

UPDATE

Drawing the Boundaries: Cayman Court of Appeal Rules on Shareholder Misrep Claims

Update prepared by Simon Dickson and Laura Stone (Cayman Islands)

The Court of Appeal rules on the availability of shareholder misrepresentation claims in a liquidation, bringing clarity to two divergent judgments of the Grand Court.

On 7 November 2025, the Court of Appeal handed down its decision as to whether, after the presentation of a winding up petition, claims for damages for misrepresentation inducing a subscription for shares in a company can be admitted to proof (**Shareholder Misrep Claims**). The Court of Appeal was required to reconcile the divergent Grand Court opinions of Doyle J in *HQP Corporation Limited* and Segal J in *Direct Lending Income Feeder Fund Ltd*.¹

The Rule in *Houldsworth*

The rule in *Houldsworth*² establishes that a shareholder cannot bring a Shareholder Misrep Claim. A shareholder cannot rescind the contract of subscription after the presentation of a winding up petition and remains a shareholder. A shareholder contracts to contribute a certain amount to be applied in payment of the debts and liabilities of the company. It would be inconsistent with their position as a shareholder to claim back any of that money.

Decision of the Court of Appeal

- The rule in *Houldsworth* does apply and is part of Cayman Islands law.
- The scope of the rule is limited. It is only designed to protect the capital of a company for external creditors.
- A Shareholder Misrep Claim, therefore, cannot be admitted in a liquidation until external creditors are paid.
- After external creditors have been paid, there is no justification for the rule and Shareholder Misrep Claims may be admitted.
- Shareholder Misrep Claims are claims brought by a person in their character as a member and section 49(g) of the Companies Act (2025 Revision) applies.
- Shareholder Misrep Claims rank below external creditors, *pari passu* with redemption creditors and above ordinary members.
- However, the order of priority as between members (but not external creditors) is subject to alteration by contract.

The decision represents a challenge for liquidators and a change of approach for investors. With respect to liquidators, it will lead to increased litigation, cost and time, but perhaps a fairer approach. With respect to investors, where actionable misrepresentations have occurred, a redemption creditor will no longer have

¹ See our legal updates on the Grand Court decisions in *HQP Corporation Limited (In Official Liquidation)* (Unreported, 7 July 2023) [here](#), and *Direct Lending Income Feeder Fund Ltd* (Unreported, 13 March 2024) [here](#).

² *Houldsworth v City of Glasgow Bank* (1880) 5 App.

priority, and returns will likely be no better than those claiming for misrepresentation. Further, where shareholders are contractually subordinated, they will need to carefully consider the risks and outcomes where the subordination has been induced by fraud and, in particular, whether the articles provide an escape valve for wronged investors.

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