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## Message from our Senior Partner – Mr Raymond Chan

It is my greatest honour to become the Senior Partner of the firm this year, especially when 2023 marks the 140<sup>th</sup> anniversary of the firm.

I still vividly recall how nervous I was when I stepped in the door of Wilkinson & Grist on 2 September 1991. Over the years, the office has become my second home, and I always look forward to coming to the office and seeing my colleagues and friends.

The pandemic has brought significant changes to our daily lives, and the legal industry has not been immune to its impact. The use of technology has become more important than ever before, with lessons learned from the pandemic emphasizing the importance of video conferencing, virtual delivery of services, and contingency planning.

Investment in technologies is key to our success and ability to not only remain competitive in the legal industry but compatible with the working requirements of our clients with evolving business needs. I am committed to keeping our firm updated with the latest advancements so that we will remain a competitive leading independent law firm in Hong Kong capable of delivering quality services to our clients worldwide.



Raymond Chan

## 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 2023, The Client's Guide to the best law firms and top lawyers.



## The World's Leading Trademark Professionals 2023

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.



**Chambers**  
AND PARTNERS

### Chambers Global Guide 2023 Chambers Greater China Region 2023

We are listed as a **Leading Firm** in **Intellectual Property (International Firms)** in China in Chambers Global and Chambers Greater China Region 2023 Guide.



### Asia IP Copyright Rankings 2023

We are ranked once again as a **Leading Firm** in **Copyright** work in Hong Kong in this 2023 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 IP developments across Asia.

# Congratulations

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



## The World's Leading Trademark Professionals 2023



Mena Lo



Annie Tsoi



Florence Lam



Esther Ho



Andrea Fong

**Mena Lo**, Head of our Intellectual Property Practice Group, has been ranked as **Silver individual** in Trademark Prosecution and Strategy, and Enforcement and Litigation. **Annie Tsoi**, Partner of our Intellectual Property Practice Group, has been ranked as **Silver individual** in Trademark Prosecution and Strategy, and **Bronze individual** in Enforcement and Litigation. **Florence Lam** and **Esther Ho**, Partners of our Intellectual Property Practice Group, have respectively been ranked as **Recommended individual** for Transactions, and **Silver individual** for Enforcement and Litigation. **Andrea Fong**, Consultant of our Intellectual Property Practice Group, has been ranked as **Gold individual** in Trademark Prosecution and Strategy.



**Chambers**  
AND PARTNERS

**Chambers Global Guide 2023**  
**Chambers Greater China Region 2023**



Keith Ho



Andrea Fong

**Keith Ho** and **Andrea Fong**, Consultants of our Dispute Resolution and Intellectual Property Practice Groups respectively, are ranked in the categories of **Senior Statespeople** and **Laywers** in their respective field in Chambers Global Guide 2023 and Chambers Greater China Region 2023.

## New Face

*We warmly welcome the following newcomer to our firm.*



**Yoyo Ng** joined our Real Estate Practice Group as an associate in 2022, after completing the 2-year training with the firm. She obtained her JD and PCLL from The Chinese University of Hong Kong. Yoyo currently works on a variety of real estate matters, including sale and purchase of properties, leases and tenancies and loan transactions. She also advises on wills and probate related matters.

## About Us

We are delighted to be visited by representatives from Customer Value Management Business Banking of Hang Seng Bank on 31 January 2023.

Hang Seng  
Bank



*(From left to right) Ms Josephine Kong, Senior Vice President; Mr Patrick Fung, Senior Vice President & Team Head; Mr Ho Pun Kei, Executive Vice President & District Head; our Senior Partner Raymond Chan; our Partners Ivan Chu and Paul Liu*

Our firm's annual dinner took place on 10 March 2023. Over 100 lawyers and staff from our Hong Kong and Beijing Offices, happily joined by our ex-Partners, enjoyed a gourmet dinner and fun-filled evening together with games and prize draws in celebration of the firm's 140<sup>th</sup> anniversary.

Wilkinson &  
Grist 2023  
Annual Dinner



## Charity Corporate Basketball Tournament 2023

As part of our corporate social responsibility efforts, we took part in the Charity Corporate Basketball Tournament 2023 on 24 April 2023. The tournament was organized by Inspiring HK Sports Foundation, a local charity established in 2012 with a vision of developing better youths through sports.



## The Community Chest BEA Charity Golf Day 2023

We are honoured to be one of the hole sponsors to The Community Chest BEA Charity Golf Day 2023 organized by The Community Chest of Hong Kong.





## Appointment

*Through strong participation in major national and international bodies, our lawyers contribute to the community.*

John Budge, Consultant of Dispute Resolution Practice Group, has been invited by the Financial Services Development Council (FSDC) to join its Working Group on Hong Kong's potential as a Regional Philanthropic Hub. FSDC is a high-level advisory body established by the HKSAR Government with the aim of formulating strategic directions for cementing Hong Kong's financial services industry. John will assist the Working Group in exploring ways for Hong Kong to refine its role as a philanthropic activity centre for local and international family offices.

## Conferences

*Our members will be attending the following conferences and will be delighted to make arrangements in advance for meeting with clients and associates.*

ECTA Annual Conference	Prague, Czech Republic, 28 June – 1 July 2023
MARQUES Annual Conference	Berlin, Germany, 19 – 22 September 2023
FICPI World Congress	London, United Kingdom, 4 – 7 October 2023
AIPPI World Congress	Istanbul, Turkey, 14 – 17 October 2023
APAA Council Meeting	Singapore, 3 – 7 November 2023
INTA Leadership Meeting	Houston, Texas, USA, 14 – 17 November 2023

# Hong Kong SAR Alerts

## Pilot Scheme on Facilitation for Persons Participating in Arbitral Proceedings in Hong Kong (“Pilot Scheme”) expanded and extended

On 28 February 2023, the HKSAR Government announced that the Pilot Scheme would be extended for 2 years from 1 March 2023 until 28 February 2025. The Pilot Scheme would also be expanded to cover all visitors including visa-required national residents of Mainland, Macao and Taiwan.

The Pilot Scheme provides immigration facilitation for eligible persons to participate in arbitral proceedings in Hong Kong on a short-term basis. Eligible persons include arbitrators, counsel, and parties of the proceedings. The extension and expansion of the Pilot Scheme further elevates Hong Kong's status as an international arbitral center.

## Commencement of the Copyright (Amendment) Ordinance 2022

The Copyright (Amendment) Ordinance 2022 (“Amendment Ordinance”) came into operation on 1 May 2023.

The Government will launch a series of publicity and educational activities to enhance awareness and understanding of the Amendment Ordinance amongst stakeholders and the general public. Upon commencement of the Amendment Ordinance, the Customs and Excise Department will also step up inspections and take enforcement actions where appropriate in accordance with the Copyright Ordinance as amended to further combat online piracy.

# Hong Kong SAR



Raymond Chan

## First Doxxing-related conviction in Hong Kong

The Personal Data (Privacy) Ordinance (“**PDPO**”) was amended in September 2021 creating certain offences to curb doxxing acts. Section 64 of the PDPO criminalizes disclosure of a data subject’s personal data without consent with intent to cause specific harm.

There have been various doxxing-related convictions and sentencing cases after the amendment of the PDPO. In the first case, the defendant pleaded guilty to the 7 charges under Section 64(3A) and admitted that he disclosed personal data of his ex-girlfriend on social media, including her name, photo, address, phone number and occupation details. After considering the

background report of the defendant, amount of traffic of the relevant social media posts and the harm inflicted to the victim, the magistrate sentenced the defendant to 8 months of imprisonment. The maximum penalty of the offence is a fine of HK\$100,000 and imprisonment for 2 years.

In another case, the defendant was an online trader. Due to a dispute with her supplier, she disclosed personal data (such as names, photos and phone number) of the victim and the victim's husband in 14 groups on a social media platform without consent. The defendant pleaded guilty to 14 charges under Section 64(3A) and was convicted accordingly. The defendant was sentenced to 2 months of imprisonment, suspended for 2 years.

Disclosure of one's personal data without consent violates his/her right to privacy and can bring about mental and psychological harm. The convictions and the sentence of imprisonment send a positive note in relation to protection of personal data in Hong Kong.

## Companies (Amendment) Ordinance 2023

The Companies (Amendment) Ordinance 2023 (the “**Amendment Ordinance**”) came into operation on 28 April 2023, amending the Companies Ordinance (Cap 622) and the Companies (Model Articles) Notice (Cap 622H) (the “**Model Articles**”). Hong Kong-incorporated companies are now permitted to hold general meetings using virtual meeting technology under the Amendment Ordinance.



Pearl Fung

Before the Amendment Ordinance came into operation, Section 584 of the Companies Ordinance provided that a company might hold a general meeting at two or more places by using technology that enabled effective communication amongst participants and voting by members in different places. However, as the said Section and the other provisions in the Companies Ordinance (such as Section 576 listing information that must be specified in a notice of general meeting) referred to *place* of a general meeting, it appeared to be a requirement under the Companies Ordinance that general meetings must be held in physical venue(s). As such, the Amendment Ordinance, which introduced amendments to allow companies to hold virtual general meetings by using virtual meeting technology, is a welcomed development.

### *What has the Amendment Ordinance introduced?*

The Amendment Ordinance has added a new Section 583A to the Companies Ordinance which clarifies that subject to the company's articles of association, a company may hold a general meeting (a) at a physical venue,

(b) by using virtual meeting technology, or (c) both at a physical venue and by using virtual meeting technology. In other words, the Companies Ordinance (as amended by the Amendment Ordinance) still allows a company to hold purely physical general meetings, but it also permits a company to hold fully virtual general meetings (without the requirement for presence of any member at any physical venue) as well as hybrid general meetings (with some of the members attending at a physical venue whilst the others attending using virtual meeting technology). The Companies Ordinance defines “virtual meeting technology” as “*a technology that allows a person to listen, speak and vote at a meeting without being physically present at the meeting*”. This means that a company may decide which technology (such as “live” webcast or videoconference) is to be used for its general meetings, so long as such technology must enable each participant to listen, speak and vote at the meeting even if he/she is not physically present at the meeting.

The Amendment Ordinance has also amended the Companies Ordinance and the Model Articles to provide for ancillary and incidental matters in relation to the use of virtual meeting technology for holding general meetings, including:-

- (1) notice of a general meeting must specify, among other things, the physical venue of the meeting or the virtual technology to be used for holding the meeting, or both; and
- (2) a person who attends a general meeting by using the virtual technology specified in the notice of the meeting is to be regarded as being present while so attending.

To provide further guidance on the holding of fully or hybrid virtual general meetings, the Companies Registry has issued a guidance note titled “*Good Practice on Holding Virtual or Hybrid General Meetings*” and a set of Frequently Asked Questions, both of which are available on the Companies Registry’s website.

*Is it necessary for a Hong Kong-incorporated company to amend its articles of association in order to hold fully or hybrid virtual general meetings under the Companies Ordinance?*

The Model Articles (as amended by the Amendment Ordinance) would apply to companies that (i) are incorporated in Hong Kong on or after 28 April 2023 (namely, the date on which the Amendment Ordinance came into operation) and (ii) adopt the Model Articles as its articles of association.

As regards other Hong Kong-incorporated companies, the new Section 583A of the Companies Ordinance clarifies that a company may hold a general meeting by using virtual meeting technology (whether or not also at a physical venue) unless the company's articles of association expressly preclude the holding of a general meeting by using virtual meeting technology or require a general meeting to be held only at a physical venue. In other words, a Hong Kong-incorporated company may hold virtual general meetings in accordance with the Companies Ordinance without amending its articles of association, so long as its articles of association do not require that physical general meetings must be held or otherwise prohibit virtual general meetings. Nevertheless, in case of doubt, the company should seek legal advice.

## China Alert

In early 2023, the China National Intellectual Property Administration issued draft amendments to the PRC Trademark Law for public consultation.

Several proposed amendments are significant, including: (1) prohibiting the re-filing of the same trademark, (2) requiring proof of use of a registered trademark every five years, (3) reducing the opposition period to two months, and (4) increasing the maximum administrative fines on bad faith filers.

While the public consultation period has ended, legal practitioners and brand owners are anxious to see whether and how the proposed amendments will be developed and implemented.

## China

### Draft interpretation clarifies applicable law in criminal IP cases

In early 2023, the Supreme People's Court and Supreme People's Procuratorate of the People's Republic of China jointly issued the "Draft Interpretation on Several Issues Concerning the Applicable Law in Criminal Cases of Intellectual Property Infringement 《關於辦理侵犯知識產權刑事案件適用法律若干問題的解釋（徵求意見稿）》 for public consultation.



Annie Tsoi

### *Background*

Under the current Criminal Law, anyone who, without authorization by the registered owner, uses a mark identical to another's registered trademark in respect of identical goods or services, giving rise to (exceptionally) serious circumstances, shall be subject to imprisonment and/or a fine (Article 213). In addition, anyone who knowingly sells counterfeit goods bearing a registered trademark, with large amounts of illegal earnings, giving rise to (exceptionally) serious circumstances, shall be subject to imprisonment and/or a fine (Article 214).

In light of the ever-changing market situation, the draft interpretation seeks to update the applicable law to determine criminal liability in IP infringement cases by clarifying/re-defining below issues:-

#### *What constitutes "identical" trademarks?*

To determine whether a mark is identical to a registered trademark, the current interpretation provides that such mark shall be "entirely identical" to, or bear "no notable visual difference" with, the registered trademark. The draft interpretation removes the reference to a "visual" difference, suggesting that the visual impression is not the only determining factor.

#### *What constitutes "identical" services?*

The draft interpretation clarifies that services shall be regarded as identical if they are considered as such by the relevant public in terms of their purpose, content, provider, target users and venue, among other things, even though the services are provided under different names.

#### *Criminal threshold for trademark infringement in respect of services*

The draft interpretation proposes that illegal earnings of RMB100,000 or above arising from the unauthorized use of a registered trademark in respect of identical services shall constitute a circumstance of a serious nature (the amount is RMB30,000 for goods). The threshold is RMB50,000 or above for the counterfeiting of two or more registered trademarks in respect of services.

#### *Definition of "serious circumstances" (情節嚴重) expanded*

The draft interpretation introduces a provision whereby, where repeat offenders under Articles 213 to 215 of the Criminal Law have received an administrative penalty with a certain amount of illegal earnings, this shall constitute a circumstance of a serious nature.

*Circumstances of “deemed knowledge” (Article 214 of the Criminal Law) expanded*

Under the draft interpretation, the following shall constitute new circumstances of “deemed knowledge”, subject to proof:

- (1) purchasing or selling goods at a significantly below-market price without justification;
- (2) transferring or destroying infringing commodities, accounting vouchers and other evidence after being found guilty by law enforcement or judicial authorities of selling counterfeit goods.

The public consultation ended in March 2023. The proposed amendments are mostly welcomed as they serve to better guard against counterfeiting activities in China. The draft interpretation, if confirmed, will supplement the existing three interpretations with the last one promulgated in 2020.

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](mailto:anitakwan@wilgrist.com).

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