ND COURT OF THE CAYMAN ISLANDS
SERVICES DIVISION

FSD 59 of 2023 (AWJ)

IN THE MATTER OF SECTION 46 OF THE COMPANIES ACT (2023 REVISION)
AND IN THE MATTER OF JUNIPER LIFE SCIENCES LTD

RBH HOLDINGS

Plaintiff

AND

JUNIPER LIFE SCIENCES LTD.

Defendant

IN CHAMBERS
CORAM: **Walters J. (acting)**

Appearances: **Mr Richard Millett KC, instructed by Mr Jonathon Milne and Mr Jordan McErlean of Conyers Dill & Pearman LLP for the Plaintiff**
Mr Alain Choo Choy KC, instructed by Mr Denis Olarou and Ms Kalyani Dixit of Carey Olsen for the Defendant

Heard: **27 & 28 April 2023**

Draft judgment circulated: **25 May 2023**

Judgment Delivered: **08 June 2023**

HEADNOTE

Application to stay proceedings in favour of arbitration pursuant to s.4 Foreign Arbitral Awards Enforcement Act or by way of a case management stay, forum non conveniens, identification of matter in dispute, consideration of whether real and substantial dispute and whether it falls within relevant arbitration clause.

JUDGMENT

1. These proceedings were commenced by the Plaintiff by way of Originating Summons dated 8 March 2023. The substance of the relief sought by the Plaintiff is as follows:

> *"1. A declaration that the written resolution of the board of directors of Juniper Life Sciences Ltd. dated 27 October 2022 exercising the discretion under Article 9.1(c) of the Articles of Association (the "Articles") dated 21 December 2021 to redeem the 5,000 ordinary shares held by RBH Holdings at the par value of USD 5,000 with effect from 27 October 2022 (the "Resolution"[1]) constituted an exercise of a power for an improper purpose and is void (or, alternatively, voidable).*
>
> *2. An order that the Resolution be set aside ab initio.*
>
> *3. A declaration that RBH Holdings has since 27 October 2022 been and continues to be a shareholder of Juniper Life Sciences Ltd.*
>
> *4. Pursuant to section 46 of the Companies Act (2023 Revision) the register of the members of Juniper Life Sciences Ltd. shall be rectified forthwith (including re-designating and/or cancelling shares as appropriate) such that it reflects the share register immediately prior to the passing of the Resolution with retroactive effect from 27 October 2022 and in the alternative, with effect from the date of this Order, such that:*
>
> *4.1 RBH Holdings shall be recorded as the holder of 5,000 ordinary shares; and*
>
> *4.2 Sylvan Asia Growth Master Fund I Pte Ltd shall be recorded as the holder of the remaining 45,000 ordinary shares."*

2. The Originating Summons was supported by the first affirmation of Mr Laika Saputra Rudianto ("Mr Rudianto") dated 6 March 2023 ("Rudianto 1"). Mr Rudianto confirms that he is the sole shareholder and director of the Plaintiff, RBH Holdings ("RBH").

3. After proceedings were issued and served, a summons for directions dated 20 March 2023 was issued by Conyers Dill & Pearman LLP ("Conyers"), attorneys for RBH. That summons was listed for hearing on 4 April 2023. On 3 April 2023, Stuarts Walker Hersant Humphries ("Stuarts"), who had come on the record for Juniper Life Sciences ("JLS" or the "Company") issued a second summons (the "Stay Summons") seeking the following relief:

> *"1. Pursuant to the Overriding Objective, all further proceedings in this action be stayed pending a mediation under the Singapore Mediation Centre.*
>
> *2. Alternatively, pursuant to section 9 (2) of the Arbitration Act 2012, all further proceedings in this action be stayed pending an arbitration administered by the Singapore International Arbitration Centre.*

[1] Or "Written Resolution".

> *3. Alternatively, pursuant to GCR Order, 12, Rule 8, that all further proceedings in this action be stayed as Forum Non Conveniens.*
>
> *...*
>
> *Grounds*
> *The Defendant seeks the relief set out above on the following grounds:*
>
> *1. Insofar as a stay pursuant to the Overriding Objective or section 9 (2) of the Arbitration Act 2012 is concerned, the Defendant relies upon clause 18 (Dispute Resolution) of the Subscription Agreement dated 12 January 2022 (as amended on 5 April 2022) between (1) [Sylvan Growth Asia Master Fund I Pte. Ltd] (2) [JLS] and [RBH]. This clause provides that any disputes arising out of or in connection to that agreement shall initially be referred to mediation under the Singapore Mediation Centre, and if unresolved, shall be finally resolved by arbitration administered by the Singapore International Arbitration Centre with a tribunal consisting of one arbitrator and the seat of the arbitration being Singapore.*
>
> *2. Insofar as a stay pursuant to an application made on Forum Non Conveniens grounds, the Defendant relies on the facts and matters set out in the letter from the Defendant's attorneys dated 3 April 2023[2]."*

4. On 4 April 2023, I gave directions for the Stay Summons to be listed for hearing on 27 and (if necessary) 28 April 2023 and for the Originating Summons to also be listed in order for any directions to be given in relation to the action as a whole.

5. On 21 April 2023 a further summons was issued by the Defendant pursuant to GCR O. 32, r.2 (3) seeking leave to amend the Stay Summons in the following terms:

> *"1. Pursuant to the Overriding Objective, all further proceedings this action be stayed pending resolution of the dispute in accordance with clause 18 (Dispute Resolution) of the Subscription Agreement dated 12 January 2022 (as amended) (the **Subscription Agreement**) between (1) [Sylvan Asia Growth Master Fund I Pte Ltd] (2) [JLS] and (3) [RBH] ~~a mediation under the Singapore Mediation Centre~~.*
> *2. Alternatively, pursuant to section 4 of the Foreign Arbitral Awards Enforcement Act[3] ~~section 9(2) of the Arbitration Act 2012~~, all further*

[2] To which I will return when summarising the facts surrounding the relationship between the Juniper Group (as defined in para 8 below) and Mr Rudianto.

[3] The "FAAEA".

"Staying of certain court proceedings
4. If any party to an arbitration agreement, or any person claiming through or under him, commences any legal proceedings in any court against any other party to the agreement, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to the proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to the court to stay the proceedings; and the court, unless satisfied that the arbitration agreement is null and void, inoperative or incapable of being performed

> *proceedings in this action be stayed pending arbitration administered by the Singapore International Arbitration Centre in accordance with clause 18 (Dispute Resolution) of the Subscription Agreement.*
>
> *…"*

6. The Grounds were amended accordingly and a reference was made to further evidence sworn on behalf of the Defendant. At the hearing on 27 April 2023, Mr Millett KC on behalf of the Plaintiff did not actively oppose the granting of leave to amend. It was suggested by the Defendant that in the absence of any direct Cayman Islands authority, the applicable test to apply is for the amendment of pleadings and originating process which was set out by Smellie CJ in *Cayman Islands Civil Aviation Authority v Island Air Limited*:

> "*It is now settled law in this jurisdiction that an amendment should always be allowed unless it would cause injustice to the other party or constitute a useless claim because no evidence would be available to support it. This principle applies at any time up to the time of trial…*"[4]

Having heard from Mr Choo-Choy KC and receiving an explanation from him as to the reason for the proposed amendment (being that the incorrect statute had been referred to in error), I granted leave.

Corporate Structure

7. In Rudianto 1, Mr Rudianto sets out the background to the proceedings and explains his understanding[5] of the relationship between the parties.

8. The Defendant, JLS was incorporated as a Cayman Islands exempted company with limited liability on 21 December 2021 with a registered office located at IQ EQ Corporate Services (Cayman) Limited ("IQ EQ"). JLS, together with its subsidiaries (as described below) (the "Juniper Group"), forms part of a private equity venture focused on the healthcare industry. Mr Rudianto says that Juniper Therapeutix Pte Ltd ("Therapeutix") and Juniper Biologics Pte Ltd ("Biologics") are the most valuable entities within the Juniper Group.

---

or that there is not in fact any dispute between the parties with regard to the matter agreed to be referred, shall make an order staying the proceedings."

[4] [2003] CILR 483 at [8].

[5] Which does not appear to be disputed.

9. As set out in the structure chart in Appendix 1[6], his understanding is that the Juniper Group has direct or indirect interests through its shareholding in the following subsidiaries:

9.1 JLS owns 100% of Juniper Holdings Ltd ("JHL"), which is a Cayman Islands exempted company with limited liability which was incorporated on 20 June 2022.

9.2 JHL owns 82.4% of Therapeutix. Mr Rudianto says that Therapeutix, was incorporated on 1 October 2020 under the laws of the Republic of Singapore and that the directors of Therapeutix are Jeun Byong Jun ("Mr Jeun", a resident of Singapore) (since 26 October 2022) and Ramandeep Singh ("Mr Singh") (since 1 October 2020).

9.3 JHL owns 75% of Biologics. Mr Rudianto explains that Biologics, was incorporated on 4 September 2020 under the laws of the Republic of Singapore. The directors of Biologics are Aidan Chan Tiong Eyong ("Mr Chan") (since 26 September 2022), Mr Jeun (since 26 September 2022), Mr Singh (since 4 September 2020), Kim Julie Yun Won (since 26 September 2022), and Jean Thoh Jing Herng (since 22 July 2022).

10. Mr Rudianto holds the shares in Margie River CS, which owns 2.6% of the shares in Therapeutix and 2.4% of the shares in Biologics. Margie River CS is an exempted Cayman Islands company with limited liability which was incorporated on 12 January 2022 with a registered office located at IQ EQ.

11. RBH is an investment holding company which Mr Rudianto describes as the "founding" shareholder of JLS. He is the 100% shareholder of RBH and also a director of RBH.

12. Sylvan Asia Growth Master Fund I Pte. Ltd ("Sylvan MF") was incorporated on 26 April 2021 under the laws of the Republic of Singapore. Mr Rudianto says that at all material times prior to the Resolution, Sylvan MF was the only other shareholder of JLS other than RBH. He understands that:

12.1 the directors of Sylvan MF are Mr Chan (since 9 January 2023) and Mr Jeun (since 23 February 2023) and;

12.2 Sylvan MF is wholly owned by Sylvan Asia Growth GP 1, Ltd. ("Sylvan GP"). Sylvan GP is the sole shareholder of Sylvan MF, and is a Cayman Islands exempted company with

[6] P2 of Exhibit "LSR 1".

limited liability which was incorporated on 5 January 2021 with a registered office located at Maples Corporate Services Limited.

13. Sylvan Capital Management Pte Ltd ("SCM") was incorporated on 25 September 2019 under the laws of the Republic of Singapore. He says that the directors of SCM are Mr Chan (since 14 December 2022) and Mr Jeun (since 6 May 2020). Mr Rudianto says that he understands that SCM has no legal relationship with JLS but that SCM did enter into an investment management agreement with Sylvan MF. He says that he believes that SCM is wholly owned by Samra Holdings Pte Ltd ("Samra") which was incorporated in 25 September 2019 under the laws of the Republic of Singapore. He understands that Mr Jeun is the sole director of Samra (since 23 November 2022).

14. The Register of Officers and Directors for JLS[7] records that Mr Andrew Edgington, principal of IQ EQ and a Cayman Islands resident was appointed a director on 21 December 2021 and remains a director. Mr Gerald Leong ("Mr Leong") (whose address is in Singapore) was appointed on 21 December 2021 and resigned on 2 September 2022. Mr Tri Kanchanadul ("Mr Kanchanadul") (whose address is in Thailand) was appointed on 21 December 2021 and remains a director. Mr Chan (whose address is in Malaysia) was appointed 2 September 2022 and remains a director (the "Directors" and collectively the "Board").

Mr Rudianto's relationship with the Corporate Structure

Evidence of Mr Chan

15. The factual background in relation to Mr Rudianto's relationship with the Juniper Group is relatively complex and set out in some detail in Chan 1.

16. Mr Chan explains that JLS operates purely as an investment holding vehicle[8]. His affidavit continues to set out the background facts and I have set out a summary of that evidence below[9]:

16.1 The Sylvan Group was co-founded by Mr Jeun in 2019 in Singapore.

16.2 In or around July 2021, Mr Chan was informed by Mr Jeun that Mr Rudianto would be joining as the Managing Director of SCM, and that his starting date would be on 1 October

[7] Page 141 of Exhibit AC-1 to the First Affidavit of Mr Chan dated 18 April 2023 ("Chan 1").
[8] Chan 1, para 8.
[9] Starting at para 18 of Chan 1.

2021. An employment agreement[10] dated 16 July 2021 (the "Employment Agreement") provided for Mr Rudianto to be employed full time by SCM in an operational role for an initial period of 1 year, starting on 1 October 2021. Mr Chan was told that Mr Rudianto would be introducing several potential investment opportunities to the Sylvan Group. Mr Chan's interactions with Mr Rudianto started from around that time.

16.3 On or around 16 August 2021, Mr Rudianto introduced the Sylvan Group to Mr Singh, a friend of Mr Rudianto, who was in the pharmaceutical business. According to Mr Singh, he had an idea to acquire the in-licensing rights for three oncology drugs in certain geographies and was in discussions with a pharmaceutical intellectual property owner to acquire these rights. Mr Singh also had a company called Biologics. Biologics was intended to be a science-led healthcare company focused on researching, developing and commercialising novel therapies in oncology, rate/orphan diseases and gene therapy. This was the so-called Project Juniper investment opportunity introduced by Mr Rudianto. At that time, the idea was for the Sylvan Asia Growth Fund I, L.P. ("Sylvan LP") to acquire, through Sylvan MF, a majority stake in Biologics, with the funds injected by the Sylvan LP going towards Biologics acquiring the in-licensing rights. The Sylvan Group would then work towards achieving a profitable exit from the investment within a short to middle term (i.e., by around 2026 to 2028).

16.4 In around early October 2021, Mr Jeun told Mr Chan that Mr Rudianto would be temporarily helping out another Indonesian government-related company, and that Mr Rudianto had requested to delay his start date with SCM. However, Mr Chan's understanding at this time was that Mr Rudianto still intended to join SCM as a Managing Director, and this was confirmed by the fact that Mr Rudianto (as an incoming Managing Director of SCM), together with Mr Leong, continued to give Mr Chan instructions on matters relating to the Project Juniper documentation.

16.5 On or around 23 November 2021, Mr Chan says that he was informed by Mr Leong that there were discussions involving Mr Jeun, Mr Rudianto and Mr Leong that culminated in an oral agreement between Mr Jeun (on behalf of SCM and Sylvan MF) and Mr Rudianto (acting for himself and his corporate vehicles) on the following terms:

16.5.1 An employee stock option plan ("ESOP") would be put in place for the key senior personnel of the Project Juniper entities, including Mr Rudianto.

[10] Starting at page 65 of Exhibit "AC-1".

16.5.2 In the case of Mr Rudianto's ESOP, he would join SCM, in about six to nine months' time as a full-time managing director and be primarily responsible for Biologics and any other subsidiaries which may be subsequently incorporated or included as part of the Project Juniper investment for a period of five years. He would also be responsible for achieving a profitable exit from the Project Juniper investment at the end of the five-year period.

16.5.3 In consideration of Mr Rudianto joining SCM to manage the Project Juniper investment for five years, Mr Rudianto would be allocated shares (in a percentage to be agreed) in JLS, and in Biologics, as well as in any other Juniper entities that may form part of the Project Juniper investment.

16.5.4 In respect of the shares in JLS, Mr Rudianto would be permitted to retain a number of the shares, but the majority of the shares were ultimately to be transferred to other incoming key senior personnel of the Project Juniper entities, consistent with the envisaged ESOP program.

16.5.5 Should Mr Rudianto cease his employment with SCM in less than five years, he would be required to return his share allocation in the Project Juniper entities on a pro rata basis depending upon the period during which he remained employed. For example, if he had remained in employment for 3 years, he would be allowed to retain 60% of the total number of shares that he would have been entitled to retain had he remained in employment for 5 years.

16.5.6 Provided that Mr Rudianto remained employed by SCM for the anticipated full five year period, a premium would be added to the value of his shares as part of his compensation package.

16.6 Consistent with the above, Mr Chan says that he assisted Mr Rudianto and Mr Leong in preparing the draft of an Investment Committee[11] memo for Project Juniper and on 23 November 2021 (the "23 November 2021 Memo") circulated the same to the Investment Committee.

16.7 The 23 November 2021 Memo was drafted on the understanding that Mr Rudianto would be joining SCM shortly on a full-time basis, as contemplated in the Employment Agreement. It was updated on 15 December 2021 and received final approval on 24 December 2021. The key terms highlighted above remained unchanged on the basis of the continued understanding that Mr Rudianto would be joining SCM shortly.

[11] Constituted by the Managing Partners of the Sylvan Group.

16.8 In the meantime, Mr Chan explains that the Sylvan Group had taken steps to incorporate JLS on 21 December 2021 as part of Project Juniper.

16.9 Subsequently, in early January 2022, Mr Leong informed Mr Chan that there were ongoing discussions with Mr Rudianto on the percentage of shares to be allocated to Mr Rudianto pursuant to the ESOP. While the exact percentage of shares to be allocated to Mr Rudianto had not been fixed, it meant that Mr Rudianto was to be allocated certain minority shares assuming the conditions agreed upon on or about 23 November 2021 were met. There were therefore discussions on the possible structure of the Company providing for the minority shareholding to be held by Mr Rudianto under the ESOP arrangement.

16.10 Mr Chan says that on or around 10 January 2022, Mr Leong informed Mr Chan that Mr Jeun (on behalf of SCM and Sylvan MF) and Mr Rudianto (acting for himself and any corporate vehicle owned by himself) had orally agreed (the "ESOP Agreement") that:

16.10.1 Mr Rudianto (or a corporate vehicle owned by him) would be initially allocated a percentage of the shares in JLS in the region of 10%, but on the basis that he would only thereafter retain a minority portion of this 10% holding (the precise portion to be agreed), with the remainder majority portion of the 10% holding to be transferred in due course to other incoming key senior personnel of the Project Juniper entities, as part of contemplated ESOP program.

16.10.2 Mr Rudianto would also be allocated a percentage of the shares in Biologics in the region of 2-3%, with the precise percentage to be agreed at a future date. Those shares would be allocated directly by way of holding shares in Biologics, and through another of Mr Rudianto's wholly owned entities, Margie River CS.

17. Mr Chan says that he understood from Mr Jeun, that the Sylvan Group's rationale for entering into the ESOP Agreement was two-fold. First, it would ensure that Mr Rudianto would honour his end of the Employment Agreement and encourage him to manage the Project Juniper investment for SCM for a minimum of five years, which was the estimated timeline for the Sylvan Group to achieve a profitable exit from the investment. If Mr Rudianto completed 5 years of employment with SCM, the ESOP shares were intended as a reward for his long-term employment. Second, it would align Mr Rudianto's interest with that of the Sylvan Group, such that Mr Rudianto would be incentivised to maximise the value of the Project Juniper investment.

18. Mr Chan goes on to explain that, in furtherance of the ESOP Agreement, and with the understanding that Mr Rudianto would be commencing full-time employment with SCM in short order, RBH and

Margie River CS were incorporated on behalf of Mr Rudianto on 10 January 2022 and 12 January 2022 respectively, to hold the ESOP shares in JLS and the Project Juniper entities pursuant to the ESOP Agreement.

19. On 12 January 2022, a board resolution[12] recorded that the JLS' single issued subscriber share was transferred to RBH, and the Company issued 4,999 ordinary shares to RBH at par value bringing its total holding to 5,000 ordinary shares. On the same date and in conjunction with the transfer and issue of ordinary shares to RBH, JLS, Sylvan MF, and RBH, entered into a subscription agreement (the "Subscription Agreement")[13] which was later updated in early May 2022 (although the date of the agreement was left as 12 January 2022) (the "Amended Subscription Agreement")[14].

20. Mr Chan highlights some of the provisions of the Amended Subscription Agreement:

20.1 Recital A, which provides that *"[i]mmediately prior to the Closing, [RBH] will hold 5,000 Ordinary Shares in the capital of the Company, representing 100% of the issued Shares at that time".*[15]

20.2 Recital B, which provides that "*the Company has agreed to allot and issue 45,000 Ordinary Shares (Subscription Shares) to [Sylvan MF], representing 90% of the Company's total issued shares, in consideration for US$48,634,928 (the "Subscription Amount") ...*"[16]

20.3 Clause 9.1, which provides that, *"[RBH] undertakes for the benefit of [SCM] that, for 60 months [i.e. 5 years] from the date of Closing (the Moratorium Period), it will not: (a) pledge, mortgage, charge or otherwise encumber any Shares held by it or any interest therein; (b) sell, transfer or otherwise dispose of, or grant any interest therein…"*

20.4 Clause 17, which provides that the Agreement shall be governed by and construed in accordance with, the laws of the Republic of Singapore.

20.5 Clause 18, which is described in further detail below and made mandatory provision for mediation, followed by arbitration, in Singapore in the event of disputes arising from or in relation to the subject matter of the Amended Subscription Agreement.[17]

---

[12] Page 144 of Exhibit AC-1.
[13] Page 148 of Exhibit AC-1.
[14] Referred to interchangeably in parts of the evidence and submissions.
[15] Unchanged from the Subscription Agreement.
[16] Unchanged from the Subscription Agreement.
[17] The Amended Subscription Agreement also included: para 10 (Right of First Offer) dealing with circumstances in which RBH might wish to sell its shares in JLS and giving Sylvan MF a right of first refusal; paras 11 and 12 which

21. Mr Chan claims that fundamentally, the Amended Subscription Agreement was structured based on the ESOP Agreement, and given that the Subscription Agreement is inextricably intertwined with the ESOP Agreement, JLS' position is that any dispute relating to the ESOP Agreement and the basis on which RBH held a 10% shareholding in the Company, as recorded in the Subscription Agreement, is a dispute that falls within the scope of Clause 18 of the Subscription Agreement, which provides as follows:

> *"Any dispute, controversy or conflict arising from or in relation to this Agreement, including a dispute on its validity, conclusion, binding effect, breach, amendment, expiration and termination, shall be initially referred to mediation under the Singapore Mediation Centre, and if unresolved, shall be finally resolved by arbitration administered by the Singapore International Arbitration Centre in accordance with the Arbitration Rules of the Singapore International Arbitration Centre for the time being in force, which rules are deemed to be incorporated by reference in this clause. The arbitration tribunal shall consist of 1 arbitrator. The seat of the arbitration shall be Singapore. The language of the arbitration proceedings shall be English."*

22. Mr Chan goes on to explain that on 5 May 2022, he sent Mr Rudianto the Amended Subscription Agreement over WhatsApp and requested that he countersign it. Apparently Mr Rudianto was agreeable to the changes to the Subscription Agreement and returned a signed copy of the Amended Subscription Agreement to him on 6 May 2022.

23. Subsequently, in or around June to July 2022, the precise percentages for shares under the ESOP Agreement were finalised. Mr Chan says that he had understood from Mr Jeun that the Sylvan Group and Mr Rudianto reached an oral agreement that Mr Rudianto (through RBH) would retain 1.4% out of 10% of the Company's shares allocated to RBH, and that the remaining 8.6% would be held by other incoming key personnel of the Project Juniper entities in due course pursuant to the ESOP program.

24. Mr Chan's evidence continues by saying that after implementing the above steps to put into effect the ESOP Agreement, he came to understand from Mr Jeun that Mr Rudianto had repeatedly requested to push back his start date. Based on the above, while there were some delays to Mr Rudianto's starting date, Mr Chan's understanding was always that Mr Rudianto would shortly be joining SCM as a Managing Director and that the ESOP Agreement with Mr Rudianto had been

---

provide for Tag Along and Drag Along rights as between RBH and Sylvan MF; and, para 13 dealing with the basis upon which additional capital contributions might be made by RBH and Sylvan MF.

put in place through the Amended Subscription Agreement as well as the other agreements involving Biologics and Therapeutix.

25. However, Mr Chan says that, as he recalls, things took a sharp turn when, in or around August 2022, the Sylvan Group apparently discovered that Mr Rudianto was in what is alleged to be gross breach of his duty in connection with the decision to invest in Project Juniper, and that material information had been concealed from the Sylvan Group. He says that it was discovered that there were, amongst other things, attempts to materially conceal unauthorised cash outlays made by the Project Juniper entities and mismanagement that resulted in the Sylvan Group being put at risk of losing its controlling stake in the Project Juniper entities. Mr Rudianto is also alleged to have been working in concert with Mr Leong to advance their own agenda without regard for the Sylvan Group's interest.

26. Mr Chan says that Mr Jeun informed him that he had confronted Mr Rudianto at a lunch meeting on around 5 August 2022 in relation to the various alleged wrongdoings. Mr Jeun then informed Mr Chan that at that meeting he had agreed with Mr Rudianto that Mr Rudianto was to "normalise" the situation in JLS with respect to the ESOP (the "Share Return Agreement")[18]. At that time, Mr Chan says that he was operating under the assumption that Mr Rudianto would return the shares in JLS that were held on behalf of the other incoming key senior employees (i.e. 8.6% of the shares), and that Mr Rudianto would still be entitled to 1.4% of the JLS' shares as per the ESOP Agreement.

27. On 3 October 2022, Mr Chan texted Mr Rudianto to inform him that *"the share sellback of Juniper Life Sciences shares held by RBH Holdings back to JLSL as Treasury shares needs to happen soon. So that the number ends up as 3.75%... direct and indirect" for Mr Rudianto*." Mr Chan says that Mr Rudianto replied, stating that he was *"not signing and... not doing anything"* until he got clarity on why he was *"blocked out of Juniper last week*."[19]

28. On or around 15 October 2022, Mr Jeun explained to Mr Chan that since Mr Rudianto had not commenced employment with SCM, during the 5 August 2022 meeting, it was agreed that Mr Rudianto should return all of the shares that had been allocated to RBH pursuant to the ESOP Agreement (and not only the 8.6% of the shares held on behalf of future SCM employees), such

[18] There is neither any evidence nor were there any submissions about the extent to which a binding oral agreement was reached and what law might apply to it.
[19] Page 246 of Exhibit AC-1.

that the share ownership position would return to a 'clean slate'. He informed Mr Chan that Mr Rudianto had orally agreed to do so, provided that he would be re-awarded the shares in the respective Project Juniper entities if he were to join SCM at a subsequent date (in tranches, and on a yearly pro-rata basis).

29. Mr Chan says that on or around 20 October 2022, Mr Jeun told him that Mr Rudianto had been behaving in an evasive manner and was unwilling to arrange a meeting to return the ESOP shares notwithstanding various attempts by Mr Jeun (i.e., that Mr Rudianto had not complied with the Share Return Agreement).

30. Apparently on or about 21 October 2022, Mr Chan consulted with Mr Edgington to discuss the options available to JLS. He says that by this time, he understood from Mr Jeun that he believed that Mr Rudianto had no intention of honouring the Employment Agreement previously signed. It appeared to Mr Chan that RBH was attempting to hold the ESOP shares hostage, and that RBH had no intention of honouring the Share Return Agreement or the ESOP Agreement.

31. Mr Chan says that if Mr Rudianto was no longer willing to take up employment as envisaged in the Employment Agreement (subject to the adjustment to the start date that the Sylvan Group was willing to accommodate), then in his view, the ESOP Agreement was no longer valid, and the conditions required for the continued holding of the ESOP shares by RBH would no longer be met.

32. Mr Chan reiterates that the ESOP shares had been specifically earmarked for incoming employees (including Mr Rudianto himself) in the Project Juniper entities and were to be made available to the JLS for such use. He says that the ESOP shares held by RBH for the benefit of other incoming employees were not Mr Rudianto's to begin with and he was not entitled to retain them.

33. He goes on to say that JLS would be severely prejudiced if RBH was allowed to continue holding the shares unconstrained by the ESOP Agreement, since JLS would have to set aside additional ESOP shares for other incoming employees. Furthermore, the fact that RBH's shares had also been obtained at such a significant discount would also undermine the value of the shares in JLS. For example, he says, while it would have been justifiable to explain to stakeholders that shares allocated for ESOP purposes are allocated at par value, there is no justifiable rationale why Mr Rudianto (who would not be an employee of JLS and had not met the conditions of the ESOP Agreement) should be allowed to retain shares in JLS while having only paid par value for the shares.

34. Mr Chan says that the Directors of JLS formed the genuine view, on the available facts, that it would be in the best commercial interests of JLS to obtain the ESOP shares from RBH.

35. On 24 October 2022, Mr Chan says that he discussed this matter again over a call with Mr Edgington. He says that they agreed that JLS should engage Cayman Islands legal counsel, Stuarts, to advise on the possible options to obtain the shares from RBH. Mr Chan continues to explain that on 27 October 2022, the Directors, having considered legal advice provided by Stuarts, and the circumstances known to them, decided to exercise their powers to purchase RBH's shares, under Article 9.1(c) of the Articles of Association of the Company (the "Articles") (the "Decision"), which provides as follows:

> *"Subject to the Law, and to any rights for the time being conferred on the Members holding a particular class of Shares, the Company may by its directors purchase all or any of its own Shares of any class including any redeemable Shares on the terms and in the manner which the directors determine at the time of such purchase."*

36. According to Mr Chan, they decided that JLS should purchase the 5,000 shares held by RBH for US$5,000 (which was the aggregate par value of the shares) since, in their opinion, that would ensure that Mr Rudianto was fairly compensated for the amount that he paid for those shares. Further, their view was that given that Mr Rudianto never commenced his full-time employment with SCM, his entitlement would be for the par value of the shares.

37. Mr Chan confirms that since the Decision was based on SCM's representation (that they no longer wished to hire Mr Rudianto as a Managing Director and that Mr Rudianto had failed to meet the conditions under the ESOP Agreement), the Directors requested SCM to provide them with a formal confirmation of its intention, as well as an indemnity in respect of the same. SCM duly complied, and issued a letter on 27 October 2022, stating as follows:

> *"27th October 2022*
> *For the Attention of the Directors*
> *Re: 5,000 Ordinary Shares owned by RBH in Juniper Life Sciences Ltd. ("JLS")*
> *As of today, RBH Holdings ("RBH"), a Cayman vehicle beneficially owned by Mr. Laika Saputra Rudianto ("Raymond") owns 5,000 shares in JLS, which is 10% of the ordinary shares outstanding. Sylvan Asia Growth Master Fund I Pte Ltd ("Master Fund") owns the remaining 90%, or 45,000 shares.*
>
> *Raymond invested US$5,000 into JLS and was issued 5,000 ordinary shares in JLS at par value of US$1.00. It was agreed with Raymond that (1) he would he would*

join Sylvan Capital Pte Ltd ("SCM") full-time as a Managing Director ("MD") and be primarily responsible for Juniper Biologics Pte Ltd ("JBP"), the main operating subsidiary of JLS and its other subsidiary companies (collectively, "Project Juniper"), making sure that JBP in particular was well-run and managed properly, and (2) that after a five year period, a premium would be added to the value of his shares as part of his compensation package provided these conditions held.

JLS was capitalised as follows: On 12th January 2022, 5,000 ordinary shares in JLS were subscribed for by RBH, a Cayman holding company incorporated and fully-owned by Raymond, at par value of US$1.00 per share. They were issued as fully paid-up and Raymond transferred US$5,000 to the bank account of JLS in lieu of RBH. Following this, 45,000 shares were subscribed for by Sylvan Asia Growth Master Fund I Pte Ltd Master Fund, at the price of US$48,634,928 as documented in the Share Subscription Agreement ("SSA") dated 12th January 2022. This SSA also imposes a moratorium on transfer of the JLS shares owned by RBH for a period of 5 years from 12th January 2022.

On 14th January 2022, 29,534 shares were issued to the Master Fund for value received, and on 1st March 2022 a further 15,466 shares were issued to the Master Fund for value received. At US$48,634,928 for 45,000 shares, this represents a price of US$1,080.78 per share for the Master Fund.

In the 9 months since then, Raymond has (1) broken his commitment to SCM by gross under reporting of many material negative operational information, while clearly recognizing his own awareness to the contrary in managing JLS and its subsidiary companies since the Project Juniper deal was brought in and executed, and (2) he has been evading several attempts to meet and discuss SCM's findings and has not been responsive to SCM's communication effort. As such SCM concludes to not proceed with hiring him given the poor management &less than truthful communication record of the last 9 months.

Therefore, it is the express recommendation of SCM to the Directors of JLS that the 5,000 shares owned by RBH in JLS be repurchased at par value.

Should you have any questions, please feel free to contact us.

Yours Truly,

_____

Jeun Byong Jun
Director
For and on behalf of:
Sylvan Capital Management Pte Ltd"

38. Mr Chan mentions that the Written Resolution was focused on the circumstances leading up to SCM's decision not to employ Mr Rudianto as a Managing Director, and largely adopts the reasons set out in SCM's letter of 27 October 2022. The wording is set out below:

"JUNIPER LIFE SCIENCES LTD.
(the "Company")
Written Resolutions of all the Directors of the Company

REDESIGNATION OF SHARES
IT IS NOTED THAT *the Directors desire to re-designate the 45,000 ordinary shares held by Sylvan Asia Growth Master Fund I Pte Ltd* ***("SAGMF")*** *as Class A Ordinary Shares and that Sylvan Asia Growth Master Fund I Pte Ltd has consented to such re-designation of its shares held in the Company. The redesignation would not affect the rights or restrictions attaching to SAGMF's shares.*

IT IS RESOLVED THAT *the 45,000 ordinary shares held by SAGMF be and are hereby reclassified as Class A Ordinary Shares with immediate effect and that SAGMF be provided with an updated copy of the register of members of the Company.*

COMPENSATION PACKAGE

IT IS NOTED THAT *Mr. Laika Saputra Rudianto* ***("Raymond")*** *Raymond invested US$5,000 into the Company and RBH Holdings (Raymond's company) was issued 5,000 ordinary shares in the company at par value of US$1.00* ***("Raymond's Shares").*** *It was agreed with Raymond that (1) he would he would join Sylvan Capital Management Pte Ltd* ***("SCM")*** *full-time as a Managing Director* ***("MD")*** *and be primarily responsible for Juniper Biologics Pte Ltd* ***("JBP"),*** *the main operating subsidiary of JLS, and its other subsidiary companies (collectively,* ***"Project Juniper"),*** *making sure the JBP in particular was well-run and managed properly, and (2) that after a five year period, a premium would be added to the value of his shares as part of his compensation package provided these conditions held.*

IT IS NOTED THAT *in the last 9 months, Raymond has (1) broken his commitment to SCM by gross under reporting of many material negative operational information, while clearly recognizing his own awareness to the contrary in managing JLS and its subsidiary companies since the Project Juniper deal was brought in and executed, and (2) he has been evading several attempts to meet and discuss SCM's findings and has not been responsive to SCM's communication effort. As such SCM concludes to not proceed with hiring him given the poor management & less than truthful communication record of the last 9 months. It has been recommended by SCM that Raymond's shares be repurchased at par value.*

IT IS NOTED THAT *the Directors have received a letter from SCM (attached as Schedule A to these resolutions) detailing the intended role for Raymond, relevant compensation and Raymond's activity in the past 9 months together with their recommendation as investment manager of SAGMF.*

REPURCHASE

> ***IT IS NOTED THAT*** *following the recommendation of SCM, the Directors desire to repurchase Raymond's Shares at the value he originally purchased them for and return the monies to the bank account from which Raymond originally sent his share purchase monies.*
>
> ***IT IS NOTED THAT*** *Article 9.1 (c) of the Articles of Association provides: "Subject to the Law, and to any rights for the time being conferred on the Members holding a particular class of Shares, the Company may by its directors: (c) purchase all of any of its own Shares of any class including any redeemable Shares on the terms and in the manner which the directors determine at the time of such purchase".*
>
> ***IT IS NOTED THAT*** *SAGMF has provided an indemnity to the Company and its directors and officers in respect of the repurchase of Raymond's Shares (attached as Schedule B to these resolutions).*
>
> *IT IS RESOLVED THAT it was in the best commercial interests of the Company and its shareholders to repurchase Raymond's Shares at par value (total US$5,000) with immediate effect and that the payment be sent to Raymond to the bank account from which Raymond originally sent his share purchase monies.*
>
> ***INVESTOR NOTICE***
>
> ***IT IS RESOLVED THAT*** *an repurchase notice ne sent to Raymond in such form as may be approved by the Directors.*
>
> ***COMPANY REGISTER***
>
> ***IT IS RESOLVED THAT*** *the registered office service provider of the Company be and is hereby instructed and authorised to update the Register of Members of the Company and the company books to reflect the redesignation and repurchase of shares.*
>
> *...*
>
> *[signed by all of the directors]"*

39. Mr Chan says that the Share Return Agreement was not mentioned because that was an agreement consequential on SCM's decision. Further, he explains that, from the Directors' perspective, the primary consideration was whether it was in its best interests for Mr Rudianto to retain the ESOP shares despite the fact that he was no longer to be a key senior employee managing the Project Juniper investment and contributing to the value of the Company. He goes further and says that in passing the Written Resolution, the Directors had taken into account the factual circumstances of which they were informed including SCM's letter.

40. On 30 October 2022, the Company issued a share purchase notice to RBH[20] ("The Share Purchase Notice"), confirming that RBH's shares had been fully purchased by the Company, and that the purchase sum had been wired to Mr Rudianto. The Share Purchase Notice stated:

> *"RBH Holdings*
> *...*
> *Dear Representative of RBH Holdings*
>
> *In accordance with Resolutions passed by the Directors of the Company, the Directors hereby inform you that they have determined in good faith that it is the best solution for the Company to engage in termination of your relationship with Juniper and Sylvan by repurchasing your Shares (the "Purchase").*
>
> *You shall be paid back the money you invested in the Company to purchase the Shares being US$5,000 (the "Purchase Amount"). The Purchase Amount has been made to you at the following banking instructions:*
>
> *[Mr Rudianto]*
> *DBS Bank Ltd.*
> *...*
>
> *All the Shares held by you have been redeemed by the Company with effect from 27 October 2022 (the "Effective Date"), and your Shares are fully purchased by the Company as at the Effective Date.*
>
> *...*
>
> *For and on behalf of the Board of Directors*
> *Director*
> *Tri Kanchanadul"*

41. Thereafter, Mr Chan says that he and Mr Jeun deliberated on whether the Share Purchase Notice should be served on Mr Rudianto at his last known residential address in Singapore, which was a service apartment (because he was unsure of whether Mr Rudianto was still staying there) or to RBH's registered address in the Cayman Islands (where he was not sure it would be brought to Mr Rudianto's attention). Mr Chan says that their intention was to ensure that the Share Purchase Notice was properly brought to Mr Rudianto's attention. In their discussions, he says that he and Mr Jeun did not settle on a position until around 9 November 2022. By this time, Mr Rudianto had emailed Mr Edgington to request a copy of JLS' Memorandum and Articles and register of members. On 9 November 2022, Mr Chan emailed Mr Edgington and requested his assistance to print and mail a physical copy of the Share Purchase Notice to RBH's registered address in the

[20] Page 254 of Exhibit AC-1.

Cayman Islands. He says that Mr Edgington was overseas at that time and was only able to send a copy of the Share Purchase Notice to Mr Rudianto on 16 November 2022 via email subsequently when he returned.

42. Mr Chan also refers to some correspondence that passed between the Singapore attorneys for SCM (Allen & Gledhill) and Mr Rudianto (and ultimately Mr Rudianto's Singapore attorneys, Oon & Bazul LLP). In particular, a letter from Allen & Gledhill to Mr Rudianto dated 23 November 2022[21] indicated in paragraph 2 that "*it has recently come to our client's attention that your conduct and actions have caused harm to [SCM's] interests.*" The letter goes on to set out various allegations against Mr Rudianto which are described as wrongful actions regarding his Employment Agreement (misrepresentations regarding Project Juniper, failure to perform his duties and improper use of confidential information) and concludes by informing Mr Rudianto that to the extent that the Employment Agreement had not been discharged by Mr Rudianto's own conduct, it was thereby terminated forthwith as were Mr Rudianto's entitlements and benefits including his short and long term compensation and incentives which were conditional on him remaining employed by SCM. On behalf of Mr Rudianto, Oon & Bazul replied substantively on 19 December 2022 denying the allegations made and asserting Mr Rudianto's right to retain the shares in JLS that had been repurchased.

Evidence of Mr Jeun

43. Mr Jeun is the managing director of SCM and gave evidence by way of an affidavit dated 18 April 2023 ("Jeun 1"). Much of his evidence covers the same facts as the evidence from Mr Chan. He explains that a number of the conversations that he had with Mr Rudianto from November 2021 onwards about the Juniper Project and Mr Rudianto's role and compensation were in conjunction with Mr Leong.

44. Mr Jeun also confirmed that by 10 January 2022 the ESOP Agreement had been concluded between him (on behalf of SCM and Sylvan MF) and Mr Rudianto (Mr Jeun says on his own behalf and acting for his corporate vehicles).

[21] Page 264 of Exhibit AC-1.

Evidence of Mr Rudianto

45. Mr Rudianto provided a second affidavit dated 21 April 2023 ("Rudianto 2") which responds to Chan 1 and Jeun 1. In summary, Mr Rudianto makes the following points:

45.1 He says that RBH's 10% stake in JLS represented consideration for originating the opportunity for the Juniper Project and supporting execution of the transactions until closing. He says that, as such, RBH was referred to as the "Founder" and that the shareholding was akin to a finder's fee.

45.2 The origination arrangement was documented in the contemporaneous records of SCM's Investment Committee such as the 23 November 2021 Memo. RBH's shares in JLS were not held for the benefit of other employees. If shares were to be available for other employees, Mr Rudianto says that such shares would have been held by JLS in treasury for those individuals.

45.3 The Amended Subscription Agreement is not tied to any alleged employment incentive arrangements. He says that as far as he is concerned the amendments to the Subscription Agreement were not introduced on that basis.

45.4 He accepts that he did have a conversation with Mr Jeun on 5 August 2022 but denies that the alleged oral agreement referred to as the Share Return Agreement was ever reached.

45.5 Finally, he says that when passing the Resolution the Directors only took into account what he describes as a "one-sided and unverified" version of events provided by SCM in its letter dated 27 October 2022 and does not accept therefore that the Directors took account of all relevant factual circumstances when taking their decision to repurchase RBH's shares.

45.6 Mr Rudianto claims that the shares held by RBH had a much higher value attributable to them than the par value used by the Directors.

Further Evidence of Mr Chan

46. Mr Chan provided a relatively brief second affidavit dated 24 April 2023 ("Chan 2"), responding to Rudianto 2. In summary, it takes issue with much of what Mr Rudianto says and raises some more detailed points in relation to the tax reasons for RBH holding the shares in JLS which he said were understood by all concerned and benefited the Sylvan Group and Mr Rudianto.

Relevant provisions of the Companies Act (2023 Revision) (the "Act")

47. Section 37 of the Act sets out the provisions governing the redemption and purchase of its own shares by a Cayman Islands company. The overriding condition in relation to the exercise of the power of a company to purchase its own shares is that such a step is authorised by the company's articles of association.

48. Section 46 of the Act deals with the remedy for improper entry or omission of an entry in the register of members of a Cayman Islands company:

> *"Remedy for improper entry or omission of entry in register 46. If the name of any person is, without sufficient cause, entered in or omitted from the register of members of any company, or if default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member of the company, the person or member aggrieved or any member of the company or the company itself may, by motion to the Court, apply for an order that the register be rectified; and the Court may either refuse such application with or without costs to be paid by the applicant or it may, if satisfied of the justice of the case, make an order for the rectification of the register, and may direct the company to pay all the costs of such motion, application or petition, and any damages the party aggrieved may have sustained. The Court may, in any proceeding under this section, decide any question relating to the title of any person who is a party to such proceeding to have that person's name entered in or omitted from the register, whether such question arises between two or more members or alleged members, or between any members or alleged members and the company, and generally, the Court may, in any such proceeding, decide any question that it may be necessary or expedient to decide for the rectification of the register: Provided that the Court may direct an issue to be tried, on which any question of law may be raised."*

49. By virtue of section 48 of the Act, the register of members shall be *prima facie* evidence of any matters directed or authorised by the Act to be inserted therein.

Summary of position of the Defendant

50. The position of the Defendant can be summarized as follows:

50.1 It says that it is plain on the evidence before the Court that there is a real and substantial dispute between RBH and JLS regarding the basis upon which RBH was allotted and held 5,000 ordinary shares in the capital of JLS and the basis upon which RBH might be required to return those shares to JLS (the "Title Dispute").

50.2 For the purposes of the Stay Summons, the Court is only concerned to establish whether there is a "*real or genuine dispute*" (or a "*reasonably substantial*" dispute) disclosed by the evidence filed which falls within the scope of the relevant arbitration clause.[22] The Court cannot and is not required to make a final or summary determination of the merits of disputed factual accounts as to the basis upon which the 5,000 Shares were allotted to and held by RBH.

50.3 The Defendant says that the Title Dispute is a dispute which clearly falls within the scope of Clause 18. It was pursuant to and/or in connection with the Amended Subscription Agreement that the 5,000 Shares were first allotted to RBH and an additional 45,000 ordinary shares were immediately thereafter allotted to Sylvan MF, resulting in RBH holding the agreed 10% shareholding in JLS. The Dispute is therefore a "*dispute, controversy or conflict arising from or in relation to* [the Subscription] *Agreement*" within the meaning of Clause 18.

50.4 The Title Dispute is inextricably linked with the question whether JLS was entitled to repurchase the 5,000 Shares at par value on the ground, as appears from JLS's witness evidence, that Mr. Rudianto and his company, RBH, were no longer intent on honouring the ESOP Agreement (or the related Share Return Agreement). The Defendant says that the evidence shows that JLS's exercise of its power of repurchase under Article 9.1(c) was a form of self-help[23] in response to the perceived breach by Mr. Rudianto and RBH of the terms of the ESOP Agreement (and related Share Return Agreement). Hence, the dispute raised by the Originating Summons as to whether JLS was entitled to recover the 5,000 Shares from RBH pursuant to Article 9.1(c) is, in substance, part and parcel of the wider Dispute as to the basis upon which RBH was allotted and held the 5,000 Shares and might be required to return the shares to JLS.

50.5 The Defendant argues that the way that the Plaintiff has sought to portray the dispute in the Originating Summons mischaracterizes matters because the relief sought does not constitute proceedings by JLS against the Directors for breach of fiduciary duty. It says that, in the absence of special circumstances (which are not alleged, and do not exist in the present case), a director's fiduciary duty to use his powers for proper purposes is a duty

[22] *SC Global Vision Fund SPC v Oasis Buono Ltd* (FSD No. 39 of 2020, 8 Jul. 2020, (Unreported) ("**SC Global**").

[23] Paragraph 16 (c) of the Defendant's written submissions go further and refer to JLS having "…*sought to sanction the perceived breach by RBH (through Mr Rudianto) of the terms of the ESOP Agreement by exercising the Company's power of repurchase* …"

owed to the company of which he is a director, not to the company's individual shareholders.[24] In the instant case, it says, no breach of fiduciary duty has been alleged by JLS against the Directors. Hence, the issue as to the propriety of the Directors' purpose does not truly arise.

50.6 Instead, it is argued by the Defendant that the dispute raised by the Originating Summons is, in substance, a dispute as to RBH's right to the 5,000 Shares as against JLS itself (and, indirectly, as against Sylvan MF); as such, it is a dispute that necessarily requires consideration of the basis upon which those shares were originally allotted to and held by RBH.

50.7 The Defendant says that once the above is understood, it is impossible to escape the conclusion that the dispute raised by the Originating Summons is a dispute "*arising from or in relation to*"[25] within the meaning of Clause 18.

50.8 In relation to the question of whether the dispute raised by the Originating Summons is arbitrable, the Defendant says that whilst it is accepted that only the Grand Court can make an order for the rectification of the register of members of the Company pursuant to s.46 of the Act, the question of RBH's entitlement to the 5,000 Shares having regard to what has been agreed between RBH, JLS and Sylvan MF (i.e. as between the shareholders and the Company) is a question that is recognised in the case law as being eminently arbitrable[26]. Hence, it is argued, the determination of whether or not the Court should make an order for rectification as sought by RBH can simply await the outcome of the arbitration of RBH's claim to the 5,000 Shares as against JLS and Sylvan MF pursuant to Clause 18 of the Subscription Agreement.[27]

50.9 It is further argued that if, contrary to the above, the dispute raised by the Originating Summons does not fall within the scope of Clause 18, that dispute is nevertheless closely connected with the dispute as to the basis upon which RBH was allotted shares in JLS. Hence, as a matter of case management, the Court ought to stay the proceedings under the

---

[24] See e.g. para. 8.2402 of *Palmer's Company Law* and *Sharp v Blank* [2015] EWHC 3220 (Ch), esp. at [9]-[13]. See also, *China Shanshui Cement Group Ltd v Tianrui (International) Holding Company Ltd* (Unreported, CICA 11 of 2021, 1 July 2022) at [50]-[51].

[25] Broad words which, pursuant to the case law exemplified by the UK Supreme Court's decision in *Fiona Trust & Holding Corp v Privalov* [2007] UKHL 40 ("**Fiona Trust**"), as followed in this jurisdiction e.g. *In the matter of Ren Ci & Ors* (FSD No. 210 of 2022), 16 Feb. 2023, Unreported ("**Ren Ci**") fairly extend to the dispute raised by the Originating Summons and any issues which it is reasonably foreseeable the Originating Summons (if not stayed) will give rise to.

[26] E.g. *NDK Ltd v HUO Holding & Anor* [2022] EWHC 1682 (Comm) ("NDK"), as applied by the Cayman Islands courts in *Ren Ci* esp. at [82]-[84].

[27] The general proposition that the Dispute is arbitrable was accepted by the Plaintiff.

Originating Summons pending the resolution by arbitration in Singapore of the dispute between the parties in respect of the existence of and compliance with the ESOP Agreement and Share Return Agreement. Alternatively, the Court ought to stay the proceedings under the Originating Summons on the ground that Singapore is clearly the more appropriate forum for the resolution of the Title Dispute.

50.10 Finally, the Defendant says that if the court were to rule against a stay of these proceedings on any of the grounds relied on (subject to the question of appeal) it is submitted that directions for the disposal of the Originating Summons will have to be made and will have to provide for what will, in effect, be a full trial of the Title Dispute.

Summary of position of the Plaintiff

51. The Plaintiff says that the sole substantive question before the Court on the Originating Summons is whether the board of JLS, in passing the written resolutions, acted for a proper purpose, and whether, in consequence, the register of members should be rectified under s.46 (the "Article 9(1)(c) Dispute"). The Plaintiff says that it is not disputed whether that question is wholly governed by Cayman Islands law. Nor does there appear to be a dispute that both parties are properly before the Grand Court as a matter of personal jurisdiction and that the Grand Court has the subject-matter jurisdiction to decide that question and make such order.

52. The Plaintiff says that it is plain and obvious from the material that the Directors considered when passing the Written Resolutions that they failed to exercise their powers of redemption for a proper purpose, and/or abused their discretion, and that rectification of the register under s.46 should follow.

53. It is argued that the purported redemption of RBH's shares pursuant to the Written Resolution was no more than the peremptory exercise of a self-help power by the Board in unilateral and one-sided furtherance of a case advanced by SCM, which was not even a shareholder, in a dispute it has with Mr Rudianto, who was also not a shareholder. The Plaintiff argues that the entire set of facts forming the basis for the exercise of the discretion were disclosed on the face of the Written Resolution, namely the contents of the letter dated 27 October 2022 to the Board from SCM.

54. The Plaintiff says that by expropriating RBH's shares, JLS delivered to SCM at least a very substantial part of the relief it would otherwise have sought in any Singapore-based dispute

resolution procedure. The Plaintiff says that this explains why neither SCM, Sylvan MF nor JLS has sought to trigger any mediation or start an arbitration.

55. The Plaintiff relies on an open letter dated 10 April 2023 in which its counsel proposed to the Defendant that if it agreed to reverse the redemption and put RBH back on the register of members then that would be without prejudice to the parties' respective positions and without prejudice to any prospective claims that SCM and/or other third parties may wish to bring in the future. In addition, RBH offered a "drop hands" on costs. On 15 April 2023 the offer was rejected by counsel for the Defendant. Instead, they proposed a stay of these proceedings pending resolution by mediation or arbitration in Singapore. The Plaintiff says that this was no more than an invitation to consent to the relief in the Stay Summons, and of no value and, more importantly, the Plaintiff says that the Defendant's rejection of the offer proves the very point of the Plaintiff's case; namely, that the entire essence and purpose of the Board's conduct in redeeming RBH's shares in the first place was a self-help remedy in order to deliver substantive relief to SCM in its claims against Mr Rudianto.

56. The Plaintiff says that JLS' rejection of the RBH offer reveals the true purposes of the Stay Summons; namely, not to have the question of the proper purpose of the Board determined by a Singapore arbitral tribunal as opposed to the Grand Court, but not to have it determined at all. It says that the Stay Summons is being pursued in bad faith and for a collateral advantage, the Court should unhesitatingly dismiss it.

Real and substantial dispute as to the basis upon which RBH was allotted and entitled to retain the 5,000 shares

Position of the Defendant

57. There is little dispute between the parties as to the approach the Court should take to the Stay Summons. As argued by the Defendant, the Court is only concerned to establish whether there is a "*real or genuine dispute*" (or a "*reasonably substantial*" dispute) about the Title Dispute disclosed by the evidence filed which falls within the scope of the relevant arbitration clause. In *SC Global*, Kawaley J summarised matters as follows[28]:

> *"13. As noted, it was common ground that if there was an arbitrable dispute about title to the Shares, a stay should properly be granted but if the Court summarily determined that no such dispute existed, the rectification claim would succeed. The legal principles I adopted were thus aligned with those which would have*

[28] *SC Global.*

applied had Aurora applied to join the proceedings and sought a mandatory stay under section 4 of the Foreign Arbitral Awards Law (1997 Revision). That section provides:

> *4. If any party to an arbitration agreement, or any person claiming through or under him, commences any legal proceedings in any court against any other party to the agreement, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to the proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to the court to stay the proceedings; and the court, unless satisfied that the arbitration agreement is null and void, inoperative or incapable of being performed or that there is not in fact any dispute between the parties with regard to the matter agreed to be referred, shall make an order slaying the proceedings."*

14. *The principles which would have applied to such an application were described by the Singapore Court of Appeal (Sundaresh Menon CJ) in Tomolugen Holdings-v-Silica Investors Ltd [2015] SGCA 57 (in a passage upon which the Defendant's counsel relied) which as follows:*

> *"[113]. .. In our judgment, when the court considers whether any 'matter' is covered by an arbitration clause, it should undertake a practical and commonsense inquiry in relation to any reasonably substantial issue that is not merely peripherally or tangentially connected to the dispute in the court proceedings. The court should not characterise the matter(s) in either an overly broad or an unduly narrow and pedantic manner ... "*

15. *What I extracted from that passage for the purposes of the present case was that even a mandatory arbitration stay will only be granted if the arbitrable matter is "reasonably substantial". This requirement was stated even more clearly in a decision of this Court upon which the Plaintiff relied, BankAmerica Trust and Banking Corporation (Cayman) Limited-v-Trans-world Telecom Holdings Limited [1999 CILR 110]. An arbitration stay under section 4 of the 1997 Law was refused on the grounds there was no "real or genuine dispute' to be referred to arbitration. Smellie CJ lucidly opined as follows (at page 119):*

> *"The governing principle is that the court will not ordinarily intervene to try a dispute which is one provided by the agreement between the parties to be resolved by reference to arbitration. The principle applies a fortiori when the contract provides exclusively for arbitration, as it does in this case. The rationale is straightforward: the parties, when they made their bargain, included as a part of it the provision for arbitration, and so should ordinarily be required to stick to their bargain: see In re Phoenix Timber Co. Ltd.'s Application (6). In that case it was also decided that the mere fact that the dispute is of a nature eminently suitable for trial in court is not a sufficient ground for refusing to give effect to what the parties have agreed. And*

> *it follows that the onus is on the party seeking the court's intervention to show the exceptional circumstance why a stay should not be entered in the court proceedings (or restraining any others to be brought) so that the arbitration might proceed on a dispute arising within a valid and subsisting arbitration agreement. Not surprisingly, the rule is that such an exceptional circumstance will arise where a party can show that there is no real or genuine dispute to be referred to arbitration. Indeed, a highly persuasive line of authority to be considered below is to the effect that absent such a real dispute to be referred to arbitration. there is no jurisdiction in the court to stay its own proceedings in deference to arbitration." [emphasis added]"*

As counsel for the Defendant rightly pointed out, the Court cannot and is not required to make a final or summary determination of the merits of disputed factual accounts as to the basis upon which the 5,000 Shares were allotted to and held by RBH (the Title Dispute), although a great deal of the evidence and submissions related to that issue.

59. The Defendant says that it is plain on the evidence before the Court that there is a real and substantial dispute between RBH and JLS (the parties to the Originating Summons), as well as between the ultimate owners of RBH and JLS (being respectively Mr. Rudianto and the Sylvan Group), regarding the basis upon which RBH was allotted and held the 5,000 Shares and the basis upon which RBH might be required to return those shares to JLS.

60. The Defendant says that the language in Clause 18 is broad and should be liberally construed in favour of arbitration. The relevant law in this regard has been helpfully reviewed by Doyle J in *Ren Ci.* After referring to the decision of Smellie CJ in *BankAmerica Trust and Banking Corporation,* Doyle J went on to consider the Court of Appeal's decision in *McAlpine Limited v. Butterfield Bank (Cayman) Limited*[29]:

> *"How the court should approach the construction of this Agreement*
>
> *30. As JA Field observed during argument, the seminal decision in the common law world on the construction of agreements such as the present, is that of the House of Lords in Fiona Trust v Privalov [2007] Bus LR 686 (to which the judge did not refer in her judgment). The House of Lords (as had the Court of Appeal), held that since the introduction of section 7 of the Arbitration Act 1996 (similar in substance to section 4 of the Arbitration Law 2012 in the Cayman Islands), an agreement to arbitrate had to be construed in such a way as to give effect to the reasonable commercial expectations of the parties.*

[29] [2020 (1) CILR Note 5].

In the course of his speech, with which Lord Hope of Craighead, Lord Scott of Foscote, Lord Walker of Gestingthorpe and Lord Brown of Eaton-under-Heywood agreed, Lord Hoffman "applauded" the opinion expressed by Longmore LJ in the Court of Appeal, to the effect that the approach to construction previously taken by the courts, should no longer be followed. He went on to say (pages 1724-5, paragraphs 12 and 13):

> *"12...[Section 7]...was obviously intended to enable the courts to give effect to the reasonable commercial expectations of the parties about the questions which they intended they intended to be decided by arbitration. But section 7 will not achieve its purpose if the courts adopt an approach to construction which is likely in many cases to defeat those expectations. The approach to construction therefore needs to be re-examined.*
>
> *13. In my opinion the construction of an arbitration clause should start from the assumption that the parties, as rational businessmen, are likely to have intended any dispute arising out of the relationship into which they have entered or purported to enter to be decided by the same tribunal. The clause should be construed in accordance with this presumption unless the language makes it clear that certain questions were intended to be excluded from the arbitrator's jurisdiction. As Longmore LJ remarked, at para 17: "if any businessman did want to exclude disputes about the validity of a contract, it would have been comparatively easy to say so.""*

31. Lord Hope put it in the following way (page 1727, paragraphs 25 and 26):

> *"25...contracts negotiated between parties in the international market are commonly based upon standard forms, the terms of which are well known. Because they have a well-understood meaning, they enable contracts to be entered into quickly and efficiently...But is must be appreciated that various clauses in these forms serve various functions. In some, a high degree of precision is necessary. Terms which define the parties' mutual obligations in relation to price and performance lie at the heart of every business transaction. They fall into that category. In others, where the overall purpose is clear, the parties are unlikely to linger over words used to express it.*
>
> *26 Clause 41 [the arbitration clause] falls into the latter category. No contract of this kind is complete without a clause which identifies the law to be applied and the methods to be used for the determination of disputes. Its purpose is to avoid the expense and delay of having to argue about these matters later. It is the kind of clause to which ordinary businessmen readily give their agreement so long as its general meaning is clear. They are unlikely to trouble themselves too much about its precise language or to wish to explore the way it has been interpreted in numerous authorities, not all of which speak with one voice. Of course, the court must do what it can to provide...legal certainty...The proposition that any jurisdiction or arbitration clause in an international commercial contract should be liberally construed promotes legal certainty. It serves to underline the golden rule that if parties wish to have issues as to validity*

> *of their contract decided by one tribunal and issues as to its meaning or performance decided by another, they must say so expressly. Otherwise they will be taken to have agreed on a single tribunal for the resolution of all disputes."*
>
> *32. As Lord Justice Moore-Bick (with whom Lord Justice McFarlane and Lord Justice Briggs agreed), pointed out in Transocean Drilling U.K. Ltd v Providence Resources PLC [2016] EWCA Civ 372, that does not mean the court's task is to re-shape the contract, but is to ascertain the parties' intention, giving the words used their ordinary and natural meaning (see paragraph 23."*

61. In *Fiona Trust & Holding Corporation v Privalov*[30] the House of Lords considered the approach to be taken to arbitration clauses:

> *"5. ... Arbitration is consensual. It depends upon the intention of the parties as expressed in their agreement. Only the agreement can tell you what kind of disputes they intended to submit to arbitration. But the meaning which parties intended to express by the words which they used will be affected by the commercial background and the reader's understanding of the purpose for which the agreement was made. Businessmen in particular are assumed to have entered into agreements to achieve some rational commercial purpose and an understanding of this purpose will influence the way in which one interprets their language.*
>
> *6. In approaching the question of construction, it is therefore necessary to inquire into the purpose of the arbitration clause. As to this, I think there can be no doubt. The parties have entered into a relationship, an agreement or what is alleged to be an agreement or what appears on its face to be an agreement, which may give rise to disputes. They want those disputes decided by a tribunal which they have chosen, commonly on the grounds of such matters as its neutrality, expertise and privacy, the availability of legal services at the seat of the arbitration and the unobtrusive efficiency of its supervisory law. Particularly in the case of international contracts, they want a quick and efficient adjudication and do not want to take the risks of delay and, in too many cases, partiality, in proceedings before a national jurisdiction.*
>
> *7. If one accepts that this is the purpose of an arbitration clause, its construction must be influenced by whether the parties, as rational businessmen, were likely to have intended that only some of the questions arising out of their relationship were to be submitted to arbitration and others were to be decided by national courts. Could they have intended that the question of whether the contract was repudiated should be decided by arbitration but the question of whether it was induced by misrepresentation should be decided by a court? If, as appears to be generally accepted, there is no rational basis upon which businessmen would be likely to wish to have questions of the validity or enforceability of the contract decided by one tribunal and questions about its performance decided by another, one would need to find very clear language before deciding that they must have had such an intention.*

[30] [2007] 4 All ER 951.

> 8. *A proper approach to construction therefore requires the court to give effect, so far as the language used by the parties will permit, to the commercial purpose of the arbitration clause. But the same policy of giving effect to the commercial purpose also drives the approach of the courts (and the legislature) to the second question raised in this appeal, namely, whether there is any conceptual reason why parties who have agreed to submit the question of the validity of the contract to arbitration should not be allowed to do so.*
> 9. *There was for some time a view that arbitrators could never have jurisdiction to decide whether a contract was valid. If the contract was invalid, so was the arbitration clause. In Overseas Union Insurance Ltd v AA Mutual International Insurance Co Ltd [1988] 2 Lloyd's Rep 63, 66 Evans J said that this rule "owes as much to logic as it does to authority". But the logic of the proposition was denied by the Court of Appeal in Harbour Assurance Co (UK) Ltd v Kansa General International Insurance Co Ltd [1993] QB 701 and the question was put beyond doubt by section 7 of the Arbitration Act 1996:*
>
> > *"Unless otherwise agreed by the parties, an arbitration agreement which forms or was intended to form part of another agreement (whether or not in writing) shall not be regarded as invalid, non-existent or ineffective because that other agreement is invalid, or did not come into existence or has become ineffective, and it shall for that purpose be treated as a distinct agreement.""*

62. The inquiry that a court must undertake in relation to the application of an arbitration clause is two-fold. As was set out in *The Republic of Mozambique v Credit Suisse International*[31]:

> *"64 There are two stages of inquiry for a court (although there may be overlapping considerations): first, to identify the "matters" in respect of which the proceedings are brought; secondly, to assess whether those matters are "matters" which the parties have agreed are "to be referred to arbitration". That is to be resolved by reference to the scope of the relevant arbitration agreement properly construed in context. Not every matter that could theoretically be arbitrable is one that the parties are necessarily to be taken to have agreed as a matter that must be referred to arbitration.*
> *65 The relevant principles were summarised neatly and sufficiently for present purposes by Popplewell J (as he then was) in Sodzawiczny[6]:*
>
> > *"43. The approach to what constitutes a "matter" in section 9 "in respect of which" the proceedings are brought should be capable of application in all these different circumstances and many in between, all of which are contemplated by the section. As a matter of principle the approach should therefore be as follows:*
> >
> > *(1) The court should treat as a "matter" in respect of which the proceedings are brought any issue which is capable of constituting a dispute or difference which may fall within the scope of an arbitration agreement.*
> >
> > *(2) Where the issues have been identified at the time the court is making the inquiry, there is no difficulty in conducting that exercise. Where the issues are not fully identified or developed*

[31] [2021] EWCA Civ 329.

at that stage, the court should seek to identify the issues which it is reasonably foreseeable may arise. In this respect I agree with Andrew Smith J at paragraph [14] of the Lombard North Central case.

(3) The court should stay the proceedings to the extent of any issue which falls within the scope of an arbitration agreement. The search is not for the main issue or issues, or what are the most substantial issues, but for any and all issues which may be the subject matter of an arbitration agreement. If the court proceedings will involve resolution of any issue which falls within the scope of the arbitration agreement between the parties, the court must stay the proceedings to that extent. This is necessary to give effect to the principle of party autonomy which underpins the Act. If a dispute is arbitral, effect should be given to the parties' bargain to arbitrate it. That applies to any dispute with which the court proceedings are, or will foreseeably be, concerned. Again I would respectfully agree with Andrew Smith J in the Lombard North Central case at paragraph [15] to this effect.

(4) Further, in considering the claim, the Court should look at the nature and substance of the claim and the issues to which it gives rise, rather than simply to the form in which it is formulated in a pleading. As Andrew Smith J put it in the Lombard North Central case at paragraph [14], the latter "would allow a claimant to circumvent an arbitration agreement by formulating proceedings in terms that, perhaps artificially, avoid reference to a referred matter, knowing that any application to stay them must be made before a defence is pleaded." The same is true of identified or foreseeable defences. Section 9 is concerned with substance not form.

44. The objection that this approach leads to fragmentation of proceedings is not a sufficient reason for departing from these principles. The desideratum of unification of process must give way to the sanctity of contract, as the mandatory terms of section 9(4) intend. Fragmentation is implicit in the pro tanto wording of section 9, and is in any event often a consequence of the consensual nature of arbitration agreements (for example in string contracts). The risk of fragmentation is reduced by the expansive approach which is taken to the construction of arbitration clauses, but it may be the inevitable result of upholding the parties' bargain. If so, the adverse consequences can be ameliorated, if not altogether avoided, by the case management power of the court to stay proceedings in so far as they fall outside the scope of an arbitration agreement… "

63. Applying those principles, the Defendant says that the key considerations are as follows:

63.1 As explained by Mr Chan, the ESOP Agreement may have been entered into between Mr Jeun (acting for Sylvan Group entities, including the Sylvan MF) and Mr Rudianto (acting for himself and his corporate vehicles, including RBH), but the existence and terms of the

ESOP Agreement were contemporaneously known and agreed to by JLS (through at least Mr Chan). The Defendant says that there was therefore agreement as to the terms of the ESOP Agreement between both shareholders (Sylvan MF and RBH) and JLS. This, the Defendant says, is hardly surprising because the issue and/or allotment of shares in JLS (and hence the implementation of the ESOP Agreement) would necessarily have had to be agreed to by JLS.

63.2 The Subscription Agreement was entered into on 12 January 2022 after instructions were given on 10 January 2022 by an associate of the Sylvan Group to IQ EQ to prepare board resolutions on behalf of JLS to issue shares to Sylvan MF and RBH. The Defendant says that gave effect to the ESOP Agreement.

64. On that basis the Defendant says that the dispute as to the basis upon which RBH was to hold (and retain) shares in JLS is plainly a dispute that falls within the language of Clause 18 of the Subscription Agreement. It argues:

64.1 That such dispute is a *"… dispute, controversy or conflict arising from or in relation to this Agreement, including a dispute on its validity, conclusion, binding effect, breach, amendment, expiration and termination…"*[32] because it is argued that the dispute "*arises"* from the Amended Subscription Agreement it is a result of the transactions described in the agreement that 10% of the share capital of JLS ended up being allocated to RBH thereby giving rise to the present dispute as to whether JLS was entitled to repurchase those shares. The Defendant argues that the dispute arises "*in relation to*" the Amended Subscription Agreement for the same reason.

64.2 The challenge by RBH to the decision to re-purchase the shares in question necessarily involves consideration of the effect of the Amended Subscription Agreement constructed in the context set out in the evidence including the conclusion of the ESOP Agreement and its subsequent implementation via the Amended Subscription Agreement.

64.3 The liberal approach that the court should take to the construction of arbitration clauses reinforces the Defendant's construction. It is commercially irrational to suppose that the parties (i.e. each of Sylvan MF, JLS and RBH) would have intended the various types of dispute that might arise in relation to RBH's holding of the 5,000 Shares referred to in the Subscription Agreement to be determined by different tribunals or courts or in a different forum depending upon the precise nature of the dispute. The presumption must be that they

[32] Clause 9 of the Subscription Agreement, clause 18 of the Amended Subscription Agreement.

intended all of their disputes in relation to RBH's entitlement to receive and hold the 5,000 Shares (including as against JLS and Sylvan MF, and the other parties to the Amended Subscription Agreement) to be determined by the same tribunal.[33]

65. The Defendant says that RBH has sought to characterize the dispute raised by the Originating Summons as being a dispute as to whether the directors of JLS exercised their power under Article 9.1(c) for proper purposes, which dispute (it is contended by RBH) is entirely distinct and separate from the other disputes revealed by the evidence before the Court. As to this it argues:

65.1 RBH's characterization of the dispute raised by the Originating Summons is misconceived because the Originating Summons does not, and cannot properly in law be deemed to, constitute proceedings by JLS against its directors for breach of fiduciary duty. Indeed, the directors themselves are not defendants named on the Originating Summons. It contends that it is well-established that, in the absence of special circumstances (which are not alleged to and do not exist in the present case), a director's fiduciary duty to use his powers for proper purposes is a duty owed to the company of which he is a director, not to the company's individual shareholders[34].

65.2 In the instant case, no breach of fiduciary duty has been alleged by JLS against its directors. Hence, the Defendant claims, the issue as to the propriety of the directors' purpose does not truly arise. Instead, it says, the dispute raised by the Originating Summons is, in substance, a dispute as to RBH's alleged continuing entitlement to the 5,000 Shares as against JLS itself (and, indirectly, as against Sylvan MF). As such, it is a dispute that necessarily requires consideration of the basis upon which those shares were originally allotted to and held by RBH and therefore "*arises from*" and/or "*relates to*" the Subscription Agreement between the Company and its two shareholders. It is the Defendant's position that it was "*via*" the Subscription Agreement that RBH's 10% shareholding in JLS was allotted, through the initial allotment of the 5,000 Shares as 100% of the capital of the Company and the dilution of that 100% shareholding to 10% through the issue of 45,000 new ordinary shares (amounting to 90% of the enlarged capital of the Company) in favour of Sylvan MF.

---

[33] The Defendant says that this is reinforced by similar arbitration agreements in a shareholders' agreement dated 15 July 2022 in relation to Biologics to which Margie River was a party and a subscription agreement dated 1 August 2022 in relation to Therapeutix.

[34] See e.g. para. 8.2402 of *Palmer's Company Law* and *Sharp v Blank* [2015] EWHC 3220 (Ch), esp. at [9]-[13]. See also in this jurisdiction, *China Shanshui Cement Group Ltd v Tianrui (International) Holding Company Ltd* (Unreported, CICA 11 of 2021, 1 July 2022) at [50]-[51].

65.3 It argues in its written submissions that the fact that JLS has sought to sanction the perceived breach by RBH (through Mr. Rudianto) of the terms of the ESOP Agreement by exercising the Company's power of repurchase in Article 9.1(c), effectively as a form of self-help, does not detract from the fact that the gist of the dispute (or disputes) between the parties to the Subscription Agreement relates to the basis upon which RBH was allotted the 5,000 Shares or a 10% shareholding in the Company pursuant to the Subscription Agreement.[35]

65.4 The Defendant says that one reaches the same conclusion, even if looking at it from the perspective of the propriety of the JLS directors' purpose in exercising the power of repurchase under Article 9.1(c). In particular:

65.4.1 An inquiry as to the propriety of the directors' purpose is necessarily a fact-sensitive inquiry into a wide range of matters, including the nature and scope of the proper purpose or purposes for which the power was conferred, the subjective purpose for which the power was in fact exercised, an understanding of the overall business context in which the power was exercised, consideration of any existing agreements between the shareholders and the company, as well as the motives and state of mind of the directors when exercising the power[36].

65.4.2 As Mr Chan explained in Chan 1, the directors of JLS resolved to exercise the Company's power of repurchase under Article 9.1(c) in order to recover the 5,000 Shares because, pursuant to the ESOP Agreement, those shares were in the nature of ESOP shares for the collective benefit of Mr. Rudianto and other key management, whereas Mr. Rudianto (and by extension RBH) was refusing to take up employment with SCM as envisaged under the Employment Agreement whilst simultaneously wishing to retain all of the shares. In such circumstances, the Defendant argues, JLS directors' defence of the charge of improper purpose will inevitably rely on the terms of the ESOP Agreement as the fundamental basis upon which the 5,000 Shares were allotted to RBH as stipulated in the Subscription Agreement. A dispute as to the existence, terms and performance of the ESOP Agreement it says, is plainly a dispute that arises from or relates to the Subscription Agreement.

---

[35] In oral submission Mr Choo Choy went further than this and said that JLS had alternative options as to how to act and this is the route that was chosen by it.

[36] See generally *Eclairs Group Ltd (Appellant) v JKX Oil & Gas plc* [2015] UKSC 71, esp. at [15], [24]-[26] and [30]-[31] and *Grand View Private Trust Co Ltd v Wong & Ors* [2022] UKPC 47, esp. at [61]-[72].

65.4.3 Thus, taking account of all issues which are already apparent from the evidence before the Court, as well as issues which it is reasonably foreseeable may arise (adopting the *Republic of Mozambique* approach approved in *Ren Ci*, at [44]), all relevant "*matters*" are ones "*agreed to be referred*" for the purposes of section 4 of the FAAEA.

66. The Defendant made the point that it does not matter that neither JLS nor Sylvan MF have yet made a reference to mediation in preparation for arbitration. The principle is summarized in *Russell on Arbitration*[37]:

> "*There is no requirement that the reference to arbitration must have been started. This is clear from the words in s.9(1) which refer to "a matter which under the agreement is to be referred to arbitration". Indeed, the fact that the dispute cannot immediately be referred to arbitration, because the exhaustion of other dispute resolution procedures is first required, will not prevent the court from ordering a stay. For example, in a situation where a disputes procedure required a process of internal review, followed by mediation which in turn was followed by arbitration if necessary, it did not matter that the initial processes of review had not been undertaken and there was no arbitration underway at the time the legal proceedings were commenced nor at the time of the application for a stay. There was a clear agreement within the terms of s.6 of the Arbitration Act 1996 to submit future disputes to arbitration and hence a stay would be granted to protect the ultimate agreement to arbitrate.*"

The Defendant says that the principle should apply to s.4 FAAEA which also makes reference to "*any matter agreed to be referred"* rather than to an actual reference to arbitration, within the context of an effective, applicable arbitration agreement. [38] On that basis the Defendant says that the court is required to impose a stay and has no discretion.

67. An issue that was dealt with by Mr Choo Choy KC in his written and oral submissions was the nature of the s.46 remedy. He referred to the case of *Nilon Ltd v Royal Westminster Investments*[39] ("*Nilon*") heard by the Judicial Committee of the Privy Council. That case involved a claim for rectification in circumstances where the reason for rectification was an untried allegation that a defendant had agreed to allot shares in the company in question to the claimant. The company was

[37] 7th ed. 2015, para 7-026.

[38] Mr Choo Choy KC was at pains to make in clear during his submissions that the Defendant will participate on an expedited basis in a mediation and any subsequent arbitration.

[39] [2015] UKPC 2.

a BVI entity and the rectification provisions were similar to those in s. 46. After reviewing a number of cases dealing with rectification, the Board said:

> *"51. In the view of the Board, proceedings for rectification can only be brought where the applicant has a right to registration by virtue of a valid transfer of legal title, and not merely a prospective claim against the company dependant on the conversion of an equitable right to a legal title by an order for specific performance of a contract. It follows that Re Hoicrest Ltd was wrong as a matter of principle, however sensible it might have been as a matter of case management."*

68. However, its review of the authorities demonstrates that the issue is not as simple as it may seem. For example:

> *"43 On the other hand, in a decision ultimately resting on the principle that the company is not concerned with beneficial interests[40], the applicant sought rectification of the company's register to remove individuals on the ground that transfers executed in favour of such individuals had been carried out in breach of trust. Rectification was refused on the basis that even if the shares had been transferred in breach of trust, that was not a matter which concerned the company, or which invalidated the registration of the transferees' names: Elliot v Mackie & Sons Ltd, Elliot v Whyte, 1935 SC 81, in which Lord President Clyde said (at 90):*
>
> > *"According to the averments in the petition, these transfers were granted and registered in breach of the trust set up by the testator's trust-disposition and settlement; and, constituting, as they do, the transferees members of the company (ex facie in their own right), expose the shares to the deeds of the transferees, to the diligence of their creditors, and to any lien competent to the company. Assuming all this to be true, it discloses no ground on which it can be said, in the words of section 100(1) of the Act of 1929, that the names of the transferees have been entered in the register 'without sufficient cause'. The company is not the judge of whether a transfer has been executed contrary to some trust reposed in the transferor, and, indeed, is not concerned with considerations of that kind, assuming them to exist. The fact – if it be a fact – that a transfer may be subject to challenge in respect that the transferor, albeit himself a registered holder of the shares, is in breach of some trust in executing it is a matter between the transferor and the persons interested in the trust, and not a matter for the company."*
> >
> > *…*

[40] In this case Article 2.6 of JLS's Articles of Association provides: "*Except as required by law: (a) no person shall be recognized by the Company as holding any share on any trust; and (b) no person other than the Member shall be recognized by the Company as having any right in a Share.*"

> 46. *In Re Diamond Rock Boring Co Ltd, Ex p Shaw (1877) 2 QBD 463 a strong Court of Appeal (Lord Coleridge CJ and Bramwell and Brett LJJ) confirmed that a claim for rectification was maintainable where the company took no active part in the proceedings and the real dispute was between rival members. In that case an agent (A) acted for both purchaser (Shaw) and seller (Piers) on the sale and purchase of shares in the company. Piers executed a transfer in favour of Shaw and sent it to the secretary of the company, but A did not pay over the price to Piers and falsely told Piers that Shaw would not complete, whereupon Piers demanded back the transfer. A cut off Piers' signature and absconded. Shaw sought and obtained rectification because, although the company was not at fault in failing to register the shares, the transfer had been duly executed and Shaw had legal title."*

69. It was agreed that in principle the dispute over the exercise of the power in Article 9 of JLS's Articles is arbitrable even though it would take an order of this Court under s. 46 of the Act to give effect to any decision of an arbitration panel[41].

Position of the Plaintiff

70. In its written submissions the Plaintiff spent some time reviewing the basis upon which the Decision might be impugned. For the purposes of the Stay Summons it is not for me to take any decisions about the basis upon which and reasons why that might be the case but the approach to that issue is, in my view, relevant to the question of what matters might fall within the ambit of Clause 18. In summary the Plaintiff makes the following arguments in relation to the exercise of the powers of the Board in passing the Resolution:

70.1 The Directors acted improperly when taking the Decision which leaves the Resolution voidable. The Resolution engages what is known in English and Cayman Islands company law as the "proper purpose rule". In essence, that provides that directors are required to exercise the powers conferred on them for the purposes for which they were conferred and not for some collateral purpose. If they fail to do so, the exercise of powers will be open to challenge even if the directors believed in good faith that the exercise was in the best interests of the company[42].

---

[41] See eg *NDK Limited v HUO Holding Limited and KXF Trading Ltd* [2022] EWHC 1682 (Comm).

[42] See *Hogg v Cramphorn* [1967] Ch 254; *Bamford v Bamford* [1970] Ch 212; *Howard Smith v Ampol* [1974] AC 821 (PC) [AB/7/86]; and most recently Lord Sumption's analysis of the law in the UK Supreme Court in *Eclairs Group Ltd JKX Oil & Gas plc* [2015] UKSC 71. At [37] Lord Sumption said: *"…[t]he rule that the fiduciary powers of directors may be exercised only for the purpose for which they were conferred is one of the main means by which equity enforces the proper conduct of directors. It is also fundamental to the constitutional distinction between the respective domains of the board and the shareholders. These considerations are particularly important when the*

70.2 The purpose of the Resolutions is plain; namely, to remove RBH as a shareholder in JLS, at the behest of SCM, expressly on the basis of SCM's allegations against Mr Rudianto. The Plaintiff says that the only facts that the directors had before them were the contents of the 27 October 2022 letter from SCM and the consent of the Sylvan MF[43]. It argues that the purpose was self-evidently improper for the following reasons:

70.2.1 The Board unquestionably took SCM's side in a personal dispute between Mr Rudianto and SCM and assisted SCM with a remedy.

70.2.2 The dispute was between SCM and Mr Rudianto (not with RBH which is a separate legal entity) so JLS could have had no interest in whether RBH remained a shareholder or not.

70.2.3 SCM is not a shareholder in JLS.

70.2.4 The Directors were aware that the share repurchase was risky because the indemnity given to JLS in that regard was from Sylvan MF, the majority shareholder and not from SCM which had recommended that the repurchase should take place.

71. The Plaintiff argues further that although bad faith is not a necessary ingredient in the improper purpose doctrine, Cayman Islands law (and English law) nonetheless requires that a unilateral discretionary power conferred on one party must be exercised honestly, rationally and in good faith and in the absence of arbitrariness, capriciousness, perversity, and irrationality: *Socimer*

---

company is in play between competing groups seeking to control or influence its affairs". See also *TMO Renewables v Yeo* [2021] EWHC 2033 (at [194]) where it was said *"...i) first, the application of the purpose test turns on the ascertainment of, and a comparison between, the purpose for which the power was conferred and the purpose for which it was exercised by the directors. ii) second, this enquiry encompasses both legal issues (construing the power) and factual issues (the actual purpose for which the power was exercised) in the relevant legal and factual context – see Lord Sumption in Eclairs at [31]: "...[t]he purpose of a power conferred by a company's articles is rarely expressed in the instrument itself...But it is usually obvious from its context and effect why a power has been conferred". iii) third, where powers are exercised for a variety of purposes (only some of which may be improper), the exercise of the power will be tainted if the "substantial or primary" (Howard Smith), or "primary or dominant" purpose (Eclairs in the Supreme Court) was improper. iv) fourth, the test is necessarily subjective – see Lord Sumption in Eclairs at [15]: "the proper purpose rule is not concerned with the excess of power by doing an act which is beyond the scope of the instrument creating it as a matter of construction or implication. It is concerned with abuse of power, by doing acts which are within its scope but done for an improper reason. It follows that the test is necessarily subjective. 'Where the question is one of abuse of powers' said Viscount Finlay in Hindle v John Cotton Ltd 1919 SLR 625 at 630, 'the state of mind of those who acted, and the motive on which they acted, are all important'." v) fifth, the duty is strict in the sense that it does not depend on establishing bad faith (see Lord Sumption in Eclairs at [16] and also Hogg v Cramphorn Ltd [1967] 1 Ch 254)."*

[43] Whilst making his oral submissions, Mr Choo Choy KC argued that this was too narrow a view of what information the directors had available to them because he said that they would have also had the benefit of the knowledge of, for example, Mr Chan.

International Bank Ltd v Standard Bank London Ltd;[44] *Braganza v BP Shipping Ltd.* (the "Braganza Principles")[45]. Both *Braganza* and *Socimer* have been considered by the Grand Court[46]. It is accepted by Mr Choo Choy KC that the Braganza Principles do apply to the Article 9(1)(c) Dispute and the Decision which was the exercise of a discretionary power arising under the Articles[47] and I believe that it is important therefore to review what they are in some more detail although, as I have said previously, the Court is not presently tasked with reviewing that Decision.

72. *Braganza* involved the disappearance by Mr Braganza from a BP oil tanker. His employer formed the view that he had committed suicide. If that was the case then his widow was not entitled to death benefits provided by his contract of insurance. The task of the Court was to decide whether his employer was entitled to form the opinion which it did. Summarizing the principles, Lady Hale said as follows:

> *"18. Contractual terms in which one party to the contract is given the power to exercise a discretion, or to form an opinion as to relevant facts, are extremely common. It is not for the courts to re-write the parties' bargain for them, still less to substitute themselves for the contractually agreed decision-maker. Nevertheless, the party who is charged with making decisions which affect the rights of both parties to the contract has a clear conflict of interest. That conflict is heightened where there is a significant imbalance of power between the contracting parties as there often will be in an employment contract. The courts have therefore sought to ensure that such contractual powers are not abused. They have done so by implying a term as to the manner in which such powers may be exercised, a term which may vary according to the terms of the contract and the context in which the decision-making power is given.*
>
> *19. There is an obvious parallel between cases where a contract assigns a decision-making function to one of the parties and cases where a statute (or the royal prerogative) assigns a decision-making function to a public authority. In neither case is the court the primary decision-maker. The primary decision-maker is the contracting party or the public authority. It is right, therefore, that the standard of review generally adopted by the courts to the decisions of a contracting party should be no more demanding than the standard of review adopted in the judicial review of administrative action. The question is whether it should be any less demanding.*
>
> *20. The decided cases reveal an understandable reluctance to adopt the fully developed rigour of the principles of judicial review of administrative action in a contractual context. But at the same time they have struggled to articulate*

[44] [2008] EWCA Civ 116, [2008] 1 LR 558 (CA), at [66].
[45] [2015] UKSC 17 [AB/12/237]; [2015] 1 WLR 1661 (SC).
[46] See, for example, *In the matter of China Agrotech Holdings Limited* [2019 (2) CILR 302], at [77].
[47] JLS and RBH being in a contractual relationship via the Articles see e.g. *Lansdowne Limited and Silex Trust Company v Matador Investments Limited & Ors*, [2012] (2) CILR 81] para 108.

precisely what the difference might be. In Abu Dhabi National Tanker Co v Product Star Shipping Ltd (The "Product Star") (No 2) [1993] 1 Lloyd's Rep 397, 404, after contrasting the position in judicial review, Leggatt LJ explained that:

> *"The essential question is always whether the relevant power has been abused. Where A and B contract with each other to confer a discretion upon A, that does not render B subject to A's uninhibited whim. In my judgment, the authorities show that not only must the discretion be exercised honestly and in good faith, but, having regard to the provisions of the contract by which it is conferred, it must not be exercised arbitrarily, capriciously or unreasonably."*

…

24. The problem with this formulation, which is highlighted in this case, is that it is not a precise rendition of the test of the reasonableness of an administrative decision which was adopted by Lord Greene MR in Associated Provincial Pictures Houses Ltd v Wednesbury Corporation [1948] 1 KB 223, 233-234. His test has two limbs:

> *"The court is entitled to investigate the action of the local authority with a view to seeing whether they have taken into account matters which they ought not to take into account, or conversely, have refused to take into account or neglected to take into account matters which they ought to take into account. Once that question is answered in favour of the local authority, it may still be possible to say that, although the local authority have kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it."*

> *"The first limb focusses on the decision-making process – whether the right matters have been taken into account in reaching the decision. The second focusses upon its outcome – whether even though the right things have been taken into account, the result is so outrageous that no reasonable decision-maker could have reached it. The latter is often used as a shorthand for the Wednesbury principle, but without necessarily excluding the former."*

…

28. There are signs, therefore, that the contractual implied term is drawing closer and closer to the principles applicable in judicial review. The contractual cases do not in terms discuss whether both limbs of the Wednesbury test apply. However, in Gan Insurance, where the issue was the limits, if any, to the reinsurers' power to withhold approval to the insured's agreement to settle a claim, Mance LJ first commented that "what was proscribed was unreasonableness in the sense of conduct or a decision to which no reasonable person having the relevant discretion could have subscribed" (para 64); but he concluded that "any withholding of approval by reinsurers

should take place in good faith after consideration of and on the basis of the facts giving rise to the particular claim and not with reference to considerations wholly extraneous to the subject matter of the particular reinsurance ...." (para 67).

29. *If it is part of a rational decision-making process to exclude extraneous considerations, it is in my view also part of a rational decision-making process to take into account those considerations which are obviously relevant to the decision in question. It is of the essence of "Wednesbury reasonableness" (or "GCHQ rationality") review to consider the rationality of the decision-making process rather than to concentrate upon the outcome. Concentrating on the outcome runs the risk that the court will substitute its own decision for that of the primary decision-maker.*
30. *It is clear, however, that unless the court can imply a term that the outcome be objectively reasonable – for example, a reasonable price or a reasonable term – the court will only imply a term that the decision-making process be lawful and rational in the public law sense, that the decision is made rationally (as well as in good faith) and consistently with its contractual purpose. For my part, I would include both limbs of the Wednesbury formulation in the rationality test. Indeed, I understand Lord Neuberger (at para 103 of his judgment) and I to be agreed as to the nature of the test.*
31. *But whatever term may be implied will depend upon the terms and the context of the particular contract involved. I would add to that Mocatta J's observation in The Vainqueur José, that "it would be a mistake to expect [of a lay body] the same expert, professional and almost microscopic investigation of the problems, both factual and legal, that is demanded of a suit in a court of law" (577). Nor would "some slight misdirection" matter, at least if it were clear that, had the legal position been properly appreciated, the decision would have been the same. It may very well be that the same high standards of decision-making ought not to be expected of most contractual decision-makers as are expected of the modern state."*

...

38. *In my view, Mr Sullivan should not simply have accepted the view of the investigation team that suicide was the most likely explanation for Mr **Braganza's** disappearance. The team had been conducting their investigation for purposes which were different from the purpose of his decision. Their purpose was to see whether BP's systems could be improved. They could and did make recommendations about the steps to be taken to support officers who might be experiencing financial or emotional problems. Those recommendations were equally valid and sensible whether or not Mr **Braganza** had in fact committed suicide.*
39. *Mr Sullivan's task was quite different. He had to consider whether he was in a position to make a positive finding that Mr **Braganza** had committed suicide. He should have asked himself whether the evidence was sufficiently cogent to overcome the inherent improbability of such a thing. In my view that can be expected of any employer making a decision under a provision such as this. But it could certainly be expected of BP, which clearly had access to in-house legal expertise to guide it in the decision-making process.*

...

> 42. *Although I would not have phrased the correct approach exactly as Teare J phrased it, in my view he was right to conclude (para 95) that the investigation team's report and conclusion could not be regarded as sufficiently cogent evidence to justify Mr Sullivan, and hence BP, in forming the positive opinion that he had committed suicide. No-one suggests that his decision was "arbitrary, capricious or perverse", but in my view it was unreasonable in the Wednesbury sense, having been formed without taking relevant matters into account.*

73. The Plaintiff argues that the process of decision-making by the Board was flawed because the Board failed to take account of relevant matters, namely (i) the fact that the person making the demand (SCM) was not a shareholder (ii) its claims were not against a shareholder (RBH) but Mr Rudianto; (iii) it had not heard and could not take account of any response by RBH or Mr Rudianto because SCM had not actually made its claims against him (at least formally) so as to give him an opportunity to set out his position. Moreover, the conclusion, to strip him of shares which he says are worth millions of dollars for US$5000, was so outrageous that no reasonable board could come to it on the information it did take account of (namely the SCM letter)[48].

74. Further it argues that it is hard to see how removing RBH as a shareholder was *bona fide* and in the interests of JLS. It says that SCM might regard it as highly desirable, in furtherance of its case, but a company is not normally interested in who are its shareholders and the board had no business preferring SCM's interests. It contends that JLS has not identified what proper corporate interest the redemption of RBH's shares served. If JLS shares were to be issued as part of an employee share scheme then new shares could always be created and issued. It was never necessary to redeem RBH's shares in order to carry forward any employee reward scheme.

75. It argues that there are three further features of the redemption that indicate that the Board *was* acting in bad faith or acting arbitrarily such as to vitiate the exercise of the discretion under the *Braganza* Principles.

    75.1 It does not appear from the Resolutions that the Board considered whether a price of par value for the shares was a fair price or not. It was obvious that it was not.

    75.2 The Notice of Redemption was sent on 30 October 2022 after the redemption had purportedly taken effect on 27 October 2022. It was a *fait accompli*. Although the notice

[48] See *Braganza* at [23]-[24].

might be valid under the articles, the result is that RBH ceased to be a shareholder before it had even known of the fact[49].

75.3 Despite the apparent intensity of the discussions between Mr Jeun and Mr Rudianto from early August 2022 to early October 2022 about what should happen to the shares, once the redemption occurred there was silence for a number of weeks. Thereafter the interactions were only between Mr Rudianto and Mr Edgington, who was not involved in the Sylvan business. Mr Edgington did not tell Mr Rudianto what had actually happened, or why. There is no evidence that Mr Edgington actually knew any more than what was contained in the written resolutions and the SCM letter.

75.4 RBH did not actually see the Written Resolutions, or learn of the basis on which its shares had been redeemed, until two months later on 23 December 2022. That is a powerful indication the Plaintiff says that, whatever the merits of SCM's position, SCM knew very well that it had procured JLS to do something it should not have done and that it had overreached.

76. Adopting the two-stage approach used in *The Republic of Mozambique* case the Plaintiff addresses the question of a stay as follows, dealing first with the matter in dispute:

76.1 The Plaintiff says that the entire basis of the exercise of the discretion by the Board is plain from the face of the Written Resolution, and most importantly the SCM letter appended to the Resolution. The SCM letter was a set of representations of fact by SCM, a third party, to the Board. It set out (in broad summary):

76.1.1 the fact of the agreement by Mr Rudianto to join SCM as managing director,

76.1.2 Mr Rudianto's investment into JLS and his acquisition of 5000 shares,

76.1.3 the Subscription Agreement and subscription by Sylvan MF for 45,000 shares (and the 5 year moratorium on transfer by RBH); and,

76.1.4 the allegations of breach by Mr Rudianto personally of his commitments to SCM; and the decision by SCM no longer to hire Mr Rudianto.

76.2 On that basis, SCM made the "express recommendation" to the Directors that the 5000 shares in JLS owned by RBH be repurchased at par.

76.3 The Plaintiff compares that to what JLS's witnesses say in their evidence. It points out that there was no reference in the SCM letter to:

76.3.1 the alleged ESOP Agreement;

[49] Although in para 72 of Chan 1, Mr Chan does discuss the delay.

76.3.2 any conditions on which Mr Rudianto or RBH held his shares;

76.3.3 any link of his right to retain the shares to the length of his tenure as managing director or his performance; and/or

76.3.4 any Share Return Agreement or other oral agreement reached in August 2022, or any other time.

76.4 The Plaintiff raises an issue about what knowledge the Directors actually had about the wider dispute between SCM and Mr Rudianto and the extent to which that might have been relevant to their decision. As mentioned earlier, Mr Choo Choy KC says that they should be treated as having been aware of the wider dispute through the knowledge of Mr Chan and possibly Mr Leong[50]. The Plaintiff goes on to argue that even if Mr Rudianto had agreed with SCM that he would return the shares held by RBH in JLS that agreement was not the basis of the exercise of discretion by the Board and was irrelevant to the matter the subject of these proceedings.

76.5 This the Plaintiff says is supported by:

76.5.1 the nature of the limited response that Mr Rudianto received from Mr Edgington;

76.5.2 the approach taken by Allen & Gledhill in its letter of 23 November 2022 written on behalf of SCM which focused on Mr Rudianto's relationship with SCM under the Employment Agreement, making no reference to the ESOP Agreement of the Share Return Agreement; and,

76.5.3 the fact that at no point between the repurchase on 27 October 2022 and the issue of the Stay Summons was mention made of oral agreements.

76.6 The Plaintiff argues that it is not that the evidence in question is a recent event, rather, it says, the point is that SCM's claims against Mr Rudianto as set out in the SCM letter and which formed the basis of the Decision, were never based on failure to perform agreements to return the shares, or to honour the conditions on which he held them as now alleged. There was simply no relevant dispute about that. It did not form any part of the basis of the Decision. Once the Board had made its decision to redeem, based on SCM's request, that

[50] This touches on a point that I raised with counsel during the course of the hearing about the information/knowledge that the decision of the directors should be assessed against. To the extent that the *Braganza* Principles are to be applied to the decision, it seems to me that similar public law principles should also be applied to the question of the adequacy of reasons given by the directors: "*It is only in limited circumstances that the absence or inadequacy of reasons can be remedied by provision of further fresh reasons in evidence when the decision is challenged. As "[i]t is well-established that the court should exercise caution before accepting reasons for a decision which were not articulated at the time of the decision but were only expressed later, in particular after the commencement of proceedings". De Smith's Judicial Review 8th ed.* para 7-116. The point was not the subject of any argument so it is simply an observation on my part at this stage.

was the end of the matter so far as JLS was concerned. There was no dispute between JLS and Mr Rudianto or RBH.

77. In relation to Clause 18, the Plaintiff does not take issue with the relevant law in relation to arbitration clauses but says that a pro-arbitration clause public policy does not preclude proper scrutiny of the matter in dispute and the objective rationale behind the clause.

78. The Plaintiff contends further that;

78.1 The power to repurchase shares arises from JLS's Articles, not the Subscription Agreement.

78.2 The exercise of power under the Articles is a matter governed by Cayman Islands law and the parties did not intend that it would fall within the Clause 18 which only deals with disputes arising under that agreement and applies Singapore law to them.

78.3 The wording of Clause 18 applies to disputes "*including a dispute on its validity, conclusion, binding effect, breach, amendment, expiration and termination*" which are powerful indicators of the boundaries of the scope of the agreement to refer disputes to mediation/arbitration.

78.4 The whole purpose and subject-matter of the Subscription Agreement was Sylvan MF's subscription for shares. This was a matter which both counsel addressed in some detail. The shares issued to RBH were dealt with by way of a board resolution dated 12 January 2022. That fact is dealt with at Recital A in the Subscription Agreement. The Subscription Agreement, however, does provide for the subscription by Sylvan MF for its shares in JLS. Mr Millett KC for the Plaintiff says that RBH had no positive role to play under the Subscription Agreement and that neither the Subscription Agreement nor the Amended Subscription Agreement can be treated as a shareholders' agreement. Indeed, he says neither of those agreements refers to JLS's Articles and both have entire agreement clauses precluding the application of any other agreement on them.

79. The Plaintiff referred to *BNP Paribas SA v Trattamento Rifiuti Metropolitani SPA*[51] which deals at paragraph 68 with competing jurisdiction clauses:

> *"In the light of the guidance provided by these authorities, so far as relevant to the present case I would summarise the approach to be as follows:*

[51] [2019] EWCA Civ 768.

(1) Where the parties' overall contractual arrangements contain two competing jurisdiction clauses, the starting point is that a jurisdiction clause in one contract was probably not intended to capture disputes more naturally seen as arising under a related contract: Trust Risk Group at [48]; Dicey, Morris & Collins at § 12-110.

(2) A broad, purposive and commercially-minded approach is to be followed - Trust Risk Group at [48]; Sebastian Holdings at [39] and [50].

(3) Where the jurisdiction clauses are part of a series of agreements they should be interpreted in the light of the transaction as a whole, taking into account the overall scheme of the agreements and reading sentences and phrases in the context of that overall scheme: see UBS v Nordbank [2009] at [83]; Trust Risk Group at [47]; Sebastian Holdings at [40].

(4) It is recognised that sensible business people are unlikely to intend that similar claims should be the subject of inconsistent jurisdiction clauses: UBS v Nordbank at [84], [95]; Sebastian Holdings at [40]; Savona at [1].

(5) The starting presumption will therefore be that competing jurisdiction clauses are to be interpreted on the basis that each deals exclusively with its own subject matter and they are not overlapping, provided the language and surrounding circumstances so allow: Monde Petroleum at [35]-[36]; Savona at [1].

(6) The language and surrounding circumstances may, however, make it clear that a dispute falls within the ambit of both clauses. In that event the result may be that either clause can apply rather than one clause to the exclusion of the other –Savona at [4] and [31].”

80. Although the Articles do not have a jurisdiction clause, it is argued that the subject matter of the Subscription Agreement was the acquisition of shares by Sylvan MF in JLS. The regulation of the relationship between JLS and its shareholders is dealt with by the Articles. The Plaintiff argues that a “*broad, purposive and commercially minded approach*” would lead rational businessmen to conclude that all disputes arising out of the relationship of shareholder with each other and with JLS under the Articles were matters for the Cayman Islands court, and not governed by Singapore mediation and arbitration. Indeed, it is said that would apply to all kinds of claims that might arise under the Articles that might have no bearing on the parties’ commercial relationship.

81. The Plaintiff’s conclusion is that the Subscription Agreement and Articles deal with two separate and distinct matters, acquiring shares and then the on-going relationship of company and

shareholder. It says that it is not possible to stretch the dispute resolution clause in the Subscription Agreement to cover the relationship under the Articles.

Analysis and discussion

The Matter

82. A great deal of the evidence and submissions touch on the substance of the Article 9(1)(c) Dispute and the Title Dispute which are not matters currently for consideration by this court. Indeed, the latter may never be a dispute dealt with in this jurisdiction. I have therefore taken care not to trespass into the facts or potential legal arguments too deeply when setting out below my views. It seems to me that the obvious starting point is the application of the two-fold test set out in *The Republic of Mozambique*. Therefore, the first issue is to identify the matter in respect of which these proceedings have been brought. As I have set out above, the Defendant has argued that a wider approach should be taken to this. It is clear that the Directors exercised their discretionary powers under Article 9(1)(c) when taking the Decision. It is common ground that when doing so the Directors had to act within the *Braganza* Principles. I have set out at some length passages from *Braganza* to illustrate the approach taken by courts in such circumstances. The focus is very much on the decision-making process.

83. There seems to be a real and substantial dispute between Mr Rudianto and SCM about the Employment Agreement and the extent to which Mr Rudianto might have breached its terms. That is the basis upon which SCM's letter to JLS dated 27 October 2022 appears to have been written as does the letter from Allen & Gledhill dated 23 November 2022. Also relevant to that dispute is the alleged ESOP Agreement and the alleged Share Return Agreement which have a bearing on what Mr Rudianto did or did not agree to do with the shares held by RBH in JLS.

84. As can be seen from the submissions on behalf of the Defendant, its approach has been to seek to show that, in effect, the relationship between JLS, RBH, Mr Rudianto, Sylvan MF and SCM is intertwined by virtue of the Employment Agreement, ESOP Agreement and Amended Subscription Agreement; intertwined to such an extent that at least the Amended Subscription Agreement gives effect to the ESOP Agreement so that the issue about RBH's retention of shares in JLS and therefore the Decision, is caught by Clause 18.

85. The alleged ESOP Agreement appears to essentially be an oral agreement. It is not clear what law might apply to it or whether according to that law it constitutes a valid contract. The evidence given

on behalf of the Defendant suggests that it was between Mr Jeun (on behalf of SCM and Sylvan MF) and Mr Rudianto (acting for himself and any corporate vehicle owned by himself; RBH was incorporated on 10 January 2022). Even if I had to do so I would be limited in drawing any conclusions that as a matter of Singapore law, and therefore a matter of fact, the Amended Subscription Agreement which is between JLS, RBH and Sylvan MF gave effect to the ESOP Agreement. As it stands, the Amended Subscription Agreement provides for the subscription by Sylvan MF for shares in JLS. It then goes on as previously mentioned to deal essentially with certain, limited aspects of the relationship between RBH and Sylvan MF as shareholders in JLS, although I do not think that one can go as far as saying that it is a general shareholders' agreement intended to govern all aspects of the relationship between shareholders in JLS, present and future. Furthermore, despite what is alleged, the ESOP Agreement and Amended Subscription Agreement do not appear to be interrelated and interdependent contracts between common parties and the latter certainly has not been drafted in that way. I am not in a position therefore to assume that the Amended Subscription Agreement gave effect to the ESOP Agreement.

86. Even if it did, in my view, the Article 9(1)(c) Dispute is entirely separate and distinct from the Title Dispute. The Title Dispute may have provided the backdrop to the Decision but, in my view, the Decision is liable to scrutiny as a matter of Cayman Islands law in its own right. Indeed, a review of the Decision itself is quite possibly a secondary issue. As some of the authorities reviewed in *Nilon* suggest, first, it may be necessary to consider as a matter of Cayman Islands law whether JLS (an investment holding company) and the Board should have got involved at all in a dispute between Mr Rudianto and SCM. They are third parties as far as JLS was concerned and even if they had been shareholders, the same issue arises. This is also a case that seems to be distinguishable from e.g. *Nilon* because it does not involve a dispute as to whether RBH should be registered as a member of JLS. At the time of the Decision, it was already a registered member and the register of members is conclusive as to that.

87. It seems to me therefore that the matter that is the subject of these proceedings (and about which there is a real or genuine dispute) is the Article 9(1)(c) Dispute; namely, whether the Board should have exercised its Article 9(1)(c) discretion at all and, if it was appropriate for it to have done so, whether the exercise of that discretion leading to the Decision was honest, rational and in good faith and in the absence of arbitrariness, capriciousness, perversity, and irrationality. Depending on the outcome of that analysis, an order may be made under s.46 of the Act rectifying the register of members of JLS.

88. Despite Mr Choo Choy KC's submission to the contrary, I am not of the view that the exercise described above will involve this Court having to decide any of the substantive issues which might flow from the Employment Agreement, ESOP Agreement, Share Return Agreement or the Amended Subscription Agreement or investigate the actual dispute much further than has already been canvassed in the evidence before the court. In my view, those are matters of background only.

Clause 18

89. Applying the principles from *SC Global, McAlpine* and *Fiona Trust* the next question is whether the Article 9(1)(c) Dispute falls within Clause 18. The clause is expressed to cover a "… *dispute, controversy or conflict arising from or in relation to this Agreement, including a dispute on its validity, conclusion, binding effect, breach, amendment, expiration and termination…".* There are clearly rights and obligations set out in the Amended Subscription Agreement that might form the subject matter of a dispute that would stand to be dealt with under Clause 18. However, would the parties to that agreement have expected that JLS would choose to exercise a self-help remedy to assist SCM with its position vis a vis Mr Rudianto in the Title Dispute? The fact is that JLS is a party to the Amended Subscription Agreement, and yet having taken its own legal advice it chose to act as it did, suggesting that it did not regard the issue as one falling within the terms of the agreement and therefore within Clause 18. It is that conduct that has given rise to the Article 9(1)(c) Dispute. Somewhat inconsistently, it now argues that Article 9(1)(c) Dispute is covered by Clause 18. In my view the Article 9(1)(c) Dispute is not one that can be treated as falling within Clause 18 as I do not believe that it is related to any of the rights and obligations arising under and from the Amended Subscription Agreement.

90. Having reached the conclusion that the Article 9(1)(c) Dispute does not fall within Clause 18, then, in my view, there are no grounds to impose a mandatory stay of these proceedings.

Case Management Stay

91. The Defendant has also raised two alternative arguments in the event that a mandatory stay is not ordered. Its secondary position is that pursuant to its inherent jurisdiction and case management powers the court should order a case management stay. This would be on the basis that the final disposal of this action is dependent on the prior determination of the Title Dispute which will have to be resolved by mediation or arbitration under the Amended Subscription Agreement or

presumably litigation under the Employment Agreement which by virtue of clause 19 is subject to Singapore law and the exclusive jurisdictions of the courts of Singapore. In support of its argument for a case management stay the Defendant refers to the cases of *In the matter of Nanfong International Investments Limited*[52]("*Nanfong*") and *SC Global*. *Nanfong* involved a situation in which there was a question as to whether a there was authority for one of its shareholders (a Samoan company) to have issued a winding up petition against a Cayman Islands company. That issue had to be either decided by a court in Samoa or the Grand Court. The Court of Appeal decided that there were the necessary strong and compelling reasons and little prejudice to the shareholder in question for a case management stay to be ordered whilst that issue was resolved by the courts in Samoa.

92. As I have already indicated, I do not regard the Title Dispute as likely to be determinative of the Article 9(1)(c) Dispute or vice versa. If it turns out that the Decision can be impugned, the register of members of JLS will be rectified to restore RBH to the position that it was in before the Decision was taken. In such circumstances, RBH will still however be subject to the restrictions in the Amended Subscription Agreement and its ultimate interest in JLS will be the subject of mediation, arbitration or litigation in Singapore.

93. On the basis of the above, I am not of the view that there are strong and compelling reasons to grant a case management stay.

Forum Non Conveniens

94. The final issue raised by the Defendant in the alternative is that if a mandatory or discretionary stay is not ordered, then the proceedings should still be stayed on forum grounds on the basis that there is another available forum, and the other forum (Singapore) is clearly more appropriate than this jurisdiction.[53] The reasons for this it says are as follows:

94.1 the ESOP Agreement arises from discussions between individuals who primarily reside in Singapore;

94.2 the principal witnesses and documents are therefore located in Singapore;

94.3 the ESOP Agreement is closely related to the Employment Agreement and the Subscription Agreement, both of which are governed by Singapore law;

[52] [2018 (2) CILR 321].
[53] See e.g. *Spiliada Maritime Cirp v Cansulex Ltd* [1986] 3 All ER 843.

94.4 issues as to the inter-relationship between the ESOP Agreement, Employment Agreement and the Subscription Agreement are therefore likely to be governed by Singapore law;

94.5 clause 19 of the Employment Agreement provides for the Singapore courts to have exclusive jurisdiction in relation to any disputes "*relating to this Agreement and/or the Employment*" – in so far as the issues arising in relation to the ESOP Agreement are not caught by the Singapore arbitration clause in the Subscription Agreement, they are likely to be covered by the Singapore jurisdiction clause (and the presence of an exclusive jurisdiction agreement in favour of another forum is usually a weighty factor in favour of that other forum);

94.6 the place of performance of both the Employment Agreement and the ESOP Agreement (at least in so far as the taking up of employment by Mr. Rudianto with SCM was concerned) is Singapore;

94.7 whilst JLS is incorporated in this jurisdiction, the underlying businesses (i.e. Biologics and Therapeutix) are incorporated in Singapore; and,

94.8 whilst the JLS directors' duty to exercise their powers for proper purposes arises under Cayman law, the content of that law is most unlikely to be disputed; rather it is the application of that law to the facts of the case that is likely to be contentious and in the latter connection the Singapore courts (which are also common law courts) are just as well placed as the Cayman courts to assess whether the directors complied with or breached their duty.

95. In my view, those are predominantly arguments related to the Title Dispute. The parties have shown themselves quite capable of instructing counsel and filing detailed evidence in relation to the Stay Summons[54]. The Article 9(1)(c) Dispute is subject to Cayman Islands law relating to a Cayman Islands company and a contract between that company and its shareholders that is governed by Cayman Islands law. One of the three directors is resident here. I accept that, in principle, the issue might be one that is capable of being dealt with by an arbitral panel or court in Singapore with the benefit of expert evidence. However, the outcomes of the Article 9(1)(c) Dispute and the Title Dispute are not in my view interdependent. SCM might succeed with the Title Dispute but that still does not mean that the Decision might not be impugned. In my view the Defendant has not

[54] Indeed it is difficult to see what more evidence might be required other than perhaps affidavits from Mr Edgington and Mr Kanchanadul dealing with their knowledge of events at the time that the Decision was taken.

discharged the burden of showing that Singapore is the more appropriate forum to deal with the Article 9(1)(c) Dispute.

Stay Summons

96. On the basis of the above, the Stay Summons is dismissed.

Directions

97. This just leaves the question of directions. Whilst counsel did touch on this subject during the hearing and in their written submissions, it seems to me that both parties should be given the opportunity in light of this decision to review what their proposals in that regard might be.

Costs

98. The Plaintiff made an offer in its letter dated 10 April 2023 inviting the Defendant to consent to the reversal of the redemption of RBH's shares in JLS on the basis that it would be without prejudice to the parties' respective positions. The register of members has not been rectified and that issue remains the subject of these proceedings. However, it does seem to me that overall the Plaintiff has been successful in resisting the Stay Summons and should get its costs but I am happy for the parties to make brief written submissions on that before I make a final order.

Hon. Justice Alistair Walters (Actg)
Judge of the Grand Court