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## NEW HONOURS



We are honoured to again be awarded as one of the winners for **Best Overall Law Firms (Hong Kong)** (卓越綜合實力律所(香港)) in the 2022 China Business Law Awards which are based on nominations received from China-focused corporate counsel and legal professionals around the world.



We are honoured to be recognized as one of the **Leading International Firms** for **Dispute Resolution (Cross-border)**, **Intellectual Property (Copyright)**, **Intellectual Property (Patent)** and **Intellectual Property (Trademark)** in the 2022 China Business Law Awards as well.



We are pleased to be recognized as **Top Tier Law Firm** for **Commercial and transactions (Domestic firms)**, **Intellectual Property, Insolvency (Domestic firms)**; and **Highly Recommended for Private client (Domestic firms)**.



### IP RANKINGS 2022

#### ASIA'S BEST FIRMS FOR INTELLECTUAL PROPERTY

We are pleased to be identified as **Tier 1 Law Firm** for **Patents and Copyright/Trademarks** in Hong Kong by Asian Legal Business (ALB) in its latest issue of 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.



### Asia IP 2022

For consecutive years, we are ranked once again as **Tier 1 Law Firm** for **Trademark Prosecution** and **Top Tier Firm** for **Patent Contentious and Prosecution**, and **Copyright** in Hong Kong in this 2022 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 have again been recognized as **Top Tier Law Firm** for **Trade Mark Prosecution**, **Trade Mark Contentious**, **Patent Prosecution**, **Patent Contentious**, **Copyright & Related Rights** work in Hong Kong and **Trade Mark – Foreign Firms** in the PRC in this annual world survey which provides in depth analysis and rankings of over 1,500 IP firms and 5,000 practitioners globally in the trade mark, patent and copyright fields.





We are pleased to be featured in **The Trademark Lawyer Magazine Law Firm Rankings 2022** as one of the **Top 10 Trademark Firms** in Hong Kong.

## Congratulations

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



Florence Chan



Keith Ho

**Florence Chan**, Partner of our Dispute Resolution Practice Group, has been recognized as Litigation star in Private client, and **Keith Ho**, Consultant of our Dispute Resolution Practice Group, has been recognized as Litigation star in Commercial and transactions, and Insolvency disputes.



## WOMEN IN BUSINESS LAW 2022



Andrea Fong



Mena Lo



Florence Lam

**Andrea Fong, Mena Lo and Florence Lam**, respectively Head and Partners of our Intellectual Property Practice Group, have been named as Women in Business Law Expert Listing in Trademarks/Copyright in the Expert Guides published by Legal Media Group.



## Who's Who Legal: Mainland China & Hong Kong SAR 2022



Andrea Fong



Mena Lo

**Andrea Fong**, Head of our Intellectual Property Practice Group, has been ranked as Thought Leader in Mainland China & Hong Kong SAR – IP – Trademarks and Recommended Leader in IP – Trademarks. **Mena Lo**, Partner of our Intellectual Property Practice Group, has been ranked as Recommended Leader in both Mainland China & Hong Kong SAR – IP – Trademarks.

## IP STARS from Managing IP



Andrea Fong



Mena Lo

**Andrea Fong**, Head of our Intellectual Property Practice Group, has been awarded as Patent star 2022 and Trademark star 2022. **Mena Lo**, Partner of our Intellectual Property Practice Group, has been awarded as Trademark star 2022.



## Asia IP 2022 Trademark Survey



Andrea Fong



Mena Lo

**Andrea Fong** and **Mena Lo**, respectively Head and Partner of our Intellectual Property Practice Group, have been named as IP Experts in the area of Trade Marks in Hong Kong.

## Talks & Seminars

*We are pleased to be involved in, and contribute to, legal education in Hong Kong SAR, China and other regions.*

**Annie Tsoi**, Partner, Intellectual Property Practice Group, upon invitation by the Vocation Training Council gave a Webinar on “IP Registration in Mainland China 內地知識產權註冊機制” on 21 June 2022, being part of the IP Manager Scheme PLUS organized by the Hong Kong Intellectual Property Department. The Webinar was attended by over 100 local entrepreneurs, owners and managers of SMEs with interest in IP trading and management in Mainland China.

Vocation  
Training  
Council

### Hong Kong Intellectual Property Department

**Annie Tsoi**, Partner, Intellectual Property Practice Group, upon invitation by the Hong Kong Intellectual Property Department presented on “Latest Development of IP and Original Grant Patent System in the HKSAR (香港知識產權及原授專利制度的最新發展)” in the 2022 Guangdong/Hong Kong Seminar on Intellectual Property and Development of Small and Medium Enterprises on 12 August 2022. The Seminar was co-organized by 廣東省知識產權局, Hong Kong Intellectual Property Department and Hong Kong Trade Development Council, and was attended online by hundreds of SME representatives in the Greater Bay Area.

## About Us

### Hang Seng Bank

We are pleased to be visited by representatives from Customer Value Management Business Banking of the Hang Seng Bank on 6 June 2022.



*(From left to right) Ms Josephine Kong, Senior Vice President of Hang Seng Bank; our Partner Raymond Chan; Mr Patrick Fung, Senior Vice President & Team Head of Hang Seng Bank; our Senior Partner Andrea Fong; Mr Ho Pun Kei, Executive Vice President & District Head of Hang Seng Bank; and our Partner David Choi*



Our Real Estate Practice Group – represented by David Choi and Yoyo Ng, respectively Head and Associate of the Group – delivered a Webinar on “Implications of COVID-19 on Contracts & Rental Enforcement Moratorium” to CK Asset Holdings Limited and Hutchison Property Group Limited on 12 July 2022. The impact of COVID-19 in the realms of force majeure and the doctrine of frustration, and the practical implications of the Temporary Protection Measures for Business Tenants (COVID-19 Pandemic) Ordinance (Cap 644 of the Laws of Hong Kong) on landlords were discussed.

CK Asset  
Holdings  
Limited &  
Hutchison  
Property  
Group Limited



*(From top to bottom)  
Ms Amy Wong, our Associate Yoyo Ng  
Mr Emmanuel Yip, Ms Bella Cheung  
our Partner David Choi*

### Hong Kong Customs and Excise Department

As a staunch supporter of the Hong Kong Customs and Excise Department and our Senior Partner and Head of Intellectual Property Practice Group Andrea Fong, currently Vice-Chair of IPRPA (Intellectual Property Rights Protection Alliance), we collaborated with the Customs YES Programme and offered summer internship to law undergraduates. Chester Chia, a YES member and final-year law student, completed a summer internship at our Intellectual Property Practice Group under the mentorship of our Partner KY So.



*(From left to right) Mr Ka Lok LAI (Youth Programme Coordinator of HK Customs), Mr Chester Chia, our Senior Partner Andrea Fong and Partner KY So.*

## Hong Kong SAR



David Choi

### Further Discussion on Payment Arrangements for Property Transactions (“PAPT”)

We discussed in our January 2022 issue the PAPT proposed by the Hong Kong Monetary Authority (“HKMA”). Since then, the Law Society has engaged discussions with the HKMA and the Hong Kong Association of Banks (“HKAB”) about the PAPT proposal, which is intended to allow property transactions to settle funds without routing through law firm’s bank accounts, thereby minimizing the hardship inflicted on the parties to the property transactions in the unfortunate event that the law firm’s business is intervened by the Law Society.



Whilst the discussions are continuing, HKAB has provided more details regarding the PAPT proposal which mainly deals with the procedure of payment by Hong Kong dollar Clearing House Automated Transfer System (“CHATS”) and the scope to which the PAPT proposal applies. According to the PAPT proposal, the existing practice for completing a property transaction is to be preserved as far as possible.

#### Scope of PAPT proposal

The PAPT proposal will be implemented in phases. In Phase 1, the PAPT will cover relatively straightforward property transactions in the secondary market that involve at most 1 buyer mortgage and 1 seller mortgage granted by a bank. Feedback would be collected during Phase 1. After further modification and adjustment, the PAPT proposal will be extended to more complex transactions in subsequent phases. The implementation date and length of each phase are yet to be decided.

The PAPT proposal has listed certain kinds of property transactions which would be excluded from the application of the PAPT (“**Exclusions**”). Examples include the situations where completion is by way of formal completion or where the property is subject to any charging order.

#### General principles

The PAPT proposal sets out various principles as general guidance for different stakeholders and several scenarios to which the general principles shall apply.

Basically, the timeline that sets out in each scenario is indicative only and the parties are free to agree on specific completion time and make adaptations. Where exceptional circumstances or last-minute issues arise or where one of the Exclusions becomes applicable to the property transactions, parties may resolve them on a case-by-case basis considering their respective commercial needs or agree on the payment method. Buyer mortgage institution (“**BMI**”) has a discretion under such circumstances to effect payment by other means.

#### Key features of the PAPT proposal

Key features of the PAPT proposal include:

1. It is the BMI who shall decide whether PAPT applies to a particular transaction and its decision is conclusive.

2. Buyer's solicitors shall obtain buyer's express written consent to disclose loan amount under the buyer's mortgage ("**Loan Amount**") to seller, seller mortgage institution ("**SMI**"), seller's solicitors and SMI's solicitors before signing the facility letter.
3. There are various key dates that seller's solicitors or buyer's solicitors should observe or comply with before drawdown of the Loan Amount. For example, seller's solicitors shall provide buyer's solicitors with the redemption amount of the loan outstanding under the seller's mortgage (if any) 10 days to 7 days before drawdown.
4. Seller shall execute the assignment of the subject property in escrow before receiving any balance of purchase price.
5. On completion of a property transaction, buyer's solicitors will provide to seller's solicitors a written confirmation issued by the BMI confirming that the Loan Amount will be transferred by BMI via CHATS directly to the SMI or seller's designated bank. For the remaining balance of the purchase price (if any), payment will be made by means of cashier's order or solicitors' cheque in the usual way.

### Observation

Whilst we welcome efforts and measures taken to safeguard the interests of buyers and sellers in property transactions, it is noted that certain aspects of the PAPT proposal to a certain extent deviate from the existing conveyancing practice in Hong Kong.

On 21 July 2022, with the support of HKMA, HKAB announced the expansion of the pilot run arrangement of the PAPT to all licensed banks for providing an alternative means of payments of funds in respect of mortgage refinancing transactions involving single mortgages. It is expected that the PAPT will be implemented with effect from 1 November 2022.

We trust, both legal and banking industries, albeit having different roles, seek to provide professional support to borrowers, buyers and sellers in the property transactions. With a cooperative attitude in mind, we are confident that different stakeholders' concerns over the PAPT proposal can be addressed with a view to protecting the legitimate interests of all relevant parties.

## The use of e-bundles and adducing digitalised evidence in the Commercial Court

Since the passing of the Court Proceedings (Electronic Technology) Ordinance (Cap 638) in July 2020 (featured in our September 2020 newsletter), the Judiciary has introduced an e-Lodgement Platform to facilitate electronic submission of documents in the Court of Appeal with effect from 7 July 2021 (featured in our September 2021 newsletter).



Paul Liu

On 27 April 2022, the Judiciary issued Practice Direction SL 1.3 – Use of E-Bundles in the Commercial Court (“**SL 1.3**”), providing guidance to court users on the preparation and use of e-bundles for cases in the Commercial List of the High Court. SL 1.3 came into effect on 11 May 2022.



Iris Chan

The Judiciary observes that many of the cases in the Commercial Court involve a substantial volume of documentary evidence. The use of e-bundles has become the norm in the Commercial Court for purposes of trial. Where appropriate, parties apply for the use of e-bundles. The directions in the latest SL 1.3 aim at giving further guidance in this regard so as to achieve consistency and to minimise the expenses involved.

SL 1.3 should be read together with the related guidelines and instructions provided by the Judiciary, including most prominently the General Guidelines for Preparing Electronic Bundles in Portable Document Format (“**Guidelines**”). The Information Technology Office of the Judiciary has also prepared training videos, accessible by the public on the Judiciary’s website.

Requirements for submissions are comprehensively set out in the Guidelines, including the size, format and naming of the electronic documents to be submitted, as well as hardware and software equipment that enables optical scanning and bookmarking of the electronic documents. Multimedia evidence (eg video and audio files) has to be submitted in appropriate format to allow playback in court. The submitted materials will be used for self-perusal and broadcast in open court.

Whilst it is noted that the usual technical issues that may possibly arise (eg time-lag in display of documents on various computers simultaneously) could potentially slow down the court process, given that voluminous documents are commonplace in Commercial List cases, the use of e-bundles is increasingly common. Court users in the Commercial Court should peruse the Guidelines and consult the Judiciary’s training videos well in advance.

SL 1.3 is a welcome guidance from the Judiciary, which in many ways helps promote the use of technology in a phased manner in light of the Court Proceedings (Electronic Technology) Ordinance. This is no doubt moving in line with modern international judicial practices which encourage the use of technology in appropriate circumstances.

Remote hearings have become progressively common in recent years. Whether e-bundles can likewise be used successfully in Court depends on the cooperation of parties to ensure the effectiveness of practice and procedure. It is hoped that in the long run, the Judiciary's objectives of cost-effectiveness and expeditious dispute resolution could be taken further and achieved at all levels of Court proceedings, thereby ensuring fairness and efficiency of litigation as a whole.



Raymond Chan

## Passing of the Employment and Retirement Schemes Legislation (Offsetting Arrangement) (Amendment) Bill 2022

On 17 June 2022, the HKSAR Government published the Employment and Retirement Schemes Legislation (Offsetting Arrangement) (Amendment) Ordinance 2022 in the Gazette, following the passing of the Employment and Retirement Schemes Legislation (Offsetting Arrangement) (Amendment) Bill 2022 (the “**Amendment Bill**”) by the Legislative Council of Hong Kong on 9 June 2022.

Key points of the Amendment Bill (as featured in our May 2022 newsletter) include:-

1. Abolition of the use of accrued benefits derived from employers' mandatory contributions under the Mandatory Provident Fund (“**MPF**”) System to offset severance payment (“**SP**”) and long service payment (“**LSP**”) (“**the Offsetting Arrangement**”) will be effective on a date to be determined (“**Transition Date**”), after which employers will no longer be able to use their mandatory contributions to MPF to offset the employee's entitlements to SP/LSP.
2. The value of an employer's voluntary MPF contributions may still be used to offset its employee's SP/LSP.
3. Abolition of the Offsetting Arrangement will have no retrospective effect (ie an employer may continue to offset the portion of its employee's SP/LSP accrued before the Transition Date against the accrued benefits derived from the employer's mandatory and/or voluntary MPF contributions).

4. The HKSAR Government currently expects to implement the abolition of the Offsetting Arrangement in 2025.
5. To ease the concerns of employers and to ensure a smooth transition, the HKSAR Government intends to set up a 25-year subsidy scheme totaling HK\$33.2 billion to help employers bear the increased operational costs.

Although the abolition of the Offsetting Arrangement will only take place in 2025 under the prevailing timeline, employers are encouraged to familiarize themselves with the latest developments of terminal payments to facilitate advance planning and ensure compliance.

## Hong Kong to introduce a licensing regime for virtual asset service providers

In July 2022, the Hong Kong Government introduced Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Bill 2022 (the “**Amendment Bill**”) to the Legislative Council for first and second reading.

The Amendment Bill seeks to enhance the legal and regulatory framework for anti-money laundering and counter-terrorist financing (AML/CTF) by introducing, among other things, a licensing regime for virtual asset service providers (“**VASP**”).

Under the proposed licensing regime for VASP, the term “VA service” (which stands for virtual asset service) refers to operating a virtual asset exchange (subject to any amendment by the Secretary for Financial Services and the Treasury). Any person who carries on a business of providing VA service will be required to be licensed by the Securities and Futures Commission (the “**SFC**”). The SFC may only grant such licence if it is satisfied, among other things, that the applicant is a company incorporated or registered in Hong Kong, that the applicant is a fit and proper person to be licensed for the VA service and each of the responsible officers, directors and ultimate owner of the applicant is a fit and proper person to be associated with the business of providing the VA service.

The requirements imposed on a licensed VASP in the Amendment Bill include (but not limited to):-

- i) each licensed VASP must have at least two responsible officers approved by the SFC and at least one of such responsible officers must be available at all times to supervise the business of the VA service; and



Raymond Chan



Pearl Fung



- ii) the individuals providing the VA service on behalf of the licensed VASP must be accredited by the licensed VASP and licensed by the SFC as a licensed representative.

According to the Legislative Council Brief in respect of the Amendment Bill, it is expected that at the initial stage, the SFC will require the licensed VASPs to offer the VA service to professional investors only.

It is proposed that the Amendment Bill will come into operation on 1 January 2023, except that the provisions relating to the licensing regime of VASP will take effect later on 1 March 2023.

## China



Annie Tsoi

### Draft Provisions on Prohibiting the Abuse of Intellectual Property Rights to Exclude and Restrict Competition released for public consultation

To supplement the newly revised Chinese Anti-Monopoly Law, on 27 June 2022 the State Administration for Market Regulation (the “SAMR”) released Draft Provisions on Prohibiting the Abuse of Intellectual Property Rights to Exclude and Restrict Competition 《禁止濫用知識產權排除、限制競爭行為規定（徵求意見稿）》 (the “**Draft Provisions**”) for public consultation.

According to the Draft Provisions:-

1. Business operators shall not reach monopoly agreements amongst themselves by way of exercising intellectual property rights. (Article 5)
2. Business operators with market dominance shall not, in the course of exercising intellectual property rights, exclude or restrict competition by exploiting its market dominance. (Article 6)
3. Business operators with market dominance shall not, without justification, limit trading behaviour, exclude or restrict competition when exercising intellectual property rights. (Article 8)
4. Business operators with market dominance shall not, without justification, impose certain unreasonable conditions in excluding or restricting competition when exercising intellectual property rights. (Article 10)



5. Business operators shall not, when exercising intellectual property rights, exclude or restrict competition via patent pools. Business operators with market dominance are prohibited from licencing at an unfairly high price and restricting their pool members from licensing patents independently, among others. (Article 14)
6. Where a business operator excludes or restricts competition by exploiting intellectual property rights thereby constituting a monopoly agreement, such illegal act shall be ordered to cease by the Anti-Monopoly Law Enforcement Agency. The Agency is further empowered to confiscate any illegal gains, and impose a fine between 1% and 10% of the sales amount in preceding year or a fine not exceeding RMB 5 million if it has no sales in preceding year.

If the monopoly agreement has not been implemented, a fine of up to RMB 3 million may be imposed. The legal representative, person-in-charge and those directly and personally responsible for reaching the monopoly agreement will be further liable to a fine of up to RMB 1 million. (Article 21)

The Draft Provisions provide guidance to business operators on certain “boundaries” in exercising their intellectual property rights under the latest anti-monopoly regime in China. They demonstrate SAMR’s determination and continuing efforts to provide an adequate balance between intellectual property protection and anti-monopoly governance.

Consultation of the Draft Provisions ended on 27 July 2022, which when finalized will supersede the current Provisions issued in 2015.

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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