

Case Summary (3)

Re : Tai Wo Tong Pharmaceutical (Hong Kong) Co. Ltd.

HCMP Nos. 2476, 2477 and 2478/2013

Date of Judgment : 2 May 2014

1. This case concerned the applications by 3 related companies for orders under section 122(1B)(a) of the former Companies Ordinance (Cap. 32) extending time retrospectively for the laying of audited accounts before the companies at their annual general meetings respectively. The holding company of the 3 companies was then engaged in a listing project.
2. The breaches in respect of all 3 companies were similar and found by the court to be technical and of a minor nature.
3. The court referred to and agreed with the principle that the three factors [see Note below] summarised in *Re Sanliuyidu (Hong Kong) Sports Goods Co. Ltd* [2009] 4 HKLRD 708 were generally but not necessarily the only matters to be looked at by the court in considering applications under section 122(1B) and stated that while on the evidence of this case it was satisfied that the breaches were inadvertent and no prejudice had been caused to the shareholders, it did not automatically follow that the court should exercise its discretion to remedy such breaches. The court further stated that the real question to be addressed was whether there were reasons that rendered it appropriate for the court to do so and that the discretion was there to be exercised for some discernible legitimate purpose.
4. The court decided that there was no discernible legitimate reason to exercise its discretion in this case, and the applications were refused.

[Note :

The three factors are:

"(1) Whether the shareholders were aware of the financial position of the company in question and thus were not prejudiced by non-compliance;

(2) Whether the default was inadvertent; and

(3) Whether the court was satisfied that the company would comply with the obligation to lay its profit and loss accounts or income and expenditure statements before general meetings in future."]
