

HONG KONG / JUDGMENT

RE INFORMATION SECURITY ONE LTD

COURT

Court of First Instance

DECIDED

13 August 2007

CASE / FILE NUMBER

HCCW212/2007

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bjbj HCCW 212/2007 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE COMPANIES (WINDING-UP) NO. 212 OF 2007

IN THE MATTER of INFORMATION SECURITY ONE LIMITED and IN THE MATTER of the
Companies Ordinance, Cap. 32

Before: Hon Kwan J in Court Date of Hearing: 13 August 2007 Date of Judgment: 13 August 2007

J U D G M E N T

This winding-up petition was brought by the company in compulsory liquidation acting by its joint and several liquidators. The company concerned is Information Security One Limited (the Company). It was incorporated as an exempted company in the Cayman Islands under its former name on 19 September 2000 and was registered in Hong Kong as an oversea company on 15 June 2001. The Company is an unregistered company under section 326(2) of the Companies Ordinance, Cap. 32. On 15 June 2006, a minority shareholder of the Company, Softbank Asia Net-Trans (No.3) Fund petitioned to wind up the Company in the Grand Court of the Cayman Islands. On 8 November 2006, the Company was ordered to be wound up by the court in the Cayman Islands and liquidators were appointed. The major complaint in the petition by the minority shareholder was that its interest as a minority shareholder had been unfairly prejudiced by the actions of those in de facto control, being the chairman and the largest shareholder. The liquidators initiated this new liquidation in Hong Kong to seek the assistance of the Hong Kong court to recover assets within its jurisdiction and to invoke the procedure under section 221 for the examination of various directors. The Company relied on section 327(3)(a) and/or (c), namely that the Company has ceased to carry on business or is carrying on business only for the purpose of winding up its affairs, and/or it is just and equitable that the Company be wound up. It seems

to me that it is not necessary to consider the complaints to found the petition for winding up on just and equitable ground in the Cayman Islands, as the ground under section 327(3)(a) would suffice. Authorities for the proposition that an ancillary liquidation may be brought in Hong Kong in respect of a foreign company where there is principal liquidation in its place of incorporation are found in *Re Irish Shipping Limited* [1985] HKLR 437 and *Re Zhu Kuan Group Company Limited*, HCCW No. 874 of 2003, 2 August 2004, Barma J. In *Re Zhu Kuan Group Company Limited*, Barma J. adopted the test in *Re Real Estate Development Company* [1991] BCLC 210 for the core elements necessary to found jurisdiction to wind up an unregistered foreign company, see paragraphs 22 and 26. The core elements are as follows:

- (1) there had to be sufficient connection with Hong Kong, but this did not necessarily have to consist in the presence of assets within the jurisdiction;
- (2) there must be a reasonable possibility that the winding-up order would benefit those applying for it; and
- (3) the court must be able to exercise jurisdiction over one or more persons interested in the distribution of the company's assets. The above criteria have been satisfied in this instance. Although the Company had declared that it ceased to have a place of business in Hong Kong as of 8 November 2003, there is evidence before the court that the Company's central management remained based in Hong Kong and that prior to the appointment of the liquidators, its principal place of business was in Hong Kong. One of the 2 executive directors who is also a shareholder is resident in Hong Kong. There are assets within Hong Kong. There is cash standing to the credit of the Company with the Bank of China Hong Kong branch of at least HK\$40,697.10 and US\$3,286.87. Further, the Company owns 2 companies incorporated in Hong Kong - Information Security One (Hong Kong) Limited and Internet Security Solutions Limited. The former has presented a petition to wind up itself. The latter has commenced proceedings against a company incorporated in the Cayman Islands and against other individuals. There are potential actions against a company incorporated in the British Virgin Islands called Best Most Holdings Limited and the liquidators wish to rely on section 221 to examine directors on issues concerning Best Most Holdings Limited. There is sufficient nexus with Hong Kong for the court to exercise its discretion to wind up the Company and there is reasonable possibility of benefit accruing to the creditors, whether local or foreign, from the making of a winding-up order. I therefore order the Company to be wound up. The costs of the Company incurred in these proceedings are to be paid out of its assets, including the costs reserved in the hearing before a Master on 8 August 2007. (S Kwan) Judge of the Court of First Instance High Court Mr William Wong, instructed by Messrs Tanner De Witt, for the Petitioner Miss Vivian Yeung, for the Official Receiver PAGE - 1udk 1udk H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V i\$&`G T![> setup hccw (for Susan Kwan only).dot setup Microsoft Word 9.0 Judiciary Hong Kong Title Microsoft Word Document MSWordDoc Word.Document.8

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