

Interim relief in the context of Cayman shareholder disputes

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With Cayman companies often being incorporated as holding companies, our dispute resolution team continues to see a trend in shareholder disputes.

Shareholder disputes commonly arise where there has been a divergence in views by a majority and minority shareholder in the management of a company, particularly where one shareholder has control over the management of that company.

| Shareholder disputes in the Cayman Islands

Shareholder disputes typically result in a just and equitable petition being brought, a derivative action or, in more limited circumstances, a personal direct claim.

| Just and equitable winding-up petitions

As compared to English or BVI law, there is no ability for a shareholder of a Cayman Islands company to bring a claim before the Grand Court of the Cayman Islands on the basis of "unfair prejudice". Instead, the Companies Act provides for the ability of a shareholder to bring a just and equitable winding-up petition, whereby the Court has discretion to grant alternative remedies to a winding-up, including orders: (a) regulating the conduct of the company's affairs in the future; (b) requiring the company to refrain from doing or continuing an act complained of by the petitioner or to do an act which the petitioner has complained it has omitted to do; (c) authorising civil proceedings to be brought in the name and on behalf of the company by the petitioner; or (d) for the purchase of the shares of any member of the company by other members or by the company itself.

| Derivative actions

Where a wrong has been committed against a company, it is possible for a shareholder bring a

derivative claim against the wrongdoer(s) in the name of the company where for example, the wrongdoer(s) have control of the company and are thereby able to prevent the company bringing an action.

Personal claim

Where the wrong has been committed against the shareholder in their personal capacity, it is possible in certain situations for the shareholder to bring a personal claim against the wrongdoer(s) notwithstanding the general Foss v Harbottle rule which provides that in any action in which the wrong is alleged to have been committed against a company, the proper claimant is the company itself and not the shareholder.

What interim relief is available?

The common forms of interim relief we see in shareholder disputes are applications for injunctions, provisional liquidators and stays.

Injunctions

Injunctive relief can be appropriate where there is a concern that assets will be dissipated or where there is a concern that the shareholder and/or company will take actions which are prejudicial to the aggrieved shareholder. An injunction could for example, prevent a company from proceeding with a proposed asset sale or from issuing new shares (which may have the effect of diluting the aggrieved shareholder's shareholding interest). An injunction could also require a company to include the aggrieved shareholder in certain decision-making.

Provisional liquidators

Provisional liquidators can be appointed to "hold the ring" in the context of a just and equitable winding up petition where it can be shown that there is a prima facie case for making a winding up order, and where the appointment of a provisional liquidator is necessary to prevent the dissipation or misuse of the company's assets, prevent the oppression of minority shareholders, or to prevent mismanagement or misconduct on the part of the company's directors. The Court has the power to grant provisional liquidators such powers as it considers necessary and appropriate to prevent dissipation, misuse, mismanagement and misconduct so as to ensure that the company's assets are properly protected pending the hearing of the petition.

Stay

When faced with a just and equitable petition or other shareholder claim, it is possible to seek a stay of the proceedings. Such a stay can be sought in favour of arbitration on the basis of an arbitration agreement that may exist in the company's articles of association or a shareholder

agreement. The Judicial Committee of the Privy Council has recently held in *FamilyMart China Holding Co Ltd v Ting Chuan* that a just and equitable petition can be stayed while underlying matters are determined by arbitration.

In addition to the above, it is relevant to also note that the existence of any non-petition clause in a company's articles of association or shareholder agreement in the context of a just and equitable petition could form the basis of a strike out application.

For more information on this topic, please contact our dispute resolution team.

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Meet the Author



Maria On 關穎

Counsel 關穎

Hong Kong

E: maria.on@ogier.com

T: [+852 3656 6144](tel:+85236566144)

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