

HONG KONG / JUDGMENT

RE TRITECH DISTRIBUTION LTD

[2026] HKCFI 473

COURT

Court of First Instance

DECIDED

23 January 2026

CASE / FILE NUMBER

HCCW458/2025

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HCCW 458/2025

[2026] HKCFI 473

IN THE HIGH COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

COURT OF FIRST INSTANCE

COMPANIES (WINDING-UP) PROCEEDINGS NO 458 OF 2025

IN THE MATTER of the COMPANIES (WINDING UP AND MISCELLANEOUS PROVISIONS)
ORDINANCE, CHAPTER 32 OF THE LAWS OF HONG KONG

and

IN THE MATTER of TRITECH DISTRIBUTION LIMITED

Before: Deputy High Court Judge Gary CC Lam in Chambers (Open to public)

Dates of Written Submissions: 22 December 2025, 5 and 9 January 2026

Date of Decision: 23 January 2026

D E C I S I O N

INTRODUCTION

At the first Monday morning hearing of the Petition filed on 28 July 2025 (the “Petition”) on 13 October 2025, having considered parties’ written and oral submissions, I granted conditional leave for TRITECH DISTRIBUTION LIMITED (the “Company”) to file and serve the Affirmation of Ip Ka Wai Charlie dated 6 October 2025 out of time, conditional upon payment of US\$22,500,000 being 50% of the underlying debt of the Petition. This is the Company’s application for leave to appeal against my order to impose the condition.

WHAT HAPPENED PRIOR TO AND AT THE MONDAY MORNING HEARING

As pointed out by the Petitioner’s Skeleton Submissions dated 9 October 2025 for the Monday morning hearing of 13 October 2025:-

“The Petitioner’s verifying affirmation was filed on 30.7.2025. As such, under rule 32(1) of the Companies (Winding-up) Rules (Cap. 32H), the deadline for the Company to file its affirmation in opposition was 8.8.2025. Neither has the Company complied with the deadline, nor has it taken out any time extension application. On 6.10.2025, the Company filed Ip 1st [the Affirmation of Ip Ka Wai Charlie] without leave. No explanation was provided by the Company to justify the delay.”

On the same date, that is, 9 October 2025, the Company filed the 2nd Affirmation of Ip Ka Wai Charlie in an attempt to explain the delay. In the affirmation, it was explained that:-

The Company engaged the solicitors on 29 August 2025 (§5). I pause here to note that the solicitors (assumed to have known the relevant statutory rules and practice) must have known by the time that the deadline had been missed and thus, following Harris J’s “advice”, an application for time extension must have been made soon.

The Company had been working diligently with the solicitors to prepare the evidence in opposition (§8).

The contents of the affirmation were finalised on 30 September 2025, but the deponent was not in Hong Kong and could only affirm the affirmation on 6 October 2025, still one week before the Monday morning hearing (§§11-12).

The Company “would be taken by surprise if they would be punished for failure to meet the deadline under Cap 32H rule 32(1) on the mere alleged but bogus claims of the Petitioner. We are not aware of any standing sanction or standing unless-order under those statutory provisions, whether express or implied. We verily believe to punish us without any forewarning will be unfair and unjust.” (§14)

During the hearing, the Company (then represented by another counsel) opposed any imposition of condition. Upon my query, the Company’s then counsel fairly accepted that there was no specific timeline to explain why the Company would have to take so much time to prepare the evidence, that there was no evidence to explain why the Company instructed lawyers so late, and

that there was no evidence to explain why application for time extension was not sought earlier rather than at the last minute. I should underscore that the Company's then counsel never suggested, as now suggested by the Company's current counsel Mr Clifford Smith SC leading Mr Tommy Cheung settling the draft Notice of Appeal and preparing written submissions, that the Court should not impose any payment conditions or any other condition "save for that of commencing appropriate proceedings in Singapore in accordance with the said exclusive jurisdiction clause" (the "Foreign Proceedings Condition"), which is the exclusive jurisdiction clause relied upon by the Company to oppose the Petition on the strength of the Court of Final Appeal's judgment in *Re Lam Kwok Hung Guy* (2023) 26 HKCFAR 119, commonly referred to as the Guy Lam's case.

Having considered the parties' submissions, at the hearing, I gave the following oral reasons for imposing the condition:-

"There is no timeline to explain the delay. There is no reason for engaging lawyers late. The evidence was said to be substantial, but it is, in my view, not so substantial that it would have prevented the Company from seeking time extension earlier. Merits-wise, despite the Company's reliance on the jurisdictional clause in favour of the Singaporean forum, there is no action taken there."

RATIONALE OF THE DECADE-LONG STANDARD PRACTICE

Although the Company alleged, as quoted in §3(4) above, that it would be taken by surprise if it would be punished for failure to meet the statutory deadline under Cap. 32H (sounding as if there should be no consequence for failure to comply with a statutory time limit), it has in fact been a standard practice for a decade or more to impose such a condition upon leave to file opposing affirmation out of time according to Practice Direction 3.1 §16.1, which put in writing the Court's practice dated back to at latest 2015 if not earlier well known to legal practitioners in the field (if not in general): see *Re Sun Sang Kong Yuen Shoes Factory Co Ltd* [2015] 4 HKLRD 52. There is good reason behind this standard practice. As explained by Harris J in *Re Sun Sang Kong Yuen Shoes Factory Co Ltd*, *supra*:-

"2. The winding up rules require evidence in opposition to be filed within 7 days of filing of the affirmation or affidavit deposing to the truth of the contents of a petition. One would also expect, as I have observed in earlier decisions, the directors of any company to appreciate that there could be little more serious for them to have to deal with than a petition seeking to wind their company up."

3. It is wholly unsatisfactory for directors of companies to ignore statutory demands, to ignore petitions and then to turn up at the hearing of the petition before the Companies Court Judge in open court, and only at that stage seek leave to file evidence in opposition.

4. The hearing before the Companies Judge on a Monday in open court is an opportunity for the court to determine petitions, if the circumstances allow it to do so. Sometimes evidence in opposition has been filed and it is apparent that substantial time needs to be made available in order for the petition to be determined. However, as should be quite clear to practitioners, one should not proceed on the basis that the Monday hearings are simply callovers.
5. The practice of the Companies Court has become quite clear in this regard. If no evidence at all has been filed by a company when a petition comes on for the first time before the Companies Court Judge, then in order for a company to have leave to file evidence in opposition, it must pay into court the amount of the debts relying on in the petition, or at least a substantial proportion of it.” (emphasis added)

Subsequently, such practice having been put in place for years and therefore presumably all legal practitioners having known such practice, his Lordship in *Re Khingan Resources Limited* [2020] HKCFI 2717 had still to complain about the practitioners’ failure to file evidence in time. He had to explain again the importance of compliance with time:-

“2. As I have sought to make clear to practitioners through a number of decisions and as a consequence of circulars helpfully issued at my suggestion to solicitors by the Law Society, it is important that companies which are subject to a winding up petition comply with Rule 32. If, for some reason, there is a difficulty in serving evidence within seven days or a company only becomes aware of Rule 32 after the specified time has expired, the company should apply for an extension of time. As, by now, should be well known to practitioners in the insolvency field, it is my practice if evidence has not been filed before the first Monday hearing before me either to make a winding up order on the grounds that the Petition is not opposed or, if an application for an extension of time is made at the hearing of the petition, to require security for the debt to be provided. I have emphasised to practitioners that a petitioner is entitled to have the first hearing in open court before a companies judge treated as a trial at which if possible the petition is disposed of. It is my practice, where practical, to try and determine petitions at the first hearing before me. This is desirable from the point of view of both companies and creditors. This is one of the reasons why I have taken the view that it is important that practitioners comply with Rule 32.

3. Another unsatisfactory feature of late filing of evidence is that it is commonly accompanied by the rather crass assumption on the part of many solicitors that if they file evidence at the Registry on Friday it will have made its way to me before 9:30am on Monday morning. They do not bother to send a copy directly to my clerk. Elementary common sense should suggest that it is unrealistic to expect a clerk in the Registry to appreciate that it is necessary for an affirmation filed at the end of the week to be rushed to a judge for a hearing early on Monday morning and do so.”

In gist, late filing of the opposing affirmation deprives the petitioner and the Court of any or any sufficient time before the Monday morning hearing to determine whether the matter could be disposed of immediately at the Monday morning hearing. Of course, the Court should also consider whether there would be any prejudice caused by the late filing as well: see §9 of *Re Khingan Resources Limited*, supra. But no one single factor would be an overriding factor. The Court considers all the relevant factors holistically in the exercise of its discretion.

I cannot but add that despite his Lordship's repeated complaints since at latest 2015 and subsequently the practice having been formalised by Practice Direction 3.1 §16.1 dated 30 June 2023, time and again, the Companies Court (as well as the Bankruptcy Court) is still faced with late applications for filing opposing affirmation out of time accompanied by arguments that no condition should be imposed without proper evidence to substantiate such arguments (for example, specific timeline to explain why despite prompt actions taken, more time would still be needed): see, for example, *Re Rad Source Technologies Asia Limited*, HCCW 253/2017, 6 November 2017 at §4; *Re Tian Shan Development (Holding) Limited* [2022] HKCFI 3084 at §7; *Re Hong Kong Easy Charge Limited* [2024] HKCFI 2134 at §§23(1) and 25(1). This is unsatisfactory.

INTENDED GROUNDS OF APPEAL

In the present application, the intended grounds of appeal advanced by the Company in the draft Notice of Appeal can be summarised as follows:-

The payment condition I imposed would effectively bring the dispute to Hong Kong Court while it should have been litigated in the foreign court in favour of which the parties have agreed to an exclusive jurisdiction clause.

The Foreign Proceedings Condition should be imposed instead, supported by §42 of the *Guy Lam's* case, and §42 of *Re Simplicity & Vogue Retailing (HK) Co Ltd* [2024] 2 HKLRD 1064, where Kwan VP said:-

"... The courts have emphasised that the steps required under the arbitration clause to commence the process may include preliminary stages such as mediation. And even if no steps at all were taken, the court could still exercise its discretion in an appropriate case to grant a short adjournment for the debtor to commence arbitration and require an undertaking from him to proceed with the arbitration with all due dispatch. If no progress is made during the adjournment, the court could consider lifting the stay and proceed to exercise its jurisdiction on the petition debt."

As regards (1) above, the Company's then counsel briefly advanced this as a reason for opposing imposition of the condition. As regards (2) above, as mentioned above, the Company's then counsel simply opposed imposition of the payment condition without suggesting any alternative. Point (2), in my view, is a new point which an appellate court would not entertain.

In any event, in advancing the above grounds of appeal, the Company misses an important point highlighted by Mr Jonathan Ng, counsel for the Petitioner, namely, on the *Guy Lam's* case, the Court has to examine at least preliminarily the substantive merits of the Company's substantive

defence to determine whether the defence bordered on the frivolous or abuse of process, and also has to consider whether the risk of insolvency affecting third parties would justify the insolvency process in Hong Kong Court: see Guy Lam, *supra* at §105; also Simplicity & Vogue Retailing (HK) Co Ltd, *supra* at §§35-36 per Kwan VP; Re Xu Peixin [2025] HKCFI 5846 at §§6-10 per Harris J. The Court can only do so properly with the company's opposing evidence filed in accordance with the statutory time limit but not just a few days before the Monday morning hearing, where the Court might otherwise be able to dispose of the petition immediately if opposing evidence was filed in good time. I pause here to note that during the hearing, the Company's then counsel, in his oral submissions, also stressed that by the late affirmation, the Company raised bona fide dispute on the debt. As explained above, the standard practice of imposing a payment condition is to ensure the company to take the matter seriously and promptly, and enable the Court to determine whether the petition could be disposed of immediately at the first Monday morning hearing. Such practice is not to bring the dispute into the Court's jurisdiction, just like in any petition hearings where when the Court imposes such a payment condition, where the Court has not even decided on the bona fide dispute on the debt. Such rationale, with these objectives in mind, is not at any rate militated against by the opposition to the petition on the ground of an exclusive jurisdiction clause.

Further and in any event, properly appreciating this rationale behind the standard practice, there is no inconsistency between a payment condition and a Foreign Proceedings Condition. They are not mutually exclusive, and if necessary, can be imposed at the same time.. The payment condition is simply to ensure that there would be matching consequence of failure to comply with a statutory time limit so as to achieve the objectives under the rationale, while a Foreign Proceedings Condition would be to ensure that the Company does have a genuine intention to commence proceedings in accordance with the exclusive jurisdiction clause. A Foreign Proceedings Condition may be imposed irrespective of whether or not opposing affirmations have been filed within time, and in my view, may be imposed together with a payment condition if appropriate.

Lastly, the Company submits that as arbitration proceedings have been commenced in Singapore on 24 October 2025 (after the 13 October 2025 hearing), it would not be right that the Petition should be allowed to proceed towards its completion and a winding up order due to lack of admitted evidence in opposition to the Petition. With respect, this does not enhance the prospects of success of the intended appeal. First, the intended appeal is against the exercise of my discretion as at 13 October 2025. Second, there was and is no evidence to explain what difficulty the Company has had in satisfying the condition. Third, given the existence of the arbitration proceedings, where appropriate, an application for proper case management may be made in the Petition. It is, however, not for the Company now to say that the payment condition should not have been imposed in the first place.

In the premises, I cannot see any error in the exercise of my discretion to impose the condition, or that the exercise can be said to be plainly wrong.

CONCLUSION

In the circumstances, I see no reasonable prospect of success in the intended appeal. Nor do I see that the intended appeal is in the interests of justice. Therefore, I dismiss the application for leave to appeal and order that the Company shall pay the Petitioner the costs of the application summarily assessed at HK\$100,000.

I thank Mr Smith and Mr Cheung, counsel for the Company, and Mr Ng, counsel for the Petitioner, for their assistance.

(Gary CC Lam)

Deputy High Court Judge

Mr Jonathan Ng, instructed by Fangda Partners, for the Petitioner

Mr Clifford Smith SC leading Mr Tommy Cheung, instructed by Angela Ho

& Associates, for the Company

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