



FOO FATT CHUEN v AXIS IDENTITY GROUP INTERNATIONAL
SDN BHD & ANOR

CaseAnalysis
| [2011] MLJU 676

 Foo Fatt Chuen v Axis Identity Group International Sdn Bhd & Anor
[2011] MLJU 676

Malayan Law Journal Unreported

HIGH COURT (KUALA LUMPUR)

MOHAMAD ARIFF JC

ORIGINATING SUMMONS NO D-24NCC-262 OF 2010

18 May 2011

Teh Meng Teck (S Sivaneindiren & Wong Sze Si with him)(Cheah Teh & Su) for the plaintiff.

Gopal Sreenevasan (S Ravindran & Krishna Raja with him) (Sreenevasan & Young) for the first defendant.

Logan Sabapathy (S Bhuvaneshwary & G B Wong with him)(Izral Partnership) for the third to seventh defendants.

Mohamad Ariff JC:

Procedural Background

This is an Originating Summons application where the Applicant is seeking to invalidate a corporate restructuring exercise involving a transfer of shares from a director and substantial shareholder, or persons connected with him, to a company. The basis of application is founded in law on several interlocking provisions of the Companies Act, namely section 132E, section 69D, section 122A and section 133A. The company concerned is the 1st Defendant in this

action, Axis Identity Group International Sdn Bhd ("AIGI"). The application is made by the Plaintiff as the Company's director and substantial shareholder.

There are several prayers in the Originating Summons, some of which are consequential orders. The main prayers are prayers 1 to 4 which are as follows:

1 A declaration that the purported transfer of 12,173 ordinary shares in the 2nd Defendant, Axis Identity Group Holdings Sdn Bhd by Kan Yik Ho to the 1st Defendant, Axis Identity Group International Sdn Bhd 6/1/2010 is null and void as the said transfer was effected in breach of section 132E of the Companies Act, 1965 and/or in breach of public policy.

2 A declaration that the purported transfer of 12,173 ordinary shares in the 2nd Defendant, Axis Identity Group Holdings Sdn Bhd by Koh Siew Boon to the 1st Defendant AIGI 6/1/2010 is null and void and said transfer was effected in breach of section 132E of the Companies Act, 1965 and/or in breach of public policy.

3 That the register of members of the 2nd Defendant Axis Identity Group Holdings Sdn Bhd be duly rectified to reflect Kan Yik Ho as the legal owner of 12,173 issued ordinary shares in the 2nd Defendant.

4 That the register of members of the 2nd Defendant Axis Identity Group Holdings Sdn Bhd be duly rectified to reflect Koh Siew Boon as the legal owner.

The rest of the prayers, fall within the rubric of consequential orders, and these include an order that all nominees, representatives and agents of the 1st Defendants appointed to the Board of the 2nd Defendant, Axis Identity Group Holdings Sdn Bhd ("AIGH") to forthwith vacate their office. However, the parties have by common consensus, agreed that the issue of the validity of the transfer of shares be heard first, to be followed by issues raised by the consequential orders.

The consensus of the parties is minuted as part of the record thus:

"By consensus, the Originating Summons will be heard first on the issue of breach of section 132E, with the issue of the consequential orders to be heard in the event this Court rules there is a breach of section 132E.

In this event, the immediate parties i.e. the parties named in the OS will argue on the second issue of whether the consequential reliefs can be ordered as a matter of law. In the event this court rules that the consequential reliefs can be ordered as a matter of law, the proposed interveners' applications will be heard and disposed off with a view to affording an opportunity for these proposed interveners to answer the allegations being made against them."

This present decision and the grounds in its support will therefore be limited to the main issue of section 132E.

Brief Background Facts

I now state the brief background facts insofar as they are relevant to the section 132E issue.

There is no dispute on the fact that the Plaintiff is and was at all material times, a director and substantial shareholder of AIGI and AIGH. The relevant transfer of shares now being challenged concerns the disposal of the Plaintiff's 65.8% shareholding in AIGH to AIGI.

Shareholding Structure of AIGH

As at 5.1.2010, the shareholding structure of AIGH was as follows:

Shareholders	Percentage
Foo Fatt Chuen	65.8%
Lai Siew Hong	28.2%
Yap Yan Yoke	6%

All the abovesaid shareholders were also directors of the company. AIGH was the ultimate holding company for all companies within a group of companies described by the Plaintiff as the "Original Axis Group of Companies". The 3rd to the 7th Defendants were subsidiaries under this ultimate holding company. The 1st Defendant, AIGI, however, was a separate company and did not form part of the original group until after 5.1.2010. It was also a dormant company.

Shareholding Structure of AIGI

Prior to the corporate restructuring and as a dormant company, AIGI was a 2 Ringgit paid-up company with the Plaintiff and his wife, Choon Siew Mei (said to be his nominee) as the only two shareholders and directors.

For purposes of clarity, it is useful to set out the exact structures of the companies prior to the corporate restructuring in graphical form, which I do below:

Structure Prior to Corporate Restructuring

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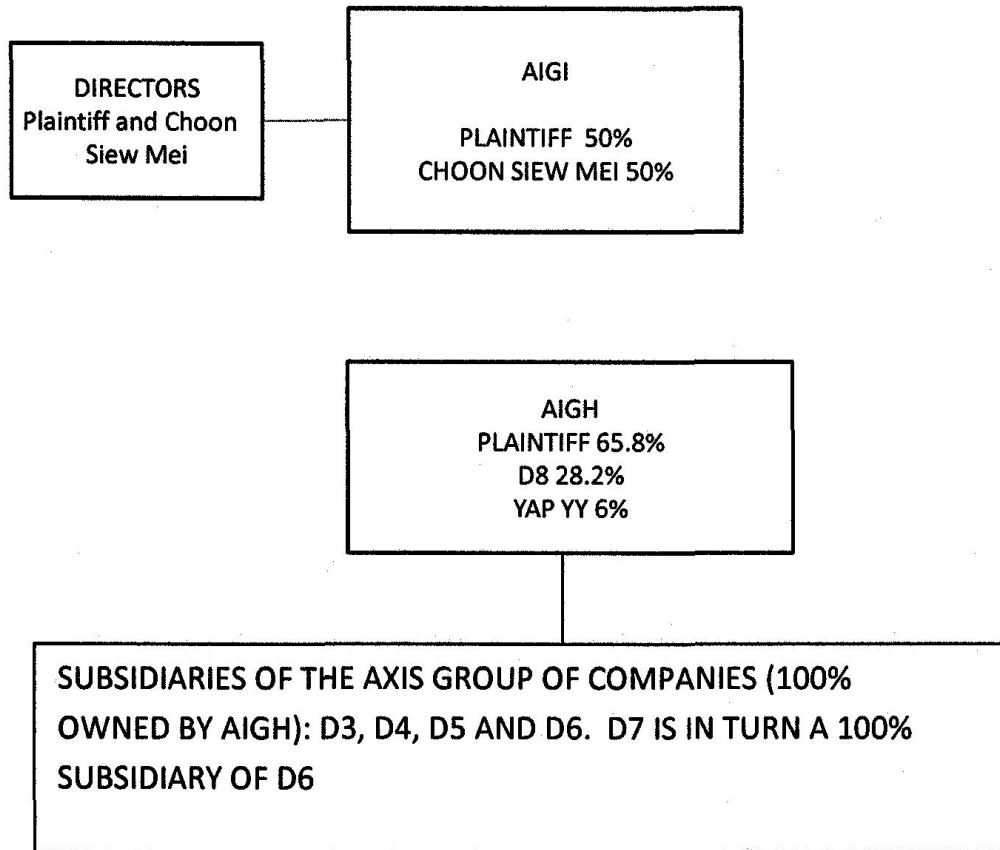


Diagram 1

The Corporate Restructuring

In January 2010 the general corporate structure of the Original Axis Group of Companies was restructured whereby AIGI became the new holding company for the entire Axis Group of Companies including AIGH. This result was sought to be achieved by transferring the Plaintiffs direct shareholding in AIGH to AIGI which was effected not through a direct transfer but through "a step mechanism, or what the Plaintiff describes as a "sidestep". The corporate restructuring exercise involved two steps. First, the Plaintiff transferred his entire shareholding in AIGH (the 65.8%) to 2 persons, namely Koh Siew Boon and Kan Yik Ho, with each being transferred with 32.9% of the shareholding in AIGH. Second, Koh and Kan then respectively transferred their shares in AIGH to AIGI. The result was AIGI became the holding company of AIGH and thus the ultimate holding company of the Axis Group of Companies.

The first step transfer was done on 5.1.2010; the second step transfer from Kan and Koh to AIGI on 6.1.2010.

The first step transfer was supported by a Board Resolution of AIGH. The transfer to Kan and Koh and subsequently the transfer from Kan and Koh to AIGI were done without any consideration passing from Koh and Kan to the Plaintiff or from AIGI to Koh and Kan.

According to the Plaintiff, and this sidestep mechanism was advised by the Company Secretary of AIGI, and apparently at this stage the Plaintiff believed there was no infringement of section 132E of the Companies Act. This sidestep mechanism, and the resultant corporate structure, can be usefully illustrated graphically as follows:

(a) The "Step Mechanism"

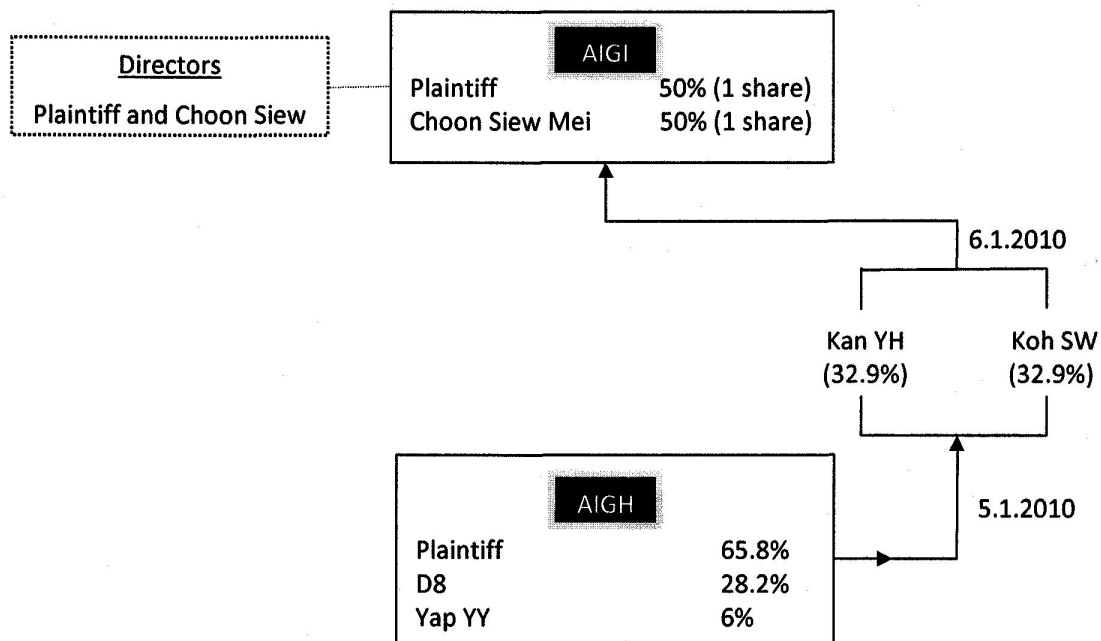


Diagram 2:

(b) The Resultant Structure

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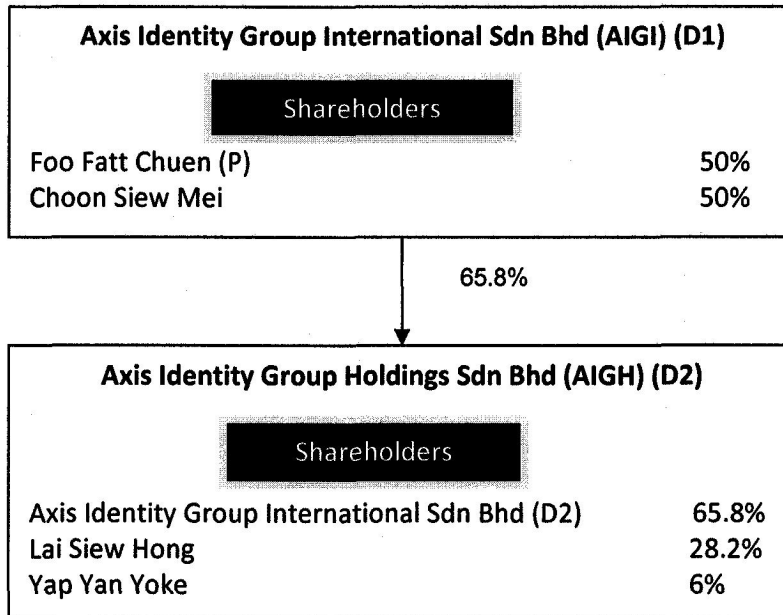


Diagram 3:

Axis Group as at 6 January 2010 (Foo Fatt Chuen's transfer of his 65.8% shareholding in AIGH to AIGI)

The Larger Scenario

To place the dispute in context, it is necessary to also mention its subsequent share swap and a further issue of ordinary shares by AIGI to another company named AGC, resulting in AGC holding 57% of the shares in AIGI and another shareholder named Foo Lai Yoke holding 20%. The Plaintiff ended up holding 20% of the shares in AIGI, whereas as at the date of the second step mechanism, he held 100% through his own shareholding and through his wife's shareholding as his nominee.

The subsequent entry of AGC and Foo Lai Yoke occurred in February and March of the same year. AGC, according to the Plaintiff, is a company controlled by one Jacobson Cheong, and Foo Lai Yoke who is his wife. Thus these changes in the corporate structure resulted in the Plaintiff having a minority shareholding in the Axis Group of Companies, as illustrated below:

(c) The Resultant Broad Corporate Structure

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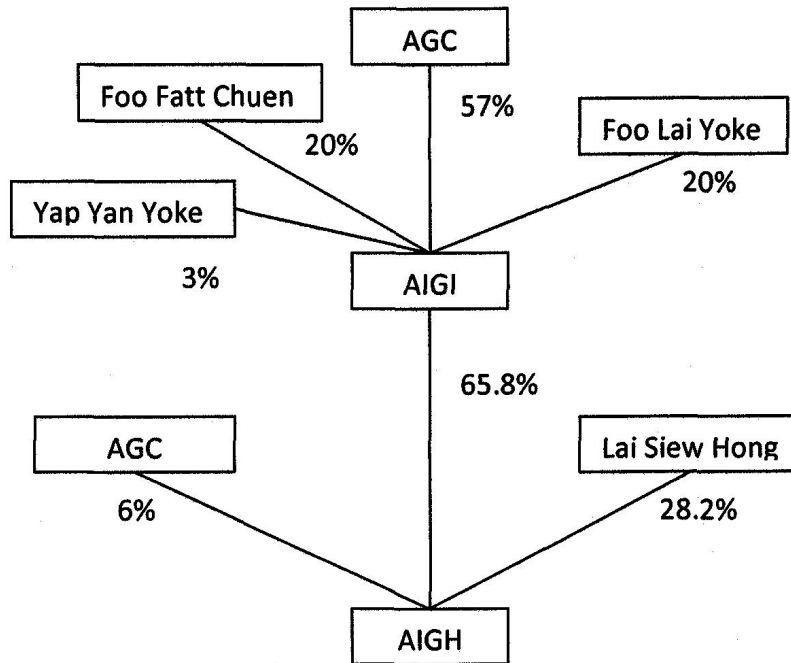


Diagram 4:

The background to and the reasons for the entry of AGC and Jacobson Cheong are part of a larger scenario which will become relevant when the consequential orders are considered. As I indicated earlier, by the consensus of the parties the issue on the alleged breach of section 132E is to be considered and decided first.

The Statutory Framework of section 132E of the Companies Act.

It is useful to place section 132E of the Companies Act in its statutory context. This provision appears under Part V headed "Management and Administration", more precisely under Division 2 headed "Directors and officers". As Section 132E itself indicates, this particular provision relates to "Substantial Property Transaction by Director or Substantial Shareholder". When seen in this broader sense, there is merit in the submission advanced by counsel for the Plaintiff that the section is one relating to good corporate governance.

Section 132E has been analysed in two High Court cases, namely *MUI Plaza Sdn Bhd v Hong Leong Bank Berhad* [1998] 6 MLJ 203 and *Omega Securities Sdn Bhd v Yeoh Lee Hoe* [2003] 1 AMR 426, and further has been subject to commentary, notably in Loh Siew Cheang's *Corporate Powers Accountability (second edition)* which contains a useful insight into the background leading to the introduction of this provision in our Companies Act. The learned commentator of *Corporate Powers Accountability* usefully explains the background thus:

"The statutory provision in section 132E of the Act was introduced in 1986. In essence, this statutory provision restates established principle of law that are applicable to directors as fiduciaries under the general law - the rule against "self dealings" were carried out directly or indirectly. The statutory purpose of section 132E is not only confined to arresting the mischief of acquisition of assets from related parties at an overvalue or disposal to them at an undervalue. It is also to give specific protection to shareholders generally against "self dealings" which may benefit directors and persons connected to them to the detriment of the company: re. Duckwari pic (No 2).

The source of section 132E of the Act is traceable to section 48 of the Companies Act 1980 (UK) which is now re-enacted, with substantial amendments, as sections 320 -322 of the Companies Act 1985 (UK). Comparative provisions are also found in section 160A - 160D of the Singapore Statute.

The most significant feature of section 132E of the Act is that the approval of the company in general meeting must be obtained if the "self-dealing" is of a requisite value. By fixing a threshold with respect to value, its statutory effect is to force all "self dealings" falling within the requisite value to be decided by the general meeting with appropriate disclosures as a self-interests and the fairness of the consideration that are involved in the transaction." (at pg. 592 - 593)

However, although the two decisions of the High Court and the above quoted commentary are useful to appreciate the meaning and purpose of the section, it is also necessary to note that this provision has been amended since then by Act A 1299 of 2007 which came into force from 15th August 2007. The effect of the amendment is to further tighten the rules on substantial property transaction by a director. It is necessary to appreciate this in order to determine whether what was done on the facts of this case can be regarded as valid or otherwise.

The present section 132E reads:

"132E(1) Substantial Property Transaction in Company. Subject to subsection (2) and section 132F, the company shall not carry into effect any arrangement or transaction where a director or a substantial shareholder of the company or its holding company, or a person connected with such a director or substantial shareholder -

(a) Acquires or is to acquire shares or non-cash assets of the requisite value, from the company; or

(b) Disposes of or is to dispose of shares or non-cash assets of the requisite value, to the company.

(2) Void Transaction.

An arrangement or transaction which is carried into effect in contravention of subsection (1) shall be void, unless there is prior approval of the arrangement or transaction -

(a) By a resolution of the company at a general meeting; or

(b) By a resolution of the holding company at a general meeting, if the arrangement or transaction is in favour of a director of substantial shareholder of its holding company or person connected with such director or substantial shareholder.

(3) Company Resolution:

The resolution of the company or its holding company at the general meeting of the company or its holding company to consider the arrangement or transaction shall be subject to the director, substantial shareholder or person connected with such director or substantial shareholder, as the case may be, abstaining from voting on the resolution whether or not to approve the arrangement or transaction."

By comparison the previous parallel provisions read:

"section 132E (1) subject to section 132F, a company shall not enter into any arrangement or transaction with a director of the company or its holding company or with a person connected with such a director to acquire from disposed to such director or person any non-cash assets of the requisite value unless the arrangement or transaction is first approved by a resolution of the company in general meeting and also, if the director or connected person is a director of its holding company or person connected with such a director, by a resolution of the holding company into the meeting.

(2) An arrangement entered into in contravention of subsection (1) any transaction entered into in pursuance of the arrangement (whether by the company or any other person) shall be voidable at the instance of the company unless an arrangement and transaction, within a reasonable period, rectified the company in general meeting and also, if the arrangement and transaction for the transfer of an asset to or by a director of its holding company or person who is connected with such director, by a resolution of the holding company in general meeting."

There are therefore material differences between the old and the new provisions. First, the present provision extends the net beyond dealings by a director or a connected person. The prohibition now expressly covers dealings by substantial shareholders as well. Second, under the current provision any arrangement or transaction in contravention of the prohibition shall be regarded as a "void", unless there is "prior approval" of such an arrangement or transaction by a resolution of the company at a general meeting. This contrasts markedly from the previous position which speaks of the arrangement or transaction having to be "first approved" by resolution of the company in general meeting. Further, any arrangement or transaction contravening the section shall be merely "voidable at the instance of the company" unless the arrangement and transaction are ratified by the company in general meeting within a reasonable period. Third, the present provision is made subject to subsection (2) and section 132F, whereas the previous provision made it subject only to section 132F. On its literal wording therefore, it appears that the present provision contains an exclusive and limited list of exceptions. Unless the arrangement or transaction is sanctioned by prior approval of the company in general meeting, or falls within any of the instances under section 132F, such arrangement or

transaction is to be regarded as void. In this context, it will be useful to examine the list of instances mention in section 132F:

"Section 132F shall not apply to an arrangement or transaction for the acquisition or disposal of a non-cash asset entered into -

(a) By a company -

i And any of its wholly-owned subsidiaries; or

ii And its holding company which holds all the issued shares of the company; or

iii Which is a wholly-owned subsidiary of a holding company and another wholly-owned subsidiary company of that same holding company; or

(b) By a company which is being wound up unless the Winding Up his members voluntary Winding Up; or

(c) By a company which is an acquisition or disposal of an asset in the ordinary course of business of the company and is one terms not more favourable than those generally available to the public or employees of the company;

(d) By a company if such arrangement or transaction does not involve transfer of cash or property and which shall have no effect unless approved at a general meeting or by a relevant authority;

(e) By a company made in pursuance of a scheme of arrangement approved by the court under section 176; or

(f) By a company in connection with a takeover offer made in accordance with the relevant law applicable to such offers."

(Paragraph (f) was inserted by the amending Act of 2007)

The Necessary Elements Under Section 132E.

In view of the amendments made in 2007, it becomes necessary to restate the elements or ingredients which constitute the prohibition on substantial property transactions by directors or substantial Shareholders. Seen in its proper context, this provision addresses the issue of what is known in corporate circles as related party transactions. It addresses the related party transactions which are substantial in nature and require to be validated by a company in general meeting, unless the particular related party transaction falls within any of the exceptions in section 132F. For instance, if the acquisition or disposal of an asset is made in the ordinary course of business of the company and if is on terms not more favourable than those generally available to the public or employees of the company, the acquisition or disposal of assets will not come within the prohibition.

For the purpose of analysis and clarity, the necessary elements of section 132E can be restated thus:

- (1) There has to be an arrangement or transaction between a company and its director or substantial shareholder, or a person connected with such director or substantial shareholder.
- (2) Such director or substantial shareholder can be a director or substantial shareholder of the company's holding company.
- (3) The prohibited arrangement or transaction has to be either:
 - (a) One where the related person acquires or is to acquire its shares or non-cash assets of a requisite value from the company; or
 - (b) One where the related person disposes or is to dispose of shares or non-cash assets of the requisite value to the company.
- (4) "Person connected", both in relation to a director as well as substantial shareholder, shall have the same meaning as provided under section 122A of the Act (as extended to substantial shareholders by section 132E(7)), which deems four categories of persons as being connected with the director or substantial shareholder. The person deemed to be connected can be either of the following:
 - (a) A member of the directors or substantial shareholder's family; or
 - (b) A body corporate which is associated with the director or substantial shareholder;
 - (c) A trustee of a trust (other than a trustee for an Employee Share Scheme or Pension Scheme) under which the director or substantial shareholder or member of his family is the beneficiary; or
 - (d) A partner of the director or substantial shareholder, or partner of any person connected with that director or substantial shareholder.
- (5) The substantial transaction has to be of the "requisite value", defined as a value which exceeds RM250,000 or, if the value does not exceed this amount, it exceeds 10% of the company's asset value provided it is not less than RM 10,000. In the case of a company listed on the Stock Exchange, the value shall have reference to the value prescribed by the listing requirements.
- (6) The relevant arrangement or transaction shall be void unless there is prior approval for it by a resolution of the company at general meeting, or where applicable, by a resolution

of the holding company at a general meeting if such arrangement or transaction is in favour of a director or substantial shareholder of the holding company or person connected with him, or such arrangement or transaction falls within any of the exceptions under section 132F.

- (7) As for the Company resolution, the director, substantial shareholder or the connected person, as the case may be, must abstain from voting on the resolution. See section 132E(3).

Whether Section 132E applies to Genuine Corporate Restructurings.

I now turn to look at the facts of this present application against these elements or ingredients under section 132E. The relevant company in this context is AIGI, being the company to which the Plaintiffs shares are transferred through the sidestep mechanism. There is no real issue on requisite value, since it is common consensus of the parties that the value of the shares far exceeds RM250,000, or even 10% of the company's asset value. The next issue to consider is whether Kan and Koh are connected persons, or deemed to be so. Having appraised the facts, it is clear on the evidence that Kan and Koh have admitted on the affidavits that they acted as nominees for the Plaintiff. Indeed, each of them has gone so far as to say that AIGI itself is the corporate nominee of the Plaintiff. I do not believe it can be seriously questioned on the facts of this case, Kan and Koh were holding the shares on trust for the Plaintiff to effect the transfer to AIGI. The next question to resolve is whether there was a valid and proper prior approval of the shareholders of AIGI. There was a resolution of the company, but the Plaintiff and his wife could not have voted on it, since the Act requires them to abstain from voting on the resolution. It really would not have mattered whether the resolution was passed before or after the transfer to AIGI, because the Plaintiff and his wife, being the only shareholders and directors, could not have voted on it in any event. Given the shareholding structure of AIGI, where the Plaintiff and his wife are the only two shareholders, it will not be possible to satisfy the requirement of a disinterested shareholders' resolution to approve the transaction. This by itself gives rise to a somewhat anomalous position in law. On the facts there is no element of any commercial gain to the Plaintiff or detriment to AIGI, or self-dealing in the usual sense as mentioned earlier. On the facts, we have here a genuine corporate restructuring agreed to by the Plaintiff and the Company, and advised by the Company Secretary of AIGI as proper. It was only subsequently and arising from the audit process that the external auditor cast a doubt on whether the sidestep was valid in law. The company's solicitors were then approached and provided an opinion that the transaction infringed section 132E.

Counsel for the Defendants urges this Court to interpret the section purposively, and in line with section 17A of our Interpretation Act. Section 132E, it was argued, should not apply to a genuine corporate restructuring. Reference was made to statements made by Park J in the English case of *NHB Ltd and another v Hoare and Others* [2006] 2 BCLC 649, which refers to the equivalent provisions in the English Companies Act of 1985, i.e. Section 320(1)(a) and (b). Park J said in that case:

"Surely s. 320(1)(a) is about cases where a director or a person connected with him purchases assets from a company at an undervalue, so that the director or connected person is in a position to make a gain at the expense of the company; that is the situation in which the director is liable to account to the company under s. 322(3)(a). And conversely s. 320(1)(b) is about cases where a director or a person connected with him sells assets to a company at an undervalue, so that the company is exposed to a loss which ought to have fallen on the director or the connected person; that is the situation in which the director is liable to indemnify the company under s. 322(1)(b)."

It requires noting in passing that the English provisions under the 1985 Act have now been superseded by sections 190 to 196 of the English Companies Act 2006, which allow members to approve a related Substantial Property Transaction within a reasonable time.

The case for the Defendants is premised on the argument that the purpose of the transfer is merely to restructure the Axis Group of Companies to provide for a new holding company; the transfer is for the benefit of AIGI in that it becomes the largest shareholder in AIGH; AIGI incurs no expenditure and no loss, and in fact benefits from the transfer; AIGI in fact seeks to enforce the transfer and the shareholders have in fact also approved the transfer.

This argument has logical merit. However, it would be wrong to lose sight of the peculiar wording of our Malaysian provision as amended in 2007. In the final analysis, any conclusion of this Court has to be anchored on principles of statutory interpretation where it is a well-entrenched principle that the duty of the court is to give effect to the law "as it stands, rather than what it might have been had [the] contingency been contemplated." (*Fan Yew Teng v Public Prosecutor* [1971] 2 MLJ 271) Abdoocader J in *Vengada Salam v Khor Soon Weng and Ors* [1985] 2 MLJ 450 stated the point succinctly as follows:

"It is a strong thing to read into an Act of Parliament words which are not there, and in the absence of clear necessity it is a wrong thing to do....We are considering here not what the Act ought to have said, but what it does say."

No doubt the task of statutory interpretation and ascertaining the collective legislative wisdom of Parliament can be a difficult one given the peculiar facts of a particular case, such as the present. Legislative history, if available, can be helpful, but the starting point in this process has to be the words used by Parliament. If the words are clear, it will be wrong for the court to ignore or improve on them so as to achieve a desired result.

I have considered the materials supplied by counsel on the legislative background. I have taken note of the fact that the amending Act of 2007 also deleted completely a related provision, i.e. section 132G. This section previously overrode section 132E, and cast a blanket prohibition on any arrangement or transaction by a company to acquire shares or assets of another company in which a director or shareholder of the acquiring company or a connected person has a

substantial shareholding, unless the arrangement or transaction was entered into three years after such person first held the shares. Any transaction or arrangement in breach was regarded as void, and any consideration given was recoverable accordingly.

It appears clear from the legislative background that while the rigidity of section 132G was completely abolished, Parliament also saw it fit to tighten the requirements of section 132E, in the manner already analyzed above. Unlike the UK provision, our law, as it stands, does not draw a distinction between private companies and public listed companies. It appears from the wording used that the legislative intent is to provide a simpler rule in relation to substantial property transactions by directors and substantial shareholders. Section 132E strictly regulates such transactions by making an arrangement or transaction in breach of the requirements void, unless the company can rely on any one of the exceptions in section 132F, or the prior approval of the shareholders is obtained. The problem with such a simple approach is well illustrated by the facts of this instant case. There will be occasions when small private companies or family companies will not be able fulfill the requirement of prior shareholders' approval because there will not be any disinterested shareholders. Legitimate corporate restructuring or even legitimate transactions will be hindered, even though there may well be no financial detriment to the company or financial benefit to the director or substantial shareholder at the expense of the company.

In the course of submission, I was referred to a report produced by the Corporate Law Reform Committee, i.e. "Consultative Document-On Review of Provisions Regulating Substantial Property Transactions, Disclosures Obligations and Loans to Directors". The views expressed in this Report are particularly apt:

"Another concern about disinterested shareholders' voting is whether this requirement will be a hindrance to the management of private companies. The view is that the shareholding structure in private companies may make it impractical to find disinterested shareholders to vote and if this issue is not addressed this requirement may impede a private company's business.

Taking into account the...views, the CLRC recommends the retention of the existing requirement under section 132E that the prior approval of shareholders is required for the Substantial Property Transaction. The CLRC also recommends that the requirements for disinterested shareholders' vote i.e. that related parties cannot vote, should only be applicable to public companies."

What we have here is a recommendation, which will be a proper subject matter for legislative amendment, not judicial interpretation. In the same light, another commentator, Michael H.K. Lim has written in his paper "Corporate Governance and the Companies Act" that "it is not the intention of the new section 132E to catch transactions that do not involve members of the public and that an amendment should be quickly implemented.

It may be that in the realm of private companies a literal interpretation of section 132E leads to an "absurd" result in the sense of achieving a result which is "out of harmony with reason or

propriety; incongruous, unreasonable, illogical." In this connection, there are subsidiary rules of statutory interpretation to consider, and it is in this area that very difficult issues of interpretation can arise, since the Court has to balance the interests of achieving general justice as against the interest of abiding by a presumed Parliamentary intention, no matter what the consequences are. I can do no better than to quote the relevant passages in the authoritative text on this issue, namely Bennion on Statutory Interpretation (fifth edition), reading as follows:

"... Presumption that "absurd" result not intended.

(1) The court seeks to avoid a construction that produces an absurd result, since this is unlikely to have been intended by Parliament. Here the courts give a very wide meaning to the concept of "absurdity", using it to include virtually any result which is unworkable or impracticable, inconvenient, anomalous or illogical, futile or pointless, artificial, or productive of a disproportionate counter mischief.

(2) In rare cases there are overriding reasons for applying a construction that produces an absurd result, for example where it appears Parliament really intended it or the literal meaning is too strong. (At page 969)

... Avoiding an unworkable or impracticable result.

The court seeks to avoid a construction of an enactment that produces an unworkable or impracticable result, since this is unlikely to have been intended by Parliament. Sometimes, however, the overriding reasons for applying such a construction, for example where it appears that Parliament really intended it or the literal meaning is too strong." (At page 971)

On the facts of this particular application, and applying this subsidiary rule of such interpretation, it would appear that this case is one where the literal meaning is "too strong".

Conclusion

I have given due consideration to the facts of this case, and the strong arguments advanced by the Defendants on rational grounds why the corporate restructuring here should not be invalidated, since it is a genuine transaction agreed to by the parties, and backed by a prior shareholders' resolution of AIGI. There is no element of a sale at an overvalue at the expense of the company and there is no element of asset shuffling by the Plaintiff. Nevertheless, the judicial function has to keep within its narrow limits, and not willy nilly encroach on the domain of legislative policy and function. As section 132E presently stands, full effect must be given to it, since the wording is clear, and the exceptions provided are exhaustive. It will not be proper for this Court to add another exception not sanctioned by the clear wording of this section. In the circumstances, the only proper order to make is to allow the Plaintiff's claim in relation to the issue of validity under section 132E, as prayed in paragraphs (1), (2), (3) and (4) of the Originating Summons.

I will now hear submissions on the consequential orders, and will decide the order on costs after hearing and deciding on the consequential prayers.

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