



# In The Supreme Court of Bermuda

## CIVIL JURISDICTION

2019: No. 319

**IN THE MATTER OF CENTRALAND LIMITED**

**BETWEEN**

**CIM-X LIMITED**

**PLAINTIFF**

**-and-**

- (1) CENTRALAND LIMITED**
- (2) EMBER VISION LIMITED**
- (3) MARBLE FOCUS LIMITED**
- (4) PICKARD ENTERPRISES LIMITED**
- (5) LI WEI**

**DEFENDANTS**

*Oppressive and prejudicial conduct by majority shareholders; buy-out order under s 111 Companies Act 1981; interest and quasi-interest on award; defendants barred from defending action*

**DATE OF HEARING: 31 MARCH 2026**

**DATE OF JUDGMENT: 30 APRIL 2026**

*Appearances*

*Matthew Watson of Carey Olsen Bermuda Limited for the plaintiff*

No appearances for the defendants who have been barred from defending the proceedings as a result of their respective and persistent failures to comply with the court's orders for disclosure

**JUDGMENT OF MARTIN J**

## Introduction

1. This is the court's judgment in respect of a petition under section 111 of the Bermuda Companies Act 1981 ("the BCA") seeking relief against the unfair prejudice alleged to have been suffered by the petitioner in its character as a member of the company on account of the actions of the majority shareholders. The petitioner<sup>1</sup> seeks an order requiring the first defendant ("the company") and/or the other defendants to buy out the petitioner's shares at a value that fairly represents the value of its shares in the company.
2. The company is a holding company registered in Bermuda whose principal activity is to hold the shares in subsidiary companies which in turn own and manage property holdings in the People's Republic of China ("the PRC"). The principal subsidiary is called Piaget Management Limited ("Piaget") which is wholly owned by the company. Piaget in turn wholly owns Everwell International Holdings Limited ("Everwell") which in turn wholly owns Zhengzhou Huanghe Great View Royal Garden Company Ltd ("Zhengzhou") which wholly owns an unnamed property group in the PRC as well as other (also unnamed) property holding companies which were acquired after the delisting transaction described below.
3. The second to fourth defendants to these proceedings are companies owned and controlled by the fifth defendant, and these defendants hold between them 89.6% of the shares of the company<sup>2</sup>. The fourth defendant was the vehicle through which the fifth defendant launched the offer to acquire the shares of the company. The fifth defendant is the ultimate beneficial owner of the vast majority of the company's issued ordinary shares (i.e. 89.6%) and is the controlling mind and spirit behind the group, and when he was a director of the company, he was the person responsible for making all of the executive decisions as to the conduct of the company's affairs. The second to the fifth defendants have not actively participated in these proceedings but the fifth defendant has filed affidavit evidence explaining the company's conduct and has given evidence as to the matters complained of by the petitioner, the substance of which will be considered in more detail below.
4. The proceedings followed an unusual course. The company (and the other defendants) failed to comply with the court's orders requiring disclosure of relevant documents under the ordinary discovery procedures that apply to proceedings of this kind. Their respective failures ultimately resulted in the court making an order that required compliance with its orders to give disclosure within a period of time, in default of which the court ordered that the company and the other defendants were to be debarred from defending the proceedings ("the Unless Order"). The defendants ignored the court's order and were consequently debarred from defending the proceedings.

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<sup>1</sup> Although the pleadings refer to the 'plaintiff' and the 'defendants', in this judgment the court has referred to 'the petitioner' for consistency and to simplify comparison with other cases of unfair prejudice in which the references are to the petitioner (and not the plaintiff). The court has kept the references to the 'defendants' because this reflects the pleadings although strictly they are 'respondents' to the petition.

<sup>2</sup> This is averred to by Mr Li Wei in his first affirmation dated 8 October 2019 at paragraph 1. The Register of Members of the company that was produced in the proceedings dated 11 April 2019 does not reflect these holdings (Hearing Bundle ("HB") 334-343), but it is to be appreciated that one of the complaints by the petitioner is that the company's records have not been faithfully and accurately kept.

5. In addition, shortly before the trial of the action the company was struck off the register. Although the company had initially instructed Bermuda counsel to act on its behalf, and participated in the defence of the proceedings, the company had repeatedly failed to pay meet its annual filing requirements or pay its annual registration fees and was (eventually) struck off the register in January 2026. The petitioner therefore had to apply to the court to restore the company to the register in order to bring the present proceedings to trial and had to give certain undertakings to the court in relation to the restoration, which will be referred to in the judgment below.
6. Although the company and the defendants had been barred from defending the action as a result of their respective failures to comply with the Unless Order, the court could not proceed simply to enter a default judgment but proceeded to hear and determine the matter on the evidence that the petitioner has presented at a trial which was conducted in open court<sup>3</sup>. In addition to the petitioner's evidence, the court also took into account the admissions in the company's defence and the averments made by the fifth defendant in his affirmations which have been filed in the proceedings prior to the making of the Unless Order. All of the relevant evidence is summarised and assessed below.

### **Summary and disposition**

7. On the basis of the uncontested evidence which the court has evaluated and assessed for credibility, consistency and reliability, the court is satisfied (i) that the company's affairs have been conducted in a manner which is unfairly prejudicial to the interests of the plaintiff in its character as a member (ii) that the matters complained of would justify the making of a winding up order on the ground that it is just and equitable to wind up the company and (iii) that it would unfairly prejudice the petitioner to wind up the company. The court has decided that the appropriate relief to be granted in the circumstances of the case is to order the defendants jointly and severally to purchase the petitioner's 97,500,000 ordinary shares in the company at a price of SGD 0.50 per share. In light of the lack of current information concerning the company's financial position, the court has assessed this value to be inclusive of any applicable minority discount.
8. The court has decided to award simple statutory interest on the purchase price at a rate of 3.5% per annum from the date of the issue of the petition. The petitioner is also to give credit for the sums received by the petitioner from the defendants in the course of the progress of these proceedings. The court has ordered that the petitioner's costs of the proceedings should be paid by the defendants such costs to be taxed and assessed on the indemnity scale.

### **Background summary**

9. The relevant background facts are set out in the first affirmations of Mr Tang Boo Teck (Mr Tang) dated 29 July 2019, Mr Li (dated 8 October 2019) and Mr Loh (dated 31 October 2019). The court's summary of the background facts is taken from the recitation of the facts given in these affirmations, a large amount of which is undisputed. Any areas of significant dispute are noted in the summary below. The second affirmation of Mr Tang dated 16 February 2026 relates to issues of valuation, which will be relevant to the court's assessment of the evidence. The

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<sup>3</sup> Following the approach explained in **Times Travel v Pakistan International Airline Group** [2019] EWHC 3732 (Ch).

scope and effect of the evidence in Mr Tang's second affirmation will be considered separately. These are the principal witnesses in the case.

10. It is appropriate to record that the affirmations filed subsequently by Mr Tang Kay Hwa (dated 22 April 2025) Mr Julian Noble (dated 9 May 2025) Mr Nicholas Lee (dated 29 May 2025) Mr Wang Jingtian (dated 22 September 2025) and Ms Kaleann Thomas (dated 29 January 2026) relate to interlocutory matters and the Unless Order, and do not impact the summary of the background facts that gave rise to the claim or affect the assessment of the evidence of the principal witnesses.
11. The petitioner was an investor in the company when it was a publicly traded company listed on the Singapore Stock Exchange ("the SGX"). In November 2011 the petitioner held 160,000,000 ordinary shares representing 8.67% of the total issued share capital of the company. On 12 August 2011 the fourth defendant made an offer to purchase a certain number of the ordinary shares of the company at a price of SGD 0.40 per share with a view to acquiring a sufficient majority of the shares to take the company private and delist the company from the SGX. The sole director of the fourth defendant was the fifth defendant, Mr Li Wei (Mr Li). Mr Li Wei approached Loh Kim Kan David (Mr Loh) who is a substantial shareholder in the petitioner, for assistance in achieving the delisting. Mr Li and Mr Loh had been business associates and Mr Loh knew the identity of some of the minority shareholders in the company whose support for the fourth defendant's offer would likely be required. Mr Loh was told by Mr Li that the company did not have sufficient capital to purchase the shares of all the minority shareholders' shares in the company and a certain number of minority shareholders would need to agree to reject the offer and retain their shares in the company as a remaining minority shareholders after the completion of the fourth defendant's acquisition of shares.
12. The petitioner's case is that as a result, Mr Li and Mr Loh agreed that in consideration for the plaintiff agreeing to reject the fourth defendant's offer and retaining its shares in the company, Mr Li would put in place an 'exit strategy' to ensure that any shareholders whose shares were not acquired by the fourth defendant in the offer would be bought out within 3 to 5 years of the fourth defendant's acquisition. As part of this understanding, the petitioner alleges that Mr Li assured Mr Loh that following the acquisition of the shares by the fourth defendant, all minority shareholders would be kept informed of the company's affairs, proper governance of the company's affairs would be observed and amendments would be made to the company's bye laws entitling the minority shareholders to additional safeguards. The company and Mr Li deny that there was any such understanding about an 'exit strategy'. This is the only substantial point of disputed evidence which will be discussed in more detail below.
13. By October 2011, a few minority shareholders including the petitioner agreed to support the fourth defendant's privatisation proposal and remain shareholders of the company. These shareholders undertook to vote in favour of the privatisation by voting in favour of the delisting and no to accept the fourth defendant's offer ("the Undertaking Shareholders"). The fourth defendant's offer proceeded and was accepted by all shareholders except the Undertaking Shareholders.

14. Following the completion of the fourth defendant's acquisition, the company's bye laws were amended in several respects. These changes included the provision for (i) a right to nominate one director to the board for any shareholder who held 10% of the ordinary shares<sup>4</sup> (ii) a restriction on the majority shareholders from disposing of any ordinary shares without the approval of the minority shareholders<sup>5</sup> and (iii) the requirement for a supermajority vote of 90% of the shareholders in respect of certain decisions that affect the management and administration of the company referred to as "the Reserved Matters"<sup>6</sup>. The result of the acquisition was that second to fourth defendants control 89.6% of the ordinary shares of the company. This is significant in terms of the manner in which the threshold for shareholder approval was set: it was self evidently intended to ensure that all of the minority shareholders would have the right to be consulted on any of the Reserved Matters, although it would not block the majority shareholders from taking action if a small percentage of the minority supported the action proposed.
15. These changes reflected the implementation of the exit strategy and were intended to provide the minority shareholders with a meaningful right to participate in the decisions which affected their investment. This was said by the petitioner to be the implementation of a quasi-partnership management structure, ensuring the participation of the minority in the management of the company's affairs.
16. However, since the implementation of these changes the company and its board have failed to discharge the ordinary statutory obligations in numerous respects including:
- (i) The failure to hold annual general shareholders meetings ("AGMs") since 2011.
  - (ii) The failure to comply with orders from the Registrar of Companies dated 15 June 2016 and 29 September 2017 to hold AGMs to put bring the company into compliance with its obligations the Bermuda Companies Act 1981.
  - (iii) The failure to provide the shareholders with statutory financial statements and audit reports from 2011 onwards.
  - (iv) The failure to appoint auditors.
  - (v) The failure to keep the register of members and register of directors and officers up to date and accurate.
  - (vi) The failure to keep proper minutes of board meetings and the appointment of officers.
  - (vii) The failure to comply with the requirement to elect directors on an annual basis.
17. In addition, the board has purported to approve Reserved Matters without seeking the consent of 90% of the shareholders, contrary to the requirements of the amended bye laws. These have included the failure to approve an annual business plan, and the removal and replacement of the CEO of the company<sup>7</sup>, breaches which have not been disputed. There are other potential

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<sup>4</sup> Bye law 85 (2A).

<sup>5</sup> Bye laws 46 A and B.

<sup>6</sup> Bye law 112A.

<sup>7</sup> See paragraph 65 d of the first affirmation of Mr Tang Boo Teck dated 29 July 2019. These allegations are not denied by Mr Li in his first affirmation dated 8 October 2019.

breaches of the obligation to obtain minority consent under the Reserved Matters the general nature of which has been admitted by the company in its defence, but of which no details are given. For the purposes of the court's analysis, the absence of specific details is unimportant because the general nature of the conduct alleged (namely breaches of these bye laws) has been accepted by the company<sup>8</sup>. These have included (a) undertaking mergers and/or dispositions of substantial assets (b) incurring indebtedness above an stated threshold (iii) giving guarantees or indemnities in respect of liabilities (c) initiating litigation in respect of claims or liabilities over a stated value (d) making investments in excess of a stated amount (e) changing the number of directors and (f) changing the CEO. The admission of these breaches of bye law 112A show that the protections afforded by the amended bye laws have not been respected or observed by the company and the nature of these breaches are not obviously trivial or insignificant.

18. Mr Li has sought to explain these breaches as being due to a lack of experience and understanding, a lack of staff support and auditing delays<sup>9</sup>. However, these deficiencies having been brought to the company's (and Mr Li's attention), no action has been taken to remedy them and the repeated failures to pay the annual registration fees resulted in the company being struck off in 2026, requiring the petitioner to restore the company to the register in order to pursue the present claim. As part of the restoration to the register, the petitioner has undertaken to ensure that the outstanding annual registration fees due to the Bermuda government will be repaid as a priority out of any recoveries made by the petitioner against the defendants.
19. Mr Li has denied that there was an 'exit strategy' plan ever agreed either between himself and Mr Loh or between the company and the petitioner as to the repurchase of the petitioner's shares or any other minority shareholder's shares<sup>10</sup>. First, Mr Li says that there never was any such conversation or agreement. Second, Mr Li refers to a Board Circular dated 8 October 2011 in which the directors explain to the shareholders the background to privatisation proposal and in which the express representation is made at section 4.6<sup>11</sup> that

*"The Offeror Concert Party Group, the Company and the Undertaking Shareholders have confirmed that there is no implicit or express understanding amongst themselves that the Offeror will make another exit offer for the Undertaken Shares, whether at the Exit Offer Price, or at any other price."*

20. Mr Li also explained that this representation was expressly relied upon by the independent financial advisors in their fairness opinion in support of the transaction<sup>12</sup>. Mr Li complains that the assertion that there was such an implicit or express understanding that there would be an exit strategy within 3 to 5 years is (a) factually incorrect and (b) contrary to the express confirmation given by the petitioner at the time of the privatisation transaction.
21. It is also alleged by the petitioner that the company has refused to provide the petitioner with any financial information about the company or the value of the holdings the company has in Piaget and Everwell and the downstream subsidiaries, or the values of the properties ultimately

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<sup>8</sup> See paragraph 64 of the company's Defence.

<sup>9</sup> See paragraphs 52-4 of Mr Li's first affirmation dated 8 October 2019.

<sup>10</sup> See paragraphs 42-51 of Mr Li's first affirmation dated 8 October 2019.

<sup>11</sup> HB 720

<sup>12</sup> See paragraph 9.5.3 of the fairness opinion HB 764.

owned by their subsidiaries. The downstream subsidiaries have not been described by name and no details have been provided as to their places of incorporation or registered addresses or who serves on their respective boards<sup>13</sup>.

22. Taken with the failure to hold annual general meetings at which the shareholders are entitled to receive the report of the board and the presentation of audited financial statements (unless waived), the petitioner complains that there is no disclosure of any meaningful information about the assets which the group owns, their value, the income that is derived that may be available for dividend, or how the business of the group is being managed.

### **The petitioner's claim**

23. Against this background, the petitioner seeks relief under section 111 of the BCA 1981 to the effect that the conduct of the defendants as majority shareholders and Mr Li in particular, as the admitted controlling mind and spirit behind the majority shareholders, would justify the court in making an order to wind the company up on the just and equitable ground, but that to make that order would be unfair to the petitioner, so that the appropriate relief is for the court to require the defendants to purchase the petitioner's shares at fair value, with no minority discount.
24. The two essential limbs of the claim rest on (i) the breach of the terms of a quasi-partnership established between Mr Li and Mr Loh or the company and the petitioner, or the majority shareholders and the petitioner that the company would repurchase the petitioner's shares at fair value and (ii) the company's repeated and persistent breaches of the bye laws, the regulatory requirements for registration and compliance with statutory duties to convene annual general meetings and present financial statements to the shareholders. It is submitted by the petitioner's counsel that either individually or taken together these failures would justify the making of a winding up order and are therefore sufficient to justify the making of an order requiring the majority shareholders to acquire the petitioner's shares at fair value.

### **The relevant legal principles**

25. It is convenient to summarise here the broad legal principles that apply in a claim under s111 of the BCA 1981 and then go on to apply those principles to the facts that have been produced in support of and those which militate against relief, taking into account that the defendants have been debarred from defending the claim. The court makes this latter observation because it should be appreciated that while the court can take into account the facts admitted by the defendants in support of the petitioner's claims, the court cannot ignore any factual matters or legal considerations which might weigh against granting relief, even though the defendants have been debarred from participating in the proceedings.
26. The relevant terms of section 111 are familiar and well known to company law practitioners, but it is convenient to set them out as a reference point for the court's analysis and application of those provisions to the facts of this case.

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<sup>13</sup> A representative organogram has been produced by Mr Li but the details disclosed in it are scant: HB 231.

27. Section 111 provides (so far as material):

***Alternative remedy to winding up in cases of oppressive or prejudicial conduct***

*(1) Any member of a company who complains that the affairs of the company are being conducted or have been conducted in a manner oppressive or prejudicial to the interests of some part of the members, including himself, or where a report has been made to the Minister under section 110, the Registrar on behalf of the Minister, may make an application to the Court by petition for an order under this section.*

*(2) If on any such petition the Court is of opinion—*

*(a) that the company's affairs are being conducted or have been conducted as aforesaid; and*

*(b) that to wind up the company would unfairly prejudice that part of the members, but otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up,*

*the Court may, with a view to bringing to an end the matters complained of, make such order as it thinks fit, whether for regulating the conduct of the company's affairs in future, or for the purchase of the shares of any members of the company by other members of the company or by the company and, in the case of a purchase by the company, for the reduction accordingly of the company's capital, or otherwise.*

28. There are three elements that must be satisfied in order for a petitioner to avail himself of the court's jurisdiction under this provision. The starting point is that the petitioner must show that the facts relied upon in support of the petition show that the company's affairs are being conducted (or have been conducted) in a manner which is oppressive or prejudicial to some part of the membership of the company of which the petitioner is a part. Usually this requires the petitioner to show that his rights as a shareholder have been adversely affected, but the categories of oppressive conduct are not closed. Then the petitioner must show that the nature and extent of the conduct alleged and proved would be sufficient in his character as a member (i.e as a shareholder) of the company in making a winding up order on the just and equitable ground under section 161 (g) of the Companies Act 1981<sup>14</sup>. Finally, the petitioner must show that it would be unfairly prejudicial to his interests (and any other members who are similarly affected) for the court to wind the company up, and that some other relief is appropriate to remedy the unfairly prejudicial conduct that has been proved.

29. Thereafter the court must consider what remedy or relief is appropriate and sufficient to meet the justice of the case. The scope of available relief is unconstrained and may involve making orders against the responsible parties to stop the conduct, or ordering them or the company to take steps to remedy the breaches of the company's constitution, or may order the persons responsible for the offending conduct to purchase the minority shareholder's shares on terms or at a price that the court considers appropriate to meet the justice of the case, or make other orders.

30. It is relevant to note at this stage that these requirements were based on the equivalent provision in section 210 of the English Companies Act 1948 which was expressed in (almost) exactly the same terms, and the Bermuda court has held that section 111 of the Bermuda Companies Act

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<sup>14</sup> See eg **DE Shaw Oculus Portfolios LLC et al v Orient-Express Hotels Ltd et al** BM 2010 SC 25.

version comes to mean the same thing as section 210 of the English 1948 Act<sup>15</sup>. Therefore, the English cases which were decided under those provisions are directly relevant to the approach the Bermuda court should take in interpreting and applying those provisions.

31. However, the English statute has been amended three times<sup>16</sup> since then and now the test in England differs from the Bermuda provision in some potentially significant respects. First, that the English statute no longer requires the court to be satisfied that the conduct would justify a winding up order on the just and equitable ground before granting relief. Second, Professor Hollington explains in his leading text<sup>17</sup> that the use of the term “oppressive” was removed from the English counterpart following the recommendations of the Jenkins Committee Report<sup>18</sup>. The Jenkins Committee disapproved of Lord Simonds’ *dictum* in **Scottish Co-operative Wholesale Society Limited v Meyer**<sup>19</sup> that ‘oppressive’ imports the notion of “*harsh, burdensome, wrongful*” conduct. The Jenkins Committee recommended the adoption of the term ‘unfairly prejudicial’ conduct which imports the meaning of “*a visible departure from the standards of fair dealing, and a violation of the conditions of fair play on which every shareholder who entrusts his money to a company is entitled to rely*”<sup>20</sup>. The more recent English cases therefore need to be read with an eye to any differences that might be relevant to cases in Bermuda which are still governed by the earlier iteration of the provisions. Based on the history of its amendments in England, section 111 of the Bermuda Act may arguably connote that a higher level of misconduct is required to attract the relief afforded by its provisions than is required under its present English counterpart.
32. One of the earliest examples of the application of these principles to a case of oppressive conduct was in **Ebrahimi v Westbourne Galleries Limited**<sup>21</sup>, a claim that was brought under section 210 of the English Companies Act 1948. This case has been referred to in most (if not all) subsequent cases of a similar kind. The facts of that case involved a closely held company owned by the members of the same family that was established as a corporate vehicle to carry on what had been a small family business and had been operated on a common understanding that the principal shareholders would have a right to participate in the management of the business. The House of Lords took the view that on the facts of the case the company had been established and run as a quasi-partnership in which the members of the company had a right to participate in the management in the same way that partners have such a right, and that the exclusion of one of the principal shareholders from participation in management as a director on the board was conduct which was oppressive and unfairly prejudicial to that member in his character as a shareholder.

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<sup>15</sup> In **Thomas and Swan v Fort Knox Bermuda Limited et al** BM 2014 SC 13 at [58] Hellman J held that the omission of the word ‘unfairly’ in the Bermuda section did not alter the meaning of the provision because the words ‘oppressive’ and ‘prejudicial’ naturally imply unfairness.

<sup>16</sup> First in section 75 of the English Companies Act 1980, then by section 459 of the English Companies Act 1985 and later by section 994 of the Companies Act 2006.

<sup>17</sup> *Hollington on Shareholder Rights* (10<sup>th</sup> Ed) at paragraph 7-04.

<sup>18</sup> *Jenkins Report of the Company Law Committee* (1962) Cmnd 1749.

<sup>19</sup> [1959] AC 324 HL.

<sup>20</sup> Explained by Hoffman LJ (as he then was) in **Re Saul D Harrison & Sons plc** [1994] BCC 475,479.

<sup>21</sup> [1973] AC 730.

33. Following that line of authority, (as in this case) many petitioners in cases since then have alleged that the understanding between the shareholders was that the business was established or operated as a quasi-partnership and seek to invoke the court's jurisdiction to grant relief on that basis.
34. It is right to point out immediately that relief under section 111 is not limited to 'quasi-partnerships'. The speeches of Lords Wilberforce and Cross made it clear that critical issue is rather whether the parties had an expectation that their rights were to extend beyond their strict legal rights as shareholders, or whether those rights may be subject to equitable considerations of a personal character between the individuals which might make it inequitable for one member to insist on applying his strict legal rights or to exercising those rights in a particular way. The decision also made clear it is not necessary to show that the actions of the majority were taken in bad faith.
35. Declining to attempt an exhaustive definition or categorisation of the circumstances in which Lord Wilberforce explained that the circumstances in which the court may superimpose equitable considerations

*"...may include one or probably more of the following elements (i) an association formed of continued on the basis of a personal relationship, involving mutual confidence—this element will often be found where a pre-existing partnership has been converted into a limited company; (ii) an agreement, or understanding, that all or some (there may be some "sleeping" members) of the shareholders shall participate in the conduct of the business (iii) restrictions upon the transfer of the members; interest in the company—so that if confidence is lost, or one member is removed from management, he cannot take out his stake and go elsewhere."*

36. As explained above the English provisions have changed and English case law has evolved significantly in the last 50 years in the light of those amendments. More recent statements of the general principles can be found in cases too numerous to catalogue here. Although some of these cases reflect the widening of the relief introduced by the statutory amendments in England referred to above, there is considerable overlap in many of these cases which would doubtless have qualified for relief under the old provisions of section 210 of the 1948 Act. While the English legislature has expressly adopted the standard of 'fairness' in the particular context of the case, unfairness is implicit in the expressions used in the earlier concepts of 'oppressive' or 'prejudicial' conduct which are the elements referred to in Bermuda's section 111. Lord Wilberforce applied the requirements of fairness to give effect to the concept of just and equitable grounds for winding up, and this theme is echoed in the modern English principles<sup>22</sup>.
37. Professor Hollington has distilled the following key principles from the case law<sup>23</sup>:
- a. A complaint of unfairly prejudicial conduct must be directed at the conduct of the company's affairs<sup>24</sup>.

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<sup>22</sup> **O'Neill v Phillips** [1999] 1 WLR 1092 at [5] per Lord Hoffman.

<sup>23</sup> *Hollington on Shareholders' Rights* (op. cit.) 7-10 to 7-13.

<sup>24</sup> In England the statute has been amended expressly to contemplate relief being granted in respect of proposed actions, whereas the Bermuda statute appears to be limited to the conduct which is ongoing or which has already

- b. The shareholder must show that the unfairness alleged is prejudicial to his interests as a shareholder.
  - c. The shareholder must show that the conduct is unfair.
  - d. A shareholder will not ordinarily be able to complain of unfairness unless there has been some breach of the terms on which the shareholder has agreed that the affairs of the company shall be conducted.
  - e. Equitable considerations may make it unfair for the persons conducting the affairs of the company to rely upon their strict legal powers or rights under the company's constitution or other rights in law.
  - f. Unfairness is an evaluative judgment and is context specific, to which the court applies an objective standard.
38. These general principles have been recognised, adopted and applied by the Bermuda court in relation to petitions for relief under section 111 of the BCA 1981 in a number of cases over the years, some of which will be considered in more detail below<sup>25</sup>. It is therefore against these general principles that the court must evaluate the central claims made by the petitioner in this case.

### **The quasi-partnership claim**

39. The petitioner has alleged that the arrangements made by the company to amend its bye laws to give effect to the changes in the minority protections in the bye laws were the result of the agreement to arrange for an 'exit strategy' for the petitioner (and other shareholders who gave undertakings to vote against the privatisation) amounted to the implementation of a 'quasi partnership'<sup>26</sup>.
40. It was submitted that the requirement to consult the minority shareholders on Reserved Matters was intended to guarantee the petitioner the right to participate in the management of the company, and accordingly the failure of the company and/or its management to consult the minority shareholders on those matters amounted to a breach of that quasi-partnership arrangement. It was submitted that this failure attracted the principles of equity described by Lord Wilberforce in *Ebrahimi* cited above, and justified a winding up order, thereby triggering the court's power to award the alternative remedy, namely a buy-out order. Mr Watson wisely did not place the full weight of his submissions on this argument, but it is necessary to address it briefly.
41. The court is not prepared to accept the quasi-partnership argument for several reasons. There is no evidence of any relationship of mutual trust and confidence between the parties before the privatisation bid was made. The company was at that time a publicly listed company with diverse shareholders and the alleged understanding came into being as part of Mr Li's proposed

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occurred. It is of course possible for ongoing conduct to include decisions which have been made but which have not yet been implemented. This is a point which can be left open for decision in the future because it does not arise on the facts of the present case.

<sup>25</sup> See eg *Chiang v Pacific Challenge Holdings Ltd v Kistefos Investments AS* [2002] Bda LR 50 (CA); *DE Shaw Oculus Portfolios LLC et al v Orient-Express Hotels Ltd et al* (supra); *Thomas and Swan v Fort Knox Bermuda Ltd* (supra); *Annuity & Life Reassurance Ltd v Kingboard Chemical Holdings & Ors* [2015] SC Bda 76 Com; *Capital Partners Securities Co Ltd v Sturgeon Central Asia Balanced Fund Ltd* [2018] CA Bda 5 Civ.

<sup>26</sup> Paragraphs 25-31 of the petitioner's submissions.

acquisition of a majority shareholding so that he could effect the privatisation. It was not a small, closely held business where the principal shareholders took part in the management of the business. There was no informal or unspoken understanding between the shareholders, and there was no history or pattern of conduct which could give rise to the kind of circumstances which Lord Wilberforce had in mind.

42. The introduction of the amendments to the bye laws reflected the express and formal arrangements entered into by the minority shareholders for the protection. These were the terms that were agreed, and although they were not respected by the company's management, there is no basis to suggest that the shareholders (including the petitioner) were entitled to rights that were not formally contained in the bye laws. The general starting point is that where parties reduce their agreement to a written instrument, the court will construe that instrument as giving effect to the parties' intentions.
43. It is the absence of formality which is more likely to give rise to the introduction of principles of equity, which may restrain a party from insisting upon legal rights because of an informal understanding or pattern of conduct to the contrary. Indeed, in this case, the petitioner does not seek to enforce anything other than its formal legal rights.
44. Finally, the assertion of the 'exit strategy' claim is directly inconsistent with and contrary to the positive confirmation given by the petitioner that there was no such agreement or understanding which is reflected in the contemporaneous documentation and was one of the statements on which the independent fairness opinion was based. The petitioner sought to avoid dealing with this point by saying that in the absence of cross examination, the petitioner's case should be preferred. The court does not agree that is the correct analysis: the SGX listing rules required full disclosure of any side agreements, and this court cannot allow the petitioner to renege or resile from that assurance in these proceedings.
45. Therefore, and for the several reasons explained above, the court does not consider that the 'quasi-partnership' claim has any merit.

### **Breaches of the laws**

46. However, it is admitted by Mr Li, speaking on behalf of the board and the majority shareholders, that the company has failed to comply with the terms of the bye laws, and has failed to comply with the basic regulatory requirements to keep the company in good standing and to report to the shareholders on an annual basis with detailed financial information (whether audited or unaudited) for a period of about 14 years.
47. The detailed breaches that have been admitted include breaches of the requirements to consult the minority shareholders in respect of the Reserved Matters, which include making investments, giving guarantees, acquiring and disposing of assets, and making changes to the board and management structure.
48. These are not minor breaches or "technical" breaches. The compliance with the basic statutory requirements to present financial statements to the shareholders on an annual basis is fundamental to the rights of shareholders to know and understand how their monies have been invested, managed and applied, and to inform them of what their investment is worth.

49. The management have failed to pay the annual government fees and file annual returns or keep the registers of directors and shareholders current. These failures also represent serious breaches of regulatory requirements, and which have resulted in the company being struck off.
50. Applying the list of principles identified by Professor Hollington and summarised above, all of these breaches qualify as oppressive and (unfairly) prejudicial conduct that would justify a winding up order on the just and equitable ground because (i) the breaches complained of all relate to the conduct of the company's affairs (ii) the conduct is unfairly prejudicial to the interests of the minority shareholders (including the petitioner) in their character as shareholders (iii) the conduct is obviously unfair assessed objectively and (iv) the conduct is in breach of the company's bye laws and the ordinary rights of shareholders as set out in the BCA 1981. The court is therefore satisfied that the court would make a winding up order.

### **Winding up order unfairly prejudicial to the petitioner**

51. However, the court considers that it would be unfairly prejudicial to the petitioner to make that order in the present circumstances, at least for the present time. The court has reached this conclusion for several independent reasons. The first is a practical one. A winding up order would not put an end to the conduct complained of or enable the petitioner to realise its stake in the company.
52. The evidence, such as it is, discloses that the underlying assets held by the subsidiary companies are valuable real property holdings in the PRC. A winding up order at this time would place further burden and expense on the petitioner to appoint a liquidator and seek to take control of the underlying subsidiaries and thereby seek to realise the underlying assets in the PRC to effect an orderly winding up and distribution to the shareholders of their respective shares of the capital value of their holdings. This task is likely to be time consuming and expensive. The court also takes into account that the relative percentage ownership of the shares owned by the petitioner is a very small proportion of the whole. It would be disproportionate to require the winding up of the whole company in order to realise sufficient value to pay out the petitioner's stake in it, unless there really is no alternative.
53. The second reason is that the court has no information on which to base any assessment as to the impact of a winding up order, or how it would affect the realisation of assets which are real property assets (so far as is known) in the PRC the realisation of which is likely to be governed by very different principles than those which apply in common law jurisdictions with which this court has familiarity.
54. The third reason is that it is evident that the company, Mr Li, the board, and the majority shareholders each and/or all consider that they are under no obligation to respect the formalities of the law that govern the management and operation of the company, and it is to be inferred from the manner in which the proceedings have been conducted by the defendants that they consider themselves to be immune to the effect of proceedings in this jurisdiction.
55. Therefore, the court considers that a more effective way of giving justice to the petitioner is to require the majority shareholders to buy out the shares of the petitioner in the company assessed at fair value. An order of this kind may be enforced against Mr Li as an individual, or upon the

other vehicles through which he controls his majority shareholdings, namely the other defendants. The court is satisfied that it has jurisdiction to make an order against the other defendants on the grounds that these entities are owned and controlled by Mr Li and that as majority shareholders those entities are to be associated with the misconduct alleged<sup>27</sup>.

56. The buy out order will also be made against the company itself, and in the event that enforcement orders are ineffective or insufficient, the petitioner may seek to enforce the buy out order against the company in this jurisdiction or result in an actual winding up order being made, but this will be a matter for the future.

## **Valuation and other matters**

### *Fair value*

57. The company and the other defendants have failed to give disclosure in these proceedings and there is no material of a contemporary nature which provides the court with current valuation evidence by which to assess the fair value of the shares. The company (and the defendants) cannot in my judgment rely upon their default in compliance with their duties in this regard to evade their liability to purchase the petitioner's shares at a value that approximates to the nearest that the court can reasonably estimate to be their fair value.
58. The petitioner has provided circumstantial evidence as to value from two sources. The first is the value of the shares at the date of the Share Purchase Agreement in 2012 which was SGD 0.50 per share. This was a value that was negotiated at arm's length and prior to the prejudicial conduct alleged (which might have affected the value of the shares)<sup>28</sup>. The second is the fact that the value in the property owned by the group is in commercial real estate holdings in the PRC. Although no information has been disclosed by the company or the other defendants as to the value of the group's holdings, Mr Tang's second affirmation expresses the view that the value of commercial real estate in the PRC is likely to have increased substantially in value in the last 14 years, in line with the relative values of residential real estate values<sup>29</sup>.
59. The court is prepared to accept this evidence as the best evidence available for the present fair value of the petitioner's shares in the company. Mr Tang is a director of the petitioner and is also a director of Centurion Investment Management Limited which is an investment manager responsible for managing the petitioner's investments. The exhibit to Mr Tang's second affirmation includes extracts from data collected from the Shanghai Shenzhen CSI 300 stock analysis reports which reflect that there has been a long-term trend of growth in value over the last 12 years, despite some volatility. This evidence does not of course give any direct evidence of the actual value of the property values that are held by the company or its underlying subsidiaries and is adduced only for the purpose of supporting the proposition that the 2012 share value contended for by the petitioner is likely to be understated. As a general supposition, the court is prepared to accept that it is more likely than not that the 2012 share price value is less than its present-day value, but the evidence cannot go any further than that.

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<sup>27</sup> See **Saxon Woods Investments Ltd v Costa & Ors** [2024] EWHC 387 (Ch) applying the dictum of Sales J in **F & C v Barthelemy No 2** [2012] Ch 613 [1096].

<sup>28</sup> See paragraphs 106-7 of the petitioner's submissions.

<sup>29</sup> Tang 2 paragraph 86 TB/28/329.

60. However, the court is fortified by and accepts and adopts the approach applied by Chan J **In re Sound Global Limited**<sup>30</sup> in relation to adopting a valuation date which pre-dates the petition as a matter of overall fairness, where the company had in that case (as in this case) refused to supply any reliable financial information by which to measure the value of the company's shares.

#### *Minority discount*

61. The petitioner has sought a valuation which does not take into account a discount to reflect that the petitioner's shares are a minority holding. There was no decided case law authority cited which elucidates how the court should approach this question in a buy-out under section 111 of the BCA or its former English counterpart. The English case law seems to draw a distinction between quasi-partnership cases where a discount is not applied, and non-quasi-partnership cases where a minority discount is applied. This appears to be based on the court's assessment of 'fairness' in each case<sup>31</sup>. It is difficult to see the expression of any clear principle in this distinction.

62. The court is mindful of the opinion issued by the Privy Council in **Shanda Games Ltd v Maso Capital Investments and Ors**<sup>32</sup> which makes it clear that when the court is assessing fair value in an appraisal action, the court should normally apply a discount to reflect that the shares being acquired are a minority holding. As a matter of consistency and general principle, it seems to the court that even though the court is here exercising a different power under a different section, the exercise the court is carrying out is similar. It seems logical that the court should apply the same approach when assessing fair value for the purposes of a buy out order as it would when making an appraisal of fair value. This means that, in the court's view, a minority discount should ordinarily be applied when the court makes a buy out order.

63. In this case, the court has rejected the submission that there was a quasi-partnership, so if there is a distinction to be drawn between quasi-partnership and non-quasi-partnership cases, then this case falls into the category of cases where a minority discount should be applied.

64. However, there is no expert evidence upon which the court can assess what that discount should be, and there is no reliable contemporary independent evidence of fair value. The court is however prepared to infer from the indirect evidence as to the likely trend of increase in share value of the company's shares to reflect the increase in property values in the PRC in the last ten years that the fair value figure of SGD 0.50 per share is likely to be an undervalue. This means that the court can reasonably take the view that the figure of SGD0.50 per share for the petitioner's shares would also reflect any minority discount that would have been applied had the relevant information been available.

#### *Interest and quasi-interest*

65. In addition, the petitioner seeks an award of simple interest at the statutory rate of 3.5% to reflect the loss of the use of the petitioner's money in the meantime, which the petitioner calls

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<sup>30</sup> [2025] HKCFI 2052 (15 May 2025)

<sup>31</sup> For example, **Bird Precision Bellows Ltd, O'Neil v Philips** and **Profinance Trust SA v Gladstone** (all cited *infra*) suggest no minority discount should be applied but **Irvine v Irvine** [2006] EWHC 583 (Ch) and **Wells v Paul Hornshaw** (*infra*) suggest that ordinarily a minority discount should be applied.

<sup>32</sup> [2020] 1 BCLC 577, 593-5.

quasi-interest because normally the court will order interest from the date of its judgment or the date of the petition. In this case the petitioner seeks an award of interest on the purchase price backdated to the date of the Share Purchase Agreement (“the SPA”) in 2012. This is on the theory that the petitioner has been kept out of its money since then. This is (presumably) because the petitioner agreed not to accept the offer on the basis of the understanding between the petitioner and the undertaking shareholders. The court cannot accept that this is the correct approach in an unfair prejudice case.

66. The petitioner did not take action to put an end to the unfairly prejudicial conduct for almost 8 years. The unfairly prejudicial conduct occurred over a long period, and there is no single action which the petitioner has suggested was the straw that broke the camel’s back, as it were, requiring the petitioner to take action in 2019.
67. The petitioner could have taken action to address the unfairly prejudicial action when the financial statements were not presented at the AGM following the completion of the privatisation in 2012 or the following year in 2013. It would not be consistent with ordinary notions of justice for the petitioner to be able to claim interest (or quasi-interest) for the unfairly prejudicial conduct from 2012 until the commencement of these proceedings.
68. The conventional view is that interest is awarded from the date of the buy out order<sup>33</sup>. This is because the date of the buy out order is the date when the obligation arises. It is logically inconsistent to hold that an obligation to buy out the petitioner’s shares could have arisen at any time prior to the date the court was satisfied that the conduct alleged justified the relief.
69. However, that starting point has been modified in **Profinance Trust SA v Gladstone**<sup>34</sup> in which it was held that the English section was wide enough to enable the court to award quasi-interest on the price payable on a buy out order, but that case made it clear that such an award is an exception to the general rule. The basic principle is still that when an order is made for the purchase of shares at present day value, there is no need to award interest or quasi-interest for any period prior to the date of the buy out order.
70. In the other cases which have been decided on this point, the English court has held that the date at which interest or quasi-interest runs is linked to the valuation date. Here, the petitioner has claimed the present-day value of the shares, which is estimated to be SGD 0.50 based on the only available evidence, which is the 2012 SPA price. That value is therefore the best evidence of present-day value, and it is inconsistent with principle and common sense to award compensation for the nonpayment of that sum since 2012. In my view, the claim for interest or quasi-interest from the date of the SPA in 2012 is unjustified and inconsistent with general principle.
71. If the theory is that the date of the SPA is when the buy out should have and would have occurred but for the assurances alleged to have been given by Mr Li as to the alleged ‘exit strategy,’ then the court has rejected that claim as being unavailable to the petitioner for the reasons already given.

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<sup>33</sup> **Re Bird Precision Bellows Ltd** [1986] Ch 658, 676H and 677E per Oliver LJ (as he then was).

<sup>34</sup> [2001] EWCA Civ 1031

72. The other cases in which the court has been prepared to award quasi-interest have been cases where the court has for some other reason considered that the justice of the case required an award to compensate the petitioner for being kept out of his money from the period when the claim to a buy out was first asserted<sup>35</sup>. There is no evidence in this case of an earlier claim to a buy out made by or on behalf of the petitioner at some point before these proceedings were commenced<sup>36</sup>.
73. The petitioner relied upon Chan J's decision **In re Sound Global Limited** for the additional proposition that the court should award quasi-interest to compensate the petitioner from the date of the suspension of trading in the company's shares for the loss of the use of its investment in the meantime.
74. However, the court is not persuaded that this is an appropriate comparison to the facts of this case. In **Sound Global**, the background facts were that the audited financial statements had overstated the cash balances and reserves as a result of fraudulent statements made by the controller of the company. This resulted in a suspension in trading in the shares of the company on the Hong Kong Stock Exchange while an investigation into the affairs of the company was conducted, which in turn meant that the petitioner was unable to realise the value of its shares by a sale on the open market. Chan J held that this justified the award of interest on the value of the shares to compensate the petitioner for the delay in realising the value of its stake in the company.
75. By contrast, in this case the petitioner commenced these proceedings after its attempts to negotiate a buy out had failed over several years. The petitioner in this case had been aware of many of the breaches of the bye laws about which complaint is made (from almost immediately after the conclusion of the transaction) but took no substantive action to remedy those breaches by legal action until the commencement of these proceedings. It does not seem to the court that the petitioner can seek to increase its recovery by an award of quasi-interest which reflects the period during which the petitioner stood by without seeking to enforce its rights by taking legal action.
76. For the avoidance of doubt, the court does not consider that this result is in any way inconsistent with the approach taken by Mussenden CJ in **Rita Furbert v Williston Furbert**<sup>37</sup> which was cited in support of the petitioner's claim in this case for interest from 2012. In **Furbert**, the claim was for repayment of a sum which had been misappropriated. Mussenden CJ held that interest should not accrue during the period in which the plaintiff delayed in taking action once the facts were known to the plaintiff *before* she commenced the proceedings<sup>38</sup>, but awarded interest for the period after the action had commenced and had been delayed due to reasons beyond the reasonable control of the plaintiff (i.e Covid).
77. The court is here in effect applying the same logic and approach because the court is allowing the petitioner's claim for interest on the *present* value of the shares (estimated on the best

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<sup>35</sup> See eg **Wells v Hornshaw and Others** [2024] EWHC 970 Ch.

<sup>36</sup> The amended petition and reamended statement of claim make no such claim and the evidence of Mr. Loh and Mr. Tang does not say anything to this effect.

<sup>37</sup> [2025] SC (Bda) 132 civ

<sup>38</sup> At paragraph 15.

evidence which happens to be the price in 2012) from the date of the petition (allowing for the delays in progressing the claim which were not caused by the fault of the petitioner), but is not allowing interest to accrue for the period in which the petitioner delayed in taking action to enforce its rights (between 2012 and 2019).

## **Conclusion**

78. Accordingly, for the reasons explained above, the court has concluded that the only appropriate order is for there to be a buy out order of the petitioner's shares at the price of SGD 0.50 per share for each of the petitioner's 97,500,000 ordinary shares (inclusive of the minority discount). The court accepts the submission that the order can and should be made against each of the defendants jointly and severally based on the authorities cited above because the defendants are all controlled by Mr Li and are sufficiently implicated in the relevant prejudicial conduct. The court has also concluded that the appropriate date for the award of interest or quasi-interest is the date of the petition. The court acknowledges and accepts the appropriateness of the petitioner's proposal to give credit for those sums paid to the petitioner by Mr Li in his efforts to forestall this claim in the calculation of the ultimate sum due to the petitioner,

## **Costs**

79. The conventional rule is that costs follow the event and are payable on the standard scale unless the court considers that there is good reason to depart from that rule. The petitioner seeks costs on the indemnity scale based on the conduct of the defendants in this case and relies on three factors.

80. First, the petitioner relies upon the scale and nature of the breaches of the bye laws by the company and Mr Li and the failure to correct those breaches once these proceedings had been commenced, despite the promises to do so. In particular, the petitioner has been denied its statutory entitlement to disclosure of annual financial statements which is basic to the rights of shareholders. Second, the petitioner relies upon the failure of the company to comply with the orders for disclosure which have significantly hampered the petitioner and the court from dealing with the case properly and efficiently. This prevented the court from assessing the present fair value of the petitioner's shares, which may well have prejudiced the petitioner in recovering the true fair value of its shares. This point is related to the failure to comply with the company's statutory obligations to present financial statements annually. Thirdly, the petitioner points to the company's failure to remain in good standing so that the company was struck off the register, requiring the petitioner to restore the company to the register in order to be able to pursue its claims.

81. The court makes it clear that the award of indemnity costs is (primarily) compensatory in nature and not punitive, but the court is entitled to register its disapproval of conduct in the litigation which necessarily increases the costs and delay in the proceedings for the other parties<sup>39</sup>.

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<sup>39</sup> See the discussion on the modern approach to the award of indemnity costs in *Friston on Costs* (3<sup>rd</sup> Ed) at 16-21 to 16.28.

82. In making its assessment, the court considers that the defendants' decision (i) to refuse to provide disclosure despite being ordered to do so by the court and (ii) to allow the company to be struck off were cynical and deliberate strategic efforts intended to prolong the proceedings in an effort to frustrate the petitioner's claims.
83. As a result, the court agrees and accepts that this is a case where the defendants' conduct fully justifies an order for costs to be paid on the indemnity scale (to be taxed if not agreed) and for which they are to be jointly and severally liable. The court expressly allows the recovery of all expenses related to the restoration of the company to the register as a necessary cost of these proceedings, and the recovery of any outstanding annual registration fees due to the Bermuda Government which the petitioner has undertaken to pay out of the proceeds of the judgment in this case which are recovered from the defendants.
84. The petitioner will prepare order to reflect the terms of the court's decisions set out above.

Dated this day 30 April 2026



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**THE HON. MR. JUSTICE ANDREW MARTIN**  
**PUISNE JUDGE OF THE SUPREME COURT**