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DCCC1588/2024

[2026] HKDC 1466

IN THE DISTRICT COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
CRIMINAL CASE NO 1588 OF 2024

HKSAR

v

TAN KIM CHWEE

Before: Deputy District Judge C H Li
Date: 11 August 2026
Present: Ms Sabrina See, counsel on fiat, for HKSAR
Mr Wayne Walsh, SC leading Mr Lawrence Hui and Mr
Fergus Tam, instructed by Zhong Lun Law Firm LLP for the
defendant
Offence: Dealing with property known or believed to represent
proceeds of an indictable offence (處理已知道或相信為代
表從可公訴罪行的得益的財產)

REASONS FOR VERDICT

1. The defendant is charged with a single count of dealing with property known or believed to represent proceeds of an indictable offence.

The Prosecution's case

2. The prosecution alleges that between the 21st day of February 2020 and the 29th day of November 2021, both dates inclusive, the defendant had dealt with a total of RMB 402,861,903.43. This sum was deposited in a bank account with The Hongkong and Shanghai Banking Corporation Limited held by the defendant in Hong Kong.

The predicate offence

3. The predicate offence is bribery.

4. Mr Wu Yinglu ("Wu"), who was the General Manager of a state-owned tobacco enterprise named China Tobacco Chuanyu Industrial Company Limited ("CTCI") since 1997, he retired in 2018.

5. During his tenure, he held the most senior position and he oversaw CTCI's operation and final decision making in procurement matters.

6. Since it was a state-owned enterprise, Wu was in effect a government official. He was not allowed to accept advantage or to make use of his position to seek personal gain.

7. Paul LEE and Tong LEE, they are brothers, they set up a company called Hongta Plastics back in 1996. Through a series of merger and acquisition, the Company's name was renamed at different intervals, namely Yuxi Printing in 2006, SENM and Yunnan Chuangxin in 2010, and YENM in 2018.

8. The Lee brothers had been supplying materials to CTCI since 2000, in or around 2010, SENM's major business was to manufacture lithium battery separator. At this juncture, Wu saw Lee's business had the potential of growing, hence he wanted to invest in it and become a shareholder.

9. However, given his role as a government official, Wu arranged the defendant to hold the shares on his behalf as he himself could not hold the shares openly.

10. The Lee brothers, since they had a major business dealing with Wu, and Wu was the person in charge of the procurement matters, the Lee brothers dared not to upset Wu but to accede to his request though unwillingly.

11. In the end, 7% of the Company's shares were sold but not to Wu directly, the shares were held on Wu's behalf by the defendant.

12. The shares were subsequently sold back to YEMN, as a result RMB 402,861,903.43 was received by the defendant, that forms the subject matter of the present charge.

Brief outline of the evidence of the prosecution witnesses

13. A total of 17 witnesses were called by the prosecution to testify at trial, 9 of whom were ICAC officers. The rest were admitted into evidence under S 65B which included 1 expert witness on PRC Law, and other civilian witnesses, such as bank staff submitting the banker affirmation or manager from a hotel.

(The PWs number as appear on the prosecution's list)

PW1 - TANG Zhuguo (Remote Hearing)

14. PW1 is now the second ranking Senior Manager of China Tobacco Sichuan. Wu was the most senior person in the company.

15. In gist, he confirmed that decision making in the company would be decided by majority and Wu would make the final decision accordingly.

PW2 – HU Xiaoming

16. PW2 was the head of Material Supply Centre of CTCL, he worked there from 2006 to 2016. He told us that Wu as the General Manager of CTCL, he was the most senior member and was in charge of the operation of the company.

17. PW2 mentioned different procurement methods were used before and after 2011 by the company.

PW3 – Liu Jingyao (Remote Hearing)

18. PW3 was the head of the Import and Export Department of CTCI and Wu at that time was the General Manager of CTCI. In 2015, when CTCI was split, she was transferred to China Tobacco Sichuan Industrial Company Limited (“China Tobacco Sichuan”).

19. She confirmed CTCI had awarded contracts to a company called Beford, a company that was operated by the defendant.

PW4 – Lee Paul Xiaoming (Remote Hearing)

20. Paul Lee gave evidence under immunity.

21. Paul Lee is the Chairman of YENM.

22. PW4 came to know Wu in around 2000. They had business dealings with Wu’s state-owned company, they were supplying materials to Wu’s state-owned company.

23. Paul Lee went on to say 78% of the company’s shares were owned by his family and the rest were owned by other persons.

24. Paul Lee met the defendant, Wu and others in Singapore in 2012, where he gave some description or introduction about SENM.

25. Pau Lee agreed that again in 2012, the defendant went to their factory in Shanghai for inspection.

26. Paul Lee agreed that the defendant received no special discount in investing into the shares.

PW5 - Lee Tony Xiaohua

27. Tony Lee gave evidence under immunity.

28. His brother is Paul Lee, he is the Vice Chairman of YENM. They both came back from the USA to the Chinese Mainland back in 1996 and formed a Company called Hongta Plastics.

29. Paul Lee was the decision maker of the Company, and Tony Lee was mainly responsible for the technology part.

30. He confirmed that the Company was losing money from 2010 to 2015, and only started making profits in mid 2015.

31. Tony Lee confirmed that the defendant had meeting with him discussing the financial situation of the Company and the price and the number of the shares as well.

PW6 – LI Heng

32. PW6 gave evidence under immunity.

33. He was a friend of the defendant and he also did transportation work for a German company where the defendant was an agent.

34. He had seen the defendant with Wu together for a few times, mainly having meals. He confirmed the defendant was a very generous man, he also had a wide network and was familiar with the leaders of the tobacco industry.

35. In 2013, the defendant asked him to hold the SENM shares for him since he was a foreign person, LI Heng agreed as he thought they were friends and trusted each other.

PW7 - PANG Qizhi

36. PW7 is the Vice President of SENM.

37. He confirmed that during his time with the Company, he had been through 2 capital increases of the Company, in turn the share ratio of all shareholders concerned was affected.

PW9 - Liu Yadong

38. PW9 was the son in law of Wu, he married Wu's daughter in 2016, however he filed for divorce in 2021 and their marriage officially ended in 2024.

39. He confirmed that he had once received 1.5 million Renminbi from Yi (Wu's subordinate) and it was Wu's money. He initially said Wu told him it was money for investing in real estate, but later confirmed that he could not be sure. Upon receiving this sum of money, he gave 200,000 Renminbi to Wu's daughter as medical expenses, he then spent the rest on

legal fees for the divorce proceedings. He said Wu did ask him for the money back, but he never pay him back.

PW19 to PW25,PW 27 & PW28

40. They are all ICAC officers. In gist, their roles were mainly for liaison purpose with the Chinese Mainland authority or were present at the interviews of the witnesses.

41. Their evidence in fact is not quite related to the issues of the present case.

Defendant's evidence

42. The defendant testified in court. In gist, he does not dispute he had dealt with the money as particularized in the charge but he claims that those were his own money and had nothing to do with Wu. He held the shares as his own investment, he never held it on behalf of Wu.

Personal background

43. The defendant was born in Singapore and he has a clear record.

44. He started working in the hotel industry both in Singapore and the Chinese Mainland until 1994. He then joined a company in Hong Kong called Centenary trading in the tobacco industry until 2001. He was also an agent for a French Company named Rhodia selling cigarette filters to China National Tobacco Corporation ("CNTC").

45. In 2001, the defendant set up his own company called WF Sinco in Singapore and continued to act for Rhodia to trade with CNTC.

46. The defendant came to know Wu as early as 1990 at a tobacco exhibition in Hong Kong, they did not meet again until 2000. In around 2004, the defendant had business dealing with Wu since Wu was the General Manager of CTCI. Eventually they got to know each other better over time.

47. In or about 2008 to 2009, the defendant set up another company called Beford in Hong Kong, which introduced companies to CTCI relating to cigar business.

48. He has been a businessman for the most part of his life, he has set up and managed numerous companies on his own.

49. Apart from WF Sinco and Beford, the defendant also invested in other companies such as Hengrunda, Union Sing Kong and Fortress Global. As of 2012, his estimated wealth was about HKD 84 million (See exhibit D204).

SENM's shares

50. Through the introduction of Wu as Wu thought SENM was a good investment, the defendant came to learn about SENM. A brief meeting took place in Singapore where Wu, the defendant and Paul Lee

were present, the defendant was briefed about this start up business company in Shanghai doing filter separator.

51. The defendant later went through background and due diligence checks, went to factory in the Chinese Mainland to see the production line and so forth, an accountant and lawyer were engaged at various stage while assessing and acquiring the shares.

52. Negotiations over the share price and the percentage of shares were made at various juncture.

53. In any event, the defendant knew the risks involved as it was a fairly new technology, and he was willing to gamble and invested in it.

54. The defendant did not hold the shares under his name at first because he was a foreign subject which did not allow him to hold the shares. He used his friend Li Heng to hold the shares for him.

55. Eventually, the defendant sold the shares in 2019.

Defence Witness

56. Mr Jiang Xue Yong, he had been the lawyer for the defendant providing legal advice between 2018 to 2020 concerning SENM shares.

Analysis of the evidence

57. Although this case involves a vast volume of documentary evidence and numerous witnesses had been called to testify including the defendant and his defence witness, the real issues are fairly narrow:

(a) whether the prosecution could make out the predicate offence;

(b) if yes, is the evidence of the defendant believable.

58. I will now turn to question one, having considered all the evidence and submissions made, I have the following observations.

59. The predicate offence being one of bribery, although the bribe took place in the Chinese Mainland, it is to be treated as it was committed in Hong Kong.

60. That brings us to the real question, what admissible evidence there is to substantiate this claim.

61. Mr Wu, a crucial witness, his evidence certainly would have a direct impact on this case, but his evidence is lacking.

62. What remains is the evidence of the Lee brothers, it appears that the prosecution case dwelled on the facts that their beliefs formed the basis of the bribery claim.

63. Having looked through all the evidence, what transpires is that there is no admissible evidence to substantiate the claim.

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64. Even if I were to accept the statement made by the Lee brothers, the best could be said was that the Lee brothers thought that they were doing Wu a favor by acceding to his request of buying their shares, and the fact that they believed the defendant was the representative of Wu to hold the shares on Wu's behalf.

65. The fallacy is this, everything was based on their beliefs and nothing more, there isn't a single piece of admissible evidence to support their beliefs.

66. Leaving their beliefs aside, on the evidence before me, could an irresistible inference be drawn that the defendant was holding the shares on Wu's behalf?

67. Before answering this question, it is best to look at the evidence as a whole, in particular, the evidence of the defendant, it might shed some light on the matter.

68. I can say at the outset, I am unable to rule out what the defendant said might be true.

69. Given all the materials presented to this court, all were in line with the defendant's version of events.

70. For instance, I find nothing unusual in the way the defendant claimed how he spent the money he received after selling the shares. He had told us in detail where did the money go, how it was spent.

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71. If one takes a closer look, would it not be strange that if the defendant had received the black money, he then had to dissipate the money to so many different people, by having so many different people involved, it in effect would increase the risk of the scheme being exposed, and the risk of not having the money back.

72. As to the email to Paul Lee by the defendant, it does lend weight to his claim it was legitimate investment. It would be unusual for the defendant to plant the evidence years ahead in an email by saying he was willing to take a gamble, it was more likely an outburst of his emotion or how he viewed the investment at that time.

73. Another point worthy to note is the fact that had it been a bribe as alleged, Wu had an upper hand over the Lee brothers, it would be quite natural for Wu to ask for their shares for free or at a nominal price, but what transpires is that Wu or the defendant had to pay a fairly substantial amount in obtaining the shares.

74. Besides, looking at the way that the negotiations progressed, again it would be quite odd, on the one hand, the Lee brothers dared not to upset Wu by acceding to his request; on the other hand, regardless the fact that it might upset their business relationship, even worst they could be removed from the suppliers' list if Wu wanted to, still, they chose to negotiate with Wu or the defendant the percentages of shares that could be bought and at what price, not once but at different intervals, putting their business at stake, one would have assumed, they would do what Wu told them just to please Wu.

75. The whole process of acquiring the shares started in 2014, with the ups and downs of the Company's profits, the capital increases, complying with the legal requirements of the Chinese Mainland, countless offers and counteroffers in terms of share price and shareholdings, one might argue that it was a cover-up and the whole scenario looked legitimate with reasonable amount of money changed hands and going through proper negotiations, however given the evidence at present, the inference could go both ways, it could be said that the defendant was making a genuine and legitimate investment as well.

76. I have not overlooked the criticisms made by the prosecution about the defendant, but I find none that would undermine or contradict the evidence of the defendant.

77. For instance, the prosecution is saying the Lee brothers had sufficient fund to inject into the company, that might be true, but at the same time, we must not overlook the fact that the Lee brother had to take out a mortgage to get a loan, one cannot simply dispel the notion that extra money would always be welcomed and needed by the Company to strengthen its production line. That said, it further adds strength to the defendant's version.

78. As to whether a meeting took place between the defendant and PW4 at a hotel on 21 March discussing the buy back, the evidence goes both ways either, on the one hand, it appeared both the defendant and PW4 were present in Hong Kong on the same day, and there was evidence of payment of breakfast for that morning; on the other hand, the travel records

as produced by the defendant showed that it was likely the defendant was not in Hong Kong in the morning.

79. Both the defendant and PW4 could have remembered that particular event wrongly, since I am unable to rule out the defendant's version, the prosecution has failed to prove such meeting took place.

80. The prosecution submits that the defendant gave 2 different versions in his VRI as to the position held by Wu, the defendant at first claimed he was not sure Wu held any official position in the Chinese Mainland government or Wu was a Chinese Mainland official, but later in the same interview he admitted he knew Wu was a Chinese Mainland official. The prosecution further submits that it was never in dispute that they were friends for a long time, no doubt the defendant knew Wu as management personal in a state-owned enterprise, it is similar to that of a government official.

81. Given the long-standing relationship between the two, in particular, the fact that the defendant was a very seasoned businessman and had vast experience in doing business in the Chinese Mainland, it is hard to believe the defendant was not aware of the position held by Wu was in effect similar to that of a Chinese Mainland official.

82. In this regard, I agreed there was a discrepancy, the defendant might have tried to hide the fact that he knew Wu was a government official, but having considered all the evidence as a whole, I do not regard this discrepancy will undermine his credibility.

83. In addition, in the VRI the defendant denied having any monetary dealings with Wu, but it turned out that was not the case, as the defendant said in court he made a loan to Wu.

84. Defence argues that his VRI must be read in context and concerning the questions asked preceding his answers were related to SENM shares and Wu's asset, certainly no monetary dealings were involved.

85. Having read the VRI again, I agreed with the defence, his VRI must be read in context. Even if the defendant's version in court differed from that in his VRI, I do not regard making a loan to Wu was material enough so as to undermine his credibility.

86. The prosecution also criticized the fund flow of the defendant being unreasonable. The prosecution pointed out some of the transactions were payment to his employee as bonus and some were to his own companies for various reasons, some transactions were transfers made to his business partner and etc.

87. As I said in an earlier paragraph, it simply made no sense in having so many people involved. More importantly, there is nothing to prove to the contrary the money was not spent as alleged. Besides, it has been quite rightly pointed out by the defence, there is simply no evidence suggesting the bribe money went to Wu at any stage.

88. Having considered all the evidence of this case, I find there is no admissible evidence to make out the predicate offence, even if I am wrong on this issue, I am unable to rule out what the defendant said might

be true, that he was making a genuine investment into the shares, and realized it and got back the cash he invested in and nothing more.

89. The verdict I return must be one of not guilty given the above findings.

(C H Li)
Deputy District Judge

ANNEXURE

RULING

1. Two applications were made by the prosecution, one was for public interest immunity (“PII”) and the other one was for remote hearing. I had considered all submissions made by both parties. I ruled in favor of the prosecution in respect of these two applications, here are my reasons.

PII claim

2. In this disputed area, two types of documents are in issue. The first type concerns unused items numbered 32-45, 47,60,61 and 63-69. A redacted version of these items has been disclosed to the defence. The parts that have been covered are the names and the working addresses of the relevant officers of The National Commission of Supervision of the People’s Republic of China (“NCS”). Item 18 also includes the rank of the NCS officers.

3. It is not in dispute that those documents must be disclosable before the PII claim comes into play. If those documents are not disclosable, that is the end of the matter.

4. In this regard, I am with the prosecution. I simply cannot see how the names and work addresses of the NCS officers concerned(or the ranks) are relevant to the issue in this case.

5. As explained by the prosecution, they would need to rely on the local authorities to make logistic and other necessary arrangement for carrying out enquiries.

6. It will certainly make no difference if his or her name is officer A or officer B, so long as they are not involved in the interviews.

First ground of objection

7. Defence submitted that the redacted parts of the documents relate to Wu who is not a witness for the prosecution, but the prosecution alleges that the defendant knew the SENM shares held under the name of his associate or himself at the material time were SENM shares holding on behalf of Wu and the defendant knew the said SENM shares held on behalf of Wu was a bribe.

8. The defence wishes to interview Wu as a potential witness. Defence complains the defendant does not know the whereabouts of Wu. In this regard the defendant needs to know the names of the NCS officers and their respective work addresses in order to ask for the whereabouts of Wu and all correspondences between Wu and the Chinese Mainland officials and any previous statement Wu has given.

9. I disagree with the defence. I think the whole matter has been misconceived. The defence could and should through the proper channel to contact Wu, the defence could ask either the ICAC or NCS should they require to contact this Wu person. By disclosing the names and the work addresses, it certainly would not help to locate this Wu person.

10. As for the correspondence between NCS officers and Wu, should the defence require that, they could ask the ICAC or NCS instead rather than asking the identity of the NCS officer.

11. Besides, the prosecution confirmed on the hearing day that contact details of NCS had been provided to the defence.

Second ground of objection

12. Defence complains that if the names of the NCS officers are not disclosed, would the defence be debarred from asking the prosecution witnesses in cross-examining for those names and what the officers did or said. If so, defence's cross examination is unfairly limited, if not so debarred/prosecution's PII application is self-contradictory.

13. Again, I disagree with the defence. First of all, there is no need to ask for the names and work addresses of the officers concerned. What matters is what they did, so far there is no evidence suggesting that anything inappropriate happened. Obviously, defence is not debarred from asking the ICAC officers what happened during the interviews concerning the NCS officers. Discovery is an ongoing exercise, should there be any evidence suggesting improper interference or action, further disclosure of the names or work addresses might then become relevant.

Third ground of objection

14. The third ground relies upon by the defence is that those NCS officers concerned were not merely arranging the interviews or mere presence at the interviews. It could be seen from the redacted items that those officers were involved in investigating other related cases in the mainland. Therefore, defence requires cross-examining them as to the conducts of the interviews and their role in the investigation of this case and related cases.

15. Again, the NCS officers concerned were not involved in the investigation of this case, I do not see how their involvement in the investigation of other related cases would be relevant to the issues at trial of this case.

Fourth ground of objection

16. Defence complains that the proposed expert witness Mr Lau, he is a partner of China Law Office, and it appears that this China Law Office was recommended to the ICAC by a NCS officer whose name has been redacted. The defence says it is relevant to the issue of bias.

17. The defence can also raise this with the expert. As I said earlier, discovery is an ongoing exercise, if the issue of bias comes into light during his testimony, this redacted NCS officer's name might become relevant but not now.

NCS Replies

18. The second type of documents in dispute is the NCS Replies. Defence argues that the NCS Replies are plainly disclosable since the prosecution has all but conceded the same by having disclosed the Notes-for-file.

19. Again, I disagree with the defence entirely. First, these are communications between the ICAC and the Chinese Mainland authorities regarding the availability of the witnesses, their criminal and disciplinary records (“the records”), the view of the Chinese Mainland authorities on the issue of disclosure, perhaps apart from the records of the witnesses, the rest are not related to this case.

20. Even though the records are relevant, but that does not extend to the document itself, so long as the content of which has been disclosed to the defence, I do not regard the format matters.

PII claim

21. If I am wrong on the issue of disclosure. That is to say, they are disclosable, I will then move on to the issue of PII.

22. Defence argues that the Replies are self-defeating, on the one hand, prosecution claims for PII; on the other hand, prosecution in essence disclosed the content in a note-for-file form.

23. I do not agree with this submission. The prosecution is entitled to claim for PII even if they have essentially disclosed the content of the documents to the defence, what matters is the fact that the Replies

themselves the prosecution trying not to disclose. The prosecution has quite rightly pointed out that the NCS insisted on retaining its confidentiality about their communications with the ICAC, if disclosed it would certainly and seriously hamper further cooperation, hence the public interest of Hong Kong will be gravely damaged.

24. Defence also complains that the Certificate of the Chief Secretary asserts that the NCS is bound by non-disclosure rules under the Chinese Mainland regulations, but such regulations do not apply to the Chief Secretary or the ICAC, and the Certificate is not binding on the courts.

25. I have borne in mind the fact that it is not binding on me, however what matters is the fact that disclosure would surely prejudice the operational effectiveness between the two agencies of Hong Kong and the Chinese Mainland.

26. Another complaint is that the Certificate asserts that the redacted parts are confidential and sensitive information that should not be accessed by the general public. Defence argues this is not a case of access by the general public but access by the defendant in serious criminal proceedings.

27. I again disagree with the defence's contention. If the information is disclosed, there is no doubt that there is a real risk that the information could be accessible to the general public.

28. Lastly, can the defendant still receive a fair trial if PII claim is upheld? Given my ruling on the disclosability issue, the information is no longer relevant, but for the sake of completeness, the answer is in the affirmative.

29. It is not in dispute the applicable legal principle as stated in *HKSAR v Nayab Amin & Another* [2020] 2 HKLRD 1051, the innocence at stake test.

30. Defence argues that Wu would be able to prove the innocence of the defendant. That might be so, but as I mentioned earlier on, the defence should approach the relevant authority or through other proper channel to locate Wu, and not by disclosing the identity of the Chinese Mainland officials which will serve no meaningful purpose.

31. I do not see the right to fair trial is affected, given the materials or information withheld, I agree that at most the credibility and reliability of the witness will be in issue, again as I mentioned earlier, the defence could explore this area with the other prosecution witnesses, since discovery is an ongoing process, and should the need arise, further discovery might be applied for.

Conclusion

32. I find in favor of the prosecution, these documents are not disclosable, even if they are, I am satisfied the prosecution has succeeded in its PII application.

Remote hearing

33. This is an application taken out by the prosecution under Cap 654 for a remote hearing of 3 witnesses who are currently in the Chinese Mainland. This application is opposed by the defence.

Background of the case

34. The 3 witnesses, Mr Lee, Mr Tang and Ms Liu, are currently in the Chinese Mainland and unable to come to Hong Kong to testify in the present case.

35. Mr. Lee, he is the key witness as to the predicate offence of bribery that happened in the PRC. He is currently engaged in a closed court hearing in the PRC.

36. Mr. Tang and Ms. Liu are the Chinese Mainland officials deployed to Chuanyu, a government owned tobacco company. They are engaged in confidential works.

Factors to be considered

37. Under section 9 of the Ordinance, it sets out matters that should be taken into account when considering the application.

38. Section 9 of Cap 654 reads: -

A		A
B		B
C	“In deciding whether to make, affirm, vary or revoke a remote hearing order for a proceeding under section 6,7 or 8, the court must consider the following factors (if applicable) –	C
D	(a) the nature, complexity and urgency of the proceeding;	D
E	(b) the nature of the evidence intended to be adduced;	E
F	(c) the views of the parties;	F
G	(d) the ability of the parties to engage with and follow the proceeding (if conducted through a remote medium);	G
H	(e) the personal or special circumstances of the parties, including any physical, visual or auditory impairment, cognitive difference and mental or psychological health issue;	H
I		I
J	(f) the maintenance of the rights of the parties;	J
K	(g) whether the parties are legally represented;	K
L	(h) whether the privileged communication between the parties and their respective legal representatives may be affected;	L
M	(i) whether the parties and the parties’ legal representatives can conduct their case effectively;	M
N	(j) the measures to be taken to ensure that evidence is given freely without coercion or other influence;	N
O		O
P	(k) the potential impact of the order on the assessment of the credibility of witnesses and the reliability of the evidence presented;	P
Q	(l) whether the use of the remote medium is likely to promote fair and efficient disposal of the proceeding;	Q
R		R
S	(m) whether the right to a fair trial can be effectively maintained;	S
T	(n) the quality and security of the remote hearing facilities and their availability to the parties;	T
U		U
V		V

(o) whether there is any public order, security, public health or emergency concern that makes it undesirable or impracticable for the parties to attend the proceeding in person

(p) any other relevant considerations ...”

39. Defence counsel has in his submissions divided the factors into 4 groups.

40. The first group deals with factors e, l and o. In gist, counsel complains the prosecution has failed to put forward a coherent justification as to why the witnesses have to give evidence in the Chinese Mainland. Counsel goes on to say, for Tang and Liu, they could conduct their confidential works through secure channels or choose not to conduct such confidential works when giving evidence in Hong Kong.

41. I disagree with counsel’s contention. The witnesses are due to testify in the coming week or so, with its imminent effect, if the witnesses are either engaged in a closed court hearing or confidential work, it would cause injustice to the prosecution if they are to be hindered and not be allowed to call their witnesses due to geographical restraint. If the prosecution’s application is allowed, it is in my view more likely to promote fair and efficient disposal of the proceeding than not.

42. Lastly, the conditions in factor o are not present.

43. The second group deals with factors a, b, d and i. Defence contents that Paul Lee is a key witness, and is important for the court to hear him viva voce.

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44. I am certain the same could be achieved through remote hearing.

45. Comparison is made between remote hearing and through live TV link, the fundamental question is the right to fair trial as advanced by the defence.

46. Counsel argues that since there is no danger posed to the witnesses or members of the community by giving evidence in person, the only disadvantage left is what the defendant may suffer.

47. It really goes back to the basic question, it is not that they are not willing to come forth and testify or they would put their lives in danger in doing so, they simply are unable to travel to Hong Kong to do their part due to restraint beyond their control.

48. This case is no doubt a serious one, and the documentary evidence is enormous, but with the assistance of modern technology, I see no difficulty in presenting or referring to the documents through remote hearing.

49. As to the quality of the remote hearing, technical issues might arise, but counteractions are all in place, the court can still hear and see the witnesses as clearly as if it is done in actual court sitting.

50. I again disagree with the defence on these grounds.

51. I am satisfied conditions in factors concerned above are met.

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52. The third group deals with factors f, j, k and m. The major complaint is that there are serious concerns about whether there has been or would be improper influence over the remote witnesses inconsistent with Hong Kong investigation and/or trial procedures.

53. The defence is in effect repeating their submissions on the possibility that the witnesses might have been influenced by the NCS officers, again by cross examining the ICAC officers concerned will serve the purpose of finding out whether there has been any influence over the witnesses.

54. As to the would-be improper influence, as submitted by the prosecution, measures will be taken to prohibit unauthorized party to be present, and the remote hearing will be conducted in a courtroom of the Supreme People's Court of the PRC, and a Judge from the Sichuan High People's Court and a court clerk will be present while the remote hearing takes place.

55. With the above arrangements, I am certain the risk of having any improper influence could be eliminated.

56. I am satisfied all conditions in factors f, j, k and m are met.

57. The last group deals with factors n and p. I have read the written submissions made by the prosecution, and I am satisfied all conditions under factor n are met. As to factor p, none has been raised.

A

B

C

D

E

F

G

H

I

J

K

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M

N

O

P

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V

58. Having considered the submissions made, and in particular factors a to p, I am satisfied the prosecution has made out its application and I rule in favor of the prosecution.

A

B

C

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