

CASE COMMENTARY

SINGAPORE HIGH COURT ORDERS WINDING UP OF FAMILY COMPANIES; FEUDING BROTHERS GO THEIR SEPARATE WAYS

Re Lee Tung Co (Pte) Ltd [2007] SGHC 197

Executive Summary

In a ground-breaking decision, the Singapore High Court has ordered the winding up of three family companies even though they were profitably run, on the grounds that the relationship between the three surviving brothers had deteriorated so badly and had become so litigious that it was best to wind up the companies so that the brothers could go their separate ways. The High Court also accepted for the first time that the family companies should be wound up to enable the administration of the estate of the family patriarch, since the fate of the estate was closely intertwined with the fortunes of the companies.

Jimmy Yim SC and Abraham Vergis of Drew & Napier LLC successfully acted for Dr Chow Kwok Chi (“**Chi**”) in his application to wind up the family companies.

Background

Chi, Mr Chow Kwok Chuen (“**Chuen**”) and Dr Chow Kwok Ching (“**Ching**”) were directors and shareholders of three family companies (the “**Companies**”) set up by their late father, property investor Chow Cho Poon (“**Mr Chow**”). The Companies were investment holding companies and were nominally managed by the three brothers upon the passing of Mr Chow and his wife.

At the time of his death, Mr Chow owed substantial debts to the Companies, amounting to approximately S\$34 million. Mr Chow's estate has not been able to pay off its debts to the Companies because the estate's principal assets comprised its shares in those Companies, which, though very sizeable in value, were illiquid.

Through his counsel, Chi argued that, as long as the Companies exist, Mr Chow's estate would remain unadministered because of the unpaid debt of S\$34 million. The estate could not be administered unless the debt is settled, but the estate's assets were mainly tied up as shares in the Companies.

Chuen and Ching contested the application. Chuen argued, among other things, that Chi had not alleged any loss of confidence or lack of probity in his conduct in relation to the running of the companies. Ching argued that if there was to be a winding up, the reason should be the alleged “oppressive conduct” of his two brothers towards him.

Decision of the court

The court granted Chi's application for the winding up of the Companies and appointed a liquidator. The liquidator was to set off the debts in Mr Chow's

estate against the realised value of its shares in the Companies upon liquidation. The estate would therefore get the net value of its shares in the Companies after its debts have been set off, which could then be distributed directly to the beneficiaries.

Ebrahimi principles extended from quasi-partnership to include family company scenarios

The courts would traditionally consider the following when faced with an application for winding up on “just and equitable” grounds:

- whether dominant shareholders of a company have been advancing their own interests;
- whether there has been a disregard of minority shareholders’ rights and interests;
- whether there has been an abuse of voting powers;
- whether a shareholder has been exclusion from management;
- whether there is deadlock in the management;
- whether the minority shareholders have been deprived of information;
- whether there has been expropriation of a shareholder’s property;
- whether there is autocracy in a family company; and/or
- whether there is a breakdown in the relationship between the shareholders.

Further, one of the elements that the courts would usually take into account when deciding whether to subject the exercise of legal rights to equitable considerations is whether the company is “an association formed or continued on the basis of a personal arrangement, involving mutual confidence” (per Lord Wilberforce in *Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360, at 379) (the “**Ebrahimi case**”).

In this case, the judge noted that the words “an association formed ... on the basis of a personal arrangement” may be applied to a wide variety of cases, extending beyond the more common cases of quasi-partnerships, to include “situations where companies are formed for the purposes of carrying on family businesses and holding family assets”.

Prior to this decision, family companies were never likened to quasi-partnerships when deciding whether they should be wound up. It appears that the courts are now prepared to look at the underlying relationship between the parties in deciding what is truly just and equitable, as opposed to merely applying strict and exacting standards.

Desire for “clean break”

The judge noted that the brothers could not get along with each other, could not work together in all matters, and had their own ideas about how “the [C]ompanies and the family fortunes should be dealt with”. In view of the “litigation history” and “the complex nature of the relationships among the brothers”, the judge stated that it did not make sense for the court to “stand aside and allow the situation to deteriorate further”.

On the evidence, the court was of the view that a “clean break” would benefit the brothers by eliminating the need to interact with each other, assist in resolving issues related to their sister's interest in the Companies, and reduce the prospect of future litigation in respect of the Companies.

This is the first time that such terminology has been imported from the domain of matrimonial law to company law. This is in line with the implementation of equitable considerations when the parties involved are all family and when the dispute is essentially a domestic one. However, the court

clarified that the desire for a “clean break” should not be the only basis for seeking a winding up order.

Difficulties in the administration of estate

The court held that the difficulties encountered in the administration of Mr Chow’s estate was a relevant consideration in deciding to grant the winding up order. The estate had been unadministered for the past decade and no progress had been made even after an administrator had been appointed by the court because the brothers could not agree on any of the solutions suggested by the administrator.

Comments

This is the first time that a Singapore court has held that the desire for a “clean break” can be a factor in deciding whether or not to wind up a company where the dispute springs from domestic relations.

It is also the first time that our courts have held that the administration of an estate related to the parties can be a factor in determining whether a company should be wound up on “just and equitable” grounds.

Nevertheless, the adoption of these new factors remain in line with the principles on the winding up of companies on “just and equitable” grounds as set out in the *locus classicus* on this subject: the English House of Lords decision in the *Ebrahimi* case. When deciding to subject the exercise of legal rights to equitable considerations, it appears that the courts are now prepared, in an appropriate case, to measure equitable considerations against the personal relationships between the parties, including other relevant issues and disputes.

If you would like more information about this case or wish to discuss how it may potentially affect you or your business, please feel free to contact the litigation and dispute resolution lawyers in Drew & Napier LLC (please refer to the Directors’ Profiles on our website), or:

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