

HONG KONG / JUDGMENT

THE OFFICIAL RECEIVER v. CHAN MAN YIU

COURT

Court of First Instance

DECIDED

7 September 2011

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HCMP1278/2010

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bjbj HCMP 1202/2010 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE MISCELLANEOUS PROCEEDINGS NO. 1202 OF 2010

IN THE MATTER of ETECH CONTROL COMPANY LIMITED (IN LIQUIDATION) and IN THE
MATTER of ORIENT POWER CAR STEREOS LIMITED (IN LIQUIDATION) and IN THE MATTER of
ORIENT POWER ELECTRONICS LIMITED (IN LIQUIDATION) and IN THE MATTER of WAH YING
ELECTRONIC COMPANY LIMITED (IN LIQUIDATION) and IN THE MATTER of UNICHEM
ENTERPRISES COMPANY LIMITED (IN LIQUIDATION) and IN THE MATTER of ACTION
INDUSTRIAL (INTERNATIONAL) LIMITED (IN LIQUIDATION) and IN THE MATTER of HOUSELY
INDUSTRIES LIMITED (IN LIQUIDATION) and IN THE MATTER of Section 168G of the
Companies Ordinance (Cap 32)

BETWEEN THE OFFICIAL RECEIVER Applicant and CHAN KIN HANG DANVIL Respondent

AND HCMP 1278/2010 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE MISCELLANEOUS PROCEEDINGS NO. 1278 OF 2010

IN THE MATTER of ETECH CONTROL COMPANY LIMITED (IN LIQUIDATION) and IN THE
MATTER of ORIENT POWER CAR STEREOS LIMITED (IN LIQUIDATION) and IN THE MATTER of
ORIENT POWER ELECTRONICS LIMITED (IN LIQUIDATION) and IN THE MATTER of ORIENT
POWER CAR AUDIO LIMITED (IN LIQUIDATION) and IN THE MATTER of WAH YING
ELECTRONIC COMPANY LIMITED (IN LIQUIDATION) and IN THE MATTER of UNICHEM
ENTERPRISES COMPANY LIMITED (IN LIQUIDATION) and IN THE MATTER of ACTION
INDUSTRIAL (INTERNATIONAL) LIMITED (IN LIQUIDATION) and IN THE MATTER of HOUSELY

INDUSTRIES LIMITED (IN LIQUIDATION) and IN THE MATTER of Section 168G of the Companies Ordinance (Cap 32)

BETWEEN THE OFFICIAL RECEIVER Applicant and CHAN MAN YIU Respondent

(Heard Together) Before: Hon Harris J in Court Date of Hearing: 11 May 2011 Date of Application by Chan Man Yiu for leave to act as a director: 5 July 2011 Date of Decision: 7 September 2011

DECISION

Introduction

I have before me 2 related applications by the Official Receiver under section 168G of the Companies Ordinance for, inter alia, an order that the Respondents, Chan Kin Hang Danvil, and Chan Yiu shall not, without the leave of the Court: be a director of a company; be a liquidator of a company; be a receiver or manager of a company's property; or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company, for a period not exceeding 15 years effective from the beginning of the 21st day after the day on which such an order is made. Danvil Chan previously applied by summons dated 8 September 2010 for the proceedings against him to be adjourned, alternatively stayed, until full and final determination of the criminal investigation and alternatively or criminal proceedings in which he is involved (Stay Summons). The Stay Summons was dismissed by Master Hui on 20 October 2010 and orders were made for the filing of evidence by the parties and directions were given for the originating summons against him to be fixed for substantive hearing before a judge. It was agreed that the 2 originating summonses should be heard together given the overlapping facts involved. By the time the applications came on before me the position of the Respondents was as follows. Danvil Chan did not dispute that disqualification was appropriate, but argued that a period of 2 to 5 years was appropriate. Chan Man Yiu did not dispute that disqualification as a liquidator or receiver was appropriate for a period of between 2 to 5 years sought by the Official Receiver. However, Mr. Jose-Antonio Maurellet, who appeared for Chan Man Yiu, argued that in practice there was no reason for Chan Man Yiu, given the complaints against him, to be disqualified from acting as a director and, in particular, as a director of his own company Billion Asia Pacific Secretaries Limited (Billion Asia). Mr. Maurellet, however, accepted that as a result of the decision in *Re Gower Enterprises Ltd* (no. 2) [1995] 2 BCLC 201 and *Re Well Bond Group Ltd* [2008] 5 HKLRD 147 per Kwan J (as she then was) at paragraph 25, it was not open to the Court to make an order only for disqualification as a liquidator or receiver. This is because section 168G deals with the different offices conjunctively not disjunctively. Mr. Maurellet argued in the alternative that the complaint against his client could be dealt with by him giving an undertaking

to the Court not to act as a liquidator or receiver. I agree with the Official Receiver that this would be unsatisfactory. If, as I accept is the present case, grounds for disqualification are shown it is appropriate that the matter be dealt with as the Ordinance provides and that the disqualification is recorded on the register of disqualification orders maintained by the Official Receiver pursuant to section 168R of the Companies Ordinance. As a consequence and on the basis that I had stated at the end of the hearing that I intended to make disqualification orders against both Respondents the only issue I wished to consider further being the length of disqualification, Chan Yiu made an application on 5 July 2011 for leave to act as a director of Billion Asia. The Official Receiver does not object to this application, which, for reasons I explain below, I shall allow.

Background

The background to the applications can be summarised as follows. Danvil Chan and Chan Man Yiu of Honest Joy Accounting Services Ltd (Honest Joy) were appointed as joint and several provisional liquidators of 7 companies (the Companies) pursuant to section 194(1A) at the Companies Ordinance and were subsequently appointed as joint and several liquidators of 5 of the Companies. In 2009, it came to the notice of the Official Receiver that there had been serious misconduct and breach of duties on the part of Danvil Chan and Chan Man Yiu as a result of which applications were made to remove them as joint and several provisional liquidators or liquidators (as the case may be) of the Companies (the Removal Applications). Details of the misconduct and unfitness of Danvil Chan and Chan Man Yiu were set out in the 1st and 2nd Reports of the Official Receiver dated 2 September 2009 and 9 October 2009 respectively filed under HCCW 498/2006 in support of the Removal Applications. Six of the 7 Removal Applications were heard together before Master Hui as they involved common questions of fact and law. The remaining application (in HCCW 35/2007) was adjourned to a Companies Judge as the Master had no jurisdiction to deal with the Official Receiver's application for consequential orders. Danvil Chan and Chan Man Yiu did not contest the Removal Applications and did not challenge the allegations of misconduct alleged against them in the reports filed by the Official Receiver, which evidence was accepted in its entirety by the Court. Orders for their removal (in respect of the 6 removal applications heard together) were granted by Master Hui on 20 October 2009. The removal order in HCCW 35/2007 was granted by Kwan JA on 2 December 2009 and reasons for judgment was given on the same day. Neither Danvil Chan nor Chan Man Yiu have appealed against the removal orders. In her judgment Kwan JA observed, inter alia, that the case involved serious professional misconduct on the part of Danvil Chan and Chan Man Yiu (see 9 Judgment) and not only were their fees in the liquidation disallowed, they were ordered to pay interest on the sums improperly retained by them. After the removal of Danvil Chan and Chan Man Yiu as liquidators of Wah Ying Electronics Company Limited (in HCCW 498/2006) pursuant to Master Hui's order dated 20 October 2009, the Official Receiver discovered that Danvil Chan and Chan Yiu received a sum of HK\$1,864,310.18 as dividend from the liquidator of a company known as Teamsing Electronic Company Limited which was a debtor of Wah Ying but did not report the receipt of such sum nor did they pay such sum into the Companies Liquidation Account pursuant

to section 202 of the Companies Ordinance. It was only after numerous inquiries by the Official Receiver that such amount was finally remitted to the Official Receiver on 23 November 2009 but without any explanation by Danvil Chan or Chan Yiu as to the delay. The Official Receiver applied under section 202(2A) of the Companies Ordinance for an order for payment of interest by Danvil Chan and Chan Man Yiu on the dividends improperly retained by them and such order was duly made by me on 21 January 2010. It should also be noted that although Danvil Chan and Chan Yiu (as provisional liquidators) filed applications for their appointment as liquidators on 12 January 2007 and 22 February 2007 respectively in HCCW 331/2006 and HCCW 455/2006, up to the date the orders for their removal were made, they failed to follow-up with the applications or to respond to the Court's requisitions at all, and offered no explanation for their inaction. The Official Receiver submits that the irresponsible and uncooperative attitude of Danvil Chan and Chan Man Yiu is further demonstrated by the various events occurring after the orders were made for their removal as provisional liquidators and liquidators. In HCCW 498/2006 and HCCW 35/2007, Danvil Chan and Chan Yiu were ordered by the Court to pay the companies concerned interest on the sums improperly retained by them at the rate of 20% per annum prescribed by section 202(2A) of the Companies Ordinance for the period of retention. Such orders were made on 2 December 2009 and 21 January 2010 respectively. Danvil Chan and Chan Man Yiu failed to respond to repeated demands for payment. On 10 June 2010, the joint and several liquidators who replaced Danvil Chan and Chan Man Yiu confirmed to the Official Receiver that no payment of the aforesaid interest had yet been received from Danvil Chan and Chan Man Yiu and statutory demands for such interest were issued to Danvil Chan and Chan Man Yiu on 9 June 2010. It was only after much delay that the payments were eventually made by Danvil Chan. Costs orders in the sum of HK\$93,325.70 were made against Danvil Chan and Chan Man Yiu in relation to the Removal Applications and in the application for payment of interest referred to above (see 17 Official Receiver's 1st Report). Such costs orders were made on 20 October 2009, 2 December 2009 and 21 January 2010 respectively. However, despite repeated demands (in respect of which again no response was received from Danvil Chan or Chan Man Yiu), no payment was made and the Secretary for Justice issued a statutory demand to Danvil Chan in respect of such costs on 11 October 2010. It was only after the statutory demand was issued that partial payment of HK\$50,335 was made by Danvil Chan on 11 November 2010, and the balance (with interest) was subsequently repaid on 30 November 2010. In November 2009, following the Official Receiver's audit of the accounts of a company known as Etech Control Company Limited (in liquidation) (Etech), in which Danvil Chan and Chan Man Yiu were appointed as joint and several liquidators, the Official Receiver discovered that HK\$3,491,528.31 (as indicated in the Statement of Affairs and financial statement) was due from a Mr. Wong Wai-Lun, a shareholder and ex-director of Etech. The Official Receiver wrote to Honest Joy on 9 December 2009 to raise queries on the progress of the recovery action in respect of book debts due to Etech; and to request Honest Joy to provide certified bank statements and a breakdown of the Liquidation Account. In respect of the query concerning book debts, no formal response was received from Danvil Chan or Chan Man Yiu. Honest Joy simply provided various meeting minutes showing that the debt was discussed and a decision was made not to take any action to recover the debt. As to the request for documents, the request was declined by Honest Joy in breach of the requirements

under section 203 of the Companies Ordinance. Due to the seriousness of the misconduct on the part of Danvil Chan and Chan Man Yiu, the Official Receiver sent a letter to each of Danvil Chan and Chan Man Yiu on 4 June 2010 and 22 June 2010 respectively informing them of the Official Receiver's intention to apply for their disqualification under section 168G of the Companies Ordinance. The 1st and 2nd Originating Summonses were served on them on 24 June 2010 and 7 July 2010 respectively. A summary of the misconduct and breach of duties relied on by the Official Receiver is set out in paragraph 25 of the Official Receiver's 1st Report, which include:

- (1) making false declarations in the tender for taking up appointment as joint and several provisional liquidators;
- (2) in acting as liquidator in HCCW 35/2007, failing to report to the Official Receiver and to remit a sum of HK\$387,891.37 to the Companies Liquidation Account in accordance with section 202 of the Companies Ordinance (the sum was eventually remitted by 2 remittances after a delay of 9 months and 2 years respectively, but no explanation was given for the late remittance and non-compliance with section 202 of the Companies Ordinance);
- (3) in acting as liquidator in HCCW 498/2006, failing to report to the Official Receiver and to remit a sum of HK\$1,864,310.18 to the Companies Liquidation Account in accordance with section 202 of the Companies Ordinance (the sum was eventually remitted about 11 months after receipt but no explanation was given for the late remittance and non-compliance with section 202 of the Companies Ordinance);
- (4) failing to report on the progress of liquidation in HCCW 35/2007;
- (5) failing to proceed with liquidations with due expedition;
- (6) failing to give security to the satisfaction of the Official Receiver in accordance with section 195(a) of the Companies Ordinance in respect of the liquidation in HCCW 35/2007;
- (7) breaching section 203 of the Companies Ordinance in relation to accounts;
- (8) failing to comply with Court orders in relation to payment of interest and costs; and
- (9) being uncooperative with the Official Receiver and failing to respond to inquiries made by the Official Receiver in the exercise of his functions and powers under the Companies Ordinance. Danvil Chan did not file any affirmation in opposition to the originating summons in accordance with the 28-day time limit provided for in section 168G of the Companies Ordinance and Rule 7 of Companies (Disqualification of Directors) Proceedings Rules. An affirmation was eventually filed by him on 18 November 2010 after the Stay Summons was dismissed; which contains minimal evidence in defence of the allegations of improper conduct as set out in the Official Receiver's 1st Report. He alleges that since there are ongoing police investigations against him, he has chosen to remain silent in respect of some of the allegations made by the Official Receiver. Whilst it seems initially to have been Danvil Chan's intention to contest the application by the time the matter came before me it had been accepted by him, as it seems to me was inevitable, that he had very few answers,

and no substantial ones, to the Official Receiver's complaints. Mr. Jonathan Wong, who appeared for Danvil Chan, narrowed the scope of his client's exculpation to 3 matters. First, the complaint that Danvil Chan made a false declaration in his tender for taking up appointment as joint and several provisional liquidators in which it was stated incorrectly that Tang Ching was a director of Honest Joy. Danvil Chan admits that this statement was false. Mr. Wong argues that the Court should only have regard to the fact that a false statement was made. Mr. Wong submits that the Court cannot properly have regard to the degree to dishonesty that this involved because there is an unresolved dispute in the evidence filed as to whether or not Mr. Tang had agreed to become a director (which Mr. Tang denies), which if true would go some way to ameliorate the gravity of the complaint. I accept that I cannot determine whose version of events is correct, but this does not detract from the seriousness of a person making a statement in a tender, which he knows at the time it is made was false, which never became true and which he did not voluntarily correct when it must have become obvious to him that Mr. Tang was never going to become a director. Secondly, Mr. Wong submits that the failure to comply with court orders should be treated as a deficiency in Danvil Chan as a litigant rather than as a liquidator. I recognise the distinction, but these matters do illustrate a disregard for proper behaviour in circumstances in which it should have been obvious what the correct thing to do was. This is consistent with a general lack of regard for the importance of proper conduct and probity when undertaking a responsible position such as that of a liquidator. Thirdly, Mr. Wong says that Danvil Chan had been assigned over 80 cases by the Official Receiver and that the subject matter of this complaint relates to only 7 of them. This seems to me to be a disturbingly high proportion of problematic cases. The complaints certainly do not arise from a one of case. The allegations of misconduct and breaches of duties on the part of Chan Man Yiu are the same as those alleged against Danvil Chan save only that the allegation against Danvil Chan regarding the making of false declarations in the tender does not apply to Chan Man Yiu. Chan Man Yiu filed an affirmation in reply on 16 August 2010. A 2nd Report of the Official Receiver was filed on 3 September 2010 in response. Chan Man Yiu's defence to the application is essentially that:

- (1) he was only an employee of Honest Joy, that he only agreed to be one of the potential Appointment Takers (in the tender for appointment as provisional liquidators) because Danvil Chan asked him to and he was certain that if he rejected his request Danvil Chan would terminate his employment;
- (2) it was in fact Danvil Chan who had full conduct of the relevant liquidation files, and that Danvil Chan insisted on handling the files himself and assured him that he would answer queries from the Official Receiver and asked him not to be involved; and
- (3) his employment with Honest Joy was terminated on 13 June 2009 and after termination he tried to contact Danvil Chan from time to time to ascertain the progress of the cases but Danvil Chan maintained that he had full conduct of the cases, that he would resolve any issues arising from such cases and deal with the Official Receiver and asked him not to be

involved. The Official Receiver points out that these explanations were never proffered in the Removal Applications, which Chan Man Yiu did not contest. Further, there is no acknowledgement from Danvil Chan that Chan Yiu indeed had no significant involvement in the conduct of the liquidation cases and simply allowed his name to be included in the tender as one of the Appointment Takers. The Official Receiver says that Chan Man Yiu's allegation that he had minimal involvement in the conduct of liquidation cases and that Danvil Chan had full conduct of all the insolvency cases transferred from the ORO after our tender was accepted is at odds with the evidence before the Court. According to Chan Man Yiu, his participation in insolvency cases was limited to (see 25-29 Chan Man Yiu's Affirmation):

- (1) assisting, from time to time when instructed by Danvil Chan, in Summary Procedure matters with little or no chance of recovery and for such matters, his involvement was limited to issuing letters to banks/landlords/utility companies;
 - (2) attending the first court hearing of their appointment in HCCW 455/2006 and a meeting with the Committee of Inspection in HCCW 498/2006 with Danvil Chan;
 - (3) from time to time, Danvil Chan would show him correspondence on a case if he needed him to answer queries on his behalf, but such correspondence does not relate to winding up of the Companies; and
 - (4) on some occasions, Danvil Chan would ask him to attend meetings with creditors on his behalf. However, the Official Receiver says that this account by Chan Yiu of his involvement is inaccurate and misleading:
- (1) It cannot be disputed that Chan Man Yiu was involved in HCCW 65/2006 which is a non-Summary Procedure in respect of Etech and 4 of the section 203 accounts submitted by the joint and several liquidators during 2007 were signed by Chan Yiu and Danvil Chan.
 - (2) The Official Receiver also received section 203 accounts signed by Chan Yiu in relation to other liquidation cases in which he and Danvil Chan were joint and several liquidators.
 - (3) Chan Man Yiu also signed correspondence dated 23 January 2008 as joint and several liquidator authorising the Official Receiver to withdraw fees from the Liquidation Account. The Official Receiver also takes issue with the following matters:
- (1) Chan Man Yiu's assertion that he was certain that if he had refused to be named as an Appointment Taker, his employment would be terminated is inherently incredible. It is not explained how he formed such a view, the Official Receiver says, and it is not suggested that Danvil Chan in fact made such a threat. In any event, the decision to allow his name to be used was in all respects voluntary.

- (2) It would have been obvious to Chan Man Yiu that an appointment as liquidator would carry with it personal and professional duties and responsibilities, including those set out in the Companies Ordinance. Upon Chan Man Yiu's acceptance of the appointment as provisional liquidator/ liquidator of the Companies, it was incumbent upon him to ensure that such duties and responsibilities were properly discharged by him in relation to the Companies.
- (3) If it was indeed the case that Danvil Chan had insisted on taking charge of all the liquidation cases and excluded Chan Yiu from any involvement, the obvious and prudent thing to do would have been to cease to act in order to avoid any personal liability arising from any failure to properly discharge his duties and responsibilities.
- (4) Chan Man Yiu should know full well that the duties and responsibilities of Danvil Chan and himself as provisional liquidator/liquidator of the Companies were joint and several and whatever arrangement there may have been as between himself and Danvil Chan would not absolve him from personal liability.
- (5) If it was indeed the case that Chan Man Yiu only agreed to be named as an Appointment Taker for fear that his employment with Honest Joy might be terminated if he had refused, there is no reason why, after his employment was in fact terminated on 13 June 2009, he did not immediately apply to cease to act as liquidator of the Companies despite acknowledging that he was concerned about continuing to act as joint and several provisional liquidator/ liquidator.
- (6) Chan Man Yiu's irresponsible attitude is further demonstrated by the fact that despite being told by Danvil Chan that the Official Receiver intended to remove him as provisional liquidator/liquidator, he took no steps to follow up with the Official Receiver himself and simply trusted Danvil Chan to reply on his behalf. He also did not take steps to inform the Official Receiver of his departure from Honest Joy and consequent change of address so that future correspondence could be sent to him.
- (7) Further, Chan Man Yiu ought to have known full well that any assurance from Danvil Chan that he would take full responsibility for the liquidation cases after his departure from Honest Joy and the provision by Danvil Chan of the written indemnity would not absolve him from personal liability. I accept the force of the Official Receiver's submissions. I would, however, say this, that I also accept that Chan Man Yiu may in practice have found himself in an awkward position, namely, working for somebody whose conduct was irresponsible and lacking in probity. It is sometimes difficult for an employee to insist that his superiors do things properly. What this case illustrates is the need for care on the part of employees, who find themselves working for unethical employers, not to allow themselves to be compromised. Employees must recognise that there comes a point at which they need to do the correct thing rather than the easy thing and that if they fail to do so they will find themselves held to account. Applicable Legal Principles Section 168G of the Companies Ordinance provides as follows:

- (1) The court may make a disqualification order against a person if, in the course of the winding up of a company, it appears that he-
- (a) has been guilty of an offence for which he is liable (whether he has been convicted or not) under section 275; or
- (b) has otherwise been guilty, while an officer or liquidator of the company or receiver or manager of its property, of any fraud in relation to the company or of any breach of his duty as such officer pursuant to section 168G(l)(b) of the Companies Ordinance, namely that Danvil Chan and Chan Man Yiu have breached their duties whilst acting as liquidator/ provisional liquidator in respect of the Companies. There is only one decided case in Hong Kong in relation to an application under section 168G of the Companies Ordinance: *Re Well Bond Group Limited*, supra. There are also very few decided cases in relation to the application of section 4 of the UK Company Directors Disqualification Act 1986 (the UK Act) (on which section 168G of the Companies Ordinance was based: see Hong Kong Company Law Handbook 12th Edn pp. 851-852). I accept the Official Receiver's submission that the Court should follow the approach and principles laid down by Kwan J (as she then was) in *Re Well Bond Group Limited* supra and proceed on the basis of the express words of the section itself, and seek guidance from decided cases in relation to the applications of other relevant sections of Part IVA Companies Ordinance insofar as it is appropriate to do so. The power to make a disqualification order under section 168G of the Companies Ordinance is discretionary, unlike the power under section 168H of the Companies Ordinance (which concerns directors of insolvent companies unfit to be concerned with management) which is mandatory in nature. In order for the discretion to be exercised, the Court must be satisfied that Danvil Chan and Chan Man Yiu have been guilty of a breach of their duties as liquidators or provisional liquidators of the Companies: see *Re Well Bond Group Limited* supra 4-5. The standard of proof in an application for disqualification is the balance of probabilities, although the cogency of evidence required must be commensurate with the seriousness of the charge against the Respondent i.e. the more serious the allegation, the more cogent the evidence must be to establish it: see *Re Copyright Ltd* [2004] 2 HKLRD 113 at p. 123J. As with the disqualification of directors, given the seriousness of a disqualification order, the Court must be satisfied that the breach of duty on the part of a liquidator is sufficiently serious to warrant disqualification (see *Re Copyright* supra, per Kwan J (as she then was) at p. 123E-I; *Re Well Bond Group Limited* supra 18), bearing in mind that the primary purpose of the jurisdiction for a disqualification order is to protect the public against the future conduct of companies by persons whose past records as directors (or liquidators in the present case) of insolvent companies have shown them to be a danger to creditors and others: see *Re Lo-Line Electric Motors Ltd* [1988] Ch 477 at 486A to C; *Re Well Bond Group Limited* supra 20. Period of disqualification I accept the Official Receiver's submission that the principles enunciated in decided cases in relation to the determination of periods of disqualification of directors under section 168H of the Companies Ordinance are applicable to section 168G, given that the primary rationale underpinning the Court's power to impose disqualification orders under the two sections is to protect the public

against persons who, by their past conduct, have shown themselves to be a danger to creditors and others: see *Re Lo-Line Electric Motors Ltd.* supra. In *Re Samuel Sherman plc* [1991] 1 WLR 1070, which concerned an application for disqualification of a director under section 8 of the UK Act (disqualification after investigation of a company), the Court applied the guidelines in *Re Sevenoaks Stationers (Retail) Ltd* [1990] BCC 765 (which concerned disqualification under section 6 of the UK Act: disqualification of unfit directors of insolvent companies) and rejected the argument that cases under section 8 should be treated more leniently. The Court drew significance from the fact that the maximum period of disqualification in both section 6 and section 8 of the UK Act was 15 years, and thus the same guidelines ought to apply: see p. 1085 F-G. Given that the maximum period of disqualification under both sections 168G and 168H is 15 years the same guidelines should apply. In *Re Well Bond Group Limited* supra, Kwan J (at 22-23) followed the guidelines in *Re Sevenoaks Stationers (Retail) Ltd* supra in determining the period of disqualification. In *Re Sevenoaks Stationers (Retail) Ltd* supra, the Court of Appeal laid down guidelines for the determination of appropriate periods of disqualification of directors under section 6 of the UK Act (equivalent to section 168H of the Companies Ordinance). It was held (per Dillon LJ at p. 771H-772A) as follows: I would for my part endorse the division of the potential 15-year disqualification period into three brackets,

- (i) the top bracket of disqualification for periods over ten years should be reserved for particularly serious cases. These may include cases where a director who has already had one period of disqualification imposed on him falls to be disqualified yet again. (ii) The minimum bracket of two to five years disqualification should be applied where, though disqualification is mandatory, the case is, relatively, not very serious. (iii) The middle bracket of disqualification for from six to ten years should apply for serious cases which do not merit the top bracket. As a general rule, the period of disqualification should reflect the gravity of the misconduct as established by evidence and the period must be effective to protect the public and serve as a deterrent to others who might be inclined towards similar misconduct: see *Re Westmid Packing Services Ltd* (No.
- 3) [1998] BCC 836 at 843H. In determining disqualification periods, the Court should adopt a broad brush approach. Reference to decided cases is neither necessary nor appropriate, as the principles applicable to the Court's jurisdiction to impose disqualification orders are reasonably clear and the application of those principles to the facts of the particular case is a matter for the trial judge: *Re Westmid Packing Services Ltd* supra at 846B-C. Adopting a broad brush approach informed by the principles to which I have referred to above I find that the following periods of disqualification are appropriate. In the case of Danvil Chan I view the complaints made by the Official Receiver are borne out by the evidence before me, and have not been subject to serious dispute by Danvil Chan, and put him in the middle bracket in terms of the seriousness of his misconduct. I, therefore, order a period of disqualification of 7 years. In the case of Chan Man Yiu I agree with the Official Receiver that his misconduct falls within the minimum bracket. In large part his failure was to stand to one side and allow Danvil Chan to misconduct the provisional liquidations and liquidations

which are the subject of the complaints. In his case I order a period of disqualification of 3 years. Costs I Order that Danvil Chan and Chan Man Yiu pay the costs of the respective applications against them. Chan Man Yiu s application for leave to act as a director I have already referred to Chan Man Yiu s application for leave to act as a director of Billion Asia. Section 168D(1) provides that court may, and under section 168H shall, make against a person a disqualification order, that is to say an order that he shall not, without leave of the court be a director of a company etc . This allows a person subject to a disqualification order to apply for leave to be a director. I can see no reason why the matter cannot be raised on an application for a disqualification order itself and the disqualification order be made subject to leave being given to allow the respondent to be a director, or take any other office specified in the section, of a named company or companies generally. Billion Asia is a private Hong Kong incorporated company with a share capital of \$2. Chan Man Yiu and his wife are the shareholders and only directors. Billion Asia provides simple secretarial and book keeping services. Its net profit for the year ending 31 March 2010 was \$27,798. Chan Man Yiu runs the company and it is his sole source of income. I accept that the misconduct that has lead to the present application against him does not sufficiently call into question his ability to run Billion Asia to justify preventing him from being one of its directors and continue to run it as before. The disqualification order against him will, therefore, be subject to the qualification that he has leave to be a director of Billion Asia. (J. Harris) Judge of the Court of First Instance High Court Ms. Sara Tong, instructed by the Official Receiver, the Applicant (in both cases) Mr. Jonathan Wong, instruc 1udk gdc& gdc& gdc& 8!\! h,y-gdTjJ 8!\! h,y- ht9l hQ+. h7!X gdV? gd7!X gd7!X gd23A hL;` hL;` h1y1 h1y1 h1y1 hL;` h,y-huu\$ hQ+. hQ+. h,y- gdM> gdD'? gd4W< gdV? gdV? h,y- h,y- h oL hF%c hF%c h,y- h 9q h4W< h 9q h4W< h4W< h,y- h4W< h4W< h 9q h4W< h 9q h4W< h oL h,y- h oL h oL h oL hWmb hWmb hD*J hD*J hD*J h oL h oL hD*J hD*J hD*J hD*J hD'? hD'? hD'? hD'? hD'? hD'? hD'? gd9o gd\$7Y gd V hxx hxx oioco] ~xnh~x\R gdYS gd` 1! gd -u gd6% hg}O h4>t h4>t h4>t h4>t h,y- h - u h -u h -u h` 1! h` 1! h -u h -u {pdYPHPY hJ?Q ysyjdj]jV j\Q\ gdol gdol gdol gd4C h,y- hD(A hD(A h,y- hv s hv s h,y- h,y- hv s hv s h,+ \ hcnz 1udk M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V [Content_Types].xml Iw}, \$yi} _rels/.rels theme/theme/ themeManager.xml K Y, sQ}# theme/theme/theme1.xml w toc'v)I`n 3Vq%'#q x}r :TZA G I u3 L+M2 e\O\* \$\*c? )6-r IqbJ#x ,AGm T[XF64 E)` # R>QD =(K& =al- 4vfa 0%M0 theme/theme/_rels/ themeManager.xml.rels 5 6?\$Q K(M&\$R(.1 [Content_Types].xmlPK _rels/.relsPK theme/ theme/themeManager.xmlPK theme/theme/theme1.xmlPK theme/theme/_rels/ themeManager.xml.relsPK <?xml version="1.0" encoding="UTF-8" standalone="yes">> <a:clrMap xmlns:a="http://schemas.openxmlformats.org/drawingml/2006/main" bg1="lt1" tx1="dk1" bg2="lt2" tx2="dk2" accent1="accent1" accent2="accent2" accent3="accent3" accent4="accent4" accent5="accent5" accent6="accent6" hlink="hlink" folHlink="folHlink"/> i\$&N9:' setup hccw (for Susan Kwan only).dot setup Microsoft Office Word f".m f".m Judiciary Hong Kong Title <b:Sources SelectedStyle="\APA.XSL" StyleName="APA" xmlns:b="http://schemas.openxmlformats.org/officeDocument/2006/bibliography" xmlns="http://schemas.openxmlformats.org/officeDocument/2006/bibliography"></ b:Sources> <?xml version="1.0" encoding="UTF-8" standalone="no"?> <ds:datastoreItem

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Prepared on 29 October 2026 · Esheria