

9. COMPANY LAW¹

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I. Corporate veil

9.1 Three cases decided, one by the Court of Appeal² and two by the General Division of the High Court (“General Division”),³ in the year under review raised veil piercing issues – specifically under the alter ego ground. The leading case for this veil piercing variety is the Court of Appeal judgment in *Alwie Handoyo v Tjong Very Sumito*⁴ (“*Alwie Handoyo*”). In *Nicholas Eng Teng Cheng v Government of the City of Buenos Aires*⁵ (“*Nicholas Eng*”), the question facing the Court of Appeal was whether a sole-director-shareholder of an undercapitalised company could be held personally liable for the company’s breach of contract in failing to supply Covid-19 test kits and the company’s refusal to refund the purchaser.⁶ As both parties agreed that the alter ego ground was applicable in the case,⁷ the Court of Appeal declined to “take a firm view” on the UK

1 The authors thank Bryan Ong Wen Wu and Fabien Tan Wei Quan for research assistance, and Samantha Tang for helpful comments.

2 *Nicholas Eng Teng Cheng v Government of the City of Buenos Aires* [2024] 1 SLR 608.

3 *Peck Wee Boon Patrick v Lim Poh Goon* [2024] 5 SLR 1234; *Wong Ben v The WatchFund Ltd* [2024] SGHC 110.

4 [2013] 4 SLR 308.

5 [2024] 1 SLR 608.

6 *Nicholas Eng Teng Cheng v Government of the City of Buenos Aires* [2024] 1 SLR 608 at [46]–[50].

7 *Nicholas Eng Teng Cheng v Government of the City of Buenos Aires* [2024] 1 SLR 608 at [45].

Supreme Court's holding in *Prest v Petrodel*⁸ that veil piercing in English law is limited to the so-called "evasion principle".⁹

9.2 While affirming that insulation from liability was a legitimate reason for incorporation and will not by itself justify veil piercing,¹⁰ the Court of Appeal confirmed that the alter ego test in Singapore veil piercing doctrine is the *Alwie Handoyo* formulation of whether "the company was carrying on the business of its controller".¹¹ In concluding that the alter ego ground was not established on the facts, the court highlighted the following: the company was created three and a half years before – and not for the purpose of – the contract at issue; the company's business activities were not limited to the contract at issue; and the defendant shareholder-director did not divert payments from the company to himself.¹²

9.3 The second alter ego case is *Peck Wee Boon Patrick v Lim Poh Goon*,¹³ which was decided before the Court of Appeal handed down judgment in *Nicholas Eng*.¹⁴ This was a case where the alter ego doctrine was invoked not as a legal basis to impose personal liability on the controller of the company for the debts of the company but rather to establish a material fact relevant for a cause of action in misrepresentation. Here, the claimants were parties to an investment agreement with the defendants, which were two brothers and two entities

8 [2013] 2 AC 415.

9 *Nicholas Eng Teng Cheng v Government of the City of Buenos Aires* [2024] 1 SLR 608 at [45]–[46]. *Prest v Petrodel* [2013] 2 AC 415 ("*Prest v Petrodel*") at [35] (*per* Lord Sumption JSC): "I conclude that there is a limited principle of English law which applies when a person is under an existing legal obligation or liability or subject to an existing legal restriction which he deliberately evades or whose enforcement he deliberately frustrates by interposing a company under his control. The court may then pierce the corporate veil for the purpose, and only for the purpose, of depriving the company or its controller of the advantage that they would otherwise have obtained by the company's separate legal personality"; and at [81] (*per* Lord Neuberger PSC, agreeing with Lord Sumption). Other justices, however, expressed doubts that veil piercing should be definitively limited to evasion: see *Prest v Petrodel* at [100]–[102] (*per* Lord Mance JSC) and [103] (*per* Lord Clarke JSC). See also *Prest v Petrodel* at [92] (*per* Baroness Hale JSC) (doubting whether all cases can be classified binarily into concealment or evasion).

10 *Nicholas Eng Teng Cheng v Government of the City of Buenos Aires* [2024] 1 SLR 608 at [47].

11 *Nicholas Eng Teng Cheng v Government of the City of Buenos Aires* [2024] 1 SLR 608 at [46].

12 *Nicholas Eng Teng Cheng v Government of the City of Buenos Aires* [2024] 1 SLR 608 at [47]–[48]. The vexed if underexamined issue of which law should govern the issue of veil piercing surfaced in *Nicholas Eng Teng Cheng v Government of the City of Buenos Aires* [2024] 1 SLR 608, but this will not be examined in this Review.

13 [2024] 5 SLR 1234.

14 15 February 2024 and 15 May 2024, respectively.

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they controlled (the contractor and the developer). The claimants alleged that the company secretary and largest shareholder of the contractor entity at the time of contract made a fraudulent misrepresentation as to his control over that company when it was the secretary's brother who was the sole director. Tan Siong Thye SJ remarked that the defendant company secretary-shareholder's conduct paralleled the main defendant's in *Alwie Handoyo*: the defendant "appeared to make no distinction between himself and [the company] in his dealings with external parties", "at all times, was in control of [the company]", and appeared "to have been in control of [the company]'s bank accounts".¹⁵ The court accordingly found him to be the alter ego of the contractor entity.¹⁶ The fraudulent misrepresentation claim accordingly failed.¹⁷

9.4 *Wong Ben v The WatchFund Ltd*¹⁸ was also shortly decided before *Nicholas Eng*.¹⁹ Accepting *Alwie Handoyo* as good authority on the alter ego ground in veil piercing,²⁰ the General Division found no evidence that the defendant individual and sole shareholder of the company "saw himself as *personally entitled*" [emphasis in original] to receive money paid to the company.²¹ The court also held that the fact that the individual controller transferred company funds into his personal accounts when the bank, at its own initiative, closed the company's accounts, constituted a "practical need" and therefore insufficient to meet the "high" threshold for lifting the veil.²²

9.5 The common thread across this line of cases is that in veil piercing on the alter ego ground, whether the controller has access to the company's funds and uses them for the controller's personal interests is a factor accorded significant, although not necessarily decisive, weight.²³ Another relevant factor is whether the company was incorporated

15 *Peck Wee Boon Patrick v Lim Poh Goon* [2024] 5 SLR 1234 at [112].

16 *Peck Wee Boon Patrick v Lim Poh Goon* [2024] 5 SLR 1234 at [112]. Conversely, the court did not find this defendant to have been in control of the other (developer) entity: *Peck Wee Boon Patrick v Lim Poh Goon* [2024] 5 SLR 1234 at [116].

17 *Peck Wee Boon Patrick v Lim Poh Goon* [2024] 5 SLR 1234 at [200(b)]. All other claims were also dismissed: *Peck Wee Boon Patrick v Lim Poh Goon* [2024] 5 SLR 1234 at [200]–[201]. The plaintiffs' appeal to the Appellate Division of the High Court was later dismissed with no written grounds: *Peck Wee Boon Patrick v Lim Poh Goon* [2024] 5 SLR 1234 at 1243.

18 [2024] SGHC 110.

19 *Wong Ben v The WatchFund Ltd* [2024] SGHC 110 was decided on 30 April 2024 and *Nicholas Eng Teng Cheng v Government of the City of Buenos Aires* [2024] 1 SLR 608 was decided on 15 May 2024.

20 *Wong Ben v The WatchFund Ltd* [2024] SGHC 110 at [152]–[155].

21 *Wong Ben v The WatchFund Ltd* [2024] SGHC 110 at [169].

22 *Wong Ben v The WatchFund Ltd* [2024] SGHC 110 at [171]–[172].

23 See *Nicholas Eng Teng Cheng v Government of the City of Buenos Aires* [2024] 1 SLR 608 at [47]; and *Wong Ben v The WatchFund Ltd* [2024] SGHC 110 at [171]–[172].

specifically for the disputed transaction. In *Alwie Handoyo*, the company was incorporated by the controller “for the sole purpose of receiving payment”²⁴ under the disputed contract. In *Nicholas Eng*, by contrast, the company’s formation took place several years before the relevant transaction, and the company also conducted other business activities.²⁵ These are evidential indicators only and they do not lower the threshold.

9.6 That conservative stance accords with the trajectory traced in past issues of the *Singapore Academy of Law Annual Review of Singapore Cases*, which emphasise both the exceptional nature of veil piercing and the preference for avoiding veil piercing absent demonstrable abuse.²⁶ In *Nicholas Eng and Wong Ben v The WatchFund Ltd*,²⁷ that standard was not met.²⁸ By contrast, the observations in *Peck Wee Boon Patrick v Lim Poh Goon*²⁹ indicated conduct approaching the line drawn in *Alwie Handoyo*, although the veil was not pierced on the facts as the alter ego analysis was used to establish a fact (*ie*, control by an individual over a company) for the purposes of misrepresentation rather than to impose personal liability outright.³⁰

II. Reflective loss

9.7 In *Khan Aisanullah v Rajib Kumar Dhali*,³¹ the claimant is a foreign national who purchased and became the sole shareholder of a Singapore-incorporated company. The claimant and the Singapore-resident defendant were appointed directors of the company, but the claimant was to be the sole signatory of the company’s bank account per an oral agreement between the claimant and the defendant. The defendant later filed documents with the Accounting and Corporate Regulatory Authority indicating, without factual basis, that the claimant had resigned;³² deprived the claimant of access to the company’s bank

24 *Alwie Handoyo v Tjong Very Sumito* [2013] 4 SLR 308 at [97].

25 *Nicholas Eng Teng Cheng v Government of the City of Buenos Aires* [2024] 1 SLR 608 at [47].

26 Alan K Koh, Dan W Puchniak & Tan Cheng Han SC, “Company Law” (2023) 24 SAL Ann Rev 198 at 198–199; Alan K Koh, Dan W Puchniak & Tan Cheng Han SC, “Company Law” (2021) 22 SAL Ann Rev 203 at 203–205; Dan W Puchniak, Tan Cheng Han SC & Samanatha S Tang, “Company Law” (2018) 19 SAL Ann Rev 227 at 227–229.

27 [2024] SGHC 110.

28 *Nicholas Eng Teng Cheng v Government of the City of Buenos Aires* [2024] 1 SLR 608 at [46]–[49]; *Wong Ben v The WatchFund Ltd* [2024] SGHC 110 at [171]–[172].

29 [2024] 5 SLR 1234.

30 *Peck Wee Boon Patrick v Lim Poh Goon* [2024] 5 SLR 1234 at [109]–[113] and [116].

31 [2024] SGHC 313.

32 *Khan Aisanullah v Rajib Kumar Dhali* [2024] SGHC 313 at [9].

account while placing the account under his own control;³³ transferred all of the claimant's shares to himself without consideration and without the claimant's consent;³⁴ and applied to have the company struck off.³⁵ About US\$400,000 were withdrawn from the company's bank accounts,³⁶ and the claimant alleged that the company lost various contracts and expected profits.³⁷ Suing the defendant directly for breach of oral agreement and fiduciary duties, the claimant claimed, among other things, "loss and damage *by way of diminution of the share value of his 100% shareholding in the Company*" [emphasis in original].³⁸ Despite the defendant not raising it as a defence, Chan Seng Onn SJ called on the parties to make submissions on the reflective loss principle.³⁹

9.8 Invoking *Miao Weiguo v Tendcare Medical Group Holdings Pte Ltd*⁴⁰ and *Burnford v Automobile Association Developments Ltd*⁴¹ – an English Court of Appeal case that relied on the majority in *Marex Financial Ltd v Sevilleja*⁴² – the General Division declared that "the shareholder must also have suffered a loss that is separate and distinct from the loss of the company".⁴³ Characterising the claimant's cause of action in contract, which is separate from any claims that the company might have against the defendant, as claiming losses that are "knock-on effects of the Company's loss", the court held that the reflective principle barred all recovery.⁴⁴

33 *Khan Aisanullah v Rajib Kumar Dhali* [2024] SGHC 313 at [10].

34 *Khan Aisanullah v Rajib Kumar Dhali* [2024] SGHC 313 at [11].

35 *Khan Aisanullah v Rajib Kumar Dhali* [2024] SGHC 313 at [13].

36 The evidence did not seem conclusive as to whether it was the defendant who withdrew the sums, and the court declined to make a finding or to draw an adverse inference against the defendant: *Khan Aisanullah v Rajib Kumar Dhali* [2024] SGHC 313 at [32]–[34].

37 *Khan Aisanullah v Rajib Kumar Dhali* [2024] SGHC 313 at [61].

38 *Khan Aisanullah v Rajib Kumar Dhali* [2024] SGHC 313 at [17].

39 *Khan Aisanullah v Rajib Kumar Dhali* [2024] SGHC 313 at [57].

40 [2022] 1 SLR 884, cited in *Khan Aisanullah v Rajib Kumar Dhali* [2024] SGHC 313 at [57]. See also Samantha S Tang & Alan K Koh, "Reflective Loss and Dishonest Assistance" [2022] LMCLQ 363.

41 [2022] EWCA Civ 1943, cited in *Khan Aisanullah v Rajib Kumar Dhali* [2024] SGHC 313 at [62], [64] and [67].

42 [2021] AC 39, cited in *Khan Aisanullah v Rajib Kumar Dhali* [2024] SGHC 313 at [63] and [68].

43 *Khan Aisanullah v Rajib Kumar Dhali* [2024] SGHC 313 at [62].

44 *Khan Aisanullah v Rajib Kumar Dhali* [2024] SGHC 313 at [65].

9.9 The claimant's attempt to invoke the *Giles v Rhind*⁴⁵ exception to reflective loss⁴⁶ was also unsuccessful. The court not only declined to decide on whether the exception was part of Singapore law but further opined that it would not have been applicable in this case. Noting that the limitation period on restoring the company (which was struck off through the defendant's actions) to the register under s 344(5) of the Companies Act⁴⁷ had yet to expire,⁴⁸ the court opined that the "appropriate course of action" was for the claimant to first apply for the company to be restored to the register before arranging for the company to sue the defendant instead.⁴⁹

9.10 Given the above comments in *Khan Aisanullah v Rajib Kumar Dhali*,⁵⁰ the odds for the *Giles v Rhind* exception's survival appear to have grown longer. Despite this, the exception arguably should be retained as it: (a) achieves the policy goal of minority shareholder protection when wrongs would otherwise go unaddressed; and (b) provides a distinct remedy where derivative actions or oppression claims might not yield the same financial remedies directly to the claimant.⁵¹ Whether Singapore's

45 [2003] BCC 79, cited in *Khan Aisanullah v Rajib Kumar Dhali* [2024] SGHC 313 at [58]. See also the discussion of *Giles v Rhind* [2003] BCC 79 in, among other places, Alan K Koh, "Reconstructing the Reflective Loss Principle" (2016) 16 *Journal of Corporate Law Studies* 373 at 377–378.

46 This is stated in the judgment as an exception that "applies where a wrongdoer's actions disabled the company from pursuing its cause of action against the said wrongdoer, on the basis that the Defendant struck out the Company and thereby disabled it from bringing a claim against the Defendant": *Khan Aisanullah v Rajib Kumar Dhali* [2024] SGHC 313 at [58].

47 Cap 50, 2006 Rev Ed.

48 *Khan Aisanullah v Rajib Kumar Dhali* [2024] SGHC 313 at [69].

49 *Khan Aisanullah v Rajib Kumar Dhali* [2024] SGHC 313 at [70]. Where the company is struck off pursuant to an application by the company – as was likely to have been in this case with the defendant acting as the company – under s 344A of the Companies Act, it is still possible to apply to have the company restored under s 344(5): *Re Asia Petan Organisation Pte Ltd* [2018] 3 SLR 435, discussed in Dan W Puchniak, Tan Cheng Han SC & Samantha S Tang, "Company Law" (2017) 18 SAL Ann Rev 247 at para 9.13. Given that the evidence – at least as presented in this case – did not seem to have been enough for the court to make a finding of misappropriation of company funds (*Khan Aisanullah v Rajib Kumar Dhali* [2024] SGHC 313 at [32]–[34]), whether this is realistic is, of course, a separate issue.

50 [2024] SGHC 313. In addition to the *dicta* on the *Giles v Rhind* exception, the General Division of the High Court also followed *Miao Weiguo v Tendcare Medical Group Holdings* [2022] 1 SLR 884 in summarily rejecting the possibility of claiming for reflective loss where double recovery is not a concern: *Khan Aisanullah v Rajib Kumar Dhali* [2024] SGHC 313 at [68].

51 As materially acknowledged even in *Miao Weiguo v Tendcare Medical Group Holdings* [2022] 1 SLR 884 at [194]. The authors thank Bryan Ong Wen Wu for this suggestion.

emerging strict set menu⁵² approach to the use of the corporate form is consistent with the need for shareholder protection against the backdrop of global competition for capital remains an open question.

III. Restoration of struck-off companies

9.11 In *Lye Yew Cheong v Accounting and Corporate Regulatory Authority*⁵³ (“*Re Concept Werk*”), the applicant applied to restore a struck-off company to the register under s 344(5) of the Companies Act 1967⁵⁴ as a necessary step towards commencing proceedings in the General Division against the company for breach of renovation contract.⁵⁵ The company’s then director, who had previously applied successfully to have the company struck off under s 344A of the Act, objected to the applicant’s s 344(5) restoration application as an intervening non-party in the s 344(5) application.⁵⁶ Disputes arising from renovation contracts are a serious consumer law issue in Singapore, with the Consumers Association of Singapore (CASE) reporting having received 962 complaints against renovation contractors in 2024.⁵⁷ As restoring a defunct renovation company to the companies register is a critical first step for aggrieved consumers seeking legal recourse against the renovation contractor, *Re Concept Werk* is of interest not only from a company law perspective, but also from a consumer law perspective in Singapore.

52 *Khan Aisanullah v Rajib Kumar Dhali* [2024] SGHC 313 at [70] (“shareholders cannot enjoy the benefits of the corporate form, including limited liability, without also assuming its disadvantages”), citing *Miao Weiguo v Tendcare Medical Group Holdings* [2022] 1 SLR 884 at [197].

53 [2025] 3 SLR 847.

54 2020 Rev Ed.

55 *Lye Yew Cheong v Accounting and Corporate Regulatory Authority* [2025] 3 SLR 847 at [11]. The applicant had previously commenced proceedings against the company in the Small Claims Tribunals but withdrew those claims with the intention of commencing proceedings in the General Division of the High Court: *Lye Yew Cheong v Accounting and Corporate Regulatory Authority* [2025] 3 SLR 847 at [11].

56 *Lye Yew Cheong v Accounting and Corporate Regulatory Authority* [2025] 3 SLR 847 at [2] and [10].

57 Anjali Raguraman, “Consumers Lost Almost \$2m in Prepayments in 2024; Highest Losses From Home Renovations: Case”, *The Straits Times* (6 February 2025) <<https://www.straitstimes.com/singapore/consumer/consumers-lost-almost-2m-in-prepayments-in-2024-highest-losses-from-home-renovations-case>> (accessed 3 September 2025).

9.12 In *Re Concept Werk*, the General Division confirmed that restoration of a company to the register under s 344(5) of the Act is subject to three requirements:⁵⁸

- (a) the applicant must be an “aggrieved person”;
- (b) the application must be made within six years after the date on which the company was struck off; and
- (c) the court must be satisfied that either (i) the company was, at the time it was initially struck off, “carrying on business or in operation”, or (ii) that restoration of the company to the register is “just”.

9.13 It was also held that the court had discretion over whether to grant restoration even where all requirements were satisfied.⁵⁹ The General Division addressed the first and third requirements in detail.⁶⁰

9.14 On the first requirement (*ie*, whether the applicant is an “aggrieved person”), the High Court previously in *Re Asia Petan Organisation Pte Ltd*⁶¹ held that the applicant must “demonstrate some proprietary or pecuniary interest arising from the company’s restoration”, but that “[s]uch interest need not be firmly established or highly likely to prevail, but it must not be merely shadowy”.⁶² In *Re Concept Werk*, the General Division held that the court “should not heavily scrutinise” the merits of an applicant’s intended claims against the company post-restoration to prevent shutting out claims without trial,⁶³ and emphasised the low threshold involved through an extensive exegesis of the statutory language and relevant Singapore and British cases.⁶⁴ In the context of company creditors applying to restore debtor companies for the purposes of commencing civil suit, the court held that an applicant who “[sought] the restoration of the Company to bring a claim against it which [could not] be said to be hopeless or lacking in ‘real prospects’

58 *Lye Yew Cheong v Accounting and Corporate Regulatory Authority* [2025] 3 SLR 847 at [16].

59 *Lye Yew Cheong v Accounting and Corporate Regulatory Authority* [2025] 3 SLR 847 at [47].

60 The applicant and intervener agreed that the application was not time-barred: *Lye Yew Cheong v Accounting and Corporate Regulatory Authority* [2025] 3 SLR 847 at [17].

61 [2018] 3 SLR 435.

62 *Re Asia Petan Organisation Pte Ltd* [2018] 3 SLR 435 at [31].

63 *Lye Yew Cheong v Accounting and Corporate Regulatory Authority* [2025] 3 SLR 847 at [23].

64 *Lye Yew Cheong v Accounting and Corporate Regulatory Authority* [2025] 3 SLR 847 at [24]–[28].

of success” would satisfy the requirement of standing.⁶⁵ On the facts, the court found that the applicant satisfied the standing requirement, and rejected the intervener’s (*ie*, director’s) attempts to challenge the merits of the applicant’s intended claims.⁶⁶

9.15 For the third requirement, the General Division clarified that sub-limbs (c)(i) (*ie*, that the company was “carrying on business or in operation” at the time of striking off) and (c)(ii) (that restoration would be “just”) were disjunctive.⁶⁷ In view of s 344(5)’s purpose, which is to “give the court the widest possible powers to restore”,⁶⁸ sub-limb (c)(i) would be satisfied so long as the company was not “completely dormant”.⁶⁹ Even if the company were not carrying on business, “any activity at all” by the company or its officers would be sufficient to show that the company was “in operation”.⁷⁰ Here, the wife of the intervener had resigned as director of the company but continued to communicate with the applicant regarding the renovation of the applicant’s flat even after the company was struck off. The court held that such actions were in the former director’s capacity as an officer of the company and showed that the company was “in operation” at the time of striking off,⁷¹ satisfying sub-limb (c)(i).

9.16 For sub-limb (c)(ii) (*ie*, that restoration would be “just”), the General Division declined to categorically limit the scope of the court’s power to order restoration so as to exclude situations where a company to be restored is to be the defendant, rather than the claimant, in an intended post-restoration lawsuit.⁷² For the purposes of the balancing exercise involved in determining “just”-ness, whether restoration is sought for the purpose of the applicant bringing a “*prima facie* meritorious claim” against the company was considered to be a relevant factor by the General Division,⁷³ but the court was to refrain from delving too deeply

65 *Lye Yew Cheong v Accounting and Corporate Regulatory Authority* [2025] 3 SLR 847 at [29].

66 *Lye Yew Cheong v Accounting and Corporate Regulatory Authority* [2025] 3 SLR 847 at [30].

67 *Lye Yew Cheong v Accounting and Corporate Regulatory Authority* [2025] 3 SLR 847 at [17].

68 *Lye Yew Cheong v Accounting and Corporate Regulatory Authority* [2025] 3 SLR 847 at [48], quoting *Re Priceland Ltd* [1997] 1 BCLC 467 at 472, *per* Laddie J.

69 *Lye Yew Cheong v Accounting and Corporate Regulatory Authority* [2025] 3 SLR 847 at [49].

70 *Lye Yew Cheong v Accounting and Corporate Regulatory Authority* [2025] 3 SLR 847 at [49]–[53].

71 *Lye Yew Cheong v Accounting and Corporate Regulatory Authority* [2025] 3 SLR 847 at [51]–[53].

72 *Lye Yew Cheong v Accounting and Corporate Regulatory Authority* [2025] 3 SLR 847 at [37]–[38].

73 *Lye Yew Cheong v Accounting and Corporate Regulatory Authority* [2025] 3 SLR 847 at [33].

into the merits of the intended claim.⁷⁴ Prejudice to a person seeking to resist restoration in the form of “administrative costs and burdens of reinstating and maintaining a company” was held to be merely the ordinary administrative consequence of restoration of a company to the register and “inherent” in the nature of restoration itself.⁷⁵ Such prejudice is accorded minimal weight as compared to the “the prospect of practical benefit sought by the applicant from such restoration”.⁷⁶ Satisfied that the sub-limb (c)(ii) “just”-ness requirement was also met,⁷⁷ the court granted the restoration application.

IV. Directors’ duties

9.17 The Court of Appeal’s decision in *Foo Kian Beng v OP3 International Pte Ltd*⁷⁸ (“*Foo v OP3*”) is the year’s defining development on directors’ duties. It addresses a question that has long generated more heat than light: when and how directors must take creditors’ interests into account as a company moves into financial difficulty. The court confirmed that the inflection point can arise before formal insolvency and – eschewing competing labels – organised the analysis around a functional three-state framework calibrated to the company’s financial condition. The point is to prevent trading risk from being shifted onto creditors as distress deepens.⁷⁹ Properly understood, the so-called “creditor duty” is not a freestanding obligation owed to creditors; it is the familiar fiduciary duty owed by directors to the company, whose practical content tracks the identity of the company’s principal economic stakeholders as its financial condition deteriorates.⁸⁰

9.18 The court articulated a coherent analytical structure. First, the court fixed, on an objective basis, the company’s financial state at the time of the impugned decision.⁸¹ Next, it examined the director’s subjective judgment as to the company’s best interests, calibrating the intensity of scrutiny to that financial state.⁸² Taken together, this two-step

74 *Lye Yew Cheong v Accounting and Corporate Regulatory Authority* [2025] 3 SLR 847 at [33]–[35].

75 *Lye Yew Cheong v Accounting and Corporate Regulatory Authority* [2025] 3 SLR 847 at [39].

76 *Lye Yew Cheong v Accounting and Corporate Regulatory Authority* [2025] 3 SLR 847 at [40].

77 *Lye Yew Cheong v Accounting and Corporate Regulatory Authority* [2025] 3 SLR 847 at [41].

78 [2024] 1 SLR 361.

79 *Foo Kian Beng v OP3 International Pte Ltd* [2024] 1 SLR 361 at [105]–[106].

80 *Foo Kian Beng v OP3 International Pte Ltd* [2024] 1 SLR 361 at [4].

81 *Foo Kian Beng v OP3 International Pte Ltd* [2024] 1 SLR 361 at [105].

82 *Foo Kian Beng v OP3 International Pte Ltd* [2024] 1 SLR 361 at [106].

method brings needed discipline to an area in which labels have too often obscured substance, and it aligns the Singapore approach with the animating rationale found in comparative authority while maintaining a distinctly pragmatic emphasis on preventing the shifting of trading risk onto creditors.

9.19 Three financial states anchor the framework. In the first, the company is solvent and trading normally, so acting in the company's best interests will ordinarily align with shareholder interests.⁸³ In the second, the company is imminently likely to be unable to discharge its debts, and creditor interests must receive real and demonstrable weight alongside those of shareholders.⁸⁴ In the third, insolvency proceedings are inevitable, the residual economic interest has shifted, and insider-favouring distributions will be especially difficult to justify.⁸⁵ The taxonomy is functional rather than formalistic, and its force lies in how it calibrates the content of the duty across these states.

9.20 The first state concerns solvent trading. The core proposition is straightforward. Acting in the company's best interests will typically be consistent with advancing shareholder interests, and courts will be slow to second-guess *bona fide* business judgments taken on an informed basis. However, even in solvency, conduct that is nakedly inimical to creditors – such as steps taken to defeat or defraud them – will breach the duty.⁸⁶ The point is not that a creditor duty springs into life *ex nihilo*, but that the single fiduciary duty to the company already contains the seeds of creditor protection where the facts demand it.

9.21 The second state arises where the company is imminently likely to be unable to discharge its debts. This is the true pivot of the decision and it is not a formula to be applied by rote. The court identifies a non-exhaustive set of indicators that directors should interrogate and record:⁸⁷

... (a) the recent financial performance of the company, in particular whether the company's financial performance has been improving or deteriorating as well as the duration and extent of any such improvement or deterioration; (b) the industry that the company operates in, including its recent and future prospects; and (c) any other external developments, such as geopolitical ones, which may have an impact on the company's business.

83 *Foo Kian Beng v OP3 International Pte Ltd* [2024] 1 SLR 361 at [105]–[106].

84 *Foo Kian Beng v OP3 International Pte Ltd* [2024] 1 SLR 361 at [105]–[106].

85 *Foo Kian Beng v OP3 International Pte Ltd* [2024] 1 SLR 361 at [106].

86 *Foo Kian Beng v OP3 International Pte Ltd* [2024] 1 SLR 361 at [106].

87 *Foo Kian Beng v OP3 International Pte Ltd* [2024] 1 SLR 361 at [105].

9.22 In this state, courts remain rightly reluctant to punish honest attempts to trade out of trouble, but transactions that exclusively advantage shareholders or directors – such as dividends or the repayment of shareholder loans – invite closer scrutiny.⁸⁸ What matters is disciplined process and an evidence-based articulation, at the time, of why the decision could reasonably be thought to serve the company as a whole.

9.23 The third state is reached once insolvency proceedings are inevitable. At this point the economic reality has shifted and so must board conduct. Directors should not authorise “corporate transactions that have the exclusive effect of benefiting shareholders or themselves at the expense of the company’s creditors, such as the payment of dividends.”⁸⁹ While difficult judgment calls may still arise in the lead-up to formal insolvency proceedings, the scope for leeway narrows markedly and the expectation of creditor-protective decision-making by directors correspondingly increases.

9.24 Set against this framework, the facts of *Foo v OP3* are straightforward and instructive. OP3 International Pte Ltd (“OP3”) operated an interior fit-out business and was sued for negligence in 2015; a substantial judgment against the company followed on 11 November 2019, and a winding-up order was made on 3 April 2020 after OP3 failed to satisfy the judgment debt.⁹⁰ During the pendency of the litigation, the director procured two transfers to himself: a dividend of S\$500,000 in December 2016 and repayments of shareholder loans in 2017 totalling S\$682,394 (S\$1,182,394 in all).⁹¹ The liquidator sought to set aside or recover these payments on the basis that, in authorising them, the director breached his fiduciary duty to act in the company’s best interests which, in financial distress, requires giving real weight to creditors’ interests.⁹² The General Division found a breach of that duty, and the appeal required the Court of Appeal to determine: (a) whether, at the time of the December 2016 dividend and the January 2017 loan repayments, OP3 was at least imminently likely to be unable to discharge its debts such that the creditor-focused dimension of the duty was engaged; and (b) if so, whether the director should nonetheless be excused under

88 *Foo Kian Beng v OP3 International Pte Ltd* [2024] 1 SLR 361 at [106(b)].

89 *Foo Kian Beng v OP3 International Pte Ltd* [2024] 1 SLR 361 at [106(c)].

90 *Foo Kian Beng v OP3 International Pte Ltd* [2024] 1 SLR 361 at [19] and [23].

91 *Foo Kian Beng v OP3 International Pte Ltd* [2024] 1 SLR 361 at [20]–[22], [127], [130] and [133].

92 *Foo Kian Beng v OP3 International Pte Ltd* [2024] 1 SLR 361 at [24]–[25], [105]–[106] and [109].

s 391 of the Companies Act 1967⁹³ on the ground that he acted honestly and reasonably.⁹⁴

9.25 The Court of Appeal concluded that OP3 was, at the material times, imminently likely to be unable to discharge its debts.⁹⁵ On the court's three-state framework, that placed the company in the second state when the December 2016 dividend and the January 2017 loan repayments were made. The financials were deteriorating; losses had been recorded; cash balances were thin; the net asset position had turned negative; major customers had disengaged; and subcontractors were pressing for payment.⁹⁶ The director's reliance on legal advice did not assist: the advice was extremely cursory and largely oral, offering only an undetailed assurance that OP3 had a "strong defence", and there was no evidence that counsel had engaged with the underlying documents or facts in any meaningful way.⁹⁷ In the circumstances, the advice afforded little basis for a cogent view of the company's exposure or its implications for solvency.⁹⁸ In that posture – where creditor interests had to be given real weight – paying out a dividend and selectively repaying shareholder loans that benefited the director alone could not be reconciled with the company's best interests.⁹⁹ The threshold finding of the second state thus did real work: it engaged the creditor-focused dimension of the fiduciary duty and warranted closer scrutiny of insider-benefiting payments, leading to the conclusion that the duty was breached.¹⁰⁰

9.26 Two further points of principle are significant. Firstly, the court confirmed that the availability of statutory regimes does not displace the fiduciary duty claim. As to dividends, s 403(1) of the Companies Act 1967¹⁰¹ restricts dividends to profits. The court accepted some overlap but held that a creditor-duty claim premised on a dividend was a distinct cause of action, and OP3 had standing to pursue it.¹⁰² Secondly, for unfair preferences, the avoidance regime now in the Insolvency, Restructuring and Dissolution Act 2018¹⁰³ ("IRDA") (ss 225–227) does not exclude a fiduciary duty claim. The court relied on the "without

93 2020 Rev Ed.

94 *Foo Kian Beng v OP3 International Pte Ltd* [2024] 1 SLR 361 at [148]–[152] and [156]–[159].

95 *Foo Kian Beng v OP3 International Pte Ltd* [2024] 1 SLR 361 at [148]–[152].

96 *Foo Kian Beng v OP3 International Pte Ltd* [2024] 1 SLR 361 at [149]–[151].

97 *Foo Kian Beng v OP3 International Pte Ltd* [2024] 1 SLR 361 at [135] and [157].

98 *Foo Kian Beng v OP3 International Pte Ltd* [2024] 1 SLR 361 at [136] and [148]–[152].

99 *Foo Kian Beng v OP3 International Pte Ltd* [2024] 1 SLR 361 at [105]–[106].

100 *Foo Kian Beng v OP3 International Pte Ltd* [2024] 1 SLR 361 at [105]–[106] and [148]–[152].

101 2020 Rev Ed.

102 *Foo Kian Beng v OP3 International Pte Ltd* [2024] 1 SLR 361 at [109]–[114].

103 2020 Rev Ed.

prejudice” saving in s 227(7) (and its predecessor) and emphasised that the one- and two-year look-back periods in ss 226(1)(b) and 226(1)(c) pursue the different policy of transactional finality; they do not compress the separate six-year period for a duty claim.¹⁰⁴ The remedies also differ: a fiduciary claim is personal against the director, whereas an application under s 225 of the IRDA is transaction-focused, aimed at unwinding a preference (eg, by vesting property in the company or releasing security under s 227(1) of the IRDA).¹⁰⁵ The upshot is that accountability under directors’ duties operates in parallel as a governance backstop for transactions that may fall outside the statutory windows yet remain inconsistent with the company’s interests in distress.

9.27 The court also considered the power to excuse directors who have acted honestly and reasonably under s 391 of the Companies Act.¹⁰⁶ It emphasised that the discretion is narrow and will be sparingly exercised.¹⁰⁷ On the facts, the court declined to grant relief: the director’s payments to himself – made when OP3 was in the second state and without a cogent, contemporaneous rationale tied to the company’s interests – could not be characterised as honest and reasonable. The General Division’s finding of breach and the consequent relief were therefore upheld. Boards should take from this not a counsel of perfection, but a counsel of contemporaneous reasoning and record-keeping.¹⁰⁸

9.28 The decision also harmonises Singapore’s trajectory with leading comparative authority while maintaining a pragmatic texture.¹⁰⁹ The animating rationale is the same: to prevent directors from externalising downside risk onto involuntary financiers once equity no longer bears the residual risk. Yet the court resists rigid triggers. By focusing on a textured assessment of the company’s position and calibrating the intensity of review accordingly, the framework invites principled, evidence-based corporate governance rather than *ex post* label-driven litigation.¹¹⁰ The court also treats creditors as a class, rather than privileging the position of any individual creditor.¹¹¹ Respectfully, that approach is sound: insolvency is a collective process, the duty is owed

104 *Foo Kian Beng v OP3 International Pte Ltd* [2024] 1 SLR 361 at [116]–[118].

105 *Foo Kian Beng v OP3 International Pte Ltd* [2024] 1 SLR 361 at [120].

106 Cap 50, 2006 Rev Ed.

107 *Foo Kian Beng v OP3 International Pte Ltd* [2024] 1 SLR 361 at [107] and [156]–[159].

108 *Foo Kian Beng v OP3 International Pte Ltd* [2024] 1 SLR 361 at [156]–[159].

109 *Cf BTI 2014 LLC v Sequana SA* [2022] UKSC 25, recognising that directors may be required to have regard to creditors’ interests before insolvency and rejecting a freestanding duty owed to creditors.

110 *Foo Kian Beng v OP3 International Pte Ltd* [2024] 1 SLR 361 at [105]–[106].

111 *Foo Kian Beng v OP3 International Pte Ltd* [2024] 1 SLR 361 at [73] and [105]–[106].

to the company rather than any one creditor, and a class-based lens helps ensure boards do not favour the loudest or best-positioned claimant.

9.29 Comparatively, *Foo v OP3* sits comfortably with the UK Supreme Court's reasoning in *BTI 2014 LLC v Sequana SA*¹¹² while tailoring the trigger and content through a staged, Singapore-specific test. The Court treats creditors as a class and affirms that the duty remains the director's subjective good-faith judgment, tested for credibility against the objectively ascertained financial state; it also expressly preserves directors' fiduciary accountability alongside capital-maintenance and avoidance regimes. The policy payoff is a framework that curbs opportunistic value extraction as distress deepens without chilling viable rescue efforts.¹¹³

9.30 From a practical corporate governance perspective, the message is unambiguous. As financial headwinds gather, boards should insist on up-to-date financial information, actively model contingent liabilities and their timing, stress-test the viability of any turnaround plan, and contemporaneously minute the reasons why proposed transactions can rationally be thought to advance the company's interests, including the position of creditors. Early recourse to external financial and legal advice can help demonstrate *bona fides*, but the advice must be sufficiently engaged with the realities at hand. Where proposed transactions confer value solely on insiders or on a particular constituency, a principled justification should be articulated in real time or the transaction should be declined.

9.31 For advisers and insolvency practitioners, *Foo v OP3* clarifies the interaction between fiduciary claims and statutory tools. Insolvency-officeholder claims grounded in breaches of directors' duties remain available even where technical requirements for clawback are not satisfied, though double-recovery is of course not permitted. Conversely, directors should not assume that compliance with formal capital-maintenance rules will insulate distributions made in the shadow of distress. The lodestar remains the company's best interests as understood through the lens of its actual financial position.¹¹⁴

9.32 The remedial and procedural posture should also be kept in view. The duty remains owed to the company – in insolvency, it is typically

112 [2022] UKSC 25.

113 *Foo Kian Beng v OP3 International Pte Ltd* [2024] 1 SLR 361 at [72]–[74], [105]–[107], [109]–[114] and [116]–[118].

114 *Foo Kian Beng v OP3 International Pte Ltd* [2024] 1 SLR 361 at [109]–[114] and [116]–[118].

enforced by the liquidator; and in pre-insolvency, it may be pursued through a statutory derivative action where appropriate.¹¹⁵

9.33 In sum, *Foo v OP3* supplies a principled and workable creditor-duty framework for Singapore. The trigger is functional rather than formal; the inquiry is two-step and calibrated to the company's financial state; and the consequences track the migration of the residual economic interest.¹¹⁶ In practical terms, the approach curbs opportunistic risk-shifting while preserving space for honest, well-reasoned attempts to trade out of difficulty. Properly implemented, it should sharpen boardroom discipline precisely when governance and insolvency risk converge – without displacing directors' other obligations, notably the duty of skill, care and diligence.¹¹⁷ Respectfully, the judgment exemplifies the Court of Appeal's tradition of pragmatic, efficient, and high-quality commercial jurisprudence.

V. Just and equitable winding up

9.34 *Tan Yew Huat v Sin Joo Huat Hardware Pte Ltd*¹¹⁸ (“*Tan Yew Huat*”) offers a clear restatement of the just-and-equitable winding-up jurisdiction under s 125(1)(i) of the IRDA. Drawing on *Sim Yong Kim v Evenstar Investments Pte Ltd*¹¹⁹ (“*Evenstar*”), *Perennial (Capitol) Pte Ltd v Capitol Investment Holdings Pte Ltd*,¹²⁰ and *Ting Shwu Ping v Scanone Pte Ltd*,¹²¹ the court emphasised unfairness as the organising idea, the central role of an article-prescribed exit mechanism, and the limited circumstances in which that mechanism does not fairly answer the dispute.¹²² The discussion below first sets out that baseline as distilled at [72], then addresses the practical question raised in this appeal – how the analysis operates when a majority can itself initiate a members' voluntary winding up – before turning to the application and practitioner implications.¹²³

9.35 The baseline begins with *Evenstar*. There, the court emphasised that “unfairness” lies at the heart of the just-and-equitable jurisdiction. Unfairness may take different forms, but it is not enough that a minority

115 *Foo Kian Beng v OP3 International Pte Ltd* [2024] 1 SLR 361 at [109].

116 *Foo Kian Beng v OP3 International Pte Ltd* [2024] 1 SLR 361 at [105]–[107].

117 *Foo Kian Beng v OP3 International Pte Ltd* [2024] 1 SLR 361 at [108].

118 [2024] SGCA 27.

119 [2006] 3 SLR(R) 827.

120 [2018] 1 SLR 763.

121 [2016] SGCA 65.

122 *Tan Yew Huat v Sin Joo Huat Hardware Pte Ltd* [2024] SGCA 27 at [63]–[72].

123 *Tan Yew Huat v Sin Joo Huat Hardware Pte Ltd* [2024] SGCA 27 at [62]–[77].

shareholder is aggrieved or wishes to exit at will. On the facts of *Evenstar*, the petition succeeded because the association rested on a foundational understanding – a legitimate expectation – that the appellant could be bought out on reasonable terms if he chose to leave.¹²⁴

9.36 *Perennial (Capitol) Pte Ltd v Capitol Investment Holdings Pte Ltd*¹²⁵ supplies the companion proposition for deadlock cases.¹²⁶ Although “just and equitable” are words of the widest significance, the jurisdiction is not a *carte blanche* and must be exercised with caution. In deadlock, the gravamen is not discord *per se* but lock-in: it is the inability to exit that generates the requisite unfairness. Hence, where there is an article-prescribed buy-out on fair terms, typically via a constitution-based valuation mechanism, its presence will usually negate unfairness and defeat a winding-up application – subject to extenuating circumstances.¹²⁷

9.37 Those extenuating circumstances are threefold. First, where legitimate expectations include a different basis for valuation than that set out in the articles, insisting on the article-prescribed mechanism may itself be unfair. Second, unfairness may arise from bad faith or plain impropriety that affects value – conduct that distorts or depresses the worth of the shares renders an article-based exit inadequate because it prices off a tainted baseline. Third, exit mechanisms that employ arbitrary or artificial valuation methods do not cure unfairness in form; they replicate it in substance (*eg*, use of a non-independent valuer or a formula untethered to fair value).¹²⁸

9.38 Drawing the threads together, the court set out a compact roadmap at [72] that is analytically and practically useful (“[72] framework”):

- (a) the jurisdiction is broad but must be exercised with caution, especially where an order would release parties from the constitutional “scheme of things”;¹²⁹
- (b) unfairness is the organising idea;
- (c) mere grievance or a desire to exit at will does not suffice;
- (d) in deadlock cases, a genuine exit mechanism usually negates unfairness; and

124 *Tan Yew Huat v Sin Joo Huat Hardware Pte Ltd* [2024] SGCA 27 at [64]–[66].

125 [2018] 1 SLR 763.

126 For a detailed discussion of this case see, Dan W Puchniak, Tan Cheng Han SC & Samantha S Tang, “Company Law” (2017) 18 SAL Ann Rev 247 at 262–265.

127 *Tan Yew Huat v Sin Joo Huat Hardware Pte Ltd* [2024] SGCA 27 at [70]–[71].

128 *Tan Yew Huat v Sin Joo Huat Hardware Pte Ltd* [2024] SGCA 27 at [71] and [72(e)].

129 *Tan Yew Huat v Sin Joo Huat Hardware Pte Ltd* [2024] SGCA 27 at [72(a)].

(e) that default is displaced where there are legitimate expectations on valuation, value-affecting impropriety, or arbitrary valuation methods (with *Ting Shwu Ping v Scanone Pte Ltd*¹³⁰ cited for the valuation point).¹³¹

9.39 Taken together, they supply the doctrinal baseline against which applications under s 125(1)(i) of the IRDA should be tested.

9.40 A short but important process point complements that baseline. Even where alternatives exist, a judge should first undertake a *prima facie* assessment of whether the pleaded facts disclose unfairness before pivoting to those alternatives.¹³² This sequencing guards against eliding the merits into a procedural shortcut, ensures the factors in the [72] framework are squarely engaged, and clarifies consequences: if no unfairness is discerned, the application fails; if a *prima facie* case is shown, the court then considers whether winding up is the proportionate remedial response or whether another route – including a members’ voluntary winding up, if viable – addresses the mischief without the bluntness of a compulsory order.¹³³ Brief reasons tied to the [72] framework also facilitate appellate review and discipline the subsequent analysis.

9.41 Against that platform, *Tan Yew Huat* addresses a practical wrinkle that earlier cases had little occasion to consider: Where the applicant is part of a majority shareholder that is able to pass a special resolution for a members’ voluntary winding up, how does that bear on s 125(1)(i)? The question has seldom surfaced because applications under s 125(1)(i) (and its predecessor) have almost invariably been brought by minority or equal shareholders; here, by contrast, the applicant was on the majority side.¹³⁴ The court’s answer is principled and coherent. There is no statutory requirement to attempt the voluntary route first, but the availability and viability of voluntary winding up will generally militate against granting a court-ordered winding up because the applicant still bears the burden of proving unfairness, and a viable voluntary route tends to negate it.¹³⁵ Where voluntary winding up is not viable, the point falls away.¹³⁶

130 [2016] SGCA 65.

131 For a detailed discussion of this case see, Dan W Puchniak & Tan Cheng Han SC, “Company Law” (2016) 17 SAL Ann Rev 235 at 241–244.

132 *Tan Yew Huat v Sin Joo Huat Hardware Pte Ltd* [2024] SGCA 27 at [77].

133 *Tan Yew Huat v Sin Joo Huat Hardware Pte Ltd* [2024] SGCA 27 at [62]–[77].

134 *Tan Yew Huat v Sin Joo Huat Hardware Pte Ltd* [2024] SGCA 27 at [73].

135 *Tan Yew Huat v Sin Joo Huat Hardware Pte Ltd* [2024] SGCA 27 at [62] and [74].

136 *Tan Yew Huat v Sin Joo Huat Hardware Pte Ltd* [2024] SGCA 27 at [74].

9.42 On the facts, the petitioner and aligned siblings commanded more than 75% of the shares and could pass the special resolution for a members' voluntary winding up. Assertions that the minority might "stymie" the process were speculative. In those circumstances, any perceived unfairness was negated by the ready availability of the voluntary route, and the petition was dismissed.¹³⁷ Separately, the court's order for specific performance meant the minority would exit in any event, rendering aspects of the winding-up appeal moot.¹³⁸

9.43 Two practitioner-facing corollaries follow. First, majority applicants should expect close scrutiny: absent concrete evidence that voluntary winding up is impracticable (*eg*, a legal impediment that cannot be managed, or a genuine, evidenced risk of process frustration notwithstanding majority control), s 125(1)(i) relief will be hard to sustain.¹³⁹ Second, minority applicants remain within the orthodox inquiry: identify the species of unfairness. If an exit mechanism exists, explain why it does not fairly address the lock-in – in particular, because legitimate expectations on valuation were engaged, value-affecting impropriety occurred, or the mechanism uses an arbitrary valuation method.¹⁴⁰

9.44 In sum, *Tan Yew Huat* both consolidates the doctrinal baseline (unfairness as lodestar; exit mechanisms as the usual answer; recognised exceptions where exit is not genuinely fair) and resolves a practical point: if a majority can voluntarily wind up, a court-ordered winding up on the just-and-equitable ground will usually falter unless non-viability is shown. The resulting framework is principled yet pragmatic – one that discourages opportunistic forum-shopping without foreclosing equitable intervention where fairness demands it.¹⁴¹ Respectfully, the court's calibration reflects the pragmatic and efficient character of Singapore's corporate law jurisprudence: it knits common-sense process into doctrine without ossifying the analysis.

137 *Tan Yew Huat v Sin Joo Huat Hardware Pte Ltd* [2024] SGCA 27 at [75]–[76].

138 *Tan Yew Huat v Sin Joo Huat Hardware Pte Ltd* [2024] SGCA 27 at [61].

139 *Tan Yew Huat v Sin Joo Huat Hardware Pte Ltd* [2024] SGCA 27 at [74]–[76].

140 *Tan Yew Huat v Sin Joo Huat Hardware Pte Ltd* [2024] SGCA 27 at [72].

141 *Tan Yew Huat v Sin Joo Huat Hardware Pte Ltd* [2024] SGCA 27 at [62]– [77].