

UPDATE

# Court refuses to grant freezer in favour of dissenters

Update prepared by Simon Dickson (Partner, Cayman Islands), Rocco Cecere (Counsel, Cayman Islands) and Nicosia Lawson (Associate, Cayman Islands)

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In the recent decision in *Re Trina Solar Limited*<sup>1</sup>, the Grand Court refused to order a freezing injunction in response to the company's post-merger conduct. The dissenting shareholders (the **Dissenters**) applied for the injunction on the basis that the company was dissipating its assets in order to escape any judgment against it in section 238, fair value proceedings. Segal J was satisfied that the Dissenters had established a good arguable case regarding the fair value of their shares, but held that the company's post-merger restructuring was neither improper nor unjustifiable and had been conducted for a legitimate commercial purpose.

## Background

Trina Solar Limited (**TSL**) was taken private by a statutory merger pursuant to section 238 of the Companies Law (2016 Revision)<sup>2</sup>. As part of its post-merger restructuring, TSL completed a range of transactions, including transferring assets in its subsidiaries to other companies in China. The dissenters argued that the transactions were unjustifiable, improper, not made for adequate consideration and enabled TSL to assert pressure on them. The dissenters applied for a worldwide freezing injunction of nearly USD200 million to satisfy any judgment against TSL, a disclosure order and the appointment of receivers over TSL's assets. TSL contended that its post-merger restructuring was legitimate, for commercial purposes and in the ordinary course of business. Furthermore, TSL argued, it had made provision for its potential liability to the Dissenters.

Segal J determined that the Dissenters had a good arguable case concerning the fair value of their shares and that they had raised legitimate concerns about TSL's restructuring. He agreed that TSL's responses to those concerns had been *belated* and *unnecessarily cryptic and unhelpful*. However, Segal J agreed with TSL's arguments that its conduct in completing the restructuring and dealing with the proceeds of restructuring transactions was part of the usual post-merger activities and therefore neither improper nor unjustifiable and accepted that TSL had received fair consideration for its assets.

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<sup>1</sup> (Unreported, 6 November 2017)

<sup>2</sup> *Fair value update: consent means consent*

## Conclusion

Trina is a reminder that freezing injunctions are potentially available to Dissenters who are concerned about the company's post-merger conduct. The Court's decision not to order a freezing injunction in Trina turned on the specific facts of the case and, in particular, the nature and rationale of the company's restructuring. The Court will approach each matter on a case by case basis.

## Contacts

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