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NEW HONOURS



For consecutive years, we have been ranked as **Leading Firm** in the practice areas of Dispute Resolution: Litigation and Intellectual Property in Hong Kong in The Legal 500 Asia Pacific 2022, The Client's Guide to the best law firms and top lawyers.

CHAMBERS GLOBAL 2022 GREATER CHINA REGION 2022

We are listed as one of the leading firms in **Intellectual Property (International Firms)** in China in Chambers Global and Chambers Greater China Region 2022 Guide.



We are recognized as one of the leading firms in **Intellectual Property** in Hong Kong in the 2021 Asia IP Awards published by Apex Asia which are designed to honour the very best law firms from around the region for demonstrating the very highest standards in trademark, patent and copyright work.



The World's Leading Trademark Professionals 2022

We have received the **Gold** ranking for **Trademark** prosecution and strategy and have also received the **Silver** ranking for **Trademark** enforcement and litigation in Hong Kong in the WTR 1000 publication which identifies the firms and individuals that are deemed outstanding in the relevant area of practice.

“Wilkinson & Grist’s IP department maintains its position as one of the strongest IP practices in Hong Kong and China. The full suite of IP services ranging from IP protection and enforcement to administrative actions and court proceedings has cemented its status as one of the most comprehensive and competitive offerings in the city.”



Asia IP RANKINGS 2022

ASIA’S BEST FIRMS FOR INTELLECTUAL PROPERTY

We are pleased to be identified as a **Tier 1 Law Firm** for **Patents** and **Copyright/Trademarks** in Hong Kong by Asian Legal Business (ALB) in its latest issue of Asia IP Rankings 2022. ALB drew information from firm submissions, interviews, editorial resources and market suggestions to identify and rank the top firms for intellectual property in Asia.



TRADE MARK SURVEY 2022

For consecutive years, we have been voted as a **Tier 1 Law Firm** for **Trademark** Prosecution work in Hong Kong in this annual world survey which provides in depth analysis and rankings for trade mark works. We are also recognized as a **Top Tier Law Firm** for **Trademark** Contentious work in Hong Kong.



Asia IP Copyright Rankings 2022

We are ranked once again as a **Top Tier Firm** in **Copyright** work in Hong Kong in this 2022 Copyright Survey – an in-focus guide from Asia IP published by Apex Asia that contains comprehensive rankings of the best IP firms and editorial depth coverage of key trademark developments across Asia.



We are recognized as a **Top Tier Firm** in Hong Kong in Commercial & Transactions, Intellectual Property and Insolvency and also **Highly Recommended** in Private Client in Benchmark Litigation Asia-Pacific 2022, the definite guide to the region's leading dispute resolution law firms and lawyers.

Congratulations

We are proud of the recognition given to our lawyers and congratulate them on their achievements.



The World's Leading Trademark Professionals 2022



Andrea Fong



Mena Lo



Annie Tsoi



Esther Ho

Andrea Fong, Mena Lo, Annie Tsoi and Esther Ho, respectively Head and Partners of our Intellectual Property Practice Group, have been ranked as **Recommended Individuals** in the WTR Global Leaders Guide that identifies the top trademark professionals in key jurisdictions around the globe. The WTR 1000 focuses exclusively on trademark practice and has firmly established itself as the definitive 'go-to' resource for those seeking world-class legal trademark expertise.

CHAMBERS GLOBAL 2022 GREATER CHINA REGION 2022



Andrea Fong



Keith Ho

Andrea Fong, Head of our Intellectual Property Practice Group, and **Keith Ho**, Consultant of our Dispute Resolution Practice Group, are **Ranked Lawyers** for Intellectual Property (International Firms) and Dispute Resolution (International Firms) respectively in Chambers Global and Chambers Greater China Region 2022.



Andrea Fong

Andrea Fong, Senior Partner and Head of our Intellectual Property Practice Group, has been named as leading individual in Intellectual Property in The Legal 500 Asia Pacific 2022.



ASIA-PACIFIC 2022



Florence Chan



Keith Ho

Florence Chan and **Keith Ho**, respectively Partner and Consultant of our Dispute Resolution Practice Group, are recognized as a **Litigation Star** in Hong Kong under “Private Client” and “Commercial and Transactions, Insolvency” respectively in Benchmark Litigation Asia-Pacific 2022.



THE
LAW SOCIETY
OF HONG KONG
香港律師會



John Budge

Our Consultant of our Dispute Resolution Practice Group, **John Budge**, recently received a Gold Award in the 2021 Pro Bono and Community Work Recognition Programme of the Law Society of Hong Kong. John has been very involved in public service in Hong Kong for many years, and this is the fourth time that he has received this award.

New Face

We warmly welcome the following newcomer to our firm.



Johnny Chow joined our firm as a trainee solicitor in 2019 and thereafter joined our Dispute Resolution Practice Group as an associate in 2021. He obtained his BSocSc (Govt & Laws), LLB and PCLL from The University of Hong Kong. Johnny currently works on a variety of litigation matters, including commercial disputes, banking litigation, contractual disputes, as well as estate administration disputes.

About Us



Caring
Company

We are delighted to be again awarded by The Hong Kong Council of Social Service as a **10 Years Plus Caring Company** in recognition of our commitment in Caring for the Community, Caring for our Employees and Caring for the Environment over the past years.

Hong Kong SAR

Soon-to-be-launched success fee model for arbitration

On 25 March 2022, Hong Kong officially gazetted The Arbitration and Legal Practitioners Legislation (Outcome Related Fee Structures for Arbitration) (Amendment) Bill 2022 (available at <https://www.elegislation.gov.hk/hk/2022/03/25/supp3/1!en>) which would allow lawyers to charge outcome-based fees for arbitration seated in or outside Hong Kong.



Ivan Chu

The Bill was based on the new fee model proposed by The Law Reform Commission of Hong Kong in its report on the topic of “Outcome Related Fee Structures for Arbitration” which was published in December 2021.

The proposed outcome-related fee structures (“**ORFSs**”) allow for the following three models on which lawyers and their clients can agree:-

1. Conditional fee agreements (CFAs)

A CFA refers to an agreement in which a client agrees to pay the lawyer an additional fee, known as a “success fee”, only in the event of a successful outcome for the client in the matter.

The success fee can be an agreed flat fee, or calculated as a percentage uplift on the fee that the lawyer would have charged if there were no ORFSs in place.

2. Damages-based agreements (DBAs)

A DBA refers to an agreement between a lawyer and its client whereby the lawyer receives payment only if the client obtains a “financial benefit” (eg monetary award or settlement) in the matter. The payment, known as the “DBA payment”, is calculated with reference to the financial benefit obtained by the client.

3. Hybrid damages-based agreements (Hybrid DBAs)

A Hybrid DBA refers to an agreement between a lawyer and its client whereby the lawyer agrees to be paid (1) a fee (typically discounted) for the legal service rendered during the course of the matter; and (2) a DBA payment only in the event the client obtains a financial benefit in the matter.

At present, Hong Kong-based lawyers are prohibited from charging success fee for litigation and arbitration proceedings while major arbitral seats such as England and Wales, Australia, Mainland China and the USA permit lawyers to offer ORFSs to their clients. The Bill therefore represents a major advancement of Hong Kong’s legal fee regime for arbitration by responding to increasing client demand for pricing and fee flexibility.

The Bill was introduced to the Legislative Council on 30 March 2022 and is expected to pass into law later this year.



Paul Liu

Re Samson Paper Co Ltd: The “Inauguration” of cross-border insolvency assistance granted by the PRC Shenzhen Court

By a Decision dated 20 July 2021 of Harris J in *Re Samson Paper Co Ltd* [2021] HKCFI 2151, the Hong Kong Court issued for the first time a letter of request to the Bankruptcy Court of the Shenzhen Intermediate People’s Court (the “**SZ Bankruptcy Court**”) requesting the latter to recognise and assist the Hong Kong liquidators of Samson Paper Co Ltd (the “**HK Liquidators**” of the “**Company**”).



Iris Chan

This Decision was the very first practical step in implementing The Supreme People’s Court’s Opinion on Taking Forward a Pilot Measure in relation to the Recognition of and Assistance to Insolvency Proceedings in the Hong Kong Special Administrative Region (the “**Pilot Measure**”), as discussed in our May 2021 Newsletter.

In January 2022, the SZ Bankruptcy Court granted the said request to recognise and assist the HK Liquidators, marking the “inauguration” of cross-border insolvency recognition and assistance in the entire PRC.

Facts and Decision of the Hong Kong Court

The Company was incorporated in Hong Kong. It went into creditors’ voluntary liquidation in August 2021 in Hong Kong.

The Company had assets in the PRC, including a wholly-owned subsidiary in Shenzhen, a wholly-owned subsidiary in Shanghai, receivables due from affiliated companies incorporated in the PRC, amongst others. As the HK Liquidators had to take possession of the Company’s PRC assets in order to perform their duties, the HK Liquidators applied to the Hong Kong Court for a letter of request pursuant to the Pilot Measure so that the HK Liquidators could be given the relevant judicial assistance in the PRC.

Harris J granted the HK Liquidators’ application and issued a letter of request. His Lordship found that the Company’s centre of main interests had been in Hong Kong since its incorporation as it had always been operating in Hong Kong (citing *Re Melars Group Ltd* [2021] EWHC 1523 (Ch) for an explanation of the criteria for determining the location of the centre of main interests). The circumstances warranted assistance to be considered by the SZ Bankruptcy Court under the Pilot Measure.

SZ Bankruptcy Court’s recognition and assistance

It was reported that on 25 January 2022, the SZ Bankruptcy Court, upon considering the letter of request and having investigated into the assets of the Company in Shenzhen, came to the conclusion that the Company’s assets in the PRC were mainly located in Shenzhen, and that the SZ Bankruptcy Court had jurisdiction over the application.

As a result of the SZ Bankruptcy Court’s decision on recognition and assistance, the HK Liquidators may perform their duties in the PRC within the scope provided by the Enterprise Bankruptcy Law of the PRC and the laws of Hong Kong. The HK Liquidators will be empowered to, for example, seize property, corporate seals, account books, documents and other information of the Company and investigate into the financial position of the Company, etc.

Conclusion

The above denotes a milestone development in cross-border insolvency cooperation between Hong Kong and the PRC. We anticipate that there will be more applications for recognition and assistance in future, and that the Pilot Measures will gradually extend to other major cities in the PRC.



Raymond Chan



Michael Leung

Abolition of the “Offsetting Arrangement” under the Mandatory Provident Fund Scheme

The HKSAR Government published the Employment and Retirement Schemes Legislation (Offsetting Arrangement) (Amendment) Bill 2022 (the “**Amendment Bill**”), which seeks to abolish the current “offsetting arrangement” under the Mandatory Provident Fund Scheme (“**MPF**”). The Amendment Bill received its first reading at the Legislative Council on 23 February 2022.

Under the current regime, pursuant to section 12A of the Mandatory Provident Fund Schemes Ordinance (Cap 485), employers may offset any statutory severance payment (“**SP**”) and statutory long service payment (“**LSP**”) payable to an employee upon termination of employment against the accrued benefits derived from the employers’ mandatory contributions to MPF.

Key features of the Amendment Bill

Under the Amendment Bill, the offsetting arrangement will be abolished from a date to be appointed (the “**Transition Date**”).

After the Transition Date, employers will no longer be able to use their mandatory contributions to MPF to offset the employees’ entitlements to SP and LSP. However, employers may continue to use their voluntary contributions and contractual gratuities based on the length of service to offset the employees’ SP and LSP after the Transition Date.

The Amendment Bill has no retrospective effect, meaning if an employee’s employment commenced before the Transition Date, the employer can continue to use the accrued benefits of the mandatory MPF contributions to offset the employee’s SP and LSP in respect of the period of employment before the Transition Date. This arrangement aims at reducing the risk of large-scale dismissals, particularly dismissals of those with long years of service, before the Transition Date.

As for the calculation of SP and LSP, the rate and the maximum payment of SP and LSP will remain unchanged. For the pre-transition portion of SP

and LSP, it will be calculated on the basis of the monthly wages immediately preceding the Transition Date; whereas for the post-transition portion of SP and LSP, it will be calculated on the basis of the last monthly wages before the termination of employment. It is expected that this can disincentivise deliberate dismissals of employees before the Transition Date.

Supporting measures for employers

To ease the concerns of employers and to smoothen the transition, the HKSAR Government intends to:-

- (i) set up a 25-year subsidy scheme totalling HK\$33.2 billion (calculated at 2021 prices, subject to change depending on the future price level at the time of implementation) – which will be particularly helpful to micro, small and medium-sized enterprises – so that employers will only need to bear a low capped amount of SP and LSP in the initial years after the abolition; and
- (ii) introduce a Designated Savings Accounts Scheme (“**DSA Scheme**”) which will mandate employers to save up to meet their future expenses for SP and LSP.

Pending confirmation of the Transition Date, employers are advised to stay abreast of the latest developments to facilitate advance planning and ensure compliance.

Collection of health data of employees during COVID-19 pandemic

The Privacy Commissioner for Personal Data issued the “Guidance for Employers on Collection and Use of Personal Data of Employees during COVID-19 Pandemic” (the “**Guidance**”) on 25 March 2022 to clarify the employers’ obligations under the Personal Data (Privacy) Ordinance (Cap 486) (the “**PDPO**”) on the collection and use of employees’ health data during the COVID-19 pandemic.

Albeit not defined in the PDPO, the Guidance explains that “health data” generally refer to personal data regarding an individual’s health status in relation to COVID-19 in the context of the pandemic.

Below sets out some pertinent points that employers should bear in mind when collecting their employees’ health data, as set out in the Guidance:-



Raymond Chan



Michael Leung

Data collection

Generally speaking, for the purpose of safeguarding the health and safety of employees at work during the pandemic, collection of COVID-19 related health data (such as temperature measurements, vaccination records, COVID-19 test results and infection records) from employees by employers can be regarded as collecting data for a lawful purpose related to the functions of the employers.

Employers are reminded that only health data that are necessary for or directly related to the purposes of collecting the data (for example to prevent or control COVID-19 in workplaces) should be collected. Therefore, collection of the health data of an employee's family members (such as their vaccination records) that are irrelevant to or not strictly necessary for the prevention or control of COVID-19 in the workplace would not be considered appropriate.

Data retention

Employers should only retain the health data of employees for a period that is necessary. Once the purpose of collection is fulfilled, the relevant data collected must be destroyed or erased permanently.

Data security

The Guidance also provides for ways in which employers should store the health data in order to prevent unauthorised or accidental access, processing, erasure, loss or use, for instance, locking paper records, encrypting electronic records, and limiting data access to authorised personnel on a need-to-know basis.

In addition, the Guidance emphasizes that a centralised or data-sharing platform to which access is available to all employees should not be used to arrange for the employees to report their health data, so as to avoid the health data of an employee being viewed by or leaked to others.

A full version of the Guidance is available at https://www.pcpd.org.hk/english/resources_centre/publications/files/covid19_pandemic.pdf.

China

The Supreme People's Court issued Interpretation on the General Part of the Civil Code of the PRC

Since the Civil Code of the People's Republic of China (the “**Civil Code**”) took effect on 1 January 2021, the Supreme People's Court has promulgated several interpretations regarding its application. Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the General Part of the Civil Code of the People's Republic of China (the “**Interpretation**”) 《最高人民法院關於適用〈中華人民共和國民法典〉總則編若干問題的解釋》 is the latest one and it came into effect on 1 March 2022.



Raymond Chan

The Interpretation comprises nine chapters, namely: (1) General Provisions; (2) Capacity for Enjoying Civil-law Rights and Capacity for Performing Civil Juristic Acts; (3) Guardianship; (4) Declaration of a Missing Person and Declaration of Death; (5) Civil Juristic Acts; (6) Agency; (7) Civil Liability; (8) Limitation of Action; and (9) Supplementary Provisions.

The prominent feature of the Interpretation is that it emphasizes the protection of several kinds of civil rights, to include:-

- (i) In Chapter 3 (Guardianship), the guardian system has been detailed in the best interest of the ward (including the minor). Article 8 stipulates that an agreement between a parent of a minor and another person who is also qualified to be the minor's guardian to exempt the parent from his/her guardian's duties would not be supported by the court.
- (ii) Chapter 6 (Agency) aims at protecting the interests of a bona fide counterparty. Article 28 sets out conditions for the court to determine whether the counterparty has reasons to believe the person performing the act has authority and therefore constitutes apparent authority.
- (iii) Chapter 7 (Civil Liability) encourages civil subjects to actively protect the legal rights and interests of themselves and other persons. Article 34 sets out principles for the court to determine the amount of compensation to be paid by a beneficiary to a person who suffers damages arising out of activities undertaken to protect the civil rights and interests of the beneficiary.

The Civil Code is the only piece of legislation officially named as a “code” (法典) and it consists of 1,260 articles. We expect the Supreme People’s Court will issue more interpretations on the other parts of the Civil Code going forward.



Annie Tsoi

New Judicial Interpretations on Anti-Unfair Competition Law issued by the Supreme People’s Court of China

On 16 March 2022, the PRC Supreme People’s Court (the “SPC”) issued the Interpretation on Several Issues Concerning the Application of the PRC Anti-Unfair Competition Law 《最高人民法院關於適用《中華人民共和國反不正當競爭法》若干問題的解釋》 (the “**2022 Interpretation**”). This new Interpretation replaces the one issued in 2007 as updated in early 2021.

Key provisions of the 2022 Interpretation include:-

1. Article 2 of the Anti-Unfair Competition Law provides that “businesses shall, in their production and distribution activities, adhere to the free will, equality, fairness, and good faith principles, and abide by laws and business ethics”.

The SPC clarifies in the 2022 Interpretation that the said business ethics do not simply refer to everyday ethical standards, but standards that are generally followed and recognized in the relevant business sector.

When determining whether a business operator has violated business ethics, the Court:-

- should take a holistic approach by considering the industry rules or business practices, the subjective state of the operator, the intention of the transaction counterpart, the impact on the rights and interests of consumers, the order of market competition, social and public interests and other relevant factors; and
- may further refer to the professional and technical norms, and self-regulated conventions formulated by competent industry associations or self-regulated organizations.

2. Under the Anti-Unfair Competition Law, if one's confusion activity misleads others into thinking that he or his offering has a particular connection with another qualifies as an unfair competition act.

The SPC clarifies that such "connection" encompasses business co-operation and sponsorship, licensing and advertising endorsement etc.

3. Online business operators are, under the Anti-Unfair Competition Law, not allowed to interfere with or sabotage another's normal and legal offering of products and services online. In particular, one is prohibited from inserting a link or forcing a URL redirection of an online product or service legally provided by another business without its consent.

According to the 2022 Interpretation, if one only inserts a link when the redirection is actually triggered by the user, the Court should comprehensively consider factors such as how the link is precisely inserted, whether there are any reasonable grounds and the impact on interest of the user and other business operators etc in determining whether there is any violation of the law.

4. It is newly added in the 2022 Interpretation that the Court will allow a claim of joint and several liability (as provided under the PRC Civil Code) against anyone who deliberately assists another in committing confusion activities of an unfair competition act by offering storage, transport and operational convenience.
5. The 2022 Interpretation provides that the People's Court of China will have jurisdiction over cases which infringing outcome occurs within the PRC despite the unfair competition act takes place abroad.

The 2022 Interpretation took effect on 20 March 2022. It demonstrates the Chinese Government's determination and continuing efforts to strengthen the protection of intellectual property rights and combat unfair competition practices in light of the ever-changing market conditions and business needs.

China Alerts

CNIPA published the “Measures for Expedited Examination of Trademark Applications (Trial Implementation)”

With a view to enhancing the trademark examination system in China, the CNIPA published and implemented the “Measures for Expedited Examination of Trademark Applications (Trial Implementation)” 《商標註冊申請快速審查辦法(試行)》 (the “**Measures**”) on 14 January 2022.

Under the Measures, a request for expedited examination can be made for the following types of trademark applications:-

1. Trademarks involving the names of national or provincial major construction projects, major projects, major technological infrastructure, major tournaments and major exhibitions etc, and where protection is urgent;
2. During outbreak of public emergencies such as particularly significant natural disasters, particularly significant accident disasters, particularly significant public health events and particularly significant social security events, and the trademark applications are directly related to a response to such public emergencies;
3. Trademarks essential for serving the high-quality development of economy and society and promoting the implementation of the outline of building a powerful country with intellectual property; or
4. Other applications with great practical significance to safeguarding national interests, social and public interests or major regional development strategies.

Where a request for expedited examination is approved by the CNIPA, the expedited examination shall be completed within 20 working days from the date of approval. If during expedited examination there is any deficiency relating to the application that requires correction or amendment, the CNIPA may terminate the expedited procedure and resume examination under the normal procedure.

China joins the Hague System for International Registration of Industrial Designs

On 5 May 2022, China joined the Hague System for the International Registration of Industrial Designs.

With China's accession to the Hague System, international designers are able to obtain design patent in China by filing one single international design application in the Hague System without the need to file individual applications. At the same time, Chinese designers are able to protect and promote their designs overseas through the Hague System with less time and costs. To facilitate the implementation of the Hague System, China has made specific declarations to accommodate its own domestic requirements such as requiring brief explanation of the characteristic features of the design as one of the additional mandatory elements of an international application. Full details of the declaration will be released later this year.

Notice: This newsletter is intended for general information only and should not be taken as legal advice of Wilkinson & Grist. For any enquiries, please contact Ms Anita Kwan at anitakwan@wilgrist.com.

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