRD 830, para. 30–32, the Court of Appeal held that in relation to a Mareva injunction which does not involve a proprietary claim, the Court usually will not order further disclosure relating to the transfer or dissipation of the defendant’s assets. An exception exists where there is evidence that the defendant has breached the injunction.

With respect to a proprietary injunction, where the plaintiff seeks to trace property which in equity belongs to him, the Court may order that the defendant disclose the whereabouts of the property. In addition, the Court may order that a third party bank give discovery of documents with respect to a defendant’s bank account, which was allegedly used for the fraud (see Pacific King Shipping Holdings Pte Ltd, para. 29).

Under s. 21 Evidence Ordinance (Cap. 8), the Court may order that the plaintiff is entitled to inspect and take copies of entries in a banker’s record (including bank statements). Such an order can be made at an early interlocutory stage of the proceedings, including at the ex parte hearing (see CTO (HK) Ltd v Li Man Chiu [2002] 2 HKLRD 875, para. 7–12; for an example of a disclosure order made in an ex parte application, see Golden Brothers Inc v Medicare Asia Ltd [2016] HKEC 2246). The advantage of such a disclosure order against a third-party bank is that it allows the plaintiff to quickly learn where its funds have been transferred.

**Second Layer Recipients**

If the plaintiff’s solicitors discover that the defendant has itself transferred funds onwards (to a “second layer” recipient), then they will need to advise their client whether to apply for a proprietary injunction and a Mareva injunction against the second layer recipient. If the funds received by the second layer recipient were the proceeds of an apparent fraud, the plaintiff will be entitled to make a proprietary claim in equity to the funds in the hands of the second layer recipient, subject to a defence of bona fide purchaser or recipient for value without notice (Pacific Rainbow International Inc, at para. 64; Arrow ECS Norway AS v Xin Cheng Holdings (International) Co Ltd [2016] HKEC 1063, para. 13). Further, the plaintiff may obtain disclosure orders with respect to the second layer recipient’s dealings with the funds (including whether the funds have been further transferred to “third layer” recipients).

A potential difficulty is that the plaintiff’s solicitors have no knowledge of the transaction between the defendant and the second layer recipient, including whether there is any business relationship between them. In various recent Hong Kong cases, second layer recipients have sought to discharge injunctions on the basis that they entered into legitimate transactions with the defendant.

For example, it has been argued by second layer recipients that they received funds from the defendant in transactions for the sale of shoes, electronic goods or frozen meat, and in the “grey market” exchange of RMB for Hong Kong dollars or United States dollars. In certain cases, the second or third layer recipient’s explanation was sufficient to discharge the injunction (eg, Arrow ECS Norway AS; Limited Liability Company Umitoys v Nice Fame Trading Ltd [2017] HKEC 1295, where a first layer recipient discharged the Mareva injunction). In other cases the evidence of the transaction was considered inadequate (eg, Pacific Rainbow International Inc).

In Arrow ECS Norway AS, para. 30, it was stated that the mere receipt of funds through an underground banking system “is not sufficient in itself to find guilt. It has to be proved that the recipient knew or had reason to believe that the money had an illicit source.” However, this analysis has been criticised on the basis that a finding of “guilt” is unnecessary when granting an interlocutory injunction. In Ferrari North America Inc v Changan International Energy Co Ltd [2017] HKEC 1324, paras. 19 and 25, it was stated:
據南華早報報導，國際詐騙犯在2016年的商業電郵詐騙案中，利用香港的銀行賬戶，合共騙取了幾近15億港元，而當中的一宗交易，導致一家外國銀行被盜取了5億港元(參見International email scams involving Hong Kong hit HK$1.5 billion for the year so far, 南華早報, 2016年12月12日)。今年到目前為止，電郵及電話騙案已帶來了超過5.8億港元的損失(參見Dedicated Hong Kong police unit set up to handle phone scams, 南華早報, 2017年7月21日)。

騙徒在這些電郵騙案中，入侵目標公司的電郵賬戶(該等賬戶一般是在香港以外的地方登記)，目的是為了更深入了解有關公司的業務，然後根據所取得的資料，偽冒該公司的職員和供應商，以達致騙取該公司款項之目的。根據香港警務處所刊登的《「電郵騙案」最新手法 - 假冒行政總裁電郵騙案》(Latest Trend of Email Scams – CEO Email Scam)資料，電郵騙案的騙徒一般會採取以下犯案手法:

- **銷售合約騙案:** 骗徒根據盜取得來的電郵，得知A公司(賣方)與B公司(買方)的業務往來情況。其後，騙徒假扮A公司發送虛假電郵予B公司員工，訛稱A公司的收款銀行賬戶號碼已經更改，要求B公司員工將應付的款項存入一個在香港新開設的銀行賬戶。

- **假冒公司高層:** 骗徒假冒受害公司的高層管理人員，向該公司的財務部門員工發出虛假電郵，訛稱要緊急匯款給外國生意伙伴或進行業務投資，並指示該公司的財務部門員工將款項存入一個在香港開設的銀行賬戶。在外國公司也許會要求香港的律師提供協助，追討該等被盜取及存入了香港銀行賬戶的款項。

本文將討論香港律師可以採取如何的策略，以(i)防止騙徒所盜取的款項被相繼轉移；(ii)查找該款項的下落；及(iii)協助當事人追討有關款項。

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“Accept that by itself the mere fact that a payment to a bank account came from an unrelated source may not necessarily be sufficient to raise a suspicion of dishonesty. But if viewed in its whole context, that fact raises a suspicion of dishonesty, it is not necessary for the court at the Mareva stage, to require a plaintiff to show 'guilt' on the part of the recipient of the fund.

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Circumstances where, following an Internet email fraud, a substantial sum is deposited in the account of one company, and then distributed, immediately, in apparently random sums, to a number of other companies, each with no apparent relationship to the distributor, have become commonplace in the courts. Equally commonplace is the suggestion by the ultimate recipients of the funds that the amount received precisely matches a transaction undertaken at the time the deposit was made. These are 'coincidences' which cannot be ignored by the courts.”

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Each case will turn on its own facts regarding whether the second layer recipient received the funds for value without notice. The Court will be required to assess whether there is credible evidence of the relevant transaction, having regard to the transaction documents, business history, contemporaneous exchanges, and the timing and amount of the fund transfer.

**Conclusion**

Once solicitors are instructed by a foreign company with respect to an email scam, they should act quickly to prevent the onward transfer of funds. The Hong Kong Courts have been willing to grant proprietary and Mareva injunctions (together with ancillary disclosure orders) on an urgent basis, in order to assist the foreign companies to protect their assets. However, the more time that passes, the greater the likelihood that funds will be transferred to second layer and third layer recipients, or leave Hong Kong entirely. This may complicate the process of making recoveries from the wrongdoers.
向香港警方舉報

受外國公司委託的律師一旦發現了欺詐情況的存在，便應當考慮立即向香港警方舉報有關的電郵騙案，此舉可促使「聯合財富情報組」(Joint Financial Intelligence Unit)向有關銀行發出「不同意」書，告知該銀行「聯合財富情報組」並不同意其處理該存在於有關存摺的香港賬戶中的交易(《有組織及嚴重罪行條例》第455章第25A(2)(a)條)。然而，該「不同意」書並不具有法律效力，可以凍結該香港銀行賬戶，或是保障該外國公司在該賬戶的款項中的權益。因此，即使該銀行收到了「不同意」書，它仍有權決定是否執行其客戶指示(Interush Ltd v Commissioner of Police [2015] 4 HKLRD 706, para. 50–52)(儘管在實際運作上，銀行始終會履行其在反清洗黑錢法例下的義務)。但不管如何，律師不應倚賴香港警方為其當事人進行追討。

「所有權強制令」和「資產凍結強制令」

律師應當建議該等外國公司考慮在香港法院提起緊急法律程序，以防止銀行處理該等涉及香港賬戶的交易，並設法追討有關的款項。此外，作為案中原告人的外國公司，也可以申請法院裁定「所有權強制令」(proprietary injunction)和「資產凍結強制令」(Mareva injunction)(以下簡稱「資產凍結令」)。

法庭頒發「所有權強制令」的目的，是為了保存該等原告人可對其提出所有權申訴的資產。原告人若遭遇電郵詐騙而被誘使匯出款項，收受了有關款項的人，可被視為以「法律構定信託」(constructive trust)方式，為原告人持有該款項。在JS Microelectronics Ltd v Achhada [2016] HKEC 694, para. 60一案中，法官指出：「任何財產若是透過欺詐手段而被收受或取得，對於運用欺詐手段而取得此等財產的人，又或是明知此等財產是藉不公平手段剝奪原告人而得來，但仍然保留或收受它們的人，衡平法將對其施加法律構定信託，而在衡平法下，該等信託財產將可予以追討和追尋。」

另一方面，法庭頒發「資產凍結令」，是旨在保障原告人，以免被告人的資產在執行法庭的判決前遭到耗散(dissipation)。「資產凍結令」的頒發，並不妨礙於原告人對該資產將會受到管制的資產，是否享有所有權方面的申訴。因此一般的看法是，有關的財產倘若未被耗散，那麼與「資產凍結令」比較，「所有權強制令」應當是「較佳的濟助方法」。倘若該等財產有被耗散的風險，那麼較為審慎的做法，就是同時向法庭申請頒發「資產凍結令」，從而進一步「加強」對該些資產的保護(Falcon Private Bank Ltd v Barry Bernard Edouard Charles Ltd [2012] HKEC 953, para. 78)。

與標準的「資產凍結令」比較，「所有權強制令」具有下列優點：

- 「所有權強制令」的申請門檻較低。法庭在審理「所有權強制令」申請時，於權衡利便後，通常會認定適當的做法，是保存有關款項，直至有關的審訊程序展開。此外，申請人並不需要證明有關資產存在被不合理耗散的真實風險(像「資產凍結令」所要求的情況般)。最後，原告人只須根據實際情況，證明存在重大問題而須對其加以審理(參見Pacific Rainbow International Inc v Shenzhen Wolverine Tech Ltd [2017] HKEC 869, paras. 37–39一案)。

- 被告人在一般情況下，不得將受制於「所有權強制令」的款項(該等款項被指稱是以「法律構定信託」方式持有)運用於法律費用的支付或日常業務支出(Wharf Ltd v Lau Yuen How [2010] 1 HKLRD 783)。相反，標準格式的香港「資產凍結令」載有此等運用原告人資產的例外情況。

- 原告人可以要求法庭向被告人下達披露命令，以協助追尋原告人款項的下落。此外，法庭也可以命令第三方銀行披露與該被指涉及欺詐用途的銀行賬戶有關的文件(參見Pacific King Shipping Holdings Pte Ltd, para. 29一案)。

披露命令

標準格式的「資產凍結令」，容許法庭向被告下達披露命令，規定被告人須就有關資產的價值、位置所在及其他詳情提供相關資料(《實務指示第11.2項》)。然而，上訴法庭在Pacific King Shipping Holdings Pte Ltd v Huang Ziqiang [2015] 1 HKLRD 830, para. 30–32一案中，裁定任何「資產凍結令」倘若並不涉及所有權申索，法庭通常不會就被告資產的轉移或耗散，發出進一步披露的命令；但倘若原告人證明被告人違反了相關強制令，情況則屬例外。

就「所有權強制令」的頒發而言，原告人如要求追尋於衡平法上屬於其的財產，法庭可命令被告發出披露命令。此外，法庭也可以命令被告銀行披露與該指涉及欺詐用途的被告銀行賬戶有關的文件(參見Pacific King Shipping Holdings Pte Ltd, para. 29一案)。

《證據條例》(第8章)第21條規定，法庭可下達命令，賦權原告人查閱銀行紀錄內的任何記項，並製取有關副本(包括銀行結算單)。這項命令可以在相關法律程序的早期非正審階段作出，包括單方面聆訊(參見CTO (HK) Ltd v Li Man Chiu [2002] 2 HKLRD 875, para. 7–12一案)；法庭根據單方面申請而作出披露命令的例子，可參見Golden Brothers Inc v Medicare Asia Ltd [2016] HKEC 2246一案)。向第三方銀行發出披露命令的好處，是可以讓原告人迅速得知其款項的下落。

第二層收受人

原告人的代表律師如發現被告已將有關款項轉移(轉予「第二層」收受人("second layer" recipient))，他們須就應否要求法庭向第二層收受人發出「所有權強制令」和「資產凍結令」，向其當事人提供法律意見。假如第二層收受人所收受的款項，顯示源於欺詐所得，那麼原告人有權就該第二層收受人所持有的款項，根據衡平法提出所有權申訴，惟須
受制於並不知情的真誠購買人所作的有值交易 (Pacific Rainbow International Inc, at para. 64; Arrow ECS Norway AS v Xin Cheng Holdings (International) Co Ltd [2016] HKEC 1063, para. 13)。此外，
原告人可就第二層收受人如何處理有關款項(包括該等款項是否已經轉予「第三層」收受人(“third layer” recipients))，
要求法庭頒發披露命令。

然而，當中的潛在困難是，原告人的律師對被告人與第二層收受人之間的交易(包括雙方是否存在任何業務關係)是一無所
知。在香港的一些近期案例中，第二層收受人聲稱其與被告人之間所進行的純屬合法交易，故要求法庭解除有關的強制令。

其中的一個例子是，第二層收受人辯稱，
他們只是在涉及鞋類、電子產品和凍肉銷售的交易方面，以及在將人民幣兌換成為港幣或美元的「灰市」交易中，收受被告
人的款項。在若干案件中，第二層或第
三層收受人所提供的解釋，足以解除相關的強制令(例如，在Arrow ECS Norway AS; Limited Liability Company Umitoys v Nice Fame Trading Ltd [2017] HKEC 1295一案中，法庭指出：
「本案同意，如果僅因存進銀行賬戶的
款項，是來自一個不相關的來源，這並
不足以質疑當中有否存在某些不誠實行
為。然而，如果根據其整體狀況觀察，
該等事實可以讓人質疑當中存在不誠實
行為，那麼在「資產凍結令」的階段，
法庭無需強制原告人必須證明該等款項
的收受人涉及「犯罪行為」。

法庭經常察覺到的一種情況是：在發生
了互聯網電郵詐騙後，經常會有大筆款項存入某家公司的賬戶中，然後，該筆款項會馬上被分散存入其他一些公司
(存入的金額數目似屬隨機性質)，而這
些公司與存款人之間並沒有明顯的關
係。同様，另一種經常發生的情況是，
這些款項的最終收受人會聲稱，他們所
收受的款項，與存款之時正在進行的某
宗交易恰好吻合。這些都是法庭應當關
注的『巧合情況』。

第二層收受人在收受有關款項時，是否並
不知悉當中實情，而且是以有值方式進行
有關交易，這須視乎每宗個案的實際情況
而定。法庭須審視有關的交易文件、業務
紀錄，雙方進行交易時是否銀貨兩訖，以及
轉移有關款項的時間和所涉及的金額，
並據此評估是否存在有關該宗交易的任何
可靠證據。

結語
律師一旦受外國公司委託處理其所涉及的
電郵騙案，便應當立即採取行動，以免所
涉及的款項被相繼轉移。香港法院向來願
意協助保護外國公司的資產，因此對於緊
急的「所有權強制令」和「資產凍結令」
(並連同附帶的披露命令)的發出，通常會
給予積極考慮。但時間越久，有關款項轉
移至第二層及第三層收受人，又或是被完
全移離香港的可能性便越高；這樣一來，
向不法者進行追討的法律程序亦變得越複
雜。
The New Hong Kong Insurance Regulatory Regime
A change has occurred in Hong Kong’s insurance regulatory regime. On 26 June 2017, the new Insurance Authority formally took over from the Office of the Commissioner of Insurance as the industry’s regulatory body. The transition marks the blossoming to life of a seed planted back in 2010 when the first consultation paper on the subject was circulated, citing the need to modernise Hong Kong’s insurance regulatory regime.

For those who have followed the passage of the legislation, which has seen the old Insurance Companies Ordinance be given a 21st century make-over to become the Insurance Ordinance, the empowerment of the new Insurance Authority marks the end of a very long road. For the insurance industry, however, this is merely the end of the beginning. Insurers and insurance intermediaries operating in Hong Kong now face the hard work of implementing the changes needed to align their governance, practices and processes with the new requirements in the legislation. So where to begin? Looking through the lens of a lawyer working in an insurance company, the following should be priorities.

The New Levy

As with everything in Hong Kong, finances come first and funding the new regulator takes priority. Unlike its predecessor, the Insurance Authority meets international standards of regulation because it is deemed operationally “independent” from Government. A significant part of that independence comes from the fact that the Insurance Authority’s long-term funding is not to come from tax payers, but from the insurance industry and insurance policyholders. All insurance policies (with certain exceptions) incepting on and from 1 January 2018, will attract a Levy on premium which will be used to fund the Insurance Authority’s existence. The Levy is payable by policyholders, but is to be collected by insurers, although insurers do have a discretion to shoulder it themselves if, for example, the cost of collecting it outweighs the Levy amount.

With the commencing rate set at 0.04 percent of premium due on each insurance policy and graduating to 0.1 percent by 2021 (subject to an overall cap), some would say the Levy falls within a de minimis range. Nevertheless, the system changes its demands on insurers, making it a priority for them to update policy documentation and communicate it in advance to policyholders, whilst advising Finance, IT and business teams on the minutiae of the detail. As a concept, the application of the Levy sounds simple, but Hong Kong is a market where insurance policy design is not dictated by the regulator, but subject to the common law principle of contract. The wide diversity of innovative coverage structures to which this has given rise, serves as one of the Hong Kong insurance market’s strengths. However, it also means that implementing the Levy is no easy task, considering the plethora of different scenarios to which the Levy must apply (multi-year policies, policies involving different currencies, treatment of cancellation and reinstatement, etc). Legal practitioners would do well to equip themselves to advise on these issues.

Key Persons in Control Functions

Of more significance to legal practitioners is the requirement for insurers to obtain approval from the Insurance Authority for their “key persons in control functions”, per the new s. 13AE of the Insurance Ordinance. The key persons in this respect are the individuals employed by the insurer, who are responsible for the performance of the control functions of risk management, finance, compliance, internal audit and intermediary management.

The applications for approval for existing key persons in each of these functions (apart from intermediary management) must be submitted to the Insurance Authority by 30 September 2017. There is a new Form A1 which has been issued for these purposes. This requires, among other things, details of the key person’s reporting lines and where they fit in within the insurer’s management organisation. It also requires demonstration that the proposed key person meets the “fit and proper” requirements laid out in the revamped Guideline issued by the Insurance Authority on the subject.

The “key persons” regime is where we see the true substance of the modernised regulatory regime at work. Being a key person comes with the prospect of personal liability, in the event the insurer itself is found to have committed an offence under the Insurance Ordinance and this is attributable to any neglect or omission on the part of a key person (see s. 124 of the Insurance Ordinance). Extending personal liability to individual members of senior management beyond Directors and the Chief Executive Officer is a principle mechanism by which the new regime seeks to restrain unlawful and undesirable behaviour within the insurance industry. Indeed, we see this same mechanism being used by other industries (eg, the new Manager-In-Charge regime instituted by the Securities & Futures Commission in its circular of 16 December 2016).

For the substance, as well as the form, of the key-person regime to be adopted, legal practitioners would do well to assist their insurer clients with the following practical tips, as well as assisting with the submission of the Form A1s:

(1) Sit down with each key person and explain the personal responsibility and expectations that comes with the role of being a key person. Stress the importance of adopting common-sense techniques such as the need to document discussions, decisions and sign-offs and the rationale behind them.

(2) An appropriate letter of appointment should be drawn up for the key person role. A one-line e-mail confirming that the person is now a key person will set the wrong tone and treats the approval process as a “tick-the-box” effort. A letter of appointment, however, setting
the parameters and expectations for the role, not only correctly documents the appointment, but gives it the appropriate status within the corporate governance framework. (For future hires of key persons, these matters should be embedded as part of their employment contract).

(3) Ensure that the key person is empowered to perform their role. This is more than about drawing reporting lines on a chart. It is about ensuring the key person is given the opportunity to raise issues directly to the board. Make the need for the key person to report, a standing item at board and board committee meetings. Key persons must also have untrammelled access to the Chief Executive Officer, so that issues can be raised to the right levels of management as and when needed. In short, all key persons need a substantive seat at the senior management table.

(4) Ensure the potential exposures of the key person are properly managed from the outset. Make sure the indemnity provisions in the company’s Articles of Association are up-to-date and extend to key persons. Similarly, legal practitioners would do well to advise insurers that key persons should be insured persons under the company’s own Directors’ & Officers’ insurance coverage. Preparing for the worst, ensures that key persons are not constantly in defensive mode, but are given the courage to operate pro-actively and practically in the business environment. Corporate governance becomes nothing more than words on a page, if those operating the corporate governance regime are not given the leeway to be practical.

(5) Encourage all key persons to make time to sit down with each other regularly and exchange views on what they are seeing in the organisation. A regular meeting like this quickly embeds best-practices across the organisation, ensures nothing falls through the cracks and creates a *esprit de corps* amongst the control functions which makes the whole substantively stronger than the sum of its parts. It also serves as a means of spotting problems, before they materialise into something substantive.

(6) Finally, ensure that all key persons are announced to the company, so everybody knows their role as gate-keepers and the importance of it to the company’s everyday functioning. This will give key persons the platform they need to communicate awareness of the expected standards of behaviour that all employees should adopt in order to stay within the lines, thereby building the right culture. Key persons can also instil this culture by making sure it is known what information they expect colleagues to provide when seeking “sign off”. A request which simply says “can you sign this off” demonstrates a lack of consideration for the requirements which matter. A request which includes a description of the attributes of the proposal which ensure fair treatment of customers, demonstrates that the business is benchmarking itself against the right standards from the outset. That’s when you know you have the culture right.

As such, the appointment of key persons is the first of the “new requirements” on the to-do list when it comes to the governance requirements of the new Insurance Ordinance. Getting this right will set your insurer clients up for success going forward.

**Growing Focus on Sales Practices and Fair Customer Treatment**

Beyond the immediate changes which came into effect on 26 June 2017, looms the most significant expansion of regulatory power wrought by the new legislation. So significant in fact, that the industry has been given a two-year hiatus to ready itself.

At some point within this two-year period, the current self-regulatory regime for insurance agents and insurance brokers will be replaced with direct regulation by the Insurance Authority. Further, this new licensing regime is expanding beyond existing brokers and agents to encompass any person carrying on “regulated activities”. In this regard, “regulated activities” are widely defined. They include virtually all core insurance processes, such as arranging, negotiating or inviting persons to enter into insurance policies, giving advice on applying for insurance, exercising a right under an insurance contract, and making and settling insurance claims. Employees of insurance companies who carry out these activities now without being individually licensed may therefore need to be licensed in future.

The two-year hiatus is intended to give the industry breathing space to prepare, but the time lag creates its own problems as the industry is already undergoing significant change before the new requirements are made clear. New distribution channels embracing technology are continually being rolled out across the board to improve customer experience. Online platforms which automate quoting and binding of insurance contracts are set to become the norm for more than just plain-vanilla consumer insurance products. InsureTech is fast turning from buzzword to reality.

How can legal practitioners assist in aligning these new distribution mechanisms with the spirit of the new legislation when its details have yet to be formulated in much needed codes and guidelines? A good starting point would be by looking to where the new provisions of the Insurance Ordinance originated, namely the Insurance Core Principles (“ICPs”) promulgated by the International Association of Insurance Supervisors. The ICPs are, after all, the international standards with which the Insurance Ordinance seeks to align.

A golden thread which runs through the ICPs, is the need to ensure “fair treatment of customers”. As such, legal practitioners would do well, when advising on the new purchase pathways and other mechanisms that technology is enabling, to benchmark these processes against some basic customer fair treatment principles. Certain common sense questions which view the process...
from the customer’s standpoint should be asked, such as:

• Is the prospective customer given the opportunity to review policy terms and conditions before making a purchase?
• Are key terms and exclusions being brought to the customer’s attention?
• Is the customer given a practical route by which he or she can ask questions on the coverage?
• Does the security underpinning the platform ensure customer data is adequately protected?
• What is the approach to handling complaints?

Giving advice on legislation which has not yet come into force (and codes of conduct or guidelines that have yet to be issued) is no easy task. By going to the ICPs which have provided the basis of the new legislation, however, legal practitioners can at least encourage insurers to set some common-sense benchmarks around the principle of “customer fair treatment” when rolling out new systems, sales processes and products. This would certainly assist in setting the insurer up for success when the legislation finally bites.

Conclusion

The new Insurance Ordinance and the new Insurance Authority mean the beginning of a period of great regulatory change for the insurance industry at a time when it is going through change itself through the general embracement of technology. Legal practitioners have a key role to play in advising insurers in this changing environment. Those market participants pro-active in addressing the necessary changes are the ones who will best adapt, survive and thrive.
個總體上限）。可能有人會認為，該等徵費只是在一個微不足道的範圍內。然而，這制度卻是改變了其對保險公司的要求。在保險公司向財務、資訊科技、和業務隊伍就細節問題提供意見時，它需要優先處理的事情，是更新保單文件及預先通知保單持有人。徵費的運用概念，表面上看似簡單，但它並沒有像表面那樣簡單，因為香港的保單是依循普通法的自由契約原則，由保險公司自行擬定，監管機構無權規管。這項原則使香港的保險公司得以推出許多不同類別，在承保結構方面具開創性的保險產品，並構成香港保險市場的發展動力。然而，由於香港的保險徵費涉及眾多不同對象（包括：多年度保單、以不同貨幣計值的保單，以及取消或恢復保單效力的處理，等等），這意味著保險徵費工作的執行殊非易事。因此，法律執業者對於這方面應當有充足的認識，從而為其保險公司客戶提供適切意見。

管控要員

對於法律執業者來說，更重要的一點，是《保險業條例》第13AE條規定，保險公司需要就其管控要員（key persons in control functions）的委任，取得「保險業監管局」的認可。此處所指的管控要員，是指保險公司所聘用的個別人士，他們被保險公司委派執行風險管理、財務、合規、內部審計及中介人管理等管控職能。保險公司必須於2017年9月30日或以前，向「保險業監管局」提交各個負責有關職能（中介人管理除外）的現有要員之認可申請，而為此目的而制訂的《表格A1》亦已發出。該表格規定（除其他事項外）保險公司須就有關要員的匯報途徑，以及該途徑在保險公司管治架構內的所處位置提供詳細資料。此外，該表格也需要保險公司證明該要員確符合「保險業監管局」的經修訂《指引》中所載的「適當人選」規定。

我們可以從這個「要員」機制，看到一個投入運作的現代化監管制度的真正內涵。倘若保險公司自身觸犯了《保險業條例》下的違法行為，而此等情況的發生，是歸因於一名要員的疏忽或不作為，那麼，該名要員將可能需要承擔個人法律責任（參見《保險業條例》第124條）。該新制度是遏止保險業內出現不合及不適當行為的一個重要機制，它將個人法律責任延伸至董事及行政總裁以外的高級管理層個別成員。事實上，我們發現在其他行業中也存在如是的機制（例如，證券及期貨事務監察委員會在其於2016年12月16日刊發的通函中，提出了「主管」機制這一新議題）。

要讓這一要員制度在實質和形式上被接納，法律執業者可向其保險公司客戶作出下列的適當提示，並協助它們提交《表格A1》：

(1) 邀請每一位要員坐下來，向他們解釋一名要員所須承擔的個人責任和所肩負的大眾期望。此外，法律執業者也要向他們強調運用普通常識技術的重要性，例如：將有關的討論、決定及協議記錄下來，以及其背後的理據。

(2) 應當為每一名要員所肩負的職能，擬定一份適當的委任書。如果透過只載有單一行文字的電郵，確認某位人士現在就是一名要員，這可能會導致其真實含義被扭曲，並將有關的認可程序視作只是例行公事。事實上，一份設定了明確範圍和期望的委任書，不但能有效述明該項委任，亦能讓該要員在企業管治架構中獲得一個適當位置。（對於在未來受聘的要員來說，此等事宜應當明確載於其僱傭合約中，作為相關合約內容的其中一部分）。

(3) 為了確保各要員獲得授予充分權力以履行其職務，保險公司不能只靠單純在圖表上劃出其匯報途徑，而是必須確保他們獲得充分授予直接向董事會提問的機會。保險公司應當在董事會及其轄下的委員會中，為要員設立一個常設項目，讓他們可以不時在該等會議中進行匯報。此外，要員必須能夠不受妨礙地，與公司的行政總裁直接接觸，從而得以將相關問題向適當的管理層反映。簡而言之，所有要員都應當在公司的高級管理層中佔有實質的席位。

(4) 保險公司需要確保，要員從一開始，其所面對的潛在風險便獲得適當的管控。此外，保險公司必須確保其組織章程細則中的彌償條款，是屬於最新制定的版本，並且適用於適用於各要員。同樣地，法律執業者亦須告知保險公司，要員應當是該公司的「董事與高級人員」的保險覆蓋範圍內的受保人士。我們需要為最壞的情況作準備，確保各要員無需經常處於一個須為自己申辯的境況；相反，他們應當獲得給予鼓勵，能夠以積極和務實的態度在經營環境中運作，推動企業管治的人士，假如未能獲得給予充分的運作空間，那麼所謂的企業管治也只能說是徒具空文。

(5) 保險公司需要確保其有權要員騰出時間，經常一起就他們所觀察到的公司情況相互交換意見。此等會議的定期舉行，可以迅速確立整個機構內的最佳運作模式，確保沒有任何重大事情被遺漏，以及在各項管控職能中建立起團隊精神，從而使得它在整體上，遠較其各部分相加起來強大。此外，此等會議亦是一個發現問題所在的地方，使問題能有效解決於萌芽之際。

(6) 最後，保險公司需要確保其有權要員的身份獲得對外公佈，讓其他人皆得知這些要員負著把關者的角色，以及他們對公司日常運作的重要性。此舉可以讓所有要員獲得一個適當平台，就各員工應當具備的行為標準，表達公司管理層對他們的期望，使他們免於墮入違規陷阱，並藉此建立正確的企業文化。此外，各要員亦應當讓其同事明確知悉，在他們計劃和客戶簽訂合約前，他們應當先向其客戶提供一些什麼資料。倘若他們只是簡略地對客戶說：「請在這份文件上簽名」，它顯示他們並沒有充分關注一些不可忽視的法律規定。而銷售人員如能詳述其計劃書中的各項要點，確保其顧客能獲得公平對待，這可以顯示該機構的確是根據正確的標準來檢視自身的服務水平，亦顯示它已確立一種正確的企業文化。

談到新《保險業條例》中的管治規定，在該「待辦事項清單」中的最首要工作，應
該是對要員的委任。如果你的保險公司客
戶對此處理得宜，在未來它將可取得業務
上的重大成果。

更為重視銷售手法及公平對待顧
客
令致保險業產生巨大改變的一刻，於
2017年6月26日到來後，相關的新法例
也給保險業的監管帶來大幅程度的權力擴
張。由於影響甚深，故保險業界獲得給予
兩年的過渡期為此作準備。

保險代理和保險經紀的現行自我規管制
度，在該為期兩年的過渡期的某一個階
段，將會被「保險業監管局」的直接規管
所取代。此外，新發牌制度的實施範圍，
亦將擴展至現行的代理人和經紀以外的範
圍，而包括任何進行「受規管活動」的人
士。在此等範疇的「受規管活動」，其含
義十分廣泛，並包括所有核心保險程序，
例如：安排、洽談、或邀請任何人訂立保
險合約，及就投保申請提供意見、行使保險
合約下的權利，以及提出保險索賠和達
成和解等。因此，現時進行此等活動，但
仍未個別獲得發給有關執照的保險公司員
工，在未來將需要申領此等執照。

法例為保險業提供一個兩年的過渡期，是
為了讓業界能有充分的時間做好預備。然
而，這一時間上的滯差，也導致保險業面
對一些額外問題，原因是在相關的新規定
確立以前，保險業自身其實已經在發生重
大改變。該等涉及科技運用，並能增強客
戶體驗的新分銷渠道，已經在繼續展開全
面性的使用。對於涉及非基本消費者保險
產品的合約，現時在網上平台進行自動化
的報價和訂約程序，已經成為一種常態，
而「保險科技」這個名詞正迅速地從一個
流行術語轉化成為人們的現實生活。

當局仍未根據新法例的細節，制定需要業
界遵守的守則和指引以前，法律執業者如
何促使該新分銷機制與該新法例的精神一
致呢？一個基本的方法，是參考《保險業
條例》新條文的出處，亦即是由國際保險
監督聯會所頒布的「保險核心原則」。事
實上，「保險核心原則」是香港的《保險
業條例》所尋求遵循的國際準則。

「保險核心原則」的中心思想，是要確保
公平對待顧客。因此，當法律執業
者需要就新銷售方式及其他涉及科技運
用的機制，向其客戶提供法律意見時，他
亦可以根據一些基本的公平對待顧客原
則，來對上述程序進行檢測，而所提出的
問題，應該是一些根據普通常識，並且是
從客戶的立場來檢視有關程序的問題。比
如：

• 在準客戶作出投保決定之前，他們是
否獲得提供檢視保單條款及條件的機
會？

• 銷售人員是否向顧客提及任何關鍵條
款和除外情况，並提醒他們注意？

• 顧客是否獲得提供任何實際途徑，讓
其可以就保險的覆蓋範圍提出問題？

• 該平台的保障措施是否能確保顧客的
資料獲得充分保護？

• 是否有任何處理顧客投訴的途徑？

法律執業者需要就一項仍未全面實施的法
例(相關的行為守則或指引亦仍未發出)提
供法律意見，這確是誠非易事。然而，法
律執業者若能更多提及為新法例提供基
礎的「保險核心原則」，這至少可以鼓勵
保險公司在實行和推出新的制度、銷售程
序、產品時，應同時訂立一些符合「公平
對待顧客」原則的普通常識基準，而此舉
在有關法例最終生效時，將能有助該保險
公司取得業務成果。

結論
《保險業條例》的通過與「保險業監管
局」的成立，標誌著在保險業監管方面，
正面對著一個重大的變遷；而另一方面，
隨著科技的運用，保險業自身也在經歷著
另一種轉變。在這不斷變遷的環境中，法
律執業者對保險公司的法律意見提供，扮
演著一個不可或缺的角色，而對那些持積
極態度面對此等改變的市場參與者來說，
在未來它們必然是最具適應力和生存能
力，能展現處處生機的一群。
Recent Actions by US Regulators Expose Local Virtual Currency Businesses to Pandora’s Box of Legal Risks

By John Han, Principal
Benjamin Sauter, Principal
More than 60 percent of businesses operating in the so-called virtual currency space are reportedly based in Hong Kong and Mainland China. These businesses may be surprised to learn that they can be exposed to possible government enforcement actions and private litigation in the United States based on conduct taking place in their local jurisdiction. The US government has recently taken aggressive steps to police the global virtual currency markets, taking a view that, in some circumstances, virtual currencies can constitute “securities” and “commodities” subject to enforcement and prosecution under US law. These recent actions open a virtual Pandora’s box of possible legal consequences for virtual currency businesses operating in the Greater China region.

**HK-Based Virtual Currency Businesses Are Exposed to Government Enforcement Actions in the United States**

The US government has been flexing its muscles to police virtual currency markets around the world. They have recently brought a number of actions against businesses in Hong Kong and others parts of the world.

In 2016, a US government body brought an enforcement action against Hong Kong-based virtual currency exchange Bitfinex for failing to register with the government body. As recently as July 2017, US prosecutors fined Russia-based virtual currency exchange BTC-e US$110 million for violating US anti-money laundering laws.

These enforcement actions against virtual currency exchanges around the world are predicated on conduct occurring outside the United States that has an effect within the United States. While the US government’s legal reach may not be valid and is open to dispute, that may be of little comfort to companies and individuals charged with illegal activity in the United States.

Three US enforcement bodies are leading the competition to become the top regulator in the virtual currency space: the US Securities and Exchange Commission, the US Commodity Futures Trading Commission, and the US Internal Revenue Service.

**US Securities and Exchange Commission**

The US Securities and Exchange Commission (“SEC”) has stated unequivocally that it intends to regulate many new virtual currencies as “securities” under US law. In a report published in July 2017, the SEC indicated that virtual currency offerings (or “initial coin offerings” that exchange virtual currency for working capital) that implicate US investors will, in most cases, be considered “securities” offerings subject to SEC enforcement jurisdiction.

The classification of virtual currencies as “securities” creates important legal consequences for virtual currency businesses around the world – including potentially virtual currency issuers, currency “miners”, investors, traders, exchanges, investment advisers and brokers. The categorisation could impose the full body of US securities laws on many virtual currency businesses and forbid a host of conduct for the first time, such as insider trading or market manipulation in virtual currencies or securities fraud.

Take the example of Bitfinex: “Spoofing” and “wash trading” activity was recently reported on the Hong Kong-based exchange. “Spoofing” involves placing a large number of sell or buy orders to drive the market price in a particular direction with the intent of canceling those orders before they are executed. “Wash trading” involves trading with oneself to give a misleading appearance of market activity.

These practices are generally considered illegal under US securities and commodities laws but are currently unregulated in virtual currency markets. However, that could all be about to change. There is a strong possibility that this and other types of forbidden conduct when “securities” are involved could be subject to enforcement actions by the SEC.

**US Commodity Futures Trading Commission**

The US Commodity Future Trading Commission (“CFTC”) has also planted its flag in the virtual currency space. In June 2016, the CFTC brought an enforcement action against the Bitfinex exchange for violating US law by allowing virtual currencies to be traded on a leveraged basis without first registering with the CFTC. The CFTC adopted a view that virtual currencies constitute “commodities” and, therefore, Bitfinex was required to register. Bitfinex cooperated with the CFTC but ultimately paid a US$75,000 fine.

The CFTC also recently took enforcement action against another virtual currency exchange, TeraExchange, for engaging in prohibited trading practices in commodities derivatives. That action was also predicated on an interpretation of US commodities laws to cover virtual currencies.

In an important signal of future scrutiny and oversight in this space, the CFTC has just approved the first Bitcoin derivative trading in the US. The CFTC may now try to assert authority over trading practices in underlying digital currency markets (that provide reference prices for newly approved derivatives products) or other markets that affect these prices through arbitrage.

**US Internal Revenue Service**

Finally, virtual currency operators around the world may be exposed to information requests and possible enforcement actions by the US Internal Revenue Service (“IRS”) for facilitating transactions subject to US taxation. The IRS is in the midst of a campaign to catch tax evaders who failed to report capital gains on the immense appreciation in Bitcoin from 2013 to 2015. As a part of that campaign, in November 2016, it subpoenaed client and transaction records from virtual currency exchange Coinbase. Hong Kong and Mainland China-based businesses may well face similar requests for records related to US taxpayers.
Virtual Currency Businesses Are Exposed to Private Litigation in the United States

Hong Kong and Mainland China-based companies that deal with US counterparties can also be sued in the United States by private parties – for example, aggrieved investors – under US securities and commodities laws or for common law claims such as fraud, negligence or breach of fiduciary duty. Litigants in the United States have broad discovery powers that can be weaponised and wreak havoc on businesses that must respond to onerous requests or face possible contempt of court sanctions or even default judgment in US courts. Recent legislation gives plaintiffs powerful new remedies, such as rescission of trades or, in some cases, punitive damages. It is doubtful that virtual currency operators can completely eliminate these risks by using exclusive non-US choice-of-forum or choice-of-law clauses in terms of service or client contracts.

Virtual Currency Businesses cannot Rely on Technological Anonymity to Protect against US Government Actions or Private Litigation

Clients cannot assume they are protected from US government or private actions by the technological anonymity afforded by blockchain technology. Governments and private parties have ways to break the anonymity surrounding virtual currency trades that impact virtual currency exchanges, money transmitters, and associated individuals.

For example, in the recent BTC-e exchange matter, mentioned above, the US Department of Justice used “blockchain analysis” to identify and locate a Russian national allegedly associated with a massive theft of Bitcoin. The Russian defendant was accused of operating a Bitcoin exchange as an international money laundering vehicle and is currently under arrest in Greece pending an extradition request to the United States.

Private parties have similar capabilities. A Bitcoin security research group recently demonstrated how to reverse engineer blockchain transactions to identify and tie individuals to virtual currency trades using (i) blockchain analysis (similar to that used by the US government) to identify accounts associated with trades and (ii) public records to link and locate individuals associated with those accounts.

How Hong Kong Solicitors Should Respond to US Government Inquiries or Private Lawsuits

Hong Kong solicitors and their clients confronting potential enforcement actions or disputes in the US should consider the following when formulating a defense strategy at the outset of any matter:

- Challenges to Application of Securities and Commodities Laws in the First Instance. The SEC’s and the CFTC’s categorisation of virtual currencies as “securities” and “commodities” for certain purposes has not been tested in court. These positions can be challenged. There are good arguments that the CFTC does not have statutory jurisdiction over virtual currency traders and that virtual currencies do not meet the legal standard to constitute “securities” under US law. Lawyers should develop arguments that the specific facts of their case are not covered by US securities and commodities laws to start with.

- Statutory Defences under US Securities and Commodities Laws. In order to properly advise their clients, lawyers for virtual currency businesses need to familiarise themselves with other defences available under the US securities and commodities statutes. In the event that a challenge to application of US securities and commodities laws fails, these statutory defences can create an important line of defence against both government enforcement and private litigation.

- Challenges to Personal Jurisdiction. Important potential defenses may be available for non-US businesses based in the Greater China region to challenge assertions of personal jurisdiction over them. Hong Kong solicitors who represent virtual currency businesses should also analyse and consider these defence options when formulating a response strategy.

- Challenges to Discovery Requests. Document requests (by way of judicial or legal assistance) from the US government or private parties may be subject to legal defenses and objections under US procedure, such as the US attorney-client privilege, or other legal privileges including those recognised under Hong Kong law. Before producing documents, information or testimony to the US government or US civil litigants, lawyers for virtual currency operators should carefully assess what a request requires and what legal defenses or privileges may apply under local or US law.

Hong Kong and Mainland China-based virtual currency companies are exposed to overlapping legal risks in their home jurisdictions and in the United States, from US federal agencies, US state regulatory bodies and private litigants. The penalties can be severe including disgorgement of profits, injunctions to prohibit further conduct, revocation of registrations or licenses, and special remedies such as periodic audits or monitorships or supervisory arrangements. Their attorneys must closely monitor the rapidly changing legal landscape in this space, both in the US and globally, so that, should a legal issue arise, they can properly advise their clients regarding potential options to mount an aggressive defense.

We would like to acknowledge the contributions of Nan Wang, Associate, Kobre & Kim LLP, in preparing this article.
報導，所謂的虛擬貨幣業務，全球目前有超過百分之六十，是在香港和中國大陸經營。令經營者可能會感到詫異的是，它們也許會面對美國政府所採取的執法行動，以及私人訴訟等各樣風險。理由是有關行為是在其司法管轄範圍內發生。美國政府近期採取了積極行動，監控全球的虛擬貨幣市場，並認為在某些情況下，虛擬貨幣根據美國法例，是屬於美國政府可對其採取執法行動和提出檢控的「證券」和「商品」。大中華區的虛擬貨幣經營者可能會因著美國的此等行動，而需要面對潘多拉盒子裡的各種可能法律後果。

香港的虛擬貨幣經營者正面對美國政府的執法行動

香港政府在監控全球虛擬貨幣市場方面，積極展示了它的執法力量。在近期，美國政府向香港及世界其他地方的虛擬貨幣經營者採取了一系列的行動。

2016年，一個美國政府機關向在香港經營的一個虛擬貨幣交易平台Bitfinex採取了執法行動，理由是它沒有向這個政府機關登記。最近，亦即是2017年7月，美國的監控部門對一個在俄羅斯經營的虛擬貨幣交易平台BTC-e處以1億1000萬美元的罰款，理由是它違反了美國的反清洗黑錢法例。

美國對全球的虛擬貨幣交易平台採取執法行動，是以有關的行為雖然在美國以外範圍進行，但在美國境外產生影響作為前提。儘管美國政府採取執法行動並非必然有效，又或是無可爭議，但被美國控告進行該等非法活動的公司或個人，絕不能對此掉以輕心。

美國現時有三個執法機構，爭相成為虛擬貨幣領域的主要監管機構，而它們分別是：美國證券交易委員會、美國商品期貨交易委員會、及美國國家稅務局。

美國證券交易委員會

「美國證券交易委員會」已明確表示，他們打算根據美國法例，將許多新創的虛擬貨幣視作「證券」而對其進行監管。該委員會在一份於2017年7月發表的報告中表示，虛擬貨幣發售(或稱「首次代幣公開發售」)是將虛擬貨幣轉換成為營運資金，而在大多數情況下，就美國投資者而言，此等發售應被視作「證券」發售，故須受該委員會的監管。

將虛擬貨幣歸類為「證券」的這一般舉措，顯示了虛擬貨幣經營者將會面臨重大的法律後果，當中包括：潛在的虛擬貨幣發行人、貨幣「採礦者」、投資者、交易商、交易平台、投資顧問及經紀。這一歸類，將一整套的美國證券法施加於許多虛擬貨幣經營者身上，並禁止進行一系列的行為，包括：內幕交易、虛假貨幣的市場操控、證券欺詐等。

就在Bitfinex為例：近期報導該在香港營運的交易平台出現「幌騙」及「虛假買賣」等活動。「幌騙」涉及發出數量龐大的買賣指令，將市場價格推往一個特定方向，並在該等指令被執行之前將其撤消。「幌騙」則涉及與自身進行買賣交易，意圖給市場活動造成一個具誤導性的表象。根據美國的證券及商品法例，該等行為一般被視作非法，但它們現時在虛擬貨幣市場中卻不受任何監管。然而，此等情況在未來可能會發生變化。倘若有關交易涉及「證券」，那麼「美國證券交易委員會」將有可能會對此類以及其他被禁止的行為採取執法行動。

美國商品期貨交易委員會

與此同時，「美國商品期貨交易委員會」也開始介入虛擬貨幣這一領域。2016年6月，該委員會向Bitfinex交易平台採取執法行動，理由是該平台觸犯了美國法律，在沒有首先向其註冊登記以前，容許客戶以槓桿形式進行虛擬貨幣交易。「美國商品期貨交易委員會」認為虛擬貨幣構成了「商品」，因此Bitfinex需要首先進行登記。對此，Bitfinex與該委員會採取了合作態度，最後被判罰款7,500美元。

此外，「美國商品期貨交易委員會」近期亦向另一虛擬貨幣交易平台TeraExchange
採取了執法行動，理由是它進行被禁止的
商品衍生工具買賣交易。同樣地，採取該
項執法行動的前提，是將美國的商品法例
解釋為也涵蓋虛擬貨幣。

「美國商品期貨交易委員會」剛批准了美
國首宗比特幣衍生工具交易，這是他們未
來在該領域進行審查和監督的一個重要標
誌。該委員會現時亦會嘗試將數位貨幣
市場(該市場為新近通過的衍生工具產品提
供參考價格)，以及通過套戥而影響此等價
格的其他市場之經營手法，提出其有權進
行監管的主張。

美國國家稅務局

最後，全球的虛擬貨幣經營者，可能需要
面對美國國家稅務局的資料要求提供，以
及它可能會作出的執法行動，以檢查須被
課徵美國稅項的交易。美國國家稅務局現
正採取行動，據稱在2013年及2015年期
間，因著比特幣的大幅升值而獲益資本收
益，但卻並沒有向該局作出申報。該委員
會現時亦在猶豫中，因為美國目前正
在進行審查，以便將比特幣視為收益收
益，而非資本收益。

事實上，民間和商業亦有與此類似的能力。一
個比特幣安全研究小組，近期展示了如何
運用區塊鏈技術，對虛擬貨幣交易的匿名保
護，以及它所可能導致的影響。比如，比特
幣業界人士可能會發現，藉著運用區塊鏈科
技而進行技術性的匿名，他們可以免於面
對美國政府的執法行動或私人訴訟。事實上，
美國政府和民間訴訟方已開始要求破譚對虛
擬貨幣的匿名保護。例如，日本政府已對一
家比特幣交易所作出罰款，原因是該交易所
未能正確識別其客戶的身份。

香港律師應如何就美國政府所作
的查詢要求或私人訴訟作出反應

香港律師以及該些正面對美國的可能執法
行動和爭議的客戶，在他們就任何相關事
宜開始制定辯護策略時，應詳加考慮下列事
項:

• 在原訴階段就證券和商品法例之適用提出
質疑。美國的「商品期貨交易委員
會」和「證券交易委員會」為某些目
的而將虛擬貨幣歸類為「證券」及「商
品」，但它們的此舉並未獲法院的驗
證；亦因此，人們有權就該等委員會的
取態提出法律挑戰。現時有強力的論據
指稱，美國的「商品期貨交易委員
會」和「證券交易委員會」對虛擬貨
幣交易商並不擁有法定的管轄權，而根
據美國法律，虛擬貨幣並不符
合虛擬貨幣的法定標準。因此，律
師應該提出論據，指他們案件中的具體
情況，從一開始便不被美國的證券及商
品法例所涵蓋。

• 根據美國證券法和商品法而可予提出
的法定辯護理由。受虛擬貨幣經營者
委託的律師，應當熟知在美國的證券
及商品法例下，他們可以提出的
其他一些辯護理由，從而向其當事人
提供適當的法律意見。倘若他們已
在美國的證券及商品法例之適用而提出的
質疑被法院駁回，這些法定辯護理由
便可以針對美國政府的執法行動和私
人所提起的訴訟，構成一道重要的辯
護防線。

• 對屬地管轄權提出質疑。在大中華
區經營的非美國經營者，它們可以提
出重要的潛在辯護理由，對該等施加
於他們身上之屬地管轄權提出質疑。
受虛擬貨幣經營者委託的香港律
師，他們在制定回應的策略時，也應
當分析和考慮這項管轄理由。

• 對文件披露要求提出質疑。美國政府
或私人訴訟方(藉司法或法律互助)提出
的文件披露要求，可以根據美國的法
律程序而對其提出法定的抗辯和反對
理由，例如：美國的律師－當事人保
密權或其他法定保密權(包括根據香港
法例而獲得承認的保密權)。在向美國
政府或美國民事訴訟人提供有關的文
件、資料或證明以前，虛擬貨幣經營
者的代表律師應當仔細評估，該等要
求需要提供一些什麼作支持，以及在
本地或美國的法例下，當方可以適用
什麼法定辯護理由和保密權。

香港及內地的虛擬貨幣公司，正面對來自
其司法管轄區及美國(當中包括：美國聯邦
機關、美國各州的監管機構、及私人訴訟
方)的雙重法律風險。有關的懲罰可以十
分嚴重，當中包括強制交出其所得利潤、
頒發禁止作出進一步行為的禁制令、撤銷
有關的註冊或執照，以及其他特別懲戒措
施，例如：接受定期審核、監控或監督安
排。因此，律師應當密切關注在這領域中
急速變化的法律形勢(包括在美國和全球出
現的變化)，從而得知有哪些有力的抗辯理
c具可供其運用，以致於當發生法律爭議時，
他們能夠充分向其當事人提供適當的法律
意見。

虛擬貨幣經營者面對美國的私
人訴訟

與美國的虛擬貨幣經營者進行交易的香港
和內地公司，亦可能會面對美國私人訴
訟方(例如：蒙受損失的投資者)根據美國
的證券及商品法例，或是普通法下的索償
(例如：欺诈、疏忽、違反信託責任)而提
起的訴訟。美國的訴訟方可能持有充分的證
據，以佐證他們的損失，並要求獲償。

虛擬貨幣經營者不能藉著運用技
術性的匿名來免於面對美國政府
所採取的執法行動或私人訴訟

客戶不能假設他們可以藉著運用區塊鏈科
技而進行技術性的匿名，從而免於面對美
國政府的執法行動或私人訴訟。事實上，
美國政府和私人訴訟方已開始要求破譚對虛
擬貨幣的匿名保護，並將它作為國際清洗黑錢工具。

例如，在近期的BTC-e交易平台一案(見上文)
中，美國司法部運用區塊鏈分析來辨
識一名被指與一宗重大的比特幣盜竊案有
關的俄羅斯公民，並尋獲他的匿藏地方。

虛擬貨幣經營者是否能夠在服務或客戶合約中，運用專門
將美國排除的「選擇訴訟地」或「選擇法
律」條款，而得以完全消除此等風險，這
是令人值得懷疑的。

香港律師以及該些正面對美國的可能執法
行動和爭議的客戶，在他們就任何相關事
宜開始制定辯護策略時，應詳加考慮下列事
項:

• 在原訴階段就證券和商品法例之適用提出
質疑。美國的「商品期貨交易委員
會」和「證券交易委員會」為某些目
的而將虛擬貨幣歸類為「證券」及「商
品」，但它們的此舉並未獲法院的驗
證；亦因此，人們有權就該等委員會的
取態提出的法律質疑。現時有強力的論據
指稱，美國的「商品期貨交易委員
會」和「證券交易委員會」對虛擬貨
幣交易商並不擁有法定的管轄權，而根
據美國法律，虛擬貨幣並不符
合虛擬貨幣的法定標準。因此，律
師應該提出論據，指他們案件中的具體
情況，從一開始便不被美國的證券及商
品法例所涵蓋。

本文作者謹此向協助製作本文的高博金律師
事務所律師王楠所付出的努力表示謝意。
THE LAW SOCIETY OF HONG KONG

12th Recreation and Sports Night

Date: 21 October 2017, Saturday
Time: 7:00 pm - 11:00 pm
Venue: Hong Kong Football Club, 3 Sports Road, Happy Valley, HK
Dinner: Buffet
Ticket price: HK$400 per member
            HK$600 per non-member
            HK$4,800 for each table for 12 pax (can include non-members)
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Solicitor and Own Client Costs

Hard facts can make for tough decisions. So might be said of the judge’s review of a master’s decision on a solicitor and own client taxation in Lam & Lai (Solicitors) v Ho Chun Yau Albert, HCMP 555/2015, 5 July 2017.

Following a complex piece of litigation (including appeal proceedings) the solicitors commenced taxation proceedings for their costs, pursuant to s. 67 of the Legal Practitioners Ordinance (Cap. 159). Dissatisfied with the costs outcome before the master, the client (the respondent) applied to review the master’s decision. The review related to some 64 items on the solicitors’ bill of costs and the main ground of objection was stated to be “duplication” of work; in particular, an objection that two partners handled the same items of work without the client’s prior agreement.

The master had dismissed the client’s application for review, finding that the duplication of work in the circumstances was not unreasonable. Significant to the master’s reasons was that four counsel had been instructed on the client’s behalf and, therefore, it was not unreasonable for two solicitors to do the same or substantially the same work (such as, for example, reviewing legal submissions).

Dissatisfied with the outcome, the client applied for a review of the taxing master’s certificate by a judge; the nature of the review being to determine whether the master’s reasons were wrong in principle rather than being a new hearing.

On the review before the judge, the sole objection to all 64 items was that both solicitors had done precisely the same work. The challenge was based solely on the “duplication” of work; not on the amount charged or time spent (after taxation).

As far as the judge was concerned, the starting point was that costs are presumed to be unreasonably incurred where the client has not been expressly informed that the costs might not be recoverable on an inter partes basis.

From that point, things appear to have become difficult for the solicitors. The judge noted that for each item in dispute both solicitors were engaged and they appeared to have spent the same amount of time. Therefore, the judge considered that the duplication of costs was unreasonable in the absence of any special or unusual reason why two solicitors were engaged with respect to the same work. As a result, the client’s review of the master’s decision was allowed and the amount of the disputed bill taxed down to allow the time claimed for one solicitor only.

Some lawyers may prefer the master’s reasoning and regard the judge’s decision as being on the harsh side, given the complexity of the underlying litigation and the number of counsel involved. However, as in most matters of costs, for every loser there is likely to be a winner.

A take-away point is that clients should not refuse to pay costs incurred as a result of what they have authorised their solicitors to do (including involving a second solicitor for a similar task). For their part, solicitors may have difficulty in rebutting the presumption (on a solicitor and own client costs challenge) that “unusual” items of costs are unreasonable unless they have warned their clients in advance that such costs may not be recoverable on an inter partes basis.

- David Smyth and Warren Ganesh, RPC

民事訴訟程序
訟費官司

在Lam & Lai (Solicitors) v Ho Chun Yau Albert (HCMP 555/2015，2017年7月5日)，原訟庭法官覆核聆案官關於訟費評定的決定；可以說，法官的覆核是基於客觀的事實，作出艱難的決定。

經過一場複雜的訴訟(包括上訴程序)之後，事務律師根據《法律執業者條例》(第159章)第67條，展開訟費評定程序。當事人(答辯人)不滿聆案官席前的訟費結果，申請由法庭覆核聆案官的決定。

要求覆核的是事務律師訟費單上64個項目，主要的反對理由是工作「重複」；當事人尤其反對兩名合夥人在未經當事人同意下，處理同一項工作。

聆案官駁回當事人的覆核申請，裁定按情況做重複的工作不是不合理。聆案官重要的理由是，當事人委聘了四名代表大律師，因此，有兩名事務律師做同樣的工作或者實質上相同的工作(例如審閱
法律陳詞)並非不合理。
當事人因為不滿意案件的結果，申請由法官覆核訴費評定官證明書；覆核的本質是裁定聆案官的理由是否原則上有錯，不是重新審訊。
覆核在法官席前進行，當事人反對訴費單上全部64個項目，唯一的理由是兩名事務律師所做的工作完全一樣。他只是基於工作「重複」提出質疑，不是基於(評定後)收取的金額或是耗用的時間。
對法官來說，首先考慮的是，如果事務律師不曾在事前通知當事人，訴費也許不可以在訴訟各方對評基準追討，訴費就會被推定為不合理地招致。
由此說來，情況對事務律師來說，變得艱難了。法官指出，每項受爭議的項目都是由兩名事務律師處理，他們似乎花了一樣長的時間。因此，法官認為，如果沒有任何特別或不尋常的理由解釋為何要由兩名事務律師做同樣的工作，重複訴費並不合理。所以，當事人覆核聆案官決定的上訴獲判得直，受爭議訴費單的金額經評定後減少，法官准予只就一名事務律師申索時間。
有些律師考慮到相關訴訟複雜難懂及涉及的大律師人數，覺得聆案官的論據較為充分，認為法官的決定較為嚴苛。然而，就像大部分訴訟案件一樣，每有一個輸家就很可能有一個贏家。
最後一提，當事人不應拒絕支付因為他們授權事務律師去做事(包括由另一名事務律師做類似的工作)而招致的訴費。對事務律師來說，他們可能難以反駁(關於質疑事務律師及其當事人訴費的)「不尋常」項目的訴費並不合理的推定，除非他們提醒過當事人，當事人預先知道該等訴費是不可以按訴訟各方對評基準追討的。
- 施德偉及莊偉倫，RPC

CRIMINAL

HKSAR v Nguyen Anh Nga: When Specific Directions Are Necessary

In HKSAR v Nguyen Anh Nga, FACC 17 of 2016 (on appeal from CACC 424 of 2012), the Court of Final Appeal addressed directions that must be given by a Judge in relation to inferences, holding that specific directions on circumstantial evidence are necessary where competing inferences can be drawn from that circumstantial evidence.

Background

In this case, the Appellant was convicted in the High Court before a Judge and Jury, of trafficking in 3.142 kilogrammes of “ice” and sentenced to 24 years imprisonment. The evidence was that she had been intercepted at the airport and asked “Is it your baggage?”. She began to cry and squatted down next to the suitcase. She had screamed: “Wah!” and looked nervous, shook and trembled. She had then opened and rummaged around inside the suitcase before Custom & Excise officers stopped her and searched the suitcase themselves. The ice was found in the false-bottom of her suitcase. She was expressionless when the package containing the drugs was removed from the false-bottom. Under caution she had said inter alia, “The name tag on the black suitcase is mine. But the articles inside are not mine”. She later also said that she had been duped into believing she was smuggling money.

Decision

In unanimously allowing the appeal, the Court cited Tang Kwok Wah v HKSAR (2002) 5 HKCFAR 209 which states that it is normally unnecessary to give the jury any special direction on how they are to approach circumstantial evidence. However there may be exceptional circumstances in which it may be desirable or necessary to give the jury a special direction on the drawing of inferences by telling them that no inference is to be drawn against the accused unless it is the only reasonable inference. In this case, prosecuting and defence Counsel had, in their final speeches invited the Jury to draw certain inferences from the Appellant’s reaction and non-reaction. In summing up, the Judge dealt at considerable length with evidence of the Appellant’s reaction and non-reaction but made no specific reference to that evidence or the arguments thereon in the context of any of her directions on circumstantial evidence or the drawing of inferences. Although the Judge directed the jury that they should take into account the speeches of Counsel, the Court cited Lord Atkin in Lawrence v R [1933] AC 699 who famously observed that “Jurors are apt to be suspicious of law as propounded by the defence; they look to the judge for authoritative statement of it”. The directions on inferential reasoning given by the Judge did not include any direction specifically set in the context of the evidence of the Appellant’s reaction and non-reaction and the rival arguments thereon. The absence of this was fatal to the conviction. A re-trial was ordered.
**Key Take-Aways**

This case illustrates why the role of the Judge is essential when there may be competing inferences that can be drawn. It is not sufficient for the Judge to direct the jury to take into account the speeches of Counsel – the Judge should direct the jury on the rival arguments specifically in the context of the evidence.

- Morley Chow Seto

**Employment Law**

**First Company Director Sentenced to Imprisonment after Defaulting on MPF Contributions**

Under the Mandatory Provident Fund Schemes Ordinance (the “MPFSO”), any employer who, without reasonable excuse, fails to make a timely payment of mandatory contributions commits an offence and is subject to a maximum penalty of a HK$450,000 fine and four years’ imprisonment.

In 2012, the MPFSO was amended to make it an offence for any employer who fails, without a reasonable excuse, to comply with a court order to pay outstanding MPF contributions and surcharges. Convicted employers are liable to a maximum penalty of a HK$350,000 fine and three years’ imprisonment, and a daily fine of HK$500 if the offence is a continuing one. When the employer is a company, the offence is presumed to be committed with the consent of or is attributable to the neglect of an officer (ie, director or manager) who knew or ought to have known about the court order. That officer will be treated as having committed the same offence as the company and will be liable to the same punishment. The presumption can be rebutted if there is sufficient evidence to raise an issue about the existence of the consent or the neglect of the officer, and the prosecution is unable to prove beyond reasonable doubt the contrary.

The 2012 amendment mentioned above was one of the amendments introduced in response to public request for more effective measures to address default contributions. In the amendment process, the Legislative Council made reference to the changes to the Employment Ordinance (the “EO”) in 2010 which made it an offence for any employer who fails to pay a sum awarded by the Labour Tribunal or the Minor Employment Claims Adjudication Board, and considered that a similar measure under the MPF regime would be appropriate.

In a recent case, the Mandatory Provident Fund Schemes Authority had brought civil claims against the employing company to recover outstanding MPF contributions and surcharges of about HK$380,000 from 2015 and 2016 (the “Outstanding Sum”). Although partial payment was subsequently made, a large part of the Outstanding Sum remained unpaid when the employing company pleaded guilty in June 2017. The defendant, being the company’s director, was sentenced to 21 days’ imprisonment for failing to comply with the court order to pay the Outstanding Sum.

Although convictions for defaulting on MPF contributions and breaching the MPFSO are not new, this is the first case in which a company director has been sentenced to imprisonment. The offence is not a strict liability offence.
An employer may avoid incurring liability if it can establish a “reasonable excuse” for its failure to comply with the court order. There is no hard and fast rule as to what may amount to a “reasonable excuse” since this is largely facts sensitive. That said, below are some examples of the potential defences which may be available to an employer or its officers.

• If the default occurs due to the employer falling on hard times, and it can be shown that the employer is making reasonable and honest efforts to salvage the business, such efforts may be taken into consideration by the Court in deciding whether the employer has a defence.

• If an employer can prove that it has a sound and regularly reviewed human resources management system, and the default is a “one off” mistake caused by an administrative oversight, that may also help exculpate the employer.

• If it can be shown that an officer has done what he/she can to avoid or remedy the breach (eg, by directing that a budget be made in the company’s accounts for paying the overdue contributions and surcharges or instructing other employees to keep track of and comply with any court orders made against the company or to obtain appropriate legal advice), then the officer may not attract personal liability in respect of the company’s breach.

- Duncan Abate, Partner, and Hong Tran, Partner, Mayer Brown JSM

- Duncan Abate, Partner & Hong Tran, Partner, Mayer Brown JSM

- Duncan Abate, Partner & Hong Tran, Partner, Mayer Brown JSM
trade and investment between the Mainland and Hong Kong.

The Investment Agreement is the first investment agreement adopted by the Mainland with pre-establishment national treatment commitments made through the negative list approach to regulating foreign investment.

The Investment Agreement:

- Covers investments in non-services sectors (including manufacturing, mining and investment in assets) which are outside the scope of the Agreement on Trade in Services that was already effective from June 2016.
- Commits the Mainland to provide national treatment to Hong Kong investments and investors on par with the Mainland investments and investors, except for the 26 special measures listed in the agreement.
- Commits each side to provide non-discriminatory treatment in relation to matters such as restrictions on expropriation of investments, compensation for losses, and transfer abroad of investments and returns.

The Ecotech Agreement:

- Strengthens previous CEPA economic and technical commitments in various sectors.
- Provides a basis for co-operation in relation to the Belt and Road Initiative.
- Updates the co-operation activities of the two sides in various sectors, including finance, dispute resolution, technology, e-commerce, intellectual property and product quality.
- Systematises sub-regional co-operation in relation to the Pan-Pearl River Delta region, the Mainland’s pilot free trade zones, and the districts of Qianhai (in Shenzhen), Nansha (in Guangzhou) and Hengqin (in Zhuhai).

**Action Items**

General Counsel for any company interested in investing or expanding in any of the non-services sectors covered by the investment agreement will want to closely examine the agreement to identify specific opportunities. If the client lacks a qualified presence in Hong Kong, counsel may wish to consider taking advantage of an opportunity by acquiring an existing CEPA-qualified entity.

- **Practical Law China**

法例顧問備忘錄

內地與香港簽署《CEPA投資協議》和《CEPA經濟技術合作協議》

2017年6月28日，中國商務部代表與香港政府代表簽署兩份新協議：

- 《CEPA投資協議》。
- 《CEPA經濟技術合作協議》。

兩份協議是在《內地與香港關於建立更緊密經貿關係的安排》（「CEPA」）的框架下簽署的，自簽署之日起生效，其中《CEPA投資協議》將於2018年1月1日起正式實施。簽署協議的目的是擴大市場自由化，便利中港兩地貿易和投資。

負面清單的作用是規限外商投資，《CEPA投資協議》是內地首份採用准入前國民待遇加負面清單模式的投資協議。

《CEPA投資協議》：

- 涵蓋在《服務貿易協議》範圍以外的非服務業（包括製造業、礦業和資產投資）的投資；《服務貿易協議》於2016年6月已經生效。
- 訂明內地承諾，除協議特別列明的26項不符措施以外，給予香港投資和投資者享有與內地投資和投資者相若的國民待遇。
- 訂明各方承諾，在限制投資被徵收、賠償損失、投資和回報轉移至外地等事宜上，提供非歧視性待遇。

《CEPA經濟技術合作協議》：

- 強化CEPA以往在多個領域有關經濟及技術的承諾。
- 給「一帶一路」合作基礎。
- 更新雙方在多個領域的合作內容，包括金融、爭議解決、技術、電子商務、知識產權、產品質素。
- 系統化泛珠三角區域、內地自由貿易試驗區、以及（深圳）前海、（廣州）南沙、（珠海）橫琴的次區域合作。

後話

公司法律顧問，凡服務的公司對投資於或擴展至投資協議所涵蓋的非服務行業感興趣的，會想仔細查看協議，找出協議提供的特有機會。要是客戶不具備在香港營商的必要條件，法律顧問也許想到，要把握商機，就得考慮收購現存符合CEPA規定的機構。

- **Practical Law China**

**GC AGENDA**

**MIIT Issues Revised Telecoms Licensing Measures**

On 13 July 2017, the Ministry for Industry and Information Technology (“MIIT”) issued the Measures on the Administration of Telecommunications Business Operating Licences, which took effect 1 September 2017, replacing the old measures of the same name issued in 2009.

The new measures bring China’s telecommunications licensing regime into conformity with recent changes to the rules governing the establishment, administration and supervision of companies.

The measures include (among others) the following changes:

- The MIIT will establish an online telecoms business administration platform to support the online telecoms licence application, approval and administration, as well as information publication and enquiry.
- Telecoms operators are required to identify their network and information security management entities and personnel, establish systems for areas including network and information security, illegal information monitoring and disposal, new business security assessment, network security monitoring and early warning,
emergency response and user information security protection, and have appropriate technical support measures.

- The competent MIIT office will establish random sampling mechanisms on selected telecoms operators’ annual reports, business operations and compliance with relevant telecoms regulations. It will also compile, regularly update, and make public two blacklists (that is, a telecoms business operation abnormal list and telecoms business operation dishonest list).

The measures also impose penalties for various specific infractions of the measures ranging from official warnings to fines, revocation of telecoms licence and criminal penalties.

**Market Reaction**

Jeanette Chan, Partner, Paul, Weiss, Rifkind, Wharton & Garrison, Hong Kong

“The new measures follow the government’s policy of reducing red tape, most notably by removing the capital verification requirement and the requirement that telecoms operators carry out record-filing at the local level after obtaining a licence. The measures also facilitate market entry by permitting a licensed operator to authorise an indirectly majority-held affiliate to operate a licensed telecoms service and by eliminating restrictions on telecoms operators to authorise more than one affiliate to provide the same licensed telecoms service in the same region.”

**Action Items**

General Counsel for any company regarded as a telecommunications operator under Chinese law will want to compare the new measures with the old measures and work with business colleagues and external advisors to identify those changes that affect the company’s business operations and expansion plans, as well as its compliance mechanisms.

- Practical Law China

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法律顧問備忘錄

工信部公布經修訂的電信業務經營許可管理辦法

2017年7月13日，工業和信息化部（「工信部」）公布《電信業務經營許可管理辦法》（「《辦法》」），2017年9月1日起施行，取代2009年公布的同名舊辦法。

新公布的《辦法》使中國的電信業務經營許可制度，符合用作規管公司的設立、管理及監督並最近被修訂過的規定。

《辦法》包括以下三項新規定：

- 工信部建立電信業務網上管理平台，推進經營許可證的網上申請、審批和管理及相關信息公示和查詢。
- 電信業務經營者必須明確其網絡與信息安全管理機構和人員，建立網絡與信息安全保障、違法信息監測處置、新業務安全評估、網絡安全監測預警、突發事件應急處置、用戶信息安全保護等制度，並具備相應的技術保障措施。
- 工信部主管部門建立隨機抽查機制，對電信業務經營者的年報信息、日常經營活動、執行電信業務規定的情況等進行檢查，並且編列、定期更新，並向社會公示兩份黑名單（分別是電信業務經營不良名單及電信業務經營失信名單）。

《辦法》亦就多種違反辦法的具體情況施加處罰，包括給予警告、罰款、撤銷電信業務經營許可證、刑事處罰。

市場回應

陳劍音合夥人，寶維斯律師事務所香港辦事處

「《辦法》是在政府減省繁瑣手續的政策出台之後公布，其中最突出的是取消了核資規定，以及電信業務經營者須在取得經營許可後向地方部門提交文件存檔的規定。《辦法》亦批准已獲許可的經營者授權其間接持有半以上股份的聯繫公司，經營已領許可證的電信服務，並消除關於電信業務經營者在同一地區授權一家以上聯繫公司提供同一項已領許可證電信服務的限制。」

後話

公司法律顧問，凡為在中國法律下被視為電信業經營者的公司工作的，會想比較一下新舊辦法，並希望與商務同事及外部顧問一起找出對公司的業務運作、擴展計劃、合規機制有影響的修訂。

- Practical Law China

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PRC

China Establishes Cyberspace Court in Hangzhou

As part of its legal reform, the Central Chinese government approved the establishment of the first cyberspace court in China on 26 June 2017.

The Cyberspace Court was established in Hangzhou, the capital of China’s Zhejiang province and home to many technology companies, to cater to the increasing number of internet-related disputes. Two key features of this newly established Cyberspace Court distinguish it from other courts:

1. cases are tried online; and
2. the court only hears internet-related disputes.

Background

The set up of the Cyberspace Court follows a successful pilot which started in April 2015, when Zhejiang Higher People’s Court confirmed three district courts in Hangzhou – Xihu, Binjiang and Yuhang, as the pilot courts to go online.
to hear e-commerce cases. In August 2015, the “E-commerce Online Court of Zhejiang Court” officially went online, where parties can file complaints via the internet after registration and real name authentication. The Cyberspace Court has accepted about 1,500 complaints since its inception.

**Jurisdiction of the Cyberspace Court**

The jurisdiction of the Cyberspace Court is limited to Hangzhou, and to civil disputes involving online shopping, online debt contracts and online copyright. Generally, the jurisdiction of the court is issue specific and governed by the PRC Civil Procedures Law, although the extent of its applicability to the Cyberspace Court is still unclear.

The Cyberspace Court has jurisdiction to hear the following types of cases:

- **Online shopping contract disputes**: disputes arising from the signing or performance of a contract where a seller has made a sale offer online and a buyer has accepted the purchase commitment.

- **Online shopping product liability disputes**: disputes arising from personal injury or property damage caused by defective products bought online, and the buyer is seeking tort liability from the product seller or manufacturer.

- **Online service contract disputes**: disputes arising from the signing or performance of a contract where internet service providers provide consumers with access to third party services or content services. Disputes relating to the provision of general online services by non-internet service providers are excluded.

- **Online loan contract disputes**: disputes arising from repayment of loans and interests of financial loan contracts or small loan contracts formed online with financial or small loan institutions. Disputes arising from repayment of loans and interests of loan contracts not entered into with financial or small loan institutions are excluded.

- **Online copyright disputes**: disputes relating to the infringement of right of communication through information network of a copyright work. Excluded are disputes that include other non-copyright related claims in addition to the infringement of right of communication through information network of a copyright work, for example, unfair competition.

Cases are handled by the Cyberspace Court online whereby plaintiffs file complaints through the internet and evidence and case materials are submitted online by the litigants. Parties to the dispute may appear at hearings via video link and the case verdict will be delivered online. The procedures for initiating a lawsuit with the Cyberspace Court are set out below.

**For the plaintiff:**

1. **Initiate lawsuit**
   - Registration and real name authentication.
   - Complete complaint form.
   - After authorisation by the user, the system will retrieve the relevant e-commerce into, (eg, transaction logistics, loans, IP rights, etc).

2. **Compulsory mediation**
   - After the complaint is filed, the parties involved are required to go through mediation.
   - Within 15 days, the mediator will contact the parties online, or through the telephone or video for mediation.

3. **File case**
   - If mediation fails, the complaint shall be formally submitted to the case-filing chamber.
   - Litigation fee to be paid online.

**For the defendant:**

1. **Relate to the lawsuit**
   - Receipt of electronic notification.
   - Login to view case details.

2. **Mediation**
   - After the plaintiff has filed the complaint, the parties involved are required to go through mediation.
   - Within 15 days, the mediator will contact the parties online, or through the telephone or video for mediation.

3. **Complete response information**
   - If mediation fails, and the case is formally filed with the court, the defendant will be informed immediately.
   - Complete standard response form.
   - The response will be served electronically.

Based on the information provided on the Cyberspace Court’s website, its decisions are subject to the review of the intermediate courts.

**Paving the way for more Cyberspace Courts**

On 19 July 2017, in collaboration with Chinese telecom company Sina Corporation, the Xishan District Court of Kunming established the first cyberspace court in Xishan, Yunnan province – the Online Court of Xishan District. Core functions of the online court include online mediation, online filing, online payment, online trial, online cross-examination, electronic supervision, electronic services, live broadcast of court proceedings and voice recognition. It enables online dispute resolution and provides litigants with more efficient, convenient and diversified services.

**Implications for Lawyers**

The establishment of the Cyberspace Court is a milestone for China in this digital era and this recent development is another testing ground, demonstrating China’s genuine sincerity towards reform. With the internet successfully transforming business models,
consumer spending and information sharing over the past two decades, the legal industry has had gradual, less significant impact. This may change in the not-too-distant future and lawyers will need to embrace and adapt to the digital landscape when handling litigation in China.

- Andrew Sim, Partner, Baker McKenzie

中國內地

中國杭州設立互聯網法院

中央政府2017年6月26日批准設立中國首 家互聯網法院。互聯網法院的設立是中國 法律改革的一部分。

互聯網法院設於杭州，杭州是中國浙江省 省會，也是許多科技公司的發源地。設立 互聯網法院的目的，是應對數目日增的涉 網糾紛。這家新設立的互聯網法院有兩個 明顯與其他法院不一樣的特色：

1. 在線審理案件；及
2. 法院只審理涉網糾紛。

背景

2015年4月，浙江省高級人民法院確定 由杭州三家基層法院——西湖、濱江、餘杭，作為試點法院，網上審理電子商務案 件。試點計劃圓滿結束之後，互聯網法院 獲准成立。2015年8月，「浙江法院電子 商務網上法庭」正式上線，訴訟雙方在註 冊並實名認證後，可以透過互聯網提交起 訟。互聯網法院自成立以來，接過大約 1,500份起訴狀。

互聯網法院的司法管轄權

互聯網法院的司法管轄權只限在杭州行 使，並且只管轄涉及互聯網購物、互聯網 借款合約及互聯網著作權的民事糾紛。一 般而言，法院的司法管轄權取決於具體 爭議，並受到《中國人民共和國民事訴訟 法》的規限，不過，此法在互聯網法院的 應用範圍至今仍未清楚。

互聯網法院的司法管轄權審理下列案件種類：

- 互聯網購物合約糾紛：貨主網上作出 銷售要約，買家接受購物承諾，兩方 簽署或履行合約時產生的糾紛。
- 互聯網購物產品責任糾紛：網上 購買產品，產品缺陷造成身體受傷或財物損毀，買家要求產品貨主或製造商承擔侵權 責任時產生的糾紛。
- 互聯網服務合約糾紛：互聯網服務提供者向消費者提供服務，使其可以得到第三方服 務或內容服務，在簽署或履行合約時產生的糾紛。涉及非互聯網服務提供者提供一般 網上服務的糾紛，不在此列。
- 互聯網借款合約糾紛：網上與金融機構或小額貸款機構訂立金融貸款合約或小額貸款 合約，在償還合約貸款及利息時產生的糾紛。涉及金融機構或小額貸款機構訂立的 貸款合約，在償還合約貸款及利息時產生的糾紛，不在此列。
- 互聯網著作權糾紛：涉及透過著作權作品資訊網絡侵犯傳播權的糾紛。除透過著作權 作品資訊網絡侵犯傳播權之外，也包括非著作權申索的糾紛，例如不公平競爭，不在 此列。

互聯網法院在互聯網辦案，原告透過互聯網提交起訴狀，索訟人應署名及提交資料。兩方當事人可通過視頻連接方式出席審訊，裁決在網上頒布。下圖簡述在互聯網法 院發起訴訟的程序。

原告：

- 註冊並實名認證
- 填寫起訴狀
- 經授權後，系統會 檢索涉案的電子商 務、交易、物流、 貸款、知識產權等 訊息
- 強制調解
- 提交起訴狀後，兩 方當事人必須進行 訴訟前調解
- 15天內，調解員 聯絡當事人，通過 在線、電話或視頻 調解
- 立案
- 如果調解不成功， 法院正式立案，並 即時通知被告應訊
- 網上繳交訴訟費

被告：

- 關聯案件
- 調解
- 劑文
- 提交起訴狀後，兩 方當事人必須進行 訴訟前調解
- 15天內，調解員 聯絡當事人，通過 在線、電話或視頻 調解
- 立案
- 如果調解不成功， 起訴狀正式提交法院立 法庭
- 按格式填寫應訊 訊息
- 電子送達應訊訊息

根據互聯網法院網站提供的資料，中級人民法院有權覆核互聯網法院的決定。

為成立更多互聯網法院鋪路

2017年7月19日，昆明西山區人民法院與中資電訊公司新浪合作，在雲南西山設立首間 互聯網法院——西山區在線法院。網上法院的核心功能包括，在線調解、在線存檔、在 線付款、在線審訊、在線盤問、電子監督、電子服務、直播法院訴訟程序、聲音辨認。 有了網上法院，糾紛可以在網上解決，也給訴訟人提供更有效率、更方便、更多元化的 服務。

對律師的影響

互聯網法院的設立是中國數碼年代的里程碑，上述最新發展是另一場考驗，顯示中國真 心推行改革。隨著互聯網過去20年成功改變業務模式、消費行為及資訊分享，法律行業 的影響力早已逐步呈現，只是較不明顯而已。這情況在不久的將來可能改變，在國內處 理訴訟的律師，需要接受和適應數碼世界。

- 沈淵明合夥人，貝克•麥堅時律師事務所
PROFESSIONS

“Reflections of My Life”

This 1969 hit song by pop rock band “The Marmalade” (from Scotland, as am I) causes some reflection, as my family and I prepare to return to life in London.

The song is about (among other things) reflection and change. Given my family’s pending voyage home, it seems a good time to reflect on my time in the legal profession here and to pass something on.

A decision by a foreign lawyer to qualify in Hong Kong should not be made lightly. The OLQE (Overseas Lawyers Qualification Examination) is a real test of industry and nerve. The process of admission is not easy. It may not get any easier.

That said, Hong Kong remains an open market for those willing to commit and who put in the effort. By comparison, as a foreign lawyer, try qualifying locally in (for example) Singapore, Seoul, Tokyo, Beijing, Dubai or Mumbai.

Despite a lower salaries tax rate, costs savings for an average family in Hong Kong are often illusory. This is largely explained by property and rent prices and school fees.

The legal profession is also very different now to what it was (for example) 1997. Increasingly, Hong Kong looks to China, the Pearl River Delta and the ASEAN markets for business, growth and innovation; and then there is the “Belt & Road”.

More change is coming. For example, solicitor incorporations and other alternative business structures. There will inevitably be consolidation in the local market. Some who do not adapt may not survive.

IT will dictate further huge changes in all business sectors over the next five or so years. Office life will become very different.

In my few years in Hong Kong there have also been significant social and economic changes. These are likely to increase and be reflected in the professions.

“Millenials” entering the legal profession (or other professions) will find it very different to those who went before them. In some respects, it will be harder. They need to engage. The role of the Young Solicitors’ Group and the “YSG CONNECTED” programme (and “mentors”) has never been more important.

Dual-qualification as a lawyer is worth having and striving for. It stays with you. I intend to keep my Hong Kong practising certificate. As my family and I ready to depart from Hong Kong and arrive in London, some of the lines from the song stay with me:

“The greetings of people in trouble…
... Take me back to my own home…”

- Michael Allan, Solicitor (E&W and Hong Kong), RPC

專業導論

Reflections of My Life

此刻，我準備舉家返回倫敦定居之時，這首流行搖滾樂隊The Marmalade(和我一樣，都是來自蘇格蘭的)1969年的名曲，勾起我的一點想法。

這首歌寫的是生命的反思和改變，還有……。快與家人起程回家了，看來，我現在是時候反思自己在香港法律界的日子，寫上幾句臨別贈言。

海外律師不應該輕率決定在香港取得執業資格。

海外律師資格考試是一場真正的考驗，考的是行業知識和意志力。認許過程並不容易，也不可能變得更為容易。

不過，對於願付出艱困努力的人來說，相對於以海外律師身分在(譬如說)新加坡、首爾、東京、北京、杜拜、孟買努力考取資格，香港仍然是開放的市場。

但亦難以馬虎了事，香港一般家庭費吃力用月可以是空談，究其原因，樓價、租金、學費，已解釋得七七八八了。

今天的律師界與(譬如說)1997年之前的亦大有不同，越來越多香港人北望神州，進軍珠江三角洲以至東盟市場經商、發展、革新；接著有「一帶一路」。

改變陸續有來，例如，律師法團及其他另類業務結構，本地市場難免要重新整合，有些因為不適應而不能生存。

未來大約五年時間裡，各行各業會在資訊科技的支撐下，經歷另一場巨變，上班生活會變得另一個樣樣。

我在香港住了數年，在這數年裡，香港社會經濟亦一直明顯的變。變得更多的可能專門行業，社會經濟的變反映在專門行業之中。

投身法律專業(或其他專業)的「千禧一代」會發現，行業起了很大變化，他們要面對的與前輩當年所面對的並不一樣，某些方面會更為艱難。他們需要投入，年青律師組及「法友聯盟」計劃(及「良師」)發揮的作用，從未末試過像現在這麼的重要。

雙重資格是值得擁有的，也是律師值得努力爭取的，它是你回憶的一部分。我打算把自己的香港執業證書收藏起來，和家人臨別在即，我在回憶中輕哼著幾句歌詞：

The greetings of people in trouble…
... Take me back to my own home…

(處於困境的人送來了問候……，
……帶我返回我自己的老家……)

- Michael Allan律師(英格蘭和威爾士、香港)，RPC
SFC Signs Cooperation Agreements on FinTech with UK’s FCA and Australia’s ASIC

The Securities and Futures Commission (“SFC”) signed its first Co-operation Agreement with the UK’s Financial Conduct Authority (“FCA”) in May this year, followed by another similar Co-operation Agreement with the Australian Securities and Investments Commission (“ASIC”) in June.

Although the cooperation agreements are not legally binding, they set forth a statement of intent for the regulators in different places to provide “the fullest possible mutual assistance to one another” in the following three aspects.

1. Referral Mechanism

The agreements enable the regulators to refer to each other innovative businesses which intend to operate in the other’s jurisdiction. The regulator receiving those referrals will then assist the businesses in understanding the regulatory regime and how such regime may be relevant to them.

2. Information Sharing

The agreements also provide a framework for sharing information among regulators. The regulators will share information about innovations in financial services in their respective markets, such as news on emerging FinTech trends, developments and related regulatory issues as well as information on organisations which promote innovation in financial services.

3. Potential Joint Innovation Projects

The agreements also signal a shared intent to explore joint innovation projects, especially those with potential for cross-border applicability.

Fostering Innovation

The cooperation agreements follow a flurry of recent activity in relation to FinTech on the part of Hong Kong’s regulators. For example, the SFC established a “Fintech Contact Point” in March 2016 to “facilitate the healthy development of the fintech ecosystem in Hong Kong and to promote Hong Kong as a fintech hub in Asia”. In December 2016, the HKMA apparently stole a march on the SFC by entering into its own Co-operation Agreement with the FCA to “foster collaboration ... in promoting financial innovation”.

Perhaps more than any other sector, the FinTech industry requires a regulatory environment which will not stifle innovation and development. The reality is that many FinTech businesses are willing and able to shop around for a favourable regulatory regime in which to operate. Concerns have previously been raised that Hong Kong’s regulatory regime has been too conservative to attract technology entrepreneurs and allow the healthy development of the FinTech industry.

These latest international cooperation agreements represent a recognition on the part of Hong Kong’s regulators that, if Hong Kong is to realise its potential as Asia’s FinTech hub, they will need to work closely with overseas regulators such as the UK’s FCA (which regulates a jurisdiction widely regarded as one of the most “FinTech-friendly” in the world). Those involved in Hong Kong’s FinTech industry should see these developments as an encouraging sign.

- Ben Yates and Rico Chan, RPC

Legislator

證監會分別與英國FCA和澳洲ASIC簽訂金融科技合作協議

今年五月，證監會及期貨事務監察委員會（「證監會」）與英國金融市場行為監管局（「FCA」）簽訂證監會的首份《合作協議》，隨後在六月與澳洲證監會及投資事務監察委員會（「ASIC」）簽訂另一份內容相若的《合作協議》。

合作協議雖然不具有法律約束力，但闡明不同地方監管機構適用的意向聲明，務求在以下三個方面「彼此提供最大可能的相互協助」。

1. 轉介機制

兩份協議讓監管機構能夠互相轉介有意在其他司法管轄區經營業務的創意公司。監管局收到轉介之後，會協助公司了解監管制度，明白制度在哪方面與公司有關。

2.分享資訊

兩份協議亦提供監管機構作用分享資訊的框架，監管機構會分享各自市場金融科技服務的創新，例如就金融科技的最新趨勢、發展和相關監管事宜，以及就兩地致力推動金融科技創新的機構，互通資訊。

3.具潛力的聯合創新項目

兩份協議亦表明雙方有意探索聯合創新項目，特別是具有跨境應用潛力的項目。

促進創新

合作協議簽訂之前不久，香港監管機構紛紛進行與金融科技有關的活動。例如，證監會2016年3月成立「金融科技促進辦公室」，「促進香港金融科技的穩健發展，並推動香港成為亞洲區的金融科技樞紐」。2016年12月，金管局更表明先證監會一步，與FCA訂立《合作協議》，「促進……合作推動金融科技創新」。

金融科技業需要不會扼殺業界創新和發展的監管環境，這個需要可能比任何其他行業的還要大。事實上，有很多金融科技公司願意，也有能力，四處揀選有利經商的制度。早前有人關注到，香港的監管制度一直太過保守，對科技企業欠缺吸引力，窒礙金融科技業穩健發展。

從這些最近簽訂的國際合作協議可見，香港的監管機構認識到，香港如果要將自己成為亞洲金融科技樞紐的潛質實現，就需要與英國FCA（廣泛監管司法管轄區的機構，被視為全球最「金融科技友好」的監管機構之一）等海外監管機構建立緊密的合

作關係，與香港金融科技業有關的公司，應當把這些看作為具有鼓舞作用的發展。

- 叶子彬及Rico Chan, RPC

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

Simply contact the editor at: cynthia.claytor@thomsonreuters.com

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

電話：cynthia.claytor@thomsonreuters.com

www.hk-lawyer.org
Competition Tribunal Practice Direction No. 1 provides that the object of the first case management conference (“CMC”) in proceedings in the Competition Tribunal (the “Tribunal”) was to identify the necessary directions to enable the matter to proceed to a substantive hearing fairly, expeditiously and economically. At the first CMC in such proceedings brought by the Competition Commission (the “Commission”) against R1–5, which was heard on 26 May 2017, the parties sought, inter alia, an order sanctioning a proposed confidentiality protocol whereby a “confidentiality ring” of nominated persons would undertake to use specified documents without redaction only for the purpose of the proceedings and not to disclose them to anyone outside the ring; and if everyone else was to be given documents, only copies with confidential information redacted would be provided.

Held, that:

• Regarding the parties’ proposed confidentiality protocol, the order (and corresponding undertaking) should offer wide protection by directing that all documents produced in the proceedings must only be used in connection therewith, leaving the collateral use of the documents subject to the parties’ consent or the direction of the Tribunal.

• As for discovery, by agreement, the Commission would disclose both used and unused materials and provide an affidavit to verify its lists of documents (the “Lists”). A deadline of 12 weeks from the date of the Lists was imposed for any application for discovery from third parties.

• Concerning applications to strike out any part of the originating notice of application (“ONA”) or to determine the admissibility of statements under s. 45 of the Competition Ordinance (Cap. 619) (the “Ordinance”) (on the issue of self-incrimination), since R2 had earlier issued such an application by summons which was fixed to be heard on 18 September 2017, it was directed that any such further application should be made at least 28 days before that date. If other Rs wished the Tribunal to consider hearing their applications and evidence at the same time as R2’s summons, they might need to apply substantially earlier than that deadline.

• As no party would definitely rely on expert evidence, any application for directions on expert evidence had to be made within 12 weeks of the date of the Lists.

• Any application for the issue of a witness summons under r. 36 of the Competition Tribunal Rules (Cap. 169D, Sub. Leg.) (the “Rules”) was to be made on or before 4 December 2017 (ie, about two weeks after the exchange of witness statements).

• By consensus, the next CMC was fixed for 13 December 2017. Given the case primarily concerned events over 11 days in July 2016 relating to a single tender, the period of 1 May to 30 June 2017 was targeted as the range of dates for the substantive hearing of the application, with the parties to confer and propose the actual trial dates within one week.

• Regarding R3’s summons for an extension of time to file its response to the ONA under r. 75 of the Rules, all the documents mentioned in the ONA had already been provided to it. Other Rs had filed or would file their responses by today. R3’s position was not so radically different that it required fundamentally different treatment and a deferment of filing its response. However, as the Commission had no objection, a final extension of 14 days was granted.

Competition Commission v Nutanix Hong Kong Ltd [2017] HKEC 1203 Competition Tribunal Competition Tribunal Enforcement Action No. 1 of 2017 Godfrey Lam J, President, in Chambers 12 June 2017
民事訴訟程序

Competition Commission v Nutanix Hong Kong Ltd [2017] HKEC 1203

競爭事務審裁處

競爭事務審裁處的執行訴訟案件2017年第1號

主任法官林雲浩內庭聆訊

2017年6月12日

案件管理 — 競爭事務審裁處的法律程序 — 首次案件管理會議 — 為使案中事宜可公平、儘快和經濟地進入實質聆訊而需要作出的指示

《競爭事務審裁處實務指示1》規定，在競爭事務審裁處的法律程序中，首次案件管理會議的目標在於識別出所需要的指示，務求案中事宜可公平、儘快和經濟地進入實質聆訊。在一個由競爭事務審裁處（「競委會」）針對第1–5答辯人提起的法律程序中，首次案件管理會議於2017年5月26日進行聆訊。在會議上，訴訟各方提出要求，包括要求法官命令批准建議的保密協議；根據建議的協議，「保密圈」內的指定人會承諾只為法律程序使用所指明的不經編修的文件，並且不會向圈外任何人披露文件內容；如果他們將文件提供給其他人，只會提供經編修的保密資料文本。

裁決 —

• 關於訴訟各方建議的保密協議，法庭應該在命令中指示，所有在法律程序提呈的文件，必須只用於與法律程序有關的專利，包括提供法官命令批准建議的保密協議；根據建議的協議，「保密圈」內的指定人會承諾只為法律程序使用所指明的不經編修的文件，並且不會向圈外任何人披露文件內容；如果他們將文件提供給其他人，只會提供經編修的保密資料文本。

• 遲於文件透露，競委會同意會提供披露所用的和不使用的資料，並提供詳盡的文件清單（「該清單」）。要求第三方透露文件的申請設有最後期限，申請人須在該清單日期後12個星期內提出申請。

• 關於要求法庭剔除原訴申請通知書任何部分的申請，或者根據《競爭條例》（第619章）第45條（關於導致自己入罪）要法庭裁定陳述的可接納性的申請，由於第二答辯人較早前藉傳票提出申請，並且已預訂在2017年9月18日進行聆訊，法官指示，任何另外提出的申請應當在該日期至少28天前提出。其他答辯人如希望審裁處考慮在聆訊第二答辯人的傳票之時，同時聆訊其申請，可能需要在最後期限之前一早提出申請。

• 沒有一方一定會依賴專家證據，法官指示，任何就專家證據申請指示的，必須在該清單日期起計12個星期內提出申請。

• 要求根據《競爭事務審裁處規則》（第619D章，附屬法例）（「《規則》」）第36條規則發出證人傳票的，須於2017年12月4日（即交換證人陳述書之後兩個星期）或之前提出申請。

• 經訴訟雙方一致同意，下次案件管理會議定於2017年12月13日舉行。考慮到案件主要涉及2016年7月份11天內發生的與單一送交有關的事，主任法官指示在2017年5月1日至6月30日期間實質聆訊申請，訴訟各方在一星期內協商並建議確實的審訊日期。

• 根據《規則》第75條規則，答辯人須在限期內將其對原訴申請通知書的回應送交存檔。關於第三答辯人發出傳票要求延長送交回應的期限，第三答辯人已獲提供所有在原訴申請通知書提及的文件，其他答辯人已經提交回應存檔，或者會在案件管理會議日期之前提交。第三答辯人的情況與其他答辯人的情況不同，因此無須上完全不一樣的處理方法，也無須延長送交回應的期限。不過，由於競爭事務審裁處的申請，主任法官最後批准延長14天。

CIVIL PROCEDURE

Designing Hong Kong Ltd v Town Planning Board (No. 2) [2017] HKEC 1162

Court of Appeal

Civil Appeal No. 184 of 2015

Cheung CJHC, Lam V-P, Poon JA

7 June 2017

Costs – public interest litigation – unsuccessful appeal against dismissal of application for protective costs order – whether no order as to costs of application below appropriate

In judicial review proceedings against the Town Planning Board (the “Board”), the Judge refused an application for a protective costs order (“PCO”) by X, finding it had failed to show it was genuinely incapable of funding the litigation or to bear the Board’s costs in the main proceedings. The Court of Appeal dismissed X’s appeal with no order as to costs (see [2017] 2 HKLRD 60). By a notice of motion, X sought leave to appeal to the Court of Final Appeal.

Held, dismissing the notice of motion, that:

• Xs' application for leave to appeal to the Court of Final Appeal was unmeritorious. The issues now raised were either too general or not reasonably arguable.

• It was fair and reasonable that there should also be no order as to costs of the PCO application in the Court below. Given this was the first case in which PCO was extensively argued in a court in Hong Kong, the application satisfied the public interest litigation (“PIL”) criteria. X’s legal team were acting pro bono and there was scope to relax the requirement for lack of personal benefit. However, in future, an unsuccessful PCO applicant would not be able to rely on the PIL criteria to be absolved from costs liability.

• There was no justification for extending the PIL protection further
民事訴訟程序

Designing Hong Kong Ltd v Town Planning Board (No. 2)
[2017] HKEC 1162

上訴法庭
上訴法庭民事訴訟案2015年第184號
高等法院首席法官張舉能，上訴法庭副庭長林文瀚，上訴法庭法官潘兆初
2017年6月7日

訟費 — 涉及公眾利益的訴訟 — 針對法庭拒絕保護式訟費令的裁決

在針對城市規劃委員會（下稱「城規會」）的訴訟案中，申請人（下稱X）向法庭申請保護式訟費令，但法庭駁回申請，並裁定X未能證明它確實無能力為訴訟提供資金或承擔城規會在主要法律程序中的訟費。X提出上訴，而上訴法庭駁回上訴，同時不作出任何訟費令（詳見[2017] 2 HKLRD 60）。X發出動議通知書，申請許可向終審法院提出上訴。

裁決 — 駁回動議通知書：

• X的終審法院上訴許可申請沒有成功機會。X現提出的爭議點如非過於籠統，就是無法合理地可辯證成立。
• 對於下級法庭席前的保護式訟費令申請，不作出任何訟費令的做法是公平且合理。考慮到本案是首宗在香港法庭席前就保護式訟費令進行全面爭辯的案件，上述申請已符合「涉及公眾利益的訴訟」的標準。X的律師團體乃以義助身份行事，關於缺乏個人利益的規定可予放寬。然而，日後如有保護式訟費令申請被駁回，申請人將不能倚仗「涉及公眾利益的訴訟」的標準以期避免在訟費方面的責任。
• 案中沒有理由把「涉及公眾利益的訴訟」的保障範圍延伸至本項沒有成功機會的上訴許可申請。本庭下令X支付城規會在動議通知書方面的訟費。

CIVIL PROCEDURE

Morpol SA v Blue Anchor Line
[2017] HKEC 1038
Court of First Instance
Admiralty Action No. 150 of 2014
Godfrey Lam J in Chambers
22 May 2017

Jurisdiction — District Court — characterisation of claims in bailment — transfer of admiralty action from High Court to District Court — nature of discretion involved when transfer of action from High Court to District Court sought

Ps, being the shippers, consignees, sellers and subrogated insurers of the cargo, brought an action in the High Court against Ds, said to be carriers under the bills of lading and bailees for reward of the cargo, to recover the loss said to have been occasioned by Ds having negligently damaged the cargo. Such loss was particularised to total approximately HK$629,000, and therefore came within the monetary limit of the District Court’s jurisdiction of HK$1 million. Ds applied for the transfer of the action to the District Court. Such transfer was opposed by Ps. They contended that: (a) the District Court had no admiralty jurisdiction and no jurisdiction over claims in bailment; (b) they had an absolute right to proceed with the action in the High Court by virtue of s. 12B of the High Court Ordinance (Cap. 4) (the “HCO”), which right could not or should not be frustrated by a transfer; and (c) in any event, the High Court should exercise its discretion not to order a transfer.

Held, ordering a transfer of the action to the District Court, that:

• Provided the matters fell within the jurisdiction conferred by the District Court Ordinance, the District Court had jurisdiction over matters that fell within the admiralty jurisdiction of the Court of First Instance, for the legislation conferring admiralty jurisdiction on the High Court did not confer such jurisdiction exclusively on the High Court. Even on the footing that Ps’ claim included a claim in bailment, it would nevertheless fall within the legislation conferring jurisdiction on the District Court. A claim in bailment should, depending on the facts, be characterised as either a claim founded on contract or a claim founded on tort rather than as being sui generis. A claim in bailment therefore came within the words “any action founded on contract, quasi-contract or tort” in s. 32(1) of the District Court Ordinance (Cap. 336) (the “DCO”).
Section 12B of the HCO was concerned with the mode of exercise of the admiralty jurisdiction, particularly whether an action might be brought in personam or in rem and, if in rem, against what ship and property. It did not confer the absolute right contended for by Ps, and it does not detract from the provisions on transfer of proceedings in s. 43 of the DCO.

While the power to transfer was discretionary by virtue of the word “may” in s. 43(1) of the DCO, s. 43(3) makes it clear that the High Court was required to order a transfer unless the case ought to remain in the High Court “by reason of the importance or complexity of any issue arising” or “for any other reason”. The burden was on Ps to demonstrate that the case positively ought to so remain. The issues on the Hague-Visby Rules in the present case were not so important or complex as to show that the case ought to remain in the High Court. Nor was the existence of the Admiralty List with a specific judge in charge of it a reason for retaining the case in the High Court.

民事訴訟程序

Morpol SA v Blue Anchor Line  
[2017] HKEC 1038

原訴法庭
高院海事訴訟案件2014年第150號  
原訴法庭法官林雲浩內庭聆訊  
2017年5月22日

司法管轄權 – 區域法院 – 對基於委託而提出的申索的描述 – 將海事訴訟由高等法院移交至區域法院 – 申請把訴訟由高等法院移交區域法院時涉及酌情權性質

眾原告人分別是涉案貨物的付運人、收貨人、賣方、取代投保人地位的承保人，眾被告人據稱分別是涉案貨物的取酬受託人及提單註明的承運人。眾原告人入稟高等法院, 指控眾被告人疏忽，引致涉案貨物損毀，向眾被告人追討損失。眾原告人分別列損失金額，總額為692,900港元左右，在區域法院申索限額100萬元的範圍以內。眾被告人申請把訴訟移交區域法院審理，眾原告人反對，辯稱：(a)區域法院沒有海事司法管轄權，也沒有司法管轄權審理基於委託而提出的申索；(b)憑藉《高等法院條例》(第4章)第12B條，眾原告人有絕對權在高等法院繼續進行訴訟，這項權利不可以，也不應該由於訴訟被移交而受阻撓；(c)無論如何，高等法院應當行使的情權，不命令移交訴訟。

裁決 – 一命令把訴訟移交區域法院：

只要涉案事情是在《區域法院條例》賦予的司法管轄權範圍內，即使那是原訴法庭海事司法管轄權範圍以內的事，區域法院也有司法管轄權審理，因為賦予高等法院海事司法管轄權的法例，不是只賦予高等法院這項司法管轄權。原告人的申索包括一項基於委託而提出的申索，但即便如此，涉案事情也應會是賦予區域法院司法管轄權的法例範圍內的事。基於委託而提出的申索，應被描述為基於合約或侵權（視乎案情而定)而提出的申索，不是自成一類。因此，基於委託而提出的申索是在《區域法院條例》(第336章)第32(1)條的「任何基於合約、準合約或侵權行為而提出的訴訟」的涵蓋範圍內。

《高等法院條例》第12B條關乎海事司法管轄權的行使方式，特別是提起的應該是對人訴訟還是對物訴訟，如果對物訴訟，應該針對哪艘船或財物提起訴訟。它沒有賦予眾原告人所聲稱的絕對權利，也沒有減損《區域法院條例》第43條的移交法律程序的規定。

CIVIL PROCEDURE

Yu Man v Chief Commodities Ltd  
[2016] HKEC 2938
Court of First Instance  
Miscellaneous Proceedings No. 1170 of 2016  
Cheung and Chu JJA  
20 July 2016

Striking out – statement of claim – failure to plead particulars and disclose reasonable cause of action – whether action properly struck out

In an action in the District Court against D, a broker in futures and forex trading, P sought HK$1 million in damages alleging he had suffered a substantial loss caused by the improper conduct of D. On D’s application, the Judge struck out the statement of claim for inter alia lacking in particularity, failing to disclose any reasonable cause of action and having no chance of success under O. 18 r. 19(1)(a) of the Rules of the District Court (Cap. 336H, Sub. Leg.) (the “RDC”), and dismissed the action. The Judge refused P’s application for leave to appeal against the decision and P now renewed the application before the Court of Appeal.

Held, refusing the application, that:

• P’s intended appeal was wholly without merit, had no reasonable prospect of success and there was no other reason in the interests of justice why it should be heard. The Judge was entitled to exercise his discretion under O. 18 r. 19(1)(a) of the RDC and order the statement of claim to be struck out on the ground that it disclosed no reasonable cause of action.

• Inter alia, in civil proceedings, the purpose of pleadings was to clearly define the issues in dispute and the
Substantive questions of law involved, enabling the parties to gather relevant evidence, disclose relevant documents and prepare for trial. The rules of pleadings must be strictly observed. A statement of claim must expressly state the cause of action and its factual basis with the necessary particularity to establish a reasonable cause of action.

- Here, the statement of claim did not set out any particulars to support the allegations of “improper acts”, “dishonesty” and “wilful tortuous acts” or their factual basis, and no cause of action was made out.

- As for P’s argument that the defective pleading could have been amended without restriction instead of struck out, under the RDC, a litigant did not have an absolute right to amend pleadings at will and at any time. Here, P never even applied for leave to amend the statement of claim.

- The law did not prescribe any time limit for an application to strike out a pleading. It was not too late for D to make such an application about two-and-a-half months after the close of pleadings and the Trial Judge did not err in exercising his case management discretion in D’s favour.

Civil Procedure

**Yu Man v Chief Commodities Ltd**

[2016] HKEC 2938

The rules of pleadings must be strictly observed. A statement of claim must expressly state the cause of action and its factual basis with the necessary particularity to establish a reasonable cause of action.

- Here, the statement of claim did not set out any particulars to support the allegations of “improper acts”, “dishonesty” and “wilful tortuous acts” or their factual basis, and no cause of action was made out.

- As for P’s argument that the defective pleading could have been amended without restriction instead of struck out, under the RDC, a litigant did not have an absolute right to amend pleadings at will and at any time. Here, P never even applied for leave to amend the statement of claim.

- The law did not prescribe any time limit for an application to strike out a pleading. It was not too late for D to make such an application about two-and-a-half months after the close of pleadings and the Trial Judge did not err in exercising his case management discretion in D’s favour.

**Criminal Law**

**HKSAR v Gurung Laxman**

[2017] HKEC 972

Court of Appeal

Criminal Appeal No. 385 of 2015

Yeung ACJHC, McWalters and Pang JJA

16 May 2017

Dangerous drugs – trafficking – conviction on charge of trafficking – appellate court satisfied that precise quantity of drugs in defendant’s possession were for trafficking while rest should be treated as having been for self-consumption – particulars of trafficking charge amended as appropriate and appropriate unlawful possession charge added – sentence reduced

D stood trial in the District Court on a charge of trafficking in dangerous drugs containing 7.09 g of methamphetamine hydrochloride (“Ice”). Those drugs were in three bags wrapped together in tissue paper and bound with tape. Most of the drugs, 6.49 g of “Ice” were in a large bag while the rest of the drugs, namely a total of 0.60 g of “Ice” were in two small bags. D, who had a history of drug abuse, admitted being in possession of all the drugs, but denied trafficking in any part of them, saying in evidence that all the drugs were for his own consumption. The Judge was of the view that the only reasonable inference was that D had all the drugs in his possession for the purpose of trafficking; convicted him as charged; did not accept for the purpose of sentencing that any of the drugs were for D’s own consumption; and sentenced him to five years and six months’ imprisonment. With leave, D appealed against conviction and sentence.

**Held**, dismissing the appeal against conviction, but allowing the appeal against sentence by reducing the sentence from five years and six months’ imprisonment to four years’ imprisonment, that:

- The Judge was entitled to infer that at least the drugs in the two small bags were possessed by D for the purpose
But the Judge had not revealed in sufficient detail which parts of D's evidence he accepted and which primary facts he relied upon to infer trafficking for the Court of Appeal to be satisfied that the inference that D was trafficking in the drugs in the large bag was the only reasonable inference.

In a case like the present where the precise portion of the drugs for self-consumption was known, it was appropriate that the offender be convicted of separate offences of trafficking and unlawful possession.

The Court of Appeal had the power – of which power they could avail themselves where, as here, such power could be exercised without any possible risk of prejudice to the appellant – to amend the charge sheet by amending the particulars of the trafficking charge to reduce the quantity of drugs as appropriate and adding an unlawful possession charge as appropriate. And this would be done in the present case.

For trafficking in the 0.60 g of “Ice” in the two small bags, D was sentenced by the Court of Appeal to three years’ imprisonment. And for unlawful possession of the 6.49 g of “Ice” in the large bag, he was sentenced to 18 months’ imprisonment.

On the totality principle, only 12 months of the sentence of 18 months’ imprisonment for unlawful possession was to be served consecutively to the sentence of three years’ imprisonment for trafficking, so that D’s total sentence would be four years’ imprisonment.

CRIMINAL SENTENCING

Dealing with property known or believed to represent proceeds of indictable offence – suspended sentence of imprisonment – review of sentence – subject to exceptional circumstances, offence attracted immediate custodial sentence even for first offender – discount to reflect immediate custodial sentence imposed on review – for offence of dealing with HK$630,000 in cash during period of 21 months, immediate custodial sentence of eight months’ imprisonment imposed on review

D pleaded guilty in the District Court to dealing with property known or believed to represent the proceeds of an indictable offence. She had so dealt with HK$630,000 in cash during the period 16 November 2009 to 18 August 2011. The predicate offence was that of trafficking.

• 上訴法庭有權——如果權力的行使可以不給上訴人帶來可能不利的風險（這宗案件）——法庭就可以使用這種權力——修改指控書，更改販毒控罪的詳情，按情況減少被判的、也按情況加控非法管有毒品罪。這宗案件就是會這樣作結。

• 被告人因為販運兩小袋合共0.60克“冰”，被上訴法庭判監3年，因為非法管有大袋內6.49克“冰”，被判監18個月。

• 基於整體刑罰的原則，被告人因為非法管有毒品而被判處的18個月監禁之中，只有12個月與因為販運而被判處的3年監禁分期執行，因此，被告人的總監禁期間是4年。
of operating an unlawful gambling establishment. In sentencing her to seven months’ imprisonment suspended for two years, the Deputy Judge took into account in D’s favour that she was a divorcée, aged 58, who was responsible for the care of her 16-year-old son who suffered from reading and writing disabilities, she derived no monetary gain from the offence of dealing and she had played a relatively passive role in it. The seven-month term was arrived at by adopting a starting point of 12 months which was discounted by one third for plea and then further discounted by one month to reflect the time for the matter to be brought to court. The Secretary for Justice applied for a review of the sentence on the grounds of manifest inadequacy and error in principle.

Held, granting the application and imposing an immediate custodial sentence of eight months’ imprisonment, that:

• In all the circumstances, the appropriate starting point was 18 months’ imprisonment. D would then be afforded, as the Deputy Judge afforded her, a one-third discount for plea and a further one-month discount to reflect the time for the matter to be brought to court. This would result in a term of 11 months’ imprisonment.

• Subject to exceptional circumstances, dealing with property known or believed to represent the proceeds of an indictable offence attracted an immediate custodial sentence even for a first offender. There were no such exceptional circumstances in the present case.

• D’s counsel having invited the Deputy Judge to impose a suspended sentence, D bore some responsibility for the sentence imposed on her. But that was not a bar to the Court of Appeal affording her some discount of sentence to reflect the undoubted distress to her of being sent to prison on review. She was entitled to such a discount of three months, resulting in a final sentence of eight months’ imprisonment.

• The seven-month term was arrived at by adopting a starting point of 12 months which was discounted by one third for plea and then further discounted by one month to reflect the time for the matter to be brought to court. The Secretary for Justice applied for a review of the sentence on the grounds of manifest inadequacy and error in principle.

Held, granting the application and imposing an immediate custodial sentence of eight months’ imprisonment, that:

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REGULATORY

Moody's Investors Service Hong Kong Ltd v Securities and Futures Commission [2017] HKEC 1166
Court of Appeal
Civil Appeal No 103 of 2016
Lam V-P, Yuen and Kwan JJA
8 June 2017

Credit rating agency – definition of credit ratings – “red flag” report itself did not constitute credit rating – distinction between assessment of some (but not all) elements of credit risk and assessment of creditworthiness – report expressed opinion primarily on corporate governance and accounting risks only – report part and parcel of credit ratings business and fell within regulated activities under s. 193

M was part of a global credit rating agency network and was licensed under the Securities and Futures Ordinance (Cap. 571) (the “Ordinance”) to carry on Type 10 activity (ie, provide credit rating services) since June 2011. In July 2011, M published a document entitled “Red Flags for Emerging-Market Companies: A focus on China”, which examined various mainland Chinese issuers (the “Report”). It was distributed to subscribers and available for sale to the general public.
M also issued a press release which stated that, “[M] highlights … governance and accounting risks prevalent when investing in fixed-income securities in the emerging markets. Through a framework of “Red Flags”, the Report focuses on transparency concerns and the general complexities associated with rapidly developing markets”. After publication of the Report, the share prices of more than half of the companies red-flagged dropped substantially. In a Decision Notice of 3 November 2014, the Securities and Futures Commission (the “SFC”) found that M failed to have the required procedural safeguards in place to ensure the integrity of the Report and the Report was materially misleading, confusing and inaccurate in several respects. M sought a review of the SFC’s decision. The Securities and Futures Appeals Tribunal (the “Tribunal”) found that M carried on Type 10 activities in the preparation and publication of the Report and there were substantive breaches of the Code of Conduct issued under s. 169 of the Ordinance. M appealed against that determination. “Credit ratings” is defined in Pt. 2 of Sch. 5 of the Ordinance as “opinions, expressed using a defined ranking system, primarily regarding the creditworthiness of – (a) a person other than an individual …”. Section 193 of the Ordinance defines misconduct as including “an act or omission relating to the carrying on of any regulated activities”.

Held, dismissing the appeal, that:

• While the Tribunal erred in concluding that the Report itself constituted a credit rating, its decision was upheld on its alternative reasoning that misconduct could be established on the basis that the preparation and publication of the Report was part and parcel of the carrying on of the business of credit ratings by M and thus a Type 10 activity was engaged.

• The Tribunal did not consider the notion of the Report being part and parcel of the credit rating in a vacuum. It was entitled to hold that even though the red flag framework was not part of the methodology in arriving at M’s credit ratings of a classic kind, the Report constituted additions and clarifications which were meant to be read together with such classic ratings and as such, the publication of the Report was an activity relating to the ratings within the meaning of s. 193 of the Ordinance. Further, the business of credit ratings encompassed clarifications or additions to existing ratings on an ongoing basis. This construction was consistent with the purposive interpretation of the statute and the proportionate interference with the freedom of expression.

• Different credit rating agencies might have different baskets of factors. In determining whether an agency did provide credit rating services, the SFC or the Tribunal need not assess whether the factors or elements that such agency had taken into account were scientifically or statistically sound in terms of the final assessment. So long as the product was presented by way of an expression of opinions primarily regarding creditworthiness (using a defined ranking system), it would be caught by the statutory definition under Pt. 2 of Sch. 5 of the Ordinance. However, it was a different matter if the product was not presented as an expression of opinions primarily regarding creditworthiness and instead presented only as a discussion limited to one or two elements without expressing any opinion on the overall assessment of creditworthiness.

• The Tribunal erred in failing to address the requirement of primacy in the statutory definition and the distinction between assessment of some (but not all) elements of credit risk and assessment of creditworthiness. The Report expressed an opinion primarily on corporate governance and accounting risks which were relevant but far from determinative of creditworthiness. M did not represent in the Report that it had adopted an alternative credit risk assessment approach based on governance and accounting risks alone and that the Report expressed an opinion primarily on an overall assessment of creditworthiness of the companies in the chart. M made it clear that although there was a degree of correlation for some non-property firms between lower ratings and larger numbers of red flags, the red flags did not represent a change in M’s rating methodologies (which encompassed other factors).
信贷评级机构 — 信贷评级的定义

—「红旗」报告本身不构成信贷评级
—评估某些(不是全部)信贷风险
—评估信用的分别
—报告本身

—报告分发的控制

—报告属信贷评级业务一部分

—在第193条所订的受规管活动范围

M是全球信贷评级机构网络其中一员，自2011年6月起获发牌进行《证券及期货条例》(第571章)(「《条例》」)所订的第10类受规管活动(提供信贷评级服务)。2011年7月，M发表一份检视国内多家中资发行人的文件，题为「新兴市场公司的「红旗讯号」：以中国为重点」(Red Flags for Emerging-Market Companies: A focus on China)(「该报告」)。M将该报告分发给股东，也设有公开发售。M亦发放新闻稿，说明「[M]发表最新报告，探討投资于新 EXPERIMENTAL 期固定收益证券时所普遍存在的治理和会计风险。该报告通过一个『红旗』(Red Flags)讯号框架，重点探討一些迅速发展市场所存在的透明度问题和整体複杂性。」该报告发表之后，获编配红旗的公司之中，有超过四分之一股股价大跌。证券及期货事务委员会(「证监会」)认定，M没有在程序上设制必要的保障，未能确保该报告公正完整，並且该报告在多个方面严重误导他人，引起混乱，内容失实。证监会於2014年11月3日发出决定通知书。M申请覆核证监会的决定。证券及期货事务上诉审裁处(「上诉审裁处」)裁断，M在编製及发表该报告时，從事第10类受规管活动，亦裁断，根據《条例》第193条所订的程序，M应该遵守。上诉审裁处裁断，Mの失当行为可以在这基础之上得以确立。信贷评级机构可对一篮子不同因素进行评估。决定某机构是否确实提供信贷评级服务时，证监会需要考虑这多个因素的影响。只要评级机构是以表达意见的方式发表研究结果，而表达的意见主要是關於(用确定的评价制度评估的)信用的，就會符合《条例》附表5第2部所定义的信用评估。不过，如果研究结果不是在主要與信用有关的意見中发表，而只是在涉及一、两种元素的讨论中发表，没有就信用的整體评估发表任何意见，情况就不一样了。

裁决 —驳回上诉：

—虽然上诉审裁处错误推断该报告本身构成信贷评级，但上诉法庭維持上诉审裁处的决定，因为上诉审裁处提出交替論据，指出该报告的编製及发表是M信贷评级业务的一部分，因此构成徬第10类受规管活动，而Mの失当行为可以在这基础之上得以确立。

—上诉审裁处不是凭空考虑该报告是信贷评级一部分的說法。它可以认为，尽管红旗讯号框架不是M得出传统信贷评级所用方法的一部分，但該报告構成增補或澄清原有信贷評级，應該與傳統評級一併閱讀，由此看來，发表该报告是《条例》第193条所指的關乎評级的活動。此外，信贷评级業務包含持續澄清或增補现有評级。這個解释符合因應立法目的對法例作出的诠释，也符合對發表自由相稱地作出的干預。

—信贷评级機構可以各有一篮子不同的因素。決定某機構是否確實提供信贷评级服務時，证监会或上诉审裁處不需要評定，從最後評定方面說來，該機構所考慮的因素或因素是否夠科學、可信赖的統計因素或元素。只要評级機構是以表达意見的方式發表研究结果，而表達的意见主要是關於(用確定的評级制度评估的)信用的，就會符合《条例》附表5第2部所定义的信用评估。不过，如果研究结果不是在主要與信用有关的意見中发表，而只是在涉及一、两种元素的討論中发表，沒有就信用的整體評级发表任何意見，情況就不一样了。
The emergence of blockchain and distributed ledger technology has been a gamechanger. These offer significant and scalable processing power, high accuracy rates, and apparently unbreakable security at a significantly reduced cost compared to the traditional systems the technology could replace. However, at the same time, it is also complicating the legal landscape in many emerging areas.

The ALB supplement Blockchain: A Legal Guide discusses some of these areas as well as some of the legal impediments that may need to be overcome prior to wide-scale implementation. It will feature contributions from regulators, law firms and other entities.

If you are a subject matter expert who wishes to contribute content to the guide by purchasing a chapter, contact Amantha Chia at amantha.chia@thomsonreuters.com or +65 6870 3917.
A good test for why a word or phrase is considered legalese is that lawyers tend to use it in legal documents but would never dream of using it in normal conversation. The term and/or is a good example. No one says “and/or” in normal speech (I hope). After reading yet another legal document peppered with this construct (it is not a word and you cannot really call it a phrase), I found myself asking why it is that lawyers seem so fond of it and whether its meaning is always as clear as they assume.

Conjunctions
The expression and/or is what grammarians (yes, there is such a thing, it means someone who studies or writes about grammar) call a conjunction. A conjunction is a word or phrase which connects (coordinates would be a better word) phrases, clauses or sentences.

History
And/or has long history. It has been around since the mid-19th century and appears to have been the subject of criticism for almost as long. This criticism comes from:

• grammarians, who make the point that it is not a real word;
• proponents of clarity in legal writing, who note that it can lead to ambiguity; and
• judges, who have called it “a bastard conjunction” and a “much condemned conjunctive-disjunctive crutch of sloppy thinkers”.

Problems with or
The main reason legal practitioners seem to prefer and/or is that or on its own can be ambiguous. It can be either exclusive, meaning A or B, but not both, or inclusive, meaning A or B or both. One commentator notes that a good way of remembering this is that the word or carries a different meaning when we are asked:

• “Would you like tea or coffee?” where it is used in an exclusive sense and when to answer “both” would seem very strange; or
• “Would you like milk or sugar?” where it is used in an inclusive sense and when answering “both” is perfectly acceptable.

Drafters are nervous types who worry that by just using or they might not cover the situation where both A and B occur. They then try to make this clear by adding and; which gives us the and/or construct.

What does it mean?
The commonly accepted meaning of and/or is that it indicates that one or more of the cases it connects may occur. Put another way, it means either and or or both. So the phrase A and/or B means:

• A; or
• B; or
• both A and B.

Most of the time and/or works just fine. However, it is not a panacea. Depending on the grammatical context, the meaning of and/or can be unclear. Set out below are a few examples.

Obligations
And/or can create ambiguity when it is used to frame an obligation. Take for example the provision “The joint venture company shall hire employees from shareholder A and/or shareholder B”. Would it satisfy that obligation if it hired employees only from shareholder A? Probably yes, but that meaning is a little unclear. Contrast this with “The joint venture company shall hire employees from shareholder A or shareholder B or both.” It then becomes much clearer that the company can choose to hire employees from only one of the shareholders.

Multiple cases
I often see and/or used where there are three or more cases (eg, A, B and/or C). Does this include A and B but not C? Again, probably yes, but that meaning is not as clear as it could be, particularly where, as is often the case, there is no other conjunction, such as and or or, between the A and the B.

Both Not an Option
Finally, and/or is often used in a lazy way where the only possible meaning is or. Consider the provision “The board meeting will be held in Hong Kong and/or New York.” The writer might have meant that the meeting could be held in

By Richard Bates, Partner
Kennedys
two places at once (via video conference perhaps?) but more likely they meant it would be held in either Hong Kong or New York.

Unlearning a Bad Habit
One of the most useful and accessible works on plain language legal writing is Michèle Asprey’s excellent book “Plain Language for Lawyers”. One of the points Asprey makes in this book is that the hard part about improving our legal writing skills is “unlearning” all the bad habits we tend to pick up and cling to. The use of and/or is in my view a very good example of one of these rather bad habits. Our job as legal drafters is to think about what we mean and then use the right word or words. As the author also notes, the really challenging part of improving the clarity of our legal writing is putting what we have learned into practice when we are under pressure. It is all too easy to use and/or when we are too rushed to consider whether we mean and or or both. If you stop to ask yourself that question the next time the issue arises when drafting a contract, pleading or other legal document, make sure you know the answer and then use the correct conjunction. Just don’t rely on and/or always doing that job for you.

和/或 – 異用連接詞的病例

作者 Richard Bates 合夥人

肯尼狄律師行

和/或的問題

法律執業者喜歡用「and/or」，主要因為單用or可能意義含糊，可以是排他的，即A或B但不包括兩者；或全包的，即A或B兩者都包括在內。有評論指出，記住這點的一個好方法，是在以下情況or有不同的含義：

- 「你想喝茶還是喝咖啡？」用法是排他，回答「兩者」似乎很奇怪；或
- 「你愛喝牛奶還是加糖？」用法是包容的，回答「兩者」完全可以接受。

起草者擔心如果只用or，可能不包含A及B兩者的情況，所以加上and來澄清一下，產生了「and/or」這個結構。

什麼意思？

「and/or」普遍接受的含義，是表示連接的一個或多個情況可能發生。換句話說，它表示and或or或兩者。所以A and/or B指：

- A；或
- B；或
- A及B兩者。

「and/or」大部份時間都沒有問題，但它可能含義不清晰，以下是數個例子。

責任

「and/or」用於表述責任時，可產生歧義。例如條款「The joint venture company shall hire employees from shareholder A and/or shareholder B」（合營公司應從A股東及/或B股東處聘請員工）。那麼，只從A股東處聘請員工符合該項責任嗎？可能符合，但含意有點不清。對照「The joint venture company shall hire employees from shareholder A or shareholder B or both」（合營公司應從A股東或B股東或兩者處聘請員工），意思就更清晰，公司可選擇從其中一箇股東處聘請員工。

多種情況

作者經常在有三種或多種情況時使用「and/or」，例如A、B and/or C。這包括A及B但不包括C？可能是，但意思不那麼清楚，尤其是通常沒有其他連接詞，例如and/or A與B之間。

兩者不是一個選項

最後，「and/or」經常被懶惰地使用，而其實唯一可能的意思是or。試想想這項條款：「The board meeting will be held in Hong Kong and/or New York.」（董事會會議將在香港及/或紐約舉行）。作者可能想說會議可在兩地同時舉行（也許用視像會議？），但更有可能想說在香港或紐約舉行。

摒棄惡習

就法律寫作用淺白語言議題，最有用、最易於讀到的參考，是Michèle Asprey的《Plain Language for Lawyers》。Asprey在書中提到，改善法律寫作技巧最困難之處，是摒棄惡習。我認為「and/or」的使用是一個惡習的例子。作為法律起草者，我們的工作是思考我們想說什麼，然後使用正確的字詞表達出來。作者亦指出，改善法律寫作清晰度最挑戰的部份，是在壓力下學以致用。當我們太匆忙沒有時間考慮意思是and or or or或兩者，使用「and/or」就太容易了。下次起草合約或狀書或其他法律文件時，停下來想想，知道答案後再用適當的連接詞，不要只依賴「and/or」。
Exit Interviews: Exposing Your Firm’s Secrets

By Sharon Meit Abrahams, Ed.D. Director of Professional Development/Diversity & Inclusion, Foley & Lardner, LLP (Miami, Florida, USA)

For years firm leaders have whispered that female lawyers leave before making partner because they want families. These same lawyers claim that diverse lawyers leave because they “can’t hack it.” If you find these assumptions offensive, then do something about it. Start conducting exit interviews for all departing lawyers – even the ones you have asked to leave the firm – to discover the real reasons why they are leaving. It will be eye opening.

The Why

The business justification for doing exit interviews is to learn about and improve systematic, organisational, or interpersonal issues that may be adversely impacting your firm and its lawyers. On the softer side, exit interviews can demonstrate to all lawyers that the firm cares about them, their experience, and making the firm a better place to work.

Feedback from the interviews can drive structural changes and changes in procedures, and can possibly affect personnel. Some firms use the information gathered from their exit interviews to drive their professional development programming, which can further be developed into training series to address the topic, such as working lunch meetings. To enable the firm to effectively utilise the feedback gathered, exit interviews need to be conducted in an organised and well-planned manner. This includes determining who should do the interviews, what questions to ask, and how the data will be shared. The following is a guide to help you plan how to implement or improve exit interviews at your firm.

The What

Determine what information you want and the best way to collect it. The most common (and least beneficial) is a written questionnaire or survey that covers qualitative data in a quantitative manner. This works for specific closed-ended questions regarding benefits, office culture, supervisors, and similar easy-to-grade topics. Survey questions should be crafted in a way that asks one variable, to ensure clear interpretation of the answer. For example:

A good question, single variable: Did your supervising lawyer give you performance feedback?

A bad question, multiple variables: Did your supervising lawyer give you performance feedback throughout the year and for your annual review?

Creating a survey is a simple process, as there are many online resources to help determine question topics and styles. If your firm develops its own online forms, or uses a surveying tool such as Survey Monkey, the creation is only limited to what you think your lawyers will tolerate answering. Additionally, keeping it as short as possible while still receiving the information you need will boost departing lawyer participation. A best practice would be to keep the written survey short, and complement it with a personal interview to gather more context and anecdotes.

While a one-on-one exit interview is time consuming, it does have a higher pay off. If the right person conducts the interview, your firm will gather data and information that truly help drive improvements. Sometimes you will learn that there is nothing you could have done to retain the lawyer.

The Who

Who is the best person in your firm to conduct an exit interview? Think about who your lawyers would most likely respond honestly to during this transition. Review your firm’s organisational structure and determine if it should be a variety of individuals or just one person. Consider someone at the local office level or at the department/practice area level as the interviewer. Does it make more sense to move the responsibility to a human resources person or a professional development (“PD”) leader?

Professional development can be viewed as the most neutral “people” function, since it resides separate from hiring, reviewing, and firing. Many PD professionals are viewed as caring about lawyers’ wellbeing and career success – whether in their firm or in the legal industry as a whole. Another option is to consider using a third party to conduct exit interviews.
The When
There are varying opinions regarding when an exit interview should be conducted. You may not have the luxury of planning the interview ahead of time. Anytime during the last week of employment works well, but try to avoid the last day. If the lawyer was asked to leave the firm, you might inquire if an exit interview should be offered or not. In most cases even terminated lawyers can offer valuable feedback about the workings of an office, practice area, or the firm in general.
Consider doing exit interviews with retiring partners, as well. They have seen the firm change over their career and often have unique insights. The timing for this should be at their leisure and can occur after they have left and have time to reflect.

The How
When conducting a one-on-one interview, start with light discussion to help your departing lawyer feel comfortable answering your questions. Assure the lawyer that no negative consequences will result from honest discussion during the exit interview. Though they are leaving the firm, departing lawyers might hesitate in answering the questions honestly.
If your firm supports this, inform the lawyer that their individual feedback will not be shared unless it is about unethical behaviour or behaviour that harms others or the firm. Let them know that you are looking for themes and are gathering data that will offer areas for improvement. Be prepared to delve deeper into comments and statements to get more detail. When asking questions about why the associate was leaving, a PD manager learned that this associate’s supervising lawyer spread rumours about the associate’s work product so that no one else would send work, thus freeing up the associate to always be available for this particular partner.
Should you do the interviews in person, via video conference, or over the phone? Best case would be in person. You can get a better feel for a person when you are directly in front of them. It is easier to read their body language, so you can pick up on signs if you have touched a nerve or hit on a sensitive topic. In today’s global world, you might only be able to do them from a distance. In this case a video conference would be best so you can still see the lawyer. Finally, the telephone is better than not at all.

The Questions
It is important to develop a standardized list of questions that each interviewer will follow so the answers can later be aligned by topic. The conversations may digress from the original questions, but at least it will make it easier to assemble the data if everyone starts with the same set of core questions.

The best way to open the line of questioning is to begin with understanding why the lawyer is leaving and where he or she is going. The “where” is easy – just ask. The “why” could be complex. Open the conversation with questions like:
• What has led you to this decision?
• Have you felt like leaving for some time, or is this recent?
• Did you talk to anyone at the firm before you made this decision?
• Were there things happening at work that made you unhappy?
• Did you feel your issues were being addressed?
• Did you actively look for a new position or did someone contact you?

The purpose of this line of questioning is to uncover the root cause of departure. Is it truly an amazing opportunity, or were they unhappy at your firm, frustrated with their career, or a completely unrelated issue?

Develop a different line of questions for partners and associates, as they may have different attitudes about their career and experiences at the firm. For example, you can focus questions around career advancement for associates and around rainmaking for partners, or questions about origination credits for partners and training for associates. Examine your firm’s culture, policies, and procedures to determine the types of questions to ask.

Some lawyers make assumptions about why people leave, so it is important to update your questions to keep in line with issues facing the legal industry. For example, when work is flat you might be the best firm in the world to work for, but lawyers might leave in search of firms that can fill their plate.

The Data
What is the best way to share the information gathered from exit surveys? If you used an electronic survey that follows a standardized format year over year, then the most straightforward option would be to compile the data into a report. Knowing how many people went in-house verses another firm, or that 17 percent of those departing complained about benefits, can be shown graphically in a report. You can also take it one step further and identify themes around why people are leaving.

When analysing the notes from the one-on-one interviews, themes will emerge. People tend to explain similar experiences in different ways, so it is helpful if the same analyst reads all the notes. This way the analyst can understand the overarching themes that emerge when multiple lawyers comment on the same issue, person, office, procedure, etc.

The Report
How to report the results should be considered when designing the exit interview process. If a report is pulled from quantifiable data, it can be displayed in a graphic or chart. A comparison to previous years will show if there have been any improvements or trends year over year. This is key if the firm has implemented any initiatives based on the data gathered from previous exit interviews. Including subjective data gathered from the personal interviews requires more time and effort, but can provide valuable information.

The first step to analysing qualitative data is outlining themes gathered from the interviews. Each set of notes must be read, and sometimes reread, in order to quantify how many times an issue or person is mentioned. It is the analyst’s responsibility to identify
consistent themes or, as noted in the example above, tie seemingly unrelated comments into a theme. Displaying themes in a report will be a matter of writing style, as it is challenging to turn them into a graph or chart. For example, you could chart the top reasons why people leave and the percentage of departing lawyers who mention it as a top reason. Another way is to list the overarching theme and then to include quotes without attribution in the document.

Deciding on how often to create and submit the report can be tied to the turnover rate at your firm. Larger firms typically have higher turnover rates so a report twice a year or even quarterly might be in order. Smaller firms will benefit from an annual report.

Determining who will receive the report is tied to your firm’s culture. The report can be sent to the leaders of areas, offices, or departments that have been identified to have a problem, to firm leaders or to both.

If there are issues identified in the exit interviews that are tied to the business side of the firm and not the practice side, share this information with the COO or equivalent. For example, during an exit interview, a new mother shared her frustration about the insurance company her firm used. When this information was shared with the human resources department of her firm, they were dismayed at how she had been treated. They took this information seriously and were able to make changes in their insurance company relationship.

The Secrets

Exit interviews have the power to uncover some of your firm’s secrets. While some lawyers may leave to spend more time with their families and some “can’t hack it,” you are bound to discover which assumptions are true and which are just excuses that some lawyers want to believe about turnover. Exit interview information is a significant first step in ensuring that leaders are informed about what is happening in their firm.

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If there are issues identified in the exit interviews that are tied to the business side of the firm and not the practice side, share this information with the COO or equivalent. For example, during an exit interview, a new mother shared her frustration about the insurance company her firm used. When this information was shared with the human resources department of her firm, they were dismayed at how she had been treated. They took this information seriously and were able to make changes in their insurance company relationship.

目的

離職面談的主要目的，是要了解及改善在制度、組織、或人際關係等方面所出現的問題，從而避免對律師事務所和律師造成不利影響。從較柔性的一方面來看，進行離職面談，是要顯示給所有律師看，律師事務所是真的在關心他們和重視他們的經驗，並且確有誠意將律師事務所建造成為一個更理想的工作地方。

從離職面談所獲得的意見回饋，能幫助推動物理事務所進行架構變更和程序修正，亦有可能會影響到人事上的安排。一些律師事務所將從離職面談所收集到的資料，運用在推動其專業發展計劃。這一舉措可進一步發展成為一系列處理有關課題的培訓計劃（例如工作午餐會議）。律師事務所如果要有效運用離職員工的意見回饋，便需要有組織和有計劃地安排進行離職面談。這包括：決定由誰人負責主持離職面談；應向離職的律師提出一些甚麼問題；以及，會如何分享所收集回來的資料。本文將就如何計劃實行和改進律師事務所的離職面談提供若干指引。

資料蒐集

你需要確定欲透過離職面談取得一些甚麼資料，以及取得該等資料的最佳方法。最普遍（但效益最小）的方法，是進行問卷或書面方式的意見調查，但此舉會將屬於質性的資料被量化。因此，它們較為適合提出一些特定的封閉式問題，例如：與工作機會、辦公室文化、上司，及其他類似的較易評分題目等有關的問題。

一個好問題應該只包含一個變項：你對你的工作表現，以及你對工作的意見回饋？

進行意見調查並不難，因為現時有許多網上資源可供運用，協助我們擬訂調查的問題和樣式。然而，律師事務所如果已為自己設定了網上表格，又或是借助例如Survey Monkey這類意見調查工具，其調查的内容，便只能侷限於你認為將要離職的律師願意容忍和回答的問題。此外，在取得所期望取得的資料之餘，我們應該盡量讓問題變得簡短，以提升即將離職的律師的參與程度；而最佳的做法，就是將書面調查的篇幅盡量縮小，並以親自面談作為補充，從而讓所收集到的資料和事項變得更加豐富。

進行一對一的離職面談雖然較為耗時，但從中得到的報償也較大。如果貴律師事務所安排了適當的人選來主持有關的離職面談，那麼，你們所取得的數據和資料，將能真正有助貴所作出改進。有時你會發現，無論你如何努力，你都是無法挽留某一位打算要離職的律師的。

人選

貴律師事務所中，誰是主持離職面談的
最佳人選呢？試想想，在一名律師快將離職前，他會最願意坦誠回答哪些工作人員的問題呢？貴所可以考慮指派本地辦事處、相關部門/執業範疇的人員來主持有關面談。然而，如果你將責任交給人力資源部門的人員，又或是專業發展部門的主管，這做法是否更為明智呢？

由於專業發展部門的職員，許多都變為關心律師的福利和事業發展（不論是就該律師事務所，還是就整個法律行業而言）；而另一個可供考慮的選擇，就是以第三者來負責主持有關的離職面談。

### 面談時間

離職面談應該安排在甚麼時候進行，許多人對此有不同看法。也許你難以預早確定面談的時間，但在該律師離職前的最後一週內的任何時間都可說是合適，不過最好避免在他上班的最後一天。如果該名律師是被貴所解僱，那麼你應該先查問一下是否可與他進行離職面談。在大多數情況下，即使是被解僱的律師，他也可以在辦公室運作、執業範疇，又或是所內的一般情況等方面，給予有价值的意見回饋。

此外，律師事務所也可以安排與即將退休的合夥人進行離職面談。這些合夥人在其事業生涯中，目睹律師事務所的種種變遷，他們因而對律師事務所會有更深入和獨特的看法。進行面談的時間，應該盡量選擇在他們離職以後，使他們能有更充分的時間抒發其個人感受。

### 如何進行

進行一對一的面談，應當以輕鬆的話題作為引子，使即將離職的律師在回答有關問題時，不會感到為難。面談的主持者可以向該名律師保證，他在面談過程中所作的坦誠表白，將不會為他帶來任何負面後果。即使律師快將離開目前的工作崗位，但在回答某些問題時，他們仍可能會有所顧忌。

如果獲得你的律師事務所的同意，你也可以告訴該名律師，他所給予的個人意見回饋，並將不會與其他人分享，除非當中涉及不道德行為，又或是涉及對該所或對其他人造成傷害的行為。一名專業發展部門的經理曾經問及一名助理律師的離職原因，而他所得到的答案是，該名助理律師的上司經常散播謠言，說他的這名下屬工作表現不佳，以致沒人願意把工作交給這名助理律師處理。於是，這名合夥人便可以堂而皇之將該名助理律師留在自己身邊，讓他只為自己工作。

離職面談是面對面進行，還是透過視像會議或電話傾談較佳呢？最理想的情況，當然仍是進行親身面談，因為這可以直接讓你更為仔細地觀察對面的律師的人格，和更為容易閱讀他的身體語言。在某些事情上，如果你觸碰到他的神經，又或是觸及一些敏感話題，你可以透過警覺顫抖，更易及早了解他的反應。在今天這個一體化的世界，有些事情我們通常都只會透過遠程方式來進行。在這情況下，視像會議亦不失為一個不錯的選擇，因為至少你可以見到該名律師。在沒有其他選擇的情況下，電話傾談是一個無奈的選擇。

### 問題擬訂

很重要的一點，是你需要先行擬訂一系列的標準問題，讓每名主持面談的人可以遵循。在稍後時間，你可以再將所獲得的資料資料按題目排序。雖然雙方所進行的交談可以偏離原來擬訂的題目，但如果大家都遵循同一組的問題來進行對話，那麼至低限度，將所收集到的資料進行綜合處理會較為容易。

最佳的發問方法，是一開始便先了解該名律師的離職原因，以及他或她將會轉到哪兒工作。「往哪裡去？」是一個較易提出
的問題，因此可以儘管放心提出；然而，要問他們「為何離去？」，這問題便會變得複雜。所以，雙方如果展開對話，主持人可考慮提出如以下問題：

• 是甚麼導致你作出這樣的決定？
• 你是否已有好一段日子打算離開？
• 你是在最近才有此打算？
• 在你作出這一決定之前，你曾否向公司內的其他人提及這事？
• 在你任職期間，你曾否遇到甚麼不愉快的事情？
• 你認為你所提出的問題曾經獲得處理嗎？
• 你是否曾經積極地尋找另一個新工作崗位？抑或是，曾經有其他人主動與你接觸？

提出這一連串問題的目的，是為了知道其離職的根本原因。這是他們的一個真正事業發展良機，或是他們的確很不滿意現時的工作環境？他對目前的事業發展感到氣餒，還是，他的離職原因與這些全不相關？

由於合夥人和助理律師對於其在律師事務所的事業發展和經歷，可能會有不同的取態，因此我們可以為他們分別擬訂不同的問題。例如，向助理律師提問，你可以將問題的重點放在他們對律師事務所的成就及他們的離職原因與這些全不相關？

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的離職意見調查所收集到的資料分享的最佳方法呢？如果貴所每年都是采用同一種標準格式來進行離職面談調查，那麼最便捷的處理方法，便是將所收集到的資料編輯成冊。倘若你知道有多少名律師離職擔任企業的內部法律顧問；有多少名律師投效其他律師事務所；又或是，在離職的律師之中，有如百分之十七的人，對律師事務所的福利曾經表示不滿，你都可以透過圖表，將這些資料在報告中顯示出來。此外，你也可以採取進一步的行動，識別員工離職的各項原因。

如果我們分析一對一的離職面談記錄，便會發現當中所出現的各項問題。人們通常傾向以不同的方式來解釋類似的經驗，因此由同一位分析人員來檢視所有面談記錄，這將會帶來較大的幫助。如此一來，該名分析人員可以了解到多名律師就同一問題、人員、辦事處、程序等作出評論時，他們所出現的各種基本主題。

報告

在訂立離職面談的進程時，我們應當考慮如何報導有關結果。如果有關報告是根據可量化的資料編纂而成，那麼我們可以運用曲線圖或圖表來加以表達。我們若將其與過去數年的……

有些律師對其員工的離職原因，可能會作出一些假設。因此，十分重要的一點是：你需要經常更新所提問的問題，使它們緊貼法律行業所正在面對的問題。例如，你的律師事務所也許是全球工作條件最佳的律師事務所，當工作平淡無奇時，律師仍會因自己的個人需要而轉職他去。
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.
PROFESSIONAL MOVES

Newly-Admitted Members

BOCK MATHIAS
LINKLATERS
年利達律師事務所

CHEN PEI WEN
陳佩雯

CHENG LOH-CHI
RONALD
程樂其

CHENG MAN CHUN
WILLIAM
鄭文雋
PINSENT MASONS
品誠梅森律師事務所

DEALY NICHOLAS
JOHN
UBS AG

FERGUSON ADAM
TIMOTHY BATY

HODGSON
MATTHEW JOHN

JIANG JIANMING
蔣健明

LAM KA CHUN
林嘉俊
FONG & CO., DAVID
方良佳律師事務所

MURAO TATSUO
村尾龍雄

NORMAN DAVID
ANDREW
ALLEN & OVERY
安理國際律師事務所

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ALEXANDRE
CHRISTIAN
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安理國際律師事務所

RUIZ ELEANOR
RUTH
LIPMAN KARAS
立祁律師事務所

RYAN STEPHEN
JOSEPH
COMPETITION
COMMISSION

ATKINS GEOFFREY MICHAEL
CHENG WAI TING
鄭慧婷
CHENG WILLIAM MAN CHUN
鄭文雋
PINSENT MASONS
品誠梅森律師事務所
Partnerships and Firms
合夥人及律師行變動

- CHAN SAU KEI
  ceased to be a partner of Clifford Chance as from 01/08/2017.

- CHIN MICHAEL GEORGE
  joined Simmons & Simmons as a partner as from 10/07/2017.

- FUNG YUK LIN CATHERINE
  ceased to be a partner of Wong, Fung & Co. as from 15/07/2017.

- HARVEY MARC PETER
  ceased to be a partner of Linklaters as from 20/07/2017 and remains as a consultant of the firm.

- HORMAN MICHAEL JAMES
  ceased to be a partner of Baker & McKenzie as from 08/07/2017.

- LINNING ALAN HUGH
  ceased to be a partner of Sidley Austin as from 22/07/2017.

- LIU SWEE LONG MICHAEL
  ceased to be the sole practitioner of Cadwalader, Wickersham & Taft as from 31/07/2017 and the firm closed on the same day.

- MacGEOCH ANDREW PHILIP BUSHILL
  ceased to be a partner of Mayer Brown JSM as from 01/08/2017.

- MOK CHUN HONG
  ceased to be a partner of Angela Wang & Co. as from 31/07/2017.

- MONACHAN PHILIP FRANCIS
  joined O’Melveny & Myers as a partner as from 01/08/2017.

- NG YIM HUNG
  became a partner of Tong & Lawyers 01/08/2017.

- SWEENEY AUSTIN GERARD
  ceased to be a partner of Herbert Smith Freehills as from 01/08/2017.

- WARDE CONOR THOMAS
  ceased to be a partner of Clyde & Co. as from 01/08/2017.

- WONG YAN MAN WALTER
  ceased to be a partner of K.Y. Lo & Co. as from 15/07/2017 and remains as a consultant of the firm.

- WONG TSZ SANG
  ceased to be a partner of Fairbain Catty Low & Kong as from 27/07/2017 and joined K.W. Wong & T.S. Wong as a partner from 04/08/2017.

- WONG YAN MAN WALTER
  ceased to be a partner of K.Y. Lo & Co. as from 15/07/2017 and remains as a consultant of the firm.

- ZHANG BOON YAN HENRY
  became a partner of Chan, Evans, Chung & To as from 01/08/2017.

- ZHANG YUN XIANG
  ceased to be a partner of Baker McKenzie as from 08/07/2017.

- ZHAO JIAN HUA
  ceased to be a partner of Herbert Smith Freehills as from 01/08/2017.

- ZHANG YAN ZHI
  ceased to be a partner of Tong & Lawyers 01/08/2017.

- ZHANG YUAN HUA
  ceased to be a partner of Herbert Smith Freehills as from 01/08/2017.

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  ceased to be a partner of Baker McKenzie as from 08/07/2017.

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September 2017 •  PROFESSIONAL MOVES  會 員 動 向
Turning a Slumbering Passion into a Second Career: A Conversation with Mark Roberts, Lawyer-turned-Painter

By Cynthia G. Claytor

In 1977, Mark Roberts left England to join Deacons as a newly-qualified shipping lawyer. Mr. Roberts specialised in shipping litigation cases dealing with cargo claims, marine insurance matters, charterparty disputes and acting for banks in ship mortgage enforcement work. In 1994, he was appointed Managing Partner and in 2000 became Senior Partner of Deacons.

In 2004, after having practiced for 30 years, he decided to become a full-time artist, painting almost exclusively in watercolours, which he believes best portrays the essence of landscapes and seascapes in Hong Kong. Since embarking on his second professional career, Mark has held three one-man exhibitions in Hong Kong and one one-man exhibition in London and has also jointly exhibited in seven exhibitions with the Hong Kong-based artistic group, Artists Abroad. He also published a book of his watercolours entitled “My Hong Kong” in 2013.

Here, Mr. Roberts speaks to Hong Kong Lawyer about his life-long love for painting and watercolours and his decision to swap billable hours for a painter’s palette.

1. **What prompted you to retire from the law in 2004 and become a full-time artist?**

In 2004, I had just completed 30 years as a lawyer and although I fully enjoyed my legal career, I believe that life is too short to limit oneself to just one pursuit. Luckily for me, I was financially secure and was in a position to retire and pursue my passion for painting. I am not sure I would want to try and make a living as an artist, which must be incredibly difficult.

2. **Do you see any parallels between how you approach your work as a full-time artist and how you approached your career as a lawyer?**

One might not think that there are any parallels but I would say both require discipline, patience (a lot of that quality), practice and hard work.

3. **Why have you chosen watercolour as your primary medium? Any other mediums that you enjoy or dabble in?**

For as long as I can remember, I have drawn or painted. I think I may have even won a school art prize sometime in the last century. To my mind, watercolour has a translucent quality (which one cannot find in other media) which can convey a very wide range of colour and atmosphere in a painting. There are a huge range of techniques, which a watercolourist has to master including washes, wet on wet, lost and found, tonal values to name but a few. Having painted exclusively in watercolour for the past 40 years, I am, however, now embarking on a new but exciting challenge for me as oils do require a different approach and technique.
4. What is the most challenging part about working with watercolours? What is the best part?

It is rather easy to make mistakes in any form of painting with watercolour perhaps being the most unforgiving. Mistakes tend to be fatal in so far that they cannot generally be corrected. Probably the most challenging aspect of watercolours is capturing the right light and shadow in a painting. However, when you achieve a certain effect in watercolour such as a granulated wash or a blend of mixed colours on paper it is very rewarding. Sometimes you have a happy accident when you think how on earth did I achieve that effect?

5. What is your creative process like?

Different artists have different approaches to creativity but for me, I am inspired by the huge diversity of subject matter that one finds in Hong Kong. I have travelled the length and breadth of Hong Kong and have discovered myriad views, landscapes, seascapes, villages, buildings, temples, etc. crying out to be captured in watercolour. I spend a lot of time initially analysing a particular scene to assess whether the subject matter gets my creative juices working but just occasionally I see a scene, which I know instinctively will make a good painting. It is then a case of identifying the right composition and the atmosphere that one wishes to try and capture.

6. Has your style changed over the years?

Not really. I would like to think that my work has improved since I decided to devote myself full time to being an artist, but I would say my watercolour style has not really changed.

7. What do you believe is a key element in creating a good composition?

For me there are a number of key elements, which include placing of the horizon, placing of subject matter convincingly within the composition, scale, perspective and balance. Ideally one would like to draw the viewer’s eye into the painting, through the painting and then out of the painting at a different location. If one can achieve this, then it will considerably improve the attractiveness of the composition.

8. What about painting and art most resonate with you?

What’s its main attraction or appeal? I consider myself extremely fortunate to have some ability to draw and paint. To start with a blank piece of paper and over a few days (or sometimes weeks) transform this blank white space into a finished watercolour gives me a tremendous sense of achievement. I never tire of this creative process.

9. Which artists do you draw inspiration?

I love the watercolours of the great JMW Turner but he is in a league of his own.

When I first arrived in Hong Kong in 1977, I discovered the work of George Chinnery, who inspired me to take up painting again which sadly had lapsed whilst I was qualifying as a lawyer.

10. Have you received any formal training or did you learn how to paint on your own?

I am almost entirely self-taught although I have attended the occasional art class. I have found that there is little substitute for just getting stuck into the process of painting and learning from your mistakes – sadly you have to accept there will be many of these over the years.

11. What do you hope to convey or add with your works? How do you pick what you will paint?

A few years ago, I was stopped in the street by another lawyer, who told me that he had been at a friend’s house and enquired of his friend whether the painting on the far wall was a “Mark Roberts”? To have someone identify my work made my day! To have a style of work, which is identifiable as one’s own, is an artist’s dream. In Hong Kong, I certainly try and pick subjects such as old Chinese temples, old buildings or old village houses, which I fear may be demolished. By painting these subjects, I hope to preserve their image for future generations.

12. What has been the proudest moment for you in your artistic career?

In 2013, I published a book entitled My Hong Kong, which contains over 120 images of my paintings of Hong Kong and which took me 10 years to complete. I am very proud of this book, which I hope provides an overview of our amazing city and its environs. I am also a proud member of Artists Abroad, who exhibit every year at the Rotunda.
1977年，Mark Roberts離開了英國，加入了的近律師行擔任新手船務律師，專門處理貨物索賠、海事保險、租船糾紛的訴訟，並代理銀行進行船舶抵押的執法工作。1994年，他被任命為執行合夥人，並於2000年成為的近律師行高級合夥人。

經過30多年的努力，他在2004年決定轉為全職藝術家，幾乎只畫水彩畫。他認為這個媒介最能描繪香港的水陸景觀。Mark開始第二事業後，曾在香港舉行了三次個人畫展，在倫敦舉辦了一次個人畫展，並曾與香港藝術團體Artists Abroad合辦了七場畫展。他於2013年出版了一本名為《My Hong Kong》的水彩畫冊。

Roberts先生向《香港律師》詳談他對繪畫和水彩畫的終身愛好，和放棄律師工作轉行做畫家的決定。

1. 甚麼促使你在2004年退職法律界，成為全職藝術家？
2004年，我擔任律師剛滿30年，雖然我完全享有我的法律事業，但我相信人生苦短，無須局限自己在單方面發展。幸運地，我的財務穩健，有能力退休追求對繪畫的熱愛。以當藝術家為生，我或許不想嘗試，因為這必定困難極了。

2. 你覺得全職藝術家的工作方式，與律師的事業有何相似之處？
人們可能不會認為有任何相似之處，但我會說兩者均要求紀律、耐心(非常耐心)、練習和努力。

3. 你為何選擇水彩為主要媒介？你喜歡或嘗試過其他媒介嗎？
自我有記憶以來，我就在畫畫了。我記得我甚至可能在上個世紀贏過學校的美術獎。在我看來，水彩具有半透明的特質(這是在其他媒介找不到的)，可以在畫中傳達非常廣泛的色彩和氣氛。水彩畫家必須掌握大量技巧，包括渲染、濕上濕、軟硬邊和色調值等等。過去40年來我只以水彩作畫，但現在我正試著畫油畫，這對我來說是個令人興奮的新挑戰，因為油畫需要不同的方法和技巧。

4. 畫水彩畫最具挑戰性之處是甚麼？最好之處又是甚麼？
任何形式的繪畫均很易犯錯，水彩畫尤甚，而且錯誤往往無法糾正。水彩畫最有挑戰性之處，或許是在畫中捕捉正確的光線和陰影。然而，當你在水彩畫中達到某種效果時，如渲染或混色，會很有成就感。有時會有意外驚喜，你會想：我是怎樣做到這個效果的？

5. 你的創作過程是怎樣的？
藝術家各有不同的創作方法，我受香港多元化的題材啟發。我已走遍香港各地，發現在無數水陸景觀、村莊、建築物、寺廟等等，都是水彩畫的上佳題材。我花了很多時間，首先分析特定的場景，看看題
材是否能激起我的創意，偶爾看到一個場景，我就本能地知道將會畫出一幅好畫。那樣就要嘗試捕捉正確的構圖和氣氛。

6. 多年來你的風格有何變化?
沒有大變化。我認為我的畫作有所改進，因為我決定當全職藝術家，但我的水彩風格沒有大變化。

7. 你認為創作的關鍵因素是甚麼?
我認為有一些關鍵因素，包括視平線佈局、題材佈局、構圖、比例、透視、平衡等等。在理想情況下，畫家希望從觀眾視角作畫，穿過畫作，然後在不同的位置跳出畫作。如果可以實現這一點，構圖的吸引力將大大提高。

8. 繪畫和藝術甚麼令你最有共鳴?
它的主要吸引力是甚麼？我自覺非常幸運，有我的繪畫能力。從一張白紙開始，幾天(或幾個星期)，將這片白色空間變成一幅完整的水彩畫，為我帶來巨大成就感。這個創作過程從不使我厭倦。

9. 你的靈感來自哪些藝術家?
我喜歡偉大的JMW Turner的水彩畫，他別具一格。1977年我初到香港時，發現了George Chinnery的作品，我為了律師資格久未拿起畫筆，他啟發了我再次開始畫畫。

10. 你受過任何正式訓練嗎？還是自學成師？
我幾乎完全是自學的，雖然我偶爾上過藝術課。我發現，不斷投入繪畫，從錯誤中學習，幾乎是不二法門。可悲的是，你必須接受過程中會不斷出錯。

11. 你希望透過作品傳達或增加甚麼？你怎樣選擇繪畫題材？
幾年前，我在街上被另一位律師攔住，他告訴我，他在朋友家裡問朋友牆上那幅畫是否Mark Roberts的作品？有人認出我的畫作，令我開心一整天！擁有讓別人認出的作品，是藝術家的夢想。在香港，我一定會嘗試挑選古老廟宇、古舊建築、老房子等題材，因為我恐怕它們可能會被拆除。通過繪畫這些主題，我希望能為後代保留它的印象。

12. 你在藝術生涯中最自豪的時刻是？
2013年，我出版了一本名為《My Hong Kong》的書，當中包含了120多幅我以香港為主題的繪畫，花了10年時間才完成。我為此書感到非常自豪，我希望它能展示我們的城市環境。我也是Artists Abroad的成員，每年都在中環交易廣場展覽區展出。
1. What is the literal translation of *res ipsa loquitur*?
   A. The action is so located
   B. The thing speaks for itself
   C. Obviously negligent

2. In order to be found guilty of most criminal offences it is necessary for the accused to have had both the *actus reus* and what?
   A. *Mala advocatus*
   B. *Morbis animi*
   C. Mens rea

3. What does “inter alia” mean?
   A. Among other things
   B. Among all
   C. Between allies

4. When a hearing is held in camera, it is:
   A. Held in public
   B. Held in private
   C. Televised

5. What does the Latin word *lex* mean?
   A. King
   B. It is short for Lexington, a Roman Emperor.
   C. Law

6. In what area of the law is the Latin maxim *animus possidendi* used?
   A. Animal protection laws
   B. Land law
   C. Shipping law

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.

7. What does the phrase *non est factum* mean?
   A. The fact has not been proved
   B. No is a fact
   C. It is not my deed

8. If a judge suggests to you an argument is a *tabula in naufragio*?
   A. She is complementing your ingenuity
   B. She thinks your argument is hopeless
   C. She is asking to you prepare a table setting out your grounds

9. When a judicial officer is *funktus officio*, it means:
   A. He has officially taken up his duties
   B. He has died in office
   C. He no longer has power to deal with a matter

10. What does *habeas corpus* literally mean?
    A. That you have the body
    B. Produce the body
    C. Show the corpse

Answers to Legal Trivia Quiz #40
1. C. Prior to the handover in 1997, the official title of the Director of Public Prosecutions was Crown Prosecutor, although he was almost invariably referred to as the DPP.
2. B. The DPP is not required to be a senior counsel (or Queen’s Counsel).
3. B. Warwick Reid was convicted of having unexplained assets.
4. A. True. In the 19th Century the Attorney General of Hong Kong was permitted to accept private cases.
5. A. Private prosecutions may be brought for all offences in Hong Kong.
6. C. Prior to the handover in 1997, public prosecutions were brought in the name of the Queen (or King).
7. C. The Australian prosecutors in Hong Kong in the 1980s were referred to as the Gumleaf Mafia.
8. B. Four Hong Kong DPPs have become High Court Judges (Duffy, Findlay, Nguyen and Zervos JJ).
9. D. Lay prosecutors are still permitted to prosecute cases in the Magistrates’ Court.
10. C. David Perry QC was the lead prosecutor of Donald Tsang.

Correction to Answers to Legal Trivia Quiz #39
10. C. Jury trials are not available in civil proceedings for sedition.
法律知識測驗 #41

香港擁有雙語法律制度，但事實上，第三語言拉丁語仍可在法庭上聽到，在裁決和陳詞中看到。本月的測驗測試讀者的拉丁語知識。請記住：quiaquid latine dictum sit altum viditur。

問題由馬錦德大律師編製。歡迎建議下期問題。

1. **res ipsa loquitur**直譯是甚麼？
   A. The action is so located(行動位置在此)
   B. The thing speaks for itself(不言而諭)
   C. Obviously negligent(顯然疏忽)

2. 被判刑事犯罪，被告必要同時具備**actus reus**和什麼？
   A. Mala advocatus
   B. Morbus animi
   C. Mens rea

3. **inter alia**是甚麼意思？
   A. 其中包括
   B. 在全部之中
   C. 在盟友之間

4. 聆訊_in camera_進行，代表：
   A. 公開進行
   B. 閉門進行
   C. 電視轉播

5. 拉丁字**lex**的意思是甚麼？
   A. 皇帝
   B. 是羅馬大帝Lexington的簡稱
   C. 法律

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

首位能提供最多正確答案(答錯的題目不得多於三題)的讀者將成為優勝者。湯森路透就得獎者所作的決定是最終及不可推翻的。

6. **拉丁語格言**animus possidenti用於甚麼範疇？
   A. 動物保護法
   B. 土地法
   C. 船務法

7. **non est factum**是甚麼意思？
   A. 尚未證實
   B. 並非事實
   C. 非我訂立的契約

8. 如法官說你的論據是**tabula in naufragio**?
   A. 她在讚賞你的聰明才智
   B. 她認為你的論據無望
   C. 她要求你表列出論據

9. 司法人員是**functus officio**指：
   A. 他已經正式履行了職責
   B. 他在任內逝世
   C. 他再無權力處理這個問題

10. **habeas corpus**直譯是甚麼意思？
    A. That you have the body(你有身體)
    B. Produce the body(生產身體)
    C. Show the corpse(出示屍體)

**法律知識測驗 #40的答案**

1. C. 1997年回歸前，刑事檢控專員的正式職銜為皇家檢控官，但他大多被稱為刑事檢控專員。
2. B. 刑事檢控專員不須一定為資深大律師(或英國御用大律師)。
3. B. Warwick Reid被判管有來歷不明財產。
4. A. 是。在19世紀，香港律政司獲允許受理私人案件。
5. A. 在香港，所有罪行均可以私人名義提出檢控。
6. C. 1997年7月1日回歸前，公訴在香港是以英女皇(或英皇)的名義提出。
7. B. 80年代香港多位來自澳洲的檢控官被稱為the Gumleaf Mafia。
8. B. 四位香港的刑事檢控專員成為了高等法院法官(Duffy、Findlay、Nguyen及Zervos J.J)。
9. D. 非專業檢控主任可在裁判法院進行檢控工作。
10. C. David Perry QC 是曾蔭權案的主控官。

**更正法律知識測驗 #39的答案**

10. C. 陪審團審訊不適用於煽動叛亂的民事訴訟。
CUHK Law Hosts a Summer Workshop for Prospective PhD Candidates

From 7–11 August 2017, the Faculty of Law of The Chinese University of Hong Kong hosted a PhD Candidate Summer Workshop on its Shatin campus. Introduced in 2015, the Summer Workshop provides a unique opportunity for prospective students from different jurisdictions and areas of interests to experience life in Hong Kong and look into the possibility of doing a PhD at CUHK Law. This year a dozen individuals were selected to participate in the programme, including those who are earning, or have earned, degrees from institutions such as Harvard University, King’s College London, Leiden University, London School of Economics, National Research University Higher School of Economics, the University of Glasgow, and the University of Oxford.

The five-day workshop was kick-started by a series of warm-up activities and meet-and-greet sessions, where participants met with the professors and current research students of CUHK Law. During the programme, participants gained insights on drafting a successful research proposal and the career prospects of a PhD candidate through a number of thematic seminars and workshops. They also had the chance to tour the CUHK campus, Hong Kong’s High Court and Hong Kong itself. At the end of the workshop, participants presented and received helpful feedback from CUHK law professors and PhD students on their draft research proposals.

A diverse and outstanding group of individuals gather to learn about the prospects of doing a PhD at CUHK Law.

中大法律學院為準博士生舉辦夏季研習班

香港中文大學法律學院於2017年8月7日至11日，在沙田校園舉辦了準博士生夏季研習班。夏季工作坊自2015年起舉辦，為來自不同司法管轄區、興趣範疇不同的準學生體驗香港生活的獨特機會，和了解在中大法律學院修讀博士學位的可能性。今年有十多位學生獲選參加，包括在哈佛大學、倫敦國王學院、萊頓大學、倫敦經濟學院、俄羅斯高等經濟研究大學、格拉斯哥大學和牛津大學修讀學位或已取得學位的學生。

為期五天的研習班以一系列熱身活動和見面環節揭開序幕，參加者與中大法律學院教授和現任研究生互相認識。在活動期間，參與者通過專題研討會和研習班，學習如何起草成功的研究計劃，了解博士生的事業前景。他們也參觀了中大校園和香港高等法院，也在香港觀光。研習班結束時，參加者介紹他們的研究計劃，由中大法律學院教授和博士生提供反饋。
CityU Held Closing Ceremony for the 7th Master of Laws Programme for Chinese Judges

On the afternoon of 3 July 2017, CityU successfully held the Closing Ceremony for the 7th Master of Laws Programme for Chinese Judges. Officiating guests of the Ceremony included Prof. Huang Yongwei, President, National Judges College; Prof. Way Kuo, President and University Distinguished Professor, CityU; The Hon. Martin Liao Cheung-kong, Non-Official Member of Executive Council, The Government of the HKSAR; Mr. Wesley Wong SC, Solicitor General, Department of Justice, The Government of the HKSAR; Mr. Liu Chunhua, Deputy Director-General, Counsel, Department of Law, Liaison Office of the Central People’s Government in the HKSAR; Mr. Paul Lam SC, Chairman, The Hong Kong Bar Association; Mr. Thomas Shiu Tsung So, President, The Law Society of Hong Kong; Dr. Kennedy Wong BBS, LLD, DCL, JP, Managing Partner, Philip K H Wong, Kennedy Y H Wong & CO.; Mr. Du Mao, Chairman of the Board, China Legal Service (H.K.) Ltd.; Prof. Geraint Howells, Dean and Chair Professor of Commercial Law, School of Law, CityU; and Prof. Lin Feng, Director, Centre for Judicial Education and Research & Associate Dean, School of Law, CityU.

Prof. Geraint Howells delivered the welcoming speech at the Closing Ceremony. He recognised the judge students’ achievement in the past year of study and wished them every success after returning to their position in mainland courts.

Prof. Huang Yongwei said the 23 Chinese judge students are outstanding representatives of the young judges in Mainland China. The CityU LLM brings a strong advantage to their profile and prospects for their career.
Offering his congratulations to the graduands, Prof. Way Kuo urged them to exercise self-discipline in handling every case at work.

Mr. Wesley Wong said that from now on, the path lying ahead for them would forever be different, because what is expected of them is now different.

Mr. Liu Chunhua said it was not an easy decision for the 23 Chinese judges to return to the campus and study common law in an English environment. They have manifested the evolution of the rule of law in China and built up a positive image of mainland judges in Hong Kong.

In Mr. Paul Lam’s view, there are three reasons why the Chinese Judges Programmes are significant for both Hong Kong and the Mainland: first, they promote mutual trust and understanding in the two legal systems; second, in the context of the Belt and Road Initiative, training on common law for Chinese judges gives confidence to countries in common law jurisdiction to participate in the Initiative; third, Chinese judges play a very important role in promoting the rule of law and the judicial reform in China.

Mr. Thomas So shared his impression on the difference between Hong Kong’s judicial system and that of the Mainland. He noted that both systems are unique and there is a lot that we can share with each other. The Master of Laws Programme for Chinese Judges is successful in promoting and facilitating mutual trust and understanding in the two legal systems.

Dr. Kennedy Wong said the 23 Chinese judge students are among the best. Although the “One Country, Two System” policy has been successful in the past 20 years, there is still much work to do and more interactions between legal talents in the two systems will be vital.

Mr. Du Mao thought CityU’s high-quality legal education had become an important part of the legal training for judges in the Mainland.

Judge Liang Ying said the Programme had not only equipped her with a good understanding in the logic of common law system, but more importantly, the one-year study has given her insights in her career to pursue excellence.

Prof. Lin Feng wished the graduands could become a bridge between different legal systems through mutual understanding and rational communication and concluded the Ceremony with a vote of thanks.

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Employment

1-3 PQE  Hong Kong
Outstanding opportunity for a junior lawyer to work alongside a highly regarded partner in a collegiate team for on a range of matters for leading clients. If you are not currently focusing on employment law you must be able to demonstrate good exposure and a genuine passion in this practice area. HKL4655

Commercial Litigation/ Insolvency

4+ PQE  Hong Kong
This leading firm seeks an associate to work on a range of litigation, restructuring and insolvency matters involving offshore, structures and issues. This opportunity is great for anyone relocating to the region and is also open to barristers and those without Chinese language skills. HKL4380

M&A/PE

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

Funds

1+ PQE  Hong Kong
This eminent firm seeks a lawyer to join their practice to work for high profile clients on a variety of private investment funds, including private equity, real estate, hedge funds, venture capital, mezzanine funds and distressed asset funds as well as funds-of-funds and secondaries. Mandarin needed. HKL4308

M&A/Private Equity

2-6 PQE  China/Hong Kong
New opportunity for mid to senior US. qualified associate who keen to develop their career in Asia. The ideal candidate will have experience in Private Equity/ Merger & Acquisition work. Experience from a premier US law firm a distinct advantage. Mandarin language skills preferred. HKL4331

Capitol Markets

3-5 PQE  Hong Kong
A truly challenging opportunity for an ambitious junior/mid level lawyer with solid capital markets experience. Your work will focus on a range of sizeable IPO transactions and equity offerings. You will possess in dept knowledge in HK listing rules as well as fluency in both Cantonese and Mandarin. HKL4243

Derivatives and Structured Finance

2-4 PQE  Hong Kong
This top tier practice seeks a lawyer to join their market leading international practice. You will work with highly regarded partners and be exposed to a wide range of structured finance and derivatives transactions, including repackagings, total return swaps, CLOs, CDOs and also OTC derivatives. HKL4231

Employment

2+ PQE  Hong Kong
Excellent opportunity for an litigator with solid employment law experience keen to join this market leading practice. You will join a collegiate team and work on complex matters across a range of issues such as incentives, pensions, benefits, recruitment, termination as well as privacy laws and retirement fund schemes. Chinese language skills desirable. HKL4654

Commercial Litigation

1+ PQE  Hong Kong
Our client seeks a junior 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. HKL4580

Funds

5+ PQE  China/Hong Kong
This truly top tier international firm is seeking a mid-level funds associate to join their growing practice. You will work for high profile clients on a variety of private investment funds. Solid exposure to fund formation is highly beneficial. You will be admitted to the NY bar with native level Mandarin skills. HKL4269

Arbitration

5+ PQE  Hong Kong
Stellar opportunity for a common law qualified mid-level lawyer to join this market leading, globally recognised arbitration practice of this UK firm, as it continues to go from strength to strength. You will work on a mix of litigation and complex and high profile arbitrations alongside a reputable partner in a regional practice. HKL4029

Banking & Finance

3-5 PQE  Hong Kong
Excellent opportunity for an associate to join a market leading practice. You will work on general banking and leveraged finance matters for PE sponsors and corporate borrowers and be exposed to lender side mandates with international investment banks. HKL4338

Dispute Resolution

2-4 PQE  Hong Kong
Excellent opportunity for a mid to senior lawyer looking for a broad mix of work. You will work for highly regarded partners on a range of complex M&A, Private Equity and Capital Market transactions for premier clients in a rewarding environment with manageable working hours. Mandarin essential. HKL4414

Capital Markets

4+ PQE  Hong Kong/Beijing
A top-tier International law firm with a prestigious corporate practice seeks an experienced corporate lawyer. You will have solid exposure to inbound & outbound investments. IPO experience will be an added advantage. Chinese language skills essential. HKL4219

Capital Markets

3-6 PQE  Beijing
Given the growth of their practice in China, a truly excellent opportunity is available for a junior lawyer with capital markets experience to work on sizeable IPO transactions and equity offerings. You will ideally be a PRC qualified lawyer with US qualifications as an added advantage. Mandarin is compulsory. HKL4222

www.atticus-legal.com

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

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.
olgayung@michaelpage.com.hk | +852 2848 4791 | linkedin.com/in/olgayung

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.
serenatang@michaelpage.com.hk | +852 3412 4810 | linkedin.com/in/tangserena

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.
tinawang@michaelpage.com.hk | +852 2848 9581 | linkedin.com/in/tina-wang-cpa-8b604746

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.
sabinali@michaelpage.com.hk | +852 3602 2480 | linkedin.com/in/sabinali

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.
martaverderosa@michaelpage.com.hk | +852 2848 4794 | linkedin.com/in/martaverderosa

Kamil Butt, Senior Consultant, Private Practice
Kamil joined Michael Page in 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.
kamilbutt@michaelpage.com.hk | +852 2848 4798 | linkedin.com/in/kamilbutt

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.
sorayatennent@michaelpage.com.hk | + 852 2848 4795 | linkedin.com/in/soraya-tennett-0b5a6a95
### FINANCIAL SERVICES

#### Legal Counsel
- 12+ PQE
- Financial Institution

Our client is a financial institution well established in Asia, with around 100 people in HK office. Their main business lines include asset management, securities, direct investments and IPO, being SFC license holder of 1, 4, 6 and 9. Currently seeking for a General Counsel to lead the existing legal team, the successful candidate will have at least 12 years’ PQE and experience gained with similar financial institutions ideally with exposure in SFC license type 1, 4, 6 and 9. Well rounded exposure in a variety of areas including banking, regulatory, commercial and corporate is useful, as is leadership experience. Good communication skills required including fluency in English and Chinese. Ref: 3940016

#### IPO Lawyer/Banker
- 5+ PQE
- Buy-side House

An excellent opportunity has arisen for corporate lawyers who are interested in making a switch in their career or to take on a role with a stronger business focus. A newly established financial institution being SFC license holder of 1 and 6, is seeking for an IPO lawyer to take on a quasi legal business role. Reporting to senior management, you will be relied on in running IPO transactions while taking on business responsibilities. The ideal candidate will have at least 5 years’ PQE with the ability to work on transactions independently, with an entrepreneurial mind. Good English and Chinese language skills required. Ref: 3942749

#### PRC Qualified Lawyer
- 5+ PQE
- Well-established Financial Institution

Joining an established legal team and reporting to the Deputy Head of Legal, you will take on a focus across corporate, private equity and banking finance matters. The ideal candidate will be a PRC qualified lawyer with at least 5 years’ relevant experience obtained in Hong Kong, either gained with sizable law firms or financial institutions. You will have strong working knowledge of PRC corporate transactions and with ability to advise on PRC law. You will have willingness to pick up on new work on top of your core focus and be a strong team player. Maturity and a stable background is preferred. Excellent communication skills are required, as is fluency in English and Chinese language skills. Ref: 3938809

### COMMERCIAL

#### Senior Legal Counsel, APAC
- 15 PQE
- Covetable Organization

This is an exciting extension to any successful career for a seasoned legal professional who desires to make a difference and help this reputable charitable organization give back to the community. You will directly influence the organization by providing legal advice on investments agreements including private equity and hedge fund investments, ISDA transactions and custodian services. You will actively participate in strategic business decisions and negotiations for commercial agreements as a business partner. The ideal candidate will have 15 years’ PQE with experience from sizeable companies. Written and spoken English, Cantonese and Mandarin are required. Ref: 3945269

#### Legal Director, Asia
- 8-12 PQE
- US Listed Multinational

A well regarded global industry leader is currently seeking a Legal Director to look after part of the regional business. You will lead a small team, with oversight across corporate transactions including M&A and corporate restructuring as well as to drive major negotiations of commercial agreements. The ideal candidate will possess at least 8 years’ PQE being well versed in commercial corporate matters, ideally with exposure to M&A. Prior in house experience with sizeable companies is an advantage but not a must. Regional leadership experience is highly advantageous. Strong English language skills is essential, and any other Asian language skills will be a plus. Ref: 3931446

#### Group Legal Counsel
- 8+ PQE
- Reputable Conglomerate

Our client is a reputable conglomerate with business in hospitality, FMCG, property and aviation sectors around the globe. They are now seeking a Group Legal Counsel as a result of business expansion. You will be a member of the executive team, work with different department heads and provide legal advice to business teams in respect to their operations and projects. Reporting to the Managing Director and Executive Director, the successful candidate will have a minimum of 8 years’ PQE with strong analytical abilities, advocacy skills and solid technical legal knowledge. Fluency in spoken and written English and Chinese (Mandarin) is required. Ref: 3943947

### PRIVATE PRACTICE

#### Debt Capital Markets Partner
- 9+ PQE
- Hong Kong Law Firm

A leading Hong Kong law firm with established offices in Hong Kong and major cities in Mainland China is keen to hire a Senior Debt Capital Markets Partner. Working closely with the founding partners, you will oversee and manage a growing practice focusing on debt capital markets, and ideally, derivatives work. Within the framework of the existing practices you will have maximum discretion on how to grow your business. The ideal candidate is a Hong Kong solicitor with an existing practice and ideally a team to bring along. Candidates without a book of business or coming from an in house position are also welcome to apply as a Counsel. Strong English and Chinese language skills are required. Ref: 3920601

#### Conveyancing Senior Associate/Counsel
- 7+ PQE
- Large Local Law Firm

A Hong Kong law firm with a long history and local resources is now hiring a Senior Conveyancing Lawyer. In this role you will be responsible for advising property developers, government authorities and public bodies as well as corporations on all kinds of land and property transactions. The team is currently led by a 25 PQE solicitor with very strong connections in the region. Specific focus for this role will be on leases, tenancies, licences and property management agreements. The ideal candidate will have at least 7 years’ PQE with strong experience drafting deeds and sub-deeds of mutual covenant, as well as relevant contracts. Good spoken and written English and Mandarin are necessary. This position offers a clear progression path within the firm. Ref: 3941455

#### Junior Regulatory Litigation Associate
- 1-2 PQE
- Reputable US Law Firm

Our client is a well-established US law firm, seeking to take on a junior litigator. In this role, you will primarily focus on white collar and regulatory defense matters, shareholders’ and directors’ disputes, internal and regulatory investigations, commercial litigation as well as handling enquiries from a variety of regulatory bodies in Asia and overseas. The ideal candidate will possess at least 1 year’s PQE, having qualified in a disputes practice and ideally with some experience in regulatory or financial services matters. Candidates from financial regulatory practices without contentious experience will also be considered. English and Chinese language skills are a must. Competitive package in line with New York rates is on offer. Ref: 3944774

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To apply, visit www.michaelpage.com.hk quoting the reference number or contact our consultants.
**Private Practice**

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<td>Hong Kong</td>
<td>2-6 PQE</td>
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<td>This UK firm with a strong banking/finance team seeks an associate. You will represent banks, corporates and sponsors on a wide-range of deals from syndicated loans and leverage finance, to acquisition finance, structured finance and project finance. You will have excellent technical and drafting skills. (HKL 14759)</td>
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<td><strong>CORPORATE / M&amp;A</strong></td>
<td>Hong Kong</td>
<td>1-6 PQE</td>
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<tr>
<td>This global law firm with a leading corporate practice in the region is led by a strong team of highly-regarded partners. You will focus on complex and multifaceted cross-border corporate M&amp;A/PE and/or capital markets transactions. You will have strong academic background and experience gained within an international law firm. (HKL 15679)</td>
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<td>Hong Kong</td>
<td>3-5 PQE</td>
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<td>Top-tier US international law firm is looking for litigators to join their dispute resolution practice. You will be working with the world’s leading clients on matters ranging from international commercial disputes, arbitration and regulatory investigations. (HKL 15561)</td>
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<td><strong>EMPLOYMENT</strong></td>
<td>Hong Kong</td>
<td>1-4 PQE</td>
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<tr>
<td>Hong Kong based law firm is keen to develop its employment department with the addition of a junior associate. You will join a solid team focusing on a mix of contentious and non-contentious employment matters. Hong Kong or Commonwealth qualified required. (HKL 15192)</td>
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<td><strong>DEBT CAPITAL MARKETS</strong></td>
<td>Hong Kong</td>
<td>1-4 PQE</td>
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<td>We are looking to recruit a junior associate to join our clients DCM team. You will have experience within bonds and a lawyer qualified in HK or UK and trained with an international law firm. Mandarin language skills are a must. (HKL 15211)</td>
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<td><strong>TMT</strong></td>
<td>Hong Kong</td>
<td>NQ-4 PQE</td>
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<td>This is a great opportunity to join an international law firm with a well-established TMT practice. You will advise blue chip tech companies on high-profile contentious and non-contentious cases. Candidates with legal experience in commercial technology or litigation will be considered. Fluency in Mandarin is critical. (HKL 15704)</td>
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<td><strong>FUNDS ASSOCIATE</strong></td>
<td>Hong Kong</td>
<td>2+ PQE</td>
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<td>This US law firm seeks a funds lawyer, with experience in funds and asset management to join their growing practice. You will have SFC regulatory exposure and understand the set-up, maintenance and restructuring of retail funds. Chinese language skills are essential. (HKL 16592)</td>
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**In-house**

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<td>Hong Kong</td>
<td>8-15+ PQE</td>
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<tr>
<td>This manufacturing and technology company seeks a legal director to join their expanding business. You will lead a small team of lawyers and focus on the company’s business globally. You will have commercial experience in the manufacturing and/or technology sector, and strong communication and negotiation skills. Written and spoken Chinese language skills are mandatory. (HKL 15652)</td>
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<td><strong>HEAD OF LEGAL</strong></td>
<td>Hong Kong</td>
<td>10+ PQE</td>
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<td>Well known insurance company seeks a head of legal to support its Hong Kong business. As well as managing the legal department the head of legal is expected to play a hands on role advising on product launches as well as developing and maintaining good relations with the various regulatory bodies. Fluency in Cantonese is critical. (HKL 15549)</td>
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<td><strong>LEGAL MANAGER</strong></td>
<td>Hong Kong</td>
<td>5-10 PQE</td>
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<td>A well-known property developer seeks a mid to senior level lawyer to support their Hong Kong legal team. You must be Hong Kong qualified with solid experience in handling commercial and M&amp;A transactions. Excellent communication skills in both written and spoken English and Chinese required. (HKL 15632)</td>
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<td><strong>FMCG</strong></td>
<td>Hong Kong</td>
<td>5-10 PQE</td>
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<tr>
<td>UK listed company with significant growth plans for Asia Pac has headcount to appoint an in-house counsel in Hong Kong to support the regional management team covering Asia Pac. Great opportunity to support a dynamic and young executive team in a business that is one of the sectors’ best global performers. (HKL 15027)</td>
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<td>4-8 PQE</td>
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<td>A high profile conglomerate seeks a commercially astute lawyer to assist in a range of employment and commercial litigation matters. The employment advice will span both contentious and non-contentious matters, while the disputes issues will include contractual, suppliers, personal injuries, IP and discrimination claims. (HKL 15675)</td>
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<td><strong>LEGAL COUNSEL (PART-TIME)</strong></td>
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<td>4-8 PQE</td>
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<td>Fast growing retail brand seeks a legal counsel to support their global operations. You will advise on a wide range of operational issues including commercial contracts, IP, employment, regulatory matters. Chinese language (Cantonese and Mandarin) required. Flexible part-time arrangement on offer. (HKL 15423)</td>
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<td><strong>INTERNATIONAL LEGAL ADVISOR</strong></td>
<td>Hong Kong</td>
<td>4-8 PQE</td>
</tr>
<tr>
<td>Global technology company has a vacancy in their international legal team. Solid experience in corporate and commercial law gained from a leading international law firm is required. Fluency in English and Mandarin and an ability to work in a fast-paced environment are critical. (HKL 15135)</td>
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</tbody>
</table>

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

- **Claire Park**
  - Tel: +852 2920 9134
  - Email: c.park@alsrecruit.com

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

- **Kumiko Lam**
  - Tel: +852 2920 9125
  - Email: k.lam@alsrecruit.com

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

[www.alsrecruit.com](http://www.alsrecruit.com)
To receive the most updated Awards information, contact Tracy at tracy.li@thomsonreuters.com.

A NEW SERIES COMING IN 2018

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**Government Counsel (Civil Service Vacancy)**

**Salary:** Master Pay Scale Point 32 (HK$62,225 per month) to Master Pay Scale Point 44 (HK$99,205 per month)

**Closing Date for Application:** 22 September 2017 (6:00 p.m. Hong Kong Time)

**Tel. Enquiry:** 2867 4809 / 2867 5014

### Welcome to Robert Walters Hong Kong

Robert Walters Hong Kong is a specialist professional recruitment firm offering recruitment services to legal, financial services, commerce & industry, and law firms. We provide our clients with access to highly qualified professionals and our candidates with opportunities that can advance their careers.

### Financial Services

**WEALTH MANAGEMENT LAWYER**  
**GLOBAL FINANCIAL INSTITUTION**  
OAA/608880  
A leading global bank seeks a wealth management lawyer to join the team of four. Coverage is over 15 countries in APAC with most profits generated in Hong Kong. Products will vary between bonds, unit trusts, structured products, etc. There is also a strong focus on FinTech and digital projects. As well as advising on product development and manufacturing, lawyers are required to advise on the risk of selling these products to customers as well as 'conduct' (ethical) considerations. Other matters include reviewing marketing material, account T&Cs, etc.  

**Key Requirements:**  
- A qualified lawyer with four to ten years’ PQE  
- A background in financial products (and interest to learn more)  
- Chinese languages are preferable but not essential

**COMPLIANCE, TRADE SURVEILLANCE**  
**TOP AMERICAN BANKING GROUP**  
QPD/611380  
Our client is a well-renowned North American banking group with a strong corporate banking, investment banking, and capital markets platform. This headcount will be responsible for monitoring and trade surveillance on the capital markets side, interacting closely with the front line.  

**Key Requirements:**  
- At least four year experience in compliance monitoring and surveillance role  
- Knowledge of financial products (such as FX, Fixed income, Swaps and OTC derivatives) and day-to-day sales and trading practices in capital markets trading environment  
- Sound working knowledge of regulatory requirements  
- Working knowledge of industry standard trading technologies is preferred (e.g., Smarts Broker Surveillance and Cognos Database)  
- Excellent English communication skills required

**LEGAL & COMPLIANCE OFFICER**  
**FORTUNE 500 CORPORATION**  
WDM/605590  
A globally recognised corporation with manufacturing and distribution hubs in Greater China is hiring a Legal & Compliance Officer to join their Hong Kong team in the Wan Chai office. This role will be primarily focused on Compliance and regional trade regulations but will also support the legal team on an ad hoc basis so a legal foundation (degree or training) would be an asset as well.  

**Key Requirements:**  
- A minimum of three years’ relevant experience in either a law firm or corporate setting supporting both legal and compliance functions  
- Strong knowledge of global compliance regulations and requirements (FCPA, anti-corruption/bribery, AML, trade regulation, sanctions, etc.)  
- Excellent communication skills and strong stakeholder management skills to work with non-local stakeholders in a diverse global organisations  
- Good understanding of the general operation of international business and regional product distribution  
- Fluency in English, Cantonese and Mandarin is essential

### Commerce & Industry

**LEGAL COUNSEL**  
**TOP PRC SECURITIES FIRM**  
ZRW/591400  
A top PRC securities firm with a rapidly growing business in APAC is looking for a Legal Counsel. Their lines of business span across a wide spectrum of DCM/ ECM/ fixed income/ general corporate finance/ asset management experience as well as structured products. The role reports to the Head of Legal.  

**Key Requirements:**  
- A Hong Kong qualified lawyer with two to seven years’ PQE  
- Experience in DCM/ ECM/ fixed income/ general corporate finance/ asset management/ structured products  
- Law firm trained applicants preferred  
- Fluency in English, Cantonese and Mandarin are essential

**LEGAL COUNSEL**  
**MAJOR PROPERTY DEVELOPER**  
ZRW/608440  
A leading property developer with extensive business in Hong Kong, Macau and China is looking for a seasoned lawyer to join as Legal Counsel. You will take charge of a broad portfolio including property leasing, sales, development and management. The role reports to the Head of Legal and joins a team of three lawyers. Occasional travel to Macau and other Chinese cities is required.  

**Key Requirements:**  
- A Hong Kong qualified lawyer of six to ten years’ PQE  
- Experience in property law including sales, leasing and tenancy, experience in working for or with major developers is ideal  
- Fluency in English, Cantonese and Mandarin is essential

### Law Firm

**CORPORATE/ FUNDS ASSOCIATE**  
**LEADING OFFSHORE LAW FIRM**  
OAA/6383308  
A top ranked offshore law firm, growing rapidly in Asia, seeks associates to join the funds practice. All associates work with all partners so there is a great opportunity to learn. They require a lawyer with a corporate background and they will then teach the funds work. If you are looking for a firm where you can work with some of the most sophisticated clients in the hedge fund and private equity market, progress according to your ability and be in a culture that is both collegiate and rewarding, then this is a very strong opportunity.  

**Key Requirements:**  
- A UK, PRC or Commonwealth (ideally Australia or New Zealand) qualified lawyers with three to six years’ PQE  
- A very strong academic background and preferably some funds experience, although solid general corporate/ M&A experience is also relevant  
- Chinese languages are preferable but not essential

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

<table>
<thead>
<tr>
<th>Name</th>
<th>Contact Information</th>
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<tbody>
<tr>
<td>Megan Craighead</td>
<td>+852 2103 5377</td>
</tr>
<tr>
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</tr>
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</tr>
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<td>+852 2103 5338</td>
</tr>
<tr>
<td><a href="mailto:Megan.craighead@robertwalters.com.hk">Megan.craighead@robertwalters.com.hk</a></td>
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<tr>
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<tr>
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Robert Walters Hong Kong is a leader in professional recruitment services, offering expertise in financial services, commerce & industry, and law firm requirements. Our team is here to provide tailored solutions and support for your career advancement needs.
<table>
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<tr>
<th><strong>Corporate/ Litigation Partners</strong></th>
<th><strong>5+ PQE Funds Lawyers</strong></th>
<th><strong>5+ PQE Litigators and Arbitrators</strong></th>
<th><strong>3-5 PQE Regulatory Lawyers</strong></th>
</tr>
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<tr>
<td>We have been instructed on a number of mandates for Corporate and Litigation Partner hires. Our clients are open to both experienced partners with a book of business, as well as talented experienced lawyers currently at Counsel/ Senior Associate level who have the ambition to take their careers to the next level.</td>
<td>A fast-expanding law firm is looking for a Senior Associate to further grow the funds team. The ideal candidate should have extensive investment funds, banking and general corporate experience. HK qualification and Mandarin ability are also required. A highly competitive package will be offered to the right candidate.</td>
<td>Top UK firm looking for mid-level arbitration lawyers to join their team. Candidates from London or Australia will be considered. The ideal candidate will come from a top tier law firm and have stellar academics. Chinese not required.</td>
<td>A prestigious law firm is looking for a mid-level regulatory lawyer looking to join an established team. The role itself will sit with the Financial Institutions Group and you will advise clients on a variety of regulatory matters including licensing, prime brokerage arrangements, securities dealing, as well as the regulatory aspects of capital markets and M&amp;A deals.</td>
</tr>
<tr>
<td>Partner</td>
<td>5+ years' PQE</td>
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<td>3-5 years PQE</td>
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Contact the Taylor Root team on +852 2973 6333
In-House

**HEAD OF LEGAL**
**HONG KONG**
**8-12 YEARS**
MNC in consumer products industry seeks a Head of Legal to provide legal support in the Greater China region & to develop legal strategy & structure. HK qualification & corporate commercial experience in both HK & China are essential. Fluent English, Cantonese & Mandarin are required. HKL6619

**REGULATORY/INVESTIGATION**
**HONG KONG**
**6+ YEARS**
Global bank seeks a regulatory lawyer to join its internal investigations team. You will have at least 6 PQE focusing on contentious/non-contentious financial services regulatory matters. Excellent opportunity to join an established team. Chinese language skills not needed. HKL6592

**EQUITIES**
**HONG KONG**
**4-8 YEARS**
Bulge bracket bank seeks a VP, you will deal with equities trading, OTC, listed/corporate derivatives & structured products. Prior in-house experience would be ideal. Chinese language skills preferable but not essential. Top quality work & attractive remuneration on offer. HKL6538

**DERIVATIVES**
**HONG KONG**
**4-8 YEARS**
Well-known financial conglomerate in Asia seeks a derivatives lawyer with relevant experience from a reputable law firm or another financial institution. Structured finance experience would be a bonus. Mandarin skills are essential. Attractive remuneration on offer. HKL6515

**COMMERCIAL/TMT**
**HONG KONG**
**4-8 YEARS**
Major global player in the internet/technology industry seeks a mid-level general commercial lawyer. You will have solid corporate experience gained from a top tier law firm. Exposure to internet, e-commerce or TMT matters will be advantageous. Mandarin is essential. HKL5546

**PART-TIME LEGAL COUNSEL**
**HONG KONG**
**4-6 YEARS**
Leading insurance provider seeks a part-time lawyer to handle commercial contracts, product development, compliance & regulatory issues. Prior insurance/funds experience advantageous. Flexible working arrangement on offer. Chinese language skills are not required. HKL6444

**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. HKL6809

Private Practice

**CORPORATE / FUNDS**
**HONG KONG**
**3-8 YEARS**
Law firm with an international platform seeks an associate with mutual funds and M&A experience. Your experience will be from another reputable law firm/financial institution & include handling matters related to SFC-authorised funds & other retail funds products. HKL6581

**ARBITERATION**
**HONG KONG**
**5-7 YEARS**
A leading Magic Circle arbitration practice seeks a senior associate. You will have strong arbitration/disputes experience from a reputable international firm. Strong drafting skills & common law qualification are required. Chinese language skills are not a prerequisite. HKL6642

**CORPORATE PSL**
**HONG KONG**
**6 YEARS**
International firm seeks a professional support lawyer to assist its corporate department. You will be responsible for preparing precedents, drafting legal updates & newsletters, maintaining the knowhow database and delivering training. Chinese language skills an advantage. HKL6539

**INTELLECTUAL PROPERTY**
**HONG KONG**
**5+ YEARS**
Well-known boutique IP firm seeks a senior associate to strengthen its team. You will advise major clients throughout Asia on a range of IP matters particularly trademark registration. You will have IP experience gained in Hong Kong and fluent Chinese is essential. HKL4045

**LITIGATION**
**HONG KONG**
**4+ YEARS**
A reputable international firm is looking for a mid-level litigator. You will have at least 4 years of post-qualification experience, proven financial services regulatory experience & strong commercial awareness. Chinese language skills not required and open to relocations. HKL5853

**FUNDS/PE**
**HONG KONG**
**3+ YEARS**
Top tier offshore firm is looking for a funds associate with 3 to 5 PQE, solid training from a peer firm and must be admitted in a commonwealth jurisdiction. Prior experience in M&A or finance will also be considered. Chinese language skills are helpful but not required. HKL6355

**DCM**
**HONG KONG**
**0-2 YEARS**
Magic circle firm seeks an NQ to 2PQE junior lawyer who would like to focus on DCM transactions. Great opportunity to gain exposure to regional DCM work including bonds, PIPEs, global depository receipts & pre-IPO investments. Chinese language skills not needed. HKL6483

www.lewissanders.com
We wish you a Happy Mid-Autumn Festival!

中秋佳節快樂！

Mike Wright | Private Practice
+852 2520 5298 | mikewright@puresearch.com

Michael Allen | In-house FS Legal
+852 2499 9796 | michaelallen@puresearch.com

Alex Tao | In-house C&I Legal
+852 2499 9293 | alextao@puresearch.com

Sherry Xu | In-house C&I Legal
+852 2520 5072 | sherryxu@puresearch.com

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You never actually own a Patek Philippe.

You merely look after it for the next generation.