

HK CFA Explains Sufficient Connection to Wind Up a Foreign Company on the Just and Equitable Ground

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The Hong Kong Court of Final Appeal (CFA) delivered its judgment in [*Kam Leung Sui Kwan v Kam Kwan Lai & Ors*](#) [FACV 4/2015](#) on November 11, 2015. The case concerned two brothers' disputes over their family business, including the well-known Yung Kee Restaurant, founded by their late father. The CFA overturned the decisions of the courts below in relation to the appellant's winding up petition and held that there was sufficient connection between the BVI ultimate holding company and Hong Kong to wind up the company on the just and equitable ground. The CFA then made a winding up order against the company with a 28-day stay to allow the parties to consider buy-out options.

This is a welcome decision to shareholders in Hong Kong seeking to wind up foreign holding companies with underlying businesses and/or assets in Hong Kong. The CFA's judgment provides important guidance on the approach to be taken when a court is called upon to exercise its discretion to make a winding up order against a foreign company on the just and equitable ground. The CFA's approach seeks to reflect the nature of the dispute and the purpose for which the proceedings are brought in a shareholders' petition.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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