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Enforcing Minority Shareholder Rights in Asia:

A COMPARATIVE GUIDE TO JUST AND EQUITABLE WINDING UP

Minority shareholders may decide to respond to majority shareholders or directors acting against the minority shareholder's interests by, for example, pursuing an unfair prejudice claim or derivative action in the place of the company's incorporation. However, these steps may not achieve the desired result in some instances and the minority shareholder might want to deploy a just and equitable winding up. While the natural outcome of a winding up petition is the liquidation of the company, in the right case, a strategy involving such an application can effectively be used by the minority to exert maximum pressure on the majority with a view to settling the matter on more favorable terms.

In the table below we summarize how a winding up application based on just and equitable ground can be applied in multiple jurisdictions, unveiling differences that can help shareholders devise an effective cross-border strategy.

	UK	HK	BVI	Cayman	Singapore
Conditions for application	Section 122(1)(g) of the Insolvency Act of 1986 and Section 994 of the Companies Act 2006 • Either the number of shareholders of the company must have been reduced below two, or the shares held by the petitioning member must have been registered to them for at least 6 months during the 18 months before the winding-up process. • There must be a tangible benefit will be derived from the winding up and that there will be a surplus available to shareholders. • Alternative solutions (e.g. an orderly wind down) are not available.	Section 177(1)(f) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32): • The company is being carried on for an unlawful purpose has been persistently in breach of its specified obligations. • The company fails to comply with directions of regulatory authority. • Deadlock in the management of the company.	Section 162(1)(b) of the BVI Insolvency Act 2003 • Company's purpose for setting up the company cannot be achieved. • Deadlock in the management of the company. • Serious mismanagement of business. • Directors' breach of duties. **Reasons for dismissal** ***(In re Cumulus Eastern European Property Fund Limited [2018] SC (Bda) 31 Com):*** • Considered a remedy of last resort – no other alternative remedy can be found available. • If the company is solvent, application may be dismissed in favor of unfair prejudice claim.	Section 92(e) of the Companies Act, taking into account provisions of 92(e) and 95(3) of the Companies Act By Section 95(3) the Court has the discretion to grant remedies which in other jurisdictions may be available through statutory unfair prejudice claim, e.g.: • regulating the conduct of the company's affairs; • allowing shareholder to bring a derivative action on behalf and in the name of the company; or • requiring the purchase of the shares of any members of the company by other members or by the company itself.	Section 125(1)(i) of the Insolvency, Restructuring and Dissolution Act (IRDA) 2018 There is no prescribed conditions to petition for a company to be wound up on just and equitable grounds.
Grounds upon which the Court may make the order	There are no specified grounds, but conventional ones include: • Contravention of the articles of association, the Companies Act and any other formal arrangements between the shareholders and the company. • Loss of substratum, where the original purposes of the company have been fully achieved or may no longer be pursued. • Breakdown in relations between parties which has led to a deadlock with regards to the company's business. • Restrictions on the participation of shareholders in the conduct of business (to which they are entitled). • Mismanagement, where loss of confidence must stem from a serious instance e.g. a want of probity on the part of the company's directors and causing the company to perpetrate a fraud. • Restrictions upon the transfer of members' interests in the company preventing a member from leaving when confidence is lost. • Unfair prejudice.	(all)	(all)	(all)	(all)
Winding-up of foreign companies	The core requirements are set out in *Stocznia Gdanska SA v Latreefers Inc (CA)* **[2001] BCC 174:** • Sufficient connection with England and Wales (presence of shareholders/ directors, assets or business). • Reasonable possibility that the winding up would benefit its applicants. • Court can exercise jurisdiction over one or more persons interested in the distribution of the company's assets. • Where a foreign company is being wound up on the just and equitable ground as a matter of public interest, it is only necessary to demonstrate that there is a sufficient connection with the English jurisdiction (*Re Titan International Inc* [1998] 1 BCLC 102).	Section 327(3) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32): The core requirements as set out in *Re Beauty China Holdings Ltd* (2009) are: • Sufficient connection with HK (presence of shareholders/ directors, assets or business). • Reasonable possibility that the winding up would benefit its applicants. • Court can exercise jurisdiction over one or more persons interested in the distribution of the company's assets.	✗	✗	In considering whether a foreign company should be wound up in Singapore, the Courts will examine: • Sufficient connection (center of main interests, place of business or presence of assets). • Whether the company or certain transactions operate under Singaporean law. • Whether the company has subjected itself to Singapore's jurisdiction.