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DENIS CHANG'S CHAMBERS

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Authors

Patrick studied law at the University of Hong Kong and was admitted to the Hong Kong Bar in 1995. He served pupillage in Denis Chang's Chambers and joined as a tenant in 1996 upon completion of pupillage. Patrick has developed a general mixed practice in both civil and criminal matters.

Patrick has appeared in the Court of Final Appeal on constitutional matters (adoption and right of abode), land matters (adverse possession), contract matters (conveyancing fees arrangement) and employees' compensation matters (court's jurisdiction on costs and power of the ECAS Board to enter into settlement).

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Valerie specialises in company and commercial matters with experience in insolvency, shareholder disputes, civil fraud and asset recovery. She has regularly acted as sole advocate for various multinational corporations and high net worth individuals.

Valerie is also well-versed in family law, and has experience in land, probate, personal injuries, criminal and regulatory matters.

Apart from her law practice, Valerie is also a part-time lecturer at the Chinese University and City University of Hong Kong, and she regularly contributes to practitioner publications. Most recently, she was commissioned by LexisNexis to author Issue 107 of Atkin's Court Forms Hong Kong – Companies (Winding-up).

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Case 1

Limitation Periods Extended? Challenging Liquidators' Proof of Debt

Re Primlaks (H.K.) Limited [2026] HKCFI 3222

Date of Decision: 2 June 2026
Coram: Deputy High Court Judge Le Pichon

Background

In 1990, the Primlaks Group, including Primlaks (H.K.) Limited (the "Company"), entered into a restructuring agreement with a number of Scheme Banks, with HSBC being the coordinator bank, to restructure the debt owed to these banks (the "Scheme Bank Debt"). *Inter alia*, two properties (the "Properties") were charged as security.

Thereafter, the Group further borrowed from a number of smaller Trade Banks (the "Trade Bank Debt"), and the same was restructured in 1997. Credit Agricole Indosuez ("CAI") was appointed agent for the Trade Banks to receive irrevocable instructions for, *inter alia*, the transfer of any surplus proceeds out of the sale of the Properties to CAI if such Properties were sold. The Company and its holding company, Primlaks Panama, signed 2 undated letters containing such instructions addressed to HSBC.

Upon becoming aware of the Scheme Bank's intention to enforce the charge on the Properties, CAI dated the undated letters and issued them to HSBC, and it was made known to the Company and Primlaks Panama that the Trade Banks shall enforce their rights.

Subsequently, HSBC terminated the restructuring agreement which led to the Scheme Bank Debt becoming immediately due and payable.

Thereafter, Oriental Properties LLC ("OPLLC") completed the purchase of Scheme Bank Debt, Trade Bank Debt and the charges over the Properties by 2 assignments respectively dated 24 and 25 February 2005.

In 2016, one of the directors of the Company ("Ashok") obtained leave to commence a derivative action on behalf of the Company against, *inter alios*, OPLLC and Primlaks Panama. Ashok alleged a conspiracy to injure the Company in that the entering into of the 2 assignments prevented the Company from honouring an agreement that he had reached with the Scheme Banks and Trade Banks to settle the debts at a discount.

In 2019, the Company was wound up, which resulted in its absence and hence its being provisionally struck out in the derivative action proceedings.

OPLLC later filed two proofs of debts for the Scheme Bank Debt and Trade Bank Debt for the Company's liquidation. Both were however rejected by the Liquidator on the primary basis that the claims are time-barred.

OPLLC now challenged the Liquidators' rejection of the proofs.

Decision

The Court dismissed OPLLC's application.

On the evidence, *prima facie*, the right to bring a claim for the Scheme Bank Debt and Trade Bank Debt, expired respectively on 14 March 2016 and 25 June 2008.

The question was therefore whether the limitation period has been extended by the Company's acknowledgment of the debts pursuant to Sections 23 and 24 of the Limitation Ordinance (Cap.347).

OPLLC relied on, *inter alia*, a Statement of Affairs (the "SOA") signed by a director of the Company which annexed management accounts that recorded the Scheme Bank Debt and Trade Bank Debt as creditors / liabilities. The SOA was submitted to the provisional liquidators after the Company was wound up.

The Court rejected OPLLC's argument that the SOA amounted to the Company's acknowledgment of the debts:

1. It is trite the powers of the persons who had been directors cease once the company has been ordered to be wound up and the liquidator appointed: ***Re Grand Peace Group Holdings*** Limited [2021] 6 HKC 486.

2. The obligation to provide a Statement of Affairs is one personal to the former directors, and they are not considered to be acting on behalf of the company in liquidation: ***Shun Kai Finance Company Limited (In Compulsory Liquidation) v Wong*** Shun (HCB 1166/2006, unrep., 6 October 2006).

3. While the director signed the management accounts on behalf of the Company, the statutory duty to file a Statement of Affairs under Section 190 of Cap.32 is merely on a person "*who [is] at the relevant date the directors*", with the relevant date being the winding-up order in the present case. The statute does not take this further.

OPLLC further relies on the derivative action and Ashok's witness statement, but these were also rejected by the Court for the reasons below:

1. The derivative action was a claim for conspiracy to injure the Company by executing the assignments of the Trade Bank Debt and Scheme Bank Debt to OPLLC. In other words, while the Company acknowledged the existence of the assignments, the Company at the same time alleged that it would not have been liable for the debts but for the conspiracy, and was seeking damages for the same.

2. The Court took the view that this was a "confession and avoidance" situation, which did not sufficiently amount to acknowledgment of the debts for the purpose of limitation.

Takeaways

This Decision is an interesting intersection of the law on the extension of limitation periods and the winding-up process. It is also a reminder that even if all formal requirements under Section 24 of the LO are met, one still needs to look at the construction of the document relied upon and assess its sufficiency as an "acknowledgment".

Case 2

Person Not Registered as Member before Bankruptcy: No Standing to bring Statutory Derivative Action

Tse Wai Ip v Clarity Medical Group Holding Limited [2026] HKCFI 3274

Date of Judgment: 4 June 2026
Coram: Recorder Jin Pao SC

Background

The Plaintiff, being the founder and executive director of the Clarity Medical Group Holding Limited (the "Company") applied for leave to bring a statutory derivative action on the Company's behalf. It was alleged that there was a scheme on the part of certain of the intended defendants to take over control of the Company and to divert funds away from it.

Inter alia, the Company argued that the application should be dismissed solely on the basis that the Plaintiff lacks standing, being never a registered member of the Company. On 3 November 2025, a bankruptcy order was also made against him.

While the Plaintiff appeared to own 478,750 shares in the Company (the “Shares”), the following matters were pertinent:

1. The Shares were held by one Koala Securities Limited (“Koala”), being a participant of CCASS. Instructions were given for Koala to have those shares transferred and registered in the Plaintiff’s personal name. This was not done.

2. Subsequently, on 2 March 2026, the Shares were withdrawn from the CCASS system by Koala, and HKSCC Nominees Limited transferred the Shares to the Plaintiff who then applied to be registered as a member of the Company. The request was however voided by the Registrar due to the Company’s objection.

3. The beneficial interest of the Shares was vested in the Official Receiver after the Plaintiff’s bankruptcy. The legal title of the Shares, being held through a CCASS participant, rested with HKSCC Nominees Limited.

Decision

The Court refused the Plaintiff’s application on the basis of lack of standing.

To bring a derivative action on behalf of the Company, the Plaintiff first has to show that he is a “member” of the Company within the meaning of Section 732 of the Companies Ordinance (Cap.622). A “member” refers to either a founder member, or a person who agrees to become a member of the company, and whose name is registered, as a member, in the company’s register of members.

A person who is not yet a registered member can still make an application provided he is able to satisfy the Court subsequently that he has become a registered member of the Company by the time leave is granted.

The Plaintiff however had not been registered as a registered member.

While the Plaintiff relied on the exception where it would be unjust to refuse recognition of the parties’ status as members, the Court took the view that the Plaintiff was not validly entitled to request the transfer of the Shares to his own name after bankruptcy. Specifically:

1. The entitlement arose from beneficial ownership of the Shares, which had vested with the Official Receiver upon the Plaintiff's bankruptcy. There has been no request from the OR or trustee-in-bankruptcy to transfer the Shares to him.

2. Further, given that the beneficial interest of the Shares was no longer vested with the Plaintiff, he could not exercise the power of instructing a nominee to transfer legal title of the Shares to himself.

The Court further rejected the Plaintiff's argument that his entitlement as legal owner amounted to after-acquired property (post-bankruptcy) that did not immediately vest in the trustee-in-bankruptcy, and held that it would be artificial to segregate the events on 2 March 2026 and the Plaintiff's status as the previous beneficial owner.

It was also held that the Board of Directors of the Company was entitled to instruct the Registrar not to proceed with the registration, as it had the discretion to do so under its Articles of Association.

Takeaways

The Judgment makes clear that while there is an exception to the general rule that registration on the register of members is necessary, the burden is on the applying party to demonstrate that the company acted in a manner which rendered it unjust or inequitable to rely on his/her lack of standing to defeat his/her application.

The Plaintiff is represented by *inter alios*, Anson Wong Yu Yat of Denis Chang's Chambers.

Case 3

Court Strikes out Petition on Unfair Prejudice and/or Just and Equitable Grounds

Wong Kwong Miu v Pepper Blossom Limited & Ors [2026] HKCFI 3577

Date of judgment: 22 June 2026
Coram: Hon Linda Chan J

Background

The Petitioner sought a buy-out order against the various Respondents (2 shareholders and the Company), or alternatively an order to wind up the Company on "just and equitable" ground.

In turn, the Company applied to strike out the Petition on the bases that, (1) the Petitioner had no standing, not being a registered member; (2) alternatively, that the Petitioner was acting unreasonably in seeking winding-up relief where there was alternative remedy, particularly as the Company is solvent and the Petitioner was seeking a buy-out order as primary relief.

Decision

The Petition was struck out.

The Court first found that the Petitioner had no standing.

Section 179(1)(a)(ii) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap.32) provides that only a "contributory" who held shares registered in his name for at least 6 months during the 18 months before the presentation of a petition has locus to present a winding-up petition against a company.

While in applications for leave to commence a statutory derivative action and an application for injunction, the locus requirement can be satisfied at the time of the substantive hearing, the Court found that it is not so in an unfair prejudice petition and a just and equitable winding-up petition. This is because:

1. A substantive order under an unfair prejudice petition, such as a buy-out order, may relate back to the date of the petition; and

2. A winding-up order made on a just and equitable petition will also relate back to the date of the petition pursuant to Section 184(2) of Cap.32.

In the present case, the Court found that the Petitioner was clearly not a member of the Company when the Petition was presented. The evidence also showed that it was the Petitioner's decision to leave the shares registered in the name of HKSCC, and that he well knew that he was not a registered shareholder, but still chose to present the Petition.

Further, the additional new ground, being that the Petitioner had a mistaken but honest belief that the lack of registration was not an issue (the "New Ground"), did not assist him. The New Ground was unpleaded, contradicted by evidence, and was an abuse insofar as it was inconsistent with the Petitioner's pleaded case.

While the locus point settled the matter, the Court further rejected the Petitioner's plea for winding-up relief, which was purportedly based on a need for investigation due to inconsistencies in the Company's accounts and lack of transparency etc.

The Court found that such was not a valid ground, given that the matters complained of by the Petitioner would be investigated at trial and if the Court found in favour of the Petitioner, a buy-out order would be made with adjustments to the Company's valuation. The Company was also undisputably solvent, and a buy-out order would normally suffice to redress any wrongs suffered by a petitioner.

As to costs, the Court awarded 50% of the costs of the striking out application to the Company on an indemnity basis, being a reflection of the Petitioner's decision to present the Petition well knowing about the locus issue, as well as the New Ground amounting to abuse.

Takeaways

The Decision demonstrates the importance for a petitioner to ensure that he has standing before pursuing the remedies for unfair prejudice or just and equitable winding up, failing which there may be costs consequences. As the Court made clear at §34, the Court would not consider why the petitioner was not a registered shareholder at the time the petition was presented unless the lack of locus was the result of the respondent's conduct.

Case 4

Retrospective Validation Order Denied over Share Charges

Wei Qianqian v IBO Technology Company Limited [2026] HKCFI 3700

Date of judgment: 29 June 2026
Coram: Deputy High Court Judge Le Pichon

Background

On 24 July 2023, the Petitioner presented a winding-up petition against IBO Technology Company Limited (the "Company") for outstanding non-convertible bonds issued by the Company to her.

The Petition triggered cross-defaults of the Company's borrowings, and despite the Company's attempt to raise funds by way of rights issue and/or placing of new shares, the restructuring lapsed.

Thereafter, on 20 October 2023, the Company entered into a Loan Agreement with the Interland Associates Limited (the "Respondent") and two share charges over the shares of two of the Company's wholly owned subsidiaries (the "Share Charges") (collectively, the "Transaction"). They also entered into a consultancy agreement with one Shenzhen Haojun Co. Ltd ("Shenzhen Haojun").

However, no announcement was made by the Company concerning the Share Charges, and no validation order was obtained, despite the Company having applied for validation of other dispositions.

In November 2023, the Company attempted another debt restructuring. While the Court refused the Company's validation order application for the use of the net proceeds of the rights issue, parties to the rights issue mutually agreed to extend the deadline for fulfilling the condition precedent (i.e. obtaining the validation order).

Notwithstanding the developments, there was no follow-up and the intended debt restructuring failed. On 15 March 2024, the Company borrowed further sums from the Respondent under an amended supplemental agreement.

On 29 April 2024, the Company was wound up.

Thereafter, upon seeking to enforce the Share Charges, the Liquidators of the Company indicated to the Respondent that the Share Charges may be void under Section 182 of Cap.32 being post-petition dispositions. Notwithstanding, the Respondent sought to enforce the Share Charges.

The Decision therefore dealt with two applications:

1. The Liquidators' summons for a declaration and consequential relief to set aside the Share Charges; and

2. The Respondent's summons for a retrospective validation order in respect of one of the Share Charges.

Decision

The Court set aside the Share Charges, and dismissed the Respondent's application for a retrospective validation order.

The starting point was Section 182, which renders the post-petition Shares Charges void unless a retrospective validation order is obtained for the Loan Agreement and the Share Charges.

It is well-established that validation orders would only be made where the applicant can show that the disposition is likely to be, or actually has been for the benefit of unsecured creditors.

The Court however noted that the range of evidence to be considered for a retrospective validation order (as opposed to a prospective order) is likely to be different. For a retrospective order, it may have become clear whether a particular transaction carrying on of the company's general business turned out to be for the benefit of the general body of creditors or not.

In the present case:

1. The Court found the Company to be clearly cash flow insolvent. It had faced serious liquidity issues since mid-2023, was unable to pay the petitioning debt, and was unsuccessful in its two attempted rights issue.

2. The Share Charges fell within the meaning of "disposition" in Section 182 of Cap.32. Being encumbrances over property (shares of the Company's subsidiaries), the Share Charges had the effect of reducing the Company's rights over those shares.

3. The Court further took the view that the Transaction was not for the benefit of the general body of unsecured creditors. While the Respondent argued that the sums injected was used by the Company to fund its restructuring efforts, there was no evidence as to the work carried out by Shenzhen Haojun under the consultancy agreement. Sums were also disbursed to one Mr Chow of Shenzhen Haojun, who was an officer in both the Respondent and Shenzhen Haojun, which raised issues of circular financing arrangement. Shenzhen Haojun was also paid substantial sums in the lead up to the winding up order, despite the Respondent well knowing that the intended rights issue was not going to take place.

4. The application for retrospective validation was taken out 2 years and 9 months after the Petition. The Respondent claimed the delay arose out of inexperience, but the Court found the Respondent to be less than frank, especially where both the Loan Agreement and Share Charges were professionally drawn documents.

Takeaways

The Court made it clear that a retrospective validation order will only be made where the applicant shows that the disposition in fact turned out to be / was likely to be, or actually has been, for the benefit of the unsecured general body of creditors (§81).

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