Dear members,

Let me start the second year of service as Chairman by expressing my sincerest gratitude to a most supportive Council in the past year, and all those who have quietly and selflessly contributed to the work of the Bar in the dozens of committees operating under the Bar Council.

When I took up the position as Chairman in January 2015, I was half-reluctant and rather scared of the role, not least due to the public exposure it would entail. I was conscious of the big shoes (perhaps literally) that I had to fill with a predecessor, Paul Shieh SC, whose performance as Chairman was none but exemplary. A year later, I am still a little scared, but that apprehension, I reckon, is a positive force, particularly with the forward charge that the Bar is undergoing right now.

By that I am referring to the various initiatives that have commenced towards changing the mindset of barristers in respect of how their professional
practice should be shaped and developed. I am reminded to be cautious, but not to be afraid of the external forces of change, and above all, not to be afraid of bringing about necessary changes.

The challenges faced by the Bar are not only affecting the junior end. Many more senior members will have found their practice drifting without a sense of direction or even spiralling downwards. Unless we embrace these changes in the legal practice environment and adapt to what are required of us without losing sight of the essence of an independent Bar, there may no longer be any rationale for our existence.

However, I am happy to report that the Bar continues to attract the best of the best. Our younger members, endearingly referred to as YBs, are positive, energetic, industrious, ready to learn and ready to seize opportunities around them. They are the driving force of the hard work and devotion of the Council and its committees.

In the seminars held in the preceding months on practice development, I am pleased to see members of the Bar of varying seniority awakening to the need to extend the scope of barristers’ practice. Separately, I continue to hear more and more voices supporting continuous professional development across the ladder of seniority. If members had only known where we were standing amongst independent Bars on compulsory professional development, none would have dared suggest that we should not at least make a start towards that internationally accepted standard. With the help of the practice area committees under the Council, I am determined to see a bar-wide educational program launched in my term. From all members, I ask you to share my wider and farther vision of the Hong Kong Bar, and for your unfailing support in helping to share knowledge and build specialization, and to encourage an incentive within chambers for the continuous building of skills.

It must always be remembered, that professional practice apart, the Bar has been and will remain a strong pillar of support for the Rule of Law in Hong Kong, as the Chief Justice has told the audience in an important lecture held recently in UCL, London. Staying strong is therefore a mission on which we must not fail not only ourselves, but the public of Hong Kong.

Winnie Tam, S.C. Chairman
親愛的會員，

請讓我籍此機會向香港大律師公會及所有為公會默默無私地貢獻的各公會轄下委員會成員致以最衷心的感謝，並以這份感謝為我的第二屆任期作始。

當我於2015年1月履任主席時，我是有點卻步、又帶點害怕的，尤其考慮到這角色所帶來的公眾注視；加上我的前任者石永泰資深大律師的出色表現，無形的壓力令我意識到我一定要加倍努力，以他為楷模，盡力做得一樣稱職。一年過後，我仍有點害怕，但我認為這些顧慮都化成了正面的動力，對於香港大律師公會現時雷厲風行的改革尤其重要。這裡所指的改革是一系列改變大律師發展及處理業務手法的倡議。我提醒自己要謹慎處事，但同時不要害怕外來因素帶來的改變，而更重要的是不要害怕作出一些必需的改變。

香港大律師公會所面對的挑戰並不單單影響到新晉大律師。越來越多較資歷深的大律師都發現他們的業務正迷失方向，甚至有倒退的情況。我們必須接受法律行業的變化，及在不要失去公會的獨立性的大前提下作出適當的調整，否則，大律師這行業便可能慢慢失去存在的意義。

話雖如此，我很高興向大家報告公會依然在吸納精英中的精英。我們年輕的成員，暱稱為新晉大律師，都十分積極、充滿活力、勤奮，並願意去學習和把握身邊的所有機會。他們是公會及其轄下委員會熱誠和辛勤工作的動力。

在剛過去數月所舉辦的研討會中，我很欣慰見到公會各資歷的成員都意識到擴闊大律師業務的需要。另外，我亦不斷聽到不同資歷的大律師對持續專業發展的支持聲音。倘若公會成員們知道本公會的位置相對於支持強制性持續專業發展的其他獨立律師公會所站的位置上，相信沒有人會反對公會向著這國際公認的標準前進。在公會轄下的執業範圍委員會Practice Area Committee的幫助下，我有決心在我的任期內開展這項涵蓋整個業界的培訓計劃。我希望各公會成員與我對香港大律師公會有著一樣廣闊遼遠的願景，並鼎力支持我們交流學習、從而強化大律師的專業素質及促進技能培養。

我們必須謹記，除了大律師的業務以外，正如香港首席大法官近日在倫敦大學學院舉辦的一個重要演講裡提到，公會一直都是香港法治的重要支柱。公會必須堅強屹立，這不僅是為了自己，更是為了我們的香港市民大眾。

譚允芝資深大律師
主席
In a seminar during the recent Middle Temple Amity Conference, held in Hong Kong to coincide with the September 2015 opening of the new home of the Court of Final Appeal, Hong Kong and English lawyers debated the relative merits of their laws on money laundering and the confiscation of criminal proceeds. To many of the English criminal lawyers, Andrew Bruce SC’s scholarly analysis of the draconian force of Hong Kong money laundering law caused almost as much surprise as my description of the draconian implications of English confiscation law. The idea that a criminal court should be able to make a confiscation order against hidden (i.e. unidentified, assumed) assets to the tune of tens of millions of pounds with a 10 year default sentence to be served if payment is not made, struck the HK lawyers as a little surprising. But perhaps no more surprising to an English lawyer than the realisation that in Hong Kong a prosecutor does not need to prove that the subject matter of the alleged criminal dealing in property is in fact the proceeds of an indictable offence.

So why, despite the common heritage and sources of our respective laws, is there such a gap between the two jurisdictions? The answer lies not in the legislative schemes as such but in the development of the case law and, I think, in the confiscation field a fundamental difference in prosecutorial practice when it comes to assessing what can fairly be identified as a defendant’s realisable assets. In Hong Kong, courts do not seek to confiscate assets that are incapable of being traced, identified and restrained. After all, as was pointed out in HKSAR v. Li Kwok Cheung George1 (in which the CFA held that “clean” money cannot be the proceeds of an indictable offence), the legislative development of the Organised and Serious Crimes Ordinance (OSCO) has reflected at all stages the UK legislation governing, initially, the proceeds of drug trafficking and later as extended to the proceeds of non-drugs crime. As changes were made in the UK, Hong Kong followed suit each time. Ribeiro and Fok PJJ point out in their joint judgment in Li Kwok Cheung that:

“the significance of the UK legislation for present purposes is that it accords basic importance to the element of benefit to the defendant and links such benefit to the concept of ‘proceeds of an indictable offence’ in relation to both the offence and confiscation orders. Modeling itself on such legislation, OSCO has done the same. Of course there are differences in the various generations of the UK legislation but, regarding the “benefit” feature, OSCO is closely comparable to the UK legislation...”.

The CFA proceeded to give a purposive construction to the phrase “proceeds of an indictable offence” both for the purposes of the s.25 (1) OSCO money laundering offence and the confiscation regime. The Court accepted that the word “proceeds”, both for the purpose of establishing the s.25(1) offence and of making confiscation orders, must be construed as referring only to money or property which represents an economic benefit gained by the defendant in connection with the commission of the predicate offence. The confiscation regime is aimed at depriving defendants of his proceeds of the relevant offence “to the extent that he has benefited from such offence” and “within his realisable means”. In light of this purposive interpretation, the CFA observed that to accept the DoJ argument that funds circulating within a dishonest scheme (but which were not themselves derived from the commission of an indictable offence) could establish guilt of money laundering would be likely to have highly detrimental consequences, with the result that “money laundering would become an offence of great and uncertain width”.

In light of what it acknowledged was the low threshold presented by the mental element in s.25 (1) resulting from the CFA’s ruling in Oei Hengky Wiryo v. HKSAR2, the CFA pointed out that the wide interpretation advanced by the prosecution would place lenders at risk and impose onerous burdens of due diligence on them. “It is one thing” said Ribeiro and Fok PJJ “to criminalise dealing with funds where the dealer knows or has reasonable grounds to believe that they are the proceeds of crime, it is quite a different matter to stigmatisise as a money launderer, a lender dealing with its own “clean” funds because of what the borrower does or intends to do with them.”

By coincidence, the Director of Public Prosecutions of England and Wales recently sought to extend the scope of English money laundering law along lines similar to the argument unsuccessfully advanced by the DoJ in Li Kwok Cheung. But like the CFA, the Supreme Court in R v. GH3 unanimously rejected this attempt, holding that there is an unbroken line of authority to the effect that it is a prerequisite of the money laundering regime in the UK’s Proceeds of Crime Act 2002 (POCA) that the property in issue should be criminal property at the time of the alleged offence. The regime is aimed at dirty money, not at the use of clean money for the purposes of a criminal offence. The Supreme Court held that the prosecution’s argument wrongly elided the distinction between someone who acquires criminal property and someone who acquires property by a criminal act for a criminal purpose. Lord Toulson pointed out that the money laundering offences depend on the commission of another predicate offence yielding proceeds. If the meaning of “criminal property” were not limited to property that was criminal property before the money laundering arrangement came into operation, there would potentially be serious consequences for banks and other financial institutions which already have onerous reporting obligations. In support of his conclusion, Lord Toulson cited the reasoning and policy analysis in Li Kwok Cheung, thereby reinforcing the obvious common heritage of our respective laws and the extent to which each jurisdiction can inform the other’s development of the law.
Quite what the implications of the rulings in Li Kwok Cheung and Pang Hung Fai will be for the draconian nature of Hong Kong's money laundering law is due to be decided in the course of 2016 in the appeal in HKSAR v. Yeung Ka Sing, Carson. Two of the certified questions raise crucial issues concerning the meaning of the "reasonable grounds to believe" limb of s.25 (1) OSCO and whether it is necessary for the prosecution to prove, as an element of the offence, that the proceeds being dealt with were in fact proceeds of an indictable offence (i.e. was Oei Hengky Wiryo wrongly decided?). The CFA has also in effect posed a question intended to tease out more clearly what the formulation "knew or ought to have known" means in the judgment of Spigelman NJP in Pang Hung Fai so that trial judges can receive a clearer understanding of the proper approach to the mens rea of the s.25 (1) offence.

Without delving too deeply into the detail of the rival arguments, it is hard to see how the reasoning in Oei Hengky Wiryo can live with the reasoning of the CFA in Li Kwok Cheung and Pang Hung Fai. In Oei, the CFA was heavily influenced by a perceived substantial difference between the two mental elements in s.25 (1) and the particular problem that would confront a prosecutor if required to prove that the allegedly laundered property was the proceeds of crime when relying solely on the "reasonable grounds to believe" limb. In light of Pang this policy justification is surely unsustainable given the CFA's conclusion that the mens rea in s.25 (1) is to be read as meaning "knew or ought to have known". It is impossible to see how a second limb, s.25 (1) conviction can be properly secured absent proof that the property was in fact the proceeds of an indictable offence because no reasonable tribunal could conclude that a defendant ought to have known that property was the proceeds of crime unless sure that it was in fact the proceeds of crime. Lord Hope's analysis in R v. Montila5 (rejected by the CFA in Oei) must surely apply to s.25 OSCO as now construed in Pang.

It is obvious that in Li Kwok Cheung the CFA engaged in a far more detailed examination of the true construction of the s.25 offence and its legislative context than is apparent from the judgment in Oei. The reasoning in Oei means that a criminal confiscation order can be made against a person convicted of the s.25 (1) offence on the basis of reasonable grounds to believe without the Court being sure that the money dealt with was in fact the proceeds of crime. This is surely incompatible with the analysis in Li Kwok Cheung.

As stated above, the CFA found that Hong Kong had largely followed English law in the development of its laws concerning money laundering and confiscation and an analysis of the pre-legislative debate in Hong Kong concerning the enactment of s.25 (1) OSCO reveals no legislative intent to achieve a radical departure from the position under English law, i.e. that the prosecution bears the burden of proving that the property allegedly laundered was in fact the proceeds of crime.

It follows that the construction of s.25 (1) OSCO adopted by the CFA in Oei must surely give way to a purposive construction which reflects the fundamental purpose of OSCO – disgorging the proceeds of serious crimes from predicate offenders and those who launder the proceeds of predicate crimes – and which reflects the practical reality that whether the mental element of the s.25 (1) offence is based on "knew" or "ought to have known", the underlying premise is that the prosecution must prove that the property dealt with was in fact the proceeds of crime. It cannot fairly be demonstrated that a person ought to have known he was dealing with the proceeds of an indictable offence absent proof that he was, any more than it can be shown that he knew he was dealing with such proceeds without proving the fundamental nature of the property in issue.

If it be the case that Hong Kong money laundering law does continue to develop so that it accords more substantially with the regime in England and Wales, I venture to suggest that it would be a very bad idea for policy and practice in relation to confiscation law to be altered in Hong Kong so as to resemble the UK's criminal confiscation regime. In a damning report published in March 2014, the Public Accounts Committee of the House of Commons issued a devastating assessment of the effectiveness of the UK's confiscation scheme. It found that more than 10 years after the enactment of the Proceeds of Crime Act, the government only collects 26 pence out of every £100 generated by criminal activity. It also found that enforcement bodies are much more successful in collecting proceeds from low-value orders than high-value ones, with an enforcement rate of nearly 90% for orders under £1,000 compared to 18% for orders over £1 million.

Is this appalling recovery rate a sign of hopeless inefficiency at the enforcement stage (despite the obvious incentive to recover available property) or a sign that the law has departed from reality at the initial stage of imposing a confiscation order? The fundamental problem in my view is that Crown Courts are forced by the absurdities of the UK's legislative scheme (as developed, it must be said, by the courts) to make confiscation orders vastly in excess of what individual defendants actually retain (or ever obtained) by way of the proceeds of their crimes. The law governing the calculation of benefit regularly results in allocating to an individual criminal a benefit sum which everyone knows was obtained by a number of criminals acting together and which is hugely inflated even taking into account what they all obtained. Once this exaggerated, in truth notional, sum is determined, the court then requires a defendant (by the confiscation stage, a person pretty well incapable of being regarded as a reliable historian) to prove that he doesn't have assets to the value of the vastly inflated benefit sum. In these circumstances it is hardly surprising that the bodies charged in the UK with enforcing confiscation orders fail on a grand scale to recover the sums of money which court orders would suggest are capable of being recovered. A legal system that requires courts to make orders that are incapable of being complied with brings justice into disrepute. So we each have something to learn from the experience and practice of our respective legal systems.

TIM OWEN QC
Matrix chambers
洗黑錢和沒收犯罪所得：
雙制度記

在2015年九月終審法院開幕期間，倫敦中殿在香港舉行研討會，讓香港和英國律師辯論兩個制度下的反洗黑錢和沒收犯罪所得的優點。Andrew Bruce SC 對香港的嚴厲反洗錢法的學術分析，與我對英國的沒收法嚴厲的含義的描述，同樣令許多英國刑事律師感到驚訝。讓刑事法院有權發出沒收令，去沒收達數十萬英鎊的隱匿（即不明的、假設的）資產，若未能付款，更可判處10年徒刑，令香港律師感震驚。但也許及英國建議，對香港檢察官毋須證明懷疑犯罪所得的項目確是可公訴罪行的得益的驚訝。

為何兩個有共同來源的法律制度卻有不同的差距？原因不在於法律制度本身，而是在於法例的發展。我認爲，亦是兩者在沒收法的檢控常規有根本的區別，尤其是當香港法院在界定哪種資產可以當作被告的變現資產（令香港法院不致於尋求没收那些不能被追蹤、識別和限制的資產）。畢竟，香港終審法院在 HKSAR v. Li Kwok Cheung George 中已裁定『乾淨』的錢不能是可公訴罪行的得益，而《組織及嚴重罪行條例》（OSCO）的立法發展亦反映兩個制度反映英國的法例，起初是效益主義，後來發展到非販毒的犯罪收益。每次英國改動沒收法，香港都有跟隨。終審法院法官李義和霍兆剛在 Li Kwok Cheung 中指出：

「英國的法規在這裏的意義在於對假定被告無罪的基本原則給予重視，更將這假定與在犯罪和沒收令兩一方面上的『可公訴罪行收益』概念聯繫起來。在這假定的基礎上，OSCO做到相同的效果。當然，英國的法規在不同時代有著不同的特徵，但對於『得益』的特徵，OSCO與英國的法規非常相似。」

終審法院更用『可公訴罪行所得』在OSCO第25(1)條洗錢罪和沒收制度中的立法目的而建設解釋。終審法院受理『收益』這字在第25(1)條在犯罪與沒收令上的意義，必須是被告或該可公訴罪行中所獲得的經濟利益，金錢或財產。沒收制度的目的是剝奪被告從有關罪行中，在他力所能及的範圍內，所獲得的利益。在這個意義上，終審法院認為法律的說法，用在騙局或循環（但本身不是從可公訴罪行所得）的基金來建立洗錢罪的意義會有嚴重的後果，令『洗錢罪成為太廣泛及模棱的罪行』。

基於終審法院在 Hengky Wiryo v. HKSAR 中建立的低門檻去成立第25(1)條中的犯罪意念，法院認為控方所提出的理據獲得法庭的接受。終審法院法官李義和霍兆剛指出，『雖然，當立證者或有合理理由由相信資金是犯罪所得的時候，法庭可以定這為刑事罪行，但當貸款人被指 sudah没了『乾淨』的資金，卻因為借款人的行為或意圖而被定為黑錢，就是另一回事了』。

巧合地，英格蘭和威爾斯的刑事檢控主任最近尋求運用香港律政司在 Li Kwok Cheung 中所提出的理據擴大英國反洗黑錢法。但是，英國最高法院在 R v. GH 一案中和香港法院一樣拒絕這種理據。終審法院成員認為英國案例一向認為英國法院在2002年訂立的《犯罪收益法》中的反洗黑錢制度規定該收益需在罪行發生的時候已是犯罪收益。該制度針對的是黑錢，不會用作犯罪用途的乾淨錢。最高法院認為，檢方的論點錯誤地忽略一個事實：犯罪收益的人和一個僱傭刑罪罪行收益去作犯罪用途的人兩者之間的區別。Lord Toulson指出，洗錢罪依賴與其它罪行所得收益的佣金。若將『犯罪收益』的含義限制於只是關於洗黑錢罪或洗黑錢罪的財產，可能令銀行和其他金融機構承受繁重的報告義務。為支持他的結論，Lord Toulson引用 Li Kwok Cheung 中的推理和政策分析，從而加強這個法律體制之間的共同背景及擴大兩者互補影響的能力。

如果香港的洗黑錢法的確繼續發展到和英國的法律越來越相近，我斗膽建議，在政策和實踐上，香港不應將香港的沒收法發展到與英國的刑事沒收制度相近。於2014年3月出版的報告中，英國下議院公共賬目委員會發佈對英國沒收制度的有效性評估。調查發現，犯罪收益法頒布的10多年來，政府無法收取犯罪收益，有近90%的沒收是在低於一千鎊的沒收令上，而只有18%的是在於超過100萬鎊的沒收令上。

這個令人震驚的沒收率是否反映執行階段中的低效率（儘管復原犯罪收益有顯著的鼓勵性質），還是沒收令根本在法例中已消失？我認為，基本的問題是刑事法庭被英國的立法計劃（以及法律在法院中的發展）逼作作出大大超過被告實際能保留或獲得的金額的沒收令。收益計算的法律常常導致一個罪犯被分配到一項許多罪犯一起行動獲得的收益，或者是被無限誇大的金額。這種被誇大，說實話是有名無實的金額被確定後，法院遂要求被告證明他並沒持有被大大膨脹的資金金額的基金。在這種情況下，法院遂將被告定為犯罪收益，而索要被告在法律上不可能處罰的犯罪收益。所以，我們可以從對方的法律制度的經驗和實踐中學習。
The Hong Kong Competition Ordinance (Cap 619)

The date of 14 December 2015 marks the full commencement of the Hong Kong Competition Ordinance (the Ordinance) (Chapter 619). The Ordinance, which was enacted by the Legislative Council back in June 2012, represents the first cross-sector competition legislation in Hong Kong. Before its full commencement, only the telecommunications and broadcasting industries in Hong Kong were governed by competition law provisions. The full commencement of the Ordinance in December 2015 is hence an important moment for Hong Kong as a latecomer to the global competition law community.

As with competition legislation in most jurisdictions around the world, the Ordinance contains three general prohibitions. The first conduct rule (under section 6(1) of the Ordinance) regulates restrictive agreements. The second conduct rule (under section 21(1) of the Ordinance) prohibits abuses of substantial market power. The two conduct rules are modelled on Articles 101(1) and 102, respectively, of the Treaty on the Functioning of the European Union (TFEU). The Ordinance contains a general exclusion for “agreements enhancing overall economic efficiency” which is modelled on Article 101(3) TFEU; this exclusion is contained in Schedule 1 to the Ordinance along with the other general exclusions. The Ordinance also has a merger rule (under paragraph 3(1) of Schedule 7) which only applies to the telecommunications industry in Hong Kong.

The first conduct rule has similar concepts as those in Article 101(1) TFEU, such as “undertaking”, “agreement”, “concerted practice”, “decision” of an “association of undertakings”, and “the object or effect… is to prevent, restrict or distort competition in Hong Kong”. As with Article 101(1) TFEU, the first conduct rule is intended to prohibit anti-competitive collusion or coordination among competitors and vertical arrangements between market players along the supply chain. The four classic types of hardcore restraints – price fixing, market sharing, output limitation and bid-rigging – fall within the definition of “serious anti-competitive conduct” under the Ordinance and, similar to the approach in the EU and other jurisdictions, are likely to be prohibited as “object” restrictions under the first conduct rule. Under the Ordinance, an undertaking engaging in serious anti-competitive conduct will not benefit from the de minimis exclusion (paragraph 5(2) of Schedule 1) nor the warning notice requirement (section 82(1)). Besides, for first conduct rule violations concerning serious anti-competitive conduct, an “infringement notice” may be issued by the Commission to the infringer “offering not to bring proceedings on condition that the person makes a commitment to comply with requirements of the notice” (section 67).

The second conduct rule is broadly similar to Article 102 TFEU, except that the latter’s concept of “dominant position” is replaced by that of “substantial degree of market power”. The market power requirement for unilateral conduct in Hong Kong hence resembles that in Australia and New Zealand. Like Article 102 TFEU, the second conduct rule prohibits “abuses” of market power, except that the latter states that the abuse must be “by engaging in conduct that has as its object or effect the prevention, restriction or distortion of competition in Hong Kong”. Therefore, it appears that the second conduct rule only prohibits exclusionary abuses (i.e. the abuse must be such that market competition is restricted, which may ultimately harm consumers due to, say, higher prices in the aftermath), but not exploitative abuses (i.e. abuses that harm consumers directly, e.g. excessive pricing) without an exclusionary effect. It follows from this interpretation that exploitative abuses (such as excessive pricing) which directly harm consumers without restricting market competition would fall outside the scope of the second conduct rule.

The Ordinance has a comprehensive list of exclusions and exemptions. Apart from the efficiency exclusion, the other general exclusions under Schedule 1 include “compliance for legal requirements”, “services of general economic interest”, “mergers”, “agreements of lesser significance” and “conduct of lesser significance”. The former is equivalent to the de minimis exception in the EU, except that it is based on turnover but not market share thresholds. The latter, which has no direct equivalent in the EU, is essentially a de minimis exception for abuses of substantial market power under the second conduct rule. Besides, section 3 of the Ordinance generally excludes statutory bodies from Hong Kong competition law. Exclusions aside, the Chief Executive in Council can make exemptions for “exceptional and compelling reasons of public policy” (section 31) or “to avoid conflict with international obligations” (section 32). More controversial is the power of the Chief Executive in Council to exempt a “specified person” or a “specified activity” from competition law in accordance with sections 4 and 5 of the Ordinance.

While the EU and many other jurisdictions adopt the administrative model of enforcement, enforcement of competition law in Hong Kong is based on the judicial model, with the work divided between the Competition Commission and the Competition Tribunal. The Competition Commission is responsible for handling complaints, conducting investigations, and the preliminary stages of enforcement, while the Competition Tribunal makes decisions concerning legality, fines and orders (Parts 3, 4 and 6 of the Ordinance). The Competition Commission is empowered to take enforcement action by accepting commitments (section 60), issuing infringement notices (section 67), or concluding leniency agreements (section 80). The Competition Commission may take a case to the Competition Tribunal seeking a pecuniary penalty and suitable orders (sections 92 and 94); for first conduct rule violations not by way of serious anti-competitive conduct, the Competition Commission is required to issue a warning notice first (section 82).

The Competition Tribunal may levy fines and issue various orders against the infringing parties (sections 93 and 94; Schedule 3). These orders include, inter alia, a declaration of illegality, a prohibitory order, and a mandatory order (Schedule 3). The Competition Tribunal can also issue disqualification orders against directors and persons involved “in the promotion, formation or management of a company” (sections 101-103). Decisions of the Competition Tribunal can be appealed to the Court of Appeal (sections 154 and 155) and, further, to the Court of Final Appeal (sections 110(3)(d), 111(1)(c), and 119(4)(b)). Apart from enforcement by the Commission, the Ordinance also allows injured parties to commence private actions against competition law infringers, but only on a follow-on basis (section 110).
The judicial model of enforcement under the Ordinance creates considerable room for members of the Hong Kong Bar to take an active part in the implementation and enforcement of the law. Under the administrative model in the EU and the UK, the courts only become involved when the competition agency’s decision is challenged on appeal. In contrast, the judicial model in Hong Kong requires the judiciary to be already involved in the first instance determination of whether there has been a competition law violation, and if so, what penalties and remedies should be imposed. There are hence ample opportunities for barristers to undertake advocacy work as part of Competition Tribunal proceedings initiated by the Competition Commission, and at the appellate stage when a competition law case is appealed to the Court of Appeal and the Court of Final Appeal. Apart from court advocacy, barristers may be instructed to undertake advisory work in relation to compliance with the Ordinance, applications for exclusion or exemption decisions, applications for block exemption orders, and other aspects of competition law. Barristers undertaking work related to Hong Kong competition law are expected to be familiar with not only the Ordinance itself, but also, amongst other things, the Competition Tribunal Rules, other subsidiary legislation and the various guidelines and policies of the Competition Commission. It is likely that barristers will be expected to draw comparative guidance from the relevant law and practice of overseas jurisdictions especially during the early stage of implementation of the Ordinance.

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1 Reproduced (with amendments) with the permission of Kluwer Law International from Kwok, Kelvin Hiu Fai, ‘The New Hong Kong Competition Law: Anomalies and Challenges’, World Competition 37, no. 4, 543-568, 2014. Some citations found in the footnotes of the original article have been omitted in this version.
Bar Council of 2015
Bar Mess
in honour of Michael Thomas CMG, QC, SC
Hong Kong Parkview
9 January 2015
Visit: Russian Lawyers on 5 January 2015

Visit: Mrs. Sotheavy Chan, Secretary of State, Ministry of Justice and Ms. Vichuta Ly, Legal Consultant of the Ministry of Justice, Cambodia on 2 February 2015

Visit: Association of Mongolian Advocates on 4 February 2015

Visit: Association for Chinese Lawyers in Europe on 30 March 2015

Meeting with International Legal Assistance Consortium (ILAC) on 13 October 2015

Visit: Integrated Bar of the Philippines (IBP) on 14 November 2015
Visit to Beijing on 27-30 April 2015

The Hong Kong Bar Association embarked upon an official four-day visit to Beijing on 27-30 April 2015. The visit enabled members of the Hong Kong Bar to interact with representatives of relevant Mainland organisations and bodies. At the same time, it provided a timely opportunity for a meaningful dialogue between members of the profession and PRC officials on such topical issues as the Hong Kong constitutional reform and the rule of law.

During these few days, the group visited a series of state ministries and offices, including the Ministry of Justice, the Supreme People’s Court, the State Intellectual Property Office of the PRC; and met with Central Government representatives including Mr. Li Fei (National People’s Congress Standing Committee Deputy Secretary-General and Basic Law Committee Chairman) and Mr. Wang Guangya (Director of the Hong Kong and Macau Affairs Office of the State Council of the People’s Republic of China).

As the visit incidentally took place during a period of intense discussions in Hong Kong over the method for selecting the Chief Executive in 2017, the meetings with Mr. Li Fei and Mr. Wang Guangya naturally centred upon the question of constitutional reform.

At the same time, the visit also fostered in-depth conversations into such topics as possible practice development opportunities for members of the Hong Kong Bar in the Mainland, through the cooperation with and the support of the PRC legal profession and relevant State departments. This proved to have been particularly relevant during the visits to the Ministry of Justice and the All China Lawyers Association (ACLA).

Finally, representatives of the Bar were welcomed and treated with utmost hospitality by our hosts throughout the visit. In addition to the official visits as mentioned above, the group were treated to lunches and dinners at some exciting venues such as the Great Hall of the People and the Diaoyutai State Guesthouse.

Michael Lok
Joseph Wong
As if Young Barristers haven’t had enough of late nights at the High Court… on 13 May 2015 an annual YBC-sponsored pupils’ drinks took place at L16 Café and Bar, located in the natural tranquil surroundings of Hong Kong Park. The event was held at the alfresco area of the venue, which attracted an attendance of over 50 members. Events like this always provide an excellent opportunity for old friends to catch up, as well as to let off some steam after a long day at work. In addition, this year’s theme was “Welcome to the Bar” as the event took place in the midst of the ‘admission season’. It was therefore particularly delightful for the YBC to be joined by members of different seniority sharing their memories and experience (plus the occasional gossips) with junior members and newcomers to the profession, over canapés and free-flowing drinks throughout the evening.

Michael Lok
Joseph Wong

—Drinks—

隨著愈多的案件與仲裁涉及內地各方，海外大律師的影響亦與日俱增，大律師公會認為自身有責任促進尤以資歷較淺的同業循這方面發展業務。殊因香港大律師的業務正面臨各種挑戰，而我們亦應積極應對。為有效實現這方針，公會於2015年8月組成了一個新的委員會，名為「中國業務發展委員會」（下稱「委員會」）。該委員會有明確清晰的司職，就是協助內地業務感興趣的同業拓展工作範疇。

就在組成後不久，委員會便籌辦了2015年11月的聯合法律論壇。該論壇的目的是為推廣根據專業守則(Annex 14A)，公會同業可受聘為上海律師事務所的法律顧問這一構思。我們的公會主席與嘉賓律政司司長袁國強資深大律師率同代表前赴。該論壇假於「上海第七屆陸家嘴法治論壇」舉行，而「陸家嘴法治論壇」亦為近年內地司法界備受矚目的年度盛事。活動十分成功，有超過200位內地律師出席論壇。我們7位同業亦獲委任為法律顧問，其中也包括資歷較淺的同業，現在，一些資歷較淺的同業亦已直接從內地的律師事務所收到了指示。這些發展都是令人鼓舞的。而委員會亦決心拓展這計劃的範疇。

當然，要讓大家熟悉這種模式的合作並令其運行流暢可能需要時日磨合，尤其當中涉及種種的實際考量。故此，我們的七名「先驅」，包括公會主席在內，曾於2016年2月29日與同業分享心得，作為第一步，委員會將會為各同業開設研討會，講解這些安排所帶來的機遇。我們歡迎並邀請各同業（不論資歷深淺）都出席這業務拓展計劃。我也歡迎各同業提出寶貴意見，若公會可如何更好地協助各同業發展業務。如有好的建議，請不吝告知予我。
It is always a pleasure to meet the members of other professional bodies to share ideas, to network and to promote our common interests. The Young Coalition Professional Group (“YCPG”) (http://www.cps.hk/en/ycpg.php), being a young members’ interest group within the Hong Kong Coalition of Professional Services, is an effective platform to serve these purposes.

The YCPG was formally inaugurated in August 2013 and consists of 11 young professional groups spanning over the legal, construction, financial and medical sectors, including the Young Barristers Committee (YBC). It aims to expand young members’ awareness of Hong Kong’s critically important services sectors and to foster cross-professional relationship among young business people and services professionals. It holds different activities throughout the year such as seminars, exchange programmes, joint professional drinks and its annual flagship activity - the Youth Forum.

The Youth Forum of the YCPG this year was held on 4 July at the Hong Kong Academy of Medicine. The Forum’s theme was “Succession to Success: Developing Next-Generation Leaders” which reflected the awareness of the challenges young professionals were facing in identifying and building their career paths. Over 400 members and guests attended.

The Forum had three sessions namely, “Dialogue with Chief Executive”, “Cultivating Excellence in Planning & Development Sector” and “Paths to Prestige in Finance, Medical Science and Law”. In the first session, we were delighted to have the Hon. C.Y. Leung, the Chief Executive of HKSAR having a dialogue with 11 young representatives in relation to the hot topic of upward mobility for this generation. The representative of YBC conveyed to the CE an increasingly competitive environment for new members of the Bar and several possible measures that the Government might consider, for example the development and promotion of international maritime arbitration, legal services in Qianhai district, etc. After some inspiring discussions with the representatives, the CE was of the view that the development of young professionals would, to a large extent, depend on the development of the society as a whole. Therefore, the problem of lack of land supply, especially in commercial and business districts, would be one of the issues the Government had to tackle.

In the third session which related to the legal sector, the Hon. Laura Cha, Chairperson of the Financial Services Development Council, and the Hon. Anna Wu, Non-official member of the Executive Council of HKSAR, were invited to share their invaluable experiences in both their legal careers and public office.

Overall, the Youth Forum 2015 was a great success in terms of participation and general feedback. The YBC will continue to work closely with other professional bodies in the YCPG for more interdisciplinary collaboration. We look forward to seeing you in our next activity!

Ryan Law
This year is the 5th anniversary of the Peking University Common Law Course established by Bar Association.

Over the past few years, the Bar Association has sent numerous members to teach in Beijing. It is hoped that this will allow us to share with the Mainland students the concept of the Rule of Law and the Common Law, which we pride ourselves on. We understand that despite the great difference between the Hong Kong and Mainland legal systems, the Mainland students are still eager to learn about our system. It is only through learning, acknowledging, thinking and reflecting that we can progress on. However, all these are premised upon an opportunity to access the relevant information.

Therefore, the Bar Association has set up the Peking University Common Law Course to provide an opportunity for the Mainland students to learn about the spirit of the Rule of Law and the Hong Kong legal system. It is indeed encouraging that amongst the students who took this Course, many are passionate to know more about the Hong Kong system. Some have enrolled in the local law degree courses of different universities in Hong Kong and are determined to develop their career in Hong Kong. Students who have decided to pursue their career in the Mainland have also indicated that they were enlightened through the Course and promised to contribute to the Mainland system in the future.

The Course lasted for about 4 months in 2015. The content of the Course included the concept of the Rule of Law and the Common Law, the court system in Hong Kong, the doctrine of precedent, judicial review and the protection of fundamental rights, international trade dispute resolutions and international commercial arbitration. At the end of the Course, students had to submit an essay on public law or arbitration. They also had to take part in a moot assessment. Finally, a total of 15 LLB and LLM students were awarded a scholarship by the Bar Association to come to Hong Kong for mini-pupillage with Hong Kong barristers and for visits to various law-related institutions.

This year, the following barristers have taken part in the Course: Andrew Mak, Elaine Liu, Adrian Wong and Carol Wong for the 1st lecture; Hectar Pun SC, YL Cheung and Richard Yip for the 2nd lecture; Gary Soo, Tim Wong and Clark Wang for the 3rd lecture; Richard Khaw, Ann Lui, Sabrina Ho and Bonnie Cheng for the 4th lecture. Other barristers who took part in the moot assessment included Kerby Lau and Albert Chan. In addition, Winnie Tam SC, the Bar Chairman, attended the closing ceremony of the Course in Beijing. She also shared with the students her route to becoming a successful female barrister. The response from the students was very positive, and it prompted numerous questions from the students.
2015年的“普通法精要”課程為期約四個月，內容涵蓋法治與普通法概念、香港法庭架構、先例原則、司法覆核與基本人權的保障、國際貿易糾紛及國際商貿仲裁等。課程結束時，學生就公法或仲裁議題提交論文及參與模擬法庭辯論，最後由香港大律師選出15位本科生及研究生授予獎學金到香港跟隨大律師進行實習及參觀各個法律機構。

今年參與的香港大律師如下：第一講的麥業成大律師、廖玉玲大律師、黃俊傑律師及王洛媛大律師；第二講的潘熙資深大律師、張耀良大律師及葉海琅大律師；第三講的蘇國良大律師、黃添偉大律師及王漓大律師；第四講的許偉強大律師、雷天恩大律師、何淑瑛大律師及鄭欣琪大律師。其他參與模擬法庭考核的大律師包括劉祉仁大律師及陳梓文大律師。而香港大律師主席譚允芝資深大律師更於結業禮時親臨主禮，與學生們分享了作為成功女大律師的心路歷程，並獲得同學們踴躍提問及極大回響。

這幾年的成功，有賴當年麥業成大律師作為大律師公會的內地事務委員會（現稱大中華事務委員會）主席與北京大學世功教授的努力溝通，創造了彼此合作的機會。前大律師主席石永泰資深大律師於2015年法律年度開幕典禮曾寄語“平等公義等法治精神有朝一日終於可以在神州大地植根，遍地開花，觸手可及”。但願此言成真。

王洛媛大律師
A passion for debating often provides the spark for a career as a legal advocate. The annual Debating Competition, now in its 11th year, aims to nurture just that. 32 schools from across Hong Kong sent in their debating teams to participate in the tournament, divided into English and Chinese divisions.

As with previous years, the debate motions revolved around socio-legal issues. Debaters sank their teeth into topical issues such as restricting parallel exports, tax discrimination and national education.

In order to maximize participation, and also to encourage participation from different levels, restrictions as to the grade and choice of team members were relaxed. Debaters from all different grades were therefore allowed to participate, and team members could be substituted flexibly rather than having the same designated members represent a team for each round of the competition.

After 3 rounds of intense debating, 2 teams each for the English and Chinese divisions respectively emerged as the finalists. The motion for the Grand Finals was “This House would enact legislation to require local primary and secondary schools to reserve quotas for admitting students from ethnic minorities”. This issue, unlike the issues in the other rounds of debates, did not receive as much media coverage or public attention, but is an important and live issue affecting many.

The English Grand Finals was adjudicated by the Honourable Chief Justice Ma and the Honourable Mr. Justice Lam, while the Chinese Grand Finals was adjudicated by Winnie Tam S.C, current Chairman of the Bar Association, and the Honourable Mr. Justice Au.

To take the experience one step further, for the first time the Grand Finals this year took place in an actual courtroom in the High Court, on 25th April 2015.

Rather than being intimidated, the choice of venue appeared to have inspired the student debaters to strive harder than usual, resulting in a heated and engrossing finale. The results were close, but unfortunately there could only be 1 winner. Wah Yan College (Hong Kong) and St. Paul’s Secondary School emerged
as the victors of the Chinese and English division respectively. Big congratulations to both schools!

The success of the tournament would not have been possible without the dedicated help from all the adjudicators and helpers, in particular the committee members of the Law Association of the University of Hong Kong, and all the judges, counsels and pupils who selflessly gave up their Saturdays to help in the event. We would like to use this opportunity to express our heartfelt gratitude for all their time and efforts.

Kinsey Kang
Participation in the Essex Court Chambers
Singapore Academy of Law International Mooting Competition 2015

I never would have thought that after graduating from law school, we would still have the opportunity to take part in a mooting competition as a contestant, not to mention together with other young members of the bar, competing with lawyers from multiple jurisdictions, and with the chance to advocate before a foreign judge at a foreign court.

This was the inaugural year of the ECC-SAL International Mooting Competition, where international teams were invited to join for the first time in Singapore. A total of twenty-seven teams from countries including Australia, Brunei, Hong Kong, Singapore and Malaysia participated.

The Hong Kong Bar Association generously supported four young barristers to take part in the moot. Miss Andrea Yu and I formed one team, while Miss Chantel Lin and Miss Arlina Mak formed another to represent Hong Kong.

The intensity of this experience began, well before we competed at the Singapore Supreme Court on 4 January 2015. Before the competition, each team was required to submit skeletons for a simulated case about the implication of terms in contracts and the availability of an account of profits as a remedy for breach of confidence. We were required to prepare for an injunction hearing that also dealt with seeking security for costs, as well as an appeal hearing about the law of implied terms. To make things more challenging, each team also had to be ready to argue on behalf of both parties to the case.

The final round was held on 6 January 2015, and the panel comprised of Justice Vinodh Coomaraswamy, Mr. Gourab Banerji SA and Mr. Roderick Cordara QC. Although we did not make it to the finals, the week spent in Singapore was still fruitful. Throughout the competition, we had the chance to observe the different styles of advocacy, as well as the different interpretations and construction of arguments towards the same case by participants from the various jurisdictions.

As the period of our stay coincided with the opening of the Singapore International Commercial Court, we were also invited by the organizers to attend a roundtable discussion held in conjunction with the Singapore Supreme Court, the Singapore Academy of Law, Young SIAC and the Singapore International Mediation Centre regarding the challenges and issues of dispute resolution institutions of Singapore.

The mooting competition ended with a private dinner for all participants. It was attended by numerous members of Essex Court Chambers flying in from London, lawyers from both Singapore and Malaysia, as well as the guest of honor, The Honourable Attorney-General of Singapore, Mr VK Rajah SC. It was a wonderful opportunity to network with lawyers from different jurisdictions and learn of the latest news in their legal community.

On behalf of both our teams, I would like to express an immense gratitude to the Hong Kong Bar Association for sponsoring our trip, as well as to our coach Mr. Lester Lee who volunteered many hours to help us prepare for the competition despite of his hectic schedules. To all of us young barristers that participated, this opportunity was indeed both a rewarding and memorable “welcome gift” from the Bar!

Stephanie Lam Tuen Yee
“Thinking of studying law?” About 20 secondary school students gave an affirmative answer by enrolling in the HKU SPACE Summer School Programme of this title. The programme consists of six 3-hour sessions designed to give students a taste of law school and an understanding of the legal profession. The YBC was invited to deliver a session on 4 August 2015 about the life at the Bar and advocacy in court.

Mr. Ernest Ng started off the morning by speaking of the path to becoming a barrister, from completing pupillage to developing practice. The students were given a realistic picture of how the career of a junior counsel can be immensely rewarding and yet sometimes daunting, and that a strong conviction is no less important than a talented mind for succeeding in this profession.

Ms. Kinsey Kang then demystified what a barrister does in court by explaining in a nutshell the procedure of criminal trials and the skills in examining witnesses. The students had the chance to put theory into practice when Mr. Newton Mak led the class to analyze a burglary case and prepared for the examination and cross-examination of witnesses, with demonstrations to reinforce their understandings.

It was not surprising that at the outset very few students responded when asked who had already thought about becoming a barrister. After all, most only just started to think about studying law. We are pleased that many of them began to ask questions during and after class about pursuing legal studies, about applying for mini-pupillage, and even about becoming a judge. We hope that the talk has given the students a better appreciation of a career at the Bar, and we have a feeling that we might meet some of them again in the future in this profession.

Kinsey Kang
Newton Mak

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“考慮讀法律”？二十名參加了香港大學專業進修學院暑期學校“考慮讀法律”課程的中學生對此給出了肯定的答案。該課程包括六堂三小時的講座旨在讓學生們可以了解法律學院以及法律職業的情況。新晉大律師委員會被邀請於2015年8月4日做一堂關於大律師以及法庭辯論的講座。

伍中彥大律師首先介紹了成為一名大律師的過程，包括從完成學徒期到發展執業。很現實地向學生們描繪了一個年輕大律師的執業情況：有時可以有很大程度地回報但很多時候也會令人氣餒，因而要想在行業中取得成功，堅定的信念和橫溢的才華同樣重要。

康亞男大律師介紹了刑事審訊的程序以及盤問證人的技巧。學生們之後得以將這些理論運用到練習中，他們在麥銘賢大律師的指導下分析了一個入室盜竊的案件以及討論了如何準備主問以及盤問證人，最後通過觀看示範來鞏固他們的理解。

不難理解，在講座的初期，在問及是否有意願成為一名大律師的時候極少學生給予回覆。畢竟，大部分學生只是剛開始考慮是否學習法律。我們很欣賞他們中的大部分在講座中以及講座結束後問了許多問題，關於如何進行法律學習，如何申請短期實習，甚至如何成為一名法官。我們希望這一講座能夠讓學生們更好地理解大律師這一職業，我們相信將來很可能我們會在這一行業中再遇上他們。

康亞男大律師
麥銘賢大律師
On 24 August 2015, the YBC held a talk specifically catered for Overseas Students, including Year 2 to Year 4 and PCLL students studying abroad. Members of the YBC shared their experiences and took on questions from the students on topics including whether to join the Bar or to qualify as a solicitor, important considerations, and current market trends. YBC members also shared their views and experiences on life at the junior Bar.

In particular, the following topics were discussed and shared:

1. An increasing number of pupil barristers are opting for extended pupillages over and above the minimum 12-month requirement;

2. When applying to pupil masters, it is important to consider a variety of factors, including: their practice areas, which members of the Bar do or do not usually take on pupils, and which members pupils may develop a good friendly relationship with for years to come;

3. As barristers are self-employed, one’s lifestyle and practice are likely to be unstable with little to no security especially when beginning one’s practice; and

4. There is a developing trend of training and / or qualifying as a solicitor first or spending one year as a Judicial Assistant, and then joining the Bar later on in one’s career.

Lareina Chan
On 20 June 2015, the hottest recorded Dragon Boat Festival in Hong Kong, the Dragon Advocates set Stanley ablaze with unprecedented results. We managed to break into the finals of the Silver Plate category with a race time of 1 minute and 22 seconds and took home a trophy.

If you ask me about the best part of being a member of the Dragon Advocates, it would not be the trophy we received or the muscles we gained from all the paddling. It would be the friendships that we have made, the supportive pats on the back during training, and (of course) our post-training gatherings over fish and chips.

On behalf of the Dragon Advocates, I would like to thank Katy Chung and Kelvin Tang, the Captains of the Dragon Advocates, for organizing 10 water training sessions and leading regular land training sessions on Wednesdays. We are also grateful for the YBC’s support to the Dragon Advocates. Last but not least, I must thank my teammates for dedicating many weekends to training and for their effort on race day.

For all other YBs who missed out on the fun this year, we look forward to having you join our ongoing swimming/land training and paddle with us next year!

Fiona Chong
Notice of Bar Sports Teams

There are currently 8 teams under the Special Committee on Welfare and Sports, namely, Badminton, Band, Basketball, Bridge, Snooker, Soccer, Table Tennis and Tennis.

The Bar is a member of the Recreation and Sports Club for Hong Kong Professional Bodies (“RSCP”) which holds annual tournaments, leagues or friendly matches for the above sports and cultural teams. Team members will participate on behalf of the Bar and play against the architects, accountants, solicitors, surveyors, doctors and dentists in Hong Kong from time to time.

Apart from the RSCP competitions, various teams are participating in friendly matches with the Judiciary, various law enforcement agents and also other professional or semi-professional leagues.

Members who are interested in joining the above teams, please contact the Team Captains listed below:

Badminton – Mr. Alan M.S. NG
Band – Mr. Ernest C.Y. NG or Ms. Deanna LAW
Wiggodies – Mr. Jeffrey SHAM
Basketball – Mr. Gregory LEUNG
Bridge – Mr. Newton MAK
Snooker – Mr. Gilbert KWONG or Mr. Robert CHAN
Soccer – Mr. Vod CHAN or Calvin LIU
Table Tennis – Mr. Charles J. CHAN
Tennis – Mr. Jonathan WONG

All of the above teams welcome both male and female, junior and senior members, please feel free to contact the team captains listed, or me (Rachael SIU) if you or your friends are interested.

Rachael Siu

大律師公會
運動隊伍通告

現時大律師公會福利及康體委員會支援的有八隊康體隊伍，包括：羽毛球隊、樂隊、籃球隊、橋牌隊、桌球隊、足球隊、乒乓球隊及網球隊。

大律師公會是香港專業團體康體會的成員，該會每年均會舉辦不少體育及康樂聯賽、比賽及友誼賽等。以上隊伍的成員均會代表大律師公會出賽，與香港其他專業團體包括建築師、會計師、律師、測量師、醫生及牙醫等對壘。

除了上述的專業團體康體會比賽之外，以上隊伍亦不定期與司法機構、不同執法機關、及其他專業或業餘隊伍進行友誼賽。

會員如有興趣參與上述隊伍，請聯絡有關隊伍的隊長/負責人：

羽毛球隊 — 吳敏生大律師
樂隊 — 伍中彥大律師 或 羅蔚山大律師
歌唱組 — 沈智輝大律師
籃球隊 — 梁智衝大律師
橋牌隊 — 麥銘賢大律師
桌球隊 — 鄭民昌大律師 或 陳景文大律師
足球隊 — 陳家成大律師 或 Calvin LIU大律師
乒乓球隊 — 陳永豪大律師
網球隊 — 黃若鋒大律師

所有會員，不論男女，不計年資，上述隊伍均歡迎參加；如有會員有興趣參與或了解，可聯絡上述所列隊長/負責人，或聯絡本人。

蕭淑瑜大律師