



GALASYS - THE CASE SO FAR

FEBRUARY 2017

The Company: At the heart of this dispute is Galasys PLC, a Jersey incorporated company which was, prior to the dispute, listed on AIM, describing itself as a global provider of integrated services and technical solutions for visitor attractions and events. See more on the company [here](#). It is a fast growing and valuable business which is what triggered the litigation; in short, shareholders and investors (Netrove, Shiji and Well Oriental Limited – see further below) have been competing over control of the business.

The Argument: Since October 2015, the board of Galasys has been deadlocked due to a dispute between, on the one hand, a faction of non-executive directors, including Teh Kim Seng (TKS) and Vincent Lai (VL), and, on the other hand, the rest of the board. TKS and VL in turn control two large shareholders in Galasys: Netrove Ventures Corporation (Netrove) and Shiji (Hong Kong) Limited (Shiji) respectively. Mourant Ozannes represent TKS and VL. We act for all the other members of the original board, namely Seah Kok Wah, Chuah Teong Ming, Hee Chee Keong, Chin Chee Seong (SKW, CTM, HCK and CCS respectively). We also act for the majority shareholder of Galasys, namely Well Oriental Limited (WOI). SKW, HCK, CCS are all shareholders of WOI along with Low Kok Thai (LKT), for whom we also act.

The Jersey litigation arises from the disputed dismissal/termination of HCK and CCK as executive and non-executive directors respectively at the instigation of TKS, VL and another non-executive director who has since resigned. It is alleged that TKS and VL were conspiring to take control of the board and, in turn, the company by seeking to change the constitution of the board. This created two separate factions, with TKS and VL on the one hand and SKW, CTM, HCK and CCS on the other. Each faction called a number of subsequent board meetings which resulted in a raft of competing resolutions. The board was plainly in deadlock and the company was unable to operate.

The battle at board level triggered proceedings in Malaysia, London and Jersey, each of which was an attempt to take control of the company or to block (by injunction) the decisions of the competing board faction. For example, in order to seek to break the board deadlock WOI called an EGM. The intention was to allow the members of Galasys to resolve the dispute and to select and appoint directors of their choice by majority decision. However, TKS and VL instructed Nabarro to issue urgent injunctive proceedings which sought to enforce what is known as the Relationship Agreement – an agreement which was part of the listing process designed, *inter alia*, to prevent WOI from exercising its majority shareholding inappropriately and to the detriment of the minority shareholders.

The Proceedings: The Jersey action is unprecedented insofar as there are no previous examples of a Jersey company invoking the assistance of the Jersey court in relation to the resolution of a dispute between directors. The urgency resulted in the action being listed as a *cause de breviete* (akin to a speedy trial), which is a rarity. The AIM regulators watched the case with interest and published updates to the market. The litigation was complex and the overlap between the multiple jurisdictions and intervention of the AIM Nominated Advisor (NOMAD) made the case very demanding, necessitating the legal team working virtually full time. The parties all

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flew to London on two occasions in the hope of reaching a mediated settlement, but on both occasions the mediations failed. It is impossible to summarise the entire case history. Suffice to say that the litigation took its toll on the company and on its performance. The NOMAD eventually resigned resulting in the company being de-listed. The de-listing triggered the automatic termination of the Relationship Agreement and thus opened the door to another EGM. The EGM took place in September and the members of the company resolved to discontinue the proceedings.

TKS challenged the EGM, the resolutions, and the mechanism by which it was called (VL had by this time retired as director and effectively absented himself from further participation in the litigation). At a hearing in October the Jersey court dismissed TKS's challenges and endorsed the validity of the EGM vote to discontinue. An AGM followed at which TKS was removed as a director and HCK's status as a director was confirmed by the members (but not CCS's – see further below). The board now comprises a selection of our clients, namely SKW, CTM and HCK, who are in the process of rebuilding the business in the hope of re-listing at some stage in the future. However, notwithstanding the decision of the members to discontinue and the removal of TKS as a director, TKS continues to challenge every step in the litigation including the company's formal application to discontinue which is listed to be heard on 24 March 2017.

Why the case is important? When the September EGM was challenged by TKS, the Jersey court reached its decision to refuse the challenge and endorse the validity of the business done at the EGM by following an old and little-known legal principle that allows shareholders to exercise a reserve power in general meeting to intervene in the management of a company when its board is paralysed: [see judgment here](#). In doing so, the Jersey court indicated a preference for an English House of Lords case, which supported that wide approach, over a rival decision of the Court of Appeal of New South Wales which did not regard a deadlock between board members as giving rise to any general power of management in the shareholders in general meeting when the deadlock could be resolved by the meeting exercising its power to appoint additional directors. The rule is a useful one for shareholders, directors and company administrators to be aware of.

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