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DCC COMMERCIAL DIGEST

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TABLE OF CONTENTS

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Abigail joined Chambers in 2019 after completing her pupillage with Mr. Graham Harris SC, Mr. Tim Kwok, Ms. Catherine Wong, Mr. Simon Wong and Mr. Jeffrey Tam.

Abigail is developing a broad civil and criminal practice. She has experience in areas such as family and matrimonial matters, public law, land, tort, personal injuries, employee compensation, commercial litigation, trusts, probate and contract.

Abigail has been instructed to appear in the Magistracies, the Lands Tribunal, District Court and High Court. She accepts instructions in all areas of work. She is fluent in English, Cantonese and Putonghua. She is capable of providing written submissions and conducting hearings in both English and Chinese.

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Ted Chan

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Ted has a broad civil and criminal practice. He has been regularly instructed to advise and/or handle probate, family and mental health cases. His experiences in handling cases with children and mental health dimensions also extend across different areas of law. Meanwhile, Ted continues to develop a wide range of practice areas including civil and commercial disputes.

Outside the Courtroom, Ted regularly mediates civil and matrimonial cases as a CEDR accredited mediator. He also frequently collaborates with family therapy and social work professionals in giving seminars on working with divorced families.

Ted is also a contributor to Atkins' Court Forms and the Hong Kong Encyclopaedia of Forms & Precedents in Family Law.

View Ted's profile

Case 1

Approach to considering whether leave is required to appeal against decision to grant leave for amendment of statement of claim, after statement of claim being struck out

TDC Capital Solution Ltd v Wong Sung King Dorothy [2025] HKCFI 4617

Date of Judgment: 2 October 2025
Coram: Deputy High Court Judge Nip SC in Chambers

After the Court struck out the Plaintiff's SOC, liberty was given for it to lodge and serve the draft ASOC. Subsequently, leave was granted to the Plaintiff to amend its SOC as per the draft ASOC with certain exceptions ("the Amendment Decision").

The Defendants, intending to appeal against the Court's decision to grant leave, took out a summons seeking (1) a direction that the Amendment Decision is an order determining in a summary way the substantive rights of a party to an action, such that no leave to appeal is required; or (2) alternatively, retrospective leave be granted to the Defendants to appeal on the grounds set out in the Notice of Appeal filed.

The Court clarifies that in cases such as the present one, where the Court's decision encompasses issues that require leave to appeal and also issues that do not require leave, then the decision and its orders should be viewed as a whole.

The Court held that it is not necessary for the Defendants to obtain leave to appeal against the Amendment Decision, because:

1. The wording of O59 r21(1)(a) focuses on whether the "judgment or order" appealed against (as opposed to specific issues) summarily determines the substantive rights of a party to an action.
2. It has been said that a "judgment or order" refers to the result of the hearing and not to the reasons given by the judge for reaching that result.
3. In deciding whether an order falls within r21(1)(a), one has to examine what the order actually determines, rather than its collateral practical effect.
4. Given that the Court has rejected the Defendants' time-bar contention which formed part of the Court's reasoning in making the order allowing the Plaintiff to amend its SOC, the amendment order (along with the Amendment Decision) should be considered as a whole as being a "judgment or order" that determines in a summary way the substantive rights of a party under O59 r21(1)(a), and thus leave to appeal is not required.

Takeaways

As this case demonstrates, it is entirely possible for a decision to comprise of both issues that require leave to appeal and also issues that do not require leave. In these cases, it is important to analyse the factual and procedural context in which the decision was made, as well as the individual orders contained in the decision as to whether such orders have determined the substantive rights of a party.

Case 2

The Court's jurisdiction on stop notices and stop orders under O.50 rr.11-15 of the Rules of the High Court

U K Prolific Petroleum Group Co Ltd v 鑫都集團有限公司 [2025] HKCFI 4769

Date of Judgment: 9 October 2025
Coram: Recorder Suen SC

In this case stop notices and stop orders under O.50 rr.11-15 of the Rules of the High Court are pursued in effect as interim measures to hold the ring over shares and convertible bonds of a listed company pending arbitration in the Shenzhen Court of International Arbitration ("SCIA"). There were no substantive proceedings in Hong Kong.

The Court rejected the submission that it has no jurisdiction to accept the filing of affidavit evidence nor seal the Stop Notice under RHC O.50 r.11(2), nor to grant a stop order under RHC O.50 r.15.

The Court held that the statutory restrictions of the stop notice/ stop order regime are that (i) such regime applies to prescribed securities and (ii) the regime may be invoked by a person claiming to be entitled to an interest in prescribed securities. The statutory provisions do not impose a restriction by reference to the territorial jurisdiction over the person in whose name the prescribed securities are held.

The only restrictions imposed by the statute relate to (i) the type of securities and (ii) the locus of an applicant, being any person claiming to be entitled to an interest in such securities.

Furthermore, the Court confirmed that an applicant falling within the ambit of the regime (i.e. "any person claiming to be entitled to an interest in prescribed securities") should be eligible to invoke the protection by the regime as long as there is an unresolved claim or a dispute as to the entitlement to the prescribed securities. In principle, such protection is needed regardless of where and how such claim or dispute is to be resolved.

Having considered the circumstances of this case, the Court held that discretion should be exercised in favour of granting the stop order and stop notices.

Amongst other issues, the Court rejected the submission that, with other alternatives open to the applicant (for example in the SCIA), seeking such recourses in Hong Kong are unnecessary and inappropriate. Here, the Court observed that a stop order targets the individual or entity with the authority to register the transfer of prescribed securities which is distinguishable from the interim measures aiming at the transferor and the transferee of those securities. As long as the securities in question pertain to a company listed for trading in Hong Kong (and thus fall under the category of prescribed securities), it is sensible for the applicant to utilize the readily available regime of stop notices and stop orders applicable to them. Furthermore, these forms of relief are not inconsistent or mutually exclusive.

Takeaways

The Court confirmed that the stop notice/ stop order regime under O.50 rr.11-15 of the Rules of the High Court is a statutory regime of its own, without having to depend on the existence of substantive proceedings in Hong Kong, though there must be an unresolved claim or dispute elsewhere as to the entitlement to the prescribed securities. It has also shed light on the unique nature of the reliefs sought, given that the disputes or proceedings are taking place outside Hong Kong.

Case 3

Correct approach to evaluation of evidence even if Claimant has been acquitted in criminal court

Yape Liezel Suelto v Lee Alice Yu Ying [2025] HKCFI 4736

Date of Judgment: 10 October 2025
Coram: Hon Poon J

The Claimant, a domestic helper, sought wages in lieu of notice and annual leave pay against her former employer. The Defendant contended that the Claimant was not entitled to such claims as she had stolen properties from her. However, the Claimant had been acquitted of theft in the criminal court. The Labour Tribunal made an award in favour of the Claimant.

On appeal, the award was set aside. The Court reasoned that even where the Claimant has been acquitted of theft in the criminal court, the Presiding Officer should have investigated the parties' cases by conducting a weighing exercise between the two version of events put forward by them, and make findings as to the key issue of summary dismissal.

In the context where both parties' testimonies have touched on the allegation of theft, it is an error of law to simply identify the Defendant's burden to prove misconduct on the Claimant's part and conclude that there is no objective evidence in support. The erroneous approach has excluded the possibility of drawing inference in the event that the Defendant is believed. At the same time, the Claimant's explanations also warranted attention.

Takeaways

Even though the appeal focused on the Presiding Officer's duty to investigate, the Court's observation on the evaluation of evidence is equally apt in civil proceedings, in which the burden of proof is different to that adopted in the criminal courts. Hence, even where the criminal courts have acquitted a party, the other party is still entitled to pursue claims or defences particularly since the scope of evidence received in the civil proceedings is often wider.

Case 4

Jurisdiction to issue letter of request under Arrangement on Mutual Taking of Evidence in Civil and Commercial Matters between the Courts of Mainland and HK

Tenwow International Holdings Ltd (in liquidation) & Anor v PricewaterhouseCoopers & Anor [2025] HKCFA 17

Date of Decision: 16 October 2025
Coram: Cheung CJ, Ribeiro PJ, Fok PJ, Lam PJ, Sir William Young NPJ

Background

Tenwow International Holdings Limited (wound up in the Cayman Islands) and its Hong Kong subsidiary (in liquidation) sued PwC Hong Kong and PwC Zhong Tian LLP (PwC ZT) in Hong Kong for audit negligence between 2013 and 2017.

PwC ZT, based in Shanghai, holds crucial audit working papers (the **Audit Documents**) in Mainland China. PRC regulations prohibit transferring audit working papers overseas without prior regulatory approval. PwC ZT listed the Audit Documents in its discovery but could not produce them without approval.

PwC ZT applied for a letter of request to the Shanghai High People's Court under the Mutual Arrangement to facilitate approval and transfer of the Audit Documents for use in the Hong Kong trial.

Procedural History

The **Court of First Instance** refused, holding:

1. Letters of request are for evidence (usually from non-parties), not to aid a party's own discovery;
2. The request fell outside the Mutual Arrangement;
3. No blanket PRC prohibition existed;
4. Delay justified refusal.

The **Court of Appeal** reversed, finding:

1. The use of the letter of request to aid in the production of own discovery in light of a legal impediment in the foreign jurisdiction is not inappropriate in principle nor wrong in principle;
2. A blanket prohibition under PRC law;
3. The request was the only viable route;
4. It fell within Article 6 of the Mutual Arrangement;
5. The court should exercise discretion to issue the letter.

The plaintiffs appealed to the **Court of Final Appeal** on two certified questions.

CFA Decision

The Court of Final Appeal (per Fok PJ, unanimous) dismissed the appeal and affirmed the decision of the Court of Appeal.

First, it was decided that Hong Kong court's jurisdiction to issue a letter of request extends to securing production by a party of its own listed discovery documents prohibited from transfer without foreign approval.

The power derives from the court's broad and flexible inherent jurisdiction, not from statute or the RHC, to maintain its character as a court of justice. It is not limited to obtaining "admissible evidence" from non-parties. Where documents are in a party's possession, already enumerated in the party's list of documents, that party is under an existing obligation to produce as part of general discovery, but are subject to a proven foreign legal impediment, and are critical to a fair trial, the court may issue a letter of request to remove the impediment regardless of whether or not such documents are material to an issue at trial and admissible in evidence at trial.

In respect of the second question, i.e. does a request for a Mainland court to facilitate regulatory approval for production fall within Article 6 of the Mutual Arrangement, the Court of Final Appeal ruled in the affirmative on the facts of that case. Since the Mutual Arrangement is not a statute and does not have the force of law, its construction should not be approached in an unduly strict or formalistic manner.Its text is broad and permissive, and its purpose is to promote judicial cooperation between the Mainland courts and those of the HKSAR. Given, the Ministry of Finance letter directing use of the Mutual Arrangement, evidence of a real risk of penalty without approval, the Audit Documents are clearly enumerated and identified in its list of documents but which are subject to a prohibition against production without approval under the law of the place where they are located, the request fell within scope.

Key Takeaways

Hong Kong courts have inherent jurisdiction to issue letters of request to Mainland courts under the Mutual Arrangement to enable a party to produce its own discovery documents located in the Mainland, where:

1. Transfer is prohibited without regulatory approval under PRC law;
2. The documents are identified in a party's list of documents and essential to a fair trial;
3. There is evidence that the Mainland court is the appropriate channel.

Such requests are not limited to obtaining evidence from non-parties or admissible material. The court will issue the letter if there is reason to believe the Mainland court is receptive, even if regulatory pre-approval is required.

Case 5

Foreign winding-up proceedings and arbitration: novel construction of arbitration clause

Hyalroute Communication Group Ltd v ICBC (Asia) Ltd [2025] HKCA 936

Date of Judgment: 21 October 2025
Coram: Hon Chu VP and Anthony Chan JA

Background

The Plaintiff is a company incorporated in the Cayman Islands. The Defendant is a bank. Two of the Plaintiff's subsidiaries borrowed a term loan from the Defendant, with the Plaintiff acting as guarantor. The borrowers and the Plaintiff failed to repay the loan.

The Plaintiff sought an interim anti-suit injunction (ASI) to restrain the Defendant from pursuing winding-up proceedings in the Cayman Islands, arguing that such proceedings breached an HKIAC arbitration clause in the Term Facility Agreement.

Decision in the Court of First Instance

The Recorder at first instance dismissed the application, finding no breach of the arbitration agreement and that the Plaintiff's defence lacked merit.

The Recorder considered, firstly, that whether foreign winding-up proceedings were in breach of an arbitration clause was a matter of proper construction of the terms of the clause. He went on to hold that if the proceedings did not have the effect of "finally resolving" the disputes, then the negative obligation not to have disputes finally resolved in a non-contractual forum was not infringed and there would be no breach of the arbitration agreement.

In assessing whether the Cayman proceedings would finally resolve the disputes or give rise to res judicata, the Recorder applied Cayman Islands law. Despite the absence of evidence on that law, he relied on authorities from the jurisdiction to conclude that the proceedings would not finally resolve the disputes within the meaning of the arbitration agreement.

The Recorder went on the consider the Merits Issue despite the plaintiff's case that merits would be wholly irrelevant in respect of ASI, and concluded that the underlying merits of the plaintiff's defence was hopeless, frivolous and it was an abuse for it to rely on such defence to prevent the Defendant from invoking the Cayman Court's winding-up jurisdiction.

Court of Appeal's Decision

The Court of Appeal dismissed the renewed application for ASI, pending determination of the appeal proper.

It accepted that it is reasonably arguable that "finally resolved" simply means the arbitration is intended to produce a conclusive resolution of the dispute. The Recorder's narrower interpretation—that only proceedings finally resolving the dispute in a non-contractual forum breach the agreement—unduly restricts the clause's scope and undermines the parties' express intent. However, unless there is a reasonably arguable appeal on the merits of the Plaintiff's defence, this error does not assist the Plaintiff.

On whether the debtor's defence merits should factor into an ASI application, the Court of Appeal examined the interaction between,

1. *Re Guy Kwok-Hung Lam* (HKCFA) (2023) 26 HKCFAR 119: which supports staying winding-up proceedings in favour of arbitration unless there is strong reason not to do so, including the lack of a bona fide defence to the debt which may constitute an abuse of process; and
2. *Sian Participation Corp v Halimeda International Ltd* (UKPC) [2024] UKPC 16: which requires the debtor to show the usual bona fide defence to justify ASI.

The Court of Appeal reiterates that the law of Hong Kong is that an ASI would normally be granted in respect of winding-up proceedings brought in breach of an arbitration agreement in the absence of strong reasons. The lack of any *bona fide* dispute to the petitioning debt may constitute an abuse of process as well as strong reason not to grant an ASI. The court does not consider its exercise of discretion to grant an ASI in a vacuum. The Court will consider the threatened proceedings or the relevant principles which govern the grant of ASI, which will shed light on the prospects and merits of such proceedings.

Lastly, the Court of Appeal held that there is no arguable appeal in respect of the merits of the Plaintiff's defence.

Takeaways

In Hong Kong, an ASI will normally be granted to restrain winding-up proceedings brought in breach of an arbitration agreement, unless there are strong reasons not to—including where the debtor lacks a bona fide defence on the merits, rendering opposition to the petition frivolous or an abuse of process. In other words, the court does not assess breach in isolation; it considers both the violation of the agreement and the substantive merits of the debtor's position.

Case 6

Interest liability in interpleader proceedings

Charm Master Enterprises Ltd v Grand T G Gold Holdings Ltd & J Thomson Asset Investment Limited [2025] HKCFI 4992

Date of Judgment: 24 October 2025
Coram: Hon Cheng J

Background

Following a judgment determining entitlement to funds paid into court, the issue of interest liability arose between the interpleading party (the Company) and the successful 2nd defendant (J Thomson). The Company argued that it was not liable to pay interest under s.48 of the High Court Ordinance, as there is no judgment against the Company, or because there was not any debt or damages capable of being the subject matter of the proceedings when instituted.

Decision

The Court rejected the Company's arguments, holding that:

1. The judgment was binding on the Company. It directs that the sums paid in by the Company to court are to be paid out to J Thomson, meaning that the Company is not entitled to repayment.
2. The interpleader process effectively resolved competing claims against the Company, and it was implicit that the Company had accepted the existence of the obligation to pay J Thomson by its earlier act of interpleading and payment into court.Since payment of the sums to J Thomson is essentially a payment by the Company, the liability for interest falls on the Company rather than Charm Master.
3. Interest was awarded from 12 September 2011 (when demand was clearly made) until the dates of payment into court in 2021, save for a short period in late 2020 to early 2021 when J Thomson raised an alternative claim.

Takeaways

This decision clarifies that a party who interpleads and pays funds into court may still be liable for interest under s.48 HCO. The Court emphasized that interest compensates for being kept out of money and that interpleader does not shield a party from such liability, particularly where significant delay occurs between awareness of competing claims and payment into court.

If the party's position was that it wanted to pay the sums, but was unable to ascertain to whom it should pay, and it was aware that the competing claimants' claims would have to be verified, possibly by way of court proceedings, then what it ought to have done was to interplead so as to protect its position rather than to hold onto the sums to which it knew it was not entitled. The Court reminded that had the Company done so, then whether or not Charm Master wrongfully denied J Thomson's claims or unreasonably prolonged the proceedings, and whether or not J Thomson had applied to join the proceedings, would have been of no concern to the Company.

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