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DENIS CHANG'S CHAMBERS

DCC COMMERCIAL DIGEST

Issue No. 6

By **Anson Wong Yu Yat** and **Tiffany Yau**

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Authors

Anson Wong Yu Yat

Barrister at Denis Chang's Chambers
Call: 2015 (HK)

Anson has appeared in more than 150 court judgments (including 18 cases in the Court of Final Appeal with 13 substantive appeals) over the mere span of 10 years' call, reflecting the exceptional wealth of experience and exposure in civil litigation for his seniority. He has been ranked by *Legal 500* and *Chambers and Partners* since 2022 and 2023 respectively. In the latest edition of *Legal 500 Asia-Pacific* 2025, he is recognised as a Leading Junior in both Commercial Disputes and Administrative and Public Law.

Anson has developed a broad civil practice with a growing practice in insolvency and bankruptcy matters in recent years. He is experienced in handling complex questions of law, including those of great general or public importance which reached the Court of Final Appeal. For example, he has recently appeared in (among others) three civil appeals before the Court of Final Appeal dealing with important questions concerning insolvency matters, land law and equity, service out of jurisdiction and statutory interpretation.

View Anson's profile

Tiffany Yau

Barrister at Denis Chang's Chambers
Call: 2021 (HK)

Tiffany is a Charles Ching Scholar. She joined Chambers in 2021 after completing her pupillage with Mr Chan Chi Hung SC, Mr Clement Lau, Mr Earl Deng, Mr Tim Parker (now Mr Tim Parker SC) and Mr Justin Ho.

Tiffany obtained her LLB from the Chinese University of Hong Kong with First Class Honours. She went on to obtain her BCL from the University of Oxford with Merit overall and Distinction in Commercial Remedies.

Before being called to the Bar, Tiffany was a Judicial Assistant to the Hong Kong Court of Final Appeal from 2019 to 2020.

Tiffany is developing a broad practice and accepts instructions in all areas of Chambers' work. She is fluent in English, Cantonese and Mandarin.

View Tiffany's profile

Case 1

Clarification on principles on allegations of fraud and unlawful means conspiracy

Real Estate and Finance Fund (In Liquidation) & Anor v Sun Cheuk Pak Alan & Ors [2025] HKCFI 2478

Date of Judgment: 23 June 2025
Coram: Mr. Recorder Maurellet SC

This case (where **Ms Tiffany Yau** of Denis Chang's Chambers acted for the 2nd, 9th, 12th, 13th, 15th and 16th Defendants) involves a 19-day trial in respect of liquidators' recovery action for over HK$1 billion against 20 defendants for unlawful means conspiracy, breach of fiduciary duties, and dishonest assistance. In its 222-page Judgment, the Court clarified key principles concerning allegations of fraud and unlawful means conspiracy.

First, the Court explained that the guidance articulated by Lord Nicholls in ***Re H*** [1996] AC 563, i.e. that the more serious the allegation, the less likely it is to be true, and so the more persuasive the evidence must be before the allegation is proved on balance of probabilities, was not a suggestion that allegations of fraud attract a heightened or higher standard of proof. Rather, what was required was essentially a contextual judgment where serious allegations must be tested against the surrounding context. Such allegations ought neither be dismissed because of their gravity, nor assumed to be improbable merely because they carry serious consequences [121]-[134].

Second, in circumstances where the plaintiffs fail to prove dishonesty in any one transaction alleged within a unified conspiracy, that might not necessarily undermine the plaintiffs' broader claim of conspiracy. The Court drew an analogy where three individuals conspired to rob 2 different banks on 2 days. Even if the plaintiffs fail to prove the conspiracy regarding one bank but successfully demonstrate a conspiracy regarding the other, it would be incorrect to dismiss the conspiracy claim entirely, given that the failure of proof with respect to the first bank does not logically negate proof of conspiracy with regard to the second, and in any event, the defendants are on clear notice that they must defend the allegations of robberies on both days. In other words, disaggregating the conspiracy into multiple, day-specific schemes would amount to a purely technical rearrangement which did not add clarity or fairness [419]-[426].

Third, on intention to injure (one of the constituent elements of unlawful means conspiracy), the Court clarified that the test for blind-eye knowledge did not extend to the unlawfulness of the conduct, and that it suffices that the defendant knew or suspected that the conduct would injure the plaintiff's interests. Unlike the tort of inducing breach of contract, in the tort of conspiracy, the wrong is the concerned resolve to injure, and a lawful means conspiracy remains actionable even if every individual act is otherwise innocent. Requiring knowledge of unlawfulness in those circumstances would import into the tort a *mens rea* foreign to its purpose, and reward conspirators who convince themselves their methods were lawful [455]-[461].

Fourth, the criminal offence of conspiracy to defraud can serve as an "unlawful means" within the tort of unlawful means conspiracy even though it "replicates" the civil conspiracy. This is because on the facts so pleaded, the conduct constituting the criminal offence was intentionally deployed to inflict harm on the plaintiffs. The question as to whether the criminal conspiracy was analytically distinct from the pleaded civil conspiracy is simply immaterial [471]-[482].

Case 2

Court of Appeal addresses second threshold requirement for winding up foreign company and allows appeal against winding-up order

Re Up Energy Development Group Ltd [2025] HKCA 555

Date of Judgment: 16 June2025
Coram: Hon Chu VP, Barma JA and G Lam JA

This is an appeal by an opposing creditor (represented by **Mr Anson Wong Yu Yat** of Denis Chang's Chambers) against a winding-up order made by Linda Chan J against Up Energy Development Group Ltd, a company incorporated in Bermuda and previously listed on the Main Board of The Stock Exchange of Hong Kong Ltd. Allowing the appeal, Barma JA (giving the Judgment of the Court of Appeal) addressed the second threshold requirement for the Hong Kong court to exercise its power to wind up a foreign company – namely, whether there is a reasonable possibility that the winding-up order would benefit those applying for it.

Background

Up Energy Development Group Ltd ("Company") was incorporated in Bermuda and established a principal place of business in Hong Kong, with its shares listed on the Main Board of The Stock Exchange of Hong Kong Ltd ("HKEx"). The Listing Committee of HKEx decided on 6 April 2020 to delist the Company. That decision was upheld by the Listing (Review) Committee and finally by the Listing Appeals Committee on 3 May 2021.

HEC Securities Ltd (subsequently renamed Seekers Markets Ltd) ("Petitioner"), which was owed HK$230 million under convertible notes issued by the Company, presented a winding-up petition ("Petition") against the Company in Hong Kong on the ground of insolvency. Another creditor, Credit Suisse AG, Singapore Branch ("CS"), presented a winding-up petition against the Company in the Supreme Court of Bermuda ("Bermuda court"). CS also filed a notice of intention to appear and support the Petition in the winding-up proceedings in Hong Kong.

The Petition

Shortly before the hearing of the Petition listed on 10 January 2022, the Company and the Petitioner filed a consent summons seeking the dismissal of the Petition. On 7 January 2022 Linda Chan J indicated by letter to the parties that she was not minded to dismiss the Petition and took the view that a winding-up order should be made "in light of the insolvency state of the Company and the absence of a viable scheme to compromise the indebtedness". The Petition was adjourned twice for the parties to address several questions raised by the judge. Meanwhile, on 11 March 2022, the Bermuda court made an order to wind up the Company.

The Petition was finally heard on 1 April 2022. The position of the Petitioner was no longer that the Petition should be dismissed as sought in the consent summons of January 2022, but that a winding-up order should be made in Hong Kong, ancillary to the Bermuda liquidation. It was submitted that there were material advantages to the liquidators (and hence the creditors) for an ancillary winding up to take place in Hong Kong as opposed to those liquidators operating under a recognition order in Hong Kong. One of the opposing creditors, Integrated Capital (Asia) Limited ("Opposing Creditor") appeared at the hearing to oppose the Petition, on the principal ground that the second threshold requirement was not satisfied.

On 6 May 2022, Linda Chan J made a winding-up order against the Company, holding that the Petitioner had demonstrated that there was a reasonable possibility of benefit to the creditors if a winding-up order were to be made and had thus satisfied the second threshold requirement.

The Appeal

The Opposing Creditor's appeal is primarily based on the contention that the judge was wrong to conclude that the second threshold requirement for the winding up of a foreign company was satisfied.

In allowing the appeal, the Court of Appeal emphasised that in order to satisfy the second threshold requirement, the benefit has to be a real possibility, rather than a merely theoretical one. The Court accepted the Opposing Creditor's submission that if the availability of the "full suite of powers" under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32) will of itself give rise to a real possibility of benefit, then the second threshold requirement is entirely otiose as it will automatically be met in every case; and if it is said that the full statutory armoury of powers is sufficient to satisfy the second threshold requirement so long as there is a sufficient connection with Hong Kong (such as where the company is listed here), this will effectively mean that the second requirement is subsumed under the first.

In the Court's view:

1. the second threshold requirement is not satisfied by a petitioner simply saying there are greater powers available to a liquidator in Hong Kong if the company is wound up here as well;

2. it is not sufficient for a petitioner to say that he is owed a debt which is not paid and would like it to be recovered and would also like to find out why it has not been paid. Otherwise every arm's length creditor can satisfy the second threshold requirement in this way, which is not the law; and

3. there cannot be any presumption that the threshold requirements would be met in the case of a Hong Kong listed company.

The Court of Appeal's judgment provides useful guidance on the second threshold requirement for the Hong Kong court to exercise its power to wind up a foreign company. It is also a rare case in which a winding-up order made by the Court of First Instance is overturned on appeal.

Case 3

Strict compliance with asset disclosure orders in the insolvency context

China Evergrande Group v Hui Ka Yan & Ors [2025] HKCFI 2465

Date of Judgment: 10 June 2025
Coram: Hon Coleman J

This case arose from the liquidation of China Evergrande Group ("CEG") and focused on the scope and timing of asset disclosure obligations under a *Mareva*/freezing injunction. In short, asset disclosure must be provided as at the date the injunction originally made, regardless of subsequent extensions of time for compliance, which changes only the deadline for compliance but not the substantive obligation to disclose assets.

The 2nd Defendant ("Xia"), who was subject to *Mareva* injunction and ancillary asset disclosure order, failed to provide adequate disclosure in that he only disclosed his assets as at the date of the affirmation and not the date of the injunction order.

Coleman J held that asset disclosure must be provided as at the date the injunction originally made, regardless of subsequent extensions of time for compliance. The Court emphasised that (1) extensions of time changes only the deadline for compliance, not the substantive obligation to disclose assets as were frozen by and as at the date of the injunction order, and (2) the purpose of asset disclosure is to ensure that the injunction could be properly policed, and be effective and to prevent a vacuum of information between the date of order and date of disclosure.

This judgment reinforced strict compliance expectations for asset disclosure. In this case, Xia was met with an unless order to provide adequate disclosure within seven days or else he would be debarred from defending the action.

Case 4

Court of Final Appeal interprets "body corporate" and "issued share capital" in section 45 of Stamp Duty Ordinance

John Wiley & Sons UK2 LLP & Anor v The Collector of Stamp Revenue [2025] HKCFA 11

Date of Judgment: 16 June 2025
Coram: Chief Justice Cheung, Mr Justice Ribeiro PJ, Mr Justice Fok PJ, Mr Justice Lam PJ and Mr Justice Gummow NPJ

This appeal concerned the proper interpretation of section 45 of the Stamp Duty Ordinance (Cap 117) which exempts certain instruments from stamp duty, including instruments "to transfer a beneficial interest in Hong Kong stock, from one associated body corporate to another"; the criterion for association is expressed in terms of beneficial ownership of "not less than 90 percent of the issued share capital". The Court of Final Appeal considered whether a "body corporate" within the meaning of section 45 could include a limited liability partnership and whether such a partnership had "issued share capital" under the same provision.

Background

As part of a restructuring of the John Wiley & Sons group, John Wiley & Sons UK2 LLP ("Wiley LLP"), a UK-incorporated LLP, sold its entire shareholding in a Hong Kong subsidiary to Wiley International LLC ("Wiley LLC") which indirectly owned the whole of Wiley LLP through another intermediary limited liability partnership ("LLP").

Wiley LLP and Wiley LLC (collectively "Appellants") were assessed to pay stamp duty in the sum of HK$6,361,204 in respect of that transfer and applied to the Collector of Stamp Revenue ("Collector") for exemption under section 45 of the Stamp Duty Ordinance (Cap 117) ("SDO"). The Respondent refused to grant relief, on the basis that the Appellants were not "associated" with each other as Wiley LLP, as an LLP, did not have "issued share capital" which was at least 90% owned by Wiley LLC.

The Appellants appealed to the District Court which found in their favour, but an appeal by the Collector to the Court of Appeal was successful on grounds including that Wiley LLC did not have "share capital" within the meaning of section 45 of the SDO.

The Appellants appealed to the Court of Final Appeal ("CFA") arguing that (1) the expression "body corporate" in section 45 of the SDO "constitutes an open-ended class of foreign corporations, which does not expressly exclude LLPs" and (2) the expression "issued share capital" in section 45 of the SDO denotes a "taxonomic class" which includes features of an LLP which are "materially analogous" to "share capital".

Section 45 of the SDO

Tracing the legislative history of section 45 of the SDO, the CFA noted that when the predecessor to the modern provision was enacted in 1968, relief was limited to transfers between one "associated company" and another where both were "companies with limited liability". In 1981, the term "associated company" was

amended to “associated body corporate” following a similar change enacted in the United Kingdom.

However, as at both 1968 and 1981, the old Companies Ordinance (Cap 32) provided for three species of company, namely “companies limited by shares”, “companies limited by guarantee”, and “unlimited companies”. The latter two species of company could either have or not have a share capital. Section 3 of the old Companies Ordinance allowed an “existing company” to register as one of the three species of company.

On the other hand, the LLP is a business entity of recent appearance which postdates the enactment of section 45 of the SDO. Unlike Singapore which has enacted specific stamp duty relief for intra-group transfers involving LLPs, Hong Kong has not done so.

Given the legislative history, the CFA accepted the Collector’s submission that it was reasonable to infer that the legislature in 1981 intended to expand the scope of section 45 of the SDO on transfers of property from just between limited liability companies to all bodies corporate having a share capital.

Meaning of “issued share capital”

The CFA further accepted the Collector’s submission that “issued share capital” under section 45 of the SDO should be given its natural and ordinary meaning. The Appellants’ definition of “share capital” (as a “taxonomic class” looking to features of an LLP “materially analogous” to “share capital”) is vague and uncertain with no support in the historical context of section 45 of the SDO.

The CFA emphasised that the phrase “issued share capital” is to be read in the same way whether or not foreign corporations are involved. Whether section 45 of the SDO should be rectified to account for cases such as the present is a matter for the legislature.

Accordingly, the CFA unanimously dismisses the appeal.

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