

ENFORCEMENT OF CORPORATE RIGHTS

公司权利的行使

Resolution of internal corporate rights
The common law rule in *Foss v. Harbottle*
Statutory Derivative Action
Winding up
Administrative remedies
Position in PRC

RESOLUTION OF INTERNAL CORPORATE DISPUTES

公司内部纠纷的决议

Best interest of the company and the shareholders ?

Litigation, mediation coupled with conciliation

8.2, 8.6

THE RULE IN *FOSS v HARBOTTLE*

FOSS v HARBOTTLE—案中的规则

Up to the company to take action against the wrongdoers

Decision to take action in the name of the company lies with either the Board of Directors or GM

Action against third party and against a director for breach of fiduciary duties

The proper plaintiff rule 8.10 ,8.25

REPRESENTATIVE ACTION

代表诉讼

A minority shareholder or a group of minority shareholders against the wrongdoers in control of the company.

Key words: FRAUD CONTROL 8.28

Court has the discretion.

No unreasonable lapse of time & unclean hands

Representative action is a common law “derivative” 8.33

STATUTORY DERIVATIVE ACTIONS

法定衍生诉讼

Minority action instituted by minority shareholders on behalf of the company to redress a wrong done to a company

Difficult or impossible if majority of the independent minority shareholders oppose ,8.41

England: S.370, Companies Act 2006

Company is named as a nominal defendant or as a co-plaintiff is approval is given by the board of directors

DERIVATIVE ACTIONS IN S'PORE & CANADA

新加坡与加拿大的衍生诉讼

Leave of the court

Action on behalf and in the name of the company

Court has the discretion to name any other person as the proper person to make the application

8.47, 8.48

REPRESENTATIVE ACTION

代表诉讼

Wrong done to the company

Must be member at the time of the court action and not at the time of the wrong doing

Financial concerns and legal costs

Damages to the company and not to him

No derivative action if there has been ratification by general meeting in compliance with the articles of association

WINDING UP: OPPRESSION & JUST & EQUITABLE PRINCIPLES

清算：压迫、公平与衡平法原则

Difficult to get a winding up order if the articles of association have been reasonably observed

Key words: *Unfairly prejudicial S.459(1) Companies Act 1985*

Best solution to resist an application for winding up is to buy out of the petitioner's shares at fair value. 8.64

ADMINISTRATIVE MEASURES

行政措施

Appointment of inspectors by Secretary of State where is fraud to make unannounced visits

Powers of the Secretary of State upon receipt of the report:
Criminal prosecution, disqualification as directors or even winding up in the public interest

DERIVATIVE ACTIONS IN CHINA

中国的衍生诉讼

S.150 and s.152 of the PRC Company Law 2005

Plaintiff: 1% of the total shares of the company for
180 days

Defendants: wrong doers plus other directors,
supervisors, senior officers of the company

Company: named either as a defendant or a third
party

WINDING UP & ADMINISTRATIVE ACTIONS IN CHINA

中国法下的清算与行政诉讼

Article 183 of the Chinese Company Law: Shareholders who control 10% of the voting rights

State Administration for Industry & Commerce “SAIC”:
Revocation of licence
Fine

THANK YOU

谢谢

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