



Cross-Border Winding-up

Under section 327 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), the Courts of Hong Kong have discretionary jurisdiction to order the winding-up of unregistered foreign companies. The courts have laid down three so-called core requirements which must be satisfied before the court will exercise its statutory jurisdiction to wind-up a foreign company. Those requirements are: (i) there had to be a sufficient connection with Hong Kong, but this did not necessarily have to consist in the presence of assets within the jurisdiction; (ii) there must be a reasonable possibility that the winding-up order would benefit those applying for it; and (iii) the court must be able to exercise jurisdiction over one or more person in the distribution of the company's assets¹.

The recent Court of Final Appeal (CFA) decision in *Kam Leung Sui Kwan v. Kam Kwan Lai*² made it clear that for a creditor's petition for a winding-up of unregistered foreign company sufficient connection with Hong Kong would usually be satisfied by the presence in Hong Kong of significant assets which may be made available to the liquidator for distribution among the creditors, even where such assets were not from the company but from an outside source. For a shareholder's petition, the presence of other shareholders within the jurisdiction is extremely relevant in establishing sufficient connection between the company and Hong Kong and usually the most important single factor. CFA further held that the presence in Hong Kong of assets held by subsidiaries of a BVI subsidiary of the company to be wound-up would be assets that could be made available to a liquidator. Consequently the requirement of a sufficient connection with Hong Kong for the purposes of section 327(3)(c) of Cap. 32 was satisfied. The CFA decision overturned the decisions of the lower courts to the contrary.

A recent decision of the Court of First Instance of the Hong Kong High Court suggests that even if winding-up proceedings have already been started in the jurisdiction where the foreign unregistered company was incorporated, winding-up proceedings parallel to them may still be commenced against the company in Hong Kong³.

These cases may suggest that given the relevant factors being present, it is possible to resolve disputes between shareholders of a foreign unregistered company by winding it up in Hong Kong.

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¹ *Re Beauty China Holdings Ltd.* [2009] 6 HKC 351, at 355f (para. 23).

² [2015] 6 HKC 644.

³ *L v. G Limited* (HCCW 318/2015) para. 6.

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PLEASE NOTE

The law and procedure on this subject are very specialised. This article is a general explanation for your reference only and should not be relied on as legal advice for any specific case. If legal advice is needed, please contact our solicitors.

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