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# HONG KONG LAWYER

THE OFFICIAL JOURNAL OF THE LAW SOCIETY OF HONG KONG 香港律師會會刊

香港律師

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## Keith Brandt

**Managing Partner, Dentons Hong Kong**
**Convenor, Solicitors Disciplinary Tribunal**

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## Inside your February issue
## 二月期刊內容

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# STAY IN THE KNOW

*Hong Kong Lawyer*, as the official monthly journal of The Law Society of Hong Kong, provides the legal community with news, analysis and insights necessary to keep abreast of the latest trends and developments.

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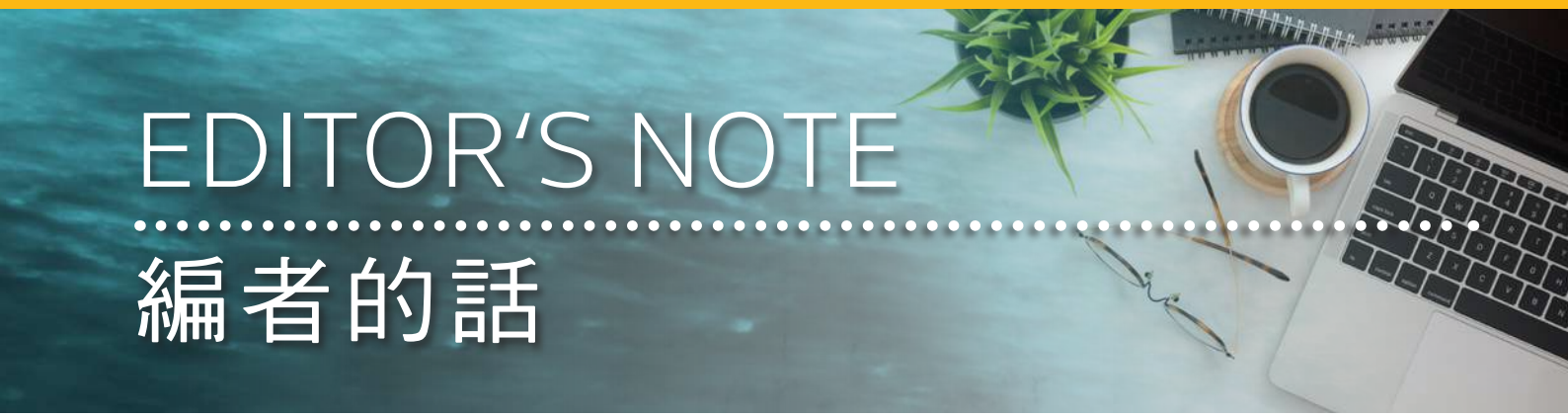

# EDITOR'S NOTE
# 編者的話

There may be no better time than now to witness the intersection of public well-being, policymaking, and law enforcement. As the Government mandates the toughest regime yet to contain the virus, we witness the tricky balancing of personal vs public interests and how laws and regulations evolve to mirror the need of the hour. Covid-19 is now in its third year in Hong Kong and only time will tell when the pandemic truly meets its end.

Another thing that has evolved over time is the legal profession itself, with technology bringing significant changes to the way things are done today compared to a few decades ago. Regardless of this, solicitors are expected to maintain the same standard of professionalism as any of their predecessors and in our Cover Story this month, Keith Brandt, the Convenor of the Solicitors Disciplinary Tribunal discusses these standards and his experience leading the Tribunal.

In our Features section this month we have an article authored by the Mass Transit Railway (MTR) Corporation on the recently enacted Personal Information Protection Law (PIPL) and its practical implications. Our second article comes from The Law Reform Commission and discusses the main recommendations set out in a recent report on outcome related fee structures (ORFSs) for arbitration. Our final article unpacks the United Nations Convention on Contracts for the International Sale of Goods (CISG) and its implications on Hong Kong arbitration.

In our Practice Management section, we learn about the importance of diversity, equality and inclusion (DEI) in the workplace while in our Lawyers at Leisure section, we meet with a lawyer who is also an established DJ and radio host!

**Sonali Khemka**
Lead Editor, *Hong Kong Lawyer*

也許沒有比現在更好的時機來見證公眾福祉、政策制定和執法的交集情況。隨著政府授權採取最嚴厲的制度來遏制病毒，我們見證了個人與公共利益之間的棘手平衡問題，以及法律如何演變以反映時代的需要。新冠病毒病在香港已經進入第三年，只有時間能證明疫情何時能真正結束。

另一件事隨著時間推移的，是法律專業本身的發展；與幾十年前相比，今天的科技給事情的處理方式帶來了重大變化。無論怎樣，律師仍被期望保持與其任何前輩相同的專業標準，在我們本月的「封面專題」中，律師紀律審裁組審裁團召集人布英達討論了這些標準和他領導審裁組的經歷。

在我們這個月的專題部分，我們有一篇由香港鐵路有限公司撰寫的關於最近頒佈的《個人信息保護法》及其實際影響的文章。我們的第二篇文章來自法律改革委員會，討論了最近一份「關於與仲裁結果有關的收費架構」的報告中提出的主要建議。最後一篇文章是對《聯合國國際貨物銷售合同公約》及其對香港仲裁影響的解讀。

在我們的「實務管理」部分，我們瞭解到多元化、平等及包容在工作場所的重要性，而在我們的「律師閒情」欄目，我們與一位同時也是知名 DJ 和電台主持人的律師見面。

**孔春秀**
《香港律師》編輯

# PRESIDENT'S MESSAGE

# 會長的話

## Anti-Money Laundering Effort

As an international financial centre, Hong Kong attaches great importance to safeguarding the integrity of the financial system by implementing international standards on Anti-Money Laundering and Counter-Terrorist Financing ("AML/CTF") to deter and detect inward and outward flows of illicit funds. The effectiveness of the AML/CTF regime enables the city to promote financial dealings and enhances Hong Kong's competitiveness as a globally trusted and reputable business centre for international institutions. Hong Kong is an active member of international AML/CFT organisations, having been a member of the Financial Action Task Force ("FATF") since 1991 and a founding member of the Asia-Pacific Group on Money Laundering (the "APG") since 1997. On 4 September 2019, FATF published the Mutual Evaluation Report on Hong Kong, concluding that Hong Kong's AML/CTF regime has a robust legal foundation, effective law enforcement and an effective system for combatting ML/TF, such that Hong Kong became the first jurisdiction in APAC to achieve an overall compliant result in the latest round of FATF's mutual evaluations.

The Law Society has devoted significant time and effort in preparing for FATF's Mutual Evaluation, including the 2018 exercise bringing Designated Non-Financial Business Professions "DNFBPs" under the AML and CTF Ordinance ("AMLO"), with the result being that Hong Kong achieved a satisfactory result in the Mutual Evaluation. Meanwhile, FATF recommended Hong Kong should strengthen the supervision of certain non-financial businesses.

The Law Society appreciates the support and commitment of the legal sector on AML/CTF in the past few years. The FATF assessment result is considered as an affirmation of the sector's concerted efforts in safeguarding Hong Kong's robust AML/CTF regime. The Law Society will continue to collaborate with members and other relevant stakeholders to keep enhancing the AML/CTF framework.

This significant achievement placed Hong Kong in the "regular" follow-up process of FATF (as opposed to the "enhanced" follow-up process for those countries that have not met required standards). As part of the "regular" follow-up process, FATF will conduct assessments at regular intervals to review if jurisdictions have addressed the deficiencies identified in their Mutual Evaluation Report and implemented changes to the FATF Standards introduced subsequent to the mutual evaluation. In the case of Hong Kong, the technical compliance assessment by the FATF is scheduled for February 2023, followed by an effectiveness assessment in June 2024, when Hong Kong is expected to extend its AML/CTF regulations to the Virtual Asset Service providers ("VASPs") and Dealers in Precious Metals and Stones ("DPMS") sectors, amongst other enhancements to the AML/CTF regime.

The Law Society's AML Committee, led by Past President Mr. Michael Lintern Smith, worked closely with the Security Bureau over the course of the past three years to provide inputs of the Law Society in a number of worksheets describing the AML regulatory framework, threats, risks, controls and vulnerabilities; supervision, sanctions and enforcement actions for violation of the Practice Direction P ("PDP") and AMLO requirements, as well as legal professionals' AML knowledge and understanding. Collaboration with other regulators was strengthened including, the Monetary Authority, the Securities and Futures Commission, the Insurance Authority and the supervisory

bodies of the DNFBPs. Experience sharing sessions were arranged to enhance understanding and collaboration between solicitors and professionals of the other sectors. AML seminars were held regularly to brief legal practitioners on the major provisions of the AMLO and PDP, provide an overview of the latest developments on international and domestic AML, enhance practitioners' understanding of the statutory obligations of suspicious transaction reporting and provide a forum for discussion on matters of common concerns relating to AML matters.

Although FATF has acknowledged the Law Society's efforts in raising the awareness of the legal professionals in money laundering and the solid foundations of the profession, FATF highlighted some deficiencies in regards to DNFBPs (including the Law Society) in areas of supervision, understanding of AML risks at the individual firms' level, and a lack of disciplinary actions imposed on professionals for non-compliance with the PDP. In response to FATF's recommendations, the AML Committee took a number of proactive steps, including evaluating the supervisory approach to monitoring of legal professionals undertaken in other foreign jurisdictions and the remedial actions taken by the local DNFBPs. Preliminary polls were conducted at the end of the seminars on 6 September and 12 December 2019 to collate views of the practitioners on the follow-up actions to be taken by the Law Society after the publication of the Mutual Evaluation Report.

The Law Society appointed a dedicated AML Executive to assist the AML Committee with formulation and execution of its AML supervisory approach, practitioner education and guidance for Members on practical application of the AML/CTF requirements.

In January 2022, the first AML review of 50 law firms was launched comprising, 28 small (sole practitioners / 2-5 partners), 16 medium (6-20 partners) and 6 large (20+ partners) firms. The AML review is proposed to be rolled out to all law firms in Hong Kong in due course. This desk-based evaluation entails a completion of the AML Questionnaire, supplemented by the firm's AML Policy and risk assessment, to:

- develop a Financial Crime risks assessment specific to the Hong Kong legal profession through identifying general and specific ML and TF risks;
- understand ML and TF risks applicable to individual law firms;
- perform a limited assessment of firm's efforts in complying with the AML/CTF regulatory requirements under the PDP and AMLO;
- identify gaps and challenges facing law firms in meeting their AML obligations; and
- proactively assist law firms with further guidance and support to effectively combat ML and TF.

The Security Bureau in August 2022 will be issuing an update report to FATF on the progress made regarding FATF's recommendations. This will include reporting on the Law Society's enhancement actions taken in establishing a robust risk-based supervision of law firms' compliance with the AML requirements. Going forward, FATF expects regulators, including the Law Society, to progress towards a more mature approach to AML supervision entailing risk assessments, on-site and off-site examinations in line with the international and FATF standards. The Law Society would like to take this opportunity to encourage law firms to maintain its AML policies and procedures up-to-date and to remain compliant and vigilant towards evolving ML/TF risks.

**CM Chan**
President

# 打擊清洗黑錢方面的工作

作為國際金融中心，香港非常重視維持金融體系穩健，通過執行打擊清洗黑錢及恐怖分子資金籌集活動（AML/CFT）的國際標準，阻止和偵查非法資金的流動。AML/CFT 行之有效，使香港能夠促進金融交易，保持良好聲譽，備受全球信任，增強其作為國際商業中心的競爭力。香港是國際 AML/CFT 組織的活躍成員，自 1991 年以來一直是財務行動特別組織（"FATF"）的成員，而且自 1997 年以來一直是亞太反洗錢組織（"APG"）的創始成員。FATF 於 2019 年 9 月 4 日發表了《香港的相互評估報告》，認為香港的 AML/CTF 制度具有健全的法律基礎、有效的執法和有效的打擊洗錢及恐怖分子資金籌集制度，使香港成為 FATF 最近一輪相互評估中，亞太區內首個成功全面合規通過評估的司法管轄區。

律師會投入了大量時間和精力準備 FATF 的《香港的相互評估報告》，包括在 2018 年將「指定非金融企業及行業」納入《打擊洗錢及恐怖分子資金籌集條例》，令香港在相互評估報告中取得令人滿意的成績。同時，FATF 建議香港應加強對某些非金融企業的監管。

律師會感謝法律界在過去幾年對

AML/CTF 的支持和投入。FATF 的評估結果，是對業界在維護香港穩健的 AML/CTF 制度方面共同努力的肯定。律師會將繼續與會員及其他相關持份者合作，不斷加強 AML/CTF 的框架。

這個重大的成就使香港在 FATF 的跟進程序中被列為「常規」（有別於未達到規定標準的國家被列為「加強」的跟進程序）。作為「常規」跟進程序的一部份，FATF 會定期進行評估，以檢視各司法管轄區是否已解決相互評估報告中發現的缺陷，並落實更改相互評估後引入的 FATF 標準。就香港而言，FATF 的技術合規評估定於 2023 年 2 月進行，隨後於 2024 年 6 月進行有效性評估，屆時香港有望將其 AML/CTF 法規擴展至虛擬資產服務提供者和貴重金屬及寶石交易界，以及對 AML/CTF 制度進行其他改進。

由律師會前會長史密夫先生領導的打擊清洗黑錢委員會，在過去三年與保安局緊密合作，代表律師會於幾個範疇提出意見，包括反洗錢監管框架、威脅、風險、管控和漏洞；對違反《執業指引 P》和《打擊洗錢及恐怖分子資金籌集條例》者的監督、制裁和執法，以及法律專業人士的反洗錢知識和理解。我們加強與其他監管機構合作，包括金融管理局、證券及期貨事務監察委員會、保險業監管局和指定非金融業者監管機構，並安排了經驗分享會，以加強律師與其他界別的專業人士之間的了解和合作。我們定期舉辦反洗錢研討會，向同業簡介《打擊洗錢及恐怖分子資金籌集條例》和《執業指引 P》的主要規定，介紹國際和本地反洗黑錢的最新發展，加深同業對可疑交易報告法定責任的理解，並就反洗黑錢有關的共同關注事項，提供一個討論平台。

儘管 FATF 肯定了律師會在提高法律專業人士在洗黑錢方面的意識所作出的努力，以及法律界的堅實專業基礎，但 FATF 強調，「指定非金融企業及行業」（包括律師會）在監管、在個別層面對反洗黑錢風險的理解，以及對不遵守《執業指引 P》的專業人士的紀律處分方面，仍有不足之處。為回應 FATF 的建議，打擊清洗黑錢委員會採取了一些積極措施，包括評估外地司法管轄區對法律專業人士進行監督的方法，以及當地「指定非金融企業及行業」採取的補救措施。在 2019 年 9 月 6 日和 12 月 12 日的研討會結束時進行了初步投票，以收集業界對相互評估報告發表後律師會應採取的跟進行動的意見。

律師會委任了一名專責的反洗黑錢行政人員，協助打擊清洗黑錢委員會制定和執行其反洗錢監管、教育從業人員和指導會員實際落實 AML/CTF 的要求。

對 50 間律師行的首次反洗錢審查已於 2022 年 1 月展開，其中包括 28 間家小型（獨資經營 / 2-5 名合夥人）、16 間中型（6-20 名合夥人）和 6 間大型（20 名以上合夥人）律師行。根據建議，反洗錢審查將適時向全港的所有律師行推展。此書面評估包括填寫反洗黑錢問卷，並輔以律師行的反洗黑錢政策和風險評估，以便：

- 通過識別一般和特定的洗黑錢和恐怖分子資金籌集風險，制訂針對香港法律專業的金融犯罪風險評估；
- 了解適用於個別律師行的洗錢和恐怖分子資金籌集風險；
- 對律師行在遵守《執業指引 P》和《打擊洗錢及恐怖分子資金籌集條例》下的 AML/CTF 監管要求方面所作的努力，進行有限度的評估；
- 確定律師行在履行其反洗黑錢責任時面對的差距和挑戰；及
- 提供進一步指引和支援，積極協助律師行有效打擊洗黑錢和恐怖分子資金籌集。

保安局將於 2022 年 8 月向 FATF 發表最新報告，說明 FATF 的建議之進展，包括報告律師會採取的強化行動，以建立風險為本的穩健監管制度，監管律師行遵守反洗錢要求。展望未來，FATF 期望律師會等監管機構，朝著更成熟的反洗黑錢監管方式邁進，包括按照國際和 FATF 標準進行風險評估及實地和非實地檢查。律師會希望藉此機會，鼓勵律師行不斷更新其反洗黑錢政策和程序，並對不斷變化的洗黑錢和恐怖分子資金籌集風險保持合規和警惕。

**陳澤銘** 會長

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Yu Yuen is the Principal Legal Advisor – Mainland China and International Business of MTR Corporation Limited. He contributes to the Corporation's Mainland and international business by providing legal support for its business development and operations, regulatory compliance and corporate governance. Yu Yuen has more than 20 years of legal practice experience. Before joining MTR, he was the General Counsel of an independent power production company in charge of its legal and company secretarial teams, and an in-house Counsel of an international agriculture, metal and energy commodities company. He started his legal career as a finance lawyer at Baker & McKenzie with extensive experience in handling aircraft finance, asset finance and various debt finance transactions.

## 黃裕源

**香港鐵路有限公司首席法律顧問 - 中國內地及國際業務**

黃律師是香港鐵路有限公司首席法律顧問 - 中國內地及國際業務。他主要對港鐵在中國內地及國際的業務發展及營運、監管合規及企業管治等領域提供法律支援。黃律師擁有二十多年的法律執業經驗。在加入港鐵之前，他曾擔任某獨立電力公司的總法律顧問，掌管其法律和公司秘書團隊，及擔任某國際農產品、金屬和能源商品類公司的法律顧問。黃律師的法律職業生涯始於在貝克・麥堅時律師事務所擔任金融律師，其在處理飛機融資、資產融資和各種債務融資交易方面擁有豐富的經驗。

## Yu Yang Maggie

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Maggie is the Legal Advisor - Mainland China Business of MTR Corporation Limited and is based in its Hong Kong headquarters. She has extensive experience in PRC-related legal matters including foreign direct investment, mergers and acquisitions, infrastructure investment, corporate restructuring, regulatory compliance, general corporate and commercial matters. Prior to joining MTR, Maggie spent over a decade working in academia, in Magic Circle law firms and financial institutions in Hong Kong and Mainland China.

## 于洋

**香港鐵路有限公司法律顧問 - 中國內地業務**

于律師在香港鐵路有限公司總部任職法律顧問 - 中國內地業務。她在中國法律事務方面擁有豐富的經驗，包括外商直接投資、併購、基礎設施投資、公司重組、監管合規、一般公司和商業事務等領域。在加入港鐵之前，于律師曾在香港及內地為大學法學院、國際律師事務所及政府金融機構工作，有近十多年的法律專業工作經驗。

## Kathryn Sanger

**Co-chair, Outcome Related Fee Structures for Arbitration Sub-committee of the Law Reform Commission of Hong Kong**

**Partner, Herbert Smith Freehills**

Kathryn is a partner in the Hong Kong office of Herbert Smith Freehills, and co-chair of the sub-committee of the Hong Kong Law Reform Commission on outcome-related fee structures for arbitration. She has over 15 years' experience of advising

## 張清明

**香港法律改革委員會與仲裁結果有關的收費架構小組委員會聯合主席**

**史密夫斐爾律師事務所合夥人**

張清明律師是史密夫斐爾律師事務所香港辦事處的合夥人，也是香港法律改革委員會與仲裁結果有關的收費架構小組委員會聯合主席。她擁有超過 15 年在亞太地區就仲裁和訴訟程序為客戶提供諮詢

clients on arbitration and litigation proceedings in Asia Pacific and has advised clients across a wide range of industries and locations, with particular strengths in financial services, energy and in China-related matters. Her arbitration skills and reputation in China matters are enhanced by her ability to speak and read Mandarin Chinese. Kathryn was a Council Member of the Hong Kong International Arbitration Centre (HKIAC) between 2008 and 2019 and she chaired the HKIAC appointments committee between 2013 and 2018. She also served on its rules and proceedings committees and, until December 2021, was a member of the HKIAC's finance and administration committee.

服務的經驗，並為多個行業和地區的客戶提供諮詢服務，尤其在金融服務、能源和中國相關事務方面具有專長。她能說和閱讀普通話，增強了她在中國事務的仲裁技巧和聲譽。張清明律師於 2008 年至 2019 年期間擔任香港國際仲裁中心 (HKIAC) 理事會成員，並於 2013 年至 2018 年期間擔任 HKIAC 任命委員會主席。她亦曾在 HKIAC 規則及程序委員會任職，並在 2021 年 12 月之前擔任 HKIAC 財務及行政委員會成員。

## Briana Young

**Co-chair, Outcome Related Fee Structures for Arbitration Sub-committee of the Law Reform Commission of Hong Kong**

**Foreign Legal Consultant (England and Wales) & Professional Support Consultant, Herbert Smith Freehills**

Briana is co-chair of the Hong Kong Law Reform Commission's sub-committee on outcome-related fee structures in arbitration. She also co-chaired HKIAC's Task Force on Third Party Funding in Arbitration and writes and speaks frequently on arbitration funding.

## 楊安娜

**香港法律改革委員會與仲裁結果有關的收費架構小組委員會聯合主席**

**史密夫斐爾律師事務所外國法律顧問（英格蘭及威爾斯）／專業支援顧問**

楊安娜律師是香港法律改革委員會與仲裁結果有關的收費架構小組委員會聯合主席。她亦曾擔任香港國際仲裁中心第三方資助仲裁工作組聯合主席，並經常就仲裁資助發表文章和演講。

## Edward Liu

**Partner, Hill Dickinson LLP**

Edward is qualified as a solicitor of Hong Kong SAR, England & Wales as well as a PRC lawyer. His main area of practice is in commercial and shipping litigation and arbitration. He is extensively experienced in advising and handling international commercial disputes covering areas such as sale of goods/trade and commodities, shipping and shipbuilding, energy and offshore projects, shareholder and equity-related disputes, and international investment (particularly connected with Belt & Road projects), commercial fraud, international sanctions, worldwide enforcement of judgments and arbitration awards etc. Edward has been appointed as members of a number of advisory bodies to the Hong Kong government, including Advisory Committee on Promotion of Arbitration, Steering Committee on Mediation, Advisory Body on Third Party Funding of Arbitration and Mediation, Aviation Development and Three-Runway Advisory Committee, Hong Kong Maritime and Port Board, Appeal Panel (Housing), Mandatory Provident Fund Schemes Appeal Board, and an adjudicator of the Registration of Persons Tribunal. He is also an arbitrator and an accredited mediator. He has consistently been listed for many years as a leading lawyer in Shipping by The Legal 500, Chambers & Partners, and Lloyd's List.

## 劉洋

**英國希德律師行香港辦公室合夥人**

劉先生擁有香港、英格蘭及威爾士和中國的律師執業資格。劉先生主要執業領域是商事與航運訴訟和仲裁業務。他在處理國際商業爭議方面具有豐富經驗，主要包括國際貨物買賣和貿易以及大宗商品、航運和造船、能源和離岸工程、股東及股權相關糾紛、國際投資（特別是涉及“一帶一路”項目）、商業欺詐、國際制裁、執行國際判決和仲裁裁決等領域。劉先生在眾多香港政府諮詢機構中擔任委員，包括仲裁推廣諮詢委員會、調解督導委員會、第三者資助仲裁和調解的諮詢機構、航空發展及三跑道系統諮詢委員會、香港海運港口局、上訴委員會（房屋）、強制性公積金計劃上訴委員會，以及人事登記審裁處審裁員。他亦是仲裁員和認可調解員。他連續多年被《法律 500 強》、《錢伯斯法律指南》和《勞氏日報》等評為航運領域的領先律師。

## Kajal Aswani

**Partner, Gall**

Kajal joined Gall's award-winning Family & Divorce practice as a Partner in July 2020 and is an experienced disputes resolution lawyer with a focus on family disputes. She has broad experience handling complex and high-profile matrimonial proceedings involving substantial assets and cross-border elements and advises on all aspects of family law including divorce, financial claims and children matters.

## 祖卡妮

**高嘉力合夥人**

祖卡妮律師於 2020 年 7 月作為合夥人加入高嘉力屢獲殊榮的家事與離婚業務，是一位經驗豐富的爭議解決律師，專注於家庭糾紛。她在處理涉及大量資產和跨境元素的複雜且備受矚目的婚姻訴訟方面擁有豐富的經驗，並就家事法的各個方面提供建議，包括離婚、財務索償和兒童事務。

## Kapil Kirpalani

**Chief Compliance Officer, Asia Pacific**
**Kohlberg Kravis Roberts**

Kapil joined KKR in 2017 and is a Director and the Firm's Chief Compliance Officer for the Asia-Pacific region. Prior to joining KKR, Mr. Kirpalani was at HarbourVest Partners where he was responsible for the legal/compliance coverage of the funds, secondaries and direct co-investing businesses across Asia. He was previously with Pacific Harbor Capital (a Citigroup affiliate) where he covered a broad range of businesses including special situations, debt & equity investments. He began his career in private practice. Kapil holds an LL.B. (with honors), an LL.M. and has completed further business studies at the University of Cambridge.

## Kapil Kirpalani

**Kohlberg Kravis Roberts亞太地區首席合規事務官**

Kapil 於 2017 年加入 KKR，擔任董事兼公司亞太區首席合規事務官。在加入 KKR 之前，Kapil 在 HarbourVest Partners 負責亞洲地區的基金、二級市場和直接共同投資業務的法律 / 合規業務。他之前在 Pacific Harbour Capital（花旗集團的附屬公司）工作，負責範圍廣泛的業務，包括特殊情況、債券和股權投資。他的職業生涯始於私人執業。Kapil 擁有法學學士學位（榮譽）、法學碩士，並在劍橋大學完成了進修的商業課程。

# FROM THE SECRETARIAT

# 律師會秘書處資訊

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

## The 5th Wave

On 26 November 2021, the World Health Organisation ("WHO") designated the variant Omicron as a Variant of Concern while it coordinated extensive research to better understand its transmissibility, the severity of symptoms and the performance of vaccines against it.

Two months later on 19 January 2022, the WHO Regional Office for Europe issued a statement to clarify some misinformation about Omicron based on the results of its global research.

The WHO Statement clarified, among other points, that as a matter of fact, "*the end of the pandemic is not yet in sight*". This clarification is directed at the myth that "*with Omicron being less severe, we are nearing the end of the pandemic*".

We are entering the third year of our fight against COVID-19, and it is indeed hard to swallow the fact that "*the end of the pandemic is not yet in sight*".

Looking at the comparative statistics from 2019 to 2021, while there has been a stable growth of more than 4% in Hong Kong solicitors annually, the prolonged public health crisis and the travel restrictions have impacted the growth of the foreign lawyer population. Compared to 2019, the numbers of foreign lawyers and foreign law firms in Hong Kong, as of the end of 2021, have dropped by 13.2% (from 1,688 to 1,465) and 7.7% respectively (from 91 to 84). Yet, notwithstanding the decrease in numbers, it is worth noting that the diverse jurisdictional spread of foreign lawyers (from 33 to 34 jurisdictions) and foreign firms (from 22 jurisdictions) was maintained at the same level throughout.

With respect to the number of trainee solicitors, it also recorded a drop of 10.5% from 1,219 in 2019 to 1,091 in 2020. The Law Society initiated an application under the Anti-epidemic Fund 2.0 for funding a job creation scheme for trainee solicitors in July 2021. An eligible law firm may apply for a monthly salary subsidy of HK$6,800 for a

## 第五波疫情

世界衛生組織於 2021 年 11 月 26 日將 Omicron 變異病毒株定為值得關切的變異病毒株，同時協調進行更廣泛的研究，以更了解其傳播力、症狀的嚴重程度及疫苗對它的效力。

兩個月後的 2022 年 1 月 19 日，世衛歐洲區域辦事處發表聲明，根據其全球研究結果，澄清有關 Omicron 的一些錯誤信息。

世衛的聲明澄清，事實上「*離疫情結束尚早*」。這項澄清反駁了「*Omicron 沒有那麼嚴重，疫情即將結束*」的說法。

我們正進入對抗新冠疫情的第三個年頭，「*離疫情結束尚早*」這個事實的確很難接受。

從 2019 年至 2021 年的比較數據來看，雖然香港律師人數每年穩定增長超過 4%，但長期的公共衛生危機和旅遊限制，影響了註冊外地律師人數的增長。與 2019 年相比，截至 2021 年底香港的註冊外地律師和註冊外地律師行的數目，分別下降了 13.2%（從 1,688 名降至 1,465 名）和 7.7%（從 91 間降至 84 間）。儘管數目有所減少，但值得注意的是，註冊外地律師（來自 33 至 34 個司法管轄區）和註冊外地律師行（來自 22 個司法管轄區）的司法管轄區分佈水平保持一致。

實習律師的人數亦錄得 10.5% 的跌幅，由 2019 年的 1,219 名跌至 2020 年的 1,091 名。律師會於 2021 年 7 月向防疫抗疫基金 2.0 申請資助，推

maximum period of 12 months for the creation of a new opening for a trainee solicitor. The application period closed on 28 January 2022. There were so far 45 successful applications and quite a number are still being processed. It is pleasing to note that as of the end of 2021, compared to 2019, the drop in trainee solicitors has narrowed to 4.8%.

Hong Kong is currently hit by the 5th wave of the pandemic.

With the experience gained in tackling the previous waves, we are confident that the legal profession is equipped and ready to overcome the associated challenges.

More practitioners may start opting to work remotely to minimize the risk of infection by avoiding travelling to work. However, as practitioners are well aware, compliance with the rules and regulations governing their practice, client protection, professional standards and the quality of legal services must not be compromised in any way by remote work arrangements. Adequate arrangements must be in place for the supervision of employees and their work in law firms when their offices are open to the public, in accordance with the minimum supervision standards set out in rule 4A of the Solicitors' Practice Rules.

For trainee solicitors, provided that there are appropriate arrangements, remote training and supervision necessitated by the pandemic, in place of training in the principals' offices, is acceptable. Factors like method and frequency of communication between the principal and the trainee, management of work flow and monitor of the trainee's work progress by the principal including review, feedback and access to the trainee's work should be properly addressed in considering any remote training and supervision arrangement. Members may refer to the details of the waiver in connection with remote training in the relevant Law Society Circular.

In 2020, the Law Society administered the LAWTECH Fund under which eligible law firms and barristers chambers could applying for funding up to HK$50,000 for procuring or upgrading their information technology systems and providing technology training for staff of the firms on a reimbursable basis. The funding helped expedite the pace of some legal practices in modernising their infrastructure to cope with the increasing adoption of an electronic mode for court hearings and filings as well as client meetings.

The court is monitoring the situation under the 5th wave carefully. Although all court hearings generally continue to proceed as scheduled (unless directed otherwise by the court), for civil proceedings, where appropriate, the court may make greater use of remote hearings and/or paper disposal for proceedings. Further, the Judiciary will implement e-filing for civil proceedings in the District Court by phases from March this year.

Going back to the WHO Statement, another myth that it has clarified is about face masks. There is a myth that "*face masks are useless against Omicron as the gaps in them are larger than the virus.*". The Statement clarifies that as a matter of fact, "*wearing masks is an effective protective measure to help reduce the infection and spread of Omicron*".

出法律人才招聘計劃（實習律師）。合資格的律師行所開設的每個實習律師新職位，可申請每月6,800 港元的薪金津貼，最長為期 12 個月，申請截止日期為 2022 年 1 月 28 日。截至目前為止，共有 45 份申請成功，不少申請仍在處理中。令人欣慰的是，截至 2021 年底，實習律師人數的降幅與 2019 年相比已收窄至 4.8%。

香港目前正受到第五波疫情的衝擊。

憑著應對前幾波疫情時獲得的經驗，我們相信法律專業人士已準備就緒，應對有關挑戰。

更多同業可能會開始選擇遙距工作，以盡量減低上班途中的感染風險。然而，正如同業已熟知，遙距工作安排必須符合執業的規則和法規，而在客戶保障、專業標準和法律服務上不能因遙距工作安排而犧牲質素。根據《律師執業規則》第 4A 條的最低監督標準，在律師行營業時，對員工及他們在律師行的工作進行充分的監督。

在有適當安排的前提下，實習律師因疫情而需要接受遙距培訓和監督，以代替在主管律師的辦公室接受培訓，是可以接受的。在考慮任何遙距培訓和監督安排時，應妥善處理主管律師與實習律師之間溝通的方法和頻率、工作流程的管理，以及主管律師對實習律師工作進度的監督，包括審查、反饋和取得實習律師的工作等因素。有關遙距培訓的豁免詳情，會員可參閱有關的律師會會員通告。

於 2020 年，律師會管理法律科技基金，合資格的律師行及大律師事務所可申請高達 50,000 港元的資助，以實報實銷方式採購或升級其資訊科技系統及為員工提供科技培訓。這筆資金有助加快一些法律執業的基礎設施現代化，以應對越來越廣泛採用電子模式進行聆訊、存檔及客戶會議。

法院正密切關注第五波疫情的情況。雖然所有聆訊通常會繼續如期進行（除非法院另有指示），但對民事訴訟，法院可能會在適當的情況下更多地使用遙距聆訊及 / 文書方式來進行訴訟。此外，司法機構將於今年 3 月起，分階段在區域法院推行以電子方式提交區域法院民事訴訟。

世衛的聲明澄清了另一個關於口罩的謠言。有一種說法是「*口罩對 Omicron 毫無效用，因為口罩的縫隙大過病毒*」。該聲明澄清，事實上「*戴口罩是有效的保護措施，有助減少 Omicron 的感染和傳播*」。

On this note, we are pleased to share that the Law Society has created its own branded surgical face masks bearing the Law Society logo for order by our members. Notwithstanding the WHO Statement that the end of the pandemic is not yet in sight, let us stay hopeful and patient. With our united effort, we will sail through the challenge!

May I take this opportunity to wish our readers joy, health and prosperity in the Year of the Tiger!

在此，我們很高興地宣佈，律師會已製作印有律師會會徽的自家品牌外科口罩，供會員訂購。儘管世衛表示疫情尚未結束，但讓我們保持希望和耐心，眾志成城，共同迎接挑戰！

謹此祝廣大讀者虎年快樂、身體健康、萬事如意！


## Monthly Statistics on the Profession

(updated as of 31 December 2021):

| | |
|---|---|
| Members (with or without Practising Certificate) | 12,795 |
| Members with Practising Certificate | 11,235 (out of whom 7,940 (71%) are in private practice) |
| Trainee Solicitors | 1,160 |
| Registered Foreign Lawyers | 1,465 (from 34 jurisdictions) |
| Hong Kong Law Firms | 942 (47% are sole proprietorships and 41% are firms with 2 to 5 partners, 52 are limited liability partnerships formed pursuant to the Legal Practitioners Ordinance) |
| Registered Foreign Law Firms | 84 (from 22 jurisdictions, 15 are limited liability partnerships formed pursuant to the Legal Practitioners Ordinance) |
| Civil Celebrants of Marriages | 2,146 |
| Reverse Mortgage Counsellors | 404 |
| Solicitor Advocates | 87 (81 in civil proceedings, 6 in criminal proceedings) |
| Student Members | 224 |
| Registered Associations between Hong Kong law firms and registered foreign law firms (including Mainland law firms) | 37 |

## 業界每月統計資料

（截至 2021 年 12 月 31 日）：

| | |
|---|---|
| 會員(持有或不持有執業證書) | 12,795 |
| 持有執業證書的會員 | 11,235 (當中有7,940 (71%) 是私人執業) |
| 實習律師 | 1,160 |
| 註冊外地律師 | 1,465 (來自34個司法管轄區) |
| 香港律師行 | 942 (獨資經營佔47%，2至5名合夥人的律師行佔41%，52間為按照《法律執業者條例》組成的有限法律責任合夥律師行) |
| 註冊外地律師行 | 84 (來自22個司法管轄區，15間為按照《法律執業者條例》組成的有限法律責任合夥律師行) |
| 婚姻監禮人 | 2,146 |
| 安老按揭輔導法律顧問 | 404 |
| 訟辯律師 | 87 (民事程序：81位，刑事程序：6位) |
| 學生會員 | 224 |
| 香港律師行與註冊外地律師行(包括內地律師行)在香港聯營 | 37 |

# FROM THE COUNCIL TABLE
# 理事會議題

## Consultation on Proposed Amendments to Listing Rules Relating to Share Schemes of Listed Issuers

The Stock Exchange of Hong Kong Limited ("Exchange") issued a consultation paper on 29 October on "Proposed Amendments to Listing Rules Relating to Share Schemes of Listed Issuers".

The Exchange explained that share schemes were established to reward and incentivise participants to contribute to the long-term growth of the issuer and to align their interests with those of the issuer and its shareholders.

The current Chapter 17 of the Exchange's Listing Rules provides a framework that governs share option schemes only. For share award schemes, issuers must seek shareholders' approval for each grant of new shares at a general meeting, or issue new shares under the general mandate.

The Exchange suggested that its proposals aimed to provide issuers with more flexibility to grant share awards and options, whilst still protecting shareholders from excessive dilution by setting a scheme mandate limit and restrictions on certain grant terms.

The Exchange also proposed changes to various requirements in Chapter 17 of the Listing Rules (such as the definition of eligible participants and the requirements for scheme mandate refreshments) in order to align them with the purpose of share schemes and to improve disclosure of grants of share options and share awards.

With the help of the Company Law Committee, the Law Society has produced a submission and responded to the Exchange. Members who are interested may refer to the link below on the Law Society's website for the submission.

https://www.hklawsoc.org.hk/-/media/HKLS/pub_e/news/submissions/20211122.pdf?rev=8427125d8b874d9c8073e0790349fa53&hash=76673AD3EF08958A880286C479CE3690

## 有關建議修訂上市發行人股份計劃的《上市規則》條文的諮詢文件

香港聯合交易所有限公司（聯交所）於 10 月 29 日就有關上市發行人股份計劃的《上市規則》條文修訂建議發表諮詢文件。

聯交所解釋，設立股份計劃是為了獎勵及激勵參與者對發行人的長遠發展作出貢獻， 並確保其利益與發行人及股東的利益一致。

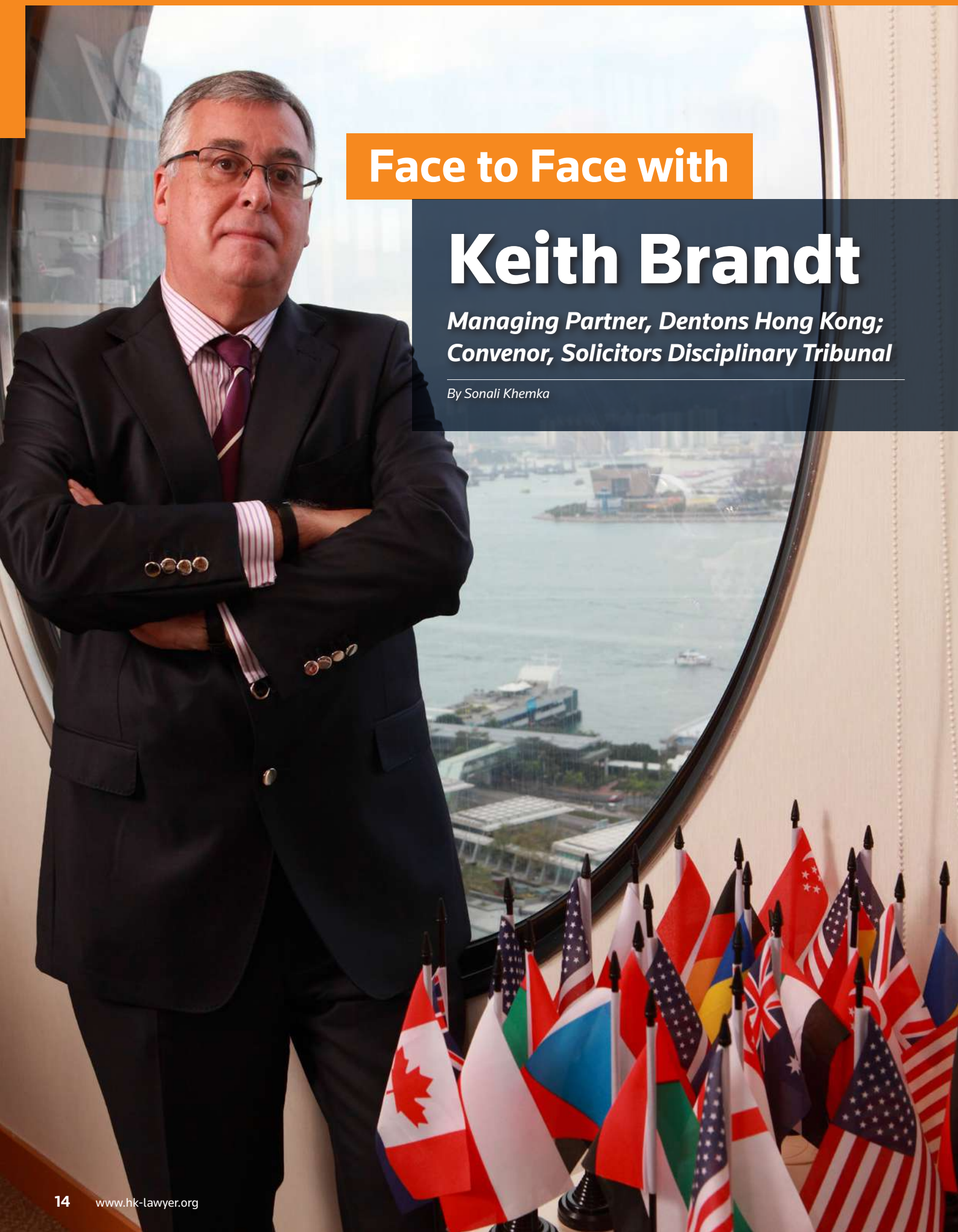
現時《上市規則》第十七章僅提供適用以規管股份期權計劃的框架。股份獎勵計劃方面，發行人每次授出新股須於股東大會上尋求股東批准，又或根據一般性授權發行新股。

聯交所建議旨在讓發行人可更靈活授予股份獎勵及股份期權，同時透過設定計劃授權限額及有關授出股份期權的若干條款限制，保障股東免受大幅攤薄影響。

聯交所亦建議修訂《上市規則》第十七章的各項規定（例如合資格參與者的定義以及更新計劃授權的規定），希望使其與股份計劃的目的一致，並加強有關授予股份期權及股份獎勵的披露質素。

律師會在公司法委員會的協助下完成意見書，並已提交予聯交所。會員可瀏覽律師會網站以查閱意見書全文。

https://www.hklawsoc.org.hk/-/media/HKLS/pub_e/news/submissions/20211122.pdf?rev=8427125d8b874d9c8073e0790349fa53&hash=76673AD3EF08958A880286C479CE3690



# Face to Face with

# Keith Brandt

***Managing Partner, Dentons Hong Kong; Convenor, Solicitors Disciplinary Tribunal***

*By Sonali Khemka*

After a career spanning more than three decades, Keith Brandt was well-positioned to take up the role as the leader of the Solicitors Disciplinary Tribunal – a role that required him to be an epitome of high professional standards. In a conversation with *Hong Kong Lawyer*, he shares the rewards and challenges of the role as well as changing norms in the profession.

## Formative Years

The solicitor of Brandt's father gave him an opportunity to be exposed to the profession from a very young age. "When I was a youngster, my father's solicitor would invite me into the office whilst I was still studying to do some internships and "outdoor clerking", which gave me a sense of what the work was like. My work, as the phrase "outdoor clerking" suggests, involved going to the courts and delivering briefs," shares Brandt. While his summers during his high school years at the law firm led him to studying law, the biggest influence in bringing him to where he is today was his move to Hong Kong. During the wave in the early 1980s of lawyers from the UK going to Hong Kong, Brandt responded to a Times Newspaper advertisement looking for applicants for a three-year legal position in Hong Kong. "I applied to the advertisement and after many rounds of interviews, I landed the role," he recalls.

In terms of shaping his career after his move, Brandt believes three cases were critical to this as they introduced him to Hong Kong and international legal systems in a profound way. "One was the *Wharf v. Eric Cumine* case which was a six-month trial and was my very first experience in Hong Kong of long trials and shortly after that in 1988, I did the *Shun Fung Ironworks v. Director of Buildings and Lands* case which ended up being Hong Kong's then longest running trial," he shares. "I worked with extraordinary talent in both of those cases and learned what makes law such a vibrant environment to live and work in," he adds.

The third significant case was BCCI which gave Brandt international exposure. "It was very much a cross-border case and I spent four years on an airplane traveling around the world, with the liquidators. It gave me the ability to really view the practice of law internationally," he shares.

The final element that has shaped Brandt's career was his return to Hong Kong as a business leader in 2001. "I was given the opportunity as a pioneer to go out and see whether not, we could establish a practice in Asia. Given my experience in Hong Kong and the huge faith my then mentor had in me, I was able to go and lead the practice that actually I now sit in today," shares Brandt. The opportunity gave Brandt the privilege of developing from a legal practitioner into a legal business leader – a transition he mastered by simply learning on his feet. "There was no rule book, and so I made up the rule book as I went along. I obviously had huge influences from the partners and the leaders that I've had the privilege of working with before that, but in terms of starting a practice in Hong Kong, I found myself having to make it up as I went along," he recalls. "Doing it that way, I found out an awful lot about myself as a person and as a business leader. Good judgment, being able to handle different types of people and being an effective salesman were all key in being able to do this," he adds.

## Solicitors Disciplinary Tribunal

The Solicitors Disciplinary Tribunal (SDT) is an independent body dealing with disciplinary cases brought by The Law Society against solicitors, registered foreign lawyers, trainee solicitors or an employee of a solicitor or a registered foreign lawyer in Hong Kong for alleged professional misconduct. Examples of professional misconduct include breaches of any of the provisions of the Legal Practitioners Ordinance, Practice Directions or circulars issued by The Law Society, principles of the Solicitors' Guide and other rules, principles and guidelines governing professional conduct.

The SDT is constituted by members selected from the Solicitors Disciplinary Tribunal Panel who are appointed by the Chief Justice. It has a wide range of disciplinary powers including striking-off the name of a solicitor, suspending a solicitor and imposing a fine not exceeding HKD500,000.

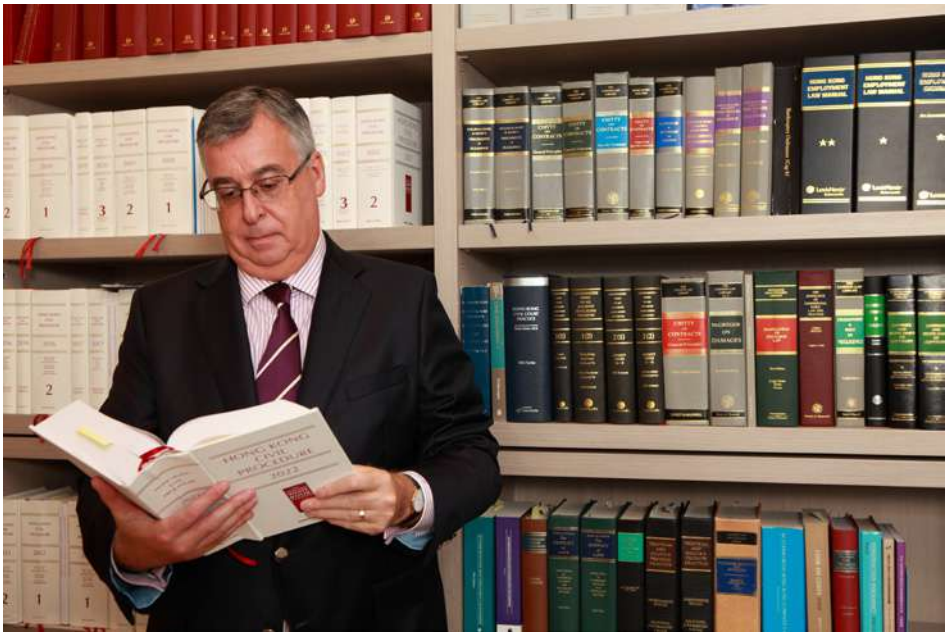
The Tribunal is very close to Brandt's heart. "I am passionate about it and the passion has maybe translated into becoming the leader (Convenor) of the SDT, which is to me a great honour," he

shares. "What the SDT does is that it adjudicates on alleged misconduct and on breaches of rules and regulations that apply to solicitors and solicitors' firm. It is designed to protect the public, the consumers of legal services, to maintain the very high standards that the profession sets for itself. It strives to maintain public confidence in the practice of solicitors in Hong Kong. It does that by ensuring that standards are complied with: honesty, probity, independence and all those traits by which solicitors carry themselves," he explains.

Brandt has been with the Tribunal for thirteen years – he was first appointed to the panel as a member during which he sat on the Tribunal in his capacity as a litigator, providing insight from a procedural aspect to the sessions. He then became Deputy Convenor in 2017 and eventually in May 2020, he was appointed by the then Chief Justice, Mr Geoffrey Ma Tao-Li as Convenor. "The role I have today as the Convenor has evolved since my time as a panel member. By convention, the Convenor does not sit on the Tribunal. My role has become much more administrative," he shares. "When there is an investigation of professional misconduct against a member, a decision is ultimately taken by The Law Society whether to bring the complaint before the SDT. Once that decision is taken and papers are prepared, my role is to receive the complaint and to identify whether or not it is a case which is suitable for disposal by myself as Convenor under the powers of S.9AB of the LPO Cap 159, or whether a Tribunal should be convened. In the majority of cases, it falls to the latter, and my immediate responsibility, and the next steps are for me to then look at identifying suitable members for the Tribunal". Tribunals are traditionally made up of three or four members, two professional members and one lay member. When it comes to foreign registered lawyers, there will always be a foreign registered lawyer on the Tribunal. "Having identified a suitable panel for a particular complaint, I then convene the Tribunal and then hand over the reins to the Chairman and the Tribunal itself to decide whether or not there is a *prima facie* case to answer against the individual whose conduct is under scrutiny. If there is, the Tribunal will proceed. I sit there constantly having to respond to The Law Society, to the Judiciary, and to the Tribunal themselves, its Chair or the Appointed Clerk, answering questions about the Solicitors Disciplinary Tribunal so I am constantly engaged with the various constituent parts of that process," he adds.

With the number of cases being brought in front of the Tribunal increasing, it has been a busy time for Brandt. "The number of cases that are coming forward has increased. There may be many reasons for that, I cannot point to one. But it is becoming increasingly political for obvious reasons. You have the intersection now of things that would have probably never arisen before – the National Security Law by way of example and how that ties in with the roles of solicitors in society," he shares. "Besides that, coming under scrutiny, what has also been evident is the growing incidence of the misappropriation of funds attracting disciplinary oversight. There have been a number of significant interventions recently for misappropriation of funds – these interventions start off with The Law Society and then more often than not fall under my remit in terms of disciplinary follow-up," he adds.

Despite it being an extremely busy role, Brandt finds it rewarding in its own ways. "For me personally, the greatest reward is being able to give something back to the community. Giving back to the Hong Kong community, that has given me such a rich career – my whole professional life has been impacted by the ability to practice in Hong Kong – is the greatest pleasure that I derive. I need to find time whilst leading my firm and I do it happily because it is a position of privilege that I take very seriously. The standards of the profession are very close to my heart – I apply the highest standard to myself and I demand the same from colleagues and members of the profession," he shares. However, there have been unique challenges too. "The curse of the role is that it can be political, and it can be extremely demanding. With the changing nature of Hong Kong generally, the legal profession came under close scrutiny in the recent elections of The Law Society. There has been a lot of talk about whether or not the professions of barristers and solicitors will be fused and whether or not the regulatory powers that The Law Society and The Bar Council have will be stripped and replaced with something else. Therefore, the role that I have, which is an integral part of the process of upholding the rule of law, so far as it applies to the conduct of solicitors within that role, has become increasingly politicised. That has become a growing challenge," he adds. Other challenges include conflicts of interest. "The community in Hong Kong is a very small community. If you



have practiced here for thirty-eight years, you generally know a significant number of members of the profession. Then, when faced with having to look at the conduct of someone you might know or having to find a Tribunal that can handle someone that is sufficiently high profile – these situations can lead to a conflict of interest. I just have to delicately navigate these challenges and overcome them," he shares.

In Brandt's view, the traits that are key to upholding the highest standard as a solicitor, other than overall compliance with the legal practitioners ordinance in all respects, include, respect (including respect for each other), courtesy, discipline, responsiveness, fairness, objectivity, empathy, the ability to listen, the ability to demonstrate to future members of the profession by doing unto yourself what you would do to others, leading by example and ultimately reputation. "The command of respect is hugely important to me and something that should be cherished in terms of your reputation that you enjoy in the office and in the market in which you operate," he shares. "It ultimately also comes down to the legacy that you build – I hope that all the things that I described would be seen in myself and be a part of my own legacy and I hope it is how people view me," he adds.

## Changing Standards

While Brandt is a proponent of maintaining professional standards of the highest quality when it comes to solicitors' practice, he is also aware of changing standards and norms. "The six-month trial and a two-year trial that I mentioned earlier in the conversation would be almost unheard of today in Hong Kong and definitely unheard of anywhere else around the world. And that is a consequence of the changes in the culture of the profession. Technology has significantly changed the way things are done . Notably, there has been the demand for speed of response and the urgency of doing business. While having so much knowledge and efficiency at our disposal, thanks to technology, has been a blessing, it is also a curse because it means the practice of law has become a practice of law 24/7. I work with some partners, notably -the firm's Global CEO, who no matter where he is in the world and which time zone he is in, if you send him an e-mail, you know you will receive a response within four hours. That is the standard in the industry now," he shares. For Brandt, this has almost made work-life balance an illusory concept and he voices this belief through a sign outside his office door that reads "Work life balance is absolutely an illusion," so he suggests (by implication) you should not believe it exists! Brandt is however quick to accept that his views these days are notably deemed to be extreme. This change, due to technology, of law becoming an around-the-clock service, has unfortunately become the norm in the modern world, according to Brandt. "This is a shift in standard that probably did not exist when I first started practicing law," he shares.

On a lighter note, another shift that Brandt has observed is a change in the way lawyers dress. "In the modern world that I am now living in, the partners and our team are much more dressed down and much more casual. I have a hard time understanding this because I come from a generation where you always wear a shirt and tie!" he shares. "If I have a meeting with a potential client or with any other business opportunity or, by way of example, when I get on a plane I always wear a tie. Everybody thinks I am completely deranged for doing that," he adds. So, while Brandt has been entrusted with the responsibility of upholding the highest standards in the profession, after attending too many meetings now where the partners have come "dressed down", he has accepted that some things are just done differently now. ■

專訪

## 德同國際有限法律責任合夥管理合夥人、律師紀律審裁組審裁團召集人

# 布英達

文：孔春秀

憑藉 30 多年的業界經驗，布英達領導律師紀律審裁組，展示高度的專業標準，乃實至名歸。他向《香港律師》分享了擔任該職位的收獲和挑戰，以及行業規範的變遷。

### 成長期

布英達從小便有機會通過其父親的律師接觸到這個行業。他分享道：「在讀書時期，我父親的律師請我去他的辦公室實習及當『戶外文員』，讓我對這份工作有所了解。職如其名，『戶外文員』需要外出，包括前往法庭遞交狀紙或送達文件等。」高中時在律師事務所的暑期工作體驗，令他選擇修讀法律，但成就布英達今時今日的事業的，是移居香港的決定。在 1980 年代初，英國律師出現了赴港潮，同期，布英達應徵了在《泰晤士報》上刊登的一個為期三年的香港法律職位招聘廣告。他回憶道：「我應徵了那個廣告的職位，然後經過多輪的面試，終於獲聘了。」

來港後，布英達認為有三宗案件對他的影響至為深遠，只因三者均令他深入了解香港以及國際法律體系。他說：「首先是 *Wharf v. Eric Cumine* 一案，該案的審訊期長達六個月，亦是我在香港的首宗長時間審訊案件。此後不久，我在 1988 年處理了 *Shun Fung Ironworks v. Director of Buildings and Lands* 案，此案後來成為香港當時審訊期最長的案件。兩宗案件中，我均與不可多得的人才合作，今我體會到是甚麼令法律工作在生活和工作上充滿活力。」他補充，第三宗重要案件是 BCCI，該案令布英達獲得國際視野。他說：「這是一宗跨境案件，我與清盤人們花了四年時間在飛機上，飛往世界各地處理與案件有關的事情，該案讓我有機會看到國際上的法律工作情況。」

影響布英達事業的最後一件事，是他於 2001 年以商業領袖的身份回到香港。他分享道：「我有機會以拓荒者的身份，去探索並尋找機會在亞洲建立業務。由於我有香港的工作經歷，加上當時導師對我的信任，我才有幸領導團隊，一做便做到現在。」這個

機會讓布英達從法律從業者，發展成為法律界的商業領袖——他透過邊做邊學去慢慢掌握這個轉變。他回憶道：「期間沒有規矩可循，所以我一路建立自己的規距。當然，之前有幸與其他合夥人和領袖共事，對我的影響深遠，但在香港建立業務方面，我則必須隨機應變。」他補充：「在過程中，我對自己作為一個人和一個商業領袖漸漸有了更深的理解。良好的判斷力、能與不同類型的人打交道、做個有效的推銷員，都是擔任這項工作的要素。」

## 律師紀律審裁組

律師紀律審裁組（審裁組）是一個獨立機構，負責處理律師會對律師、註冊外地律師、見習律師或由律師或註冊外地律師聘請的香港僱員，涉嫌專業失當而提起的紀律處分案件。專業失當的例子包括違反《法律執業者條例》的任何條文、《執業指引》或律師會發出的通告、《律師專業操守指引》的原則，以及規管專業操守的其他規則、原則和指引。

審裁組是由首席法官任命的律師紀律審裁團中選出成員而組成。它擁有廣泛的紀律處分權力，包括把律師從律師登記冊上剔除、暫時吊銷律師資格及處以不超過港幣 500,000 元的罰款。

布英達對審裁組的工作很上心。他說：「我對擔任審裁組領導者（召集人）的工作充滿熱誠，獲委此職對我來說是莫大榮幸。」他解釋：「審裁組對涉嫌失當和違反適用於律師和律師事務所的規則和法規的行為作出裁決。它旨在保障公眾（即法律服務的消費者），以維持法律界自我設定的極高標準。通過確保律師們遵守標準：誠實、正直、獨立及律師須具備的一切其他特質，致力維持公眾對香港執業律師的信心。」

布英達已服務審裁組超過 13 年，最初他被委任為審裁團的成員，以訴訟律師的身份，從程序方面提供意見。他隨後於 2017 年成為副召集人，並於 2020 年 5 月獲時任首席法官馬道立任命為召集人。他分享道：「自我擔任審裁團成員以來，召集人的職責在一直演變。按照慣例，召集人不能擔任審裁員。我的工作變得偏重行政方面。在對會員的專業失當行為進行調查後，律師會將就是否將申訴提交給審裁組作最終決定。一旦決定提交並準備好文件，我的職責是接收申訴，並決定案件是否適宜由我作為召集人，根據《法律執業者條例》（第 159 章）第 9AB 條賦予的權力處理該案，或者召集審裁組。大多數案

件都屬於後者，而我接下來的責任，就是尋找合適的審裁組成員。」審裁組傳統上由三至四名成員、兩名專業成員和一名非專業成員組成。審理涉及外地註冊律師的案件時，則審裁組必須要有外地註冊律師。他補充道：「為特定的申訴選定合適的審裁組小組人選後，我便會召集他們開庭，然後把控制權交給主席和審裁組，決定表面證據是否成立。如果成立，審裁組將繼續審理。期間我須不斷回應律師會、司法機構和審裁組、審裁組主席或委任書記，回答他們有關審裁組的問題。因此，我一直參與該過程的各個環節。」

隨著提交審裁組的案件數量不斷增加，布英達的工作更加繁重。他說：「需要審理的案件數量有所增加，當中的因由可以有很多，我不能以偏概全，但顯然形勢變得越來越政治化。以前可能從未出現過的事件，現在交集在一起，例如《國家安全法》及它與律師的社會角色之間的關係。」他補充道：「此外，挪用資金而引致紀律審查和監督的事件也越來越多。最近有一些針對挪用資金的重大干預措施出台，這些干預措施由律師會開始推行，然後在紀律跟進方面往往屬於我的職權範圍內。」

儘管職務繁重，但布英達認為它饒富意義。他分享道：「對我個人而言，最大的意義是能夠回饋社會，香港社會讓我擁有如此豐盛的事業——在香港執業影響了我整個事業生涯——我很榮幸能夠回饋香港。在領導律師事務所的同時，我要抽出時間處理審裁組的工作，但我很樂意這樣做，因為擔任這個職位是我的榮幸，而我非常認真對待它。我很重視行業的標準——我要求自己達到最高標準，對同事和同業亦然。」然而，他也面對獨特的挑戰。他說：「這個職位的難處在於它可以很政治化，而且要求極高。隨著香港整體環境的轉變，法律界在最近的律師會選舉中備受關注。大律師和事務律師的專業會否被融合，以及律師會和大律師公會的監管權力會否被剝奪和取而代之的問題，引起了廣泛討論。我的職位負責把關及維持律師的操守，是維護法治過程中不可或缺的一部分，也因此變得越來越政治化，亦越來越具挑戰性。」其他挑戰還包括利益衝突。他分享道：「香港是個很小的社會，在這裏執業 38 年後，我自然認識相當多的業內人士。故此而，每當需要審理認識的人，或者挑選審裁組成員以處理知名度高的人士時，我便可能面對利益衝突，而我必需巧妙地應對並克服這些挑戰。」

布英達認為，作為律師，除了遵守《法律執業者條例》外，保持最高標準的關鍵還包括尊重（包括互相尊重）、禮貌、紀律、反應能力、公平、客觀、同理心、傾聽的能力、以身作則。他說：「尊重對我來說非常重要，並且應該珍惜在辦公室和市場上享有的聲譽。」他補充道：「這最終會成為你建立的承傳——我希望我說的所有特質，均能體現在我自己身上，並成為我承傳下去的一部分，亦希望給別人留下這樣的印象。」

## 標準變遷

儘管布英達支持在律師執業方面保持最高專業標準，但他也意識到標準和規範正在改變。他分享道：「我之前提到歷時六個月和兩年的審訊，在今天的香港幾乎已成絕響，而在世界其他地方也絕對聞所未聞——這是業界文化改變的結果。科技顯然改變了我們做事的方式。譬如，人們愈來愈要求反應快，做事快。我們憑藉科技可以擁有浩瀚的知識和高效率，這是一種祝福，也是一種詛咒，因為這亦意味著法律工作已變成全天侯無休止的工作。曾和我合作的一些合夥人，尤其是本律師事務所的全球首席執行官，如果你給他發一封電郵，不論他身處何方，在哪個時區，他都一定會在四小時內回覆——這就是現時的業界標準。」對於布英達來說，這幾乎使工作與生活平衡變成一個虛幻的概念。他在自己辦公室門外掛了一個牌子，上面寫著「工作與生活平衡絕對是幻覺」，所以他建議（暗示）大家不應相信它存在！然而，布英達承認，他的觀點被認為是極端的。他表示，因為有了科技，全天候法律服務已不幸成為現代世界的常態。他說：「這是我剛開始從事法律工作時可能不存在的標準。」

布英達觀察到另一個相對輕鬆的改變，是律師穿著的變化。他說：「在我現在所處的現代世界裡，其他合夥人和我們團隊的穿著變得更加休閒隨意。我很難理解這一點，因為我來自必須穿襯衫和打領帶的時代！」他補充：「如果我與潛在客戶見面，或者有任何其他商業機會，又或例如當我上飛機時，我總是會打領帶——所有人都認為我這樣做是精神錯亂。」因此，雖然布英達被委以維護行業最高標準的責任，但出席了太多合夥人「穿便服」的會議之後，他也接受了有些事情現在與以往確實有所不同。■

# LAW SOCIETY NEWS
# 律師會新聞

## Celebration of the 20th Anniversary of the Establishment of The Hong Kong Coalition of Professional Services Seminar cum Luncheon

The Law Society is one of the founding members of The Hong Kong Coalition of Professional Services ("HKCPS"). In celebration of its 20th anniversary, HKCPS held a seminar cum luncheon on 3 December 2021. Vice-Chairman of the National Committee of the Chinese People's Political Consultative Conference and Founding Chairman of HKCPS Mr. C Y Leung, Deputy Director-General of the Department of Educational, Scientific and Technological Affairs of the Liaison Office of the Central People's Government in the HKSAR Mr. Ye Shuiqiu, Financial Secretary Paul Chan, and Secretary for Justice Teresa Cheng were invited to speak at the event.

President C. M. Chan was invited to join as one of the seminar speakers under the title "Challenges & Opportunities for and Contributions by Professionals under the 14th Five-Year Plan particularly in the GBA", covering topics such as the professional indemnity for practicing lawyers in the Greater Bay Area, industry regulatory issues, as well as training and assessment arrangements after the GBA Legal Professional Examination.

## 香港專業聯盟成立 20 周年研討會暨午宴

律師會是香港專業聯盟的其中一個創會成員。香港專業聯盟於 2021 年 12 月 3 日舉辦了研討會暨午宴，慶祝成立二十周年。全國政協副主席暨專業聯盟創會主席梁振英先生、中央人民政府駐香港特別行政區聯絡辦公室教育科技部副部長葉水球先生、財政司司長陳茂波先生及律政司司長鄭若驊資深大律師等嘉賓獲邀在活動上致辭。

會長陳澤銘律師獲邀擔任研討會嘉賓之一，並以「國家十四五規劃下，專業界於大灣區的挑戰、機遇與貢獻」為題分享真知灼見，當中提及大灣區律師在大灣區執業的專業彌償保險安排、行業規管問題、大灣區律師執業考試後的培訓及考核具體安排等。

Representatives of the Law Society took a group photo with Vice-Chairman of the National Committee of the Chinese People's Political Consultative Conference and Founding Chairman of HKCPS Mr. C Y Leung, Financial Secretary Paul Chan, and Secretary for Justice Teresa Cheng.
律師會代表與全國政協副主席暨專業聯盟創會主席梁振英先生、財政司司長陳茂波先生及律政司司長鄭若驊資深大律師等嘉賓合照。

# "Youth Dream Seminar Series"

The Greater Bay Area Young Talents Association ("GBAYTA") held the "Youth Dream Seminar Series" on 16 December 2021 and Mr. C. M. Chan, President of the Law Society, was invited to give a talk. The hybrid seminar attracted over 80 professionals joining physically and virtually.

President talked about Hong Kong's rule of law, opportunities under the 14th Five-Year Plan and GBA development, as well as a brief introduction on LawTech's development in recent years.

Ms. Vivian Ji (left), Chairperson of the GBAYTA, presented a Certificate of Appreciation to President C. M. Chan (right).
大灣區青年專才協會主席季輝律師（左）向律師會會長陳澤銘律師（右）頒發感謝狀。

# 「青春夢想，同向同行」系列講座

大灣區青年專才協會於 2021 年 12 月 16 日舉行「青春夢想，同向同行」的系列講座，並邀請律師會會長陳澤銘律師擔任主講嘉賓。講座以實體及網上形式同步舉行，成功吸引到超過 80 名專業人士親身和網上出席。

會長在講座中介紹香港的法治、國家「十四五」規劃綱要和大灣區發展下的機遇，以及簡介法律科技近年的發展。

# Meeting with the Legal and Compliance Department of China Resources Group

The Legal and Compliance Department of China Resources Group visited the Law Society on 23 December 2021, and was received by Vice-President of the Law Society and Chairman of the Greater China Legal Affairs Committee Roden Tong, as well as Council Member Careen Wong. The meeting attendees exchanged views on the development of Hong Kong's legal profession, the 14th Five-Year Plan and opportunities for the legal profession under the development of the GBA.

Mr. Roden Tong, Vice-President of the Law Society and Chairman of the Greater China Legal Affairs Committee (third from left) exchanged souvenir with Mr. Li Shan Song, Deputy Group General Counsel, Legal and Compliance Department of China Resources Group (fourth from right).
律師會副會長暨大中華法律事務委員會主席湯文龍律師（左三）與華潤集團法律合規部副總經理李山松律師（右四）交換紀念品。

# 與華潤集團法律合規部會面

華潤集團法律合規部於 2021 年 12 月 23 日來訪律師會，由律師會副會長暨大中華法律事務委員會主席湯文龍律師及理事會成員黃巧欣律師接見。雙方就香港律師行業發展、「十四五」規劃及大灣區發展為法律業界提供的機遇等議題進行交流。

## Meeting with Representatives of the Hong Kong Trade Development Council

Over the years, the Law Society and the Hong Kong Trade Development Council ("HKTDC") have been working closely on promoting Hong Kong's professional legal services through joint seminars and large-scale overseas events.

To strengthen collaboration, Mr. Amirali Nasir and Mr. Roden Tong, Vice-Presidents of the Law Society, met with representatives of the HKTDC's Service Promotion Department on 22 December 2021 to discuss cooperation opportunities in the coming year.

Mr. Amirali Nasir (second from left) and Mr. Roden Tong (first from right), Vice-Presidents of the Law Society, presented souvenirs to representatives of the HKTDC's Service Promotion Department.
律師會副會長黎雅明律師（左二）及湯文龍律師（右一）向貿發局服務業拓展部代表致送紀念品。

## 與香港貿易發展局代表會面

多年來，律師會與香港貿易發展局（「貿發局」）一直保持緊密合作，透過共同舉辦不同研討會及海外大型活動，積極推廣香港的專業法律服務。

為了加強聯繫，律師會副會長黎雅明律師及湯文龍律師在 2021 年 12 月 22 日與貿發局服務業拓展部代表會面，討論新一年的合作空間。

## Rule of Law Forum (2021)

The Rule of Law Forum (2021) is one of the three flagship events of the China Law Society. Last year, the forum was held in hybrid format in Shenzhen on 23 December 2021 under the theme "Persevering Comprehensive Law-based Governance; Striving to Advance Rule of Law in China". Mr. C. M. Chan, President of the Law Society, was invited to give a speech at a Roundtable Meeting under the theme "Innovation of the Rule of Law Legal Systems in Hengqin and Qianhai Cooperation Zones". The forum attracted an estimate of 250,000 online viewers through live streaming.


Mr. C. M. Chan , President of the Law Society of Hong Kong, was one of the speakers at the forum.
律師會會長陳澤銘律師擔任論壇講者之一。

## 中國法治論壇（2021）

中國法治論壇（2021）是中國法學會年度舉辦的三大論壇之一。去年，論壇以「堅持全面依法治國 為法治中國建設而奮鬥」為題，於 2021 年 12 月 23 日透過現場和網上並行模式在深圳舉行。律師會會長陳澤銘律師獲邀在「橫琴、前海兩個合作區法治體系創新」的圓桌討論環節中作分享。此次論壇吸引了估計近 25 萬人在線實時觀看。

# Sichuan-Hong Kong-Macau International Commercial Legal Services Cooperation and Exchange Roundtable Meeting

To promote closer collaboration between Sichuan, Hong Kong and Macau, the "Sichuan-Hong Kong-Macau International Commercial Legal Services Cooperation and Exchange Roundtable Meeting" was held on 12 January in a hybrid format. The event focused on opportunities regarding the Tianfu Central Legal Services District. As one of the speakers, President C. M. Chan took the opportunity to promote Hong Kong's legal services to Sichuan counterparts.


President C. M. Chan promoted Hong Kong's legal services in the form of a pre-recorded video.
會長陳澤銘律師以預先錄製的視頻向四川同業宣傳香港的法律服務。

# 川港澳國際商事法律服務合作交流高峰圓桌會議

為促進四川、香港和澳門緊密合作，「川港澳國際商事法律服務合作交流高峰圓桌會議」於 1 月 12 日透過現場和網上並行模式舉行，聚焦有關天府中央法務區的機遇。作為演講嘉賓之一，會長陳澤銘律師藉此機會向四川同業宣傳香港的法律服務。

# The Ninth Joint Meeting for Lawyers Associations in the Greater Bay Area

The Ninth Joint Meeting for Lawyers Associations in the Greater Bay Area was hosted by the Macau Lawyers Association virtually on 17 January. Representatives of the Law Society included Mr. C. M. Chan, President of the Law Society; Mr. Roden Tong, Vice-President and Chairman of the Greater China Legal Affairs Committee; Mr. Thomas So, Past President and Chairman of the Greater Bay Area Sub-Committee; Mr. Neville Cheng and Mr. James Wong, Vice-Chairmen of the Greater China Legal Affairs Committee; and Ms. Heidi Chu, Secretary General of the Law Society.

Items discussed at the meeting included setting up a joint working group in civil and commercial law of the three regions, supporting the career development of young lawyers, ensuring smooth transition after election of new councils and/or supervisory boards of lawyers associations, as well as the grooming of young lawyers and promotion of female lawyers' well-being.

# 第九次粵港澳大灣區律師協會聯席會議

由澳門律師公會主持的第九次粵港澳大灣區律師協會聯席會議於 1 月 17 日透過網上會議形式舉行。律師會的出席代表包括會長陳澤銘律師、副會長暨大中華法律事務委員會主席湯文龍律師、前會長暨粵港澳大灣區附屬委員會主席蘇紹聰律師、大中華法律事務委員會副主席鄭宗漢律師和黃江天律師，以及秘書長朱潔冰律師。

粵港澳三地律師在會上就多個議題作交流，包括討論成立三地民商法研究小組、支持青年律師職業發展、確保新一屆律師協會理事會和／或監事會選舉後順利交接、培養青年律師及促進女律師福祉等。


The Ninth Joint Meeting for Lawyers Associations in the Greater Bay Area was held virtually under the pandemic.
第九次粵港澳大灣區律師協會聯席會議以線上形式舉行。

# Joint Webinar with the Malaysian Bar

Concluding the 2021 joint webinar series coordinated by the International Legal Affairs Committee, a joint webinar with the Malaysian Bar was successfully held on 10 December 2021 and was well received by around 70 registrations from the two jurisdictions.

Under the theme "Structuring Cross Border Green Sukuk", esteemed speakers from both associations shared their valuable experience and insights on the opportunities and benefits brought about by the development of Islamic finance, green sukuk and green bonds in the two places, for instance, the Hong Kong Government Green Bond Programme which was set up in 2018 and the recent 2021 United Nations Climate Change Conference (COP26). The Law Society was also honoured to have the gracious presence of Mr. Yap Wei Sin, Consul-General of Malaysia in Hong Kong and Macau, to extend a warm welcome to the webinar attendees; and Ms. Saniza Othman, Vice Chairlady of the Malaysian Chamber of Commerce (Hong Kong & Macau), participating as a panellist to talk about the work of the Chamber and advantages of doing business in Hong Kong.

The full webinar recording is now available on the "International Desk" of the Law Society's website if you have missed the webinar or would like to revisit it.


Eminent speakers from Hong Kong and Malaysia exchanged their insightful opinions on green finance from various perspectives.
來自香港和馬來西亞的知名講者從不同角度就綠色金融交換了寶貴意見。

(From left) Vice-President Amirali Nasir; President C. M. Chan; Mr. Yap Wei Sin, Consul-General of Malaysia in Hong Kong and Macau; and Ms. Saniza Othman, Vice Chairlady of the Malaysian Chamber of Commerce attended and spoke at the joint webinar.
(左起) 副會長黎雅明律師、會長陳澤銘律師、馬來西亞駐香港及澳門總領事葉威信先生及香港及澳門馬來西亞商會副主席 Saniza Othman 女士出席網上研討會並發表演講。

# 與馬來西亞律師協會合辦網上研討會

國際法律事務委員會 2021 年的聯合網上研討會系列，以與馬來西亞律師協會舉辦的聯合網上研討會作結。該網上研討會於 2021 年 12 月 10 日成功舉行，吸引了來自兩個司法管轄區約 70 位參加者。

研討會的主題為「計劃跨境綠色伊斯蘭債券」，兩個協會的講者就兩地發展伊斯蘭金融、綠色伊斯蘭債券和綠色債券所帶來的機遇和得益，分享他們的寶貴經驗和見解，例如於 2018 年設立的政府綠色債券計劃和 2021 年聯合國氣候變化大會 (COP26)。律師會很榮幸邀得馬來西亞駐香港及澳門總領事葉威信先生向與會者致歡迎辭，以及香港及澳門馬來西亞商會副主席 Saniza Othman 女士參與討論環節，介紹商會的工作及在香港營商的好處。

如果您錯過了該網上研討會或想重溫其內容，歡迎瀏覽律師會網站的「國際法律平台」。

# Islamic Finance Working Party – Webinar on Islamic Finance and Halal Certification

The Islamic Finance Working Party ("IFWP") under the Practice Management Committee organised a webinar entitled "Explore the Untapped Opportunities: Innovations in Islamic Finance, Halal Food then Halal Tourism" on 9 December last year. The webinar was well attended by over 70 members and industry players representing different sectors including Consul Generals and representatives of financial institutions.

The panel discussion featured speakers Vice-President and IFWP Chairman Shaikh Amirali Nasir, Founder of Nasirs; IFWP member Ms. Daphne Lo, Consultant of Li & Partners; IFWP member Mr. Kingsley Ong, Partner of CMS and Ms. Sharifa Leung, Managing Director of 3 Hani Enterprises Limited. The panellists provided an introduction to the economic and legal framework of the Islamic financial system before looking into the concept of Halal and the Halal certification process in both Hong Kong and Mainland China. They further highlighted how innovative financial technology like blockchain can be leveraged in the Islamic economy and offers abundant opportunities to industry players.


From left: Mr. Kingsley Ong, Shaikh Amirali Nasir, Ms. Sharifa Leung and Ms. Daphne Lo
左起：王世偉律師、副會長黎雅明律師、梁雪花女士及盧鳳儀律師

# 伊斯蘭金融工作小組 — 有關伊斯蘭金融和清真認證的網上研討會

執業管理委員會轄下的伊斯蘭金融工作小組（小組）於去年 12 月 9 日舉辦了一場網上研討會，主題為「探索機會：伊斯蘭金融科技、清真食品和清真旅遊」，吸引了來自不同界別的 70 多位會員和業界代表參加，包括總領事和金融機構的代表。

講者包括副會長兼小組主席、黎雅明律師行創辦人（謝赫）黎雅明律師；小組成員、李偉斌律師行顧問律師盧鳳儀律師；小組成員、CMS 合夥人王世偉律師；及三亨事務所有限公司總經理梁雪花女士。講者介紹了伊斯蘭金融體系的經濟和法律框架，然後探討清真概念以及香港和內地的清真認證程序，並進一步討論在伊斯蘭經濟中如何利用區塊鏈等創新金融科技，為行業參與者提供大量機會。

# NOTARIES NEWS
# 香港國際公證人協會新聞

## AGM on 17 November 2021

Hong Kong Society of Notaries' Annual General Meeting was held on 17 November 2021 at The Hong Kong Club, followed by the Members' Dinner Gathering.

Mr. Kenneth H. W. Sit (President), Ms. Au Miu Po (Vice-President), Mr. David Beaves, Mr. Chan Bing Woon, Ms. Chang Lai Shan Eliza, Ms. Ella Shuk Ki Cheong, Mr. Gordon Chu, Ms. Hannah C. L. Ha, Mr. Andrew Hart, Mr. Jesse Kwok Hong Yee, Mr. Kwong Chi Keung, Ms. Lam Yuet Ming Emily, Ms. Rebecca Lo and Mr. Ma Ching Nam were re-elected as members of the Council.

Mr. Sit has completed his 2-year tenure as President and is succeeded by Ms. Au Miu Po who was unanimously elected President at the Council meeting held on 12 January. Mr. Gordon Chu was unanimously elected Vice-President at the same meeting.

Despite the pandemic, we had very good attendance at both the 2021 AGM and the 2021 Members' Dinner Gathering. Fine wine and cuisine were served under a cozy atmosphere which was conducive to the further promotion of friendship between members.

The Hong Kong Society of Notaries currently has 393 members, the majority of whom have over 15 years post-admission qualification as solicitors. Notaries Public are primarily concerned with the preparation and authentication of documents for use abroad, serving a vital role in international trade.

Only solicitors with at least 7 years' post-qualification experience are eligible to apply for appointment as notaries public after passing the requisite professional examination.

## 2021 年 11 月 17 日的週年大會

香港國際公證人協會週年大會於 2021 年 11 月 17 日在香港會舉行，隨後舉行會員聚餐。

薛海華先生（會長）、區妙寶女士（副會長）、David Beaves 先生、陳炳煥先生、鄭麗珊女士、張淑姬女士、諸國輝先生、夏卓玲女士、Andrew Hart 先生、郭匡義先生、鄺志強先生、林月明女士、盧孟莊女士及馬清楠先生獲重選為理事會成員。

薛海華先生已完成其兩年的會長任期，理事會已在 1 月 12 日的會議中一致選出其繼任人區妙寶女士為會長。諸國輝先生亦在該會議中獲一致選為副會長。

在疫情下會員仍然踴躍出席 2021 年週年大會和會員聚餐，享用美酒佳餚，在溫馨的氣氛下增進友誼。

香港國際公證人協會現時有 393 名會員，大多數會員均具備超過 15 年的律師資格。公證人的主要工作為準備和認證在海外使用的文件，在國際貿易中起著至關重要的用。

律師必須具備最少 7 年經驗，並通過必須的專業考試後，才合資格申請成為公證人。

The President, the Vice-President, Ms. Elsie Leung and Members at the 2021 Annual General Meeting
會長、副會長、梁愛詩女士及會員出席 2021 年週年大會

The President, Council Member and Members at the 2021 Members' Dinner Gathering
會長、理事會成員及會員出席 2021 年週年大會

The newly elected President, Ms. Au Miu Po
新任會長區妙寶女士

The newly elected Vice-President, Mr. Gordon Chu
新任副會長諸國輝先生

# A New Era for Personal Information Protection in Mainland China

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The Mainland's personal information protection regulatory regime has recently been substantiated by the implementation of the Personal Information Protection Law ("PIPL") on 1 November 2021.

It is essential for legal practitioners to be familiar with the PIPL, particularly since the law not only applies to individuals and entities processing personal information in the Mainland, but also has extraterritorial application under certain circumstances. Furthermore, the law regulates outbound transfer of personal information (including transfer from the Mainland to the Hong Kong SAR), and imposes significant penalties and legal consequences on non-compliance.

## Coverage of the PIPL

The PIPL regulates the processing of personal information. "Personal information" is broadly defined as any information relating to identified or identifiable natural persons recorded in electronic or other means, excluding anonymized information. Therefore, a piece of information is regarded as personal information as long as

the information could facilitate the identification of a natural person. Furthermore, processing activities widely cover collection, storage, usage, reorganization, transmission, provision, disclosure and deletion of personal information.

Moreover, the PIPL has introduced a specific category of personal information, namely "sensitive personal information", which includes biometrics, religious beliefs, specific identity, medical health, financial accounts, personal whereabouts, and the personal information of minors under 14 years old. In general, more stringent regulations are applicable on the processing of sensitive personal information.

### Outbound Transfer of Personal Information

Regulation on outbound transfer of personal information is one of the most prominent features of the PIPL discussed in the business community. Different regulations are applicable depending on the nature of the processors.

For Critical Information Infrastructure Operators ("**CIIOs**") and entities processing personal information to a significant magnitude as specified by the Cyberspace Administration of China (the "CAC"), personal information could only be transferred outbound after satisfactory completion of a security assessment conducted by the CAC. A CIIO is an operator of "Critical Information Infrastructure", which is defined in the Regulation for the Protection of the Security of Critical Information Infrastructure as important cyber facilities and information systems relating to public communications and information services, energy, transportation, water conservancy, finance, public services, electronic government services, national defence technology industry and other important industries and fields, and other important cyber facilities and information systems whereby any damage, loss of function or data leakage of which may seriously endanger national security, national economy, people's livelihood and public interests.

For other entities, personal information could be transferred outbound after one of the following conditions is fulfilled: (i) a security assessment by the CAC having been passed; (ii) certification from a professional institution having been obtained; (iii) a standard agreement with the offshore recipient of personal information having been entered into; and (iv) other conditions to be specified by laws and regulations.

Furthermore, no personal information stored in the Mainland could be provided to any foreign judicial or law enforcement agencies without the approval of the relevant Mainland authority.

### Extraterritorial Application

Entities outside the Mainland which process personal information of individuals within the Mainland may be subject to extraterritorial application of the PIPL under certain circumstances. These circumstances include offshore processing for the purpose of providing products or services to individuals within the Mainland, or offshore processing for assessing or evaluating the behaviour of individuals within the Mainland. The PIPL requires these offshore processors to establish a specialized institution or appoint a representative in the Mainland to be responsible for personal information protection.

### Requirement to Obtain Consents, and Rights of Individuals

Under the PIPL, personal information may only be processed with consents from the relevant individuals or on other grounds permitted under the PIPL. These grounds include necessity to enter into or perform a contract, necessity for human resources management implemented as per the labour rules and systems legally established and the labour contracts legally signed, necessity to perform legal duties or legal obligations, necessity to respond to public health emergency or to protect life, necessity for health and property safety, and for the purpose of news reporting.

Unless otherwise provided in other laws and regulations, an individual has the right to know, the right to restrict or reject the processing of personal information by others, the right to inquire and request for a copy of personal information from processors, the right to rectify incorrect or incomplete information, and the right to have personal information deleted. Processors are obliged to set up a convenient mechanism for individuals to exercise the above rights.

These general principles in the PIPL for the protection of individuals' interests carry certain similarities to the principles provided in the Hong Kong Personal Data (Privacy) Ordinance.

### Automated Decision-Making

In respect of the increasing use of algorithms in business, the PIPL entails general provisions regulating automated decision-making.

Under the PIPL, personal information processors making use of automated decision-making functions should ensure the transparency of the decision-making process and the fairness and impartiality of the outcomes, and that there shall be no unreasonable price discrimination against individuals.

If a processor uses automated decision-making functions for push notification or marketing, the processor should provide individuals with an option for not receiving personalized information or methods for convenient opt-out.

### Legal Liabilities

Any individuals or entities which fail to comply with the PIPL may be subject to an order to correct, confiscation of illegal income, penalties, business suspension or revocation of licenses. The amount of penalty to be imposed is dependent upon the severity of the breach, with a maximum of RMB 50 million or 5% of the processor's revenue of the prior year. It is unclear from the PIPL as to whether such revenue relates to that of the infringing entity only or that of the group to which the infringing entity belongs.

As regards burden of proof, the PIPL has adopted a special arrangement. If the processing of personal information damages individuals' rights and causes harm and the processor cannot prove that there is no fault on its part, the processor shall bear legal liabilities accordingly.

### Compliance Actions

For the purpose of compliance with the PIPL, in practice entities involved in processing Mainland originated personal information should consider taking the following actions:

1. Consider whether the entity is classified as a CIIO or is involved in handling a significant amount of personal information, and if so, beware of the more stringent regulatory requirements;

2. Assess whether there exists any of the following activities, and if so, beware of the relevant regulatory requirements:
   - outbound transfer of personal information,
   - use of personal information for automated decision-making,
   - factors conducive to extraterritorial application of the PIPL;

3. Adopt necessary measures to protect personal information, such as:
   - categorizing personal information for appropriate compliance,
   - formulating operation procedures to obtain necessary consents and handle enquiries and requests from individuals under the PIPL,
   - implementing security measures (e.g. encryption and anonymization),
   - conducting regular education and training,
   - formulating and implementing emergency plans for personal information security incidents, including notifying the relevant authority and individuals,
   - conducting regular compliance audit;

4. Prepare a personal information impact assessment report if there is any processing of sensitive personal information, use of personal information for automated decision-making, entrusting another party to process personal information, publicizing personal information, or outbound transfer of personal information;

5. Appoint a personal information protection officer if the quantity of personal information processed reaches the threshold set by the CAC.

For the sake of completeness, it is worth noting that the PIPL, together with the Data Security Law and the Cybersecurity Law, form a comprehensive regulatory basis on cyber / data security and personal information protection in the Mainland. In general, the PIPL regulates the processing of personal information; the Data Security Law monitors the processing of data of all forms with specific emphasis in the processing of important data; and the Cybersecurity Law mainly lays a regulatory foundation for cyber-operators and CIIOs.

This article has only focused on discussing the PIPL, and practitioners should also consider the application of the Data Security Law and the Cybersecurity Law holistically when devising an appropriate compliance programme. ■

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# 中國內地個人信息保護法律進入新的階段

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內地於 2021 年 11 月 1 日實施《個人信息保護法》，該法律進一步完善了內地個人信息保護方面的監管制度。

法律執業者需要認識該《個人信息保護法》，因為該法不僅適用於在內地處理個人信息的個人和實體，在某些情況下亦具有域外效力。此外，該法對向境外提供個人信息（包括從內地向香港特別行政區提供個人信息）進行了規管，並對違規行為處以重大處罰和法律後果。

## 《個人信息保護法》的涵蓋範圍

《個人信息保護法》規範個人信息的處理。「個人信息」被廣泛定義為以電子或者其他方式記錄的與已識別或者可識別的自然人有關的各種信息，當中不包括匿名化處理後的信息。因此，只要能夠識別自然人的信息，均視為個人信息。此外，個人信息的處理廣泛地包括個人信息的收集、存儲、使用、加工、傳輸、提供、公開、刪除等。

《個人信息保護法》還設定了一類

特別的個人信息，即「敏感個人信息」，包括生物識別、宗教信仰、特定身份、醫療健康、金融賬戶、行踪軌迹等信息，以及不滿十四周歲未成年人的個人信息。一般而言，處理敏感個人信息的規管更為嚴格。

### 向境外提供個人信息

《個人信息保護法》在商界中最具討論性的一點，是向境外提供個人信息的規定。處理者的性質不同，適用的規定也有所不同。

關鍵信息基础設施運營者和處理個人信息達到國家網信部門規定數量的個人信息處理者，須通過國家網信部門組織的安全評估，才可向境外提供個人信息。根據《關鍵信息基礎設施安全保護條例》，所謂「關鍵信息基础設施」是指公共通信和信息服務、能源、交通、水利、金融、公共服務、電子政務、國防科技工業等重要行業和領域的，以及其他一旦遭到破壞、喪失功能或者數據泄露，可能嚴重危害國家安全、國計民生、公共利益的重要網絡設施、信息系統等。

至於其他的實體，須具備以下條件之一才可向境外提供個人信息：(i) 通過國家網信部門組織的安全評估；(ii) 經專業機構進行認證；(iii) 與境外接收方訂立標準合同；或 (iv) 法律、行政法規規定的其他條件。

此外，非經內地主管機關批准，任何個人或實體不得向外國司法或者執法機構提供存儲於內地的個人信息。

### 域外效力

位於境外的實體在處理境內個人信息的活動時，在這些情況下有機會適用《個人信息保護法》，包括：以向境內自然人提供產品或者服務為目的、在境外分析或評估境內自然人的行為等。《個人信息保護法》規定境外的個人信息處理者，須在境內設立專門機構或者指定代表，負責處理個人信息保護相關事務。

### 取得個人同意的規定及個人權利

根據《個人信息保護法》，個人信息處理者必須取得個人的同意，或符合下列情況之一，方可處理個人信息，包括為訂立、履行個人作為一方當事人的合同所必需，按照依法制定的勞動規章制度和依法簽訂的集體合同實施人力資源管理所必需，為履行法定職責或者法定義務所必需，為應對突發公共衛生事件或者緊急情況下為保護自然人的生命健康和財產安全所必需，及為實施新聞報道等。

除非法律、行政法規另有規定，個人對其個人信息的處理享有知情權、限制或者拒絕他人處理個人信息的權利，向處理者詢問和索取個人信息副本的權利、發現其個人信息不準確或者不完整的，更正不正確或不完整的信息的權利，以及刪除個人信息的權利。個人信息處理者有義務建立便捷的個人行使權利的申請受理和處理機制。

《個人信息保護法》中保護個人利益的一般原則與香港《個人資料（私隱）條例》的原則有某些相似之處。

### 自動化決策

鑑於在商業活動中越來越多使用演算，《個人信息保護法》包含了規範自動化決策的一般規定。

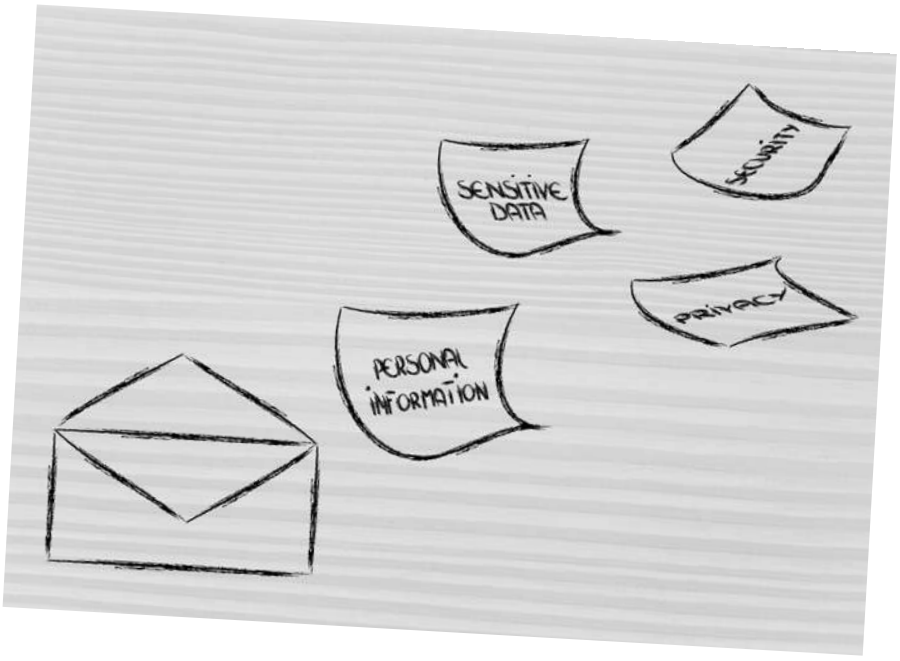
根據《個人信息保護法》，個人信息處理者利用個人信息進行自動化決策時，應當保證決策的透明度和結果的公平公正，不得對個人在交易價格等交易條件上實行不合理的差別待遇。

如果處理者通過自動化決策方式向個人進行信息推送或商業營銷，則應同時提供不針對其個人特徵的選項，或者向個人提供便捷的拒絕方式。

### 法律責任

任何違反《個人信息保護法》的個人或實體，會被責令改正、沒收違法所得、罰款、責令暫停相關業務或者吊銷相關業務許可。罰款視乎違規的嚴重性而定，最高為人民幣五千萬元或者上一年度營業額百分之五。該法沒有訂明營業額是指違規實體的營業額，還是違規實體所屬集團的營業額。

在舉證責任方面，《個人信息保護法》採取了特殊安排。處理個人信息侵害或個人信息權益造成損害的案件時，如個人信息處理者不能證明自己沒有過錯，個人信息處理者應當承



擔相應的法律責任。

### 合規行動

為遵守《個人信息保護法》，涉及處理源自內地的個人信息的實體，實踐中當應考慮採取以下行動：

1. 考慮該實體是否被歸類為關鍵信息基礎設施運營者或涉及處理大量個人信息，如果是，應注意更嚴格的監管要求；

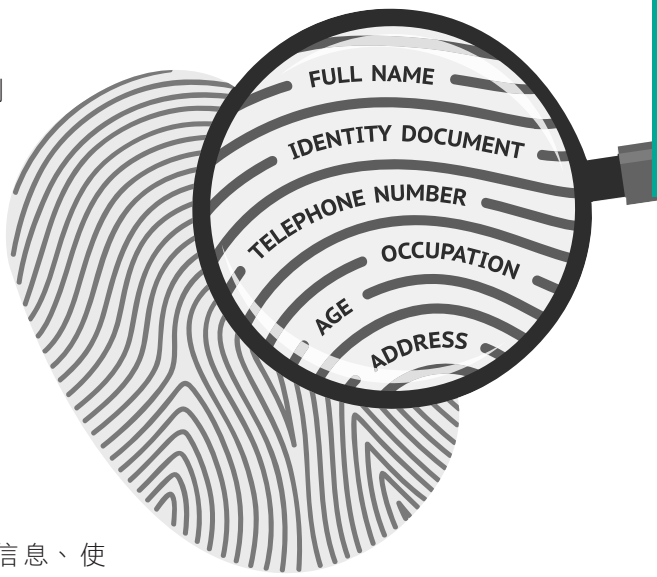
2. 評估有否進行以下活動，如有，應注意相關的監管要求：
   - 向境外提供個人信息；
   - 使用個人信息進行自動化決策；
   - 導致《個人信息保護法》域外適用的因素；

3. 採取必要措施保護個人信息，例如：
   - 對個人信息進行分類以確保合規性；
   - 制訂根據《個人信息保護法》取得必需的同意和處理個人的查詢和要求的操作規程；
   - 實施安全措施（例如加密和匿名化）；
   - 進行定期教育和培訓；
   - 制訂和實施個人信息安全事件應急預案，包括通知有關部門和個人；
   - 進行定期合規審計；

4. 若有處理敏感個人信息、使用個人信息進行自動化決策、委託他人處理個人信息、公開個人信息、向境外提供個人信息等行為，應編制個人信息影響評估報告；

5. 若處理的個人信息量達到網信辦的規定時，應委任個人信息保護主任。

為完整起見，《個人信息保護法》與《數據安全法》和《網絡安全法》共同構成了內地網絡／數據安全和個人信息保護的全面監管基礎。一般來說，《個人信息保護法》規範個人信息的處理；《數據安全法》監控各種形式的數據處理，特別是重要數據的處理；《網絡安全法》則主要為網絡運營商和關鍵信息基礎設施運營者奠定監管基礎。




本文僅重點討論《個人信息保護法》，執業者在設計適當的合規方案時，還應整體考慮《數據安全法》和《網絡安全法》的適用問題。■

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# Law Reform Commission's Report on Outcome Related Fee Structures for Arbitration:

# Enhancing Hong Kong's Competitive Position as a Leading International Arbitration Centre

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## Scope of the Study

On 15 December 2021, the Law Reform Commission ("LRC") released its Report on Outcome Related Fee Structures for Arbitration ("Report") recommending that the law in Hong Kong be amended to lift the prohibitions on the use of outcome related fee structures by lawyers in arbitration taking place in and outside Hong Kong. It also made recommendations on the appropriate form of regulation and the specific safeguards relating to outcome related fee structures for arbitration ("ORFSA"). The LRC emphasised in the Report that these recommendations are not applicable to mediation proceedings that do not fall within the Arbitration Ordinance (Cap 609) of Hong Kong.

The Report was published following a study by the LRC's Outcome Related Fee Structures for Arbitration Sub-committee ("Sub-committee"), established in October 2019, to review the current position relating to ORFSA, to consider whether reform is needed to the relevant law and regulatory framework and, if so, to make such recommendations for reform as appropriate. The Sub-committee has studied the relevant law in Hong Kong, and in nine jurisdictions where arbitration commonly takes place, namely Singapore, England and Wales, Mainland China, Australia, the United States of America, France, Sweden, Switzerland and South Korea.

The results of the Sub-committee's study were summarised in the Sub-committee's consultation paper published in December 2020 ("Consultation Paper"). The Consultation Paper made preliminary recommendations for the reform of the law to permit lawyers to use ORFSA taking place in and outside Hong Kong. It also made recommendations on the operation of individual regimes relating to ORFSA and invited public comments.

The LRC considers that the proposed reforms are necessary to preserve and promote Hong Kong's competitiveness as a leading arbitration centre, enhance access to justice and, importantly, respond to increasing client demand for pricing and fee flexibility. For Hong Kong to remain a leading arbitration hub, it is essential that it can offer what its competitors offer. By allowing lawyers to enter into ORFSA, Hong Kong is able to remain competitive, and compete with other major arbitral seats for arbitration work.

## Different Types of Outcome Related Fee Structures

For the purposes of the Report, an outcome related fee structure refers to the three types of agreements which a lawyer may enter into with a client, namely conditional fee agreements ("CFAs"), damages-based agreements ("DBAs") and hybrid damages-based agreements ("Hybrid DBAs").

A CFA refers to an agreement pursuant to which a client agrees to pay the lawyer an additional fee, known as a success fee, which is only payable in the event of a successful outcome for the client in respect of the claim or proceedings. The success fee can be an agreed flat fee, or calculated as a percentage uplift on the fee that the lawyer would (or could) have charged if there were no outcome related fee structure in place during the course of the proceedings, namely "benchmark" fees.

As for a DBA, this refers to an agreement between a lawyer and a client whereby the lawyer receives payment only if the client obtains a "financial benefit" in the matter, and such payment, known as the DBA payment, is calculated by reference to such financial benefit, i.e. a percentage of any monetary award, or settlement agreement, that is obtained by the client in or through the course of the arbitration proceedings.

A Hybrid DBA refers to an agreement between a lawyer and a client whereby the lawyer agrees with the client to be paid a DBA payment only in the event that the client obtains a financial benefit in the matter and also fees (typically discounted) for legal services rendered during the course of the matter.

## Results of the Public Consultation Conducted by the Sub-Committee

In total, the Sub-committee received 23 responses to the Consultation Paper from members of the public, including arbitration institutions, arbitrators, barristers, a chamber of commerce, consumer/public interest groups, the finance sector, a Government department, law firms, a litigation funder, professional bodies and a regulator. A detailed discussion of the public responses, which were overwhelmingly and unequivocally supportive of the proposed reforms, together with the LRC's analysis and 14 recommendations, are set out in the Report.

The Report also includes in its Annex 1 a set of draft provisions to amend the Arbitration Ordinance and Legal Practitioners Ordinance (Cap 159) of Hong Kong and in its Annex 2 a list of recommended safeguards to be included in related subsidiary legislation. Some of the major recommendations in the Report are summarised below.

## Major Recommendations in the Report

### Prohibitions on the use of CFAs, DBAs and Hybrid DBAs in arbitration should be lifted (Recommendations 1, 4 and 10)

At present, lawyers in Hong Kong are prohibited from entering into outcome related fee structures for litigation and arbitration proceedings. However, all major arbitral seats permit some forms of outcome related fee structures and Singapore, a notable outlier in this respect, has also proposed legislative amendments to provide for a framework to introduce CFAs.

In light of the overwhelming support from a diverse range of respondents for permitting the use of CFAs, DBAs and Hybrid DBAs in arbitration, the LRC recommends that prohibitions on the use of CFAs, DBAs and Hybrid DBAs in arbitration by lawyers should be lifted, so that users of arbitration in Hong Kong and their lawyers may choose to enter into CFAs, DBAs and/or Hybrid DBAs for arbitration. The recommendations are limited to arbitration and related court proceedings, such as applications to the Hong Kong courts to set aside or enforce an arbitral award, or interim relief in

support of an arbitration.

**Non-recoverability of success fee premium and legal expense insurance premium from the unsuccessful party (Recommendations 2 and 5)**

For the CFA regime, the success fee includes a success fee premium paid by the client over and above "benchmark" fees. This is illustrated in the worked example in paragraph 1.7 of the Report, as follows:

(a) Client and lawyer agree that client will only pay 70% of "benchmark" hourly rates during the course of the proceedings.

(b) However, in the event of success, the client will pay 120% of "benchmark" hourly rates. The success fee therefore represents the 50% paid on top of the 70% of "benchmark" hourly rates charged during the course of the proceedings.

(c) The success fee premium in this scenario is the 20% uplift on 100% "benchmark" hourly rates.

The LRC recommends that, for CFAs, any success fee premium agreed by a client with its lawyers and, for both CFAs and DBAs (including Hybrid DBAs), any legal expense insurance premium agreed by a client with its insurers shall not, in principle, be borne by the losing party who is not a party to the contracts between the client and its lawyers/ insurers. The legal expense insurance refers to a contract of insurance that provides reimbursement to a client or a lawyer for some or all of the legal fees, adverse costs or disbursements incurred in respect of a matter.

Nonetheless, the LRC is mindful of the unusual factual circumstances of *Essar Oilfields Services Ltd v Norscot Rig Management PVT Ltd* [2016] EWHC 2361 (Comm) and the decision of the tribunal in that case to order the losing party to bear the third party funder premium incurred by the winning party, based on the exceptional circumstances in that case, and in particular the conduct of the losing party which had contributed to the winning party having to bear such costs in order to pursue its case. It therefore recommends that where in the opinion of the tribunal there are exceptional circumstances, the tribunal may apportion such success fee premium and legal expense insurance premium between the parties if it determines that apportionment is reasonable, taking into account the exceptional circumstances of the case.

**Cap on the success fee (Recommendation 3)**

The LRC further recommends that, for the CFA regime, the success fee should be capped at 100% of the "benchmark" costs. This is consistent with the position in England and Wales, where CFAs have been permitted since the 1990s. Barristers should also be subject to the same 100% cap in such circumstances.

**Success fee model should apply where a DBA, or a Hybrid DBA is in place (Recommendation 6)**

In England and Wales, one of the recommendations proposed in an independent review of the Damages-Based Agreements Regulation 2013 by Professor Rachael Mulheron and Mr Nicholas Bacon, QC, is to switch to the success fee model, whereby the costs recovered from the opponent are outside of, and additional to, the DBA payment.

Considering the overwhelming support for the success fee model from the

respondents, the LRC recommends that, where a DBA or a Hybrid DBA is in place, the success fee model should be adopted so that the DBA payment could be treated as a true success fee on top of the recoverable costs.

**Cap on the DBA payment (Recommendation 7)**

The LRC also recommends that the DBA payment should be capped at 50% of the financial benefit obtained by the client. It takes the view that a cap does not necessarily lead to overcompensation of lawyers and that a higher cap could potentially increase the number of lower value claims for which a DBA may be considered. This is also consistent with the current position in England and Wales.

**Termination of ORFSA prior to the conclusion of the arbitration (Recommendation 9)**

On the issue of termination of ORFSA prior to the conclusion of the arbitration, the LRC recommends that the relevant legislation should specify, on a non-exhaustive basis, the principal grounds upon which ORFSA can be terminated by the lawyer. This will provide the primary safeguards to stakeholders and enhance clarity. On the other hand, the LRC does not consider it necessary to set out statutory grounds on which a client may terminate ORFSA. It should be a matter for agreement with the lawyer in accordance with basic contractual principles so as to provide maximum flexibility for the benefit of the client.

**Appropriate form of regulation (Recommendations 11 and 12)**

In order for lawyers to be permitted to use ORFSA and with a view to introducing an appropriate form of regulation, the LRC recommends that amendments be made to (1) the Arbitration Ordinance, (2) the Legal Practitioners Ordinance, (3) the Hong Kong Solicitors' Guide to Professional Conduct, and (4) the Hong Kong Bar Association's Code of Conduct in clear and simple terms.

Under this approach, the LRC further recommends that the more detailed legislative framework and the particular safeguards which form part of the ORFSA regime should be set out in subsidiary legislation.

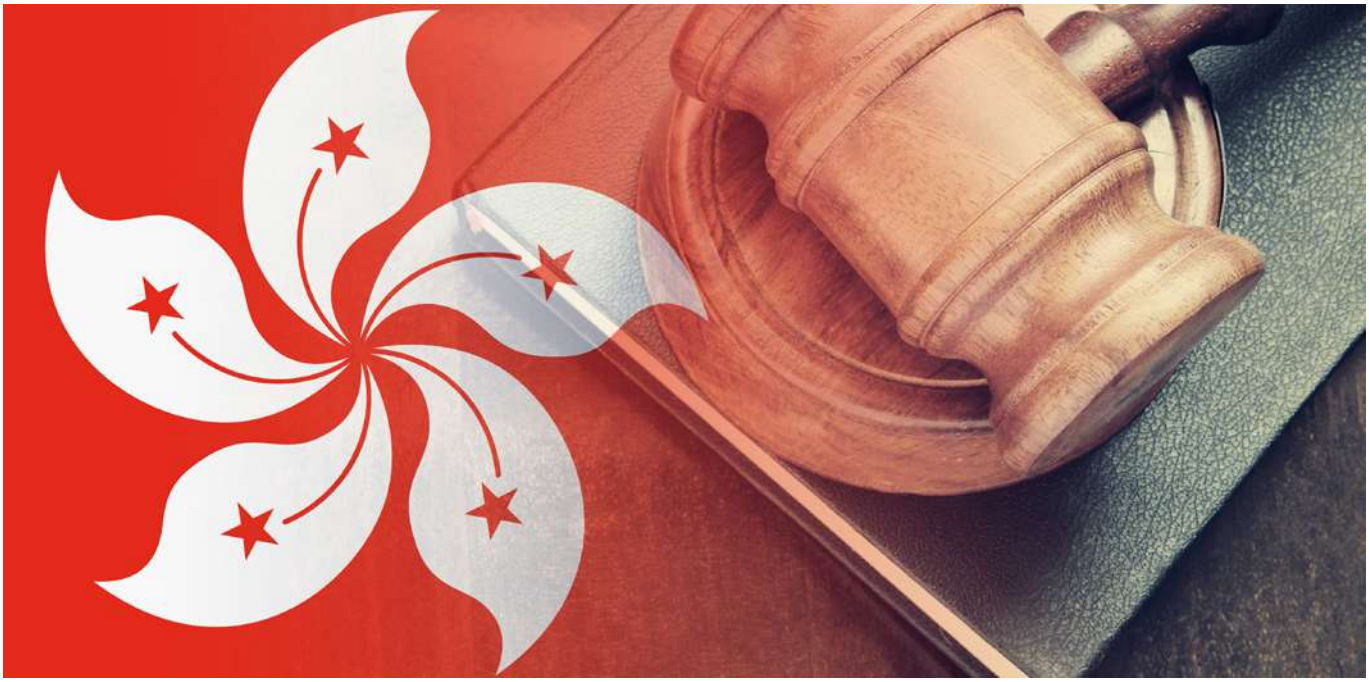
**Specific safeguards relating to ORFSA and other matters (Recommendation 13)**

The LRC recommends that the subsidiary legislation should include a number of safeguards, such as ORFSA must be in writing and signed by the client, the lawyer should inform clients of their right to take independent legal advice, and ORFSA should be subject to a minimum cooling-off period of seven days.

Another key recommendation is that ORFSA should be void and unenforceable to the extent that they relate to personal injury claims. Although personal injury claims are not often subject to arbitration, excluding these claims will address certain concerns raised that individuals were generally more vulnerable to exploitation by unscrupulous professionals than corporate entities, which would typically be more sophisticated and more frequent users of arbitration. The LRC recommends that no other categories of claims be treated differently, or excluded from the ORFSA regime.

## Conclusion

In the event that the recommendations set out in the Report are implemented by the HKSAR Government, lawyers will be allowed to enter into ORFSA and, importantly, respond to increasing client demand for pricing and fee flexibility. This should allow Hong Kong to compete with other jurisdictions for arbitration work on an even playing field and, moreover, maintain its status as one of the world's leading arbitral seats. ■



# 香港法律改革委員會《與仲裁結果有關的收費架構》報告書：提升香港作為領先國際仲裁中心的競爭地位

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## 研究範圍

香港法律改革委員會（法改會）於2021年12月15日發表《與仲裁結果有關的收費架構》報告書（報告書），建議修改香港法律，撤銷禁止律師在香港及在香港以外地方進行的仲裁採用與結果有關的收費架構的相關規定，並建議關於與仲裁結果有關的收費架構（ORFSA）的合適規管方式及具體保障措施。法改會在報告書中強調，這些建議不適用於並非香港《仲裁條例》（第609章）所指的調解程序。

法改會於2019年10月成立與仲裁結果有關的收費架構小組委員會（小組委員會），檢視現時ORFSA的情況，考慮是否需要改革相關法律和規管架構；如需改革，作出合適的改革建議。報告書是根據小組委員會所進行的研究而撰寫。小組委員會研究了香港，以及九個常見進行仲裁的司法管轄區（即新加坡、英格蘭及威爾斯、中國內地、澳洲、美國、法國、瑞典、瑞士和韓國）的相關法律。

小組委員會在2020年12月發表的諮詢文件（諮詢文件）已撮述了小組委員會的研究結果。諮詢文件就改革香港法律，以准許律師就在香港及在香港以外地方進行的仲裁採用ORFSA，作出初步建議，亦就有關ORFSA的個別機制應如何運作，作出建議及徵詢公眾意見。

法改會認為，建議改革有必要進行，以維持及提高香港作為主要仲裁中心的競爭力，擴大尋求公義的渠道，而還有重要一點，就是因應當事人日益殷切的需求而提供釐定價格和收費形式的彈性。香港要維持主要仲裁樞紐的地位，就必須能夠提供與競爭對手相同的服務。准許律師採用ORFSA，能令香港保持競爭力，與其他主要仲裁地爭奪仲裁工作。

## 不同類型的與結果有關的收費架構

就報告書而言，與結果有關的收費架構指律師可與當事人訂立的三種協議：按條件收費協議（CFA）、按損害賠償收費協議（DBA）及混合式按損害賠償收費協議（混合式DBA）。

CFA指根據律師與當事人訂立的協議，當事人同意只在當事人就申索或法律程序中取得成功的結果的情況下，方向律師支付一項稱為「成功收費」的額外費用。成功收費的數額可以是雙方議定的固定金額，也可以按假若在法律程序過程中沒有訂立與結果有關的收費架構的話，律師本應（或可）收取的費用（即「基準」收費）的某個百分比額外計算。

DBA指根據律師與當事人訂立的協議，律師只在當事人在有關事宜中取得「財務利益」的情況下方可收取費用（DBA費用），而該費用是參照該財務利益而計算的，即按當事人在仲裁程序或通過仲裁程序所取得的金錢判給或和解協議獲得的款額的某個百分比計算。

混合式DBA指根據律師與當事人訂立的協議，律師與當事人約定律師會就期間所提供的法律服務收取一定

費用（通常是經折扣費用），並只在當事人在有關事宜中取得財務利益的情況下，方可收取 DBA 費用。

## 小組委員會進行公眾諮詢的結果

小組委員會共收到 23 份公眾人士對諮詢文件的回應，包括仲裁機構、仲裁員、大律師、商會、消費者 / 公眾利益團體、金融界、政府部門、律師

行、訴訟資助者、專業機構和監管機構。報告書詳細討論了公眾的回應，當中絕大多數明確支持擬議改革。報告書亦提出法改會的分析和 14 項建議。

報告書的附件 1 亦載有香港《仲裁條例》及《法律執業者條例》（第 159 章）的修訂擬稿，而附件 2 載有建議納入相關附屬法例的保障措施。報告書中的一些主要建議概述如下。

## 報告書的主要建議

### 撤銷禁止在仲裁中採用 CFA、DBA 及混合式 DBA 的規定（建議 1、4 及 10）

現時，香港禁止律師為訴訟和仲裁的法律程序訂立與結果有關的收費架構。然而，所有主要仲裁地均准許某種形式的與結果有關的收費架構，而在這方面明顯與別不同的新加坡也提出了法例修訂，以設立引入 CFA 的框架。

鑒於在各類不同的回應者中，絕大多數都支持准許在仲裁中採用 CFA、DBA 及混合式 DBA，法改會建議應撤銷禁止律師在仲裁中採用 CFA、DBA 及混合式 DBA 的相關規定，容許香港的仲裁使用者和其律師可以選擇為仲裁訂立 CFA、DBA 及 / 或混合式 DBA。有關建議僅限於仲裁和相關的法院程序，例如向香港法院申請撤銷或強制執行仲裁裁決，或申請支持仲裁的臨時濟助。

### 不可向敗訴方討回成功收費溢價及法律開支保險的保費（建議 2 及 5）

就 CFA 機制而言，成功收費包含當事人在「基準」費用之上所支付的成功收費溢價。報告書第 1.7 段的實例對此進行了說明如下：

(a) 當事人與律師議定，當事人在法律程序過程中只會支付「基準」每小時收費率的 70%。

(b) 但若成功，當事人會支付「基準」每小時收費率的 120%。因此，在法律程序過程中所收取的「基準」每小時收費率的 70% 以外支付的 50%，即為成功收費。

(c) 在此情況下，成功收費溢價為 100%「基準」每小時收費率之上的 20% 額外收費。

法改會建議，就訂立了 CFA 的情況而言，當事人與其律師所議定的成功收費溢價，及就訂立 CFA 及 DBA（包括混合式 DBA）的情況而言，當事人與其保險人所議定的法律開支保險保費，原則上不須由敗訴方承擔，因為敗訴方並非當事人與律師 / 保險人所訂立合約的一方。法律開支保險指向當事人或律師補還就某事宜招致的某些或全部法律費用、不利訟費或代墊付費用的保險合約。

然而，法改會亦考慮了 *Essar Oilfields Services Ltd v Norscot Rig Management PVT Ltd* [2016] EWHC 2361 (Comm) 的不尋常事實情況，仲裁庭根據該案的例外情況，尤其是敗訴方的行為導致勝訴方不得不承擔出資第三者費用以進行訴訟，決定命令敗訴方承擔勝訴方的出資第三者費用。因此，法改會建議，仲裁庭如認為有例外情況，並在考慮案件的例外情況後，裁定作出分攤是合理的，則可將該成功收費溢價及 / 或法律開支保險的保費在各方之間分攤。

### 為成功收費設定上限（建議 3）

法改會進一步建議，就 CFA 機制而言，成功收費的上限應為「基準」訟費的 100%。這與英格蘭及威爾斯的情況一致，英格蘭及威爾斯自 1990 年代起已准許 CFA。在這種情況下，100% 上限亦應適用於大律師。

### 就訂立了 DBA 或混合式 DBA 的情況而言，應採用成功收費模式（建議 6）

在英格蘭及威爾斯，梅麗朗教授（Professor Rachael Mulheron）及貝根御用大律師（Nicholas Bacon, QC）對《2013 年按損害賠償收費協議規

例》（Damages-Based Agreements Regulations 2013）進行獨立檢討，他們提出的其中一項建議是改為成功收費模式，根據該模式，從對方討回的訟費是在 DBA 費用以外另再計算的。

考慮到絕大多數回應者支持成功收費模式，法改會建議，就訂立了 DBA 或混合式 DBA 的情況而言，應採用成功收費模式，以便 DBA 費用被視為在可予追討的訟費之外，還可另外保留的真正成功收費。

### 為 DBA 費用設定上限（建議 7）

法改會亦建議，DBA 費用的上限應定為相等於當事人所取得的財務利益的 50%。法改會認為，上限不一定會導致對律師過度補償，而更高的上限有機會令更多價值較低的申索可考慮採用 DBA。這也與英格蘭及威爾斯現時的做法一致。

### 在仲裁結束前終止 ORFSA（建議 9）

關於在仲裁結束前終止 ORFSA 的問題，法改會建議有關法例應以並非盡列無遺的方式指明律師可據以終止 ORFSA 的主要理由。這將為持份者提供基本保障並提高清晰度。另一方面，法改會認為無須列出當事人可終止 ORFSA 的法定理由。當事人可終止 ORFSA 的理由，應純粹按照基本合約原則與律師議定，以便為當事人的利益提供最大彈性。

### 合適的規管方式（建議 11 及 12）

為准許律師採用 ORFSA 及引入合適的規管方式，法改會建議，應以清晰而簡單的用語對以下項目作出修訂：(1)《仲裁條例》；(2)《法律執業者條例》；(3)《香港事務律師專業操守指引》；及 (4) 香港大律師公會《行為守則》。

按這方案，法改會進一步建議，附屬法例應列出較詳細並以立法形式制定的框架，以及組成 ORFSA 機制一部分的特定保障措施。

### 關於 ORFSA 的具體保障措施和其他事宜（建議 13）

法改會建議，附屬法例應至少納入一些保障措施，例如 ORFSA 須以書面訂立，並由當事人簽署；律師應告知當事人有取得獨立法律意見的權利；及 ORFSA 應設有最少七天的「冷靜」期。

另一項主要建議是，ORFSA 在關於人身傷害申索的範圍內應屬無效及不可執行。儘管人身傷害申索甚少會進行仲裁，但排除這些申索會釋除某些憂慮，即個人一般較法團實體更容易受到無良專業人士剝削，因為法團實體通常是更精明練達的仲裁使用者，也更常使用仲裁。法改會建議，沒有任何其他類別的申索應以不同的方式處理，或被排除在 ORFSA 機制之外。

### 總結

若香港特區政府落實報告書的建議，律師將獲准訂立 ORFSA，更重要的是，回應當事人對定價和彈性收費日益增加的需求。這將使香港可在公平環境下與其他司法管轄區爭奪仲裁工作，並保持作為世界領先仲裁地之一的地位。■

# CISG and Hong Kong: its Implications on Hong Kong Arbitration

*By Edward Liu, Partner, Hill Dickinson LLP*

Since the United Nations Convention on Contracts for the International Sale of Goods ("CISG") became effective in 1988, 94 States have so far adopted it (as of December 2021). However, Hong Kong, being one of the international trade centres in the world, has only demonstrated intention to seek its application last year.

Recently in September 2021, the Legislative Council of the HKSAR has enacted the Sale of Goods (United Nations Convention) Ordinance (Cap 641), which will soon bring the CISG into place.

Before the handover, the CISG was not applicable to Hong Kong, against the background that the UK is not a party to it. After the handover, the status quo on non-application of the CISG has been maintained. The reason for it may be similar to that of the UK, whose legal tradition has a great impact on Hong Kong's legal system.

## Historical Reasons why the CISG Has Not Been Applicable to Hong Kong

On this interesting question, it might be helpful to see why the UK refused to join

the CISG.

One major reason would be that the CISG is a mix of civil and common law, which involves compromises by countries of both legal traditions to agree to an internationally adopted convention. The hesitation of legal practitioners from the UK is based on their unfamiliarity with the civil law concepts involved in the CISG, including the fundamental breach, right to cure after the time fixed for performance and the self-help remedy of reducing the price where non-conforming goods are delivered.

The above leads to the second reason why the UK is not eager to ratify CISG. It is because it sees the ratification as having the effect of diminishing the role of English law in settling international trade disputes, which would reduce the number of disputes to be solved in the UK (see "Convention on Contracts for the International Sale of Goods – Comments by the Council's Law Reform Committee," *Report of the British Law Society*). This argument is mainly based on the self-perception of the UK legal practitioners that English Law is a world brand-name, and such prestigious position of the English Law might be jeopardized by ratifying the CISG (see Angele Forte, "The United Nations Convention on Contracts for the International Sale of Goods: Reason or Unreason in the United Kingdom", (1997) 26 *Baltimore Law Review* 51-66).

Concerns for uniformity is another issue. Lawyers in the UK have doubts on the uniformity in the application of the Convention, as it may be interpreted variously without any standard interpretation. This is particularly true when interpretation of law is usually with reference to case laws.[1] Some also see the flexibility offered by the Convention as diminishing its effectiveness because traders can simply opt out, and uniformity would be affected as well.

It seems that the above concerns similarly apply to some local legal practitioners after 1997, as Hong Kong's international sales law continues to be based on the relevant English law and legal principles.

## Benefits for the Application of the CISG to Hong Kong

The HKSAR Government conducted a public consultation on the proposed application of the CISG to Hong Kong ("the Proposed Application") last year. The Proposed Application has received positive comments from different stakeholders. The following 6 main benefits were identified by major supporters.

First, the Proposed Application would help to facilitate Hong Kong's international trade development. As of December 2021, 94 states have adopted the CISG, including more than half of Hong Kong's top 20 trading partners by total trade value. With its great coverage, joining CISG will likely reduce the legal barriers, frictions and uncertainties regarding international trades, with the upshots of enhancing trades between Hong Kong and CISG party states, raising Hong Kong's reputation as an international leading centre of trade and commerce, and thus promoting Hong Kong's GDP and trade growth in the long run.

Second, the Proposed Application would strengthen Hong Kong's position as a leading centre for international legal and dispute resolution services in the Asia-Pacific Region, in terms of both arbitration and litigation. Hong Kong lawyers will become more equipped and better placed to advise on transactions from the CISG perspective. Hence, the Proposed Application will improve Hong Kong's competence in resolving disputes in relation to the CISG and may even promote Hong Kong's status as a dispute resolution hub for CISG disputes. Given the "neutral" nature of the CISG, it is usually welcomed by parties in dispute and their arbitrators. By applying the CISG to Hong Kong, Hong Kong's standing as an international trade and legal dispute resolution hub may be consolidated.

Third, in the context of the Belt and Road Initiative ("BRI"), the Proposed Application will also be beneficial. Currently, about 45% of the BRI countries are contracting parties to the CISG. The CISG will help to form an important basis for "bridging legal systems" among BRI members, thus enhancing Hong Kong's status as a dispute resolution hub for CISG disputes, which would be favourable to sales of goods contracts between Hong Kong and other BRI countries governed by the CISG.

Fourth, following the Proposed Application, the current Hong Kong law on international sale of goods would be improved in three main areas, namely contract modification, effective acceptance and merchantable quality. This is likely to enhance the attractiveness of Hong Kong law to parties who are more familiar with the CISG, as they have greater confidence in the law.

Fifth, the CISG has a gap-filling function for small and medium enterprises (SMEs) It is common for SMEs to be involved with trades that are not properly protected by contracts drafted by lawyers. The CISG then serves the "gap-filling" function in helping these SMEs to save time and costs when conducting cross-border deals.

Lastly, the application of the CISG is flexible, as it allows flexibility and freedom for parties to choose. Parties may apply the CISG flexibly and exclude any articles (with the exception of Article 12, which concerns requirements as to form of contract[2]) that they do not wish to apply, thus bolstering commercial convenience.

Apart from the benefits raised during the consultation process, there are also other benefits worth noting. For example, the CISG provides a modern, uniform and fair regime for contracts for the international sale of goods, introducing certainties in commercial exchanges and reducing transaction costs. Also, by adopting a globally recognised set of rules, the CISG helps to prevent Hong Kong businesses from being subjected to unfamiliar foreign laws when entering into cross-boundary transactions.

## CISG's Impact on Arbitration, in Particular in the Area of Trades and Shipping

### CISG and Arbitration

The CISG was not designed to govern arbitration agreements, but international sales contracts. Nonetheless, the CISG governs basic contract law concepts including formation (Articles 14-24), interpretation (Article 8) and remedies for breach, which are relevant in determining the substantive validity of arbitration agreements. Thus, the CISG would be relevant to such determination when it governs a sales contract containing an arbitration clause itself.

When the CISG governs a sales contract containing an arbitration clause, some have argued that the CISG should be the law applicable at the seat of arbitration regardless of its "procedural" character (see Pilar Perales Viscasillas and David Ramos Muñoz, "CISG and Arbitration in Andrea Büchler and Markus Müller-Chen," (2011) *Private Law (national - global - comparative - Festschrift für Ingeborg Schwenzer zum 60. Geburtstag), Stämpfli Verlag AB* 1355, 1366). On the other hand, others have argued that where the arbitral seat is located at a Contracting State to the CISG, the arbitrators would enjoy discretion in determining whether to apply the CISG as the law applicable at that seat (see Juan Pablo Hernández Páez, "Arbitration Agreements Under The CISG," (2021) 1 *The Treaty Examiner* 24-30). Thus, to avoid problems of compatibility, if parties wish to apply the uniform CISG law, they should agree expressly in their arbitration agreement that disputes will be governed by the CISG where applicable.

### CISG in Hong Kong

*More in line with international standards for dispute resolution, in particular arbitration*

As of 2020, Hong Kong's top 20 trading partners include Mainland China, Taiwan, USA, Singapore, Japan, Korea, Malaysia, Viet Nam, India, Thailand, The United Kingdom, Germany, The Philippines, Netherlands, France, The United Arab Emirates, Switzerland, Italy, Macao and Australia.

As shown in the table below, the CISG applies to 12 out of Hong Kong's top 20 trading partners in 2020.

| | Total Trade | | | Does the CISG apply? |
|---|---|---|---|---|
| **Rank** | **Country/Territory** | **Value (HK$, M)** | **Percentage Share (%)** | ✓ / × |
| **1** | Mainland China | 4,248,047 | 51.8 | ✓ |
| **2** | Taiwan | 504,201 | 6.2 | × |
| **3** | USA | 433,548 | 5.3 | ✓ |
| **4** | Singapore | 373,515 | 4.6 | ✓ |
| **5** | Japan | 349,311 | 4.3 | ✓ |
| **6** | Korea | 299,431 | 3.7 | ✓ |
| **7** | Malaysia | 196,348 | 2.4 | × |
| **8** | Vietnam | 185,126 | 2.3 | ✓ |
| **9** | India | 154,778 | 1.9 | × |
| **10** | Thailand | 135,220 | 1.6 | × |
| **11** | United Kingdom | 109,497 | 1.3 | × |
| **12** | Germany | 108,589 | 1.3 | ✓ |
| **13** | Philippines | 99,120 | 1.2 | × |
| **14** | Netherlands | 80,439 | 1.0 | ✓ |
| **15** | France | 75,643 | 0.9 | ✓ |
| **16** | United Arab Emirates | 73,531 | 0.9 | × |
| **17** | Switzerland | 67,183 | 0.8 | ✓ |
| **18** | Italy | 57,487 | 0.7 | ✓ |
| **19** | Macao | 48,750 | 0.6 | × |
| **20** | Australia | 48,599 | 0.6 | ✓ |

Disputes in relation to trades and shipping are usually resolved through arbitration. According to the CISG, a contract for the sale of goods will come within its ambit if the places of business of the parties are in different states (Article 1, CSIG) which are both contracting states to the CISG (Article 1(1)(a)). This is so unless the fact that the parties have their places of business in different states does not appear from the contract, or dealings between, or information disclosed by, the parties before or at the conclusion of the contract (Article 1(2)). With the CISG applied to Hong Kong, it is likely that more trade and shipping related arbitrations will be dealt with according to the CISG, particularly when such a great number of Hong Kong's trading partners are Contracting States to the CISG.

One may wonder whether the Proposed Application would actually attract more parties to contracts for international sale of goods to resolve disputes in Hong Kong, especially when a recent international arbitration survey already showed that Hong Kong is the third most preferred seat in the world. Though the CISG has never been applied to Hong Kong previously, such application may attract more parties to resolve disputes in Hong Kong in view of the option of applying the CISG through opting for Hong Kong law as the governing law of their contracts.

Moreover, the CISG is often welcomed by parties and the arbitrators due to its neutrality (that the law is not favouring parties from a particular state or region, but applicable to all Contracting States). The Proposed Application may result in Hong Kong starting to handle more international sale of goods cases with Hong Kong law (and hence the CISG) as the governing law.

This may help enhancing the competence of Hong Kong's arbitration community in dealing with CISG-related disputes, which will in turn boost the parties' confidence in Hong Kong's legal and arbitral system. With the alignment of Hong Kong's international sale of goods law with the CISG and hence the traders' greater confidence in it, not only Hong Kong's international trade transactions may be promoted, but also parties are likely to be encouraged to resolve their disputes in Hong Kong. If this happens, more training opportunities might also be created for local lawyers and arbitrators.

*Belt and Road Initiative Context*

The above is particularly true when considering the role of Hong Kong in the BRI. Being a logistics and maritime services hub and a regional trading centre, Hong Kong acts as a trade and logistics integrator for cooperation in maritime and other types of transports among BRI countries, providing support services and other professional services given its strong base of professionals.

By applying the CISG, which is an international set of rules designed to provide clarity to most of the international sale of goods transactions, Hong Kong can further its capability in handling disputes arising from transactions facilitated by the BRI.

*COVID-19*

With Covid-19, popularity of online shopping has hit its historic high. This has resulted in great demand for shipping service, and hence, more disputes involving shipping. Indeed, the disruption of the supply chain caused by the pandemic has created a great number of disputes. With the application of the CISG to Hong Kong and its adoption in relevant international sales of goods contracts, the time cost for handling such disputes would be saved in light that the CISG is a standard law that parties from around the globe are more familiar with. It also allows greater capacity to handle more disputes caused by the pandemic.

*Transactions with the Mainland China*

As noted in the table above, Mainland China is Hong Kong's top trading partner. Incidental to more trades between the two economies, more cross-boundary trade disputes may arise. However, being an international convention governing international sale of goods, the CISG does not apply to transactions within China, including those transactions between the Mainland enterprises and the HKSAR enterprises.

In the public consultation, there was general support to apply the CISG rules to Mainland-HKSAR transactions by way of a Mainland-HKSAR arrangement. According to Ms. Teresa Cheng, SC, the Secretary for Justice, the HKSAR Government is following up and working on reaching such arrangement through discussion with the Central People's Government, just as what has been done regarding the reciprocal enforcement of arbitral awards between the Mainland and the HKSAR through an arrangement modelled on the New York Convention. If such an arrangement is in place at the end, Hong Kong's ability to resolve cross-boundary sale of goods disputes smoothly through arbitration would likely be further enhanced. ■

1 It may be noted, however, that uniform interpretation of the CISG has been assisted by the availability of opinions issued by the CISG Advisory Council (see https://iicl.law.pace.edu/cisg/page/cisg-advisory-council-opinions), the CISG database of the United Nations Commission on International Trade Law as well as various leading commentaries on the Convention.

2 Unless the CISG is excluded by the parties to the sales contract in its entirety.

# 《聯合國國際貨物銷售合同公約》與香港：兼談其對香港仲裁的潛在影響

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《聯合國國際貨物銷售合同公約》（下稱「《銷售公約》」）於1988年生效以來，截至2021年12月已有94個國家採用該公約。然而，香港作為世界上的國際貿易中心之一，直至2021年才表示有意加入公約及本地立法。

2021年9月，香港特別行政區立法會制訂了《貨物銷售（聯合國公約）條例》（第641章），使《銷售公約》將於今年內生效。

回歸前，由於英國並非《銷售公約》的締約國，因此香港一直並沒有加入《銷售公約》。香港法律體制一直受英國法律傳統所影響，所以香港未有加入公約的原因或與英國相似。

## 《銷售公約》未適用於香港的歷史原因

關於這個問題，或許可以從英國拒絕

加入《銷售公約》的原因略知一二。

首先，《銷售公約》是大陸法和普通法的混合體，是經兩種法律傳統互相妥協後的產物。英國法律界一直對加入《銷售公約》有所保留，源於他們不熟悉《銷售公約》當中的大陸法概念，包括大陸法下的違約、賣方不履行義務的補救措施，包括降低價格等。

上述情況則衍生出英國對《銷售公約》一直持觀望態度的另一個原因——擔心公約削弱英國法在解決國際貿易爭議的影響，從而減少貿易雙方在英國處理法律糾紛的誘因（見 British Law Society Report, "Convention on Contracts for the International Sale of Goods – Comments by the Council's Law Reform Committee"）。這種論調是建基於英國法律界認為英國法是一個世界品牌，而加入《銷售公約》或會危及英國這個法律品牌的國際聲譽和地位（見 Angele Forte (1997), "The United Nations Convention on Contracts for the International Sale of Goods: Reason or Unreason in the United Kingdom", *Baltimore Law Review*, 26, 51-66）。

一致性是第三個問題。鑑於《銷售公約》沒有劃一的詮釋標準，英國法律界擔心《銷售公約》會衍生出多種詮釋，有損法律的一致性。這種擔心在案例主導的英國尤其明顯。[1] 同時，有些人不滿《銷售公約》提供合同雙方肆意退出的權利，認為有損法律的一致性。

因此，受英國影響，上述對《銷售公約》的憂慮同樣適用於回歸後香港法律界的部分人士。

## 加入《銷售公約》對香港的利處

香港特區政府去年發表了《建議銷售公約適用於香港特別行政區的諮詢文件（建議）》（下稱「建議」）。持份者普遍對建議持正面意見，支持的理據可歸納成以下六點：

第一，促進香港的國際貿易發展。如前所述，截至 2021 年 12 月，已有 94 個國家加入了《銷售公約》，當中包括佔香港貿易總額超過一半的前 20 個貿易夥伴。香港可受惠於《銷售公約》眾多的締約國，減少國際貿易的法律障礙、摩擦和不確定性。長遠而言，此舉會加強香港與各《銷售公約》締約國之間的貿易，提升香港作為國際領先的貿易和商業中心的聲譽，並促進香港經濟和貿易增長。

第二，強化香港作為亞太地區國際法律和爭議解決服務中心的地位。加入《銷售公約》後，香港律師將更有能力和條件從《銷售公約》的角度為交易提供法律服務和諮詢，可提高香港解決《銷售公約》相關糾紛的能力，促進香港發展成《銷售公約》爭議解決中心的地位。《銷售公約》的「中立」性質（即不偏袒某國或地區的當事人）尤其受到合同雙方及仲裁員的歡迎。通過加入《銷售公約》，香港作為國際貿易和法律爭議解決服務中心的地位可以加以鞏固。

第三，有助香港抓緊一帶一路機遇。現時約 45% 的一帶一路成員為《銷售公約》的締約國。香港加入《銷售公約》能在一帶一路各成員國之間築起一道「法律體系橋樑」，提高香港作為爭議解決服務中心的地位。這讓香港和其他一帶一路國家在制訂貨物銷售合同時變得更方便。

第四，提高投資者對香港法律信心。建議落實後，現時香港國際貨物售賣法律將在三個領域有所改變，包括：合同修改，就「有效接受」的定義，「可商售品質」的詮釋。對熟悉《銷售公約》的國際貿易商而言，建議能增加他們對本港法律的信心。

第五，進一步保障中小型企業。中小型企業的交易合同普遍並非由律師所起草。因此，《銷售公約》的既定條款能起到填補法律真空的作用，減省中小型企業在進行跨國交易和起草合同時的時間和成本。

第六，尊重協議雙方的自主性。《銷售公約》的彈性應用為協議雙方提供靈活度和自主性。協議雙方可以按共識在合同上應用或剔除《銷售公約》的條款（除第 12 條就合同訂立條件以外[2]），為營商增添便利。

除了上述六大好處外，宏觀而言，《銷售公約》更為國際貨物銷售合同提供一個現代、一致和公平的制度，提高商業交易的確定性並降低了交易成本。此外，全球通用的規則避免香港企業在進行跨境交易時受制於不熟悉的外國法律。

## 《銷售公約》對特別涉及貿易和航運仲裁的影響

### 《銷售公約》與仲裁

銷售公約本身的訂立目的並非針對仲裁協議，而是國際銷售合同。儘管如此，《銷售公約》規範了基本合同的概念，包括訂立（第 14-24 條）、詮釋（第 8 條）和違約補救措施等。這些規範均與決定仲裁協議的實質有效性有關。因此，當一份銷售合同出現仲裁條款時，合同自然會受到《銷售公約》的管轄。

坊間對《銷售公約》和仲裁條款的關係意見不一：一方面，有些人認為《銷售公約》應凌駕仲裁所在地的法律（見 Pilar Perales Viscasillas and David Ramos Muñoz (2011), "CISG and Arbitration" in Andrea Büchler and Markus Müller-Chen, *Private Law (national - global - comparative - Festschrift für Ingeborg Schwenzer zum 60. Geburtstag), Stämpfli Verlag AB* 1355, 1366）；另一方面，有些人認為若仲裁所在地為《銷售公約》的締約國，仲裁員應有權選擇是否採用《銷售公約》（見 Juan Pablo Hernández Páez (2021), "Arbitration Agreements under the CISG", *The Treaty Examiner*, 24-30）。因此，若雙方希望採納《銷售公約》的內容，應在仲裁合同上訂明紛爭將會受公約管轄，以避免相容性問題。

### 香港與《銷售公約》

*緊貼國際爭議解決標準*

截至 2020 年，香港的前 20 位貿易夥伴包括中國大陸、台灣、美國、新加坡、日本、韓國、馬來西亞、越南、印度、泰國、英國、德國、菲律賓、荷蘭、法國、阿拉伯聯合酋長國、瑞士、義大利、澳門和澳洲。

如下表所示，佔香港總貿易額的首 20 個貿易夥伴中，有 12 個為《銷售公約》的締約國。

| | 總貿易 (2020 年) | | | 《銷售公約》適用？ |
|---|---|---|---|---|
| 排名 | 國家 / 地區 | 總額（以港幣百萬計） | 百分比 | ✓ / × |
| 1 | 中國大陸 | 4,248,047 | 51.8 | ✓ |
| 2 | 台灣 | 504,201 | 6.2 | × |
| 3 | 美國 | 433,548 | 5.3 | ✓ |
| 4 | 新加坡 | 373,515 | 4.6 | ✓ |
| 5 | 日本 | 349,311 | 4.3 | ✓ |
| 6 | 韓國 | 299,431 | 3.7 | ✓ |
| 7 | 馬來西亞 | 196,348 | 2.4 | × |
| 8 | 越南 | 185,126 | 2.3 | ✓ |
| 9 | 印度 | 154,778 | 1.9 | × |
| 10 | 泰國 | 135,220 | 1.6 | × |
| 11 | 英國 | 109,497 | 1.3 | × |
| 12 | 德國 | 108,589 | 1.3 | ✓ |
| 13 | 菲律賓 | 99,120 | 1.2 | × |
| 14 | 荷蘭 | 80,439 | 1.0 | ✓ |
| 15 | 法國 | 75,643 | 0.9 | ✓ |
| 16 | 阿拉伯聯合酋長國 | 73,531 | 0.9 | × |
| 17 | 瑞士 | 67,183 | 0.8 | ✓ |
| 18 | 義大利 | 57,487 | 0.7 | ✓ |
| 19 | 澳門 | 48,750 | 0.6 | × |
| 20 | 澳洲 | 48,599 | 0.6 | ✓ |

一般而言，貿易和航運相關的合同都會訂有仲裁條款，約定將爭議通過仲裁形式解決。根據《銷售公約》，若合同雙方的營業地在不同的國家（第1條），而這些國家都是《銷售公約》的締約國（第1(1)(a)條），貨物銷售合同則受《銷售公約》管轄。唯一的例外是雙方的營業地在不同國家的事實不能從合同條款、合同生效前或其他已披露的資訊推斷出（第1(2)條），公約則不適用。觀乎香港的主要貿易夥伴都是《銷售公約》的締約國，隨著香港加入《銷售公約》，預計會有更多與貿易和航運有關的仲裁根據《銷售公約》進行處理。

究竟加入公約是否真的能夠吸引更多客戶在香港解決法律爭議？儘管《銷售公約》未曾在香港應用，但鑒於雙方可以選擇香港法律管轄合同，從而應用公約。該應用料能進一步提升香港吸引力，尤其當最近一項國際仲裁調查指出香港是世界第三大受歡迎的仲裁地。

另外，《銷售公約》的中立性更是其受合同雙方和仲裁員歡迎的原因，令香港有機會處理更多國際貨物銷售的案件。長遠而言，這有助提升香港仲裁界處理與《銷售公約》有關的糾紛能力，增加貿易商對香港法律和仲裁制度的信心，為本地律師和仲裁員創造更多培訓機會。

*一帶一路*

香港作為物流和海運服務的樞紐及區域貿易中心，能為一帶一路國家提供海運和大型運輸的支援及其他專業服務。而《銷售公約》的應用能進一步提升香港處理一帶一路貿易糾紛的能力。

*2019 冠狀病毒病*

疫情的出現令網上購物的普及率再創新高，亦為航運服務創造巨大需求。另一方面，疫情對供應鏈造成一定破壞，牽涉航運的糾紛亦應運而生。《銷售公約》在全球的普及和一致性能節省合同雙方的處理成本，同時令香港在疫情下有負荷處理更多的爭議。

*與中國內地的交易*

如上表所述，中國內地是香港最大的貿易夥伴。隨著兩地經濟互動增加，跨境貿易亦會出現。惟《銷售公約》作為一項管轄國際貨品銷售的公約，並不適用於中國境內交易，包括內地企業於香港特區企業之間的交易。

就此，公眾諮詢普遍支持將《銷售公約》涵蓋中港之間的交易，並著特區與內地當局達成相關安排。律政司司長鄭若驊曾披露，特區政府正與中央人民政府商討相關安排，並建議仿效《紐約公約》互相執行仲裁裁決的做法。若建議落實，預計香港以仲裁形式解決跨境貨物銷售糾紛的能力將會大大提高。■

1 須留意《銷售公約》諮詢委員會已就公約的詮釋發表一系列意見（見https://iicl.law.pace.edu/cisg/page/cisg-advisory-council-opinions）。另外，亦可參考聯合國國際貿易法委員會的《銷售公約》數據庫及關於公約的主要評論。

2 除非合同雙方將《銷售公約》完全排除在外。

# INDUSTRY INSIGHTS
# 業界透視

## MENTAL HEALTH

### Practice Insights – Conditional Discharge and Mental Health Review Tribunal

The mental health regime in Hong Kong could be a mystery to many legal practitioners. There is, for example, little guidance from the Mental Health Ordinance (Cap. 136) ("Ordinance") itself on how a conditional discharge from a mental hospital operates under the Ordinance. The matter in some cases seemingly depends on how medical doctors interpret the relevant provisions in the Ordinance. The practice also changes from time to time.

Members of the Mental Health Law Committee (the "Committee") of the Law Society of Hong Kong shared the following experience of theirs on two practice areas, viz. the Conditional Discharge provisions and the Mental Health Review Tribunal.

#### Conditional Discharge

Under section 42B of the Ordinance, certain patients may be discharged from mental hospital, subject to conditions. This applies only to patients who have been compulsorily detained in a mental hospital and who have a history of criminal violence or a disposition to commit violence. Conditions that may be imposed include residing in a specified place, attending an outpatient clinic for treatment, taking medications as prescribed and being under the supervision of the Director of Social Welfare. A patient who fails to comply with one or more of the conditions can be recalled to the mental hospital if it is deemed necessary in the patient's interests or to protect others. Once recalled, the patient will automatically be deemed to be compulsorily detained under section 31 of the Ordinance.

The Ordinance does not cover all possible scenarios which may arise. Members of the Committee has had the experience that the Hospital Authority doctors apply their interpretation when dealing with situations which are not clearly set out in the Ordinance. It is important for solicitors to be aware of the practice and interpretation of the conditional discharge provisions.

Frequently Asked Questions in this regard, together with the understanding of the Committee of the answers to these questions, are set out in the following:

1. Is a Conditional Discharge ("CD") order no longer valid if a patient has been compulsorily admitted into a mental hospital?

   Yes. The Committee understands that a CD order will cease to be effective if the patient has been compulsorily admitted into a mental hospital, but not if the patient has been admitted informally, voluntarily pursuant to section 30 of the Ordinance, or into a non-psychiatric ward. New CD orders can only be issued where the patient has been compulsorily detained in a mental hospital.

   The word "informally" refers to a patient who is admitted into a psychiatric ward of a public hospital other than the wards listed in the Declaration of Mental Hospital (Consolidation) Order (Cap. 136B).

2. How can a CD order be discharged or cancelled?

   The Ordinance does not provide to the medical superintendent or the clinician responsible for the case any legal authority or power to discharge a CD order. Only the Mental Health Review Tribunal has the power to discharge a CD order, pursuant to section 59E (1) of the Ordinance. However, the medical superintendent or clinician responsible for the case can vary the terms of a CD order.

3. What happens if a patient fails to return or be taken into custody within 28 days of him/her being recalled to hospital?

   According to section 43(6) of the Ordinance, the patient can no longer be taken into custody after the expiration of the 28 days.

#### Mental Health Review Tribunal ("MHRT")

The MHRT comprises a chairman with legal experience, a doctor, a social worker, and one lay member who is not a doctor or a social worker. Applications can be made to the MHRT for review of compulsory admissions to a mental hospital, conditional discharge and other cases under section 59B (2). While applications can theoretically be made to the MHRT during detention under section 31 and section 32 of the Ordinance, the length of the application process is such that a MHRT hearing will not be convened in time for the patient to have his/her case reviewed prior to the end of the detention period.

Patients under compulsory detention in a mental hospital can make an application once every 12 months and, if not exercised, an automatic application is made after 12 months of compulsory detention. Thereafter, automatic application is made every 2 years. The Committee understands that there is no automatic application for patients under conditional discharge.

Application can be made by the patient or a relative. Legal representation is permitted. The Committee also understands that legal aid is available for the above.

***– Mental Health Law Committee***


## 精神健康

## 實務見解 — 關於有條件釋放的條文及精神健康覆核審裁處

可能對許多法律執業者來說，香港的精神健康制度是神秘難解的。舉例說，關於《精神健康條例》（第 136 章）（「《條例》」）的有條件釋放精神病院病人的條文是怎麼運作的，《條例》在這方面的指引是少之又少。在某些案例，這似乎取決於醫生怎樣詮釋《條例》的相關條文。此外，運作方法亦不時改變。

以下是香港律師會轄下精神健康法委員會（「委員會」）成員就兩個實務範圍，即有條件釋放的條文及精神健康覆核審裁處，分享他們的經驗。

### 有條件釋放

根據《條例》第 42B 條，在符合條件的情況下，某些精神病院病人可獲釋放。這條例只適用於已被強制羈留在精神病院，而且有刑事暴力病歷，或有使用刑事暴力傾向的病人。可以施加的條件包括：居住在指定的地方、在門診部接受治療、服用獲處方的藥物，以及受社會福利署署長監管。如果病人不遵守一項或多於一項條件，為病人本身的利益或為保護他人著想，病人可被召回精神病院。一旦被召回，該病人就會自動被視為是根據《條例》第 31 條而被強制羈留。

《條例》沒有涵蓋所有可能發生的情況。委員會成員曾遇過有醫管局醫生在某些《條例》沒有清楚列明的情況時，應用了他們自己的解釋處理。律師應清楚知道有條件釋放條文的實踐和詮釋。這點很重要。

以下列出這方面的常見問題，並且述明委員會所理解的問題答案；

1. 如果病人已被強制送進精神病院，有條件釋放令就不再具有效力嗎？

   對。委員會明白，如果病人已被強制送進某間精神病院，有條件釋放令就會停止生效。但如果病人被「非正式地」或根據《條例》第 30 條自願被送進精神病院，又或者病人被送進非精神病房，有條件釋放令就不會停止生效。只有在病人已被強制羈留在精神病院的情況下，法院才可以發出新的有條件釋放令。

   「非正式地」指病人被送進《精神病院（綜合）宣布令》（第 136B 章）所列出的病房以外的公立醫院精神科病房。

2. 怎樣才可以解除或取消有條件釋放令？

   《條例》沒有給予院長或負責個案的臨床醫生任何法律權限或權力，以解除有條件釋放令。根據《條例》第 59E(1) 條，只有精神健康覆核審裁處才有權解除有條件釋放令。然而，院長或負責個案的臨床醫生可以更改有條件釋放令的條款。

3. 如果病人沒有在他／她被召回醫院起計 28 天內返回或被扣押送回醫院，會發生什麼事？

   根據《條例》第 43(6) 條該病人在 28 天期屆滿後，不可能再被扣押入精神病院。

### 精神健康覆核審裁處（「審裁處」）

審裁處由一名具備法律經驗的主席、一名醫生、一名社工，以及一名既不是醫生又不是社工的外行成員組成。根據第 59B(2) 條，申請人可向審裁處提出申請，要求覆核病人被強制收納入精神病院的個案、病人獲有條件釋放的個案及其他個案。理論上，申請人可在第 31 及 32 條所訂明的羈留期間，向審裁處提出申請，但是實際上，由於申請過程歷時很長，審裁處會趕不及在病人的羈留期完結前召開聆訊，覆核他／她的個案。

被強制羈留在精神病院的病人，可以每 12 個月提出申請一次，如果沒有行使這個權利，申請會在該病人被強制羈留後 12 個月自動提出。自此以後，申請會每兩年自動提出一次。委員會明白，自動申請不適用於已被有條件釋放的病人。

申請可由病人或病人的一名親屬提出。法律代表也可以提出。委員會亦明白，法律援助適用於上文所述事宜。

***– 精神健康法委員會***

## PROFESSION

### Practice Insights – Without Prejudice Privilege Update

#### Update

In an important judgment, the Court of Appeal recently dismissed the first defendant's appeal in *Secretary for Justice v Wong & Ors* [2021] HKCA 1982. In doing so, the Court of Appeal upheld the lower court's decision that a letter marked "without prejudice" sent by the first defendant's lawyers to the District Lands Office had not (in substance) been made on a without prejudice basis – therefore, the letter could be referred to in the plaintiff's statement of claim. The judgment analyses the legal principles that underpin the protection afforded to without prejudice communications and is of genuine practical importance for legal practitioners and their clients, given the widespread use of such communications in their daily lives.

#### Practice

*Secretary for Justice v Wong* confirms that for a communication to be made on a without prejudice basis it must be made for the purpose of a relevant and extant dispute between the parties. In this case, while there appeared to have been a dispute (at some stage) between some of the owners of a plot of land, the letter from the first defendant's lawyers did not dispute the government's title to adjoining land. Therefore, while the first defendant may have been trying to negotiate, there had been no relevant dispute as between the District Lands Office and the first defendant at the time – the first defendant had been, in effect, asking for a "concession".

While the outcome in the case may seem a tad harsh, recent judgments have been consistent in scrutinising claims to without prejudice privilege. To be without prejudice, based on an objective assessment (i.e., according to a reasonable person), a communication at the time it comes into existence must be created:

- for a legitimate purpose;
- with an intention that it be without prejudice;
- for the purpose of genuinely attempting to settle one or more issues relating to a relevant and extant dispute between the parties; and
- with respect to actual or contemplated legal proceedings.

In *Secretary for Justice v Wong*, the absence of a "relevant dispute" between the two principal parties appears to have been fatal to the claim to without prejudice privilege. While labels such as "without prejudice" are important as a starting point, they are not conclusive. In practice, it is worth noting that:

- while a communication can form part of a continuum of negotiations, a claim to without prejudice privilege is determined on a "document-by-document" basis;
- replying to another party's "open" correspondence by marking a letter "without prejudice" does not alter the status of the previous correspondence – whether the reply is without prejudice is determined by its contents, applying the legal principles set out above; and
- negotiation (of itself) does not attract without prejudice privilege. For example, in Secretary for *Justice v Wong*, while the first defendant may have been trying to negotiate it appears that the letter in question did not assert his alleged rights in contradiction to the government's rights. Legal practitioners and their clients must make their intentions clear.

#### Epilogue

While the first defendant (the appellant) lost his appeal in Secretary for *Justice v Wong*, it is noteworthy that the Court of Appeal chose to set out the legal principles that underpin without prejudice privilege in such detail. In particular, Secretary for *Justice v Wong* applies the Court of Appeal's reasoning in *Poben Consultants Ltd v Clearwater Bay Golf & Country Club* [2019] 1 HKLRD 1110 – another important case, in which a claim to without prejudice privilege was unsuccessful.

It will be interesting to see when the Court of Final Appeal gets an opportunity to review the contributions of Mr. Wong and the Clearwater Bay Golf & Country Club to the common law. The legal issues involved raise points that are arguably of great general or public importance.

***— David Smyth, Senior Consultant, RPC***

## 專業導論

### 實務透視 - 關於「內容不得損害權益」的特權的最新信息

#### 最新信息

在最近的一宗案例，*Secretary for Justice v Wong & Ors* [2021] HKCA 1982，上訴法庭駁回第一被告人的上訴，維持下級法庭的判決，亦即認同

第一被告人的律師發給地政專員，上面標明「內容不得損害權益」的那封信，（實質上）並不是在第一被告人的權益不受損害的基礎上寫的——因此，原告人的申索陳述書可以提及那封信。「內容不得損害權益」的通訊獲得保護是有法律原則支持的，上訴法庭的判決對這些原則進行了分析。這無疑對法律執業者和他們的當事人具有實際的重要性，因為這正是他們在日常生活中廣泛使用那一種通訊。

### 實務新知

*Secretary for Justice v Wong* 一案確認，要在權益不受損害的基礎上與另一方通訊，那次通訊必須是為了訴訟各方之間某個現存並且相關的爭議而作出。儘管涉案土地的擁有人，有的似乎（在某階段）相互之間存在爭議，但是第一被告人律師發出的信函，內容不涉及就政府在毗連土地的業權提出異議。因此，儘管第一被告人也許一直有嘗試進行洽商，但是當時地政專員與第一被告人之間並不存在相關的爭議——實際上，第一被告人一直在要求「讓步」。

儘管案件的結果似乎是嚴厲了點，但近期的判決對「內容不得損害權益」的特權聲稱的審查是貫徹如一的。根據客觀的評定（即明理的人所會作出的評定），要通訊內容不得損害權益，那次通訊必須一開始就符合下列要求：

- 有一個合法的目的；
- 打算是「內容不得損害權益」的；
- 真的是為了解決問題，嘗試解決一個或以上與訴訟各方之間現存並且相關的爭議有關的問題；及
- 是與實際或預期進行的法律程序有關的。

在 *Secretary for Justice v Wong* 一案，訴訟雙方沒有「相關的爭議」，這似乎對「內容不得損害權益」特權的聲稱具有毀滅性的影響。儘管以「不得損害權益」一類的標籤作為起點很重要，但它們不具決定性影響。值得一提的是，在實踐中：

- 某次通訊可以是持續談判過程中的一部分，但「內容不得損害權益」特權的聲稱卻是逐一根據文件決定的；
- 接到另一方的「不是不得損害權益」的通訊，在回信上標明「內容不得損害權益」並不會改變所收通訊的地位——回信是否「不損害發出者權益信函」是根據信函內容，運用上文列出的法律原則決定的；及
- 談判（本身）沒有不享有「內容不得損害權益」的特權。舉例說，在 *Secretary for Justice v Wong* 一案，第一被告人可能一直嘗試進行談判，但以乎有關信函沒有提到他所聲稱的權利，作出與政府的權利相違背的宣稱。法律執業人員和他們的當事人必須使自己的意圖清晰不昧。

### 結語

*Secretary for Justice v Wong* 一案的第一被告人（上訴人）上訴失敗，值得留意的是，上訴法庭選擇非常詳細地列出「內容不得損害權益」的特權在法律上的基礎原則。特別是，Secretary for Justice v Wong 一案把上訴法庭在 *Poben Consultants Ltd v Clearwater Bay Golf & Country Club* [2019] 1 HKLRD 1110 一案的理據加以應用。那是另一重要案例，案中有關「內容不得損害權益」特權的聲稱被裁定不成立。

大家可以想像一下，終審法院什麼時候會有機會檢視黃先生和清水灣高爾夫球鄉村俱樂部對普通法的貢獻。涉及的法律議題提出一些可以辯證的具有非常廣泛或關乎公眾重要性的問題。

***— RPC 高級顧問 施德偉***

## TECHNOLOGY

## Crypto Analytics | How to Research a Crypto or Virtual Asset Token? | Common Crypto Analysis & How to Avoid Crypto Scams & Rug Pulls

*"Risk is not inherent in an investment; it is always relative to the price paid. Uncertainty is not the same as risk...."*

- Seth Klarman

### Introduction

Pursuant to Paragraph 6.2(h) and Schedule 1 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission, licenced institutions are required to remind their clients:

*"The prices of securities fluctuate, sometimes dramatically. The price of a security may move up or down, and may become valueless..."*

In reality, much of such warnings is nothing more than white noises to the listener and does little to mitigate investment risk. This is why proper research and understanding of products is crucial.

### Do Your Own Research | Common Crypto Analysis

When it comes to the question of how to make a profitable [crypto] investment, a lot of factors are important and is responsible for one's results. There are three (3) common types of analysis commonly employed within the crypto ecosystem. Whilst a lot of traders would pivot that only one type matters (and therefore prevails over the others), reality is that they all matter to a certain degree.

Common Analytics 1: Technical Analysis

A technical analysis is the analysis of past price action of an asset. This usually take the form of performing analytics on price charts with a view to find discernible patterns (often from investor psychology). It should be stressed that:

- one cannot expect to make great investment decisions purely by looking at charts; and
- results may be bogus.

Common Analytics 2: Sentiment Analysis (AKA Sentiment & Fundamental Indicators)

Sentiment Analysis is the study of how the general population 'feels' about a certain stock or crypto. Market sentiment studies will often make reference to the overall attitude of investors toward a particular security or financial market.

As such, the foundation of the analysis is the feeling or tone of a market (AKA crowd psychology). Data can be extracted through the activity and price movement of the securities traded in that market. In broader terms, while rising prices will indicate bullish market sentiment, falling prices on the other hand will indicate a bearish market sentiment.

While feels cannot be measured per se, recent breakthrough in **big data** and **artificial intelligence** technology enables the use of various tools to gage internet activities and formulate a **sentiment score**.

As effective as the tool may sound, common shortcomings of sentiment analysis include:

- Data being easily manipulated;
- Data not reflective of long term trend in nature (diminishing in value over time); and
- Difficult to analyse and interpret.

Common Analytics 3: Fundamental Analysis

A fundamental analysis is the actual study of the composition of a particular crypto project. Such analysis includes the study of the following information (usually found within a project's whitepaper): -

- team composition;
- track record;
- progress;
- and specific project objectives.

## The Default Tone | Always Play the Devil's Advocate

It is always important to keep in mind that each action should have an objective in mind. The research of a crypto is no exception.

"*Healthy scepticism is the basis of all accurate observations*"

- Arthur Conan Doyle

One of the biggest issues faced by crypto-investors is the 'fear of missing out' ("**FOMO**"). To combat this phenomena, the goal of any crypto research should be to play the role of the Devil's Advocate as, whilst it is easy to see an investment as investible, it will often take a lot more effort to make an investment look bad. As such, one should always **look for drawbacks**. Where a product still generates interest after spotting all drawbacks, then it may be investible.

## Tokenomics

Tokenomics is the study of the economy of a virtual asset. Data to Tokenomics of specific projects can usually be found on the project's website or whitepaper. The first thing to find out about a token is whether it is an inflationary or deflationary asset.

- Inflationary assets are assets that can be created in perpetuity (e.g. USD or RMB where central banks can just print indefinitely). Inflationary assets decrease in value over time in absence of increasing demand.
- Deflationary assets are assets that will decrease over time (e.g., being burnt upon use). Example includes collector cards.

Many crypto assets are a mixed class. For example, Bitcoin at present is inflationary as more can be mined BUT will eventually be exhausted (at which point will become deflationary). Farm tokens are another form of highly inflationary assets.

## Premine Factor

Another dataset to look into is presale data. Tokens are oftentimes circulated presale via (i) private investors, (ii) early users (via airdrops) and (iii) miners. Depending on a project's vision, it may influence price of the asset over time. Common issuing method includes Initial Coin Offerings, Premine, Presale and Algorithmic Issuance.

## Project Composition

It is no understatement that the people behind a token is essential to the token's future. Where a team comprise crypto-veterans, the likelihood of success of a new project increases owing to the strategic experience they bring to the table. On the contrary, lesser known developers may associate higher risk (e.g., as veterans have reputation risks to worry about).

## Final Factor | Vision

Lastly, a project will only have value if it has a problem to solve. For example, Bitcoin is seen to have value as it endeavours to solve the issue of inflation. Ethereum on the other hand aim to solve issues with expensive and slow banks. Polkadot aims to become the internet of blockchain.

## Conclusion

Ultimately, the goal of any token research should be to assess where an asset deserves to be. Therefore, always remember, before investing, do technical analysis and read the whitepapers.

***– Joshua Chu, Consultant, ONC Lawyers***

***– Ohoon Kwon, Partner, Cha & Kwon***

## 科技

# 分析加密資產的方法 | 當怎樣研究加密資產或虛擬資產代幣？| 常見的加密資產分析及如何避開加密貨幣騙局和「拉地毯」騙局

*「風險不是投資所固有；它總與已支付的價格相對應。不確定性和風險是不一樣的……」*

- Seth Klarman

### 引言

根據《證券及期貨事務監察委員會持牌人或註冊人操守準則》第 6.2(h) 段及附表 1 的規定，持牌機構必須提醒客戶：

*「證券價格有時可能會非常波動。證券價格可升可跌，甚至變成毫無價值。……」*

可是聽者藐藐，這類警告只像白噪音，幾乎完全無助於減輕投資風險。要好好瞭解產品和恰當的產品研究之所以那麼重要的原因正在於此。

### 自己做研究 | 常見用以分析加密資產的方法

怎樣才能投資 [ 加密資產 ] 獲利？這個問題涉及許多既重要，也影響投資結果的因素。常用於加密資產生態系統的分析方法有三 (3) 種。很多交易商認定只有一種是重要的（也就相較其餘兩種優勝），但事實上，三種分析都有一定程度的重要性。

常見分析法 1：技術分析

技術分析是分析資產以往的價格行為。這通常是根據價格圖表進行的，目的是找出明顯的走勢模式（通常從投資者的心理角度來分析）。有兩點需要強調：

- 大家不可能指望單靠圖表就可以作出重要的投資決定；及
- 結果可以是假的。

常見分析法 2：情緒分析（亦稱為情緒及基本指標）

情緒分析是研究普羅大眾對某一股票或加密資產有什麼「感覺」。市場情緒研究通常以整體投資者對某一證券市場或金融市場的態度作為參考。

由此看來，市場感覺或市場氣氛（亦稱為群眾心理）是分析的基礎。數據可以透過證券在市場的買賣活動和價格變動取得。籠統地說，價格上升顯示市場情緒高漲，即牛市，價格下跌顯示市場情緒低落，即熊市。

儘管感覺本身不可量度，但最近在**大數據**和**人工智能**方面取得的技術突破，使我們能夠利用不同工具來精確測量互聯網活動及計算**情緒分數**。

情緒分析似乎很有用，可是它有幾個常見的缺點，包括：

- 數據容易篡改；
- 數據本質上不能反映長遠走勢（價值隨著時間而遞減）；及
- 不容易分析，不容易理解。

常見分析法 3：基本分析

基本分析是切實地研究某一加密貨幣計劃的構成成分。這類分析所研究的資料包括以下三項（通常可以在計劃白皮書找得）：

- 團隊組成；
- 往績記錄；
- 發展進度；及
- 計劃的特定目標。

### 預設腔調 | 總是高唱反調

切記，每做一件事都應該有一個目標。加密資產的研究也不例外。

*「應有的懷疑是精確觀察萬物的基礎」*

- Arthur Conan Doyle

「錯失恐懼」（fear of missing out）是加密資產投資者面對的其中一個大問題。大家容易把某產品看為可以投資的產品，但通常得多花許多工夫才把某產品看為不利投資的產品，所以，任何加密資產的研究都應該以高唱反調為目的，好去克服「錯失恐懼」這種心理現象。由此看來，大家務必要**找出缺點來**。如果產品缺點盡現依然引起投資興趣，那麼它就是你可以投資的產品了。

### 代幣經濟學

代幣經濟學研究的是某一虛擬資產的經濟體。特定計劃的代幣經濟學的數據通常可以在該計劃的網頁或白皮書找到。研究的代幣是通脹資產還是通縮資產？這是第一件要查明的事。

- **通脹資產**是可以無休止地創造的資產（例如美元和人民幣，央行可以只管無限量印製）。通脹資產的需求如果沒有增加，價值會隨著時間而下跌。
- **通縮資產**是將會隨着時間而減少的資產（例如一用就會耗盡）。例子包括收藏卡。

很多加密資產是兩者的混合物。舉例說，比特幣現在是通脹資產，還有更多可以開採，不過，總有一天會被採盡（那時就變成通縮資產了）。農場代幣是另一形式的高通脹資產。

### 預挖礦因素

另一組研究的數據是預售數據。(i) 私人投資者；(ii) 早期用戶（透過空投）；及 (iii) 挖礦者往往是代幣流通以前的預售對象。預售可以隨著時間而影響價格，影響與否取決於計劃的願景。代幣常見的發行方法包括初始代幣發行、預挖礦、預售和算法發行。

### 計劃團隊的組成

代幣背後一眾人物對於代幣的未來極為重要。此話說來毫不誇張。如果團隊有人是身經百戰的代幣老手，有他們來謀略獻策，新計劃成功的可能性會加大。反過來說，知名度較低的開發商，風險可能較高（例如，老手要為聲譽風險而擔憂）。

### 最後的因素 | 願景

最後一點，只有解決問題的計劃才有價值可言。例如，比特幣被看為有價值，是因為它努力解決通脹問題。以太幣則致力解決銀行費用高速度慢的問題。波卡幣致力成為區塊鏈的互聯網。

### 總結

歸根結底，所有代幣研究都應該以某資產得到應得的評價為目的。因此，總要記住，投資之前，先做技術分析和閱讀白皮書。

***– 柯伍陳律師事務所顧問律師 朱喬華***

***– 車・權法律事務所合夥人 權吾勳***

# CASES IN BRIEF
# 案例撮要

## CONTEMPT OF COURT

| |
|---|
| *Hwang Joon Sang v Vivien Chung Ying Yin* |
| [2021] HKCFI 3296 |
| Coleman J in Chambers |
| 3, 4 November 2021 |

**Facts**

Ps sought leave to apply on an *ex parte* basis for an order of committal for contempt against D6 because of the false statements made by her, on behalf of herself and D1-7, in two of her affirmations made in support of the application to discharge injunctions against them, pursuant to O.52 r.2(1) and O.41A r.9 of the Rules of the High Court (Cap.4A, Sub. Leg.).

**Held**, refusing Ps' application for leave to apply for an order of committal for contempt, that:

1) The Court would always approach with extreme caution any application for leave to cite a person for contempt for giving a false statement verified by statement of truth without an honest belief in its truth. Hence, it was of paramount importance for the applicant to make explicit reference to the fact that he was seeking leave under O.41A r.9, so that the Court's vigilance was aroused. Generally, the proper time for determining the truth or falsity of statements was at trial. To give leave during the interlocutory stages would unlikely be appropriate if it would serve to distort the trial process. Ultimately the only question was whether it was in the public interest for such proceedings to be brought. The Court would need to consider factors which would indicate whether the alleged contempt was of sufficient gravity, including the strength of the evidence relevant to the falsity, the significance of the statement in the proceedings, and evidence as to the state of mind of the alleged contemnor. Other important factors to be weighed in the balance included the Court's view as to the effect of the false statement on the applicant, whether the alleged contemnor was warned at the earliest opportunity, whether the alleged contemnor had recanted from the relevant statement and the timing of any recanting, the deterrent effect of the proposed contempt proceedings, and whether such proceedings would likely justify the resources required (*KJM Superbikes Ltd v Hinton* [2009] 1 WLR 2406, *Numeric City Ltd v Lau Chi Wing* [2016] 4 HKLRD 812 applied).

2) As to whether O.41A r.9 had any application to a complaint about a false statement made in an affidavit or affirmation, on the face of it, an affidavit or affirmation did not fall within the description of those documents required to be verified under O.41A. However, even if O.41A r.9 was not directly applicable, the general approach to be taken to such an application would be similar, and the applicant for leave to apply for committal would still need to satisfy the requirements of O.52. At bottom, it was the Court to whom the oath or affirmation or verification statement was given, and in its maintenance of the proper administration of justice that decided whether it was in the public interest in the overall circumstances of any individual case to permit committal proceedings in that case, and if so at what point in time (*Kinform Ltd v Tsui Loi* (No 2) [2011] 5 HKLRD 80, *La Dolce Vita Fine Dining Co Ltd v Zhang Lan* [2018] HKCFI 548 applied; *International Sports Tours Ltd v Thomas Shorey* [2015] EWHC 2040 (QB) considered).

3) On balance and in the overall exercise of the Court's discretion, the answer to the ultimate question was that it was not in the public interest for committal proceedings to be brought, and the potential punishment for contempt would not be proportionate or appropriate in this instance.

**Applications**

This was the plaintiffs' *ex parte* applications for leave to apply for an order of committal for contempt against the sixth defendant pursuant to O.52 r.2(1) and O.41A r.9 of the Rules of the High Court (Cap.4A, Sub.Leg.).

## 藐視法庭

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|---|
| *Hwang Joon Sang v Vivien Chung Ying Yin* |
| [2021] HKCFI 3296 |
| 高等法院原訟法庭法官高浩文內庭聆訊 |
| 2021 年 11 月 3 日、4 日 |

**案情**

原告人根據《高等法院規則》(第 4 章，附屬法例 A) 第 52 號命令第 2(1)

## FAMILY LAW

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|---|
| *TO and KO (Divorce: Jurisdiction)* |
| [2021] HKCA 1545 |
| Kwan V-P and Barma and Au JJA |
| 30 September, 22 October 2021 |

條規則及第 41A 號命令第 9 條規則提出單方面申請，要求法庭許可頒發針對 D6 的藐視法庭令，理由是她在其所作出的其中兩項代表自己和 D1-7 的非宗教式誓詞中作出虛假陳述（該等誓詞是為針對她們發出的禁制令之解除申請提供支持）。

**裁決**—拒絕接納原告人就頒發藐視法庭令的申請許可而提出的申請，理由如下：

1) 某人若被指在以屬實申述核實的文件中作出虛假陳述，而並非真誠地相信其為屬實，法庭就針對該人提出的藐視法庭指控的許可申請，經常會極其審慎地處理。因此十分重要的一點是，申請人須明確提述他是根據第 41A 號命令第 9 條規則尋求許可，從而引起法庭警覺。一般而言，要確定某項陳述之真假的適當時間，是於審訊之時。倘若於非正審階段批予許可，將會對審訊程序造成扭曲，這在任何情況下都是不適當的，而最終的唯一問題是：准予提起該等法律程序是否符合公眾利益。法庭將須考慮各項可顯示所指稱的藐視法庭行為是否確實是嚴重的因素，包括與虛假相關的證據之強度、法律程序中的陳述的重要性，以及與所指的藐視法庭者的精神狀態有關的證據。其他須權衡的重要因素包括法庭就虛假陳述對申請人所產生的影響的看法、所指的藐視法庭者是否已於第一時間被警告、所指的藐視法庭者是否已撤除相關陳述以及其撤除時間、所建議的藐視法律程序所具的阻嚇作用，以及該等法律程序能否為所需資源提供合理性（*KJM Superbikes Ltd v Hinton* [2009] 1 WLR 2406、*Numeric City Ltd v Lau Chi Wing* [2016] 4 HKLRD 812 等案件適用）。

2) 至於第 41A 號命令第 9 條規則是否適用於在宗教式誓章或非宗教式誓詞中作出虛假陳述的申訴，從表面看，宗教式誓章或非宗教式誓詞並不在須根據第 41A 號命令進行核實的文件的描述範圍內。然而，即使第 41A 號命令第 9 條規則並不直接適用，但仍與對該等申請所採取的一般做法類似，而申請交付羈押許可的申請人仍須符合第 52 號命令的規定。基本上，宗教式誓章、非宗教式誓詞或核實陳述是呈遞予法庭，其須秉行司法公正，並須決定在任何個別案件的整體情況下，允許該案件進行交付審判程序是否符合公眾利益，若然，是在甚麼時間點（*Kinform Ltd v Tsui Loi (No 2)* [2011] 5 HKLRD 80、*La Dolce Vita Fine Dining Co Ltd v Zhang Lan* [2018] HKCFI 548 等案件適用；*International Sports Tours Ltd v Thomas Shorey* [2015] EWHC 2040 (QB) 一案被考慮）。

3) 經過綜合考慮及在法庭整體行使其酌情決定權的情況下，該項最終問題的答案是：提起交付審判法律程序並不符合公眾利益，而在本案中對藐視法庭的潛在懲罰將顯得不相稱或不適當。

**申請**

本案乃原告人根據《高等法院規則》（第 4 章，附屬法例 A）第 52 號命令第 2(1) 條規則及第 41A 號命令第 9 條規則，針對第六被告人提出有關藐視法庭的交付羈押令的許可申請之單方面申請。

**Facts**

On the application of the husband (H) commenced after a decree *nisi* had been made, the Family Court Judge: (i) dismissed the divorce petition of the wife (W) on the ground that the Hong Kong courts lacked jurisdiction to entertain the petition under s.3(b) of the Matrimonial Causes Ordinance (Cap.179) in that neither party had been habitually resident in Hong Kong throughout the period of three years immediately before the date of the petition; (ii) rescinded the decree *nisi*; and (iii) discharged H's undertakings to W and the Court. W appealed. Eleven grounds of appeal were advanced on her behalf. Under grounds 1 to 6, it was contended as follows. First, H should not have been allowed to challenge jurisdiction because, a decree *nisi* having been made, the Court was *functus officio*. Second, setting aside the decree *nisi* could only take place by a fresh action or an appeal, with the burden on H. Third, *res judicata* had arisen both by way of cause of action estoppel and issue estoppel. Fourth, H had submitted to the jurisdiction and was debarred from challenging it. Under grounds 7 to 11, a challenge was made to the Judge's finding of fact that neither party had been habitually resident in Hong Kong throughout the period of three years immediately before the date of the petition. The bulk of the submissions made on behalf of W was on her contention that there was no jurisdiction to entertain H's challenge to jurisdiction, alternatively, that the jurisdiction to entertain that challenge should not have been exercised in the circumstances.

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

1) Once the court's attention has been drawn to any question on jurisdiction, it would investigate whether there was jurisdiction without requiring fresh action or appeal and without a shifting of burden. If it concluded that there was no jurisdiction, the decree nisi would be set aside. Due to the importance of the jurisdictional issue, subject to concerns about abusive re-litigation, the court would investigate and if necessary rescind any decree nisi made without jurisdiction (*Dennis v Dennis* [2003] 3 WLR 1443, *Armstrong v Armstrong* [2003] EWHC 777 (Fam), *W v C (Divorce: Jurisdiction)* [2013] 2 HKLRD 602 applied).

2) H's dilatoriness in challenging jurisdiction was regrettable since such challenges should be pursued at an early stage and resolved as soon as practicable. But there did not appear to be abusive re-litigation in this instance. The duty of promptitude should not be a governing consideration where jurisdiction was in issue. This was a proper case to reopen the issue of jurisdiction (*Day v Day* [1980] Fam 29, *RKL v WL* [2016] 1 HKFLR 162, *Re Resource 1* (2000) 3 HKCFAR 187 considered).

3) A decree *nisi* was non-final and by its very nature could not create any res judicata or issue estoppel. It was not final unless and until it became absolute. In any event, the concepts of res judicata and issue estoppel should not apply here given that the issue to be determined was one of statutory jurisdiction. The court had a right and duty to inquire into the issue of jurisdiction in this instance in exercising its statutory jurisdiction and to act upon evidence which is material to its determination (*J & F Stone Lighting and Radio Ltd v Levitt* [1947] AC 209, *Thompson v Thompson* [1957] P 19, *Laws v Laws* [1963] 1 WLR 1133, *Kemp v Pearce [1972] VR 805, R v R (Divorce: Jurisdiction: Domicile)* [2006] 1 FLR 389, *Champion Concord Ltd v Lau Koon Foo* (No 2) (2011) 14 HKCFAR 837, *W v C (Divorce: Jurisdiction)* [2013] 2 HKLRD 602, *Kan Lai Kwan v Poon Lok To Otto* (2014) 17 HKCFAR 414 applied).

4) Since a submission to jurisdiction was a form of estoppel, it should be irrelevant to this issue for the same reasons that res judicata should not apply when the jurisdiction was a statutory one (*RKL v WL* [2016] 1 HKFLR 162, *RKL v WL* (FCMC 14906/2014, [2015] HKEC 2650) distinguished).

5) W bore, but had not discharged, the burden of showing that the Judge's findings of fact were plainly wrong.

**Appeal**

This was the petitioner wife's appeal against the judgment of Judge Melloy in the Family Court dismissing her petition for divorce on the ground that Hong Kong lacked jurisdiction to entertain the same under s.3(b) of the Matrimonial Causes Ordinance (Cap.179).

## 家事法

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| *TO and KO（離婚：司法管轄權）* |
| [2021] HKCA 1545 |
| 上訴庭副庭長關淑馨、上訴庭法官鮑晏明、區慶祥 |
| 2021 年 9 月 30 日、10 月 22 日 |

**案情**

就本案頒發暫准判令後本案的丈夫 (H) 所提出之申請，家事法庭法官：(i) 駁回妻子 (W) 的離婚呈請，理由是香港法院無權受理該根據《婚姻訴訟條例》（第 179 章）第 3(b) 條所提出之呈請，因為在緊接呈請提出當日之前的整段 3 年期間內，婚姻的任何一方皆未慣常居於香港；(ii) 撤銷該暫准判令；及 (iii) 解除 H 對 W 和法庭所作的承諾。W 提出上訴，共有 11 項上訴理由代表她提出，而根據第 1 至第 6 項理由而提出的爭辯如下。首先，H 不應獲准就司法管轄權提出質疑，原因是暫准判令已經頒發，法庭是*權責終結*。第二，暫准判令的撤銷只能藉提出新的訴訟或上訴來進行，責任由 H 承擔。第三，*既判案件*藉已決訴訟因由不得重提及已裁決的問題不容推翻而確立。第四，H 已受相關司法管轄權所限，他被禁止對其提出質疑。根據第 7 至 第 11 項理由，原審法官就緊接呈請提出當日之前的整段 3 年期間內，婚姻的任何一方皆未慣常居於香港之事實裁斷被提出質疑。代表 W 作出的大部分陳詞，乃基於 W 所提出的如下爭議，即：香港並無司法管轄權受理 H 就司法管轄權所提出的質疑；又或是，受理該質疑的司法管轄權不應在該等情況下行使。

**裁決**—駁回上訴，理由如下：

1) 法庭一旦被要求審理司法管轄權問題，便會調查是否有司法管轄權可無需提起新的訴訟或上訴，以及無需轉移責任而存在。倘若法庭裁定並沒有司法管轄權，該暫准判令將被撤銷。基於司法管轄權問題的重要性（但須關注重新訴訟被濫用），法庭會進行調查，如有必要，將撤銷任何在沒有司法管轄權情況下頒發的暫准判 令（*Dennis v Dennis* [2003] 3 WLR 1443、*Armstrong v Armstrong*

[2003] EWHC 777 (Fam)、*W v C (Divorce: Jurisdiction)* [2013] 2 HKLRD 602 等案件適用）。

2) H 拖延對司法管轄權提出的質疑，做法令人遺憾，因有關質疑理應及早提出，並在切實可行情況下盡快解決。但本案看來並不存在濫用重新訴訟的情況。就司法管轄權問題而言，及早採取行動的責任，不應該是一項決定性的考慮因素。本案是一宗重新提出司法管轄權問題的適當案件（*Day v Day* [1980] Fam 29、*RKL v WL* [2016] 1 HKFLR 162、*Re Resource 1* (2000) 3 HKCFAR 187 等案件被考慮）。

3) 暫准判令乃非終局性，就其本質而言，不能形成任何*既判案件*或已裁決的問題不容推翻情況。除非它已成為絕對判令，否則並非最終。無論如何，基於所須裁定的問題乃法定司法管轄權問題，*既判案件*及已裁決的問題不容推翻等概念於本案因此並不適用。就法庭於本案行使其法定司法管轄權而言，它有權利和責任研訊有關司法管轄權問題，並根據該等對其裁決起關鍵作用的證據來行事（*J & F Stone Lighting and Radio Ltd v Levitt* [1947] AC 209、*Thompson v Thompson* [1957] P 19、*Laws v Laws* [1963] 1 WLR 1133、*Kemp v Pearce* [1972] VR 805、*R v R (Divorce: Jurisdiction: Domicile)* [2006] 1 FLR 389, *Champion Concord Ltd v Lau Koon Foo (No 2)* (2011) 14 HKCFAR 837、*W v C (Divorce: Jurisdiction)* [2013] 2 HKLRD 602、*Kan Lai Kwan v Poon Lok To Otto* (2014) 17 HKCFAR 414 等案件適用）。

4) 由於受司法管轄權所限乃屬一種不容推翻形式，故它與這問題應當並不相關，而基於同樣理由，當有關司法管轄權是屬於法定司法管轄權時，*既判案件*原則應不予適用（*RKL v WL* [2016] 1 HKFLR 162、*RKL v WL* (FCMC 14906/2014, [2015] HKEC 2650) 等案件被區別）。

5) W 有責任證明原審法官所作的事實裁斷屬明顯犯錯，但其未能做到。

**上訴**

本案乃作為妻子的呈請人就家事法庭法官麥莎朗駁回其離婚呈請之判決所提出的上訴，而法官的判決理由為根據《婚姻訴訟條例》（第 179 章）第 3(b) 條之規定，香港不具備受理該宗離婚呈請的司法管轄權。

## LEGAL PROFESSION

*CL Chow & Macksion Chan (A Firm) v Chan Pui Fat (陳培發)*

[2021] HKCFI 3086

Deputy Judge Raymond Leung SC

28-30 July, 2, 5 August, 25 October 2021

**Facts**

A company (C) commenced a High Court action regarding a commercial dispute (the Action). The defendants and third parties in the Action included D1-8 in the present proceedings along with other co-defendants. D1 was the owner and/or in control of D2-8 (collectively the "Chan Camp"). All the defendants in the Action were notified of a *Mareva* Injunction (the Injunction) granted *ex parte* upon the application of C. Chow, a partner of P, a solicitors' firm, provided advice and assistance to the Chan Camp. The Injunction was discharged against D1 and the other co-defendants on the ground of material non-disclosure on the part of C, but continued against D1's group of companies, namely, D2-7. P rendered a bill of costs claiming about $3.6 million for the Chan Camp to C. However, after the taxation hearing only $1.7 million of the amount claimed was allowed. Chow requested D1 to allow the $1.7 million recovered from C to be retained by P for defraying P's profit costs for which a bill would be rendered. D1 took the position that all the money recovered ought to be returned to him since P (acting through Chow) had: (i) agreed to handle the various items of work pertinent to the Injunction on the basis the Chan Camp would only need to pay the various sums by way of costs on account as demanded by Chow from time to time and such sums had in fact been paid by the Chan Camp; and (ii) represented that the costs on account so paid would be sufficient to cover all items of work done (or to be done) by P and counsel at every stage. Thereafter, P commenced this action for recovery of professional fees and disbursements for legal services rendered to the Chan Camp. By a Consent Order, the action was stayed in favour of taxation proceedings. However, in light of the numerous factual disputes, the parties agreed to proceed under this action to resolve the factual disputes whereupon the taxation proceedings were stayed by a Consent Order. The factual issues included whether P and D1 entered into the agreement as pleaded in the Defence, or whether the Chan Camp was liable to pay all "costs reasonably incurred" by P.

**Held**, ruling that:

1) There was no hourly rate(s), whether by description or by reference to the actual monetary figure(s), which were agreed upon for handling the Injunction and the Action. The admission of Chow that he might not have mentioned charging reasonable costs demonstrated that there was no express term. Upon the finding that no hourly rate had been agreed, the pleadings in the Statement of Claim would admit a construction that there was an implied term for reasonable remuneration by operation of s.7 of the Supply of Services (Implied Terms) Ordinance (Cap.457). Taking Ds' case at its highest, there was no evidence that D1 was ever told by Chow that after putting up the various sums by way of costs on account, Ds would have no obligation to make any further payment whatsoever when a bill was rendered in due course. Accordingly, there was no agreement as alleged by Ds and therefore the costs payable by Ds to P should proceed to taxation (*Re Paine (1912) 28 TLR 201, Griffiths v Evans* [1953] 2 All ER 1364, *Manches LLP v Green* [2008] 6 Cost LR 881, *Wong & Fok v Ronstar (Asia) Ltd* (HCA 1476/2009, [2010] HKEC 1308), *Adams v London Improved Motor Coach Builders Ltd* [1921] 1 KB 495, *R v*

*Miller* [1983] 1 WLR 1056, *Educational Group (HK) Ltd v Deacons* (HCMP 2138/2008, [2009] HKEC 749), *RTS Flexible Systems Ltd v Molkerei Alois Müller GmbH & Co KG* [2010] 1 WLR 753 applied).

2) (*Obiter*) The desirability of a written retainer as recommended under the relevant provisions in the Hong Kong Solicitors' Guide to Professional Conduct concerning client care and proper records for civil cases cannot be over-emphasised. Further, legal practitioners are reminded that proper advice to the client as to the method and rate of charging supported by contemporaneous documents is the accent of modern practice in terms of client care.

**Action**

This was an action by the plaintiff for recovery of professional fees and disbursements for legal services rendered to the defendants in respect of a commercial dispute.

## 法律專業

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|---|
| *CL Chow & Macksion Chan (A Firm) v Chan Pui Fat (陳培發)* |
| [2021] HKCFI 3086 |
| 高等法院原訟法庭暫委法官梁偉文 |
| 2021 年 7 月 28-30 日、8 月 2 日、5 日、10 月 25 日 |

**案情**

一家公司（C）就一項商業糾紛向高等法院提起訴訟（訴訟）。案中各被告人及各個第三方包括在本法律程序的 D1-8 中，並聯同其他同案被告人。D1 乃 D2-8 的所有人及 / 或對它們施加控制（統稱"陳營"）。案中各被告人就一項由 C 提出申請，並獲法庭單方面批准的資產凍結強制令（強制令）接獲了通知。Chow 乃一家律師事務所 P 的合夥人，他向陳營提供法律意見及協助。D1 及其他同案被告人獲解除強制令，理由是 C 沒有作出重大披露，但該強制令仍對 D1 的公司集團（即 D2-7）繼續實施。P 代表陳營向 C 交付了一份訟費單，要求對方清償約 360 萬元訟費，但經過訟費評定聆訊後，只獲批給當中的 170 萬元。Chow 要求 D1 同意由 P 保留從 C 追討回來的 170 萬元，以作支付 P 的律師服務費用，而 P 亦將會就此開發訟費單。D1 的立場是，所有追討回來的款項都應退還給他，理由是 P（透過 Chow 行事）曾經：(i) 同意代為處理各項與強制令有關的工作，而陳營只須以預付費用方式，支付 Chow 不時要求支付的各項相關費用，而陳營亦已實際支付該等款項；及 (ii) 表示以預付費用方式所繳付的費用，將足以支付 P 及大律師於每個階段完成（或將完成）的所有工作項目。之後，P 提起訴訟，追討向陳營提供法律服務應得的專業服務費及代墊付費用。根據一項同意令，該宗訴訟被擱置以便進行訟費評定法律程序。然而，鑑於存在許多事實爭議，雙方同意在該宗訴訟下著手解決事實爭議問題，並藉一項同意令擱置有關的訟費評定程序。有關的事實爭議包括 P 及 D1 之間是否訂立了有如抗辯書中所述的協議，還是陳營有責任向 P 支付一切"合理招致的費用"。

**裁決**—判決如下：

1) 案中並不存在經協議的在處理強制令和訴訟方面的按時計費率（無論是藉說明還是藉提述實際金額數字）。Chow 承認他可能未提及收取合理費用，這顯示雙方並無訂立明文條款。在裁定並不存在經協議的按時計費率後，在申索陳訴書的申述中一項可被接納的詮釋是，藉《服務提供（隱含條款）條例》（第 457 章）第 7 條的施行，當中存在須付出合理費用的隱含條款。從最大範圍來看 D 的案情，並沒有證據顯示 Chow 曾告知 D1，在他通過預付費用繳納各筆款項後，當訟費單於適當時間發出時，各被告人無需再作任何進一步付款。因此，該案並不存在各被告人所指的協議，而各被告人應支付 P 的費用須進行訟費評定（*Re Paine* (1912) 28 TLR 201、*Griffiths v Evans* [1953] 2 All ER 1364、*Manches LLP v Green* [2008] 6 Cost LR 881、*Wong & Fok v Ronstar (Asia) Ltd* (HCA 1476/2009, [2010] HKEC 1308)、*Adams v London Improved Motor Coach Builders Ltd* [1921] 1 KB 495、*R v Miller* [1983] 1 WLR 1056、*Educational Group (HK) Ltd v Deacons* (HCMP 2138/2008, [2009] HKEC 749)、*RTS Flexible Systems Ltd v Molkerei Alois Müller GmbH & Co KG* [2010] 1 WLR 753 等案件適用）。

2) （*附帶意見*）在《香港事務律師專業操守指引》中，關於保障當事人及為民事案件保存妥善記錄的相關條文之下建議採納的聘用書，其可取性是毫無疑問的。此外，法律執業者須注意，在收費辦法及費率方面為當事人提供恰當意見，並輔以同步文件作支持，是保障當事人利益的現代實務要點。

**訴訟**

本案乃原告人就一宗商業糾紛向被告人提供法律服務，在收取專業費用和代墊付費用方面提起的訴訟。

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

就完整的摘要和判決書，請到 **www.westlawasia.com** 參閱 Westlaw 及《香港法律彙報與摘錄》。

# PROFESSIONAL MOVES
# 會員動向

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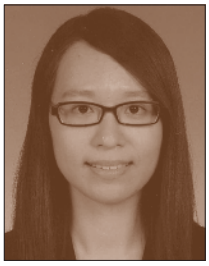
AU-YEUNG ADRIEN YIU LAM
歐陽耀林
*CHEUNG FUNG & HUI*
*張馮許律師行*



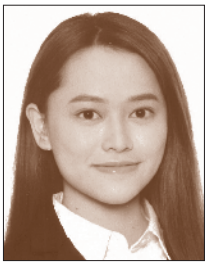
CHEUNG WUI YING
張滙盈
*LCH LAWYERS LLP*
*呂鄭洪律師行有限法律責任合夥*

HON CHAK MING
韓澤明
*C/O DEBEVOISE & PLIMPTON*

CHAN MAN HEI OTILIA
陳文希
*DEACONS*
*的近律師行*

CHOI HIU KAY CRYSTAL
蔡曉琦

HUNG PAK KA
洪栢嘉



CHAN YUET YAU
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*唐滙棟律師行*

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CHEUNG HANG LAM
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何佩恩
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LIANG NICOLE ZHUOYI
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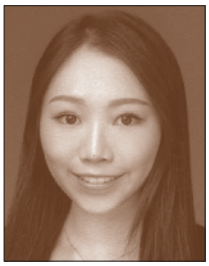
*DEACONS*
*的近律師行*

NG WING YU
伍詠瑜
*LO & LO*
*羅文錦律師樓*



LEE LOK CHING
李樂晴

MA SZE TING
馬詩婷
*KING & COMPANY*
*譚德興程國豪*
*劉麗卿律師行*

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莫穎雅
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*西盟斯律師行*

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LI TIN WAI
李天蔚
*ELLALAN*
*張淑姬趙之威*
*律師行*

NG KAI MING
吳啟銘
*DEACONS*
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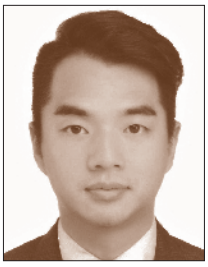
*杜偉強律師事務所*

TO HON YEUNG
杜瀚洋
*ROBERTSONS*
*羅拔臣律師事務所*



TSANG KING LOK KELVIN
曾景鑠
*LO & LO*
*羅文錦律師樓*

TSOI TSZ SHAN
蔡芷姍
*LOEB & LOEB LLP*
*樂博律師事務所有限法律責任合夥*

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徐展鵬

WONG KA YAN KELSEY
王嘉欣
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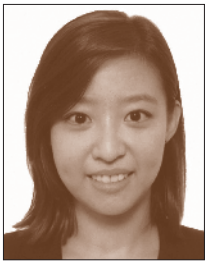
*歐華律師事務所*



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*梁鳳慈律師行*

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CHAN WING YAN JACQUELINE
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LEE VINCE
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伍愷盈
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OPENSHAW PATRICIA TAN
*GIBSON, DUNN & CRUTCHER*
*吉布森律師事務所*

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鄭杰仁
*ALIBABA.COM CHINA LIMITED*

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徐茵琪
*DEACONS*
*的近律師行*

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温浠旻

YAT SZE MAN FLORENCE
葉思敏
*THE CHINESE UNIVERSITY OF HONG KONG*

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楊栩慧
*GOGO TECH LIMITED*

YEUNG JAMIE YUNG YI LING
翁翊翎
*SLAUGHTER AND MAY*
*司力達律師樓*

YIP TSZ YAN
葉芷欣
*TUNG & CO.*
*佟達釗律師行*

YU HOI DICK CHERIE
余愷廸

ZEPPEZAUER CHRISTIAN ANTON
*CK HUTCHISON HOLDINGS LIMITED*

## Partnerships and Firms 合夥人及律師行變動

*Changes received as from 1 December 2021 取自2021年12月1日起香港律師會所提供之最新資料*

- BELL MALCOLM WILLIAM
  ceased to be the sole practitioner of Malcolm Bell & Co., Solicitors as from 14/01/2022 and the firm closed on the same day.
  麥萬勤
  自2022年1月14日不再出任Malcolm Bell & Co., Solicitors獨資經營者一職，而該行亦於同日結業。

- CEULEN MICHAEL JACQUES CHANTAL MARIE
  became a partner of Simpson Thacher & Bartlett as from 01/01/2022.
  CEULEN MICHAEL JACQUES CHANTAL MARIE
  自2022年1月1日成為盛信律師事務所合夥人。

- CHAN HAU YU NICOLE
  became a partner of Minterellison LLP as from 01/01/2022.
  陳巧茹
  自2022年1月1日成為銘德有限法律責任合夥律師事務所合夥人。

- CHAN HEUNG WING ANTHONY
  ceased to be a partner of Hauzen LLP as from 01/01/2022 and joined M.B. Kemp LLP as a partner on the same day.
  陳向榮
  自2022年1月1日不再出任浩宸律師行有限法律責任合夥合夥人一職，並於同日加入M.B. Kemp LLP為合夥人。

- CHAN KA CHUN
  joined Howse Williams as a partner as from 28/12/2021.
  陳嘉駿
  自2021年12月28日加入何韋律師行為合夥人。

- CHAN KAR NANG SHERMAN
  became a partner of Seyfarth Shaw as from 01/01/2022.
  陳家能
  自2022年1月1日成為賽法思律師事務所合夥人。

- CHAN LAI CHUNG RACHEL
  became a partner of Norton Rose Fulbright Hong Kong as from 01/01/2022.
  陳勵聰
  自2022年1月1日成為諾頓羅氏香港合夥人。

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- CHAN PO MAN
  became a partner of ONC Lawyers as from 01/01/2022.
  陳寶文
  自2022年1月1日成為柯伍陳律師事務所合夥人。

- CHANG CHI KEUNG KENNETH
  joined Wong and Partners as a partner as from 03/01/2022.
  鄭志強
  自2022年1月3日加入黃克民, 黃克麟律師行為合夥人。

- CHENG KWOK WAI
  became a partner of Mayer Brown as from 01/01/2022.
  鄭國偉
  自2022年1月1日成為孖士打律師行合夥人。v

- CHEUNG TAK MAN DESMOND
  commenced practice as a partner of Cheung Yan & Associates as from 16/12/2021.
  張德民
  自2021年12月16日成為新開業張殷律師事務所合夥人。

- CHOW LAI ON
  became a partner of Deacons as from 01/01/2022.
  周麗安
  自2022年1月1日成為的近律師行合夥人。

- CHOW SUK KUM MONITA
  ceased to be a partner of K.Y. Lo & Co. as from 01/01/2022 and joined Lily Fenn & Partners as a partner as from 03/01/2022.
  周淑琴
  自2022年1月1日不再出任勞潔儀律師行合夥人一職，並於2022年1月3日加入范家碧律師行為合夥人。

- CHU DAVID CHARLES
  ceased to be a partner of Bird & Bird as from 01/01/2022.
  朱卓偉
  自2022年1月1日不再出任鴻鵠律師事務所合夥人一職。

- CHUNG SHIU HUNG LAWRENCE
  became a partner of Katherine Y.W. Or & Co. as from 01/01/2022.
  鍾兆雄
  自2022年1月1日成為柯玉華律師事務所合夥人。

- CHUNG YUEN YAN AMY
  became a partner of Deacons as from 01/01/2022.
  鍾宛殷
  自2022年1月1日成為的近律師行合夥人。

- CROOCK JAMES MAXWELL
  ceased to be a partner of Dechert as from 01/01/2022.
  CROOCK JAMES MAXWELL
  自2022年1月1日不再出任德杰律師事務所合夥人一職。

- DESOMBRE MICHAEL GEORGE
  joined Sullivan & Cromwell (Hong Kong) LLP as a partner as from 07/12/2021.
  DESOMBRE MICHAEL GEORGE
  自2021年12月7日加入蘇利文・克倫威爾律師事務所(香港)有限法律責任合夥為合夥人。

- DING JIA JIA
  became a partner of Simpson Thacher & Bartlett as from 01/01/2022.
  丁佳佳
  自2022年1月1日成為盛信律師事務所合夥人。

- DOE JULIANNE PEARL
  ceased to be a partner of Dentons Hong Kong LLP as from 01/01/2022 and remains as a consultant of the firm.
  杜珠聯
  自2022年1月1日不再出任德同國際有限法律責任合夥合夥人一職，而轉任為該行顧問。

- FEWINS JEZAMINE CORRINA
  ceased to be a partner of Stephenson Harwood as from 18/12/2021 and joined Lewis Silkin as a partner on the same day.
  FEWINS JEZAMINE CORRINA
  自2021年12月18日不再出任羅夏信律師事務所合夥人一職，並於同日加入世勤律師事務所為合夥人。

- FOSH MICHAEL JOHN
  ceased to be a partner of Reed Smith Richards Butler as from 01/01/2022.
  FOSH MICHAEL JOHN
  自2022年1月1日不再出任禮德齊伯禮律師行合夥人一職。

- FUNG YING WAI
  became a partner of Mayer Brown as from 01/01/2022.
  馮英偉
  自2022年1月1日成為孖士打律師行合夥人。

- HASWELL PAUL RICHARD
  joined Seyfarth Shaw as a partner as from 03/01/2022.
  HASWELL PAUL RICHARD
  自2022年1月3日加入賽法思律師事務所為合夥人。

- HO CHUN YAN ALBERT
  ceased to be a partner of Ho Tse Wai & Partners as from 01/01/2022.
  何俊仁
  自2022年1月1日不再出任何謝韋律師事務所合夥人一職。

- HO KIU CHOR SIDNEY
  became a partner of Sit, Fung, Kwong & Shum, Solicitors as from 01/01/2022.

何翹楚
自2022年1月1日成為薛馮鄺岑律師行合夥人。

- HUNG TONG SENG JEFFREY
ceased to be a partner of Sit, Fung, Kwong & Shum, Solicitors as from 01/01/2022 and commenced practice as a partner of SFKS CK Kwong, Solicitors on the same day.
洪同聲
自2022年1月1日不再出任薛馮鄺岑律師行合夥人一職，並於同日成為新開業SFKS鄺志強律師行合夥人。

- KAN KIN HANG MICHAEL
ceased to be a partner of Gallant as from 11/12/2021.
簡健恒
自2021年12月11日不再出任何耀棣律師事務所合夥人一職。

- KU KA YAN YVONNE
became a partner of Morley Chow Seto as from 03/01/2022.
顧嘉恩
自2022年1月3日成為麥樂賢周綽瑩司徒悅律師行合夥人。

- KWON CHAN DOO
ceased to be a partner of Ashurst Hong Kong as from 01/01/2022 and joined Reynolds Porter Chamberlain as a partner on the same day.
KWON CHAN DOO
自2022年1月1日不再出任亞司特律師事務所合夥人一職，並於同日加入Reynolds Porter Chamberlain為合夥人。

- KWONG CHI KEUNG
ceased to be a partner of Sit, Fung, Kwong & Shum, Solicitors as from 01/01/2022 and remains as a consultant of the firm. Mr. Kwong commenced practice as a partner of SFKS CK Kwong, Solicitors as from 01/01/2022.
鄺志強
自2022年1月1日不再出任薛馮鄺岑律師行合夥人一職，而轉任為該行顧問。鄺律師於2022年1月1日成為新開業SFKS鄺志強律師行合夥人。

- LAM CHOR LAI CELIA
ceased to be a partner of Simpson Thacher & Bartlett as from 01/01/2022 and remains as a consultant of the firm.
林楚麗
自2022年1月1日不再出任盛信律師事務所合夥人一職，而轉任為該行顧問。

- LAM MAN SHING
ceased to be a partner of Katherine Y.W. Or & Co. as from 01/01/2022.
林敏成
自2022年1月1日不再出任柯玉華律師事務所合夥人一職。

- LAM WAI
joined Hans as a partner as from 01/01/2022.
林 慧
自2022年1月1日加入韓氏律師事務所為合夥人。

- LAU WAI KAR LORETTA
became a partner of Deacons as from 01/01/2022.
劉蔚嘉
自2022年1月1日成為的近律師行合夥人。

- LEE KING HEI
became a partner of Wat & Co. as from 01/01/2022.
李璟禧
自2022年1月1日成為屈漢驊律師事務所合夥人。

- LEE KUI YEE
became a partner of Wat & Co. as from 01/01/2022.
李居頤
自2022年1月1日成為屈漢驊律師事務所合夥人。

- LEUNG WAI PUI
ceased to be a partner of CLY Lawyers as from 01/01/2022 and remains as a consultant of the firm.
梁偉培
自2022年1月1日不再出任陳林梁余律師行合夥人一職，而轉任為該行顧問。

- LI FAI
ceased to be a partner of Jingtian & Gongcheng LLP as from 01/01/2022 and joined LC Lawyers LLP as a partner as from 03/01/2022.
李 輝
自2022年1月1日不再出任競天公誠律師事務所有限法律責任合夥合夥人一職，並於2022年1月3日加入林朱律師事務所有限法律責任合夥為合夥人。

- LI JOYCE SZE MANN
became a partner of Deacons as from 01/01/2022.
李思敏
自2022年1月1日成為的近律師行合夥人。

- LO CHAK TIN
became a partner of ONC Lawyers as from 13/12/2021.
盧摘天
自2021年12月13日成為柯伍陳律師事務所合夥人。

- LYALL SOPHIE JANE
became a partner of Ashurst Hong Kong as from 22/12/2021.
LYALL SOPHIE JANE
自2021年12月22日成為亞司特律師事務所合夥人。

- MARSHALL WILLIAM FRANCIS
ceased to be a partner of Tiang & Partners as from 01/01/2022.
MARSHALL WILLIAM FRANCIS
自2022年1月1日不再出任程偉賓律師事務所合夥人一職。

- MOK KWOK LEUNG
ceased to be a partner of Anthony Siu & Co. as from 11/12/2021.
莫國樑
自2021年12月11日不再出任蕭一峰律師行合夥人一職。

- NG DANIEL HEYSON
became a partner of Norton Rose Fulbright Hong Kong as from 01/01/2022.
吳希信
自2022年1月1日成為諾頓羅氏香港合夥人。

- NGAN HIU TING
ceased to be the sole practitioner of H.T. Ngan & Co. as from 31/12/2021 due to the intervention in the practice of the firm by the Law Society on the same day.
顏曉婷
自2021年12月31日不再出任顏曉婷律師事務所獨資經營者一職，因該行於同日被律師會介入。

- OH CHEE HWA
ceased to be a partner of Sidley Austin as from 01/12/2021.
胡志樺
自2021年12月1日不再出任盛德律師事務所合夥人一職。

- OPENSHAW PATRICIA TAN
joined Gibson, Dunn & Crutcher as a partner as from 12/01/2022.
OPENSHAW PATRICIA TAN
自2022年1月12日加入吉布森律師事務所為合夥人。

- PEDLEY JAMES GEORGE
ceased to be a partner of Simmons & Simmons as from 01/01/2022.
PEDLEY JAMES GEORGE
自2022年1月1日不再出任西盟斯律師行合夥人一職。

- PHILLIPS BYRON ANDREAS
became a partner of Hogan Lovells as from 01/01/2022.
PHILLIPS BYRON ANDREAS
自2022年1月1日成為霍金路偉律師行合夥人。

- SETO YUEH ERIC
ceased to be a partner of Morley Chow Seto as from 01/01/2022 and remains as a consultant of the firm.
司徒悅
自2022年1月1日不再出任麥樂賢周綽瑩司徒悅律師行合夥人一職，而轉任為該行顧問。

- SO KI YAN KEVIN
ceased to be a partner of Howse Williams as from 01/01/2022 and joined Karas LLP as a partner as from 03/01/2022.
蘇期殷
自2022年1月1日不再出任何韋律師行合夥人一職，並於2022年1月3日加入祁卓信有限法律責任合夥律師行為合夥人。

- VAN DALE JENNIFER A.
ceased to be a partner of Eversheds Sutherland as from 01/01/2022 and remains as a consultant of the firm.
VAN DALE JENNIFER A.
自2022年1月1日不再出任安睿順德倫國際律師事務所合夥人一職，而轉任為該行顧問。

- WAN SHIU MAN
ceased to be a partner of Baker & McKenzie as from 05/01/2022.
溫韶文
自2022年1月5日不再出任貝克・麥堅時律師事務所合夥人一職。

- WOLL ROBERT
ceased to be a partner of Mayer Brown as from 01/01/2022.
WOLL ROBERT
自2022年1月1日不再出任孖士打律師行合夥人一職。

- WONG ILAN
became a partner of White & Case as from 17/12/2021.
汪亦嵐
自2021年12月17日成為偉凱律師事務所合夥人。

- WONG WAI YIN LISA
ceased to be a partner of Boase Cohen & Collins as from 06/01/2022 and joined Charles Russell Speechlys LLP as a partner as from 10/01/2022.
黃惠賢
自2022年1月6日不再出任布高江律師行合夥人一職，並於2022年1月10日加入思雅仕律師行有限法律責任合夥為合夥人。

- WONG YUEN TING WENDY
ceased to be a partner of Tim Chan & Co. as from 05/12/2021.
王琬婷
自2021年12月5日不再出任陳德餘律師行合夥人一職。

- YAN LAI YU JAMIE
commenced practice as a partner of Cheung Yan & Associates as from 16/12/2021
殷麗瑜
自2021年12月16日成為新開業張殷律師事務所合夥人。

- YAP BETTY HIU-YEE
ceased to be a partner of Paul, Weiss, Rifkind, Wharton & Garrison LLP as from 01/01/2022 and joined Linklaters as a partner on the same day.
葉曉儀
自2022年1月1日不再出任寶維斯有限法律責任合夥律師行合夥人一職，並於同日加入年利達律師事務所為合夥人。

- YUNG MING WAI
ceased to be a partner of CFN Lawyers as from 01/01/2022.
翁明蔚
自2022年1月1日不再出任陳馮吳律師事務所合夥人一職。

# For the Love of Music

*By Sonali Khemka*

Our passion and genuine love for certain things can take us on varying paths and bring us so much joy beyond our day-to-day work. For Paul Haswell of Seyfarth Shaw, his love for music has given him a fulfilling career as a DJ and radio host and he shares with us how he got onto this path as well what he enjoys about it.

On Stage At Strange Fruit Festival Nov 2003
2003 年 11 月 Strange Fruit Festival 在舞台上

Paul grew up with a deep interest in music and technology and has loved collecting vinyl records since his childhood. "Even as a small child I used to play records on a beaten-up old turntable and I still have the first record I ever bought," he comments. However, it was not until he went to university that he got the chance to take his love of records public. "When I was at Oxford, I had the chance to start DJing – playing records in public at bars and clubs to a crowd of people who would (hopefully!) dance. I loved it and was hooked – I continued DJing throughout my time at university, starting a regular indie club night with some friends called "Strange Fruit" and even having the chance to DJ in New York - which got me into trouble during my Legal Practice Course (LPC) because I was flying back and forth from the UK and the US at weekends during term time. My tutors became suspicious as to why I never attended classes on Friday afternoons; there was no social media then, so I doubt they ever suspected I was spending weekends in New York!" he adds.

"When I eventually moved to London to start my training contract, I started DJing in London too, moving "Strange Fruit" there. That led to me and my friends DJing and booking bands to play in front of an often-packed crowd, including some who went on to achieve success, such as Belle & Sebastian, The Gossip, The Postal Service and Sea Power, and saw me travelling all over the UK to DJ and tour with bands, which was perhaps not as glamorous as it sounds," he shares.

Even though "Strange Fruit" ended in 2003, Paul continued to DJ regularly, moving on from hosting bands and DJing with them to running a monthly London club called "Crimes Against Pop" which was focused only on DJs. "This was really just a place where my friends and I would get together every month to play music and dance. It was immense fun, and

A small section of Paul's record collection
Paul 收藏的一小部分唱片

About to go on air at RTHK
即將在香港電台播出

usually a massive party, and me and the rest of Crimes Against Pop were invited to play other venues and events in the UK including festivals such as Bestival which saw me DJ multiple times on the Isle of Wight. All of this continued until I left London for Hong Kong, at which point I really thought that was the end of me DJing. However, I managed to find some DJ gigs soon after arriving, with the first one being a Halloween show at Grappa's Cellar," says Paul. .

His DJing career on this side of the world really took off when he approached one of the people who run Clockenflap – an annual music and arts festival in the city. "It turned out that one of [the organisers] had actually been to the Strange Fruit club I'd started back in Oxford and so they let me, as Crimes Against Pop, DJ at Clockenflap," he shares.

When one of Paul's fellow Crimes Against Pop DJs also moved to the city a few years later, the two of them not only played at Clockenflap together but were also approached to present a music show on RTHK, Hong Kong's public broadcasting service. "Initially, this was a one-hour pre-recorded show called "Pop Fugitives" where we could play anything we wanted. I had never actually done radio at this point, whereas my co-host had worked in radio for years, but pre-recording a show which went out every Saturday night proved to be fun, and it was great to be able to unleash my taste in music on to the airwaves," he recalls.

After a year or so of this, Pop Fugitives came to an end and Paul and his team were offered the weekly Sunday morning slot on RTHK Radio 3 – something they have been doing ever since. "We jumped on the chance to host a lengthy live show focusing on new music. At the same time Crimes Against Pop has played every Clockenflap festival for the last seven years or so, and we now also present a weekly music show on Clockenflap's online radio network, Clockenflap Music. We've been fortunate enough to perform at various venues and parties across Hong Kong in addition to Clockenflap, such as the British Chamber Ball, Hong Kong Rugby Sevens and a fair few charity events. If we think an event will be fun, and especially if it's for a good cause, then we're happy to be part of it," he shares.

Paul's current show on RTHK Radio 3 is called "The Sunday Escape" – a music show focusing on all the best new music of the week in addition to whatever else he wants to play. "We have a lot of freedom, and occasionally get to interview some brilliant bands too. Members of the Sex Pistols and the Specials have been on the show, which is incredible when I think about it, and we've also interviewed bands such as Madness, Blossoms and They Might Be Giants," he shares. Paul finds the live radio show extremely rewarding as not only does it allow him to work with music but also connect with like-minded music lovers. "I have a large and unwieldy record collection here in Hong Kong of more than 15,000 records and hosting a radio show allows me to play all of the music I love and introduce it to my audience. The show is four hours long, and live: it's great fun talking to listeners, playing music that hopefully they enjoy, and because I spend each weekend checking out all the week's new music I get to discover new bands and artists every week." Paul is also amazed that his show has international reach: "We have listeners not just in Hong Kong, but all over the world; people call and write in from the UK, US, Australia, Singapore and Japan. Even now, seven years since it started, I'm always surprised people are listening!"

Balancing a DJing career with a legal career was not always easy, especially at the very beginning of Paul's career. "At the first firm I worked at, I worked with a fair few senior colleagues who took a dim view of me DJing. Whilst some of this was admittedly my fault – as a trainee I foolishly dyed my hair red because I thought it would look cool when DJing, without thinking whether it was compatible with being a trainee solicitor – I also found that as a junior lawyer there was pressure to be a lawyer and nothing else. I like to think I've shown that

DJing at Volar in Hong Kong
在香港 Volar 做 DJ

there's no need to do that, and indeed I am of the view that a lawyer who has no interests outside of the law is going to be an unhappy lawyer in the long run. Work-life balance and embracing your passions is incredibly important!"

Paul notes that it did get easier to juggle being a lawyer and a DJ, and as a more senior lawyer and later as partner of a law firm, he not only has the flexibility to manage his time but finds his passion intrigues people. "Clients and colleagues know that I am a DJ and so some of them listen to the show or come to see me DJ. The last time I played at Clockenflap many of my colleagues and clients came along, and indeed I have ended up acting for some clients just because they know me through DJing, which is cool," he shares.

Having balanced both careers for a number of years now, Paul has found some surprising similarities between the two. "DJing helps you to build the confidence to perform in public, and then through presenting on the radio or indeed in any setting you build your ability to think on your feet and to speak. Both are important skills for a lawyer, especially in the areas in which I work," he explains. "When COVID hit and we could no longer do public events and talks, I began filming and producing regular videos which I post on LinkedIn about various legal topics. The inspiration for this very much came from my work in music, which has as a result helped me develop my skill and style as a technology lawyer, both in terms of the way I interact with people in the legal profession and the way I approach giving talks on technology and the law," he adds.

For anyone looking into getting into DJing, Paul believes a genuine love of music, plenty of energy, some knowledge of what you are talking about and boundless enthusiasm are essential. "It also helps if you can think on your feet and talk about seemingly anything. Whilst lots of research goes into the music that features on the shows I present as well as when I am DJing at events, nothing I do is ever scripted. I feel like I've managed to make an art of saying the first thing that comes into my head!". ■

# 出於對音樂的熱愛

文：孔春秀

Selfie with the audience at Clockenflap
在 Clockenflap 與聽眾自拍

我們對某些事情的熱情和真摯的愛可以使我們走上不同的道路，並在我們的日常工作以外給我們帶來許多歡樂。對於賽法思律師事務所 (Seyfarth Shaw) 的 Paul Haswell 來說，他對音樂的熱愛使他當上了充滿成就感的 DJ 和電台主持人，他並與我們分享了他是如何走上這條道路的，以及他在這方面的樂趣。

Paul 在成長過程中對音樂和科技有著濃厚的興趣，他從小就喜歡收集黑膠唱片。他說：「甚至在我還是個小孩子的時候，我就經常在一個破舊的轉盤上播放唱片，我還保留著我買的第一張唱片。」然而，直到他上了大學，他才有機會將他對唱片的熱愛公之於眾。他補充說：「當我在牛津大學時，我有機會開始做 唱片騎士（ “DJ” ）-- 在酒吧和俱樂部公開播放唱片，希望讓一群人跳舞。我喜歡音樂，並且迷上了音樂 -- 我在大學期間一直在做 DJ，和一些朋友一起開始了一個定期的地下音樂俱樂部之夜，叫做 Strange Fruit，甚至有機會在紐約做 DJ -- 這在我的法律實務課程（LPC）中給我帶來了麻煩，因為我在學期中每個週末從英國和美國來回飛。我的導師開始懷疑我為什麼週五下午不上課；那時還沒有社交媒體，所以我猜想他們是否懷疑我在紐約過週末！」

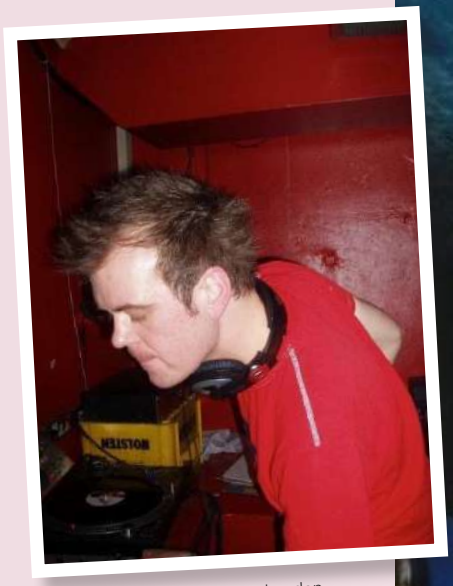
他分享道：「當我最終搬到倫敦開始我的見習培訓時，我也開始在倫敦做 DJ，把 Strange Fruit 搬到了那裡。這導致我和我的朋友們在那裡做 DJ 和預訂樂隊在經常擠擁的人群面前表演，其中包括一些後來獲得成功的樂隊，如 Belle & Sebastian、The Gossip、The Postal Service 和 Sea Power，並看到我在英國各地做 DJ 和樂隊巡演，這些也許並不像聽起來那麼令人嚮往。」

儘管 Strange Fruit 在 2003 年結束了，Paul 繼續定期做 DJ，從帶領樂隊並與他們一起做 DJ，到每月在倫敦經營一間名為 Crimes Against Pop 的俱樂部，而該俱樂部只專注於 DJ 播放音樂。他說：「這其實只是一個我和我的朋友們每個月都會聚在一起玩音樂和跳舞的地方。這非常有趣，通常是一場盛大的派對。我和 Crimes Against Pop 的其他成員被邀請在英國的其他場所和活動中表演，包括如 Bestival 等節日；當時我在「懷特島」曾多次做 DJ。所有這些一直持續到我離開倫敦去香港，那時候我真的以為我的 DJ 生涯就這樣結束了。然而，我在到達香港後很快便找到了一些擔任 DJ 的演出，第一次是在 Grappa's Cellar 的萬聖節演出，直到現在很多年已過去了，我仍然以 Crimes Against Pop 的名義在香港演出，但最引人注目的是在 Clockenflap 音樂節上。」

當他接觸到 Clockenflap -- 本港一年一度的音樂和藝術節 -- 的其中一位負責人時，他的 DJ 生涯在世界的這一邊真正開始了。他表示：「事情是這樣的，該音樂節的其中一位組織者曾經去過我在牛津創辦的 Strange Fruit 俱樂部，所以他們讓我以 Crimes Against Pop 名義，在 Clockenflap 做 DJ。」

數年後，當 Paul 的一位在 Crimes Against Pop 的同伴 DJ 也搬到香港時，他們兩人不僅一起在 Clockenflap 演出，還被邀請在香港電台（香港的公共廣播服務）主持一個音樂節目。他回憶說：「最初，這是一個預先錄製的一小時節目，名為 Pop Fugitives，我們可以播放任何我們想播放的東西。在那時我從來沒有真正做過廣播，而我的拍檔主持人在電台工作了多年；但事實證明，預先錄製一輯每個週六晚上播出的節目是很有趣的，而且能夠在電波中釋放我的音樂品味真是太好了。」

經過一年左右的時間，Pop Fugitives 結束了，Paul 和他的團隊得到了香港電台第三台每週日上午的時段 — 自此他們一直在做主持。他分享道：「我們抓住了這個機會，主持了一檔專注於新音樂的長篇直播節目。同時，Crimes Against Pop 在過去七年



DJing at Crimes Against Pop, London
在倫敦的 Crimes Against Pop 做 DJ

DJing at Strange Fruit circa 2001
2001 年左右在 Strange Fruit 做 DJ

多的時間裡，在每個 Clockenflap 音樂節上都有演出；現在我們還在 Clockenflap 的線上廣播網絡 Clockenflap Music 上主持每週音樂節目。除了 Clockenflap 之外，我們還有幸在香港的各種場所和派對上表演，例如英國商會舞會、香港七人橄欖球賽和一些慈善活動。如果我們認為一個活動是有趣的，特別是如果該活動是為公益而做的，那麼我們就會很樂意參與其中。」

DJing at Bestival on the Isle of Wight
在懷特島的 Bestival 做 DJ

Paul 目前在香港電台第三台主持的節目稱為「The Sunday Escape」-- 這是一個音樂節目，關注本週所有最好的新音樂，以及他想播放的其他音樂。他說：「我們的自由度很大，偶爾也會採訪一些出色的樂隊。Sex Pistols 和 The Specials 的成員都參加過這個節目，當我想到這一點時，這真是不可思議，我們還採訪過 Madness、Blossoms 和 They Might Be Giants 等樂隊。」Paul 認為直播的廣播節目非常有意義，因為這樣的節目不僅讓他與音樂打交道，而且還能與志同道合的音樂愛好者連繫。「我在香港這裡有大量不方便收藏的唱片，超過 15,000 張，主持廣播節目使我能夠播放所有我喜歡的音樂，並把這些音樂介紹給我的聽眾。節目長達四個小時，而且是現場直播：與聽眾交談非常有趣，播放希望他們喜歡的音樂，而且因為我每個週末都會檢視一週的所有新音樂，所以每週都能發現新的樂隊和藝人。」Paul 還對他的節目具有國際影響力感到驚奇。「我們的聽眾不僅在香港，而且遍佈世界各地；人們從英國、美國、澳大利亞、新加坡和日本均相繼致電和寫信到來。即使是現在，從開始至今已經七年了，我總是很驚訝有人仍在收聽！」

在 DJ 事業和法律事業之間取得平衡並非容易之事，尤其是在 Paul 的職業生涯的最初階段。「在我工作的第一家律師行，我和一些高階同事一起工作，他們對我的 DJ 工作持否定態度。雖然有些是我的錯 -- 作為一名實習生，我愚蠢地把頭髮染成了紅色，因為我認為這樣做在當 DJ 時看起來很棒，而沒有考慮到這是否與作為一名樓宇物業事務的實習律師相匹配 -- 我還發現，作為一名初級律師，有成為一名律師的壓力，而沒有其他方面的壓力。我想我已經表明了沒有必要這樣做，而且我確實認為，從長遠來看，一個在法律之外沒有興趣的律師將是一個不快樂的律師。工作和生活的平衡以及欣然珍愛你的激情是非常重要的！」

Paul 指出，巧妙地兼顧律師與 DJ 的工作確實變得更容易了，作為一名更資深的律師，以及後來成為一家律師行的合夥人，他不僅可以靈活地管理自己的時間，而且發現他的激情吸引了人們。他分享說：「客戶和同事知道我是個 DJ，所以他們中的一些人要來聽我的節目或來看我做 DJ。上次我在 Clockenflap 表演時，我許多同事和客戶都來了，事實上，我最後成為一些客戶的法律代理，就是因為他們先透過看我當 DJ 認識我，這真棒。」

在平衡這兩種事業多年後，Paul 發現這兩者之間有一些驚人的相似之處。他解釋說：「做 DJ 可以幫助你建立在公眾面前表演的信心，然後透過在電台或任何場合的演講，你可以建立自己的即時應對能力和演講能力。這兩種能力對律師來說都很重要，特別是在我工作的領域。」他補充說：「當新冠病毒發生後，我們不能再進行公眾活動和講座，我開始定期拍攝和製作影片，並在 LinkedIn 上發表各種法律話題。這方面的靈感很大程度上來自於我在音樂方面的工作，這也幫助我發展了作為科技律師的技能和風格，其中包括我與法律界人士的互動方式以及我就科技和法律進行演講的方式。」

對於任何想從事 DJ 工作的人來說，Paul 認為對音樂的真正熱誠、擁有充沛的精力、對交談中內容的一些知識和無限的熱情是不可劃缺的。「如果你能即時應對並能談論似乎任何事情，這也會有所幫助。雖然我在節目中以及在活動中做 DJ 時對音樂進行了大量的研究，但我所做的一切都不是按照劇本進行的。 我覺得我已經掌握了一門藝術，那就是學會了說出腦海中浮現的第一件事！」■

# CAMPUS VOICES
# 法學院新聞

THE UNIVERSITY OF HONG KONG
FACULTY OF LAW
香 港 大 學 法 律 學 院

## Introduction to HKU Law Series

HKU Law had recently launched the "Introduction to HKU Law Series", and invited Professor Hualing Fu, Dean of Law, and Professor Alec Stone Sweet, Chair Professor of Comparative and International Law as the guests of the first two episodes.

Professor Hualing Fu discussed his path to become a Public Law scholar, studying Law in Hong Kong and HKU, how HKU Law is different from other Hong Kong law schools.

Professor Alec Stone Sweet talked about life at HKU, his career as a musician, his thoughts on proportionality, his current work on the Chinese Civil Code, the expansion of the administrative state and advice for young scholars.

For the full interviews, please visit:

Professor Hualing Fu - https://www.youtube.com/watch?v=tF84PH6_Xnc

Professor Alec Stone Sweet –https://www.youtube.com/watch?v=kTRKW_XeXUk

## 走進法律學院系列

港大法律學院最新推出「走進法律學院系列」，邀得院長傅華伶教授及比較法及國際法講座教授 Alec Stone Sweet 任第一、二集的嘉賓。

傅華伶教授分享了如何踏上公法研究之路、探討在香港及港大讀法律、港大法律學院與香港其他幾家法學院的區別。

Stone Sweet 教授分享了他在港大的生活、任職音樂家的經歷、對比例原則的看法、目前在《民法典》方面的研究、對行政國家擴張的看法和對年輕學者的建議。

欲觀看完整訪問片段，請至：

傅華伶教授 - https://www.youtube.com/watch?v=tF84PH6_Xnc

Alec Stone Sweet 教授 - https://www.youtube.com/watch?v=kTRKW_XeXUk

# HKU Law Upcoming Events　港大法律學院活動預告

## (1) Book Talk: Regulating the Crypto Economy

Date & Time: 24 February 2022, 5:00 – 6:00 PM (HKT)

Format: Live Zoom Session

Author: Professor Iris Chiu, University College London

Discussant: Professor Kelvin Low, National University of Singapore

This book focuses on the building of a crypto economy as an alternative economic space and discusses how the crypto economy should be governed. The crypto economy is examined in its productive and financialised aspects, in order to distil the need for governance in this economic space.

Details and registration:
https://aiifl.law.hku.hk/book-talk-regulating-the-crypto-economy/


## (1) 書籍講座：監管加密經濟

日期及時間：2 月 24 日下午 5 時至 6 時

形式：Zoom 線上進行

作者： 倫敦大學學院 Iris Chiu 教授

講者： 新加坡國立大學 Kelvin Low 教授

本書著眼於構建加密經濟作為替代經濟空間，並討論如何監管加密經濟。為釐清對經濟空間監管的必要性，本書對加密經濟由其產性和金融化方面進行審視。

詳情及登記：https://aiifl.law.hku.hk/book-talk-regulating-the-crypto-economy/


## (2) Six Faces of Globalization

Date & Time: 25 February 2022, 12:30 — 1:30 PM (HKT)

Format: Live Zoom Session

Speaker: Professor Anthea Roberts, Australian National University

Registration: https://hkuems1.hku.hk/hkuems/ec_regform.aspx?guest=Y&UEID=77704

## (2) 全球化的六面

日期及時間：2 月 25 日下午 12 時半至 1 時半

形式：Zoom 線上進行

講者：澳洲國立大學 Anthea Roberts 教授

登記：https://hkuems1.hku.hk/hkuems/ec_regform.aspx?guest=Y&UEID=77704

## (3) Artificial Intelligence and Legal Disruption


LAW & TECHNOLOGY CENTRE
The University of Hong Kong

**Artificial Intelligence and Legal Disruption**

**Dr. Hin-Yan Liu**
Associate Professor, University of Copenhagen Faculty of Law

**Date: Tuesday, March 1, 2022**
**Time: 4pm – 5pm (Hong Kong Time)**

This event will be conducted via Zoom. Prior registration is required.
The link to the webinar will be provided upon successful registration.

**Abstract:** Why is it that technological developments and societal changes must contort and accommodate the immovable bedrock of 'the Law'?

Burgeoning ideas built around the concept of 'Legal Disruption' suggest that new and emerging technologies, and their social implications, reveal the arbitrariness and limitations of existing legal principles and processes. Artificial Intelligence, for example, presents liminal entities between agents and objects that confuse binary legal thinking. Worse still, if AI applications are understood as networks or complex adaptive systems, legal thinking is more or less locked out. Indeed, technologies such as AI threaten to alter the very axiology of contemporary societies which serves as the lynchpin of the law.

Yet, rather than precipitating a crisis for the legal order, the lens of legal disruption reveals other ways of doing regulation that can circumvent legal safeguards. This presents both challenges and opportunities which we will engage with during this event. The objective of introducing AI and Legal Disruption to the Law and Technology Centre at HKU is to deepen the comparative dialogue and collaboration as we collectively explore this broad problem-space.

**About the speaker:**

Dr. Hin-Yan Liu relentlessly pursues the challenges to legal and regulatory thinking brought about by Artificial Intelligence and other new and emerging technologies. Dissatisfied with doctrinal attempts to accommodate revolutionary technological change, he has pioneered the concept of Legal Disruption that pits the law as just another moving part relating and adapting to change. Hin-Yan is a native of Hong Kong, but is at home in Copenhagen, where he is an Associate Professor at the Faculty of Law. Before that, he has completed a tour of universities in London before embracing la bella vita at the European University Institute in Florence. With perpetually itchy feet and insatiable curiosity, Hin-Yan is constantly on the search for the next idea, the next journey, the next engrossing conversation, the next adventure.

**All are welcome!**

**To register, please visit www.lawtech.hk/events or scan the QR code.**
For inquiries, please contact Ms. Grace Chan at mngrace@hku.hk or 3917 4727.

Details and registration: https://www.lawtech.hk/artificial-intelligence-and-legal-disruption/

## (3) 人工智能和法律衝擊

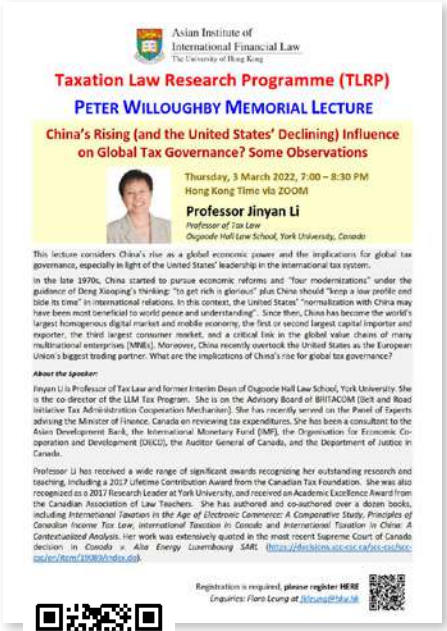
日期及時間： 3 月 1 日下午 4 時至 5 時

形式：Zoom 線上進行

講者：哥本哈根大學 Hin-Yan Liu 博士

為什麼科技發展和社會變革必須配合「法律」不可動搖的基石？愈來愈多圍繞「法律衝擊」概念的思想表明，新興科技及其社會影響揭示了現有法律原則和程序的隨意性和限制。

詳情及登記 : https://www.lawtech.hk/artificial-intelligence-and-legal-disruption/


Asian Institute of International Financial Law
The University of Hong Kong

**Taxation Law Research Programme (TLRP)**

**PETER WILLOUGHBY MEMORIAL LECTURE**

**China's Rising (and the United States' Declining) Influence on Global Tax Governance? Some Observations**

Thursday, 3 March 2022, 7:00 – 8:30 PM
Hong Kong Time via ZOOM

**Professor Jinyan Li**
*Professor of Tax Law*
*Osgoode Hall Law School, York University, Canada*

This lecture considers China's rise as a global economic power and the implications for global tax governance, especially in light of the United States' leadership in the international tax system.

In the late 1970s, China started to pursue economic reforms and "four modernizations" under the guidance of Deng Xiaoping's thinking: "to get rich is glorious" plus China should "keep a low profile and bide its time" in international relations. In this context, the United States' "normalization with China may have been most beneficial to world peace and understanding". Since then, China has become the world's largest homogenous digital market and mobile economy, the first or second largest capital importer and exporter, the third largest consumer market, and a critical link in the global value chains of many multinational enterprises (MNEs). Moreover, China recently overtook the United States as the European Union's biggest trading partner. What are the implications of China's rise for global tax governance?

***About the Speaker:***

Jinyan Li is Professor of Tax Law and former Interim Dean of Osgoode Hall Law School, York University. She is the co-director of the LLM Tax Program. She is on the Advisory Board of BRITACOM (Belt and Road Initiative Tax Administration Cooperation Mechanism). She has recently served on the Panel of Experts advising the Minister of Finance, Canada on reviewing tax expenditures. She has been a consultant to the Asian Development Bank, the International Monetary Fund (IMF), the Organization for Economic Co-operation and Development (OECD), the Auditor General of Canada, and the Department of Justice in Canada.

Professor Li has received a wide range of significant awards recognizing her outstanding research and teaching, including a 2017 Lifetime Contribution Award from the Canadian Tax Foundation. She was also recognized as a 2017 Research Leader at York University, and received an Academic Excellence Award from the Canadian Association of Law Teachers. She has authored and co-authored over a dozen books, including *International Taxation in the Age of Electronic Commerce: A Comparative Study*, *Principles of Canadian Income Tax Law*, *International Taxation in Canada and International Taxation in China: A Contextualized Analysis*. Her work was extensively quoted in the most recent Supreme Court of Canada decision in *Canada v. Alta Energy Luxembourg SARL* (https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/19080/index.do).

Registration is required, please register HERE
Enquiries: Flora Leung at fkleung@hku.hk

## (4) Peter Willoughby Memorial Lecture – China's Rising (and the United States' Declining) Influence on Global Tax Governance? Some Observations

Date & Time: 3 March 2022, 7:00 – 8:30 PM (HKT)

Format: Live Zoom Session

Speaker: Professor Jinyan Li, Osgoode Hall Law School, York University

This lecture considers China's rise as a global economic power and the implications for global tax governance, especially in light of the United States' leadership in the international tax system.

Details and registration: https://aiifl.law.hku.hk/influence-on-global-tax-governance/

## (4) 中國崛起（和美國衰落）對全球稅務管理的影響

日期及時間： 3 月 3 日下午 7 時至 8 時半

形式：Zoom 線上進行

講者：約克大學奧斯古德霍爾法學院 Jinyan Li 教授

此講座探討中國作為全球經濟強國的崛起及其對全球稅務管理的影響，特別考慮到美國現時在國際稅務體系中的領導地位。

詳情及登記 : https://aiifl.law.hku.hk/influence-on-global-tax-governance/

CUHK LAW THE CHINESE UNIVERSITY OF HONG KONG 香港中文大學

## The 2022 Professional Ethics Student Essay Competition

To promote the awareness of professional ethics, the Faculty of Law at The Chinese University of Hong Kong (CUHK LAW) has organised the 2022 Professional Ethics Student Essay Competition with the sponsorship of the MaMa Charitable Foundation Limited. The Competition is open to students enrolled in the CUHK LLB, JD, LLM and PCLL programmes in 2021-22. The submission deadline is 13 April 2022.


Learn more: https://bit.ly/33HpY5V

## 2022 職業道德學生徵文比賽

為提高學生的職業道德意識，香港中文大學（中大）法律學院舉辦 2022 年職業道德學生徵文比賽。比賽獲廣正心嚴慈善基金有限公司贊助，公開予中大法律學士、法律博士、法學碩士及法學專業證書課程的學生參加，截止日期為 2022 年 4 月 13 日。

詳情請瀏覽：https://bit.ly/33HpY5V

## Congratulations to Professors Normann WITZLEB and Hao ZHANG on Receiving Research and Teaching Awards

### Germany/Hong Kong Joint Research Scheme 2021/22

Professor Normann WITZLEB has been awarded funding under the Germany/Hong Kong Joint Research Scheme for 2021/22 with Professor Kai von Lewinski at the University of Passau (Germany). The funded project has the title "Strengthening Data Accountability in the Platform Economy – towards Greater International Convergence of Privacy Protections for Children?".

The award will support the awardees, as well as two early career researchers, to investigate how data protection laws and regulation in Germany, Hong Kong and mainland China balance the accountability obligations of data processors and digital platforms with the privacy rights of children and explore whether law reforms towards greater convergence are desirable.

The Germany/Hong Kong Joint Research Scheme is a joint initiative of the Hong Kong Research Grants Council (RGC) and the German Academic Exchange Service (DAAD) to promote research collaboration between Hong Kong and Germany. Details of the scheme are available at https://bit.ly/3FpY2Ay.

### CUHK Vice-Chancellor's Exemplary Teaching Award 2020

Professor Hao ZHANG has been awarded the CUHK Vice-Chancellor's Exemplary Teaching Award 2020. The award was presented at the Ceremony for the Inauguration of the Choh-Ming Li Professorships and Presentation of Teaching and Research Awards on 5 January 2022.

# 恭喜 Normann WITZLEB 教授和張浩教授分別獲研究和教學獎

## 德國 / 香港合作研究計劃 2021/22

Normann WITZLEB 教授與德國 University of Passau 的 Kai von LEwinski 教授獲得 2021/22 年度德國 / 香港合作研究計劃獎金，資助其研究項目，名為「Strengthening Data Accountability in the Platform Economy — towards Greater International Convergence of Privacy Protections for Children?」。

該協作研究金將資助兩位得獎者及兩位早期職業研究人員，研究德國、香港和中國大陸的數據保護法律和條例如何平衡數據處理者和數碼平台的責任與兒童的隱私權，以及探討進行法律改革以實現更大程度的融合是否可取。

德國 / 香港合作研究計劃是香港研究資助局和德國學術交流中心（DAAD）為促進香港與德國的研究合作而推出的計劃。詳情請瀏覽：https://bit.ly/3FpY2Ay

## 中大 2020 年校長模範教學獎

張浩教授獲得中大 2020 年校長模範教學獎。該獎於 2022 年 1 月 5 日舉行的卓敏教授席就職暨教學及研究獎頒獎典禮上頒發。

# 7th Year Greater China Legal History Seminar Series 2021-22
# 七周年大中華區法律史研討會系列 2021-22


The 7th Greater China Legal History Seminar Series hosted four online seminars on "The Small House Policy and the Court of Appeal", "Magistracies in Colonial Hong Kong", "Controversies on the Morality and Effectiveness of Judicial Torture in late Ming China" and "From Copyright Norm to Copyright Law: The First Copyright Statute in the Qing Dynasty and the Republican China". **Watch the seminar video recaps at https://bit.ly/2Yb72tZ**

七周年大中華區法律史研討會系列已舉行四場網上研討會，主題是「小型屋宇政策與上訴法庭」、「殖民時期的香港裁判所」、「中國明朝晚期司法酷刑的道德與效力之爭」及「從版權規範到版權法：清朝和民國時期的第一部版權法規」。**重溫研討會影片：https://bit.ly/2Yb72tZ**

## UPCOMING: "Early Cross-Border Legal Issues: Law in the Age of Matteo Ricci" (11 February 2022)

The next seminar "Early Cross-Border Legal Issues: Law in the Age of Matteo Ricci" will be delivered by Professor Stuart McManus from the CUHK Department of History on 11 February 2022.

The Pearl River Delta region has long attracted merchants from the rest of Asia and beyond. This is documented from almost the very beginning of Chinese dynastic history, but took on a particular significance in the late-Ming and early-Qing periods when Portuguese and other European merchants (as well as missionaries and other hangers-on) were permitted to set up shop in Macau. This resulted in several centuries of cross-border and cross-cultural interactions that frequently touched on questions of law.

In giving an overview of cross-border legal issues in the sixteenth and seventeenth centuries, this seminar will first treat the constitutional


Details and registration: https://bit.ly/3nll4SY

詳情及報名參加：https://bit.ly/3nll4SY

status of early modern Macau and the sources of law that applied there. This is not as simple as it might appear as pre-modern law (both Chinese and Western) was more capacious than its modern equivalent, and so it is important to take into account the universalising cosmovisions, law-adjacent systems of rules, religious ideas and customs that characterized the legal landscape of the period. It will then address the overlapping judicial-administrative systems of Macau and Guangdong, before turning to the role of translation between Portuguese and Chinese, contracts, dispute resolution and cross-border crime (especially human trafficking). There will also be reference to the ways that cross-border trade in early modern Macau fitted into broader patterns of commerce in East Asia, and the larger legal history thereof.

### 下一場研討會：「早期的跨國法律問題：利瑪竇時代的法律」（2022 年 2 月 11 日）

下一場研討會「早期的跨國法律問題：利瑪竇時代的法律」將於 2022 年 2 月 11 日由中大歷史系 Stuart McManus 教授主講。

珠江三角洲地區一直吸引無數來自亞洲和其他地區的商人，源遠流長，幾乎可追朔至中國王朝歷史的開端，這現象在明末清初時尤其如此，因為當時葡萄牙和其他歐洲商人（以及傳教士和其他追隨者）獲准在澳門營商，引發了其後幾個世紀以來頻繁的涉及法律問題的跨境和跨文化互動。

是次研討會將概述十六和十七世紀時期的跨境法律問題，討論現代早期適用於澳門憲法地位的法律淵源。這問題並不像看起來那麼簡單，因為早於現代的法律（包括中國和西方）比現代法律適用的範圍更廣，因此需要將賦予這一時期法律環境特徵的普遍化的世界觀，與法律相鄰的規則體系、宗教思想和習俗考慮在內。接著，研討會將探討澳門和廣東重疊的司法行政系統，以及葡萄牙語和漢語之間的翻譯角色、合同、爭議解決和跨境犯罪（特別是人口販運）。會上還將提及澳門現代早期的跨境貿易如何融入東亞更廣泛的商業格局，以及其更廣泛的法律歷史問題。

## Past Events　活動回顧

### Workshop on Anti-suit Injunctions and FRAND Litigation in China


The Workshop on Anti-suit Injunctions and FRAND Litigation in China, co-organised by the Centre for Financial Regulation and Economic Development (CFRED) at CUHK LAW and the Center for Law and Intellectual Property at Texas A&M University School of Law, was successfully held online on 17 December 2021. This workshop was facilitated by two principal papers written by scholars in these two law schools: (1) King Fung Tsang & Jyh-An Lee, The Ping-Pong Olympics in Antisuit Injunction in FRAND, 28 Michigan Technology Law Review (forthcoming 2022); and (2) Peter K. Yu, Yang Yu, and Jorge L. Contreras, Transplanting Anti-suit Injunctions, 71 American University Law Review (forthcoming 2022). Conducted in a roundtable format, this workshop brought together more than 20 esteemed scholars and practitioners from Asia, Australia, and North America to examine the emergence of anti-suit injunctions in international patent litigation concerning standard-essential patents and fair, reasonable, and non-discriminatory (FRAND) licenses.

### 中國禁訴令和 FRAND 訴訟研討會

中國禁訴令和 FRAND 訴訟研討會由中大法律學院的金融規管與經濟發展研究中心及德州農工大學（Texas A&M University）法學院的 Center for Law and Intellectual Property 合辦，於 2021 年 12 月 17 日網上舉行。研討會的討論主要借助以下兩篇由這兩所法學院學者撰寫的論文：(1) King Fung Tsang & Jyh-An Lee, The Ping-Pong Olympics in Antisuit Injunction in FRAND, 28 Michigan Technology Law Review（將於 2022 年出版）及 (2) Peter K. Yu, Yang Yu, and Jorge L. Contreras, Transplanting Anti-suit Injunctions, 71 American University Law Review（將於 2022 年出版）。研討會以圓桌會議形式進行，匯聚來自亞洲、澳洲和北美洲共 20 多名學者和從業人員，探討國際專利訴訟中關於標準必要專利和公平、合理和非歧視性許可的國際專利訴訟中的出現情況。

## CUHK LAW Postgraduate Information Day 2022

CUHK LAW held the Postgraduate Information Day online on 8 January 2022. Over 640 participants attended the event to receive admission and programme information for the JD, LLM and PCLL Programmes. They also had the opportunity to meet the Faculty Dean, Programme Directors, other Faculty academic members, current students and alumni.

More admission details: www.law.cuhk.edu.hk/app/study-with-us/student-admission


## 中大法律學院研究生課程資訊日 2022

中大法律學院於 2022 年 1 月 8 日網上舉行研究生課程資訊日。超過 640 名參加者出席活動，獲取法律博士、法學碩士和法學專業證書課程的入學及其他資訊，並藉此機會與學院院長、課程主任、學院其他教學成員、學生和校友會面。

瀏覽更多入學資訊：www.law.cuhk.edu.hk/app/study-with-us/student-admission


# Upcoming Events 活動預告

## The 3rd Machine Lawyering Conference on"Legal Innovation in the Digital Society" (18-19 February 2022)

Advances in machine learning and the increasing reliance on automated processes in nearly all aspects of our society continue to pose challenges for legal scholars, policymakers and practicing lawyers alike. While digital technologies have reshaped our daily life and enabled novel business practices, they have also led to numerous unsolved legal issues. Innovations in law and policy may be desirable – if not indispensable. Multiple questions arise therefrom. Should technological change always result in legal change? Is the legal system ready to accommodate ongoing developments or do we need regulatory intervention?

To continue the fruitful dialogues during the 1st and 2nd Machine Lawyering Conferences and to keep up with the recent developments, CUHK LAW's Centre for Financial Regulation and Economic Development (CFRED) will host the 3rd Machine Lawyering Conference online on 18-19 February 2022. The theme of this conference is how the law responds to the constantly evolving digital technologies and new business models.

## 第三屆機器律師學術會議：「數字社會中的法律創新」（2022 年 2 月 18 至 19 日）

機器學習的進步及社會各方越趨依賴自動化流程繼續為法律學者、政策制定者和執業律師帶來挑戰。雖然數碼技術改變了我們的日常生活習慣及開拓了嶄新的商業經營模式，但亦同時衍生了許多未解決的法律問題。法律和政策創新或者是可取的，如非必不可少，但由此亦會產生諸多問題，例如技術變革應該總是導致法律變革嗎？法律制度是否已準備好適應現時的發展，抑或我們需要監管干預？

為了延續第一屆和第二屆會議的豐富討論成果和緊貼最新的發展動態，中大法律學院金融規管與經濟發展研究中心將於 2022 年 2 月 18 至 19 日以網上形式舉行第三屆機器律師學術會議，主題是法律如何應對不斷演變的數碼技術和新的商業模式。


Details and registration: www.law.cuhk.edu.hk/conf/2022/machine_lawyering

詳情及報名參加：www.law.cuhk.edu.hk/conf/2022/machine_lawyering

## Property Law Seminar on "Private Takings of Land for Urban Redevelopment: A Tale of Two Cities" (16 February 2022)

In 1999, both Hong Kong and Singapore brought into force legislation that permitted a supermajority of apartment owners within a building development that met certain statutory criterion to force a minority of dissents to sell the development as a whole. Both territories did so because, as land scarce cities, it was considered that the redevelopment of aging buildings was an urgent imperative. In so doing, although they claimed to be following other jurisdictions, both Hong Kong and Singapore broke new ground in pioneering the private takings of land among common law jurisdictions. These developments have proven controversial in both territories although the controversies have differed because of differences in implementation and historical background in both cities, despite their sharing a past as British colonies in Asia.

This Property Law Seminar organised by CUHK LAW compares the two regimes against each other as well as against the more mature regime permitting private takings of shares in mergers and acquisitions law to highlight the lessons to be learnt in order to prevent abuse. It will be presented online by Professor Kelvin LOW from National University of Singapore, Professor WAN Wai Yee from City University of Hong Kong, and Mr. Alwin CHAN from the University of Hong Kong.


Details and registration: https://bit.ly/3npdfMm

詳情及報名參加：https://bit.ly/3npdfMm

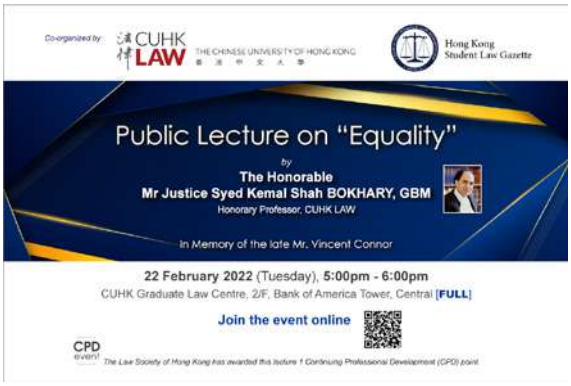
## 「雙城記：私人徵地進行市區重建」財產法研討會（2022 年 2 月 16 日）

香港和新加坡均於 1999 年立法，允許在符合某些法定標準的建築發展項目中佔絕大比數相同意見的公寓業主迫使少數持不同意見的業主出售整個發展項目，原因是兩地土地稀缺，人們認為重建老化的建築物是當務之急。香港和新加坡雖然聲稱要效仿其他司法管轄區，但它們在普通法司法管轄區之間開創了私人徵地的先河。事實證明，這些發展在兩地均存在爭議，儘管它們的實施和歷史背景不同引致爭議點有別以及曾是英國在亞洲的殖民地。

中大法律學院將舉行財產法研討會，比較香港和新加坡兩地的制度，以及允許私人在併購法中佔有股份的更成熟的制度，探討為防止濫用而應借鏡的地方。研討會的講者包括新加坡國立大學 Kelvin LOW 教授、香港城市大學溫慧儀教授和香港大學陳維灝先生。

## Public Lecture on "Equality" (22 February 2022)

Jointly organised by CUHK LAW and the Hong Kong Student Law Gazette, this public lecture by The Honorable Mr. Justice Syed Kemal Shah BOKHARY, GBM is delivered in memory of the late Mr. Vincent Connor, a distinguished lawyer and devoted member of the CUHK LAW Advisory Board. Mr. Connor won the abiding affection and respect of all who served with him. The topic of this lecture, "Equality" is a fitting theme when paying tribute to a good man who made the law his life's work. For the cases show the law is at its best when delivering equality and at the opposite end of the spectrum when it fails to do so.




Details and registration: https://bit.ly/3r8bqEk

詳情及報名參加： https://bit.ly/3r8bqEk

## 「平等」公開講座（2022 年 2 月 22 日）

本公開講座由中大法律學院與香港法律學生刊物《Hong Kong Student Law Gazette》合辦、包致金法官大紫荊勳賢主講，以紀念已故傑出律師、中大法律學院諮詢委員會前成員 Vincent Connor 先生。Vincent Connor 先生備受所有曾與他共事的人的長期愛戴和尊重，是次講座的主題「平等」，正恰如其分地向這位以法律為畢生事業的好人致敬，因為很多案例證明，法律在實現平等時是好的，而在未能做到這點時則相反。

# Recent Publications 近期出版


- "Investment Arbitration and the Chimera of an Ideal Adjudicative Community" in *Journal of World Investment & Trade* by Professor Fernando DIAS SIMÕES. Read article: https://bit.ly/3fqOmLz
- "Does black-box machine learning shift the US fair use doctrine?" in *Journal of Intellectual Property Law & Practice* (Oxford University Press) by CUHK LAW PhD student Yangzi LI. Read article: https://bit.ly/3qocSDJ
- "The Internationalization of China's Foreign Direct Investment Laws" in *Fordham International Law Journal* by Professor Sandra MARCO COLINO. Read article: https://bit.ly/3nmJKea
- "Canaries or Colonials? The Reduced Prominence of the 'Overseas Judges' on Hong Kong's Court of Final Appeal" in *Asian Journal of Comparative Law* (Cambridge University Press) by Professor Stuart HARGREAVES. Read article: https://bit.ly/3KiAu4y
- "Shareholder Voting and COVID-19: *The China Experience" in The Chinese Journal of Comparative Law* (Oxford University Press) by Professor Chao XI. Read article: https://bit.ly/3FnR0fK
- "China's natural gas sector regulation in the context of pipeline restructuring: towards independent gas pipeline operation?" in *Journal of World Energy Law & Business* (Oxford University Press) by Professor Hao ZHANG. Read article: https://bit.ly/3rd6XQP
- "Resuscitating criminal courts after Covid-19: Trialling a cure worse than the disease" in *The International Journal of Evidence & Proof* by Professors Luke MARSH and Mike McCONVILLE. Read article: https://bit.ly/34NQqLO
- "Big Brother at Work – Workplace Surveillance and Employee Privacy in Australia" in *Australian Journal of Labour Law* co-authored by Professor Normann WITZLEB. Read book chapter: https://bit.ly/3qCohzP

Learn more about CUHK LAW's research excellence: www.law.cuhk.edu.hk/app/research-excellence

了解更多中大法律學院教研人員的研究項目和成果：www.law.cuhk.edu.hk/app/research-excellence

## Happy Chinese New Year 2022!

CUHK LAW wishes you a happy, healthy and prosperous Year of the Tiger!

## 恭賀新禧 2022!

中大法律學院祝願各位虎年快樂，身體健康，萬事勝意！

香港城市大學
City University of Hong Kong

## CityU School of Law Held Online Admission Talk for Postgraduate Programmes 2022 Entry

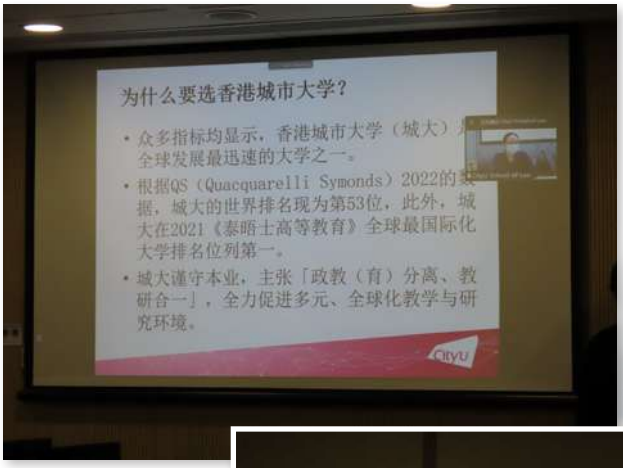
To help prospective applicants learn more about our School and receive the latest information about entrance requirements of our postgraduate programmes, CityU School of Law held an admission talk via GTER (寄託天下) on 6 January 2022. The talk was attended by Dr DING Chunyan (Associate Dean), Dr Lauren Yu-Hsin LIN (Master of Laws Programme Director), Dr Christopher TO Wing (Master of Laws in Arbitration and Dispute Resolution Programme Director) and Dr Sara TSUI Fung Ling (Juris Doctor Programme Associate Director), and it attracted more than 600 participants.

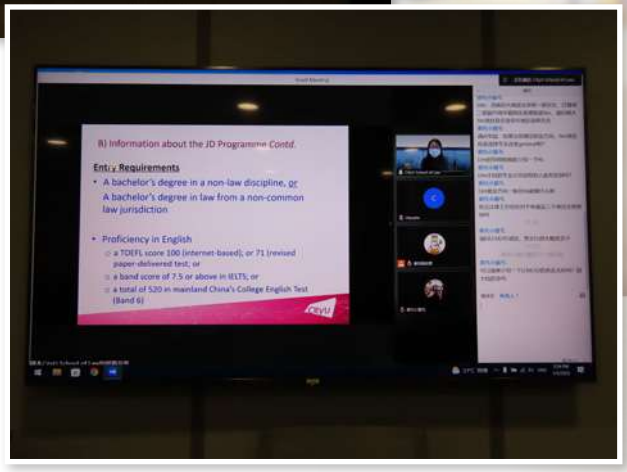
To review the content of the admission talk, please visit: https://vjc.h5.xeknow.com/sl/2eATYD. Another GTER talk will be organized by the School of Law in March 2022. Please stay tuned!

## 香港城市大學法律學院舉辦 2022 年研究生課程招生線上宣講會

為了讓有志報讀香港城市大學（城大）法律學院的同學詳細瞭解學院的教學特色以及 2022 年的研究生招生要求，學院於 2022 年 1 月 6 日在寄託天下（GTER）通過線上直播方式舉行了研究生課程招生宣講會。法律學院副院長丁春艷博士、法學碩士課程主任林郁馨博士、法學碩士（仲裁及爭議解決學）課程主任陶榮博士、法律博士課程副主任徐鳳翎博士出席此次宣講會，並吸引了 600 餘人參與。

如欲重溫宣講會內容，請至：https://vjc.h5.xeknow.com/sl/2eATYD。法律學院將於今年三月舉辦另一場研究生課程招生線上宣講會。敬請期待！



# Centre for Chinese and Comparative Law (CCCL) Seminars
# 中國法與比較法研究中心學術研討會

## Seminar on Revising Chinese Company Law (again): Academic Debates and Legislative Considerations

In view of the concerns from the most recent round of amendments to China's company law, the CCCL of CityU hosted a virtual seminar on 17 December 2021, on the theme of "Revising Chinese Company Law (again): Academic Debates and Legislative Considerations," which was co-organized by the Tsinghua Commercial Law Research Centre, Singapore Management University Yong Pung How School of Law and the Asian Law Schools Association, inviting Prof ZHU Ciyun and Prof TANG Xin from Tsinghua Commercial Law Research Centre as the keynote speakers.


## 「中國公司法最新一輪修訂的主要關注和爭議點」座談會

鑑於中國公司法最新一輪修訂引發的關注和爭議，城大法律學院中國法與比較法研究中心，聯合清華大學商法研究中心、新加坡管理大學楊邦孝法學院及亞洲法學院協會，於 2021 年 12 月 17 日舉辦了一場網上學術研討會，由清華大學商法研究中心主任朱慈蘊教授及副主任湯欣教授擔任主講嘉賓。

## Online Symposium on the Peaceful Settlement of the Sino-Indian Boundary Dispute: A Pragmatic Multidisciplinary Framework

On 4 March 2021, CCCL, in partnership with the Public Law and Human Rights Forum (CPLR), hosted a symposium on Sino-India Border Disputes (SIBD) from the perspectives of international law and international relations. Adopting a forward-thinking approach, on 9 December 2021, the CCCL organized the second follow-up online symposium in collaboration with CPLR, to bring together a group of 13 scholars and experts to continue the SIBD conversation that began at the first symposium. It investigated whether efficient territorial delineation necessitates an interdisciplinary approach that considers both legal (international law, treaties, uti possidetis, and effective control) and non-legal (political, historical, economic, and geographical) claims of both parties.

## 「和平解決中印邊界爭端：務實的多學科框架」網上研討會

城大法律學院屬下的中國法與比較法研究中心和公法與人權論壇於 2021 年 3 月 4 日聯合協辦了一場網上研討會，以國際法和國際關係的角度，探討中印邊界糾紛有關的問題。而在 2021 年 12 月 9 日，CCCL 和 CPLR 再次合作第二次網上研討會，以「和平解決中印邊界爭端：務實的多學科框架」為題，邀請了 13 位來自世界各地的專家學者，目的是為專家學者們提供一個強大且中肯的平台展開相關的學術討論，以及為日後出版有關領域的具影響性學術創造一個良好的開端。

### Multilateral Trading System and Future International Economic Law: Implications for Rule of Law in China

Given the importance of a rules-based multilateral trading organization to the global economy, the CCCL of CityU hosted a distinguished public lecture on 3 December 2021, with Judge and Prof ZHAO Hong, the former member and chairperson of the WTO's Appellate Body, as the guest speaker to discuss the relationship between the multilateral trading system and future international economic law.

### 傑出人士講座：「多邊貿易體制和國際經濟法的未來：對中國法治的啟示」

鑑於多邊貿易組織對全球經濟的重要性，城大中國法與比較法研究中心於 2021 年 12 月 3 日舉辦了一場傑出人士公開講座，以「多邊貿易體制和國際經濟法的未來：對中國法治的啟示」為題，特地邀請了世界貿易組織（世貿）上訴機構前成員兼主席趙宏法官進行演講，討論多邊貿易體系與未來國際經濟法之間的關係。

## Public Law and Human Rights Forum (CPLR) Seminars

### CPLR Webinar on Sexual Harassment Against Women in Asia: A Dialogue on Gender Based Violence in India, Pakistan, Bangladesh and Afghanistan

CPLR hosted its second webinar as part of the series on Asian perspectives on Human Rights on 2 December 2021. It discussed how gender-based violence hinders women from realising their economic, social & cultural as well as civil & political rights as provided under international human rights instruments such as: CEDAW, ICCPR and ICESCR etc. It also considered how sexual harassment against women in Asia prevents the attainment of equality and development at an international level. The webinar enlightened the responsibility to invest resources in enforcing the protection guaranteed in countries' statutes. Effective measures necessary for narrowing the gender inequality gap were also addressed in the webinar.

## 公法與人權論壇學術研討會

### 公法與人權論壇「亞洲人權視野」網絡研討會 - 對亞洲女性的性騷擾：探討印度、巴基斯坦、孟加拉和阿富汗針對女性的性暴力情況

城大法律學院公法與人權論壇於 2021 年 12 月 2 日舉辦了第二次亞洲人權視野網絡研討會。此次研討會討論了基於性別暴力以及它如何阻礙婦女實現其經濟、社會和文化以及公民和政治權利，並研究了國際人權條文 CEDAW、ICCPR 和 ICESCR 所規定的權利在亞洲的實踐情況。 研討會就對亞州婦女的性騷擾及岐視如何阻礙了平等和發展的實現進行了討論，並探討該如何倡導和實踐有關平權措施。

## Upcoming Events

### Business and Human Rights Standards: Relevance for Law Students

Businesses impact both people and the planet in diverse ways. Instead of focusing merely on maximising profits for shareholders, business enterprises are expected by various stakeholders to respect internationally recognised human rights wherever they operate. The UN Guiding Principles on Business and Human Rights solidified these social expectation. The emergence of these soft and hard standards has significant implications for future lawyers advising businesses – from corruption to modern slavery, gender discrimination, foreign investment, ESG disclosure, artificial intelligence and climate change. The CityU CPLR will organise a webinar on 3 March 2022 from 15:00 to 16:30 to expose law students to the relevance of these issues to their studies and professional career.

Please register here: https://bit.ly/3rsrQHM

## 活動預告

### 商業和人權標準：與法學院學生的相關性

聯合國商業與人權指導原則在鞏固企業對國際公認人權要求方面具有重要意義。這些標準會影響未來律師為企業提供的諮詢內容—考慮從腐敗到現代奴隸制、性別歧視、外國投資、ESG 披露、人工智能和氣候變化等。 城大法律學院公法與人權論壇將於 2022 年 3 月 3 日 15:00 至 16:30 舉行網上研討會，讓學生了解這些議題與他們職業生涯的相關性。

歡迎通過以下網址報名：https://bit.ly/3rsrQHM

## Call for Papers: ALSA & HKCML Joint Conference on "Transplantation of Foreign Law and the Creation of Unique Legal Solutions in Asian Legal Systems" (Abstract Submission Deadline: 31 March 2022)

The Asian Law School Association and Hong Kong Commercial and Maritime Law Centre are jointly organising the conference on "Transplantation of Foreign Law and the Creation of Unique Legal Solutions in Asian Legal Systems" on 26-27 May 2022. We are now inviting papers from experts, scholars, practitioners and current doctoral students. Please indicate your interest to present your paper at the conference by submitting your personal information and an abstract of your intended paper to Ms Candice Wong at candice.wong@cityu.edu.hk no later than 31 March 2022 (Thursday).

Please visit https://rb.gy/ovxp0e for details.

## 會議徵文 — 亞洲法學院協會 & 香港商務及海事法研究中心聯合會議「外國法律的移植與亞洲法律體系中創造的獨特法律解決方案」（提案截止日期：2022 年 3 月 31 日）

亞洲法學院協會和香港商務及海事法研究中心將於 2022 年 5 月 26 日至 27 日聯合舉辦「外國法律的移植與亞洲法律體系中創造的獨特法律解決方案」會議。現誠邀專家、學者、業界人士及在讀博士生提交論文。有意發表論文者，請於 2022 年 3 月 31 日（星期四）或之前將個人信息以及論文題目和摘要電郵至黃美婷小姐 (candice.wong@cityu.edu.hk）。

詳情請參閱：https://rb.gy/ovxp0e

## Selected Recent Publications 精選期刊出版

- Julien CHAISSE, "Delays Expected but Duration of Delays Unpredictable: Causes, Types, and Symptoms of Procedural Applications in Investment Arbitration" 38(1) *Arbitration International* 1-39 (2022).

- Virginia HARPER HO, "Modernizing ESG Disclosure," 2022 *Illinois Law Review* (forthcoming 2022).
  - Featured on Columbia Law School Blue Sky Blog on Corporations and the Capital Markets (11 November 2021).

- Lauren Yu-Hsin LIN, "Party Building or Noisy Signaling? The Contours of Political Conformity in Chinese Corporate Governance," 50(1) *Journal of Legal Studies* 187-217 (2021) (with Curtis Milhaupt).
  - The findings of Dr Lin and Professor Milhaupt's research have been relied upon by the U.S. Securities and Exchange Commission in the disclosure rule under a newly-enacted federal law—Holding Foreign Companies Accountable Act. Dr. Lin's paper has made real world impact and contributed significantly to the policy-making of the international community.

The University of Law

## The University of Law Launch 2021/22 Mentoring Scheme

The University of Law (ULaw) recently launched its mentoring scheme for the 2021 / 22 academic year. More than 30 students from the full time and part time cohorts of the Graduate Diploma in Law (GDL) and MA Law signed up for the scheme and attended the opening event and have already gained much support and guidance from their mentors over the last few months.

Professor Peter Crisp, Deputy Vice Chancellor Law at ULaw kicked off the evening event by sharing with the students that having a mentor would be an invaluable resource as they continued their studies and started their legal careers. Savvas Michael, Programme Director of the Hong Kong campus, delivered an opening talk to the mentors, thanking them for their efforts and commenting on the importance of the mentoring role, which would shape the lawyers of the future. Mentors and mentees were then given the opportunity to meet face to face for the first time and students were able to discuss their goals and ambitions.

Students were selected for the scheme by demonstrating their legal career interests during the application process, including whether they wished to become barrister or solicitor, and the type of practice areas and firms which they wanted to work in. Mentors have given their time to the mentoring scheme and come from a vast range of areas within the legal world, including Commercial and Criminal Barristers; Corporate Solicitors and Partners; in house Counsel and professionals; and experienced Mediators. Mentors from large international law firms such as Mayer Brown, Allen & Overy, and Slaughter & May were in attendance.

Many of the mentors are ULaw alumni, including David Swain, who completed his GDL and Legal Practice Course (LPC) at the College of Law (former name of The University of Law) at one of our UK Campuses, Bloomsbury in London.

## 英國法律大學推出 2021/22 年度學員指導計劃

最近，英國法律大學（ULaw）推出了 2021/22 學年的學員指導計劃，有超過 30 位修讀法律深造文憑（Graduate Diploma in Law - GDL）和法學碩士（MA Law）的全日制和兼讀制學生報名參加。參與的學生在出席計劃的開幕活動後，過去幾個月一直從導師身上得到各方面的支援和指導。

ULaw 法律系副校長 Peter Crisp 教授為開幕晚會揭開序幕時，告訴學生無論他們選擇繼續學習或是投身法律界工作，導師都會在旅途中一直為他們提供寶貴的意見和支援。香港校區課程總監 Savvas Michael 在活動中向一眾導師致辭，除了感謝他們所付出的努力外，亦肯定了導師這個角色在培育未來律師當中的重要性。活動期間，導師和學員首次認識彼此，同時學生亦能藉此討論自己的目標和抱負。

為了獲選參與這個計劃，申請的學生需要展示他們在法律事業上的發展志向，包括希望成為大律師還是事務律師，以及投身什麼類型的執業領域和律師事務所。導師方面，他們分別來自法律界多個不同的領域，其中包括商業和刑事大律師、公司律師和合夥人、內部法律顧問和專業人員，以及經驗豐富的調解員，他們都在百忙之中抽空參與這個指導計劃。此外，來自孖士打律師事務

David is now a Partner at Lewis Silkin, based in the Hong Kong office, and the Head of Intellectual Property (Asia-Pacific). He said: "I remember being a law student, seeking guidance on what it was like to be a lawyer, and how to approach applications for legal roles. So, I know that when I was studying law, I would've really valued and benefitted from the opportunity to have a mentor. I am now in a position where I can support and guide law students through these important early years of their legal careers - it makes a real difference and it's great to be a part of it".

Abigail Liu, Barrister at Denis Chang's Chambers, said: "This thoughtful mentoring program encouraged and allowed me, as a mentor, to connect and bond with passionate students who are the future of the profession. This is certainly enjoyable and rewarding."

Patrick Yip, Vice Chair and International Tax Partner of Deloitte China, said: "I have had the pleasure of meeting with my ULaw mentee a couple of times – he reminds me of myself in that like me, he had worked for a number of years in other fields before embarking on his law journey. Therefore, I know it is not easy to change direction mid-career in this manner. It was great that I was able to share with him both my struggles and rewarding experiences that hopefully strike a chord with him. I believe he is a talented and committed student with a valuable diverse background and has a lot of potential.'

The mentors will continue to share their knowledge and wisdom with their mentees throughout 2022 and ULaw and the students are incredibly grateful for their help and support.

ULaw is committed to supporting the legal careers of individuals in the UK, Hong Kong and around the world. Academics and practice-qualified tutors bring invaluable real-life experience into the classroom. With 19 campuses, including Hong Kong, ULaw programmes maintains high standards and

所、安理國際律師事務所，以及司力達律師樓等大型國際律師事務所的導師，亦參與了是次活動。

很多導師都是 ULaw 的校友，當中包括在法律學院（英國法律大學的前稱）設於英國倫敦布魯姆斯伯里的其中一個校園修畢 GDL 和法律實務課程（Legal Practice Course - LPC）的 David Swain。目前，David 是世勤律師事務所的合夥人，常駐在香港辦公室工作，同時亦是 Intellectual Property（亞太區）的負責人。他表示：「我記得當我還在修讀法律時，曾就律師是一份怎樣的工作，以及申請法律工作有什麼技巧等尋求相關指導。這樣的經歷，令我十分珍惜能夠從導師身上學習的機會。在法律界工作了一段日子，讓我今天能夠為初出茅廬的新鮮人提供一些支援和指導。能夠協助年青一輩開拓不一樣的未來，我感到相當榮幸」。

張健利律師樓的大律師 Abigail Liu 指：「這個深具意義的導師計劃，鼓勵我以導師的身份認識有意在未來成為法律界專業人士的學生，並與他們建立密切的關係。從中我不僅獲益良多，亦能樂在其中。」

德勤中國副主席兼國際税務合夥人 Patrick Yip 認為：「我有幸曾經與一位 ULaw 學員交流過幾次。在展開法律之旅前，這位學員曾在其他行業工作過幾年，因此讓我回想起昔日的自己。我明白在職業生涯中突然改變發展方向並不容易，所以希望透過分享自己艱辛過後取得成果的經歷，來勉勵他繼續努力。他是一個既有才華，亦能堅持不懈的學生，我相信憑著他在各行業中取得的寶貴經驗，將來定能在法律界中大展所長」。

踏入 2022 年，導師們將會繼續與學員分享他們的知識和智慧，同時 ULaw 和學生亦衷心感謝他們的協助和支持。

ULaw 致力於支持英國、香港和世界各地的人們投身法律行業。在學術上和實務上，合資格的導師將自身寶貴的現實生活經驗帶入課堂。ULaw

promoting diversity into the profession, with an award-winning Employability and Careers Service supporting the future legal talent every step of the way.

Hong Kong is a world hub for commerce and finance with over 900 law firms, making it an ideal location to study and launch a career in law. In an increasingly global economy and cross-border commerce, The University takes pride in maintaining an international outlook. For further details on ULaw courses, the PCLL Conversion Examinations Preparatory Course (PPC), LLMs (e.g., Medical Law and Ethics); (Corporate Governance), the SQE courses, forthcoming seminars, and lectures to enhance your credentials and knowledge, visit website www.law.ac.uk/hong-kong.

擁有包括香港在內的 19 間分校，其課程一直保持極高水準，並積極令行業變得更多元化，其就業能力和職業服務更屢獲殊榮，一直支持未來法律人才走每一步。

香港是世界一流的商業和金融中心，坐擁 900 多家律師事務所，絕對是學習法律和開展法律事業的理想之地。在日益全球化的經濟和跨境商業中，大學以保持國際視野為榮。如果想知道有關 ULaw 的課程、PCLL 轉換考試預備課程 (PCLL Conversion Examinations Preparatory Course - PPC) 、法學碩士課程 ( 如醫學法和倫理學 ) ; ( 企業管治 ) 、SQE 課程、以及即將舉行的研討會和講座之更多詳情，以獲取資格認可和提高自身的法律知識水平，請瀏覽 www.law.ac.uk/hong-kong。

**Savvas Michael**
Programme Director
The University of Law
Hong Kong Campus

英國法律大學香港分校
課程總監
**薩瓦斯．邁克爾**
**(Savvas Michael)**

Savvas has a Masters in History from University College London (UCL) and read Law at The University of Cambridge. After graduating, he worked at the High Court of the Hong Kong SAR. He then spent five years working in the City of London, including at the Financial Ombudsman Service and within the Legal team at the Bank of England. At the latter, he predominantly worked on Ring Fencing, whereby the Bank of England regulated the separation of retail and investment banks, as per the Banking Reform Act 2013. This involved analysing the re-structuring of major banks and Litigation work, as the Ring Fencing Transfer Schemes required High Court approval. Savvas also worked on Brexit related matters at the Bank of England.

Savvas has been working at The University of Law since September 2019. His areas of teaching and expertise include Public Law, International and European Union Law. He has taught across all undergraduate and postgraduate programmes, including the GDL, MA, LLB, LLM and BPTC. Savvas was previously the Course Head of the LLM programmes at London Bloomsbury. Savvas has also taught at other UK universities, including UCL and the University of Cambridge.

Savvas 擁有倫敦大學學院 (UCL) 的歷史碩士學位，並在劍橋大學攻讀法律。畢業後，他在香港特別行政區高等法院任職，隨後在倫敦市工作了五年，包括在金融申訴專員服務署和英倫銀行的法律團隊工作。他在英倫銀行主要從事「分隔措施」方面的工作，負責讓英倫銀行根據 2013 年《銀行改革法案》監管零售和投資銀行的分隔，而當中亦涉及到分析主要銀行的重組和訴訟工作，因為「分隔措施轉移計劃」需要獲得高等法院批准。薩瓦斯還曾在英倫銀行處理與英國脫歐相關的事務。

Savvas 自 2019 年 9 月起在 ULaw 任職，其教學和專業領域包括公法、國際法和歐盟法，並教授過所有本科和研究生課程，包括 GDL、MA、LLB、LLM 及 BPTC。他過往曾是倫敦布盧姆斯伯里法學碩士課程的課程負責人，還曾在英國其他大學任教，如倫敦大學學院和劍橋大學。

# The Importance of DEI in the Workplace

*By Kajal Aswani, Partner, Gall*
*Kapil Kirpalani, Chief Compliance Officer - Asia Pacific, KKR & Co. Inc*

Diversity in the workplace is about embracing what makes people in an organisation different. Equity is creating fair opportunity and access for all while inclusion provides a sense of belonging.

Diversity, Equity and Inclusion (DEI) is a well-known and much-discussed topic today. It helps companies differentiate themselves from others, encouraging staff commitment and loyalty, decreasing attrition and, if implemented correctly, can become a crucial part of a company's growth strategy.

The world's most influential companies are increasingly issuing DEI reports and setting goals for their strategy to incorporate DEI deliverables. Apple, the world's biggest company by market capitalisation, announced in a press release in January 2021 a set of projects as part of its US$100 million Racial Equity and Justice Initiatives program. Nasdaq, in its "Nasdaq Rules" (Rule 5605(f)), has also supported the idea of requiring disclosure of diversity statistics along with explanations for non-compliance with their standard on diversity, equity and inclusion.

## The Business Case for DEI

In a 2017 report released by Mckinsey & Company's "Delivering through Diversity", companies with the most diverse executive teams either ethnically or culturally were 33% more likely to outperform their peers on profitability. Moreover, ethnic and cultural diversity at board level is also significant in terms of outperformance on profitability with more diverse boards 43% likelier to experience higher profits. Overall, the report is positive and hypothesises that firms and companies which actively take on the challenge to build a more inclusive environment encapsulating cultural differences strengthen the effectiveness of an organisation. The indirect benefits of this are wide-ranging, spanning profitability, motivation, and productivity.

## Creating a Network for the Legal Industry in Hong Kong

Lawyers and law firms looking to advocate and improve DEI can team up with relevant groups and organisations as a starting point. One such group is the South Asian Lawyers Group ("SALG"), an informal group set up in 2006 by myself and my co-author. We aim to provide a networking platform for legal professionals and law students of South Asian origin in Hong Kong by increasing their integration into Hong Kong's legal community.

By working with existing groups and associations, lawyers and law firms can have access to an established network of people and events that can help them achieve their DEI goals. For example, every year, SALG, in collaboration with its members, host a variety of events throughout the year which help promote DEI. These events include talks given by members on topical issues relating to race in the workplace, life as a South Asian legal professional and career challenges faced by ethnic minorities, and informal networking events which provide members with a friendly platform to meet other South Asians. For example, in 2021, SALG invited Shalini Mahtani, Founder of The Zubin Foundation (a non-profit organisation to raise awareness on social issues in Hong Kong) to speak about her incredible mission to help change the landscape of ethnic minorities in Hong Kong. Such events are extremely beneficial in identifying the most relevant opportunities for change based on personal experiences and driven to inspire others to think and talk about DEI initiatives which can help shift mindsets towards a more equitable and diverse environment.

Another initiative a number of legal networks have explored are mentoring programmes whereby younger legal professionals are offered guidance and encouragement from experienced professionals. SALG will kick off its own mentoring programme later this year and is hosting a launch event in Spring 2022 with a panel of speakers who will discuss the importance of mentorships and the role of mentors through SALG.

The Hong Kong Judiciary has also taken a more open approach towards inclusivity. The recent news covered in multiple newspapers of Hong Kong barristers Azan Marwah and Harpradeep Singh winning a year-long campaign to allow religious headdresses in court instead of the traditional horsehair wigs comes as a timely reminder and important rule change towards bringing inclusivity for those who have been historically excluded.

## Why Promote DEI in the Legal Sector?

Emotional intelligence often goes under the radar in a fast-paced working environment, given the objective nature of lawyers and the results-based nature of their work. Inculcating racial diversity into the legal sector taps into aspects of self-awareness and elements of subconscious biases which bring long-term and immediate benefits within a firm's practices. This would instill confidence in those who are considered minorities to speak up, voice their opinion during discussions and encourage everyone to consider ideas that are not the usual norm.

DEI initiatives should push the agenda forward for change because the benefits of inclusivity are shared by everyone. One such benefit includes maximum market penetration of the talent pool and attracting applicants that value diversity, equity, and inclusion. Further, having a diverse group of individuals in an organisation has its own trickle-down effects, such as better decision-making and creativity, varied viewpoints and cultural understanding, which will lead to more thorough opinions and strategies. Intentionally branding law firms as international and diverse could boost their market by helping them reach potential clients from diverse backgrounds too.

## Embedding DEI Initiatives into a Firm's Culture

So how can firms go about introducing DEI initiatives and what are some examples of initiatives they can incorporate into their firms?

1. Keep an open mind and undertake a thorough assessment of needs by having open conversations with employees and stakeholders about their views on DEI and what it means to them.

2. Start by creating a DEI plan as it solidifies the steps to be taken and sets targets to be achieved within a time frame. The Equal Opportunities Commission launched the Racial Diversity & Inclusion Charter for Employers in December 2018 to encourage and promote racial diversity and inclusion within the workplace and giving interested employers a checklist of policies and practices which they can implement to further their DEI initiatives.

3. Have a team made up of people from different cultures promote diversity in the workplace and involve them in the interview process. You may also need to redefine your recruiting strategy and revisit job descriptions. For example, if a role does not necessarily require Chinese language skills, this requirement can be removed to attract a wider group of applicants.

4. Encourage inclusive behaviour in the workplace and educate staff and management about issues surrounding DEI including the benefits of having a diverse workgroup. This can be by way of talks or events and celebrating important religious events of staff from multi-cultural backgrounds, which helps instill a sense of togetherness, deeper understanding and appreciation for each other's roots and upbringing.

5. Forge networks and relationships with professional and minority groups whose membership are comprised of underrepresented talent (for example, SALG HK, LGBTQ+, HKGALA, WILHK etc).

6. Attend conferences, networking drinks, Chamber events and community outreach initiatives that promote values which align with you/your firm. ■

# 工作場所中多元化、公平及包容的重要性

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工作場所的多元化是指接受那些使一個組織中的人與眾不同的因素。公平是為所有人創造公平的機會和通道，而包容則是提供一種歸屬感。

多元化、公平和包容（Diversity, Equity and Inclusion: DEI）是當今一個眾所周知且被廣泛討論的話題。這些元素幫助公司將自己與其他公司區分開來，鼓勵員工重視承諾和忠誠度，減少流失，如果實施得當，可以成為公司發展策略的一個關鍵部分。

世界上最有影響力的公司正越來越多地發佈 DEI 報告，並為其策略設定目標，以納入 DEI 的交付成果。世界上市值最大的公司 -- 蘋果公司 -- 在 2021 年 1 月的一份新聞稿中宣佈了一系列項目，作為其一 億美元的「種族公平和正義計劃」的一部分。納斯達克在其《納斯達克規則》（第 5605(f) 條）中，也支持要求披露多元化統計資料的想法，並對不符合其多元化、公平和包容標準的情況作出解釋。

## DEI 的商業案例

在麥肯錫公司發佈的 2017 年報告《透過多元化來實現績效》中，在種族或文化方面擁有最多元化的執行團隊的公司，在盈利能力方面超過其同行的可能性達 33%。此外，董事會層面的種族和文化多元化在盈利能力方面的表現也很顯著，多元化程度更高的董事會有多 43% 的可能性獲得更高的利潤。總的來說，該報告是積極的，並假設那些積極接受挑戰，建立一個包含文化差異的更具包容性環境的公司，可以增強機構的有效性。這樣做的間接好處是廣泛的，這些包括盈利能力、積極性和生產力。

## 為香港的法律行業建立一個交際網絡

希望倡導和改善 DEI 的律師和律師行可以與相關團體和組織合作，作為一

個起點。「南亞律師團體」（South Asian Lawyers Group: SALG）就是這樣一個團體，這是一個由我和我的聯合撰寫者在 2006 年成立的非正式團體。我們的目標是為香港的南亞裔法律專業人士和法律學生提供一個交際網絡，讓他們更多地融入香港的法律界。

透過與現有的團體和協會合作，律師和律師行可以獲得一個既定的人員和活動的交際網絡，以幫助他們實現 DEI 目標。例如，每年，SALG 與其成員合作，在全年舉辦各種活動，幫助促進 DEI。這些活動包括成員就工作場所的種族問題、南亞法律專業人員的生活以及少數族裔面臨的職業挑戰等熱門問題進行的講座，以及為成員提供友好平台以認識其他南亞人的非正式交際活動。例如，在 2021 年，SALG 邀請了 The Zubin Foundation（一個提高香港社會問題意識的非營利組織）的創始人 Shalini Mahtani，講述她幫助改變香港少數族裔面貌的不可思議使命。這類活動非常有利於根據個人經驗找出最相關的改變機會，並激勵其他人思考和談論 DEI 倡議，這有助於將心態轉向更加公平和多元化的環境。

一些法律網絡探索的另一項舉措是「師友計劃」，年輕的法律專業人士可以從經驗豐富的專業人士那裡得到指導和鼓勵。SALG 將在今年晚些時候啟動自己的「師友計劃」並在 2022 年春季舉辦啟動儀式，屆時將有一組演講者透過 SALG 討論「師友計劃」的重要性和導師的作用。

香港司法機構也對包容性採取了更加開放的態度。最近，多家報紙報道了香港大律師 Azan Marwah 和 Harpradeep Singh 在長達一年的游說運動中獲勝，獲允許在法庭上佩戴宗教頭飾，而不是傳統的馬鬃假髮；這是一個及時的提醒和重要的規則改變，為那些在以往被排斥的人帶來了包容性對待。

## 為什麼要在法律界促進 DEI ？

鑑於律師的客觀性質和工作以結果為基礎的性質，在快節奏的工作環境中，情商通常不會受到關注。將種族多元化觀念灌輸到法律界，可以挖掘出自我意識和潛意識中的偏見因素，從而在律師行的業務中帶來長期和直接的好處。這將為那些被認為是少數群體的人灌輸信心，讓他們在討論中說出自己的意見，並鼓勵每個人考慮那些非常規的想法。


DEI 倡議應該推動變革的日程安排，因為包容性的好處是大家分享的。其中一個好處包括最大限度地滲透到人才庫中，吸引重視多元化、公平和包容性的申請人。此外，在一個機構中擁有一個多元化的群體，有其自身的「下層受惠」效應，例如有更好的決策和創造力，不同的觀點和文化理解，而這將導致有更全面的意見和策略。若有意將律師事務所打造成國際化和多元化的品牌，則可以幫助他們接觸到來自不同背景的潛在客戶，從而促進增加他們的市場份額。

## 將 DEI 倡議納入律師行的文化中

那麼，律師行如何去引入 DEI ，有哪些倡議的例子可以納入他們的律師行？

1. 保持開放的心態，透過與員工和利益相關者進行公開對話，瞭解他們對 DEI 的看法以及 DEI 對他們的意義，對需求進行全面評估。

2. 首先創建一個 DEI 計劃，以此鞏固要採取的步驟，並設定要在時間範圍內達成的目標。平等機會委員會於 2018 年 12 月推出了《種族多元共融僱主約章》，以鼓勵和促進工作場所的種族多元化和包容性，並為感興趣的僱主提供一份政策和做法的清單，他們可以實施該等政策和做法，以促進其 DEI 舉措。

3. 讓來自不同文化背景的人組成的團隊促進工作場所的多元化，並讓他們參與面試過程。你可能還需要重新定義你的招聘策略，重新審視職位性質說明的內容。例如，如果一個職位不一定需要中文技能，可以取消這一要求，以吸引更多的申請人。

4. 鼓勵工作場所的包容性行為，對員工和管理層進行有關 DEI 問題的教育，包括指出擁有一個多元化工作團隊的好處。這可以透過講座或活動的方式進行，並透過那些來自多元文化背景的員工的重要宗教慶祝活動來實現，這有助於灌輸一種團結的意識，並加深對彼此的根源和教養的理解和欣賞。

5. 與那些由代表性不足的人才組成的專業和少數群體建立交際網絡和關係（例如，SALG HK、LGBTQ+、HKGALA、WILHK 等）。

6. 參加那些促進與你 / 你的律師行的價值觀一致的會議、交際網絡酒會、商會活動和社群外展活動。■

THE LAW SOCIETY OF HONG KONG
香港律師會

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