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# HONG KONG LITIGATION NEWSLETTER

## Recent Judgments - What they mean for you as a director, shareholder, or your company.

In this edition, our litigation team discusses the key takeaways from two recent judgments in relation to disputes amongst directors and shareholders.

In the first case, Stephenson Harwood secured a victory for the 1st to 3rd Defendants and dismissed the Plaintiff's application for injunctive relief under section 729 of the Companies Ordinance (Cap. 622).

Next, our team breaks down a case where a minority shareholder's attempt to enforce an alleged oral agreement fell short.

We hope you enjoyed this edition, and we look forward to your continued support in the coming editions. As usual, please feel free to contact us should you like to learn more on any topic, or if you would need our assistance.

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# HONG KONG COURT CLARIFIES LIMITS ON DIRECTOR'S RIGHTS TO CHALLENGE BOARD DECISION

In *Chen Ming v Chen Jiagan and ors.* [2025] HKCFI 868, the Court reaffirmed the well-established principle that a director is not a party to the Articles of Association and therefore has no standing to complain about its breach. This decision sheds light on the proper channels for resolving boardroom disputes and the remedies available to directors who are removed from office.

## BACKGROUND

In this case, the Plaintiff was an executive director and chairman of Xin Yuan Enterprises Group Limited, a Cayman-incorporated company listed in Hong Kong (the "**Company**"). At a board meeting on 17 December 2024, it was resolved that the Plaintiff be removed as chairman and director of the Company ("the **Resolutions**").

The Plaintiff commenced a Writ action against the directors and company secretary of the Company on the sole basis that the resolutions passed at the December Meeting are in breach of the Articles of Association of the Company ("**AA**") seeking the following reliefs:

1. Declaration that the Resolutions are void or invalid or ineffective;
2. Injunctions restraining the Defendants from implementing or effecting the Resolutions.

The Plaintiff also took out a Summons for an interim injunction against the defendants restraining them from acting upon the resolutions and taking any further steps to *inter alia* change the composition of the board until the next EGM pursuant to s. 729 of the companies ordinance (cap. 622) ("**CO**")<sup>1</sup>.

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<sup>1</sup> Section 729 of the CO gives the Court the power to order remedies like injunctions to stop or require certain actions be taken, order damages, declaring contracts void if a member of the company shows that their interests are affected.



## DECISIONS

The Court held, *inter alia*, that:

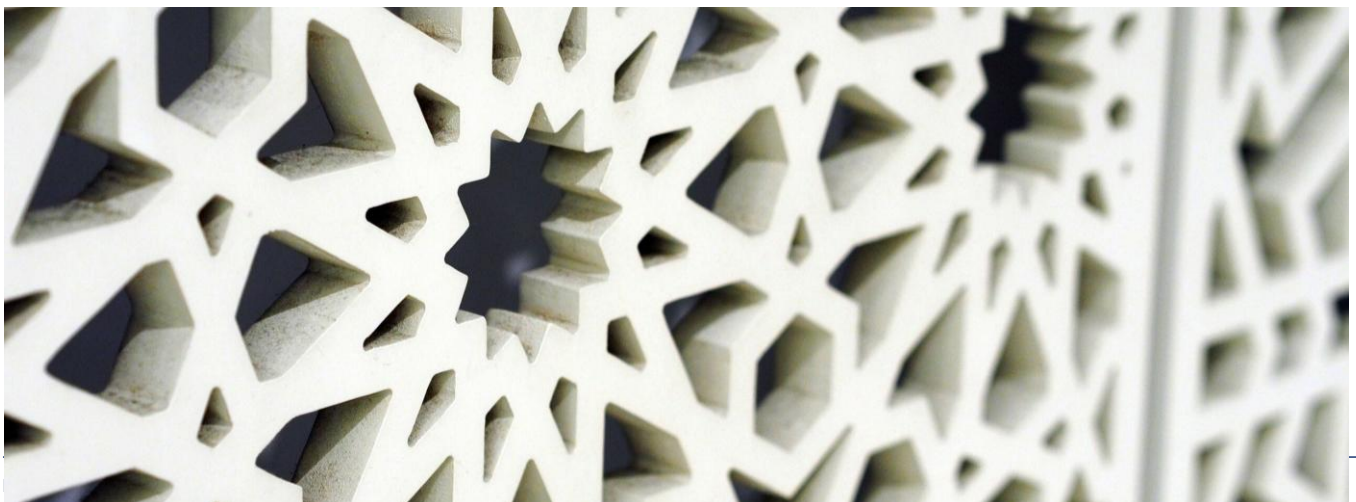
1. **Only members may enforce the articles.**  
The Court reaffirmed that a company's articles of association constitute a statutory contract between the company and its members. This contract does not extend to directors in their capacity, unless they are also members. Although directors are obliged to act in accordance with a company's articles, this does not make them parties to the articles or provide them with the right to complain about any breach of the articles.
2. **Only company can complain about director's breach of fiduciary duties.**  
Directors cannot sue each other for breach of fiduciary duty – only the company itself can complain about any wrongdoing on the part of a director for breach of fiduciary duties.
3. **Only a member or creditor of the company can seek injunctive relief under section 729 of the CO.** Procedurally, the Court confirmed that any application under section 729 of CO should be by way of an Originating Summons, not a Writ. As to who has the right to seek such relief, the wording of section 729(1) of the CO is clear that only a "*member or creditor of a company whose interests have been... affected by the conduct...*" for, *inter alia*, breach of a person's fiduciary duties owed to the company, may apply for an injunctive relief (see also section 728 of the CO).

## CONCLUSION AND IMPLICATIONS

In this case, the Plaintiff is only a director, and not a shareholder. Therefore, he has no right to sue under the AA, nor bring any application for injunctive relief under section 729 of the CO. Accordingly, the Court struck out the writ and dismissed the application for interim injunction.

This case serves as a helpful reminder to directors who intend to take action in respect of the actions and/or conducts of their fellow directors.

**Stephenson Harwood acted for the 1st and 3rd Defendants in this case.**







# CONTROL BATTLES IN NEW BRIGHT INTERNATIONAL DEVELOPMENT LIMITED

Unfair prejudice petition is a mechanism used by minority shareholders to seek redress when the company's affairs are being conducted unfairly and exploited by the majority shareholders in a manner which is prejudicial to their interests.

## BACKGROUND

The fight in **Re New Bright International Development Ltd [2025] HKCFI 2351** is between the Petitioner (who is the minority shareholder) and the majority shareholder. The majority shareholder seeks to alter the composition of the Board of Directors which would deny the minority shareholder's right to equal participation in the management and decision-making of the company ("**Right to Equal Participation**"). According to the minority shareholder, the majority shareholder is merely holding the shares on trust for a Mr Pa and that the Right to Equal

Participation was given to her by virtue of an oral agreement made between her and Mr Pa ("**the Oral Agreement**").

The minority shareholder therefore presented an Unfair Prejudice Petition against the majority shareholder to, inter alia, restrain the majority shareholder from changing the composition of the Board of Directors.

## MAJORITY SHAREHOLDER WAS A NOMINEE FOR MR PA

The Court accepted that the majority shareholder is a nominee for Mr Pa.

1. Nominee arrangement not inherently improbable given Mr Pa's known practice of using nominee director or shareholder for his business before.
2. As an undischarged bankrupt, Mr Pa was prohibited from acting as a director of the Company without leave. Further, it is inherently probable that Mr Pa had used



this arrangement to avoid any claims that his creditors may have.

3. The majority shareholder argued that she was in a romantic relationship with Mr Pa and hence the shareholding in question is a gift from Mr Pa to herself. The Court did not accept this contention.

It is also important to note that any agreement made by the principal is not enforceable against the nominee per se unless it can be shown that the principal has authority to enter into the agreement on behalf of the nominee.

## NO ORAL AGREEMENT

Despite the discussions during meetings attended only between the Petitioner and Mr Pa (as alleged by the Petitioner), the Court refused to accept that there is such alleged Oral Agreement on balance.

In modern commercial practice, especially in high-value and complex ventures, it is rare for parties not to document such fundamental arrangements. The absence of written evidence tends to suggest no such agreement was concluded.

## WHETHER THE ORAL AGREEMENT WOULD BIND THE NOMINEE

Even if the Oral Agreement had been proven, the Court held that there was no basis to bind the majority shareholder as nominee to its terms.

The minority shareholder alleged that Mr Pa had entered into the alleged agreement both for himself and on behalf of the majority shareholder. However, the Petition did not clarify whether this was based on actual, implied, or apparent authority, nor did it set out any facts showing that the majority shareholder had authorised, or represented, that Mr Pa had authority to act on her behalf in entering into the Oral Agreement. Thus, the Court held that even if the Oral Agreement did exist, it would not be binding on and enforceable against the majority shareholder.

## CONCLUSION AND IMPLICATIONS

In a commercial context, the Court is reluctant to find the existence of oral agreements. This is yet another case confirming the importance of recording any understanding and agreement in writing even if a business is set up between two trusted friends / partners to mitigate any risks of costly litigation.



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