

The rights of minority shareholders to bring claims for improper use of power by the company

Cases - 23/04/2024

Gemma Bellfield and Corey Byrne of Ogier Cayman recently instructed Tom Lowe KC and Tara Taylor of Wilberforce Chambers on behalf of Tianrui (International) Holding Company before the Judicial Committee of the Privy Council for the hearing of an appeal which will determine several important questions of corporate law and shareholder rights.

China Shanshui Cement Group Limited (CSCG) is a producer of cement in the People's Republic of China. Tianrui (International) Holding Company (Tianrui) is one of four major shareholders in CSCG. The dispute arises out of a battle for control of CSCG. Tianrui alleges that certain bonds and shares were issued and allotted to parties connected or affiliated with two other major shareholders of CSCG for the purpose of diluting Tianrui's shareholding and/or obtaining control of CSCG.

Tianrui brought writ proceedings against CSCG seeking declarations that: (a) the bondholders were parties connected to the two major shareholders; and (b) the issue and allotment of the bonds and shares was an improper exercise of CSCG's powers. In response, CSCG filed a summons seeking an order that the writ be struck out.

At first instance, Justice Segal found that Tianrui had standing to bring the claim following authoritative dicta from a long line of English and Australian cases. However, Justice Segal's decision was overturned by the Cayman Islands Court of Appeal who determined that Tianrui's claim involved allegations of breach of fiduciary duty and therefore should have been brought as a derivative proceeding on behalf of CSCG under Order 15, Rule 12A of the Grand Court Rules.

At the hearing on 12 and 13 March 2024, the Privy Council heard submissions on a number of important corporate law questions:

1. When directors of a company issue shares for an improper purpose, this will usually be a

breach of fiduciary duty. However, does a shareholder in the company also have the ability to bring proceedings (in their own right, not as a derivative claim) seeking a declaration in relation to and/or injunction to prevent an improper use of power by the company?

2. If the shareholder does have such a claim, is this a claim available to any shareholder in the company or do they have to be particularly affected by the improper use of power?
3. Whether, and if so, to what extent, an improper use of power can be "cured" by ratification by the general meeting of shareholders?
4. Whether the effect of an improper use of corporate power is that the action of the company is void ab initio or simply voidable?

The judgment of the Privy Council will be a significant decision for minority shareholders and directors alike.

The Privy Council has reserved its decision.

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