

BVI commercial courts effective support of the us market

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In a decision of Justice Jack published on 3 March 2021 the BVI Commercial Court reinforced its reputation by demonstrating its ability to act effectively to protect the interests of US investors in BVI companies.

On 11 September 2020 a group of shareholders who had purchased shares on the New York Stock Exchange in Nam Tai Property Inc, a BVI company listed on NYSE, gave formal notice to Nam Tai requiring it to hold a shareholder meeting to consider resolutions changing the board of directors. On 5 October Nam Tai's board carried out a private placement of shares that so diluted the US investors in favour of one shareholder, a subsidiary of Kaisa Holdings Limited, as to ensure that the challenge to the board would be defeated. On 13 October IsZo Capital LP, one of the group of US shareholders, started proceedings in the BVI Commercial Court to set aside the placement.

The BVI Commercial Court first granted an injunction to preserve the position on 14 October. This protection was continued by undertakings on 19 October, when the Court ordered an expedited timetable that led to a trial starting on 31 January 2021. The trial finished on 24 February and Jack J gave his judgment on 3 March.

Jack J found that the directors who voted in favour of the placement had acted in breach of their fiduciary duties in effecting the placement and had acted for the improper purpose of diluting the US investors so as to secure the board from challenge by the US shareholders and give Kaisa effective control of Nam Tai. (Peter Kellogg and Mark Waslen did not vote in favour of the placement.) Jack J therefore declared the placement to be void, ordered Nam Tai to hold the shareholders meeting and ordered that IsZo be paid its legal fees of the proceedings.

On 3 March Jack J also gave detailed directions consistent with NYSE practice for the holding of the shareholder meeting, which is to take place on 26 April 2021, and made further orders preserving the position pending the shareholder vote.

By these proceedings the BVI has demonstrated its willingness and ability to provide a quick and effective response to protect shareholders investing in BVI companies.

Brian Sheehy, the head of IsZo, said: "The BVI's reputation as a financial center in which shareholder rights are protected effectively has been enhanced by this important case".

A copy of the full judgment can be found [here](#).

Nick Burkill led the Ogier team acting for IsZo comprising Ewelina Clyde-Smith and James McDermott. Nick appeared in the proceedings with Edward Davies QC and Ben Griffiths, led by Martin Moore QC.

Ogier's corporate team led by Michael Killourhy with Rebecca Clark advised on the requisition process for the shareholder meeting, proposed board changes and other corporate measures, and provided BVI corporate support to the dispute resolution team in preparation for and during the proceedings.

Ogier worked with a team at New York attorneys Olshan Frome Wolosky LLP led by Ryan Nebel.

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