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Welcome to our latest bulletin featuring various legal and market updates

- Is an arbitration clause a trump card against winding-up petitions?;
- Email fraud; and
- E-Signatures.

We hope that you find this edition informative and we welcome your comments and suggestions for future topics.

If you have any questions regarding matters in this publication, please refer to the contact details of the contributing authors.

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Is an arbitration clause a trump card against winding-up petitions?

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The legal effect of an arbitration clause on winding-up proceedings has been constantly debated, and is still unsettled in Hong Kong based on cases decided so far. On the one hand, it has been argued that the Court should respect party autonomy by dismissing any winding up petition where the underlying contract was subject to an arbitration clause (i.e. the *Salford-Lasmos* approach discussed below). On the other hand, it has been argued that the Court should adhere to the traditional approach by examining whether a *bona fide* dispute on substantial grounds has been shown regardless of the existence of an arbitration clause.

In the recent Court of First Instance case of *Re Asia Master Logistics Ltd* [2020] 2 HKLRD 423, the Court examined the competing positions in Hong Kong and other common law jurisdictions in great detail, and offered insight on how the competing positions could be reconciled.

The facts in *Re Asia Master Logistics* is rather straightforward. The creditor petitioner presented a winding-up petition against the debtor respondent on the basis of unpaid debt owed under a charterparty the parties had entered into. The debtor respondent did not dispute the debt but raised a counterclaim arguing that the creditor petitioner had breached the charterparty. The debtor respondent sought to resist the winding-up petition on the basis that the charterparty contained an arbitration clause.

Deputy High Court Judge William Wong SC held that there was *prima facie* no dispute on the debt, and the counterclaim consisted of bare allegations. In respect of the effect of the arbitration clause in the charterparty, the learned judge held that even if the *Salford-Lasmos* approach was applicable, the debtor respondent failed to take steps to commence arbitration proceedings, and therefore, the threefold conditions under the *Salford-Lasmos* approach were not satisfied, and a winding-up order ought to be made in any case.

Traditional approach

If a debtor company fails to satisfy a statutory demand for payment of a debt, the creditor petitioner may petition to wind-up the debtor company. The debtor company may then apply to dismiss or stay the petition on the ground that there is a *bona fide* dispute on substantial grounds. Under the traditional approach, the existence of an arbitration clause does not detract from the requirement on the part of the debtor company to show a *bona fide* dispute on substantial grounds in its application to stay or dismiss a winding-up petition.

The main rationale behind this line of authorities appears to be that a creditor petitioner's statutory right to petition for winding-up cannot be fettered by contract. However, it has been said that the traditional approach undercuts parties' freedom to contract and the policy that supports party autonomy enshrined in the Arbitration Ordinance. This has led to departure from the traditional approach by the English Court of Appeal in *Salford Estates (No 2) Ltd v Altomart Ltd (No 2)* [2015] Ch 589, which was followed by the Court of First Instance in Hong Kong in *Re Southwest Pacific Bauxite (HK)* Ltd [2018] 2 HKLRD 449 (*Lasmos*), i.e. the *Salford-Lasmos* approach.

Salford-Lasmos approach

Under the *Salford-Lasmos* approach, the debtor company would no longer need to show a *bona fide* dispute on substantial grounds when applying to stay or dismiss winding-up proceedings. Save in exceptional cases (where the petition will be stayed), the winding-up petition will be dismissed so long as the following three conditions are satisfied:-

(i) the debtor company disputes the debt;

(ii) the contract under which the debt purportedly arises contains an arbitration clause which covers any dispute relating to the debt; and

(iii) the debtor-company has taken steps required under the arbitration clause to commence the dispute resolution process and files an affirmation demonstrating this.

However, in the case of *But Ka Chon v Interactive Brokers LLC* [2019] 4 HKLRD 85, the Court of Appeal expressly noted its reservations (in obiter) on the *Salford-Lasmos* approach. In particular, Kwan V-P (a) questioned the appropriateness of substantially curtailing the rights of a creditor to present a petition, and (b) doubted that the Court should invariably stay or dismiss the winding-up petition if it is satisfied that there is no *bona fide* dispute on substantial grounds.

As such, it remains unclear whether the *Salford-Lasmos* approach is good law in Hong Kong. Before appellate courts in Hong Kong provide further guidance on this subject, debtor companies

who wish to set aside winding-up proceedings on the basis of the existence of an arbitration clause will invariably continue to rely on the *Salford-Lasmos* approach for its seemingly lower threshold required to set aside winding-up proceedings.

It should be emphasised that in order to satisfy requirement (iii) above in the *Salford-Lasmos* approach, the debtor company must communicate unequivocal intention to resort to arbitration. The mere gauge of an interest to resolve a dispute by arbitration (such as merely requesting the creditor's solicitors to confirm whether they had instructions to accept service of a Notice of Arbitration as in *Re Asia Master Logistics*) is not a valid commencement of arbitration proceedings. It is necessary for the debtor company to take steps required under the arbitration clause to commence the contractually mandated dispute resolution process.

How should the Court strike a balance between party autonomy and creditor's statutory right to wind-up?

The learned judge in *Re Asia Master Logistics* attempted to reconcile the apparent conflict between creditor's statutory right to wind-up under the traditional approach with party autonomy under the *Salford-Lasmos* approach by analysing whether the presentation of a winding up petition *per se* would amount to a breach of an agreement to resolve disputes by way of arbitration.

The learned judge was of the view that the Companies Court does not resolve nor determines disputes when ruling on a creditor petitioner's *locus* to wind-up a debtor company, and that disputes over the debt are only finally resolved upon determination by the liquidator. As an agreement to arbitrate only requires a party to submit to arbitration for resolution or determination, the determination of a winding-up petition does not come within the scope of an agreement to arbitrate, and therefore does not encroach on party autonomy (see paragraphs 71 to 77 of judgment in *Re Asia Master Logistics*).

In winding-up proceedings, the Court's role is simply to consider the prospective merits and ascertain whether the debtor company had proven a triable case on the defence. It does not have to decide whether one side or the other is more probably right. Disputes over debts owed by the debtor company are only determined or resolved when the creditor petitioner submits its proof of debt to the liquidator for determination. In doing so, the liquidator is acting in a quasi-judicial capacity and is not bound to accept a proof of debt by mere reason of the fact that the Court confirmed the creditor petitioner's *locus* to bring a winding-up petition.

Furthermore, in recognising the practical reality that the presentation of winding up petitions can put considerable pressure on the debtor company to pay in lieu of arbitration, the learned judge took the view that the risk of abuse of process by creditors can be mitigated by (i) the Court's power to order the creditor petitioner to pay the debtor company's costs on an indemnity basis, and (ii) the debtor company's right to claim damages for malicious presentation of the winding-up petition.

In conclusion, the learned judge was of the view that the traditional approach does not encroach on party autonomy as the Companies Court when determining whether to grant a winding-up order does not resolve nor determine disputes which shall be referred to arbitration. On the other hand, the *Salford-Lasmos* approach is antithetical to the nature of the Court's flexible discretion to allow a petition even in circumstances where the debtor-company could show a *bona fide* dispute on substantial grounds.

Current state of the law

The learned judge having concluded that the traditional approach is preferred over the *Salford-Lasmos* approach, summarised the present state of the law in the following terms:-

(i) Firstly, regardless of whether or not the debt had arisen from a contract with an arbitration clause, a debtor company who wishes to dispute the existence of a debt must still show that there is a *bona fide* dispute on substantial grounds.

(ii) Secondly, the existence of an arbitration agreement should be regarded as irrelevant to the exercise of discretion.

(iii) Thirdly, the commencement of arbitration proceedings may be relevant evidence but this alone would not be sufficient to prove the existence of a bona fide dispute on substantial grounds.

(iv) Fourthly, a creditor petitioner is still subject to the risk of being liable to pay the debtor company's costs on an indemnity basis, and risk of liability under the tort of malicious prosecution.

Conclusion

Until there is further guidance from appellate courts, debtor company who wishes to set aside a winding-up petition should not expect to rely on the commencement of arbitration as a definite shield against winding-up proceedings. It would be safe to assume that without a *bona fide* dispute on substantial grounds, the debtor company still runs the risk of being ordered to be wound-up by the Court.

Email fraud

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Introduction

In our June 2020 bulletin, Pryderi Diebschlag looked at the serious problem of email frauds perpetrated via Hong Kong incorporated companies operating bank accounts in Hong Kong. We now look at the role of the banks in these frauds and their potential liability to victims.

In most of the email fraud cases which our litigation team has handled in the last few years, the proceeds of the email frauds have been wired to the fraudsters' bank accounts in Hong Kong. More often than not, these "1st tier" recipient accounts have been opened at major commercial banks in the names of newly incorporated Hong Kong companies. The Hong Kong companies typically have only a sole director and shareholder resident in the Mainland of the PRC.

Disclosure provided pursuant to court orders by the fraudsters' banks usually shows that aside from the fraudulent transactions with which we are concerned, the 1st tier recipient bank accounts have been largely inactive and only small amounts of money have been deposited into the accounts. In many of these cases, it appears therefore that both the company and the bank account were established purely for the purposes of fraud.

After receiving funds from the victim, the fraudster seeks to launder the funds by transferring them to "2nd tier" or "3rd tier" recipients. Frequently, these recipients are unlicensed money changers or remittance agents which handle large volumes of money on a daily basis. In either case the fact pattern and customer profile ought to arouse suspicions in the minds of the bank officers responsible for overseeing or monitoring the bank's customer relationship with the fraudsters.

As explained in our June bulletin, victims of email frauds primarily seek redress via proprietary tracing actions i.e. they follow and try to recover the money from the 1st tier, 2nd tier or even 3rd tier recipients. However, such is the speed with which funds can be transferred electronically, even if a victim instructs solicitors to take action promptly, it may be too late to trace and recover the funds. In such circumstances, the victims will obviously look to see whether proceedings can be brought against other parties to recover the loss. While the recipient companies and their controllers will be liable for orchestrating the fraud and/or handling the proceeds, these defendants can be difficult to pursue in Mainland China and may themselves only be "fronts" for the persons responsible for original email hacking.

Accordingly, a victim may consider investigating the possibility of bringing a claim against the fraudster's banks in Hong Kong. Such claims are not straightforward but in certain circumstances the banks may be liable and where very substantial sums have been lost, such claims are likely to be pursued.

Banks' Duties under AMLO and OSCO

A bank which finds itself "on notice" of fraud upon receiving payment instructions but still processes the payment risks prosecution for failing to meet its obligations under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap.615) ("AMLO") and the Organized and Serious Crimes Ordinance (Cap.455) ("OSCO").

Under OSCO s.25, it is an offence to deal with property knowing or having reasonable grounds to believe that it represents the proceeds of an indictable offence. In particular, the definition of "deal" in s.2 would mean that the offence extends to receiving, holding and transferring funds between the bank's own accounts, instead of merely the execution of payment instructions. OSCO s.25A also requires a person who knows or suspects that any property represents the proceeds of crime to inform an "authorized officer". Further, pursuant to the AMLO, banks and other regulated financial institutions are under obligations to conduct client due diligence and keep records to prevent their institutions from being used to launder money or finance terrorism.

The Hong Kong Monetary Authority (the "HKMA") has already drawn the banks' attention to the importance of understanding their clients' businesses in order to ensure effective monitoring and thereby detect fraud. In the HKMA's Guidance Paper on Transaction Screening, Transaction Monitoring and Suspicious Transaction Reporting dated May 2018, it is expressly noted that:

"In the case of corporate accounts, unless [Authorized Institutions] understand the purpose and nature of the business undertaken and are alert to the risk that insufficient or inaccurate information presents, they may be unable to assess the [money laundering/terrorist financing] risk or implement appropriate controls. Corporate accounts can sometimes be misused to receive the proceeds of overseas frauds (e.g.

recently incorporated, relative inactivity in the account followed by multiple inward and outward remittances from and to parties that are seemingly unconnected with the business profile of the customer)."

There are no statutory provisions in Hong Kong which entitle victims of fraud to bring claims for damages against banks which have facilitated the frauds through inadequate AML monitoring or procedures so we consider the potential for common law claims below.

Actions by victims against the banks in tort

The courts have considered whether third party victims of fraud can pursue bankers in negligence on the basis that the banks ought to have realised that their customer engaged in fraud. In **Abou-Rahmah v Abacha** [2005] EWHC 2662, the defendant bank received two payments made by the claimant who gave instructions to credit the account of a customer called "Trust International". However, the bank credited the account of an entity called "Trusty International", which was controlled by a fraudster. The claimants therefore sought recovery in the English High Court of the monies paid, arguing (among other points) that the payment by the defendant bank to a party other than the one specified in the instructions was negligent.

The Court, applying the test laid down in **Caparo Industries v Dickman** [1990] 2 AC 605 held that a recipient's bank does not owe a duty of care to a non-customer payer to (1) pay money received only to the payee identified in the payer's instructions, or (2) clarify any discrepancies in those instructions as to the payee's identity with the payer.

While this case has yet to be considered in Hong Kong, the Hong Kong courts have adopted the threefold test in **Caparo** (e.g. **Luen Hing Fat Coating & Finishing Factory Ltd v Waan Chuen Ming** (2011) 14 HKCFAR 14), so it is likely that **Abou-Rahmah v Abacha** is good law in Hong Kong and would therefore prevent a payer from recovering damages in a direct tort action against the banks.

Unjust Enrichment

The decision of the English High Court in **Jeremy Stone v National Westminster Bank** [2013] EWHC 208 provides some indications of how judges will consider compliance with anti-money laundering legislation in the context of claims against banks. In that case, a claim was brought against NatWest (the defendant bank) by investors who had been defrauded in a Ponzi scheme. One of the issues was whether NatWest was liable to return the monies paid on the ground of unjust enrichment, as the claimants alleged that they paid the money into the fraudster's account with NatWest on the basis of their mistaken belief that the business was genuine.

In addition, the claimants argued that the defence of good faith change of position should not be available to NatWest because the breach of the bank's AML obligations meant that: (i) it had failed to report criminal activity (contrary to s.330 of the Proceeds of Crime Act 2002) ("POCA") and (ii) it had failed to monitor their relationship with its fraudster client (contrary to Reg 8(1) of the Money Laundering Regulations 2007).

However, both arguments were rejected for the following reasons:

- there was no breach of POCA s.330 because the relationship manager of NatWest did not suspect money laundering and therefore was not obliged to report it. In any event, breach of s.330 would amount to "strict liability for regulatory failures which were insufficiently grave to debar NatWest from relying on the change of position defence"; and
- there was no breach of Reg 8(1) because NatWest operated an automated fraud monitoring system that provided adequate monitoring for the purpose of the AML legislation. Equally, such a breach would have been "technical in nature" and would not have debarred NatWest from relying on the defence.

Therefore, the Judge's obiter comments above suggest that it will not be easy for victims of fraud to rely on breaches of AML obligations for the purpose of bringing civil claims against banks. Note however that the comments were made in the context of a claim for unjust enrichment and the claimants accepted that it could not bring a claim in negligence.

Quincecare Duty

The United Kingdom Supreme Court ("UKSC") has recently considered the "Quincecare" duty of bankers in its judgment in **Singularis vs Daiwa Capital Markets Limited** [2019] UKSC 50. Reliance on such a duty may prove fruitful for victims of email frauds and the serious consequences for Daiwa in that case may encourage banks to tighten up their risk management procedures in order to avoid facilitating email frauds and bank fraud generally.

The Quincecare duty of care was first established in **Barclays Bank v Quincecare** [1992] 4 All ER 363, where the court held that the relationship between a bank and its

customer was that of agent and principal and that accordingly, the bank owed fiduciary duties to its customers. Consequently, the banks owe an implied duty in contract and tort to exercise reasonable skill and care when executing instructions from their customers. One aspect of the Quincecare duty is that the banks should refrain from executing an order if and for so long as the bank was "put on inquiry", in the sense that there are reasonable grounds (although not necessarily proof) for believing that the order was an attempt to misappropriate funds. The test is one of negligence to be assessed in accordance with the "external standard of the likely perception of an ordinary prudent banker". On the facts, Barclays was held not liable as there was nothing in the relevant payment or the transaction history that was out of the ordinary and would put the bank on inquiry.

In **Singularis**, the sole shareholder and chairman of the company, Mr Al Sanea, instructed its bankers to remit funds out of its account to another account in order to avoid payment to creditors. This was in circumstances where a number of its other bank accounts with Daiwa had already been frozen. Creditors of Singularis wound up the company and the liquidators who were appointed brought an action against Daiwa under Quincecare principles in order to recover damages for negligence and breach of contract for implementing the instructions of the controller.

The bank sought to rely on **Stone & Rolls v Moore Stephens** [2009] UKHL 39 to argue that as the chairman was the controlling mind of Singularis (i.e. it was a "one-man company"), the fraud perpetrated by the controller must be attributed to the company and therefore Singularis' claim against Daiwa failed on account of illegality.

The UKSC agreed that Daiwa had committed an "incontrovertible" breach of the Quincecare duty. In particular, it upheld the lower courts' rejection of the attribution argument. Apart from distinguishing the facts of **Singularis** from those in **Stone & Rolls** on the basis that Singularis also had other directors (hence not a "one-man company"), the UKSC also held that to attribute Mr Al Sanea's fraud to Singularis in these circumstances would be to "denude the [Quincecare] duty of any value in cases where it is most needed". In other words, if Daiwa's breach of its duty was rendered immaterial as a result of Mr Al Sanea's individual actions, there would in effect be no Quincecare duty of care or its breach would cease to have consequences.

In addition, the UKSC noted that where a bank is on notice of something suspicious, as in the present case, it should suspend payments until it has made reasonable enquiries and received sensible answers, so as to satisfy itself that the payments should properly be made.

The Quincecare duty and its application in the Singularis situation have also been followed in Hong Kong. In the recent CFI case of **PT Tugu Pratama Indonesia v Citibank NA** [2018] 5 HKLRD 277, the court considered the extent to which Citibank (the defendant bank) owed a duty of care to the plaintiff in the context of its rogue directors' fraudulent scheme to defraud the plaintiff. Citing Singularis as an authority, the court held that an honest and reasonable banker would be put on inquiry in light of the "red flags", and Citibank has breached its duty of care by not doing so.

In the context of email frauds, this line of cases shows it may be possible for victims to recover monies from the fraudster's tier 1 recipient bank that were fraudulently paid out from the 1st tier account to 2nd tier accounts or even withdrawn in cash, and thereby dispersed. If the fraudster carries out transactions which are suspicious or unusual and the bank fails to make reasonable enquiries, the bank could be in breach of its Quincecare duty and might therefore be liable to compensate the 1st tier recipient account holder company for any money lost. Such a remedy might also be available against the 2nd tier recipient which is conducting illegal money services through a Hong Kong bank account.

This would therefore be valuable to a victim who obtains judgment against an impecunious 1st tier or 2nd tier recipient and seeks to enforce that judgment by appointing provisional liquidators who take action in the company's name against the bank, thereby allowing it to repay the judgment debt.

Conclusion

While Hong Kong banks fulfil a crucial gate-keeping role in the fight against remittance fraud and money laundering, and can attract criminal and regulatory sanctions for failure to discharge their obligations, it will often be difficult for fraud victims to bring a civil claim for damages against the banks for failing to comply with their duties.

Nevertheless, depending on the facts, there may be circumstances in which the banks can be held to account for their role in facilitating email frauds via a liquidators claim for a breach of the Quincecare duty. It is also worth noting that claims brought by liquidators may in appropriate circumstances be financed through third party funding.

E-Signatures

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E-Signatures

It has been increasingly common for parties to use e-signatures (or electronic signatures) such that documents can be signed electronically on practically any device, from almost anywhere, at any time. Electronic signatures are also getting popular in Hong Kong, particularly in connection with online transactions.

The principal legislation regulating electronic signatures in Hong Kong is the Electronic Transactions Ordinance (Chapter 553 of the Laws of Hong Kong) (the ***ETO***), which was enacted in January 2000 and updated in June 2004. The ETO provides the legal framework for, among other things, the recognition of electronic signatures, giving them the same legal status as wet-ink signatures.

The ETO recognises two types of e-signatures, namely electronic signatures and digital signatures.

Electronic signature under the ETO

Under the ETO, "*electronic signature*" means any letters, characters, numbers or other symbols in digital form attached to or logically associated with an electronic record, and executed or adopted for the purpose of authenticating or approving the electronic record. It is a broad term referring to any electronic process that indicates acceptance of an agreement, a document or a record.

Examples of electronic signature would be a typed name at the bottom of an email or a signature written by a stylus or finger on a tablet.

For transactions not involving government entities, any form of electronic signature can meet the requirements under the ETO so long as it is reliable, appropriate and agreed by the recipient of the signature:

- *reliable* - the signatory shall use a method to attach the electronic signature to or logically associate the electronic signature with an electronic record for the purpose of identifying himself/herself and indicating his/her authentication or approval of the information contained in the document in the form of the electronic record;
- *appropriate* - having regard to all the relevant circumstances, the method used is reliable, and is appropriate, for the purpose for which the information contained in the document is communicated; and
- *agreed* - the recipient must consent to the use of the signing method by the signatory.

Digital signature under the ETO

A digital signature is one specific type of e-signature. Under the ETO, a "*digital signature*" is an electronic signature generated by using "an asymmetric cryptosystem and a hash function" (both terms are defined in the ETO). In simpler term, it is an electronic signature encrypted by a set of algorithms whereby the identity of the signer can be authenticated.

For transactions involving government entities, a digital signature can meet the requirements under the ETO if the digital signature is:

- supported by a recognised digital certificate issued by a recognised certification authority;
- generated within the validity of that certificate; and
- used in accordance with the terms of that certificate.

Currently, there are two recognised certification authorities in Hong Kong, namely the Hongkong Post Certification Authority and Digi-Sign Certification Services Limited.

The Hongkong Post Certification Authority is the public recognised certificate authority in Hong Kong which issues recognised digital certificates under the brand name of "e-Cert", for personal and organisational use, whereas Digi-Sign Certification Services Limited is a commercial recognised certification authority which issues digital certificates with the brand name of "ID-Cert" for both individuals and organisations.

Where e-signatures cannot be used

Schedule 1 to the ETO sets out certain documents which shall require wet-ink signatures and cannot be signed electronically or digitally. They include:

- wills, codicils or any other testamentary documents;
- documents concerning a trust (other than resulting, implied or constructive trusts);
- powers of attorney;

- oaths and affidavits;
- statutory declarations;
- any instrument which is required to be stamped or endorsed under the Stamp Duty Ordinance (Cap. 117) other than a contract note to which an agreement under section 5A of that Ordinance relates;
- any deed, conveyance or other document or instrument in writing, judgments, and lis pendens referred to in the Land Registration Ordinance (Cap. 128) by which any parcels of ground tenements or premises in Hong Kong may be affected;
- any assignment, mortgage or legal charge within the meaning of the Conveyancing and Property Ordinance (Cap. 219) or any other contract relating to or effecting the disposition of immovable property or an interest in immovable property;
- a document effecting a floating charge referred to in section 2A of the Land Registration Ordinance (Cap. 128); and
- negotiable instruments (excluding cheques that bear the words "not negotiable").

The ETO also excludes the application of e-signatures to any proceedings set out in Schedule 2 to the ETO (including proceedings before the Court of Final Appeal, the Court of Appeal and the Court of First Instance, the District Court and the magistrates), unless any rule of law relating to those proceedings provides otherwise (the Court Proceedings (Electronic Technology) Bill, which would facilitate electronic filings in court proceedings, was passed on 17 July 2020, however, no information is yet available as to when it will come into force).

Practical considerations

Although e-signatures are convenient and generally valid and enforceable in Hong Kong, they are not risk-free. Set out below are a few issues which should be considered before using e-signatures:

- Always check whether there is any exceptions or restrictions in using e-signatures under the ETO, in particular whether the documents are those set out in Schedule 1 to the ETO.
- There may be other specific requirements for e-signatures in other jurisdictions.
- E-signatures should be avoided where any documents need to be registered or filed with government authorities or regulators that require wet ink signatures or where the documents need to be notarised.
- Where a deed is to be executed by a company incorporated in Hong Kong, a "wet ink" execution is recommended. Although under the Companies Ordinance (Cap. 622 of the Laws of Hong Kong), a company incorporated in Hong Kong is permitted to execute a deed by having it signed on behalf of the company by two directors or one director and the company secretary (or one director where it is a sole director company) and it appears that the signatures could be in electronic form so long as the requirements in the ETO are satisfied, the position remains untested and unclear in Hong Kong.
- Signing documents electronically via unsecured WiFi / public networks in cafeterias, shopping malls or other public places should be avoided. To the extent possible, VPN or secured and trustworthy WiFi / networks should be used.
- Technology is rapidly developing and changing, no medium for data storage will last forever. Regular review of the appropriate data storage medium is recommended before any data storage technology becomes obsolete. After a document is electronically executed, taking appropriate measures to retain and protect electronic record including keeping hard copy(ies) and backup copies of the document is recommended.

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仲裁条款对清盘程序的法律效力一直备受争议，而且在香港的案例中仍未有定论。一方面，有意见认为在标的合同受仲裁条款约束的情况下，法院应尊重当事人的自主权而驳回任何清盘呈请（即下文所述的 *Salford-Lasmos* 案方针）。另一方面，有意见认为法院应沿用传统的方针，即不论相关协议是否有仲裁协议，法庭应审视债务人有否就涉案债项提出基于实质理由的真诚争议。

原讼法庭最近在 *Re Asia Master Logistics Ltd* [2020] 2 HKLRD 423 一案中，详细分析了香港与其他普通法地区的法律下不同的立场，并对于如何解说各立场提供见解。

Re Asia Master Logistics 一案的案情相对直接。债权人基于其与债务人先前订立的租船合同下未偿还的债务向法院提出清盘呈请。债务人没有争议有关债务，但提出了反申索，指债权人违反了租船合同，并欲以租船合同载有仲裁条款来反对清盘呈请。

高等法院王鸣峰暂委法官裁定该债务表面上没有争议，而债务人的反申索只是空洞的指控。就租船合同内仲裁条款的效力而言，法院认为即使采纳 *Salford-Lasmos* 案方针，由于债务人并无采取任何行动展开仲裁，所以债务人未能证明已满足 *Salford-Lasmos* 案方针下的三个要求，法院亦无论如何应发出清盘令。

传统的方针

若果一家债务人公司未能偿还法定偿债书中所索偿的债务，债权人有权提出呈请，要求法庭颁令将债务人清盘。如果债务人能够就该债项证明已方有一个基于实质理由的真诚争议，其可向法院提出撤销或搁置该清盘呈请。根据传统的方针，仲裁条款并不减免债务人在提出撤销或搁置清盘呈请时，须证明已方有基于实质理由的真诚争议的要求。

采纳上述方针的案例背后的主要理由似乎是，债权人作出清盘程序的法定权利不应受到合同的束缚。不过，有意见认为传统的方针削弱当事人自愿订立合同的自由及与《仲裁条例》下各方有自主权背道而驰。这引申了英国上诉法院在 *Salford Estates (No 2) Ltd v Altomart Ltd (No 2)* [2015] Ch 589 一案中偏离传统的方针，其原则被香港高等法院在 *Re Southwest Pacific Bauxite (HK) Ltd* [2018] 2 HKLRD 449 一案中跟随（即「*Salford-Lasmos* 案方针」）。

Salford-Lasmos 案方针

根据 *Salford-Lasmos* 案方针，债务人提出撤销或搁置清盘呈请时，不需证明其对债项有基于实质理由的真诚争议。除了在特殊情况呈请应被搁置外，只要符合以下三个要求，法庭应当撤销破产清盘呈请：

(i) 债务人争议有关债项；

(ii) 债项据之而提出的合约载有仲裁条款，其涵盖任何与呈请债项有关的争议；及

(iii) 债务人根据仲裁条款的规定，采取行动展开合约规定的争议解决程序并就此作出誓章。

然而，在 *But Ka Chon v Interactive Brokers LLC* [2019] 4 HKLRD 85 案中，上诉法庭以附带意见的形式，表示对 *Salford-Lasmos* 案方针有所保留。其中，关淑馨副庭长 (a)质疑相当程度地削弱债权人提出清盘呈请的法定权利的做法是否恰当，及 (b) 质疑当法庭认为债务没有基于实质理由的真诚争议时，应否一概撤销或搁置清盘呈请。

有见及此，香港法庭将来会否跟随 *Salford-Lasmos* 案方针仍然有待分晓。在香港上级法院给予进一步指引前，希望搁置清盘呈请的债务人将仍然会继续依赖 *Salford-Lasmos* 案方针，因其搁置清盘程序的门槛似乎较低。

要强调的是，为了满足上述 *Salford-Lasmos* 案方针的第 (iii) 项要求，债务人必须向债权人确切传达提请仲裁的意图。单纯试探对方是否愿意通过仲裁解决争议（例如在 *Re Asia Master Logistics* 一案中债务人仅要求债权人的律师确认他们是否获得其指示接受仲裁通知书的送达）并不会被视为已有效展开仲裁程序。债务人必须遵从仲裁条款的规定采取行动启动合同内所规定的争议解决程序。

法院应如何在自主权与债权人申请将债务人清盘的法定权利之间取得平衡？

Re Asia Master Logistics 一案中，法庭透过分析提出清盘呈请这行为本身是否违反合约方同意以仲裁解决争议的协议，尝试解说债权人提出清盘呈请的法定权利与 *Salford-Lasmos* 案方针强调当事人的自主权之间似乎存在的矛盾。

法庭认为，当法庭裁定债权人是否具有法律地位申请将债务人清盘时，法庭并不是解决争议或就争议作出裁决。关乎呈请债项的争议只会在清盘人作出决定后才解决。由于仲裁协议仅要求其中一方提请仲裁以解决或裁定纠纷，而对清盘呈请的裁决不在仲裁协议范围之内，因此这不会侵犯当事人的自主权（见 *Re Asia Master Logistics* 判词第 71 至 77 段）。

在清盘程序中，法庭的角色单单是考虑该案的预期胜算，并厘定债务人是否已证明有需要进行审讯的辩解。法庭在此阶段不需要判断哪一方的理据更可能正确。在债权人提交债权证明表给清盘人时，关乎呈请债项的争议才会被裁定或被解决。在这情况下，清算人以类似司法的身份行事，并且不一定因为法院已裁定债权人具有法律地位提出清盘呈请而必然需要接受债权证明表。

此外，有见及债权人提交清盘呈请书的行为可能间接施加相当压力使债务人尽快偿还债务而放弃仲裁，法庭认为透过以下的方式能够减低债务人可能滥用诉讼程序的风险：(i) 法庭有权命令债权人按弥偿基准支付债务人的清盘呈请讼费，及 (ii) 债务人有权就对方恶意提出的清盘呈请申索损害赔偿。

总括而言，法庭认为，由于法庭于裁定应否发出清盘令时不会解决或裁定需提请仲裁的争议，传统的方针不会损害当事人的自主权。另一方面，*Salford-Lasmos* 案方针对法院在债务人即使能证明其就债务有基于实质理由的真诚争议的情况下是否仍然作出清盘令的灵活酌情权存在对立。

现时的法律原则

法庭因认为传统的方针比 *Salford-Lasmos* 案方针更为可取，总结现时的法律该如下：-

(1) 首先，不论债务是否源自一份载有仲裁条款的合约，希望争议债务是否存在的债务人，须证明有基于实质理由的真诚争议。

(2) 其次，仲裁协议的存在应被视为与法院行使酌情权无关。

(3) 第三，仲裁程序的展开，或许可是相关证据，但单凭这一点并不足以证明基于实质理由的真诚争议的存在。

(4) 最后，债权人须承受需要按弥偿基准支付债务人的讼费或被控恶意检控的风险。

总结

在上级法院给予进一步的指引之前，债务人不应期望仅以开展仲裁作为反对清盘呈请的必然理由。当债务人对债项没有基于实质理由的真诚争议，该债务人仍会面临就法院颁布将其清盘命令的风险。

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引言

在本所于 2020 年 6 月发表的通讯中，本所的律师 Pryderi Diebschlag 介紹了不法分子透过在香港成立的公司操纵香港银行账户进行电邮诈骗这一严重的问题。本文将探讨银行在这类诈骗中扮演的角色及其对受害人的潜在责任。

在本行诉讼部门近年来处理的大部分电邮诈骗案中，骗徒一般将诈骗所得的款项汇入其在香港的银行账户。这些“第一层”的收款账户通常是新成立的香港公司在香港大型商业银行开立的银行账户。这类香港公司一般只有一名董事及股东，由中国内地居民担任。

据受骗银行披露的文件显示（该等披露一般是依据法庭命令而作出），上述的第一层收款账户通常并不活跃，除了骗案所涉的交易外，只有小额款项被存入该等账户中。由此可见，在大多数情况下，上述公司及银行账户纯粹是为了行骗为目的而设立。

在收到受害人的款项后，骗徒会以洗钱为目的将该款项转给“第二层”或“第三层”的收款人。该等收款人通常为每天都处理大量款额的无牌货币兑换商或汇款代理商。不管是哪种情况，此等案情及客户的背景都理应引起银行负责监督或核查客户关系的工作人员的怀疑。

正如我们在 6 月发表的通讯中所述，电邮诈骗的受害人主要通过以所有权追踪（proprietary tracing）的方式追回被骗的款项，即跟踪并尝试向第一层、第二层甚至第三层的收款人追回赃款。然而，由于电子转账的速度很快，即使受害人及时聘请律师并迅速采取行动，也可能来不及跟踪及追回财产。在这种情况下，为弥补损失，受害人肯定会考虑可否向其他涉事方提起诉讼。尽管接收赃款的公司及其控制人会因谋划诈骗及/或处置诈骗所得而负上法律责任，但要在中国内地起诉他们十分困难，况且他们可能只是操纵电邮诈骗幕后主谋的“幌子”。

因此，受害人可以考虑向涉案的香港银行提起申索。虽然这类申索并非直截了当，但在某些情况下，银行确实负有责任，而如果受害人损失的金额巨大，受害人很可能会向银行索赔。

银行在《反洗钱条例》及《有组织及严重罪行条例》下的责任

银行在收到付款指示时“察觉”有诈骗活动但仍办理付款的，可能违反其在《打击洗钱及恐怖分子资金筹集条例》（第 615 章）（以下简称“**《反洗钱条例》**”）及《有组织及严重罪行条例》（第 455 章）下的责任而被检控。

《有组织及严重罪行条例》第 25 条规定，如有人明知或有合理理由相信任何财产为可公诉之犯罪所得之收益而处理该等财产，即属犯罪。根据该条例第 2 条就“处理”作出的定义，该罪行不仅包括执行付款指示的行为，还包括收受、持有以及在同一银行的不同账户间转移款项的行为。该条例的第 25A 条还规定，任何人知道或怀疑任何财产为犯罪所得（可公诉之罪行）的，须将此情况告知相关的“获授权人”（authorized officer）。另外，《反洗钱条例》规定，银行及其他受监管的金融机构有责任进行客户尽职调查并对客户资料进行存档以防止客户利用该等机构进行洗钱或恐怖分子资金筹集活动。

香港金融管理局（以下简称“**金管局**”）强调银行应充分了解客户的业务，确保能有效监察并发现欺诈行为。金管局在 2018 年 5 月刊发的《交易筛查、交易监察及可疑交易举报指引文件》中明确指出：

“针对公司账户，除非[认可机构(Authorised Institutions)]了解公司客户的商业目的及业务性质并警惕文件不完备或不准确所隐藏的风险，否则可能无法评估[洗钱/恐怖分子资金筹集活动]的风险或采取适当的防范措施。公司账户有时会被不法分子用来接收跨境诈骗所得（例如新设立的公司，公司的银行账户本来并不活跃，但其后有多笔款项进出，资金来源及去向看起来与客户的业务毫无关系）。”

香港并无成文法赋予受害人以银行因其对洗钱行为的监察或防范措施不足而促成欺诈为由向银行索赔的权利。因此，我们在下文探讨在普通法下提起该等索偿的可能。

对银行提起民事侵权诉讼

法院曾经探讨过诈骗案的第三方受害人可否以银行应当知悉其客户参与诈骗为由，向银行提起失责之诉。在 **Abou-Rahmah v Abacha** [2005] EWHC 2662 一案中，被告银行收到申索人的指示，让其向一家名为“Trust International”的客户支付两笔款项，然而，银行却将该等款项支付给一家名为“Trusty International”的公司账户，而“Trusty International”正是为骗徒所控制。申索人遂向英国高等法院申请追讨已支付的款项，并指出被告银行将款项支付给除付款指示所指定的收款方以外的第三方的行为属于失责行为。

法庭在该案中采纳了 **Caparo Industries v Dickman** [1990] 2 AC 605 案中的法律原则，判定收款银行就以下事项对并非为其客户的付款人不负有谨慎责任（duty of care）：（1）仅将其

收到的款项支付予付款指示中指定的收款人；或（2）向付款人就付款指示所载的收款人之身份信息的差异作出澄清。

尽管香港法庭尚未考虑过上述案例，但香港法庭采纳了 **Caparo** 案的三重法律原则（如 **Luen Hing Fat Coating & Finishing Factory Ltd v Waan Chuen Ming** (2011) 14 HKCFAR 14 案）。因此 **Abou-Rahmah v Abacha** 一案很可能会获得香港法庭认可，而使付款人无法通过直接向银行提起民事侵权诉讼的方式获得损害赔偿。

不当得利（Unjust Enrichment）

我们可从英国高等法院在 **Jeremy Stone v National Westminster Bank** [2013] EWHC 208 案中的判决一窥法官在银行作为被告的索赔中会如何考虑银行有否遵从反洗钱法律的情况。在该案中，中了庞氏骗局圈套的投资者向被告 NatWest 银行索赔。其中的一个争论点为 NatWest 是否应该因不当得利而负有退还已支付款项的法律责任。申索人称其之所以向骗徒在 NatWest 的账户付款是因为申索人误信骗徒的业务是真实的。

申索人的另一论点为 NatWest 不能以其真诚改变立场（good faith change of position）作为抗辩，因为 NatWest 违反了其反洗钱的责任，也就是说：（1）NatWest 没有按照英国《2002 年犯罪收益法》第 330 条的规定报告犯罪活动，及（2）NatWest 没有按照英国《2007 年反洗钱规例》第 8(1)条的规定监察其与骗徒客户的关系。

然而，以上的两个论点均被法庭驳回，理由如下：

- NatWest 没有违反英国《2002 年犯罪收益法》第 330 条的规定，因为 NatWest 的客户关系经理并没怀疑有洗钱活动，所以没有报告的责任。无论如何，即使 NatWest 违反了第 330 条，“该行为也仅构成监管性失当的严格责任，其严重程度不足以阻止 NatWest 以真诚改变立场作为抗辩”；及

- NatWest 没有违反英国《2007 年反洗钱规例》第 8(1)条的规定，因为 NatWest 的自动反洗钱监察系统足以满足英国反洗钱法律的监察要求。同样地，即使有违反也只是“技术性违规”，并不能阻止 NatWest 援引抗辩。

因此，从上述法官在判决时所作的附带意见可见，欺诈案件的受害人一般很难以违反反洗钱法律为依据向银行提起民事索偿之诉。要注意的是在上述的案件中，原告的诉由是不当得利，且原告承认其无法向银行提起失责之诉。

Quincecare 责任

英国最高法院最近在其对 **Singularis vs Daiwa Capital Markets Limited** [2019] UKSC 50 一案的判决中考虑了银行的 “Quincecare” 责任。援引“Quincecare” 责任为理据或许对电邮诈骗案的受害人有很大帮助，而该案对 Daiwa 银行所带来的严重后果，也可能会促使银行加强风险管理措施以避免其促使电邮诈骗及一般的银行诈骗的发生。

Quincecare 责任是在 **Barclays Bank v Quincecare** [1992] 4 All ER 363 一案中诞生的。在该案中，法庭判定由于银行与其客户之间的关系为代理人与委托人的关系，银行对其客户负有受信责任（fiduciary duty）。因此，银行在执行客户指示时对客户负有合同法及民事侵权法下的潜在责任，即以合理的技能和谨慎行事。Quincecare 责任的其中一环是一旦银行对客户的指示“有所怀疑”，即银行有合理的理由（但不一定是证据）相信该指示是为了盗用款项而作出，就不该执行该客户的指示。而衡量银行是否存在失责，应以“一家普通谨慎的银行可能作出的行为”为客观标准来衡量。根据 Barclays 案的案情，法庭判定 Barclays 无须承担责任，因为相关的付款行为或以往的交易记录均无异常，Barclays 不会产生任何合理怀疑。

在 **Singularis** 一案中，Al Sanea 先生(其为一家公司的唯一股东及董事会主席)为了规避向债权人付款，指示其银行将款项从公司的银行账户转至其他账户。当时，该公司其他一些在 Daiwa 银行的账户已被冻结。Singularis 的债权人将 Singularis 清盘，清盘人根据 Quincecare 一案判定的法律原则对 Daiwa 银行提起诉讼，以 Daiwa 银行执行该公司控制人的付款指示实属失责及违约行为为由进行索偿。

Daiwa 银行缓引 **Stone & Rolls v Moore Stephens** [2009] UKHL 39 一案辩称，由于 Singularis 的董事会主席就是 Singularis 的实际控制人（即该公司为一家“一人公司”），该实际控制人所行使诈骗必然可归咎于 Singularis，所以 Singularis 对 Daiwa 银行的申索因 Singularis 本身的不法行为而不能成立。

英国最高法院认同 Daiwa 银行 “毫无争议”地违反了 Quincecare 的责任。尤其是，英国最高法院维持下级法院的判决，即反对公司的实际控制人的诈骗一定归咎于该公司的论点。英国最法高院认为 **Singularis** 案与 **Stone & Rolls** 案的案情不同，因为 Singularis 有其他董事（因此并非一家“一人公司”），除此以外，英国最高法院判定，如在本案中把 Al Sanea 先生的诈骗归咎于 Singularis，那么“[Quincecare]责任的法律原则就会在最需要显现其价值的案件中变得毫无意义”。换言之，如果 Al Sanea 先生的个人的行为

使得 Daiwa 银行的失责变得无关紧要，那么，所谓的 Quincecare 责任就不复存在，或即使违反了 Quincecare 责任也不会造成任何后果。

此外，英国最高法院指出，如果一家银行（如同在本案中一样）察觉有可疑之处，就应停止付款，直至其作出合理的询问且收到合理的答复后，确信付款是适当的，方可进行。

Quincecare 责任的法律原则及其在 Singularis 一案中的适用情形也被香港法庭所遵循。香港原讼法庭最近在 **PT Tugu Pratama Indonesia v Citibank NA** [2018] 5 HKLRD 277 一案中，考虑了花旗银行（被告银行）对原告所负之谨慎责任的程度（在该案中，原告公司的董事向该公司实施了诈骗计划）。援引 Singularis 案为据，法庭判定一家诚实及合理行事的银行见到“警示信息”（"red flags"）便会作进一步询问，而花旗银行的不作为违反了其对原告所负的谨慎责任。

在电邮诈骗案的范畴，上述案例均表明，受害人可以向第一层收款银行追回该银行因受骗而汇入第二层收款银行的款项，甚至是以现金方式提取而无从追踪的款项。如骗徒进行的交易有可疑或不寻常之处，但银行没有作合理的查询，银行可能已经违反了 Quincecare 责任并要第一层收款账户的开户公司赔偿其损失的款项。受害人也许能向第二层收款人（即透过香港银行账户提供非法金钱服务的第二层收款人）获得同样的济助。

因此，若受害人向第一层或第二层收款人起诉并获得胜诉判决却发现该等收款人无力清偿，受害人仍可通过委任临时清盘人以公司的名义对银行起诉，而让银行偿还经法院裁定的债项。

总结

尽管香港银行在反诈骗性汇款及反洗钱的事项上扮演了重要的把关角色，而且可能因为没有履行其责任而受到刑事及监管上的惩处，对诈骗案的受害人而言，以银行没有履行其责任为由向其提起民事索偿并非易事。

尽管如此，视乎案情（即清盘人以银行违反 Quincecare 责任为由向其起诉），银行可能因为其促成了电邮诈骗案的发生而须承担责任。值得注意的是，在适当的情况下，清盘人可以获得第三方的资助以提起申索。

电子签名

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当事方采用电子签名愈来愈普遍，使得文件几乎可以在任何地点、任何时间及任何设备上通过电子方式签署。电子签名在香港也日趋流行，尤其是有关在线交易。

在香港，管辖电子签名的主要法例是《电子交易条例》（香港法例第 553 章）（以下简称**"电子交易条例"**），电子交易条例在 2000 年 1 月实施并在 2004 年 6 月更新。电子交易条例为承认电子签名等提供一法律框架，赋予电子签名与手写签名同等的法律地位。

电子交易条例承认两种的电子签名，即电子签署和数码签署。

电子交易条例下的电子签署

在电子交易条例下，"电子签署"指与电子纪录相连的或在逻辑上相联的数码形式的任何字母、字样、数目字或其他符号，而该等字母、字样、数目字或其他符号是为认证或承认该纪录的目的而签立或采用的。电子签署一词的意思广泛，指任何表示接受一项协议、一份文件或一份记录的电子过程。

电子签署的例子有电子邮件底部的以打字形式键入的姓名或用输写笔或手指在平板电脑上书写的签名。

对于不涉及政府单位的交易，只要该电子签署是可靠的及适当的，并且经接受签名者的同意，任何形式的电子签署都可以满足电子交易条例的要求：

- 可靠 - 签字人使用某方法使该电子签署与某电子纪录相连或在逻辑上相联，以识别自己和显示自己认证或承认包含于以该电子纪录形式存在的该文件内的信息；
- 适当 - 就传达包含于该文件内的信息的目的而言，在顾及所有有关情况下，所使用的该方法是可靠的和适当的；以及
- 同意 - 接受签名者必须同意签字人采用该签名方法。

电子交易条例下的数码签署

数码签署是一种特殊的电子签署。在电子交易条例下下，"数码签署"是通过"非对称密码系统和杂凑函数"（上述两词在电子交易条例下都有定义）产生的一个电子签署。简单地说，它是用一组算法加密并可以据此验证签名人身份的一个电子签署。

对于涉及政府单位的交易，数码签署可以满足电子交易条例的要求，如果一个数码签署符合以下各项：

- 有由认可核证机关发出的认可数码证书证明该数码签署；
- 在该证书有效期内产生的；及
- 按照该证书的条款使用的。

目前，香港有两个认可核证机关，分别为香港邮政核证机关和电子核证服务有限公司。

香港邮政核证机关是香港的认可公共核证机关，其发出名为"e-Cert"的认可数码证书，供个人及机构使用，电子核证服务有限公司则是一家商业认可核证机构，其为个人及机构客户发出名为"ID-Cert"的数码证书。

不能采用电子签署的情形

电子交易条例的附表 1 列明某些文件不能以电子或数码方式签署而必须采用手写签署，当中包括：

- 遗嘱、遗嘱更改附件或任何其他遗嘱性质的文书；
- 有关信托的文件（归复信托、默示信托或法律构定信托除外）；
- 授权书；
- 誓言及誓章；
- 法定声明；
- 根据《印花税条例》（第 117 章）须加盖印花或加以签注的文书，该条例第 5A 条所指的协议所关乎的成交单据除外；
- 《土地注册条例》(第 128 章) 提述的会影响香港的任何一幅地、物业单位或处所的契据、转易契、其他书面形式的文件或文书、判决及待决案件；
- 《物业转易及财产条例》（第 129 章）所指的任何转让、转让契、按揭或法定押记或任何其他关乎不动产或不动产权益的处置的合约，或任何其他达成该等处置的合约；
- 《土地注册条例》（第 128 章）第 2A 条提述的达成浮动抵押的文件；以及
- 可流转票据（但不包括注有"not negotiable"字样的支票）。

电子交易条例亦将电子签署的应用排除于该条例的附表 2 所列的任何法律程序中（包括在终审法院、上诉法庭及原讼法庭、区域法院及裁判官席前进行的法律程序），除非与这些程序有关的任何法律规则另有规定（旨在促进法院程序中以电子方式存档的《法院程序（电子科技）条例草案》在 2020 年 7 月 17 日通过，但目前尚无关于该条例草案何时生效的消息）。

实务上的考虑

尽管电子签名使用方便且在香港通常为有效的和可执行的，但电子签名并非毫无风险。以下是在采用电子签名前应当考虑的几个事项：

- 采用电子交易条例下的电子签署时，必须检查是否有任何例外或限制，尤其是文件是否为该条例的附表 1 中列明的文件。
- 在其他司法管辖区内，电子签名者可能有其他具体的要求。
- 如果任何文件需要向要求使用“手写”签署的政府当局或监管机构登记或备案，或者文件需要公证，则应避免采用电子签名。
- 如果一份契据是由一家在香港成立的公司来签署的，我们建议采用“手写”签署。尽管根据《公司条例》（香港法例第 622 章），在香港成立的公司可通过由公司的两名董事或一名董事和公司秘书（或者一名董事，如果该公司只得一名董事）代表公司签署契据，而且似乎只要签名符合电子交易条例的要求，就可以电子形式签署，但是上述的说法在香港仍未经考验，尚属不明朗的。
- 应避免在餐厅、购物中心或其他公共场所通过不安全的无线网络/公共网络以电子方式签署文件。应尽可能地使用虚拟私人网络或安全可靠的无线网络/网络系统。
- 科技的发展一日千里，且日新月异，任何储存资料的媒介都有被取代的一天。在任何储存资料的技术过时前，应对储存资料之适当的媒介作定期的检讨。在文件以电子形式签署后，我们建议采取适当的措施，包括以纸张形式保留文件的副本和保留备份副本等方式保留和保护电子记录。

铭德及有关办事处：

阿德莱德 奥克兰 北京 布里斯班 堪培拉 达尔文 黄金海岸 香港 伦敦 墨尔本 珀斯 上海 悉尼 乌兰巴托 惠灵顿