



Wilkinson & Grist
Solicitors & Notaries

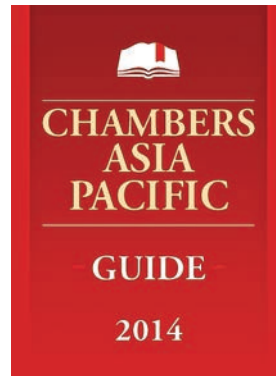
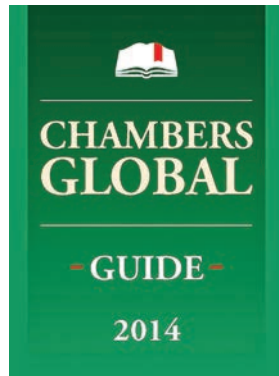
Welcome Message

Moving into the second quarter, we have seen some significant changes on the legislative front in both Hong Kong and China commencing with the coming into effect of the long anticipated Hong Kong New Companies Ordinance which provides the needed updates in the corporate arena and across the border the notable revision of the China Trademark Law. At the same time, the Amendments to the Stamp Duty Ordinance being a key measure of the HKSAR Government to cool real estate prices through increased stamp duty were finally gazetted after much debate. Recent court rulings also exemplify on third party financial assistance in divorces, and provide wider reading of “action” to include bankruptcy and winding up action in the Limitation Ordinance. We look forward to working with and assisting our clients on these new developments through our different Practice Groups.

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NEW HONOURS



We are pleased to be ranked in both the Chambers Global 2014 Guide and the Chambers Asia Pacific 2014 Guide as one of the leading **Intellectual Property (International Firms) – China**.

“One of the top firms for trade mark filing in Hong Kong, it has also seen significant growth in the PRC. In addition to its trade marks expertise, is also well known for its capabilities in the contentious arena, including customs enforcements.”

Our firm is also ranked in both guides as a leading firm for **Dispute Resolution (International Firms) – China**.

Managing Intellectual Property™

TRADE MARK SURVEY 2014 PATENT SURVEY 2014

We have, once again, been voted as a **TIER 1** for both **Trademark** and **Patent Prosecution** work in Hong Kong in this annual IP survey covering more than 80 jurisdictions. We are also voted as **TIER 1** in **Trademark Contentious** work and as a leading **CHINA FOREIGN FIRM** in **Trademark**.

Asia IP



The 2014 Asia IP Copyright Survey

We are ranked, once again, as a **Tier 1 Recommended Law Firm** in Hong Kong in The 2014 Asia IP **Copyright Survey** on the best firms for copyright related advice around the region. This survey is published by Apex Asia in its Asia IP December 2013/January 2014 issue which also reviews the state of copyright protection in the region and highlights legislative changes.



The World's Leading Trademark Professionals 2014

For consecutive years, our Intellectual Property Practice has received the highest **Gold Band** ranking for Hong Kong in the WTR 1000 publication which identifies the leading practitioners and firms in both the contentious and non-contentious spheres of trade mark in over 60 key jurisdictions globally.

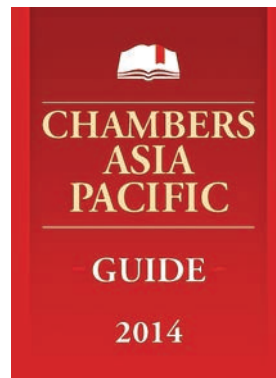
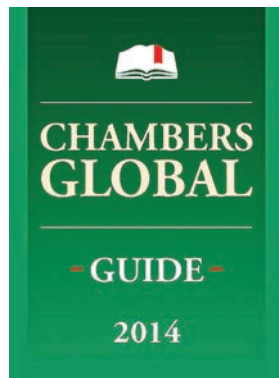
"Wilkinson & Grist is a dominant force in the market, with a heavy registration workload and a busy contentious practice. Many of its clients have used the 'fantastic' ensemble for years, impressed by its 'extremely timely and accurate advice'."

"Partners are often consulted by the government, ensuring that they stay at the forefront of legislative developments and can provide up-to-the-minute counsel to clients."

"The firm has also run its own IP agency in Beijing since 2004; commentators note that it has put in a lot of effort to research into Chinese Law and has a deep understanding of it."

Congratulations

We are proud of the recognitions given to our partners and congratulate them on their achievements.



Yvonne Chua



Andrea Fong



Keith Ho



John Budge

In both the Chambers Global 2014 Guide and the Chambers Asia Pacific 2014 Guide, **Yvonne Chua** and **Andrea Fong**, respectively Head and Supervising Partner of our Intellectual Property Practice Group, are ranked as leading lawyers for intellectual property in China whereas **Keith Ho**, Head, and **John Budge**, Consultant, both of our Dispute Resolution Practice Group, are ranked as leading individuals for dispute resolution.

Yvonne Chua *“is a well-respected practitioner amongst her peers. Recently she has been active in a number of trade mark oppositions, litigation and parallel import matters.”*

Andrea Fong *“is an experienced practitioner across contentious and non-contentious issues. Her standing is recognised by her membership of various international IP associations.”*

Keith Ho *“is widely respected by both peers and clients as ‘an experienced and renowned litigator’ with the ability to ‘get a grip of his clients’ problems and concerns’. He continues to represent the Chinachem Charitable Foundation in proceedings stemming from the interpretation of the will of the late Nina Wang, Former owner of Chinachem Group”. “Recent highlights include successfully acting for two defendants in a CNY 250 million breach of contract claim, concerning the sale of shares and a major plot of real estate located in Mainland China. He also practises in insolvency law.”*

John Budge “has particular expertise in employment, insolvency and private client litigation. He acted for Moulin Investment in connection with a family dispute involving a sum in excess of HKD50 million”. “Peers say he is a ‘very competent, likeable guy, and very well known in the market’ .”



The World’s Leading Trademark Professionals 2014



Yvonne Chua



Andrea Fong



Helen Tang

Partners of our Intellectual Property Practice Group have, yet again, been ranked in this WTR 1000 listings following an exhaustive qualification research process.

Yvonne Chua received the highest **Gold Band** ranking whereas **Andrea Fong** and **Helen Tang** received the **Silver Band** ranking.

Yvonne Chua “can most often be found handling litigation and anti-counterfeiting cases.”

Andrea Fong is “ ‘thought very highly of’ in dispute resolution.”

Helen Tang “has sewn up significant prosecution matters.”

Celebrating the 10th Anniversary of our Beijing IP Agency

This year marks another important milestone of our firm as we celebrate the 10th anniversary of our Beijing IP Agency, being the first IP agency approved by the Chinese Government to a foreign firm. From being one of the first non-PRC firms to assist international and Hong Kong corporations in securing IP registrations in China, we have since expanded to all areas of IP work from building IP rights portfolio to protection and enforcement and further, commercialization of IP.

We have witnessed marked improvements to the IP setting in China throughout the years and thanks to our clients' trust, through our unwavering team efforts in striving for the best results, we have always been at the forefront of law and attained numerous notable successes, with many being unprecedented.

In 2000, we assisted IKEA in winning China's first foreign related cyber-squatting litigation against CINET on the domain name ikea.com.cn. Since then, we have recovered from many cyber-squatters domain names such as "bloomberg.com.cn", "jockey.cn" and "philippecharriol.com.cn". On tackling cross border infringing activities, we were honoured to receive in 2007 from Panasonic Corporation the first ever "GOLD AWARD" presented by them in the "Contribution to Protection of Rights Award" for our work in the "Hong Kong Panasonic case" concerning a HK shadow company that was used to perpetrate unlawful activities in China. This case was then recognized by the PRC State Administration of Industry & Commerce as one of the top ten classic cases on unfair competition in China since the Anti-Unfair Competition Law came into force.

Further, in having successfully obtained well-known mark recognitions, notwithstanding the high threshold, for "PORSCHE", "Porsche's Crest Logo" and for Hennessy and BMW respectively their Chinese marks "軒尼詩" and "宝马", we have advanced our clients' trademark protection to dissimilar goods.

We have also defeated many bad faith trade mark applications/registrations based on 'unconventional grounds'. Amongst the notable cases were our success for S.T. DUPONT in reversing the China Trademark Office's acceptance of the marks "都彤 DUTONG" and "都彤" relying on the non-existence of the applicant, a HK shadow company which had since been deregistered through our separate petition in HK; as well as opposing the mark FUNKTION-ONE for Funktion One Research Limited based on proving its international fame established amongst the relevant trade in China notwithstanding that the use evidence of the client's mark in China was then not very substantial.



Yvonne Chua
Senior Partner



Howard Tsang
*Head of Beijing
IP Agency*

Amongst the challenging enforcement cases, our participation in the extensive anti-counterfeiting campaign at the Luohu Commercial City in Shenzhen in 2000 at the invitation of the Technical Inspection Bureau which also involved a series of consecutive raids, was particularly memorable. This case which had attracted much publicity at the time resulted in the addition in all shop leases a specific requirement not to sell counterfeit goods in this Commercial City.

On criminal actions handled by us, we are excited that in the criminal prosecution initiated for Hennessy in the 2006 Zhongshan case, the principal offender was sentenced to 7 years' imprisonment, and the landlord as accessory to 3-years' suspended sentence. We also coordinated massive cross-province raids in 2012 with simultaneous investigations into the downstream buyers in other cities resulting in successful seizures of large quantity of counterfeit toys and criminal conviction of all the key persons in the syndicate.

In 2007, we managed to master another challenge in stopping infringement of 3D marks, namely the "Hennessy XO Bottle" and separately the "Kraft Triangular Chocolate" through raid actions taken in Fujian and Guangdong respectively; both cases being first of their kind in both provinces.

Through court proceedings, we secured maximum award of statutory damages of RMB500,000 such as for ExxonMobil in 2009 in our actions against defendants that used labels featuring objectionable descriptions such as "Proud Product of American Mobil International Petroleum Group" in Chinese on their lubricants.

On non-traditional marks, we are pleased to secure for adidas many injunctions restraining unauthorised use of their "3-stripes" device mark on footwear, following the successful extension of their International Registration to China in 2006. Such precedents have also enabled us to further restrain use of 4-stripes device.

Through the expertise and experience we have built up, and riding on the wave of high economic growth of China, our IP Practice Group working with our Beijing IP Agency, is now one of the strongest practices in HK and China with a team of 30 professionals including HK qualified lawyers and PRC legal counsel, patent agents and trademark agents, and support staff of over 70. We are grateful to our clients for their confidence and are pleased to have received continuous recognitions and awards throughout the years as a leader in the field.

We look forward to advancing our good work and be our clients' trusted partner in their business expansion in China whilst also assisting Chinese corporations in expanding their IP rights abroad. Growth and successes obviously come with challenges. But with continued legal improvements in China, heightened awareness of IP rights, and the general advancement of China as a nation, we are confident of further growth and progress in China and will continue to pursue for excellence amidst the challenges.

Announcing New Partner

We are delighted to announce that **Chloe Ma** of our Dispute Resolution Practice Group has been admitted into the partnership as of April 2014. Chloe joined us in July 2008 after being admitted as a solicitor in Hong Kong in 2007 and in England and Wales in 2008. She then qualified as an accredited mediator in 2011. Her practice now spans from banking litigation, insolvency, shareholders' disputes to audit negligence.



New Faces

We warmly welcome the following newcomers to our firm.

Jacqueline Ko joined our Intellectual Property Practice Group as an associate in December 2013. She graduated from the University of Auckland in New Zealand and completed PCLL at The University of Hong Kong. She was admitted as a barrister and solicitor of the High Court of New Zealand in 2007 and then in 2011 as a solicitor in Hong Kong. Prior to joining our firm, Jacqueline's practice was focused on civil litigation and contentious IP work for both Hong Kong and China. She no doubt adds strength to our cross-border enforcement team.



Mavis Lau joined our Company and Commercial Practice Group in September 2013 and was admitted as a solicitor in Hong Kong in November 2013. She obtained her Bachelor of Laws degree and PCLL from The University of Hong Kong. Mavis now handles general commercial matters including compliance with the new Companies Ordinance, the Securities and Futures Ordinance and the Personal Data (Privacy) Ordinance, as well as various corporate transactions including loan transactions, business transfers and share sales.



April Yu Jinyi, PRC Counsel, joined our Beijing Office in October 2013. She obtained her Bachelor of Laws degree from the China University of Political Science and Law in 2008, and Master of Laws degree from Dalian Maritime University in 2011. In the following year, she passed the PRC Bar Examination and since then her main area of practice is on enforcement of IP rights in China.



Appointments

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

Review Body on Bid Challenges

Andrea Fong, partner, has been re-appointed by the Secretary for Commerce and Economic Development to serve as a Member of the Review Body on Bid Challenges for a term of 2 years commencing 1 January 2014. This is an impartial and independent body tasked to conduct inquiries and make determinations and recommendations on challenges received in respect of alleged breaches of the World Trade Organization Agreement on Government Procurement and Closer Economic Partnership Agreement with New Zealand, both of which Hong Kong, China is a signatory.

Board of Review of IRD

Paul Liu, partner, Dispute Resolution Practice Group, has been appointed by the Chief Executive of Hong Kong as a Member of the Board of Review for a term of 3 years from 3 January 2014. The Board of Review is an independent statutory body established under the Inland Revenue Ordinance (Cap 112) to review assessments of the Commissioner of Inland Revenue upon applications of the persons aggrieved by such assessments.

The Hong Kong Housing Authority

Cleresa Wong, Head, Conveyancing and Real Estate Practice Group, has been reappointed as a member of the Building Committee and the Commercial Properties Committee of The Hong Kong Housing Authority for a period of two years from 1 April 2014. The Hong Kong Housing Authority is a public authority and is the biggest landlord in Hong Kong. It is responsible for providing public housing and ancillary amenities for eligible persons, and also develops affordable homes for purchase by the lower income groups.

Publications

We are happy to provide upon request copies of the following published articles written by our lawyers.

“Highlights of 2013 filings and enforcement”
- Mena Lo

Intellectual Asset Management Magazine
29 January 2014

World Trademark Review LEXOLOGY
29 January 2014

“Registrability requirements of movement marks and holograms clarified”
- Annie Tsoi

World Trademark Review
5 February 2014

Intellectual Asset Management Magazine
5 February 2014

World Trademark Review LEXOLOGY
5 February 2014

Talks & Seminars

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

Yvonne Chua, Senior Partner, also President (2013-4) of Licensing Executives Society (LES) International, spoke on *“Intellectual Property Protection for Brand Owners and Practical Tips on Licensing”* at the 2014 Asian Licensing Conference as organized by the Hong Kong Trade Development Council from 6 to 7 January 2014.

2014 Asian
Licensing
Conference



Yvonne was also a speaker at the LESI Global Technology Impact Forum 2014 which took place in Geneva from 19 to 21 January 2014, when she gave a presentation on *“2013 Year IP in Review”*.

LESI Global
Technology Impact
Forum 2014



(From left to right) Mr Hector Chagoya, GTIF Co-Chair; Yvonne Chua, Mr Randall Rader, US Chief Judge, Mr Arnaud Michel, LESI President Elect, and Mr Edward Elliott, Attorney Advisor, USPTO Patents for Humanity.

On 23 January and 18 March 2014 respectively, **Yvonne** spoke at the London Seminar of LES Britain & Ireland and the Seminar in Singapore organised by LES Singapore on *“Recent IP Trends in the Asia Pacific”*.

LES Britain &
Ireland and LES
Singapore

Yvonne was also moderator at the AUTM Asia 2014 Conference held in Taipei from 9 to 11 April 2014 on the Session titled *“Essential & High Value Patents”*.

About Us

Caring Company



We are delighted to be again awarded by the Hong Kong Council of Social Service the **5 Years Plus Caring Company Logo** in recognition of our commitment in Caring for the Community, Caring for our Employees and Caring for the Environment over the past years.

World Trade Organization



Meeting by our Senior Partner, **Yvonne Chua**, also President of Licensing Executives Society International, with Mr Antony Taubman, Director, Intellectual Property Division, World Trade Organization, during his visit to Hong Kong in February 2014, joined by council members of LES China Hong Kong.

Hong Kong Watch Trades & Industries Ltd



Our congratulations to Chairman Mr Geoffrey Edward Kao of the Federation of Hong Kong Watch Trades & Industries Ltd and his new Board appointed on 17 March 2014 as we continue to serve as their Honorary Legal Advisor.

Conferences

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

IACC	Hong Kong, 7 – 9 May 2014
INTA	Hong Kong, 10 – 14 May 2014
LES Int'l Management & Delegates' Meeting	Moscow, Russia, 16 – 18 May 2014
LES International Annual Conference	Moscow, Russia, 18 – 21 May 2014
ECTA Annual Conference	Alicante, Spain, 18 – 20 June 2014
AIPPI	Toronto, Canada, 14 - 18 September 2014
MARQUES	Copenhagen, Denmark, 23 – 26 September 2014
LES USA & Canada Annual Meeting	San Francisco, USA, 5 – 8 October 2014
LES Asia Pacific Regional Meeting	Seoul, Korea, 5 – 6 November 2014
APAA	Penang, Malaysia, 8 – 11 November 2014
INTA Leadership Meeting	Phoenix, Arizona, USA, 11 – 15 November 2014

Hong Kong

New Companies Ordinance

Following a comprehensive rewrite exercise launched in 2006 due to the need to modernize and reform Hong Kong's company law, the new Companies Ordinance (Cap 622) ("**New CO**") and 12 pieces of subsidiary legislation came into effect on 3 March 2014.

The previous Companies Ordinance (Cap 32) ("**Old CO**") is retitled as the "Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32)". Only provisions relating to prospectuses, winding-up and disqualification of directors are retained, with all other provisions regarding the operation of companies having been repealed.

The New CO provides a modernised legal framework for the incorporation and operation of companies and below are highlights of some of the major changes:

1. The memorandum of association has been abolished:
 - A new company can be formed by filing with the Registrar of Companies ("**Registrar**") an incorporation form and a copy of its articles of association.
 - For pre-existing companies incorporated under the Old CO ("**Pre-Existing Company**"), provisions in its memorandum (except those on the amount



Raymond Chan

*"The New CO
provides a
modernised legal
framework....."*

of registered share capital and division of share capital into shares of fixed amount) are regarded as provisions of its articles.

2. A common seal need not be kept. To execute a deed without affixing common seal, the document must be (1) expressed to be executed by the company as a deed, (2) delivered as a deed, and (3) signed by its sole director or, if the company has two or more directors, by two directors or by one director and the company secretary.
3. The concepts of par value, authorized share capital and share premium have been abolished. A Pre-Existing Company does not need to carry out any share conversion process, and its share capital and share premium are deemed to be amalgamated. The no-par regime allows for more flexibility in the alteration of share capital.
4. A court-free procedure for reduction of share capital based on a solvency test is introduced. Reduction of share capital was permitted under the Old CO only if the court's approval had been obtained.
5. All companies may fund share repurchases out of capital, subject to satisfaction of a procedure based on the solvency test. Under the Old CO, only private companies can fund share repurchases out of capital.
6. The general prohibition of financial assistance has been relaxed with the introduction of three new exemptions available to all companies. The abolished "whitewash procedure" exemption in the Old CO was only available to unlisted companies.
7. There are important amendments to the requirements of registration of charges:-
 - A charge on an aircraft (or on a share therein) as well as a charge on instalments due but not paid on the issue price of shares are registrable. However, a charge for securing the issue of debenture(s) is no longer registrable.
 - A charge on cash deposit is not a charge on book debt and thus not registrable.
 - A certified copy of the charge must be filed together with Form NM1 and will be available for public inspection. Those who may reasonably be expected to search the register would have constructive notice of all terms in the charge. The time limit for filing is shortened to 1 month.
 - To enter a memorandum of satisfaction against a debt secured by a registered charge, a certified copy of the evidence of discharge must be filed together with Form NM2 and will be available for public inspection.
8. A company's first financial year under the New CO begins on the first day of its first "accounting reference period", upon which certain new rules apply:
 - A business review must be included in the directors' report unless an exception applies. A private company may opt out of this requirement by special resolution.
 - The criteria for simplified reporting have been relaxed, with a private

company being automatically qualified if it satisfies certain size tests. A private company can also adopt simplified reporting if it obtains 75% members' approval (with no member objecting) and it satisfies a more lenient set of size tests.

9. A private company must have at least one director who is a natural person, unless it belongs to the same group as a listed company (in which case all directors must be natural persons).
10. The rules regarding fair-dealing by directors have been revamped:
 - The Old CO in general prohibits a company from granting loans to a director or persons connected with the director. The categories of connected persons have now been expanded to include an adult child, a parent, a cohabitee and an associated body corporate. The New CO also provides several new exceptions to the prohibition, and retains (with some relaxation) most exceptions in the Old CO.
 - A company may not pay its director for loss of office without the company's prior approval. The New CO extends the prohibition to cover indirect payment, such as payment to a director's connected person.
 - Members' approval is required for directors' employment exceeding 3 years.
11. There are detailed procedures for passing a written members' resolution. Alternative procedures may be set out in the articles, but the resolution must be agreed to by all entitled members.
12. A company may dispense with the holding of AGM by unanimous members' resolution (which must be filed within 15 days). Financial statements and reports must still be sent to the members.
13. If a company is in default of certain requirements in the New CO, a responsible person (defined as an officer or shadow director who authorizes, permits or participates in the default) can be held criminally liable.
14. The Registrar may compound offences listed in Schedule 7 (eg failing to file annual return), by giving notice that no proceedings will be instituted if a defaulting company pays a fee and fulfils the outstanding obligation within a specified period.
15. To apply for deregistration, a company must satisfy additional requirements:
 - The company is not a party to any legal proceedings; and
 - Neither the company nor its subsidiaries has immovable property in Hong Kong.
16. A court-free procedure of administrative restoration of a struck off company is introduced. A struck off company may be restored by the Registrar if:
 - The company was in operation or carrying on business at the time of striking off;
 - If the company had immovable property in Hong Kong which has been vested in the Government, the Government has no objection to the restoration; and

- The applicant has updated the company's filing records.

17. The New CO codifies directors' duty to exercise reasonable care, skill and diligence as well as the Turquand Rule.

A Pre-Existing Company should, at the very least, ensure that it has at least one director who is a natural person, identify its accounting reference period, and prepare financial statements and reports accordingly. Further, it is advisable (though not compulsory) for a Pre-Existing Company to review and amend its articles to reflect or take advantage of the new initiatives.



Rebecca Lau

*"...the word
"action" ...has a
wider meaning in
Hong Kong..."*

Important message to creditors - limitation on enforcement actions on judgment debts in Hong Kong

The Court of Appeal of Hong Kong ("CA") handed down an important judgment in ***Re Li Man Hoo*** [2013] 4 HKLRD 247 on 30 August 2013 holding that bankruptcy and winding up petitions fall within the definition of an "**action**" under Section 4(4) of the Limitation Ordinance (Cap 347) ("Ordinance").

Section 4(4) of the Ordinance provides that an **action** shall not be brought upon any judgment after the expiration of 12 years from the date on which the judgment became enforceable. In England, it has been held that the word "**action**" in the corresponding English provision means "*a new set of proceedings brought for the purpose of re-establishing the judgment debt to obtain a second judgment*". It follows that the relevant limitation provision does not apply to enforcement proceedings such as bankruptcy or winding up proceedings.

However, in the case ***Re Li Man Hoo***, the CA refused to follow the restrictive meaning applied in England. In that case, the bankruptcy petitions were presented in September 2011 based on a judgment debt obtained in February 1999 (ie more than 12 years after the date of the judgment). The CA held that the word "**action**" in Section 4(4) of the Ordinance would include "*any proceeding in a court of law*" pursuant to Section 2 of the Ordinance. Thus, bankruptcy petitions would be considered as an "**action**" under Section 4(4). As a result, any bankruptcy petition based on a judgment which was entered more than 12 years before the presentation of the petition is time-barred under the Ordinance.

Section 4(4) also applies to winding up proceedings. In ***Re Man Po International Holdings Ltd*** [2012] 4 HKLRD 911, the petition for the winding up of a company was issued in January 2012 based on a judgment obtained in July 1998 and it was held that enforcement of the judgment was time-barred.

Unlike the position in England, the word "**action**" in Section 4(4) of the Ordinance has a wider meaning in Hong Kong and it covers all kinds of legal proceedings

including bankruptcy and winding-up petitions based on a judgment debt and such proceedings cannot be brought after the limitation period of 12 years. It is therefore important for creditors to take timely enforcement action to recover judgment debts in the future.

Does third parties' financial assistance count in a divorce?

The answer is probably “yes”, depending on the extent of such financial assistance and the likelihood of it continuing in future.

Section 7 of the Matrimonial Proceedings and Property Ordinance (Cap 192) (“MPPO”) provides that when the Court makes a maintenance order, it has to take into account various factors including “the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future”.

In **KEWS v NCHC** [2013] 2 HKLRD 314, the Court of Final Appeal held in June 2012 that the Court is not restricted to taking into account only those assets which in law represent the property of either spouse and “other financial resources” include those assets or resources to which the relevant spouse has or is likely to have access but to which he or she may not have a legal entitlement. Further, the Court can look into the financial resources which a party actually has (or should have) at present or which that party is likely to have in the foreseeable future.

It follows that when computing a party's overall financial resources, financial assistance made by a third party may be taken into account. This also gives rise to two critical evidential questions for the Court to consider, namely (i) What is the extent of the financial assistance provided by a third party? and (ii) What is the likelihood of such assistance continuing in the foreseeable future?

Although the husband in **KEWS** only earned HK\$14,000 (about USD1,800) per month, after considering his earning capacity and the generous financial support from his parents which was very likely to continue, the Court ordered him to pay to his wife HK\$42,500 (about USD5,400) per month as her monthly maintenance and a lump sum of HK\$1.5 million (about USD192,300).

In the more recent January 2014 Court of Appeal decision of **TCWF v LKKS** CACV 154/2012 & CACV 166/2012, the husband held a portfolio of high-quality real estate in Tokyo through his father's business expertise and with his father's financial support. The husband and his father had an agreement which effectively enabled the father to “buy back” such investment and to retain control over the



Derick Tam

*“The answer
is probably
“yes”.....”*

same. The Court of Appeal agreed that the Court may in the exercise of its family jurisdiction in ancillary relief matter disregard third party rights if it comes to the conclusion that such rights would unlikely be exercised in the foreseeable future and regarded it as the corollary of the situation in **KEWS**. However, on the facts of this case the Court held that such investment of the husband was encumbered by his father's rights pursuant to the agreement, and his father would exercise such rights in the event of the divorce. It follows that when assessing the husband's financial resources, his father's rights had to be taken into account. As a result, the award to the wife made by the lower court was significantly reduced from HK\$1,470.4 million (about USD188.5 million) to HK\$524.5 million (about USD67.2 million). Although the wife has applied to appeal to the Court of Final Appeal, as pointed out by the Chief Justice in **KEWS**, the outcome in any given case is inevitably fact-sensitive.



Annie Tsoi

Registrability requirements of movement marks and holograms clarified

A movement mark or hologram is registrable as a trademark in Hong Kong provided that it is a sign that is capable of distinguishing the goods or services of one undertaking from those of others, and is also capable of being represented graphically. The underlying principles and criteria for examination are the same as those applied to an ordinary trademark.

“...the graphical representation, the written description...are fundamental...”

The Hong Kong Trademarks Registry recently issued a note presenting its examination practice and clarifying the filing requirements for this special category of mark, as follows.

In graphically representing a movement mark, the applicant should provide a series of still images in the correct sequence of perceivable movement. The applicant is also required to provide a precise written description with prescribed information.

In graphically representing a hologram, the applicant should depict all of its material features, including all of its various images when viewed from different angles. The applicant should also provide a written statement precisely describing the multiple views by reference to the essential features of the hologram.

When examining the registrability of a movement mark or a hologram, the graphical representation, the written description and the specification of goods and/or services are the fundamental basis. Careful and thorough crafting of these required elements in preparing the application is therefore crucial. Any sample (eg in the form of a video clip) submitted under the application is of referential value only.

Hong Kong Alert

Stamp Duty (Amendment) Ordinance 2014

After much debate, the Stamp Duty (Amendment) Bill 2012 ("Bill") was finally passed on 22 February 2014. The Stamp Duty (Amendment) Ordinance 2014 was gazetted on 28 February 2014, with retrospective effect from 27 October 2012. Our article on the Bill can be found in the January 2013 issue of our Newsletter.

China

Highlights of 2013 filings and enforcement

China experienced a continued growth in the number of applications filed for invention and utility model patents but a slight drop in design patent filings. Up to October 2013, the total number of invention patent and utility model applications filed were respectively 594,390 and 689,971, representing a 23% and 22% increase when compared with the figures in 2012. The total number of design patent applications filed up to October 2013 had slightly dropped from 520,945 in 2012 to 519,858 in 2013. Overseas filings increased by 3% whereas domestic filings by 16%. Amongst various overseas countries, Japan was the top filer followed by the USA.

For trademarks, domestic trademark filings showed a 14% increase for the first three quarters in 2013. Total number of trademark applications received by the Trademark Office exceeded 1.2 million and the number of trademark registrations granted was over 650,000.

China had shown to become more active in stamping infringement activities. Up to September 2013, public security bureaus investigated 234,000 infringement cases involving goods valued over RMB 24 billion. More than 35,000 people were arrested. Charges were laid against 12,990 people and 10,566 were ultimately convicted. Combating on-line infringement is one of the main targets for China in the enforcement work in the coming year.

To protect the rights of the consumer public, the standing committee of the State Council recently adopted an opinion on the publication of information on administrative actions taken against the sale of counterfeits and imitations. A platform will be created where the public is able to have access to information on actions taken by administrative authorities all over China against infringers, including any penalty imposed on them.



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China Alerts

State Council issues trial opinion on disclosure of administrative penalties for IPR infringement cases

On 4 February 2014, the PRC State Council approved and issued the *Opinion Regarding Disclosure of Information in Accordance with the Law on Administrative Penalty Cases of Manufacture and Sale of Counterfeit and Inferior Quality Goods and Infringement of Intellectual Property (Trial)* (“Opinion”). The Opinion requires administrative enforcement authorities to take the initiative to disclose information on administrative penalties for IPR infringement and counterfeiting cases within 20 working days from the date of decision or change of decision for imposing administrative penalties. The information to be disclosed includes reference number of the penalty decision, the name of the individual or corporation and its legal representative, the major facts of the infringing activities, the types of penalties and bases for imposing such penalties, the manner and timeframe for executing administrative penalties, the name of the authority imposing administrative penalties and the date. Trade secrets and personal privacy data are exempted from disclosure.

Patent protection extended to GUI-related designs

The *Decision of the State Intellectual Property Office amending the Guidelines for Patent Examination* (“Decision”) (promulgated by Order No 68 of the State Intellectual Property Office) has come into effect on 1 May 2014. Pursuant to the Decision, design patent protection is extended to graphical user interface (GUI) related designs. However, such protection is not available to game interfaces and displayed patterns that are irrelevant to human-machine interaction or irrelevant to the implementation of product functionality, such as wallpapers for electronic screen, start-up and shutdown screens, website layouts, etc.

China is expecting new trademark implementing regulations & examination guidelines

To facilitate the implementation of the new PRC Trade Mark Law in May 2014, new Implementing Regulations and Examination Guidelines will soon be finalized and promulgated. These are expected to detail the procedures, logistics and examination criteria in practice under the new law.

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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