

# 婚姻法律程序涉及第三方利益 的財產糾紛

家福會調解中心 家事調解研討會

講者：嚴永錚大律師

貝納祺大律師辦事處

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# 目錄

## 01. 法律概念

涉及第三方利益的財產糾紛的基本法律原則

## 02. 婚姻法律程序

婚姻法律程序如何處理涉及第三方利益的財產糾紛

## 03. 涉及第三方利益的財產糾紛的常見障礙

## 04. 問答與討論

# 1. 為甚麼離婚會牽涉第三方？

## 香港社會現況

財產登記在子女名下但實際出資人為其家人



### 饋贈情況

父母出資為子女購買物業



### 信託

因稅務、管理家族生意、申請按揭等原因，子女以信託形式持有財產



### 貸款

父母借款給子女購買物業

# 信託概念與構成形式

(Primecredit Ltd v Yeung Chun Pang Barry [2017] 4 HKLRD 327)

## 信託基本概念

註冊擁有人只是代他人持有財產，並不是物業的實益擁有人



### 明示信託

明確訂立協議  
確立代持關係



### 歸復信託

出資者為實益  
擁有人



### 共同意願 推定信託

從家庭溝通、財  
務安排等反映代  
持意願



# 第192章 《婚姻法律程序與財產條例》 第17條

## 適用情況

處置財產目的為令另一方經濟給養申索失敗

## 目的

防止一方透過轉移財產逃避財產分配責任

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## 法律後果

法庭有權撤銷處置，將財產重新納入婚姻資產

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## 三年假定

# LLC v LMWA [2019] 2 HKLRD 529 (CA)

18. We start by making some general observations on the resolution of dispute of beneficial ownership which may involve third party interest in the context of ancillary relief applications. In *TL v ML* [2006] 1 FLR 1263, Deputy High Court Judge Mostyn QC highlighted the difference between determining a dispute of ownership between a spouse and a third party and the discretionary exercise of determining ancillary relief between spouses. Procedurally, he opined as follows at [36] and [37]:

“ [36] In my opinion, it is essential in every instance where a dispute arises about the ownership of property in ancillary relief proceedings between a spouse and a third party, that the following things should ordinarily happen:

- (i) The third party should be joined to the proceedings at the earliest opportunity;
- (ii) Directions should be given for the issue to be fully pleaded by points of claim and points of defence;
- (iii) Separate witness statements should be directed in relation to the dispute; and
- (iv) The dispute should be directed to be heard separately as a preliminary issue, before the financial dispute resolution (FDR).

[37] In this way, the parties will know at an early stage whether or not the property in question falls within the dispositive powers of the court and a meaningful FDR can take place. It also means that the expensive attendance of the third party for the entire duration of the trial can be avoided. It is a great pity that none of these steps took place in this case. Had they happened, I believe that a great deal of the costs would have been saved.”

...

22. One must not lose sight that the dispute on ownership in these cases often arisen from matrimonial proceedings. But for the breakdown of marriage and the application for ancillary relief by one spouse in a divorce petition, there would not be any claim on the property. In other words, the parties only raise the issues on beneficial ownership for the court to determine because of the matrimonial proceedings.



# LLC v LMWA [2019] 2 HKLRD 529 (CA)

25. Further, even in cases where a spouse seeks a proprietary order in respect of the disputed property, the third party must be involved only if he or she has a competing claim to that property. In this respect, there is a difference between cases where the third party is the legal owner or one of the legal owners of the disputed property and cases where a spouse claims that the third party has a beneficial interest in a property legally held under the name of that spouse. In the former case, the third party should be joined as a party since the legal title of the disputed property would have to be transferred or subject to encumbrance if the ownership issue is resolved by the making of a proprietary order. In the latter case, the third party should be notified of the claim and if he or she decides to contest the ownership issue, he or she should apply to be joined as party to the proceedings. If the third party does not apply to be joined, he or she shall be bound by the judgment: see Order 15 Rule 13A(4) of the Rules of the High Court, applicable by virtue of Rule 3 of the Matrimonial Causes Rules.

...

26. Irrespective of the role of the third party in contesting the ownership issue, given the ancillary relief application is the substratum for such contest, the primary protagonists are often the spouses.

# 涉及第三方利益的財務糾紛案件特色



## 利益一致

第三方與婚姻一方連成一線，共同目標：排除財產於婚姻資產之外



## 爭議根源

糾紛源自離婚，若非離婚根本不會出現此類爭議



## 當夫妻達成和解時， 第三方通常不再繼續申索



## 法庭就這類型案件的程序/流程



## 2. 處理涉及第三方利益的財務糾紛案件

### 加入第三方 (Joinder)



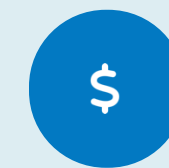
#### 法律文件

第三方需準備狀書及證人  
陳述書



#### 法律代表

第三方通常有獨立律師  
團隊代表



#### 成本考量

龐大律師費影響家庭資  
源分配

# 「加回」- 是否一定需要加入第三方

## LCC v LTLA [2024] 2 HKLRD 1177

- 有說法指若然有充裕的家庭資產可以透過「加回」方法，將第三方的資產名義上「加回」到婚姻資產之中
- 但「加回」資產與第17條下的「撤銷處置」是不同的
- 第17條下的「撤銷處置」有三年假定
- 「加回」資產需要證明行為是明顯及嚴重 (obvious and gross) 的，這些行為可被法庭視作不能被忽視的不公正行為 (inequitable to disregard)
- 「加回」只是處理名義上的資產，不涉及有實質的資產，因此帶有懲罰性，法庭決定是否「加回」應格外小心
- 若然爭議的財產在第三方名下，需要加入第三方，以讓法庭作出對第三方有約束力的命令

# 涉及第三方利益的財產糾紛的另類排解爭議程序

## LLC v LMWA [2019] 2 HKLRD 529 (CA)

29. By now, it should be recognized that in matrimonial or family proceedings[1] the parties and those advising them have a positive duty to engage in constructive settlement negotiations and to participate in alternative dispute resolution processes like mediation, FDR and CDR in good faith. The rationale for such duty has been explained in the cases and the judgment of the judge cited at [9] to [11] above.

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46. It is therefore wrong to assume that the third party would necessarily wish to take active part in contesting the beneficial ownership issue. It is also wrong to assume that the third party would not be willing to undergo some alternative dispute resolution processes in order to settle the matter. Even in the context of general civil actions where ownership dispute is litigated amongst family members, the court will encourage them to participate in such processes. Given that the underlying substratum of the ownership dispute is the matrimonial or family proceedings with the attendant financial implications for the family as discussed above, it is all the more imperative for the parties, their lawyers as well as the court to take a strong proactive approach to steer the parties to efficient and proportionate mode of dispute resolution.

## LLC v LMWA [2019] 2 HKLRD 529 (CA)

47. Hence, whilst it may not be fruitful to have a FDR solely between the spouses before the determination of a preliminary issue (when the court has decided that there should be a trial of preliminary issue), it does not follow that there should not be any form of alternative dispute resolution processes involving all the interested parties, including the third party. On the contrary, such processes should be explored vigorously. In general, though there could be exceptional cases, there is no reason why there could not be any mediation involving the third party for the resolution of the dispute of the ownership before moving onto a mediation of the remaining issues in the matrimonial dispute.

...

49. Bearing in mind the origin of such ownership dispute and the above analysis regarding the underlying character of these proceedings, and in light of our above observations on the implications for the third party if he or she has to undergo a full blown trial to resolve the dispute, in appropriate cases judges in the Family Court should exercise the case management power to direct a process akin to FDR (with modified directions) to take place involving the third party. The exercise of case management power to facilitate settlement of dispute is one of the underlying objectives provided for under Order 1A Rule 1(e) of the Rules of the High Court and the power to give a direction for a modified FDR to be held can be derived from Order 1B Rule 1(2)(I). Practice Direction 15.12 paras 6 and 8 underscore the applicability of these provisions to matrimonial proceedings of which the trial of preliminary issue, as discussed above, is part of such proceedings. See also Practice Direction 15.10 para 1.1.

## LLC v LMWA [2019] 2 HKLRD 529 (CA)

68. The husband and the wife had previously attempted mediation without success. At the hearing, this Court suggested that the effectiveness of the process could be enhanced if a FDR can be held with the assistance of a mediator. There can be matters on which a FDR judge can give useful views and steer the parties to explore at greater length with a mediator. With such steering, a mediator can work more effectively with the parties separately in a way which a FDR judge cannot. The mediator can also refer some issues which divided the parties to the FDR judge for an authoritative opinion. With synergy between the FDR judge and the mediator, it is also more likely in cases where parties reach agreement on some but not all the issues, a more costs effective way to resolve the outstanding issues could be worked out.



# 和解的平台



## 調解

實務指示15.10：律師須告知第三方可使用家事調解服務



## 排解財務糾紛的聆訊 (FDR)

家事法庭法官協助釐清爭議，無損權益原則



## 調解員協助的排解財務糾紛的聆訊 (M-FDR)

法官在調解員協助下幫助各方達成和解



# 審訊程序

有機會需要分拆成兩個審訊處理

1.初步爭論點：夫妻+第三方 - 處理涉及  
第三方利益的財產

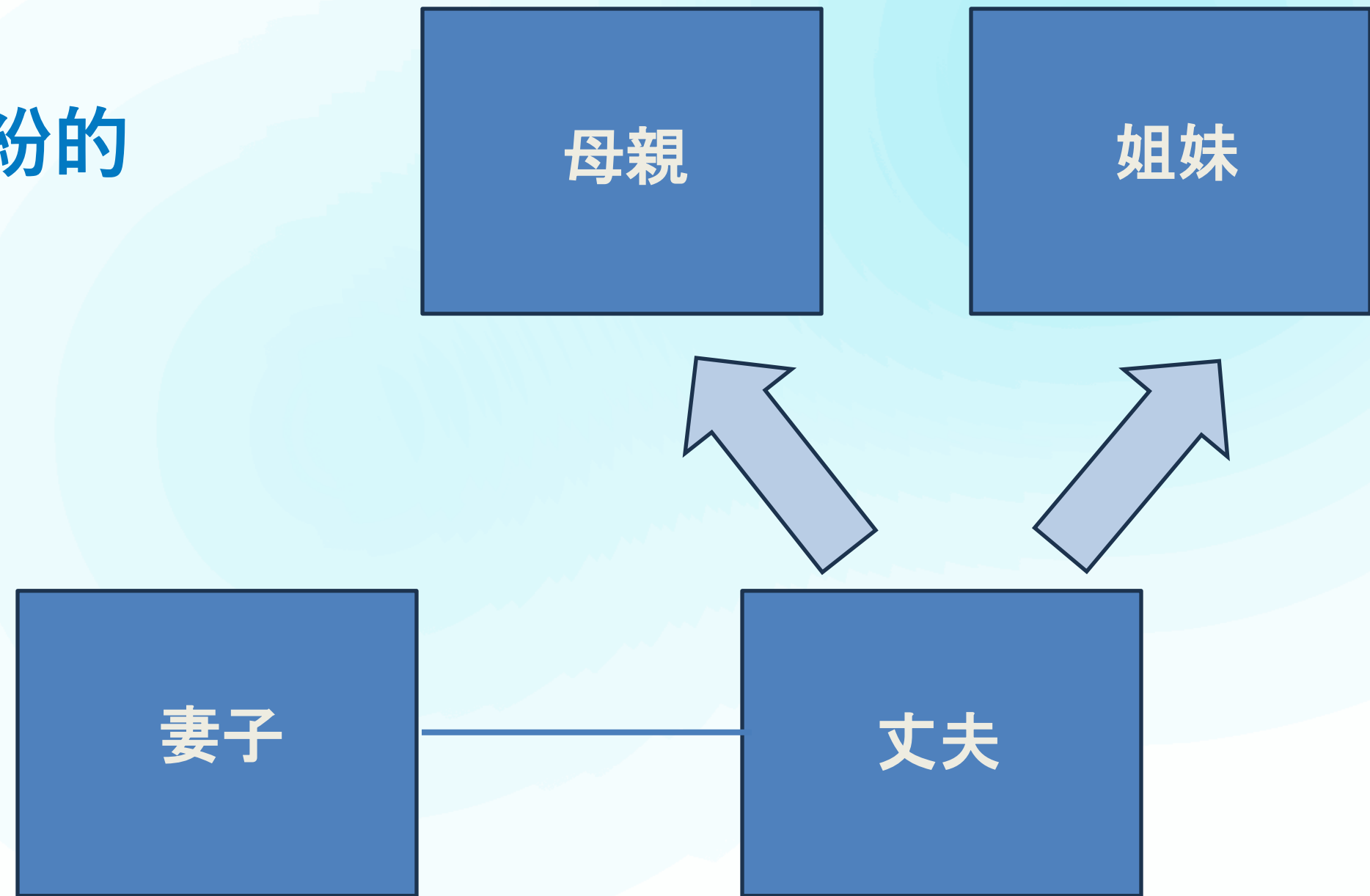
2.附屬濟助：只是夫妻之間





### 3. 涉及第三方利益的財產糾紛的常見障礙

- 中國文化強調群體利益、家族和諧、孝道、人情、面子
- 家族成員對家庭決策有重大影響
- 部分參與者沒有最終話語權
- 話事權可能在幕後親人手上
- 誰是真正決策人



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**謝謝大家**

**歡迎提問**