**FAMC No. 22 of 2024**

**[2025] HKCFA 2**

IN THE COURT OF FINAL APPEAL OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

**MIsCELLANEOUS PROCEEDINGS nO. 22 OF 2024 (CRIMINAL)**

(ON APPLICATION FOR LEAVE TO APPEAL FROM

CACC NO. 239 OF 2021)

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BETWEEN

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|  | **HKSAR** | **Applicant** |
|  | **and** |  |
|  | **MAK KWONG YIU (麥光耀) (D1)** | **1st Respondent** |
|  | **CHAN LAI YEE (陳麗兒) (D2)** | **2nd Respondent** |
|  | **WONG SHUK ON (黃淑安) (D3)** | **3rd Respondent** |
|  | **LEE YICK MING (李易明) (D4)** | **4th Respondent** |

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| Appeal Committee: | Mr Justice Ribeiro PJ, Mr Justice Fok PJ and  Mr Justice Lam PJ |
| Date of Hearing and Determination: | 27 February 2025 |

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| **DETERMINATION** |

The Appeal Committee:

1. At the conclusion of the hearing of this application for leave to appeal, we indicated that leave to appeal would be granted to the applicant (prosecution) in respect both of the point of law ground and the substantial and grave injustice ground and that this would be recorded in a short determination of the Appeal Committee. This is that determination.
2. We are satisfied that the following points of law of great and general importance are involved in the decision of the Court of Appeal and grant the applicant leave to appeal in respect of them, namely:

“For the purposes of Rule 14A.25 of the Listing Rules, whether a direct contractual relationship is necessary for there to be a connected transaction between a listed company and a connected person? In particular, in the event that a party (‘the Front Party’) enters into a service agreement that serves no genuine business purpose with a listed company, with a prior arrangement that the Front Party would engage a connected person of the listed company to actually provide the said service to the listed company, whether, as a matter of law, there is a connected transaction between the listed company and the connected person under Rule 14A.25 of the Listing Rules when the connected person is so engaged?”

1. We also grant the applicant leave to appeal on the substantial and grave injustice limb on the grounds that it is reasonably arguable that the Court of Appeal erred in allowing the respondents’ appeals against their convictions on the two charges of conspiracy to defraud on the basis (1) that proof of a connected transaction was required to sustain their convictions; (2) alternatively, that the prosecution had failed to prove a connected transaction (assuming such proof was required); (3) that they were not subject to duties to disclose the share placement agreements involved to (in the case of D1, D2 and D3) the board of directors, shareholders and potential investors of the placing company and also to (in the case of D1) The Stock Exchange of Hong Kong Limited; and/or that, (4) even if disclosure to the board of directors had been made, the share placement agreements would in any event have been approved.
2. As we indicated at the hearing, the grant of such leave on the substantial and grave injustice limb does not permit the re-opening of factual issues canvassed at trial and determined on intermediate appeal. However, Mr Edwin Choy SC, for D4, referred to the possible existence of grounds of appeal available to D4 which differed from the grounds of appeal available to the other defendants which D4 had advanced in the Court of Appeal as independent reasons for allowing D4’s appeal but which the Court of Appeal did not deal with because of the way it disposed of the Appeal. We record that D4 is at liberty to raise such points in his printed case for possible consideration on the hearing of the appeal and that the applicant will be entitled to respond to them in a supplemental case. Whether any such points will be entertained and dealt with on the appeal will be a matter for the Full Court to determine at the hearing.
3. The appeal will be listed to be heard on 3 September 2025.

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| (R A V Ribeiro) | (Joseph Fok) | (M H Lam) |
| Permanent Judge | Permanent Judge | Permanent Judge |

Ms Human Lam, SPP and Mr Ivan Shiu, SPP, of the Department of Justice, for the Applicant

Mr Derek Chan SC, Mr Tony C.H. Chow and Mr Sik Chee Ching, instructed by Ma Tang & Co., for the 1st Respondent

Ms Maggie Wong SC, Ms Rachel Lau and Ms Karry Lau, instructed by Edward C.T. Wong & Co., for the 2nd Respondent

Mr Martin Hui SC and Ms Vivian W.M. Wong, instructed by K.L. Chan & Co., for the 3rd Respondent

Mr Edwin Choy SC, Ms Karen Y.Y. Lau and Ms Vivian Lam, instructed by Chiu, Szeto & Cheng, for the 4th Respondent