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China Evergrande's Judicial Review Tests the SFC's Power to Enter into HK$1 Billion Investor Settlement with PwC HK

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On 19 August 2026, the Honourable Mr Justice Coleman of the Court of First Instance heard a judicial review challenge brought by China Evergrande Group (In Liquidation) ("**CEG**") against the Securities and Futures Commission ("**SFC**"). The challenge concerns an agreement between the SFC and PricewaterhouseCoopers Hong Kong ("**PwC HK**"), under which PwC HK agreed to set aside HK$1 billion to compensate eligible independent minority shareholders of CEG ("**Settlement Agreement**").

This update outlines the key submissions made by the parties at the hearing.

Background

On 23 April 2026, following an investigation into CEG's financial statements for 2019 and 2020, the SFC announced that it had reached the Settlement Agreement with PwC HK. The SFC concluded that PwC HK, in its capacity as CEG's auditor, was concerned in the disclosure of false or misleading information by CEG and had committed serious breaches of auditors' professional duties. Under the Settlement Agreement, PwC HK agreed, without admitting liability, to set aside HK$1 billion to compensate eligible independent minority shareholders of CEG. In return, the SFC agreed to take no further action against PwC HK, provided that the agreement was performed.

Separately, CEG is pursuing claims of approximately US$8.5 billion against PwC HK, PwC China and PwC International for alleged negligence and misrepresentation arising from PwC's audits of CEG's financial statements for 2017 to 2020. Those claims remain ongoing.

Disclosure of the Settlement Agreement

A preliminary issue arose concerning the SFC's non-disclosure of the full Settlement Agreement. CEG argued that the agreement was central to the challenge and should be disclosed under the SFC's duty of candour, while the SFC maintained that it had provided sufficient information and complied with that duty. The Court indicated that further directions concerning the production of documents would be given.

CEG's Grounds of Challenge

CEG seeks to quash the SFC's decision to enter into the Settlement Agreement. Its oral submissions focused on two principal grounds:

- whether the SFC had statutory power to enter into the Settlement Agreement ("**Ground 1**"); and
- if the SFC had such power, whether its decision was nevertheless unlawful because it failed to take relevant considerations into account or took irrelevant considerations into account ("**Ground 2**").

In its application papers, CEG also challenged the SFC's refusal to suspend implementation of the Settlement Agreement and its decision not to refer its conclusions concerning PwC HK for possible further enforcement action. These grounds were maintained but were not further developed during the hearing.

Ground 1

Ground 1 concerned whether the SFC could rely on its general power under section 5(4)(b) of the Securities and Futures Ordinance (Cap. 571) ("**SFO**") to "*make contracts or other agreements*" to enter into the Settlement Agreement (as contended for by the SFC), or whether the SFC was required to use the court-supervised procedure under section 213 (as contended for by CEG). The issue arose because the SFO does not contain any specific provision authorising the SFC to resolve or settle cases outside of disciplinary matters.

CEG's position

According to CEG, section 213 of the SFO establishes the specific statutory procedure through which the SFC may obtain compensation for investors from a person suspected of contravening the SFO. CEG submitted that the legislature could not have intended the SFC to bypass the safeguards built into that procedure, including independent judicial oversight. It further asserted that, as a matter of statutory interpretation, section 213 as a specific provision should prevail over the general provision of section 5(4)(b).

CEG further submitted that the Settlement Agreement was negotiated against the prospect of section 213 proceedings, which provided the basis for securing PwC HK's agreement to establish the compensation fund. It argued that the distinction between contemplated and formally commenced proceedings was artificial: the SFC could not use the prospect of section 213 proceedings to obtain a compensatory outcome of the kind available under that provision while avoiding its safeguards by entering into an agreement before proceedings were commenced.

CEG emphasised that it was not necessarily seeking to prevent eligible shareholders from receiving compensation. Its position was that any compensation should be considered openly and fairly through the statutory court process, in which CEG and its creditors could be heard.

The SFC's position

The SFC submitted that the general contracting power in section 5(4)(b) of the SFO was sufficiently broad to authorise the Settlement Agreement. The SFC distinguished the Settlement Agreement from the unilateral exercise of a disciplinary power: it had not compelled PwC HK to pay compensation. Rather, PwC HK had voluntarily agreed to establish the compensation fund in return for the SFC agreeing to take no further action, provided that the Settlement Agreement was performed.

The SFC accepted that the Court's approval and the statutory safeguards under section 213 of the SFO would apply if section 213 proceedings had been commenced and the SFC sought an order from the Court. However, in the present case, the SFC had not actually commenced proceedings nor invoked the Court's jurisdiction under section 213. In the circumstances, the SFC maintained that it could rely on its general contractual power.

The SFC also rejected the suggestion that its interpretation left the Settlement Agreement without judicial oversight. It submitted that the decision remained subject to judicial review and that the Court could become involved if PwC HK defaulted and the SFC sought specific performance.

Ground 2

CEG's alternative case was that, even if the SFC had statutory power to enter into the Settlement Agreement, its decision was unlawful because it failed to properly consider the potential effect on CEG and its creditors.

CEG's position

CEG contended that it and the eligible shareholders were looking to the same potentially limited pool of PwC HK assets. On CEG's case, payment of the HK$1 billion to shareholders might reduce the assets available to satisfy a future judgment in CEG's favour, while providing shareholders with compensation they would not otherwise receive through CEG's liquidation. It submitted that the SFC failed to take into account the materially relevant consideration of potential prejudice to CEG and its creditors as affected third parties.

CEG contrasted the Settlement Agreement with the section 213 procedure, under which the Court must consider whether a proposed order would unfairly prejudice any person. Although the SFC submitted that the Court could consider third-party interests if PwC HK defaulted under the Settlement Agreement and enforcement became necessary, CEG argued that no such judicial scrutiny would occur if PwC HK performed the agreement voluntarily. It therefore submitted that the SFC was required to properly balance the interests of eligible shareholders against those of CEG's creditors before entering into the Settlement Agreement.

Further, CEG relied on the wider public interest underlying the statutory insolvency regime under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) ("**CWUMPO**"), pursuant to which creditors would ordinarily rank ahead of shareholders in the distribution of CEG's estate. CEG submitted that, although compensating eligible shareholders might serve the interests of the investing public, enabling them to recover from PwC HK before CEG had established and enforced its claims for the benefit of creditors was inconsistent with that statutory priority and therefore contrary to the wider public interest.

The SFC's position

The SFC drew a distinction between CEG's estate and PwC HK's assets, submitting that the statutory priority rules under CWUMPO were not engaged by the Settlement Agreement. Those rules govern the distribution of CEG's estate, in which creditors rank ahead of shareholders. The HK$1 billion, however, belonged to PwC HK and had never formed part of CEG's estate. The SFC therefore submitted that the payment to eligible shareholders would not alter the ranking of claims against CEG's estate, and, accordingly, did not conflict with the wider public interest underlying the statutory insolvency regime.

In the SFC's submission, CEG's real concern was not that the legal priority of claims against CEG's estate had been changed. Rather, CEG wanted PwC HK's assets to be preserved against the possibility that CEG might obtain and enforce a judgment against PwC HK in the future. The SFC characterised this as a concern about PwC HK's possible future financial position, rather than an interference with the administration of CEG's existing estate.

The SFC further contended that the alleged prejudice to CEG and its creditors depended on several unresolved assumptions, including that:

- CEG would succeed in its separate claims against PwC HK;
- PwC HK would be unable to satisfy those claims; and
- the HK$1 billion would otherwise remain available when CEG's proceedings were concluded.

The SFC maintained that it was not irrational to enter into the Settlement Agreement without proceeding on the basis of those assumptions. The SFC also denied that creditors' interests had been ignored as it had been raised in its internal decision-making materials. Although those interests might not have been given the weight preferred by CEG's liquidators, the SFC submitted that a disagreement over weight did not establish that a relevant consideration had been omitted or that the decision was irrational.

Conclusion

The Court reserved its decision at the conclusion of the hearing. According to local news reports, the Court's decision will be handed down in October 2026. The Court's decision is expected to provide important guidance on the scope of the SFC's power to resolve contemplated enforcement action through voluntary agreements outside of disciplinary matters.

Contact the authors:

Nathan Dentice
Partner, Hong Kong
T: 2841 6881
E: nathan.dentice@minterellison.com

Priscilla Au-Young
Partner, Hong Kong
T: 2841 6838
E: priscilla.au-young@minterellison.com

Felice Chan
Trainee Solicitor, Hong Kong
T: 2841 6840
E: felice.chan@minterellison.com

MinterEllison Group and Associated Offices:
Adelaide Auckland Brisbane Canberra Hong Kong London Melbourne Perth Sydney Wellington