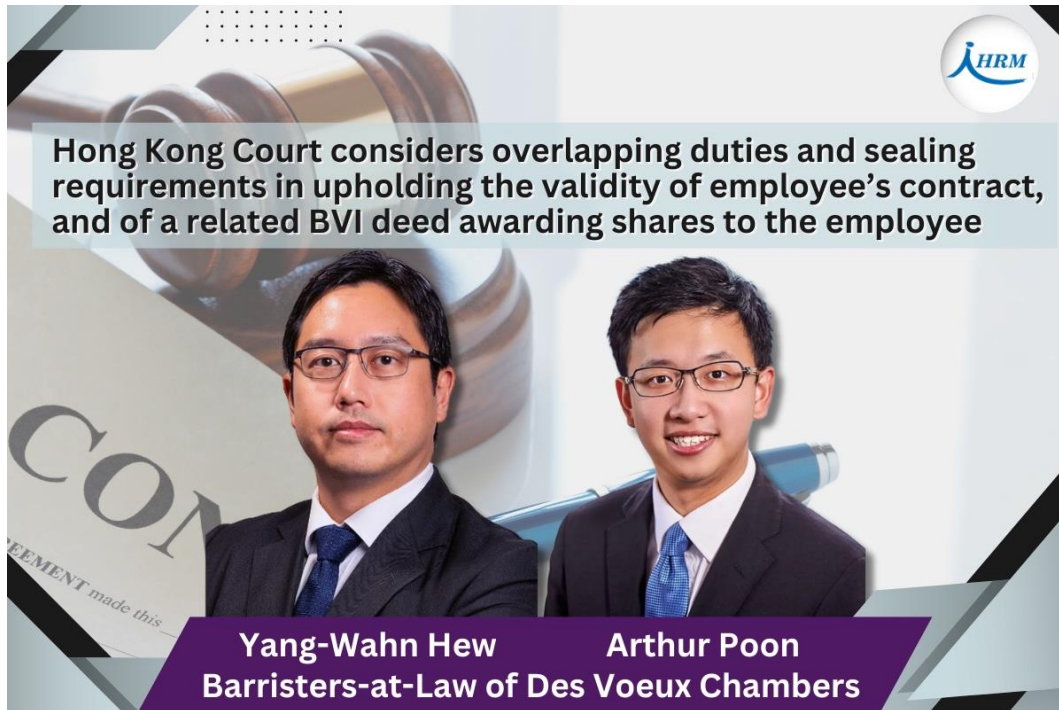




## LEGAL FOCUS



### Takeaways for Hong Kong Professionals:

- Professionals should be aware that it is possible for an employee to claim that a contract of employment is enforceable against an employer, even if the employee's duties under that contract potentially overlap with the same employee's duties owed to another company under a separate contract of employment.
- They should also ensure that their employers are properly advised as to the potential impact of inter-related and collateral contracts, the utility of choice of law provisions, and of the potential impact of applicable local or overseas provisions in case a dispute arises as to the validity of employment contracts.

## Hong Kong Court considers overlapping duties and sealing requirements in upholding the validity of employee's contract, and of a related BVI deed awarding shares to the employee

----- YANG-WAHN HEW & ARTHUR POON  
BARRISTERS-AT-LAWS OF DES VOEUS CHAMBERS

In *AIM Global Holdings Ltd. & Ors. v Chien Kun Allen & Rising Dragon Global Ltd.* [2023] HKCFI 1126 the Court of First Instance, in rejecting all of the Plaintiffs' claims and giving judgment for the Defendants on all the substantive issues, considered that there was sufficient consideration in relation to purportedly overlapping contracts of employment with entities, and held that a deed relied on by the Defendants had been validly executed under BVI law.

The case concerned a BVI holding company ("AIM"), its controller Madam Liu, and its PRC operating subsidiary ("Shanghai Weicon") who had initially engaged by contract a consultant ("Rising Dragon") to help AIM and Madam Liu sell their business of and/or shares in Shanghai Weicon.

Subsequently, both AIM and Shanghai Weicon entered into separate and further contracts of employment with Mr. Chien (an officer of Rising Dragon), appointing him as the CFO and Acting CEO of both entities ("the HK Employment Agreement" and "the PRC Employment Agreement" respectively). Another separate agreement ("the Deed of Share Award") was also entered into at the same time, whereby Mr. Chien was to be entitled to be vested shares in AIM upon certain conditions, including if his services were

terminated by AIM or Shanghai Weicon without cause.

In giving judgment, K. Yeung J. held inter alia that all four contracts were (contrary to the Plaintiffs' case) valid and binding on the parties. Of particular interest to human resources professionals will be the learned Judge's rejection of the Plaintiffs' submission that there had been no consideration for the PRC Employment Agreement on the basis that its contractual duties overlapped entirely with the HK Employment Agreement. Amongst other things, the Court held, as had been submitted by the Defendants, that even if there had been complete overlap in duties, according to *Pao On v Lau Yiu Long* [1980] AC 614 (UKPC from Hong Kong), the actual performance of the HK Employment Agreement by Mr. Chien constituted valid consideration in support of the PRC Employment Agreement, as Shanghai Weicon thereby obtained the benefit of a direct obligation against Mr. Chien.

As for the Deed of Share Award, one of the main issues was whether the absence of AIM's company seal thereon affected its validity as a deed. As the Deed of Share Award included no choice of law provision, on the facts his Lordship held

**LEGAL FOCUS**

that it was governed by the laws of another jurisdiction, namely BVI law. It was further held that it was enforceable as it had been validly executed as a deed under BVI law. In doing so, the learned Judge preferred the evidence of the Defendants' BVI expert, Matthew Hardwick K.C., and found that the only purpose of s. 103(3) BVI Business Companies Act 2004 (as amended) was to make it clear that the absence of the seal did not render the Deed of Share Award invalidly executed as a deed.

The Court also held that there was valid consideration in support of the Deed of Share Award as, on the facts, both it and the HK and PRC Employment Agreements were all inter-related and collateral contracts: see *Asia Develop Ltd v Glory Mark Investment (Group) Ltd* [2021] HKCFI 1572.

By [Yang-Wahn Hew](#) and [Arthur Poon](#),  
Barristers-at-Law of *Des Voeux Chambers*

-End-



The copyright of all articles published on the HR Journal belongs to the Hong Kong Institute of Human Resource Management (HKIHRM). No part of these articles may be reproduced, stored, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without prior written permission from the HKIHRM. The HKIHRM does not accept any liability for any views, opinions or advice expressed by writer and interviewees of the articles. The contents of the HR Journal do not necessarily reflect the views or opinions of the HKIHRM or the members of the HKIHRM and no liability is accepted in relation thereto.



Copyright © Hong Kong Institute of Human Resource Management. All Rights Reserved

**Hong Kong Institute of Human Resource Management**

Units 1810-15, 18/F, Millennium City 2, 378 Kwun Tong Road, Kwun Tong, Kowloon, Hong Kong

Tel : (852) 2837-3826 / 2837-3828 | Email : [pr@hkihrm.org](mailto:pr@hkihrm.org) | Website : [www.hkihrm.org](http://www.hkihrm.org)

