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DCC COMMERCIAL DIGEST

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Stephanie has a broad civil and criminal practice, has appeared as an advocate in the Magistracies, Juvenile Courts, District Court, the Lands Tribunal and High Court. She has also been instructed as junior counsel for appeals to the Court of Appeal and Court of Final Appeal. Since 2021, she has also been serving as a Judicial Associate to the Court of Appeal.

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Case 1

Court of First Instance found Mainland judgment's "enhanced interest" order to be a penalty and hence not registrable/enforceable in Hong Kong

天津津融投資服務集團有限公司 v 濟南穆和企業管理有限公司 and Ors [2025] HKCFI 6182

Date of Judgment: 10 December 2025
Coram: DHCJ Gary CC Lam

The applicant had obtained an order pursuant to s.5(1) of the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap.597) ("MJREO") to register two Mainland judgments ("Mainland Judgments") against the 1st to 3rd respondents ("Registration Order"). Under the Mainland Judgments, the respondents were ordered to pay *inter alia* enhanced interest pursuant to article 260 of the PRC Civil Procedure Law ("Enhanced Interest Order").

The 3rd respondent applied to set aside the Registration Order on *inter alia* the basis that the Enhanced Interest Order is in the nature of a penalty and hence does not meet the requirement in MJREO s.5(2)(e) and/or is unenforceable by reason of being contrary to public policy under MJREO s.18(1)(j).

The Court noted that as a matter of legal principle, to determine whether a sum is penalty or not is to be determined according to the laws of Hong Kong (the test of which is whether the sum bears any relation to the loss suffered), with regard to the attitude adopted by the courts in the foreign jurisdiction which ordered the penalty.

Having regard to the expert evidence filed in the instant case to the effect that the Enhanced Interest Order is both compensatory and punitive, the Court held that while such interest is, from the Mainland law perspective, said to bear some relation to the loss in that a fixed interest rate is imposed for loss regarded as difficult to prove and quantify, "according to the laws of Hong Kong", the enhanced interest imposed under article 260 of the PRC Civil Procedure Law is so high that it cannot be readily ascertained how this exactly bears any relation to the actual loss suffered, and there was no material before the Court as to how such interest was determined by the legislature. Having considered all these on the whole, and having considered the Mainland's attitude that such interest is both compensatory and punitive, the Court found that according to Hong Kong law, the Enhanced Interest Order is punitive in nature and hence does not meet the requirement in MJREO s.5(2)(e) and/or is unenforceable by reason of MJREO s.18(1)(j). The Court therefore set aside the part of the Registration Order in relation to the Enhanced Interest Order.

Case 2

Court of Appeal decision addressing interlocutory procedural issues in partial settlements under Hong Kong's Competition Ordinance (Cap. 619)

Competition Commission v. Atal Building Services Engineering LTD and others [2025] HKCA 1120

Date of Judgment: 12 December 2025
Coram: Hon Zervos and G Lam JJA

The appeals arose out of Competition Tribunal case management orders in enforcement proceedings by the Hong Kong Competition Commission against ATAL Building Services Engineering Limited, the "JC Parties", and Johnson Controls International PLC), and Mr Lee Yui Ming, concerning alleged cartel conduct in air conditioning works. The issues on appeal concerned disclosure of communications underlying ATAL's Cooperation Agreements and the timing of ATAL's "Kam Kwong" penalty determination.The Commission alleged price fixing, market sharing and bid rigging between ATAL and Johnson Controls during 2015–2018.

The Court of Appeal affirmed the Competition Tribunal's decision, ruling that the need for swift and robust enforcement of competition laws generally requires Kam Kwong hearings covering admissions of violations and agreed penalties to move forward without delay. Postponing them to align with trials involving other accused parties should only occur when strong justification exists, with decisions tailored to the specific facts and procedural context of each matter.

The Court also held that that non-settling parties must receive copies of correspondence and communications linked to cooperation agreements between the Commission and settling respondents, viewing these as key evidence from cooperating accomplices that the Commission intends to use against the remaining defendants.

Additionally, the Court noted that even after such materials are shared for litigation purposes, any party believing they retain privilege against external third parties or deserve confidentiality safeguards under the Competition Ordinance can request the Tribunal to impose suitable restrictions.

This appellate decision is significant as guidance on procedural issues in partial settlements under the Competition Ordinance (Cap. 619). It balances the public interest in encouraging leniency and early cooperation (via Cooperation Agreements and Kam Kwong) with robust disclosure obligations to protect non-settling parties' due process rights in multi-party cartel cases.

Case 3

Hong Kong's framework for enforcing Mainland arbitral awards through common law actions

廈門新景地集團有限公司 formerly known as 廈門市鑫新景地房地產有限公司 v. ETON PROPERTIES LTD AND OTHERS [2025] HKCA 1119

Date of Judgment: 12 December 2025
Coram: Hon Kwan VP, Au JA and G Lam JA

The plaintiff sought to acquire indirect development rights in a Xiamen land project through share transfers from entities controlled by the defendants. The defendants had breached the agreement, leading to a 2006 CIETAC arbitral award ordering continued performance. When the defendants failed to comply, the plaintiff pursued common law enforcement in Hong Kong, resulting in liability findings upheld by the Court of Final Appeal in 2020, with the present appeal concerning quantum after a damages assessment trial.

The Court of Appeal dismissed the defendants' appeal against the first-instance award of approximately RMB 343 million (RMB 169 million damages plus pre-judgment interest). It upheld the trial judge's adoption of a realistic counterfactual assessing damages as if the arbitral award had been performed in 2006 amid prevailing circumstances (ongoing development and pre-sales under the defendants' superior design), allowing the plaintiff to recover lost profits from the actual project minus costs, while disregarding self-inflicted restructuring obstacles. The Court rejected estoppel/waiver claims based on negotiation posturing, confirmed the breach date as the assessment date absent injustice, and deferred to the trial judge on expert evidence, interest, and costs.

This judgment concludes a 22-year saga, affirming Hong Kong courts' flexible, commercially sensible approach to compensatory remedies in enforcing Mainland arbitral awards via common law actions. It reinforces protection against self-induced breaches in structured deals which are common for navigating PRC land restrictions, clarifies that aggressive negotiation statements rarely ground estoppel/waiver, and provides practical guidance for quantifying loss of chance in delayed or frustrated cross-border investments.

Case 4

Clarification of the limited remedies for breaches of the pre-2025 Building Management Ordinance and 2018 Code of Practice on Procurement

Incorporated Owners of Grenville House v Wong Tak Keung Stanley & Anor [2025] HKCA 1104

Date of Decision: 12 December 2025
Coram: Hon Kwan VP, Cheung and Barma JJA

The case arose from a dispute in a prominent Mid-Levels residential building where the Incorporated Owners sought to recover HK$220,000 from two owners (the Respondents) as their share of costs for mandatory building repairs under the Mandatory Building Inspection Scheme (MBIS). The Respondents refused payment, counterclaiming that the OC's failure to fully disclose the MBIS statutory notice and allow inspection of tender documents breached the 2018 Code of Practice on Procurement under the Building Management Ordinance (Cap. 344), rendering the general meeting resolutions approving the works and contribution arguably invalid or unenforceable.

The Court of Appeal dismissed the owners' appeal against the Lands Tribunal's order for payment plus interest and charges. It held that, under the pre-2025 regime, while the OC was required to comply with the 2018 Code (including disclosure obligations), breaches did not confer private enforceable rights on individual owners, such as court-ordered inspection or relief from validly passed resolutions and that an owners' recourse was limited to raising issues at general meetings. The binding nature of resolutions under the deed of mutual covenant and Ordinance prevailed absent statutory invalidity.

This ruling reinforces collective decision-making in multi-owned buildings, upholds binding resolutions absent statutory invalidity, and highlights transitional gaps addressed by the 2025 amendments introducing statutory inspection rights.

Case 5

Court of First Instance holds common law enforcement of Mainland judgments meeting s.5(2) of the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597) barred by MJREO s.22(2)

華融華僑資產管理股份有限公司 v 李曉鵬 [2025] HKCFI 6402

Date of Judgment: 22 December 2025
Coram: Hon Au-Yeung J

The plaintiff had obtained judgment against the defendant in the Mainland ("Mainland Judgment") and had issued a writ in Hong Kong against the defendant for common law enforcement of the Mainland Judgment. The Plaintiff issued *inter alia* an Order 14 summons for summary judgment. The defendant opposed the Order 14 summons on the basis that the Mainland Judgment satisfied ss.5(2)(a)-(e) of the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap.597) ("MJREO") and hence is barred from common law enforcement by reason of MJREO s.22(2).

The Court held that enforcement by a common law action of a Mainland judgment that meets the requirements of MJREO ss.5(2)(a)-(e) is barred by MJREO s.22(2) and that the Mainland Judgment in this case met the requirements of MJREO ss.5(2)(a)-(e) and hence is barred from common law enforcement. Further, MJREO ss.5 and 7 created a time period of 2 years within which a judgment creditor can apply for registration of a Mainland judgment.

The plaintiff however nevertheless sought to rely on the common law route, relying on *inter alia China Everbright Bank Co Ltd v China Kingho Energy Group Ltd* [2025] 2 HKC 863, where Keith Yeung J held that there was a good arguable case that the common law route was still open despite the expiry of the 2-year time limit under the MJREO. The Court in the instant case stated that Keith Yeung J did so in *China Everbright* on the basis that (a) the MJREO is modelled on the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap.319) ("FJREO"); (b) a query why the time limit under the MJREO was restricted to 2 years as opposed to the 6-year time limit under the FJREO; (c) the lack of a readily discernable policy for abrogating the common law route (which was the only way Mainland judgments could be enforced in Hong Kong prior to commencement of the MJREO); and (d) reading MJREO s.22(2) in conjunction with MJREO s.16, a foreign judgment can be a cause of action on its own.

For reasons stated in the Judgment, the Court held that there can be answers to Keith Yeung J's queries, though the Court did not find it necessary to make a definitive decision in contradiction to Keith Yeung J's decision, as all that Keith Yeung J did in *China Everbright* was to hold that the plaintiff in that case had shown a good arguable case to support an interim injunction, which was not sufficient for the plaintiff in the instant case to obtain summary judgment. The Order 14 summons was thus dismissed.

Case 6

Court of Final Appeal clarifies that leave under Bankruptcy Ordinance s.12 may be given for all stages of oral examination of judgment debtor and is not required on a piecemeal step-by-step basis

Dadra Inc v Chan Choi Har Ivy [2025] HKCFA 25

Date of Judgment: 30 December 2025
Coram: Chief Justice Cheung, Mr Justice Fok PJ, Mr Justice Lam PJ, Mr Justice Bokhary NPJ and Lord Neuberger of Abbotsbury NPJ

A judgment creditor ("JC") had obtained an order for oral examination of the judgment debtor ("JD") pursuant to O.49B r.1A of the Rules of the High Court (Cap.4A) ("RHC"). At the oral examination, the JD was ordered to disclose documents, but she subsequently failed to do so. Subsequently a bankruptcy order was made against the JD on the petition of another judgment creditor. The Master then granted the JC leave pursuant to s.12(1) of the Bankruptcy Ordinance (Cap.6) ("BO") to proceed with the oral examination notwithstanding the JD's bankruptcy. The JC subsequently obtained an order for imprisonment against the JD for acting contrary to RHC O.49B r.1B(1)(c).

At issue was whether a High Court Master would only have the jurisdiction to make an order for the imprisonment of a judgment debtor who has been adjudged [bankrupt] under RHC O.49B r.1B(1)(c) on the ground that he has wilfully failed to make full disclosure as required under RHC O.49B r.1A(2) if leave has been expressly sought and granted under BO s.12(1) for the judgment creditor to proceed with or commence an application for an order for the imprisonment of such debtor under RHC O.49B r.1B(1)(c).

The CFA held that that question turns on the true construction of RHC O.49B and BO s.12.

After finding that RHC O.49B constitutes a holistic, coherent scheme for enforcement of a money judgment backed by possible coercive sanctions that may be imposed before, during or after the examination of the judgment debtor, and that BO s.12 is a separate procedure serving a different purpose to O.49B (namely to protect the creditors of the bankrupt as a whole by achieving an orderly administration of the bankrupt's assets, with a view to their *pari passu* distribution to the creditors; protecting individual creditors from other creditors gaining an unfair advantage by pursuing the bankrupt without court supervision and control; and protecting the bankrupt himself from being harassed by improper pressure from individual creditors seeking to gain an unfair advantage over other creditors), the CFA held that BO s.12 does not, on its face, mandate that leave be sought under that section in respect of discrete parts of the RHC O.49B enforcement process.

As such, leave may be (and in fact in this case was) given pursuant to BO s.12 to proceed with the oral examination of a judgment debtor for all stages of the enforcement process under RHC O.49B at one time and it is not necessary to seek leave on a piecemeal step-by-step basis.

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