

UPDATE

Swift redemption: BVI Court clarifies strict timetable for dissenting shareholders' appraisal rights

Update prepared by Justine Lau (Hong Kong), Sophie Christodoulou (BVI) and Jaclyn Pascoe (Cayman)

In a key decision for BVI companies and investors alike, the BVI Commercial Court has clarified the strict statutory timetable applicable to dissenting shareholders seeking fair value for their shares following a merger. The case, *Oasis Core Investments Fund Ltd & Others v Hollysys Automation Technologies Ltd*,¹ arose from a high-profile acquisition and adds welcome certainty to the operation of sections 176 and 179 of the BVI Business Companies Act, 2004.

The Legal Dispute

Oasis Core Investment Fund Ltd and various other companies (the **Dissenters**) brought claims against Hollysys Automation Technologies Ltd, a leading automation control system solutions provider in China (the **Company**), following their dissent from a merger undertaken by the Company in which the Company was acquired by Ascendent Capital Partners.

As dissenting shareholders, the Dissenters sought to redeem their shareholding in the Company under section 176 of the BVI Business Companies Act, 2004 (as amended) (the **BCA**). The parties failed to come to an agreement on the price to be paid for the Dissenters' shares, triggering the appraisal mechanism for determining 'fair value' of the shares pursuant to section 179(9) of the BCA.

The statutory framework for determination of fair value

Section 179 of the BCA sets out the procedure for the valuation of a dissenting shareholder's shares redeemable under section 176 of the BCA. The salient provisions are in section 179(9), which states that:

'If the company and a dissenting member fail, within the period of 30 days referred to in subsection (8), to agree on the price to be paid for the shares owned by the member, within 20 days immediately following the date on which the period of 30 days expires, the following shall apply —

- (a) the company and the dissenting member shall each designate an appraiser;*
- (b) the 2 designated appraisers together shall designate an appraiser;*
- (c) the 3 appraisers shall fix the fair value of the shares owned by the dissenting member as of the close of business on the day prior to the date on which the vote of members authorising the action was taken or the date on which written consent of members without a meeting was obtained, excluding any appreciation or depreciation directly or indirectly induced by the action or its proposal, and that value is binding on the company and the dissenting member for all purposes; and*
- (d) the company shall pay to the member the amount in money upon the surrender by him or her of the certificates representing his or her shares.'* (our emphasis added)

¹ *Oasis Core Investments Fund Ltd & Others v Hollysys Automation Technologies* (BVIHCOM 2024/0619, 0620, 0621 & 0622, 1 April 2025). A copy of the judgment is linked [here](#).

Timing of the Appraisal Process

The three appraisers were appointed after what the Dissenters held was an inordinate delay on the part of the Company. The appraisers were subsequently unable to make much progress in determining the fair value of the Dissenters' shares which the Dissenters asserted was also attributable to the Company. Accordingly, the Dissenters applied to the Court for declaratory relief on the true construction of section 179(9) of the BCA: specifically, whether the 20-day period applies to only paragraph (a) of that subsection, as alleged by the Company, or if it applies to all of that subsection, as alleged by the Dissenters.

The Company did not dispute the literal interpretation of section 179(9) as contended by the Dissenters but rather asserted that the Court should adopt a purposive interpretation to ensure that the statutory mechanism for valuation can operate effectively. The Company argued, *inter alia* that –

- (i) The timescale provided was fanciful and the work would need to be done at such a speed, at the risk of compromising the quality of the appraisal process, that the valuation would be more susceptible to challenge.
- (ii) The parties might be setting up the appraisers to fail if they are not given adequate time to prepare the valuation, as once the statutory period has been exceeded, it could be argued the resulting valuation may not be binding.
- (iii) The statutory regime applies a 'one size fits all' approach which is inconceivable for a \$1.66 billion company to comply with.
- (iv) Adopting the Dissenters' construction would damage the BVI's financial services infrastructure because of the impossibility of conducting a process that is never likely to be completed in the 20-day period.

The Court's Decision: Strict Compliance Required

The Court rejected the Company's arguments, holding that the entire appraisal process — from the appointment of the appraisers through to payment — must be completed within the 20-day statutory window, following the lapse of the initial 30-day negotiation period. In reaching its finding, the Court held that:

- **Purposive construction rejected in favour of literal interpretation:** There is no scope for any departure from the general principle that the Court must apply the literal construction of section 179(9). There is nothing illogical or impossible about the 20-day period; it is entirely consistent with the intention of the legislature to provide for a swift payment to the dissenting shareholders for surrendering their shares.
- **The legislative intent upheld:** The legislature chose to apply section 179(9) to all companies incorporated or registered in the BVI. If it thought there might be difficulty in certain companies complying with the machinery set out in section 179, it would have made different rules for different types of companies, but it did not.
- **The Court's role:** the function of the court is to interpret the legislation as it stands and not to rewrite the statutory framework. It is not able to strain the construction of a provision because it believes it might damage the financial interests of the jurisdiction. It is just and appropriate for the companies' legislation of the BVI to provide effective protection for minority shareholders who have made investments in BVI companies.
- **Appraisers beware:** Appraisers must be aware of the 20-day deadline for completing the appraisal and '*...only accept the proposed retainer if [they] can comply*' with the statutory regime. The Court rejected the contention that no appraiser would accept instructions on such a basis.
- **Facilitating appraisals:** While the Court has a (narrow) residual jurisdiction to put a statutory appraisal process back on track, the Court does not have power to extend or relax the 20-day time limit. The parties must come to this agreement between themselves.

Significance

This decision sends a strong signal that the BVI's statutory regime offers not only protection for minority shareholders but also certainty and efficiency for companies completing mergers. Parties on all sides must prepare for the possibility of dissent and ensure that any required appraisals are procedurally compliant and professionally managed within the strict timeframe. Proposed appraisers should heed the Court's clear '*diktat*' and only accept instructions if they can comply with the timetable.

Mourant's Role

Mourant acted for Hollysys prior to its merger with Ascendent Capital Partners. Since completion of the merger, Hollysys has been represented by Appleby.

Contacts



Eleanor Morgan
Partner | Mourant Ozannes
British Virgin Islands
+1 284 852 1712
eleanor.morgan@mourant.com



Jennifer Jenkins
Partner | Mourant Ozannes
British Virgin Islands
+1 284 852 1709
jennifer.jenkins@mourant.com



Justine Lau
Partner
Mourant Ozannes (Hong Kong) LLP
+852 3995 5749
justine.lau@mourant.com



Michael Popkin
Partner
Mourant Ozannes (Hong Kong) LLP
+852 3995 5769
michael.popkin@mourant.com



Shane Donovan
Partner | Mourant Ozannes
British Virgin Islands
+1 284 852 1731
shane.donovan@mourant.com



Sophie Christodoulou
Counsel | Mourant Ozannes
British Virgin Islands
+1 284 852 1702
sophie.christodoulou@mourant.com

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