

ENFORCING MINORITY SHAREHOLDER RIGHTS IN ASIA: A Comparative Guide to Unfair Prejudice

Minority shareholders may feel that their rights have been unfairly prejudiced by the majority and that they have been shut out of the company that they partly own. The situation may be complicated by the multi-jurisdictional nature of the structure that holds their interests: a typical structure in Asia might involve, for example, a Cayman Islands company listed in Hong Kong, with equity holding structures in BVI incorporated, and the company's operations and assets spread across several other jurisdictions.

In such a situation, it is imperative that minority shareholders understand their available rights and remedies in each of the relevant jurisdictions so that they can devise and deploy an effective cross-border strategy to enforce their rights. Although there may be common themes across the jurisdictions involved, there will be differences in law and practice which will require steps taken in each jurisdiction to be carefully coordinated and aligned with the wider objectives and strategy.

Each case is unique and requires tailored advice. However, in this alert our global Claim Monetization team has laid out the basic parameters across five key jurisdictions where an unfair prejudice remedy is available as one of the strategic weapons in the armory.

Unfair Prejudice: An Overview

An aggrieved minority shareholder may apply for remedies if the affairs of the company have been conducted in a way that is prejudicial either to the interests of the members in general or one or more members. The available remedies are wide ranging and typically include an order that one shareholder buy out the other or for the regulation of the affairs of the company to redress the prejudice.

		 UK	 HK	 BVI	 Cayman	 Singapore
Who can apply	A current or former member of the company	✓ Section 994 of the Companies Act 2006 • Unregistered members to whom shares have been transferred (voluntarily or by operation of law) are also eligible to claim relief.	✓ Sections 724(1) and (3) of the Companies Ordinance (Cap. 622)	✓ Section 184I of the BVI Business Companies Act, 2004	✗ No statutory basis. Members however may pursue similar remedies in the context of a winding-up petition on the just and equitable ground under Section 92(e) of the Cayman Islands Companies Act.	✓ Only shareholders who do not have control of the company and are otherwise unable to remedy any prejudice and discrimination suffered are entitled to apply under Section 216 of the Companies Act (Cap. 50)
Requirements	Company's affairs have been conducted in a manner unfairly prejudicial to the interests of one or more members, including but not limited to:	✓	✓	✓		✓
	• Dilution of minority shares • Denial of access to company information • Improper failures to pay dividends/ payment of excessive remuneration; • Breaches of the articles/ shareholders' agreements; • Mismanagement that results in large-scale financial loss arising					
	An actual or proposed act or omission of the company is or would be prejudicial.	✓	✓	✓		✓
Relief	Restraining the continuance of the conduct of the company's affairs	✓	✓	✓ Including setting aside any decision/ action taken by the company/ directors found to be in breach of the Business Companies Act, 2004 or the company's articles		✓
	Requiring the doing of an act that the company has omitted or proposed to omit	✓	✓	✓ Including the rectification of company records		
	Ordering proceedings brought in the company's name against any person	✓	✓	✓		✓ (Civil proceedings)
	Appointing a receiver/ manager over the company's property and/or business	✓	✓	✓		
	Regulating the conduct of the company's affairs in the future	✓	✓	✓		✓
	Purchasing of the shares of any member of the company by another member	✓	✓	✓		✓
	Purchasing of the shares of any member of the company and the corresponding reduction of the company's capital	✓	✓	✓		✓
	Paying of damages and any interest	✓	✓	✓		
Additional considerations	The following factors may persuade the Court to dismiss the application: • Refusal by the petitioner of a fair offer to purchase its shares. • Express provision for an exit route in the company documents • Petitioner's conduct • Delay in presenting the petition	✓	✓	✓		✓