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When Does A Shareholders' Dispute Become Oppression?

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Federal Court Clarifies The Limits In *ISM v Queensway Nominees*

The Federal Court has clarified an important boundary in Malaysia's minority oppression regime: a dispute between shareholders does not become an oppression claim merely because it arises from a shareholders' agreement.

In *ISM Sendirian Bhd v Queensway Nominees (Asing) Sdn Bhd & Ors and another appeal* [2026] MLJU 1467, the apex court revisited its earlier decision in *Jet-Tech Materials Sdn Bhd & Anor v Yushiro Chemical Industry Co Ltd & Ors* [2013] 2 CLJ 277 and considered when a breach of a shareholders' agreement may fall within Section 181 of the Companies Act 1965, now Section 346 of the Companies Act 2016.

The Federal Court affirmed the principle in *Jet-Tech Materials* that the conduct complained of must concern the "affairs of the company" before the statutory oppression remedy can be invoked. But it also provided an important qualification: *Jet-Tech Materials* should not be read as establishing a blanket rule that a breach of a shareholders' agreement can never form the basis of an oppression action.

The distinction is significant. The real question is not simply whether a shareholders' agreement has been breached, but whether the conduct complained of relates to the affairs of the company.

The Dispute

The case arose from a joint venture between ISM Sendirian Berhad ("ISM") and MPHB Capital Berhad ("MPHB") for the acquisition and development of several parcels of land as part of a proposed mixed-use commercial development known as the Imbi Project. Five joint venture companies were incorporated to acquire and hold the relevant properties. ISM held 30% of the equity in the companies, with MPHB holding the remaining 70%.

Although no formal shareholders' agreement was executed, the parties accepted that an oral agreement governed their relationship. The central dispute concerned their respective funding obligations. ISM maintained that it was responsible only for 30% of the cash component of the funding i.e. effectively 9% of the total funding required for each joint venture company. Meanwhile, MPHB was responsible for the balance, including the entire loan component.

MPHB took a different position. It contended that the parties were required to fund the joint venture companies in proportion to their respective 30:70 equity interests.

The disagreement eventually resulted in five consolidated oppression actions brought by ISM under Section 181 of the Companies Act 1965.

ISM alleged, among other things, that MPHB had acted oppressively by requiring it to contribute 30% of the purchase price of one of the properties, undertaking rights issues that diluted ISM's shareholding, charging interest on shareholder advances and refusing to re-elect ISM's nominee director.

MPHB counterclaimed that ISM itself had breached the oral agreement by failing to provide its agreed share of the funding.

High Court Finds Oppression

The High Court found that the parties had entered into an oral shareholders' agreement.

Among other matters, it found that ISM and MPHB were to hold their interests in the joint venture companies in a 30:70 ratio and that the funding arrangement comprised separate cash and loan components. ISM was required to contribute 30% of the cash component, while MPHB would provide 70% of the cash component and the entire loan component.

The High Court also found that decisions concerning the joint venture companies were to be made by consensus.

On that basis, the court held that ISM had established oppression, unfair prejudice or disregard of its interests in relation to three matters: the demand that ISM contribute 30% of the purchase price of the De Vegas land, the rights issues undertaken by three of the joint venture companies, and the imposition of interest on certain shareholder advances. The High Court rejected ISM's remaining complaints.

Court Of Appeal Draws A Line Between Shareholder And Company Affairs

The Court of Appeal reversed the High Court. Its central finding was that the dispute arose from the oral shareholders' agreement between ISM and MPHB rather than from the affairs of the five joint venture companies.

Relying on *Jet-Tech Materials*, the Court of Appeal held that an oppression claim under Section 181 must concern the affairs of the company. A shareholders' agreement, and a breach of that agreement, was in contrast a private matter between the contracting shareholders.

The Court of Appeal also found that the five companies were essentially vehicles established to acquire and hold the land for the Imbi Project. It rejected the High Court's characterisation of the relationship between ISM and MPHB as a quasi-partnership, finding instead that the parties were sophisticated commercial entities dealing with each other at arm's length.

On the evidence, the Court of Appeal further concluded that ISM was obliged to provide funding in proportion to its 30% equity interest. It found that the rights issues were undertaken in accordance with the companies' constitutions and that there was no evidence that the shareholder advances were intended to be interest-free.

None of the conduct complained of therefore amounted to oppression.

Federal Court: *Jet-Tech* Does Not Create A Blanket Prohibition

Before the Federal Court, the key issue was whether *Jet-Tech Materials* meant that a breach of a shareholders' agreement could never be actionable as oppression, or whether such a breach could fall within Section 181 where the conduct also amounted to oppression, unfair prejudice, unfair discrimination or disregard of a shareholder's interests.

The Federal Court affirmed that *Jet-Tech Materials* remains good law. Crucially, however, it said the passage at paragraph 37 of the decision must be understood in its factual context.

The Federal Court observed that there was nothing in paragraph 37 or elsewhere in *Jet-Tech Materials* that expressly established that every breach of a shareholders' agreement falls outside Section 181. Rather, the principle established by *Jet-Tech Materials* is that the conduct complained of must relate to the affairs of the company before the statutory oppression remedy is engaged.

This distinction is important as a shareholders' agreement remains a private contractual arrangement between shareholders. But the mere fact that a complaint involves a breach of such an agreement does not, by itself, determine whether an oppression action is available.

The court must look beyond the contractual label and determine the true nature of the conduct complained of.

What Are The "Affairs Of The Company"?

The Federal Court also considered the meaning of the expression "affairs of the company".

It held that there is no exhaustive legal definition of the term. While the expression should be interpreted broadly, whether particular conduct concerns the affairs of a company ultimately depends on the factual circumstances of each case.

The critical distinction is between the affairs of the company and the affairs of its shareholders. The latter may remain private matters capable of enforcement through an ordinary contractual action without necessarily engaging the statutory oppression remedy.

This means that the existence of a shareholders' agreement, even one governing important aspects of the parties' commercial relationship is not conclusive. The court must determine whether the alleged conduct has crossed from a private shareholder dispute into the affairs of the company itself.

Why ISM's Claim Ultimately Failed?

Despite clarifying that *Jet-Tech Materials* does not impose an absolute bar against oppression claims involving shareholders' agreements, the Federal Court upheld the Court of Appeal's decision against ISM.

On the facts, the dispute remained one concerning the parties' oral shareholders' agreement. The five joint venture companies had been incorporated principally as vehicles to hold the properties acquired for the Imbi Project. The Federal Court agreed with the Court of Appeal that there were no relevant affairs or business vested in those companies that could bring the conduct complained of within Section 181. The necessary connection with the affairs of the companies had therefore not been established.

ISM's oppression actions could not be sustained and the appeals were dismissed.

Commentary

The Federal Court's decision provides useful clarification for shareholders, directors and companies involved in joint ventures and closely held businesses.

ISM v Queensway Nominees should not be read as saying that breaches of shareholders' agreements are categorically excluded from Malaysia's oppression regime. Equally, a shareholder cannot transform what is essentially a contractual dispute into an oppression claim merely by alleging unfairness.

The dividing line is the affairs of the company. The practical inquiry is therefore likely to be highly fact-sensitive. Courts will need to examine the substance of the conduct complained of, the role of the company in the underlying arrangement and whether the alleged wrongdoing genuinely concerns the company's affairs or remains a private dispute between shareholders.

This decision also carries a broader lesson for joint ventures. Where important governance, funding and decision-making arrangements are intended to regulate not merely the relationship between shareholders but the manner in which the company itself is to operate, those arrangements should be carefully documented and, where appropriate, reflected in the company's constitutional and governance framework.

Ultimately, *ISM v Queensway Nominees* reinforces a distinction that can easily become blurred in shareholder disputes: not every breach of a shareholders' agreement is oppression, but neither is every such breach necessarily outside the oppression remedy. What matters is whether the conduct complained of concerns the affairs of the company.

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