9. COMPANY LAW

Dan W **PUCHNIAK**
BA (Manitoba), LLB (Victoria), LLM (Kyushu), LLD (Kyushu);
Barrister and Solicitor (Ontario);
Assistant Professor, Faculty of Law, National University of Singapore.

TAN Cheng Han SC
LLB (National University of Singapore), LLM (Cambridge);
Advocate and Solicitor (Singapore);
Professor and Dean, Faculty of Law, National University of Singapore.

Lifting the corporate veil

9.1 Arguably, the invention of separate corporate personality has been one of the major driving forces in the development of market economies. Separate corporate personality has enabled individuals to begin business enterprises without risking their entire fortunes. It has facilitated fund raising by allowing members of the public to invest such surplus funds as they are prepared to risk and to spread such funds over different companies without any fear that one poor investment will imperil the entire portfolio. It has facilitated the development of stock exchanges by, *inter alia*, making it easier for shares to be valued. Without separate personality, the value of shares in a company would also be influenced by the net worth of its shareholders since in a world of unlimited shareholder liability the risk premium to purchase shares in a company would vary according to the ability of the other shareholders to contribute meaningfully to the company's debts should it become insolvent. This would undoubtedly make the valuation exercise more challenging. Accordingly, courts are reluctant to ignore the separate personality of companies unless there is a compelling reason to do so. This is amply demonstrated in the case of *Sitt Tatt Bhd v Goh Tai Hock* [2009] 2 SLR(R) 44.

9.2 In *Sitt Tatt Bhd v Goh Tai Hock* [2009] 2 SLR(R) 44, the plaintiff had deposited a sum of US$1m into the defendant's account. This amount was to be used to advance the joint venture that the plaintiff had entered into with an Indonesian company and Prime International Consultants Pty Ltd ("Prime"). Prime was an Australian company that was wholly owned by the defendant and he was its sole director. The money deposited into the defendant's account was intended for Prime but as Prime did not have a bank account in Singapore the money was deposited in the defendant's personal account.

9.3 Unfortunately, the transaction unravelled due to Prime's repudiation of the joint venture agreement. At the time of the repudiation, a balance of US$350,511.71 remained in the defendant's account. It was held that since the purpose for which the money had been deposited had failed, the defendant was liable as a trustee to return this amount to the plaintiff. The defendant was also liable to repay another US$30,000 which had been misapplied.

9.4 While Prime would be liable for the balance of the US$1m, the plaintiff asserted that the corporate veil should be lifted to make the defendant responsible for the said balance. The plaintiff argued that in the circumstances of the case, it would be appropriate for the court to pierce Prime's corporate veil and hold the defendant personally liable for Prime's repudiation of the joint venture agreement. It was the defendant who personally steered Prime to repudiate the agreement and as the *alter ego* of an A$2 company, who was answerable to no one else and who used Prime as he wished, the defendant could not make Prime a shield for himself and seek to avoid the damages suffered by the plaintiff on account of Prime's repudiation of contract. Justice Judith Prakash rejected this argument as she said that persons are entitled to incorporate companies for the purpose of insulating their personal affairs from their business dealings or to keep different business dealings separate (*Sitt Tatt Bhd v Goh Tai Hock* [2009] 2 SLR(R) 44 at [78]). Such purposes are generally respected by the courts.

9.5 Her Honour said that while the courts could in appropriate circumstances ignore the separate personality of a company, this was done only in limited circumstances and certainly ought not to be done simply because a court considered that justice so required. The general proposition in law is that parties are entitled to protect themselves by creating companies even if these are effectively one-man companies and that those dealing with such companies can protect themselves by requiring personal guarantees from the party who runs the company (*Sitt Tatt Bhd v Goh Tai Hock* [2009] 2 SLR(R) 44 at [79]). The courts can, however, pierce the corporate veil where the company was merely a device, façade or sham. Prakash J said that in this connection a sham referred to acts done or executed by parties to the sham that were intended by them to give to third parties the appearance of creating between the participating parties legal rights and obligations which were different from the actual rights and obligations which the participating parties intended to create (at [80]).

9.6 In the present case, all the parties knew that the defendant was the controlling mind behind Prime. They also knew that they were contracting with Prime and not the defendant. Prime had an office in Perth. It operated its own bank account, had its own assets, telephone line, fax line and letterheads. The mere fact that the defendant held all the shares in Prime would not make him liable for Prime's debts. There was no assertion of any impropriety in the defendant or Prime's dealings, and Prime had not been used by the defendant to further any improper purpose. Prime's venture with the plaintiff and the Indonesian company was a *bona fide* commercial transaction. Thus, there was no evidence that Prime had been created as a sham or a façade to shield the defendant from responsibility for nefarious transactions. No false picture was presented to the Indonesian party in its dealings with Prime or with the defendant as the representative of Prime. In these circumstances, whilst the plaintiff might have been aggrieved that its contractual recourse was only against Prime, a company with few assets, Prakash J felt that she could not, simply on the basis that the defendant, as the only director of Prime, was instrumental in Prime's breach of contract, hold him personally liable for that breach (*Sitt Tatt Bhd v Goh Tai Hock* [2009] 2 SLR(R) 44 at [81]). Indeed, it may be observed that if this were the case it would be a serious inroad into the doctrine of separate personality that would undercut the utility of incorporating companies.

9.7 Two other observations may be made from this decision. First, there is a tendency in such cases to use words such as "device", "façade" or "sham" interchangeably to justify veil lifting without explaining the basis for the company's separate personality being ignored. Prakash J on the other hand makes it quite clear what is meant when the corporate veil is lifted in such circumstances. The approach is akin to that when the courts find that there is a "sham" contract. The courts may infer that a company was merely a "sham" entity where the facts suggest that it was not intended to be a separate person (*eg*, it did not have a proper office; its assets were co-mingled with those of its parent or major shareholder; it had no proper letterhead or officers; or it was undercapitalised). None of these factors in themselves will be crucial as the undercapitalisation in the present case demonstrated but taken in conjunction with other factors or all the circumstances may lead the court to conclude that the company was a sham.

9.8 Second, there is value in recognising that even where a company is not a sham, the veil may be lifted if the company has been used for an improper purpose. While it may be that many cases involving the improper use of a company may also be cases where the company is a sham, it is not difficult to conceive that in such cases the dominant persons behind the company fully intend the company to be a real entity in its own right so as to insulate the former from the improper or dishonest use of the corporate vehicle. A company that has been used to perpetrate fraud on third parties may be reasonably capitalised, have its own accounts, office premises and employees. It may be difficult to regard such a company as a sham but the nefarious use of such a vehicle should no less attract the opprobrium of the courts through veil lifting.

Breach of fiduciary duty

9.9 Fiduciary obligations are imposed on certain persons *vis-à-vis* others where the relationship between the parties is such that the persons to whom the obligations are owed are in a vulnerable position as against the fiduciaries. Fiduciary obligations are imposed to discourage the fiduciary from taking undue advantage of his position. In so far as companies are concerned, the paradigm fiduciary is the company director as the management of companies is typically vested in the board as a whole. Beyond the directors of the company, other officers or employees of the company who have agency powers to bind the company are also fiduciaries by virtue of the agency relationship. In addition, regardless of whether officers or employees have agency powers, if they have substantial authority within the company to direct its operations, such employees may also be regarded as fiduciaries by virtue of the responsibilities entrusted to them. In many companies, the scope of influence of senior employees is greater than that of non-executive directors and just as the latter are regarded as fiduciaries, so too should the former.

9.10 Thus, in *ABB Holdings Pte Ltd v Sher Hock Guan Charles* [2009] 4 SLR(R) 111, Justice Judith Prakash held that a senior employee could owe his corporate employer the same fiduciary duties that a director of such a company would find imposed on him. Thus, fiduciary obligations were imposed on the defendant *vis-à-vis* the third plaintiff as the defendant was a senior employee and part of the third plaintiff's senior management. In assisting another company that was a potential competitor to the second and third plaintiffs, the defendant was in breach of his fiduciary duty as director and senior employee respectively.

Shares

9.11 In *Lian Hwee Choo Phoebe v Maxz Universal Development Group Pte Ltd* [2009] 2 SLR(R) 624, the Court of Appeal had to consider the effect of an article that was *in pari materia* with Art 40(*a*) of Table A of the Companies Act (Cap 50, 1994 Rev Ed). This was Art 32 of the articles of association of the respondent company. Article 32 provided that the respondent company may from time to time by ordinary resolution increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe. A resolution to issue new shares was passed but the resolution did not prescribe the specific number of shares to be issued. The appellants thus contended that the share resolution was invalid as it did not conform with Art 32 which, in their submission, had to specify the precise quantum of the new shares to be issued. Article 32 of the respondent company's articles was *in pari materia* with Art 40(*a*) of Table A. Even though Art 40(*a*) previously dealt with a company's issuance of shares beyond its authorised share capital, it was not repealed by the Legislature in tandem with the abolition of the concept of authorised share capital in 2006. It must, therefore, follow that Art 40(*a*) now applied to regulate every issuance of shares by the respondent company. Accordingly, the resolution passed to issue new shares contravened Art 32 because it did not specify the number of new shares which the board of the respondent company was authorised to issue. The respondents, on the other hand, submitted that the phrase "share capital" in Art 32 referred only to the authorised share capital of the company and, following the abolition of the concept of authorised share capital from 30 January 2006, Art 32 was no longer applicable. It had become otiose.

9.12 In dismissing the appeal, Chao Hick Tin JA said that at the time of the respondent company's incorporation, a provision like Art 32 was meant to provide a mechanism to facilitate the increase of a company's authorised share capital pursuant to the then existing s 71(1)(*a*) of the Companies Act (Cap 50, 1994 Rev Ed). It was not meant to apply to a resolution to increase the issued or paid-up capital (*Lian Hwee Choo Phoebe v Maxz Universal Development Group Pte Ltd* [2009] 2 SLR(R) 624 at [24]). The article in question also had to be read together with s 161 of the Companies Act (Cap 50, 2006 Rev Ed) which gives directors the powers to issue shares with the approval of the company in general meeting. The appellants' argument was unattractive as it sought to use an article in a schedule of the Act to circumscribe s 161 which was a provision in the main body of the Act. The correct approach was to seek to read the provisions in the main body of the Act with those in the schedule harmoniously having regard to the legislative intent (at [32]).

9.13 While the court thought that Art 40(*a*) of Table A ought to have been repealed and not retained in its present form, it should be interpreted in a manner that would be consistent with s 161 of the Companies Act (Cap 50, 2006 Rev Ed). Article 40(*a*) should not be construed to prohibit the shareholders of a company from giving the board of the company blanket approval to carry out share issuances when s 161 of the Act expressly empowered shareholders to do just that. If Art 40(*a*) was not to be regarded as otiose, and assuming that the terms thereof were incorporated in the articles of association of a company, it would empower the shareholders in a general meeting to set the limit or the price at which new shares should be issued. However, if the resolution did not set any limit as to the quantum or the price for the new shares to be issued, then such a resolution, like the resolution in the present instance, could constitute the approval under s 161 upon which the directors could then carry out a share issue exercise (*Lian*

Hwee Choo Phoebe v Maxz Universal Development Group Pte Ltd [2009] 2 SLR(R) 624 at [35]).

9.14 The court added that if the power to issue shares under s 161 of the Companies Act (Cap 50, 2006 Rev Ed) was exercised in a manner designed to oppress minority shareholders, this could be addressed by s 216 of the Act (*Lian Hwee Choo Phoebe v Maxz Universal Development Group Pte Ltd* [2009] 2 SLR(R) 624 at [39]).

9.15 *Auston International Group Ltd v Ng Swee Hua* [2009] 4 SLR(R) 628 was another case involving s 161 of the Companies Act (Cap 50, 2006 Rev Ed). When shareholders in general meeting give the directors a mandate to issue shares, such approval shall generally continue in force until the conclusion of the next Annual General Meeting or the expiration of the period within which the next Annual General Meeting is required by law to be held (s 161(3)). Section 161(4) then provides as follows:

> The directors may issue shares notwithstanding that an approval for the purposes of this section has ceased to be in force if the shares are issued in pursuance of an offer, agreement or option made or granted by them while the approval was in force and they were authorised by the approval to make or grant an offer, agreement or option which would or might require shares to be issued after the expiration of the approval.

9.16 In *Auston International Group Ltd v Ng Swee Hua* [2009] 4 SLR(R) 628, the shareholders' resolution provided that:

> It was resolved that the Directors be and are hereby authorised pursuant to the provisions of Section 161 of the Companies Act, Cap. 50 (the 'Act') to allot and issue shares and convertible securities of the Company on such terms and conditions and with such rights or restrictions as they may deem fit.

9.17 Chief Justice Chan Sek Keong, delivering the judgment of the Court of Appeal, held that in the light of s 161(4) of the Companies Act (Cap 50, 2006 Rev Ed), the preceding resolution was sufficiently broad to authorise the directors of the appellant company to issue convertible bonds to the respondent with a conversion date after the expiry of the general mandate given by the shareholders. In the present case, the court would have expected the terms of the relevant resolution to apply expressly to the issue of the conversion shares even after the expiry of the general mandate. In the court's view, the resolution quoted above was in itself sufficient as it authorised the directors to issue convertible securities on such terms and conditions as they may deem fit (*Auston International Group Ltd v Ng Swee Hua* [2009] 4 SLR(R) 628 at [34]).

9.18 The court held further that rr 804 and 812 of the SGX-ST Listing Manual had no application when a person who is holding convertible bonds is appointed to the board of directors and subsequently exercised his right of conversion. The said rules contemplated shareholders' approval only for the issue of convertible securities, and not their conversion. This was because the right to convert would already be vested in the holder before he became a director. The purpose of those rules was to avoid conflicts of interest by preventing directors from issuing shares or convertible securities to themselves in the absence of shareholders' approval (*Auston International Group Ltd v Ng Swee Hua* [2009] 4 SLR(R) 628 at [36]).

9.19 The court concluded that the appellant company was in breach of its obligation as it had failed to issue and credit the conversion shares into the securities account designated by the respondent (*Auston International Group Ltd v Ng Swee Hua* [2009] 4 SLR(R) 628 at [37]).

Minority shareholders' remedies

9.20 Majority rule has long been a core principle in company law. This makes sense. In most cases, providing majority shareholders with ultimate control in companies promotes economic efficiency and contractual fairness. The majority, as the corporate stakeholder bearing the most risk and having the greatest potential for reward, has the strongest incentive to maximise corporate profits. As such, allowing the majority to dominate the corporate decision-making process is generally the most efficient form of corporate governance. In addition, the corporate constitution, which forms a contract between the shareholders *inter se*, normally provides for majority rule. Therefore, in most cases, allowing majority rule is tantamount to allowing the terms that shareholders freely agree on to govern the internal affairs of the company which promotes contractual fairness.

9.21 Ironically, protecting minority shareholders, which axiomatically involves placing limits on majority rule, also finds support in the principles of economic efficiency and contractual fairness. Minority investors that are inadequately protected from majority exploitation will either choose not to invest in companies or purchase minority shares at a reduced price. In either case, the failure to adequately protect minority shareholders will have a negative economic impact by increasing the cost of capital. Experience has also taught us that allowing tyranny of the majority often results in productive corporate capital being inefficiently tunnelled from minority shareholders to majority shareholders for their personal pleasures. Contractual fairness rarely supports such tyranny as almost all corporate constitutions, in spite of their general majority rule construction, provide some protection for minority shareholders.

9.22 Courts face the unenviable task of having to develop a logical framework that does not interfere with normally efficient and fair majority rule while at the same time places limits on majority rule in order to prevent inefficient and unfair minority exploitation. Historically, the common law has not fared well in providing such a framework. The foundational common law rule in *Foss v Harbottle* (1843) 2 Hare 461; 67 ER 189 has vexed generations of venerable legal minds and left minority shareholders yearning for clearly defined limits on majority power.

9.23 In s 216 of the Companies Act (Cap 50, 2006 Rev Ed), the Singapore Legislature provided local courts with a broadly worded oppression remedy which afforded them the opportunity to develop clear limits on majority rule. Over the last several decades, following the trend throughout the common law world, local courts have embraced the oppression remedy and skillfully pieced together a logical framework which has deftly balanced *de facto* majority rule with necessary minority protection. In spite of the court's success, in an increasingly competitive and ever-changing global business environment, it is necessary to constantly refine this critical area of the law to ensure that Singapore remains competitive for investors. The recent case of *Over & Over Ltd v Bonvests* [2009] 2 SLR(R) 111 represents the court's effort at such a refinement.

9.24 In *Over & Over Ltd v Bonvests* [2009] 2 SLR(R) 111, the plaintiff and defendant were two family controlled companies that decided to enter into a joint venture agreement to develop and manage a large hotel in Singapore. For the purpose of the joint venture, the plaintiff and defendant companies incorporated another company ("JV Company") in which they respectively owned 30% and 70% of the shares. The JV Company purchased land on Scotts Road and developed and managed a hotel on the land. The hotel was the sole business of the JV Company.

9.25 Under s 216 of the Companies Act (Cap 50, 2006 Rev Ed), the plaintiff claimed that three actions taken by the defendant, during a six-year period after the hotel was built, amounted to oppression: (a) the transfer of JV Company shares by the defendant to a related company which allegedly breached the plaintiff's pre-emptive rights under an oral agreement; (b) a rights issue in the JV Company called by the defendant to allegedly dilute the plaintiff's JV Company shares; and (c) several related party transactions undertaken by the defendant in an allegedly unfair manner and without proper disclosure to the JV Company. Justice Woo Bih Li rejected all three claims holding that the plaintiff consented to the share transfer, the rights issue was fairly undertaken in order to repay the JV Company's loan and the related party transactions were not unfair. In turn, the court dismissed the plaintiff's s 216 claim for oppression and awarded the defendant costs.

9.26 In arriving at the decision, his Honour provided two helpful pieces of guidance which further refine the test for oppression under s 216 of the Companies Act (Cap 50, 2006 Rev Ed). First, the court explicitly adopted the approach advocated by Margaret Chew in her leading text *Minority Shareholder Rights and Remedies* (LexisNexis, 2nd Ed, 2007) of a *singular test* for oppression in which the essential criterion is whether there is some element of unfairness which justifies the court's intervention. In the authors' respectful opinion, this approach has considerable merit. It correctly interprets the four *prima facie* grounds for oppression in s 216 (*ie*, "oppression", "disregard of interests", "unfairness discrimination" and "prejudice") as alternative expressions of commercial unfairness. This interpretation is in line with the legislative intention of s 216 which is to provide the courts with a broad ambit of authority to develop a fair and efficient framework for protecting minority shareholders from majority exploitation. It also avoids the uncertainty and confusion that would inevitably result from attempting to categorise claims of oppression under one of the four grounds in s 216 when there is no meaningful distinction between them (*Over & Over Ltd v Bonvests Holdings Ltd* [2009] 2 SLR(R) 111 at [66]–[68]).

9.27 Second, the court explicitly rejected the approach taken in *Ng Sing King v PSA International Pte Ltd* [2005] 2 SLR(R) 56 by holding that prejudice is *not* a prerequisite for establishing oppression under s 216 of the Companies Act (Cap 50, 2006 Rev Ed) (*Over & Over Ltd v Bonvests Holdings Ltd* [2009] 2 SLR(R) 111 at [73]). This approach is helpful as it again focuses the court's attention on the central criterion of unfairness in oppression cases. It also avoids the pedantic distinction between "prejudicial conduct" and "unfair conduct" which in some cases has left shareholders who have been treated unfairly (but not prejudicially) without a remedy.

9.28 *Tan Choon Yong v Goh Jon Keat* [2009] 3 SLR(R) 840 is another recent case which illustrates the complexity in this area of the law and the need for the court to continually re-evaluate its approach to s 216 Companies Act (Cap 50, 2006 Rev Ed) to ensure it strikes an optimal balance between majority rule and minority protection. In that case, the two defendants incorporated a start-up consultancy business (the "Company") to provide a range of services in the engineering and construction industries. After incorporation, the two defendants asked the plaintiff, who was a successful managing director of an established consultancy firm, to resign from his current position and join their start-up Company. The plaintiff accepted the defendants' offer and joined the Company based on a mutual understanding that he would be the CEO, a director and play a major role in running the Company.

9.29 As agreed, the plaintiff was appointed as the Company's CEO, a director (along with his wife and the two defendants) and allocated 25.3% of the Company's shares (with the plaintiff's wife receiving 0.8% and the two defendants each receiving 25.3% of its shares). To raise additional capital, the Company listed itself on Phillip Securities' Over-The-Counter Capital ("OTC Capital"). As part of OTC Capital's listing requirements, the Company produced a disclosure document which, in order to attract investors, specifically highlighted the plaintiff's consultancy experience and the leadership role he would play in the Company. As a result of the listing, the Company raised $3,816,800 from the placement of 19,084,000 shares.

9.30 Within weeks after listing, the Company became dysfunctional. Although the plaintiff was crucial to the Company's business, the defendants planned to get rid of him. The plaintiff complained that he faced numerous obstructions in running the Company. He was denied access to important Company records and, despite repeated requests, was never shown the defendants' generous employment contracts which they allegedly had signed with the Company. The plaintiff was also denied sufficient co-operation from the defendants to address OTC Capital's serious concerns about how the Company had utilised investors' funds.

9.31 After considerable discord, the defendants used their majority voting power to appoint two new directors to gain control of the Company's board and summarily dismissed the plaintiff from his CEO position. This was done in spite of the fact that there was no mention of the CEO's removal on the agenda for the board meeting at which he was dismissed and in the face of an existing court injunction prohibiting the plaintiff's removal as CEO. To add insult to injury, the Company directed the accounting firm KPMG to investigate unsubstantiated claims that *the plaintiff* had defrauded the Company. At the Company's next annual general meeting, the defendants again used their majority power to ensure that the plaintiff was not re-elected to the board. Throughout this series of events, the defendants utilised the Company's funds to pay for legal advice to assist them in their battles with the plaintiff. The plaintiff claimed that the defendants' actions amounted to oppression and sought a remedy under s 216 of the Companies Act (Cap 50, 2006 Rev Ed).

9.32 The court held that the actions of the defendants amounted to oppression and ordered that the defendants purchase the plaintiff's shares at a price to be determined by the parties within 30 days of the judgment – failing which the Company would be wound up. In arriving at its decision, the court helpfully clarified a number of aspects of the test for oppression under s 216 of the Companies Act (Cap 50, 2006 Rev Ed) (*Tan Choon Yong v Goh Jon Keat* [2009] 3 SLR(R) 840 at [34]–[39]). First, it noted that the circumstances under which a petitioner becomes a member of a company may be relevant in determining whether or not there is oppression. Specifically, when the petitioner joins a company based on an express or implied understanding that he or she will participate in management, the breach of such an understanding may justify relief under s 216 of the Act.

9.33 In this case, Justice Tan Lee Meng found that based on the understanding between the parties, the plaintiff had a "legitimate expectation" that he would be the Company's director and CEO. The defendants' attempts to renege on this arrangement without just cause amounted to oppression (*Tan Choon Yong v Goh Jon Keat* [2009] 3 SLR(R) 840 at [46]). His Honour also noted a number of other examples of oppressive acts by the defendants, including the defendants' use of company funds to pay for legal advice in their battles with the plaintiff, the appointment of KPMG to "conduct a witch hunt" against the plaintiff and the defendants' abuse of their voting power to advance their own agenda. The court also re-affirmed that a winding-up order should only be granted under s 216 as a last resort (at [115]).

9.34 There are a few observations that may be made from this decision which relate to the court's finding that the plaintiff had a "legitimate expectation" to be a director and the CEO of the Company. This case is somewhat unusual as it involved the finding of a legitimate expectation in a *public* company with listed shares. The vast majority of cases in which courts have found legitimate expectations involve private closely held companies. This is understandable considering that in most cases legitimate expectations are based on an informal understanding or agreement between the shareholders, which is obviously much more likely to arise in the context of a private closely held company. Even though this case involved a public company, based on the current case law, evidence of an understanding between the plaintiff and defendant provides *prima facie* support for the court's finding that the plaintiff had a legitimate expectation that he would be a director and the CEO of the Company.

9.35 However, two points, which have not yet been fully explored in the case law, may be worth examining as they suggest that the scope or existence of the plaintiff's "legitimate expectation" may have been different than what the court ultimately found in this case. First, one might argue that even with an agreement between the parties, by virtue of s 152 of the Companies Act (Cap 50, 2006 Rev Ed) – which provides shareholders in *public* companies with the right to remove any director by way of ordinary resolution notwithstanding any agreement to the contrary – a member can never have a legitimate expectation not to be removed by majority vote as a director in a *public* company. In addition, although there was an understanding between the plaintiff and defendants, it might be queried as to whether the Company's issuance of a large number of shares to outside investors changed or destroyed the legitimate expectation of the plaintiff as it was no longer based upon an understanding between *all* of the members. While *Tan Choon Yong v Goh Jon Keat* [2009] 3 SLR(R) 840 suggests that these difficulties are not insuperable, largely because from a theoretical framework the remedy under s 216 of the Companies Act is being sought by a member against individuals rather than the collective enterprise that is the company, these observations illustrate the inherent difficulties that consistently challenge the courts in their attempt to provide a fair and efficient framework for minority protection under this provision of the Act.