IN-DEPTH

Banking Litigation

HONG KONG

LEXOLOGY

Banking Litigation

Contributing Editor

Jonathan Clark

Slaughter and May

In-Depth: Banking Litigation (formerly The Banking Litigation Law Review) provides a practical overview of the litigation landscape and framework for banking disputes in major jurisdictions worldwide. Focusing on recent developments and trends, it examines a wide range of issues – including significant recent cases and legislative changes; procedural considerations; legal privilege; conflicts of law; available remedies; exclusion of liability; and much more.

Generated: November 21, 2025

Hong Kong

Ralph Sellar, **Warwick Chan**, **Martha Savage**, **Timothy Shaw** and **Jason Cheng**

Slaughter and May

Summary

Introduction

Against a backdrop of corporate failures connected to China's real estate sector, Hong Kong (as Asia's leading financial centre) has seen a steady stream of adjacent financial services-related disputes in 2025. In addition, Hong Kong has cultivated a hub for virtual asset trading and other cryptocurrency-related activities. The collapse of certain trading platforms and extreme volatility in the value of certain virtual assets have resulted in various novel cases in the Hong Kong courts. In parallel, there have been developments in Hong Kong's patchwork of laws and regulations covering virtual assets, including stablecoins.

These themes are the focus of this year's edition of *Lexology In-Depth Banking Litigation* in Hong Kong.

Year in review

At the time of publication, 470 winding up orders were made by the Hong Kong courts in 2025.[1] This figure already eclipses a total of 443 orders made in 2024, which included the ongoing liquidation of China Evergrande (which has an estimated US$300 billion in liabilities and which has resulted in several legal actions). In this context, this year Hong Kong's Court of Final Appeal (CFA) handed down important decisions in relation to Keepwell deeds (under which Mainland-based enterprises undertake to support the liabilities of special purpose bond issuers listed in Hong Kong) and the application of mutual assistance arrangements between the Hong Kong and Mainland courts in litigation matters. The courts have also considered a bank's obligation to give disclosure to assist a foreign liquidator to discharge their duties to gather in the assets of a foreign company.

There has also been activity in the courts concerning fraud involving bank accounts. Following the 2023 landmark decision of *PT AsuransiTuguPratama Indonesia TBK v. Citibank NA,*[2] the issue of the scope of a bank's *Quincecare* duty owed to customers has been before the courts again. Relatedly, the legitimacy of the 'no consent letter regime' (in which banks will freeze accounts having reported suspicious transactions to the Joint Financial Intelligence Unit) was subject to the review of the court.

As with other jurisdictions, Hong Kong has seen a developing body of case law in relation to virtual assets and cryptocurrencies in which established common law principles (and accompanying procedural measures) have been applied to new technologies and asset classes. Such cases include, among other things, the distribution of unliquidated virtual assets deposited on a virtual assets exchange in a winding-up as well as the application of trust and property law principles to such assets. Given the diversification of certain financial institutions into the virtual assets sector, these developments will be of interest.

2025 has also seen important legislative developments in the virtual assets sector. The new Stablecoins Ordinance was enacted in August 2025, serving as the cornerstone piece of legislation in Hong Kong regulating stablecoin issuers. This new statutory framework, among other things, has facilitated the entry of traditional financial institutions, including banks, into the virtual asset sector. Further legislative proposals on the regulation of virtual

assets are also in the pipeline, with the Hong Kong SAR government releasing continued public and industry consultations over the past year. The Banking Ordinance has also seen important amendments over the past year, with key updates focusing on efforts to combat financial crimes.

Further details of the above are set out below.

Recent cases

Standing to bring an action to enforce Keepwell Deeds

Bond defaults by Hong Kong listed issuers has been a regular occurrence in recent years, triggered in part by policy changes by the Mainland Chinese government in relation to the real estate sector or geopolitical events. Consequently, there have been several legal actions to enforce primary and secondary obligations in relation to such bonds, in particular obligations under Keepwell deeds (an instrument under which a Mainland-based enterprise will undertake to ensure, *inter alia*, that the 'offshore' bond issuer has sufficient resources to meet their financial liabilities to bondholders).[3]

Two important issues considered by the CFA in *Nuoxi Capital Ltd v Peking University Founder Group Co Ltd* [4]were which was the correct party to enforce the Keepwell deed and whether a breach of obligation to provide liquidity through a lending facility has caused actionable loss. In this case, the plaintiff (then in liquidation) was the bond issuer, and the defendant (which had issued the Keepwell deed), was the parent company of the plaintiff. Under the Keepwell deed, the defendant had liquidity and funding obligations to ensure that the bond issuer had sufficient funds to repay the bonds. Upon default under the bonds, the plaintiff's liquidators brought claims against the defendant for alleged breaches of the funding and liquidity guarantee provisions. However, the claims failed for technical reasons. Under the Keepwell deed, the defendant was obliged to provide liquidity to the issuer by way of a lending facility. The CFA accepted that the plaintiff had suffered no net loss because any loss triggered by the breach of the liquidity obligation (i.e., liability to the bondholders) would have been cancelled out by equal indebtedness from the plaintiff to the defendant under the lending facility (had the obligation been performed). The CFA also accepted that the parties were all 'creatures or vehicles' of the same corporate group and there was no utility in awarding substantial damages in relation to an inter-company liability, when the true loss was caused to the bondholders instead of the plaintiff. Nonetheless, the CFA left the door open to bondholders by accepting that the trustee could sue Peking University Founder Group for breach of contract and recover not only any loss that it had suffered, but also the losses of third parties, if the trustee holds the contractual rights (i.e., choses in action) on trust for those third parties (in this case, the bondholders).

The *Quincecare* duty in focus again

The scope of the *Quincecare* duty has seen continued focus in Hong Kong. Traditionally, the *Quincecare* duty has arisen in circumstances where a financial institution is on notice of wrongdoing in connection with a customer's account, typically where an authorised or

trusted agent is purporting to be acting on behalf of a customer but there are grounds for believing the transactions are not in fact authorised.[5]

As mentioned in last year's edition, in 2023 the CFA provided much-anticipated clarity on the principle in *PT AsuransiTuguPratama Indonesia TBK v. Citibank NA*, [6] holding, among other things, that banks hold duties to their customers under two juridical sources when making payments out of a customer's account. The first is a bank's general duty (under both contract and tort) to exercise reasonable care and skill as the customer's agent. The other is a bank's duty to *only* make such payments when given instructions from an agent with actual or apparent authority from the customer. A bank is under a general duty to make enquiries if features of the transaction indicate wrongdoing.[7]

At the end of 2024, in *Excel Courage Holdings Limited v. Seto Ming Wai & CLC Securities Limited*, the Court of First Instance (CFI) held that transaction features that suggest impropriety (that may cause loss to a client) were required for the duty to be engaged. The mere presence of unusual circumstances is insufficient in the absence of facts suggesting wrongdoing. This would include features such as a bank's knowledge that the agent has a substantial conflict of interest in respect of the transaction or a plain lack of benefit for the principal or commercial purpose on the face of the transaction.[8] The Court made it clear that an agent's mere non-compliance with regulatory best practices or a general irregularity in the structuring or documentation of a transaction would generally not be material or serious enough to engage the *Quincecare*duty.[9]

Constitutionality of the No Consent Regime

In Hong Kong, there is a statutory obligation under the Organized and Serious Crimes Ordinance (Cap 455) (OSCO) for a person to disclose to the police (or any other authorised officer)[10] their knowledge or suspicion of any property being representative of, or used in or intended to be used in connection with, an indictable offence.[11] As a sector, financial institutions account for the vast majority of suspicious transaction reports filed with the Joint Financial Intelligence Unit of the Hong Kong police.[12]

It is a defence if the person makes a report and receives consent from the police in advance of dealing in such property.[13] It is from this that the practice of issuing letters of no consent (the No Consent Regime) arises, which often leads to banks disabling or effectively freezing the relevant suspicious accounts.

In *Tam SzeLeung v. Commissioner of Police*,[14] the CFA affirmed and upheld the constitutionality of the police's practice of issuing letters of no consent in response to suspicious transaction reports by banks and other intermediaries. The CFA held that the constitutionality of the No Consent Regime lies within the Police Force Ordinance (Cap 232) (rather than the OSCO), which authorises the police to take lawful measures to prevent the crime of money laundering and protect property, [15] and the common law.

As a result of the CFA's decision in *Tam SzeLeung*last year, other similar constitutional challenges to the No Consent Regime have fallen away this year.[16]

Banks in Hong Kong may, therefore, continue to rely on letters of no consent received from the police in suspending transactions on customer accounts pending further police enquiries.

Disclosure orders against financial institutions for various purposes

As an international financial centre, many cases have a cross-border element and in two recent cases, the courts made disclosure orders against Hong Kong banks to facilitate a foreign trustee-in-bankruptcy and liquidator to obtain documents and information and other ancillary orders to facilitate the carrying out of their functions.

In the recent case of *Re Lim Huey Ching*,[17] the bankrupt individual maintained two accounts in Hong Kong with certain Hong Kong banks. The CFI granted orders in favour of the Singaporean trustee-in-bankruptcy, holding that so long as certain principles are met and that doing so would be in line with the substantive law and public policy related to bankruptcy proceedings in Hong Kong, the Court would normally give assistance to a foreign trustee-in-bankruptcy to facilitate the distribution of a bankrupt's/insolvent company's property under a single universal process. [18] Such principles were that (1) the foreign bankruptcy or insolvency proceedings must be collective in nature; (2) the foreign proceedings are conducted in the jurisdiction in which the debtor is domiciled or has submitted thereto; and (3) the assistance sought is necessary for the administration of a foreign bankruptcy or the performance of the office-holder's functions.[19]

Ho YuenYu Ivy v Zhang Lihua[20] was a costs hearing after disclosure orders were made against a bank for information in relation to the defendant's bank accounts. The CFI highlighted that, as a matter of principle, a bank, in handling a disclosure order for suspicious account activity,[21] has an obligation to combat financial crimes in Hong Kong notwithstanding its duty owed to its client. [22] When it comes to an application for reimbursement of costs for compliance with a disclosure order, a bank should therefore only claim for reasonable bank charges incurred and should not seek to engage in a practice of 'levying extravagant photocopying or administrative charges, rather than seeking genuinely to provide for full compensation…'.[23] The Court also extended this principle to excess claims to cover legal costs, ruling that a bank should not be able to engage a solicitor, but then 'profit' from a costs application by leaving a solicitor to charge excessive legal costs (which might have been 'usual' in ordinary commercial litigation) without checks and balances.

Virtual assets

In recent years, Hong Kong has made concerted efforts to develop the virtual assets and cryptocurrency sector and the key legislative and regulatory developments are discussed further below. However, with the development of this expanding sector, there have also been some notable failures, including most prominently the JPEX scandal.

JPEX was a virtual asset trading platform (the legal definition of which will be discussed further below) set up in Hong Kong (whilst headquartered in Dubai) that actively promoted its products and services to the Hong Kong public through local social media 'influencers' and key opinion leaders, purporting to offer a wide range of virtual asset trading services. It transpired that the platform was unlicensed in Hong Kong and was making misrepresentations to the public as to its investment relationships. JPEX collapsed in 2023 and customers were unable to withdraw virtual assets deposited on the platform and even saw a reduction or alteration of their account balances.[24] The Hong Kong Securities and Futures Commission (SFC) opened investigations and arrested key JPEX personnel,

including local 'influencers' that promoted JPEX's business. [25] On 5 November 2025, the Hong Kong police formally charged 16 such individuals for, *inter alia*, conspiracy to defraud in connection with the scandal.[26]

In *Chan Wing Yan and Another v JP EX Crypto Asset Platform Pty Ltd*, [27] the plaintiffs had deposited around 240,000 USDT (Tether) into wallets purportedly assigned to their accounts on the JPEX platform. The plaintiffs were not provided with the private keys to their wallets, and JPEX failed to return their USDT to them when they demanded urgent withdrawals from the platform. The plaintiffs applied for default judgment. In granting such judgment, the Court first affirmed the principle that cryptocurrency was capable of constituting property at law.[28] On the facts, it then held that USDT was held on express trust by JPEX on the plaintiffs' behalf, with the 'three certainties' trust law principle squarely met.[29]JPEX was ordered to deliver up the deposits, and an injunction was also granted against JPEX, restraining it from further dissipating any assets. This decision is consistent with decisions in other common law jurisdictions on the legal status of cryptocurrency held on virtual asset exchanges.

Where a company operating a cryptocurrency trading platform is wound up, and the assets of which wholly comprise crypto-assets, the CFI has laid down important guidance this year in the case of *Re Gatecoin Ltd (In Liq) (No 2)*[30] as to how such assets are to be distributed to certain customers, referred to as 'non-consenting customers' (NCCs), who had not accepted Gatecoin's latest version of terms and conditions.[31] Given the beneficial interest that the NCCs held in the relevant pool of cryptocurrencies (as tenants-in-common), it was held that such cryptocurrencies should be returned in the amounts claimed *in specie* (on a *pro rata* basis) if there was no shortfall as opposed to the proceeds being liquidated in the usual way.[32] Where distribution *in specie* was not possible, the Court further held that the liquidators should be allowed to sell the cryptocurrency in question and apply the sale proceeds to meet creditors' claims.[33]

Interim and procedural orders in virtual asset-related cases

In *Mantra Dao Inc. and Another v John Patrick Mullin and Others*,[34] the CFI granted interim disclosure orders for the disclosure of books and records in relation to a decentralised autonomous organisation (DAO), which involved the use of blockchain and decentralised ledger technologies. The plaintiffs and defendants set up the DAO together in 2020 to establish various blockchain projects and develop its own technologies and products in the crypto-assets market. The defendants subsequently 'took over' management of the DAO, leaving the plaintiffs without visibility and managerial oversight. An ownership dispute ensued, and the plaintiffs applied for interim disclosure orders and to be given regular updates on the operation of the DAO. In granting such relief, the court noted that the cryptocurrency industry is fast-growing, and decisions are often made with a view to obtaining a first-mover advantage. With the level of assets controlled and managed by the defendants, it was important for the plaintiffs to be given regular updates on the financial operation of the project, given their claim over the ownership, management and control thereof.[35]

The Courts have also recently made decisions in cases concerning crypto- related fraud. For example, the Courts allowed substituted service to be effected on the Ethereum blockchain itself(where an unauthorised transfer of USDC occurred, forming the subject

matter of the fraud), and also granted a worldwide asset preservation order against the perpetrator compelling the transfer of all defrauded assets to the plaintiff's custodial wallet in escrow.[36] Given the expanding virtual asset sector (and with it the opportunity for misconduct), it is expected that case law in this area will continue to develop in the coming year pending the determination of this dispute. However, it is already apparent that despite the complexity of the underlying technologies and the novel relationships between parties involved in crypto-related activities, the courts have had no difficulty applying tried and tested legal principles to these new technologies and commercial scenarios.

Procedural decisions and relief in aid of litigation

In an important decision on procedural measures this year, the CFA in *Tenwow v.-PricewaterhouseCoopersZhongTianLLP*[37] held that the Hong Kong Courts have inherent jurisdiction to issue a letter of request (LOR) to Mainland Chinese courts pursuant to the Arrangement on Mutual Taking of Evidence in Civil and Commercial Matters between the Courts of the Mainland and the Hong Kong Special Administrative Region (the Mutual Arrangement) to obtain discovery documents that are in a party's possession in the PRC, but their transfer to Hong Kong may be subject to regulatory restrictions.

The appellant argued that the use of the word 'documentary evidence' in the Mutual Arrangement meant that materials obtained during discovery (which were the subject materials sought to be obtained by the respondent) were to be excluded. The CFA declined to interpret the terms of the Mutual Arrangement in 'an unduly strict or formalistic matter' so as to exclude discovery documents from its scope, on the basis that the Mutual Arrangement was not a statute and does not have the force of law.[37] The CFA affirmed that so long as there are reasons to suppose the recipient Mainland Court would 'be receptive' to the request made, the Hong Kong Courts should then consider whether there are any other factors that may affect the exercise of their discretion in this regard.[38]

Recent legislative developments

Further development of legislative framework covering virtual assets

In Hong Kong, there is no broad overarching legislative framework on the regulation of virtual assets (including cryptocurrencies) – rather, a patchwork of regulations and legislation has developed in parallel with the growth of the sector. Several of these regulations and laws apply to financial institutions.

The latest piece of legislation is the Stablecoins Ordinance (Cap. 656) (SO), enacted in August 2025. The SO aims to regulate issuers and offers of stablecoins and a range of conduct matters in relation to such activity.

The SO sets out the meaning and definition of 'stablecoin'[39] and establishes a licensing regime for all persons carrying on, or holding themselves out as carrying on, a 'regulated stablecoin activity'[40] in Hong Kong, which is the primary stablecoins market activity that the Ordinance regulates. Among other things, an applicant for a stablecoins licence must demonstrate, *inter alia*, that it has adequate financial resources and liquid assets to meet its obligations as they will or may fall due,[41] a pool of reserve assets for each type of

specified stablecoins,which must be segregated from any other pool of reserves,[42] and fit and proper persons holding managerial positions therein.[43]

To avoid regulatory overlap, certain provisions under the SO do not apply to banks approved as an authorised institution under the Banking Ordinance (Cap 155).[44]

The Hong Kong Monetary Authority (HKMA) is the authority responsible for the licensing of issuers and enforcing the provisions of the SO. Financial institutions, including banks, may now leverage this new legislation in putting forth novel financial products to the public with proper scrutiny. As of present, many firms have already applied for a licence from the HKMA,[45] and banks are no exception as well. [46] It is an offence for a person to carry on, or hold themselves out as carrying on, a 'regulated stablecoin activity' without having been granted a licence by the HKMA.[47]

Part 5B of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap 615) (AMLO) (enacted in 2023) continues to serve as the main legislative framework for the licensing of virtual asset trading platforms (VATPs) for non-security tokens.[48] As mentioned in previous editions, the AMLO regime operates in parallel with the Securities and Futures Ordinance (Cap 571) (SFO) to regulate the trading of security tokens[49] that fall under the definition of 'securities' under Schedule 1 thereto. As of September 2025, the SFC has granted licenses to 11 VATPs, all of which consist of dual licences granted under both the SFO and AMLO.[50]

Further proposed legislation on virtual assets is in the pipeline as well. The Hong Kong government has, in February 2024, issued a public consultation on the licensing of persons carrying out over-the-counter (OTC) trading of virtual assets.[51] Building on this consultation, the government further noted that it may be insufficient to merely regulate OTC trading of virtual assets as they may be traded under various methods. Further effort was placed in enhancing the regulation of virtual assets in 2025, examples of which include the release of public consultations on the regulation of dealing in virtual assets[52] and virtual asset custodian services.[53]

The regulatory and legislative framework in relation to virtual assets is expected to continue developing to ensure customer protection and enhance Hong Kong's status as a hub for the virtual asset sector.

Updates to the Banking Ordinance to allow information sharing concerning suspicious activity

Following a public consultation by the HKMA,[54] the Banking (Amendment) Bill 2025 came into effect on 3 November 2025.[55] The amendment seeks to:

1. introduce a voluntary mechanism for authorised institutions (as well as law enforcement agencies) to request or disclose information among each other for the detection or prevention of suspected prohibited conduct; and
2. introduce safe harbour provisions for authorised institutions disclosing information under the voluntary mechanism or using information so disclosed by other authorised institutions.[56]

Changes to court procedure

Summary judgment for fraud claims

In 2021 the procedural restriction on granting summary judgment where the relevant claim alleges fraud was removed. Litigants have recently utilised this procedural change. For example, in *Idemitsu Chemicals (Hong Kong) Co Ltd v Yanqing Ltd*,[57] the CFI granted summary judgment in favour of the plaintiff in a case involving serious fraud, in which its Hong Kong office managing director was deceived by an elaborate scheme into believing he was instructed directly by the CEO from the plaintiff's Tokyo headquarters, and subsequently transferring substantial funds in relation to a purported M&A transaction (which in fact never existed).

Electronic case management and remote hearings

To enhance the efficiency of court operations, the Hong Kong judiciary has been implementing the integrated Case Management System (iCMS) in stages to handle court-related documents and payments electronically.[58] The iCMS is being progressively implemented across various court levels and, commencing from end-June 2025, has been extended to the High Court, beginning with civil appeal cases.[59]

Following a public consultation and gazettal late last year, the Courts (Remote Hearing) Ordinance (Cap 654) (C(RH)O) was enacted in March 2025. Under the C(RH)O, judges and judicial officers may order remote hearings at various levels of courts and tribunals where it is just and fair to do so, having regard to a list of factors such as the nature of the proceedings[60] and the potential impact of such an order on the reliability of evidence presented, for example, on witness examination.[61]

Interim measures

For key related updates in this area, please refer to the sub-sections 'Interim and procedural orders in virtual asset-related cases' and 'Procedural decisions and relief in aid of litigation' under the section 'Year in Review - Recent cases' above.

As highlighted in previous editions, the Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of Mainland China and of the Hong Kong Special Administrative Region (the HK-PRC Interim Measures Arrangement), which has been in place since April 2019, allows for parties to an arbitration seated in Hong Kong to apply to the Mainland courts for interim relief and vice versa. The use of the HK-PRC Interim Measures Arrangement saw a considerable surge in 2024, according to statistics released by the HKIAC.[62]

Privilege and professional secrecy

As with other common law jurisdictions, legal professional privilege protects from disclosure confidential communications between a client and its lawyer for the dominant purpose of giving or receiving legal advice (legal advice privilege), and communications between clients and their lawyers and third parties for the purpose of obtaining information or advice in connection with existing or contemplated litigation (litigation privilege). The Courts of Hong Kong have interpreted the concept of 'client' broadly to cover a corporate client's employees, as highlighted in previous editions.[63]

However, there have been no material developments in 2025.

Jurisdiction and conflicts of law

Financial services institutions have typically favoured court jurisdiction clauses in banking contracts and, in particular, debt instruments. However, for a variety of reasons, arbitration clauses are increasingly popular in financial services contracts.

This year, several cases have shone a spotlight on the scope of arbitration clauses, particularly in the context of winding up proceedings.

Recap of the effect of exclusive jurisdiction and arbitration clauses on winding-up petitions

As noted above, there has been substantive case law over the past few years in Hong Kong on the treatment of winding-up petitions where the debt is subject to an exclusive jurisdiction clause or arbitration clause. Following a recent decision by the CFA, the law on this is now relatively settled.

In *Re Lam Kwok Hung Guy*,[64] the CFA held that where there is an exclusive jurisdiction clause in the underlying agreement between the parties that gives rise to a dispute, the parties should resolve the dispute pursuant to that exclusive jurisdiction clause. The court should therefore stay any winding-up proceedings pending the resolution of such disputes, absent any countervailing factors such as the risk of insolvency affecting third parties or the dispute concerned being frivolous or bordering on an abuse of process.

Last year, the CA extended this principle to a debt dispute subject to an arbitration agreement in *Re Simplicity & Vogue Retailing (HK) Co, Limited*,[65] holding that so long as there was a genuine intention to arbitrate, a winding-up petition should be stayed or dismissed in favour of arbitration.[66]

Anti-suit injunctions to stay winding-up proceedings

As in other common law jurisdictions, Hong Kong has seen several cases concerning the jurisdictional intersection between winding up petitions and an agreement to refer any dispute arising under the relevant contract to arbitration. As at the date of publication, the position under English law (per the principles laid down in *Sian Participation Corp v Halimeda International Ltd*)[67] and Hong Kong law (per *Re Simplicity & Vogue Retailing (HK) Co, Limited*)[68] have diverged somewhat.

In what was described as an 'interesting and novel' case this year, Recorder William Wong SC in *Hyalroute Communication Group Ltd v Industrial and Commercial Bank of China (Asia) Ltd*[69] considered whether an anti-suit injunction in favour of an arbitration agreement was to be granted to restrain the defendant from presenting a winding-up petition in the Cayman Islands to wind up a Cayman company. In dismissing the plaintiff's application, the Court held that the case boiled down to a matter of construction of the arbitration clause, which provided that 'any dispute, controversy arising…out of the Agreement…shall be referred to and *finally resolved* by binding arbitration…'. As a winding-up petition does not have the effect of 'finally resolving' the disputes under the contract governed by Cayman law, the Court held that the Cayman petition would fall outside the ambit of the arbitration clause.

The decision of Recorder William Wong SC is currently pending appeal before the Court of Appeal.[70] After filing the Notice of Appeal, the plaintiff also renewed its interim anti-suit injunction application against the defendant pending determination of the substantive appeal.[71] However, the Court of Appeal rejected the renewed application on the basis that the plaintiff's appeal had no real prospect of success, thus failing to satisfy one of the conditions for the grant of an interim injunction pending appeal.[72]Notwithstanding the fact that the decision is subject to appeal, the approach taken at first instance should provide comfort to financial institutions and other creditors that the Hong Kong courts will not allow arbitration clauses to be used as a 'debt dodger's charter' where a valid winding-up petition is made.

In the case of *Soremi Investments Ltd v China National Gold Group Hong Kong Ltd* this year,[73] the CFI reaffirmed the well-established legal position that the court must stay proceedings in favour of arbitration if (1) there is a valid and enforceable arbitration agreement (i.e., not null and void), (2) a dispute exists between the parties and (3) the dispute falls within the scope of the arbitration agreement. The overarching basis for such applications is based on Section 20 of the Arbitration Ordinance (Cap 609), adopting Article 8 of the UNCITRAL Model Law. Where there is a *primafacie* or plainly arguable case that the parties are bound by their agreement to resolve their dispute by arbitration, the Court should not attempt to resolve the issue, and it is for the arbitral tribunal to determine first on its jurisdiction.[74]

This year the Courts have also resolved applications to set aside a default judgment and to stay the court proceedings in favour of arbitration pursuant to a valid arbitration clause in the underlying contract.[75] Recently, the Courts have affirmed the position that the stay application would be considered first. Where a defendant persuades the Court to grant a stay of proceedings in favour of arbitration under usual principles,[76] the Court would set aside the default judgement and refer the case to arbitration, without any consideration as to the merits of the defence. Whereas if the Court decides that the stay application will or is likely to fail (for example, because the arbitration agreement will not be enforced or apply), a default judgment will only be set aside if it is shown that the defence has a real prospect of success as per the usual principles.

Anti-suit injunctions and anti-arbitration injunctions

The courts have the power to restrain litigation commenced in breach of a valid arbitration agreement (an anti-suit injunction)[77] and to injunct oppressive or abusive arbitration proceedings (an anti-arbitration injunction).[78] While both forms of relief have comparable

outcomes, the tests are different and, in adopting a pro-arbitration stance, the Hong Kong courts are generally slow to intervene in an ongoing arbitral process.

In the recent case of *Bank A v Bank B*,[79] the plaintiff (a German bank) applied for an anti-suit injunction against the defendant for the latter's breach of an arbitration agreement in bringing proceedings in Russia for purported breach of a derivatives agreement. In granting the injunction, the Court held that comity is of less relevance where a contractual anti-suit injunction is sought, namely where proceedings are brought in breach of an arbitration agreement. This is because the parties have expressly agreed *not* to sue in court, and the issue of *forum conveniens* never comes into play.[80] An applicant is required to show a high degree of probability that the initiation of foreign proceedings constituted a breach of an arbitration agreement in order to succeed.[81]

In □ □ v □ *Harvest Trade Investments Ltd*,[82] the CFI affirmed the test for an anti-arbitration injunction. An applicant must show that (1) the injunction does not cause injustice to the claimant in the arbitration; and (2) the continuance of the arbitration would be oppressive, vexatious, unconscionable or an abuse of process. Where the dispute in question is clearly within the terms of a valid arbitration agreement, the courts would refrain from interfering. In this case, the plaintiff made jurisdictional challenges to the Hong Kong arbitral tribunal which were, at the time of commencing the Court action, pending determination. Among other things, the CFI was not satisfied that continuance of the arbitration would be oppressive or vexatious which justified it determining the same challenges in parallel, particularly given that an arbitral tribunal is expressly given the power to rule on its own jurisdiction under the Arbitration Ordinance.[83]

Winding-up of foreign companies

As highlighted in previous editions, the principles applicable to the winding-up of foreign companies in Hong Kong are relatively settled.

In deciding whether to exercise its jurisdiction to wind up a foreign company, it is settled law that a Court considers three core requirements: (1) the foreign company must have a sufficient connection with Hong Kong; (2) there must be a reasonable possibility that the winding-up order would benefit those applying for it and (3) the court must be able to exercise jurisdiction over one or more persons in the distribution of the company's assets.-[84]

In *Re Up Energy Development Group (In Liq) Ltd*,[85] a decision this year at the Court of Appeal, it was held that in assessing whether the second requirement had been met, the threshold to meet is a low one and there simply needs to be a 'real' benefit (as opposed to a theoretical one). That said, where the petitioner alleged that the benefit of a winding-up order (against the subject Bermudian company) was the availability of the 'full suite of powers' under Hong Kong's winding-up legislation to the liquidators, the Court held that the second requirement would be rendered 'entirely otiose as it will automatically be met in every case'.[86] What was required was a benefit that was 'sufficient and tangible',[87] - the prime example being the existence of assets in Hong Kong which may realistically be recoverable by the liquidators.

On a related note, foreign corporate rescues may often be intertwined with the use of 'soft-touch provisional liquidation' (i.e., a company remains under the day to day control of the directors but is protected against actions by individual creditors), a procedure allowed

in other common law jurisdictions but not in Hong Kong.[88] Although there is 'nothing objectionable' in granting recognition and assistance to foreign soft-touch provisional liquidators in the Hong Kong Courts,[89] there is a line of cases in recent years which indicated a pattern whereby foreign soft-touch provisional liquidators would apply for recognition and assistance from the Hong Kong Court but fail to present any credible plan of corporate rescue.[90] In other words, the soft-touch provisional liquidation has been abused to obtain a 'de facto' moratorium of enforcement actions in Hong Kong. The Hong Kong Courts have, therefore, scrutinised such applications to prevent such techniques from being used to frustrate creditors' interests,[91] and it can be expected that such scrutiny will carry through in future jurisprudence.

Recognition and enforcement of foreign judgments (including Mainland judgments) and awards

As detailed in previous editions, there are various legal frameworks under which Hong Kong and Mainland China may mutually recognise and enforce Court judgments and arbitral awards. Insofar as Mainland Chinese Court judgments are concerned, among other things, the Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance (Cap 645) allows for Mainland Chinese judgments in civil and commercial matters to be enforced in Hong Kong.[92] Other foreign judgments are generally enforceable under the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap 319) or at common law.

In a similar fashion to Court judgments, Mainland Chinese and foreign arbitral awards can respectively be enforced in Hong Kong as well (and vice versa).[93]

Sources of litigation

As seen from the case law updates above, banking disputes and other related litigation have stemmed from a few key sources. Insolvency and debt enforcement cases (including the collapse of Mainland Chinese property companies, as highlighted by the case of *Nuoxi Capitalv Peking University Founder Group* mentioned above) have been a major contributor to the courts' case load. Given the ongoing and complex winding-up of large groups of companies, we expect this to be a continued source of litigation over the coming years. The increased use of arbitration clauses has led to greater litigation, particularly in relation to the jurisdictional interplay between arbitration and insolvency law.

Exclusion of liability

As highlighted in previous editions, the law on the use of anti-Bartlett clauses was settled by the CFA case of *Zhang Hong Li v DBS Bank (Hong Kong) Ltd*.[94] By way of brief recap, anti-Bartlett clauses stem from the English case of *Bartlett v Barclays Bank Trust Co Ltd (Nos 1 and 2)*,[95] and predominantly serves to relieve trustees form the duty to exercise control over or interfere with, or become involved in, the management of a trust that a

settlor intends to retain control over. In Zhang Hong Li, the CFA, among other things, held that the trustee (i.e., DBS Bank) of a Jersey family trust set up by a wife and husband to invest in financial products did not have any 'high level supervisory duty' to supervise and manage the trust. This was the effect of the anti-Bartlett clause present in the trust deed.-[96] However, the CFA recognised that an anti-Bartlett clause would not exempt trustees from their 'irreducible core of obligations', which are 'fundamental to the concept of a trust'.[97]

The law in this area is especially relevant to financial institutions appointed as trustees of family or investment trusts set up by family offices and high-net-worth individuals.

Regulatory impact

Regulators in Hong Kong, including the HKMA and SFC, have continued to step up activities against mis-selling, digital fraud and scrutiny of virtual assets.

Notably, in a joint enforcement action between the HKMA and SFC announced in January 2025, the SFC reprimanded and fined a prominent Hong Kong bank HK$66.4 million for 'serious regulatory failures' between 2014 and 2023 in relation to the bank's sale of collective investment schemes and derivative products (including solicitation of customers into conducting excessively frequent transactions with short holding periods) and the receipt of monetary benefits from client transactions where it should not have done so.[98] The HKMA has also stepped up enforcement in anti-money laundering (AML) and counter-terrorist financing (CTF), evidenced by a recent disciplinary stint taken against three banks in Hong Kong on significant AML/CTF deficiencies and a lack of proper internal control mechanisms.[99]

This year, the HKMA issued joint circulars with the SFC on the conduct expected of intermediaries when distributing investment products with exposure to virtual assets.[100] The HKMA has further issued consultations on revised Supervisory Policy Manual modules to include cryptocurrency standards.[101]

As mentioned in previous editions, the HKMA has also placed focus on sustainable financing. In mid- to late-2024, it set out the methods for assessing the greenness of projects and assets,[102] as well as launched its Sustainable Finance Action Agenda for future years.[103]

Most of this regulatory action is relevant to financial institutions.

Outlook and conclusions

In a busy year, the Hong Kong courts have dealt with specific regional issues (such as the enforcement of Keepwell deeds) as well as contentious issues arising in parallel with other jurisdictions, such as the scope of the *Quincecare* duty and the jurisdictional interplay between insolvency law and arbitration clauses. Further, the flexibility of the common law system has been demonstrated in the recent cases relating to virtual assets. What is clear,

however, is that Hong Kong continues to be a robust and reliable common law jurisdiction to resolve complex and novel disputes.

As to the outlook, it is likely that Hong Kong will see more insolvency-related cases in which financial institutions tend to be entangled. The recent uptick in capital markets activity could potentially lead to disputes and regulatory scrutiny if any offerings do not meet with investors' and regulators' expectations.

Endnotes

1 See Official Receiver's Office of Hong Kong, Statistics on Compulsory Winding-up and Bankruptcy (https://www.oro.gov.hk/eng/statistics/compulsory_winding_up_and_bankruptcy/stat.php?stat_type=W&chart=A ^ Back to section

2 [2023] HKCFA 25 (Hong Kong Court of Final Appeal). ^ Back to section

3 *Re Tsinghua Unigroup Co, Ltd* [2023] HKCFI 1572, where a bond trustee successfully claimed against the PRC Keepwell provider for breaching Keepwell deeds in failing to ensure their offshore subsidiary issuer (and guarantor) remained solvent with sufficient liquidity to pay interest and principal on such bonds. However, note that the enforceability of Keepwell deeds is highly susceptible to PRC regulatory approval or reorganisation proceedings, and breaches of Keepwell deeds are only subject to the usual rules of assessing contractual damages. ^ Back to section

4 (2025) 28 HKCFAR (Hong Kong Court of Final Appeal Reports) 172. ^ Back to section

5 *Luk Wing Yan v. CMB Wing Lung Bank Ltd* [2021] HKCFI (Hong Kong Court of First Instance) 279. ^ Back to section

6 *Supra* note ii above. ^ Back to section

7 According to Lord Sumption, such features may include a bank's knowledge that the agent has a substantial conflict of interest in respect of the transaction; a plain lack of benefit for the principal or commercial purpose on the face of the transaction; and unusual aspects of the transaction (at [16]). ^ Back to section

8 Ibid. ^ Back to section

9 At [58]. ^ Back to section

10 Specifically, that person is to report to the Joint Financial Intelligence Unit (JFIU) of Hong Kong, formed by both the Hong Kong Police Force and the Customs and Excise Department. ^ Back to section

11 Section 25A(1) of the OSCO. ^ Back to section

12 https://www.jfiu.gov.hk/en/str.html (JFIU website). ^ Back to section

13 Section 25A(2)(a) of the OSCO. ^ Back to section

14 [2024] HKCFA 8. ^ Back to section

15 *Ibid,* [61]-[65]. ^ Back to section

16 In the recent case of *Wang Shuiting v Commissioner of Police (No 2)* [2025] HKCFI 352, proceedings were brought by the applicant arising out of the No Consent Regime with issues significantly overlapping with *Tam Sze Leung*. The applicant withdrew proceedings shortly after the CFA's decision and the applicant was ordered to pay the Commissioner's costs. It can be expected that similar constitutional challenges will fall away after the decision in *Tam Sze Leung*. ^ Back to section

17 [2025] HKCFI 2896. ^ Back to section

18 The Court has power under common law to recognise and give effect to foreign bankruptcy or insolvency proceedings and to grant recognition and assistance to foreign trustees-in-bankruptcy and liquidators, and the grant of disclosure orders against banks in Hong Kong are part and parcel of this power. ^ Back to section

19 The Court followed the case of *Re Phillip James Kingston (Bankrupt)* [2024] 5 HKLRD 788 in laying down these essential principles to granting recognition and assistance to foreign liquidators, at [14]. ^ Back to section

20 [2025] HKCFI 2461. ^ Back to section

21 Under Hong Kong law, such orders can be made under the common law (commonly known as *Norwich Pharmacal* orders or banker's trust orders) or under the Evidence Ordinance (Cap 8). ^ Back to section

22 At [31]. ^ Back to section

23 Ibid. ^ Back to section

24 Alert List of the SFC (SFC, 8 July 2022) (https://www.sfc.hk/en/alert-list/2850). ^ Back to section

25 As of April 2024, the Hong Kong police had reportedly arrested more than 70 people allegedly involved in the JPEX scandal allegedly involving more than 2,600 victims and losses of more than HK$1.6 billion. See https://www.scmp.com/news/hong-kong/law-and-crime/article/3259533/hong-kong-jpex-cryptocurrency-scanda (South China Morning Post, 18 April 2024). ^ Back to section

26 *Police charge 16including influencer Joseph Lam in $1.6B JPEX crypto fraud case* (The Standard, 5 November 2025) (https://www.thestandard.com.hk/wealth-and-investment/article/316007/Police-charge-16-including-influencer-J
^ Back to section

27 [2024] HKDC (Hong Kong District Court) 1628. The Court referred extensively to the New Zealand case of *Ruscoe v Cryptopia Ltd (in Liquidation)* [2020] NZCH 935, which also held that a cryptocurrency trading exchange held cryptocurrencies on express trust for the accountholders, particularly as the exchange was principally responsible for following accountholders' instructions and have them increase or reduce their cryptocurrency interest on the exchange. It did so as bare trustee. ^ Back to section

28 The Court affirmed and followed the case of *Re Gatecoin (lin Liq)* [2023] 2 HKLRD (Hong Kong Law Reports and Digest) 1079. ^ Back to section

29 In equity, the three certainties principle is a touchstone for the existence of an express trust. In holding that the three certainties were met, the Court reasoned as follows: (1) First, there was sufficient certainty of subject matter. Not only was cryptocurrency property, i.e., it was capable of forming the subject of a trust, the USDT was also sufficiently segregated in users' wallets such that it was clearly identifiable before being withdrawn. Each beneficiaries' proportionate share in the USDT was not uncertain, and therefore the trust did not fail for being a fungible mass with unascertainable interests therein. (2) Second, there was sufficient certainty of object as the beneficiaries of the trust were certain and the extent of their claim could be readily seen from the balance of their accounts recorded on the JPEX platform. (3) Third, there was sufficient certainty of intention. It was clear that JPEX, in creating the exchange without allocating to its users the private keys, manifested an intention to hold the crypto-assets deposited by such users on trust. JPEX also acknowledged on multiple occasions that beneficial ownership of the crypto-assets was to remain with its users, including the use of terms such as 'client funds', 'customer funds' and 'your account's security and assets' in its public announcements. ^ Back to section

30 [2025] HKCFI 493. ^ Back to section

31 The concept of NCCs was laid down in *Re Gatecoin Ltd* [2023] HKCFI 914 (the '2023 case'), which related to the same subject matter and liquidation proceedings, and was the first instance under which an application for directions by the liquidators was made as to whether the cryptocurrency was held by Gatecoin on trust for its customers. The present 2025 case is a continuum and the second instance under which the liquidators applied for the Court's further directions. In the 2023 case, the Court held, among other things, that NCCs were customers that did not accede to the superseded terms and conditions of Gatecoin (such terms and conditions expressly provided for the absence of an intention on the part of Gatecoin to hold the cryptocurrency on trust). Therefore, the NCCs still retained beneficial interest over the cryptocurrency under a trust. It was therefore the Court's task in the 2025 case to decide how the beneficially held cryptocurrency was to be distributed to such NCCs. ^ Back to section

32 Such administrative costs will primarily be attributed to a liquidator's expenses in the liquidation to reflect the time and costs spent by them. The Court made it clear that these should be paid out of the trust assets and not by free assets, as this would place an unfair burden of costs on unsecured creditors. On the other hand, where there was a shortfall, the Court held that the *pari passu ex post facto* approach should be adopted (following the English case of *Barlow Clowes International Ltd (in liq) v Vaughan* [1992] 4 All ER 22), which involves establishing the total quantum of assets available and sharing them on a proportionate basis among all the investors who have contributed to the acquisition of such assets, ignoring the dates on which they made their investment. ^ Back to section

33 The Court recognised that in distributing the cryptocurrencies *in specie*, it would be necessary to engage a service provider to set up a designated wallet for each type of cryptocurrency and, thereafter, transfer the requisite amount of cryptocurrency to each creditor. The Court listed out several (non-exhaustive) scenarios where it would not be in the interest of the creditors or it would be impracticable for the liquidators to effect allocation*in specie*, including, among others, (1) if the amount of a type of cryptocurrency available is small as compared to the cost of setting up a designated wallet for that cryptocurrency, even where there is no shortfall; (2) if the transaction cost for transferring the cryptocurrency to the creditors is disproportionate to the value of the claims; and (3) if the creditor elects to receive cash in lieu of allocation *in specie*. ^ Back to section

34 [2024] HKCFI 2099. ^ Back to section

35 The Court also highlighted that as cryptocurrency trading was a 'new, novel and innovative business', the Hong Kong Courts have little experience in dealing with such kind of disputes, and might not be familiar with the *modus operandi* and the structures for the operation of such kind of business. The Court should therefore focus on the balance of convenience issues, and would not be in a position to form a preliminary view about the overall merit of the claim. ^ Back to section

36 HCA (High Court Actions) 533/2025. ^ Back to section

37 *Ibid*, at [75]. The appellant highlighted the difference in wording used under the Mutual Arrangement as regards what kind of documents may be requested by a requesting Court. Under Article 6 of the Mutual Arrangement, a Mainland Court may request the taking of evidence by the Courts of Hong Kong, including the 'obtaining of documents'; on the flip side, a Hong Kong Court may request the 'provision of documentary evidence' from a Mainland Court. The appellant sought to argue that the difference in wording meant that the documents requested by the respondent, which was in the nature of general discovery, would fall outside the scope of Article 6. The appellant also argued that the word 'evidence' under the Mutual Arrangement should be given the same meaning as that under the Evidence Ordinance (Cap 8). The CFA specifically rejected this, holding that there was no reason for the Mutual Arrangement to be interpreted in such a restrictive manner. The documents requested by the respondent, which were audit working papers, clearly fell within the ambit of Article 6. ^ Back to section

38 *Supra* note 37, at [81]. ^ Back to section

39 Section 3 of the SO. A 'stablecoin' is defined as a cryptographically secured digital representation of value that (1) is expressed as a unit of account or store of economic value; (2) is used, or intended to be used, as a medium of exchange accepted by the public for, among other things, payment for goods or services; (3) can be transferred, stored or traded electronically; (4) is operated on a distributed ledger or similar information repository; and (5) purports to maintain a stable value with reference to a single or pool of assets. Section 4 of the Ordinance specifically targets 'specified stablecoins', which are further defined as a stablecoin that, among other things, purports to maintain a stable value with reference to (1) one or more official currencies; (2) or any prescribed unit of account by the HKMA. ^ Back to section

40 Under Section 5(1) of the Ordinance, a person carries on a 'regulated stablecoin activity' if, among other things (1) the person issues a specified stablecoin (as defined under Section 4 of the Ordinance) in Hong Kong in the course of business; or (2) the person issues a specified stablecoin in a place outside Hong Kong in the course of the business and the specified stablecoin purports to maintain a stable value to the Hong Kong dollar. Under Section 5(2) of the Ordinance, a person holds himself out as carrying on a 'regulated stablecoin activity' if (1) the person actively markets, whether in Hong Kong or elsewhere, to the public that the person carries on an activity and (2) the activity, if carried on in Hong Kong, would constitute a regulated stablecoin activity. ^ Back to section

41 Section 4, Schedule 2 to the SO. ^ Back to section

42 Section 5, Schedule 2 to the SO. ^ Back to section

43 Sections 7 and 8, Schedule 2 to the SO. ^ Back to section

44 For example, the requirement for minimum financial resources (under Section 4, Schedule 2 to the SO) or fitness and propriety of a licensee applicant's directors, controllers etc. (under Sections 7 and 8, Schedule 2 to the SO) do not apply to authorised institutions (Section 2, Part I, Schedule 2 to the SO). The rationale for this is that in being approved as an authorised institution by the HKMA, the applicant would already have had to be assessed on such criteria under the Banking Ordinance. ^ Back to section

45 *77 firms apply to issue stablecoins in Hong Kong, BOCHK included* (Ledger Insights, 2 September 2025) (https://www.ledgerinsights.com/77-firms-apply-to-issue-stablecoins-in-hong-kong-bochk-included-report/). ^ Back to section

46 *Standard Chartered, Animoca Brands and HKT establish joint venture to issue HKD-backedstablecoin* (Standard Chartered Press Release, 17 February 2025) (https://www.sc.com/en/press-release/standard-chartered-animoca-brands-and-hkt-establish-joint-venture-to-issue-hkd-backed-stablecoin/). ^ Back to section

47 Section 8(3) of the SO. ^ Back to section

48 This is regulated as a 'VA service' under the AMLO. Under Schedule 3B of the AMLO (referencing Section 53ZR), a 'VA service' is defined as providing services through means of electronic facilities (a VA exchange) whereby offers to sell or purchase virtual assets are regularly made or accepted in a way that forms or results in a binding transaction (or there is a reasonable expectation of such), and where client money or client virtual assets comes into direct or indirect possession of the person providing such service. 'Virtual asset' is separately defined under Section 53ZRA of the Ordinance. On a reading of the legislation, the definitions would most likely cover non-security blockchain-based crypto products, such as Bitcoin, Ethereum and Tether that are sold on an online platform. Platform operators would therefore be squarely caught within the Ordinance's definitions. It is noteworthy that stablecoin issuers may fall foul of the dual regime if one, for example, offers a stablecoin trading/exchange service, and may therefore require licences from both the HKMA and SFC. Stablecoins would be caught within the definition of 'virtual assets' under the AMLO. ^ Back to section

49 According to the Commission, 'security tokens' are digital representations of the ownership of assets (e.g., gold or real estate) or economic rights (e.g., share of profits or revenue) using blockchain technology, meaning that they are cryptography-secured products. ^ Back to section

50 List of virtual asset trading platforms (SFC Website) (https://www.sfc.hk/en/Welcome-to-the-Fintech-Contact-Point/Virtual-assets/Virtual-asset-trading-platforms-ope ^ Back to section

51 Public Consultation on Legislative Proposals to Regulate Over-the-Counter Trading of Virtual Assets (Financial Services and the Treasury Bureau (FSTB), 8 February 2024) (https://www.fstb.gov.hk/fsb/en/publication/consult/doc/VAOTC_consultation_paper_en.pdf). ^ Back to section

52 Public Consultation on Legislative Proposal to Regulate Dealing in Virtual Assets (FTSB and SFC, 26 June 2025) (https://www.fstb.gov.hk/fsb/en/publication/consult/doc/VADEALING_consultation_paper_en.pdf). ^ Back to section

53 Public Consultation on Legislative Proposal to Regulate Virtual Asset Custodian Services (FTSB and SFC, 26 June 2025)FTSB and SFC, 26 June 2025) (https://apps.sfc.hk/edistributionWeb/api/consultation/openFile?lang=EN&refNo=25CP7). ^ Back to section

54 Public consultation on proposed enhancements to Banking Ordinance (HKMA, 5 December 2024) (https://www.hkma.gov.hk/eng/news-and-media/press-releases/2024/12/20241205-7/). ^ Back to section

55 Banking (Amendment) Ordinance 2025 to commence on November 3 (gov.hk, 5 September 2025) (https://www.info.gov.hk/gia/general/202509/05/P2025090500211.htm). ^ Back to section

56 Report of the Bills Committee on Banking (Amendment) Bill 2025 (legco.gov.hk, 22 May 2025) (https://www.legco.gov.hk/yr2025/english/hc/papers/hc20250516cb1-910-e.pdf ^ Back to section

57 [2023] HKCFI 3072 ^ Back to section

58 Pursuant to Section 7 of Court Proceedings (Electronic Technology) Ordinance (Cap 638), the Chief Justice has designated iCMS as the e-system to facilitate the use of electronic technology, principally in relation to proceedings and for other court-related proceedings. ^ Back to section

59 https://www.info.gov.hk/gia/general/202506/23/P2025062300283.htm. Prior to the extension to the High Court, iCMS covered personal injury actions, tax claim proceedings, civil action proceedings and employees' compensation cases in the District Court, summons cases in the Magistrates' Courts, as well as bulk claims in the Small Claims Tribunal ^ Back to section

60 Section 9(a))of the C(RH)O. ^ Back to section

61 Section 9(k) of the C(RH)O. ^ Back to section

62 In 2024, the HKIAC processed 40 applications made to 21 different Mainland Chinese courts under the Interim Measures Arrangement seeking to preserve evidence, assets or conduct worth a total of 9.1 billion yuan (approximately US$1.2 billion) in Mainland China, representing a noteworthy increase from the 19 applications processed in 2023 and reflecting a growing reliance on the Interim Measures Arrangement. See further details of the HKIAC's 2024 case statistics at https://www.hkiac.org/news/hkiac-releases-statistics-2024. ^ Back to section

63 *CITIC Pacific Ltd v. Secretary for Justice (No. 2)* [2015] 4 HKLRD 20. ^ Back to section

64 (2023) 26 HKCFAR 119. ^ Back to section

65 [2024] HKCA (Hong Kong Court of Appeal) 299. ^ Back to section

66 The Court's reasoning is important: (1) generally speaking, a petitioner would be entitled to a bankruptcy or winding-up order absent an exclusive jurisdiction clause or an arbitration provision vis-à-vis the petition debt, and if such debt is not subject to a *bonafide* dispute on substantial grounds. This is known as the 'Established Approach'; (2) the determination of whether there is such a *bona fide* dispute is a threshold question determinant of whether the Court's bankruptcy or insolvency jurisdiction is engaged to begin with; (3) in deciding whether or not to exercise this discretion, various considerations underpin such exercise, including public policy interests to hold parties to their contractual bargains (but this is not the only consideration) and (4) therefore, the 'Established Approach' is not appropriate where an exclusive jurisdiction clause or arbitration clause is involved, absent countervailing factors, for the significant public policy considerations (among other things) in holding parties to their bargains. ^ Back to section

67 [2024] UKPC 16. ^ Back to section

68 *Supra* note lxvi above. ^ Back to section

69 [2025] HKCFI 2417. ^ Back to section

70 After filing the Notice of Appeal, the Plaintiff also renewed its interim anti-suit injunction application against the Defendant pending determination of the substantive appeal. However, the Court of Appeal rejected renewed application on the basis that the Plaintiff's appeal had no real prospect of success, thus failing to satisfy one of the conditions for the grant of an interim injunction pending appeal. One of the Plaintiff's grounds of appeal, among other things, was that the underlying merits of the action (purportedly within the ambit of the arbitration agreement) were wholly irrelevant to the application for an anti-suit injunction, and that the Court must only look at whether the underlying dispute is covered by an arbitration clause. Whilst the Court of Appeal agreed that the Courts do not consider the merits of the underlying dispute when deciding the Plaintiff's claim for anti-suit injunctions (approving *Bank A v Bank B* [2024] 5 HKLRD 250), it disagreed that merits of the underlying dispute are wholly irrelevant. It held that where the Plaintiff's case on the underlying merits was 'hopeless and frivolous', it would be abusive for the Plaintiff to use an anti-suit injunction to prevent the Defendant from invoking the Cayman Court's winding-up jurisdiction. The Plaintiff's grounds of appeal were therefore not reasonably arguable. ^ Back to section

71 *Hyalroute Communication Group Ltd v Industrial And Commercial Bank of China (Asia) Ltd* [2025] HKCA 936. ^ Back to section

72 One of the Plaintiff's grounds of appeal, among other things, was that the underlying merits of the action (purportedly within the ambit of the arbitration agreement) were wholly irrelevant to the application for an anti-suit injunction, and that the Court must only look at whether the underlying dispute is covered by an arbitration clause. Whilst the Court of Appeal agreed that the Courts do not consider the merits of the underlying dispute when deciding the Plaintiff's claim for anti-suit injunctions (approving *Bank A v Bank B* [2024] 5 HKLRD 250), it disagreed that merits of the underlying dispute are wholly irrelevant. It held that where the Plaintiff's case on the underlying merits was 'hopeless and frivolous', it would be abusive for the Plaintiff to use an anti-suit injunction to prevent the Defendant from invoking the Cayman Court's winding-up jurisdiction. The Plaintiff's grounds of appeal were therefore not reasonably arguable. ^ Back to section

73 [2025] HKCFI 4514. ^ Back to section

74 *Mike Ghias v Sirnaomics Ltd* [2025] HKCFI 4284. ^ Back to section

75 *Tongcheng Travel Holdings Ltd v OOO Securities (HK) Group Ltd* [2024] HKCFI 2710. ^ Back to section

76 *Ibid,* at [19]. When faced with an application for stay of proceedings in favour of arbitration, the Courts must refer the dispute to arbitration unless one or more of the following is demonstrated: (1) there is no arbitration agreement at all; (2) the arbitration agreement is null and void, inoperative of incapable of being performed; (3) there is in fact no dispute to be referred to arbitration or (4) the relevant dispute is not one that is covered at all by the arbitration provisions in the arbitration agreement. ^ Back to section

77 Section 45 of the Arbitration Ordinance (Cap 609) and Section 21L of the High Court Ordinance (Cap 4). ^ Back to section

78 Section 21L of the High Court Ordinance (Cap 4). ^ Back to section

79 [2024] HKCFI 2529. ^ Back to section

80 *Ibid,* at [34]. ^ Back to section

81 *Ibid.* ^ Back to section

82 [2025] HKCFI 2669, applying [redacted] *formerly known as* [redacted] *v. Eton Properties Ltd and Another* [2023] HKCFI 1327. ^ Back to section

83 Pursuant to Section 34(1) of the Arbitration Ordinance, which adopts Article 16(1) of the UNCITRAL Model Law, an 'arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement.' ^ Back to section

84 *Kam Leung Sui Kwan v Kam Kwan Lai* (2015) 18 HKCFAR 501. ^ Back to section

85 [2025] HKCA 555. ^ Back to section

86 *Ibid,* at [61]. ^ Back to section

87 *Ibid,* at [53]. ^ Back to section

88 *This position was expressly ruled out in Re Legend International Resorts Limited [2006] 2 HKLRD 192, where the Court of Appeal held that Hong Kong provisional liquidators should not be appointed for the sole purpose of a corporate rescue.* ^ Back to section

89 *Re Ping An Securities Group (Holdings) Ltd* [2021] HKCFI 651. ^ Back to section

90 *Re Global Brands Group Holding Ltd (In Liq)* [2022] HKCFI 1789. ^ Back to section

91 *Re China Bozza Development Holdings Ltd* [2021] HKCFI 1235. ^ Back to section

92 This is done by way of a registration process, detailed under Section 10 of the Ordinance. It is noteworthy that the Ordinance only applies to Mainland Chinese Judgments obtained post-29 January 2024. The Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap 597) continues to be applicable to any Mainland Chinese Judgments obtained pre-29 January 2024. A written agreement between the parties to submit to the sole jurisdiction of a Mainland Chinese or Hong Kong Court in order for this Ordinance to be utilised. ^ Back to section

93 The framework underpinning the enforcement of foreign arbitral awards in Hong Kong lies in Hong Kong being a party to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention). Subject to leave being given by the Court, arbitral awards handed down in another contracting state to the New York Convention may be enforced in Hong Kong in the same manner as a judgment under Section 87 of the Arbitration Ordinance. The framework underpinning the enforcement of Mainland Chinese arbitral awards in Hong Kong lies in the Arrangement Concerning Mutual Enforcement of Arbitral Awards between Mainland China and the Hong Kong Special Administrative Region. ^ Back to section

94 [2019] HKCFA 45. ^ Back to section

95 [1980] Ch 515. ^ Back to section

96 At [45]. ^ Back to section

97 At [65]. This principle stems from MillettLJ's judgment in the landmark case of *Armitage v Nurse* [1998] Ch 241. The 'irreducible core of obligations' consist of 'the duty of the trustees to perform the trusts honestly and in good faith for the benefit of the beneficiaries', but that was as far as they go. They do not include 'the duties of skill and care, prudence and diligence' and certainly do not operate to override express terms of a trust (i.e., the anti-*Bartlett* provision). ^ Back to section

98 See the HKMA's press release at https://www.hkma.gov.hk/eng/news-and-media/press-releases/2025/08/20250826-4/. ^ Back to section

99 See the HKMA's press release at https://www.hkma.gov.hk/eng/news-and-media/press-releases/2025/07/20250722-4/. ^ Back to section

100 Joint circular on intermediaries' virtual asset-related activities (SFC and HKMA, 22 December 2023) (https://apps.sfc.hk/edistributionWeb/api/circular/openFile?lang=EN&refNo=23EC67) as supplemented by the Supplemental joint circular on intermediaries' virtual asset-related activities (SFC and HKMA, 30 September 2025) (https://apps.sfc.hk/edistributionWeb/api/circular/openFile?lang=EN&refNo=25EC50). ^ Back to section

101 Letter to the Chairperson of the Hong Kong Association of Banks from the HKMA - Cryptoassets standard: consultation on new and revised SPM modules and code of practice (HKMA, 8 September 2025) (https://brdr.hkma.gov.hk/eng/doc-ldg/docId/getPdf/20250905-3-EN/20250905-3-EN.pdf). ^ Back to section

102 Hong Kong Taxonomy for Sustainable Finance (HKMA, May 2024) (https://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2024/20240503e1.pdf). ^ Back to section

103 Sustainable Finance Action Agenda (HKMA, 21 October 2024) (https://www.hkma.gov.hk/media/eng/doc/key-information/press-release/2024/20241021e4a1.pdf). ^ Back to section

SLAUGHTER AND MAY/

Ralph Sellar	ralph.sellar@slaughterandmay.com
Warwick Chan	warwick.chan@slaughterandmay.com
Martha Savage	martha.savage@slaughterandmay.com
Timothy Shaw	timothy.shaw@slaughterandmay.com
Jason Cheng	Jason.Cheng@SlaughterandMay.com

Slaughter and May