THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

TERRITORY OF THE VIRGIN ISLANDS

BVIHCMAP2022/0012

BETWEEN:

NG MIN HONG

Appellant

and

[1] SOEMARLI LIE
[2] SUCCESS OVERSEAS FINANCE LIMITED

Respondents

Before:

The Hon. Mde. Vicki Ann Ellis	Justice of Appeal
The Hon. Mde. Ingrid Mangatal	Justice of Appeal [Ag.]
The Hon. Mr. Darshan Ramdhani KC	Justice of Appeal [Ag.]

Appearances:

Mr. Alain Choo-Choy KC, with him, Mr. James Noble, Ms. Kate Lan and Mr. Yan Chng for the Appellant
Mr. Matthew Hardwick KC, with him, Mr. Richard Evans and Dr. Alecia Johns for the Respondents

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2025: June 16, 17;
2026: March 27.

Commercial appeal – Companies – Unfair prejudice remedy under section 184I of Business Companies Act of BVI – Quasi-partnership – Personal relationship of mutual trust and confidence – Whether 'Business' relationship constituted a quasi-partnership – Whether quasi-partnership survives death of one original quasi partner where son of deceased takes over father's role and jointly manages Business with surviving founder – Whether quasi-partnership can exist in circumstances where other members 'outside the ring' – Whether quasi-partnership possible where members outside the ring hold the balance of power – Right of access to records of Business – Failure to provide records – Affairs of the company – Whether failure to disclose records amounts to trivial breach or whether it rises to unfair prejudicial conduct – Unfair Prejudice – Whether the conduct of company A may amount to conduct of company B where director of company A is not a director of company B – Whether director of company A having de facto control of

company B renders the conduct of Company B attributable to Company A– Whether company A's refusal to pay dividends to company B amounts to unfair prejudice on the part of company B in relation to its members –Appellate review – Findings of fact based on credibility

A dispute between Mr. Somarlie Lie, a minority shareholder and Mr. Ng, the majority shareholder in Success Overseas Finance Limited ('SOFL'), a British Virgin Islands ('BVI') company eventually led Mr. Lie to commence proceedings in the BVI Commercial Court, contending that Mr. Ng Min Hong had conducted the affairs of SOFL in an unfairly prejudicial manner in breach of section 184I of the BVI Business Companies Act, 2004. Mr. Lie contended that in 1988, he and Mr. Ng's father, Mr. Wiyono, had established a joint venture 'Business' in Indonesia which involved the production of palm oil. That Business was originally established through a company called PT Panca Daya Perkasa ('PT PDP'), which held majority shareholdings in a number of Indonesian Operating Companies ('IOCs'). Mr. Lie contended that the arrangement between him and Mr. Wiyono was founded on a personal relationship between the families and on mutual trust and confidence, and that it was agreed between the two that they would jointly manage the Business and that Mr. Lie would have access to the records of the Business. In 1992, Mr. Wiyono died, and Mr. Lie claimed that he and Mr. Wiyono's widow agreed that Mr. Ng, the appointed administrator of Mr. Wiyono's estate, would join the Business, and that he and Mr. Lie would thereafter jointly manage the Business as Mr. Lie and Mr. Wiyono had done previously. The two men were appointed directors of PT PDP and of the IOCs and jointly managed the Business for about 23 years. At all material times prior to 2015, Mr. Lie and Mr. Ng each owned 28.86% of the shareholding in PT PDP and therefore together held the majority voting power of PT PDP.

In 2002, Mr. Lie and Mr. Ng, each of whom had separately transferred their respective PT PDP shares in two separate Indonesian companies, followed financial advice from one Deutsche Bank ('DBT'), and together they transferred their respective shares to SOFL which had been incorporated to hold those shares. Mr. Emir Siregar, who owned 8.3% of the shares in PT PDP also transferred those shares to SOFL at that time. From its incorporation until the relationship broke down, SOFL was managed by a nominee director who was required to take instructions from either or both Mr. Lie and Mr. Ng. SOFL had also issued a mandate ('the DBT Mandate') to DBT, authorising either Mr. Lie or Mr. Ng to give instructions to DBT with regards to the business of SOFL. Over the years Mr. Lie, Mr. Ng and Mr. Siregar received dividends from the dividends paid by the IOCs to PT PDP and then from the latter to SOFL. In 2015, a dispute arose between Mr. Lie and Mr. Ng when Mr. Lie opposed Mr. Ng's proposal that the Business go public, which led to a breakdown of the relationship.

In the proceedings below, Mr. Lie contended that Mr. Ng then embarked upon a course of conduct which led to the complete removal of Mr. Lie from the management structure of the Business, and in that process appointed his brother the sole director of SOFL. It was alleged by Mr. Lie that Mr. Ng exercised control of SOFL through the nominee director, his brother, and that he was also the sole director of PT PDP after the relationship broke down, having terminated Mr. L's appointment as a director of that company in late 2015. Mr. Lie who claimed that he was denied access to records of the Business at the material times, alleged that unknown to him, Mr. Ng with his control of SOFL and PT PDP, took a number of steps to dilute Mr. Lie's shareholding in SOFL and thereafter obliterating his beneficial interests in the Business.

Mr. Ng had vigorously defended the claim, denying that any quasi-partnership existed at any level. He contended that he was not personally responsible for any of the conduct of SOFL as he was simply a shareholder at all material times. Mr. Ng argued that the stopped dividends had nothing do with the conduct of SOFL affairs, as SOFL was only able to pay dividends when it received dividends from PT PDP. He contended that the evidence shows that the decision to stop dividends for Financial Year (FY) 2015 was a decision of a shareholder who controlled PT PDP and not by him as the sole director. He contended further that PT PDP's decisions not to pay dividends for FY 2016 to FY 2018 were good faith decisions to inject profits into capital projects. In any event, he argued that nothing related to the non-payment of dividends could amount to the conduct of the affairs of SOFL at all as these were matters which PT PDP controlled. As to the 2017 Disposition, which involved the unauthorised transfer of SOFL's majority shareholding in PT PDP to a company controlled by Mr. Ng and his brother, Mr. Ng contended that this could not be viewed as unfairly prejudicial on the part of SOFL, as his PT PDP shares were simply transferred out to another company. He accepted that it reduced SOFL's shareholding in PT PDP and made it a minority shareholder but contended that if any prejudice which had been caused was directly connected to the fact that even after his PT PDP shares had been transferred out, he, Mr. Ng, had retained his 48.85% shareholding in SOFL; he claimed that this was his personal act, and not that of SOFL; therefore it could not ground a claim of unfair prejudice under section 184I of the BCA.

The Judge found that a quasi-partnership existed between Mr. Lie and Mr. Ng, and that Mr. Lie was entitled to the Business records and that Mr. Ng used his control of SOFL and the Business to conduct the affairs of SOFL in an unfairly prejudicial manner with regards to Mr. Lie to: (1) deliberately withhold pertinent records of the Business for the material period; (2) stop millions of dollars of dividends payments for the 2015 financial year, and similarly caused PT PDP not to declare any dividends to SOFL for FY 2016, FY 2017 and FY 2018; (3) secretly transfer from SOFL all Mr. Ng's PT PDP shares to company G, which is jointly held by Mr. Ng and his brother, thereby reducing SOFL shareholding in PT PDP to 14%, whilst Mr. Ng himself retained his own shareholding in SOFL; (4) secretly cause PT PDP to issue new shares in 2018 ('the 2018 Rights Issue') which Mr. Ng and other shareholders bought and thereby reduced SOFL shareholding in PT PDP to 1% (SOFL did not participate in the 2018 Rights Issue); and (5) dispose of the remaining 1% of PT PDP shares held by SOFL in 2019, thereby reducing Mr. Lie's beneficial interest in the Business to zero ('the 2019 Disposition'). The substantial allegations made by Mr. Ng were dismissed, many of them as being meritless. The Judge did however make one finding in favour of Mr. Ng, namely that Mr. Lie had acquired two palm oil companies in 2015 without notifying Mr. Ng, which resulted in the Business losing an opportunity to acquire more operating companies. However, the Judge held that since these two companies were not competitors, this was a minor breach and could not operate to deprive Mr. Lie of relief under section 184I of the BCA.

On this appeal, Mr. Ng has not appealed the Judge's dismissal of his allegations, nor has he challenged the Judge's findings on the 2019 Disposition, but he has essentially challenged all the other findings of the Judge. He contends *inter alia* that the Judge was plainly wrong to find that a quasi-partnership existed at any point as there was no close and personal relationship between Mr. Lie and Mr. Wiyono or between Mr. Lie and Mr. Ng, and that such a finding was inconsistent with the oral evidence and other evidence

including the documentary evidence led at trial. It was also inconsistent, he argued, with the fact that there were other members who were 'outside the ring', and who had the 'balance of power' with their share vote. That, even if there was such a relationship between Mr. Lie and Mr. Wiyono, it could not have survived the death of Mr. Wiyono, and so there was no arrangement that Mr. Lie would have access to records of the Business.

He contended further that the Judge was wrong to find that he was in control of SOFL at the material times, since its directors were his brother and then later another individual. He maintained that he had no involvement in the cessation of dividends and that these were the acts of PT PDP and could not be regarded as the conduct of the affairs of SOFL for the purposes of section 184I of the BCA. He also argued that the 2017 Disposition was not an act done in the conduct of the affairs of SOFL, as it was merely his personal act of transferring his own PT PDP shares out of SOFL to another company, and that even after this transfer, he personally retained his original 45.85% shareholding in SOFL. With regards to the 2018 Rights Issue, he contended that the Judge was plainly wrong on his factual findings and that there was compelling evidence that SOFL had taken a commercial decision not to participate and that there was no evidence that he was the driving force behind that decision.

Held: dismissing the appeal, upholding the orders of the Commercial Court and awarding costs of the appeal to the Respondent, to be assessed if not agreed within 21 days of this judgment, that:

1. A quasi-partnership is an equitable relationship which may arise from the 'circumstances surrounding the conduct of the affairs of a particular company which are such as to give rise to equitable constraints on the behaviour of other members', It need not possess all the characteristics or be akin to a partnership and there is no rule that there must be strict equal management in any quasi-partnership arrangement; the nature of the relationship all depends on the understanding or the agreement. An agreement grounded in a personal relationship and mutual understanding is equally open to different kinds of formal responsibilities being allocated to one member as against another and yet remain a quasi-partnership which allows both to 'participate in the conduct of the business'. Thus, the equity which is a quasi-partnership may simply be an agreement to provide access to all the business records of a company without extending to full and joint management. It is sufficient that there is arrangement or agreement, whether written, oral and or by conduct, which makes it unconscionable for one of partners of the quasi-partnership to insist on strict compliance with the formal rules governing the company. The equity does not entitle one party to disregard the obligation he assumes by entering the company, nor the court to dispense him from it. What it does, as equity always does, is that it 'enables the court to subject the exercise of legal rights to equitable considerations; considerations, that is, of a personal character arising between one individual and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way.'

   Strahan v Wilcock [2006] 2 BCLC 555 applied**; Ebrahimi v Westbourne Galleries Ltd** [1973] AC 360 applied.

2. The Judge, having found Mr. Lie to be a credible and truthful witness was entitled to believe his evidence of the personal relationship involving mutual confidence which existed between Mr. Lie and Mr. Wiyono, the discussions which took place between Mr. Lie and Mr. Wiyono's widow and the events which followed after Mr. Wiyono's death which related to Mr. Lie and Mr. Ng's joint management of the Business. The fact that the constitutional documents of PT PDP were inconsistent with the existence of a quasi-partnership, and that there was no written joint venture agreement ('JVA'), even while these parties executed such a JVA with another company, was not enough to nullify Mr. Lie's evidence of a quasi-partnership arrangement. The detailed expressions of the constitutional documents of the company would, in most cases, not determine whether a quasi-partnership exists in fact as it is axiomatic of the existence of a quasi-partnership that it will usually be inconsistent with the company's constitutional documents. Those documents would be determinative where they truly negative the existence of this equity. It must be recognised that by its very nature, a quasi-partnership often exists as a result of oral understandings and agreement between the relevant persons. It would therefore be important to make a distinction between those rules of formal constitutional documents of the company which are simply inconsistent with the existence of a quasi-partnership but yet not negative its existence in the face of the oral understanding and agreement.

   Ebrahimi v Westbourne Galleries Ltd [1973] AC 360 applied; **Tay Bok Choon v Tahansan Sdn Bhd** [1987] 1 WLR 462 applied; **George v McCarthy & Anr [**2006] BCLC 714 distinguished.

3. There is no rule that a court may not find a quasi-partnership arrangement between only some of the shareholders (especially founder-shareholders) of a company, with the remaining shareholders being strangers to the arrangement. No doubt, every shareholder would be entitled to the strict enforcement of the rules which govern the company. Yet, the authorities have shown that the courts would be prepared to recognise a quasi-partnership where the member who is 'outside the ring' is simply a minority shareholder, as the majority would be entitled to lawfully and properly override the minority in any event. Once the party seeking to enforce the quasi-partnership arrangement has led evidence to prove the existence of the agreement, the question for the court is whether the presence of members 'outside the ring' changes the quasi-partnership character of the company. In this case, the presence of the other strategic members has never been shown to change the quasi-character of the Business or of SOFL. The mere fact of Mr. Siregar being 'outside the ring' does not automatically mean that Mr. Lie and Mr. Ng did not have a quasi-partnership at the SOFL level. Mr. Siregar was simply a minority shareholder with 8.3% of the shares of SOFL and Mr. Lie and Mr. Ng each had 45.85% of the shares. The arrangement between Mr. Lie and Mr. Ng as found by the Judge would be that they would together be responsible for the management of SOFL, as was confirmed by (1) Mr. Lie's oral evidence of the quasi-partnership; (2) all of the nominee directors being required to take instructions from either Mr. Lie or Mr. Ng; (3) the DBT Mandate. They could not ignore Mr. Siregar's voting rights. But the reality was that Mr. Lie and Mr. Ng with 45.85% of the shares each, had an understanding, which if one of them chose to act contrary to that understanding and decided,

for instance, to co-opt Mr. Siregar to vote out the other, then the ousted one would be entitled to enforce the equity.

Re Edwardian Group Ltd [2019] 1 BCLC 171 applied; **Estera Trust (Jersey) Ltd v Singh** [2018] EWHC 1715 (Ch) considered; **Waldron v Waldron** [2019] Bus LR 1351 considered**; Dinglis Properties Ltd v Dinglis** [2019] BCLC 325 considered.

4. A quasi-partnership between two persons would not survive the death of one of the quasi-partners, but where, as in this case, as found as a fact by the Judge, the son of the deceased partner, as heir of the deceased partner, enters the company with the understanding that he would join the remaining quasi-partner on the same terms as his father, then a new quasi-partnership arrangement could arise. In the circumstances of this case, the Judge accepted Mr. Lie's evidence that he and Mr. Wiyono's widow, and then Mr. Lie and Mr. Ng discussed and agreed that Mr. Ng would enter the Business with the same understanding and arrangement which existed between Mr. Lie and Mr. Wiyono, and that Mr. Lie and Mr. Ng thereafter managed the affairs of SOFL through successive nominee directors. Within this context, the DBT Mandate instructed DBT to 'take instructions from either SL or NMH for all matters in relation to the management of SOFL and its assets'. These matters clearly recognise that either Mr. Lie or Mr. Ng possessed the 'joint and several' authority to make decisions for SOFL confirms the high degree of trust and mutual confidence each of these men had in the other. It was therefore properly open for the Judge to find that a quasi-partnership existed at the SOFL level.

   Ebrahimi v Westbourne Galleries Ltd [1973] AC 360 applied**; Matsuura v A&S Company Limited & Anr** BVIHC (COM) 130 of 2015 distinguished**; George v McCarthy & Anr** [2006] BCLC 714 distinguished.

5. Mr. Lie's voluntary withdrawal from the boards of the IOCs cannot be seen as a withdrawal from or a termination of the quasi-partnership, as the Judge also found as a fact that Mr. Lie had chosen to remain as a director of PT PDP and continue to jointly manage SOFL, and that it was Mr. Ng who engineered Mr. Lie's removal as a director of PT PDP and the management structure of SOFL. Therefore, that element of the quasi-partnership agreement which required him to be given access to the records of SOFL and the Business, and to be consulted on decisions, were enforceable obligations as against Mr. Ng and SOFL. The denial of such records in the circumstances of this case, which was part of a clear campaign to remove Mr. Lie from the Business and strip him of his beneficial interests, was no trivial matter as it meant that Mr. Lie had no timely knowledge of what was transpiring with the affairs of SOFL and only learnt of the various unfairly prejudicial conduct after they had occurred; therefore, the denial of access to records was by itself unfairly prejudicial for the purposes of section 184I of the BCA.

   Phoenix Office Supplies Ltd and others v Larvin [2003] 1 BCLC 193 applied; **Re Elgindata Ltd** [1991] BCLC 959 applied.

6. There is nothing on the evidence or in law which indicates that the Judge was plainly wrong in relation to his findings in relation to the effect of Mr. Lie withholding information in relation to his acquisition of PT Rendi and PT Palmaris. The finding that PT Rendi and PT Palmaris were not 'competitors of PT PDP and the Indonesian operating companies in any real or sensible sense' is a relevant and significant matter. Having regard to the magnitude of Mr. Ng's unconscionable conduct, which operated to completely obliterate all of Mr. Lie's beneficial interests in SOFL and PT PDP and the Indonesian operating companies, Mr. Lie's acts of failing to inform PT PDP of an opportunity to purchase other palm oil producing companies (not competitors) did not rise to the threshold of nullifying the quasi-partnership between the two men.

   Fage UK Ltd v Chobani UK Ltd [2014] EWCA Civ 5 followed; **Beacon Insurance Company Ltd v Maharaj Bookstore Ltd** [2014] UKPC 21 followed.

7. The principles guiding an appellate review of findings of facts are well established. An appellate court will not interfere with a Judge's findings of fact, evaluation of those facts and inferences drawn from them unless compelled to do so. This is because it is well accepted that the Judge is in the best position to bring to bear his expertise in assessing evidence, seeing and hearing the evidence first-hand. For this reason, when an appellate court is being asked to reverse a judge's findings of facts which turns on the credibility of witnesses, it should not do so unless it is satisfied that any advantage enjoyed by the trial judge by having seen and heard the witnesses could not be sufficient to explain or justify his conclusions. While the appellate court would be entitled to interfere if shown that the Judge has failed to use or has palpably misused his advantage, the higher court ought not to take the responsibility of reversing conclusions so arrived at merely on the results of their own comparisons and criticisms of the witnesses and of their own view of the probabilities of the case.' An appellate court's intervention would therefore be justified when the trial judge's conclusion was one for 'which there was no evidence to support,' or which was based on a demonstrable misunderstanding of the evidence or demonstrable failure to consider relevant evidence. If there is no such identifiable error, and the question is simply one of judgment as to the appropriate weight to be given to the relevant evidence, the appellate court must be satisfied that the judge's conclusion 'cannot reasonably be explained or justified'. The Judge must be shown to be plainly wrong. In the present case, the Judge's findings concerning the cessation of dividends issue, the 2017 Disposition and the 2018 Rights Issue have not been shown to be plainly wrong. The Judge was entitled to draw adverse inferences from Mr. Ng's continued and consistent failure to provide relevant information about the stopped dividends payments, the 2017 Disposition, the 2018 Rights Issue, the 2019 Disposition and the IPO, and the absence of independent witnesses such as Madam Karlinah, his brother and Mr. Duad to corroborate his oral evidence on critical matters where he sought to cast responsibilities on others and to withdraw himself. The Judge was equally entitled to draw the compelling and irresistible inference and believe that Mr. Ng's was in *de facto* control of SOFL and in *de facto* and *de jure* control of PT PDP at all material times.

Fage UK Ltd v Chobani UK Ltd [2014] EWCA Civ 5 followed; **Beacon Insurance Company Ltd v Maharaj Bookstore Ltd** [2014] UKPC 21 followed; **JSC BTA Bank v Ablyazov & Anor** [2018] EWCA Civ 1176 applied.

8. Mr. Ng's contention that the 2017 Disposition and the 2018 Rights Issue were merely the 'acts of PT PDP' and not the conduct of the affairs of SOFL is rejected. Where a respondent is in *de facto* control of a BVI company and uses that control to orchestrate the dilution of the company's underlying assets in a subsidiary for his own personal benefit, such conduct constitutes the conduct of the 'affairs of the company' under section 184I. The 2017 Disposition, which saw Mr. Ng's beneficial interest in PT PDP transferred out of SOFL to his own vehicle Grahaidea, directly prejudiced SOFL by stripping it of its majority status and leaving Mr. Lie's interest trapped in a minority vehicle with no dividend flow. This was a classic case of a majority shareholder using his position to shift value from the company to himself to the exclusion of the minority quasi-partner.

   R v Board of Trade, ex p. St Martins Preserving Co Ltd [1965] 1 QB 603 applied**; Re a Company No. 002470 of 1988, ex p. Nicholas** [1992] BCC 895 applied**.**

9. The 2017 Disposition and the subsequent 2019 Disposition of PT PDP shares constituted a disposal of more than 50% in value of the assets of SOFL. Under section 175 of the BCA, such a transaction required shareholder approval. The failure to seek Mr. Lie's approval, within the context of a quasi-partnership where Mr. Lie had a legitimate expectation of consultation and joint management, rendered the dispositions not only a statutory breach but also a significant element of unfairly prejudicial conduct. The appellant cannot rely on the technicality that the shares 'belonged to him' originally; once transferred to SOFL, they became corporate assets subject to the statutory and equitable protections afforded to all shareholders.

   Section 175 of the **BVI Business Companies Act, 2004** applied.

10. The Judge's core finding that Mr. Ng embarked on a calculated campaign to 'obliterate' Mr. Lie's interests was supported by the evidence. In circumstances where the relationship of trust and confidence has completely broken down due to the bad faith of the majority, the court is entitled to exercise its wide discretion under section 184I to provide a remedy that protects the economic value of the minority's interest.

    Section 184I of the **BVI Business Companies Act, 2004** applied.

JUDGMENT

Introduction

[1] **RAMDHANI JA [AG.]**: This is an appeal against the judgment of Justice Wallbank dated the 17th November 2021, which allowed a claim of unfair

prejudice pursuant to section 184I of the BVI Business Companies Act, 2004 ('BCA') brought by Mr. Somarlie Lie ('Mr. Lie' or 'the Respondent') against Mr. Ng Min Hong ('Mr. Ng' or ('the Appellant')) in his conduct of the affairs of the Second Respondent, Success Overseas Finance Limited, a BVI company ('SOFL'). The Judge ordered that Mr. Ng is to buy out Mr. Lie's minority shareholding in SOFL on terms which have been determined in a separate decision, and which has been the subject of a separate appeal.

[2] The essence of the judgment of the Court below is that Mr. Ng, the appellant, in the conduct of the affairs of SOFL, had embarked on a course of conduct designed to dilute and did dilute SOFL's shareholding in the Indonesian holding company PT Panca Daya Perkasa ('PT PDP') and in so doing, eventually wiped out Mr. Lie's beneficial interest in that company and its Indonesian subsidiaries (altogether referred to in this Judgment as 'the Business'[1]) which was worth millions of dollars in yearly dividends. The trial judge found that Mr. Ng, in the conduct of the affairs of SOFL, had acted oppressively and in an unfairly prejudicial manner to Mr. Lie in his capacity as a shareholder of SOFL.

[3] In making these findings, the Judge accepted Mr. Lie's contention that, as a fact at the material time, a quasi-partnership existed between the parties, and found that after the relationship had broken down starting in 2015, Mr. Ng, had conducted the affairs of SOFL in an unfairly prejudicial manner, by:

(1) (**'the Information Complaint**') deliberately failing to supply requested company documents (and requested information in relation to two separate transfers of shares of SOFL, referred to as 'the 2017 Disposition' and 'the 2019 Disposition') contrary to Mr. Lie's right of full access to all financial and operational records of the Business, which was founded by Mr. Lie and Mr. Aleh Wiyono, Mr. Ng's father.

(2) (**'the Non-Payment of Dividends Complaint'**) deliberately failing to pay dividends to Mr. Lie in his capacity as a shareholder of SOFL in respect of FY 2015 to 2018;

(3) ('**the 2017 Disposition Complaint'**) deliberately effecting the 2017 Disposition, which had occurred without any consideration being

[1] At the trial, the Judge adopted the use of the term 'the Business' to refer to the palm oil production. For the purposes of consistency this Court will continue to use that reference.

paid by a company named Grahaidea to SOFL in respect of the transfer of the 2,052,631 shares in PT PDP by SOFL to PT Grahaidea Sellarassindo ('Grahaidea') (a company owned by Mr. Ng and his brother) and without consultation with or consent from Mr. Lie and which had resulted in SOFL's shareholding in PT PDP being reduced from 63.16% to 28.94%;

(4) ('**the 2018 Rights Issue Complaint**') deliberately failing to participate in a rights issue by PT PDP in September 2018 ('the 2018 Rights Issue') pursuant to which Grahaidea acquired over 60 million additional shares in PT PDP and as a result of which SOFL's percentage shareholding in PT PDP was further reduced from 28.94% to 1.38%; and

(5) (**'the 2019 Disposition'**) deliberately and wrongfully effecting the 2019 Disposition, which had reduced SOFL's shareholding in PT PDP to nil.

From being entitled to share in dividends worth millions of dollars every year, Mr. Lie's entitlement had been reduced to zero.

[4] Having made these findings, and in consideration of the orders sought on the claim, the Judge made a buy-out order and directed *inter alia,* that (a) Mr. Lie's shareholding in SOFL should be valued as a rateable proportion of the total value of the company as a going concern without any discount on account of the fact that he is a minority shareholder of SOFL (having regard to the fact that there was a quasi-partnership existing between the parties), (b) on the basis of a sale between a willing vendor and a willing purchaser, acting at arm's length, of the entire share capital of SOFL, and (c) that Mr. Lie's shareholding should be valued on the footing that SOFL holds a 63.16% shareholding in PT PDP, as if the 2017 Disposition, 2018 Rights Issue and 2019 Disposition had not taken place.

[5] The appellant had resisted the claim at trial and contended that the evidence could not support any finding of a quasi-partnership at any stage. He contended that the claim was unsustainable as at the time of the allegations of unfair prejudice, Mr. Lie had resigned from all of the Indonesian subsidiaries and was lawfully terminated from the holding company PT PDP. He not only denied that there was any oppressive conduct but also counterattacked the respondent, making serious allegations of dishonesty and breach of duty by Mr. Lie in

relation to SOFL's immediate and ultimate subsidiaries ('Misconduct Allegations'). Mr. Ng's contention at trial was that in the light of Mr. Lie's misconduct and breaches of duty, it was clear that Mr. Lie had failed to come to court with clean hands and the court should decline to grant any relief.

[6] As noted earlier, the Judge found that Mr. Lie's unfair prejudice allegations were validly made. Further, he rejected each of Mr. Ng's Misconduct Allegations. The first allegation was of serious dishonesty, alleging misappropriation by Mr. Lie of proceeds of sale of palm fruit shells. The Judge found that the allegation was insufficiently particularised and it was dismissed as hopeless. The second allegation related to Mr. Lie's purchase of uncertified seedlings at discounted prices causing poor growth and poor production yields. This too was dismissed for being hopeless. The third allegation was that Mr. Lie had misappropriated IDR 2billion. This sum was withdrawn by Mr. Lie but Mr. Ng failed to prove that Mr. Lie's explanation for its withdrawal was a 'mendacious cover story'; the allegation failed. The fourth allegation that Mr. Lie had secretly acquired PTS SAMS, another Palm oil company also failed at trial on the basis that the Judge found that Mr. Ng and Mr. Lie did discuss this company, and the former had no issue with its ownership. The fifth allegation was that Mr. Lie had also secretly acquired PT Mitra Bumi, yet another palm oil company and then had operated it in competition with the Business. This too failed, with the Judge holding that 'there can be no criticism of Mr. Lie in acquiring a palm oil factory and/or plantation in 2016 in an owning capacity, even whilst in a subsisting quasi-partnership with Mr. Ng in the same general industrial sector. Even though such an arrangement might give rise to a conflict of interest on the part of Mr. Lie, as an owner (as opposed to a director), Mr. Lie would not be under the same fiduciary duties towards the Business as if he had been a director'. The allegation that Mr. Lie had 'poached' the business staff away for his personal benefit also failed for a lack of documentary evidence and cogent oral evidence.

[7] The Judge did find that Mr. Lie had acquired two other companies PT Rendi and PT Palmaris without informing the decision makers of the Business that these companies were up for sale and that because of Mr. Lie's conduct, and that the Business lost the opportunity to purchase these companies. The Judge found,

however, that these companies were not in competition with the Business and had not been out of pocket for their purchase; any loss suffered would be addressed by additional arguments on the point.

[8] In refusing to let this last finding affect any grant of relief to Mr. Lie, the Judge stated that any lack of 'clean hands' could not prevent Mr. Lie seeking relief from Mr. Ng's unfairly prejudicial/oppressive conduct of the affairs of SOFL. The Judge observed that as a matter of law (since Mr. Lie seeks a statutory remedy) and fact: Mr. Lie's breach of duty as a director of PT PDP in failing to disclose and offer the opportunity to purchase PT Rendi and PT Palmaris to PT PDP is not related to Mr. Ng's wrongful conduct and does not exonerate Mr. Ng from it. Mr. Lie's wrongdoing, as a matter of principle, in this regard is merely part of the factual background [which was] proven].

The Appeal

[9] In his appeal, Mr. Ng did not appeal any of the Judge's findings on his Misconduct Allegations nor did he appeal the Judge's finding on the 2019 Disposition. His main focus was on the Judge's findings of the existence of a quasi-partnership, and on the other conduct which amounted to unfair prejudice. In doing so, he relied on a number of grounds to contend that the Judge was plainly wrong in finding that there had been unfair prejudice as contemplated by section 184I of the BCA, and in making orders that Mr. Ng buy out Mr. Lie's minority shareholding. He maintained the contention that the *clean-hands* principle applied and it ought to have barred the grant of any relief. In this appeal, Mr. Ng challenges the Judge's findings in relation to the Quasi-Partnership Allegation, the Non-Payment of Dividends, the 2017 Disposition and the 2018 Rights Issue.

[10] A starting assault on the judgment made by Mr. Choo-Choy KC is that the Judge failed to take into account or to adequately consider not only evidential matters, but also his own submissions made at the trial.

[11] The challenge to the quasi-partnership allegation is contained in Ground 1 of the appeal. This ground contains four limbs:

(1) Ground 1(1): the Judge "failed to address adequately or at all any of the Appellant's submissions summarised" on the quasi-allegation issue;

(2) Ground 1(2): "had he taken full and proper account of those submissions" he "would or ought to have" rejected the Quasi-Partnership Allegation;

(3) Ground 1(3): the Judge erred in holding that Mr. Ng "continued to have a right in equity to be consulted and to have access to all records of the Business" after December 2015;

(4) Ground 1(4): the Judge ought to have held that Mr. Lie's Information Complaint was "relatively trivial and unsuitable therefore as a ground of unfair prejudice".

[12] As far as Ground 1(2) is concerned, the appellant particularised several sub-grounds to make his case. These are placed under the following headings:

(1) Inconsistency with terms of notarised Deed establishing PT PDP (Ground 1(2)(1)); "Inconsistency of alleged quasi-partnership with actual JVA entered into" (Ground 1(2)(a), (b), (c) and (f));

(2) Relevance of Madam Soendari as an original founder" (Ground 1(2)(b));

(3) Relevance of subsequent co-founders and strategic shareholders (Ground 1(2)(e));

(4) Alleged agreement with Mr. Ng and his mother following Mr. Wiyono's death (Ground 1(2)(g) and (h));

(5) Establishment of SOFL (Ground 1(2)(j));

(6) Relevance of Mr. Lie's voluntary withdrawal and/or lawful removal from the management during the period September to December 2015 (Ground1(2)(k));

(7) Relevance of Mr. Lie's parallel pursuit of his own plantation business of breach of fiduciary duty to the PT PDP Group (Ground 1(2)(i));

(8) Lack of close personal relationship between Mr. Lie and Mr. Ng (Ground 1(2)(i));

[13] As his Ground 2, the Appellant contends that the Judge was wrong to find that SOFL's non-payment of dividends could be regarded as a ground of unfair prejudice. The five limbs of Ground 2 are as follows:

(1) Ground 2(1): the Judge failed to address adequately any of Mr. Ng's submissions;

(2) Ground 2(2): the Judge erred in treating the decision of the board of directors and/or shareholders of PT PDP not to recommend or pay a dividend as amounting to conduct of the affairs of SOFL. Such was conduct of the affairs of PT PDP ("Affairs of SOFL Finding");

(3) Ground 2(3): the Judge erred in holding that it was Mr. Ng that had deliberately caused dividends to stop being paid by PT PDP in favour of SOFL ("Stopped Dividends Findings");

(4) Ground 2(4): the Judge was wrong to hold that SOFL's shareholders would automatically receive dividends when dividends were paid at the operating company subsidiary level ("Automatic Dividends Finding");

(5) Ground 2(5): the Judge erred in finding that SOFL's failure to pay dividends was unfair and prejudicial because, with no dividends having been paid by PT PDP, SOFL had no income or profits out of which dividends could have been paid ("Unfair Prejudice Finding").

[14] As his Ground 3, the Appellant complained of the Judge's finding that the 2017 Disposition was an act of unfair prejudice. The three limbs of this ground in summary are:

(1) Ground 3(1): the Judge erred in holding that the 2017 Disposition was not a genuine repatriation of Mr. Ng's economic interest in PT PDP to Grahaidea pursuant to the Indonesian Tax Amnesty Programme ("No Repatriation Finding");

(2) Ground 3(2): the Judge erred in finding that the 2017 Disposition was "an egregious and unlawful appropriation" of Mr. Lie's interest in SOFL because Mr. Ng had approved and was entitled to the 2017 Disposition pursuant to s175 of the BCA ("s175 Argument");

(3) Ground 3(3): the Judge wrongly failed to appreciate that (1) the real source of unfairness and prejudice to Mr. Lie was Mr. Ng's failure to transfer his shareholding in SOFL; yet (2) such failure was not conduct of the affairs of SOFL but the conduct of Mr. Ng ("Real Source of Unfairness").

[15] Ground 4 of the appeal complains that the Judge's findings on the 2018 Rights Issue was equally wrong. The six limbs of Ground 4 are:

(1) Ground 4(1): the Judge ought to have found that SOFL's non-participation in the 2018 Rights Issue was not unfair, given that SOFL was unable to participate because it did not have sufficient funds to do so ("**SOFL's Non-Participation**");

(2) Ground 4(2): the Judge was wrong to speculate that had SOFL received the dividends to which it had been entitled it would have been able to participate;

(3) Ground 4(3): there was no proper basis upon which the Judge could have found that the conversation between Mr. Achmad and Mr. Lie at the 18th September 2018 meeting of PT PDP shareholders took place ("**the Achmad Conversation**");

(4) Ground 4(4): the Judge erred in finding that SOFL was not given an opportunity to participate: SOFL was unable to avail itself of the opportunity to participate as a result of a lack of funds ("**SOFL's Lack of Funds**");

(5) Ground 4(5): the Judge erred in finding that the 2018 Rights Issue was not a preparatory step towards an IPO of PT PDP, but merely intended to shift value in the Business from the Respondent to the Appellant ("**IPO Argument**");

(6) Ground 4(6): the Judge wrongly treated the 2018 Rights Issue as unfairly prejudicial conduct as against Mr. Lie: yet the 2018 Rights Issue was conduct on the part of PT PDP, not SOFL ("**PT PDP Conduct**").

Background Context of the Claim and Counterclaim

Preliminary

[16] In setting out this background leading up to the claim, the trial judge's summary of the case and the parties undisputed positions will be drawn upon. Additionally, those events in contention before the trial judge which became matters of fact finding would be identified with reference to the parties' opposing positions as contained in their appeal skeleton arguments supplemented by their oral arguments over the two days' hearing of this appeal.

SOFL – Prior to July 2017

[17] Prior to July 2017, SOFL, a holding company, owned 3,789,473 shares (amounting to nearly 63.16% of the shareholding) in PT PDP which was itself a holding company; SOFL had no other business. In turn, at all material times PT PDP owned controlling shareholdings in the following subsidiaries:

(1) 85% of the shares in an Indonesian company called PT PDP which was incorporated in February 1990 and operates a plantation in Sumatra – the other (15%) shareholder of PT PEU being an Indonesian government entity formerly known as PT Perkebunan VI (or "PTP 6"), but which was subsequently consolidated with other Indonesian entities to become PT Perkebunan Nusantara IV ("PTPN 4");

(2) 99.99% of the shares in an Indonesian company called PT Alam Permai Makmur Raya ("PT APMR.") which was incorporated in June 2004 and operates a plantation and a palm oil factory in East Kalimantan;

(3) 99.99% of the shares in an Indonesian company called PT Bumi Mulia Makmur Lestari ("PT BMML") which was incorporated in June 2004 and operates a plantation in East Kalimantan;

(4) 99.99% of the shares in an Indonesian company called PT Multi Makmur Mitra Alam ("PT MMMA") which was incorporated in August 2004 and operates a plantation and a palm oil factory in East Kalimantan; and

(5) 99.99% of the shares in an Indonesian company called PT Sinar Alam Niaga Raya ("PT SANR") which was incorporated in August 2004 and operates a plantation in East Kalimantan.

[18] The latter four companies (PT APMR., PT BMML, PT MMMA, and PT SANR) have been referred to as the "East Kalimantan Companies". Together with PT PEU, they have also been collectively referred to as the "Indonesian Operating Companies" or "the IOCs", to distinguish them from PT PDP's role as the Indonesian holding company.

[19] From its incorporation until September 2016, there were three shareholders, Mr. Lie and Mr. Ng each holding 45.85% of the shares, and Mr. Emir Siregar holding 8.3% of the shares in SOFL. In September 2016 Mr. Ng acquired Mr. Siregar's 8.3% shareholding in SOFL and became a 54.15% (i.e. majority) shareholder of

SOFL. Thereafter, Mr. Ng and Mr. Lie have been the only shareholders of SOFL, with Mr. Lie continuing to hold a minority shareholding of 45.85%.

The Original Establishment of PT PDP in 1988

[20] The establishment of PT PDP in Indonesia on 26th February 1988, was the result of dealings between Mr. Ng's father, Mr. Aleh Wiyono ("Mr. Wiyono"), and Mr. Lie. In 1988, Mr. Wiyono and Mr. Lie had joined forces with a third individual, Madam Soendari Soebarta ("Madam Soendari") a mutual friend of theirs, in establishing PT PDP with a view to entering the palm oil production business in Indonesia. At the date of its establishment, Mr. Wiyono owned 100 shares in PT PDP (50%); Mr. Lie owned 80 shares (40%); and Madam Soendar owned 20 shares (10%). Mr. Wiyono was appointed as the sole Director (also referred to as "President Director") of PT PDP (i.e. the only person with managerial authority within the company), whilst Mr. Lie was appointed as Commissioner (i.e. in a purely supervisory and non-managerial role).

[21] It was Mr. Lie's case at trial that the Business (as initially structured through PT PDP) was established as a joint venture between him and Mr. Wiyono, with whom he shared a close friendship and familial relation. At the trial, Mr. Ng denies that there was ever a joint venture or quasi-partnership between Mr. Lie and Mr. Wiyono, for various reasons. First, he disputed that there was any close friendship, much less any substantial familial relation between Mr. Lie and Mr. Wiyono. Further, Madam Soendari (as co-founder of PT PDP) paid for and was allotted a significant shareholding as she had an important role to play in relation to PT PDP with her valuable contacts and knowledge of relevant local and national government procedures as well as her husband's contacts with the Indonesian military. Mr. Ng's case at trial and on this appeal is that it would be extraordinary if a quasi-partnership arrangement between only Mr. Lie and Mr. Wiyono had been entered into, to the exclusion and without the knowledge of Madam Soendari as the third substantial shareholder and co-founder of PT PDP (there being no allegation by Mr. Lie that Madam Soendari was party to or knew of the alleged quasi-partnership arrangement between Mr. Lie and Mr. Wiyono). Mr. Ng's case was that the true nature of the relationship between Mr. Lie and

Mr. Wiyono is accurately reflected in the various disclosed corporate documents relating to PT PDP and, subsequently, its later established subsidiaries, rather than as alleged by Mr. Lie.

[22] In December 1988 (at a time when PT PDP was still an inactive company), there were changes to the shareholding of PT PDP as follows: (i) Mr. Wiyono's shareholding reduced to 80 shares (ii) Madam Karlinah Umar Wirahadiksumah ('Madam Karlinah') acquired 55 shares, (iii) Mr. Lie's shareholding reduced to 35 shares, and (iv) Madam Soendari's shareholding increased to 30 shares. Madam Karlinah was a friend of Mr. Wiyono's with government contacts and the wife of Indonesia's former 4th Vice President (the late Mr. Umar Wirahadikusumah). She was appointed as 'President Commissioner' of PT PDP and, as such, had a supervisory role over the directors of the company. However, she was never involved in the day-to-day management of PT PDP and was never involved at an operational level.

[23] As reflected in the Articles of Association of PT PDP, upon the incorporation of PT PDP in February 1988 and until his death in June 1992, Mr. Wiyono was the sole director of PT PDP. Mr. Lie was only appointed as commissioner of PT PDP during that time. Following Madam Karlinah's investment into PT PDP as a co-founder with Mr. Wiyono, Mr. Lie and Madam Soendari in December 1988, she became President Commissioner and senior in position on the Board of Commissioners of PT PDP to Mr. Lie's role as 'Commissioner'.

[24] At this early stage (between 1988 and 1990), PT PDP owned no plantation land and did not engage in any palm oil business. PTP 6, later renamed PTPN 4, was an Indonesian government entity, which did own plantation land. The decision was taken to add the Indonesian government entity PTP 6 as an additional strategic partner. PTP 6 contributed 10,000 hectares of plantation land and the injection of this asset was structured through the incorporation (on 26th February 1990) of the new joint venture company PT PEU.

[25] A 'Joint Venture Establishment Agreement' dated 26th February 1990 was therefore entered into between (1) Mr. Wiyono for PT PDP; (2) Mr. Daud Bastari

for PTP 6; and (3) Darwin Lubis for 'Cooperative Serba Usaha Kesejahteraan Karyawan PTP VI Pabatu' ('CKK', an Indonesian co-operative), for the joint management of the plantations (at Teluk Dalam, Kalianta and Koto Kampar). PTP 6 was given 15% of the shares in PT PEU in return for its plantation land; PT PDP acquired 80% of the shares in PT PEU; and CKK acquired 5% of the shares (subsequently acquired by PT PDP in 2004).

[26] As to the management of PT PEU, by agreement between the joint venture shareholders (i.e. PT PDP, PTP 6 and CKK), Mr. Wiyono and Mr. Lie were appointed the two directors and Madam Karlinah was appointed the 'Chief Commissioner' of PT PEU. While Madam Karlinah had no involvement in the day-to-day management of PT PEU, her role as Chief Commissioner was to supervise the Board of Directors (i.e. those involved in the day-to-day management). Mr. Wiyono was the President Director and Mr. Lie's role was that of operations director. Mr. Ng was appointed as one of the corporate commissioners of PT PEU (which was his first formal role within the PT PDP group), and (together with Madam Karlinah as Chief Commissioner) had responsibility for supervising the Board of Directors.

[27] In June 1992, Omar Abdalla (the father of Mr. Siregar) and Madam Kiswati joined as new shareholders of PT PDP, acquiring respectively 10 shares and 5 shares, amounting to 5% and 2.5% respectively of the share capital of PT PDP. Mr. Lie described those shareholders as 'strategic shareholders' in his witness statement for the trial.

[28] Later in June 1992, Mr. Wiyono passed away. On 5th August 1992, his then 27.5% shareholding in PT PDP was transferred to his son, Mr. Ng. On 11th August 1992, following resolutions passed by a meeting of all the shareholders of PT PDP and chaired by Madam Karlinah, both Mr. Ng and Mr. Lie were appointed as directors of PT PDP. Between 1992 and 1998, both Mr. Lie and Mr. Ng were involved in the operation and management of PT PDP and PT PEU with full access to all financial and operational records.

[29] Mr. Lie's case at trial was that the business of PT PDP and PT PEU operated as a joint venture as between him and Mr. Ng on the same agreed basis upon which it operated between him and Mr. Wiyono before the latter's death. In this regard, Mr. Lie alleged in his witness statement for the trial that following Mr. Ng's appointment as representative of Mr. Wiyono's heirs, Mr. Wiyono's widow and Mr. Ng's mother, Madam Tan Ka Pie ('Madam Tan'), had agreed with Mr. Lie that Mr. Lie and Mr. Ng run the business as partners in the same way that Mr. Lie and Mr. Wiyono had done prior to Mr. Wiyono's passing. Mr. Ng denied at trial that there was any such agreement between Mr. Lie and his mother and averred instead that Mr. Lie's involvement in the management of PT PDP and PT PEU and his access to all financial and operational records was by virtue of his appointment as director of those companies pursuant to the shareholders' approval of such appointment, not by virtue of any alleged agreement between him and Madam Tan.

[30] Between 1992 and 1998, Mr. Lie and Mr. Ng were both involved in the operation and management of PT PDP and PT PEU.

[31] In 1995 and 1996, Mr. Ng transferred his 27.5% shareholding in PT PDP to the Indonesian company PT Majumakmur Mandirisejati ('PT MM') and Mr. Lie in turn transferred his 27.5% shareholding in PT PDP to the Indonesian company PT Bahana Sentramakmur ('PT BS').

Transfer of Shareholdings in PT PDP to SOF

[32] In about 2001, Mr. Lie and Mr. Ng received advice from Deutsche Bank ('DBT') whereby, for tax planning and privacy reasons, they could set up a registered company in the BVI to hold their respective shares in PT PDP (in place of the Indonesian holding companies PT MM and PT BS). Mr. Lie and Mr. Ng agreed to do so, following which Mr. Lie and Mr. Ng, as well as Mr. Siregar (who had by then inherited the shareholding of his deceased father, Omar Abdalla, and also shared the same tax planning and privacy objective as Messrs Lie and Ng), transferred their respective shareholdings in PT PDP to a newly incorporated BVI company, SOFL. On 27th August 2002, SOFL was incorporated in the BVI

with the nominee director and shareholder Lion International Management Limited ('Lion').

[33] On 13th November 2003, the 28.9% shareholdings respectively owned by each of PT MM (on behalf of Mr. Ng) and PT BS (on behalf of Mr. Lie) in PT PDP were transferred to SOFL such that SOFL held 63.16% of the shares in PT PDP. Mr. Siregar also transferred his 5.26% shareholding in PT PDP to SOFL. Thereafter Mr. Lie and Mr. Ng each owned 45.85% of SOFL and Mr. Siregar owned 8.3%.

[34] With effect from 16th September 2015, Regula Limited ('Regula') was appointed as sole director and shareholder of SOFL in place of Lion. Like Lion before it, Regula was a nominee director and acted in accordance with the instructions of Mr. Ng or Mr. Lie. Formal Declarations of Trust dated 22nd March 2005 confirmed Regula's acknowledgment and declaration that it held 4,585 shares for each of Mr. Lie and the 'Everlast AW Trust' (Mr. Ng's family trust). Furthermore, by a 'company proposal' signed on 28th March 2005, DBT agreed: (1) to provide certain corporate services to Mr. Ng, Mr. Siregar and Mr. Lie as set out in Appendix A; and (2) to 'take instructions from either [Mr. Ng or Mr. Lie] for all matters in relation to the management of the Company and its assets' as were set out ('the DBT Mandate').

Establishment of East Kalimantan Subsidiaries

[35] In 2004, there was an expansion of the operations of the Business with additional plantations and factories established in East Kalimantan, Indonesia. In June 2004, PT APMR and PT BMML were established to operate palm oil plantations in East Kalimantan (the shares were owned 99.99% by PT PDP; at the point of incorporation, Mr. Lie was appointed as director and Mr. Ng as commissioner, but thereafter Mr. Ng, Mr. Lie and Mr. Abdul Harahap ('Mr. Harahap') were each appointed as a director). In August 2004, PT MMMA and PT SANR were also established to operate palm oil plantations in East Kalimantan (the shares were owned 99.99% by PT PDP; the directors were similarly Mr. Ng, Mr. Lie and Mr. Harahap).

[36] Between 2004 to 2014, the operations of the PT PDP group ran relatively smoothly. Mr. Lie, based in the Medan office, acted as Operations Director (in charge of daily operations) for the Indonesian Operating Companies. Mr. Ng (as President Director) and Mr. Harahap (Commissioner) were both stationed in the Jakarta office.

Beginning of Breakdown in Relationship – Disagreement Over IPO Proposal

[37] The breakdown in the relationship between Mr. Lie and Mr. Ng began in 2015.

[38] Prior to this, in or around 2013, the shareholders of PT PDP discussed the possibility of a public offering and the issuance of PT PDP Shares to the public through the Indonesian Stock Exchange ('the IPO'). At that stage, there was no shareholder consensus over the IPO proposal, and the discussions did not proceed further then.

[39] On 27th April 2015, Mr. Ng, as President Director, further to Madam Karlinah's notice of 24th April 2015, wrote to Mr. Lie inviting him to attend an Extraordinary General Shareholders' Meeting (EGSM) of PT PDP on 11th May 2015 for the purpose of discussing and proceeding with the shareholders' approval of the IPO.

[40] Ahead of the EGSM, SOFL appointed Mr. Siregar as SOFL's proxy for the purposes of voting in respect of the IPO at the 11th May 2015 EGSM. Mr. Lie, however, was not in favour of the IPO proposal.

[41] On 4th May 2015, shortly before the EGSM, Mr. Lie wrote to DBT instructing them to cancel the proxy (and the proxy was duly cancelled).

[42] On 5th May 2015, Mr. Lie's Singapore solicitors (Wong Tan & Molly Lim LLC ('WTM')) wrote to DBT informing it of the disagreement and instructing it not to take any instructions from Mr. Ng or Mr. Siregar on any matters relating to SOFL without Mr. Lie's agreement.

[43] 'In view of the fact that the 11th May 2015 EGSM was not quorate, Mr. Ng sent a second EGSM invitation scheduled to take place on 21st May 2015 to approve the IPO. By letter dated 18th May 2015, Mr. Lie raised certain procedural objections to the proposed EGSM. By a further letter dated 8th June 2015, Mr. Lie wrote to PT PDP setting out his substantive objections to the IPO explaining in particular that 'finance to this date is very strong' and that the company was being supervised by the Board of Commissioners in accordance with the Articles of Association. At the trial Mr. Ng disputed receiving this last letter. The trial judge commented as follows: 'When taken to this letter in cross-examination Mr. Ng stated repeatedly that until disclosure 'I have never received this letter' (and identified a particular feature of the letter that did not make sense to him). Mr. Hardwick then took Mr. Ng to his own 22nd June 2015 response to that 8th June 2015 letter, which elicited Mr. Ng's response 'I don't remember'. At the trial (and continuing to rely on this on this appeal) Mr. Hardwick KC identified these passages in cross-examination as a first 'red flag', submitting that they provide very powerful evidence of the reality of Mr. Ng's attitude to truth-telling: that unless and until constrained by the contents of a particular document set before him, Mr. Ng felt entirely at liberty to say or argue anything that he felt would assist his case.'

[44] On 11th May 2015, Mr. Mohammad Achiruddin Noer ('MAN'), on behalf of his mother, Madam Rachma (by then, an owner of 1.58% of the shares in PT PDP) also wrote to PT PDP objecting to the IPO. Further, on 18th May 2015 (1) PTPN 4 wrote objecting to the IPO on the basis that PT PEU's 'current performance is excellent' and the introduction of new shareholders could be detrimental to its existing management; and (2) the Central Labour Union of Panamtama, Medan Office, wrote expressing certain concerns and asking the President Director of PT PEU to reconsider.

[45] In light of the divergent views, no shareholders' meeting to consider the IPO proposal could be arranged at that time. Mr. Lie did not rely on the disagreement concerning the IPO as a ground of unfair prejudice, but rather as background to the falling out between the parties. Mr. Ng claimed at trial that Mr. Lie expressed

'violent opposition' to the IPO, stemming from an alleged desire to suppress details of his management practices and alleged breaches of duty.

[46] On 25th June 2015, DBT (through its lawyers Messrs Carey Olsen) wrote to SOFL stating that (1) they would be terminating their provision of services on account of the disagreement between the beneficial owners of SOFL; and (2) Regula would retire as nominee director of SOFL effective 9th July 2015. Upon DBT's resignation, the shares in SOFL were transferred to the personal names of Mr. Ng, Mr. Lie, and Mr. Siregar.

Appointment of Mr. Ng's Brother as Sole Director of SOFL

[47] On 8th July 2015, WTM (on behalf of Mr. Lie) wrote to Messrs Carey Olsen (for DBT) stating that no new director of SOFL should be appointed without Mr. Lie's prior written approval. On 23rd July 2015, Mr. Lie wrote to Mr. Siregar and Mr. Ng suggesting that in view of the imminent resignation of Regula as sole director of SOFL it would be sensible for each of them to select a director of SOFL (such that the new board would have 3 directors). No specific response to the letter was received.

[48] On 14th September 2015, Mr. Ng wrote to Mr. Lie stating that he wished to appoint his brother Ng Ming Hwie ('Mr. Ng's Brother') as sole director of SOFL (and enclosed a written resolution to that effect, signed by Mr. Ng and Mr. Siregar as majority shareholders of SOFL). On 17th September 2015, Mr. Lie replied proposing the appointment of both (1) himself and (2) Mr. Ng's Brother as joint directors of SOFL. Mr. Lie did not oppose the appointment of Mr. Ng's Brother as a director of SOFL: his objection was to the sole directorship. However, on 23rd September 2015, Mr. Ng's Brother was appointed as sole director of SOFL. Mr. Ng informed Mr. Lie of this appointment by letter dated 28th September 2015.

Mr. Lie's Resignation from Management of PT PEU and the East Kalimantan Subsidiaries

[49] On 23rd November 2015, Mr. Lie voluntarily resigned as operations director of (1) PT PEU effective from 1st January 2016 and (2) the East Kalimantan

Companies (PT APMR, PT BMML, PT MMMA and PT SANR) effective from 1st January 2016, ostensibly on account of his age and declining health (following his diagnosis with Ischaemic heart disease in late 2014). Mr. Lie's evidence was that his objective was to resign from his 'very active…executive role' and to be relieved of the 'rigors of daily operational management'.

Mr. Lie's Removal as Director of PT PDP

[50] On 17th December 2015, Mr. Lie's directorship of PT PDP was terminated following an extraordinary general shareholders' meeting (EGSM) of PT PDP whereupon Mr. Ng became the sole director of PT PDP and has remained sole director at all material times thereafter. At trial Mr. Lie maintained that his termination from PT PDP's directorship was without just cause (although again this termination is not pleaded as a ground of unfair prejudice but as part of the relevant factual background). Mr. Ng's case was that Mr. Lie's position as director of PT PDP was lawfully terminated at the 17th December 2015 EGSM.

Mr. Lie's Acquisition of PT Palmaris and PT Rendi

[51] Unbeknown to Mr. Ng or PT PDP at the relevant time Mr. Lie secretly negotiated the purchase of two palm oil plantation companies, PT Palmaris and PT Rendi, from early June 2015 onwards. Whilst he appears to have agreed the terms of purchase by the time of his resignation from the management of the Indonesian Operating Companies in late November 2015, formal conclusion of the purchase agreements took place in early 2016.

Non-Payment of Dividends to SOFL

[52] On 9th May 2016, PT PEU declared a dividend for the Financial Year 2015 and the sum of IDR 212.5 billion (approximately USD 18 million) was paid to PT PDP as the 85% shareholder of PT PEU.

[53] On 25th July 2016, PT PDP in turn declared a dividend of IDR 200 billion for the Financial Year 2015 to its then shareholders as follows: (1) Madam Karlinah: IDR 67.3 billion; (2) SOFL: IDR 126.32 billion; (3) Mr. Harahap: IDR 3.16 billion;

and (4) Mr. Noer: IDR 3.16 billion. However, Mr. Lie did not then receive his 45.85% entitlement of SOFL's IDR 126.32 billion dividends.

[54] At the trial Mr. Lie claimed, that as a result, he telephoned Mr. Ng about this in July 2016 and further that his wife sent text messages to Mr. Ng regarding the unpaid dividends between August and September 2016.

[55] On 13th September 2016, Mr. Lie wrote to Mr. Ng's Brother (in his capacity as director of SOFL) noting that he had not received a dividend following PT PDP's AGSM on 25th July 2016. No response was received. On 25th October 2016, Mr. Lie again wrote to Mr. Ng and his brother regarding the unpaid dividends. Again, Mr. Lie says that he received no response, and his account was not challenged in cross-examination.

[56] The non-payment of dividends by SOFL in respect of FY 2015, as well as FY 2016 to 2018, formed the basis of one of Mr. Lie's allegations of unfair prejudice in the proceedings below.

Mr. Lie's Requests for SOFL Corporate Documentation

[57] In March 2017, Mr. Lie instructed Messrs Conyers to write to SOFL requesting copies of SOFL's corporate records and for documentation relevant to the 2014 dividend distribution. Messrs Conyers wrote to SOFL by letters dated 3rd and 29th March 2017 and again on 4th May 2017 after no response was received. Meanwhile, in Indonesia, on 18th April 2017 Mr. Lie filed a police report against Mr. Ng in respect of his unpaid dividend for the Financial Year 2015. In July 2017, there was an unsuccessful police mediation between Mr. Lie and Mr. Ng. At the trial, Mr. Lie's evidence was that the police ultimately terminated the complaint on the basis that the unpaid dividend did not constitute a criminal matter. On 13th June 2017, one Mr. Muhamed Ismet Nasrudin ('Mr. Muhamed'), filed a police report on behalf of PT APMR, accusing Mr. Lie of embezzling IDR 2 billion from PT APMR (the initial criminal complaint which formed the basis of the IDR 2bn Allegation).

The 2017 Disposition

[58] On 14th July 2017, the 2017 Disposition took place whereby SOFL disposed of the majority of its shares in PT PDP (2,052,631 of 3,789,473) by transferring the same to PT Grahaidea (which is jointly owned by Mr. Ng and Mr. Ng's Brother). The 2,052,631 shares of SOFL transferred to Grahaidea represented Mr. Ng's indirect interest in PT PDP. Mr. Ng continued to be a shareholder in SOFL.

[59] By virtue of the 2017 Disposition, SOFL's shareholding in PT PDP reduced from 63.13% to 28.94%. Mr. Lie states that he became aware of the 2017 Disposition on or around 19th September 2017 upon a review of PT PDP's publicly available company profile. On 24th November 2017, Messrs Conyers (acting for Mr. Lie) wrote to SOFL again requesting SOFL's register of members and directors and copies of all resolutions as well as details concerning the 2017 Disposition. On 4th December 2017, Messrs Wither Khattar Wong (acting for SOFL) responded stating that SOFL was not in a position to disclose any financial records of the company given that SOFL (together with PT PDP) was under special audit to address the alleged abuse and misappropriation of funds by Mr. Lie during his tenure as Operations Director of certain subsidiaries of PT PDP.'

Appointment of Mr. Achmad as Sole Director of SOFL

[60] On 19th February 2018, Mr. Achmad was appointed as the sole director of SOFL in place of Mr. Ng's Brother following the passing of a director's resolution by Mr. Ng's Brother in accordance with SOFL's Articles of Association. At the date of the trial, Mr. Achmad remained the sole de jure director of SOFL (he did not provide any evidence in the proceedings).

[61] On 16th April 2018, Conyers sent a 13-page letter before action to Mr. Ng and Mr. Siregar detailing Mr. Lie's allegations of unfair prejudice. On 12th July 2018, the Claim was issued.

The 2018 Rights Issue

[62] On 18th September 2018, two months after the claim was issued, PT PDP initiated a rights issue pursuant to which existing shareholders were each

offered the opportunity to acquire new shares in the company (the "2018 Rights Issue").

[63] Both Grahaidea and Madam Karlinah (through her corporate vehicle, PT Karya Puma Wahana ("PT KPW")) participated in the 2018 Rights Issue, but SOFL did not. As a result of SOFL's non-participation in the 2018 Rights Issue, SOFL continued to hold 1,736,842 shares in PT PDP; Grahaidea's holding increased from 2,148,102 shares to 62,613,205 shares (Grahaidea having subscribed for its pro-rata entitlement pursuant to its pre-emption rights); and PT KPW – Madam Karlinah's corporate vehicle – increased its holding from 2,115,056 shares to 61,649,953 shares (PT KPW also having subscribed for its pro rata entitlement pursuant to its pre-emption rights).

[64] The net result therefore was that SOFL was left with a considerably diluted 1.38% shareholding (a significant reduction from its pre-rights issue percentage of 28.94%), Grahaidea with a 49.69% shareholding and PT KPW with a 48.93% shareholding in PT PDP.

[65] On 16th May 2019, Mr. Lie filed an Amended Statement of Claim in order to plead the 2018 Rights Issue as an additional ground of unfair prejudice.

[66] In June 2019, Mr. Lie issued a Request for Further Information in respect of Mr. Ng's Amended Defence (and in particular in relation to the Misconduct Allegations) ('the June 2019 RFI'). Dissatisfied with Mr. Ng's response thereto, Mr. Lie issued an application in respect of the same on 4th September 2019. This application was heard before Farara J (Ag.) on 9th October 2019. In a judgment dated 11th October 2019, Farara J ordered that Mr. Ng provide further responses to the June 2019 RFI, including in respect of a number of the Misconduct Allegations ('the RFI Judgment'). Mr. Ng provided these further responses on 1st November 2019.

[67] By its Case Management Conference Directions Order dated 17th September 2019 ('the CMC Order'), the Court ordered that the issue of liability and general form of relief was to be determined at trial, with the issue of quantum (if a buy-

out order were made in Mr. Lie's favour) to be stood over for directions by the trial judge. The Court ordered further that SOFL was to provide disclosure (as well as Mr. Lie and Mr. Ng) by way of exchange of lists of documents on or before 6th December 2019. Mr. Lie and Mr. Ng exchanged lists of documents on 6th December 2019. However, SOFL has never complied with any of its disclosure obligations in the CMC Order and has not engaged in these proceedings at all.

The 2019 Disposition

[68] In September 2019, SOFL transferred its shares in PT PDP to PT PDP itself thereby reducing its shareholding in PT PDP to nil (the "2019 Disposition").

[69] On 27th January 2020, Conyers (for Mr. Lie) first learned of the 2019 Disposition. On 28th January 2020, Conyers wrote to Messrs Withers (Mr. Ng's then BVI legal practitioners) requesting details in respect of the 2019 Disposition. By letter in response dated 30th January 2020, Withers suggested that Mr. Lie approach Mr. Achmad (SOFL's sole director) for such information. Mr. Lie subsequently issued a Request for Further Information ('RFI') in respect of the 2019 Disposition on 10th February 2020 ('the 2019 Disposition RFI'). Mr. Ng's position remained that the 2019 Disposition was not then an issue in dispute in the proceedings and could not therefore be the subject of an RFI. Mr. Lie filed a Re-Amended Statement of Claim on 10th June 2020 (with the leave of the Court) which pleads the 2019 Disposition as an additional ground of unfair prejudice. Mr. Ng in turn filed his Re-Amended Defence on 19th June 2020.

[70] On 11th March 2020, Mr. Lie filed a specific disclosure application which was heard on 22nd April 2020. Judgment on the specific disclosure application was handed down on 21st July 2020 ('the Specific Disclosure Judgment'). Mr. Ng filed a Supplemental List of Documents on 10th August 2020 pursuant to the Specific Disclosure Judgment.

[71] On 11th September 2020, Mr. Ng issued an application for leave to amend his Re-Amended Defence and to serve a Re-Re-Amended Defence and

Counterclaim ('the Amendment Application'). The Amendment Application sought leave to challenge, for the first time, a number of transactions set out in Permata Bank Account statements disclosed by Mr. Lie in December 2019 ('the Permata Statements'). The draft counterclaim sought relief requiring Mr. Lie to account for each of the transactions in the Permata Account. Additionally, the counterclaim sought to challenge 7 withdrawals contained in the Permata Statements on specific dates between 2013 and 2015 ('the 7 Payments'). The Amendment Application came before the Court at the pre-trial review on 16th September 2020. The trial Judge dismissed the Amendment Application with costs on the basis that it was too late and too close before trial to be introducing what appeared to be further alleged misappropriations on the basis of bank statements which were disclosed in December 2019 (some nine months prior to the Amendment Application). At a further hearing on 28th September 2020, the trial judge gave further directions to trial including the terms of the revised trial timetable.

[72] Against the above background, Mr. Lie made the Unfair Prejudice Allegations, namely:

(1) the failure to supply requested company documents (and requested information in relation to the 2017 Disposition and the 2019 Disposition as defined below) contrary to Mr. Lie's (alleged) expectation of full access to all financial and operational records of the business of the PT PDP group pursuant to an alleged quasi-partnership between Mr. Lie and Mr. Ng (the "Quasi-Partnership Allegation");

(2) the failure to pay dividends to Mr. Lie in his capacity as a shareholder of SOFL in respect of FY 2015 to 2018 (the "Non-Payment of Dividends"); the 2017 Disposition, which had occurred without any consideration being paid by Grahaidea to SOFL in respect of the transfer of the 2,052,631 shares in PT PDP by SOFL to Grahaidea and without consultation with or consent from Mr. Lie and which had resulted in SOFL's shareholding in PT PDP being reduced from 63.16% to 28.94%;

(3) the 2018 Rights Issue, as a result of which SOFL's percentage shareholding in PT PDP was further reduced from 28.94% to 1.38%; and

(4) the 2019 Disposition, which had reduced SOFL's shareholding in PT PDP to nil.

[73] The evidential phase of the trial on liability in this matter took place between 6th and 28th October 2020. On behalf of the claimant, the Judge heard from Mr. Lie; Mr. Rudi Rangkuti ('Mr. Rangkuti'); Mr. Robert Saragih ('Mr. Saragih'); and Mr. Andy Zulmi. On behalf of the first defendant, the Court heard from Mr. Ng and Mr. Robby Sembiring. There was no challenge to the factual evidence of Mr. Ng's further witnesses, Mr. Tusiman, Mr. Lambok Siahaan; and Mr. Alsen Manurung (and they were not called to give oral evidence on this basis). The Judge also heard expert evidence from Mr. Andi Kadir (for Mr. Lie) and Mr. Ibrahim Senen (for Mr. Ng) on matters of Indonesian law.

[74] As noted, the learned Judge found in Mr. Lie's favour in relation to each of the Unfair Prejudice Allegations, as well as the Quasi-Partnership Allegation.

[75] The trial Judge dismissed all but one of the Misconduct Allegations made by Mr. Ng against Mr. Lie in his counterclaim.

The Issues Raised on the Appeal

[76] This appeal raises a number of broad issues.

[77] **The Quasi-Partnership Issue & The Information Complaint -** The first issue, and as a specific matter, and as raised in Ground 1, is whether the Judge had erred in fact and law in his finding that a quasi-partnership existed at the SOFL level. A primary question which arises is whether, on an adequate consideration of the documentary and other evidence led at trial, the Judge erred in fact and law when he held that Mr. Lie had a right in equity to be consulted and to have access to all of the records of the Business after December 2015.

[78] **The Non-Payment of Dividends Issue -** The second issue is whether the Judge has erred in law and fact when he treated decisions of the directors and shareholders of PT PDP not to pay dividends to its holding company SOFL as amounting to conduct of the affairs of SOFL for the purposes of section 184I of

the Act, and that such conduct was unfairly prejudicial to Mr. Lie as shareholder of SOFL.

[79] **The 2017 Disposition Issue -** The third issue is whether the Judge erred in fact and law when he found Mr. Ng in effecting the 2017 Disposition was conducting the affairs of SOFL for the purposes of section 184I of the Act and that was an act of unfair prejudice.

[80] **The 2018 Rights Issue -** The fourth Issue is whether the Judge erred in law and fact when he found that the 2018 Rights issue effected by PT PDP was conduct on the part of its subsidiary SOFL for the purposes of section 184I of the Act and that this was an act of unfair prejudice.

[81] A primary underlying issue and an overall contention permeating many of the grounds of appeal, is whether in the circumstances of this case, as evidenced by the oral and documentary evidence, this Court could properly conclude that the trial judge was plainly wrong in finding those facts which led to his conclusions and orders. As a corollary, should this Court substitute its own findings of facts grounded in the credibility of witnesses, their oral and other evidence led at trial? This issue will be subsumed in the discussions on Issue 1 and the guiding principles will be drawn upon throughout this appeal as is appropriate.

[82] These issues will now be addressed in turn, under the broad headings as are presented in the grounds of appeal with regards to the approach taken by the parties and their respective submissions on this appeal. This Court has relied on and has drawn extensively from the parties' skeleton arguments for the summaries of the arguments used in this Judgment. Where appropriate, relevant and necessary, points made during the parties' closing arguments at the trial, and the transcripts of their oral arguments have been incorporated.

Discussions and Findings

Issue No. 1 – The Quasi-Partnership Issue & The Information Complaint

[83] The first issue, and as a specific matter, and as raised in Ground 1, is whether the Judge had erred in fact and law in his finding that a quasi-partnership existed at the SOFL level. A primary question which arises is whether, on an adequate consideration of the documentary and other evidence led at trial, the Judge erred in fact and law when he held that Mr. Lie had a right in equity to be consulted and to have access to all of the records of SOFL after December 2015. Further, whether a failure to provide the records amounted to unfair prejudice for the purposes of section 184I of the BCA.

[84] This issue arose out of Mr. Lie's complaint at trial which remains a primary issue at this stage that after he had resigned his executive role in the IOCs, he was entitled to but was denied access to pertinent information with respect to SOFL's affairs. The requested information includes Mr. Lie's repeated requests in 2017 for copies of the register of members and register of directors of SOFL as well as subsequent repeated requests for information in relation to (1) the Non-Payment of Dividends (2) the 2017 Disposition (3) the 2018 Rights Issue and (4) the 2019 Disposition.

[85] Mr. Lie's case was that in 1988 he 'established a joint venture with Mr. Ng's father, Mr. Wiyono, for the establishment and operation of the Business'. The joint venture was in the nature of a partnership in which both expected to be and were involved in the management of the Business with full access to all financial and operational records and details of the Business; and when Mr. Wiyono passed away and Mr. Ng inherited his father's shareholding in PT PDP, the relationship between Mr. Lie and Mr. Ng in connection with the Business remained as it had been between Mr. Lie and Mr. Wiyono.

On the Finding of Facts

[86] On this appeal, the Appellant has sought to challenge multiple findings on fact including those which grounded the finding by the judge that a quasi-partnership existed between Mr. Lie and Mr. Wiyono, and then Mr. Lie and Mr. Ng. Mr. Choo-

Choy KC submitted that this was one of those cases in which it would be proper to interfere with the Judge's findings of fact and relied on the learning set out in **Beacon Insurance Company Limited v Maharaj Bookstore Limited**[2], **Group Seven Ltd and Others v Nasir and Others**[3] and **Pleshakov v Sky Stream Corporation and Others**[4].

[87] The Respondent has also relied on well-established principles which guide the court's general approach to findings of fact made by a trial judge based on the oral evidence of witnesses and has effectively argued that these principles do not assist the appellant in this case.

[88] The principles guiding an appellate court are well established. In **Fage UK Ltd v Chobani UK Ltd**[5], Lewinson LJ cautioned at paragraph 114 that:

> "Appellate courts have been repeatedly warned, by recent cases at the highest level, not to interfere with findings of fact by trial judges, unless compelled to do so. This applies not only to findings of primary fact, but also to the evaluation of those facts and to inferences to be drawn from them…The reasons for this approach are many. They include:
>
> (1) The expertise of a trial judge is in determining what facts are relevant to the legal issues to be decided, and what those facts are if they are disputed.
>
> (2) The trial is not a dress rehearsal. It is the first and last night of the show.
>
> (3) Duplication of the trial judge's role on appeal is a disproportionate use of the limited resources of an appellate court and will seldom lead to a different outcome in an individual case.
>
> (4) In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping.
>
> (5) The atmosphere of the courtroom cannot, in any event, be recreated by reference to documents (including transcripts of evidence).

[2] [2014] UKPC 21.
[3] [2019] EWCA Civ 614.
[4] [2021] UKPC 15.
[5] [2014] EWCA Civ 53.

(6) Thus, even if it were possible to duplicate the role of the trial judge, it cannot in practice be done."

[89] There can be no doubt that a primary reason for the generous ambit given to the factual findings of trial judges is that they have a real advantage over an appellate court in having seen and heard witnesses first-hand. For this reason, when an appellate court is being asked to reverse a judge's findings of facts which turn on the credibility of witnesses, it should not do so unless it is satisfied that any advantage enjoyed by the trial judge by having seen and heard the witnesses could not be sufficient to explain or justify his conclusions[6] [7]. As Lord Sumner stated in **SS Hontestroom v SS Sagaporak**[8]:

> "…not to have seen the witnesses puts appellate judges in a permanent position of disadvantage as against the trial judge and unless it can be shown that he has failed to use or has palpably misused his advantage, the higher court ought not to take the responsibility of reversing conclusions so arrived at merely on the results of their own comparisons and criticisms of the witnesses and of their own view of the probabilities of the case …" (quoted with approval in Assicurazioni Generali SpA v Arab Insurance Group [2003] 1 WLR 5774 at para. 12)

[90] Even so, there is no doubt that 'the advantages that a trial judge has over an appellate court in matters of evaluation will vary from case to case. As the Board explained:

> "The form, oral or written, of the evidence which formed the basis on which the trial judge made findings of primary fact and whether that evidence was disputed are important variables. As Lord Bridge of Harwich stated in Whitehouse v Jordan [1981] 1 WLR 246, 269-270:
> "[T]he importance of the part played by those advantages in assisting the judge to any particular conclusion of fact varies through a wide spectrum from, at one end, a straight conflict of primary fact between witnesses, where credibility is crucial and the appellate court can hardly ever interfere, to, at the other end, an inference from undisputed primary facts, where the appellate court is in just as good a position as the trial judge to make the decision."

[91] Speaking to the spectrum of fact finding, the Board in **Beacon** stated:

> "Where the honesty of a witness is a central issue in the case, one is close to the former end of the spectrum as the advantage which the trial judge has had in assessing the credibility and reliability of oral evidence

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[6] *Kwok Kin Kwok v Yao Juan* [2022] UKPC 52.
[7] *Assicurazioni Generali SpA v Arab Insurance Group (BSC)* [2003] 1 WLR 577 [12].
[8] [1927] AC 37 [47].

> is not available to the appellate court. Where a trial judge is able to make his findings of fact based entirely or almost entirely on undisputed documents, one will be close to the latter end of the spectrum."

[92] In fact, the authorities have made the point that the reasons for restraint extend beyond simply seeing and hearing the witnesses testify, and are often stronger where the finding involves an evaluation of primary facts. As Leggatt LJ in **JSC BTA Bank v Ablyazov & Anor**[9] explained:

> "Those reasons are by no means limited to the advantage enjoyed by the trial judge in a case in which oral testimony plays a significant part of having seen and heard the witnesses give evidence. The reasons also include recognition that the judge who presides over the trial is immersed in the evidence in a way that an appeal court cannot replicate. As it was put in the majority judgment of the Supreme Court of Canada in Housen v Nikolaisen [2002] 2 SCR 235, para 14 (quoted by Lord Reed JSC in McGraddie v McGraddie [2013] 1 WLR 2477, para 33): 'appeals are telescopic in nature, focusing narrowly on particular issues as opposed to viewing the case as a whole.' In elaborating this point, the Canadian Supreme Court adopted the observations of a commentator that: 'The trial judge has sat through the entire case and his ultimate judgment reflects this total familiarity with the evidence. The insight gained by the trial judge who has lived with the case for several days, weeks or even months may be far deeper than that of the Court of Appeal whose view of the case is much more limited and narrow, often being shaped and distorted by the various orders or rulings being challenged.' See Housen v Nikolaisen [2002] 2 SCR 235, para 14 (quoted in McGraddie v McGraddie [2013] 1 WLR 2477, para 4)."

[93] An appellate court's intervention would also be justified when the trial judge's conclusion was one 'which there was no evidence to support,' or which was based on a demonstrable misunderstanding of the evidence or demonstrable failure to consider relevant evidence. [I]f there is no such identifiable error and the question is simply one of judgment as to the appropriate weight to be given to the relevant evidence, the appellate court must be satisfied that the judge's conclusion 'cannot reasonably be explained or justified.'[10]

[94] As Lord Reed summed it up in the **Henderson** case at paragraph 62:

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[9] [2018] EWCA Civ 1176.

[10] See Group Seven Ltd (a company incorporated under the laws of Malta) and another company v Notable Services LLP and another [2019] EWCA Civ 614 and Beacon Insurance Company and Maharaj Bookstore Ltd [2014] UKPC 21.

> "It does not matter, with whatever degree of certainty, that the appellate court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge would have reached."

[95] In all of this, the appellate court must remind itself that it only has the printed record of the evidence: **Beacon Insurance Company v Maharaj Bookstore Ltd.**

[96] These principles will guide this Court in the analysis of the Judge's fact-finding exercise.

On the Judge's Consideration of the Parties' Submissions at Trial

[97] In this case, the appellant has complained that the trial Judge, in his fact-finding task, failed to take into account or adequately address his submissions. In treating with this sub-ground of appeal, and as the respondent has submitted, the appellate court must bear in mind the approach endorsed by this very Court in **Marie Makhoul v Cicely Fosta**[11] where this Court adopted Lord Hoffmann's caution in **Biogen Inc v Medeva Plc**[12] when his Lordship stated:

> "The need for appellate caution in reversing the judge's evaluation of the facts is based upon much more solid grounds than professional courtesy. It is because specific findings of fact, even by the most meticulous judge, are inherently an incomplete statement of the impression which was made upon him by the primary evidence. His expressed findings are always surrounded by a penumbra of imprecision as to emphasis, relative weight, minor qualification and nuance...of which time and language do not permit exact expression, but which may play an important part in the judge's overall evaluation."

[98] As an appellate court considers a judgment to determine a complaint that the Judge has failed to take into account or adequately address the submissions of a party or even the evidence in this case, it is useful to bear in mind the guidance of Lord Justice Males in **Simetra Global Assets Ltd and another company v Ikon Finance Ltd and others**[13] at paragraph 46:

> "Without attempting to be comprehensive or prescriptive, not least because it has been said many times that what is required will depend on the nature

[11] ANUHCVAP2009/014 (delivered 23rd February 2015, unreported).
[12] [1997] RPC 1.
[13] [2019] EWCA Civ 1413.

> of the case and that no universal template is possible, I would make four points which appear from the authorities and which are particularly relevant in this case. First, succinctness is as desirable in a judgment as it is in counsel's submissions, but short judgments must be careful judgments. Second, it is not necessary to deal expressly with every point, but a judge must say enough to show that care has been taken and that the evidence as a whole has been properly considered. Which points need to be dealt with and which can be omitted itself requires an exercise of judgment. Third, the best way to demonstrate the exercise of the necessary care is to make use of "the building blocks of the reasoned judicial process" by identifying the issues which need to be decided, marshalling (however briefly and without needing to recite every point) the evidence which bears on those issues, and giving reasons why the principally relevant evidence is either accepted or rejected as unreliable. Fourth, and in particular, fairness requires that a judge should deal with apparently compelling evidence, where it exists, which is contrary to the conclusion which he proposes to reach and explain why he does not accept it."

[99] It is now appropriate to examine the question as to whether the Judge has gotten it plainly wrong on his findings on the quasi-partnership as well as the other 'facts' which are being challenged on this appeal.

The Nature of a Quasi-Partnership

[100] Mr. Ng's attack on this finding of quasi-partnership arises not only from its relevance to the Judge's finding that there was unfair prejudice in the form of Mr. Ng's refusal to provide information that Mr. Lie had requested about SOFL's affairs, but also its relevance to the valuation issue. As regards the latter, the court agrees with him that it 'is well-established that the general rule in unfair prejudice cases is that, unless the company whose affairs have been conducted in an unfairly prejudicial manner is a quasi-partnership, the minority shareholder's shares are to be valued at a discount to reflect the fact that they represent a minority holding': see **Shanda Games Ltd v Maso Capital Investments Ltd.**[14]

[101] What then is a quasi-partnership? And is one established in this case?

[14] [2020] UKPC 2 [37]-[38].

[102] The quasi-partnership is now an acceptable label given to the equity which arises from the 'circumstances surrounding the conduct of the affairs of a particular company which are such as to give rise to equitable constraints on the behaviour of other members'. This definition recognises that the term quasi-partnership may be misleading as there is no need to show that the relationship possesses all the characteristics of a partnership in the traditional sense: see **Strahan v Wilcock.**[15]

[103] Once present, this equity does not entitle one party to disregard the obligation he assumes by entering the company, nor the court to dispense him from it. What it does, as equity always does, is that it 'enable[s] the court to subject the exercise of legal rights to equitable considerations; considerations, that is, of a personal character arising between one individual and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way.'**[16]**

[104] The case of **Ebrahimi v Westborne Galleries Ltd. and Others,** treating with the effect of "just and equitable" ground for winding up, is the leading English authority on this issue**.** In this case, a director of a small private company was removed from office by ordinary resolution and found himself locked into the company with little prospect of receiving a return from his investment by way of dividends. The court granted a winding-up order on the just and equitable ground; although the majority had acted within their legal rights it was proper to subject those rights to equitable considerations where the company was in substance a partnership. Thus, the court will order a winding up of such a company where it would do so if the association in question was a partnership. Lord Wilberforce making reference to the 'just and equitable' principle in this context stated:

> "The words are a recognition of the fact that a limited company is more than a mere legal entity, with a personality in law of its own: that there is room in company law for recognition of the fact that behind it, or amongst it, there are individuals, with rights, expectations and obligations inter se which are not necessarily submerged in the

[15] [2006] 2 BCLC 555.
[16] Ebrahimi v Westborne Galleries Ltd. and Others [1973] AC 360.

company structure. That structure is defined by the Companies Act and by the articles of association by which shareholders agree to be bound. In most companies and in most contexts, this definition is sufficient and exhaustive, equally so whether the company is large or small."

[105] How and when does a quasi-partnership arise? As the **Ebrahimi** case has properly pointed out:

> "It would be impossible, and wholly undesirable, to define the circumstances in which these considerations may arise. Certainly, the fact that a company is a small one, or a private company, is not enough. There are very many of these where the association is a purely commercial one, of which it can safely be said that the basis of association is adequately and exhaustively laid down in the articles."

[106] The authorities have shown that the courts are prepared to typically find that the characteristics of a quasi-partnership have been superimposed on the formal rules and structure of a company if one or more of the following factors are established:

(1) it is formed or 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;

(2) an agreement, or understanding, that all, or some (for there may be "sleeping" members), of the shareholders shall participate in the conduct of the business;

(3) restriction 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. See **Re Zinotty Properties Ltd**[17]: one of the participators had not been appointed a director as he had been promised.

This is not an exhaustive list.

[107] Whilst a quasi-partnership arrangement may be delineated in the articles or found in a written document of some sort, it is more often found in the oral agreement or understanding between and even the conduct, of the parties. See **Tay Bok Choon v Tahansan Sdn Bhd,**[18] which makes the point that a quasi-

[17] [1984] 3 All ER 754.
[18] [1987] 1 WLR 462.

partnership may even be found on credible affidavit evidence of the unwritten arrangement and given by the party seeking to enforce the equity.

[108] It is therefore apparent that the detailed expressions of the constitutional documents of the company would in most cases not determine whether a quasi-partnership exists in fact. Surely, those documents would be relevant where they truly negative the existence of this equity. It must be recognised that by its very nature, a quasi-partnership often exists as a result of oral understandings and agreement between the relevant persons. It would therefore be important to make a distinction between those rules of formal company's constitutional documents which are simply inconsistent with the existence of a quasi-partnership but yet not negative its existence in the face of the oral understanding and agreement.

[109] One example where the constitutional documents of a company may actually negative the existence of a quasi-partnership is found in the case of **George v McCarthy & Anr**,[19] a decision relied on by the appellant on this appeal. In that case, quite apart from the articles of the company, the parties had entered into a shareholder's agreement subsequent to the establishment of the company. That agreement was found to be an arms-length commercial undertaking and covered a number of matters such as (a) who would remain directors, (b) restrictions on decision making of the parties, (c) restrictions on the paying of dividends, (d) a limited restrictions on the transfer of shares (expressly found not to a share restriction in the terms contemplated by Lord Wilberforce in the third category). Significantly, it expressly provided that the agreement constituted the entire agreement which could not be waived or varied except in writing, and further that 'nothing contained in the agreement shall constitute a partnership between the parties or any of them'. It was in this context that the court stated:

> "…this Shareholders' Agreement negates the concept of a quasi-partnership as at that date. It self-evidently does not rely on a personal relationship involving mutual confidence, but instead seeks to set up a series of checks and balances which will expressly prevent the oppression of a minority by the majority. There is no room, in my

[19] [2006] BCLC 714.

> judgment, for an equitable agreement or understanding to sit alongside this formal express agreement, nor is there any evidence of any unwritten agreement or understanding complementary to or conflicting with this written agreement."

[110] Even though the cited cases relate to the 'just and equitable' jurisdiction in winding up cases, the equity has been adopted in considering unfair prejudice issues in oppressions cases.

Did the Judge Err in Fact and Law to find a Quasi-Partnership in this Case?

[111] The questions are: Did the Judge properly apply these principles to the facts of the case? Was the Judge plainly wrong? Did he disregard or misunderstand crucial evidence with the result that he reached a factual conclusion which no reasonable judge could have reached and which lay outside the bounds within which no reasonable disagreement was possible? Additionally, or alternatively, did he disregard, or demonstrate misunderstanding and/or misapplication of the legal principles applicable to the concept of quasi-partnership in the context of allegations of unfair prejudice, so much so that his conclusion in fact and law was plainly wrong? Did the Judge fail to consider the submissions so much so that, his findings were plainly wrong?

[112] Taking the latter question first, it would appear to me that the Judge cannot be faulted for failing to take into account or adequately consider the submissions of any of the parties. It must be apparent to anyone that there was a detailed recital of Mr. Ng's submissions under the heading of 'Issue 1: Quasi-Partnership Allegation and the Information Complaint' and in particular the subheading "First Defendant's Submissions". This covers 9 pages of the Judgment. There can be no doubt that the point of the 'Joint Note' ordered by the Judge and provided by the parties, was to ensure that the parties' respective rival contentions were captured accurately and comprehensively. I have considered the closing addresses at the trial. I agree with the Respondent that the Judge followed the **Simetra's** approach of marshalling the evidence which bears on the issue.

[113] It is clear to me that while the Judge did not in this section expressly refer to each of the 12 submissions in turn, an examination of the Judge's analysis

reveals that that there was a clear logic to his approach, and that he must have had each of the 12 submissions in mind when he set out his conclusions in the Judgment. **Simetra** makes it clear that 'it is not necessary to deal expressly with every point'.

[114] But did the Judge get it plainly wrong in the circumstances of this case? I now turn to address this question.

Preliminary Point: Quasi-Partnership at SOFL Level

[115] The appellant's argument in essence, (both in written and oral arguments) is that it was plainly wrong in the circumstances of this case, for the Judge to find there was a quasi-partnership at SOFL level, [when] the entire foundation of Mr. Lie's case on the facts (as set out in his pleadings and in his trial witness statement) was that the quasi-partnership at the SOFL level was originally constituted at the PT PDP level (between himself and Mr. Wiyono during the period 1988 to 1992 until Mr. Wiyono's death), then maintained as between him and Mr. Ng (following Mr. Wiyono's death in 1992), and much later transferred from PT PDP to SOFL (following the restructuring by Mr. Lie and Mr. Ng of their respective holdings in PT PDP).

[116] The appellant uses this argument to contextualise his grounds of appeal on this point as in those grounds, he points to the 'circumstances' and documents, which negatives any finding that a quasi-partnership was originally constituted at the PT PDP level and then continued. He is saying that if Mr. Lie's pleaded case about the quasi-partnership being originally constituted at the PT PDP level was rejected, then a quasi-partnership at the SOFL level must be equally rejected. He also contends that the Judge in any event 'misapplied the legal principles applicable to the concept of a quasi-partnership in the context of allegation of unfair prejudice'.

[117] Mr. Hardwick for Mr. Lie opposes these points. He submits that Mr. Lie's pleaded case and his witness statement did not present any 'quasi-partnership' at the PT PDP level. What was alleged was a 'joint venture' established between Mr.

Lie and Mr. Wiyono in respect of the "Business" - the nature of which Business developed from just PT PDP (in 1988) to the wider group, with SOFL as the ultimate holding company, by 2002.

[118] He contends that: '[a]ccordingly, and conventionally, (1) the pleaded case identified the factual building blocks for argument (including the original Mr. Lie/Mr. Wiyono "joint venture", with Mr. Wiyono "replaced" by Mr. Ng in 1992); and (2) the legal argument explained that (in a case brought pursuant to BVI law against the BVI company SOFL), that the quasi-partnership contended for pertained to SOFL.'

[119] The Judgment reveals that the Judge was very conscious that his task was to find whether a quasi-partnership existed at the SOFL, but that this required an examination of the historical circumstances and the relationship between the parties.

[120] At paragraph 248 of the Judgment, the Judge found and recognised the 'joint venture' between Mr. Lie and Mr. Wiyono in 1988 when they established PT PDP in 1988.

[121] The appellant is right about one thing here, that is, the Judge did go on to make a finding of the quasi-partnership even at the PT PDP level. At paragraph 249 of the Judgment, the Judge found as a fact that there was a close family relationship between the two men and that the basis of the joint venture arrangement between them was that of a partnership; both expected to be and were involved in the management of the 'business' with full access to all financial and operational records and details of the business'. As I understand the Judge, he was not making a ruling on whether a quasi-partnership existed as a matter of Indonesian law, but that such a partnership existed through the lens of BVI law.

[122] The success of Mr. Ng's preliminary point therefore would depend on whether he is right about those circumstances and documents on which he relies to

negate any finding that a quasi-partnership was established originally at the PT PFP level and at the SOFL level.

[123] His first argument is contained in ground 1(2) of the Notice of Appeal.

Whether Quasi-Partnership Inconsistent with Notarised Deed Establishing PT PDP

[124] Mr. Choo-Choy KC argues that a finding that there is a quasi-partnership is inconsistent with the terms of the notarised Deed establishing PT PDP. For this contention, he relies on the case of **George v McCarthy**.[20]

[125] In short, he contends that the relationship of the individuals (Mr. Wiyono, Mr. Lie and Madam Soendari) who were the founding shareholders of PT PDP as the original emanation of the business, was expressly regulated by the terms of PT PDP's Articles of Association, as contained in the 19th February 1988 notarised Deed. Those Articles are a very important document in the Indonesian context, as is apparent from Articles 7-10, 15 and 21 of the Indonesian Companies Law and the evidence of Mr. Lie's Indonesian company law expert, Mr. Kadir (including his evidence that any rights to participate in the management of an Indonesian company must be recorded in the Articles of Association of the company).

[126] Learned counsel goes on to point out that it was uncontradicted that all three founders appeared before an Indonesian notary who read and explained the terms of the document to them, that the terms of the intended arrangements between them were accurately reflected in the Deed. He submits that 'any matters of importance agreed between them in relation to PT PDP would have been notified to the notary and recorded in the Deed.'

[127] Mr. Choo-Choy KC submits that the terms of the Deed and related Articles of Association (see Articles 1-4, 5(5), 10, 23 and 24) fundamentally contradict Mr. Lie's quasi-partnership allegation in multiple respects:

[20] [2006] BCLC 714.

(1) They did not record a joint venture between Mr. Wiyono and Mr. Lie alone, rather they recorded the establishment of the business of PT PDP by Mr. Wiyono, Mr. Lie and Madam Soendari as the three founders and shareholders of the business (Article 4(2));

(2) They made clear that the Articles were legally binding on all shareholders (Article 5(5));

(3) They provided for the appointment, dismissal and replacement of management, i.e. the Board of Directors, to be the exclusive preserve of the general meeting of shareholders (Article 10(3));

(4) They provided that any matters not expressly regulated by the Articles are to be decided by the general meeting of shareholders (Article 23); and

(5) They confirmed Mr. Lie's appointment as a Commissioner, not as a Director (Article 24), i.e. as having a non-managerial role only within the business of PT PDP.

[128] King's Counsel submits that 'the Articles were expressed to be mandatory and exhaustive in their effect by requiring all shareholders to comply with the terms of the Articles and with all decisions lawfully made at a general shareholders' meeting (Article 5(5)), thereby leaving no room for any notion of joint venture or quasi-partnership existing outside of the terms of the Articles or resolutions of the general shareholders' meeting. Further still, no shareholders' agreement or joint venture agreement was entered into between Mr. Lie, Mr. Wiyono and Madam Soendari (and no resolution was passed at any general shareholders' meeting evidencing the quasi-partnership arrangement alleged by Mr. Lie), whether at the time of establishment of PT PDP or at any other time.'

[129] For completeness learned King's Counsel also points out that it is a matter of significance that, 'a written Joint Venture Establishment Agreement dated 26th February 1990 was entered into in relation to PT PEU.' He argues that '[t]his is powerful evidence that, in the Indonesian context, and consistent with Mr. Kadir's evidence, when joint venture relationships are intended, they are usually recorded in the form of a written agreement collateral to the articles of association of the joint venture company. The absence of such an agreement between the founders of PT PDP strongly suggests that no such agreement was ever entered into (let alone as between Mr. Lie and Mr. Wiyono to the exclusion

of Madam Soendari), and no such joint venture understanding as alleged by Mr. Lie ever existed.'

[130] Mr. Choo-Choy KC nonetheless accepts that 'quasi-partnership allegations are usually advanced in situations where the constitutional documents of the company do not record the alleged quasi-partnership arrangement' but relying on **George v McCarthy**, he submits that in this case, the notarised Deed ought to have been taken as negativing any quasi-partnership.

[131] Mr. Hardwick KC does not agree with Mr. Choo-Choy KC. He first contends that it is irrelevant to consider the effect of the notarised Deed (Articles of PT PDP), as the issue for the Judge was not whether a quasi-partnership existed at PT PDP level but whether one existed at the SOFL level having regards to BVI law and English principles governing the issue.

[132] On whether there should have been a written agreement or a resolution setting out any quasi-partnership, Mr. Hardwick KC was equally short with his answer. He submitted that having regards to the fact that Mr. Lie and Mr. Wiyono were friends and co-founders, there was no need for there to be a written record of the joint venture arrangement between the parties.

[133] In my view, the Judge was required to consider the oral evidence of the parties and it was open to him on the evidence presented to him to make a finding that there was a close and personal and familial relationship between Mr. Lie and Mr. Wiyono involving mutual confidence. As the Judge found, when Mr. Wiyono died, there was an understanding between Mr. Lie and Mr. Ng's side of the family, which included both Mr. Ng and his mother, being Mr. Wiyono's widow that the business would be conducted as before Mr. Wiyono's death, with the difference that Mr. Lie would take more of a leading role whilst Mr. Ng would be inducted by Mr. Lie into the ways and means of successful palm oil development and commercial exploitation. Mr. Wiyono's widow had expressed the wish that Mr. Lie was to educate Mr. Ng on the ways of the business which was understood by the Judge as the 'art of building productive and enduring

business relationships and how to assess suitable commercial opportunities and bring them to fruition'.

[134] This fact-finding exercise is not shown to be plainly wrong. The Judge was entitled to find that Mr. Lie was a credible witness. He saw and heard this witness. He was entitled to accept his evidence with regards to the relationship and the interactions between Mr. Lie and Mr. Wiyono and his side of the family.

[135] Having made these findings, the Judge applied the principles set forth in **Ebrahimi v Westbourne Galleries** (as approved in the House of Lords decision in **O'Neill v Phillips**) in which Lord Wilberforce explained how the 'superimposition of equitable considerations' over and above that which is laid down in a company's articles requires 'an association formed or continued on the basis of a personal relationship involving mutual confidence' or 'an agreement, or understanding, that all, or some…of the shareholders shall participate in the conduct of the business'.

[136] The absence of a written record evidencing the quasi-partnership cannot, therefore, negate the existence of the quasi-partnership.

[137] With regards to the arguments that the express terms of the notarised Deed (Articles of PT PDP) negative the existence of a quasi-partnership, Mr. Hardwick KC submits that 'it is axiomatic (in this area of law) that the informal arrangement or agreement is likely to be "inconsistent" with the formal written terms.'

[138] This Court must agree with Mr. Hardwick KC.

[139] In most of the cases, the relevant Articles would usually set out, for example, how the company is managed, how decisions are made, and how shares are to be dealt with. Those cases show that when the equity arises, and a quasi-partnership is found, it will usually mean that the expressed terms of the Articles would not be strictly enforced. In other words, inconsistency with the Articles is not determinative as to whether a quasi-partnership exists or not. In **McCarthy**, the document in question was a separate shareholder's agreement which had

been entered into as an 'arms-length' commercial undertaking. That agreement has expressly spoken to the question of a partnership and had excluded its operation. That is not the case here.

[140] With regards to the contention that it was significant that Mr. Lie was appointed as a 'commissioner' not a 'director' of PT PDP, Mr. Hardwick KC contended that this simply reflected the requirement at Article 10(1) that PT PDP must have at least one commissioner and one director.

[141] It has been recognised that shareholders may be in a quasi-partnership even though one of them is not fully involved at all times once that is the understanding: see the case of **Fowler v Gruber**[21]. The cases also show that even 'sleeping members' may be part of a partnership arrangement: see **Ebrahimi; Banfield v Edwards and others**[22]**.** It goes without saying that there is no rule that there must be strict equal management in any quasi-partnership arrangement; it all depends on the understanding or the agreement. An agreement grounded in personal relationship and mutual understanding is equally open to different kinds of formal responsibilities being allocated to one member as against another and yet remain a quasi-partnership which allows both to 'participate in the conduct of the business'.

[142] Taken by itself and together with the other matters, it is difficult to see how Mr. Lie's appointment as Commissioner can negate a finding of a mutual agreement or understanding involving mutual confidence.

[143] As far as the written Joint Venture Establishment Agreement dated 26th February 1990, which was entered into in relation to PT PEU, Mr. Hardwick KC for Mr. Lie submits that this only reinforced the very different nature of that venture: when the Indonesian government entity PTP 6 became a 15% shareholder of PT PEU, that did require documentation precisely because that was a commercial relationship. But that joint venture was at the PT PEU level.

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[21] [2009] CSOH 36 [136].
[22] [2024] EWHC 2104 (Ch).

The very fact that Mr. Wiyono and Mr. Lie appreciated the need to reduce that different commercial relationship to a written agreement, yet left their joint venture in PT PDP undocumented, is entirely consistent with the different nature of their relationship and agreement.

[144] As the Judge finally held on this point, that SOFL was not a mere 'commercial association' but (applying the test of Lord Wilberforce in **Ebrahimi**) (1) SOFL was 'an association…continued on the basis of a personal relationship, involving mutual confidence'; and (2) the underpinning 'agreement, or understanding, that…some…of the shareholders shall participate in the conduct of the business' (which had its original foundations back in 1988) is expressly confirmed by the DBT Mandate.'

[145] Again, the respondent's arguments on this point are preferred. There is no doubt that Mr. Lie would have understood the utility and need for a written joint venture agreement when dealing with third parties and new arrangements. Such an understanding is not at all inconsistent with the finding made by the Judge that Mr. Lie and Mr. Wiyono had a personal relationship involving mutual confidence.

Relevance of Madam Soendari as an Original Founder / Relevance of Subsequent Co-Founders and Strategic Shareholders

[146] The argument here really is that the presence of an original co-founder and other persons joining PT PDP as shareholders and Mr. Siregar being a member of SOFL negates any finding of a quasi-partnership in this case between Mr. Lie and Mr. Wiyono and then between Mr. Lie with Mr. Ng.

[147] As Mr. Choo-Choy KC points out in relation to ground 1(2): '[i]t was common ground before the Judge that Mr. Lie and Mr. Wiyono had gone into the palm oil plantation business with a third individual, Madam Soendari, who had an important role to play by reason of her valuable contacts and knowledge of relevant local and national government procedures and her husband's connections with the Indonesian military and was allotted a significant shareholding. It has never been alleged by Mr. Lie, and there was no evidence to suggest, that there was any joint venture or quasi-partnership agreement

between all three of them or between either Mr. Lie or Mr. Wiyono (on the one hand) and Madam Soendari (on the other hand).'

[148] Mr. Choo-Choy KC then submits that it was inherently implausible and unreal for only 2 of the 3 founders of the Business to have been party to a joint venture or quasi-partnership and for the third to have been excluded from it. The law in this regard is that the courts will seldom find that there is a quasi-partnership arrangement between some only of the shareholders (especially founder-shareholders) of a company, with the remaining shareholders being strangers to the arrangement. He relies on the cases of **Re Edwardian Group Ltd**,[23] **Fowler v Gruber**[24] and, more recently, **Re Dinglis Properties Ltd**.[25]

[149] Mr. Choo-Choy KC contends that in the Judgment, the Judge did not even allude to the relevance of this general principle and related case law, let alone seek to distinguish its application on the particular facts of this case.

[150] As regards to ground 1(3), Mr. Choo-Choy KC pointed to certain undisputed matters as follows: in December 1988 Madam Karlinah acquired 55 of the 200 issued shares in PT PDP, representing a significant shareholding of 27.5% which at the time was larger than Mr. Lie's then shareholding of 35 shares in PT PDP. Effectively, Madam Karlinah and Madam Soendari's combined shareholding at that point in time amounted to 42.5% of PT PDP's share capital – larger than either Mr. Lie's (17.5%) or Mr. Wiyono's (40%) shareholding. The notarised Deed dated 26th December 1988 recorded that Madam Karlinah was joining the original founders and shareholders of the company in order 'to participate as the founder/shareholder and member of the Management Board of the Company, which has been fully agreed by the other founders/shareholders of the said Company'. Thus, Madam Karlinah joined the business (which had only just been incorporated) as much a founder as the original 3 founders. Mr. Lie confirmed during his oral evidence that, as the wife of the 4th Vice-President of Indonesia, Madam Karlinah had government

[23] [2019] 1 BCLC 171 [130]-[139].
[24] [2009] CSOH 36 [136]-[137], [117].
[25] [2019] EWHC 1664 (Ch).

connections and was an important investor in the business. Although she was not appointed to a day-to-day management role, she was appointed to the supervisory role of President Commissioner, in a role superior to that of Mr. Lie as a simple Commissioner.

[151] Learned King's Counsel also pointed out that 'in June 1992, Omar Abdalla and Madam Kiswati acquired 10 shares and 5 shares respectively. As earlier noted, Mr. Lie's own pleaded case and evidence was that they, too, joined PT PDP as strategic shareholder.'

[152] He submitted that it was 'not alleged by Mr. Lie that all of those strategic investors (Madam Karlinah, Mr. Abadalla and Madam Kiswati) joined the ownership of PT PDP and thereby enlarged a pre-existing quasi-partnership between Mr. Lie and Mr. Wiyono, or that they were informed of the existence of any such quasi-partnership.'

[153] He submitted that '[h]aving regard to the legal principles earlier referred to in **Fowler v Gruber** (esp. [136]-[137]), **Re Edwardian Group** (esp. [130]-[139]) and **Re Dinglis Properties** (esp. [191] and [194]) and in particular the evidential improbability of equitable constraints coming into existence which only some shareholders are positively said to have been a party to (**Re Dinglis Properties** at [191] and [194]) and the legal consideration that what renders an informal quasi-partnership arrangement enforceable in equity is its mutuality as between the owners of the business (**Re Edwardian Group** at [131] and [134]-[136]), it is unrealistic to suppose that a quasi-partnership arrangement between Mr. Lie and Mr. Wiyono only (if it ever existed) could have survived the arrival of all of those co-founders and strategic investors during the formative stage of PT PDP and/or that a quasi-partnership arrangement between Mr. Wiyono and Mr. Lie existed without the knowledge and to the exclusion of all such substantial shareholders of PT PDP.'

[154] Mr. Hardwick KC takes a different view. With regards to arguments made in relation to Madam Soendari, Mr. Hardwick KC sought to make two points. First, he accepts that it was not alleged that Madam Soendari was part of the joint

venture/quasi-partnership, and he submits that as a matter of law and for the purposes of the section 184I relief being sought, the relevant partnership was at SOFL level.

[155] The second point he seeks to make contends for 'an express exception for "a case where the shareholders that are not parties to the equitable considerations are either a very small minority or are closely connected to the quasi-partners."' He refers to the case of **Re Edwardian Group Ltd** at [130] to [139], and submits that: 'Mr. Siregar had just 8% of the shares in SOFL – and the DBT Mandate formally confirmed that only Mr. Lie and Mr. Ng could give voting instructions to the nominee director – such that no difficulties, practical or legal, were represented by Mr. Siregar being "outside the ring" of quasi-partners.'

[156] As regards ground 1(3), Mr. Hardwick KC submitted that the later inclusion of Madam Karlinah presented no conceptual obstacle to the factual claim that there was a 'joint venture' between Mr. Wiyono and Mr. Lie. She was a person with contacts and influence, but she was not a manager or operator and what involvement she had did not (as the Judge found) affect the reality of the joint venture agreement between Mr. Wiyono and Mr. Lie. Again, moreover, it was not alleged that there was a 'quasi-partnership arrangement' as a matter of Indonesian law at PT PDP level: the allegation was at SOFL level – where Madam Karlinah had no shareholding and no managerial role.

[157] In my view, it is significant that the Judge knew that his task was to determine whether a quasi-partnership existed at the SOFL level. It is also important that the understanding that the Judge was being asked to enforce was between Mr. Lie and Mr. Wiyono and then Mr. Lie and Mr. Ng that Mr. Lie 'expected to be involved in the management of the "business" with full access to all financial and operational records and details of the business' and in turn have full access to all financial and operation records and details of SOFL.

[158] The question then has to be whether at the SOFL level a finding of a quasi-partnership could properly be made even though Mr. Siregar holding 8.3% of shares in SOFL was outside of the ring.

[159] In **Re Edwardian**, the court opined that in an exceptional case, a quasi-partnership could exist even though there was a minority 'outside the ring'. Speaking in the context of the enforceability of the obligations superimposed on the company and the presence of a minority who is not part of the agreement, the court stated:

> "The understanding is enforceable in equity because of its mutuality: the mutual relationship of trust and confidence, of a personal character, affects the conscience of each member equally. Almost by definition, if the majority (by voting rights) of the members are not bound by any such mutual rights or understanding, the company does not have the characteristics of a partnership. One can see that, in an exceptional case, the fact that a small shareholding may have devolved on someone 'outside the ring' ought not to affect the character of the company. In other cases, the shares may only be permitted to be transferred to someone who is a member of the class within the ring, so that the character of the company is unaffected."

[160] **Dinglis Properties** is not authority for the point that Mr. Choo-Choy KC is seeking to make. In that case, it was recognised that 'there was no place for equitable constraints of a quasi-partnership nature in relation to publicly listed companies': See para. 191 citing **In re Blue Arrow plc,**[26] 590–591, per Vinelott J and **In re Astec (BSR) plc,**[27] 587–589, per Jonathan Parker J. The Judge in **Dinglis Properties** recognised that there were opposing views on whether a quasi-partnership could arise even if some of the shareholders were not parties to the mutual understanding relied on. Reference was made to **Re Yung Kee Holdings Ltd**[28] a judgment of the Hong Kong Court of Appeal and **Estera Trust (Jersey) Ltd v Singh and others.**[29]

[161] In **Estera Trust** even though Fancourt J was doubtful of the proposition, he was careful to say at paragraph 134:

> "…except perhaps in a case where the shareholders that are not parties to the equitable considerations are either a very small minority or are closely connected to the quasi-partners … **such that the established quasi-partnership character of the company does not change**." (emphasis supplied)

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[26] [1987] BCLC 585.
[27] [1998] 2 BCLC 556.
[28] [2014] 2 HKLRD 313.
[29] [2018] EWHC 1715 (Ch).

[162] In **Waldron v Waldron,**[30] Judge Eyre QC said he preferred the view of the Hong Kong Court of Appeal, and that therefore the 'crucial question is whether there are any equitable considerations arising from the dealings between the shareholders which call for restraints over the exercise of strict legal rights on the particular facts of the case', albeit that in forming that judgment the existence of third party rights and third party involvement can be very significant in deciding whether such equitable constraints are present.

[163] In **Dinglis Properties** itself, the court considered that the question would have to depend on the state of the pleadings and the evidence. The court stated at paragraph 194:

> "It seems to me, therefore, that on this point the better approach for me is to consider the evidence otherwise said to support the existence of the understandings, and in doing so to bear in mind: (i) the inherent probability of equitable constraints coming into existence which only some shareholders are positively said to have been a party to, and perhaps more importantly, (ii) the fact that neither Iris nor indeed Cheryl have given evidence before me, with the consequence that I have not had from either of them their own first-hand account of how they say the relevant understandings came into being."

[164] In this case, the pleaded case provided the foundation for the finding of a quasi-partnership, and the evidence of Mr. Lie convinced the Judge of the arrangements and its terms.

[165] The Judge in the present case gave due regard to the fact of the involvement of other minority shareholders of the Indonesian companies and even of SOFL. On the establishment of PT PDP Madam Soendari was a minority shareholder who did not participate in management. Madam Karlinah was equally a minority shareholder. The Judge determined that '[t]hose minority shareholders may have had their uses, and thus could be called "strategic", but this did not change the reality that fundamentally this was a business venture jointly conducted first between Mr. Lie and Mr. Wiyono and then, after the latter's death, between Mr. Lie and Mr. Ng.'

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[30] [2019] Bus LR 1351 [41]-[42].

[166] The Judge made it a point to speak at various stages, to a 'joint venture' and a 'business venture jointly conducted'. He must have had in mind that what he was faced with was not a partnership in the traditional sense, but it was the personal relationship between two parties which involved mutual confidence and which in 'the circumstances of this case are such as to give rise to equitable constraints on the behaviour of other members' beyond the strict rights and obligations set out in the Act.

[167] I am not persuaded that the mere fact of Mr. Siregar being a member of SOFL must mean that Mr. Lie and Mr. Ng did not have a quasi-partnership at the SOFL level. In fact, there is no doubt that he was simply a minority shareholder with 8.3% of the shares of SOFL. Mr. Lie and Mr. Ng each had 45.85% of the shares. The arrangement between Mr. Lie and Mr. Ng would be that they would be responsible for the management of SOFL. This would not automatically mean that they would ignore Mr. Siregar's voting rights. This does not mean that they must cause Mr. Siregar not to have the benefit of his voting power.

[168] But the reality was that these two men, Mr. Lie and Mr. Ng with 45.85% of the shares each, had an understanding, which if one of them chose to act contrary to that understanding and decided, for instance, to co-opt Mr. Siregar to vote out the other, then the ousted one would be entitled to enforce the equity. This is quite consistent with the recognition in **Estera** that the shareholder outside the ring really was such a minority that could not change the established quasi-partnership character of the company**.**

[169] There is also no doubt that during the period of 2002 and 2015, the directors in place were simply nominees who took their directions from Mr. Lie and Mr. Ng. Then there is the DBT Mandate which states that Deutsche Bank International Trust Company may take instructions from either Mr. Lie or Mr. Ng for all matters in relation to the management of SOFL and its assets including any investments and withdrawal of the company's assets. Even when the nominee sole director resigned in 2015 after the relationship had broken down, Mr. Lie's proposal was that two directors be appointed, one by Mr. Ng and the other by himself. The

Judge must have accepted that this was indicative of the arrangement that both men were managing the affairs of the company. This proposal was rejected by Mr. Ng, and he and Mr. Siregar used their shares to appoint Mr. Ng's Brother to the exclusion of Mr. Lie and in the face of his objections. In 2016, Mr. Siregar transferred his 8.3% to Mr. Ng.

[170] These are compelling matters which are consistent with Mr. Lie's narrative of the existence of a personal relationship and conduct as between Mr. Lie and Mr. Wiyono and then Mr. Lie and Mr. Ng, which gave rise to such an arrangement that Mr. Lie and Mr. Ng would conduct the business together. The exclusion of Mr. Siregar from the DBT Mandate is a significant factor and confirms that the management was left to Mr. Lie and Mr. Ng. All of these factors are consistent with Mr. Lie's evidence, both written and oral, that there was an arrangement between the parties such that it would be unconscionable to allow Mr. Ng to insist on his strict rights as a majority shareholder.

[171] In my view, this is such a case where the presence of other members at various times does not mean that as between Mr. Lie and Mr. Ng there could be no quasi-partnership existing at the SOFL level.

[172] I am unable to agree that any of the circumstances set out so far must lead to a conclusion that the Judge was plainly wrong, that he was duty bound to find that Mr. Lie was not credible on these matters, or that there was a misapplication of the relevant legal principles.

Alleged Agreement with Mr. Ng and His Mother following Mr. Wiyono's Death

[173] The Appellant challenges the Judge's findings when he believed Mr. Lie's account in his witness statement and his evidence at trial that following Mr. Wiyono's death, he and Mr. Wiyono's widow (Mr. Ng's mother) had an agreement on continuation of the arrangement which existed between Mr. Lie and Mr. Wiyono.

[174] Mr. Choo-Choy KC argues that Mr. Lie ought not to have been believed when in the context of Mr. Ng being appointed as representative of Mr. Wiyono's heirs, Mr. Lie said: 'I spoke with NMH and his mother (the wife of AW), Madam Tan Ka Pie, and it was discussed and agreed that NMH and I would run PT PDP and the Business together as partners, in the same way that it operated between me and AW'.

[175] Mr. Choo-Choy KC submits, that this was a 'belated account, advanced by Mr. Lie for the first time in his witness statement for the trial, [and it] was simply not credible. There was a wealth of both direct and circumstantial (contemporaneous) evidence to contradict it.' He argues that:

(1) It was inconsistent with the arrangements that existed prior to Mr. Wiyono's death in that Mr. Lie had until then been a Commissioner only, not a director of PT PDP, and had not therefore had a joint managerial role within PT PDP.

(2) It was inconsistent also with how the new management of PT PDP was determined and agreed in August 1992 by the general meeting of shareholders of PT PDP. There is nothing in the minutes of the August 1992 shareholders' meeting to indicate that it was intended that either Mr. Ng or Mr. Lie should have (let alone that either of them already had) an entrenched right to participate in the management of the company independently of the shareholders' resolution for their appointment as directors.

(3) Mr. Lie's belated account is further undermined by his admission during cross-examination that the appointment of the new Board of Directors of PT PDP in August 1992 (following his father's death) was not a matter of personal agreement between him and Mr. Ng (as Mr. Wiyono's heir). Rather, in Mr. Lie's own words, there was a need for the 'lobbying' of the shareholders 'one by one' with regard to the composition of the new Board of Directors. Mr. Lie's oral evidence on this aspect – which was fair and realistic on the facts – was inconsistent with the notion that he had any pre-existing entitlement to participate in the management of PT PDP.

(4) Prior to provision of his trial witness statement dated 14th February 2020, Mr. Lie had never given the said account despite the obvious importance of the alleged agreement with Mr. Ng and Mr. Ng's mother to the Quasi-Partnership Allegation. The alleged agreement was not mentioned on any important occasion when Mr. Lie's relationship with PT PDP was addressed, such as:

(i) the PT PDP shareholders' meeting of 17th December 2015 when Mr. Lie was removed from the Board of Directors of PT PDP; or

(ii) in any of the important documents in which Mr. Lie set out his quasi-partnership case for the purposes of the proceedings, namely, (1) the Conyers' letter before action dated 16th April 2018, (2) Mr. Lie's affidavit dated 12th July 2018 in support of his application for permission to serve out, and (3) his Statement of Claim and Reply (and the various amended versions of those pleadings over a 2-year period since commencement of the action).

(iii) The alleged agreement with Mr. Ng's mother was first alleged at paragraph 13 of his trial witness statement, some 28 years after allegedly having been made and having never been referred to at any point in any document before the Court. In any event, he submits, that an 'agreement to educate' is not the same thing as an agreement to be partners in a business.

(iv) What is more, when actually cross-examined about this alleged agreement, he started off by stating that there was in fact no agreement as alleged, then went on to refer to an irrelevant conversation about the relationship between Mr. Ng and his mother, and finally explained that what he had agreed with Mr. Ng's mother (as allegedly previously agreed with Mr. Wiyono) was that he would 'educate Mr. Ng about the palm oil plantation business so that Mr. Ng could replace his father. However, Mr. Lie's oral account of an agreement to 'educate Mr. Ng', whatever that meant, was not the same thing as the alleged agreement with Mr. Ng and his mother that Mr. Ng and Mr. Lie 'would run PT PDP and the Business as partners, in the same way that it operated between me and [Mr. Wiyono]'.

[176] Mr. Choo-Choy KC submits that: 'The reality of the matter is that there is no scintilla of any evidence to suggest that the relationship between Mr. Lie and Mr. Ng (and before him Mr. Wiyono) was anything other than the relationship or combination of relationships of co-shareholders, director and commissioner, or co-directors, expressly established pursuant to the terms of the Articles of Association of the respective companies within the PT PDP group.'

[177] Mr. Hardwick KC is not in agreement. He contends that the argument on this point contending that Mr. Lie was 'simply not credible' constituted a further direct challenge to the Judge's findings of fact following 3 days of cross-examination

of Mr. Lie and 5 days of cross-examination of Mr. Ng. Mr. Ng's skeleton arguments for trial and closing submissions had strongly challenged the fact and nature of the agreement between Mr. Lie, Madam Tan and Mr. Ng. Yet in his evidence on this topic (as identified above) Mr. Lie gave consistent evidence in his own words and with details that were unique (cleaning the cemeteries; the repeated parental plea to 'educate' Mr. Ng) and compelling.

[178] Mr. Hardwick KC further submits that 'Mr. Lie had explained that there were two relevant conversations: (1) first, upon Mr. Wiyono's death and Mr. Ng's inheritance of the shares, Madam Tan asked Mr. Lie to "educate" Mr. Ng; and (2) second, Mr. Lie spoke to Mr. Ng about this and agreed the joint management of the business going forward. The Judge clearly accepted this and found it compelling evidence of Ms Tan's wish that "Mr. Lie should educate her son".'

[179] King's Counsel submits that Mr. Ng's attempts to challenge the Judge's finding as 'simply not credible' and inconsistent with 'circumstantial contemporaneous evidence' is hopeless. He contends that '[t]here was no documentary evidence passing between Ms Tan, Mr. Lie and Mr. Ng in respect of these conversations; and the only indirectly relevant document (the 5th August 1992 "Statement Letter" by which Mr. Ng was to represent the heirs of the late Mr. Aleh Wiyono) made compelling sense of Mr. Lie's evidence that Ms. Tan has asked [him] to educate her son to perform that role'.

[180] I have considered these competing arguments and re-examined the planks and the evidence upon which they are built. The Judge's finding that Mr. Lie was credible and was speaking the truth cannot be seen as a light finding made in passing. The evidence of each of these parties was tested at length during the trial. The Judge would have had an extended opportunity to assess their demeanour and their credibility. These submissions made by the parties in this Court, were made at the trial. The Judge would have been very cognizant of the matters he should have given due regard.

[181] Mr. Choo-Choy KC's argument that Mr. Lie's narrative was at odds with him being simply a 'Commissioner' is not persuasive, and it does not present itself

as such evidence that would dismantle the Judge's findings on credibility. I have earlier noted that there was nothing inconsistent with Mr. Lie being appointed a 'Commissioner' and the existence of an understanding based on a personal relationship which involves a mutual understanding and which a court of equity would enforce. That view equally applies here.

[182] Mr. Choo-Choy KC's arguments that Mr. Lie's conversation and agreement with Madam Tan was also inconsistent with how the new management of PT PDP was determined and agreed in August 1992 by the general meeting of shareholders of PT PDP is equally not enough to belie the Judge's finding on credibility. It is to be noted that the equity which is at work here is not akin to a partnership sharing all the same characteristics. It is an equity which arises from the agreement and understanding between the parties to it which makes it unconscionable for one party to insist on his strict rights as a member of the company. Where a member is outside of the ring of this quasi-partnership, there is nothing inconsistent with the arrangement for any of the quasi-partners to seek to persuade that minority member or members to cast their vote when required, in accordance with the wishes of the quasi-partners.

[183] The new management being agreed by the general meeting, therefore, is not such an event which must mean that Mr. Lie is not a credible witness.

[184] Equally, the reliance on the silence in the minutes of the August 1992 shareholders' meeting to indicate that it was intended that either Mr. Ng or Mr. Lie should have (let alone that either of them already had) an entrenched right to participate in the management of the company independently of the shareholders' resolution for their appointment as directors, is also not enough to derail the Judge's finding. This is tantamount to saying that if there is no written record of the quasi-partnership, then it cannot exist; that is not the law.

[185] I am not persuaded by Mr. Choo-Choy KC's arguments. They do not demonstrate that the Judge erred on this matter. I prefer Mr. Hardwick's submissions on this matter.

Lack of Close Personal Relationship between Mr. Lie and Mr. Ng

[186] The Appellant also grounded his appeal on the quasi-partnership issue by contending that the Judge also ignored (1) the evidence of Mr. Lie's exaggeration of the closeness of his relationship with Mr. Wiyono, and (2) the evidence of lack of any close personal relationship between Mr. Lie and Mr. Ng.

[187] Mr. Choo-Choy KC submitted that under cross-examination Mr. Lie contradicted his own assertion at paragraph 8 of his trial witness statement that his mother was the cousin of Mr. Wiyono and that they shared the same great grandfather. 'Under cross-examination, he changed his evidence, stating that they had "the same great, great, great-grandfather", going back "[m]ore or less four to five generations"; and he further conceded that the "Ng" surname was a very common Chinese surname, so that persons sharing that surname would not necessarily be closely related. Thus, he exaggerated the extent and closeness of the personal connection between his family and Mr. Ng's family in his witness statement.'

[188] Counsel further submitted that 'none of the familial or social connections relied upon by Mr. Lie (alleged visits by Mr. Wiyono's family to Mr. Lie's family house or the alleged cleaning of parents' or grand-parents' cemeteries in Medan) provided a firm and identifiable basis for the alleged quasi-partnership, because Lord Wilberforce's speech in **Westbourne Galleries** …makes clear that the critical consideration is not merely whether there is a close relationship of trust and confidence between the relevant individuals, but whether the association between them is based on an agreement or understanding of entitlement to participate in the management of the relevant business. In this particular regard, the best contemporaneous evidence of the agreement or understanding between Mr. Wiyono and Mr. Lie as regards their entitlement to participate in the management of PT PDP was what had been set out in the notarised Deed by which the company was set up and its Articles of Association.

[189] With regards to the second aspect, related to the lack of close personal relationship between Mr. Lie and Mr. Ng, Mr. Choo-Choy KC submits that these

two men were never close. They lived in different places and had 'no personal relationship of any meaningful kind at the time of Mr. Wiyono's death in June 1992. Mr. Lie did not assert the existence of any close relationship between himself and Mr. Ng; his only assertion was that he was 'close friends' with Mr. Wiyono.

[190] When questioned about the closeness of his relationship with Mr. Ng, Mr. Lie's evidence boiled down to the assertion that when Mr. Ng came to Medan, he would come to Mr. Lie's father's house and borrow Mr. Lie's car; that they would have dinner together; and that Mr. Lie's parents would 'clean the cemeteries' of Mr. Wiyono's parents. But even if this were all true (and most of it was disputed or qualified by Mr. Lie), it did not begin to support the alleged quasi-partnership arrangement. None of the trivial matters relied upon by Mr. Lie came anywhere near satisfying the indicia of a quasi-partnership.

[191] Mr. Choo-Choy KC submits that '[t]he mere fact that a company is a small company or a 'family company' or one founded on trust and confidence does not result in the conclusion that it is a quasi-partnership[31].'

[192] He goes on to contend that '[e]qually, in so far as an agreement or understanding regarding participation in management is relied upon, there must be "a firm and identifiable evidential basis for it", such as conduct specifically "referable to" the alleged agreement; and it would be "fatal to the implication of [such an agreement or understanding] if the parties would or might have acted exactly as they did in the absence of [the alleged agreement or understanding]."'

[193] He submits that '[e]ven if a quasi-partnership of some sort existed between Mr. Lie and Mr. Wiyono, it cannot have automatically survived Mr. Wiyono's death and transmuted into what was then a nascent relationship between Mr. Lie and Mr. Ng. The death of one of two quasi-partners will normally bring the quasi-partnership to an end**.[32]**. It is no doubt for this reason that Mr. Lie put forward

[31] Robin Hollington, *Hollington on Shareholders' Rights* (9th edn, Sweet & Maxwell 2020) para 7-43.
[32] Matsuura v A&S Company Limited & Anr BVIHC (COM) 130 of 2015).

the alleged quasi-partnership agreement with Mr. Ng's mother following Mr. Wiyono's passing, but this allegation was a late concoction and contradicted by the contemporaneous evidence as well as Mr. Lie's oral evidence under cross-examination.'

[194] Mr. Hardwick KC is consistent in his disagreement here again. His response is that once again, Mr. Ng is attacking findings of fact which was made by the Judge. He pointed out that the Judge accepted Mr. Lie's evidence.

[195] He submits that '[t]his claimed "lack of close personal relationship between Mr Lie and Mr. Ng" seeks to challenge the Judge's findings as to the nature of the personal relationships between both (1) Mr. Lie and Mr. Wiyono; and (2) Mr. Lie and Mr. Ng. It is clear that the Judge found both (1) the details surrounding the personal relationships between Mr. Lie, Mr. Wiyono and Mr. Ng (e.g. that Mr. Lie's parents would "clean the cemeteries" of Mr. Wiyono's parents prior to their visits to Medan; and (2) (following the death of Mr. Wiyono) the details in respect of the conversations between Mr. Lie and Ms Tan and Ms. Tan and Mr. Ng [is] compelling. Again, the attempt to challenge these findings of fact (and without even proper regard to the evidence) is hopeless.'

[196] King's Counsel further submits that '[a]s to the requisite "agreement or understanding of entitlement to participate in the management", the Judge traced the original understanding and agreement back to the joint venture incepted by Mr. Lie and Mr. Wiyono; found that the same understanding endured at the SOFL level; and (applying the principles in **Ebrahimi)** found that the requisite agreement or understanding was expressly confirmed by the DBT Mandate.'

[197] As to the further argument, by reference to the case of **Matsuura**,[33] that 'even if a quasi-partnership of some sort existed between Mr. Lie and Mr. Wiyono, it cannot have automatically survived Mr. Wiyono's death….Mr. Lie's case did not turn upon the "automatic survival" of a quasi-partnership at the PT PDP level

[33] Ibid.

between him and Mr. Wiyono. Mr. Lie's case was of a quasi-partnership with Mr. Ng at the SOFL level. Moreover, the facts of **Matsuura** serve to emphasise the fundamentally different nature of this case. Where (1) **Matsuura** concerned shares inherited by a long-separated wife who would have no management involvement; (2) Mr. Wiyono's shares were inherited by his son, Mr. Ng, precisely so that Mr. Ng could represent the family and continue with active management involvement in the family business.'

[198] I must agree with Mr. Hardwick KC's general analysis of the evidence which makes it clear that this Court cannot interfere with the Judge's findings on this point.

[199] The Judge clearly accepted the evidence of 'close family and social relationship' between Mr. Lie and Mr. Wiyono. This would have related to the original friendship between Mr. Wiyono and Mr. Lie's mother - which involved regular visits to Medan (dining together, visiting his grandparents' graves). Then there is the evidence of subsequent relationship between Mr. Wiyono and Mr. Lie which culminated in their going into business together in 1988 (and in the course of which Mr. Wiyono had entrusted to Mr. Lie the business education of Mr. Ng).

[200] When Mr. Wiyono died in 1992, Mr. Ng, as his son, inherited his shares as the 'family heir'. The Judge believed Mr. Lie when he spoke of the conversations with Madam Tan during which she requested that Mr. Lie educate her son. Mr. Choo-Choy KC wants this to be compartmentalised that such an agreement is different from an agreement to jointly run a business. But it was open to the Judge to find that this was merely indicative of the nature of the personal relationship, and not to be seen as the full extent of the understanding. In other words, Mr. Ng had to be brought up to speed even though they would jointly manage the Business as Mr. Lie and Mr. Wiyono had done before the latter's death.

[201] Further, and as a separate matter, this case is in contrast to the factual situation in the **Matsuura** case in which after the death of one of the partners, the question arose in relation to 'a long-separated wife who would have no

management involvement'. In this case Mr. Lie agreed and spoke to Mr. Ng about his mother's request. A mere six days after inheriting his father's shares, Mr. Ng and Mr. Lie were formally appointed at a General Shareholders Meeting of PT PDP, as joint directors. This remained the case for 23 years. In written closing arguments before the Judge, Mr. Hardwick KC submitted that the 'joint managerial appointment clearly reflected the wishes of both AW and Madam Tan as expressed to Mr. Lie. And whilst the relationship between Mr. Lie and NMH was not the same as the close collegiate relationship between Mr. Lie and AW, it was plainly no mere "commercial business": it was a personal relationship rooted in their respective family ties and assumed responsibilities.' It is difficult to see how the Judge would have been plainly wrong to make this finding.

Establishment of SOFL

[202] Mr. Choo-Choy KC argues that even if there was a quasi-partnership at the PT PDP level between Mr. Lie and Mr. Wiyono and after the latter's death, between Mr. Lie and Mr. Ng, 'it would be extraordinary if, merely by the offshore transfer of Mr. Lie's and Mr. Ng's respective shareholdings in PT PDP to a BVI vehicle some 15 years later in November 2003, a quasi-partnership should suddenly spring out of nowhere.'

[203] King's Counsel contends that '[c]onsistently with the absence of any quasi-partnership at the PT PDP level, it is also plainly apparent that at the SOFL level, the terms of SOFL's Articles of Association expressly contradicted the notion of any quasi-partnership between Mr. Lie and Mr. Ng. In particular, SOFL's Articles: (i) provided for simple majority rule at both directors' and members' level, (ii) did not provide for any power of veto in respect of any reserved matters, (iii) did not reserve to either Mr. Ng or Mr. Lie a right of participation in the management of the company, (iv) enabled a majority of the members to remove a director from office at any time, with or without cause, and (v) enabled any member to transfer his or her shares to any transferee subject only to complying with the terms of the memorandum of association. Furthermore, no separate shareholders' agreement or joint venture or partnership agreement was ever concluded between the parties to evidence the alleged quasi-partnership.

Again, if the basis of the transfer by Mr. Lie and Mr. Ng of their shareholdings in PT PDP to SOFL was that there was a quasi-partnership arrangement between them, one would have expected such an arrangement to have been recorded in writing. They were, after all, restructuring and formalising their relationship through SOFL and had the benefit of professional advice at the time. The fact, therefore, that they did not record the alleged arrangement in writing strongly suggests that there was no such arrangement.

[204] Mr. Choo-Choy KC further submits that '[t]he Judge at paragraph 255 expressed the view that the alleged quasi-partnership – and in particular the alleged agreement that or understanding that Mr. Lie would be entitled to participate in the conduct of the business (which, in the Judge's words, 'had its original foundations back in 1988') – was 'expressly confirmed by the DBT Mandate.' On proper analysis, however, the DBT Mandate (under which either Mr. Ng or Mr. Lie could give instructions to DBT on behalf of SOFL) did not evidence any quasi-partnership as between Mr. Ng and Mr. Lie.' He submits that:

(1) There are countless examples of mandates from corporate clients to their banks or other agents authorising the latter to act on the instructions of director A or director B, but it plainly does not follow from this that there is a quasi-partnership between directors A and B.

(2) The existence and terms of the DBT Mandate merely reflected the fact that, by March 2005, Mr. Ng and Mr. Lie were (and had for some years been) directors of PT PDP and the Indonesian Operating Companies (the ultimate assets of SOFL).

(3) The DBT Mandate was not exclusively referable to the existence of the alleged quasi-partnership agreement: it was just as consistent and referable to Mr. Ng and Mr. Lie's role as co-directors of PT PDP and the Indonesian Operating Companies. It is trite law in this connection that, where the alleged quasi-partnership is sought to be inferred from the parties' conduct, unless the conduct in question is only explicable on the basis that the alleged quasi-partnership exists, there is no firm and identifiable evidential basis for inferring a quasi-partnership: see Hollington on Shareholders' Rights (9th ed. 2020), at para. 7-44.

[205] Furthermore, Mr. Choo-Choy KC contends, 'the Judge lost sight of the fact that Mr. Siregar was a significant (8.3%) shareholder of SOFL, and that his father, Mr. Abdalla, had been one of the strategic investors in PT PDP. There was no

allegation by Mr. Lie and no evidence to suggest that either Mr. Abdalla or Mr. Siregar was ever a party to or informed of the alleged quasi-partnership between Mr. Lie and Mr. Wiyono, or between Mr. Lie and Mr. Ng. It is inherently improbable and legally implausible that there could have been a quasi-partnership as alleged which was undisclosed to, and which excluded, Mr. Siregar at the SOFL level.'

[206] Moreover, the notion that Mr. Siregar should be considered to be the sort of 'very small minority' shareholder whose ignorance of and exclusion from a quasi-partnership might 'perhaps' not be fatal to the enforceability of the quasi-partnership (per Fancourt J very tentatively in **Re Edwardian Group**, at [[131] and [134]) is of no assistance to Mr. Lie's case, because:

(1) Mr. Siregar's 8.3% shareholding was not a very small minority shareholding, but a significant shareholding which determined the balance of majority power as between Mr. Lie and Mr. Ng as shareholders of SOFL;

(2) Mr. Lie himself (at paragraph 16 of his trial witness statement) described Mr. Siregar's shareholding as a strategic shareholding that Mr. Siregar's father (Mr. Abdalla) had originally acquired within PT PDP; and

(3) As described during Mr. Ng's oral evidence, Mr. Siregar had played an independent role within the PT PDP group, having disagreed with Mr. Lie in relation to the IPO proposal, the performance of the East Kalimantan Companies, and Mr. Lie's gift of shares in the East Kalimantan Companies to Mr. Harahap and Mr. Noer.

[207] He contends that nowhere in the Judgment, did the Judge treat with the inclusion of Mr. Siregar. He argues that the 'Judge did not properly take account of Mr. Siregar's role and interest in SOFL as an 8.3% shareholder by merely reciting the existence of that shareholding and the argument about its legal significance'.

[208] Mr. Hardwick KC again does not agree with Mr. Choo-Choy KC. He submits that '[a]s to the argument) that SOFL's Articles "expressly contradicted the notion of any quasi-partnership between Mr. Lie and Mr. Ng", again it is the very essence of the quasi-partnership jurisprudence that the necessary "association"

"agreement" or "understanding" can give rise to the superimposition of expectations and rights over and above the company's constitution'.

[209] He further submits that at the SOFL level, the DBT Mandate by which DBT agreed to '…take instructions from either SL or NMH for all matters in relation to the management of SOFL and its assets…' was consistent with and confirmed Mr. Lie's evidence of his understanding with Mr. Ng.

[210] If this was a document which 'merely reflected "the fact that SL and NMH were then both directors of PT PDP and the IOCs and hence jointly involved in their management…" and "…did not evidence any special and personal relationship of trust and confidence…" why then Mr. Lie and NMH were both directors of PT PDP and the IOCs: to which the straightforward answer is that these directorships reflected the reality that this was a joint venture.'

[211] Mr. Hardwick KC continues that 'at SOFL level the DBT Mandate obviously did not reflect the directorship position because at the SOFL level Regula was the sole director. Yet it is common ground that (1) Regula (like Lion before it) was just a nominee director and (2) that at all material times between 2002 and 2015 Regula (through the offices of DBT) acted in accordance with the instructions of Mr. Lie and NMH. Thus, the DBT Mandate again reflects the true nature of SOFL: a joint venture company, incorporated for the sole purpose of holding the interests of NMH and Mr. Lie in PT PDP, owned as to 45% by each of NMH and Mr. Lie; and managed jointly by NMH and Mr. Lie through a nominee director'.

[212] Mr. Hardwick KC submits that Mr. Choo-Choy KC is wrong about his argument that the Judge had 'lost sight' of the fact that Mr. Siregar owned 8% of the shares in SOFL. He argues that 'the fact of this shareholding (and the relevant argument) was recorded at paragraphs 76(3) and 77(10) of the judgment. The Judge found paragraph 249 that the fact of the minority shareholder in SOFL "did not change the reality" that this was a business venture "jointly conducted…between Mr. Lie and Mr. Ng". Moreover, the voting intentions that mattered were those of Mr. Lie and Mr. Ng – again as confirmed by the DBT

Mandate. No difficulties were represented by Mr. Siregar being "outside the ring" of quasi-partners.'

[213] The Appellant's arguments under this heading equally fails.

[214] The argument that the quasi-partnership at the SOFL level had sprung from nowhere is not at all consistent with the facts as the Judge found from the oral evidence given at trial. The Judge had accepted the oral evidence of Mr. Lie of the arrangement between himself and Mr. Wiyono, and then after the latter's death between himself and Madam Tan. Mr. Ng could not contradict this evidence, and the Judge found that Mr. Lie's evidence on both of these matters was credible. These facts cannot be disturbed by this Court. The additional uncontradicted evidence that (1) days after Mr. Wiyono's death, Mr. Lie and Mr. Ng were appointed joint directors of PT PDP and managed this company together for 23 years, (2) that Mr. Lie was a joint director in all of the Indonesian operating companies until his resignation in 2015.

[215] This is the context within which the DBT Mandate is to be viewed. It is to be recalled that both of these men, and Mr. Siregar had their PT PDP shares in another holding and after they received advice, SOFL was incorporated in the BVI as simply a holding company, but to be managed only by the majority shareholders, Mr. Lie and Mr. Ng. This is not the case where directors of a company give a mandate to the bank that either of them can make business decisions. This is a case where in the context of a long history of association (personal and business), and relations, these two gentlemen had used their majority to appoint only nominee directors of SOFL who had to follow and implement their instruction, and not that of Mr. Siregar. Within this context, the DBT Mandate instructs DBT to 'take instructions from either SL or NMH for all matters in relation to the management of SOFL and its assets'. These matters clearly recognise that either of Mr. Lie or Mr. Ng possessed the 'joint and several' authority to make decisions for SOFL confirms the high degree of trust and mutual confidence each of these men had in the other.

[216] The presence and inclusion of Mr. Siregar has been discussed above. For all intents and purposes, he was entitled to exercise his voting power at general meetings and he did, when he voted with Mr. Ng to install Mr. Ng's Brother as a sole director in 2016. In the circumstances of this case, it being understood that Mr. Lie and Mr. Ng would share in the management of SOFL, this cannot be viewed as negating the existence of the quasi-partnership arrangement between the two of them in the affairs of SOFL. In fact, there is the irresistible inference to be drawn that it was Mr. Ng who persuaded Mr. Siregar to vote his shares to reject Mr. Lie's proposal that there should be more than one director appointed; this was clearly an act of bad faith. It is the kind of inequity which is referred to in **Phoenix Office Supplies Ltd and others v Larvin,**[34] the facts of which involved shareholders breaching their collateral agreement and using their voting powers to remove a minority director; the court considered that it was in this conduct that the unfair prejudice remedy was designed to prevent.

[217] There is compelling evidence that after Mr. Ng's Brother was appointed sole director of SOFL in 2016, he took instructions only from Mr. Ng to the exclusion of Mr. Lie and Mr. Siregar. That same year when the 2015 dividends were approved by PT PDP to be paid to SOFL, and SOFL never received those declared dividends, Mr. Lie and Mr. Siregar were both standing outside the management structure of SOFL and were unable to get SOFL to take any steps to secure payments. Mr. Siregar thereafter transferred his shares to Mr. Ng in 2016 and left the company.

[218] In **Estera Trust (Jersey) Ltd v Singh and others,** it was recognised that 'the notion of a quasi-partnership between certain members only, entitling them to manage the company's business, would inevitably be likely to create difficulty as regards the minority shareholders. They were entitled to expect the company to be run in accordance with its constitution, in the best interests of the members of the company as a whole, and not in accordance with rights and obligations to which they were not parties.' It is difficult to see how such difficulties would be present in this case with Mr. Siregar being 'outside the ring', when in any event,

[34] [2003] 1 BCLC 193.

Mr. Lie and Mr. Ng each held 45.85% of the shares in SOFL and were by virtue of their combined majority, entitled to exercise the right to manage SOFL as they saw fit in the best interests of all their members. There is no particular element or term of the quasi-partnership arrangement between Mr. Lie and Mr. Ng which has been shown was likely to create any difficulty for Mr. Siregar who was 'outside the ring'; none has arisen for consideration. In fact, and, ironically perhaps, what happened to Mr. Siregar when SOFL received no dividends for 2015 from PT PDP, he too suffered as he got no dividends from SOFL. This in my mind is a proper case for the Judge to have found that notwithstanding Mr. Siregar being a minority shareholder with voting power and even the balance of power, it was nonetheless not inconsistent with the existence of a quasi-partnership between Mr. Lie and Mr. Ng at the SOFL level.

Relevance of Mr. Lie's Voluntary Withdrawal and/or Lawful Removal from Management during the Period September to December 2015

[219] Mr. Choo-Choy KC also attacks the Judge's findings by contending that the Judge erred in law, even if there was 'nevertheless deemed to be a relationship of quasi-partnership between Mr. Lie and Mr. Ng based on rights of joint participation of SOFL, PT PDP and/or PT PDP group subsidiaries, any such relationship of quasi-partnership must necessarily have come to an end over the period September to December 2015'. This must be so because:

(1) The lawful appointment of Mr. Ng's Brother as sole director of SOFL with effect from 23rd September 2015, following the resignation of Regula as nominee director of SOFL in July 2015; importantly in this connection, it is (rightly) not alleged by Mr. Lie that the appointment of Mr. Ng's Brother as sole Director of SOFL instead of Regula – which arose in the wake of the disagreement between Mr. Ng and Mr. Siregar (on the one hand) and Mr. Lie (on the other hand) as to whether there should be an IPO of PT PDP and the resulting paralysis within Regula's decision-making on SOFL's behalf – constituted unfairly prejudicial conduct on the part of Mr. Lie; and as a result of these developments, Mr. Lie had ceased to be involved, either directly or indirectly, in the management of SOFL by the time of the much later events in 2017-2019 alleged by Mr. Lie to have constituted unfair prejudice;

(2) Mr. Lie's voluntary decision by letter dated 23rd November 2015 to resign from the management of all five Indonesian Operating Companies in view of the breakdown of his relationship with Mr. Ng and what he describes as his deteriorating health at that time (he

was then 63 years old and had been diagnosed with Ischaemic heart disease); again in this connection, Mr. Lie expressly accepted that the breakdown in relations that (in part) led to his resignation from the management of the Indonesian Operating Companies (namely, the disagreement over the IPO proposal) was not a ground of unfair prejudice or otherwise wrongful towards him; and

(3) The lawful termination of his directorship of PT PDP by the general meeting of shareholders of PT PDP on 17th December 2015; in this connection, whilst Mr. Lie did not voluntarily leave the Board of Directors of PT PDP but was removed from his directorship by the general meeting of shareholders of PT PDP on 17th December 2015;

(4) The general shareholders' meeting was entitled under Indonesian law to take that course and was expressly permitted to do so under Article 11(3) of the PT PDP's Articles of Association;

(a) The general shareholders' meeting was entitled under Indonesian law to take that course and was expressly permitted to do so under Article 11(3) of the PT PDP's Articles of Association;

(b) In light of the increase in and pursuit of his own palm oil plantation business interests from at least June 2015 onwards – which (as regards the PT Rendi and PT Palmaris plantations) he concealed from PT PDP at the time and continued to conceal right up to his cross-examination (as further described below) and which was found by the Judge (at paragraphs 304-306 and 308) to have amounted to a breach of his duty as a director of PT PDP – Mr. Lie's position as a Director of PT PDP was in any event untenable; and

(c) Mr. Lie has (rightly and unsurprisingly) not pleaded his removal as Director of PT PDP in December 2015 as a ground of unfair prejudice. Indeed, he conceded during his oral evidence that his understanding was that, under Indonesian law, the majority shareholders of PT PDP were entitled to terminate his directorship.'

[220] Mr. Choo-Choy KC submits that '[t]he relevant legal principles in this connection are clear: in order for a quasi-partnership to form the basis of an allegation of unfair prejudice, there must be an extant quasi-partnership at the time of the events alleged to give rise to unfair prejudice. See Fowler v Gruber**,** at [136]-[137] and Re Sunrise Radio Ltd, at [30]-[32].'

[221] He submits that 'by reason of the above events (none of which themselves give rise to or are alleged to constitute unfair prejudice), Mr. Lie and Mr. Ng were by late December 2015 no longer jointly involved in the management of SOFL, PT PDP or the underlying business of the Indonesian Operating Companies or in a personal relationship of mutual trust and confidence giving rise to any equitable considerations, no relationship of quasi-partnership could possibly have been subsisting at the time of the events alleged to constitute unfair prejudice during the period 2017 to 2019.'

[222] King's Counsel points out that '[a]t J[257], the Judge accepted the submission advanced on Mr. Lie's behalf that there may be understandings enforceable in equity falling short of actual participation in the day-to-day management of the business, such as understandings with respect to a right of access to company records or to be consulted. As to this however:

- Mr. Lie never pleaded (and never tendered any evidence in support of) a quasi-partnership arrangement limited to a right of information or a right to be consulted; his pleaded case has always been of a joint venture, initially between him and Mr. Wiyono, and (after Mr. Wiyono's death) between him and Mr. Ng, whereby they would be jointly involved in the management of the business, with consequential rights of access to company records; thus, the right to information has always been alleged to be parasitic upon his alleged joint venture agreement with Mr. Wiyono and Mr. Ng;

- Furthermore, once he had left the management of SOFL, the Indonesian Operating Companies and PT PDP, it was not alleged by Mr. Lie that he had reached any fresh agreement with Mr. Ng regarding continuing access to information about the PT PDP group or the need to consult with Mr. Lie in relation to any matters concerning the business of the PT PDP group;

- Thus, in accepting to Mr. Lie's submission as set out above, the Judge acceded to a submission which was not supported by any evidence (or indeed any pleading on behalf of Mr. Lie) and reached a decision which was plainly wrong;

- Had he taken proper account of the evidence that Mr. Lie had indisputably left his management role within SOFL and all PT PDP group companies by December 2015, the only rational conclusion that he could have reached was that, apart from the specific rights afforded to Mr. Lie as a shareholder of SOFL pursuant to SOFL's Articles of Association, Mr. Lie did not have any rights in equity to have access to information or documentation relating to the PT

PDP group or to be consulted with respect to the affairs of the PT PDP group; and

- In any event, as set out at para. 4.4 of the Notice of Appeal, Mr. Lie's complaint about SOFL's failure to provide information to him on request was relatively trivial and unsuitable as a ground of unfair prejudice.

[223] Mr. Hardwick KC begins his response by pointing out in his arguments that whilst Mr. Lie did resign from the IOCs: (1) he certainly did not voluntarily step aside from SOFL (on the contrary his efforts to be appointed a joint director were thwarted by Mr. Ng); and (2) he did not decide to resign from PT PDP but was dismissed from PT PDP, as the contemporaneous record of the 17th December 2015 meeting made perfectly clear and as Mr. Ng accepted.

[224] Learned Counsel submits that Mr. Ng's case at trial was that Mr. Lie's "departure" from PT PDP was "wholly voluntary and/or fair". In fact, it was precisely the contrary: a dismissal (without cause) from the company that Mr. Lie had founded 27 years previously. The Judge correctly rejected the argument that involuntary dismissal (at PT PDP level) brought to an end the quasi-partnership at SOFL level and at the very point when Mr. Lie's rights as quasi-partner, which he sought to vindicate by this claim, assumed particular importance.

[225] I agree with Mr. Hardwick KC.

[226] This is a rather short point. Mr. Lie's voluntary resignation from the IOCs cannot be seen as withdrawing from the quasi-partnership having regard to the fact that Mr. Lie chose to remain as a director of PT PDP and continue with his intention to jointly manage SOFL. It was Mr. Ng who engineered Mr. Lie's removal from the management structure of SOFL. There is compelling evidence that he also effected the involuntary termination of Mr. Lie as a director of PT PDP. It is therefore difficult to understand this argument that since he has resigned from the IOCs and he was lawfully terminated from PT PDP that would mean he has lost his right to be provided with records and be consulted on decisions to be taken.

[227] Mr. Choo-Choy KC's complaint of the Judge's finding at paragraph 257 is misconceived. The Judge stated: 'I accept Mr. Hardwick's submission that the cases have recognised understandings enforceable in equity short of actual participation in day-to-day management, including 'a right of access to company records' ([35]) and a 'right in equity to be consulted'[36]. I accept Mr. Lie's argument that Mr. Lie's right to be consulted and to be provided with information was denied by Mr. Ng in a manner which was unfairly prejudicial to him.'

The Law on Unfair Prejudice – Section184I of the BCA

[228] It is appropriate that I set out the fundamental underpinnings of section 184I of the BCA. The section states:

> '(1) A member of a company who considers that the affairs of the company have been, are being or are likely to be oppressive, unfairly discriminatory, or unfairly prejudicial to him or her in that capacity, may apply to the court for an order under this section.
>
> (2) If, on an application under this section, the Court considers it just and equitable to do so, it may make such an order as it thinks fit, including without limiting the generality of this subsection, one or more of the following orders:
>
> (a) in the case of a shareholder, requiring the company or other person to acquire the shareholder's shares;
> (b) requiring the company or other person to pay compensation to the member;
> (c) regulating the future conduct of the company's affairs;
> (d) amending the memorandum or articles of the company;
> (e) appointing a receiver of the company;
> (f) appointing a liquidator of the company under section 159(a) of the Insolvency Act specified in section 162(1)(b) of that Act;
> (g) directing the rectification of the records of the company;
> (h) setting aside any decision made or action taken by the company or its directors in breach of this Act or the memorandum or articles of the company.
>
> (3) No order may be made against the company or any other person under this section unless the company or that person is a party to the proceedings in which the application is made."

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[35] Relying on Phoenix Office Supplies v Larvin [2002] EWCA Civ 1740.
[36] Relying on Hollington on Shareholders' Rights (9th edn. Sweet & Maxwell 2020) paragraph 7-50 and Re Elgindata [1991] 1 BCL 959.

[229] This section provides what has become known as the oppression remedy, which has its origins in section 210 of the English Company Act 1948. Under that section any member may complain of oppression against the company. Where the conduct would justify a winding up order, the court is given power to grant any order it thought fit.

[230] Section 184I of the BCA is expressed in a more expansive manner and there is no requirement that the relevant conduct must justify a winding up order before the Court is empowered to make an order under this section; the court has a wide and flexible jurisdiction to grant a remedy in any case where 'the affairs of the company have been, are being or are likely to be oppressive, unfairly discriminatory, or unfairly prejudicial to him or her in that capacity'. Today this remedy is viewed as one of the most powerful weapons in the arsenal of the shareholder.

[231] The section makes it clear that the conduct complained of must be 'conduct of the affairs of the company' of which the claimant is a member. Therefore, actions of an individual shareholder acting in a personal capacity would not engage the section. The question for the court is whether the conduct is that of the company or by those authorised to act as its organs. Actions of a de facto director in control of the company may also amount to conduct of the company. (More will be said of this below.)

[232] The test for deciding whether the conduct is oppressive, unfairly discriminatory, or unfairly prejudicial is an objective one. There is therefore no need to show that the person who acted on behalf of the company did so in bad faith or deliberately to treat him unfairly. Of course, the presence of bad faith or deliberate intent to oppress the member would be relevant.

[233] With regards to the 'unfair prejudice' aspect of the section, our court has accepted that the question may be determined both with reference to the formal rules which govern the company and the members' relationship with it and to each other, or with reference to that equity which may arise out of the parties'

agreement and understanding: see the case of **Re the Estate of Wong Kie Nai**[37]. The principles relating to unfairness is distilled in Halsbury Laws of England as follows:

> "In deciding what is fair or unfair for these purposes, it must be borne in mind that fairness is being used in the context of a commercial relationship, the contractual terms of which are set out in the articles of association, and the starting point is to ask whether the conduct of which the shareholder complains is in accordance with the articles and the powers which the shareholders have entrusted to the board. However, a finding that conduct was not in accordance with the articles does not necessarily render it unfair, as trivial or technical infringements of the articles will not give rise to relief. Conduct may also be unfair without being unlawful where it does not accord with the understandings upon which the shareholders are associated."[38]

[234] The categories of 'unfair prejudice' are not closed. As was noted by Neil LJ in Saul D Harrison: 'The words "unfairly prejudicial" are general words and they should be applied flexibly to meet the circumstances of the particular case'. In **Ebrahimi v Westbourne Galleries Ltd,** Lord Wilberforce speaking of the words 'just and equitable' cautioned: 'Illustrations may be used, but general words should remain general and not be reduced to the sum of particular instances.'

[235] With these principles in mind, I turn to the Information Complaint. Was this a trivial complaint?

[236] This finding by the Judge must be understood in the context that Mr. Lie was pushed out of the management of SOFL and terminated as a director of PT PDP and that in this case, his complaint was that he was denied access to pertinent information. That was the understanding in equity which the Judge was speaking about because that was the understanding which Mr. Lie was seeking to enforce. The fact that Mr. Lie was denied pertinent information was unfair in the circumstances of this case and in particular the quasi-partnership arrangement which existed between the parties. It was also prejudicial as this denial of information was simply hiding the other things that Mr. Ng had embarked upon.

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[37] BVIHCMAP2018/0001 and BVIHCMAP2018/0002 (delivered 27th March 2019, unreported).
[38] Halsbury's Laws of England, vol 14 (2026) para 661.

[237] On 3rd March 2017, after he had been denied dividends for 2015, Mr. Lie's legal practitioners, Conyers wrote to SOFL requesting certain business records including: (a) a copy of the company's register of directors; (b) a copy of the company's register of members; and (c) copies of all resolutions and minutes of meetings of members of the company. There was no response and even several follow-up letters went unanswered; since the issue of the claim, no less than 18 letters went unanswered. The many requests sought in particular information in relation to each of (1) the Non-Payment of Dividends; (2) the 2017 Disposition; (3) the 2018 Rights Issue and (4) the 2019 Disposition. Even formal applications and court orders for SOFL to provide information did not assist. Requests were unanswered and court orders breached, and Mr. Lie was left in the dark as to the affairs of SOFL since the appointment of Mr. Ng's Brother as SOFL's sole director in September 2015, and the termination of his own appointment as director of PT PDP. All of this, whilst all of his beneficial interests in the Business was wiped away.

[238] This Court is therefore unable to agree with Mr. Choo-Choy KC. This Court cannot find that, having regard to all of the circumstances, that the Judge was wrong in law and fact to find that Mr. Lie's right to be consulted and to be provided with information which was denied by Mr. Ng in a manner which was unfairly prejudicial to him, was a trivial complaint. Relevant information was being withheld which would have prevented Mr. Lie from acting to protect his rights in a timely manner. At the relevant times, steps were being taken to dilute Mr. Lie's beneficial interests in all of the Indonesian companies, and that information was being kept from him at a time when he had been removed from any management role in SOFL.

[239] This Court is therefore satisfied that there is no basis upon which to reverse the Judge's findings on the quasi-partnership issue and the Information Complaint.

Relevance of Mr. Lie's Parallel Pursuit of His Own Plantation Business

[240] Mr. Choo-Choy KC is not at all finished on the main point. He argues that a further aspect of the evidence that the Judge disregarded and which had a material bearing on whether it was rational to conclude that the alleged quasi-partnership endured beyond December 2015 was that, once he had left his active management role within the PT PDP group, Mr. Lie went full steam ahead with the acquisition and development of his own palm oil plantations, including those of PT Palmaris and PT Rendi.

[241] He contends that the key points to note for the purposes of this appeal are:

(1) It is telling that Mr. Lie's decision to retreat from the day-to-day management of the PT PDP group companies in November 2015 coincided with the fact that he had during the period June to November 2015 been secretly negotiating the purchase of PT Palmaris and PT Rendi;

(2) In circumstances where he was actively pursuing these opportunities for his and his family's personal benefit disloyally behind PT PDP's back, it is inconceivable that he could sensibly be considered in equity to have remained a quasi-partner with Mr. Ng with respect to the management of the PT PDP group (including SOFL as the parent of the group), especially after he had ceased to be personally involved in the management of any of the PT PDP group companies; and

(3) By the time of the events in 2017-2019 alleged to be unfairly prejudicial, he was no more than a direct co-shareholder with Mr. Ng in SOFL and an indirect co-shareholder with him and several others (Madam Karlinah, Mr. Harahap and Mr. Noer) in PT PDP.

[242] Mr. Hardwick KC submits in response that the Appellant's arguments are 'a complete mischaracterisation of what in fact happened. Mr. Lie had owned PT SAMS for 11 years since 2004 – and the Judge found paragraph 300 of the judgment that "Mr. Lie and Mr. Ng discussed the palm oil operation at PT SAMS and that Mr. Ng had no problem with his ownership of PT SAMS". The Judge also rejected Mr. Ng's claim that he Mr. Lie had "secretly acquired" PT Mitra Bumi in early 2015, finding that Mr. Lie had purchased these shares on 13th November 2016 (paragraph 302) – and concluding (paragraph 303) that "there can be no criticism of Mr. Lie in acquiring a palm oil factory and/or plantation in

2016 in an owning capacity, even whilst in a subsisting quasi-partnership with Mr. Ng in the same general industrial sector.”’

[243] He further submits that ‘[i]n respect of two small plantations, PT Rendi Permata Raya and PT Palmaris Raya on the West coast of Sumatra (hundreds of kilometres from the 4 PT PEU plantations and mills), the Judge found that (1) Mr. Lie was approached by their previous owners “before he stepped down or was sacked from his role as director of PT PDP” (paragraph 304); and (2) Mr. Lie “should have…offered the opportunity of purchasing these oil palm plantation companies to PT PDP but did not do so.”’

[244] However, the Judge then made clear findings of fact that (1) ‘Mr. Ng (and PT PDP) did not genuinely care about” the purchase of PT Rendi and PT Palmaris; and (2) he rejected Mr. Ng’s claims that the PT Rendi and PT Palmaris “were competitors of PT PDP and the Indonesian operating companies in any real or sensible sense .

[245] Mr. Hardwick KC concludes: ‘Again, in the light of these findings of fact, Mr. Ng’s assertion that it is “inconceivable that he could sensibly be considered in equity to have remained a quasi-partner” is wrong: the Judge clearly found, and on solid evidence, that his quasi-partnership rights endured.’

[246] In my view, the Judge’s findings are justified. There is really nothing on the evidence or in law which indicates that there was no basis for the Judge’s findings in relation to PT Rendi and PT Palmaris. The finding that PT Rendi and PT Palmaris were not ‘competitors of PT PDP and the Indonesian operating companies in any real or sensible sense’ significantly dilutes Mr. Choo-Choy KC’s arguments. Having regard to the magnitude of Mr. Ng’s unconscionable conduct which operated to completely obliterate all of Mr. Lie’s beneficial interests in PT PDP and the Indonesian operating companies, Mr. Lie’s acts of failing to inform PT PDP of an opportunity to purchase other palm oil producing companies (not competitors) cannot rise to the threshold of nullifying the quasi-partnership between the two men.

Ground No. 2 – The Non-Payment of Dividends

[247] The Judge accepted as a fact that Mr. Lie had made out his case that Mr. Ng in his conduct of the affairs of SOFL had refused and/or failed to pay him dividends for the Financial Years 2015, 2016, 2017 and 2018 and that this was unfairly prejudicial conduct within the meaning of section 184I of the BCA.

[248] Ground 2 of the Notice of Appeal mounts the challenge against this finding. The Appellant effectively contends by this ground that[39]:

(1) The Judge erred in treating the decision of the board of directors and/or shareholders of PT PDP not to recommend or pay a dividend as amounting to conduct of the affairs of SOFL. Such was conduct of the affairs of PT PDP ("**Affairs of SOFL Finding**");

(2) the Judge erred in holding that it was Mr. Ng that had deliberately caused dividends to stop being paid by PT PDP in favour of SOFL ("**Stopped Dividends Findings**");

(3) the Judge was wrong to hold that SOFL's shareholders would automatically receive dividends when dividends were paid at the operating company subsidiary level ("**Automatic Dividends Finding**");

(4) the Judge erred in finding that SOFL's failure to pay dividends was unfair and prejudicial because, with no dividends having been paid by PT PDP, SOFL had no income or profits out of which dividends could have been paid ("**Unfair Prejudice Finding**").

[249] Under this ground, he also contended that the Judge failed to adequately address the Appellant's submissions which the Judge himself summarised at paragraphs [94] to [100] of the Judgment.

Appellant's Submissions

The Affairs of SOFL Finding

[250] Mr. Choo-Choy KC submitted 'that the Non-Payment of Dividends at the level of SOFL for FY 2015 to 2018 was merely reflective of a failure on the part of PT

[39] This summary was adopted from the Respondent's skeleton argument.

PDP to declare and/or pay dividends to SOFL in its capacity as a shareholder of PT PDP'.

[251] He contends that the Judge erred in treating the decision of the board of directors and/or shareholders of PT PDP not to recommend or pay a dividend to the shareholders of PT PDP (including SOFL) for the financial years 2015 to 2018 as amounting to conduct of the affairs (or acts) of SOFL. That was conduct of the affairs of and action by PT PDP, not conduct of the affairs of (or action on the part of) SOFL, albeit that it resulted in SOFL (as a shareholder of PT PDP) receiving no dividends and being unable therefore to pay any dividends of its own to any of its shareholders. Contrary to the Judge's finding, the distinction between the conduct of the affairs of PT PDP and the conduct of the affairs of SOFL in the context of the dividends that might be declared and paid by PT PDP in favour of SOFL was not 'entirely artificial' as described by the Judge, but a legal distinction going to the very essence of what may or may not constitute unfairly prejudicial conduct within the proper meaning of Section 184I. This was wrong as a matter of law.

[252] He contends that it is therefore critical that the Judge 'consider the nature and detail of the conduct in question to determine who is involved in it, for what purpose, and in what capacity or on behalf of which of the two companies, with a view to establishing whether the affairs of the company itself (as distinct from the affairs of the subsidiary) are in fact being conducted in an unfairly prejudicial manner.' Alternatively, he argues that even if it is found that it was Mr. Ng who deliberately caused dividend payments from PT PDP to stop, he could have only done so as a shareholder of PT PDP acting through Grahaidea and or with the assistance of Madam Karlinah. As such his actions could not amount to conduct of SOFL for the purposes of section 184I. The Judge's error here, he contends, was his failure to properly analyse the capacity in which Mr. Ng may have been acting at the PT PDP level.

[253] Mr. Choo-Choy KC noting that that Mr. Lie's essential complaint was that SOFL (under Mr. Ng's control) has failed or refused to pay him a dividend in respect of FY 2015 – FY 2018, contends that, '[t]he Judge appreciated this fundamental

difficulty with Mr. Lie's pleaded case in relation to the Non-Payment of Dividends, but he sought to overcome it in one of two ways:

- first, by holding [at para. 261 of the Judgment] that "Mr. Ng deliberately caused [dividends from PT PDP to SOFL] to be stopped [in respect of FY 2015 to FY 2018], even though there were plenty of funds to be distributed"; and

- secondly, by accepting Mr. Lie's submission [at para.262 of the Judgment] that "the business reality is that the conduct of the affairs of PT PDP in failing to recommend and/or pay a dividend was equally the conduct of the affairs of SOFL" and that "any attempt … to compartmentalise these dividend decisions is entirely artificial.'"

[254] Mr. Choo-Choy KC submits that '[t]he distinction between the conduct of the affairs of PT PDP and the conduct of the affairs of SOFL in the context of the dividends that might be declared and paid by PT PDP in favour of SOFL was not "entirely artificial" as described by the Judge; on the contrary, it is a legal distinction going to the very essence of what may or may not constitute unfairly prejudicial conduct within the proper meaning of section 184I.

The Stopped Dividends Findings

[255] Mr. Choo-Choy KC submits that the Judge erred in holding that it was Mr. Ng who had deliberately caused dividends to stop being paid (or stop being declared and paid) by PT PDP in favour of SOFL for FY 2015 to FY 2018

[256] Mr. Choo-Choy KC argues that in relation to this issue, the Judge made factual findings for which there was no evidence and/or misunderstood the evidence before him thereby reaching factual conclusions that were plainly wrong. Here he primarily focusses first on the evidence which relates to SOFL paying dividends only when it has received dividends. He contends that the Judge's misconceived reliance on the history of dividend payments led him into error.

[257] Mr. Choo-Choy KC also points to the evidence which relates to the decision-making process at the PT PDP, the persons involved, and the factors which that company would consider if deciding whether dividends should be paid as against applying profits to capital projects. He contends that the Judge failed to have regard to or adequately consider that with regards to dividends for FY

2015, there was clear evidence that it was Madam Karlinah who stopped the approved dividend payment for SOFL; Mr. Ng had nothing to do with it. She did so as 'she held Mr. Lie responsible for damage caused to PT PDP by his alleged misconduct' and that she did not wish to take the payment declared in her favour in order to assist with the IPO of PT PDP; and only the dividends declared in favour of the minor shareholders (Mr. Harahap and Mr. Noer) were paid by PT PDP.

[258] As regards FY 2016, FY 2017 and FY 2018 Mr. Choo-Choy KC submitted that the Judge failed to have regard to the documentary evidence which showed that the overwhelming majority of the shareholders of PT PDP voted against declaring any dividends for payment by PT PDP to its shareholders from FY 2016 onwards, in order to build up the reserves of PT PDP for the future implementation of various capital projects over several years; and that there was no dividend declaration by PT PDP for FY 2017 and FY 2018 years either.

The Automatic Dividends Findings

[259] Mr. Choo-Choy KC's complaint is that the Judge was wrong to hold that SOFL's shareholders (including the Respondent) would automatically receive dividends when dividends were paid at the operating company subsidiary level.

[260] He submits that the evidence showed that whether or not dividends paid at a subsidiary level would ultimately be payable at the level of SOFL would depend upon dividends being declared and paid at PT PDP level. The Judge ignored or took insufficient account of this evidence in reaching his decision.

[261] The fact that, historically, PT PDP had paid dividends to SOFL whenever it received dividends from its operating subsidiaries did not mean that PT PDP would always declare and pay dividends to SOFL. In any event this was conduct on the part of PT PDP, not conduct on the part of SOFL.

The Unfair Prejudice Finding

[262] Mr. Choo-Choy KC's complaint is that the Judge erred in finding that SOFL's failure to pay dividends to the Respondent for financial years 2015 to 2018 and/or to give genuine consideration to whether dividends should be paid was unfair and prejudicial to the Respondent because, with no dividends having been paid by PT PDP to SOFL in respect of those financial years, (1) SOFL had no income or profits out of which dividends could have been paid to the Respondent, (2) the question of consideration by SOFL whether or not to pay dividends to its shareholders, including the Respondent, did not arise, (3) there could have been no unfairness in the Respondent not receiving dividends that SOFL could not pay, and (4) in any event, PT PDP's failure to declare or pay dividends in favour of SOFL as one of PT PDP's shareholders did not amount to conduct of the affairs (or any act on the part of) of SOFL but was conduct of the affairs of PT PDP.

[263] He submits that there is no 'principle that a company was required to declare or pay a dividend or to consider doing so, when (as in SOFL's case in relation to FY 2015 to FY 2018) it had no income or profits whatsoever to enable it to make any dividend payments to its shareholders. Nor would it be rational to lay down any such principle.'

The Respondents' Submissions

[264] Mr. Hardwick KC can be relied on to disagree. He has again disagreed with Mr. Choo-Choy KC's insistence that the Judge was wrong on the Non-Payment of Dividends Findings.

The Affairs of SOFL Finding

[265] Mr. Hardwick submits[40] that the Appellant's arguments that 'conduct of the affairs of PT PDP, was not conduct of the affairs of SOFL, in seeking to draw a bright line between the affairs of SOFL and the affairs of PT PDP in respect of

[40] Mr. Hardwick first notes that the primary section 184I arguments made by Mr. Choo-Choy were advanced at trial. He relies on his responses made during closing arguments at the trial which he has repeated on this appeal.

dividend payment, was an entirely artificial one – directly contrary to the guidance of David Richards J. in **Re Coroin Ltd**[41] who explained that the court "will not adopt a technical or legalistic approach to what constitutes the affairs of the company but will look at the business realities."'

[266] King's Counsel argues that 'the distinction was artificial because the "business realities" of this case were that (1) PT PDP was the key Indonesian holding company in the business; (2) SOFL was only ever formed to move the interests of Mr. Lie and Mr. Ng in PT PDP offshore to the BVI, and SOFL had and has no business other than as a holding company of PT PDP; (3) it was obvious that SOFL would only be in a position to recommend and pay a dividend to its shareholders if PT PDP paid a dividend to SOFL in the first place; and (4) for every year on record until the FY 2015 (a) PT PDP had paid a dividend to SOFL; and (b) SOFL had distributed that dividend payment to its shareholders.'

[267] He submits that 'accordingly (1) the necessary effect of a failure of PT PDP to pay dividends to SOFL was that SOFL could neither recommend nor pay any dividend to its shareholders; such that (2) the business reality was that the "conduct of the affairs" of PT PDP in failing to recommend and/or pay a dividend was equally the "conduct of affairs" of SOFL. The immediate and necessary relation between a dividend decision at PT PDP level and a dividend decision at SOFL level made any attempt to compartmentalise these dividend decisions between the subsidiary and holding company entirely artificial.'

[268] He submits that the Judge heard full arguments on these points and rejected the Appellant's arguments in making the finding that: 'In the circumstances of this case,… the business reality is that the conduct of the affairs of PT PDP in failing to recommend and/or pay a dividend was equally the conduct of the affairs of SOFL. …any attempt by Mr. Ng and/or his Counsel to compartmentalise these dividend decisions is entirely artificial. …The reality was that Mr. Ng was the person who controlled what happened in the business…'

[41] [2012] EWHC 2343 (Ch) (at [628].

[269] The key finding of fact as to Mr. Ng's control was and is unimpeachable, based upon the Judge's thorough understanding and assessment of the totality of the evidence. The legal conclusion that the 'business reality is that the conduct of the affairs of PT PDP in failing to recommend and/or pay a dividend was equally the conduct of the affairs of SOFL' is entirely in line with the explanation in **Re Coroin Ltd** that the court 'will not adopt a technical or legalistic approach to what constitutes the affairs of the company but will look at the business realities.'

The Stopped Dividends Findings

[270] Mr. Hardwick KC effectively submits that the evidence makes it clear that the Judge cannot be shown to have erred in law or was plainly wrong on the facts. He submits that any analysis of the evidence would show in relation to the non-payment of the dividends that: (1) even though the FY 2015 dividends were declared by PT PDP in 2016, SOFL never received same and Mr. Lie to date, has not gotten those dividends, (2) at the material times, Mr. Ng's Brother was in control of SOFL and was taking instructions from Mr. Ng who was the director in charge of PT PDP, (3) that Mr. Lie and his wife at separate times communicated with Mr. Ng about the stopped 2015 dividend payment, (4) at no time, did Mr. Ng explain that those dividends was going to be withheld but instead promised to pay them when the exchange rate for the dollar was better as dividends at the SOFL level was paid in US dollars (despite being told by Mr. Lie's wife that the rate was a good one at that time). Yet Mr. Lie never received any payment and eventually made a police complaint in Indonesia that Mr. Ng and his brother as director of SOFL had embezzled his dividends.

[271] As for the 2016 dividends, Mr. Hardwick KC submits that the circumstances were even more extreme. He provided a detailed analysis of the evidence which he submits shows that by this time (in 2017), Mr. Ng had already transferred his PT PDP shares to Grahaidea which he and his brother owned but yet retained his majority shareholding in SOFL. Even though the operating companies earned significant profits, and comparable significant dividends being paid to PT PDP, its shareholders (Mr. Ng being entitled to control the majority shareholding

vote) voted that no dividends would be paid and that the profits would be diverted to capital projects. In fact, the evidence showed that this decision was a ploy as there were no such projects which required such significant sums. That it was all Mr. Ng's doing to ensure that Mr. Lie did not get any money out of the Business.

[272] As far as the FY 2017 dividends were concerned, Mr. Hardwick KC submitted that numerous failed attempts were made to obtain disclosure of the details of any dividends which were declared for that year by PT PDP. Eventually, Mr. Lie had to rely on publicly available records for PTPN 4 (the Indonesian Government is 15% shareholder in PT PEU) in order to ascertain what dividends had been declared at PT PEU level.

[273] Mr. Hardwick KC submitted that it was Mr. Ng's duty as sole director of PT PDP (Article 14) to present a report on PT PDP's financial results. For FY 2017, Mr. Ng (1) would, in about July 2018, have reported that PT PDP had received (yet again) a very substantial dividend from PT PEU (IDR 229.5bn ($15.8m)); but (2) (as sole director and controlling shareholder) would neither have recommended nor approved a dividend payment to the PT PDP shareholders (including SOFL) in circumstances where by July 2018: (a) the battle lines were firmly drawn (on 12th July 2018 Mr. Lie commenced this Claim); and (b) Mr. Ng was determined that Mr. Lie should not see any part of that $15.8m dividend from PT PEU for FY 2017.'

[274] It was this evidence and argument that the Judge had well in mind when he found in emphatic terms at paragraph 261 of the judgment that: 'Mr. Ng…stopped the dividends specifically and precisely to ensure that Mr. Lie would not receive any further money'; (paragraph 265) 'I accept that SOFL's failure, at Mr. Ng's behest, to pay dividends to Mr. Lie for financial years 2015 – 2018 and/or to give genuine consideration to whether dividends should be paid was unfair and prejudicial to Mr. Lie…Mr. Ng's whole point in this regard was to ensure that Mr. Lie would not receive one cent more, if he could help it. Mr. Lie's complaints in this regard are well-founded and I find that they succeed'. Again,

this provides a complete answer to the attempt to rerun the arguments in respect of the FY 2017 Dividend.

The Automatic Dividends Finding

[275] Mr. Hardwick KC submitted that the Appellant's arguments on this limb – 'the Judge was also wrong to hold that SOFL's shareholders (including Mr. Lie) would automatically receive dividends when dividends were paid at the operating company subsidiary level' – not only fails to address the context and meaning of paragraph 264 but also misunderstands the point being made by the Judge. What the Judge stated was that:

> "[264] SOFL's shareholders would automatically receive dividends when dividends were paid at the operating company subsidiary level, as Mr. Ng himself pleaded. That was the business reality. I do not give credence to Mr. Ng's attempt at trial to recant from that pleaded assertion. That attempt was self-serving, and redolent of Mr. Ng's prevalent propensity to manipulate matters to suit his case.'

[276] He submits that Mr. Ng had pleaded as a fact that whenever dividends were received by SOFL, those 'dividends were automatically distributed to the shareholders pro rata to their shareholding in SOFL'. Mr. Ng did attempt to resile from this during cross-examination and to explain there was no automatic payout but 'an amount has to be determined first before it was distributed on a pro rata basis'. Mr. Hardwick KC was quick to point out that Mr. Ng was always ready to shift the blame and on this occasion sought to lay the blame of the mis-pleaded assertion on his lawyer.

[277] Thus, the Judge's reference at paragraph 264 of the judgment that 'SOFL's shareholders would automatically receive dividends when dividends were paid at operating company subsidiary level' was simply intended to reflect Mr. Ng's original evidence that 'the payment by SOFL of a dividend depended solely on whether SOFL had itself received any dividends from PT PDP.' The Judge did not state that SOFL's shareholders would automatically receive dividends 'when dividends were received by PT PDP from its operating subsidiaries.'

[278] Accordingly Ground 2(4) is entirely misdirected. It (1) fails to have regard to this important context (Mr. Ng's U-turn in evidence); and (2) in any event, misunderstands what the Judge actually found.

The Unfair Prejudice Finding

[279] Mr. Hardwick KC submits that this final limb of Ground 2 returns to the SOFL/PT PDP distinction that the Judge had been wrong to find a failure to pay dividends by SOFL in circumstances where, absent the payment of dividends by PT PDP, SOFL had no income or profits to distribute.

[280] Mr. Hardwick KC submitted that 'the facts and documents in relation to the FY 2015 to FY 2017 confirmed at every step the 'business realities' that: (1) dividend decisions and payments at PT PDP level had an immediate and necessary relation to dividend payments at SOFL level; and (2) Mr. Ng, as sole director of PT PDP and the only person with real influence in the corporate affairs of SOFL, knew that they did; and the conduct of Mr. Ng in relation to the FY 2015 and FY 2016 dividends (considered above), disclosed a deliberate attempt by Mr. Ng, through the organs of PT PDP, to ensure that the affairs of SOFL were conducted to the unfair prejudice of Mr. Lie.'

[281] He pointed out that the Judge agreed, finding emphatically at paragraph 261 of the judgment that Mr. Ng 'stopped the dividends [from PT PDP in respect of the Financial Years 2015 to 2018] specifically and precisely to ensure that Mr. Lie would not receive any further money'. The Judge was entirely correct to find that such actions at PT PDP level (instigated by its sole director, Mr. Ng) was conduct of the affairs of SOFL (of which Mr. Ng was the directing mind). The English Court of Appeal in **Gross v Rackind** was at pains to emphasise (following a line of case law before it) that the expression 'the affairs of the company' 'is one of the widest import' and can include the affairs of a subsidiary. It is difficult to conceive of a more obvious (and meritorious) example of the affairs of a holding company (SOFL) extending to the affairs of its subsidiary (PT PDP).

Discussions on the Non-Payment of Dividends Issue

The Affairs of SOFL Finding

[282] It is useful to start with section 184I(1) of the BCA which states:

> "A member of a company who considers that the **affairs of the company** have been are being or are likely to be conducted in a manner that is, or **any act or acts of the company have been**, or are, or are likely to be oppressive, unfairly discriminatory, or unfairly prejudicial to him in that capacity, may apply to the court for an order under this section." [emphasis supplied].

[283] The section has its genesis in the English Company Act 1948 and provides for the statutory remedy or 'unfair prejudice remedy' given to a member of a company and which is engaged, either by conduct of 'the affairs of the company' (the first limb) or 'any act or acts of the company' (the second limb) which have had, or are likely to have an unfairly prejudicial effect on the member in question in his or her capacity as member.

[284] As far as what may properly be considered the 'affairs of the company', the English authorities are relevant. Philmore J's explanation in **R v Board of Trade, ex p. St Martins Preserving Co Ltd**[42] is therefore useful. He said:

> "In speaking of 'its affairs' in connection with a company the natural meaning of the words connotes 'its business affairs'.
> What are 'its affairs' when the company is in full control? They must surely include its goodwill, its profits or losses, its contracts and assets including its shareholding in and ability to control the affairs of a subsidiary, or perhaps in the latter regard a sub-subsidiary such as Atholl Houses Ltd. In ordinary parlance the affairs of the applicant company must surely have included its shareholding in T. G. Tickler Ltd., and its power in virtue of that shareholding to control the board of that subsidiary and the disposition of Atholl Houses Ltd., the wholly owned sub-subsidiary."
> [T. G. Tickler Ltd was a 98 per cent subsidiary of the company and Atholl Houses Ltd was a wholly owned subsidiary of T.G. Tickler Ltd.]

[42] [1965] 1 QB 603.

[285] It is easy to see that the section would be engaged where 'the conduct to be complained [is] in the affairs of the very company in respect of which the petition is presented' [43] (emphasis supplied)

[286] But equally, the cases (including ex p. St Martins Preserving) have shown, that in particular situations, the business reality of the situation is that the conduct of the affairs of one company constitutes the conduct of the affairs of another company.

[287] This point is well made in **Re a Company No.002470 of 1988, ex p. Nicholas**[44]. In this case, the English Court of Appeal decided in withholding monies due to its subsidiary a holding company could be said to be conducting the affairs of the subsidiary. At paragraphs 906–907, referring to the facts of the case, Fox L.J. said:

> "We are not, therefore, dealing with a case of a company which is simply running its own affairs in a manner which is harmful to the interests of shareholders in its subsidiary. It seems to me that Electronics, when it withheld payments from the company, was doing so as part of general control of the financial affairs of the company. It exercised that general control by deciding how much the company should receive (by withholding sums due to the company) and restricting the company's ability to spend money (by the signature requirements on cheques drawn by the company). In my view Electronics, when it withheld from the company payments which were due to the company, was conducting the affairs of the company."

[288] Later in this same case, Ralph Gibson L.J. said at paragraphs 909–910:

> "On the question whether there was relevant conduct of the business of the company by Electronics, I must refer to some aspects of the facts. Before doing so it is necessary to complete the passage from Lord President Cooper's judgment which Viscount Simonds expressly adopted as defining his view. The first sentence of the passage ([1959] AC 324 at p.343) was:
>
> > 'In my view the section warrants the court in looking at the business realities of a situation and does not confine them to a narrow legalistic view.'"

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[43] (See Harman J. in Re a Company (No.001761 of 1986) [1987] BCLC 141 at p. 144)
[44] [1992] BCC 895.

[289] The converse is equally true. In **Gross v Rackind,** the question posed in relation to section 459 of the UK Companies Act 1985, which provided for an oppression remedy was whether such a remedy could be granted in relation to a holding company where (1) it was the affairs of the subsidiary of that company that had been conducted in an unfairly prejudicial manner, and (2) the directors of the holding company were also directors of the subsidiary. The Court of Appeal, noting that there was no clear English authority on point, nonetheless, held:

> "The conduct of the affairs of one company could also be conduct of the affairs of another, since a holding company had been held to have been conducting the affairs of a subsidiary. The expression 'the affairs of the company' was one of the widest import which could include the affairs of a subsidiary of that company. Equally, however, the affairs of a subsidiary could also be the affairs of its holding company, especially where, as in the instant case, the directors of the holding company, which necessarily controlled the affairs of the subsidiary, also represented a majority of the directors of the subsidiary."

[290] It is to be noted that 'before one company can be said to have control over the affairs of another there must be some element of control and the fact that persons have control of one company but were shareholders in another would not satisfy the test of control of both': **Re Grandactual Ltd, Hough v Hardcastle**[45]**.** It is therefore important to examine who is controlling the first company and who is controlling the other.

[291] In this case, the Judge considered and made findings on the business realities of the situation as far as who was in control of SOFL and PT PDP. He concluded as follows:

> "[262] Mr. Choo-Choy, for Mr. Ng, submitted that a complaint of unfair prejudice in respect of the affairs of SOFL cannot, without more and on the present facts, extend to a failure by PT PDP to declare or pay a dividend to SOFL. This was of a piece with Mr. Choo-Choy's manifold other technical legal arguments. In the circumstances of this case, as Mr. Hardwick, for Mr. Lie, has submitted, the business reality is that the conduct of the affairs of PT PDP in failing to recommend and/or pay a dividend was equally the conduct of the affairs of SOFL. He argued that any attempt by Mr. Ng and/or his Counsel to compartmentalise these dividend decisions is entirely artificial. I agree.

[45] [2005] All ER (D) 313 (Apr) at [29].

> [263] The reality was that Mr. Ng was the person who controlled what happened in the business. I do not accept that Mr. Ng's Brother, Mr. Achmad, or anyone else was a primary decision maker as Mr. Ng has suggested."

[292] In my view this finding was justified on the evidence in this case and on consideration of all the submissions of the parties. There is a compelling case, having regard to the principles set out in **Rackind,** the business reality was that it was Mr. Ng who was in control of both SOFL and PT PDP, and was making decisions for the latter in relation to dividends for the period 2015 to 2017.

[293] The trial Judge was not at all impressed with Mr. Ng as a witness of the truth and was entitled to find as a fact that it was Mr. Ng and not his brother who was the primary decision maker of SOFL. Equally, he was entitled to find that, Mr. Ng was in control of PT PDP at the material time, and it was he, and not Madam Karlinah, who was making decisions about dividends payments for the relevant period.

[294] Disagreements began in early 2015 between Mr. Lie and Mr. Ng about whether the Business should go public. Mr. Lie took objection to this plan which was being driven by Mr. Ng. A meeting had been planned to discuss this go public proposal and Mr. Ng had appointed Mr. Siregar as SOFL's proxy to attend that meeting. Mr. Lie had objected to this and that meeting was cancelled.

[295] In June 2015, Mr. Lie wrote to Mr. Ng expressing objections to the go public plan and asked Mr. Ng to explain the reasons for such a proposal. At trial, Mr. Ng denied that he had ever received or seen this letter from Mr. Lie prior to disclosure during the proceedings. When he was shown his own written response to the letter, he admitted that he had written a response and that he simply did not remember. In fact, in his short-written response, he simply told Mr. Lie that he could not give him any reasons because Mr. Lie was not a shareholder in PT PDP. This was an astonishing answer as Mr. Lie was a co-director in PT PDP at the time and was an equal shareholder in SOFL which held shares in PT PDP.

[296] It was at this stage, that DBT wrote to SOFL and indicated that because the beneficial owners were in disagreement, DBT would be terminating their relationship with SOFL and that Regula would be resigning as the nominee director. Thereupon, Mr. Lie wrote to Mr. Ng. and Mr. Siregar suggesting that each of them appoint a director. There was no response to this letter and approximately seven weeks later, Mr. Ng sent a letter to Mr. Lie proposing the appointment of Mr. Ng's Brother as sole director and giving Mr. Lie seven days to respond indicating that if he did not, the others would vote in Mr. Ng's brother. Mr. Lie wrote objecting and suggested that he should be appointed together with Mr. Ng's Brother as directors. But Mr. Ng and Mr. Siregar would use their voting majority to appoint Mr. Ng's Brother, Mr. Ng Ming Hwie as sole director. His role according to Mr. Ng was the same as previous directors before him. The previous directors took instructions from both Mr. Lie and Mr. Ng. Mr. Ng accepted during cross-examination that his brother was a nominee director and took instructions from him. Mr. Lie did not give him any instructions; in fact, Mr. Ng's brother failed to even respond to Mr. Lie's various request for information.

[297] After Mr. Lie resigned from each of the Indonesian operating companies in November 2015, he was terminated as a director of PT PDP. Mr. Ng remained as the sole director of PT PDP and was the sole director at all material times thereafter. At this stage Mr. Lie had effectively lost his management role in SOFL.

[298] I agree with Mr. Hardwick KC that the Appellant's attempt to draw a bright line between the affairs of SOFL and the affairs of PT PDP in respect of dividend payment, was an entirely artificial one. Mr. Choo-Choy KC had asked the Judge and is now asking this Court to adopt a technical or legalistic approach to what constitutes the affairs of SOFL and to ignore the business realities. The Judge did not agree with him. This Court cannot find fault with the Judge on this matter.

[299] I also agree with the Judge that 'the distinction was artificial because the "business realities" of this case were that (1) PT PDP was the key Indonesian holding company in the business; (2) SOFL was only ever formed to move the interests of Mr. Lie and Mr. Ng in PT PDP offshore to the BVI, and SOFL had

and has no business other than as a holding company of PT PDP; (3) it was obvious that SOFL would only be in a position to recommend and pay a dividend to its shareholders if PT PDP paid a dividend to SOFL in the first place; and (4) for every year on record until the FY 2015 (a) PT PDP had paid a dividend to SOFL; and (b) SOFL had distributed that dividend payment to its shareholders.'

[300] There is so much in this case to ground the Judge's findings. First, in the context of the breakdown of the relationship, there is the fact that Mr. Ng rejected Mr. Lie's proposal to appoint more than one director of SOFL and chose instead, using the voting power of Mr. Siregar, to appoint his own brother. Second, there is the fact that he refused to share information with Mr. Lie about the affairs of the business. Third, during this time, Mr. Ng transferred out his PT PDP shares from SOFL to a company owned by him and his brother. Fourth, there was the non-payment of dividends for 2015 even after Mr. Ng approved those payments as director of PT PDP. Fifth, the telling conversations between he and Madam Tunggal, and then he and Mr. Lie about the non-payment of the 2015 dividends. It is easy to see how the Judge would have disbelieved him.

[301] This is one of those cases where even the cold written words of the transcripts raises doubts as to Mr. Ng's veracity as there is so much - inconsistency, recanting and plain obstructiveness – that it is easy to see how the Judge would have found that Mr. Ng was not a credible witness, and to draw those adverse inferences against him which related to whether he was in control of SOFL and PT PDP at the material times. The Judge would have been entitled to find that the business reality is that the conduct of the affairs of PT PDP in failing to recommend and/or pay a dividend was equally the conduct of the affairs of SOFL. This point is well made in **Re a Company No.002470 of 1988, ex p. Nicholas**. In that case, the English Court of Appeal decided in withholding monies due to its subsidiary a holding company could be said to be conducting the affairs of the subsidiary.

[302] In short, this Court cannot find that the Judge had erred in fact or law when he found that Mr. Ng was in control and was conducting the affairs of both companies.

The Stopped Dividends Findings

[303] The Judge found that Mr. Ng had deliberately stopped the payments of dividends to SOFL. Having regard to the evidence that was led in the court below and having considered the submissions of the parties both in the court below and in this Court, the Judge's findings will not be disturbed for the following reasons.

[304] It is useful to begin this analysis by considering the SOFL's historical approach to the payment of dividends.

[305] Between 2004 and 2015, the five Indonesian companies generated significant profits; most of it came from PT PEU and paid to PT PDP and then distributed as dividends to SOFL. Many of SOFL's resolutions approving dividends expressly stated that Mr. Lie's wife, Madam Tunggal was an authorised person to receive the dividend payment. The documentary undisputed evidence makes it clear that significant sums amounting to millions of dollars were paid throughout this period as dividends. Through SOFL, Mr. Lie (and sometimes his wife Madam Tunggal) would receive millions on a yearly basis. Some of these payments are seen from the following:

(1) **Interim Dividend** – evidenced by the "Written Resolution of the Sole Director of SOFL" signed by Regula and dated 10th May 2007, by which it was resolved (upon the instruction of Mr. Lie or NMH to declare an interim dividend in the sum of $3,823,939.54 distributed to (1) Mr. Lie: $1,752,741; (2) ES: $318,457.54; (3) NMH, his brother and his sister:$1,752,741;

(2) **Interim Dividend** – evidenced by the "Written Resolution of the Sole Director of SOFL" signed by Regula and dated 21st July 2008, by which it was it was resolved to declare an interim dividend in the sum of $6,486,000 distributed to (1) NMH: $2,973,831; (2) Mr. Lie: $2,973,831; and (3) ES: $538,338;

(3) **Interim Dividend** – evidenced by the "Written Resolution of the Sole Director of SOFL" signed by Regula and dated 3rd June 2010, by which it was resolved to declare an interim dividend in the sum of $5,985,000 distributed to (1) Mr. Lie: $2,744,122.50; (2) ES: $496,755; and (3) "Deutsche Bank Trustee Services of the Everlast A.W. Trust": $2,744,122.50;

(4) **Interim Dividend** – the "Written Resolution of the Sole Director of SOFL" signed by Regula and dated 9th August 2010, by which it was resolved to declare an interim dividend in the sum of $7,700,000 distributed to (1) Mr. Lie: $3,530,450; (2) ES: $639,100; (3) "Deutsche Bank Trustee Services of the Everlast A.W. Trust" as to $3,530,450 – bringing the total dividend for 2010 to c$13.6m;

(5) **Interim Dividend** – the "Written Resolution of the Sole Director of SOFL" signed by Regula and dated 18th May 2012, by which it was resolved to accept the dividend payment of $16,363,361 "from its underlying company, PT PDP" and to declare an interim dividend of precisely the same sum of $16,363,361 distributed to (1) Deutsche Bank Singapore: $7,502,601; (2) Mr. Lie: $4,000,000; and (3) "Soemarli Lie and/or Djuniar Tunggal ": $3,502,601;

(6) **Interim Dividend** – the "Written Resolution of the Sole Director of SOFL" signed by Regula and dated 18th March 2013, by which it was resolved to accept the dividend payment of $306,570 "from its underlying company, PT PDP" and to declare an interim dividend of precisely $306,570 distributed to (1) Deutsche Bank Singapore: $153,285; and (2) "Soemarli Lie and/or Djuniar Tunggal": $153,285;

(7) **Interim Dividend** – the "Written Resolution of the Sole Director of SOFL" signed by Regula and dated 10th June 2013, by which it was resolved to accept the dividend payment of $15,350,858.15 "from its underlying company, PT PDP" and to declare a dividend of $15,340,858 distributed to (1) Everlast A.W. Trust: $7,033,784 (2) "Soemarli Lie and/or Djuniar Tunggal": $7,033,784 and (3) ES: $1,273,290;

(8) **Interim Dividend** – the "Written Resolution of the Sole Director of SOFL" signed by Regula and dated 26th June 2013, by which it was resolved to accept the dividend payment of $13,069,796 "from its underlying company, PT PDP" and to pay a dividend in the amount of precisely $13,069,706 to (1) Everlast A.W. Trust: $6,534,898; (2) "Soemarli Lie/and or Djuniar Tunggal": $6,534,898 – bringing the total dividends declared in 2013 to just short of $29m;

(9) **Interim Dividend** – the "Written Resolution of the Sole Director of SOFL" signed by Regula and dated 28th April 2014, by which it was resolved to accept the dividend payment of $13,100,000 "from its underlying company, PT PDP" and to declare an interim dividend of precisely $13,100,000 distributed to: (1) Everlast A.W. Trust: $6,006,350; (2) "Soemarli Lie and/or Djuniar Tunggal": $6,006,350; (3) ES: $1,087,300; and finally

(10) **Interim Dividend** – the minutes of a PT PDP AGSM for the Financial Year 2014 recording (1) "Dividend for Financial Year 2014 from PT PEU" in the sum of IDR 389.3bn; and (2) "Dividends for

> Financial Year 2014 paid out to Shareholders" of IDR 300bn. SOFL's 63.16% share of that dividend was approximately IDR189bn – and Mr. Lie received his 45% share of that Financial Year 2014 dividend (the sum of $5,336,940 paid into the joint account of himself and his wife) on 21st January 2016.

[306] It is undisputed that on 25th July 2016, at a General Meeting of Shareholders, PT PDP, having received IDR212.5bn from PT PEU, approved a dividend payment in the sum of IDR200bn to its shareholders to be paid in accordance with their respective share ownership. The General Meeting declared that IDR126m – approximately US$9.6M - was to be paid to SOFL for its 63 % shareholding in PT PDP; Mr. Lie would have been entitled to about US$4.5M of this dividend payout.

[307] Mr. Lie is yet to receive this approved dividend payment for 2015.

[308] Mr. Lie's evidence at trial, which the Judge accepted, was that when this 2015 payment was not received, both he and his wife Madam Tunggal on separate occasions communicated with Mr. Ng to ask about this non-payment of dividends. Mr. Lie's evidence was that he made a number of telephone calls to Mr. Ng, who told him that he 'should continue to wait for the dividends – because (1) he had not yet bought the US dollars with which to pay that dividend; and (2) was …'waiting for the exchange rate to be more favourable before exchanging the IDR into USD…' Mr. Ng had never stated or suggested that there were no dividends to distribute. Mr. Lie's evidence on these matters was not challenged by counsel for Mr. Ng.

[309] During cross-examination, however, Mr. Ng was asked about these calls and his statements. At first, he stated that he did not recall these calls, and he called on counsel to produce the records. When no records were forthcoming his answers became a pure denial of any conversations.

[310] Screen shots of text messages were also shown to him. It was put to Mr. Ng that in July 2016 after Mr. Lie had called Mr. Ng on several occasions to speak about the 2015 dividends, Madam Tunggal had texted him 'please, ask if our

dividends have been transferred,' and his response was 'not yet Mrs,' so this is to her, not to Mr. Lie, '$ has not been bought.' Mr. Ng was not prepared to accept that he had this text conversation and finally said he did not know what business she was talking about and if he did respond, 'it could have been because it was just my, out of politeness, out of courtesy that I have to answer, you know, to answer her.' He then asked for proof that this text conversation had taken place. The following exchange took place during cross-examination:

> Q. Your only reason for not having paid yet was "dollar hasn't been bought."
> A. The answer that I see is right there.
>
> Q. That's what you wrote, Mr. Ng, isn't it?
> A. Probably. If I can make sure that this text actually happened.

[311] There was also evidence that Madam Tunggal had also texted him in August 2016 to ask about the payment of the 2015 dividends. Then there is evidence that in September 2016, she texted him: 'Min Hong, can I please ask if our dividends have been transferred because that day Min Hong said $ has not been bought but now US $ is already lower. Please buy it immediately as those dividends are our rights. Thanks.' Mr. Ng said that he does not recall those messages and that he and Madam Tunggal did not discuss business.

[312] Mr. Lie then wrote a letter dated 13th September 2016 to Mr. Ng's Brother and requested his 'clarification on the dividend payments towards myself as a shareholder of SOFL that I have not received. Thank you for your clarification.' When this letter was put to Mr. Ng at trial, he stated that he knew nothing about this request for clarification. Mr. Ng was also asked about a second letter written in October 2016 which was addressed to Mr. Ng as director of PT PDP, his brother as director of SOFL and Madam Karlinah as President Chairperson/Shareholder of PT PDP, again requesting 'clarification' about the payment of the 2015 dividend. Mr. Ng denied receiving the letter.

[313] By a letter dated 3rd March, Mr. Lie had his lawyers send a letter to Mr. Ng's brother documenting the many requests which had been made and enquiring when the 2015 dividends would be paid. Mr. Ng denied knowing about this letter. There was no response from SOFL.

[314] On 18th April 2017, Mr. Lie made a police complaint in Indonesia against Mr. Ng and his brother and alleged that they had embezzled his dividend payments. A police driven mediation took place in July 2017. It was unsuccessful and the police thereafter terminated the report as they considered that the matter was not a criminal matter.

[315] Mr. Ng's pleaded case was that 'no dividends were paid to the Company by PT PDP and, accordingly, none were paid by SOFL to its shareholders.' In fact, in his witness statement, Mr. Ng did not speak about PT PDP's decision to approve a dividend payment for 2015. He treated with the non-payment as follows: 'in respect of the years 2015, 2016, 2017, 2018 and 2019, to the best of my knowledge, no dividends were paid to SOFL by PT PDP. None of the SOFL shareholders (including me) were paid a dividend for these years.' There was no mention that PT PDP had actually approved the dividend payment. When tasked about what 'to the best of my knowledge' means, his response was: 'to the best of my knowledge means no money had been sent'.

[316] It was during cross-examination that Mr. Ng offered for the first time, an explanation why the money had not been sent to SOFL. He said:

> "Okay. I can tell the Court that actually, although the dividends were declared and then, but I was later on stopped by Mrs. Karlinah about the payment, you know. So that is why when you asked me about Mrs. Karlinah, whether she received the money or not, I said no because she also was not paid."
>
> "These two people, actually her instruction -- I would say she is my boss because we know that she is the most powerful person in the Company. So, at that time, it so happens because the two small shareholders actually had been paid because I thought it would be, you know, we would be just doing what, I was doing, my job as a director. But then later on, Mrs. Karlinah actually asked me to stop payment, including for herself, so that's what I did."

[317] Mr. Ng was the sole director of PT PDP. While Madam Karlinah was President Commissioner, she was a minority shareholder of PT PDP. SOFL was the majority shareholder. The Judge was not at all impressed with Mr. Ng's evidence

on this point. There was no basis for Mr. Ng to sit back and allow this to happen. Mr. Ng's evidence had no ring of the truth.

[318] As far as the 2016 dividends are concerned, the circumstances are even more telling. The Director's Report for FY 2016 presented at the General Shareholders Meeting of PT PDP shows that 'PT PEU Financial Year 2016 Dividend, IDR212.5 bn was listed under the heading 'Estimated Funds Available' (the same amount for FY 2015); SOFL's share of that is IDR212.5 bn.

[319] That Report also indicated that PT PDP's cash reserves for FY 2016 amounted to IDR165.8 bn which was almost double of what was available for FY 2015. The Report then shows that the 'Directors propose' at the General Shareholders' Meeting chaired by Mr. Ng the following: '1. In developing the company's business and the company's subsidiaries according to the company's plan, both short-term and long-term plans will be explained by Mr. Iqbal Wilis as Specialised Staff on Business Development. 2. It is suggested that the company should not pay out dividends for the Financial Year 2016.' Mr. Ng accepted that he was the 'Director' who proposed as he was the only director. The proposal was approved by the shareholders holding the majority of the shares. The first of those shareholders was Grahaidea (34.21 % of PT PDP shares - jointly owned by Mr. Ng and his brother) which was represented by Mr. Ng's brother. Grahaidea had become a new shareholder as only eleven days before this meeting SOFL had transferred over 2 million PT PDP shares to Grahaidea – the 2017 Disposition. SOFL was another shareholder but now with 28.9 % of PT PDP shares. It too was represented by Mr. Ng's Brother. Mr. Lie was at the meeting representing Mr. Harahap who held 1.58 % of shares in PT PDP. Mr. Noer was at the meeting. He too held 1.58% of PT PDP shares. They voted not to approve the proposal not to pay dividends for FY 2016.

[320] Mr. Ng accepted at trial that at the date of that GSM, all of his shares which had once been held by SOFL were now held by Grahaidea whilst he still remained a shareholder in SOFL which he controlled.

[321] Mr. Ng's explanation was that PT PDP decided not to pay dividends for FY 2016 because major capital investment was planned. He accepted that the amount being earmarked for this was significantly different from previous years. The following chart was prepared by Mr. Hardwick:

Year Estimated	Funds available	Capital Investment	% of Funds allocated	Reserved Funds	Dividends Declared
2016	378 billion	1.35 trillion	350%	Not specified	0.00
2015	276 billion	65 billion	21.9%	31.6 billion	200 billion
2014	397 billion	90 billion	22.6%	7.6 billion	300 billion
2012	492 billion	150 billion	30.4%	42 billion	300 billion
2011	498 billion	135 billion	27.1%	63 billion	300 billion

[322] Mr. Ng was tasked on the proposed capital investment. He was asked about the proposed power plant project for one of the estates for which approximately IDR424.2 bn was allocated. He was asked about the 'feasibility study, the architect's drawing and ']permit documentation'. His answer was that he did not have those with him and then admitted that this project had not started at all, and further that he did not have the breakdown of costs with him. Two other proposed projects related to injection of IDR317 bn for cattle farms for two estates. Mr. Ng again had no documentation but said that had 'started talking' about these. He accepted that he had no documents to speak to the proposed projects and explained that he did not know that this was important to the proceedings.

[323] By 2017, Mr. Lie was making requests from his lawyers to Mr. Ng seeking information about the financial position of PT PDP and its operating subsidiaries.

He asked for all the minutes and resolutions of these companies for the period 2015 to 2018, all material relevant to whether dividends were declared or paid. Mr. Ng's response was that the shareholders had written to him and had expressly disagreed with any disclosure to Mr. Lie. Even when ordered by the court below to disclose this material, Mr. Ng failed to do so saying that he did not have the documents. Eventually lawyers responding for SOFL would say that nothing could be disclosed because there was 'special audit' ongoing 'to address the alleged abuse and misappropriation of PT PDP's subsidiaries' funds by [Mr. Lie] client during his tenure as Operations Director.

[324] For FY 2017 and FY 2018, it also became clear from the evidence that PT PDP received significant payments from PT PEU. Mr. Ng, at trial continued to maintain that he was unable to disclose the PT PDP Director's Report for 2017 as the shareholders did not allow it – he being the beneficial owner of Grahaidea and still retaining control over SOFL through his brother.

[325] Mr. Ng's evidence must have affected the Judge, driving the court to its findings on this issue. The Judge held:

> "[261] Mr. Ng's position is that SOFL did not in fact receive any dividends from PT PDP in respect of the Financial Years 2015 to 2018 and hence could not declare any dividends in favour of its shareholders as it had done in earlier years. I accept that Mr. Ng also deliberately caused this to be stopped, even though there were plenty of funds to be distributed. I emphatically reject, as self-serving, unsupported and artificial, that the money was to be retained to finance other projects. Mr. Ng, and nobody else, stopped the dividends specifically and precisely to ensure that Mr. Lie would not receive any further money after Mr. Lie resigned from and/or was sacked from his role as director of the Indonesian operating companies towards the end of 2015.
>
> [262] Mr. Choo-Choy, for Mr. Ng, submitted that a complaint of unfair prejudice in respect of the affairs of SOFL cannot, without more and on the present facts, extend to a failure by PT PDP to declare or pay a dividend to SOFL. This was of a piece with Mr. Choo-Choy's manifold other technical legal arguments. In the circumstances of this case, as Mr. Hardwick, for Mr. Lie, has submitted, the business reality is that the conduct of the affairs of PT PDP in failing to recommend and/or pay a dividend was equally the conduct of the affairs of SOFL. He argued that any attempt by Mr. Ng and/or his Counsel to compartmentalise these dividend decisions is entirely artificial. I agree.

> [263] The reality was that Mr. Ng was the person who controlled what happened in the business. I do not accept that Mr. Ng's Brother, Mr. Achmad, or anyone else was a primary decision maker as Mr. Ng has suggested.
>
> [264] SOFL's shareholders would automatically receive dividends when dividends were paid at the operating company subsidiary level, as Mr. Ng himself pleaded. That was the business reality. I do not give credence to Mr. Ng's attempt at trial to recant from that pleaded assertion. That attempt was self-serving, and redolent of Mr. Ng's prevalent propensity to manipulate matters to suit his case."

[326] Even the reading of the transcripts compels this Court to the same finding that the Judge arrived at. There is no basis to find that the Judge erred in fact or in law to find first that 'the business reality is that the conduct of the affairs of PT PDP in failing to recommend and/or pay a dividend was equally the conduct of the affairs of SOFL'.

The Automatic Dividend Payment Issue

[327] The Appellant's argument about whether dividends were paid automatically when received by SOFL is neither here nor there. In any event I agree with the Respondent on this that this argument was misconceived. It was always Mr. Lie's position that SOFL would pay dividends when they were received. This was Mr. Ng's own pleaded case from which he tried to resile from at trial.

The Unfair Prejudice Finding

[328] The Judge was quite correct to find that Mr. Ng's conduct of SOFL in relation to the non-payment of dividends was unfair and prejudicial to Mr. Lie. This finding is found at paragraph 265 where the Judge stated:

> "I accept that SOFL's failure, at Mr. Ng's behest, to pay dividends to Mr. Lie for financial years 2015– 2018 and/or to give genuine consideration to whether dividends should be paid was unfair and prejudicial to Mr. Lie, causing him obvious economic harm. Mr. Ng's whole point in this regard was to ensure that Mr. Lie would not receive one cent more, if he could help it. Mr. Lie's complaints in this regard are well founded and I find that they succeed."

[329] In **Re AMT Coffee Ltd; McCallum-Toppin v McCallum-Toppin,**[46] the court held that:

> "A failure to pay dividends, even for years, was not in itself unfairly prejudicial, but the failure to make a decision in good faith when the company had sufficient reserves to declare dividends, paid out large sums by way of bonuses to two of the directors, and had lent large sums of money to those directors on loan accounts to pay personal expenditure, amounted to conduct unfairly prejudicial to the petitioners."

[330] So, it is in this case, the withholding of dividend payments was not done in good faith. Having regard to the previous findings on this point, and the clear language used by the Judge, the Appellant's contentions on this point obviously have no merit.

Failure to Adequately Address Mr. Ng's Submissions

[331] Before leaving this ground, I must say that on an examination of the pleaded case, the evidence, and the findings of the Judge on this point, the Judge was well seized of the arguments on both sides and had these well in mind when he dealt with this issue. This would become obvious from the above analysis of the arguments on this appeal as against the context of the Judgment.

Issue No. 3 – The 2017 Disposition

The Appellant's Submissions

[332] The Appellant contends that the Judge's findings in relation to the 2017 Disposition are plainly wrong because they are based on:

(1) a disregard or a misunderstanding of the evidence relating to the purpose of the 2017 Disposition;

(2) an erroneous characterisation of the 2017 Disposition as amounting to an unlawful misappropriation of Mr. Lie's beneficial interest in SOFL; and

(3) a failure to identify the real source of unfairness and prejudice to Mr. Lie in connection with the 2017 Disposition.

[46] [2019] EWHC 46 (Ch).

[333] Mr. Choo-Choy KC contends that '[It was common ground before the Judge that the 2017 Disposition consisted of the transfer by SOFL in late June 2017 of 2,052,631 of the 3,789,473 shares that SOFL held in PT PDP to Grahaidea, an Indonesian company owned equally by Mr. Ng and his brother and in which Mr. Lie had no interest. Information about the transfer is and was publicly available in PT PDP's company profile (a publicly available document in Indonesia), which recorded the transfer as having been effected by notarial deed dated 20th June 2017 and validated under Indonesian law on 14th July 2017.124 The result of the 2017 Disposition was to reduce SOFL's shareholding from about 63.16% to 28.94%. Since Mr. Lie then held 45.85% of SOFL, it followed that the 2017 Disposition reduced Mr. Lie's indirect economic interest in PT PDP from about 28.96% to just 14.48%.'

Purpose of 2017 Disposition

[334] There was an issue at trial as to whether the 2017 Disposition amounted to the repatriation by Mr. Ng of his interest in PT PDP (as held through SOFL) back to Indonesia (i.e. into the ownership of an Indonesian company). Mr. Ng's case was that it was, the transfer by SOFL to Grahaidea having been made pursuant to the Indonesian Government's 'Tax Amnesty Programme'. It was common ground that the Tax Amnesty Programme existed at the time, but Mr. Lie refused to accept that the transfer was genuinely made pursuant to that programme.

[335] As set out at paragraph 267-272, the Judge essentially disbelieved Mr. Ng's evidence that the 2017 Disposition was made pursuant to the Tax Amnesty Programme, concluding that it was 'a deliberate act of retaliation by Mr. Ng' and 'an egregious and unlawful appropriation of Mr. Lie's beneficial interest in SOFL'. In so holding, the Judge ignored or misunderstood the relevant evidence, which objectively pointed to a genuine transfer of Mr. Ng's share of SOFL's economic interest in PT PDP to Grahaidea. In particular:

(1) By August 2003 but prior to the restructuring of the interests of Mr. Ng, Mr. Lie and Mr. Siregar into the share capital of SOFL, the respective shareholdings in PT PDP stood as follows:

(1) PT MM (Mr. Ng's vehicle): 1,736,842 shares
(2) PT BS (Mr. Lie's vehicle): 1,736,842 shares
(3) Mr. Siregar: 315,789 shares

(4) Madam Karlinah: 2,021,053 shares
(5) Mr. Harahap: 94,737 shares
(6) Mr. Noer: 94,737 shares

(2) Thus, the aggregate of Mr. Ng / PT MM's and Mr. Siregar's shares in PT PDP was 1,736,842 + 315,789 = 2,052,631 shares.

(3) The number of PT PDP shares transferred to Grahaidea (2,052,631 shares) pursuant to the 2017 Disposition was precisely the number of shares that Mr. Ng's Indonesian vehicle, PT MM, and Mr. Siregar had in November 2003 transferred to SOFL. This was the same number of PT PDP shares which, following Mr. Ng's acquisition of Mr. Siregar's shareholding in SOFL, constituted Mr. Ng's entire economic interest in PT PDP.

(4) Thus, the transfer of the 2,052,631 shares of PT PDP from SOFL (a BVI entity) to Grahaidea (an Indonesian company) was self-evidently a repatriation of the ownership of those shares from an offshore jurisdiction to Indonesia.

(5) Furthermore, Mr. Ng disclosed a Tax Amnesty Approval Letter dated 10 April 2017 in respect of Grahaidea and a Certificate of Exemption from withholding tax dated June 2017 in relation to the transfer of the 2,052,631 shares to Grahaidea (in fact received from his brother, who manages Grahaidea) – which supported the view that the transfer to Grahaidea was related to the tax amnesty. Indeed, both documents identified the taxpayer as Grahaidea and the subject matter or asset in respect of which tax amnesty was sought as the 2,052,631 shares of PT PDP.

(6) Mr. Lie had challenged the authenticity of both of the above documents during the trial, but that challenge was rejected by the Judge and Mr. Lie did not seek to appeal the Judge's decision. Accordingly, the Judge necessarily had to proceed on the basis that those two documents were genuine and authentic. However, the Judge neither adverted to the deemed authenticity of those documents, nor sought to explain how such deemed authenticity could be consistent with his finding that the transfer of the 2,052,631 shares to Grahaidea was not intended to be a repatriation of Mr. Ng's indirect interest in PT PDP to Indonesia.

(7) The Tax Amnesty Approval Letter dated 10th April 2017 expressly referred to the taxpayer, identified as Grahaidea, as having 'submitted the Asset Declaration Letter for the Amnesty', thereby confirming that there was clearly some form of tax amnesty declaration or application that was made on behalf of Grahaidea prior to the issue of the Tax Amnesty Approval Letter. The Judge relied at paragraph 269 of the judgment on the fact that Mr. Ng had not disclosed any tax amnesty declaration, but (i) Mr. Lie had never requested disclosure by Mr. Ng of the 'Asset Declaration Letter' referred to in the Tax Amnesty

Approval Letter dated 10th April 2017, and (ii) in circumstances where the authenticity of the Tax Amnesty Approval Letter (as well as the Certificate of Exemption) had to be accepted by the Judge, it was not open to him to draw any adverse inference from Mr. Ng's non-disclosure of any asset declaration to the relevant Indonesian authorities.

(8) What is more, Mr. Lie himself had disclosed a written invitation dated 5th June 2017 from PT PDP (signed by Mr. Ng as director) to Mr. Harahap (in his capacity as PT PDP shareholder) to attend an extraordinary general shareholders' meeting on 20th June 2017 regarding 'one of the shareholders' request to Transfer Shares' 'as part of Tax Amnesty 2016 Program'. Since Mr. Harahap was Mr. Lie's trusted friend and colleague within the PT PDP group, the giving of notice by Mr. Ng to Mr. Harahap showed that there had been no intention on Mr. Ng's part to conceal the proposed transfer to Grahaidea from Mr. Lie or his friends and colleagues on the board of PT PDP. This amounted to corroboration of the fact that the transfer to Grahaidea was genuinely treated amongst shareholders of PT PDP as being related to the Tax Amnesty.

(9) Further still, it did not lie in Mr. Lie's mouth to cast doubt on Mr. Ng's intention to repatriate his economic interest in PT PDP back to Indonesia when he (Mr. Lie) had himself explored that very possibility in his letter dated 30th September 2016 to the directors and shareholders of PT PDP indicating his desire to take advantage of the tax amnesty in relation to his equity stake in PT PDP.

Judge's Erroneous Characterisation of the 2017 Disposition as an Unlawful Appropriation of Mr. Lie's Beneficial Interest in SOFL

[336] Mr. Choo-Choy KC submits that irrespective of whether the 2017 Disposition was a legitimate repatriation of assets pursuant to the Tax Amnesty Programme, the Judge (at paragraph 272) erred in law in finding that the 2017 Disposition was 'an egregious and unlawful appropriation' of Mr. Lie's beneficial interest in SOFL. The Judge did not elaborate on why he considered the transfer to Grahaidea to be unlawful, but in so far as he relied on the fact that the transfer was effected in breach of section 175 of the BCA, as alleged by Mr. Lie, he was wrong to do so.

(1) Pursuant to section 175(b), the details of the disposition ought to have been submitted to the members 'for it to be authorised by a resolution of members' (i.e., pursuant to section 81(2) of the Act, to be authorised by 'a majority of in excess of 50% … of the votes of those members entitled to vote and voting on the resolution.'

(2) The words 'authorised by a resolution of members' in section 175 emphasise that the purpose of the submission of the details of the disposition is to obtain authority for the transaction from the appropriate majority of shareholders: see Justice Bannister's explanation in **Ciban Management Corporation v Citco (BVI) Ltd**[47] in relation to the predecessor of section 175, that '[i]ts purpose is to ensure that directors do not use their powers in order to dispose of assets of a company on ventures to which its members have not signed up …' (at [67]) and that 'the section has been enacted for the benefit of members of the company' (at [68])

(3) In the case of SOFL, the relevant majority of members was (as Mr. Lie himself positively asserts in support of his claim for relief) represented by Mr. Ng's 54.15% shareholding in SOFL. Even if Mr. Lie had been notified of the proposed transaction, he would not have been able to prevent the transfer against Mr. Ng's wishes. Hence, the SOFL director's failure to submit the details of the 2017 Disposition to Mr. Lie, whilst amounting to a technical contravention of section 175(b), was not contrary to its spirit or rationale since the transaction was known to Mr. Ng.

(4) As majority shareholder of SOFL and the properly entitled and authorised organ of SOFL under section 175, Mr. Ng had approved and was entitled to approve the transfer of the 2,052,631 shares of PT PDP to Grahaidea. The transfer was therefore lawful and valid, as subsequently acknowledged by the Judge at paragraph 286 where he stated that 'breach of section 175 of the Act does not of itself invalidate or nullify an asset disposal'. The lack of notice to Mr. Lie did not invalidate Mr. Ng's approval of the 2017 Disposition or render the transaction 'unlawful' – though it might potentially have amounted to unfair conduct.

Judge's Failure to Identify Real Source of Unfairness to Mr. Lie

[337] Finally, Mr. Choo-Choy KC submits that the Judge was wrong to hold, as he implicitly did at paragraph 272, that it was the 2017 Disposition that caused prejudice to Mr. Lie by having a significant depressive effect on the value of his shareholding in SOFL. Specifically:

(1) Once it is accepted that Mr. Ng as majority shareholder of SOFL was entitled to authorise the transfer of the 2,052,631 shares of PT PDP by SOFL to Grahaidea, the unfairness and prejudice to Mr. Lie arose, not by reason of Mr. Ng's failure, or that of his brother (as the then sole director of SOFL), to provide details of the proposed transfer to Mr. Lie as required by section 175, but by reason of Mr. Ng's failure to transfer his shareholding in SOFL to Mr. Lie once the 2017 Disposition had occurred.

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[47] BVIHCV2007/0301 (delivered 27th November 2012, unreported).

(2) Had Mr. Ng transferred his shares in SOFL to Mr. Lie in order to counter-balance the repatriation of Mr. Ng's economic interest in PT PDP to Indonesia through Grahaidea, it would not have been realistically arguable by Mr. Lie that he was unfairly prejudiced by the transfer to Grahaidea because, in that event, he would still have been the ultimate beneficiary of 1,736,842 shares in PT PDP (i.e., the totality of the PT PDP shares held by SOFL after the 2017 Disposition and the same number of shares as had been transferred by PT BS, Mr. Lie's vehicle, to SOFL).

(3) The correctness of the above reasoning was acknowledged at paragraph 57 of Mr. Lie's trial witness statement, paragraph 16.51 of Mr. Lie's written opening submissions, during Mr. Hardwick KC's cross-examination of Mr. Ng to the effect that Mr. Ng should have relinquished his shares in SOFL in Mr. Lie's favour following the 2017 Disposition, and at paragraphs 365-366 of Mr. Lie's written closing submissions where it was contended that the transfer to Grahaidea was prejudicial in circumstances where Mr. Ng continued to own 54% of SOFL's shares.

(4) Once the real source of unfairness and prejudice is appreciated as explained above, the critical point to note is that Mr. Ng's failure to transfer his shareholding in SOFL to Mr. Lie is and was a failure on the part of Mr. Ng in his capacity as shareholder (or member) of SOFL. Mr. Ng's failure in this regard was neither conduct of the affairs of SOFL nor an act or omission of SOFL for the purposes of section 184I. Only Mr. Ng as owner of the shares (i.e. as member) of SOFL can transfer those shares to Mr. Lie. He cannot be forced to do so by SOFL itself.

(5) Having regard to the well-established principles earlier summarised, it follows that there could have been no proper finding of unfairly prejudicial conduct within the meaning of section 184I in connection with the 2017 Disposition, because the unfair and/or prejudicial nature of Mr. Ng's refusal to transfer his shareholding in SOFL to Mr. Lie – which was the real source of unfairness and prejudice to Mr. Lie – was simply not conduct that engaged the Court's jurisdiction to grant relief under section 184I.

(6) The Judge simply failed to engage with any of the above points.

[338] Mr. Choo-Choy KC submits, '[l]ast but not least, the Judge should in any event have viewed the question of unfairness and prejudice in relation to the 2017 Disposition having regard to the consequences of the 2018 Rights Issue – which he failed to do. In particular:

(1) Even if the 2017 Disposition had not taken place, SOFL's total holding of 3,789,473 shares would have been diluted as a result of

the 2018 Rights Issue to approximately 3% of the shareholding of PT PDP (as opposed to the 1.38% holding to which it was in fact diluted);

(2) As a result, the great bulk of the prejudice to Mr. Lie has been caused by the 2018 Rights Issue and SOFL's non-participation in it, rather than the 2017 Disposition;

(3) The relevant principle, summarised in Hollington on Shareholders' Rights, at paragraph 7-18, is that '… an isolated past act or omission is sufficient to give the court jurisdiction to intervene, although the court will of course take into account in the exercise of its discretion the extent to which the prejudice relied upon by the petition is continuing …' and 'past unfairly prejudicial conduct could no longer be relied upon because it had been overtaken by events. Thus, whether the conduct in question remains unfairly prejudicial in light of supervening events is a question that the Court will not turn a blind eye to, because of the flexible and discretionary nature of the Court's jurisdiction under section 184I.

The Respondent's Answer

No Repatriation Finding

[339] Mr. Hardwick KC submits that '[t]he sole basis upon which Mr. Ng had sought to justify the 2017 Disposition to Grahaidea (a company owned by him and his brother) was that this was a repatriation of assets pursuant to the Indonesian Government's "Tax Amnesty Programme."' Accordingly, Mr. Lie had, through the course of the litigation, pressed Mr. Ng to explain the nature and details of this alleged repatriation.

[340] Mr. Hardwick KC submitted that '[t]hese attempts came to nothing. Mr. Lie's witness statement (1) set out the relevant history of this aspect of the dispute, detailing his repeated (and repeatedly thwarted) claims for proper information; (2) explained that 'to date, NMH has failed to answer basic questions regarding the applicable tax tariff which applied to the repatriation, the relevant financial institution and investment instrument'; and (3) made the (obvious) point that 'NMH's retention of a majority interest in SOFL is plainly inconsistent with any repatriation under the Indonesian tax amnesty programme.'

[341] Mr. Hardwick KC sought to summarise the evidence as follows:

Chronology & Evidence

[342] Mr. Hardwick summarised the evidence as follows:

(1) PT PDP's company profile revealed that as at December 2015 (the time of Mr. Lie's dismissal) SOFL owned 3,789,473 PT PDP shares – 63.16% of the 6,000,000 issued PT PDP shares. However, entry: "8. Amendment to Company Profile Announcement" (1) recorded a "Transfer of Shares" with "Date of Validation" 14th July 2017; and (2) revealed that 2,052,631 PT PDP shares were transferred to Grahaidea leaving SOFL with a balance of 1,736,842 shares in PT PDP – just 28.94% of PT PDP's shares;

(2) despite pre-action letters on 24th November 2017 and 16th April 2018 no explanation was ever forthcoming in respect of the 2017 Disposition;

(3) requests 20 and 21 of Mr. Lie's 2nd June 2019 RFI sought to understand the details of the claimed repatriation. Mr. Ng refused to supply the same. Accordingly on 9 September 2019 Mr. Lie issued an RFI application. This was the subject of a contested hearing on 9th October 2019 before Mr. Justice Gerard Farara QC (Ag) who made an order on 11th October requiring responses to Requests 20 and 21;

(4) Mr. Ng served a very short response on 1st November 2019.The one hard edged detail that Mr. Ng did provide (in response to Request 20.1 '…identify the date or dates on which you made a declaration to the Indonesian Government in respect of the 2,052,631 shares in PT PDP pursuant to the Indonesian Government's Tax Amnesty Programme...') was the date of '1st April 2017'. However, Mr. Ng did not provide the document;

(5) on 11th March 2020, Mr. Lie sought specific disclosure of the 1st April 2017 Tax Amnesty Declaration identified by Mr. Ng on 1st November 2019. Mr. Ng vigorously resisted disclosure of this document. However, Wallbank J rejected Mr. Ng's objections and by his order dated 29th July 2020 required Mr. Ng to disclose "Category 4: the Tax Amnesty Declaration to the Indonesian government dated 1st April 2017";

(6) purportedly pursuant to Wallbank J's 29th July 2020 order, Mr. Ng served his Supplemental List of Documents dated 10th August 2020 which included what he described as a "Tax Amnesty Certificate" dated 10th April 2017; and (2) a "Certificate of Exemption" dated June 2017;

(7) the first document was described on its face as a "Tax Amnesty Approval Letter" and dated 10th April 2017. There was no covering letter; no signature; no stamp and no manuscript writing. Moreover:

(a) the document was not the 'the Tax Amnesty Declaration to the Indonesian government dated 1st April 2017' which Mr. Ng had been ordered to provide. It was plainly not Mr. Ng's declaration of funds to the Indonesian Government. When asked, in cross-examination, about the 1st April 2017 "Tax Amnesty Declaration" Mr. Ng claimed (in evidence directly inconsistent with his 14th April 2020 witness statement 'I don't have the document';

(b) the "Tax Amnesty Approval Letter" was dated 10th April 2017: this was not the 1st April 2017 document that was ordered to be disclosed by Wallbank J;

(c) the information boxes in the document identified 'shares in PT PDP' and '2,052,631 shares'. However, the remainder of the vertical columns ("Year obtained", "Value of asset reported in the tax return"; "Value of asset located domestically"; "Value of asset located overseas not repatriated"; "Value of asset located overseas repatriated") were all blank.

(8) the second document disclosed, the Certificate of Exemption, was a letter from the "Small Tax Office of Jakarta" and described as "Certificate of Exemption from Withholding Tax on Income Derived from the Transfer of Shares". Again, there was no covering letter, no signature, no stamp and no manuscript writing at all. Moreover:

(a) this was a Certificate of Exemption not a Tax Amnesty Declaration, and dated June 2017 not 1st April 2017; and

(b) the document related to "Withholding Tax" and said nothing about (1) the separate tax tariff payable under the Tax Amnesty Programme for repatriated assets; or (2) whether, when and how Mr. Ng had made a declaration for repatriation for the 2m PT PDP shares to the Indonesian Government.

(9) further, Mr. Ng's 1st November 2019 answer to Request 20.4 that there was 'no tax tariff applicable' to the 2017 Disposition made no sense: the very purpose of the Tax Amnesty Programme was to encourage declarations and repatriations of offshore funds by introducing initially low but then increasing tax tariffs. Moreover when cross-examined about this Mr. Ng's evidence was evasive and opaque, claiming variously (1) that there was not in fact a 'repatriation' of assets: 'I wouldn't say, you know, in the tax department's view, it is not repatriation'; (2) seeking to distance himself from the whole process 'let me be clear, I didn't have anything to do with the tax amnesty of PT Grahaidea'; and (3) even

seeking to distance his brother from the process ('So Ng Min Hwie didn't do, he didn't prepare any tax forms…He didn't go to the tax office…Even if there were things to be paid, it wasn't paid by Ng Min Hwie');

(10) finally, Mr. Ng had claimed that the 2017 Disposition was 'designed in effect to reverse the transfer into the BVI corporate structure in 2003 by PT MM for no consideration'. Yet Mr. Ng still owned 54.15% of SOFL's shares. If Mr. Ng's transfer had (as he claimed) been a transfer pursuant to the Tax Amnesty Programme, he would have been obliged to relinquish his shareholding in SOFL.

[343] Mr. Hardwick KC's submissions to the Judge and to this Court are summarised as follows:

(1) contrary to his RFI Response that 'NMH made a declaration to the Indonesian Government' pursuant to the Tax Amnesty Programme on 1st April 2017, Mr. Ng claimed at trial that the declaration was made by Grahaidea;

(2) contrary to his pleaded claim that the assets 'to be repatriated to Indonesia' was 'the shareholding in PT PDP which PT MM had transferred to the company in 2003', Mr. Ng claimed at trial that it was 'the responsibility of PT Grahaidea to confess and, "this is my asset that I didn't declare before."'

(3) Mr. Ng's claim that there was no tax tariff payable in respect of the 2017 Disposition was contrary to the entire purpose of the Tax Amnesty Programme;

(4) Mr. Ng failed to provide the one document that he did identify (in his 1 November 2019 RFI Response) and was ordered to provide the Tax Amnesty Declaration dated 1st April 2017;

(5) the two documents which Mr. Ng eventually provided under compulsion of court order (on 10th August 2020) did not support Mr. Ng's pleaded claim; in any event

(6) contrary to the clear guidance in published articles in relation to the Tax Amnesty Programme which Mr. Ng himself disclosed, Mr. Ng had not relinquished his ownership in SOFL after the alleged transfer.

The No Repatriation Finding

[344] Mr. Hardwick KC submits that it was to this detailed procedural and evidential material that the Judge had regard in finding that:

> "267. Mr. Ng admits that the transfer took place but claims that this was a repatriation of his shareholding, pursuant to the Indonesian Government's 'Tax Amnesty Programme'.
>
> 268. I do not believe this explanation of Mr. Ng. Mr. Ng also surprisingly said that the tax declaration was in fact not his, apparently forgetting that he had already in plain terms acknowledged that he himself had made such a tax declaration. Extraordinarily, Mr. Ng changed his case at trial, claiming that it was not he but Grahaidea that had the responsibility for making the necessary tax amnesty declaration.
>
> 269. Mr. Ng gave very selective and insufficient disclosure of the documents which would most obviously prove his story. Equally extraordinarily, Mr. Ng did not produce his tax amnesty declaration, nor any other document that supports his assertions that this was the reason for the transfer.
>
> 270. Moreover, Mr. Ng did not repatriate his shareholding in SOFL at all: he continued to hold it."

[345] In addition (and quite properly) the Judge accepted Mr. Lie's case that the 2017 Disposition was 'a deliberate act of retaliation by Ng' three months after Mr. Lie had filed the police report in respect of the unpaid FY 2015 Dividend.

The Appeal Argument

[346] Mr. Hardwick KC submits that the Appellant is now hopelessly arguing that 'the Judge ignored or misunderstood the relevant evidence, which objectively pointed to a genuine transfer of Mr. Ng's shares of SOFL's economic interest in PT PDP to Grahaidea'; this is simply a rerun of the arguments made at trial.

[347] Mr. Hardwick KC submits that '[t]he Tax Amnesty Approval Letter and the Certificate of Exemption did not support the alleged repatriation – for the reasons summarised above. Critically, Mr. Ng failed (in the teeth of Wallbank J's specific disclosure order) ever to disclose the key 1st April 2017 Tax Amnesty Declaration.

The Section 175 BCA Argument

[348] Mr. Hardwick KC next addresses the Appellant's claims that 'in any event Mr. Ng had approved and was entitled to approve the 2017 Disposition under s175

of the BCA. He submits that as majority shareholder of SOFL, 'even if Mr. Lie had been notified of the proposed transaction, he would not have been able to prevent the transfer.'

[349] Mr. Hardwick KC submits that this 'deeply unmeritorious argument was run at the trial, and he summarised his arguments at trial as follows:

(1) the 2017 Disposition was a 'transfer' of more than 50 per cent in value of the assets of SOFL – yet SOFL's director did not submit details of the 2017 Disposition to its members for authorisation in accordance with s175 of the BCA;

(2) this issue of non-compliance with s175 was first raised over 2 years prior to trial when in the original 28th June 2018 Statement of Claim, Mr. Lie claimed that the 'details of the Disposition….ought to have been submitted to shareholders for it to be authorised by the shareholders'. Mr. Ng denied this;

(3) the day before the formal commencement of the trial Mr. Ng first admitted a breach of s175 of the BCA only to claim that it was a 'technical contravention of section 175(b))' on the basis that Mr. Lie 'even if notified, would not have been able to prevent the transfer';

(4) Mr. Lie should, pursuant to s175 of the BCA, have been provided with details of the proposed transfer in the summer of 2017. He might not have been able to prevent the 2017 Disposition: but much uncertainty (and cost) would have been avoided had he been provided with the details to which he was statutorily entitled; further

(5) whilst it was true that Mr. Ng would have been in a position to approve the 2017 Disposition even if s175 had been complied with, ….SOFL's failure to submit the 2017 Disposition for authorisation was (1) a flagrant breach of the law and was repeated in respect of the 2019 Disposition; and (2) these were precisely the sort of 'repeated defaults' (albeit without 'enduring adverse financial consequences') which were likely 'to undermine trust and confidence' in SOFL's board.[48]

[350] The Judge agreed at paragraph 272 and (at paragraph 286 in the context of the unchallenged 2019 Disposition) explained carefully why breach of s175 of the BCA could be (and was in this case) 'an indicator of more fundamental oppressive or unfairly prejudicial conduct.'

[48] The Respondent relied on Sunrise Radio Ltd and Another (Petitioner) v Dr Avtar Lit and Others [2009] EWHC 2893 (Ch).

The Real Source of Unfairness

[351] Mr. Hardwick KC contends that the Appellant's arguments – that (1) the real source of unfairness and prejudice to Mr. Lie was the failure of Mr. Ng to transfer his shareholding in SOFL to Mr. Lie once the 2017 Disposition had occurred, yet (2) such failure was not the conduct of the affairs of SOFL, but conduct on the part of Mr. Ng in his capacity as a shareholder in SOFL - on this point were also taken at trial and continue to be without merit.

[352] Mr. Hardwick KC points out that Mr. Ng first conceded on the eve of trial, that Mr. Lie had suffered 'unfairness and prejudice' by reason of the 2017 Disposition; and then raised a new argument that 'unfairness and prejudice' was conduct on the part of Mr. Ng (not an act or omission of SOFL).

[353] Mr. Hardwick KC's response in summary is as follows:

(1) the distinction that Mr. Ng sought to draw between (1) the conduct of SOFL (by the majority vote of Mr. Ng) in approving the transfer away of the approximately 2 million PT PDP shares; and (2) the failure of Mr. Ng to transfer his 45% interest in SOFL to Mr. Lie, was entirely artificial. It made no sense to attempt to divide into two separate acts (1) the SOFL share transfer, by which approximately 2 million of SOFL's PT PDP shares were transferred to Grahaidea; and (2) its immediate and necessary consequence, that Mr. Ng continued to be a 54% shareholder in SOFL (but now of SOFL's substantially reduced 1.7m PT PDP shares);

(2) the business reality was that there was one act (the share transfer) with one ineluctable and obviously unfair result: Mr. Ng's company Grahaidea acquired approximately 2 million PT PDP shares; yet Mr. Ng continued to own 54% of SOFL's shares. The upshot was that whilst in 2003 Mr. Lie had transferred to SOFL the 1.7 million PT PDP shares 100% owned by his Indonesian vehicle PT BS, suddenly, by reason of the 2017 Disposition, he found himself with a mere 45% interest in those 1.7 million shares;

(3) equally, the well-established distinction[49]between the (1) 'acts of members' (e.g. a shareholder's vote in his private capacity); and (2) 'acts or conduct' of the company (e.g. a 'resolution' which implements the shareholder's vote) could not avail Mr. Ng in the

[49] See Harman J. in Re Unisoft Group Ltd (No. 3) [1994] BCLC 609 and Wallbank J. in CH Trustees v Omega Services Group Limited et al Claim No. BVI HC (COM) 0037 of 2015 (delivered 22nd November 2016, unreported) at [105] and [106]).

context of a company which he controlled (as 54.15% shareholder) and directed (through the nominee directorship of his brother). The reality was that Mr. Ng (through his majority control and shadow directorship) was able to use the organs of SOFL to achieve a transfer that would (1) put 2 million PT PDP shares entirely out of the reach of Mr. Lie (in Grahaidea); (2) maintain his majority shareholding and control of SOFL; and (3) give him a 54.15% interest in what had been Mr. Lie's 1.7 million PT PDP shares; and

(4) by SOFL's transfer, Mr. Lie's economic interest in PT PDP was immediately cut by more than half. Followed 2 years later by the 2019 Disposition, the 2017 Disposition was the first step in Mr. Ng's crude plan to eliminate Mr. Lie's economic interest in PT PDP altogether.

[354] It is clear, Mr. Hardwick submits 'that the Judge did not accept Mr. Ng's argument as to the "Real Source of Unfairness". Once again, the Judgment discloses no error of law or fact in this regard.

Discussions on the 2017 Disposition Issue

[355] The evidence in this case shows that 'by reason of the 2017 Disposition, SOFL's interest in its only asset (PT PDP) was reduced from 63.16% to 28.94%. In turn, Mr. Lie's economic interest in PT PDP was reduced from 28.94% to just 13.27%. Mr. Lie's complaint at trial which was found by the Judge to be justified was that this Disposition was not a trivial breach of section 175 of the BCA and in the circumstances of the case, was plainly unfairly prejudicial to him.

The 2017 Disposition – No Repatriation of Assets

[356] There is no doubt that the evidence supported the Judge's findings in this case. It is clear from the evidence that following the breakdown of the relationship between the parties and after Mr. Ng had appointed his brother as sole director of SOFL against the wishes of Mr. Lie. He then proceeded to cause SOFL to effect a transfer of all his SOFL shares to Grahaidea a company which was owned by him and his brother. This was done without the knowledge and consent of Mr. Lie.

[357] There was a clear struggle by Mr. Ng to deny anyone, including the court access to information about the 2017 Disposition. He also sought to sidestep the

significance of the struggle when just one day before the formal commencement of the trial Mr. Ng first admitted a breach of s175 of the BCA only to claim that it was a 'technical contravention of section 175(b)' on the basis that Mr. Lie 'even if notified, would not have been able to prevent the transfer.' He was here saying that the withholding of information mattered not.

[358] Mr. Lie first complained of the 2017 Disposition in a legal letter to Mr. Ng dated 16th April 2018. Having reiterated that there had been no response to any requests for pertinent information, that letter complained that Mr. Ng had transferred the majority of SOFL shares to Grahaidea. The letter complained that:

> "...there can be no commercial justification...for Mr. Ng and Mr. Siregar...to have transferred the majority of the asset base of SOFL to a third company in which they have an interest while our client has none. It seems difficult to conceive of any explanation for this transaction other than it represents an unlawful appropriation..."

[359] There was no response to this letter. Mr. Ng's first response to this was in his statement of case when he explained that the shares were transferred to Grahaidea to take advantage of Indonesian Government's Tax Amnesty Programme for repatriated assets. No other details were provided at that stage.

[360] During the proceedings, requests for further information were made by Mr. Lie. Particulars (with supporting documents) were sought in relation to the 2017 transfer. These questions related to the (1) the date of the transfer, (2) the name of the approved Indonesian financial institution which handled the transfer, (3) the tax tariff. Mr. Ng was also asked to provide details of steps he took to notify Mr. Lie of this transfer. Mr. Ng essentially refused to provide any answers contending that these were matters which were within Mr. Lie's knowledge. Mr. Ng was then ordered by Justice Farara to provide proper responses to these requests for information. At this point, with regards to the query relating to the date that Mr. Ng made the declaration to the Indonesian Government pursuant to the Tax Amnesty Programme, his response was that that declaration was made on the 1st April 2017. In relation to the applicable tax tariff applied, Mr. Ng's answer was that there was no tax tariff applied. At trial, Mr. Ng was asked

to identify the document which was the 1st April 2017 declaration. He said that he did not have the document because it was Grahaidea who handled the whole process. He was then reminded that in response to Justice Farara's order his response was that: 'these are confidential documents to be submitted to the tax authorities that cannot be disclosed.' He was then told that during the course of the proceedings, Justice Wallbank had recorded his position on these documents as: 'Mr. Ng does not deny that he controls documents in this category. He contends rather that any documents that may exist in connection with his tax affairs are confidential and personal.' To this during cross-examination, Mr. Ng maintained that he did not have the document.

[361] There is another point to Mr. Ng's struggle to withhold information and it collides with Mr. Choo-Choy KC's arguments that Mr. Ng in sending a written invitation dated 5th June 2017 from PT PDP to Mr. Harahap (Mr. Lie's friend) to attend an extraordinary general meeting regarding one of the shareholder's request to transfer shares 'as part of Tax Amnesty Programme' clearly indicates that Mr. Ng had no intention to conceal the transfer to Grahaidea, and that this was also corroboration of the genuineness of the repatriation of shares. If this were the case, why did Mr. Ng spend so much time and energy even at the trial to withhold information about this 'transfer' and other matters? The Judge was entitled to draw the adverse inferences against Mr. Ng.

[362] Mr. Ng did provide the 'Tax Amnesty Approval Letter' (described by Mr. Ng's list of documents as a 'Tax Amnesty Certificate'), 'the Certificate of Exemption', and 'the Certified Translation of Certificate of Exemption'. It was pointed to him that the Tax Amnesty Certificate was in fact not a certificate, but a Tax Approval Letter purportedly issued by the Indonesian Ministry of Finance and was unsigned and unstamped. His answer was that is how he got and that it was generated by the Government's computer system. When he was tasked about the 1st April 2017 Declaration which he claimed he had he said that he spoke to his brother about it and these were the documents which his brother gave to him. Any questions of the authenticity of these documents are irrelevant having regards to the nature and contents of the documents themselves.

[363] During cross-examination it was pointed out that that letter itself had boxes which were to be filled out with relevant information and that in relation to the query 'date asset was obtained' the box next to it was blank; in relation to the query 'the value of the asset reported' in the tax return, the box next to it was blank.

[364] The Judge properly found on the evidence that this was no repatriation of assets as follows:

> "[267] Mr. Ng admits that the transfer took place but claims that this was a repatriation of his shareholding, pursuant to the Indonesian Government's 'Tax Amnesty Programme'.
>
> [268] I do not believe this explanation of Mr. Ng. Mr. Ng also surprisingly said that the tax declaration was in fact not his, apparently forgetting that he had already in plain terms acknowledged that he himself had made such a tax declaration. Extraordinarily, Mr. Ng changed his case at trial, claiming that it was not he but Grahaidea that had the responsibility for making the necessary tax amnesty declaration.
>
> [269] Mr. Ng gave very selective and insufficient disclosure of the documents which would most obviously prove his story. Equally extraordinarily, Mr. Ng did not produce his tax amnesty declaration, nor any other document that supports his assertions that this was the reason for the transfer.
>
> [270] Moreover, Mr. Ng did not repatriate his shareholding in SOFL at all: he continued to hold it."

The 2017 Disposition was an Unlawful Appropriation of Mr. Lie's Beneficial Interest in SOFL

[365] The Appellant's challenge to the Judge's finding that the 2017 Disposition was an 'egregious and unlawful appropriation' of Mr. Lie's beneficial interests is equally without merit. The Appellant points out that the Judge 'did not elaborate' on why he considered that this transfer was unlawful and as I understand his argument, he effectively argues that the breach of section 175 is a mere technical breach and could not ground such a finding.

[366] Section 175 of the BCA required that whenever the directors of a company have resolved to dispose of more than 50% of its shares, it shall submit details of the disposition to members for it to be authorised by a resolution of the members.

Mr. Ng accepted that SOFL had failed to provide details to Mr. Lie for an approval by resolution but sought to argue that this was a mere technical breach. I accept that the Appellant's claims that even if Mr. Lie had been notified of the proposed transaction, he would not have been able to prevent the transfer and that Mr. Ng as majority shareholder was entitled to approve the 2017 Disposition under section 175 of the BCA was a 'deeply unmeritorious argument.'

[367] Mr. Hardwick KC's summary of the evidence set out above, which was clearly accepted by the Judge, is compelling and grounded in the transcript. Against this background, he logically dismantled the Appellant's arguments as follows:

(1) the 2017 Disposition was a 'transfer' of more than 50 per cent in value of the assets of SOFL – yet SOFL's director did not submit details of the 2017 Disposition to its members for authorisation in accordance with s175 of the BCA;

(2) this issue of non-compliance with s175 was first raised over 2 years prior to trial when in the original 28th June 2018 Statement of Claim, Mr. Lie claimed that the 'details of the Disposition….ought to have been submitted to shareholders for it to be authorised by the shareholders.' Mr. Ng denied this;

(3) the day before the formal commencement of the trial Mr. Ng first admitted a breach of s175 of BCA only to claim that it was a "technical contravention of section 175(b))" on the basis that Mr. Lie 'even if notified, would not have been able to prevent the transfer';

(4) Mr. Lie should, pursuant to s175 of the BCA, have been provided with details of the proposed transfer in the summer of 2017. He might not have been able to prevent the 2017 Disposition: but much uncertainty (and cost) would have been avoided had he been provided with the details to which he was statutorily entitled; further

(5) whilst it was true that Mr. Ng would have been in a position to approve the 2017 Disposition even if s175 had been complied with….SOFL's failure to submit the 2017 Disposition for authorisation was (1) a flagrant breach of the law and was repeated in respect of the 2019 Disposition; and (2) these were precisely the sort of 'repeated defaults' (albeit without 'enduring adverse financial consequences') which were likely 'to undermine trust and confidence' in SOFL's board.

[368] The Respondent's reliance on **Sunrise Radio Ltd and Another (Petitioner) v Dr Avtar Lit and Others**[50] is appropriate. As HHJ Purle QC explained at paragraph 8:

> "….The factors which the law takes into account include the requirements of statute and the company's constitution, and departures from those requirements have the potential to found a complaint of unfair prejudice if the Court concludes that the departures are sufficiently serious (which will more likely be so in the case of repeated defaults) to undermine trust and confidence in the board, even though there are no enduring adverse financial consequences for the shareholder in question, and even though a particular omitted requirement (for example, to seek shareholder approval) would have been a mere formality. Where, moreover, statute or the constitution lay down absolute standards, not dependent on impropriety or even negligence, the Court should respect those standards, which are there for a purpose, and not be too ready to dismiss anything other than minor, inadvertent departures as 'trivial.'"

[369] The Judge agreed with the Respondent's argument and found that the 2017 Disposition in the context of the 2019 Disposition (unchallenged on this appeal) was an indicator of more fundamental oppressive or unfairly prejudicial conduct' in this case.

[370] This Court will not disturb that finding.

The Real Source of Unfairness

[371] This Court is not persuaded by the Appellant's arguments that the real source of unfairness was not that Mr. Ng had transferred out his PT PDP shares which he was entitled to do as the owner of these shares, but the real source of unfairness was that he failed to transfer his shares in SOFL once the 2017 Disposition had occurred.

[372] I have noted the Appellant's arguments that 'Mr. Ng's failure to transfer his shareholding in SOFL to Mr. Lie is and was a failure on the part of Mr. Ng in his capacity as shareholder (or member) of SOFL. Mr. Ng's failure in this regard was neither conduct of the affairs of SOFL nor an act or omission of SOFL for

[50] [2009] EWHC 2893 (Ch).

the purposes of section 184I. Only Mr. Ng as owner of the shares (i.e. as member) of SOFL can transfer those shares to Mr. Lie. He cannot be forced to do so by SOFL itself.'

[373] These arguments fail to recognise the business realities of the situation.

[374] It is important to recognise the 2019 Disposition which was effected by Mr. Ng through SOFL. This took place on the 16th September 2019 (the day before the CMC in this matter), disposed of its remaining 1,736,842 shares in PT PDP to PT PDP itself. The Judge found that the 2019 Disposition was in breach of section 175 of the Act and a final act of unlawful appropriation which was unfairly prejudicial to Mr. Lie. The Judge had also found Mr. Ng's failure to supply requested information on the transaction (both in response to Messrs Conyers 28th January 2020 letter and the 2019 Disposition RFI) was also unfair. This finding by the Judge has not been challenged and remains a finding of fact.

[375] I would adopt the Judge's analysis of section 175 of the BCA as a correct analysis of the operation of the section. The Judge offered the following:

> "As a matter of legal analysis, breach of section 175 of the Act does not of itself invalidate or nullify an asset disposal. The argument is not infrequently run (as it was here), that a breach is only of a technical nature where the majority of members can authorize a disposal anyway. Such an argument ignores the purpose and intent behind the section. Taken to its logical conclusion, such an argument would mean that section 175 is, in practice, a useless provision or one that is so weak as to be a pointless formality. That is hardly likely to be correct. Rather, section 175 of the Act creates an important check. The check operates by requiring the company's directors to provide details of a proposed disposal to the members so that the members can then authorise the disposal by way of a resolution of members. Inherently this requires that the directors must give sufficient details pertaining to the proposed disposal to all the company's members to enable all the company's members to decide whether or not to authorise the disposal. Such a step also affords minority shareholders an opportunity, if necessary, to apply to the Court for interim relief to injunct conduct that might be oppressive, unfairly prejudicial or unfairly discriminatory against the minority's interests. A disposal which has not met the requirements of the section is not inherently oppressive, nor inherently prejudicial, nor inherently discriminatory, although it may well be if it is the interests of a minority that are overridden, to the advantage of the majority, and the majority, in reality, control the Board of directors. In general, though, a

failure to satisfy the requirements of section 175 will be unfair, even if all members are similarly affected, because every member is entitled to it being applied properly. Thus, where the requirements of section 175 have been disregarded or ignored, this can be an indicator of more fundamental oppressive or unfairly prejudicial conduct."

[376] The effect of this Disposition was that whilst Mr. Ng had transferred out all his PT PDP shares in the joint venture vehicle SOFL, he continued to retain his majority shares in SOFL. I agree with the Respondent that the reality was that Mr. Ng**,** through his majority control and shadow directorship, was able to use the organs of SOFL to achieve a transfer that would (1) put approximately 2 million PT PDP shares entirely out of the reach of Mr. Lie (in Grahaidea); (2) maintain his majority shareholding and control of SOFL; and (3) give him a 54.15% interest in what had been Mr. Lie's 1.7 million PT PDP shares; and by SOFL's transfer, Mr. Lie's economic interest in PT PDP was immediately cut by more than half. Followed 2 years later by the 2019 Disposition, the 2017 Disposition was the first step in Mr. Ng's crude plan to eliminate Mr. Lie's economic interest in PT PDP altogether.'

[377] The practical business reality of this was that Mr. Ng was now able to deal with his own PT PDP shares as he wanted to through Grahaidea without having to deal with Mr. Lie. At the same time, he still retained his majority shareholding in SOFL (even when he had no beneficial interests in anything in that company) and had his brother as the sole director to chart the fate of that company and to vote the shares as Mr. Ng wished whenever it became necessary.

[378] This must be an egregious and unlawful appropriation of Mr. Lie's beneficial interests not only in SOFL but also in PT PDP and the Business as a whole.

The 2018 Disposition – The 2018 Rights Issue

The Appellant's Arguments

[379] The Appellant argues that the Judge was plainly wrong with regards to his findings on the 2018 Rights Issue. Mr. Choo-Choy KC contends that the Judge erroneously treated the 2018 Rights Issue which was conduct of the affairs of PT PDP – as amounting to unfairly prejudicial conduct of SOFL. Further, that

the Judge wrongly concluded that SOFL's non-participation in the 2018 Rights Issue was unfair and made adverse factual inferences which were neither justified by the evidence nor (more importantly) legally relevant to the assessment of whether unfair prejudice had occurred in connection with the 2018 Rights Issue.

[380] In summary, under this ground, the Appellant, by his Notice of Appeal relies on six limbs:

(1) Ground 4(1): the Judge ought to have found that SOFL's non-participation in the 2018 Rights Issue was not unfair, given that SOFL was unable to participate because it did not have sufficient funds to do so ("**SOFL's Non-Participation**");

(2) Ground 4(2): the Judge was wrong to speculate that had SOFL received the dividends to which it had been entitled it would have been able to participate;

(3) Ground 4(3): there was no proper basis upon which the Judge could have found that the conversation between Mr. Achmad and Mr. Lie at the 18th September 2018 meeting of PT PDP shareholders took place ("**the Achmad Conversation**");

(4) Ground 4(4): the Judge erred in finding that SOFL was not given an opportunity to participate: SOFL was unable to avail itself of the opportunity to participate as a result of a lack of funds ("**SOFL's Lack of Funds**");

(5) Ground 4(5): the Judge erred in finding that the 2018 Rights Issue was not a preparatory step towards an IPO of PT PDP, but merely intended to shift value in the Business from the Respondent to the Appellant ("**IPO Argument**");

(6) Ground 4(6): the Judge wrongly treated the 2018 Rights Issue as unfairly prejudicial conduct as against Mr. Lie: yet the 2018 Rights Issue was conduct on the part of PT PDP, not SOFL ("**PT PDP Conduct**").

Judge's Erroneous Treatment of the 2018 Rights Issue as Conduct of the Affairs of SOFL

[381] Mr. Choo-Choy KC argues that '[t]he Judge concluded that "the very purpose" of the 2018 Rights Issue "had been to shift value in the Business from Mr. Lie to Mr. Ng". In so concluding, the Judge wrongly treated the 2018 Rights Issue (as distinct from SOFL's non-participation in it) as being itself unfairly prejudicial

conduct as against Mr. Lie within the meaning of section 184I. In particular, he contends:

(1) The Judge overlooked the fact that the 2018 Rights Issue (comprising the amendment of PT PDP's Articles of Association in order to increase the authorised and issued share capital of the company and the issue by PT PDP of new shares to the shareholders participating in the rights issue) was conduct on the part of PT PDP, not SOFL.

(2) As such, the 2018 Rights Issue itself could not, as a matter of law, amount to unfairly prejudicial conduct of the affairs of SOFL within the meaning of section 184I.

Judge's Misconceived Assessment of Unfairness

[382] Mr. Choo-Choy KC submits that '[i]n so far as SOFL's non-participation in the 2018 Rights Issue was conduct of the affairs of SOFL that could potentially be caught by section 184I, the Judge was wrong to find that such non-participation was unfair as against Mr. Lie.' He contends that:

(1) Pursuant to Article 4(3) of PT PDP's Articles of Association, SOFL as an existing shareholder of PT PDP had a right of first refusal in respect of the new shares to be issued by PT PDP pro rata to its existing shareholding.

(2) However, SOFL was not obliged to exercise this right of first refusal and participate in the 2018 Rights Issue; and even if SOFL had wished to participate in the 2018 Rights Issues, it was unable to do so because (as was common ground before the Judge) it did not have the required funds to do so.

(3) SOFL would have been required to make a payment of about USD 2.4 million in order to participate in the rights issue and maintain its pro rata shareholding in PT PDP. Since, however, it had not received any dividends from PT PDP during the period from FY 2015 onwards, it was unable to pay that amount in order to avoid the dilution of its shareholding as a result of the rights issue.

(4) It was fundamentally unsound for the Judge to treat SOFL's non-participation in the rights issue in such circumstances as involving unfairly prejudicial conduct on its part or in the conduct of its affairs.

[383] Mr. Choo-Choy KC submits that the Judge recognised at paragraph 279 the practical reality that SOFL did not have the funds to participate in the 2018 Rights Issue, but went on to speculate that had SOFL received the dividends to which it had been entitled in respect of FY 2015 to FY 2017, it would have been

able to participate in the 2018 Rights Issue and thus avoid the dilution of its equity interest in PT PDP. As to this reasoning however:

(1) As submitted under section (C) above, the non-declaration and/or non-payment of dividends by PT PDP in favour of SOFL was not unfairly prejudicial conduct of the affairs of SOFL but arose out of conduct on the part of PT PDP which was irrelevant for the purposes of section 184I.

(2) Accordingly, SOFL's resulting lack of funds and inability to participate in the 2018 Rights Issue was not caused by any unfairly prejudicial conduct within the meaning of section 184I; nor did it amount to unfairly prejudicial conduct on the part of SOFL itself.

(3) It would make no difference to the above analysis that SOFL might have been starved of dividends by Mr. Ng's actions and/or that the purpose of the 2018 Rights Issue was (as described by the Judge) to shift value away from SOFL and hence Mr. Lie. What presently matters is whether those harmful actions can properly be described as the actions of SOFL or the conduct of the affairs of SOFL. For the reasons set out above, they cannot, because they are actions at the PT PDP level, engaged in by the directors and shareholders of PT PDP in their capacity as such.

Erroneous and Irrelevant Factual Inferences

[384] Mr. Choo-Choy KC submits that at paragraphs 274-278, the Judge made a number of factual findings based on inferences. They broadly relate to (i) whether the 2018 Rights Issue was a preparatory step towards an IPO of PT PDP, (ii) whether SOFL was given an opportunity to participate in the 2018 Rights Issue, and (iii) whether Mr. Achmad, SOFL's sole director at the time of the 2018 Rights Issue, attended the 18th September 2018 shareholders' meeting at which the rights issue was formally concluded by means of the relevant amendments to the Articles of Association of PT PDP.

[385] Mr. Choo-Choy KC submits that the Judge's findings in the above respects are flawed on the grounds summarised as follows:

(1) The Appellant's evidence that Mr. Achmad did in fact attend the 18th September 2018 meeting of PT PDP shareholders and informed the Appellant that SOFL did not have sufficient funds to subscribe for its pro rata entitlement to the newly issued shares was perfectly credible, not least because it was in fact the case that SOFL did not have the funds to participate in the 2018 Rights Issue. There was no proper basis upon which the Judge could have found that no

such conversation took place between the Appellant and Mr. Achmad.

(2) …even if no such conversation with Mr. Achmad had taken place as alleged by the Appellant, the Judge nevertheless erred in finding that SOFL was not given an opportunity to participate in the 2018 Rights Issue. The crux of the matter is that SOFL was unable to avail itself of the opportunity to participate in the 2018 Rights Issue, not as a result of lack of awareness of the rights issue, but as a result of a lack of funds that prevented it from participating in the rights issue.

(3) the Judge erred in finding that the 2018 Rights Issue was not a preparatory step towards an IPO of PT PDP but merely intended to shift value in the Business from the Respondent to the Appellant. In so finding, he ignored or took insufficient account of the facts and matters summarised at paragraphs 126 and 127 of the Judgment.

[386] On proper analysis, however, Mr. Choo-Choy KC's over-arching submission is that the specific purpose of the 2018 Rights Issue and the details of what passed between Mr. Ng and Mr. Achmad in relation to it are not ultimately critical. The crux of the matter is that the 2018 Rights Issue was a matter for PT PDP and that SOFL was unable to avail itself of the opportunity to participate in it, not as a result of lack of awareness of the proposed rights issue, but as a result of a lack of funds caused by the Non-Payment of Dividends, which was itself the result of conduct of the affairs of PT PDP. In these circumstances, even if the Judge were right about the factual findings that he made at paragraphs 274-278, no finding of unfair prejudice could lie as against Mr. Ng in relation to the affairs of SOFL.

The Respondent's Answer

[387] Mr. Hardwick KC again submitted that this ground is equally without merit and he offers the Court an analysis of the evidence in his arguments.

SOFL's Non-Participation

[388] He submits that as far as Mr. Ng's amended pleaded position that Mr. Lie had been given an 'opportunity' to participate in the 2018 Rights Issue is concerned, the Request for Further Information Application made by Mr. Lie is relevant. This RFI requested Mr. Ng: (1) to provide details of the 'opportunity' that was

provided to Mr. Lie to participate in the Rights Issue and (2) to provide information as to when and by who he was told that SOFL did not have the funds to participate in the Rights Issue.

[389] He submitted that Mr. Ng's response was the production of an invitation to an EGM dated 6th August 2018 and a statement that SOFL (1) 'had notice of what was proposed, and had the opportunity to participate in the Rights Issue, but did not'; and (2) 'The communication was made orally at the shareholders meeting by Mr. Daud (who was representing [SOFL] at the meeting) to NMH. Mr. Daud simply stated that [SOFL] did not have sufficient assets to participate in the Rights Issue.'

[390] He further submitted that from the expert's report of Mr. Andi Kadir, that in relation to the 2018 Rights Issue, PT PDP was required to seek approval by GMS and offer to the existing shareholders to participate in the rights issue before the offer was made to third parties. Kadir had observed that the meeting to which the 6th August invite related did not deal with the Rights Issue, the invite was to the wrong meeting. Mr. Kadir further observed that 'I have not sighted any notice being served to SOFL of the GMS approving the Rights Issue.'

[391] With regards to Mr. Ng's contention that Mr. Achmad attended the relevant meeting as SOFL's director, Mr. Hardwick KC submits that Mr. Ng, in breach of the disclosure order by Wallbank J, failed to disclose the minutes of this meeting, and Mr. Achmad did not give a witness statement. In any event, Mr. Hardwick KC submits, Mr. Achmad was but a mere nominee director with Mr. Ng in control of SOFL at that time. 'Accordingly, Mr. Ng's claim that he had a conversation with Mr. Achmad on 18th September 2018 at which Mr. Achmad 'informed' Mr. Ng 'verbally' that SOFL did not have sufficient funds to participate in the 2018 Rights Issue was a contrived and an obvious fiction: Mr. Ng knew exactly what the SOFL's financial position was because (1) he (as sole director) had presided over the PT PDP meetings in July 2017 and July 2018 in relation to the FY 2016 Dividend (where he had recommended no dividend at all) and the FY 2017 Dividend; and (2) he was the controlling shareholder (and directing mind) of SOFL.

SOFL's Lack of Funds

[392] Mr. Hardwick KC submits that the 'claimed insufficiency of SOFL funds was equally contrived having regards to the circumstances of the case, where 'the 2018 Rights Issue reduced SOFL's interest in PT PDP from 28% to 1.38%'. He submits that 'SOFL's non-participation therein delivered a swift and brutal end to SOFL's meaningful economic interest in the key Indonesian company to which the business profits had been channelled for the previous 16 years. The claim, in this context, that SOFL's nominee director (Mr. Achmad) took a bona fide decision that SOFL should not or could not participate was again obviously untrue. The reality, by 18th September 2018, a few weeks after the Claim had been issued against Mr. Ng on 12th July 2018 and consistent with every other part of this case was that (1) Mr. Ng did not want SOFL to acquire any PT PDP shares; (2) his plan was to dilute Mr. Lie's interest in PT PDP; and (3) SOFL did not participate in the 2018 Rights Issue because Mr. Ng directed that it should not participate.

PT PDP Conduct

[393] Mr. Hardwick KC submits that the Appellant's arguments in relation to Ground 4(6) does not capture the concessions made by the Appellant that by reason of the 2018 Rights Issue, SOFL was left with a 'considerably diluted 1.38% shareholding'; and (2) that 'The prejudicial effect of SOFL's non-participation in the Rights Issue is indisputable'.

[394] Mr. Hardwick KC submits that '[y]et the response to this is straightforward. The unfairness arose out of (1) the failure of the 2018 Rights Issue to comply with the Indonesian law requirements relating to pre-emption rights: SOFL was not notified of the 18th September 2018 AGM approving the 2018 Rights Issue or represented at the same as required by Indonesian law; and (2) the fact that the real purpose of the 2018 Rights Issue (launched just 2 months after this Claim) was very significantly to dilute SOFL's shareholding (and thereby Mr. Lie's beneficial interest in) PT PDP.'

The IPO Argument-Reason

[395] This fifth limb of Ground 4 engages with the question as to why the 2018 Rights Issue took place, just two months after the Claim was issued by Mr. Lie against Mr. Ng.

[396] Mr. Hardwick KC submits that Mr. Ng had asserted that 'the Rights Issue was put into effect as a preparatory step to an IPO in respect of PT PDP.' Not a single document was referred to. Nothing at all was said by Mr. Ng as to what steps had been taken since 2015 in order to progress the 2018 Rights Issue.

[397] The Judge agreed, stating at paragraph 284 that "I reject Mr. Ng's assertion that the 2018 Rights Issue was a 'preparatory step' towards an IPO of PT PDP; and I accept that it was a crude and deliberate act of share dilution – reducing SOFL's interest in PT PDP to a mere 1.38%.' (and explaining this finding in points (1)-(6) at paragraph 284). Once again this was an emphatic finding of fact which the Judge was entitled to make on the evidence before him.

[398] Among the matters which Mr. Hardwick KC made reference to are:

(1) PTPN 4's 2018 Annual Report revealed that PT PEU declared an IDR 270 bn dividend of which PT PDP would have received 85% (IDR 229.5 bn or approximately $16m as Mr. Ng accepted;

(2) at this stage in September 2018 SOFL was a 28.94% shareholder of PT PDP: 28.94% of PT PDP's $16m was $4.6m;

(3) according to PT PDP's company profile the price per new share was IDR 1,000. Grahaidea acquired 60,560,574 shares which (at IDR 1,000 per share) would have cost IDR 60.5 bn or $4.05m (at the exchange rate at 18th September 2018 (IDR14,800=$1)) as Mr. Ng was prepared to accept;

(4) if SOFL had received (as it should have received) its $4.6m portion of PT PDP's $16m dividend, it would have been able to fund the acquisition of every share acquired by Grahaidea – and be reinstated as the majority shareholder of PT PDP.

[399] As indicated earlier, Mr. Hardwick KC submitted that 'the 2018 Rights Issue reduced SOFL's interest in PT PDP from 28% to 1.38%: SOFL's non-participation therein delivered a swift and brutal end to SOFL's meaningful

economic interest in the key Indonesian company to which the business profits had been channelled for the previous 16 years. The claim, in this context, that SOFL's nominee director (Mr. Achmad) took a bona fide decision that SOFL should not or could not participate was again obviously untrue. The reality, by 18 September 2018, a few weeks after the Claim had been issued against Mr. Ng on 12 July 2018 and consistent with every other part of this case was that (1) Mr. Ng did not want SOFL to acquire any PT PDP shares; (2) his plan was to dilute Mr. Lie's interest in PT PDP; and (3) SOFL did not participate in the 2018 Rights Issue because Mr. Ng directed that it should not participate.

[400] Mr. Hardwick KC submitted that the evidence led the Judge to find as follows: 'I also reject Mr. Ng's claim that SOFL was given an opportunity to participate in the 2018 Rights Issue'; (2) 'I accept that Mr. Ng's claim that he had a conversation with Mr. Achmad at the claimed meeting on 18th September…was a contrived and convenient fiction'; and (3) 'As to the claimed insufficiency of funds…if SOFL had received…its USD4.6m portion of PT PDP's USD 16m dividend for the Financial Year 2017, I accept that SOFL would easily have been able to fund the acquisition of the same'. These were findings of fact that the Judge was certainly entitled to make on the evidence adduced at trial."

Discussion on the 2018 Rights Issue

[401] The Claim before the Court filed early September 2018, was that Mr. Ng through his control of PT PDP and SOFL had conducted the affairs of the latter company in a manner which was unfairly prejudicial to the interests of Mr. Lie. Many complaints were expressed in the original claim that Mr. Ng had failed and or refused to provide information of the records of the Business.

[402] It was in this context that two weeks after the claim was issued, PT PDP carried out its Rights Issue by amending its Articles of Association to increase both its authorised and issued share capital from 12 million and 6 million to 200 million and 126 million respectively. Despite pre-emption rights in all existing shareholders including SOFL, SOFL was the only shareholder who did not participate with the effect that Grahaidea acquired over 60 million additional

shares in PT PDP. As a result of the 2018 Rights Issue, SOFL's percentage shareholding in PT PDP reduced from 28.94% (following the 2017 Disposition) to just 1.38%. Grahaidea became the largest single shareholder with 49.6% of PT PDP.[51]

[403] Mr. Lie amended his claim to include a new complaint in relation to the Rights Issue. He complained that it was Mr. Ng as the majority shareholder and person in control of SOFL and PT PDP who caused SOFL not to participate in the Rights Issue and that this was to the detriment to SOFL.

[404] The Judge was called upon to consider whether SOFL had been given an opportunity to participate in the Rights Issue, and whether it had made a decision that because it did not have the necessary funds, it would not participate. It is Mr. Ng's case that the evidence makes out this simple state of affairs. Mr. Lie on the other hand is contending that he was unaware of the Rights Issue and that he has no knowledge that SOFL took that position and that in any event, the lack of funds on SOFL's part was because of Mr. Ng's conduct of affairs of SOFL in ensuring that SOFL had no funds to participate.

[405] The parties had much to say about these matters. Substantially similar submissions were made at closing, and each side had an opportunity to assist the Judge with the analysis of the evidence. The Judge clearly preferred Mr. Hardwick KC's analysis. It is useful to set out his reasoning and conclusions on this matter. The Judge stated:

> "[274] I reject Mr. Ng's assertion that the 2018 Rights Issue was a 'preparatory step' towards an IPO of PT PDP; and I accept that the overwhelming likelihood is that it was a crude and deliberate act of share dilution – reducing SOFL's interest in PT PDP to a mere 1.38%.
>
> I take note of:
>
> (1) the known hostility by this point in time in September 2018 on the part of Mr. Ng towards Mr. Lie (with the issue of the Claim two months previously in July 2018);
>
> (2) the fact of the 2017 Disposition which had reduced SOFL's interest in PT PDP from 63.13%to 28.94%;

[51] Paragraph 273 of the Judgment.

(3) the fact that by the 2018 Rights Issue, Grahaidea (jointly owned by Mr. Ng and his brother) became the largest shareholder in PT PDP;

(4) the fact that whilst each of (1) Mohammad Achiruddin Noer (on behalf of his mother and then shareholder Madam Noer); (2) PTPN 4;

(5) the management of the labour union of PT PEU's four plantations); and (4) Mr. Lie had provided reasoned written objections to an IPO, Mr. Ng had never engaged with any of these objections in 2015;

(6) the fact that the 2018 Rights Issue was a central part of Mr. Lie's claim from the moment that it was introduced by way of amendment on 16th May 2019 and Mr. Ng had every opportunity (including in responding to Mr. Lie's RFI) to develop his case as to the bona fides of the 2018 Rights Issue, justified by a specific commercial purpose. Instead, his approach was one of obstruction and obfuscation; and

(7) the dearth of any proper evidence that an IPO was contemplated in September 2018. Not a single document was produced to and nothing at all was said by Mr. Ng as what steps had been taken since 2015 in order to progress the 2018 Rights Issue. With the exception of an 11th May 2017 letter from PT Galelia, there is not a single PT PDP minute, resolution or other document over the period 2016 – 2020 which corroborates Mr. Ng's claim that an IPO was genuinely intended in September 2018. Moreover, there is no document which corroborates Mr. Ng's claim that the major ongoing obstacle to the proposed IPO was a problem with 'concession certificates' nor is there any evidence from any of the professionals one would expect to be involved in an IPO process (such as legal counsel, accountants, specialist sector advisers).

[275] I also reject Mr. Ng's claim that SOFL was given an opportunity to participate in the 2018 Rights Issue.

[276] Mr. Hardwick refers to Mr. Lie's June 2019 RFI seeking proper particulars of when and by whom SOFL was allegedly offered 'an opportunity' to participate in the 2018 Rights Issue. Following an unsatisfactory response, Mr. Lie issued the RFI Application and Mr. Ng was ordered to answer this question (among others). In his 1st November 2019 RFI Response, Mr. Ng appended an EGSM invitation dated 6th August 2018 and stated SOFL 'had notice of what was proposed, and had the opportunity to participate in the Rights Issue, but did not'. However (as observed by Mr. Lie's expert Mr. Andi Kadir at paragraph 61 of his report) this 6th August 2018 notice was an invitation to the wrong meeting: it was an invitation to SOFL to attend an EGSM of PT PDP on Thursday 30th August 2018 for the purpose of approving a 'Transfer of Shares' and was not in respect of the 2018 Rights Issue which was approved in the course of a PT PDP AGM on 18th September

2018. SOFL was never sent an invitation to the 18th September 2018 AGM.

[277] Mr. Ng's fall-back position is that 'Mr. Achmad attended the AGM on behalf of SOFL.' However, Mr. Hardwick points out that (1) neither Mr. Ng nor SOFL have disclosed the minute of this PT PDP AGM; (2) the only document that, under compulsion of Court order, Mr. Ng disclosed in respect of the AGM was an invitation to the wrong meeting; and (3) Mr. Achmad has not produced a witness statement and did not attend trial to give evidence on this important point.

[278] As to an alleged conversation between Mr. Achmad and Mr. Ng at the 18th September 2018 AGM, Mr. Hardwick contends, and I accept, that the reality is that (1) Mr. Achmad was a mere nominee (following in the line of nominee directors, Lion, Regula and Mr. Ng's Brother); and in any event (2) Mr. Ng as sole director of PT PDP and controller of SOFL knew better than anyone the financial position of SOFL. Accordingly, I accept that Mr. Ng's claim that he had a conversation with Mr. Achmad at the claimed meeting on 18th September 2018 in which Mr. Achmad 'informed' Mr. Ng 'verbally' that SOFL did not have sufficient funds to participate in the 2018 Rights Issue was contrived and a convenient fiction.

[279] As to the claimed insufficiency of SOFL funds, (1) Mr. Ng's written closings submissions state that 'On the basis of a 28.9% shareholding, SOFL's pro rata entitlement would have been nearly IDR 35 billion, equivalent to nearly USD 2.4 million'; and (2) Mr. Hardwick contends that if SOFL had received (as it should have received) its USD 4.6m portion of PT PDP's USD 16m dividend for the Financial Year 2017, I accept that SOFL would easily have been able to fund the acquisition of the same.

[280] Mr. Choo-Choy accepts that the 2018 Rights Issue took place and that the prejudicial effect of SOFL's non-participation in the Rights Issue is 'indisputable', since the result has been that SOFL's percentage shareholding in PT PDP has been diluted from 28.95% (where it stood following the 2017 Disposition) to 1.38%, with the consequence that the value of Mr. Lie's 45.85% shareholding in SOFL will have been commensurately diminished. However, he submits that the question is whether the dilution of SOFL's shareholding in these circumstances is unfairly prejudicial as against Mr. Lie. In this regard, SOFL's non-participation in the 2018 Rights Issue was not unfair as against Mr. Lie given that: (1) SOFL was not legally obliged to participate in the 2018 Rights Issue and its failure to do so cannot therefore, of itself, be a ground of unfairness; (2) SOFL was unable to participate because it did not have sufficient funds to do so, thus it is impossible to see on what credible basis its non-participation in the 2018 Rights Issue could be said to be unfair; and (3) on Mr. Ng's evidence, Mr. Achmad did in fact attend the 18th September 2018 AGM on behalf of SOFL and had informed Mr. Ng (as was in fact the case) that SOFL did not have

> sufficient funds to subscribe for its pro rata entitlement to the newly issued shares.
>
> [281] I do not accept this line of argument. I find that the effect of this rights issue was indeed unfairly prejudicial towards Mr. Lie, because the very purpose of this transaction had been to shift value in the Business from Mr. Lie to Mr. Ng by means of this manoeuvre."

[406] My own examination of the evidence brings me to the conclusion that I cannot find that the Judge was plainly wrong to conclude (1) that the invite that Mr. Ng spoke about was an invitation to a 'wrong' meeting and not the one at which the Rights Issue was discussed, (2) that Mr. Ng's conversation with Mr. Achmad was a 'convenient fiction'. Here was Mr. Ng speaking to the director of SOFL about the Rights Issue which had the potential to reduce SOFL shareholding in PT PDP from 28.98% to less than 2%, and the director's only comment is that SOFL cannot take part; there are no funds available. This was tantamount to giving up millions of dollars every year in dividends, and yet it was made to appear as if it was simply a social conversation, without any significant consequence.

[407] It is therefore not surprising that the learned Judge would have been inclined to disbelieve all of this evidence. The evidence would have clearly supported his findings. Matters which would have been relevant is Mr. Ng's continued resistance throughout the proceedings to disclose documents which were requested, such as the minutes of the EGM when the Rights Issue was discussed and determined.

[408] Over the years, Mr. Lie had received millions of dollars in dividends from SOFL from the profits earned by the operating companies. Since 2015, the payment of dividends to SOFL and from SOFL to Mr. Lie had stopped completely, despite many attempts on his part to secure payments, including a police report in Indonesia that Mr. Ng and his brother had embezzled his 2015 dividends.

[409] Mr. Lie had been terminated as a director of PT PDP leaving Mr. Ng as the sole director, and his management role in SOFL had been stripped from him when

Mr. Ng led a voting majority to appoint Mr. Ng's Brother as the sole nominee director taking, taking instructions only from Mr. Ng.

[410] By the time the claim was filed, SOFL's beneficial interests in PT PDP had been reduced from 63.85 % to a mere 28.85 % with Mr. Lie's share being just under half of that as Mr. Ng continued to retain his majority shareholding in SOFL despite having transferred his PT PDP shares out of SOFL to Grahaidea.

[411] Whilst no dividends were being paid to SOFL for the period 2015 to 2018, significant profits by way of dividends were still being received by PT PDP. PTPN 4's 2018 Annual Report revealed that PT PEU declared an IDR 270 bn dividend of which PT PDP would have received 85% (IDR 229.5 bn or approximately $16m as Mr. Ng accepted. If dividends were paid to SOFL, it would have received for its 28.94% the sum of US$4.6 million.

[412] The evidence shows that and Mr. Ng was prepared to accept, that 'according to PT PDP's company profile the price per new share was IDR 1,000. Grahaidea acquired 60,560,574 shares which (at IDR 1,000 per share) would have cost IDR 60.5 bn or $4.05m (at the exchange rate at 18th September 2018 (IDR14,800=$1).

[413] If SOFL had received (as it should have received) its $4.6m portion of PT PDP's $16m dividend, it would have been able to fund the acquisition of every share acquired by Grahaidea – and be reinstated as the majority shareholder of PT PDP.

[414] It was Mr. Lie's case that he was unaware that PT PDP was proposing issuing additional shares. That fight for information has permeated this matter and the Judge was surely entitled to draw adverse inferences against Mr. Ng.

[415] The Judge made factual findings based on the evidence recited above. He clearly did not believe Mr. Ng on this matter. Even if the IPO issue was a genuine one, it is not inconsistent with the finding that Mr. Ng was on a path to strip Mr. Lie of everything. The Appellant has not persuaded this Court that the Judge

has been plainly wrong. There is therefore no basis upon which this Court may interfere with the Judge's findings on this matter.

[416] In the premises, this ground of appeal fails as well.

Final Disposition

[417] This is, in many respects, a remarkable case. It is of some significance that the Appellant has not appealed the Judge's findings in relation to the 2019 Disposition, by which SOFL transferred its remaining shares in PT PDP back to PT PDP, thereby extinguishing entirely Mr. Lie's beneficial interest in the Business. The Judge found that there was nothing commercial or appropriate about that transaction and that it was effected for the same specific prejudicial purpose of depriving Mr. Lie of the value of his SOFL shareholding. That finding stands. In my judgment, the connection between that final step and the earlier acts complained of is plain. The Judge was entitled to view the 2019 Disposition as the culmination of a course of conduct which began in 2015. There was more than ample evidence upon which he could conclude that Mr. Ng, being in de facto control of SOFL and in de jure control of PT PDP, directed and caused the various acts which resulted in Mr. Lie being stripped of all value in SOFL and all beneficial interest in the Business.

[418] The Judge carefully directed himself on the applicable legal principles, including the nature of a quasi-partnership and the scope of section 184I of the BCA. His conclusions were firmly rooted in his assessment of credibility, the documentary record, and the commercial realities of the Business.

[419] The Appellant has not demonstrated that the Judge misdirected himself in law, misunderstood the evidence, failed to take account of relevant matters, or reached conclusions that were not reasonably open to him. On the contrary, the various findings made by the Judge, including that (i) a quasi-partnership existed at the SOFL level, (ii) Mr. Lie retained enforceable equitable expectations of participation and access to information, (iii) the denial of information was materially prejudicial, and (iv) the dilution of SOFL's shareholding in PT PDP

through the 2017 Disposition, the 2018 Rights Issue and related steps constituted unfairly prejudicial conduct within section 184I, were findings plainly open to the Judge on the evidence.

[420] This Court is therefore satisfied that none of the grounds of appeal has been made out. It follows that the appeal must be dismissed and the orders of the Commercial Court upheld.

Costs

[421] As to costs, the general rule is that costs follow the event. The Respondent has been wholly successful on the appeal. There is no reason to depart from the general principle. Accordingly, the Appellant shall pay the Respondent's costs of the appeal, such costs to be assessed if not agreed, pursuant to Part 65 of the CPR, within 21 days of this judgment.

I concur.
Vicki Ann Ellis
Justice of Appeal

I concur.
Ingrid Mangatal
Justice of Appeal [Ag.]

By the Court

EASTERN CARIBBEAN SUPREME COURT
SEAL
COURT OF APPEAL

Deputy Chief Registrar