MAYER | BROWN

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Shareholder disputes

Developments in Unfair Prejudice litigation

Introduction

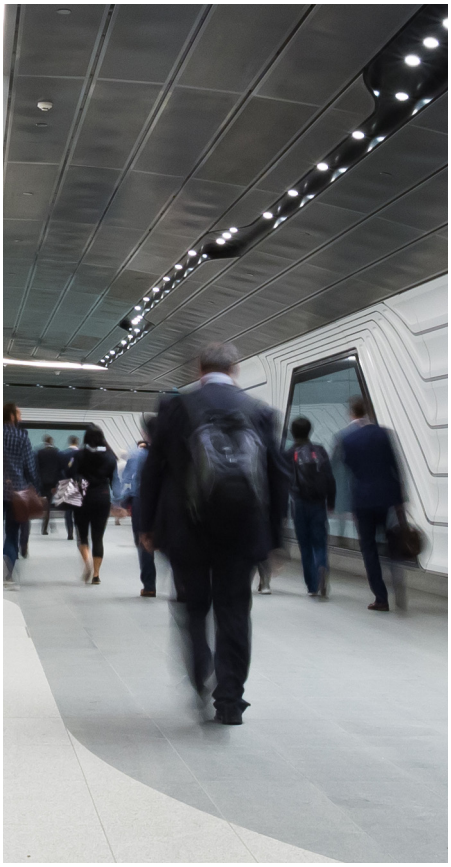
Companies – both public and private, and in multiple sectors – continue to grapple with the challenges of today's economic climate. Nuanced, complex and consequential (perhaps even existential) decisions must often be made under significant time pressures. As a result, the interests and views of shareholders – particularly minority shareholders – may not always receive the attention they deserve, or require. Increasingly, those shareholders are looking for means of redress.

Our short series of articles will discuss recent significant developments, and the current state of the law, relating to shareholder disputes and minority shareholder protections; why litigation in this area is increasingly prevalent and relevant in today's climate; and some of the areas in which we are seeing these disputes emerge.

In this first article, we look at unfair prejudice actions, which have long formed an important weapon in shareholders' arsenals. These allow minority shareholders to seek redress for perceived injury or prejudice they have suffered, unfairly, as a result of corporate action (or inaction), at the hands of those who manage the company, perhaps in breach of some promise or agreement.

The growing number of unfair prejudice actions over recent years, and months, reflects the dual emerging trends of stakeholders – particularly minority shareholders – litigating to protect their rights, and of courts considering, and perhaps expanding, the scope of the unfair prejudice jurisdiction.

These trends are likely to continue. We consider some of the factors to keep in mind when preparing, or responding to, unfair prejudice petitions.



WHAT ARE UNFAIR PREJUDICE PETITIONS AND HOW DO THEY WORK?

Aggrieved shareholders, unhappy with the performance of those running the company, commonly have two potential courses available to them (absent a wish to seek to wind up the company). First, in specific (and rather limited) circumstances, they may be able to pursue a so-called derivative action, in the company's name, against its directors. Secondly, they may be able to establish that their interests have been unfairly prejudiced through the conduct of the majority shareholders, and/or, increasingly, the directors of the company, and obtain relief by way of an unfair prejudice petition.

Whilst the two mechanisms have the potential to overlap, derivative actions – for which judicial permission is required – may be more appropriate where the shareholders act as one, to seek a remedy for the company. In cases of intra-shareholder disputes, however, where the remedy being sought is for the benefit of the shareholders, unfair prejudice petitions are often seen as the more attractive option.

Unfair prejudice petitions are based upon the statutory provisions in sections 994-996 of the Companies Act 2006 (the "**Act**"). Section 994 entitles a member (that is, a shareholder) of the company to petition the court for relief on the grounds that:

(a) the company's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of the members generally or of some part of its members (including the petitioner); or

(b) an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial.

Each element will commonly be construed broadly, and the courts repeatedly demonstrate a willingness to apply the tests flexibly, whether that be by reference to the conduct of the company's affairs, or the interests in issue. Indeed, the jurisdiction has been described, by Lady Justice Arden, as having "*an elastic quality which enables the courts to mould the concepts of unfair prejudice according to the circumstances of the case*"[1]. This flexibility has significant appeal for prospective petitioners. Nonetheless, it is a statutory jurisdiction and, as such, will only be available if the requirements of section 994(1) are satisfied.

WHO CAN BRING UNFAIR PREJUDICE PETITIONS?

Any company satisfying the Act's definition of a company, i.e. one formed and registered under the Act or its predecessor statute[2], will be subject to the jurisdiction of section 994. It does not apply to overseas companies.

The ability to petition the court under section 994 is limited to:

(a) *members* of the company in question; and

(b) *non-members* (i) who are transferees of shares (by virtue of a properly executed instrument of transfer, and regardless of whether the company in fact registers the transferee as a shareholder); or (ii) to whom shares have been transmitted by operation of the law, such as in the context of a bankruptcy scenario.

There is some uncertainty as to the point(s) in time at which the petitioning party must satisfy the standing requirements; this has been the subject of recent disputes. Whilst a party must satisfy those requirements at the time the petition is filed, it is not necessarily the case that it must

1 *In re Macro (Ipswich) Limited [1994] 2 BCLC 354,* per Arden J at 404.
2 Companies Act 1985

continue to do so through the course of the action and through to judgment; recent authority suggests that standing is not lost upon the petitioner ceasing to be a member.[3]

There is no prohibition on majority shareholders presenting petitions under section 994. In practice, however, such petitions are vulnerable to challenge, and would ordinarily be struck out, given that any prejudice suffered will not be considered unfair if it can be rectified by the petitioner itself (which, of course, will likely be the case for majority shareholders). A situation which can arise in this context is where the petitioner becomes the majority shareholder after filing the petition as a result of a change of control; this does not, without more, jeopardise the action, as the conduct complained of could still have reduced the company's value.

Difficult issues can arise in the context of trustees presenting – or not presenting – petitions; whilst the relevant interest for the purposes of considering unfair prejudice is that of the beneficial owner of the shares, beneficial owners under a trust do not fall within the section 994 requirements (i.e. they are not themselves members or transferees of shares) and cannot, therefore, present a petition directly.

Similarly, insolvency scenarios can present difficulties. A shareholder may still bring a section 994 petition in an insolvency scenario, but there will be additional difficulties in establishing that, essentially, it was the allegedly unfairly prejudicial conduct complained of which led to the company's insolvency and that the shares would have had a value but for that conduct.

Notwithstanding these issues, however, as a general proposition, the unfair prejudice mechanism is available to shareholders of the company in question.

WHO IS THE APPROPRIATE RESPONDENT?

A key question in the context of unfair prejudice is the appropriate respondent(s) to a petition: whose conduct should the petition address and from whom should redress be sought?

Unfair prejudice claims can, and do, target a range of potential parties. Most frequently, the principal focus of the action will be the party or parties with the ability to control the company, i.e. the company's majority shareholder(s). In addition, however, relief may be sought as against former and non-shareholders, including company directors and third parties. The propriety of pursuing non-shareholders in unfair prejudice petitions will depend upon the circumstances of the case and, most pertinently, the conduct in question and the capacity in which the relevant parties were acting. These are rarely straightforward issues.

Nonetheless, the courts have frequently demonstrated their willingness to entertain unfair prejudice petitions targeting, and to grant relief against, non-shareholder parties. "*Non-members of a company who are alleged to have been responsible for [unfairly prejudicial conduct] can be joined as respondents, and, in an appropriate case, such non-members can be made primarily or secondarily liable*" for the relief granted[4]. The reason this can become significant is that frivolous unfair prejudice actions are, regrettably, not unheard of, and the wide scope of potential respondents means that putative actions can target parties seen as having the ability to meet an award (or settlement value), whether that be by way of corporate resources or, commonly, insurance policies sitting behind the respondents (usually directors and officers indemnity policies).

3 *Re Motion Picture Capital Limited [2021] EWHC 2504 (Ch)*
4 *Apex Global Management Limited v Fi Call Limited [2013] EWHC 1652,* per Vos J at 125

Figure 1: Company directors and unfair prejudice actions

It is not uncommon for unfair prejudice petitions to name company directors as respondents, either at the outset, or at some stage during the progress of the action (this approach is often motivated by the wish to access the proceeds from a directors' and officers' liability insurance policy).

The question of whether a director is an appropriate respondent will depend, in any given case, upon a consideration of whether the director has breached his or her duties to the company and, if so, whether that breach amounts to unfair prejudice. That in turn will depend upon the extent to which the conduct amounts to, or involves, conduct by the majority.

As Lady Justice Arden has identified:

> *"One of the most important matters to which the courts will have regard is … the terms on which the parties agreed to do business together. These are commonly found in the company's articles … [and] any applicable rights conferred by statute. In addition, the terms on which the parties agreed to do business together include by implication an agreement that any party who is a director will perform his duties as a director."*[1]

Directors whose conduct allegedly breaches their duties, then, may find themselves the target of an unfair prejudice petition in certain circumstances. We will return to specific issues arising in the context of directors facing unfair prejudice actions in a later article.

1 *Re Tobian Properties Limited; Maidment v Attwood and others [2012] EWCA Civ 998*, per Arden LJ at 22

THE IMPORTANCE OF GETTING IT RIGHT

Identifying who the appropriate, and inappropriate, respondents to a petition might be is a crucially important early consideration, for both the petitioning party and any recipient of a petition. This is highly significant for the simple reason that petitions commonly fail on the basis that they insufficiently justify, or plead, the case as against each named respondent. Claims for relief have been struck out where, for example, no allegation was made that the relevant respondent benefited from, or even had knowledge of, the relevant conduct[5].

A key factor in determining if a party is an appropriate respondent will be the extent to which that party is connected to the conduct in question (we address the conduct issue further below). If the individual, or his or her agent acting within the scope of the agency, carried out that conduct, then this will be a straightforward question. In other circumstances it may not be so straightforward, and the courts may be called upon to ascertain the extent of the relevant parties' responsibility for the conduct in question.

Where the issue arises, the appropriate test, according to one judicial view, is "*whether the defendant in a section 994 claim is so connected to the unfairly prejudicial conduct in question that it would be just, in the context of the statutory regime…to grant a remedy against that defendant in relation to that conduct*"[6]. Elsewhere, the court

5 See, for example, *Re Bankside Hotels Ltd [2019] BCLC 434, and Re G&G Properties Limited [2018] EWHC 2807 (Ch)*
6 *F&C Alternative Investments (Holdings) Limited v Barthelemy (No 2) [2012] Ch 613*, per Sales J at 1096

pointed out that "*merely being connected with the acts complained of cannot be enough*", *on the basis that if that were sufficient, "personal liability would be imposed in most cases because a company acts through its board of directors*"[7].

The extent to which the "*connection*" to the relevant conduct is sufficient will depend upon the business realities of a particular situation, as well as factors such as the prospective defendant's knowledge of the conduct; and the receipt of any benefit arising from the conduct.

In summary, then, a range of parties may find themselves named as respondents to unfair prejudice petitions either at the outset or as the petition proceeds, and a crucial enquiry, at an early stage, will be whether it is appropriate to name each of those respondents, having regard to the nature of the respondent's involvement in the conduct in question, and the conduct itself.

THE CONDUCT IN QUESTION

In order to obtain any relief, the petitioner must establish that the petition is well-founded. It will be crucial for the petitioner to persuade the court that the conduct of the respondents falls within the scope of section 994, and that it was, or will be, unfairly prejudicial. When evaluating the respondents' conduct, the court will have regard to (i) the nature of the conduct; (ii) the prejudicial effect of that conduct; and (iii) the unfairness of that prejudice.

Unfair prejudice usually involves one of two scenarios. The first concerns a material failure to abide by, or a material breach of, the company's articles of association (which will ordinarily govern how the company's affairs should be conducted) or, for example, a valid shareholder agreement. The second involves a finding that the majority shareholders were constrained by equitable considerations – in other words, restrictions on their behaviour founded in principles of equity as opposed to being founded on the articles or shareholder agreement – and acted in breach of those equitable principles to the detriment of the minority.[8] The latter scenario usually arises in the context of some (alleged) informal agreement between the members as to how the company will be managed (the so-called "quasi-partnership" scenario).

Figure 2: Conduct which has formed the subject of unfair prejudice petitions – some examples

- Changes to shareholder agreements and other corporate documents.
- Dilution of shareholdings (and equity investment restructurings more generally).
- Exercising specific rights under corporate documents.
- Mismanaging the company's capital expenditure.

The conduct must relate to the company's affairs

Again, the flexibility of the section 994 mechanism makes it attractive to prospective petitioners. That flexibility includes the broad scope of conduct that can be targeted, subject to the important limitation that it must pertain to the affairs, or actions (or omissions), of the company, albeit even that limitation has been applied flexibly by the courts (see further below).

7 *Re TPD Investments Limited [2017] EWHC 657 (Ch),* per Asplin J at 158
8 The classic formulation of this second type of unfair prejudice is set out in *O'Neill v Phillips [1999] 2 All ER 961*

The Court of Appeal recently confirmed that a petitioner must demonstrate that the alleged unfair prejudice resulted from the conduct of the affairs of the company; if the respondent's personal conduct is the subject of allegations, those allegations will only succeed if the conduct was causally connected to the conduct of the affairs of the company.[9]

Conduct deemed to relate to the company's affairs will – ordinarily – include all matters decided by the board of directors, although there will be circumstances where the conduct in fact relates to shareholders acting in their capacity as shareholders, which will not be actionable.

Prejudicial effect of the conduct

Once it is established that the conduct in question in fact relates to the company's affairs, the petitioner will then need to show that the conduct is prejudicial to its interests as a member of the company. The prejudice may relate only to the petitioning shareholder, or the entirety of the members.

Again, "*prejudice*" is broadly construed, and will go beyond mere financial damage to the value of the shares (although a significant decrease in economic value of the shares will clearly establish prejudice). Prejudicial conduct is commonly alleged, for example, in the context of rights to participate in the management of the company.

The prejudice must be unfair

The third element that the petitioner will need to establish is that the prejudice is unfair. This issue commonly forms a principal battleground, and will often be difficult to establish. The approach to this question will be heavily dependent on the context of the specific case, including the factual background and the particular corporate context in which the dispute arose. "*All is said to be fair in love and war*", noted Lord Hoffman in the only unfair prejudice case to reach the highest court; so "*the context and background are very important*".[10] Nonetheless, a number of principles have emerged that reflect the general approach the courts will adopt, which will be based upon an objective approach and will apply established equitable principles.

Whilst the court will assess unfair prejudice on an objective basis, the conduct of the petitioner may be relevant in determining that the respondent's prejudicial conduct was not, in fact, objectively unfair. This might arise in circumstances where, for example, the petitioner has, by its conduct, acquiesced in relation to particular conduct of the company's affairs, or has delayed in bringing the petition.

A recent Court of Appeal case held, however, that a petitioner who had taken over 17 years to issue a petition after first suggesting that he would do so, that did not necessarily equate to acquiescence in any mismanagement; the shareholder was entitled to assume that the company was being managed by its directors in accordance with the company's constitution.[11] The court will exercise its discretion as to whether, in any given case, it would be unfair or inappropriate for a petitioner to obtain relief.

Conduct which does not comply with the terms on which the parties agreed to do business may be considered unfair. Members are entitled to expect that the affairs of the company will be conducted in accordance with the articles of association and any shareholder agreements, and that directors will discharge their statutory duties to the company.

If there is found to be an agreement or understanding between the members with respect to the management of, or decision-making regarding, the company, a breach of such agreement or understanding may be considered unfair.

9 *Primekings Holding Limited and others v Anthony King, James King and Susan King [2021] EWCA Civ 1943*
10 *O'Neill v Phillips [1999] UKHL 24*, per Lord Hoffman
11 *Bailey v Cherry Hill Skip Hire Limited [2022] EWCA Civ 531*

Figure 3: Conduct deemed to be unfair – some examples

- Mismanagement of the company's business by the board of directors, which is sufficiently egregious to amount to the directors breaching their statutory duties to the company. The breach itself must have caused real prejudice to be suffered, however (note that even if the proper claimant in a breach of fiduciary duty context is the company itself, that will not necessarily bar an unfair prejudice petition).
- Payment of excessive remuneration, if it can be established that the directors approved the level of remuneration for an improper purpose of self-enrichment in breach of their fiduciary duty; or where the remuneration is in fact a disguised dividend payment.
- Excluding the member from the management of, or decision-making regarding, the company, but only where those rights have been conferred on the member and there are no reasonable bases on which to exclude the member.
- Diluting the minority members' interests by issuing or allotting shares unfairly or without commercial rationale.
- Failing to distribute dividends in accordance with a member's agreement without justification, or for improper reasons (although a mere lack of dividend payments, on its own, will not ordinarily be a sufficient basis for asserting unfair prejudice).

If conduct in inequitable, in the sense that even if no rules are being broken, those rules are being used "*in a manner which equity would regard as contrary to good faith*"[12], such conduct may be considered unfair.

None of these principles, either individually or taken together, give rise to a single proposition, or doctrine, as to what will or will not be considered unfair in any given case, although some illustrative examples of conduct that has been found to be unfair have emerged (see Figure 3).

WHAT RELIEF CAN BE OBTAINED, AND AGAINST WHOM?

A principal attraction of unfair prejudice petitions is the wide discretion of the courts in terms of the relief that can be, and is, granted, and the parties against whom that relief can be granted. Assuming the court is satisfied that a petition is well-founded (and it will have no jurisdiction to make any order if it is not so satisfied), it is able to "*make such order as it thinks fit for giving relief in respect of the matters complained of*"[13].

The court's decision in this regard will be influenced by a range of factors, and will not be limited by the relief specifically sought by the parties. Those factors may include, for example, conduct since the petition was filed; interests of third parties and creditors; and what the court considers to be the most effective way of ensuring that the unfair prejudice does not continue into the future. The court "*is entitled to look at the reality and practicalities of the overall situation, past, present and future*".[14]

The Act sets out indicative, and non-exhaustive, examples of the relief that may be granted (see Figure 4).

12 Ibid.
13 Companies Act 2006, section 996(1)
14 *Grace v Biagioli [2005] EWCA 1222*

Figure 4: Relief the Court may grant (non-exhaustive)

- Regulating the conduct of the company's affairs in the future.
- Requiring the company to refrain from doing, or continuing, an act complained of.
- Authorising civil proceedings to be brought in the name and on behalf of the company by such person(s) and on such terms as the court may direct.
- Requiring the company not to make alterations to its articles without the leave of the court.
- Providing for the purchase of shares in the company, whether by other members or by the company itself.

Within that flexible framework, remedies can be sought, and granted, in respect not only of past or present conduct, but also of anticipated or potential future conduct. Indeed, recent years have seen an increase in the use of unfair prejudice petitions to seek to prevent anticipated majority action.

Notwithstanding the broad discretion available to the court, however, the most common relief sought in unfair prejudice actions remains a purchase order in respect of the petitioner's shares; if such an order is granted, and the petitioner's shares are purchased, it will of course (usually) bring the petitioner's membership of the company to an end, in exchange for a fair market value. As discussed further below, the market valuation of the shareholding will often be a key battleground in disputes.

Aside from purchase orders, however, it is worth highlighting some examples of cases where the relief has fallen outside the more conventional parameters.

A recent case resulted in an order (relatively rarely granted) regulating the affairs of the company on an ongoing basis, rather than a buy-out order, although the case – unusually – concerned a petition brought by the majority shareholder[15].

Another recent case – which also highlighted the potential for overlap between the unfair prejudice and the derivative action mechanisms – resulted in the Court granting the petitioner the statutorily requisite permission to commence a derivative claim on behalf of the company[16]. Whilst this remedy is expressly identified in the Act[17], it is also, in practice, relatively rarely granted.

Instead of the more usual buy-out order compelling the majority shareholder to purchase the minority shareholder's shares, the Court of Appeal adopted an alternative approach, awarding the petitioner the option (but not the obligation) to purchase the majority shareholder's shares at a fair value[18].

As will be clear, the reputation of unfair prejudice actions for flexibility is not unjustified. Whilst this can be an attractive feature, a key point for litigants to keep in mind is that the court will not necessarily limit itself to granting the relief sought by the petitioner. In other words, even if the petitioner requests, for example, an order compelling the company to take, or refrain from taking, a particular course of action, the court may conclude that in fact the relationship between the shareholders is irreparably damaged, such that the only appropriate order is a compulsory share purchase order (or, in extreme circumstances, that the company ought to be wound up).

15 *Re Macom GmbH (UK) Limited; Macom GmbH v Bozeat [2021] EWHC 1661*
16 *Taylor Goodchild Limited v Taylor and Scott Taylor Limited [2021] EWCA Civ 1135*
17 Section 996(2)(c)
18 *Thomas v Dawson [2015] EWCA Civ 706*

VALUATION ISSUES

Assuming the court is satisfied that there has been unfairly prejudicial conduct, and is prepared to grant a buy-out order (or perhaps other relief), a key issue – and frequent battleground during the litigation – will be around the appropriate valuation of the parties' shareholdings.

The starting point is that the shares of the selling party should be attributed a fair market value as at, or as close to, the sale date as possible, although other valuation dates may be considered more appropriate, for example if there has been a generalised market fall through the life of the petition.

Share valuation, which aims to establish the value of the company in question, at the relevant time, on the basis of what is fair in all the circumstances, is – usually – a complex, nuanced, and technical exercise, dependent on expert input. The court will consider a range of factors and may adopt one of a number of approaches, perhaps based upon the value of the company as a going concern, or alternatively upon the liquidation or breakup value of the company's net assets.

In addition to simply valuing the shares as at the relevant time, significant questions will arise around whether any diminution in value as a result of the unfairly prejudicial conduct should be disregarded; whether any other relevant financial factors – such as outstanding company debt – should be taken into account; and whether there is an entitlement to interest on the price of the shares.

A further crucial question often arises around whether a "*minority discount*" should be applied to the value of the minority shareholding. Such discounts – which will not usually apply in quasi-partnership contexts[19] – reflect the fact that the minority ownership brings with it a lower level of control over the company, and should therefore (arguably) be attributed a value less than the pro rated share of the overall value of the company. There is some judicial inconsistency in this regard, with a number of recent cases suggesting that it is inappropriate to apply a discount at all, in apparent contrast to earlier decisions. In any event, this issue is frequently litigated, and the outcome can be highly significant on the ultimate quantum of the order.

SPECIFIC INITIAL CONSIDERATIONS FOR PARTIES

The appeal of unfair prejudice petitions will be clear; they provide an effective, and flexible, means of protecting minority (and, in principle, majority) shareholder rights within companies where those rights have been neglected or undermined.

Notwithstanding their flexibility, however, such actions give rise to particular considerations, for both petitioners considering instigating the action, and respondents who are faced with the petition.

Petitioners

Putative petitioners should consider carefully the party or parties from whom they wish, and will be able, to seek relief. This will involve considering the conduct in question and different parties' exercise of or influence over that conduct, the means of the potential respondents, and the extent to which a properly articulated case can be pleaded out against each party (in order to reduce the risk of the claim being struck out).

19 See, for example, *Sunrise Radio Limited [2009] EWHC 2893 (Ch)*

With regard to potential respondents, whilst there may be an attraction in casting the net widely, particularly if a "scheme" or pattern of conduct is in question, in order to increase the chances of obtaining satisfactory relief, there will also be a commensurately increased costs exposure.

Relatedly, when it comes to pleading the case, the importance of clear and specific points of claim, setting out in sufficient detail the claim as against each respondent (including with regard to the conduct in question), cannot be overestimated in the context of section 994. Falling short in this regard risks having the claim stuck out.

Having regard to the potential defences available to an unfair prejudice petition, particularly around acquiescence or waiver, and delay, putative petitioners should keep in mind the benefits not only of commencing the petition early, but also of documenting any disagreements with majority decisions at the time such disagreements arise.

Petitioners should give close consideration both to the relief they wish to seek, but also to the fact that the court may, in any given case, depart from the "usual" buy-out order and grant some other relief; even if successful in establishing the unfairly prejudicial conduct, therefore, the petitioner may not obtain the desired result.

Finally, it is well established that unfair prejudice petitions can in principle be subject to arbitration agreements, notwithstanding their statutory basis, and subject to various limitations. Putative petitioners should assess whether any relevant agreement, such as the shareholder agreement, contains an arbitration mechanism (and if so, whether all shareholders are subject to that agreement) or, alternatively, whether it would be beneficial to seek to agree an ad hoc arbitration mechanism with the prospective respondents.

Respondents

For parties on the receiving end of an unfair prejudice petition, a number of immediate and longer term considerations should be addressed at an early stage, for example:

- Does the claim properly target the particular respondent, and is the conduct in question properly actionable (for example, did the conduct truly relate to the affairs of the company, and was the particular respondent responsible for that conduct)?
- What is the individual respondent's relative culpability and how can this be established (in other words, can a particular respondent establish that he or she was not liable, or not wholly liable, for the unfair prejudice that is alleged to have been suffered)?
- Is there a basis on which to challenge either the petition itself, or the relief sought, or both, on the basis of, for example, considerations of proportionality, or the petitioner's own conduct (keeping in mind that a high threshold will need to be satisfied in order for a petitioner's conduct to bar relief)?

An early assessment of these issues will assist the respondents in focusing the defence effort and, perhaps, effectively extricating themselves from an ill-founded petition.

An equally important, early, consideration, will be whether in fact an offer to purchase the minority's shares should be made. Where "fair and reasonable" offers are made, but rejected, the petition may become vulnerable to strike out[20].

20 Commonly referred to as "*O'Neil and Phillips offers*".

CONCLUDING COMMENTS

Unfair prejudice actions provide shareholders – particularly minority shareholders – with valuable protection but, as will be clear, the use of the section 994 mechanism throws up multiple potential issues, for both petitioners and respondents, from the outset, and throughout.

Be that as it may, the rise in the use of this mechanism to litigate shareholder grievances appears to be continuing. Corporate conduct, and the conduct of those running companies, continue to attract growing attention, including through the lens of Environmental, Social and Governance (ESG) considerations in particular. Decisions that are taken that impact the overall value of the company, or particular shareholders within it, are being scrutinised more than ever before, and shareholders, and directors, should remain mindful of potential unfair prejudice when conducting company affairs.

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