



## The Role of Share Valuation in Shareholder Dispute Cases – Practical Aspects of Share Valuation in Dispute Circumstances

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Private and Confidential

BORRELLI WALSH 保華  
A **KROLL** BUSINESS

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# 01

INTRODUCTION

# OUR APPROACH

Borrelli Walsh, a Kroll Business, is Asia's leading specialist advisory firm with a dedicated team of approximately 140 professionals across offices in Beijing, British Virgin Islands, Cayman Islands, Hong Kong, Jakarta, London, New Delhi, Shanghai and Singapore.

## WE FOCUS EXCLUSIVELY ON:

- Insolvency (Liquidations, Receiverships and Individual Bankruptcies)
- Forensics (Financial Investigations, Forensic Accounting, Expert Witness, Matrimonial & Probate)
- Advisory (Directorship and Funds & Asset Management)
- Restructuring

Our expert team has an established reputation for hard work, tenacity and integrity. We have a proven track record of delivering practical and efficient solutions in our chosen areas in Asia Pacific, the Caribbean and internationally.

Our Managing Directors and Directors have real hands on involvement in all projects.

Key clients include private equity and special situations funds, bondholders, local and international banks, lawyers, listed and private companies, regulators and industry bodies, government departments and family groups.

# OUR APPROACH

Borrelli Walsh has a strong reputation for delivering results to complex problems through hard work, innovative and practical solutions throughout the Asia Pacific region and internationally.

We work with our clients and other stakeholders in small and experienced groups and focus on providing strategic direction and momentum. Concurrently, we work to resolve financial and operational problems, thereby enhancing and realizing value in a low risk and well considered environment.

We have established relationships with well experienced and like-minded international contacts in a broad range of professional and commercial disciplines and industries.

Of paramount importance is our discretion and our loyalty to our clients.

# OUR SERVICES

## INSOLVENCY

- Court and Private Receiverships
- Provisional Liquidations
- Compulsory, Creditors and Members Voluntary Liquidations
- Bankruptcy and Individual Voluntary Arrangements

## FORENSICS

- Litigation support and expert testimony
- Computer forensics
- Investigating service provider negligence, including auditors and underwriters
- Asset tracing, retrieval and realization
- Regulatory and money laundering investigations
- Anti-bribery and corruption investigations and risk assessment
- Corporate internal investigations
- Fraud risk management framework review
- Matrimonial, Trust & Probate

## RESTRUCTURING

- Crisis & interim management (Chief Restructuring Officer) – Executive Appointments
- Independent Financial Advisors and Monitoring Accountant
- Formal and informal restructurings and workouts
- Cash and working capital management
- Schemes of Arrangement
- Singapore Judicial Management
- Indonesian Suspension of Debt Payment Obligation (“PKPU”)
- Chapter 15 of the US Bankruptcy Code

## ADVISORY

- Corporate Advisory
  - Executive and non-executive directorships
  - PRC Legal Representative appointments
  - Pre-investment / pre-finance due diligence of entities and assets
  - Sales of entities and assets
- Funds and Asset Management
  - Replacement Management and General Partner
  - Specialist services for management and divestiture of illiquid or distressed assets
  - Realisation alternatives and strategies
  - Redemptions, valuation and pricing, illiquid investments

# LOCATIONS

## Restructuring Advisory

In November 2020, Kroll, a global leader in risk mitigation, investigations, compliance, cyber resilience, security and incident response solutions, acquired Borrelli Walsh. Kroll has nearly 4,000 professionals in 25 countries around the world. The combination of the businesses strengthens the firm's restructuring offerings for clients in Asia, the Caribbean and around the world. With the addition of Borrelli Walsh, the firm has nearly 450 restructuring staff in 14 different jurisdictions.





# 02

Valuation Methods  
Often Used in Dispute  
Circumstances



# VALUATION METHODS OFTEN USED IN DISPUTE CIRCUMSTANCES

Companies (or shares of these companies) are typically valued by using one or more of the following valuation methods:

VALUATION METHOD	A BRIEF INTRODUCTION	OFTEN USED IN DISPUTE CIRCUMSTANCES?
<b>Market Approach – such as EBITDA Multiple Method</b>	<ul style="list-style-type: none"> <li>Assessing the value of the company by reference to the price, earnings and other performance indicators of comparable companies for which there is sufficient available information. This may either be by reference to peer listed companies or by reference to recent transactions in relation to equivalent companies.</li> </ul>	<ul style="list-style-type: none"> <li><b>Yes</b>, as performance indicators are usually readily available.</li> <li>But a reliable valuation using this method highly depends on:               <ul style="list-style-type: none"> <li>identifying suitable Comparable Companies;</li> <li>determining what adjustments and discounts need to be made for the differences between the subject company and the Comparable Companies; and</li> <li>identifying a suitable valuation multiple (such as price/earnings multiple and EBITDA multiple).</li> </ul> </li> </ul>
<b>Net Asset Value (NAV)</b>	<ul style="list-style-type: none"> <li>Estimated value of assets after deducting its liabilities.</li> </ul>	<ul style="list-style-type: none"> <li><b>Yes</b>, when:               <ul style="list-style-type: none"> <li>the company holds significant tangible and liquid assets (such as marketable securities and real estate properties); and</li> <li>a relatively reliable (and readily available) financial statements of the company are available.</li> </ul> </li> </ul>

# VALUATION METHODS OFTEN USED IN DISPUTE CIRCUMSTANCES

Companies (or shares of these companies) are typically valued by using one or more of the following valuation methods.

VALUATION METHOD	A BRIEF INTRODUCTION	OFTEN USED IN DISPUTE CIRCUMSTANCES?
<b>Quoted Price</b>	<ul style="list-style-type: none"><li>Estimated value by reference to the price of a company's shares quoted on a stock exchange or any other markets.</li></ul>	<ul style="list-style-type: none"><li><b>Yes</b>, when valuing shares of listed companies being traded actively in the relevant stock market.</li></ul>
<b>Discounted Cash Flow (DCF)</b>	<ul style="list-style-type: none"><li>Estimated value by reference to expected future cash flow discounted for risk and time value of money.</li></ul>	<ul style="list-style-type: none"><li><b>Not so often (with the exception of some special industries such as utility and energy), as:</b><ul style="list-style-type: none"><li>reliable cash flow forecasts are not usually available; and</li><li>comparable financial and market data is required to determine an appropriate discount rate for risk and the time value of money.</li></ul></li></ul>

The left side of the image features a series of flowing, ethereal blue light trails that originate from the bottom left and curve upwards and to the right, eventually fading into the dark background. The trails vary in intensity, with some appearing as bright, sharp lines and others as softer, more diffuse bands of light. The overall effect is one of dynamic movement and digital energy.

# 03

## Valuation in Business Transactions vs Valuation in Dispute Circumstances

# VALUATION IN BUSINESS TRANSACTIONS VS VALUATION IN DISPUTE CIRCUMSTANCES

Valuations in business transactions and those in dispute circumstances are substantially different from each other in context, readers, valuation dates, primary purpose and form.

DIFFERENCES	VALUATION IN BUSINESS TRANSACTIONS	VALUATION IN DISPUTE CIRCUMSTANCES
<b>Context</b>	<ul style="list-style-type: none"> <li>• Sale and purchase transaction.</li> <li>• M&amp;A.</li> <li>• Audit.</li> </ul>	<ul style="list-style-type: none"> <li>• Shareholder dispute.</li> <li>• Divorce proceedings.</li> <li>• Other business disputes.</li> </ul>
<b>Readers</b>	<ul style="list-style-type: none"> <li>• Buyer and seller in the transaction and their shareholders.</li> <li>• Stakeholders of the company.</li> </ul>	<ul style="list-style-type: none"> <li>• Lawyers representing the parties in the dispute.</li> <li>• The judge in the associated legal proceedings.</li> </ul>
<b>Valuation Date</b>	<ul style="list-style-type: none"> <li>• A key date shortly prior to the completion of the transaction.</li> <li>• Financial year end.</li> </ul>	<ul style="list-style-type: none"> <li>• The date of an event or transaction affecting the parties in dispute.</li> <li>• Date of petition.</li> <li>• A date closer to the trial of the legal proceedings or the date of the judgment.</li> </ul>

# VALUATION IN BUSINESS TRANSACTIONS VS VALUATION IN DISPUTE CIRCUMSTANCES

Valuations in business transactions and those in dispute circumstances are substantially different from each other in context, readers, valuation dates, primary purpose and form.

DIFFERENCES	VALUATION IN BUSINESS TRANSACTIONS	VALUATION IN DISPUTE CIRCUMSTANCES
<b>Primary Purpose</b>	<ul style="list-style-type: none"> <li>To facilitate the completion of the transaction.</li> <li>To discharge directors' duties.</li> </ul>	<ul style="list-style-type: none"> <li>To provide assistance to the Court for the purposes of resolving the dispute such as by determining a quantum to be paid by 1 party to another.</li> <li>To answer questions specified by the Court including by commenting on the valuation reports prepared by a valuer for (disputed) business transactions.</li> <li>The expert may need to be cross examined at the trial.</li> </ul>
<b>Usual Form</b>	<ul style="list-style-type: none"> <li>A relatively more standard template.</li> <li>May not contain detailed analysis or explanation.</li> <li>Usually not required to disclose supporting documents.</li> <li>May not be a substantial document.</li> </ul>	<ul style="list-style-type: none"> <li>Tailor made to deal with the matters relevant to the dispute.</li> <li>Requires detailed analysis and explanation in respect of the approach adopted, adjustments or discounts made and the conclusion.</li> <li>Supporting documents are required to substantiate the analysis, adjustments and conclusion.</li> <li>Usually a more detailed and substantial document.</li> </ul>

# VALUATION IN BUSINESS TRANSACTIONS VS VALUATION IN DISPUTE CIRCUMSTANCES

## A Case Study

Please contact us if you wish to discuss the details of the case study.

# 04

## Common Constraints

# COMMON CONSTRAINTS FACING VALUATIONS IN DISPUTE CIRCUMSTANCES

- Whether a valuation is reliable highly depends on whether an appropriate valuation method has been adopted.
- More often than not, it is chosen by reference to the information available to the valuer, and this is highly influenced by when the “Valuation Date” is:
  - if it is the date of an event or transaction which happened some time ago (not a date close to present as in valuation for a business transaction), some information and documents may no longer be available now; and
  - some more suitable valuation methods may not be applicable because of lacking necessary information and documents.
- More assumptions and adjustments will therefore likely be required when undertaking the valuation and this may be subject to dispute and criticism by the opposing party.
- Any solutions?



# COMMON CONSTRAINTS FACING VALUATIONS IN DISPUTE CIRCUMSTANCES

- Possible solutions:
  - Trying to agree with the opposing party a list of documents to be provided to and the assumptions to be made by the valuation experts – Experts representing the parties respectively will undertake the valuation on the basis of the same documents and assumptions, hopefully narrow down the disparity between the experts.
  - Appointing a Single Joint Expert acceptable to all parties in dispute – the parties will usually be abided by the Single Joint Expert's opinions.
- Whether the valuation prepared by an expert is reliable still highly depends on his experience – research, analysis, adjustments and supporting literature.



# 05

## Key Takeaways

# KEY TAKEAWAYS

- Valuations in dispute circumstances require more detailed analysis, explanations and supporting literature (than valuations in business transactions).
- Without these details and supporting literature, the valuation would be readily criticised by an opposing expert and/or may not be helpful to the Court.
- In circumstances where information and documents are limited, the expert's experience in elaborating his research, analysis and identifying relevant supporting literature is very important – a valuer who does not have experience in preparing expert report and/or being an expert witness may not understand such importance.
- When you need a valuation in dispute circumstances – choose an expert with expert witness experience and practical experience in business and transactions.



# 06

How can BW help?

# HOW CAN BW HELP?

## How can we help?

We have substantial experience in providing expert reports and giving expert evidence in court and arbitration – APAC and other jurisdictions.

Our strong business experience (from insolvency and restructuring cases) enables us to supplement our analysis and opinions with real life examples and/or assist our clients in developing strategy in dealing with dispute circumstances:

- **Providing Expert Reports and Giving Expert Evidence** – preparing expert reports in dispute circumstances for determining valuation and business losses, providing opinions on business transactions and/or answering questions specified by the Court.
- **Independent Financial Advisor** – advising clients with a “hands on” approach to:
  - consider the information and documents disclosed by the opposing parties and set out our observations;
  - review and comment on expert reports and other witness statements; and
  - work with clients’ legal advisors to develop a strategy and steps to deal with all possible claims to be issued by the opposing parties.



# 07

SPEAKER PROFILE

# ANSON LI

Director – Hong Kong



## QUALIFICATIONS

- Registered Appointment Taker with the Official Receiver's Office in Hong Kong
- Specialist Designation in Insolvency, SD (Insolvency), awarded by the Hong Kong Institute of Certified Public Accountants
- Certified Public Accountant, the Hong Kong Institute of Certified Public Accountants
- Chartered Accountant, the Institute of Chartered Accountants in England and Wales
- Member of the Restructuring and Insolvency Faculty of the Hong Kong Institute of Certified Public Accountants
- Member of the International Women's Insolvency and Restructuring Confederation
- Postgraduate Diploma in Professional Accounting, The Hong Kong Polytechnic University
- Bachelor of Economics and Finance, The University of Hong Kong

## PROFESSIONAL HISTORY

Anson has over 15 years of experience in corporate and individual insolvency, receiverships, schemes of arrangement, financial review and investigations across numerous jurisdictions including Hong Kong, PRC, Singapore, Cayman Islands and BVI.

Anson's recent work includes investigating, locating and securing hidden assets, investigating and litigating fraudulent transactions and payments in liquidation and bankruptcy, undertaking independent forensic investigations in respect of substantial suspicious payments and irregular transactions and solvency analysis in legal proceedings, reviewing financial documents to undertake analysis and valuations in contested divorce proceedings and shareholder disputes.

Anson has worked in our BVI office including with securing and realising assets of hedge funds during the 2008 Global Financial Crisis and taking control of BVI companies in receivership with international assets.

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**Appendix**

**Credentials**



# RELEVANT EXPERIENCE

Job	Industry/Location	Work
<b>Confidential</b>	Shareholder Dispute / Restaurant <b>Hong Kong</b>	Appointed Expert in a shareholder dispute to prepare an account of profits of two popular Japanese-sushi restaurant groups comprising of 30 restaurants. The shareholders of the first Japanese-sushi restaurant brought a claim against the sole director for breach of fiduciary duty following his establishment and operation of other competing restaurants under the same trademark. Our work includes the review of books and records to assess their completeness and truthfulness, the group structure and the business operation and management of the two restaurant groups to account for the loss of profits of the first restaurant.
<b>Project Quartz - Restaurant Group</b>	Litigation Support / Restaurant <b>Cayman Islands</b>	Independent expert report in connection with a dispute between a Franchisee and Franchisor that the Franchisee was induced to enter the Franchise Agreement by misrepresentations that the restaurant operations of the franchisees in many other locations were loss making/unprofitable if run in accordance with the Franchise Agreement and failed to disclose this to prior to the signing of the contract.
<b>Confidential</b>	Shareholder dispute / F&B <b>Hong Kong</b>	Single joint expert work to value a company which is a major supplier of several food chain stores in Hong Kong. As a result of ongoing shareholder dispute, a petition to wind-up the company was filed by one of its shareholders. The Court ordered that both parties file a joint expert report to value the company as if the company is sold as going concern. We have identified two appropriate valuation methods on the basis of information available to us for assessing the company's value and submit a single joint expert report for the parties' and the Court's consideration.

# RELEVANT EXPERIENCE

Job	Industry/Location	Work
<b>Confidential</b>	Shareholder Dispute / Garment Trading  <b>Hong Kong, PRC</b>	Appointed Expert to critically review a valuation report prepared by a Single Joint Expert on the value of two garments trading companies at a certain point in time. We identified an important and material defect in Single Joint Expert's valuation. We then considered different valuation methodologies and determined key variables and thereafter established our own valuation of the companies by reference to profit forecast and future prospect using a market comparable valuation approach.
<b>Confidential</b>	Shareholder Dispute / Garment  <b>BVI, Cayman</b>	Voluntary Liquidators of a Cayman Islands registered company with BVI subsidiaries controlling one of the largest government business in the world as a result of a shareholder dispute. We were successful in negotiating a settlement of the family dispute while maintaining business operation.
<b>Confidential</b>	Shareholder Dispute / Garment manufacturing and retail  <b>Hong Kong</b>	Appointed chairman and sole director of a Hong Kong Holding Company following resignation of the entire board during a shareholder dispute. Assumed full operational responsibility for international business. Facilitated regular monitoring and reporting required to and between key stakeholders. Controlled and facilitated access to information and specific due diligence to assist dispute resolution process.

# RELEVANT EXPERIENCE

Job	Industry/Location	Work
<b>Confidential</b>	Shareholder Dispute / Marketing  <b>PRC, USA</b>	Nominated as non-executive director by Cayman Court of an integrated multi-platform marketing company to stabilise the business and operations of the company and facilitate the resolution of a shareholder dispute. The company is headquartered in Shanghai and its American Depository Shares are listed on the New York Stock Exchange. Our work included monitoring the business and operations of the company, considering and establishing long term business strategies, and providing advice to management in respect of claims against former directors of the company for misconduct. We also chaired the Audit Committee of the company to oversee financial reporting process and disclosures, communicate with internal and external auditors and provide recommendations, and enhance corporate governance of the company.
<b>Confidential</b>	Dispute / Education  <b>Hong Kong</b>	Appointed Independent Accountant by an education association to conduct a review of the books and records of one of its schools following allegations by the association's collaborating partner. The Allegations were made following an internal audit of the school. Our work included collating the books and records, reviewing and analysing documents related to the Audit and the Allegations, meeting with the management and accounting staff of the school, preparing a report of our findings and exploring the options available to resolve the dispute.

# RELEVANT EXPERIENCE

Job	Industry/Location	Work
<b>Confidential</b>	Litigation Support / Manufacturing  <b>PRC</b>	Independent valuation of a carpet tackstrip manufacturing company in PRC and giving expert witness evidence in arbitration proceedings. We considered different valuation methodologies and determined key variables and thereafter estimated the value of the company by reference to profit forecast and future prospects.
<b>Confidential</b>	Shareholder Dispute / Garment manufacturer  <b>Hong Kong</b>	Independent valuation of a uniform trading company. We considered different valuation methodologies and determined the price of the shares in the company by reference to its assets, liabilities, profitability and future prospects. Facilitated the buyout of the minority shareholder's interest by the major shareholder.
<b>Confidential</b>	Shareholder Dispute / Metal Manufacturing  <b>PRC</b>	Appointed to a large metal manufacturer with a joint venture in PRC. Our work included substantial investigations and tracing of fund flows in Hong Kong and PRC. Litigation was commenced with the PRC investor of the JV for recovery of the Company's assets.

# RELEVANT EXPERIENCE

Job	Industry/Location	Work
<b>Confidential</b>	<p>Post-Acquisition Dispute / Manufacturing</p> <p><b>Hong Kong</b></p>	<p>Expert in arbitration proceedings to determine the value of a PRC-based business. The dispute arose following the asset purchase of the business after it transpired that revenues were far less than those represented in the business' financial statements prior to closing. The buyer sought to recover damages through a HKIAC arbitration for loss of business opportunities resulting from a breach of the asset purchase and sale and non-compete agreements. The report estimated the forecast revenue, profit and EBITDA of the business for each financial year in a five year period.</p>
<b>Confidential</b>	<p>Shareholder Dispute / Manufacturing</p> <p><b>Hong Kong</b></p>	<p>Independent financial review for a minority shareholder of a metallic electronic products manufacturing group including assessing the basis for the preparation of financial statements of the group and establishing any accounting irregularities and violation of the Companies Ordinance and accounting standards.</p>
<b>Confidential</b>	<p>Litigation Support / Pharmaceuticals</p> <p><b>USA, Canada, Puerto Rico, UK, Ireland, France, Italy</b></p>	<p>Independent financial advisor to pharmaceutical roll-up of eight contract development and manufacturing organizations (CDMO) facilities acquired from seven different pharmaceutical companies. Work included review and independent valuation of individual acquisition transactions, analysis of potential claims by company against third party sellers, major customers and other significant parties, and assistance in negotiations with key creditors and constituencies. Our work also included providing assistance to company and primary equity owner in their litigation with dismissed management team, including review and analysis of third-party consultant's report, valuation and other financial analysis in support of company's litigation claims, counterclaims and defenses, and preparation of expert witness report and availability for depositions and court expert testimony.</p>

# RELEVANT EXPERIENCE

Job	Industry/Location	Work
<b>Confidential</b>	Litigation Support / Insurance  <b>PRC</b>	Appointed by a leading PRC financial services provider to prepare a valuation report of a Hong Kong insurance company which was placed under a bidding process for disposal by its shareholders. Joint offer was made by 2 parties for acquisition of the target company and later dispute arose between the parties. We have been instructed to research recent development of the relevant industry and market, review and analyse the due diligence and valuation reports previously prepared for the transaction and adduce expert evidence in respect of the value of the target company as at 3 relevant dates.
<b>Matrimonial Proceedings</b>	Litigation Support  <b>Hong Kong</b>	Appointed independent accountant by a businessman to ascertain the value of a company which is engaged in direct marketing of essential oil. The company was jointly owned by him and his wife who intended to commence a divorce proceedings against him. Our work included understanding the relevant industry and market, reviewing and analysing the company's latest financial statements and the underlying breakdown, valuing the company and preparing a report setting out the associated methodologies, adjustments and valuation. We have also attended a without prejudice meeting between the businessman and his wife for the purposes of resolving the financial matters between them.

For more information, please contact:

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#### About Borrelli Walsh, A Kroll Business

Borrelli Walsh, a Kroll Business, is Asia's leading specialist restructuring advisory firm with a dedicated team of approximately 140 professionals across offices in Beijing, British Virgin Islands, Cayman Islands, Hong Kong, Jakarta, London, New Delhi, Shanghai and Singapore. For more information, visit [www.borrelliwalsh.com](http://www.borrelliwalsh.com).

#### About Kroll

Kroll is the world's premier provider of services and digital products related to governance, risk and transparency. We work with clients across diverse sectors in the areas of valuation, expert services, investigations, cyber security, corporate finance, restructuring, legal and business solutions, data analytics and regulatory compliance. Our firm has nearly 5,000 professionals in 30 countries and territories around the world. For more information, visit [www.kroll.com](http://www.kroll.com).

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