

Winding-up Chapter-21 Foreign Listcos in Hong Kong

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Recently we have succeeded in applying for a winding-up order on behalf of our client against the National Investments Fund Limited (stock code 1227) (“NIF”), which is a typical chapter-21 listco and incorporated overseas and had been favoured by overseas investors for their subscription of recognised permissible asset for immigration purposes. Similar to other chapter-21 listings, NIF started with no track record, an all-cash balance sheet, an appointed investment manager and a custodian. Before the Capital Investment Entrant Scheme came to an end in 2015, NIF issued promissory notes in the aggregate amount of HK\$ 110 million, all of which were in default upon the maturity dates.

NIF’s insolvency might be a tip of the iceberg. Ever since the outbreak of COVID19 pandemic, we have seen a growing trend of winding-up petitions against various listcos¹. In particular, loan defaults in respect of the Capital Investment Entrant Scheme is more prevalent.

As backdoor listing was no longer a low-hanging fruit, let alone the economic setback by the pandemic, it is very difficult if not impossible to expect white-knight investments to rescue the falling chapter-21 listcos. In these circumstances, it leaves the creditors no other alternatives but winding up against the deadbeats followed by realisation and distribution of the remaining assets.

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Legal requirement and practical implication

To wind up a foreign company in Hong Kong, a petitioner must satisfy the three core requirements for the Court to exercise its exorbitant jurisdictions:

1. there must be a sufficient connection with Hong Kong;

¹ Sun Cheong Creative Development Holdings Limited (stock code 1781) under HCCW 403/2020; China Huiyuan Juice Group Limited (stock code 1886) under HCCW 298/2019; Lerthai Group Limited (stock code 112) under HCCW 233/2020; Ming Lam Holdings Limited (formerly known as Sino Haijing Holdings Limited, stock code 1106) under HCCW 109/2020; SMI Holdings Group Limited (formerly known as SMI Corporation Limited, stock code 198) under 108A/2019.

2. there is a reasonable possibility that the winding-up order would benefit those applying for it; and
3. the Court must be able to exercise jurisdiction over one or more persons interested in the distribution of the company's assets.

In respect of the second core requirement, the Court in a recent decision *Re China Huiyuan Juice*² has raised the evidential bar such that it is necessary for a petitioner to demonstrate by evidence that there is “*a real possibility of a tangible benefit to creditors*”. That is to say, it will not be sufficient to file an affirmation in which the deponent simply asserts that the listed status would have any residual value following liquidation. To the contrary, evidence from a witness familiar with the current practice of the Stock Exchange of Hong Kong and the current value of a listco will be required in order to prove the existence of tangible benefit.

In our case *re National Investment Funds*, we have secured the winding-up order, which was the first one against the listco incorporated in foreign jurisdiction after *Re China Huiyuan Juice* tightened the second core requirement. In light of this higher evidential bar, we did not rely on the value of listing status. Instead we have obtained the information of the bank accounts and assets located in Hong Kong during the interlocutory proceedings, and adduced the same in the substantive hearing to prove “a real possibility of a tangible benefit to creditors”. It is a common strategy that the petitioner leverages its bargaining powers to detect the information of assets before consenting to the respondent’s applications in interlocutory proceedings.

² *Re China Huiyuan Juice Group Limited* [2020] HKCFI 2940

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