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Winding-Up On Just & Equitable Grounds:
What Does It Entails?





i. Introduction

Section 465(1)(h) of the Companies Act 2016 provides the Court with the power to wind up a company on just and equitable grounds. While this ground is not dependent on establishing insolvency, it is often used as an additional or alternative ground. It is possible to wind up a company on just and equitable grounds despite it being solvent, if there are satisfactory reasons for the Court to exercise its discretion and form an opinion that it is just and equitable to order a winding up. However, this provision does not define or lay out examples of the circumstances that can constitute just and equitable grounds. Therefore, in this article, we will explore the legal position in relation to this provision, including examples of circumstances that are suitable and unsuitable for Section 465(1)(h) to be applied.

ii. Circumstances that constitute a just and equitable ground

One circumstance that may justify winding up a company is the total breakdown of mutual trust and confidence between shareholders. In **Poh Bee Bee v Brand Speaks Sdn Bhd & Ors**¹, the High Court of Kuala Lumpur allowed the winding up of a company due to a loss of mutual trust and confidence between shareholders, as well as a lack of probity and honesty in the conduct of the director/shareholder. This decision shows that the breakdown of mutual trust and confidence can be a just and equitable ground for winding up a company, especially when it is coupled with a lack of probity and honesty in the company's management.

Further, the Court of Appeal in **Gulf Business Construction (M) Sdn Bhd v Israaq Holding Sdn Bhd**² held that the following circumstances can be constituted as just and equitable grounds:

- (a) Where the substratum of the company has gone;*
- (b) Where the company's main object for its existence has lapsed;*
- (c) Where the principal object of setting up the company can no longer be achieved;*
- (d) Where the company's only business is ultra vires the company;*
- (e) Where the company is carrying on its business at a loss, and the remaining assets of the company are insufficient to pay its debts;*
- (f) Where there is no reasonable hope of ultimate profit for the company;*

¹ [2021] MLJU 2472

² [2010] 5 MLJ 34



- (g) Where the relationship of the parties in the company has broken down irretrievably;*
- (h) Where there is a lack of confidence among the shareholders that threatens the very existence of the company; and*
- (i) Where the winding up of the company would open the door to investigate the misconduct of the directors or promoters of the company.*

iii. Circumstances that that do not constitute a just and equitable ground

In **Tan Keen Keong v Tan Eng Hong Paper & Stationery Sdn Bhd & Ors** and other appeals³, the Federal Court held that illegality alone is not sufficient to justify winding up a company. Instead, winding up should only be considered when all other remedies have been exhausted, unless the said illegality or violation of law shall never be rectified without winding up the company. This decision emphasizes the importance of balancing the interests of innocent stakeholders against the need to wind up a company.

In **Dato' Ting Check Sii v Datuk Hj Mohammad Tufail Mahmud & Anor**⁴, the Court held that certain circumstances are not capable of constituting just and equitable grounds for winding up a company. These may include allegations of mismanagement or misappropriation of funds by directors, quarrels and groupings among shareholders, general or mere allegations of oppression of minority shareholders, the substratum not wholly gone, and the company running at a loss. This decision highlights that not all circumstances can justify winding up a company under just and equitable grounds. That being said, the Court has wider roles in assessing whether winding up of a company is a just and equitable solution for the shareholders. In submitting the petition to wind up under this particular ground, the applicant is expected to submit and proof their allegations while arguing that continuous existence of the company is no longer viable and may cause significant challenges or difficulties to the shareholders.

iv. Conclusion

Winding up a company under just and equitable grounds is a serious matter that should be approached with caution. Despite the broad and extensive nature of the provision, the Court will examine the facts of each case carefully and determine whether there is no other avenue for the petitioner to be remedied other than winding up of the Court. Based on the foregoing, the circumstances that are capable to constitute a just and equitable are often when there is no other remedy available and that the company has no longer able to exist and serves its purpose as intended during its incorporation.

³ [2021] 3 MLJ 914

⁴ [2008] 7 CLJ 453

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