

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2026] SGHC 74

Originating Application No 1402 of 2025

Between

- (1) Create the Future LP
- (2) Blackbeard Limited

... Applicants

And

- (1) Pirate Studios Pte. Ltd.
- (2) Eric Norman Solberg
- (3) Kyle Roland

... Respondents

FOUNDATIONS OF DECISION

[Companies — Directors — Meetings]
[Contract — Contractual terms — Implied terms]
[Injunctions — Application]

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**Create the Future LP and another
v
Pirate Studios Pte Ltd and others**

[2026] SGHC 74

General Division of the High Court — Originating Application No 1402 of 2025

Philip Jeyaretnam J

30 January 2026, 9 February 2026

7 April 2026

Philip Jeyaretnam J:

Introduction

1 Pursuant to a convertible loan agreement dated 3 June 2024 (“CLA”), EXS Securities and Fiscal Agent Limited, as the facility agent, exercised on 15 November 2025 the lenders’ right to convert a portion of the loans outstanding into equity of Pirate Studios Pte Ltd, a company incorporated in Singapore (“Company”), by the issue of a conversion notice (“Conversion Notice”).

2 One of the lenders was EXS Property Innovations Concepts VCC (“EPIC”), a member of the same group of companies as the facility agent. I refer to the group collectively as “EXS”.

3 To date, the Conversion Notice has not been challenged by the Company, or by the individual founders who are parties to the CLA, namely David Borrie (“Mr Borrie”) and Michael Hammerton.

4 The applicants were shareholders of the Company. This application did not concern the position between the Company and the lenders. Rather, it concerned provisions in the Company’s constitution that gave the founders certain board rights, and the validity of certain resolutions passed at a board meeting that was only attended by directors appointed by the lenders. The applicants sought a declaration that the resolutions passed at that board meeting were invalid, and an injunction restraining the respondents (including the Company) from acting on them.

5 Having heard the parties, I allowed the application, and granted the declaration sought. I declined to grant the injunction. The second and third respondents appealed on 9 March 2026. I now elaborate on my oral decision.

Background

6 EXS had invested in the Company through EPIC.¹ The investment involved, among other things, the CLA and an investor rights agreement (“IRA”) which was also dated 3 June 2024. In connection with EXS’s investment in the Company, the Company’s constitution was amended. Regulation 73 of the constitution gave the founders the right to appoint a “Founders Director” and EPIC the right to appoint three “EPIC Directors”.² In addition to allocating appointment rights, the constitution also provided for certain affirmative voting requirements as well as quorum requirements. Certain

¹ Affidavit of Simon Charles Brockman Andrews (“SCBA-1”) at para 15.

² SCBA-1 at p 427.

decisions made during board meetings required the affirmative vote of at least one Founders Director and one EPIC Director (“Reserved Matters”).

7 By the time this matter came before me, there were two directors appointed by the founders, and four directors appointed by EPIC. Nothing turned on this point, as there seemed to be no dispute that these were “Founders Directors” and “EPIC Directors” within the meaning of the constitution.³ The second and third respondents were EPIC Directors.⁴ There were also two directors appointed by the applicants.⁵

8 On 30 October 2025, EXS sent a notice of cure under Art 16.2 of the IRA alleging breaches by the founders and stating that pending cure the Founders Directors’ right to vote in board meetings was suspended (“IRA Cure Notice”).⁶ The EPIC Directors then called for a board meeting on 24 November 2025 (“24 November Meeting”), following the issue of the Conversion Notice. The Founders Directors did not attend this meeting. Neither did the directors appointed by the applicants, who wrote to say that the meeting would be inquorate and suggested that it be cancelled.⁷ Certain board resolutions were passed during the 24 November Meeting (“Resolutions”). One of these was to accept the “processing of the [Conversion Notice]”,⁸ and apparently make EPIC the Company’s majority shareholder. The applicants commenced the present proceedings to invalidate the Resolutions and stop them from being acted on.

³ Affidavit of Eric Norman Solberg (“ENS”) at para 2.5.11(d).

⁴ SCBA-1 at para 14.

⁵ ENS at para 2.5.11(d); SCBA-1 at para 13.

⁶ ENS at p 496–497.

⁷ SCBA-1 at p 634.

⁸ SCBA-1 at p 653.

The parties

9 Before turning to the issues on which I decided, I make some observations on the parties to the proceedings.

10 The applicants were shareholders in the Company from before the EXS investment. The first applicant held about 8.5% of the shares in the Company. The second applicant held a little under 3% of the shares in the Company. The Company was the holding company for an operating subsidiary named Pirate Studios Limited.⁹

11 The Company was the first respondent, and the subject of these proceedings. It was not represented. The second and third respondents, Eric Norman Solberg (“Mr Solberg”) and Kyle Roland (“Mr Roland”) are directors of the Company.¹⁰

12 Not all the EPIC Directors were joined as parties, nor were either of the Founders Directors joined. However, no point was taken by Mr Solberg or Mr Roland concerning non-joinder of parties. It was clear that the interests of EXS were fully represented by Mr Solberg and Mr Roland. In particular, Mr Solberg was a founder of EXS.¹¹

13 As for the Founders Directors, it was accepted that they did not attend the 24 November Meeting. As the applicants noted, this would, on the face of things, mean the meeting was inquorate.¹² The applicants, as shareholders and

⁹ SCBA-1 at para 9.

¹⁰ SCBA-1 at para 14.

¹¹ SCBA-1 at para 14.

¹² SCBA-1 at p 634.

thus parties to the constitution, were entitled to rely on the quorum requirement (if applicable) for their own protection. A company's constitution is a contract between members. Any member may enforce any right and enjoin the Company and its directors from breaching the constitution. In her oral submissions, counsel for the second and third respondents accepted that the applicants had the requisite standing to bring this action.¹³

The 24 November Meeting was inquorate

14 The first issue was whether the 24 November Meeting met the quorum requirements in the constitution.

15 The key relevant provision in the constitution was Regulation 89(1). This provided that a board meeting required a quorum of a majority of the directors, and the presence of at least one Founders Director and one EPIC Director. If there was no quorum, Regulation 89(2) and 89(3) provided for adjournment of the meeting. However, adjourned meetings also required the presence of at least one Founders Director and one EPIC Director.

16 For convenience, I set out Regulation 89 in full:¹⁴

89. —(1) The presence, in person or by videoconference or teleconference, of at least a majority of the directors (which, at all times, must include at least one (1) EPIC Director and one (1) Founders Director) will constitute a quorum at all meetings of the Board.

(2) If a quorum is not present at a duly convened meeting of the Board, such meeting may be adjourned to take place seven (7) days from such date.

(3) If a quorum is still not present at such scheduled second meeting of the Board, such meeting shall be adjourned to take

¹³ Notes of Evidence dated 30 January 2026 at 8:17–18.

¹⁴ SCBA-1 at p 430.

place seven (7) days from such date, and at such second adjourned meeting, the directors then present (in person or by videoconference or teleconference, and which must include at least one (1) Founders Director and one (1) EPIC Director) shall constitute a quorum.

17 It was not disputed that only four of the Company’s directors (*ie*, the EPIC Directors) attended the 24 November Meeting.¹⁵ There was no majority of directors present and no Founders Director attended.

18 I first had to deal with how non-compliance with these requirements should be characterised (*ie*, whether they were procedural or substantive in nature). If this was a procedural irregularity, I then had to deal with whether there was substantial injustice to the applicants that could not be remedied.

19 A substantive irregularity is one that changes the “thing to be done”. A procedural irregularity is one that changes the way that thing is done: *Thio Keng Poon v Thio Syn Pyn* [2010] 3 SLR 143 at [66]. A quorum requirement is generally regarded as a procedural matter, such that business conducted at an inquorate meeting is not ordinarily invalidated unless the irregularity has caused or may cause substantial injustice to any person that cannot be otherwise remedied: see ss 392(1)(a) and 392(2) of the Companies Act 1967 (2020 Rev Ed).

20 As held in the Court of Appeal decision of *Chang Benety v Tang Kin Fei* [2012] 1 SLR 274 (“*Chang Benety*”) at [33] and [48], although the lack of quorum (without more) is a procedural irregularity, where the quorum requirement protects as part of a contractual bargain the representation of different stakeholders on the board, the breach of such a requirement *prima facie* causes substantial injustice.

¹⁵ ENS at para 4.4.1.

21 In *Chang Benety*, the company in question had two shareholders, known as “SCM” and “PPLH”. SCM had appointed six directors, and PPLH had appointed three directors. The company’s constitution provided that a quorum required the presence of at least one director appointed by SCM, and one appointed by PPLH. The directors appointed by PPLH declined to attend a board meeting as a defensive tactic. The directors appointed by SCM proceeded with the meeting and passed resolutions: *Chang Benety* at [9]–[16].

22 The Court of Appeal in *Chang Benety* held that the breach of the quorum requirement was a procedural irregularity, even if it was an expressly negotiated requirement: *Chang Benety* at [43]–[44]. However, substantial injustice was caused. The quorum requirement related not only to the number of directors present, but also to representation of shareholders and their interests. The breach of such a quorum requirement would *prima facie* result in substantial injustice: *Chang Benety* at [48]. The Court of Appeal also indicated that regard would have to be had to the nature of resolutions passed in the inquorate meeting. In *Chang Benety*, the resolution involved the appointment of counsel to investigate complaints involving directors appointed by PPLH. This shed light on the “intention to make use of the inquorate meetings to pass resolutions to the possible disadvantage of the [directors appointed by PPLH]”: *Chang Benety* at [49].

23 In the present case, the quorum and affirmative voting requirements were both directed to the balance of representation among shareholders (in particular between the founders and EPIC). Thus, non-compliance with the requirements was a procedural irregularity that would *prima facie* cause substantial injustice.

24 Mr Solberg and Mr Roland contended that there was no substantial injustice, principally because, among other things, the same outcome would have been reached even if the Founders Directors attended (as the Founders Directors' voting rights had been suspended pursuant to the IRA) and because there had been or would be substantial injustice done to EXS if the Founders Directors could cause a deadlock in the Company by absenting themselves indefinitely.¹⁶ They also complained that this would interfere with EXS' rights under the CLA and IRA.

25 I rejected this contention. When quorum and voting requirements perform a representative function under a company's constitution, they are there for the precise purpose of stopping the minority of the board from being outvoted, whether generally or on specified matters. Having regard to the nature of the Resolutions, I was of the view that, as in *Chang Benety*, the EPIC Directors were seeking resolutions that were adverse to the founders and potentially the other shareholders. The Resolutions were not limited to administrative matters or regulatory compliance. They related to, among other things, approving the suspension of the Founders Directors as well as the processing of the Conversion Notice that would have made EPIC the majority shareholder of the Company.

26 As for whether the quorum and voting requirements ceased to apply in the event of suspension of the Founders Directors, that was a matter of interpretation of the constitution or the implication of a term, and went to the question of whether there was compliance with these requirements. That was the second issue on which I decided.

¹⁶ Second and Third Respondents' Written Submissions ("RWS") at paras 6.2.2–6.2.10.

There was no basis to imply the term into the constitution

27 The second issue was whether, as Mr Solberg and Mr Roland argued, a term should be implied that if the Founders Directors had their voting rights suspended, then the aforesaid directors were not to be included for the purpose of the quorum or voting requirements in the Company’s constitution.

28 I dealt with this issue on the basis that the Resolutions were purportedly passed at a board meeting, and did not accept the applicants’ argument that they were instead resolutions in writing under Regulation 91(1) of the Company’s constitution.¹⁷ Regulation 91(1) provided that resolutions in writing could be passed by a majority of the directors.¹⁸ The applicants argued that this requirement was not met, as only the four EPIC Directors (out of a total of eight directors) had signed the Resolutions.¹⁹ The second and third respondents had argued that the Resolutions were merely *titled* as drafts, and were intended to serve as the agenda for the meeting.²⁰ I accepted that while the Resolutions were phrased as resolutions in writing,²¹ they were used as drafts for a meeting that took place.

29 Mr Solberg and Mr Roland’s submission was that there was an implied term that “where a director has had their voting and consent rights suspended by reason of default of their appointing shareholder, such director(s) shall also

¹⁷ Applicants’ Written Submissions (“AWS”) at para 7.

¹⁸ SCBA-1 at p 431.

¹⁹ AWS at paras 41–43.

²⁰ RWS at paras 7.1.1–7.1.2.

²¹ SCBA-1 at p 457.

be disregarded for the purposes of forming a quorum for Board Meetings”.²² If such a term was implied, there would be no irregularity or lack of quorum at all.

30 The reference to suspension is to that asserted by the IRA Cure Notice relying on Art 16.2 of the IRA.²³

31 Art 16.2 provides in relevant part:²⁴

While a Breach is continuing, and on and from the date the continuing Breach occurred (regardless of when or whether a notification in Clause 16.1 is given) until the Breach has been cured or as may otherwise be agreed by the Other Parties:

...

(b) the Relevant Party’s, its Responsible Parties and its appointed Directors (if any) will be suspended from any consent or voting rights as a Shareholder or (as the case may be) Director; and the Relevant Party agrees and agrees to procure (to the extent within their powers) its Responsible Parties and appointed Directors (if any), not to exercise any consent or voting rights it or he may have during the period while the Breach is continuing;

(c) the Relevant Party and its Responsible Parties’ rights to consent or approve any matter under this Agreement will be suspended, and the Relevant Party agrees not to (and its Responsible Parties shall not be entitled to) exercise any rights to approve or consent to any matter under this Agreement it may have during the period while the Breach is continuing; and

...

PROVIDED THAT in the case of sub-clauses (b) and (c), the Other Parties shall, and shall (to the extent within their powers) procure that their Responsible Parties and appointed Directors shall, exercise their consent and voting rights bona fide in the interests of the Company and to protect its value, and in particular, that they will not exercise such consent or voting rights to:

²² RWS at para 4.1.1.

²³ ENS at p 497.

²⁴ SCBA-1 at p 230.

- (i) amend the Constitution of the Company; or
- (ii) alter the share capital of the Company (including by way of issuance of new Shares), in each case to the detriment of the Relevant Party

32 The IRA Cure Notice alleged certain breaches of the IRA, gave 60 days' notice of cure, and stated that:²⁵

Unfortunately, until the breaches are remedied, you and Adam Balderston, the appointed Director of the Founders, will be suspended from voting on the Board, and all rights to consent or approve any matters under the IRA will also be suspended as set out in Section 16.2 of the IRA.

33 The IRA Cure Notice did not assert that the Founders Directors could not attend board meetings nor that their attendance was no longer required for the purpose of quorum. EPIC took the position in subsequent communications that the suspension meant that the quorum requirements would not apply. However, EPIC also took the position that the Founders Directors had been and were still entitled to attend meetings. To set out the relevant paragraphs in full:²⁶

To reiterate, upon [the Founders Directors'] suspension due to breach of the IRA, the Quorum requirement listed in IRA 7.5 (b) and Regulation 89(1) of the Constitution of having at least one Founder Director is no longer applicable.

Majority of the Directors [*sic*], including one EPIC Director will constitute a quorum.

In any event, as previously reiterated, all of you have had ample notice of the Board Meeting on 24 November 2025, full opportunity to attend, and every chance to provide comments on the proposed resolutions, which you have done. On this basis, no prejudice or injustice has been occasioned by proceeding with the meeting, given that your consent and voting rights are in any event suspended.

²⁵ ENS at p 497.

²⁶ SCBA-1 at p 691.

34 In other words, notwithstanding their suspension, the Founders Directors were still entitled to act as the eyes and ears of the founders.

35 The test for whether a term may be implied into a contract was set out in *Sembcorp Marine Ltd v PPL Holdings Pte Ltd* [2013] 4 SLR 193 (“*Sembcorp*”). *Sembcorp* concerned the same underlying dispute as that in *Chang Benety*. However, *Sembcorp* was between the shareholders of the company (rather than the directors as in *Chang Benety*), and concerned the validity of the quorum and representation requirements (whereas in *Chang Benety* the issue was the effect of lack of quorum). By the time of *Sembcorp*, the issue had been reframed as whether a term should be implied that shareholders would no longer have rights to board representation once they ceased to hold a half-interest in the company in question.

36 In *Sembcorp*, the Court of Appeal set out a three-stage test at [101] for the implication of terms.

(a) The first step is to ascertain how the gap in the contract arises. Implication will be considered only if the court discerns that the gap arose because the parties did not contemplate the gap.

(b) At the second step, the court considers whether it is necessary in the business or commercial sense to imply a term in order to give the contract efficacy.

(c) Finally, the court considers the specific term to be implied. This must be one which the parties, having regard to the need for business efficacy, would have responded “Oh, of course!” had the proposed term been put to them at time of the contract. If it is not possible to find such

a clear response, then, the gap persists and the consequences of that gap ensue.

37 Terms are implied into a contract only where there is a gap, and not where parties chose not to provide a term or believed that the expressed terms addressed the matter. In other words, parties must have failed to contemplate the issue: *Sembcorp* at [94]–[95].

38 The second and third respondents’ counsel referred me to provisions of the constitution that concerned situations where directors could be deprived of voting and consent rights,²⁷ and where there was a deadlock.²⁸ However, there was no indication of whether a director whose voting rights were suspended would be considered for the purposes of a quorum. This was, on the second and third respondents’ view, a gap in the constitution. Giving effect to the constitution supposedly required the implication of a term that when directors have had their voting and consent rights suspended, they would be excluded from the quorum or voting requirements in the constitution.²⁹

39 For a term to be implied under *Sembcorp*, the second and third respondents also needed to show that the specific term to be implied was one that was necessary: *Sembcorp* at [98] and [101]. The effect of the term that the second and third respondents sought to imply was that if the Founders Directors had their *voting* rights suspended, (a) their attendance (or lack thereof) would not be considered in determining what constitutes a quorum, and (b) no votes

²⁷ RWS at para 4.3.1.

²⁸ RWS at para 4.3.2.

²⁹ RWS at para 4.3.6.

by the Founders Directors (in the present case) were needed for Reserved Matters.

40 I did not agree that such a term could be implied into the constitution. The principal reason why it could not be implied was because there was no gap. In fact, the question of when a director should be excluded for the purpose of quorum was expressly considered, and provisions made, in Regulation 93(1). Regulation 93(1) contemplated a director being “excluded for purposes of constituting a quorum”.³⁰ Certain situations were set out, namely where a majority of the other directors had in good faith decided that exclusion or denial was appropriate due to a conflict of interest, or where the director was required to abstain from deliberations or voting under the Companies Act.³¹ The constitution *did not* provide that a director would be excluded for the purpose of constituting a quorum when their voting rights were suspended.

41 There were three other points that indicated consideration of questions of when and how the quorum and affirmative voting requirements might be disapplied.

(a) Regulation 89(1) defined a quorum as the “presence... of at least a majority of the directors”. There was no further requirement, for example, that the required majority would be limited to a majority of the directors in office *and with voting rights*. The requirement was simply for a majority of directors.³²

³⁰ SCBA-1 at p 431.

³¹ SCBA-1 at p 431.

³² SCBA-1 at p 430.

(b) Regulation 94(2) prescribed that Reserved Matters required the positive vote of at least one Founders Director and one EPIC Director “unless otherwise stated”. Regulation 94(2) provided that if there was a deadlock that could not be resolved, a Reserved Matter could be passed without the vote of a Founders Director, so long as there were votes from an EPIC Director, and a director appointed by the applicants.³³ The constitution contemplated situations where the vote of a Founders Director would not be needed.

(c) Regulation 94(2) further stated that “if a director is appointed by a shareholder whose rights may be suspended pursuant to the IRA, the positive vote of such director shall not be required”.³⁴ This was an example of the constitution contemplating the consequences of suspension, and limiting it to disapplying the requirement of an affirmative vote for Reserved Matters. Suspension was not stated to lead to the consequence that attendance of the suspended director was not required for the purpose of quorum.

42 These provisions reinforced my conclusion that was no gap. Under *Sembcorp*, no term could be implied in such a situation.

43 The further reason why I rejected the implication of such a term was that it did not meet the business efficacy or officious bystander tests, as considered in *Sembcorp* at [91] and [98].

44 The second and third respondents argued that it would not be efficacious for the Founders Directors or EPIC Directors to be able, by their absence, to

³³ SCBA-1 at p 432.

³⁴ SCBA-1 at p 432.

effectively veto all resolutions if their voting rights were suspended.³⁵ On their view, to allow this would be to undermine the right to suspend directors. This was at best an argument about the desirability of the term, rather than its necessity for business efficacy.

45 I also did not agree with the second and third respondents' submission that the Company would be deadlocked if the term was not implied into the constitution. Counsel for the applicants rightly submitted that there were ways for deadlock to be resolved, in particular Regulation 94(2), which provided that matters could be resolved by senior decision makers of the shareholders and EPIC.³⁶ Deadlock on the board level could also be resolved at the shareholder level.

46 I also noted that Regulation 91(1) provided that a resolution in writing could be passed by a majority of directors entitled to receive notice of a meeting. Regulation 91(1) provided a mechanism for some business to be done even if a quorum could not be obtained, or if the affirmative vote of a particular director was not forthcoming.

47 In any event, there were good commercial reasons why a director whose voting and consent rights had been suspended should continue to be counted towards the quorum for board meetings pending cure. Moreover, neither the IRA nor the IRA Cure Notice on their face extended suspension to the Founders' Directors rights to attend board meetings and be counted towards quorum. It certainly was not obvious nor necessary for business efficacy in these circumstances for the constitution to extend further than the IRA.

³⁵ RWS at paras 4.3.5–4.3.6.

³⁶ AWS at paras 73–74.

48 A term will only be implied on the basis of business efficacy if “honest business could not [otherwise] be carried on”: *The Moorcock* (1889) 14 PD 64 at 69, cited in *Sembcorp* at [87]. In the present case, there were mechanisms for honest business to be done. Those mechanisms were not used.

49 Turning to the officious bystander test, the situation here was quite different from that in *Sembcorp*. There, the question was what would have been obvious to a bystander concerning whether the quorum requirement would continue to apply after a party ceased to hold an equal proportion of shares. In the present case, Mr Solberg and Mr Roland did not contend that the quorum requirement would cease to apply upon the lenders issuing the Conversion Notice. Rather, they linked its disapplication to the suspension of the directors. In my view, the officious bystander would not be of the view that a term would have to be implied. The officious bystander would note the existence of alternative methods of doing business, even in the absence of the Founders Directors.

50 I turn briefly to a separate argument of the second and third respondents that was mentioned but not pressed, namely whether the Founders Directors were excluded for the purposes of constituting a quorum on the basis that the EPIC Directors had purportedly made a good faith judgment that the Founders Directors were in a position of conflict.³⁷ On this view, the Founders Directors were justifiably excluded for the purposes of constituting a quorum under Regulation 93(1)(a), which stated:³⁸

(1) Notwithstanding anything to the contrary in Regulations 88 to 92, a director may be excluded from any meeting, denied any

³⁷ ENS at para 6.1.4.

³⁸ SCBA-1 at p 431.

materials and excluded for purposes of constituting a quorum if:

(a) in the good faith judgment of a majority of the other directors, such exclusion or denial is appropriate as a result of a conflict of interest;

51 The first difficulty was the lack of evidence of any such good faith judgment having been made by the EPIC Directors. Although there had been some reference to conflicts of interest,³⁹ these were general and unparticularised allegations of the existence of some conflict. For example, one letter from EXS to the Founders Directors sent on 24 November 2025 (just prior to the 24 November Meeting) began as follows:⁴⁰

Thank you for your rather obviously coordinated flurry of actions coming only on the Friday evening right before the Board Meeting to be held on Monday 24 November 2025. This is in line with Borrie's long-standing pattern of changing things at the last minute which we have noted before.

Unfortunately, this continuing politicking and gamesmanship in contravention of the Agreements and is not in the best interests [*sic*] of Pirate and its main stakeholders and represents an ongoing pattern of negligence, conflicts of interest and bad faith.

52 More fundamentally, where directors are appointed to the board for the purpose of representing shareholder interests, it would not ordinarily be a conflict of interest if the supposed conflict lay only in being aligned with those shareholder interests, subject to my observations at [57] below.

53 Accordingly, I granted the declarations sought by the applicants, that the resolutions purportedly passed by the board of directors of the first respondent during the 24 November Meeting were invalid.

³⁹ ENS at p 537; SCBA-1 at p 599 and 676.

⁴⁰ ENS at p 537.

54 The applicants also sought a final injunction against the Company or Mr Solberg and Mr Roland taking steps in furtherance of the Resolutions. The grant of an injunction is a discretionary remedy, even in the face of the violation of an express term in the Company's constitution: *Nanyang Commercial Management Pte Ltd v Matex International Ltd* [2026] 3 SLR 136 at [67].

55 The applicants raised the fact that there had been a subsequent attempt to confirm or ratify the Resolutions,⁴¹ even though the Resolutions were supposedly passed just two weeks prior. This indicated (on the applicants' view) that unless an injunction was granted, further steps would be taken to implement or uphold the Resolutions.⁴²

56 I declined to grant the injunction. The grant of the declaration would dispose of the matter and there was no need for any injunction to stop the company from acting on the invalidated resolutions. The parties were free to determine their rights under the CLA and IRA in arbitration. They were also free to take other steps under the constitution to protect their position as advised and thought fit.

57 I noted that the 24 November Meeting covered a number of items of business, not limited to the processing of the Conversion Notice. While it did not arise for my decision on this application, there would be cogent arguments that the processing of the conversion, if contractually valid, could not be stymied by the non-cooperation of the Founders Directors. In particular, the refusal of a director to attend a board meeting, the business of which was the

⁴¹ SCBA-1 at p 710–711.

⁴² AWS at para 97.

implementation of the contractual right of a shareholder against the company, in order to deny the meeting quorum and thwart the implementation of that contractual right might amount to that director acting against the best interests of the company. On this ground or otherwise there might be a basis for a good faith judgment by a majority of other directors that there would be a conflict of interest. In that event, the other directors could potentially trigger a provision such as that found in Regulation 93(1)(a). This would, however, need to be specifically identified and notified in accordance with that Regulation.

Conclusion

58 In summary, I found that there was no implied term in the constitution to the effect that a director who had their voting rights suspended would be excluded for the purpose of constituting a quorum. The 24 November Meeting was inquorate. Although this was a procedural irregularity, the quorum requirement had a representational function and substantial injustice was caused by its breach. The Resolutions were invalid. However, I declined to grant the injunction sought. I fixed costs at \$20,000 all-in, payable by the second and third respondents to the applicants.

Philip Jeyaretnam
Judge of the High Court

Luis Inaki Duhart Gonzalez and Chia Bing Da Edric (Selvam LLC)
for the applicants;

The first respondent absent and unrepresented;
Lee Ping (Li Ping), Ryan Mark Lopez and Nikhita Tejal Mulani
(Shook Lin & Bok LLP) for the second and third respondents.
