



## Summary of Judgment

### Lai Chee-Ying v Secretary for Security

HCMP 956/2021; [2021] HKCFI 2804

**Decision** : **Plaintiff’s application for declaration dismissed**  
**Date of Hearing** : **15 September 2021**  
**Date of Judgment** : **17 September 2021**

### Background

1. The Plaintiff has been charged with, *inter alia*, two offences concerning collusion under Article 29(4) of the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (“NSL”). On 14 May 2021, the Secretary for Security (“the Secretary”) issued a notice (“the Notice”) under section 3(1) of Schedule 3 to the Implementation Rules for NSL 43 (“Implementation Rules”). The Notice stated that the Secretary has reasonable grounds to suspect that the properties specified in the Notice (“Specified Property”) are offence related property for the purposes of section 3 of Schedule 3 to the Implementation Rules. The Plaintiff was directed that he “must not deal with the Specified Property, whether directly or indirectly, except under the authority of a licence granted by the Secretary”.
2. The Specified Property includes all shares in Next Digital Limited (“the Company”) held by the Plaintiff (“the Shares”). The Plaintiff applied to the Court for, *inter alia*, (1) a declaration that for the purposes of Schedule 3 and the Notice, “deal with” excludes the exercise of any voting rights in relation to the Shares; (2) alternatively, a licence under section 4(2) of Schedule 3 for the Plaintiff to exercise voting rights in relation to the Shares.

### Issues in Dispute

3. The issues in dispute are:

(1) Whether, on the true and proper interpretation of the NSL including in particular Schedule 3, to “deal with” shares in a company held by a person alleged to be “offence related property” for the purposes of Schedule 3 and made the subject of a notice issued under section 3 of Schedule 3, includes exercising directly or indirectly voting rights in relation to such shares (“the Construction Issue”);



- (2) If the answer to the above question is yes, whether it is reasonable in all the circumstances of this case to grant to the Plaintiff a licence, and whether a licence should be granted to the Plaintiff (and if so, whether and what conditions are to be attached to the licence), to exercise directly and indirectly the voting rights in relation to the Shares under section 4(2) of Schedule 3 (“the Licence Issue”).

### **Department of Justice’s Summary of the Court’s rulings**

(Full text of the judgment at

[https://legalref.judiciary.hk/lrs/common/search/search\\_result\\_detail\\_frame.jsp?DIS=138813&QS=%2B&TP=JU&ILAN=en](https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=138813&QS=%2B&TP=JU&ILAN=en))

4. The Court reiterated that a purposive and contextual approach should be adopted in the construction of the NSL and Schedule 3 of the Implementation Rules. As stated in NSL 1, the purpose of the NSL includes the prevention, suppression and punishment of NSL offences (the “Stated Purposes”). Pursuant to NSL 3, the executive, legislature and judiciary are to effectively prevent, suppress and impose punishment for any act or activity endangering national security in accordance with the NSL and other relevant laws. (paragraphs 38-43)
5. As regards the purposes of a freezing notice under Schedule 3,
- (a) From the provisions of section 3 (which relate to freezing notice), read with the other provisions of Schedule 3, especially sections 9 and 13 (which relate to confiscation and forfeiture orders), one of the purposes of a freezing notice is to preserve the property in question so that a confiscation or forfeiture order may be obtained in the future. (paragraph 54)
- (b) In addition, the Court accepted that a freezing notice may also serve the purposes of preventing the use of the property in financing or assisting any NSL offence, and preventing any dealing with the property in a manner which may prejudice on-going investigation or proceedings concerning NSL offence. (paragraph 55)

### **The Construction Issue**

6. The provisions of section 3 were drafted in wide and embracing terms: (paragraph



56)

- (1) The natural and ordinary meaning of “deal with” has a wide ambit;
  - (2) The use of the words “directly or indirectly” is consistent with an intention that the ambit of prohibition imposed by a freezing notice is a wide one;
  - (3) Read in light of the context and purposes of the NSL (in particular, the Stated Purposes), that intention is fortified;
  - (4) The opportunity to obtain a licence to allow a property to be dealt with in a particular manner is an important constituent of section 3. It is necessary when it is at least impractical, if at all impossible, to state in advance what action is or is not permitted without derogating from the Stated Purposes. Thus, the built-in licence regime further fortifies the intention that “deal with” should be construed widely.
7. The voting right of a shareholder in a company is a property right protected by Articles 6 and 105 of the Basic Law. However, the protection of property right is not absolute. There is no reason why the right to vote should be carved out or treated differently under the NSL freezing regime. If the Shares are frozen by the Notice, it makes little sense for the prohibition not to apply to an important right attached to the same. (paragraphs 59 & 60)
  8. That there is a degree of imprecision in the phrase “deal with” is not a sound reason to exclude the exercise of voting right from dealing with the Shares. (paragraph 61)
  9. There exists an avenue for the Plaintiff to apply for a licence to exercise his voting right if he takes the view that such action will have no adverse bearing on national security. If the Secretary disagrees with him, the Plaintiff can go before the court for adjudication. (paragraph 62)
  10. The existence of the licence exception provides a balance between the Stated Purposes and the protection of property right. It also mitigates the imprecision of the phrase “deal with”. There is no reason to read down the provisions of section 3 to exclude the exercise of voting right. (paragraph 63)
  11. On the facts, the Court rejected the Plaintiff’s submission that the exercise of voting right by the Plaintiff would not possibly impact upon the purposes of the freezing regime adversely. (paragraphs 64-72)



12. There is a need for the court to give due weight to the views of the enforcement agencies in matters of national security and related risk assessment. (paragraph 64)

13. The Court also rejected the Plaintiff's submission that the exhaustive definition of "deal with" under section 6(12) of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) should be transplanted for the construction of "deal with" in section 3 of Schedule 3 to the Implementation Rules. (paragraphs 74-80)

14. The Court answered the Construction Issue in the affirmative. The declaration sought by the Plaintiff was dismissed. (paragraph 81)

### **The Licence Issue**

15. The Court acceded to the Plaintiff's application for adjournment. The hearing of the Originating Summons was adjourned *sine die* with liberty to restore. (paragraph 82)

**Civil Division**

**Department of Justice**

**September 2021**