

Victory City: A Wake Up Call for Auditors and Litigants on Early Disclosure in Hong Kong

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前言

The Hong Kong High Court has recently clarified the legal principles relating to pre SOC discovery under Order 24 Rule 7 of the Rules of High Court (“**RHC**”) in an auditors’ negligence claim. In *Victory City International Holdings Limited (In Liquidation) & Ors v Deloitte Touche Tohmatsu (a firm)* [2025] HKCFI 550, the Plaintiffs’ joint and several liquidators commenced legal proceedings against the company’s former auditor for negligence in preparing the audit report and applied for specific disclosure of audit working papers for certain financial years.

The decision in *Victory City* highlights a more pragmatic judicial attitude to pre SOC discovery in Hong Kong. By compelling early disclosure of audit working papers, the Court underscored that fairness and efficiency may override rigid procedural technicalities. The ruling serves as a wake up call for auditors, receivers, and litigants alike by signalling that early transparency can be both a procedural necessity and a sound commercial strategy.

Background

It was alleged that, from 2012 to 2020, the Plaintiffs’ group reported strong profits and large assets, but in late 2020, they defaulted on certain debts and eventually collapsed in 2021. Subsequent investigations by the JLs uncovered extensive fraud, including trade-finance fraud (such as duplicate/false invoices), large overstatements of PPE and inventories, and undisclosed loans. The Defendant resigned as auditor in March 2021 and warned that its prior reports should not be relied on.

Between 2021 and 2024, the JLs requested the Defendant to provide all audit working papers (AWPs) for FY2012 - FY2020 to assist them in the investigations. However, the Defendant only provided limited scope of documents and files in a piecemeal fashion, primarily focusing on FY2020. In the premise, the JLs applied for specific disclosure so as to enable the Plaintiffs to plead the particulars of the Defendant’s breach of the auditor’s duty in the Statement of Claim.

Legal Principles

Order 24 rule 7 of the RHC sets out the basic requirements for specific discovery:

1. the documents or classes of documents exist (existence);
2. they relate to matters in issue (relevance); and
3. they are in the defendant’s possession, custody or power (possession/custody/power).

While Order 24 Rule 7 permits specific discovery before the submissions for Statement of Claim, such application must be exceptional, for instance, such discovery would save costs of the undoubtedly heavy amendments which would be required once discovery was given.

In deciding the relevance of the documents to be disclosed, while the Court continues to adopt the Peruvian Guano test – a document is relevant (i) if it may reasonably be supposed to contain information that could either advance the applicant’s case or damage the opponent’s case, or (ii) if it may fairly lead to a train of inquiry that has those consequences, the Court considered that English cases for pre-action disclosure, which have adopted a more restrictive approach after *Three Rivers District Council v Governor and Company of the Bank of England* (No 4) [2003] 1 WLR 210, remain relevant.

Upon considering the English cases, the Court accepted that:

1. AWP’s are the equivalent of medical records in medical negligence cases, which are obvious examples for pre-action disclosure, even though these applications ought to be exceptional;
2. The Court should consider whether the early disclosure would likely save costs resulting from the applicant, and whether it would be burdensome for the respondent to hand over the requested documents.

Decision

As the Plaintiffs’ case is based on the Defendant’s negligence in preparing the audit reports from 2012 to 2020, the Court are satisfied that the AWP’s for FY2012 to FY2019 are relevant and material to the Plaintiffs’ claim.

The crux of the dispute rests on whether the instant case gives rise to exceptional circumstances which justify a pre-SOC specific discovery application. Upon considering the following facts, the Court held that the present case gives rise to exceptional circumstances:

1. The prior disclosure by the Defendant were done in piecemeal fashion and were obviously incomplete. The Plaintiffs’ claim concerns the entire auditing process from FY2012 to FY2020, encompassing misstatements in the audited financial statements, improper audit sampling practice, which are of “cumulative and iterative” nature of the audit process. Piecemeal disclosure would not be sufficient for the Plaintiffs to properly plead their claim.
2. The AWP’s are akin to medical records in medical negligence case. They are raw materials on which the Plaintiffs rely to properly plead their case. Without them, it would be difficult, if not impossible, for the Plaintiffs to ascertain what audit procedures were performed by the Defendant or particularise how and why those procedures were deficient.
3. The earlier all AWP’s are disclosed, the more time and costs could be significantly saved as no substantial amendment and/or re-amendments would be required.
4. The Defendant already confirmed that all AWP’s are readily available, both in electronic and physical form, and could be easily handed over to the JLs.

Commentary and Practical Implications

The Hong Kong Court’s approach in *Victory City* underscores that pre-SOC disclosure remains a jurisdiction the Court will exercise sparingly, but it will intervene where fairness and procedural efficiency demand it. The judgment reflects a growing judicial pragmatism where the requested materials are the indispensable factual substrate of the claim, as audit working papers are to an audit negligence case, the Court will

not allow defendants to hide behind procedural technicalities to defer meaningful pleading.

While Order 24 rule 7 continues to be governed by the traditional Peruvian Guano test, practitioners should be mindful that the Hong Kong courts are willing to draw comparison from English pre-action discovery jurisprudence post-Three Rivers (No4), which lays down a more stringent test for relevance as compared with Peruvian Guano test. The key shift lies not in abandoning Peruvian Guano, but in calibrating relevance against proportionality and cost efficiency. If the purpose of early discovery is not to embark on a fishing expedition, but rather to allow an informed pleading and minimise wasteful amendments, the Court will often consider that an “exceptional circumstance”.

From a practical standpoint, the case sends a strong message to auditors and professionals that selective or piecemeal disclosure of core records is counter-productive. Once proceedings are reasonably in contemplation, a firm refusal to provide foundational materials, especially those that cannot sensibly be reconstructed from other sources, can invite a pre-SOC discovery order and adverse cost consequences. In that sense, complete early transparency may serve both as a litigation-avoidance strategy and as evidence of good faith in regulatory contexts.

For claimants, Victory City offers a useful framework for building a persuasive narrative of “exceptionality”. The applicant should be ready to demonstrate (i) that the documents sought are the raw evidential materials necessary to particularise the alleged breach; (ii) that incomplete disclosure would materially obstruct the proper drafting of pleadings; and (iii) that early production would reduce overall costs and promote procedural economy. These factors should be articulated concretely in affidavit evidence, rather than asserted as generalities.

More broadly, the decision signals that Hong Kong’s discovery regime, though rooted in the older common-law concept of wide disclosure, remains adaptive and commercially sensitive. The Court’s analogy of audit working papers to medical records in professional negligence litigation is a pragmatic recognition that some categories of information are essential to enable even the first articulation of a claim. Practitioners should not assume that “pre-SOC discovery” is out of reach; rather, the focus should be on demonstrating why a just and efficient resolution cannot begin without it.

Finally, the judgment serves as a gentle warning to professional advisers. Structured and prompt document management is no longer merely good practice; it now carries real procedural and reputational consequences. When the working papers or internal records form the very architecture of a case, resistance to disclosure—particularly when done in piecemeal fashion—will almost certainly attract judicial scrutiny, and may jeopardise any later argument on proportionality or confidentiality.



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