



THE LAW SOCIETY  
OF SINGAPORE

# CASE LAW UPDATES:

## Disclosure and Due Diligence: The Purchaser's New Nightmare

### The Death of Chabra: Long Live C Inc?

Tuesday, 20 September 2005, 5.30 to 7.30pm

#### About this Seminar

This seminar discusses some recent UK case law developments involving (a) Share Sale Agreements and (b) Freezing Injunctions of interest and relevance to practicing lawyers, corporate counsel and company directors and management alike.

#### Who Should Attend

- Corporate, commercial law, or litigation practitioners
- Legal officers, in-house counsel
- Corporate transactional professional advisors
- Company directors & management

#### Disclosure and Due Diligence: The Purchaser's New Nightmare

In the case of *Infiniteland v Artisan* [2005] EWCA 758; the Court of Appeal considered the disclosure mechanism in a standard share sale agreement. The court decided that whilst the knowledge of an investigating accountant, though imputed to the principal, was not "actual" knowledge; in any event the purchaser was fixed with knowledge of all facts and matters that would have been apparent to a reasonable investigating accountant on an examination of the documents available to him. This case radically changes the test for adequate disclosure and raises difficult issues for those advising on the scope and terms of disclosure letters.

This seminar will review the law in this area and give guidance as to how to approach disclosure in such circumstances. Consideration will also be given the appropriate drafting of clauses so as to prevent this decision prejudicing purchasers in future transactions.

*Paul Downes was counsel for Infiniteland in the court at first instance and in the Court of Appeal.*

#### The Death of Chabra: Long Live C Inc?

Frequently the court is asked to freeze the proceeds of a fraud which have been vested in a limited company, owned and controlled by the fraudster. However at the interlocutory stage it can be difficult to prove that the corporation is a sham or that there was no intention to divest the individual of the beneficial title to the moneys. Previously the court had relied on the well-established Chabra jurisdiction.

However in the case of *TCF v Bilgin* [2004] EWHC 2732 the Chabra jurisdiction was challenged on the basis that there was no evidence to support a nominee argument. Gavin Kealey QC agreed, but nevertheless upheld the injunction. He relied on the previous decision of C Inc and held that even without any basis for the Chabra type jurisdiction the court could nevertheless freeze the assets of the corporation in lieu of the appointment of a receiver.

This seminar will analyse the Chabra jurisdiction and the newly emerging C Inc jurisdiction and explain how they can operate so as to virtually exclude any corporate veil difficulties in freezing the underlying assets of a corporation, owned by a defendant, but against which no substantive cause of action exists.

*Paul Downes was counsel for TCF.*

#### Programme Outline

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|------------------|---|
| 5.15 - 5.30 p.m. | : <i>Registration &amp; Refreshments</i>                      |
| 5.30 - 6.10 p.m. | : Disclosure and Due Diligence: The Purchaser's New Nightmare |
| 6.10 - 6.30 p.m. | : <i>Networking Break</i>                                     |
| 6.30 - 7.10 p.m. | : The Death of Chabra: Long Live C Inc?                       |
| 7.10 - 7.30 p.m. | : Q&A/ Discussion Session                                     |

#### About the Speaker

##### **Mr. Paul Simon Downes ACIB BA(OXON)**

- |                          |   |
|--------------------------|---|
| <b>Areas Of Practice</b> | General commercial law (with specific expertise in banking and finance related matters), media and entertainment, international trade, insurance and re-insurance, and professional negligence.       |
| <b>Directories</b>       | Chambers & Partners: Commercial Litigation; Legal 500: Banking, Commodities; Legal Experts: Banking, Commodities  |
| <b>Appointments</b>      | Barclays Bank (1983-87), Consultant for Barclays Bank on Banking Law/Accountancy Training (1988-93), Assistant Examiner for Chartered Institute of Bankers in Banking Law and Accountancy (1988-1993) |

**Programme Category: Professional Practice**

**Training Level: Intermediate**

**Practice Area: Category 1 (Commercial /Corporate Law)**

**CPD Hours: 1 hour 40 minutes**



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**Education**

BA Oxon (First Class)  
Associate Chartered Institute of Bankers

**Awards/Distinctions** Wronker Prize (Tort)

Top ranking legal history finals paper  
Bacon Scholar  
Whitehead Memorial Prize  
Lombard Prize for International Trade  
Henry Grosvenor Trust Award

**The Chairperson**

**Mr. Petrus Huang**

**Director, Drew & Napier LLC, Member, Continuing Professional Development Committee, The Law Society of Singapore**

| <b>Venue:</b>  | <b>Fee:</b>  |
|--|--|
| The Law Society of Singapore<br>Conference Room, Level 2<br>Singapore 058673 | <b>S\$ 52.50</b><br>(Law Society Members, SCCA Members & employees of Singapore law practices) |
| (Registrations will begin at 5.15pm )  | <b>S\$ 84.00</b> (others)<br>(includes 5% GST, materials & refreshments)                       |

## REGISTRATION FORM

Name (Dr/Mr/Mrs/Miss/Mdm): \_\_\_\_\_

Name and Address of Law Firm/Law Corporation/Organisation: \_\_\_\_\_

Date of Admission: \_\_\_\_\_ Number of years in Practice: \_\_\_\_\_

AAS No: \_\_\_\_\_ NRIC/Passport No: \_\_\_\_\_  
(Law Society Members) (Law Society Associate Members & Non Law Society Members)

Position in Law Firm/Law Corporation/Organisation: \_\_\_\_\_

Tel number: \_\_\_\_\_ Fax number: \_\_\_\_\_ Email: \_\_\_\_\_

**Mode of payment:**  GIRO  Cheque

**Law Society Member**  **Employee of Singapore law practice**   
**SCCA Member**  **Non-member**

Cheque payments should be made payable to "**The Law Society of Singapore**" & arrive at our office with the completed registration form on or before the closing date, **Tuesday, 13 September 2005**:

The Training & CPD Department  
The Law Society of Singapore  
39 South Bridge Road (S)  
058673

For further enquiries, please contact  
The Training & CPD Department at  
Tel: (65) 6557 2747 Fax: (65) 6557 2751  
E-mail: [cpd@lawsoc.org.sg](mailto:cpd@lawsoc.org.sg)  
CPD Portal: [www.lawsociety.org.sg/CPD](http://www.lawsociety.org.sg/CPD)  
Website: [www.lawsociety.org.sg](http://www.lawsociety.org.sg)

### REGISTRATION, REFUND & CANCELLATION POLICY

1. Registrations will be confirmed upon receipt of full payment accompanied by a duly completed registration form.
2. The Organisers reserve the right to refuse to register or admit any participant, and to cancel or postpone the course.
3. Substitute delegates are welcomed, subject to the Law Society Training Department being notified at least 2 working days before the course of the details of the substitute delegate.
4. The Organisers reserve the right to impose a cancellation fee in the event any registrant wishes to withdraw from the course after the registration closing date.
5. The Organisers will not entertain any request for a refund of fees made later than 24 hours before course commencement. However a confirmed registrant who has paid in full the course fees but does not turn up for the course will be entitled to collect a set of the materials provided.

-1