IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 23 of 2022 (DDJ)

IN THE MATTER OF THE COMPANIES ACT (2022 REVISION)
AND IN THE MATTER OF SEAHAWK CHINA DYNAMIC FUND

Appearances:	Sebastian Said, Andrew Jackson and Ryan Kuss of Appleby (Cayman) Ltd on behalf of the Petitioner Lau Chun Shun Tom Smith QC instructed by Paul Smith and Caitlin Murdock of Harneys on behalf of Hao Liang Tom Lowe QC instructed by Jamie McGee of Bedell Cristin on behalf of fourteen minority shareholders namely Jin Cheng, Qianyi Zhang, Junchen Feng, Min Zhao, Wentian Wu, Ming Hu, Yulin Deng, Chun-Hsia Chiang, Lingxiao Li, Long Chen, Po Yee Rosa Au-Yeung, Yong Yu, Yulu Mo and Qian Luo
Before:	The Hon. Justice David Doyle
Heard:	21- 29 June, 29 July 2022
Draft Judgment circulated:	3 August 2022
Judgment delivered:	9 August 2022

HEADNOTE

Dismissal of winding up petition based on the just and equitable ground – assessment of the oral and documentary evidence – consideration of whether there was a quasi-partnership – whether there was justifiable and irretrievable loss of trust and confidence – whether there was serious lack of probity, dishonesty and oppression – whether there was a need for an urgent investigation – whether the Petitioner had a legitimate expectation of participating in the management of the company - whether the Petitioner was unreasonably failing to pursue alternative remedies including the redemption of his shares

JUDGMENT

Introduction

1. It is a very serious step to make an order winding up a solvent company. In the particular circumstances of this case I have not been persuaded that it is just and equitable to make such an order and I therefore dismiss the winding up petition.

2. The two main protagonists in this case are Lau Chun Shun ("Mr Lau") and Hao Liang ("Mr Liang").

3. Mr Lau is stated to be part of the well known "Nine Dragons" family in the People's Republic of China ("PRC"). He is the son of Madam Cheung Yan who is the founder of Nine Dragons Paper (Holdings) Limited which is listed on the Hong Kong Stock Exchange. Mr Lau's wife is Chen Li ("Ms Lau") and she is also engaged in the family business.

4. Mr Liang was born in China and has been interested in the financial markets since the age of 13. He is the son of He Hui. Various internet articles feature him as an investment prodigy and he appears to be well known as an investment manager. Mr Liang's wife is April Li ("Ms Liang"). Ms Liang is described as an expert in primary market private equity investment.

5. The paths of Mr Lau and Mr Liang appear to have first crossed in September 2017 when they were introduced through a relative of Mr Lau and a former schoolmate of Mr Liang. Mr Liang had set up Seahawk China Dynamic Fund (the "Company" or the "Fund") in the Cayman Islands in August 2017 and was on the look out for investors. Mr Lau seemed interested. Mr Lau had a family investment management company, incorporated under the laws of Hong Kong, called Gold Dragon Worldwide Asset Management Limited ("Gold Dragon" or the "Manager"). Both Mr Lau and Mr Liang saw good potential for cooperation with Mr Lau becoming a significant investor and Mr Liang being key in respect of investment management and producing significant financial returns. At a meeting in November 2017 in Hong Kong, Mr Lau met Ms Liang and Mr Liang met Ms Lau. Mr Lau became a significant investor in the Company. Mr Liang directed management of the investments and produced very significant financial returns and was described by Mr Lau as "awesome". Sadly however the relationship between Mr Lau and Mr Liang deteriorated culminating in Mr Lau presenting a petition for the winding up of the Company.

Mr Lau's case

6. Mr Lau says that he has justifiably and irretrievably lost all confidence in the Company's management because of the clear lack of probity of Mr Liang, the Company's sole voting

member. Mr Lau says that Mr Liang has abused and misused his power and authority in connection with his control and management of the Company and has acted in a manner that favours his own interests to the detriment of the interests of the Company, Mr Lau and other investors.

7. In particular Mr Lau complains about two specific issues, which he describes as (1) the Unauthorised Scheme and (2) the Late Trade Allocations.

8. In respect of the Unauthorised Scheme, Mr Lau says that Mr Liang "attempted to secretly strip approximately US$19,997,219.62 for his own benefit from the Company" (paragraph 11 (a) i. of the petition).

9. In respect of the Late Trade Allocations, Mr Lau says that Mr Liang "has orchestrated a deliberate and cynical system to siphon moneys to the Hover4pi Funds (controlled by Mr Liang and his wife) while simultaneously causing significant losses to the Company". Mr Lau adds that "In doing so [Mr Liang] deliberately preferred the interests of the Hover4pi Funds, and ultimately himself, and has deliberately caused the Fund to suffer losses of approximately USD 8,073,918.07" (paragraph 11 (a) ii. of the petition).

10. Mr Lau complains about significant amendments to the Company's constitutional documents and the Investment Management Agreement (the "IMA") between the Manager and the Company without formal notice to him. Mr Lau alleges that Mr Liang convened board meetings "without providing the requisite notice to [him], who was entitled to such notice as a director, despite dishonestly recording the contrary in relevant minutes" (paragraph 11 (a) iv of the petition).

11. Mr Lau makes the general complaint that Mr Liang "sought to conceal his illegitimate actions and acted with a complete lack of transparency by failing to inform investors and the Manager of his conduct" (paragraph 11 (a) vi of the petition).

12. Mr Lau complains that Mr Liang created a new class of shares which he allocated to himself and that Mr Lau was removed from the board of the Company.

13. Mr Lau alleges that the Company was operated by Mr Lau and Mr Liang "akin to a quasi-partnership and the personal relationship involving mutual trust and confidence on which it was founded and operated (as part of an effective 'consolidation' of [Mr Lau's] business through the Manager) has irretrievably broken down. The legitimate expectations that had arisen on account of that relationship and the understanding between Mr Liang and [Mr Lau], have been disregarded by Mr Liang. Accordingly, there is no or no reasonable hope of reconciliation between Mr Liang and [Mr Lau]." (paragraph 11 (b) of the petition).

14. Mr Lau further alleges that Mr Liang has used his voting power to cause "oppression and prejudice to Mr Lau's interests as a shareholder, exclude him from the Fund's management as a director and to further his own personal interests." (paragraph 11 (c) of the petition).

15. Mr Lau also says that there is an urgent need for an investigation into Mr Liang's actions explaining that the Late Trade Allocations have been reported to the regulator in Hong Kong and the Unauthorised Scheme is the subject of civil proceedings brought by the Manager in Hong Kong (paragraph 11 (d) of the petition).

16. Mr Lau says that he seeks a winding up of the Company "as, in the circumstances, there is no other more suitable remedy to pursue." (paragraph 13 of the petition).

17. Mr Lau at paragraph 21 of his petition says that the following matters are demonstrative of a relationship of trust and confidence between Mr Lau and Mr Liang "similar to that obtaining between partners":

(a) each became a director of the other's entity: Mr Liang a director and CEO of the Manager an entity owned and run by Mr Lau and his family, and Mr Lau became a director of the Company which had been founded by Mr Liang;

(b) Mr Lau agreed to manifestly uncommercial terms, pursuant to which the substantial majority of the fees normally payable to the Manager would be paid to Mr Liang as a bonus (as to 80%);

(c) Mr Lau settled Mr Liang's bonus entitlements for 2018 and 2020 in the manner requested by Mr Liang, contrary to the General Terms, and personally ensured Mr Liang was paid a bonus for 2019 notwithstanding Mr Liang's lack of entitlement to the same (paragraph 21 of the petition).

18. Mr Lau at paragraph 77 of his written closing submissions submits that the Fund should be wound up for the following reasons:

"(1) *First*, the Fund was a quasi-partnership and the relationship of mutual trust and confidence which previously existed between [Mr Lau] and Mr Liang as quasi-partners has irretrievably broken down on account of:
(a) The Late Trade Allocations; and/or
(b) The Unauthorised Scheme; and/or

(c) Mr Liang's removal of [Mr Lau] as a director of the Fund.

(2) *Second*, [Mr Lau] held a legitimate expectation that he would remain a director of the Fund and, in breach of that legitimate expectation, Mr Liang unjustifiably removed [Mr Lau] as a director of the Fund and, thus, excluded him from its management.

(3) *Third*, [Mr Lau] has lost confidence in Mr Liang managing the Fund due to a serious lack of probity of the part of Mr Liang in his conduct of the Fund's affairs, and in particular on account of his dishonesty in respect of:

(a) The Late Trade Allocations; and

(b) The Unauthorised Scheme.

(4) *Fourth*, [Mr Lau] has been oppressed on account of [Mr Liang's] actions as part of the implementation of the Unauthorised Scheme, where his complete voting control of the Fund was used to e.g. create the new class of Performance Allocation Shares.

(5) *Fifth*, given *inter alia*, the seriousness of the matters which have been the subject of the Petition, their recent discovery, and concerning aspects of the evidence in respect of the approach to the corporate governance of the Fund, there is clearly an urgent need for an investigation into the affairs of this CIMA-regulated Fund."

19. At paragraph 1 of his written closing submissions Mr Lau says that he applies for a winding up order on the just and equitable basis "primarily as a result of two courses of dishonest

conduct: the Late Trade Allocations and the Unauthorised Scheme." These serious allegations of dishonesty are at the core of Mr Lau's case.

20. Paragraph 356 on page 155 of Mr Lau's written closing submissions reads as follows:

> "356. For all the foregoing reasons, [Mr Lau] seeks the winding-up of the Fund, on the just and equitable basis, in light of [Mr Lau's] loss of confidence in Mr Liang arising from his dishonest misconduct relating to the Late Trade Allocations, and the Unauthorised Scheme; and because of: (i) the justifiable and irretrievable breakdown of the quasi-partnership relationship between [Mr Lau] and Mr Liang as a result of that dishonesty; (ii) Mr Liang's disregard of [Mr Lau's] legitimate expectations of being a director of the Fund, by removing him as such in December 2021, and (iii) the clear need for a thorough independent investigation of the Fund's affairs, based on what the Court has heard and seen at trial, both in the *private interests of all stake-holders* of this Fund, but also in the *wider public interest* of these Islands, given the seriousness of much of the misconduct that has been ventilated on this Petition, in respect of a CIMA-regulated fund, which (absent a winding up order) will then be seeking further investment from the public."

Mr Liang's case

21. Mr Liang denies that he has been dishonest and denies that it is just and equitable for the Company, a solvent and highly profitable company, to be wound up. Mr Liang says that Mr Lau could request redemption of his shareholding in the Company "which would be a

far more appropriate and less destructive remedy than liquidation, especially given that it would also be a very profitable remedy for [Mr Lau] considering how much profit the Company has generated with the efforts of Mr Liang" (paragraph 51 of the amended defence).

22. Mr Liang openly admits that he convened board meetings on 11 August 2021 and 16 November 2021 without providing prior notice to Mr Lau but says that Mr Lau was unable to dictate or alter the outcome of any board meetings on his own (paragraph 11 a i. and ii. of the amended defence).

23. Mr Liang also openly admits that the effect of the resolutions passed was, among other things, to create a new class of shares known as Performance Allocation Shares by way of resolution of the board of directors dated 11 August 2021 which were allocated to him on 16 August 2021 (paragraph 11 a. iii of the amended defence). Mr Liang admits that there was a resolution to remove Mr Lau as a director of the Company in December 2021 (paragraph 11 a. iv of amended defence).

24. Mr Liang says that any rights that Mr Lau has are in his capacity as an investor in the Company and such rights are limited to those rights of an investor as set out in the relevant documents including the subscription agreements, a side letter dated August 2018, and the offering Memorandum and Articles (paragraph 11 b. iii of amended defence).

25. Mr Liang denies that (1) the Company was operated by Mr Lau and Mr Liang akin to a quasi-partnership; (2) there was a personal relationship of mutual trust and confidence on the basis of which the parties agreed to operate the Company (3) there has been an irretrievable breakdown of trust and confidence (paragraph 11 b viii to x of the amended

defence). Mr Liang says that "Mr Lau has admitted that the Company has been extremely successful and that he has enjoyed enormous profit through his investment." Mr Liang adds that to the extent that Mr Lau alleges that there is no reasonable hope of reconciliation Mr Lau could request a redemption of his shareholding in the Company so as to withdraw his investment per the terms of his investment (paragraph 11.b.xi of the amended defence).

26. Mr Liang denies that Mr Lau could have had any legitimate expectation to participate in the management of the Company or of the Manager given that Mr Lau had no relevant investment or fund management qualifications or experience and was not licensed by the Hong Kong Securities and Futures Commission (paragraph 11.b.xiv of the amended defence).

27. Mr Liang avers that the Manager is simply a "figurative corporate vehicle" and that he was in effect the investment manager and that "all performance fees and management fees after deduction of costs were paid and are payable to Mr Liang" (paragraph 11.b.xv of the amended defence).

28. Mr Liang says that Mr Lau subscribed for his investment to the Company in full knowledge that Mr Liang held all Management Shares and that the Participating Shares enjoyed no voting rights and accordingly there has been and can be no oppression or prejudice caused to Mr Lau or any other investor (paragraph 11.c.i. of the amended defence).

29. Mr Liang avers that Mr Lau may redeem his investment in the Company which is very successful and other than Mr Lau (and according to Mr Lau some of his family members) no other investor has come forward in support of the petition. Mr Liang says that Mr Lau

has available alternative remedies which are more appropriate than a winding up of the Company but has failed to pursue them.

30. Mr Liang avers that the appointment of Mr Lau as a director of the Company was done to assist him "as he wished to be seen to hold a position of importance in addition to his investment, and to give him a veneer of legitimacy in the Company, even though he performed no actual functions" (paragraph 14 k. of the amended defence).

31. Mr Liang denies that the matters pleaded at paragraph 21 of the petition demonstrate any relationship of trust and confidence similar to that pertaining between partners as alleged "rather they reflect the industry practice and terms of a commercial transaction" and denies that he lacked entitlement to the bonus for 2019 (paragraph 21 of the amended defence).

32. Mr Liang denies that he sought to divert the performance fee payable to the Manager to himself. Mr Liang avers that he was in fact, at all material times, entitled to the surplus of the performance fees and management fees as his bonus. Mr Liang develops this averment by descending into the following detail:

(1) the General Terms dated 11 July 2018 entered into between Mr Liang and Mr Lau (on his own behalf and on behalf of the Manager) stipulated that the bonus of Mr Liang shall not be less than "80% of the performance fee plus management fees less costs" in any event;
(2) the General Terms were subject to a common understanding (the "Common Understanding") between Mr Liang and Mr Lau (on his own behalf and on behalf of the Manager) that:

(a) Mr Liang would have full autonomy and power to manage and operate the Company as he had always done, including but not limited to making all investment decisions as its portfolio manager, selecting the team members for operating and investing on behalf of the Company, and deciding on the remuneration and bonuses of those team members; and

(b) Mr Liang would be entitled to receive all the performance fees and management fees after deduction of costs from the Company;

(3) the General Terms were also subject to Mr Lau's express assurance, made to Mr Liang prior to the execution of the General Terms and on the morning of 9 July 2018, whereby Mr Lau (on his own behalf and on behalf of the Manager) promised Mr Liang that matters relating to distributions of all the Company's staff's salaries and bonuses would and should be wholly decided by Mr Liang, given that the surplus was ultimately "Mr Liang's fees", so it should be up to Mr Liang (rather than Mr Lau) to decide how to distribute the same, irrespective of the provisions in the General Terms (the "Promise");

(4) it is expressly provided under the section "Allocation Method" of the General Terms that all the profits of the Manager shall belong to the Company's team and shall be distributed to the team members in the form of bonuses;

(5) the provision under "Profit Distribution" of the General Terms that (a) Mr Lau has the final decision on the team salary and bonus; but that (b) Mr Liang's bonus is protected at no less than 80% of the Company's performance fees plus management fees less costs, unless agreed by both parties, was added so that Mr Lau could appear as "the boss" in front of his family, albeit he did not (and could not) actually participate in the

daily management and operation of the Manager, the Company, or any related investment activities. Such provisions were purely in order to make Mr Lau look good in the eyes of the Nine Dragon Group's matriarch, and were at all material times subject to the Common Understanding and the Promise;

(6) pursuant to the Common Understanding and the Promise (a) Mr Lau (on behalf of himself and the Manager) allowed Mr Liang to decide on the salary and bonuses of the staff of the Company for the years 2018, 2019 and 2020; and (b) Mr Liang was paid all performance fees plus the management fees surplus as his bonuses for the years 2018, 2019 and 2020; and

(7) by reason of the dispute no performance fees nor management fees surplus have been paid for 2021 (paragraph 24 a. (i) to (vi) of the amended defence).

33. Mr Liang denies that he failed to act in good faith for the benefit of the Company as a whole when passing on 12 August 2021 the Management Shareholder Resolutions (paragraph 24 b. of the amended defence). Mr Liang says that the amendments were made (a) as a means to obtain tax savings in respect of Mr Liang's bonus distribution in accordance with the Common Understanding and the Promise; and (b) in order to obviate the need to take out cash from the Company thus preserving its liquidity (at a time when Mr Lau was seeking early redemption to which he had no contractual entitlement). The effect of the amendments was such that instead of the Company distributing to the Manager performance fees in cash and the Manager then distributing to Mr Liang his bonus allocation in cash (which would attract substantial tax liability in Hong Kong), pursuant to the Common Understanding and the Promise, the Company would instead issue

Performance Allocation Shares direct to Mr Liang at the Fund level (paragraph 24 c. of the amended defence).

34. Mr Liang says that Rachel Kong Wai Nga ("Ms Kong") and Lee Wing Lam ("Ms Lee"), both employed by the Manager, were aware of the issue of the performance allocation shares and the conversion of the crystallised performance fees which was reflected in the relevant NAVs for the Company issued from October 2021 onwards (paragraph 24 ci. of the amended defence).

35. Mr Liang says that he had various discussions with Mr Lau's wife (who often acted as Mr Lau's representative and channel for communication with Mr Liang) and Ms Kong about his intention to change the method of payment of the performance fees to allotment of shares at the Company level in order to obtain tax savings, so they were well aware of the same (paragraph 25 e. of the amended defence).

36. Mr Liang admits that on 16 November 2021 resolutions of the board of directors of the Company were passed and a supplemental agreement was entered into approving and providing for the full conversion of the outstanding crystallised performance fee in the sum of US$19,997,216.62 as of 31 October 2021 to the Performance Allocation Shares and that the supplemental agreement was provided to the Administrator (paragraph 29 and 30 a. of the amended defence).

37. Mr Liang denies that he acted dishonestly by not giving Mr Lau notice of the 11 August and 16 November 2021 board meetings of the Company (paragraph 35 of the amended defence).

38. In relation to the alleged dishonest Late Trade Allocations Mr Liang says that during the period June to December 2021 the Manager's management of the investment activities of the Company and the Hover4pi Funds, including the placement and allocation of trades, involved (a) Mr Liang (in his capacity as an employee of the Manager and authorised trader for the Company) and members of the investment team of the Manager, (b) Ms Lee (who was stated by Mr Liang to be the settlement officer responsible for the operation of the broker of the accounts of the Manager), and (c) Ms Kong (who, among other responsibilities, was said by Mr Liang to have supervised Ms Lee and was responsible for the Manager's compliance and internal controls). Mr Liang adds that Ms Lee and Ms Kong, who supervised all works of Ms Lee, were responsible for the settlement of all the relevant trade orders (paragraph 37 a.i of the amended defence).

39. Mr Liang openly says that there were occasions after June 2021 where the Manager allocated trades to the Company or to the Hover4pi Funds after the relevant trade orders were placed (paragraph 37 b. of the amended defence).

40. Mr Liang says that all trades made by the Manager were placed in the expectation of generating profit over the term of the holding of the trade, and therefore trades that were not immediately profitable (or appeared not to be immediately profitable) were still expected to be profitable over a longer time frame (paragraph 37 b. of the amended defence).

41. Mr Liang says that he discussed with Mr Lau and his wife in July 2021 the fact that the Manager needed to take some actions in compensating certain losses, arising from a specific trading activity, to Hover4pi Funds, and in doing so the Company might need to endure some temporary loss as a result. Given that the estimated amount of the temporary

loss was relatively small compared to the Company's profit made in 2021 and that Ms Liang had generated substantial returns for Mr Lau's family by her investment advice throughout the previous few years, Mr Lau raised no objection and did not voice any concerns about doing so. Mr Liang denies the allegations of dishonesty (paragraph 37 d. of the amended defence).

42. Mr Liang denies that the Company has suffered the US$8 million loss alleged and that Mr Liang had intended to act in a manner that favoured his own interests to the detriment of the interests of the Company.

The position of certain minority shareholders

43. The fourteen minority shareholders represented by Mr Tom Lowe QC say that to whatever extent Mr Lau's allegations succeed they do not merit winding up and Mr Lau has an alternative remedy. Their position is developed as follows:

(1) it is unheard of for a solvent open ended investment company with active redemption rights to be wound up. This is because redemption according to the Fund's redemption terms is always an alternative remedy. That remedy is equivalent to an automatic buyout right;

(2) in respect of the Unauthorised Scheme allegations, Mr Liang has not in fact stripped the Fund of performance fees. Mr Liang is entitled to at least 80% of the performance fee in the sum of US$62.3 million for 2021 which has not been paid to him and which exceeds the US$20 million. Even if the creation of the Performance Fee Allocation Shares was wrongful this is not a wrong done to the Fund who had no entitlement to

the performance fee. Mr Lau has an obvious alternative remedy to seek cancellation of the share class and have the amendments to the IMA declared invalid;

(3) the Late Trade Allocations need to be put into perspective. They amount to a miniscule percentage of gains made by Mr Liang for the Fund. This is not the type of misconduct which justifies winding up of the Fund on the just and equitable basis. This might have justified a claim for compensation, apart from the obvious course of referring the conduct to the Hong Kong Securities and Futures Commission;

(4) the alleged misconduct needs to be placed into perspective and falls a long way short of the degree of seriousness required for winding up. The quasi-partnership complaint that Mr Lau was excluded from management is unsustainable. There is no need for investigation even if this was a ground for winding up (which it is not);

(5) Mr Lau plainly has an alternative remedy in this case. Mr Lau has a contractual right to exit by redemption at an agreed fair value and by way of an agreed fair procedure;

(6) even if the court is minded to conclude that it would be just and equitable to wind up the Company at most what are needed are relatively modest orders with respect to the conduct of the Company under section 95(3) of the Companies Act.

Submissions

44. I take account of all the written and oral submissions placed before the court. I do not refer to all of them in this judgment. They form part of the court record and I have regard to them all. The parties will be able to glean from the determination section of this judgment

which submissions I have accepted, which submissions I have rejected and those that I considered immaterial to the determination of the relevant issues in the case.

45. As much as I enjoy reading them, skeleton arguments are getting too long and attorneys must exercise more discipline and focus on making skeleton arguments shorter.

46. In this case the written opening submissions ran to 237 pages:

129 pages (including its Schedules) with 568 footnotes for Mr Lau
90 pages with 11 footnotes for Mr Liang; and
18 pages for fourteen minority shareholders which in the main argued in favour of an alternative remedy.

47. The closing written submissions ran to 244 pages:

156 pages with 711 footnotes for Mr Lau (with the authors having the gall at paragraph 339 on page 150 to refer to "the interests of brevity");
75 pages with 389 footnotes for Mr Liang; and
13 pages for fourteen minority shareholders which in the main attacked Ms Kong.

48. A grand total of nearly 500 pages with 1679 footnotes of written submissions for what should have been a relatively simple case. Over 30 volumes of documentation were placed before the court with some filled to bursting with too many pages (volume 2 had some 1,582 pages but was beaten to the top spot by volume 3 which had some 1626 pages and volume 8 part of 1 of 3 had some 1401 pages to give just a few examples of the mass of material this case has generated). The court also scheduled a hearing at 8am on 29 July

2022 to accommodate counsel for oral closing submissions. The parties had suggested that the court dispense with oral closing submissions. The court however insisted upon them. I find that there is still value in oral advocacy.

49. In view of the increasing length of written submissions and the mass of material being put before the courts these days it is no wonder that judgments are getting so long. Lady Arden who recently visited these islands to deliver this year's Annual Guest Lecture some ten years earlier had argued for consideration to be given to, where possible and appropriate, more concise judgments (M Arden "*Judgment Writing: Are Shorter Judgments Achievable?*" (2012) 128 LQR 515; see also P Butt *Judgment Writing: an Antipodean Response* (2013) 129 LQR 7). More recently Lord Burrows in *Judgment – Writing: A Personal Perspective* (20 May 2021) stressed the importance of the 3Cs (clarity, coherence and conciseness).

50. Judges at first instance must, where appropriate, make findings of fact and give adequate reasons for their decisions. Appellate courts sometimes criticise judges for the length of their judgments, the time taken to deliver them and their failure to make all necessary findings of fact and to give all necessary reasons. Remarkably in one case counsel had the temerity to criticise a judge for delivering a judgment too concisely and too quickly. Fortunately the Judicial Committee of the Privy Council in *Byers v Chen Ningning* [2021] UKPC 4 robustly and properly rejected the misconceived criticism that the judgment itself was "so concise and that it was produced with such speed that it may be inferred that the judge did not consider all of the relevant evidence before him or the submissions he heard" as follows at paragraph 37:

> "The Board has no hesitation in rejecting this contention. As a general matter, the expeditious production and delivery of a judgment is to be applauded, not criticised; and concision in a judgment is a quality, not a defect. That is not to say that expedition and concision are a justification for a failure by a judge to address material submissions; for making errors of law or findings of fact which cannot be supported or which are plainly wrong; or for failing adequately to explain the reasons for his or her decision. Of course, they are not."

51. I will continue to endeavour to ensure that my judgments address material submissions, contain any necessary findings of fact and adequate reasons and that they are delivered within a reasonable time. I think most busy first instance judges will appreciate that the worthy aspiration for concise judgments is a lot easier said in theory than implemented in reality. Lord Burrows at page 5 of the lecture referred to above stated:

> "My overall point here, therefore, is that judgment-writing is a particularly difficult exercise; and that applying the three Cs – being clear, coherent and concise – is, in the context of judgments, easier said than done."

Lord Burrows at page 6 added:

> "The old adage that it is harder to write a short judgment than a long judgment is true; but from the perspective of the reader the time and effort needed to produce a short judgment is well worth it."

I also note Lord Bingham's comment in his much read book *The Rule of Law* (2010) at pages 42 – 43:

> "The length, elaboration and prolixity of some common law judgments … can in themselves have the effect of making the law to some extent inaccessible."

Law

52. The well-established and well-known law is common ground (with the exception of the need for an investigation ground which I will come to shortly). I think I can properly deal with the relevant law briefly. What is in dispute in this case is the application of the relevant law to the particular circumstances of this case and I will turn to that further in due course.

Section 92(e) – the just and equitable ground

53. Under section 92(e) of the Companies Act (2022 Revision) (the "Companies Act") a company may be wound up by the Court if "the Court is of the opinion that it is just and equitable that the company should be wound up".

54. There is no doubt that Mr Lau is a contributory and has standing to present a petition pursuant to section 94(1)(c) of the Companies Act.

55. Under section 95(3) of the Companies Act where a petition is presented by a contributory on the just and equitable ground the court has the jurisdiction to make various orders, as an

alternative to a winding up order including an order regulating the conduct of the company's affairs in the future.

Lack of confidence in management

56. It is well settled that a company may be wound up on the just and equitable ground if it is established that there has been a justifiable loss of confidence in management, for example on account of serious misconduct or serious mismanagement of the affairs of the company by the directors or the majority shareholders (paragraph 22 of Martin JA's judgment in *Tianrui (International) Holding Company Limited v China Shanshui Cement Group Limited* 2019 (1) CILR 481).

Lack of probity

57. Lack of probity in the conduct of a company's affairs is a well-established basis for a just and equitable winding up. Lack of probity complaints can be based on allegations of breaches of fiduciary duties (see paragraph 10 (11) of my judgment in *Aquapoint L.P.* delivered on 23 November 2021). Lack of probity is not limited to quasi-partnership cases. Where a lack of confidence is rested on a lack of probity in the conduct of the company's affairs this may justify a winding up order. A winding up order can be sought on the ground that the shareholder petitioner has lost confidence in the probity of the directors (paragraph 24 of the judgment of the Judicial Committee of the Privy Council in *Lau v Chu* [2020] 1 WLR 4656).

Equitable considerations

58. At paragraphs 158 – 162 of my judgment in *Fan v AquaPoint* (FSD; unreported 10 June 2022) I briefly referred to equitable considerations and made reference to the various leading authorities including Lord Wilberforce's judgment in *Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360, the judgment of Ma CJ and Lord Millett NPJ in *Re Yung Kee Holdings Ltd* [2015] 6 HKC 644 and the judgment of the Judicial Committee of the Privy Council in *Lau v Chu* [2020] 1 WLR 4656.

59. Where the company is a corporate quasi-partnership, an irretrievable breakdown in trust and confidence between the participating members may justify a just and equitable winding up, essentially on the same grounds as would justify the dissolution of a true partnership (paragraph 15 of the judgment of the Judicial Committee of the Privy Council in *Lau v Chu* [2020] 1 WLR 4656).

Ratification

60. It is well established that a shareholders' meeting is capable of ratifying an unauthorised act of the directors (paragraph 52 of *Tianrui*). In the *Byers* appeal referred to above the Privy Council also considered the application of the *Duomatic* principle, named after the case of *In re Duomatic Ltd* [1969] 2 Ch 365, which it had considered in some detail in *Ciban Management Corpn. Citco (BVI) Ltd* [2020] 3 WLR 705 at paragraphs 31 to 47.

Alternative remedies

61. It is also well settled that a winding up petition will not succeed if there exists an adequate alternative remedy which the petitioner has unreasonably failed to pursue (paragraph 23 of *Tianrui*). Winding up is a shareholders' remedy of last resort. But this does not mean that winding up is unavailable to members if they have any other remedy. The member retains a significant element of choice in the remedy to be sought, even though the court has the last word (paragraph 20 of the judgment of the Judicial Committee of the Privy Council in *Lau v Chu* [2020] 1 WLR 4656). An unreasonable refusal to accept a fair offer for the applicant's shares might bar relief by way of winding up (paragraph 21 of *Lau v Chu*). It may be expected that a respondent (especially if represented by an experienced legal team) should put forward one or more remedies which it is alleged were both available and sufficiently attractive as an alternative to make it unreasonable to continue to seek a winding up. It is not for a judge to imagine every potential alternative remedy and deal with it, in the absence of a properly formulated invitation to do so (paragraph 52 of *Lau v Chu*).

62. If the actions of the directors have resulted in a justifiable loss of confidence in the management of a company, an aggrieved contributory has a statutory right to petition for the winding up of the company on the just and equitable ground. It cannot be deprived of that right merely because the company can point to other remedies which, alone or in combination, might arguably go all or some way to obtaining compensation for what has occurred. A petitioning contributory may legitimately take the view that it prefers the company to be wound up to having to pursue piecemeal a series of actions, by litigation or otherwise, or by a combination of litigation and other steps, that might be capable of redressing some, or even all, of its concerns (paragraph 37 of *Tianrui*).

Is the need for an investigation a self-standing sole ground for a winding up order?

63. There was a brief debate in these proceedings as to whether the need for an investigation can be a self-standing sole ground for a winding up order.

64. Chief Justice Smellie in *GFN Corporation Limited* 2009 CILR 135 at paragraph 37 stated:

> "… the authorities have also clearly established that the court has jurisdiction, in the exercise of its statutory jurisdiction … to wind up a company on the basis that an investigation into its affairs is necessary and justified."

65. Chief Justice Smellie applied to *Bell Group Fin. (Pty) Ltd v Bell Group (UK) Holdings Ltd* [1996] BCC 505 at 512 (Chadwick J) and *In re Krasnapolsky Restaurant & Winter Garden Co* [1892] 3 Ch 174 at 178 (Vaughan Williams J) and at paragraph 42 added:

> "This principle – that the need for an investigation into the affairs of a company can be a free-standing basis for the making of a winding-up order on the just and equitable ground – is already recognised in Cayman law: see *In re Parmalat Capital Fin. Ltd* 2006 CILR 171, at para 18 [on appeal 2006 CILR 480 on further appeal 2008 CILR 202]".

66. Mr Lowe submitted that the Chief Justice's decision in *GFN* was overturned in the Court of Appeal on the law in respect of the petitioner's claim to be a creditor (2009 CILR 650). I note from the law report that the headnote confirms that the appeal was dismissed and the winding up order affirmed, although an error was specified in relation to the approach of failing to determine that the petitioner was on the balance of probabilities a creditor before

making the winding-up order. Notwithstanding this, the Court of Appeal was satisfied on the basis of evidence before it that the petitioner was a creditor of the appellant in respect of at least a substantial part of the petition and therefore since it was a creditor in respect of an undisputed debt it had sufficient standing to petition for the winding-up order.

67. In *Parmalat* 2006 CILR 171 Henderson J at paragraph 18 stated:

> "The circumstances surrounding its downfall need continuing investigation, and that is a free standing ground for making a winding up order: *Re Gordon & Breach Science Publishers* [1995] 2 BCLC 189; *In re Pantmaenog Timber Co Ltd* [2004] 1 AC 158 (HL); *Bell Group Fin. (Pty) Ltd v Bell Group (UK) Holdings Ltd* [1996] BCC 505 …"

68. Henderson J in *Paradigm Holdings* 2004-05 CILR 542 at paragraph 35 stated:

> "These are matters which require a full investigation. That is one of the traditional reasons for making a winding-up order under the just and equitable ground: see 1 *Palmer's Company Law*, 22nd ed., para 81-08, at 887 (1976); and *Re Peruvian Amazon Co. Ltd* (1913), 29 T.L.R. 384 …"

69. More recently Cheryll Richards J in *Madera Technology Fund (CI), Ltd* (FSD unreported judgment 3 November 2021) at paragraph 76, praying in aid *Paradigm* and *GFN*, felt able to say:

> "It is accepted that the need for an investigation can be a free-standing basis for the making of a winding up order on the just and equitable ground."

70. Andrew Jones J in a 6 page judgment in *ICP Strategic Credit Income Fund Ltd* (FSD unreported judgment 10 August 2010) at paragraph 8 stated:

> "In the circumstances of this case, I also accept that the need for such an investigation is a sufficient justification for making a winding up order."

71. Peter Cresswell J in an 80 page judgment in *Fortune Nest Corporation* (FSD unreported judgment 5 February 2013) dealt with a winding up petition based on three grounds: (1) lack of probity; (2) oppression; and (3) need for an investigation. When dealing with the relevant law at paragraphs 30 to 33 Cresswell J referred to *Paradigm* (at paragraph 30), *GFN* (at paragraph 31) and *ICP* (at paragraph 32). The Respondent in *Fortune* submitted that these cases all involved a company rendered insolvent due to fraud or serious wrongdoing and where such allegations had been made outside of the winding up process and that the court would be taking a novel step in ordering a winding up on the ground of a need for an investigation in circumstances where serious factors, external to the winding up process, were not present. The Petitioner's case in *Fortune* was that such factors were not necessary in order for it to be just and equitable to wind up a company on the basis that an investigation is necessary, and that it was wrong to trammel the court's jurisdiction in this manner. Cresswell J dealt with the issue as follows at paragraph 33 of his judgment:

> "It is unnecessary to address these competing submissions because in this case I consider that there is no need to go beyond consideration of loss of confidence caused by a lack of probity and oppression."

72. Three years later, Ingrid Mangatal J in a 78 page judgment in *Washington Special Opportunity Fund, Inc* (FSD unreported judgment 1 March 2016) at paragraph 122 referred to *Parmalat*, *GFN* and *ICP* as "leading Cayman cases on this area" adding:

> "These, and other cases, demonstrate that it has been accepted in this jurisdiction that the need for an investigation into the affairs of a company can be a free-standing basis for the making of a winding-up order on the just and equitable ground. For a contrary view, see the Second Edition of Derek French's work *Applications to Wind Up Companies*, paragraph 7.7.6.2."

73. In French's Fourth Edition at paragraph 8.179 the following is stated:

> "A need to investigate a company's affairs does not in itself justify winding up on a contributory's petition… A need to investigate a company may be a sufficient reason for ordering a winding up by the court on a public interest petition."

74. Mr Lowe courageously submitted that Mangatal J's decision in *Washington Special Opportunity Fund Inc* was *per incuriam* as she followed the Chief Justice without noticing the differing reasons in the Cayman Islands Court of Appeal and neither she nor the Chief Justice grappled with the contrary English case law on the subject. Mr Lowe boldly submitted that there was no authority in the Cayman Islands in which the court has reached

a reasoned conclusion that a need for investigation is an independent ground for winding up.

75. For my part I note the local authorities (see for examples Parker J in *Padma Fund*, FSD unreported judgment 8 October 2021 at paragraph 84 and *Alibaba.com Limited* 2012 (1) CILR 272 Cresswell J) to the effect that a decision of another judge of the FSD should be followed unless the subsequent judge is convinced it is wrong.

76. I also note that the Cayman Islands Court of Appeal in *GFN* 2009 CILR 650 did not comment adversely on the comments of the Chief Justice at paragraphs 37 and 42 of his judgment reported at 2009 CILR 135. Indeed they expressly left the point open for further consideration when the need arises. Chadwick P at paragraph 32 stating:

> "It is unnecessary also to decide whether the Chief Justice was wrong to hold that a creditor could obtain a winding-up order on the just and equitable ground on the sole basis that an investigation into the company's affairs was necessary. We heard no argument on that question. It can await further consideration by this court when the need arises."

77. In *GFN* the petitioner petitioned on the basis it was a creditor. Mr Lau in the case presently before me petitioned on the basis he was a contributory and that was not in dispute.

78. *In Re Asia Private Credit Fund* 2020 (1) CILR 134 concerned the jurisdiction of the courts in respect of supervision orders. *GFN* was referred to in a footnote. Field JA at footnote 9 to paragraph 103 commented:

> "… the petitioner threatened to apply to wind up APCF on the just and equitable ground if the manager did not appoint the FTI liquidators as the voluntary liquidators, this being a ground that can be relied on where there is the need for an investigation into the affairs of a company, see *In re GFN Corp Ltd* … per Smellie, CJ."

79. This was not an issue that had to be determined by the Court of Appeal and consequently there appears to have been no consideration of the authorities other than *GFN* which, I accept, the Court of Appeal appears to have referred to as the existing law of the Cayman Islands.

80. It will be seen from the determination section of this judgment that I do not, in the circumstances of this case, need to resolve the issue as to whether the need for an investigation is a free-standing basis for a winding up order and I leave it open for determination by wiser heads than mine in another case should the need arise. Suffice for me to say at first instance that I am not presently convinced that my fellow first instance judges in *GFN*, *Paramalat*, *Paradigm*, *Madera*, *ICP* and *Washington* were plainly wrong on this point.

Dishonesty

81. Mr Lau's case is based on serious allegations of dishonesty in respect of the Unauthorised Scheme and the Late Trade Allocations. Counsel were agreed that in respect of the allegations of dishonesty the court should be guided by the test laid down by the Supreme

Court of the United Kingdom in *Ivey v Genting Casinos (UK) Ltd* [2018] AC 391. Lord Hughes JSC set out the relevant test at paragraph 74 as follows:

> "When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

The assessment of the witnesses

82. I now turn to the assessment of the witnesses who gave live evidence in this case and were subject to cross-examination.

Mr Lau

83. It is probably an understatement to say that I did not find Mr Lau an impressive witness. His evidence and recollections were extremely vague and it was plain that he had relied on others to deal with the detail. He frequently responded "I don't recall"; "I don't remember"; and on one occasion "I just don't remember any more … it's a few months ago". He frequently failed to answer questions directly, but, in fairness, he was not alone

in that failing. His reliability and credibility were badly damaged in respect of his lack of recollection and detail and in respect of certain non-disclosure issues. It would appear, based on his response to the questions put to him on the non-disclosure issues, that his main focus at the *ex parte* stage was in getting the Order rather than complying with his disclosure duties (but a determination in that respect may, if matters are not settled, be for another day so at this stage I say no more about it).

84. In addition to leaving the detail to others it cannot be said that he had a handle on the overall situation or on the main issues in this case. He sought refuge in the General Terms but did not seem to fully understand them or be fully on top of the evidence provided in his affirmations. It appeared that these had been drafted by others (as is often the case) and he had simply signed them largely relying on others involved in the drafting process. Mr Lau did appear to find it difficult to answer simple questions in a straight forward way and tried on occasions to pre-empt any perceived damage to his case by long-winded self-serving explanations. He could not resist trying to get in, whenever he felt he could, something which he thought would be prejudicial to Mr Liang.

85. Mr Lau struck me as an individual who did not dirty his hands with the detail and was content to leave persons he described as his "co-workers" and his in-house lawyer "Alan" (whose surname he did not mention) to do the running in this respect. Mr Lau's admission that he was not aware of the precise terms on which he was investing, to most people, a significant amount of money was somewhat startling. It appeared that provided the General Terms were largely complied with and money was made for his family, Mr Lau was not too concerned about the detail or corporate governance. He was content to leave (in his word) the "awesome" Mr Liang to it in the expectation that healthy returns would be produced.

86. Mr Lau's stubborn persistence in his exaggerated allegations of dishonesty and secret asset stripping by Mr Liang appeared to be fuelled by his subjective feeling that he had been wronged or slighted in some way. I did not find his overstated protestations that he had been wronged and that Mr Liang must pay for it impressive. I also gained the impression that Mr Lau's wife heavily influenced his thinking in this regard and indeed generally. At perhaps his wife's instigation it appears that Mr Lau really wanted to teach Mr Liang a "lesson" so that he would "remember the pain" and was content to launch these misconceived and ill founded proceedings in an attempt to advance that unfortunate and unjustified agenda.

87. I take into account Mr Lau's very limited role in respect of the Company, his lack of grasp of the detail and the language difficulties and that this was, on his evidence, the first time he had been involved in litigation. Having said all that, I did not find him a convincing witness. His claims were overstated and at times grossly exaggerated. They appear to have been constructed after he had decided to part ways with Mr Liang and in an attempt to justify putting an end to the Company and adversely impacting Mr Liang's reputation as an extremely successful investment manager. His evidence was insufficient to justify this court making a winding up order.

88. Even Mr Lau's own attorneys, who tried to leave no stone unturned in advancing serious allegations against Mr Liang, had to reluctantly but inevitably accept that:

> "… his recollection of matters and documents at trial was such that careful assessment, and corroboration as against other evidence is clearly going to be

required in respect of the evidence he has given" (paragraph 71 of their written closing submissions).

Ms Kong

89. Ms Kong plainly understood the questions put to her and was not an unintelligent witness. Again her credibility was impacted by her responses to questions put to her in respect of alleged non-disclosure at the *ex parte* stage. She seems to have accepted that certain documents could have been disclosed especially in respect of the Unauthorised Scheme/Performance Allocation Share issue but were not, as admittedly her main focus was on Mr Liang's alleged wrongdoing and concealment. Counsel referred various documents to her where Mr Liang did not conceal the Performance Allocation Share issue and she had no real answers to these questions. She also had no real answer to questions to the effect that the practice was not to have formal board meetings but to use pro forma board minutes. Ms Kong says this practice was not disclosed at the *ex parte* hearing as she did not think it relevant and they were focused on the alleged wrongdoing of Mr Liang. Ms Kong's loyalty was to her "boss" Mr Lau. She was plainly on the side of Mr Lau. Ms Kong accepted that others had placed some of the "late" trades but said that Mr Liang could still allocate them to Hover4pi or the Company. Ms Kong was the COO but says she worked in the back office not the front office and had no hands-on supervision of Ms Lee. Ms Kong also could not resist frequently trying to get in as much prejudice against Mr Liang, as she felt was possible. I have concluded that there was some substance in the criticisms against Ms Kong advanced by Mr Liang represented by Mr Smith QC and the minority shareholders represented by Mr Lowe QC.

Ms Lau

90. Ms Lau endeavoured most of the time to give concise and direct answers to the questions. She did however sometimes not give a direct answer and instead used the opportunity to create prejudice against Mr Liang; for example when asked whether Mr Liang received all the management fee surplus for 2019 her answer started with a criticism of Mr Liang's "bad performance in the year of 2019". She did however accept that Mr Liang was paid a bonus based on the Fund's performance in 2020 "including by a transfer of shares". She maintained that Mr Liang had inflated the value of ByteDance. Ms Lau maintained that she "reiterated multiple times to Mr Liang that … we need to do his bonuses with very normal procedures."

91. Ms Lau was not cross-examined at length and her evidence was of limited relevance to the main issues which were before the court for determination.

Mr Liang

92. Mr Liang was well able to protect and advance his own case. He seemed almost relaxed in his exchanges with counsel during cross-examination. He was an engaging individual and I must guard against being overly influenced by the positive and confident way in which he delivered his evidence. On occasions during his cross-examination he was disarmingly frank. He remained calm and controlled throughout a lengthy cross-examination.

93. I entirely accept that an individual who comes across as an engaging and confident witness may not always be a truthful witness but on the whole I was much more impressed with

Mr Liang's evidence than Mr Lau's evidence. I do not however fully accept the pleaded case on the alleged Common Understanding and the Promise for reasons which I will come to. Moreover I was not impressed with the fact that Mr Liang took legal advice on the notice of a directors' meeting point and subsequently failed to follow it. Neither was I impressed with Mr Liang's conduct in respect of the Late Trade Allocations. Furthermore, Mr Liang was wrong to attempt to belittle the role of non-executive directors of funds. I was not however persuaded that Mr Liang dishonestly attempted to secretly strip out the assets of the Company or that he acted dishonestly in respect of the Late Trade Allocations.

94. Mr Liang made errors and with the benefit of hindsight he accepted these. It is plain to me, having observed the open way in which he gave his evidence, that he has learnt important lessons from his dealings with Mr and Ms Lau and his involvement in these legal proceedings which must have been a painful and distracting process for him. Suffice to say I do not think these errors will be committed in the future. Mr Liang gave me the impression that he now realised the importance of corporate governance and of conducting board business properly and following all relevant regulatory guidance to the letter. I am not persuaded that there is any significant risk of any serious mismanagement in the future.

Fei Qin

95. Fei Qin had worked with Mr Liang since the creation of the Company and gave her limited evidence in a very straightforward way but was plainly loyal to Mr Liang and wished to assist his case.

Wang Ning

96. Wang Ning was called by Mr Lowe and is a trader having joined the Manager on 30 March 2021. He was cross-examined in respect of various trades and the Late Trades Allocation allegations. He accepted that there was a flaw in the procedure relating to the allocation and settlement of some of the trades. My impression of him was that he was a bright and intelligent young man who gave his evidence honestly and to the best of his ability.

The expert witnesses

97. I accept the credibility and integrity of the expert witnesses (William Wong SC, Nathan Paul Wilmor Dentice and Norman Nip SC). I am grateful to them for their assistance to the court on the specific and limited issues referred to them for their opinions.

General law on assessment of evidence

98. Deemster Hodge Malek QC in *UK Secured Finance Fund plc (in liquidation) v UKSFF Subsidiary Limited* (unreported judgment 28 March 2022; Isle of Man High Court) at paragraphs 19-20 helpfully set out some of the factors to consider when assessing evidence from witnesses stating:

> "witness recollection can be fallible and memory is often unreliable" (paragraph 19).

> "It is important to bear in mind the distinction between reliability and credibility. A witnesses account may be tainted by unreliability for a number of reasons: inability to remember, filling in gaps, wishful thinking, the way statements are prepared by lawyers as part of the adversarial process, to name a few. Credibility relates to the honesty and truthfulness of an account, i.e, is a witness lying …." (paragraph 20).

Deemster Malek at paragraph 20 of his judgment quoted from the leading book he edits namely *Phipson on Evidence* (20th edn, 2022) at paragraphs 45-18:

> "The principal tests or factors to take into account in determining whether a witness is lying more or less overlap with those which apply in assessing the reliability of a witnesses account. These are:
>
> (1) the consistency or otherwise of the witness's evidence with what is agreed or clearly shown by other evidence, to have occurred;
> (2) the internal consistency of the witness's evidence;
> (3) consistency with what the witness has said or deposed on other occasions;
> (4) the credit of the witness in relation to matters not germane to the litigation;
> (5) lies established in evidence or in the context of the proceedings;
> (6) the demeanour of the witness;
> (7) the inherent probabilities of the witness's account being true.
>
> All these matters can be explored and tested in cross-examination, a key part of the process in getting to the truth of a witness's account."

Deemster Malek commented that he was not assisted by demeanour quoting from Atkin LJ in 1924 "….I think that an ounce of intrinsic merit or demerit in the evidence, that is to say, the value of the comparison of evidence with known facts, is worth pounds of demeanour." (paragraph 21).

99. Our very own Justice Kawaley has recently reminded us of the issues to be considered when assessing evidence. Sitting in the Supreme Court of Bermuda in *Wong v Grand View Private Trust Company and others* [2022] SC (Bda) 44 Com (22 June 2022) Assistant Justice Kawaley at paragraph 21 of his 471 page judgment, in respect of a trial which took place largely remotely over many months, quoted from Leggatt J in an English case from 2013 to the effect that a trial judge in a commercial case should place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations and base factual findings on inferences drawn from the documentary and known or probable facts. Cross-examination affords the opportunity to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth. Justice Kawaley at paragraph 22 also quoted from Lord Bingham's helpful cautionary extra-judicial words from 20 years ago: "… however little insight a judge may gain from the demeanour of a witness of his own nationality when giving evidence, he must gain even less when (as happens in almost every commercial action and many other actions only) the witness belongs to some other nationality and is giving evidence either in English as his second or third language, or through an interpreter."

100. Judges in other cases have also stressed the obvious importance of contemporaneous documentary evidence. Lord Pearce in an English case in 1968 commented that witnesses who think they are morally in the right tend very easily and unconsciously to conjure up a legal right that did not exist. A witness, however honest, rarely persuades a judge that his present recollection is preferable to that which was taken down in writing immediately after the incident occurred. Lord Pearce stressed: "… contemporary documents are always of the utmost importance."

101. Males LJ in *Simetra Global Assets Ltd v Ikon Finance Ltd* [2019] 4 WLR 112 at [48] also stressed "the importance of contemporary documents as a means of getting at the truth, not only of what was going on, but also as to the motivation and state of mind of those concerned. That applies to documents passing between the parties, but with even greater force to a party's internal documents including emails and instant messaging. Those tend to be the documents where a witness's guard is down and their true thoughts are plain to see."

102. All these statements are generalisations and, of course, the proper assessment of the evidence in each case must be decided in the context of the particular issues, facts and circumstances of that specific case.

103. In view of the evidence put before this court I need to make a general point. I accept that in the world of money and investment business wealthy people do not always bother themselves with what they may describe as "boring lawyer's detail" but when individuals choose to make serious allegations of dishonesty without cogent evidence to support them

they should not be surprised when their claims are dismissed with adverse judicial comment against them.

Determination

104. The attorneys helpfully agreed a list of issues and I refer below to the main issues I consider necessary to determine in order to come to a conclusion as to whether Mr Lau is entitled to a winding up order on the just and equitable ground. I deal with the following main issues:

(1) the alleged quasi-partnership;
(2) the alleged Common Understanding and Promise;
(3) the alleged lack of probity and loss of confidence: the Unauthorised Scheme, the Late Trade Allocations and the removal of Mr Lau as a director;
(4) the alleged oppression;
(5) the alleged need for an investigation; and
(6) alternative remedies.

Alleged quasi-partnership

105. I am not satisfied that this is a quasi-partnership case. I am not persuaded that there should be any superimposition of equitable considerations in this case in *Ebrahimi* terms. There

was "nothing more" in *Ebrahimi* terms. The association between Mr Lau and Mr Liang was not on the basis of a personal relationship and there was no mutual confidence over and above the usual confidence between an investor and investment manager. There was no agreement or understanding that Mr Lau would significantly participate in the conduct or oversight of the business of the Company. In Mr Smith's blunt but justifiable expression "All Mr Lau brought to the party was money". There was no undue restriction of the transfer of Mr Lau's interest in the Company. Mr Lau can in *Ebrahimi* terms "take out his stake and go elsewhere."

106. I would not describe the relationship between Mr Lau and Mr Liang as a close personal relationship or as a "quasi-partnership". Despite casual phrases in the messages between Mr Lau and Mr Liang and wedding ceremony invites and attendance at dinner it was plain that the foundation and core of their relationship was strictly business. The General Terms were not indicative of a personal relationship or something equating to the quasi-partnership cases. Mr Lau, although a very significant investor and by far the largest, was not the only investor. First names terms or informal personal references do not amount to a relationship tantamount to a quasi-partnership. Moreover the involvement of Ms Lau and Ms Liang does not transform the relationship between Mr Lau and Mr Liang to one tantamount to a quasi-partnership no matter how hard Mr Said may attempt to persuade me otherwise and neither does Mr Liang's meetings with other members of Mr Lau's family. The fact that Mr Lau and Mr Liang introduced their wives to one another is not indicative of a quasi-partnership relationship. It is a common feature of many business relationships. I do not accept that the business and personal lives of Mr Lau and Mr Liang were "interwoven" as suggested by Mr Said on Mr Lau's behalf. Moreover I do not think Mr Lau's personal congratulations to Mr Liang on the birth of his son assists Mr Said in his attempts to portray the relationship as a close personal relationship and neither does the

fact that Mr Liang obtained some information about Mr Lau's family wealth. Furthermore the bonus payments were a commercial business matter and there is nothing in Mr Lau's consolidation and mutual directorship points that lead me to conclude that the relationship was tantamount to a quasi-partnership. I agree with Mr Smith when he says that mutual benefit, trust and polite communications are basic aspects of modern business relationships. None of these, whether alone or together, are sufficient to persuade me that the business relationship between Mr Lau and Mr Liang amounted to a quasi-partnership.

107. Frankly, I do not think that Mr Lau had any real interest in the overall management of the Company. I note the evidence in respect of Mr Lau's request for meetings to discuss investment strategy and Mr Lau imparting information in respect of the policies of the PRC and comments on certain specific investments but this goes nowhere near evidencing serious involvement in the management or oversight of the Company. Frankly I gained the impression that Mr Lau was just "playing at it" when it suited him and was not in a position to make any real significant contribution to the management or oversight of the Company. Being named as a director may have offered him some status and the perception of some credibility within his family but it was apparent that Mr Lau had very little appreciation of the duties of directors.

108. Of course there was some "trust" between Mr Lau and Mr Liang. Mr Liang "trusted" Mr Lau to come up with the money to invest and Mr Lau "trusted" Mr Liang to make a significant financial return for his family.

109. I have gained the impression that Mr Liang saw in Mr Lau a wonderful opportunity to secure significant funds to manage. I have also gained the impression that Mr Lau saw in Mr Liang a successful investment manager who could make his family a lot of money and

increase his reputation within his family. There can be no doubt that Mr Lau's family invested hundreds of millions of US dollars into the Company and that, in return, Mr Liang produced a lot of money for them. For example Mr Liang generated a US$380 million profit for the Fund in 2021. Mr Liang also made a lot of money for himself along the way.

110. Commissioner Jonathan Sumption sitting as a judge on the Channel Island of Jersey, in *Syvret v Chief Minister and Others* [2011] JLR 343 at paragraph 38 stated: "… official entertaining does not bring together companies of choice. Such entertaining is simply part of the courtesies of office on both sides." In a similar way, I am sure, that the "social engagements" of Mr Lau and Mr Liang had their foundations in business rather than in personal choice. Without Mr Liang's desire for money to invest and without Mr Lau's desire to obtain a good financial return for his family, their paths would not have crossed, or if they did they would not have continued to walk the same path together for more than one brief moment. They lived in different worlds. Without the business of money being on the agenda they would have had no time for each other and would not have walked the same path together. I accept that the dividing line in Hong Kong and the PRC between business and pleasure may not be as distinct as it is in other parts of the world but I am convinced that it would be wrong to describe the relationship between Mr Lau and Mr Liang as tantamount to a quasi-partnership. Mr Lau was an investor. Mr Liang was an investment manager. The commercial relationship, at its core, was as simple as that. I agree with Mr Smith that "This was a pure investor-manager relationship."

Alleged Common Understanding and Promise

111. I do not accept that there was a Common Understanding and Promise precisely in the lawyers' terms pleaded on behalf of Mr Liang. There is no contemporaneous evidence or corroboration to support Mr Liang's pleaded case in this respect. The Common Understanding and Promise may have reflected Mr Liang's perception and the reality on the ground but there is no evidence that Mr Lau signed up to the Common Understanding or the Promise. Moreover, I found parts of Mr Liang's version as to what transpired at the 15 July 2021 meeting mere "wishful thinking". I find on the evidence that Mr Lau did not give his informed consent to the alleged Unauthorised Scheme or the alleged Late Trade Allocations. I do however also find on the evidence that Mr Lau was not overly concerned as to the mechanisms or amount of the payment of the bonuses as long as there was a healthy financial return for his family from their significant investments. If matters had otherwise progressed smoothly, I doubt that Mr Lau would have had any issues in respect of the trades he now complains of. In the grand scale of this matter they were relatively insignificant, but Mr Lau has blown them out of all reasonable proportion in his attempt to obtain a winding up order.

Alleged Lack of Probity and Loss of Confidence

Unauthorised Scheme

112. In respect of the Unauthorised Scheme I am not persuaded on the evidence and arguments presented that Mr Liang has "attempted to secretly strip approximately US$19,997,219.62 for his own benefit from the Company" (paragraph 11 (a) i. of the petition). In any event

any loss suffered would be a loss of the Manager not the Company. Mr Lau accepted that the Company itself was not entitled to any part of the performance fees or the management fees. Mr Lau also accepted that the Company was always liable to pay the full amount of the management and performance fees to the Manager.

113. Mr Lau's complaints about lack of notice of a directors' meeting ring somewhat hollow in the circumstances of this case. The evidence indicates that this is not how the Company worked. I do not find any dishonesty whatsoever in Mr Liang's production of the board minutes. He was simply using a pro forma, which had been used by others many times before, which recorded that "requisite notice" had been given when it had not been. This was entirely consistent with how the Company had previously been run, with Mr Lau's blessing or at least lack of objection. I was however concerned to note that having taken the trouble to take legal advice in respect of the meeting Mr Liang appears not to have followed it. Mr Liang was conscious that with 3 directors he did not require Mr Lau's vote. Mr Lau had not played an active role as a director. Mr Liang raised the majority vote point in his email dated 10 August 2021 to Ogier. Ogier responded promptly on 11 August 2021 confirming in effect that a majority vote was sufficient but they also stated that if all directors were not agreeable then an actual meeting must be called with due notice. Mr Liang acknowledges receiving the legal advice but thought there must be a reason as to why Ms Kong never gave notice in the past "good or bad, I just didn't take it as serious … It might seem questionable corporate governance, but this is the practice. We never had any issue, so I didn't think this is necessary … I definitely failed to appreciate the seriousness of this procedure phase and I do accept that on corporate governance perspective, it might look a bit imperfect." The failure to give notice was not ideal but I

have not been persuaded to grant a winding up order on this ground alone or taken together with the other grounds Mr Lau relies upon.

114. It is common ground that Mr Liang produced board minutes dated 11 August and 16 November 2021 and the business was conducted without providing prior notice to Mr Lau, who was a director at the material times. The failure to give notice was not the correct way to proceed but was entirely consistent with the previous way in which directors' "meetings" had been conducted in the past with, I find, Mr Lau's knowledge and acquiescence or at least lack of objection. The failure to give notice was wrong but it was not dishonest. It is wrong to refer to the minutes produced as "forged". Any procedural irregularity was, in any event, capable of being ratified by Mr Liang as the holder of the management shares in the Company. I find that Mr Liang genuinely believed that the amendments reflected what he understood was justified and proceeded in the way he did because he did not think, based on previous practice, that the giving of notice was necessary and he wished to avoid any unnecessary confrontations or further disagreements with Mr Lau.

115. I accept that it is clear from the WeChat messages on 30 April 2021 that Mrs Lau wanted to follow the "normal procedure" in respect of the fees but was also keen to get the redemptions. Mr Liang was also keen to obtain any legitimate tax savings. The exchanges finished by Mr Liang saying he would "think of another solution" but the redemptions could "still go on as planned." I believe Mr Liang in part when he says that the amendments were effected in order (a) for Mr Liang to obtain tax savings in respect of his bonus distribution and (b) to preserve the liquidity of the Fund. They were also effected by Mr Liang in an attempt to prevent Mr Lau trying to delay the payment of the bonus in future years until Mr Lau's requests for early redemption were satisfied. Mr Liang wanted to remove any areas of unnecessary and distracting conflict with Mr Lau.

116. Furthermore I find that the Company has not suffered any detriment as a result of the amendments. The Manager can pursue any remedies it believes it is entitled to against Mr Liang if these cannot be settled by agreement. I find, on the evidence, that the Manager was aware of Performance Allocation Shares issue. Mr Liang did not deliberately hide it from the Manager. For example, on 2 April 2021 Mr Liang sent a WeChat message to Ms Kong asking her to discuss with "fund admin" whether the crystalised performance fees can be paid "directly to Liang Hao and converted into fund shares. Because Liang Hao owns 100% of the fund's management shares, it should be okay to do so." Ms Kong sent an email to Apex on 3 May 2021 subject: Performance Fee Queries "Could Hao LIANG subscribe the shares with the accrued performance fee … we just wonder if he can directly subscribe the fund with the accrued performance fee in the year end". On 2 May 2021 Ms Kong had sent an email to Apex stating: "The amount depends on the total performance fee accrued at the year end. For example, if the Dec 2021 NAV is confirmed, the total performance fee is USD 50mn, then we would like to subscribe the Seahawk Fund with USD 50mn by Hao Liang. It means the Manager would not receive any fee income from the Fund." Ms Kong said that she mentioned to Mr Lau towards the end of July 2021, Mr Liang's intention to change the mechanism for the payment of performance fees. Moreover Ms Kong admitted to introducing the concept of Performance Allocation Shares to Mr Liang in 2019 in the context of the economic substance requirements in the Cayman Islands.

117. There was no improper attempt at the "secret stripping" of nearly US$20 million. Mr Liang's actions in respect of the Performance Allocation Shares were not dishonest or seriously lacking in probity in the overall context of the relationship between Mr Lau and himself and in all the circumstances of this case. Mr Lau accepted that Mr Liang, as the

holder of all the voting shares of the Company, was entitled to pass a resolution creating a new class of Performance Allocation Shares. Mr Lau also inevitably accepted that Mr Liang was entitled on Mr Lau's own case to a bonus of approximately US$50 million in performance fees, way in excess of the US$20 million which Mr Lau has accused him of dishonestly attempting to "secretly strip" out of the Company. I find that there was no dishonesty or "secret stripping" out of assets.

Late Trade Allocations

118. In respect of the Late Trade Allocations or "rat" trades I accept the expert evidence that such are against the regulatory guidance in Hong Kong but even if these trades could be properly categorised as late or "rat" trades it would not be sufficient to justify a winding up order in the grand scale of the overall context. I do not belittle the importance of complying with the law and regulatory guidance but the allegations in this case need to be considered in their proper context and they are insufficient to justify taking the draconian step of placing this solvent company into liquidation. Moreover the late or "rat" trades have been referred to the appropriate regulatory body in Hong Kong for investigation and if anyone genuinely believes that they have suffered a loss then legal action may be pursued in respect of any wrongdoing. I am not persuaded that Mr Liang acted dishonestly (in the *Ivey v Genting Casinos (UK) Ltd*) [2018] AC 391 at paragraph 74 sense) in respect of the Late Trade Allocations.

119. I accept that Mr Liang and others have acknowledged that the Late Trade Allocations were not the proper way to proceed. For example Ms Lee in a WeChat on 7 July 2021 suggested

that these allocations should stop when a new employee was due to start as "I don't know how to explain it."

120. In a useful document entitled "Note on 32 Alleged Late Trade Allocations" Mr Liang has helpfully provided his detailed comments in respect of the trades. Mr Said in his closing submissions focused on trades 26 and 27 and Mr Liang's comments:

> "Seahawk Fund sustained a loss of US$1.9 million from Trades 26 and 27 combined. As detailed in my Affidavit, the funds would split the loss on a pro rata basis. Accordingly, Hover4pi Funds would bear approximately US$180,000 loss from this trade."

121. Mr Said submitted that the loss suffered by the Company was therefore admitted by Mr Liang at US$1.9 million in respect of these trades. Mr Smith refers to Mr Liang's evidence which he says was not seriously challenged on this point to the effect that Hover4pi Funds should have had the loss of US$180,000 allocated to them so the figure of loss to the Company is just US$180,000 and not US$1.9 million. Moreover all the trades were entered into because they were believed to be good profitable trades. There was no dishonesty but it is accepted that there were some regulatory breaches of the code of conduct namely best execution practice. I accept Mr Smith's submission that they fall "way short of the sort of conduct that might justify winding-up of an investment fund."

122. I do not find that in making the Late Trade Allocations, Mr Liang intended to improperly favour (a) the interests of the Hover4pi Funds; and/or (b) his own and his wife's interests to the detriment of the interests of the Fund. I accept that the trades made by the Manager

were placed in the expectation of generating profit over the term of the holding of the trade. I find that the serious allegations pleaded at paragraph 11 (a) ii of Mr Lau's petition namely that through the Late Trade Allocations Mr Liang "has orchestrated a deliberate and cynical system to siphon moneys to the Hover4pi Funds (controlled by him and his wife) while simultaneously causing significant losses to the Company. In doing so he deliberately preferred the interests of the Hover4pi Funds, and ultimately himself, and has deliberately caused the Fund to suffer losses of approximately USD 8,073,918.07" not proved. During his closing submissions I asked Mr Said if there was evidence before the court as to what loss the Fund had suffered in respect of the trades as at the date of the hearing. Mr Said responded in the negative and stressed that the loss of confidence of Mr Lau was based on the grounds of dishonesty or lack of probity in respect of Mr Liang's conduct.

123. I find that Mr Liang genuinely believed that Mr Lau would have no objection to Mr Liang's attempts to help Mr Liang's wife out in respect of Hover4pi Funds. Applying the objective standards of ordinary decent people I find no dishonesty. Certainly Mr Liang's activities in this respect do not justify making a winding up order in respect of the Company. I do not, however, accept that there was any positive fully informed agreement from Mr Lau in respect of the trades and in my judgment Mr Laing's evidence in respect of the 15 July 2021 meeting on this point is simply wishful thinking. Mr Liang may have mentioned the issue in very general terms but there was no positive fully informed agreement from Mr Lau to the trades.

124. I find that the plan to make up the loss was, however, known about in the office of the Manager. Mr Wang referred to the strategy in his evidence. Ms Lee also had responsibility of settling the trades and Ms Kong as COO was ultimately responsible. The brokers sent queries in relation to the settlement of trades to an email address to which Ms Kong and

Ms Lee had access. Mr Liang did not try to dishonestly hide any of the trades. They were conducted openly in the office of the Manager. I find that Mr Liang's subjectively held genuine belief was that Mr Lau would not object to the strategy. In his own mind it would appear that he had genuinely convinced himself that Mr Lau had agreed to the strategy or at the very least would not object to it. I agree with Mr Smith that in the context of this case and given the vast sums Mr and Ms Liang had generated for Mr Lau and his family this was a genuine and reasonable belief. Viewed objectively Mr Liang's conduct could not properly be regarded as dishonest, in the particular circumstances of this case.

125. I am also persuaded that the "investigation" undertaken by Ms Kong was not an independently, fairly, competently and comprehensively undertaken investigation. Again there is much to be said for the submission that she had an axe to grind. She wanted to encourage Mr Lau to develop a business relationship with her husband and to use his fund. It was in her best interests and the best interests of her husband to "rubbish" Mr Liang and find fault. Her "investigation" was not a professionally undertaken investigation. She did not even ask Mr Liang for an explanation of his position. I accept the submission of Mr Lowe on behalf of certain minority shareholders that: "There was no sense of proportion to the criticisms of Mr Liang." The partisan "investigation" was in effect akin to a witch hunt with a foregone conclusion in mind, on the basis of "I must find serious wrongdoing against Mr Liang as that will be to my benefit." I do not believe that the work of the JPLs on this issue salvages the difficulties created by Ms Kong's flawed and tainted investigation. Mr Smith referred the court to a 6 page letter from Harneys to the JPLs dated 8 June 2022 in which various concerns are raised by Mr Liang in respect of this issue. I also take into account the persuasive criticisms raised under the heading "The analysis is inherently flawed" at paragraphs 153 to 164 of Mr Liang's closing written submissions.

126. I do not find that the Late Trade Allocations were dishonest or significantly lacking in probity in the circumstances of this case.

127. Mr Lau's exaggerated pleaded allegations are in respect of "dishonest breaches of Mr Liang's fiduciary duty as a director of the Company to avoid placing himself in a conflict of interests and to not make a personal profit at the expense of the Company" (paragraph 38 of the petition) and that "Mr Liang acted dishonestly: (a) Mr Liang consciously and deliberately placed himself in a conflict of interest by making the Late Trade Allocations and by favouring the interests of Hover4pi, and ultimately himself and his wife, by allocating the Profit-Making Allocated Trades to Hover4pi and the Loss-Making Trades to the Company." (paragraph 39 (a) of the petition). I have found no dishonesty on the part of Mr Liang. As I think the draftsman of the petition realised any honest breaches of fiduciary duties in the circumstances of this case would not have been sufficient to justify the court taking the drastic step of winding up this solvent company. This may also in part go some way to explaining why Mr Lau has grossly overstated his case from its very inception.

128. Of course I do not condone any breaches of fiduciary duty or any failures to follow regulatory guidance but these allegations must be viewed in the wider context of the relationship between Mr Liang and Mr Lau. I do not say that wrongful conduct is justifiable so long as no loss arises or that wrongful conduct is justifiable as long as a good return is provided. One must however consider the allegations that are made in this case in the context of the draconian remedy that is sought which would impact not just Mr Liang but the Company and other investors.

129. Is it proportionate to wind up the Company because Mr Liang made errors in failing to notify Mr Lau in advance of two board decisions which resulted in changes to the structure for bonus payments which favoured Mr Liang and went beyond the General Terms (the Unauthorised Scheme) and in trying to recover the Hover4ipi losses (the Late Trade Allocations)? Should a winding up order be made on the basis of the pleaded allegations? My answer to those questions is plainly in the negative. I do not condone the errors made by Mr Liang but I do not find that they were dishonest or significantly lacking in probity such that a winding up order is appropriate. I am driven to the conclusion that there has not been a justifiable loss of confidence in the management of the Company, due to the matters pleaded.

130. The overall impression I get is that Mr Lau has used the Unauthorised Scheme and the Late Trade Allocations to reverse engineer his wish to terminate his relationship with Mr Liang with "extreme prejudice" in *Apocalypse Now* terms. In my judgment there is a lot to say for the submission that Mr Lau had decided to terminate his relationship with Mr Liang well before what he describes as the Unauthorised Scheme and Late Trade Allocations came to his attention. It appears that he has focused on them and made exaggerated claims of dishonesty and serious lack of probity as a way of justifying the termination of his relationship with Mr Liang with extreme prejudice. It is difficult to identify the true reason which prompted the fallout. The fallout on the evidence presented to the court appears to have started when there was a misunderstanding on the part of Mr and Mrs Lau in respect of the calculation of the amount of Mr Liang's 2020 bonus. Mr Lau himself accepted during cross-examination that it was from February 2021 that his relationship with Mr Liang deteriorated. It appeared to be common ground that on 3 March 2021 Mr Lau (in the presence of Mrs Lau) had spoken "very harshly" to Mr Liang repeatedly accusing Mr

Liang of "crossing the line", insisting that he be permitted to redeem his money in one go, in order to "give [Mr Liang] a lesson" so that Mr Liang would "remember the pain". There may have been issues in respect of the translation of these terms but the message was clear. The relationship between Mr Lau and Mr Liang had, for some reason, deteriorated and Mr Lau, in effect, wanted Mr Liang to remember not to cross him. I do not accept Mr Said's submission that subsequent communications between Mr Lau and Mr Liang (including Mr Lau congratulating Mr Laing on the birth of his son) show that the good relations between Mr Lau and Mr Liang were fully restored before the matters complained of in the petition took place. I do not accept that Mr Lau justifiably lost confidence in Mr Liang due to the Unauthorised Scheme or the Late Trade Allocations as pleaded, which appear to have come to Mr Lau's attention in November 2021.

Removal of Mr Lau as a director

131. I do not find that Mr Liang's removal of Mr Lau from the board of the Company shows a serious lack of probity by Mr Liang. There has been no justifiable loss of confidence in the management of the Company on that basis either.

132. Mr Lau did not have a legitimate expectation of participating in the management of the Company as a director while he was a member. Indeed I go further, on the evidence I am satisfied that Mr Lau had no real interest in participating in the management of the Company at any meaningful level and was not in any event in a position to make a significant contribution to the management of the Company. He lacked the necessary skills, experience, and willingness to do so.

133. I have considered the expert evidence on whether or not Mr Lau needed to be licensed in Hong Kong to participate in the management of the Company but, in light of my findings above, do not need to make any determinations in that respect. I have concluded that whether or not he needed regulatory approval, Mr Lau had no legitimate expectation of participating in the management of the Company at any level.

Alleged Oppression

134. I am not satisfied that Mr Liang's conduct can properly be categorised as oppressive in so far as Mr Lau is concerned. When he became an investor Mr Lau should have been aware that Mr Liang held all of the management shares and that the participating shares enjoyed no voting rights. Mr Lau has the right to submit redemption requests on the terms provided for in the Company's constitutional documents. Mr Lau is not being forced to remain a member of the Company. There is an agreed, fair and reasonable route for his exit, namely the redemption route.

Alleged Need for an Investigation

135. I assume for present purposes at first instance that in Cayman law a need for an investigation into the affairs of the company is a self-standing ground for a winding up order to be made on the application by a contributory in respect of a solvent company. I have concluded, however, that in the particular circumstances of this case there is no need for any further investigations into the affairs of the Company which would justify this court taking the drastic step of making a winding up order and in effect killing the Company, just

for the purpose of another investigation into its affairs. Another investigation is simply not necessary.

136. Various issues in respect of the affairs of the Company have been investigated by the JPLs since their appointment on 10 February 2022 and two reports have been prepared and made available to the parties. The matter has been referred to the regulators who may conduct whatever investigations they see fit. The issues of which pleaded complaint has been made have been "investigated" during the course of these proceedings and in my judgment there are no issues which require further investigations which would justify a winding up order being made to enable JOLs to conduct further investigations.

Alternative remedies

137. Mr Lau has not demonstrated that he is entitled to some relief. Even if he had it would not be just and equitable to wind the company up. There is a reasonable alternative remedy available. Mr Liang has demonstrated that the redemption of Mr Lau's shareholding in the Company, pursuant to the terms of his investment and subject to compliance with the Company's constitutional documents, is a reasonable alternative to a winding up order.

138. Furthermore, Mr Lau has acted unreasonably in not pursuing a redemption of his shareholding in accordance with the terms of his investment and the terms of the Company's constitutional documents, as an alternative remedy to killing the Company and adversely impacting the reputation of Mr Liang by unreasonably insisting on a winding up order and an official liquidation.

139. Mr Liang has also demonstrated that in addition to unreasonably failing to pursue his redemption remedy Mr Lau has also unreasonably failed to limit his relief by way of progressing a complaint to the Securities and Futures Commission in Hong Kong and legal proceedings through the Hong Kong courts but instead has unreasonably insisted on a winding up order being made in addition to the progression of other legal proceedings and regulatory referrals. In my judgment these alternative remedies would be adequate remedies for Mr Lau and there is no justification for his request that this court presses the winding up order nuclear weapon button and destroy the Company. Mr Lau can exit the Company on agreed terms and the Company can continue in existence to the benefit of the other investors who do not want it liquidated.

140. I have concluded that Mr Lau has alternative remedies. He can exit the Company. He can redeem his shares in accordance with the agreement he entered into. The Company is currently liquid holding approximately US$224 million in cash as at 9 June 2022. Mr Lau should be able to redeem his remaining entire investment within a relatively short time frame following the agreed procedure. The complaints in respect of the so called Unauthorised Scheme and the Late Trade Allocations can be pursued against Mr Liang by way of litigation and regulatory referrals in Hong Kong and, if on advice it is considered appropriate, derivative actions can be commenced if need be. I hope, however, that the parties will see sense and settle matters amongst themselves to avoid further costly and time consuming destructive litigation.

141. I note the wise guidance of the Court of Appeal in *Tianrui* (in the context of an appeal against an order striking out a winding up petition) especially at paragraph 37 but in my judgment in the circumstances of the case presently before me, having heard evidence and legal argument over a number of days, there is no merit in the winding up petition and I

have not been persuaded that it is just and equitable to wind the Company up. Even if I had been satisfied that there was some merit in the petition and Mr Lau was entitled to some relief I would not have granted a winding up order as in my judgment Mr Lau has, for the brief reasons stated in this judgment, unreasonably failed to pursue his alternative remedies.

Concluding remarks

142. Now that the relationship between Mr Lau and Mr Liang has changed and sadly significantly deteriorated I am sure that Mr Liang will have learnt from this unfortunate experience and will take care in the future to observe to the letter all necessary legal formalities (for example notice of directors' meetings) and follow all applicable regulatory guidance (for example avoiding late trade allocations).

143. If he is to continue to have a successful career in the future Mr Liang must take great care to ensure that corporate governance requirements and regulatory guidance are properly followed.

144. In respect of the way forward it may be desirable if Mr Liang can do all he properly can to facilitate Mr Lau's early exit from the Company. If Mr Liang unreasonably obstructs Mr Lau's early exit from the Company he may find himself on the receiving end of another winding up petition which would be another great distraction with a lot more time and money being thrown at the lawyers. Mr Lau and Mr Liang should focus on moving forward in their own separate ways. I leave the parties to deal with the Hong Kong proceedings as they see fit but express the wish that they consider settling them through mediation if possible. It is in the best interests of both Mr Lau, Mr Liang, the Company and the Manager

that the parties put their differences behind them and move forward in their own separate ways. More or continuing litigation is not the answer.

Ancillaries

145. Counsel should provide the court with a draft order (agreed as to form and content) reflecting my dismissal of the petition for my approval within 5 days of the delivery of this judgment. Any ancillary applications (such as costs) should be filed within 14 days of the delivery of this judgment with concise (no more than 5 pages) skeleton arguments in support and any concise skeleton arguments in reply within 14 days thereafter. I intend to decide any ancillary issues on paper rather than requiring a further hearing. I am grateful to the attorneys and their respective teams for their assistance to the court.

THE HON. JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT