Case Summary

HKSAR v Lai Chee Ying (黎智英) (1st Defendant "D1")
Apple Daily Limited (2nd Defendant "D2")
Apple Daily Printing Limited (3rd Defendant "D3")
AD Internet Limited (4th Defendant "D4")

HCCC 51/2022; [2025] HKCFI 6291
(Court of First Instance)
(Full text of the Court's reasons for verdict in English at https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=175422&currpage=T)

Before: Hon Toh, D'Almada Remedios and Alex Lee JJ in Court
Dates of Trial: Various dates between 18 December 2023 to 28 August 2025 (156 days in total)
Date of Reasons for Verdict: 15 December 2025

Conspiracy to commit collusion with foreign country or entity to impose sanctions or blockade or engage in other hostile activities ("SBHA") under NSL 29(1)(4) and ss. 159A and 159C of Crimes Ordinance ("CO") – conspiracy as a continuing offence – civil law of contract and doctrine of frustration not applicable to criminal conspiracy – proof of continuation as a party to agreement with necessary intention after change of law – proof of new agreement and starting date of agreement unnecessary – existence of agreement be inferred by overt acts or declarations – use of overt acts for proof of facts in issue and as factual foundation for inference of facts not hearsay use – distinction from co-conspirators' rule

Offence of collusion under NSL 29(1)(4) – NSL be construed in light of ordinary meaning, purpose and context – word of "collusion" in NSL 1 and heading of Part 4 in Chapter III as brief guide without limiting effect on NSL 29 and NSL 30 – incitement not relevant to

"request" under NSL 29(1)(4) – international law of little assistance – "act of state" doctrine not applicable – request for SBHA against officials of PRC or HKSAR covered by NSL 29(1)(4) – ejusdem generis rule applicable – "sanction" and "blockade" as different forms of hostile activities – wordings of SBHA and "request" be given plain and ordinary meaning – collusion as an "action crime" – proof of knowledge of illegality of agreement unnecessary

Conspiracy to print, publish, etc. seditious publication under ss. 10(1)(c), 159A and 159C of CO – application of HKSAR v Tam Tak Chi (2025) 28 HKCFAR 122 – proof of intention to incite persons to violence or public disorder unnecessary – proof of actual publication of seditious articles or knowledge of illegality of agreement unnecessary – new offences created in Instrument A305 Safeguarding National Security Ordinance modelled on old provisions of CO – components of seditious intention under s. 9(1) of CO as ordinary language – s. 9(2) applicable when intention under s. 9(2) of CO be "only" intention

Corporate criminal liability under NSL – legal basis under NSL 31 and NSL 36 – finding of corporate criminal liability under doctrine of attribution – "directing mind and will" of a corporate body – three categories of rules of attribution – "directing will and mind" normally be board of directors

Background

1. D1 and the other three corporate defendants, namely D2, D3 and D4 (collectively "Corporate Defendants") were jointly charged with: (para. 23)

(1) one count of conspiracy to print, publish, sell, offer for sale, distribute, display and/or reproduce seditious publications, contrary to ss. 10(1)(c), 159A and 159C of the CO (Count 1); and
(2) one count of conspiracy to commit collusion with a foreign country or with external elements to endanger national security (namely, to request a foreign country or an institution,

organisation or individual outside the mainland, Hong Kong, and Macao of the PRC to impose sanctions or blockade, or engage in other hostile activities (collectively "SBHA") against the HKSAR or the PRC, contrary to Article 29(1)(4)[1] of the NSL and ss. 159A and 159C of the CO (Count 2).

2. D1 was additionally charged with another count of conspiracy to commit collusion with a foreign country or with external elements to endanger national security, contrary to NSL 29(1)(4) and ss. 159A and 159C of the CO (Count 3). (para. 23)

3. D1 was the founder of Next Digital Limited ("NDL"). At all material times, D2 was the registered proprietor and publisher of Apple Daily, D3 was the registered printer of Apple Daily, and D4 was the owner and user of the domain name "appledaily.com.hk". The Corporate Defendants were the subsidiaries of NDL. (paras. 91-92)

4. The particulars of Count 1, Count 2 and Count 3 were as follows: (para. 23)

<u>For Count 1</u>:

"D1 and the Corporate Defendants, between the 1 April 2019 and 24 June 2021, both dates inclusive, in Hong Kong, conspired together and with CHEUNG Kim-hung, CHAN Pui-man, LAW Wai-kwong, LAM Man-chung, FUNG Wai-kong, YEUNG Ching-kee and other persons, to print, publish, sell, offer for sale, distribute, display and/or reproduce seditious publications, having an intention:-

(a) to bring into hatred or contempt or to excite disaffection against the Central Authorities or the Government of the Hong Kong Special Administrative Region;

(b) to excite inhabitants of Hong Kong to attempt to procure the alteration, otherwise than by lawful means, of any other matter in Hong Kong as by law established;

[1] NSL 29(4) referred to in the judgment of the Court of First Instance probably refers to sub-para. (4) of para. 1 of NSL 29. For the purpose of this case summary, NSL 29(1)(4) referred to here is identical to NSL 29(4) as referred to by the CFI in their judgment.

(c) to bring into hatred or contempt or to excite disaffection against the administration of justice in Hong Kong;
(d) to raise discontent or disaffection amongst inhabitants of Hong Kong;
(e) to incite persons to violence; or
(f) to counsel disobedience to law or to any lawful order."

For Count 2:

"D1 and the Corporate Defendants, between 1 July 2020 and 24 June 2021, both dates inclusive, in Hong Kong, conspired together and with CHEUNG Kim-hung, CHAN Pui-man, LAW Wai-kwong, LAM Man-chung, FUNG Wai-kong, YEUNG Ching-kee and other persons to request a foreign country or an institution, organisation or individual outside the mainland, Hong Kong, and Macao of the People's Republic of China, to impose sanctions or blockade, or engage in other hostile activities against the Hong Kong Special Administrative Region or the People's Republic of China."

For Count 3:

"D1, between the 1 July 2020 and 15 February 2021, both dates inclusive, in Hong Kong, conspired together with CHAN Tsz-wah, Mark Herman Simon, LI Yu-hin, LAU Cho-dik and other persons to request a foreign country or an institution, organisation or individual outside the mainland, Hong Kong, and Macao of the People's Republic of China, to impose sanctions or blockade, or engage in other hostile activities against the Hong Kong Special Administrative Region or the People's Republic of China."

5. D1 and the Corporate Defendants pleaded not guilty to all the charges against them. D1 elected to give evidence in his defence. (para. 29) On the other hand, the Corporate Defendants elected not to give evidence or to call any witnesses. (para. 30)

6. There were six accomplice witnesses called by the prosecution, including Cheung Kim-hung, Chan Pui-man, Yeung Ching-kee, Li Yu-

Hin ("Andy") and Chan Tsz-wah ("Wayland") (all of whom were named in the aforesaid particulars of charges and pleaded guilty to various charges) as well as Chow Tat-kuen ("Royston") (who was granted an immunity by the prosecution on the condition that he gave true and full evidence in another trial and in the present trial). (paras. 99 and 120)

Major provision(s) and issue(s) under consideration

- NSL 1, NSL 29 and NSL 30
- CO ss. 9, 10(1)(c), 159A and 159C

Summary of the Court's reasons for verdict

A. Legal challenges brought by the defence

(a) Application for stay for proceedings

7. Before the commencement of the trial, D1 applied on 2 May 2023 for a stay of proceedings on the bases that (1) the criminal proceedings against him would necessarily violate his constitutional right to a hearing before an independent and impartial tribunal; and (2) a fair-minded and informed observer would conclude that the ensuing trial will not be free from political interference. It was argued that on either basis the trial would amount to an abuse of process. The Court, having heard counsel's submissions, dismissed on 29 May 2023 the stay application with reasons given[2]. (para. 25)

(b) Time limit for prosecuting Count 1

8. At the beginning of the trial, D1 and the Corporate Defendants challenged the validity of Count 1 by arguing that it had been time-barred. The Court, having heard parties' submissions, ruled that Count 1 was not time-barred[3]. While D1 applied on 2 January 2024 to re-open

[2] [2023] 3 HKLRD 534. Accessible at: https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=152847&QS=%2B&TP=JU.
[3] [2023] HKCFI 3337. Accessible at: https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=157099&currpage=T.

the time-bar issue by arguing that there were some perceived ambiguities in the said ruling, the Court dismissed the application on the same date with reasons given[4]. (para. 26)

B. Issues before the Court

9. The Court briefly summarised the issues as follows: (para. 20)

(1) in relation to Count 1, whether D1 agreed with others to print seditious articles between 1 April 2019 and 24 June 2021; and
(2) in relation to Count 2 and Count 3, whether D1 agreed with others to request foreign countries or institutions to impose SBHA against the PRC and the HKSAR after the enactment of the NSL, namely between 1 July 2020 and 24 June 2021.

10. After stating the prosecution case (paras. 27-28) and the defence case (para. 29), the Court discussed the relevant legal principles and their application to the present case.

(a) No retrospective application of the NSL

11. The Court emphasized that the D1's actions and words to foreign countries to request for SBHA before the promulgation of the NSL are not the subject of any criminal charges in that case but only served as a background to the charges he faced. (para. 18)

(b) Conspiracy: Nature and proof of a conspiracy

12. The Court started with the principle that conspiracy is an inchoate offence, meaning that the offence is constituted by an agreement of two or more persons to do, at once or at some future time, certain things. The commission of the underlying substantive offence is a different offence. (paras. 32-33) What constitutes a statutory conspiracy is a matter of construction of the relevant provisions, which makes it undesirable to introduce ideas derived from the civil law of contract to a criminal

[4] [2024] HKCFI 58. Accessible at: https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=157212&currpage=T.

conspiracy. (para. 34) On this basis, the Court rejected the defence submissions (both at half-time and at closing) that the doctrine of "frustration" in contract law should be applicable to a criminal conspiracy, and that the NSL was a "frustrating event" in the present case by reason of rendering previously non-illegal activities criminal after its promulgation. The Court also rejected the defence that D1 could only be convicted of Count 2 and Count 3 if there was evidence showing that D1 was a party to "new agreements" similar to those before the NSL was enacted. (para. 37).

13. On the other hand, the Court acknowledged that criminal conspiracy is a continuing offence and accepted the prosecution submissions that a defendant would be criminally liable for the offence of conspiracy even though the agreement concerned was not illegal when he joined in but was subsequently rendered illegal by a change in the law, provided that after such change of the law the agreement still existed and the defendant remained a party to that agreement with one or more persons with the necessary intention. Hence, it is sufficient to prove that the parties concerned simply continued to pursue their agreement as before and that the making of a new agreement is not necessary. (para. 36). Similarly, if a person joins a conspiracy after it has been formed, that person is equally guilty. (para. 40)

14. As to matters that need to be proved for a conspiracy, the Court agreed that it is not necessary for the prosecution to prove the date the conspiracy started so long as the conspiracy in question existed during the charge period. The origins of all conspiracies are concealed, and the very existence of the initial agreement can only be inferred by overt acts (para. 39). It was held that the agreement forming the conspiracy can be expressed or implied (or partly expressed or partly implied) so long as it could be proved beyond reasonable doubt that there was a meeting of minds of more than one person. (para. 41)

15. Further, in a case of conspiracy, the overt acts or declarations including out of court statements (whether made in the presence of a particular defendant or not) could be used to infer the intention and elements of the offence, to prove facts in issue and to provide the factual

foundation for inferring facts in issue. Such use of out of court statements, which is distinct from the co-conspirators' rule, does not amount to hearsay use. (para. 42)

(c) The offence of "collusion" in Count 2 and Count 3

(i) General principles on construction of the NSL

16. In construing the provisions of the NSL, the Court applied the ruling of the CFA in *HKSAR v Lai Chee Ying* (2021) 24 HKCFAR 33 that the NSL should be construed in light of its ordinary meaning, purpose and context. The Explanations and Decisions made in proceedings of the NPC and the NPCSC regarding promulgation of the NSL may be deemed as extrinsic materials relevant to the consideration of the context and purpose of the NSL. (para. 47) The Court also referred to *HKSAR v Lui Sai Yu* (2023) 26 HKCFAR 332, which reiterated the principle laid down in *Lai Chee Ying* that the NSL functioned coherently with the HKSAR's legal system including the local laws unless the local laws are displaced due to inconsistency with the NSL pursuant to NSL 62. (para. 48)

17. Having set out the aforesaid guiding principles on the construction of the NSL, the Court referred to the social context leading to the enactment of the NSL, noting that the NSL was enacted in full awareness that national security in the HKSAR could be undermined by non-violent acts, for example, inciting public hatred and paralysing governance by the government and operation of the legislature. (paras. 49-50)

(ii) Construction of the offence of "collusion" under NSL 29(1)(4)

18. Turning to the construction of the offence of collusion under NSL 29(1)(4) specifically, the Court noted that the word "collusion" appears only in NSL 1 (General principles) and the heading of Part 4 of the NSL but not in NSL 29 or NSL 30. Also, the word "collusion" is not defined in the NSL, nor are the terms "sanctions", "blockade" and "hostile activities" used in NSL 29(1)(4). (paras. 51-52) It was held that the word "collusion" in NSL 1 and in the heading of Part 4 only serves as a brief guide to the content of NSL 29 and NSL 30, and does not limit these two

articles. (paras. 56-57)

19. Having considered a number of factors including the paramount importance of safeguarding national security, the purpose of the NSL, the respect and protection to human rights, the principle of the rule of law, and the context of NSL 29(1)(4) taken in its widest sense, the Court concluded, there being nothing in its context or the legislative intent of the NSL indicating otherwise, the *ejusdem generis* rule is applicable to the word "other" before "hostile activities" in NSL 29(1)(4) to the effect that "sanction" and "blockade" should be understood as different forms of "hostile activities" for the purpose of NSL 29(1)(4). It was further held that in order to give due effect to the purpose of the NSL, the terms "sanctions", "blockade" and "hostile activities" in NSL 29(1)(4) and the word "request" in NSL 29 shall be given their plain and ordinary meaning. Thus, for example, a technology embargo imposed by a foreign country against the PRC or the HKSAR is capable of being categorized as a "blockade" or "hostile activity". To "request" in NSL 29 simply means to ask and to appeal for something or something to be done; the law of "incitement" is irrelevant in this context; and a request can be made orally or in writing, and be made explicitly or implicitly; what is important is that the person who makes the request intends that sanction be imposed by a foreign country or entity. Any sanction, blockade and hostile activity which aims at officials of the PRC or the HKSAR, as the case may be, for their work done or things said in their official capacity on behalf of their Government is equal to sanction, blockade and hostile activity which aims at the PRC or HKSAR. (paras. 57-58)

20. In particular, the Court disagreed with the following points raised by the defence with reasons: (para. 58)

(1) the Court disagreed that the law of "incitement" is relevant to the construction of the word "request" in NSL 29(1)(4). In the Court's view, what is important is that the person who makes the request intends that sanctions be imposed by a foreign country or entity;
(2) the Court disagreed that international law, including the Charter

or resolutions of the United Nations, are of assistance in construing the NSL or the meanings of "sanction", "blockade" and "hostile activity". The Court reiterated that the approach to the construction of the NSL has been authoritatively laid down in *Lai Chee Ying* and *Lui Sai Yu*;

(3) the Court disagreed that the "act of state doctrine" is applicable to the present case. The Court is concerned about whether the measures imposed or proposed by the foreign countries were targeted at the PRC or the HKSAR and could be regarded as hostile activities, rather than the validity of such measures; and

(4) the Court disagreed that NSL 29(1)(4) does not cover a request for SBHA against officials of the PRC or the HKSAR. In the Court's view, such narrow and literal reading of the provision would defeat its purpose.

(iii) Elements of the offence of conspiracy to commit "collusion" in Count 2 and Count 3

21. The offence of "collusion" under NSL 29(1)(4) consists of these elements: (1) the accused made a request; (2) the request was made to a foreign country or entity; and (3) the purpose of the request was for the foreign country or entity to impose SBHA against the HKSAR or the PRC. NSL 29(1)(4) does not require that the request in question resulted in any sanction or blockade other hostile activity. In other words, the offence under NSL 29(1)(4) is an "action crime" rather than a "result crime". (para. 59)

22. As summarised by the Court, the elements of the offence of "conspiracy to commit collusion" charged in Count 2 and Count 3 under NSL 29(1)(4) are that (1) there existed an agreement of two or more persons; (2) the agreement was to make a request to a foreign country or entity; (3) the request was to impose SBHA against the HKSAR or the PRC; and (4) the agreement, if carried out in accordance with the intention of the parties to the agreement, would necessarily amount to or involve the commission of a "collusion" offence under NSL 29(1)(4) by one or more of them. (para. 60) The prosecution did not have to prove the accused's knowledge of the illegality of the agreement. If all the

elements of the offence were proved to be present, then the accused's mistaken belief about the legality of their act would not afford them a defence. (paras. 60-62)

(d) The offence of "sedition" in Count 1

(i) Application of *HKSAR v Tam Tak Chi* (2025) 28 HKCFAR 122

23. Turning to the offence of "sedition" under s. 10(1)(c) of the CO, the Court applied the CFA's judgment in *HKSAR v Tam Tak Chi* (2025) 28 HKCFAR 122, which held that the intention to incite others to violence or public disorder is not an element of the offence under s. 10 of the CO. (para. 66) The Court also stated three points held by the Court of Appeal ("CA") in *Tam Tak Chi* (all of which were not challenged on further appeal to the CFA in that case), including (1) the offence of "sedition" is constitutional by satisfying the four-stage test of proportionality, (2) the terms "hatred", "contempt", "disaffection", "discontent" and "feelings of ill-will" (being part of the "seditious intention" under s. 9(1)) are ordinary language, and (3) s. 9(1) and s. 9(2) of the CO have to be read together. (para. 67)

24. It is also pertinent to note that the CA in *Tam Tak Chi* did not decide on whether the offences under s. 10 of the CO are ones of "basic intent" or "specific intent" as the applicant in that case simply conceded that the offence under s. 10(1)(b) (uttering seditious words) was one of "basic intent". Similarly, the Court in the present case did not find it necessary to deal with this question based on its factual findings (which are to be discussed below). (para. 68)

(ii) Operation of the repealed ss. 9 and 10 of the CO and interrelationship with the SNSO

25. The offences of "sedition" under the CO, and with them ss. 9 and 10 of the CO, have been repealed and substituted with new offences created by the Safeguarding National Security Ordinance ("SNSO"). The Court noted that the new offences in the SNSO modelled on the old provisions in the CO, for example, the definition of "seditious intention"

is set out in s. 23(2) of the SNSO while the intentions which are not considered as "seditious" are set out in s. 23(3)&(4). (para. 69) In particular, the word "only" appearing in the old s. 9(2) of the CO (which indicates that the intention which is considered as not "seditious" should be the only intention in order to apply the exception that the act, speech or publication in question is not seditious) is retained in s. 23(3) of the SNSO, which the Court deemed to be purposeful and important as it evinces the legislative intent to restrict the operation of s. 23(3)&(4) of the SNSO in the same manner as the old s. 9(2) of the CO did. An act or a publication in question could be "seditious", if the intentions referred to in s. 9(2) are not the "only" intention for the act or publication. If an accused in uttering a seditious speech had the intention "to point out errors or defects in the Government with a view to the remedying of such error or defects" and at the same time he also had the intention to bring into hatred or contempt or to excite disaffection against the Government of HKSAR, then s. 9(2) would not be applicable and the accused would still be guilty of the offence of "uttering seditious words" under section 10(1)(b). This is because the first intention is not the "only" intention for the speech. (paras. 70-71)

(iii) Elements of the offence of conspiracy to print, publish etc. seditious publications in Count 1

26. As summarised by the Court, the elements of the conspiracy charge in Count 1 consist that (1) there was an agreement of two or more persons, (2) the agreement was to print, publish, sell, offer for sale, distribute, display and/or produce publications, (3) the publications that the parties agreed to print, etc. would be "seditious" under s. 9 of the CO, and (4) the agreement, if carried out in accordance with the intention of the parties to the agreement, would necessarily amount to or involve the commission of an offence under s. 10(1)(c) of the CO by one or more of them. The offence is an inchoate offence. In proving these elements, it is not necessary to prove actual publication or production of the "seditious publications" nor the knowledge of the accused, who was a party to the agreement, of the illegality of the agreement. (paras. 72-73)

(e) Corporate criminal liability – the directing mind

27. The Court started with the well-established principles that a company can be guilty of both statutory and common law offences, even those requiring *mens rea*, but it cannot be indicted for a crime for which imprisonment is the only punishment. As submitted by the prosecution and not challenged by the defence, a company may be found guilty of offences under the NSL because (1) NSL 31, which provides for the penalty of an offence under the NSL committed by an "incorporated or unincorporated body such as a company or an organisation", clearly contemplates such an incident; and (2) NSL 36 provides that the NSL "shall apply to offences under this Law which are committed in the Hong Kong Special Administrative Region by any person". (paras. 74-75)

28. The Court subsequently explained the doctrine of attribution, meaning that the conduct of individuals who represent the "directing mind and will" of the company is attributed to the company, thus rendering the company criminally liable. (para. 75) The Court referred to the majority judgment given by Lord Walker of Gestingthorpe NPJ of the CFA in *Moulin Global Eyecare Trading Ltd v Commissioner of Inland Revenue* (2014) 17 HKCFAR 218, in which the Privy Council case (on appeal from New Zealand) of *Meridian Global Funds Management Asia Ltd v Securities Commission* [1995] 2 AC 500 was cited by His Lordship as the "leading case on the topic of attribution in company law". (paras. 75-76)

29. The Court referred to the three categories of rules of attribution as clarified by Lord Hoffmann in *Meridian*, namely: (para. 77)

(1) primary rules of attribution as derived from company law statutes and the articles of association of the company concerned;
(2) general rules of attribution as equally available to natural persons, namely, the principles of agency; and
(3) in exceptional cases when a rule of law expressly or impliedly excludes attribution based on the general principles of agency or vicarious liability,

with the Court's task, in cases concerning the third category, to determine the legislature's intention from the statutory language, purpose and context and to fashion a special rule where it is dealing.

30. The Court further referred to the conventional approach to attributing criminal liability to a corporate body for offences requiring proof of *mens rea* (as held by the English Court of Appeal in *R v St Regis Paper Company Ltd* [2012] 1 Cr App R 14 with *Meridian* applied), where the ultimate question for the jury under such approach would be whether the person(s) who had committed the offence with the requisite intention constituted the "directing mind and will" of the corporation. Such persons would normally be the board of directors, the managing director and other superior officers of the company who carried out the functions of management and spoke and acted as the company. Meanwhile, the Court acknowledged that there might be cases where the law was intended to apply to companies but application of the primary rules of attribution would practically defeat that intention. In such cases, the Court had to fashion, based on interpretation of the relevant statute or regulation, a special rule of attribution that adheres to the purposes of that statute or regulation. (para. 78)

(f) Taking of judicial notice

31. Both prosecution and the defence asked the Court to take judicial notice of certain matters, though the defence did so as a last minute decision during oral closing. (para. 79) The Court first set out the principles that (1) judicial notice is the cognisance taken by the Court itself of certain matters which are so notorious, or clearly established, that evidence of their existence is deemed unnecessary, and (2) the party seeking judicial notice of a fact has the burden of convincing the judge that: (a) the matter is so notorious as not to be the subject of dispute among reasonable men; or (b) the matter is capable of immediate accurate demonstration by resort to readily accessible sources of indisputable accuracy. It was also not in dispute that judges may, in reaching their decisions, use their general information and knowledge of the common affairs of life which men of ordinary intelligence possess at their decisions, so long as they do not act on their own private knowledge or belief regarding the facts of a particular case. (para. 80)

32. Applying the aforesaid principles, the Court considered several subjects as applied by the prosecution to be proper subjects of judicial

notice, for example, the serious social unrest and public disorder marked by protests, violence, vandalism and arsons across the HKSAR arising from the HKSAR Government's proposal to introduce the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019 ("ELAB") and the consequent series of events during this period. (para. 81) On the other hand, the Court rejected to take judicial notice of the five matters applied by the defence as they were not supported by any materials and the Court failed to see any relevance of any of those five matters to the present case. (para. 82)

(g) D1's no-case submission

33. D1 made a no-case submission with three grounds when the prosecution case was closed: (para. 85). The Court ruled that D1 had a case to answer on all these charges against him. (paras. 88-90)

C. The Court's Factual Findings and Verdict

34. Before summarising the factual findings on the charges, the Court assessed the evidence of the six accomplice witnesses and found them to be credible and reliable. On the other hand, the Court found D1 neither credible nor reliable. Hence, the Court essentially accepted the accomplice witnesses' evidence as true but rejected the exculpatory parts of D1's evidence. (para. 1738)

(a) Factual findings on Count 1 and D1's liability

(i) D1 as the helmsman of Apple Daily and Apple daily as D1's platform

35. From the evidence of Cheung Kim-hung, Chan Pui-man, Yeung Ching-kee and Royston, D1 was very hands-on and deeply involved in the operation of Apple Daily, who would from time to time give editorial directions and expected those directions to be followed. D1 was, as described by Cheung Kim-hung, the "helmsman" of Apple Daily. While the Court accepted that Apple Daily's senior management shared the same or similar political perspectives as D1's, this did not weaken the

evidence of the four aforesaid accomplice witnesses that it was D1 who was setting the editorial policies and giving editorial directions of the newspapers. In whole, the Court found that D1's political views bore heavily on the editorial policy of Apple Daily and the selection criteria of writers and articles of the Editorial and Apple Forum that they could be regarded as "guiding principles". (paras. 1741-1743)

36. The Court also accepted the evidence of Cheung Kim-hung and Chan Pui-man that having a charter did not mean that the senior editorial staff of Apple Daily could say "no" to D1 as the boss of the newspaper because the charter was prepared for merely meeting the corporate auditing requirement of Apple Daily's publicly listed parent company. The "editorial independence" provided for in the charter only practically meant that there should be a separation between news reporting and advertisement, and such independence was indeed "independence in a birdcage" as described by Yeung Ching-kee. (para. 1745)

37. The Court, by citing non-exhaustive examples, found that D1 had been using Apple Daily as a platform for spreading his political ideas and implementing his political agenda both before and after the promulgation of the NSL, having regard in particular to the fact that D1's articles were published in his own column "Sink or Swim, Smile" in both printed and online versions of Apple Daily, and that his *live chat* shows were advertised and posted on various online platforms of Apple Daily. (para. 1746)

(ii) Impugned articles were seditious

38. The prosecution referred to 161 articles as "samples" of the products of the conspiracy charged in Count 1, which were from D1's column "Sink or Swim, Smile", the Editorial, Apple Forum and D1's live broadcasts. In response to the schedule prepared by the prosecution listing out summaries of the impugned articles and the limbs of seditious intention upon which they relied, the defence for D1 prepared a schedule and argued that the impugned articles were not seditious by relying upon the four limbs in s. 9(2) of the CO. (para. 1748)

39. In light of the sheer amount of samples, the Court did not recount them individually but gave an overall observation, having considered them in their proper literary and social context, that they manifested a general and constant pattern of showing serious hostility and bias against the Communist Party of China ("CPC"), the Central People's Government ("CPG") and the HKSAR Government, including portraying the CPC, CPG and the HKSAR Government and the Police as enemies acting with intent to harm Hong Kong people, subjecting officials of the CPG and the HKSAR Government to reidicule and derogation to such a degree that it brought into hatred and contempt against them, and making appeals for the public to openly resist the HKSAR Government even after the withdrawal of the ELAB. (para. 1749) In particular, the Court listed out 17 written works (from D1's articles, The Editorial and Apple Forum) which were objectively assessed, bearing in mind the meanings of "hatred", "contempt" and "disaffection" in s. 9(1) of the CO clarified in *Tam Tak Chi,* as seditious and written with a view to bringing into hatred and contempt and to excite disaffection against the HKSAR Government. (paras. 1750-1751)

(iii) Was there an agreement to publish, etc, "seditious" articles

40. Given the sheer amount of impugned articles and the duration of time they spanned, the Court found that D1 and the senior management of Apple Daily, during the charge period of Count 1, were aware that there were articles published in Apple Daily which would bring into hatred and contempt and excite disaffection against the CPG and the HKSAR Government. (para. 1752) Given D1 was a hands-on boss and deeply involved in the operation of Apple Daily, the Court was satisfied that D1 agreed with those articles which were consistent with his own political stance. Indeed, the Court found that D1 had been allowing the impugned articles to be published in his newspaper not only to spread and implement his political agenda, but also to keep the resistance movement alive against the HKSAR Government. (para. 1753)

41. The Court considered that the impugned articles have to be read in the perspective of D1's political stance given the Court's finding on how D1 was influencing Apple Daily's editorial policy and stance and using

Apply Daily to generally implement his anti-PRC agenda. (para. 1754)

42. In this regard, the Court discussed their findings on D1's political agenda in greater detail. As the Court found, D1 affiliated himself with Western values, viewed China's rise under the rule of the CPC as a threat to the world order based on US dominance and considered that the Western world should be united to confront China. D1 was obsessed with assimilating CPC's values to those of the Western world as this would, as he said, avoid future conflicts and secure peace because he believed that China was a dictatorship. D1 desired a regime in China that is not under the rule of the CPC or at least with the President of the PRC having stepped down or removed. His main aim was to gather support from the US and the Western world to destabilise the CPC. He tried to influence foreign policy on the HKSAR or the PRC through his relations with foreign figures and in the hopes of ganging up the countries in the world to confront China against the "CPC Culture". In short, D1's end game was to change the regime of the CPC. (paras. 1754-1755)

43. Against this background, the Court found that the impugned articles were supportive of the said agenda of D1, who was consciously using Apple Daily and his personal influence to consistently carry out a campaign with a view to undermining the legitimacy or authority of the CPG, the HKSAR Government and their institutions and harming the relation between the CPG and the HKSAR Government with the people in Hong Kong, which went far beyond what would be permissible under s. 9(2) of the CO. (para. 1756)

44. The Court observed that D1's political campaign would require full and knowing cooperation of Apple Daily's senior management including at least Cheung Kim-hung, Chan Pui-man, Yeung Ching-kee and Royston. In this regard, the Court found that D1 had made known his political views to the senior management of Apple Daily and accepted Yeung Ching-kee's evidence that the views expressed in the Editorial represented Apple Daily's stance, which was in turn based on D1's editorial directions and political stance. (paras. 1756-1757)

45. The Court also highlighted that they had considered the evidence of

the accomplice witnesses (citing Chan Pui-man and Yeung Ching-kee's evidence as examples) that the impugned articles and reports were published with a view to changing government policies which they considered to be wrong. That said, the Court also found that the senior management was fully aware of D1's anti-China stance and his aforesaid campaign to undermine the legitimacy or authority of the CPG, the HKSAR Government and their institutions and to harm the relation between the CPG and the HKSAR Government with the people in Hong Kong, yet they still willingly became parties to D1's campaign, which went beyond the boundaries permitted by s. 9(2) of the CO. (para. 1758)

46. To summarise, the Court was satisfied that during the charge period of Count 1, the conspiracy as charged existed with D1 being the mastermind and all the other parties (including all persons named in the particulars of Count 1 and Royston) knowingly and willingly implemented D1's seditious campaign against the HKSAR Government and its officials. (para. 1759) On the totality of evidence, D1 was found guilty of Count 1. (para. 1812)

(b) Factual findings on Count 2 and D1's liability

(i) D1's campaign for sanctions before the NSL

47. The Court found that prior to the promulgation of the NSL, D1 had been carrying on a campaign to openly call for SBHA against the PRC and some senior officials of the HKSAR Government through various means, including the platform of Apple Daily, D1's personal Twitter account, his articles published in and interviews with foreign media; and that Apple Daily's senior management knowingly and willingly took part in that campaign by causing publication of editorials and forum articles which openly called for sanctions against the HKSAR Government or the PRC. In short, the Court found that an agreement to request foreign countries (particularly the US) to impose SBHA against the HKSAR Government or the PRC, with D1 being the mastermind, had already existed prior to the promulgation of the NSL. (paras. 1761-1762)

(ii) D1's intention and conduct after the NSL

48. The Court found that D1 must have been aware of the offence of "collusion" created by the NSL. The Court noted that D1 himself ceased to make any direct or explicit requests for sanctions after the NSL. Similarly, there were attempts by the senior management (under the leadership of Cheung Kim-hung) to reduce the risk of Apple Daily's editorial staff breaching the NSL. (paras. 1763-1764) However, it was held that the only adaptation D1 made was in its form but not its substance as what D1 did was to merely adopt a more indirect and subtle strategy and to tone down his rhetoric in continuing his expression of an anti-PRC stance and the campaign for requesting SBHA. (paras. 1767 and 1781)

49. The Court was satisfied, based on available evidence, that the pre-NSL agreement to request SBHA continued to exist after the NSL with D1 remaining as the mastermind. The other parties who knowingly and willingly joined that agreement included at least the members of the senior management of Apple Daily named in Count 2. (para. 1782) On the totality of evidence, D1 was found guilty of Count 2. (para. 1812)

(c) Liability of the Corporate Defendants on Count 1 and Count 2

50. The Court agreed with the prosecution on the roles of the Corporate Defendants that at all material times: (para. 1784)

(1) D2 was the main body corporate entity maintaining the operation and the publication of the content of the newspaper;
(2) D3 was responsible for printing the printed version of the newspaper and various posters and publications containing the impugned articles, thereby facilitating their dissemination and circulation; and
(3) D4 was responsible for maintaining the domain name for Apple Daily's website, which published the online version of Apple Daily containing the impugned articles (for Count 1), thereby facilitating their dissemination to a broad online audience at both local and domestic levels. D4 also served as a means to request and solicit support from foreign entities for SBHA against the PRC and the HKSAR (for Count 2).

51. The Court found that D1, by virtue of his majority shareholding in the holding company NDL and his substantial shareholder loan to NDL that gave him a significant leverage, was in *de facto* control of the corporate defendants in that case even though he was not a director in any of corporate defendants at the material time. The Court also agreed with the prosecution that given the roles played by Cheung Kim-hung, Chan Pui-man, Law Wai-kwong, Nick Cheung and Royston (notably their directorship in any of the Corporate Defendants during the charged periods), they were all responsible for the implementation of D1's editorial policy and the overseeing of the daily management of NDL and the Corporate Defendants. All of them, as a whole, were thus acting as the "directing mind and will" of the Corporate Defendants with their intention relating to Count 1 and Count 2 becoming also the intention of the Corporate Defendants by the doctrine of attribution. (paras. 1785-1787) In conclusion, the Corporate Defendants were held to be knowing and willing parties to the conspiracies in Count 1 and Count 2, and were found guilty of Count 1 and Count 2. (paras. 1790 and 1812)

(d) Factual Findings on Count 3 and D1's liability

52. First and foremost, the Court highlighted that their findings of D1's intention to request SBHA on Count 2 are also relevant to Count 3. The Court was also fully satisfied that an agreement existed between Mark Herman Simon ("Mark Simon"), Andy, Wayland, Lau Cho-dik ("Finn Lau") and others to engage in "international lobbying" with a view to soliciting international support for the resistance movement in Hong Kong. (paras. 1791-1792)

53. The issue turned on whether D1 was also a party to the aforesaid "international lobbying" campaign. On this point, the main evidence against D1 was the testimony of Wayland (whom the Court found to be an honest and reliable witness) and D1's text messages in WhatsApp and Signal. In short, the Court accepted Wayland's evidence as to the content during his six meetings and telephone conversations with D1 and Mark Simon. (paras. 1793-1794)

54. In particular, the Court highlighted eight findings as follows (para. 1794)

(1) D1 knew about and provided financial assistance to the "G20" and "G Fry" newspaper advertisement/crowdfunding campaigns, and he was told by Wayland of Andy's role in the said campaigns;
(2) D1 told Wayland at their first meeting that Wayland could contact him via Mark Simon, who would have daily contact with and report to D1. This point was further supported by the WhatsApp and Signal messages between D1 and Mark Simon as well as Wayland's evidence of Mark Simon's involvement in the "G20" and "G Fry" campaigns and his meetings with Wayland;
(3) D1 wanted to unite the valiant and the "peaceful, rational and non-violent" under a leadership group so that the valiant would restrain and control their violence in order to uphold the moral high ground and international support of the anti-ELAB movement. The assistance of Wayland, whom D1 believed could get in touch with the valiant, was therefore enlisted;
(4) D1's idea was that the proposed leadership group, in which he would play a dominant role, should dominate the anti-ELAB movement. D1 also told Wayland that he could use his power of media to do things which could not be achieved by young people;
(5) D1 knew that Hong Kong was used by the US as a leverage on China in the trade deal;
(6) D1 knew that both before and after the promulgation of the NSL, Andy, Wayland and Finn Lau had been engaging in international lobbying;
(7) the entire "Fight for Freedom. Stand with Hong Kong" team ("SWHK") joined the Inter-Parliamentary Alliance on China ("IPAC") with Mark Simon's advice. The Court found it inherently improbable for D1 not to have been told of the SWHK joining the IPAC by Mark Simon, given D1' relationship with Mark Simon, D1's knowledge about the IPAC, and the importance to which D1 attached in seeking international support, coupled with the fact that this was prominently covered by Apple Daily on 15 June 2020; and

(8) the Court accepted Wayland's evidence that he became a member of the SWHK US front with the assistance of Mark Simon and that the SWHK US front would report to Mark Simon nearly on a weekly basis, with the finding that Mark Simon would not have such an influence on the SWHK but for his position as D1's right hand man. Given the trusted relationship between D1 and Mark Simon, the only reasonable inference was that Mark Simon was acting, with D1's agreement and full knowledge, in dealing with the SWHK US front and helping Wayland join that front.

55. The Court found that, having taken all evidence as a whole, after the sixth meeting on 16 June 2020, there was an agreement between D1, Andy, Wayland, Finn Lau and Mark Simon for Andy, Wayland and Finn Lau to engage in the "international lobbying" campaign, with all parties to the agreement knowing that the campaign would involve requesting foreign countries to impose SBHA on the PRC and HKSAR. That agreement continued to exist after the promulgation of the NSL with all parties still having the intention to carry out their respective parts of the agreement. (paras. 1795-1796) On the totality of evidence, D1 was found guilty of Count 3. (para. 1812)

Endnote – HKSAR v Chan Tsz Wah and Li Yu Hin (HCCC 147/2021), Lai Chee Ying & Ors (HCCC 51/2022), Cheung Kim Hung & Ors (HCCC 52/2022); [2026] HKCFI 854 (Full text of the Court's reasons for sentence at https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=177109&QS=%2B%7C%28HCCC%2C147%2F2021%29&TP=RS)

56. The Court started with Count 2 and Count 3 as these two offences were more serious than Count 1. NSL 29 provides for two sentencing bands, namely (1) a person who commits the offence shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years, and (2) a person who commits an offence of a grave nature shall be sentenced to life imprisonment or fixed-term imprisonment of not less than ten years. It has been settled that the sentencing bands prescribed for NSL offences are mandatory that, save and except for the

operation of NSL 33, the final sentence shall not fall below the lower limit of the applicable sentencing band, and that this is equally applicable to a conspiracy to commit a NSL offence (paras. 25-28)

57. The Court, when determining the proper sentences of Count 2 and Count 3 for a particular defendant in question, followed the steps as set out in *Lui Sai Yu*: (para. 29)

(1) determine the applicable sentencing band;
(2) fix the starting point within the applicable sentencing band;
(3) make adjustments from the starting point for the relevant aggravating and mitigating factors (not including the NSL 33 factors, if any) and arrive at a provisional sentence which must be located within the applicable sentencing band;
(4) determine if NSL 33 is engaged; and
(5) if NSL 33 is engaged, determine to what extent a reduction of the sentence provisionally determined may be merited.

58. Further, having analysed the legislative intent of NSL 29, the Court had the following observations regarding the sentencing scheme of NSL 29 and was of the view that it is the legislative intent that, other things being equal, the engagement of a foreign entity in endangering national security is generally to be regarded as an offence of a more serious nature which has to be met with a more severe penalty: (paras. 30-31)

(1) It carries the same maximum sentence as the other major NSL offences, namely secession (NSL 20); subversion (NSL 22); terrorist activities (NSL 24); and terrorist organisation (NSL 25), which is life imprisonment.
(2) The minimum sentence, however, is 3 years' imprisonment, which is unlike NSL 20, 22 and 25 where the lesser sentencing options of "short-term detention" and "restriction" (as defined in NSL 64) can be available.
(3) Both NSL 29 and NSL 30 are contained in Chapter III, Part 4 of the NSL and the two articles are the only provisions in that part.

59. The phrase "offence of a grave nature" in NSL 29, which also appears in the penalty sections of NSL 20 and 22, has not been statutorily defined. The phrase should be given its ordinary and natural meaning unless its context or purpose points to a different meaning. Local sentencing laws are relevant and applicable to deciding on whether a case brought under NSL 29 should be classified as of a "grave nature" in order to give effect to the principles of "convergence, compatibility and complementarity". (paras. 33-34)

60. In determining whether the present NSL offences were of a "grave nature" under NSL 29, the Court considered the relevant factors set out in *HKSAR v Ma Chun Man* [2022] 5 HKLRD 246 with some adaptations for the present case, which would include: (para. 35)

(1) the context including the society's atmosphere in which the offence was committed;
(2) the *modus operandi*, including the ways, acts, wording, media or platform adopted;
(3) the frequency, duration and persistency of the offence;
(4) the scale of the offence;
(5) whether the offence was premeditated and if so, the scale and precision of the premeditation;
(6) whether violence or threat of violence was involved and if so, the urgency and seriousness of the relevant violence or threat;
(7) the number of people involved;
(8) the target group(s) of the request for sanctions and the potential influence on them;
(9) whether the offence actually succeeded in resulting in foreign sanctions or the risk and imminence of such sanctions; and
(10) the actual or potential impact of the offence on the HKSAR and/or the PRC.

61. The structure of NSL 29 ranks all the sub-paragraphs on an equal footing. Since the sentencing exercise is a holistic one having regard to all the circumstances of the offence, the seriousness or gravity of the

offence must necessarily be a case-specific question. (para. 37)

62. The NSL does not have retrospective effect and the defendants are not to be punished for their pre-NSL acts or activities, nor for their political thoughts. They were convicted because they had agreed to do and intended to carry out what was not permissible under NSL 29. That is not to say that what had happened before the enactment of the NSL are irrelevant. This is because the defendants' pre-NSL acts and activities formed part of the context in which their offences took place. It is well-established that in sentencing, the context of the offence is relevant to the assessment of the gravity of the offence and the culpability of an offender. (paras. 38-39)

63. In an offence jointly committed by a number of offenders, a legal issue arises whether the role played by a particular offender is a factor relevant only to the fixing of the starting point within the applicable sentencing band; or whether it is also relevant to the determination of the applicable sentencing band. This "banding issue" is important because it may bear on the amount of sentencing discount a defendant may receive for his guilty plea when he or she is unable to pray in aid NSL 33. The matter becomes more acute in the case of a conspiracy where different parties might have different degrees of knowledge of the scope of the conspiracy and might have different roles to play in it. The penalty provisions in NSL 20 and NSL 22 are identical. The "banding issue" under NSL 20 and NSL 22 depends on (1) the participatory role of the offender; and (2) the gravity of the offence. On the other hand, in NSL 29, the gravity of the offence is the only criterion for determining the applicable sentencing band. (paras. 40-41)

64. The Court accepted that the act(s) of the offender should not be excluded as a relevant factor in the determination of the "banding issue". However, it should be noted that the Courts in *HKSAR v Lui Sai Yu* or *HKSAR v Ma Chun Man* was not required to consider or address the

situation of a joint offence where different parties played different roles in the offence. Further, the difference between the penalty sections of NSL 20 and NSL 22 on the one hand and that of NSL 29 on the other could not have been accidental. There must be some significance to the fact that the penalty section of NSL 29 refers only to the gravity of the offence as the criterion for determining the banding issue; otherwise, the Legislature would have easily adopted the same formulation as in NSL 20 and NSL 22. Bearing in mind the legislative intent that a serious view should be taken of cases which involve the engagement of a foreign entity in endangering national security, the Court held that, when determining whether an offence is of "a grave nature" for the purpose of NSL 29, although the court should not ignore the act(s) of an offender in a joint offence scenario, the emphasis is on the objective seriousness of the offence as a whole. There can be situations where the offence as a whole is so serious that the small part played by an offender counts very little in the assessment of his culpability, especially when he or she committed the offence with the full knowledge of its scope which went beyond his or her own part. This construction focuses on the offence as a whole rather than the part played by an offender. Generally speaking, the insignificant role played by an individual co-conspirator was not a mitigating factor. However, if a co-conspirator played an active, affirmative and extensive role, his culpability would be aggravated. The Court had to take into account the overall gravity of the offence before arriving at the appropriate sentence. (paras. 41-47)

(a) Starting points

65. In respect of Count 1, the Court was of the view that the conspiracy in question fell within the most serious category of its type in view of the fact that the printed and online platforms of Apple Daily had been used for the publication of the impugned articles, having regard also to the number of articles in question, the number of parties involved in the publication of those articles, and the duration of the offence. Hence,

the Court adopted 21 months' imprisonment as the starting point for D1 and a fine of $4,500 for the Corporate Defendants. (paras. 58-59)

66. In respect of Count 2 and Count 3, the Court was of the view that the two conspiracies in question also fell within the category of offences of "a grave nature". The Court highlighted the following points: (paras. 60-61)

(1) the offences took place at a time when Hong Kong had hardly recovered from the social turmoil caused by the anti-ELAB movement in 2019 (of which Apple Daily had a significant part to play);
(2) for Count 2, the conspiracy involved the use of various printed and online platforms so that a vast audience, both local and overseas, could be reached;
(3) for Count 3, the conspiracy involved the use of online platforms and the activities of parties took place both within and outside of Hong Kong;
(4) the conspiracies were clearly premeditated;
(5) the conspiracies were persistent ones, resulting in many acts rather than a single incident. After the enactment of the NSL, the request for SBHA became more implicit and subtle, but the change was only in form rather than in substance and the defendants continued with their agreement for some time until after they were arrested by the police;
(6) there were multiple parties to each conspiracy; and
(7) SBHA were in fact taken by foreign countries against the HKSAR as a whole as well as against officials of the governments of the HKSAR and the PRC. Such adverse measures have not been removed even up to today. Although it was not the case that the conspiracies were the only cause of the SBHA, they were still a contributing cause.

67. Having looked at all the circumstances and before considering any aggravating or mitigating factors, the Court adopted 15 years' imprisonment as the starting point for each of the two conspiracy charges in Count 2 and Count 3. As regards the Corporate Defendants, the

Court adopted a fine of HK$3 million as the appropriate starting point. (paras. 62-63)

(b) Sentence of D1

68. The Court, having found D1 to be the mastermind and the driving force behind the conspiracies concerned, enhanced the starting point by: (para. 64)

(1) 2 months' imprisonment in addition to the 21 months' starting point of Count 1, making a provisional sentence of 23 months' imprisonment; and
(2) 3 years' imprisonment in addition to the 15 years' starting points of Count 2 and Count 3, making a provisional sentence of 18 years' imprisonment for each of the charges.

69. Turning to the three mitigating factors put forward on behalf of D1, namely old age, poor health and solitary confinement, the Court noted that advanced age may be taken into account but only "as an act of mercy", which had to be balanced against the gravity of the offence and the public interest in seeing adequate punishment for very serious crimes. (para. 66). As regards D1's health condition, the Court considered an updated medical report of D1 and, noting that none of D1's medical conditions was life-threatening and that there was nothing to suggest that the medical attention provided to D1 by the Correctional Services Department was or had been inadequate to deal with his conditions, declined to give D1 any deduction for his medical conditions. (paras. 68-71) As regards D1's solitary confinement, the Court considered a statement given by the Chief Superintendent of Lai Chi Kok Reception Centre, and noted (amongst others) that D1 had been removed from association upon receipt of his own requests for protection and having assessed all relevant considerations; that despite such removal, his entitlements as a person-in-custody had not been deprived of, and D1 had been able to maintain social contact and interaction conductive to his wellbeing and rehabilitation through various means including general visits from family members and others, mail correspondence, religious services arrangement (including administration of the Holy

Communion), welfare and counselling services, outdoor exercise, meaningful but light duty work and so forth; and that D1 had never lodged any complain in relation to the custodial treatments at all. (paras. 74-75) Nevertheless, the Court, having considered all the circumstances, accepted that the combination of D1's old age (78 years of age), health condition and solitary confinement would cause his prison life to be more burdensome than that of other inmates. Thus, the Court deducted one month from the sentence of Count 1, and one year from each of the sentences of Count 2 and Count 3. (para. 77)

70. Having considered D1's serious and grave criminal conduct with details set out in the Reasons for Verdict, by applying the totality principle, the Court was satisfied that the total sentence for D1 in the present case should be 20 years' imprisonment. Hence, the Court ordered that: (para. 79)

(1) one year of the sentence in Count 1 is to be served consecutively to the sentence in Count 3;
(2) two years of the sentence in Count 2 is to be served consecutively to the sentence in Count 3; and
(3) the remaining terms in Counts 1, 2 and 3 are to be served concurrently to each other.

71. The Court was aware that D1 was serving an imprisonment term of 5 years and 9 months for DCCC 349/2021. Bearing in mind that the sentence of imprisonment D1 was serving was for an offence of a totally different nature and the facts of which were unrelated to the present case, by applying the totality principle, the Court further directed that 18 years of the present term should be served consecutively to D1's sentence in DCCC 349/2021. (paras. 80-81)

(c) Sentences of the Corporate Defendants

72. NSL 31 does not provide for any fixed sum or maximum amount that the court could impose as a fine on a company for conviction of offences under the NSL. One should bear in mind that the NSL functions coherently with the HKSAR's legal system and seeks "convergence,

compatibility and complementarity" with local laws, unless they are expressly or implicitly displaced in the event of inconsistency by the operation of NSL 62. One of the relevant local laws not so displaced by NSL 62 is section 3 of the High Court Ordinance (Cap. 4) which establishes the High Court as a court of unlimited civil and criminal jurisdiction. As such, there is no upper limit to the fine which the High Court can impose pursuant to NSL 31. (para. 53)

73. In determining the appropriate level of fine to be imposed on corporate defendants, the court would bear in mind the purpose of the NSL which is to prevent, suppress and punish acts or activities that endanger national security: NSL 1, NSL 3 and NSL 8. The appropriate level of fine would depend on a host of factors including (1) the gravity of the offence; (2) the role played by the corporate defendant under consideration; (3) the harm or potential harm that might have been caused to national security; and (4) the need for general deterrence. The capacity of the corporate defendant to pay the fine would also be a relevant factor but it is not determinative. In this regard, the capacity of the corporate defendant to pay cannot result in the imposition of fines that do not reflect the objective seriousness of the conduct or have the necessary general deterrent effect. (para. 54)

74. As noted by the Court in the Reasons for Verdict, the conspiracies in Count 1 and Count 2 could not have been carried out without the full co-operation of the Corporate Defendants. The Court was unable to see any cogent mitigation factors which might reduce the penalties of the Corporate Defendants. As such, each of the Corporate Defendants was fined for (a) HK$4,500 for Count 1, and (b) HK$3 million for Count 2, thus making a total fine of HK$3,004,500. (paras. 82-83)

(d) Sentences of the accomplice witnesses

75. Each of Cheung Kim-hung, Chan Pui-man, Yeung Ching-kee,

Wayland and Andy pleaded guilty timely and gave evidence for the prosecution. As aforementioned, the Court found all of them to be truthful witnesses and their evidence significantly contributed to the convictions of D1 and the Corporate Defendants. The Court was satisfied that NSL 33(3) was engaged in respect of all these accomplice witnesses, so that a lighter and reduced penalty than the starting point might be imposed. That said, the Court disagreed with the submissions of the defence (on behalf of Cheung and Wayland) that they should be put in the "supergrass" category for sentencing purpose so as to benefit from a discount of as much as two-thirds since the materials before the Court were insufficient to suggest that any of the accomplice witnesses was facing "an inevitable and justifiable fear for the safety and security of themselves or their family members". (paras. 84-87)

76. The Court also carefully and fully considered the personal circumstances of each of the accomplice witnesses as outlined in their written mitigation submission and mitigation letters, taking into account their timely plea, assistance to the prosecution, positive good character and/or humanitarian grounds as applicable to some or all of the accomplice witnesses. After making the relevant deductions, the sentences of the accomplice witnesses were as follows: (paras. 88-94)

(1) Cheung Kim-hung: 6 years and 9 months' imprisonment;
(2) Chan Pui-man: 7 years' imprisonment;
(3) Yeung Ching-kee: 7 years and 3 months' imprisonment;
(4) Wayland: 6 years and 3 months' imprisonment; and
(5) Andy: 7 years and 3 months' imprisonment.

(e) Sentences of Law Wai-kwong, Lam Man-chung, and Fung Wai-kong

77. All three of them did not assist the authorities nor did they give evidence for the prosecution and therefore could not avail themselves of

NSL 33. After the customary one-third discount for their timely plea, their sentences were respectively reduced to 10 years' imprisonment which is the statutory minimum. Law Wai-kwong's voluntary service for Apple Daily Charitable Foundation as a director did not fall within the parameters of NSL 33 and hence he was not granted any additional discount. Therefore, each of them were sentenced to 10 years' imprisonment. (paras. 95-97)

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