Lim Kok Wah and others *v* Lim Boh Yong and others and other matters
[2015] SGHC 211

Case Number	: Suit No 1005 of 2012, Originating Summons No 1042 of 2012 and Originating Summons No 1050 of 2012
Decision Date	: 13 August 2015
Tribunal/Court	: High Court
Coram	: Vinodh Coomaraswamy J
Counsel Name(s)	: Hee Theng Fong and Toh Wei Yi (Harry Elias Partnership LLP) for the plaintiffs in Suit No 1005 of 2012, the first, second and third defendants in Originating Summons No 1042 of 2012, and the defendants in Originating Summons No 1050 of 2012; Lee Hwee Khiam Anthony, Cheng Geok Lin Angelyn and Quek Jun Haw Joey (Bih Li & Lee LLP) for the first and second defendants in Suit No 1005 of 2012 and for the plaintiffs in Originating Summons No 1042 of 2012 and Originating Summons No 1050 of 2012.
Parties	: LIM KOK WAH — LIM KOK KHEE — LIM HOO SIG — LIM BENG TUAN — LIM BOH YONG — LIM KOK LEONG — SIEM SENG HING & COMPANY (PTE.) LIMITED — KENSON ENTERPRISE (PTE) LTD

Companies – Oppression – Minority shareholders

13 August 2015

Vinodh Coomaraswamy J:

Introduction

1 This litigation is between two sets of brothers who share a father but have different mothers. The brothers are now locked in a struggle for control of two companies: Siem Seng Hing & Company (Pte.) Limited ("SSH") and Kenson Enterprise (Pte) Ltd ("Kenson").

2 This litigation comprises three sets of proceedings. The main proceedings are Suit No 1005 of 2012 ("S1005"). I will, for convenience, refer to the parties throughout this judgment by their position in S1005. The four plaintiffs seek relief in S1005 under s 216 of the Companies Act (Cap 50, 2006 Rev Ed) arising from what is said to be the oppressive and unfairly prejudicial conduct of the first and second defendants.

3 Before the plaintiffs commenced S1005, however, the first and second defendants had brought separate proceedings by way of two originating summonses against the plaintiffs.

(a) In Originating Summons No 1042 of 2012 ("OS1042"), the defendants seek a declaration that an Extraordinary General Meeting ("EGM") of the shareholders of SSH on 25 October 2012 and the resolutions passed at that meeting are invalid.

(b) In Originating Summons No 1050 of 2012 ("OS1050"), the defendants seek a declaration that a meeting of the directors of Kenson held on 25 October 2012 and the resolutions passed at that meeting are invalid.

4 I have dismissed the plaintiffs' claim in S1005 and granted the first and second defendants the

relief which they seek in OS1042 and OS1050. The plaintiffs have appealed against my decision. I now set out my grounds.

Background facts

LKH and the Lim family

5 All of the natural persons who are parties to the proceedings before me are sons of Mr Lim Khai Huat @ Lim Ngam ("LKH"). LKH died in 2001 at the age of 88. [note: 1] His enduring wish was that his sons would remain united, come what may. This litigation would undoubtedly have been a profound disappointment to him.

6 LKH had two wives and 13 children. He had the following nine children by his first wife, Mdm Choo Chee Lan ("Mdm Choo"): [note: 2]

(a) Mr Lim Kok Wah ("LKW"), the first plaintiff;

(b) Mr Lim Kok Khee ("LKK"), the second plaintiff;

(c) Mr Lim Hoo Sig ("LHS"), the third plaintiff;

(d) Mr Lim Beng Tuan ("LBT"), the fourth plaintiff;

(e) Mdm Lim Bee Gan;

(f) Mdm Lim Eng Neo;

(g) Mdm Elsie Lim Bee Har;

(h) Mdm Lim Bee Cheng; and

(i) Mdm Lim Mui Kwee ("LMK").

7 LKH had the following four children by his second wife, Mdm Ng Hong Mui ("Mdm Ng"): [note: 3]

(a) Mr Lim Kok Leong ("LKL"), the second defendant;

(b) Mr Lim Boh Yong ("LBY"), the first defendant;

(c) Mdm Lim Lee Kwan; and

(d) Mdm Lim Bee Leng.

8 Throughout LKH's lifetime, and in fact for almost a decade after his death, the two branches of his family lived and worked harmoniously together. Their relationship started deteriorating in or about late 2010. Before tracing the circumstances which led to this deterioration, it is convenient to introduce the corporate defendants.

SSH

The initial years

9 LKH, together with other like-minded entrepreneurs, incorporated SSH on 26 February 1957 to carry on the business of selling and supplying building materials. [note: 4] The other founders of SSH are not related to the Lim family. Their identities are inconsequential to this dispute.

10 None of LKH's children was involved in the business of SSH at the time of its incorporation and for a decade after that. At that point, LKH (and the other founders) either allotted shares or transferred a portion of their own shares to their respective sons. The founders thereby drew in the next generation into the family business. It was also during this period that LKW and LKK as well as LKL and LBY were appointed directors and thereby became involved in managing the business of SSH.

11 In 1975, LKH incorporated Kenson to be, effectively, the family holding company for both branches of his family.

12 In the 1980s, LKH acquired all the shares in SSH from all the other shareholders who were not part of his family. He held these shares either in his own name or through Kenson. By 30 December 1993, all of the shares in SSH were owned either by members of the Lim family or by Kenson. [note: 5]

The parties' involvement in SSH

13 As was typical with many men of LKH's generation, he drew in only his sons as directors and shareholders in SSH. LKH passed away intestate. It was only by reason of his intestacy that his wives and daughters came to hold shares in SSH. [note: 6]

14 Up to 2001, the plaintiffs collectively held 20.55% of the shares in SSH whilst the defendants held 13.98% of those shares. [note: 7] The remaining 65.47% of the shares in SSH were held by LKH (*ie*, 49.87%) and by Kenson (*ie*, 15.60%). The table below sets out the shareholding in SSH from 30 December 1993 until LKH's death in 2001, in order of magnitude. [note: 8] For ease of reference, the plaintiffs' names are in bold and the defendants' names are in italics.

Shareholder	**Percentage**
LKH	49.87%
Kenson	15.60%
LKW	**8.10%**
LBY	*7.99%*
LKL	*5.99%*
LHS	**4.25%**
LBT	**4.13%**
LKK	**4.07%**
Total	100.00%

15 LKH's sons have all served as directors of SSH at one time or another. The details of their appointments as directors are as follows: [note: 9]

(a) LKW was appointed a director in 1978.

(b) LKK was appointed a director in 1978. He was not re-appointed in 1982 but returned to the board in 1983. He remained a director for three years and ceased to be a director in 1986.

(c) LHS was appointed a director in 1993.

(d) LBT was appointed a director in 1998.

(e) LBY was appointed a director in 1978 but ceased to hold office in 1981. He was re-appointed in 1983.

(f) LKL was appointed a director in 1984 but ceased to hold office in 1986. He was re-appointed in 1993.

16 All of LKH's sons, apart from LKK, served as directors of SSH until this litigation began. It is a matter of record that LKK ceased to serve as a director in 1986 and was never re-appointed to the board. The parties, however, dispute the reason for LKK's departure from the board.

17 LKH was the managing director of SSH until the time of his death. [note: 10] Although the extent of the involvement of the other plaintiffs in SSH is in dispute, it is common ground that LKW and LBY took the lead in managing SSH, at first under LKH's supervision from 1993 until his death in 2001, and thereafter on their own. [note: 11] They were appointed the chairman and the managing director respectively of SSH on 22 August 2001. [note: 12]

Kenson

18 As mentioned above, LKH incorporated Kenson in 1975. LKH and his two wives, Mdm Choo and Mdm Ng, were its initial shareholders and directors. As with SSH, LKH was Kenson's managing director until he died in 2001. [note: 13]

19 In line with LKH's practice, all of his sons (but none of his daughters) were allotted shares in Kenson. Thus, in 1977, each son was allotted 3,333 shares. In 1978, LKH appointed all of his sons as directors of Kenson. They remain directors to the present day. [note: 14] In 1992, Mdm Choo and Mdm Ng stepped down as directors.

20 In 1995, LKH transferred all of his shares in Kenson to four of his sons: LKL, LBY, LHS and LKW. He transferred 140,897 shares to LKL, 34,327 shares to LBY, 13,393 shares to LHS and 3,770 shares to LKW. [note: 15] The table below sets out the shareholding in Kenson from the time of these transfers to the present day, in order of magnitude. [note: 16] Once again, for ease of reference, the plaintiffs' names are in bold and the defendants' names are in italics.

Shareholder	Percentage of shareholding
LKL	*31.97%*
LBY	*19.39%*
LBT	**13.59%**

LKW	**11.75%**
LHS	**11.57%**
LKK	**11.40%**
Mdm Ng	0.19%
Mdm Choo	0.14%
Total	100.00%

21 The second defendant, LKL, holds more shares in Kenson than any other shareholder. He was therefore appointed the managing director of Kenson.

22 The four plaintiffs hold 48.31% of Kenson. Significantly, however, LKL and LBY together hold 51.36% of Kenson. Pursuant to a shareholders' resolution of Kenson passed on 14 October 2010, Kenson appointed LKL as its corporate representative to attend and vote for Kenson at all meetings of the shareholders of SSH. [note: 17] Kenson's vote in SSH, which was worth 15.60% of SSH, was therefore controlled by the first and second defendant's branch of the Lim family.

Events leading to this litigation

23 Cracks in the relationship between the two branches of the family started to surface a decade after LKH's death. A series of events which had their genesis in events in 2008 and which took place in late 2012 saw the tension build up between the two branches.

2008 Rights Offer

24 On 18 June 2008, a special resolution was passed at an EGM of SSH approving a rights issue to the existing shareholders to raise $1,700,007 ("the 2008 Rights Offer"). [note: 18] Although it was not appreciated at the time, the 2008 Rights Offer had implications for the control of SSH.

25 In the same resolution, the directors were empowered to allot the rights shares that were not taken up by the existing shareholders to any persons whom they considered suitable. On the next day, 19 June 2008, the shareholders were notified by letter of the 2008 Rights Offer.

26 The deadline for SSH's shareholders to accept their entitlement to the rights shares was 30 June 2008. All of the existing shareholders, save for LKH's estate, subscribed for their entitlement under the offer. However, the shares under the 2008 Rights Offer remained unallotted for more than four years, until 25 October 2012 (see [36] below).

Distribution of LKH's shares in SSH

27 On 20 January 2011, nearly a decade after LKH's death, his shares in SSH were finally distributed to his beneficiaries in accordance with the law of intestacy. [note: 19] But 79,787 shares in SSH, representing 1.92% of its share capital, were not distributed. These shares were earmarked for distribution to LMK, LKH's daughter with Mdm Choo. But they could not be distributed to LMK because Mdm Choo took the position that LMK had agreed to sell the shares to her.

28 This bloc of 1.92% of the shares in SSH holds the balance of power in SSH. After the first round of distribution of LKH's shares, the shareholding in SSH was as follows: [note: 20]

Shareholder	Percentage of shareholding
LKH's estate (pending resolution of dispute between LMK and Mdm Choo)	1.92%
Plaintiffs' branch (excluding LMK)	48.36%
Defendants' branch	34.12%
Kenson	15.60%
Total	100.00%

The plaintiffs' branch of the family controlled 48.36% of SSH. Taking into account the Kenson bloc, the first and second defendants' branch of the family controlled 49.72% of SSH's shares. LMK's 1.92% bloc determined who held the majority.

Impasse at EGM in SSH on 6 February 2012

29 On 6 February 2012, the plaintiffs convened an EGM of SSH to consider and pass an ordinary resolution to return the sum of $852,300 that had been received by SSH under the 2008 Rights Offer. [note: 21] It will be recalled that LKH's estate failed to subscribe for the shares in 2008. At the EGM, LKW asked that the 2008 Rights Offer be cancelled and the share application monies be returned to the shareholders on the grounds that the estate had not subscribed for its entitlement in 2008. [note: 22] Presumably, the plaintiffs had become aware of the implications of this omission and were seeking to negate the consequences of the 2008 Rights Offer by passing this resolution. 2,011,915 votes were cast in favour of the motion. 2,068,481 votes, which included Kenson's votes exercised by LKL, were cast against the motion.

30 This EGM could not proceed due to an impasse as to how the votes in respect of the shares earmarked for LMK were to be exercised. It was decided that the vote on the resolution would be held in abeyance. The minutes of the EGM record the following: [note: 23]

> … [t]he results of the vote would be held in abeyance while the shareholders sought legal opinions on the matter. Unless the verdict is proven to the contrary, the motion was considered as inconclusive and the resolution to return the share application monies was not deemed to be passed.

31 LMK eventually commenced litigation against LKH's estate and won. On 2 February 2012, the court ordered the estate to transfer the shares earmarked for LMK to her. The transfer was effected on 1 March 2012. Around the same time, on 27 February 2012, the plaintiffs commenced a suit against LMK claiming that she had reneged on an agreement to sell her shares to them.

Failure to re-elect LHS and LBT to SSH's board

32 Things came to a head when the third and fourth plaintiffs, LHS and LBT, were not re-elected

to SSH's board in 2012. [note: 24] This was the catalyst for the minority oppression claim.

33 Under Article 95 of SSH's articles of association, directors are obliged to retire from office at each AGM. Ever since the Lim family took full control of SSH, the retirement and re-election of directors at AGMs had been a formality. But at SSH's 56th Annual General Meeting ("AGM") held on 20 September 2012, LBY asked for the re-election of directors to be done by poll. The first and second defendants' branch of the family and Kenson, through LKL, voted against the re-election of LHS and LBT. Crucially, LMK (acting by proxy) also voted against re-electing these two plaintiffs. With the majority (*ie*, 51.64%) voting against their re-election, LHS and LBT ceased to be directors of SSH.

34 Interestingly, this AGM was held less than two weeks before the conclusion of the plaintiffs' suit against LMK (see [31] above). On 2 October 2012, the court ordered LMK to transfer her shares in SSH to Mdm Choo. The transfer was eventually effected on 18 October 2012. Following this transfer, the plaintiffs' branch of the family became the majority shareholders of SSH. The shareholding in SSH after 18 October 2012 was as follows:

Shareholder	Percentage of shareholding
Plaintiffs' branch	50.28%
Defendants' branch	34.12%
Kenson	15.60%

The struggle for power: the three meetings on 25 October 2012

35 On 25 October 2012, each branch of LKH's family attempted to gain control of SSH. The two branches convened three meetings in the span of one day.

(i) The defendants convene a meeting of SSH's directors

36 At 9.00 am on 25 October 2012, the first and second defendant, LKL and LBY, convened a meeting of the directors of SSH to implement the 2008 Rights Offer. They sought to pass a resolution to allot the rights shares to the shareholders who had subscribed for them in 2008. The notice for this board meeting was issued on 19 October 2012. This was the day after LMK transferred her shares to Mdm Choo pursuant to the order of court. [note: 25] By this time, LHS and LBT had already failed to be re-elected at the earlier AGM. LKL, LBY and LKW, the first plaintiff, were the only three directors of SSH as a result. These three directors were present at this meeting.

37 The resolution passed by two votes to one, with LKL and LBY voting in favour and LKW voting against. The consequence of this allotment of the rights shares was that the plaintiffs lost the majority control of SSH which they had held for the brief period of 23 days from 2 October 2012 to 25 October 2012. The allotment had the following effect on the shareholding of SSH:

Shareholder	Percentage of shareholding
Plaintiffs' branch	48.70%

Defendants' branch	33.06%
Kenson	18.24%

(ii) The plaintiffs convene a meeting of Kenson's directors

38 LHS convened a meeting of the directors of Kenson on the same day, 25 October 2012, at 2.15 pm. The principal purpose was to pass two resolutions: (i) for LHS to replace LKL as the corporate representative of Kenson to attend and vote at all shareholders' meetings of SSH; and (ii) to instruct LHS to vote in favour of reinstating LHS and LBT as directors of SSH at an EGM of SSH which was to be held later that day. Notice of this meeting was served only a day before, on 24 October 2012. [note: 26] Only the plaintiffs were present at this meeting. Unsurprisingly, the resolutions passed.

(iii) The plaintiffs convene a meeting of SSH's shareholders

39 LKW convened an EGM of SSH to be held fifteen minutes after the meeting of Kenson's directors. The purpose of this EGM was to pass resolutions to elect LHS and LBT as directors of SSH. The notice of this EGM was dated 19 October 2012. It is in dispute whether the notice was served on 18 or 19 October 2012. [note: 27] Once again, neither of the defendants was present at this EGM.

40 At the EGM, the plaintiffs' branch of the family and Kenson, whose votes were now cast by its newly-appointed corporate representative LHS, voted in favour of the resolutions. LHS and LBT were re-elected as directors in LKL's and LBY's absence.

Proposed EGM of SSH on 5 November 2012

41 Thereafter, on 27 October 2012, the plaintiffs convened a meeting of the directors of SSH to pass a resolution to convene an EGM on 5 November 2012. The purpose of the EGM was to consider a resolution to authorise the directors of SSH to allot 847,707 shares in SSH to any persons whom they thought fit. This was the number of shares that LKH's estate would have been entitled to if it had taken up its entitlement under the 2008 Rights Offer.

42 LHS and LBT, who had been elected directors of SSH on 25 October 2012, voted in favour of the resolution together with LKW. The defendants voted against the resolution. The plaintiffs treated the resolution as having been passed and caused SSH to issue a notice to its shareholders informing them that the EGM would be held on 5 November 2012.

43 In response, the defendants commenced OS1042 and OS1050 against the plaintiffs on 1 and 6 November 2012 respectively. They also obtained an *ex parte* injunction restraining the EGM scheduled for 5 November 2012 from proceeding.

44 I now move on to address in turn the three proceedings which comprise this litigation.

OS1050: the meeting of Kenson's directors

45 In OS1050, LKL and LBY seek the following relief:

(a) A declaration that the meeting of the directors of Kenson on 25 October 2012 is invalid.

(b) A declaration that the proceedings and resolutions passed at that meeting are void and of no effect.

(c) A declaration that LKL is and continues to be Kenson's corporate representative to attend and vote at all of SSH's shareholders' meetings until further resolved by Kenson's directors.

(d) An injunction restraining LHS from representing himself as Kenson's corporate representative and from attending and voting at all of SSH's shareholders' meetings.

46 As I have mentioned, only the plaintiffs attended the board meeting on 25 October 2012 at which the four resolutions were passed. As a result of those resolutions, LHS replaced LKL as the corporate representative of Kenson to attend and vote at SSH's shareholders' meetings. The notice of the board meeting was served on LKL and LBY on 24 October 2012.

47 LKL and LBY complain that as a result of the late notice, it came to their attention only on the morning of 25 October 2012 that a board meeting was going to be held that afternoon. LKL and LBY immediately wrote a letter to the plaintiffs objecting on the grounds that inadequate notice had been given and recording that they would not be able to attend the meeting because of prior commitments. [note: 28] Despite receiving this letter, the plaintiffs went ahead with the board meeting at 2.15 pm in LKL's and LBY's absence and removed LKL as Kenson's corporate representative.

Notice of the board meeting was irregular

48 I accept the defendants' submission that notice of the board meeting was issued and served irregularly on LKL and LBY in that inadequate notice of the meeting was given to them.

49 Article 106 of Kenson's articles of association states: [note: 29]

106. A Director may … at any time, *by notice duly given* summon a meeting of the Directors to be held but it shall not be necessary to give notice of a meeting of the Directors to a Director who is not in Singapore or Malaysia.

[emphasis added]

Article 106 requires merely that notice must be "duly given", without stipulating the number of days of notice that must be given. Nevertheless, it is well-established that reasonable notice must be given.

50 In *Chow Kwok Ching v Chow Kwok Chi and others and other suits* [2008] 4 SLR(R) 577, Judith Prakash J made the observation at [200]:

… As there were no notice periods prescribed in the articles, only reasonable notice of board meetings needed to be given. In most cases a few days' notice (not seven days) would have been sufficient but I do agree that in relation to the meeting of 16 January 2004, the notice was short and since the plaintiff had clearly indicated he had a prior appointment, the meeting should not have proceeded on that date. …

51 Tan Lee Meng J made a similar observation in *Tan Choon Yong v Goh Jon Keat and others and other suits* [2009] 3 SLR 840. Tan J stated at [74]:

… unless the articles require otherwise, notice of a board meeting may, depending on the need, be called at a short notice so long as it is sufficient to enable directors to attend it. …

52 It is clear to me that in the present case, the directors' meeting of 25 October 2012 was called at such unreasonably short notice that there was insufficient time for LKL or LBY to attend. Notice of the meeting was sprung on them, giving them less than a day to react to it. Moreover, the plaintiffs went ahead with the meeting even though LKL and LBY put them on notice expressly by letter that they were unable to attend the meeting. I thus find that notice of the meeting was issued and served irregularly.

The irregularity cannot be cured

53 The next question is whether this irregularity can be cured under s 392 of the Companies Act. Section 392 states:

> **Irregularities**
>
> **392.** – (1) In this section, unless the contrary intention appears a reference to a procedural irregularity includes a reference to –
>
> (a) the absence of a quorum at a meeting of a corporation, at a meeting of directors or creditors of a corporation or at a joint meeting of creditors and members of a corporation; and
>
> (b) a defect, irregularity or deficiency of notice or time.
>
> (2) A proceeding under this Act is not invalidated by reason of any procedural irregularity unless the Court is of the opinion that the irregularity has caused or may cause substantial injustice that cannot be remedied by any order of the Court and by order declares the proceeding to be invalid.
>
> …

54 The defendants argue that the failure to give proper notice was a substantive rather than procedural irregularity and is therefore incapable of being validated under s 392. In the alternative, they argue that even if the failure to give proper notice was a mere procedural irregularity, it cannot be cured under s 392 because the irregularity caused them substantial injustice. [note: 30] The defendants submit that the plaintiffs' actions were deliberately calculated to exclude them from the board meeting.

The irregularity is procedural

55 It is not easy to determine if a particular irregularity is procedural or substantive. This was recognised in the Court of Appeal decisions of *Chang Benety and others v Tang Kin Fei and others* [2012] 1 SLR 274 ("*Chang Benety*") and *Thio Keng Poon v Thio Syn Pyn and others and another appeal* [2010] 3 SLR 143 ("*Thio Keng Poon*"). Both cases found the principles in the New South Wales Supreme Court case of *Cordiant Communications (Australia) Pty Ltd v The Communications Group Holdings Pty Ltd* [2005] NSWSCC 1005 ("*Cordiant*") instructive. The following paragraphs from *Cordiant* were cited in both cases:

> What, then, is the substantive irregularity as distinct from a procedural irregularity? In my view, the cases concerning the distinction between a substantive law or rule and a procedural law or rule provide some guidance. In *John Pfeiffer Pty Ltd v Rogerson* (2000) 203 CLR 503, Gleeson CJ, Gaudron, McHugh, Gummow and Hayne JJ said (at 543-544):

matters that affect the existence, extent or enforceability of the rights or duties of the parties to an action are matters that, on their face, appear to be concerned with issues of substance, not with issues of procedure. Or to adopt the formulation put forward by Mason CJ in McKain 'rules which are directed to governing or regulating the mode or conduct of court proceedings' are procedural and all other provisions or rules are to be classified as substantive.

In the light of this observation and of the decisions in *Industrial Equity, ANZ Nominee*, *Scullion* and *Link Agricultural*, I think that the following general proposition may be formulated for the purposes of the application of the Corporations Act, s 1322:

- what is a 'procedural irregularity' will be ascertained by first determining what is 'the thing to be done' which the procedure is to regulate;

- if there is an irregularity which changes the substance of 'the thing to be done', the irregularity will be substantive;

- if the irregularity merely departs from the prescribed manner in which the thing is to be done without changing the substance of the thing, the irregularity is procedural.

The application of such a proposition in any particular case will depend upon the starting point, *ie*, defining 'the thing to be done'. Different answers to the question will be found depending on how broadly or narrowly one defines 'the thing to be done'.

56 The defendants submit that the failure to give proper notice is a substantive irregularity because it amounted to a wrongful exclusion of the LKL and LBY from the meeting. They contend in turn that the improper and wrongful exclusion of LKL and LBY constitutes a breach of: (i) Articles 91 and 107 of Kenson's articles of association; and (ii) the plaintiffs' fiduciary duties to Kenson. [note: 31]

57 I do not agree with the defendants. To my mind, the deficiency of the notice or the notice period is a procedural irregularity. The defendants have conflated two issues in their submission by treating the failure to give adequate notice and the wrongful exclusion of LKL and LBY as being one and the same. The irregularity in question is the failure to give adequate notice, not the improper or wrongful exclusion of LKL and LBY from the meeting. Whether this irregularity led to the improper or wrongful exclusion of LKL and LBY from the meeting is a separate inquiry. That separate inquiry arises if I find that the irregularity is a procedural one, because it will go to the issue of whether substantial injustice resulted. But at this stage, the focus is on the fundamental nature of the irregularity and not its consequence. The consequence should be set aside for the time being.

58 On a plain reading of s 392(1), a deficiency of notice or time is a procedural irregularity "unless the contrary intention appears". The length of the notice does not "affect the existence, extent or enforceability of the rights or duties of the parties". Employing the terminology set out in the passage cited at [55] above, the "thing to be done" is giving notice to the directors that a board meeting is to be held at a certain time and place. An irregularity in giving notice does not change the substance of the notice which is given. Instead, it is a departure from the prescribed manner in which notice is to be given. In other words, notice has been accurately given, but the notice period is inadequate. The substance of the "thing to be done" – the giving of notice – remains unchanged. Therefore, the failure to give adequate notice is a procedural, and not a substantive, irregularity.

Substantial injustice has resulted

59 Even though I have found that the failure to give adequate notice is a procedural irregularity, the board meeting may still be invalid if I find that the irregularity has caused or may cause substantial injustice that cannot be remedied by any order of the court: s 392(2) of the Companies Act.

60 The Court of Appeal observed at [58] in *Thio Keng Poon* that whether the irregularity is accidental or deliberate is of secondary importance. Instead, the focus should be on the significance and the materiality of the non-compliance and whether "substantial injustice" was caused.

61 The court went on to provide guidance on what constitutes "substantial injustice". The following principles can be distilled from the judgment (at [75]):

(a) First, it is axiomatic that there must be a direct link between the procedural irregularity in question and the injustice suffered.

(b) Second, the injustice must be of a 'substantial' nature. This means that the injustice must be real, rather than theoretical or fanciful. There must be some basis or indication on the face of the evidence before the court that the aggrieved party had suffered injustice or would suffer injustice as a result of the procedural irregularity occurring.

(c) Third, the aggrieved party must show that there may or could have been a different result, if not for the procedural irregularity.

(d) The determination of substantial injustice under s 392 involves a holistic weighing and balancing of the various interests of all the relevant parties.

62 The defendants submit that the irregularity caused substantial injustice to them and therefore the meeting was invalid. They argue that as a direct result of the plaintiffs' failure to provide adequate notice, LKL and LBY were unable to attend the board meeting and the resolutions were passed in their absence. [note: 32] They contend that if adequate notice had been given, they may have been able to attend the meeting and the resolutions may not have been passed. They submit that this was because LHS and LBT, who were both in a position of a conflict of interest, were not entitled to vote. On the other hand, LKL, who was the chairman of Kenson, would have had a second vote in the case of an equality of votes under Article 108 of Kenson's articles of association. In the alternative, they submit that if adequate notice had been given, LKL and LBY could have taken steps as the majority shareholders to remove some or all of the plaintiffs from the board of Kenson or to seek injunctive relief after commencing an oppression claim against the plaintiffs in order to prevent the resolutions being passed.

63 The plaintiffs in turn submit that the defendants did not suffer any prejudice even though they were given only a day's notice because an EGM of SSH had been scheduled to take place that same afternoon at 2.30pm. [note: 33] Both meetings were fixed at the same location and were 15 minutes apart. I do not accept this submission, not least because notice of the EGM of SSH itself was problematic as I go on to find when I consider OS1042. The fact remains that LKL and LBY were notified of the board meeting at a late hour.

64 I accept the defendants' submissions that, had they been given adequate notice, they could have taken other actions which were likely to have led to a different result. The manner in which the plaintiffs sprang the notice of the meeting on LKL and LBY was clearly intended to take them by surprise and to deprive them of time to react. In these circumstances, I am of the view that plaintiffs' failure to provide reasonable notice of the meeting of the directors of Kenson did cause substantial

injustice to the defendants.

65 To conclude, the plaintiffs' failure to provide adequate notice cannot be cured under s 392 of the Companies Act. The Kenson board meeting on 25 October 2012 and the resolutions passed in the meeting are therefore invalid.

OS1042: the meetings of SSH's directors and shareholders

66 I turn now to consider OS1042. In that application, the defendants seek the following relief:

(a) A declaration that the EGM of SSH held on 25 October 2012 is invalid and that all proceedings and the resolution passed at the meeting are void and of no effect.

(b) A declaration that the directors' meeting of SSH held on 27 October 2012 is invalid and that all proceedings and the resolution passed at the meeting are void and of no effect.

(c) An injunction restraining LHS and LBT from acting or purporting to act as directors of SSH.

(d) An injunction restraining the plaintiffs from proceeding with the EGM fixed for 5 November 2012, as notified in the notice of EGM dated 27 October 2012, and from passing the proposed resolutions set out in the notice.

67 The defendants argue that the notice of EGM dated 19 October 2012 was defective as they were given only six days' notice of the EGM. They submit that this is defective under s 177(2) of the Companies Act, which requires at least 14 days' notice to be given. [note: 34] They argue that a company cannot circumvent the minimum period stipulated in s 177(2) by providing for a shorter period of notice in their articles of association. Thus, Article 62 of SSH's articles of association which provides that seven days' notice suffices cannot displace s 177(2) of the Companies Act. The defendants further submit that in any event, the notice was also defective under Article 62 as only six days' notice was given. [note: 35]

68 Further and in the alternative, the defendants submit that Kenson was not properly represented at the EGM of SSH on 25 October 2012 because the Kenson board meeting on 25 October 2012 itself was not properly convened and thus the appointment of LHS as corporate representative was invalid.

69 The plaintiffs, on the other hand, submit that proper notice was given. Although the notice is dated 19 October 2012, the plaintiffs assert that it was in fact mailed on 18 October 2012 and that the date is misstated on the notice due to a clerical error. [note: 36] Their position is therefore that seven days' notice was given as required by Article 62, with the result that the notice is not defective.

Notice of the EGM was irregular

70 Article 62 of SSH's articles of association stipulates that at least seven days' notice of an EGM must be given. The article states:

NOTICES OF MEETINGS

62. Seven days' notice at the least (inclusive of the day on which the notice is served or deemed to be served but exclusive of the day for which notice is given) specifying the place, the day and the hour of meeting …

71 Although SSH's articles of association pre-date the repeal of the Companies Ordinance (Cap 174, 1955 Rev Ed) (*ie*, 29 December 1967), s 3(2) of the Companies Act provides that the continuity of its status, operation or effect is not disturbed, "unless the contrary intention appears in the [Companies] Act".

72 I agree with the defendants that s 177(2) of the Companies Act sets out such a "contrary intention". Article 62 must be read subject to s 177(2) and cannot supersede it.

73 Section 177(2) of the Companies Act states:

> **Calling of meetings**
>
> **177.** …
>
> (2) A meeting of a company or of a class of members, other than a meeting for the passing of a special resolution, shall be called by notice in writing of not less than 14 days or such longer period as is provided in the articles.

74 The wording of s 177(2) is clear. It requires *at least* 14 days' notice to be given, while permitting a company's articles to require a notice period that is *longer* than 14 days. The implied effect of s 177(2) is that a company's articles cannot provide for a notice period that is *shorter* than the prescribed minimum period of 14 days.

75 This conclusion is supported and reinforced by s 177(3). That subsection sets out the exceptions to the requirement that at least 14 days' notice must be given. It reads:

> (3) A meeting shall, notwithstanding that it is called by notice shorter than is required by subsection (2), be deemed to be duly called if it is so agreed –
>
> (a) in the case of a meeting called as the annual general meeting, by all members entitled to attend and vote thereat; or
>
> (b) in the case of any other meeting, by a majority in number of the members having a right to attend and vote thereat, being a majority which together holds not less than 95% of the total voting rights of all the members having a right to vote at that meeting.

76 As the defendants submit, [note: 37] s 177(3) sets out specific situations in which a meeting is deemed to be duly called even if the notice period is shorter than that prescribed in s 177(2). The wording of s 177(3) suggests that the two exceptions set out in this subsection are exhaustive.

77 I therefore find that the notice dated 19 October 2012 of the EGM of SSH to be held on 25 October 2012 is defective as it contravenes s 177(2) of the Companies Act. Given my finding that the prescribed minimum period in s 177(2) cannot be overridden by a company's articles of association, it makes no difference whether the notice was served on 18 or 19 October 2012 (*ie*, whether six or seven days' notice was given).

The irregularity cannot be cured

78 Unless the irregularity in giving notice can be cured under s 392 of the Companies Act, the EGM of SSH on 25 October 2012 and the resolution that was passed to appoint LHS and LBT as directors

will be invalid.

79 I note that the defendants sent the plaintiffs a letter on 25 October 2012 stating that inadequate notice had been given to them of the EGM of SSH and warning that steps would be taken to invalidate the meeting and the resolutions passed if the plaintiffs proceeded with the meeting. As is the case with the Kenson board meeting on 25 October 2012, the plaintiffs ignored the defendants' letter and carried on with the EGM.

80 I find that the plaintiffs' failure to provide adequate notice in relation to the EGM of SSH on 25 October 2012 caused substantial injustice to the defendants. This is especially so when the plaintiffs' actions in relation to both Kenson and SSH are considered as a whole. The plaintiffs sprang the two meetings on LKL and LBY. They gave LKL and LBY inadequate notice of both meetings. As a result of the plaintiffs' actions in relation to both meetings, the resolution to appoint LHS and LBT as directors of SSH was passed in LKL's and LBY's absence. The purpose of s 392 is to balance "the twin considerations that proceedings are not invalidated for minor reasons, and that procedural irregularities do not result in unjust situations that cannot be remedied by the courts": *Chang Benety* at [37]. I do not think that the purpose of s 392 is to cure situations like the present. Thus, I find that s 392 does not cure the deficiency in the notice of the EGM of SSH. The EGM and the resolution that was passed at the EGM are thus invalid.

Kenson was not properly represented at SSH's EGM

81 Additionally, the defendants submit that the resolution passed at the EGM to appoint LHS and LBT as directors are invalid because Kenson was not properly represented at the EGM.

82 I have declared in OS1050 that the Kenson board meeting held on 25 October 2012 is invalid because inadequate notice of the meeting was given. I have also declared that the appointment of LHS as Kenson's corporate representative is invalid. Following my decision in OS1050, the votes cast by LHS at SSH's EGM in favour of electing LBT and himself as directors of SSH are void and ought not to have counted. The resolution that was passed at the EGM to appoint LHS and LBT as directors is invalid.

Consequences that flow from my findings

83 It will be recalled that following the EGM of SSH on 25 October 2012, the plaintiffs called a SSH board meeting on 27 October 2012 in order to pass a resolution to call for an EGM on 5 November 2012. All six parties attended the board meeting. The plaintiffs voted in favour of the resolution while the first and second defendants voted against the resolution. The resolution to convene the EGM on 5 November 2012 was deemed to be passed by the plaintiffs and a notice of the EGM was thereafter issued to the shareholders of SSH.

84 I accept the defendants' submission that LHS and LBT, who attended the SSH board meeting held on 27 October 2012 and voted in favour of the resolution, were not lawfully appointed as directors of SSH. [note: 38] Thus, the board was not properly constituted for that meeting. The meeting is invalid and the resolution passed is also invalid.

85 To the extent that it is still necessary, I also grant an injunction against the holding of the EGM of SSH that was originally scheduled for 5 November 2012 for the purpose of passing the resolution to authorise SSH's directors to allot the 847,707 unsubscribed shares.

86 I now turn to consider the plaintiffs' claim under s 216 of the Companies Act.

S1005: minority oppression

87 S1005 involves two distinct minority oppression claims. One arises from the way in which the affairs of SSH have been conducted. The other arises from the way in which the affairs of Kenson have been conducted.

The parties' positions

88 The plaintiffs argue that both SSH and Kenson are quasi-partnerships or are akin to quasi-partnerships. As a result, it is said, the court should look beyond the confines of the parties' strict legal rights and obligations and instead look for informal or implied understandings between the parties which give rise to legitimate expectations between them. The plaintiffs submit that they each have a legitimate expectation of participation in the management of each company. They submit also that all of the shareholders of SSH have a legitimate expectation that its profits will be shared amongst them relatively equally, in the sense that the profits will be shared in a manner proportionate to their shareholding.

89 Relying on these legitimate expectations, the plaintiffs complain that the following actions of the defendants in SSH oppressed and unfairly prejudiced their interests: [note: 39]

(a) LKL and LBY caused the third and fourth plaintiffs (*ie*, LHS and LBT) to be removed as directors of SSH in its AGM held on 20 September 2012. This, the plaintiffs argue, is contrary to the common understanding held by both the plaintiffs and the defendants that they would each be entitled to remain involved in the management of SSH and defeats their legitimate expectation that they would be directors of SSH until they no longer wished to be involved.

(b) The defendants, especially LBY in his capacity as the managing director of SSH, made and executed major business decisions for SSH without first getting consent or approval from the plaintiffs who were the directors and shareholders of SSH.

(c) LBY, in his capacity as the managing director of SSH, caused a drastic shift in SSH's core business, resulting in a significant increase in SSH's risk profile. LBY did this, the plaintiffs submit, without first getting consent or approval from the plaintiffs who were directors and shareholders of SSH.

(d) The defendants caused SSH to declare inadequate or insufficient dividends over a period of more than a decade after LKH's demise in 2001.

(e) At the same time, LBY drew excessive directors' fees from SSH. The amount of fees he drew significantly increased after LKH's demise. The plaintiffs submit that the alleged gap between the financial benefits received by LBY and the plaintiffs is contrary to the common understanding and legitimate expectations of the shareholders that there would be a relatively equal sharing of profits by the shareholders of SSH in a manner proportionate to their shareholding.

(f) LBY made self-serving business decisions which were in conflict of interest with the group of companies comprising SSH, Kenson and their subsidiaries.

90 The plaintiffs make similar complaints in relation to Kenson, which can be summarised as follows:

(a) LKL and LBY acted in breach of the parties' common understanding and legitimate

expectation that they could remain as directors and participate in the management of Kenson for a s long as they wanted by threatening to remove LKK and LBT from participation in the management of Kenson as directors.

(b) The defendants, especially LKL as the managing director of Kenson, made and executed major business decisions without the approval of the plaintiffs who were directors of Kenson.

(c) Inadequate dividends were declared in Kenson since 2001.

(d) Further, LKL received excessive directors' fees. The plaintiffs argue that the gap between the financial benefit received by LKL is contrary to the common understanding and legitimate expectations they had that there would be a relatively equal sharing of profits by the shareholders of SSH in a manner proportionate to their shareholding.

91 The defendants make the following submissions in response:

(a) SSH and Kenson cannot be characterised as quasi-partnerships or as companies that are akin to quasi-partnerships. Even if they were a quasi-partnership when LKH was still alive (which the defendants deny), the companies ceased to be quasi-partnerships after LKH's demise in 2001.

(b) Further, there was never any mutual understanding or legitimate expectation among the shareholders of either SSH or Kenson that the plaintiffs, as LKH's sons, are entitled to participate in the management of the business.

92 The defendants further submit that even if I find against them on these two issues and find that the plaintiffs were entitled to participate in the management of the two companies, the plaintiffs' claim should still fail for the following reasons:

(a) First, the defendants have not unfairly excluded the plaintiffs from participating in the management of SSH or Kenson.

(b) Second, each of the six acts which the plaintiffs cite as being oppressive or unfairly prejudicial to them were not in fact so.

(c) Third, the plaintiffs had control of the board of SSH and of Kenson and could have readily put an end to any acts of oppression. The defendants submit that the plaintiffs, having chosen not to use their management control to stop the oppressive or unfairly prejudicial acts that were allegedly committed, cannot now seek the court's protection under s 216 of the Companies Act.

(d) Fourth, the plaintiffs cannot assert that the defendants acted oppressively in causing LHS and LBT not to be re-elected in SSH's AGM on 20 September 2012. The first and second defendant's branch of the family held only 34.12% of the shares in SSH. They further argue that they cannot be held responsible for the way in which LMK voted, not least because she is from the *plaintiffs'* branch of the family and not from the defendants'.

(e) Fifth, they submit that LKW and LHS do not have standing to bring a claim under s 216 of the Companies Act in relation to SSH against the defendants. In a similar vein, they submit that LKW also has no standing to bring such a claim in relation to Kenson.

(f) Sixth, they argue that the plaintiffs are not entitled to rely on s 216 of the Companies Act because there is a mechanism available under the articles of association of SSH and Kenson for

them to sell their shares in the companies at a fair value.

The issues

93 The issues that fall to be determined are as follows:

(a) First, whether either SSH or Kenson is a company that is subject to equitable considerations.

(b) Second, whether the parties have a legitimate expectation that the plaintiffs, as LKH's sons, are entitled to participate in the management of SSH or Kenson and a legitimate expectation that there would be a relatively equal sharing of profits by the shareholders of SSH in a manner proportionate to their shareholding.

(c) Third, whether the plaintiffs have been treated in such a manner by the defendants as to warrant relief under s 216 of the Companies Act.

94 Before going into the parties' submissions in detail, I set out the general legal principles that are applicable in deciding whether relief under s 216 of the Companies Act ought to be granted.

The law on minority oppression

Section 216(1) of the Companies Act

95 I begin with s 216 itself. Section 216(1) of the Companies Act was enacted with the objective of protecting minority shareholders from being unfairly treated by majority shareholders. The section states:

Personal remedies in cases of oppression or injustice

216. — (1) Any member or holder of a debenture of a company … may apply to the Court for an order under this section on the ground —

(a) that the affairs of the company are being conducted or the powers of the directors are being exercised in a manner *oppressive* to one or more of the members or holders of debentures including himself or *in disregard of his or their interests* as members, shareholders or holders of debentures of the company; or

(b) that some act of the company has been done or is threatened or that some resolution of the members, holders of debentures or any class of them has been passed or is proposed which *unfairly discriminates* against or is otherwise *prejudicial* to one or more of the members or holders of debentures (including himself).

[emphasis added]

96 On a literal reading, s 216(1) of the Companies Act provides four alternative limbs under which relief may be granted: (i) oppression; (ii) disregard of a member's interest; (iii) unfair discrimination; and (iv) conduct that is otherwise prejudicial to the member.

Commercial fairness is key

97 It is settled law that the touchstone in a minority oppression claim is fairness. This was

emphasised in *Over & Over Ltd v Bonvests Holdings Ltd and another* [2010] 2 SLR 776 ("*Over & Over*") (at [81] and [130]) where the Court of Appeal provided a clear summary of the principles that govern a minority oppression claim. The common thread that underpins all four limbs under s 216 of the Companies Act is that the members must have been treated in an unfair manner. There is therefore little utility in reading the four limbs disjunctively and attempting to draw a distinction between each limb.

98 Even though prejudice to the claimant is an important factor in the overall assessment of unfairness, it is not an essential requirement to make out a claim under s 216 of the Companies Act: see *Over & Over* at [72]. In this respect, Singapore law differ from English law where both unfairness and prejudice must be shown in order to establish an unfair prejudice claim: see s 994 of the English Companies Act 2006 (c 46) (UK) and *Re Saul D Harrison & Sons plc* [1995] 1 BCLC 14 at 31 ("*Re Saul Harrison*").

99 The courts have consistently held that the test of "commercial unfairness" involves a consideration of whether there has been a "visible departure from the standards of fair dealing and a violation of the conditions of fair play which a shareholder is entitled to expect": see *Over & Over* at [77] and *Re Kong Thai Sawmill (Miri) Sdn Bhd* [1978] 2 MLJ 227 citing a passage from *Elder v Elder & Watson Limited* [1952] SC 49. The concept of fairness has to be applied judicially and the content which it is given by the courts must be based upon rational principles: *O'Neill v Phillips* [1999] 1 WLR 1092 ("*O'Neill*") at 1098. It is not sufficient that the conduct is considered unfair by applying *subjective* notions of commercial or other morality.

100 It is also important to distinguish unfairness from unlawfulness. Conduct that is technically unlawful may not be unfair; in the same vein, conduct may be unfair without being unlawful: *Re Saul Harrison* at 19 and *Over & Over* at [85]. Therefore, a majority shareholder may act entirely in accordance with his strict legal rights, yet the manner in which the rights are exercised may warrant the court's intervention. Conversely, conduct that is not lawful because it involves some trivial or technical infringement of the articles or even of the Companies Act may not be unfair.

101 The Court of Appeal also observed in *Over & Over* (at [74]) that, even though in the majority of cases a claim under s 216 of the Companies Act is based on the cumulative effect of a course of action, it is not inconceivable that a single isolated act could amount to oppression.

The starting point of a minority oppression claim

102 Showing unfairness is no doubt crucial and essential to succeed in a minority oppression claim. But the starting point in establishing a claim based on minority oppression is not to show unfairness. Instead, a member must first show that the company in question is subject to equitable considerations, arising either at the time the parties' relationship commenced or subsequently, which make it unfair for those conducting its affairs to rely on their strict legal powers and rights under the company's articles of association and under the Companies Act. The applicable standard of fairness differs depending on the nature of the company and the relationships of the shareholders. What is unfair in conduct in one company may not be unfair conduct in another.

103 After deciding if equitable considerations apply, the next stage of the inquiry is to examine whether the member has shown sufficiently that (i) he has certain legitimate expectations derived either from the articles of association, or in the case of a quasi-partnership from the parties' interactions and personal relationships; and (ii) the conduct complained of is contrary to or has departed from such expectations to the extent that it has become unfair.

104 Bearing these principles in mind, I turn to consider the issues.

Is either company subject to equitable considerations?

105 In *Ebrahimi v Westbourne Galleries Ltd and others* [1973] AC 360 ("*Ebrahimi*"), Lord Wilberforce identified a number of elements which may result in the superimposition of equitable considerations. He stated at 379E:

> … Certainly the fact that a company is a small one, or a private company, is not enough. There are very many of these where the association is a purely commercial one, of which it can safely be said that the basis of association is adequately and exhaustively laid down in the articles. The superimposition of equitable considerations requires something more, which typically may include one, or probably more, of the following elements: *(i) an association formed or continued on the basis of a personal relationship, involving mutual confidence* – this element will often be found where a pre-existing partnership has been converted into a limited company; *(ii) an agreement, or understanding, that all, or some (for there may be "sleeping" members), of the shareholders shall participate in the conduct of the business; (iii) restriction upon the transfer of the members' interest in the company – so that if confidence is lost, or one member is removed from management, he cannot take out his stake and go elsewhere*.
>
> [emphasis added]

106 If the member fails to show that equitable considerations are superimposed on the company, the measure of commercial unfairness is defined by the parties' legal rights and their legitimate expectations derived from and enshrined in the company's constitution. But the situation is different if the member succeeds in showing that equitable considerations are superimposed on the company. The archetype of this, of course, is the quasi-partnership, *ie* a company within Lord Wilberforce's first category in the passage quoted above at [105]. In this special class of companies, an extended measure of unfairness will take into account otherwise unenforceable expectations which arise from the members' personal relationship of mutual confidence rather than from the company's constitution, and which expectations are not necessarily submerged in the company structure: *Over & Over* at [79] citing *Ebrahimi* with approval. This was unequivocally recognised by Chan Sek Keong CJ in *Lim Swee Khiang and another v Borden Co (Pte) Ltd and others* [2006] 4 SLR(R) 745 ("*Borden*") at [83]:

> … where a company has the characteristics of a quasi-partnership and its shareholders have agreed to associate on the basis of mutual trust and confidence, the courts will insist upon a high standard of corporate governance that must be observed by the majority shareholders vis-à-vis the minority shareholders.

107 The Court of Appeal also accepted in *Over & Over* (at [83]) that the courts have "consistently applied a stricter yardstick of scrutiny [in the context of quasi-partnerships] because of the peculiar vulnerability of minority shareholders in such companies". The Court of Appeal went on to explain in the same paragraph that greater scrutiny is needed in the case of quasi-partnerships because the members of a closely-held company based on a personal relationship of mutual trust and confidence are inevitably prepared to accept a great degree of informality in spelling out the fundamental understandings and expectations underlying their investment and are more vulnerable to being locked into that investment:

> … **First**, those who enter into a corporate structure often do not always spell out their rights and obligations in their entirety, in part because they are unable to anticipate all the eventualities that may arise, but also because it would be disproportionately expensive and time-consuming to

do so even if they could. *Naturally, this problem is particularly acute in respect of those who set up business with others essentially on the basis of mutual trust and confidence – they would have operated on the belief that the majority would take their interests into account and that any such problems would be readily and civilly ironed out.* Ironically, often these understandings are not documented, let alone spelt out in legal terms, as it might be perceived that the very documentation of the understanding might betray a lack of trust. … **Second**, the *reality of the nature of a closed company makes it susceptible to exploitative conduct by the majority* simply because the minority has no obvious legal remedies spelt out in the memorandum and articles of association. At the risk of stating the obvious, it bears mention that minority shares in private companies are often difficult to dispose of, and even if there was a market for them they would often have to be sold at a substantial discount.

[emphasis in bold and in italics added]

108 Therefore, in cases involving quasi-partnerships, the courts will take into account even informal and undocumented understandings and expectations in determining whether the minority has been unfairly treated: *Over & Over* at [84]. The reason for this was best explained by Hoffmann LJ (as he then was) in *Re Saul Harrison* at 19-20, where he said:

… *the personal relationship between a shareholder and those who control the company may entitle him to say that it would in certain circumstances be unfair for them to exercise a power conferred by the articles upon the board or the company in a general meeting.* I have in the past ventured to borrow from public law the term 'legitimate expectation' to describe the correlative 'right' in the shareholder to which such a relationship may give rise. *It often arises out of a fundamental understanding between the shareholders which formed the basis of their association but was not put into contractual form* …

[emphasis added]

109 The plaintiffs take the position that SSH and Kenson are subject to equitable considerations because they are family companies and are therefore quasi-partnerships or share the characteristics of a quasi-partnership. For this proposition, the plaintiffs rely on the cases of *Chow Kwok Chuen v Chow Kwok Chi and another* [2008] 4 SLR(R) 362 ("*Chow Kwok Chuen*") and *Fisher v Cadman* [2005] EWHC 377 (Ch). They submit that Kenson has always been a quasi-partnership while SSH became a quasi-partnership between LKH and his sons in 1993 when LKH bought out all the other shareholders who were unrelated to the Lim family (see [12] above).

110 On the other hand, the defendants argue that neither company is a quasi-partnership. They submit that neither company was incorporated or operated on the basis of any relationship of mutual trust and confidence between the members. [note: 40] Instead, LKH alone made all the final management decisions in the two companies while he was alive and the companies operated according to the members' strict legal rights after he died.

111 There is no doubt that SSH and Kenson are "family companies" in the broad sense that all its members who are natural persons are members of a family. However, I accept the defendants' submission that neither SSH nor Kenson is a quasi-partnership. The facts show that LKH ran both companies as an autocratic patriarch. He decided whom to appoint as a director and decided when they should cease to be a director. On this issue, I accept the defendants' evidence that it was LKH who decided that LKK, the second plaintiff, should resign as a director of SSH (see [15]–[16] above and [127] below).

112 Importantly, even though the parties are family members, their relationship in the two companies was not based on mutual trust and confidence between the members. Unlike the companies in *Chow Kwok Chuen*, LKH did not set up and run SSH and Kenson "with the inherent assumption … that the shareholders and directors, as descendants of the patriarch, would work in concert to grow the [companies], enhance the family fortune and perpetuate the legacy" (*Chow Kwok Chuen* at [33]). Quite the contrary: LKH had an overriding say in both companies until his death in 2001. All the parties accepted LKH's authority and his decisions unquestioningly. So while it is undoubtedly true that there existed in each company a bilateral relationship of mutual trust and confidence between LKH and each son, I find that there was no such relationship between each son and all of the other sons.

113 In particular, even as between each son and LKH during his lifetime, there was never any expectation or any basis for any expectation that each son would be involved in managing SSH so long as he wished or even that each son would be entitled to hold the office of director so long as he wished. In fact, only LKW and LBY assisted LKH in managing SSH while LKH was alive. After LKH's death, the two took over the management of SSH without objection. In contrast, LHS, LBT and LKL were non-executive directors who did not participate, who did not expect to participate and who did not ask to participate in the management of SSH.

114 As for Kenson, there is even more evidence to show that it is not a quasi-partnership. LKH established Kenson on his own and determined unilaterally who would be a shareholder and who would be a director. From the 1980s, LKL was the only son of LKH who was involved in managing the business of Kenson. The remaining parties were non-executive directors. It appears, in fact, that even LKH did not play an active or substantial role in Kenson. He and the other members were content to leave the company to be managed by LKL.

115 In these circumstances, I find that neither SSH nor Kenson is a quasi-partnership or a company that is akin to a quasi-partnership. There is no scope of the superimposition of equitable considerations. The measure of commercial unfairness is defined by the parties' legal rights and their legitimate expectations derived from and enshrined in the company's constitution. The plaintiffs do not allege that there has been any breach of their legal rights under SSH's or Kenson's articles of association or the Companies Act. Against the applicable measure, therefore, I find that LKL and LBY have not treated the plaintiffs unfairly.

116 In case I am wrong in these findings, I now consider the plaintiffs' case on the assumption that that the parties' relationships as members of SSH and of Kenson were personal relationships based on mutual trust and confidence, as a result of which they did not document the fundamental understandings and expectations underlying their investment in these two companies.

Legitimate expectations

117 The plaintiffs' case is that LKL's and LBY's actions in SSH and in Kenson are in breach of the plaintiffs' legitimate expectations. They submit that there was an informal or implied understanding amongst the parties that they, as LKH's sons, are entitled to participate in the management of SSH and Kenson. [note: 41] These informal or implied understandings in turn gave rise to the following legitimate expectations: [note: 42]

(a) that the plaintiffs are entitled to act as directors of SSH and Kenson until and unless they no longer wish to. This, they submit, follows from the fact that s 157A(1) of the Companies Act state that the powers of management of a company are vested in its directors; and

(b) that the plaintiffs are entitled to participate in the making of major business decisions and are entitled to have their consent or approval sought on such decisions.

118 On the plaintiffs' account, the implied understanding and legitimate expectation arose from the way LKH gave the shares in the companies to the parties and how he repeatedly communicated to them his wish and intention that all of them should stay united and run the companies together. This, the plaintiffs explain, was the reason LKH appointed and retained all of them as directors of SSH (save for LKK, who ceased to be a director in 1986) and of Kenson. They further argue that the fact that none of LKH's sons ever objected to the appointment of their brothers as directors or to their own appointment as directors shows that they were in tacit agreement that all of them are entitled to be part of the management of the companies. [note: 43] As additional support for this submission, the plaintiffs rely on the fact that the re-election of directors in each company took place as a matter of routine, without a poll, each year up until the EGM of SSH on 25 October 2012. [note: 44]

119 In response, the defendants argue there was never any such understanding or expectation. They point out that the plaintiffs' pleaded case and the evidence that they have tendered are contradictory and submit that it is telling that the plaintiffs are unable to pinpoint the exact genesis of the alleged understanding or expectation. [note: 45] They further submit that the fact that LKH's sons were all appointed directors of SSH and Kenson at different periods and were removed as directors of SSH for certain periods of time during LKH's lifetime militates against the existence of any such understanding. [note: 46] Instead, they argue that the evidence shows that LKH had the sole power to decide who was to be appointed director and when he should be appointed. In a similar vein, the fact that LKK ceased to be a director of SSH and was unable to counter the defendants' objections when he sought to be re-elected subsequently militates against such a mutual or implied understanding. [note: 47] They submit that such an understanding or expectation could not have existed considering that only LKW and LBY were involved in the management of SSH and only LKL was involved in the management of Kenson. [note: 48]

120 The concept of "legitimate expectations" arose from the judgment of Hoffmann LJ (as he then was) in *Re a Company (No 00477 of 1986)* [1986] BCLC 376 at 378. He later used the phrase again in *Re Saul Harrison*. But subsequently in *O'Neill*, Lord Hoffmann cautioned against using the concept too loosely and deprecated the phrase. I quote the relevant passage from *O'Neill* (at 1102) in full:

> It was probably a mistake to use [the term "legitimate expectations"], as it usually is when one introduces a new label to describe a concept which is already sufficiently defined in other terms. In saying that it was "correlative" to the equitable restraint, I meant that it could exist only when equitable principles of the kind I have been describing would make it unfair for a party to exercise rights under the articles. *It is a consequence, not a cause, of the equitable restraint. The concept of a legitimate expectation should not be allowed to lead a life of its own, capable of giving rise to equitable restraints in circumstances to which the traditional equitable principles have no application.* …
>
> [emphasis added]

121 The concept of "legitimate expectations" is thus of limited scope. It cannot be used as a legal mask for what may have been nothing more than a party's *subjective* expectations, even if there is a reasonable basis for that subjective expectation. Showing that a subjective expectation has been defeated cannot, in itself, suffice to make out a claim under s 216 of the Companies Act. The plaintiffs cannot rely on any subjective expectation that they may have harboured that they would be

entitled to participate in the management of the business of SSH or of Kenson. They can succeed in their case only if they can show an informal agreement or a clear understanding shared by the parties that they were each entitled to participate in the management of each company and to hold the office of a director until they elect otherwise.

122 The evidence before me shows that there was no such implied or informal understanding between LKH's sons. It is not necessary for me to make a conclusive finding on whether LKH communicated to the parties his intentions for them to all remain involved in the companies. First, even if LKH had such an intention, it does not necessarily follow that the parties shared it. The understanding has to be one that was shared by them all, and not one that was *imposed* upon them. Further, LKH passed away a decade before the dispute arose. Even if I accept that the parties shared such an informal understanding in 2001 out of respect for their father, that does not in itself mean that the understanding persists more than a decade after his death. What is important is thus whether the parties had such an implied or informal understanding at the material time, *ie* in 2012, independent of the wishes that LKH allegedly had.

123 The plaintiffs' case is also weakened by the fact that only a few of LKH's sons were actively involved in managing each company. If the plaintiffs could show that they had each consistently been involved in managing each company, I would find more convincing their case that an informal understanding existed between all of LKH's sons that each son should have a right always to involve himself in management. But the evidence shows that only LKW and LBY were involved in managing SSH.

124 It is true that some of LKH's other sons manage SSH's subsidiaries. For example, LHS is the managing director of Sim Seng Hin Sawmill Company (Pte.) Limited ("SSH Sawmill") and LBT was the managing director of another subsidiary, Kitchen & Kitchen Pte. Ltd ("Kitchen & Kitchen") up till 2011. [note: 49] But participation in the management or in the business of a subsidiary is distinct from a right to participate in the management or business of the parent and cannot in itself give rise to an expectation of such a right.

125 As for Kenson, the evidence shows that only LKL was involved in the management and operations of the company. [note: 50] This explains why LKH gave the majority of his shares in Kenson to LKL instead of his other sons. The other sons were merely non-executive directors. The plaintiffs had to resort to reciting dated and contrived examples in an attempt to argue that they had been involved in managing Kenson. For instance, LKW asserts that he helped LKL run the company in the 1980s when Kenson was sharing premises with SSH by answering calls on LKL's behalf when the latter was not available. I agree with the defendants that this hardly counts as being involved in the management of Kenson.

126 LHS also claims that he was involved in the business of Kenson because he was in charge of procuring timber for Kenson and further, that the goods were placed at SSH Sawmill's warehouse. [note: 51] He also claims that he oversaw Kenson's customer orders which required the processing of timber. LHS's involvement in Kenson must be seen in the context of Kenson's contractual relationship with SSH Sawmill. His supposed acts of involvement in Kenson are in fact either unsolicited services provided by LHS in his capacity as the managing director of SSH Sawmill or business transactions between Kenson and SSH Sawmill, for which the evidence shows that SSH Sawmill was remunerated at arm's length. It suffices to say that participating in the management of a company is clearly distinct from performing *services* for that company as delegated by its managers or on one's own accord.

127 I also find that there was no implied or informal understanding shared by the parties that they were entitled to remain on the board of each company. When he was alive, it was LKH who decided which of his sons should be appointed to the boards of the companies and when that should be done. It was also LKH who decided when they should cease to be directors (see [15] above). In this regard, I accept the defendants' submission [note: 52] that the second plaintiff, LKK, did not voluntarily resign his office as a director of SSH but was removed by LKH because LKH was displeased with him. Although LKK produced a letter of resignation, the letter simply states that he was resigning as manager but did not state that he was resigning from the office of a director. After he ceased to be a director in 1986, LKK was never reinstated as a director of SSH. This is strong evidence which militates against any suggestion of an understanding or agreement between the sons or with LKH that any of them was entitled to be a director.

128 Further, LKK conceded in cross-examination that when his attempts to be reinstated to SSH's board after LKH's death were met with objections from the defendants, at no point did he suggest that he and his brothers from both branches of the family had any sort of legitimate expectation to hold office as a director. [note: 53]

129 The evidence contradicts the plaintiffs' submission that such a legitimate expectation exists. Instead, the evidence shows that no such expectation existed when each company was first formed, when LKH took control of SSH and when LKH appointed his sons to the board of SSH. The plaintiffs have also not shown that there was any change after LKH's death which gave rise to such an understanding or expectation.

130 In these circumstances, I find that the plaintiffs did not have any legitimate expectation that they are entitled to participate in the management of SSH or Kenson or to be appointed as directors of the companies for so long as they wished.

Commercial unfairness

131 Having found that the plaintiffs have no basis for a legitimate expectation to participate in the management of the business or to hold office as a director of either company, I turn now to look at whether the specific acts of oppression alleged against the defendants were indeed commercially unfair. As discussed at [99] above, "commercial unfairness" involves a consideration of whether there has been a visible departure from the standards of fair dealing and a violation of the conditions of fair play which a shareholder is entitled to expect.

Removal of LHS and LBT from the board of SSH

132 My finding that the plaintiffs do not have a legitimate expectation to be directors of SSH deals directly with the plaintiffs' first complaint that the defendants unfairly caused the failure of LHS and LBT to be re-elected as directors at the AGM of SSH held on 20 September 2012. It is not suggested that the voting or the AGM was in any way invalid. What the plaintiffs are unhappy about is the fact that the defendants voted against LHS's and LBT's re-election, with the result that they ceased to be directors. Given that the plaintiffs have no legitimate expectation to hold or to continue to hold office as director, there is nothing unfair in the defendants exercising their votes to bring about that result together with other shareholders.

LBY's and LKL's decision-making

133 The plaintiffs also complain that it is unfair that LKL and LBY do not consult them before making important business decisions. They allege that they made and executed major business decisions

without first obtaining consent or approval from them. The business decisions include the following: [note: 54]

(a) SSH's purchase of a property located at No 8 Tuas Avenue 12;

(b) SSH's purchase of a property located at 31A Benoi Road;

(c) SSH's investment in Topex Investment Pte Ltd, a wholly-owned subsidiary of SSH, in excess of $500,000; and

(d) Kenson's purchase of 17 Joo Koon Road.

134 It is not necessary for me to examine the merits of each decision or the reasons behind them. The role of the court on an application under s 216 is not to assess the business merits of the company's management's decisions. The court's role is to assess whether the decision has been attended by commercial unfairness.

135 The plaintiffs have not shown why LBY, who after all is the managing director of SSH, must consult the plaintiffs before making business decisions which he views as commercially sound. In fact, Article 103 of SSH's articles of association stipulates that the managing director has the power to "do and execute all such contracts acts deeds matters and things [sic] as may be considered by him requisite or expedient" in the management of the ordinary business of the company, subject to any directions that may be given by the board from time to time. [note: 55]

136 It also cannot be said that the plaintiffs were completely excluded from executive decision-making in SSH. The evidence shows that LBY included LKW, as the representative of his branch of the family, in decision-making. Further, the board of SSH was eventually informed of the respective transactions and in most instances, ratified the acts of LBY and LKW or signed resolutions of approval. [note: 56] I find that the plaintiffs have failed to make out their claim that they were unfairly excluded from the decision-making process. It does not lie in the mouth of a director who chooses not to take an active part in the management of the company to argue that it is unfair that the company's executive directors have taken or implemented business decisions without involving him.

137 The situation in Kenson is similar. As I have found, LKL was the only one actively involved in running Kenson. He cannot be faulted for making decisions for the company as its managing director without consulting the plaintiffs. Further, the plaintiffs' complaint in relation to Kenson is even weaker than that in relation to SSH. They are able to point only to an isolated act – the purchase of 17 Joo Koon Road – as a basis for their complaint that LKL acted oppressively by excluding them from the business decisions in Kenson. While I accept that an isolated act can amount to oppression (see [101] above), there are no surrounding circumstances of commercial unfairness here. I therefore find that there has been no oppression in Kenson.

138 The plaintiffs also complain that LBY caused a drastic shift in the core business of SSH from 2005 onwards without the consent or approval of the plaintiffs. This, they say, resulted in a significant increase in the risk profile of SSH. Again, I do not need to go into the commercial merits of LBY's decision in order to evaluate whether this amounts to oppression. Whether the change in SSH's core business from supplying a wide range of building materials to supplying mainly steel bars and steel beams caused an increase in SSH's risk profile or a drop in its profits is therefore not of consequence. What matters is whether it was oppressive or unfairly prejudicial not to seek the consent or approval of the plaintiffs in making this change.

139 I have already found that the plaintiffs do not have a legitimate expectation to be involved in the management of the business of SSH. Further, I accept LBY's submission that the plaintiffs were aware of the shift in SSH's business direction. At the very least, this would have been clear from the annual audited financial statements that were sent to all the shareholders. Even if I accept the plaintiffs' account that LKW and LKK raised their concerned by cautioning LBY that the change was risky [note: 57] and that LBT told LBY that there should not be such a change [note: 58], the fact remains that no objections were ever placed on record at any AGM or any board meeting. It is also telling that even though this shift took in 2005, the plaintiffs did not allege that this was oppressive, prejudicial or unfair until the parties fell out in 2010. This complaint is an afterthought formulated by the plaintiffs to bolster their claim against the defendants.

Excessive director fees and inadequate dividends

140 The plaintiffs argue that LKL and LBY acted unfairly in paying themselves excessive directors' fees whilst declaring inadequate dividends. They submit that in the years prior to LKH's death (*ie*, 1994 to 2000), the directors of SSH received only $5000 in directors' fees every year. Yet starting from 2004, LBY started receiving an additional fee as a director which was equivalent to 10% of the net profit of SSH. As for Kenson, the plaintiffs point out that after LKH's death, LKL received on average about 42.81% of the directors' fees paid out each year whilst the remaining directors each received only about 7% to 13% of the fees. [note: 59]

141 The plaintiffs also point to the fact that SSH and Kenson have not paid significant dividends during the same period. For instance, SSH paid dividends only twice over a period of more than ten years since 2002. On the plaintiffs' calculations, only about $1.2m has been paid to the shareholders in the period of more than 10 years, even though the accumulated revenue reserve of SSH as of December 2011 was as high as $21m and includes a substantial sum of cash and cash equivalents amounting to more than $5.7m. [note: 60]

142 Kenson too did not pay significant dividends over the same period. It paid dividends only on three occasions over the same ten year period from 2002, with the total dividends amounting to only $507,308 even though it had much higher reserves. [note: 61] The plaintiffs further point out that the dividends paid in both companies coincided with the companies' issuance of share capital by a rights issue. As a result, a significant portion of the dividends distributed to the shareholders of Kenson and SSH was returned to the companies by the shareholders as part of its enlarged share capital. [note: 62]

143 The plaintiffs argue that the practice of paying excessive directors' fees, coupled with the practice of declaring inadequate dividends amounts to oppression as it is contrary to their common understanding or legitimate expectation that there would be a relatively equal sharing of profits amongst the shareholders, subject only to the proportion of shares which they hold.

144 I accept that a policy of declaring inadequate dividends coupled with an overly generous policy of remunerating directors may cumulatively result in conduct that is oppressive or commercially unfair: *In re Gee Hoe Chan Trading Co Pte Ltd* [1991] 2 SLR(R) 114 and *Re Sam Weller & Sons Ltd* [1990] Ch 682. An example of such a situation is where, through directors' fees and remuneration, the majority shareholders receive sums that far exceed the amounts that the minority shareholders, who do not receive such fees and remuneration, receive as dividends.

145 However, I am unable to accept the plaintiff's submission on the facts of the present case. I

take as my starting point the fact that directors have no obligation to declare dividends and shareholders correspondingly have no right to receive dividends: *Burland v Earle* [1902] AC 83. The failure to recommend or effect the declaration of dividends does not by itself amount to unfair conduct which is impeachable under s 216 of the Companies Act.

146 Further, it cannot be said that LKL and LBY have unfairly enriched themselves by adopting a policy of generous payments to directors and suppressed dividends to shareholders. First, it is the plaintiffs who controlled the board of directors of both SSH and Kenson at the material time. Whether to declare dividends, as well as the quantum to declare, is a decision for the board. The plaintiffs could therefore, at any time, have passed the necessary resolutions to declare dividends should they have wished to do so. The fact that they did not do so suggests, again, that there in fact was no unfairness of any kind and that the complaint of unfairness is made now purely as an afterthought.

147 Second, I accept the defendants' submission that the additional directors' fees which LKL and LBY receive, though substantially more than the other directors' fees, is not without reasonable justification. The defendants submit that it is the policy in all SSH group companies for each company's managing director to be awarded 10% of the net profit for that year if the company earns a profit. [note: 63] This is to incentivise the managing director who plays a vital role in running the company. This is not disputed by the plaintiffs.

148 Third, the evidence shows that the plaintiffs did not object to the directors' fees paid to LKL and LBY even though they controlled the board and so could have voted it down at any time. The plaintiffs tried to explain that they did not voice their dissatisfaction or grievance because they did not want to affect the relations between the two branches of the family. In the absence of any threat or unreasonable behaviour on the part of the defendants, however, I am of the view that if the plaintiffs chose, for whatever reason, to remain silent for the past decade and accept the policies on dividends and remuneration of LKL and LBY instead of exercising their power to change the situation, the court should be slow to find that the policies had an oppressive effect, whether in any given year or over all the years.

149 Additionally, the plaintiffs submit that there was a common understanding among the shareholders that there would be a relatively equal sharing of profits by the shareholders in relation to both companies. But the plaintiffs fail to adduce sufficient evidence to show that such an understanding existed. [note: 64] They were unable to state the circumstances in which the understanding arose or explain why it is not shared by the other shareholders such as their sisters. The plaintiffs have also failed to explain why they approved the directors' fees awarded every year without protest, instead of insisting on their rights under this mutual understanding or legitimate expectation. I find that no such legitimate expectation exists.

150 In conclusion, the practices in SSH and Kenson in relation to the declaration of dividends and payment of directors' fees were not commercially unfair and did not oppress the plaintiffs.

Self-serving business decisions

151 The plaintiffs further allege that LKL and LBY made self-serving business decisions that were in conflict with the interests of the SSH group of companies. Sometime in 2010, a subsidiary of SSH, Kaiwatt Development Pte Ltd ("Kaiwatt"), undertook a project to develop a property at Pegu Road. The plaintiffs' complain that the following acts of LBY were self-serving and were against the interests of SSH:

(a) Kaiwatt nominated Style Line Pte Ltd ("Style Line") instead of SSH Sawmill, SSH's

subsidiary, as sub-contractor for the flooring for the project. Style Line is a company that LKL and his nephew collectively owned.

(b) Kaiwatt did not nominate another subsidiary of SSH, Kitchen & Kitchen for the kitchen works in the project. Kitchen & Kitchen had to bid for the sub-contracting works with other sub-contractors.

152 There is no need to look into these decisions in detail. First, the decisions do not concern SSH or Kenson directly. Any decision made by LKL and LBY in relation to Kaiwatt is made by them in their capacity as directors of Kaiwatt. They thus fall outside of the scope of the present minority oppression claims, which relate to Kenson and SSH.

153 Second, if these two SSH subsidiaries have in fact suffered any loss as a result of these decisions, that is a matter for those companies to pursue as the proper plaintiff. I have thus far rejected each of the plaintiffs' allegations of oppression. Even if I were to assume that this narrow allegation in relation to Kaiwatt is well-founded, it is all that now remains of the plaintiffs' case on oppression. In those circumstances, it ought to be for the subsidiaries to pursue this allegation in proceedings for breach of fiduciary duty rather than for the members of those subsidiaries' holding companies to do so under s 216. Any loss suffered by the members would be merely reflective of the subsidiaries' and the holding company's loss.

154 Third, even if LKL and LBY made these decisions in their capacity as the managing directors of Kenson and SSH respectively, the acts cannot be said to be oppressive or unfair to the plaintiffs. The plaintiffs have failed to show that LKL and LBY acted in bad faith in making the decisions. With regard to Kitchen & Kitchen, it is hard to conceive how a decision to call for bids in order to award a sub-contract can be a self-serving or oppressive act, save in the most exceptional of situations. As for the decision to nominate Style Line instead of SSH Sawmill, the defendants have provided a commercially justifiable explanation for this which I accept: SSH Sawmill did not have the expertise to carry out bamboo flooring works. The role of the court on a s 216 application is not to judge the commercial merits of business decisions made by a company's management. With the exception of LKW, who was involved in SSH, the plaintiffs have had little involvement in the business of SSH and Kenson and do not have a legitimate expectation to participate in the management of the business of the companies.

155 For all of these reasons, I reject the plaintiffs' allegation of unfairness in respect of these two decisions.

Conclusion on the minority oppression claims

156 I have found that none of the acts complained of by the plaintiffs amount to commercial unfairness. There has been no oppression of the plaintiffs, no disregard of their interests as members, no acts which unfairly discriminate against them and no acts which are unfairly prejudicial to them. That remains my view even if I take into account these acts cumulatively and consider LKL's and LBY's conduct holistically. The defendants have not acted in such a way that departs from the standards of fair dealing or violates the conditions of fair play which the plaintiffs are entitled to expect, even after I take into account equitable considerations.

157 There is therefore no need for me to examine the further defences raised by the defendants (at [92(c)] to [92(f)] above).

Conclusion

158 In the circumstances, I have made the following orders:

(a) In respect of S1005, the plaintiffs' minority oppression claims are dismissed.

(b) In respect of OS1050, the Kenson board meeting held on 25 October 2012 and the resolutions passed therein were invalid. The notice of that meeting was issued and served irregularly, and this irregularity cannot be cured under s 392 of the Companies Act.

(c) In respect of OS1042, the EGM of SSH on 25 October 2012 and the resolutions passed therein were invalid because the notice of the meeting was defective and Kenson was not properly represented. The consequence is that the board meeting of SSH held on 27 October 2012 is invalid.

(d) I also grant an injunction against the holding of the EGM of SSH that was originally scheduled to take place on 5 November 2012.

159 As costs should follow the event, I have ordered the plaintiffs to pay the defendants' costs of and incidental to the three proceedings before me, such costs to be assessed as a single set of costs on the standard basis and to be taxed if not agreed.

[note: 1] Affidavit of evidence in chief ("AEIC") of Lim Boh Yong filed on 22 April 2013 at paragraph 8.

[note: 2] Closing submissions of the plaintiffs filed on 30 September 2013 at paragraph 21.

[note: 3] Closing submissions of the plaintiffs filed on 30 September 2013 at paragraph 21.

[note: 4] Closing submissions of the plaintiffs filed on 30 September 2013 at paragraph 29.

[note: 5] Closing submissions of the plaintiffs filed on 30 September 2013 at paragraph 32.

[note: 6] Closing submissions of the plaintiffs filed on 30 September 2013 at paragraph 36.

[note: 7] AEIC of LBY at paragraph 38.

[note: 8] AEIC of LKW at paragraph 12.

[note: 9] AEIC of LKW at paragraph 10.

[note: 10] Closing submissions of the plaintiffs filed on 30 September 2013 at paragraph 35.

[note: 11] AEIC of LBY at paragraph 30.

[note: 12] Closing submissions of the plaintiffs filed on 30 September 2013 at paragraph 37.

[note: 13] Closing submissions of the plaintiffs filed on 30 September 2013 at paragraph 41; AEIC of LBY at paragraph 39.

[note: 14] AEIC of LKK at paragraph 15.

[note: 15] AEIC of LBY at paragraph 46.

[note: 16] Supplementary AEIC of LKL filed on 22 April 2013 at paragraph 21.

[note: 17] AEIC of LKW at paragraph 84.

[note: 18] Closing submissions of the plaintiffs filed on 30 September 2013 at paragraph 37(e).

[note: 19] Closing submissions of the plaintiffs filed on 30 September 2013 at paragraph 37(h).

[note: 20] Closing submissions of the plaintiffs filed on 30 September 2013 at paragraph 37(h)(ii).

[note: 21] Closing submissions of the plaintiffs filed on 30 September 2013 at page 28.

[note: 22] AEIC of LKW at paragraph 95.1.

[note: 23] Agreed bundle of documents (Volume 2) pages 560–562.

[note: 24] AEIC of LKW at paragraph 82.

[note: 25] AEIC of LKW at paragraph 98.

[note: 26] AEIC of LKW at paragraph 103.

[note: 27] AEIC of LKW at paragraph 107.

[note: 28] Agreed bundle of documents (Volume 2) page 628.

[note: 29] Agreed bundle of documents (Volume 1) page 58.

[note: 30] Closing submissions of the defendants filed on 30 September 2013 at page 139.

[note: 31] Closing submissions of the defendants filed on 30 September 2013 at paragraph 174.

[note: 32] Closing submissions of the defendants filed on 30 September 2013 at paragraph 212.

[note: 33] AEIC of LKW at paragraph 103.

[note: 34] Closing submissions of the defendants filed on 30 September 2013 at paragraphs 215–219.

[note: 35] Closing submissions of the defendants filed on 30 September 2013 at paragraph 214.

[note: 36] AEIC of LKW at paragraph 107.

[note: 37] Closing submissions of the defendants filed on 30 September 2013 at paragraph 218.

[note: 38] Closing submissions of the defendants filed on 30 September 2013 at paragraph 226.

[note: 39] Closing submissions of the plaintiffs filed on 30 September 2013 at paragraph 12.

[note: 40] Closing submissions of the defendants filed on 30 September 2013 at paragraph 298.

[note: 41] Closing submissions of the plaintiffs filed on 30 September 2013 at paragraph 174.

[note: 42] Closing submissions of the plaintiffs filed on 30 September 2013 at paragraph 179.

[note: 43] Closing submissions of the plaintiffs filed on 30 September 2013 at paragraph 177.

[note: 44] Closing submissions of the plaintiffs filed on 30 September 2013 at paragraph 180.

[note: 45] Closing submissions of the defendants filed on 30 September 2013 at paragraph 80.

[note: 46] Closing submissions of the defendants filed on 30 September 2013 at paragraph 92.

[note: 47] Closing submissions of the defendants filed on 30 September 2013 at paragraph 103.

[note: 48] Closing submissions of the defendants filed on 30 September 2013 at paragraphs 107 and 126.

[note: 49] Closing submissions of the plaintiffs filed on 30 September 2013 at paragraph 25.

[note: 50] Closing submissions of the plaintiffs filed on 30 September 2013 at paragraph 129.

[note: 51] Closing submissions of the defendants filed on 30 September 2013 from paragraph 131 onwards.

[note: 52] Closing submissions of the defendants filed on 30 September 2013 from paragraph 95 onwards.

[note: 53] Closing submissions of the defendants filed on 30 September 2013 from paragraph 104.

[note: 54] Closing submissions of the plaintiffs filed on 30 September 2013 from paragraph 182.

[note: 55] Closing submissions of the defendants filed on 30 September 2013 from paragraph 3.

[note: 56] Closing submissions of the defendants filed on 30 September 2013 from paragraph 9.

[note: 57] Closing submissions of the plaintiffs filed on 30 September 2013 from paragraph 225.

[note: 58] Closing submissions of the plaintiffs filed on 30 September 2013 from paragraph 147.

[note: 59] Closing submissions of the plaintiffs filed on 30 September 2013 from paragraph 237.

[note: 60] Closing submissions of the plaintiffs filed on 30 September 2013 from paragraph 240.

[note: 61] Closing submissions of the plaintiffs filed on 30 September 2013 from paragraph 244.

[note: 62] Closing submissions of the plaintiffs filed on 30 September 2013 from paragraphs 239 and 243.

[note: 63] Closing submissions of the defendants filed on 30 September 2013 from paragraph 244.

[note: 64] Closing submissions of the defendants filed on 30 September 2013 from paragraph 54 onwards.