Press Summary

24 July 2025

Jardine Strategic Limited (Appellant) v Oasis Investments II Master Fund Ltd and 80 others (Respondents) No 2 (Bermuda)

[2025] UKPC 34

On appeal from the Court of Appeal for Bermuda

Justices: Lord Briggs, Lord Leggatt, Lord Burrows, Lady Rose and Lord Richards

Background to the Appeal

This appeal, the second of two before the Judicial Committee of the Privy Council (the "**Board**") regarding a dispute over shareholders' rights in Bermuda, concerns whether plaintiff shareholders are entitled to see the legal advice given to a company in which they hold shares for the purposes of litigation against the company. This also has significant consequences for the law of England and Wales.

The appellant company, Jardine Strategic Limited (the "**Company**"), was formed from the amalgamation on 14 April 2021 of two companies within the Jardine Matheson corporate group. The result of the amalgamation was that all the shares in one of the merging companies were cancelled, and the newly formed Company is required to pay fair value for those cancelled shares to shareholders of the old company who voted against the proposed transaction but whose shares were nevertheless cancelled when the transaction was approved at a shareholders' general meeting.

Some of those shareholders, the respondents in this appeal, were not satisfied with the figure that the group offered them as the fair value for their shares. That figure was US$ 33 per share. They have triggered the statutory mechanism set out in the Bermudan Companies Act 1981 under which the court is required to determine the fair value of those shares for the Company to pay.

As part of their claim, the plaintiffs sought various orders for discovery, including to see the legal advice that was given to the Jardine Matheson group when it was deciding what value it would offer as fair value to dissenting shareholders who had their shares cancelled. The Company asserted that those documents, which it had listed in its discovery but not made

available for inspection, were covered by legal professional privilege, in particular legal advice privilege.

The plaintiffs assert that, as a matter of Bermudian law, a company cannot in the course of litigation between it and shareholders or former shareholders withhold documents from inspection on the ground that the documents are covered by legal advice privilege (the "**Shareholder Rule**").

At first instance, the Chief Justice of Bermuda held that the Company was not entitled to maintain legal advice privilege in respect of legal advice received by Jardine Strategic because the plaintiffs had been shareholders in that company. The Court of Appeal dismissed the Company's appeal.

The appellant now appeals to the Board.

Judgment

The Board unanimously allows the appeal. The Shareholder Rule forms no part of the law of Bermuda, and it ought not to continue to be recognised in England and Wales either. Lord Briggs and Lady Rose give the judgment of the Board, with which all other justices agree. The Board also issues a *Willers v Joyce* direction, applying the decision so as to bind the courts of England and Wales.

Reasons for the Judgment

At the outset, it is important to set out what this appeal is not about: the plaintiffs accept that legal advice which is sought by the Company once the litigation has started or is in contemplation is protected from inspection, even by shareholders, and is not covered by the Shareholder Rule (**[7]**). Secondly, the plaintiffs are not asserting that all shareholders have a right at any time to see company documents, including legal advice received by a company, in the ordinary course of their relationship (**[8]**). Their suggestion instead is that the Shareholder Rule should only apply to override legal advice privilege in the context of a discovery exercise in litigation in which the company and the shareholders or former shareholders are involved.

The concept of legal professional privilege has long been held to be a fundamental condition on which the administration of justice rests (**[20]**). It is at heart a necessary corollary of the right of any person to obtain, in confidence, skilled advice about the law. Statutory and common law exceptions to privilege have therefore been narrowly construed, and are generally limited to situations where some other interest is present, such as a risk of crime, or where two parties have retained the same legal representation and one now wishes to bring a claim against the other (**[24-27]**). The Shareholder Rule is one of these exceptions, and has traditionally been based on a now-antiquated principle that shareholders have a proprietary interest in the assets of the companies in which they own shares, and therefore hold a right to see any legal advice which has been paid for from those assets and obtained prior to the shareholders' dispute arising (**[28-30]**). This justification, now almost 140 years old, has increasingly been replaced by an argument that the Shareholder Rule is instead an example of joint interest privilege (**[31-42]**). It has only recently been questioned, both in overseas common law jurisdictions and in England and Wales (**[42-48]**).

The Board is satisfied that the Shareholder Rule forms no part of the law of Bermuda, and that it ought not to continue to be recognised in England and Wales either (**[80]**). It is like an emperor who has worn no clothes, and it is time that was acknowledged (**[82]**).

Its original proprietary basis is wholly inconsistent with the proper analysis of a registered company as a legal person separate from its members, nor can it be justified as a form of joint interest privilege (**[81]**). Whilst it is true that there may be a frequent alignment between the interests of a company and its shareholders, this is an oversimplification. Not only do the interests of different classes of shareholders frequently diverge, even a solvent company has several different stakeholders other than just its shareholders whose interests have to be taken into account, such as its workforce (**[86-87]**). Many decisions as to how to balance those interests will need, or at least benefit from, candid, confidential, legal advice, which would be discouraged if there was even a possibility that this would become available to shareholders in future litigation (**[88-90]**). A narrower, more nuanced, basis for occasionally depriving a company of legal professional privilege in litigation would likely have a similar effect, creating a sea of uncertainty for directors (**[92-98]**).

For this reason, the Board would therefore advise His Majesty to allow the appeal (**[102]**). There is therefore no need to address any of the other issues which the appellant raised (**[103-107]**).

Finally, to the extent that there is also continued uncertainty as to the status of the Shareholder Rule in England and Wales, the Board views it as appropriate that this decision be regarded as representing the law of England and Wales, and therefore issues what is known as a *Willers v Joyce* direction (named after the case *Willers v Joyce (Re: Gubay (deceased) No 2)* [2016] UKSC 44 in which a panel of nine Supreme Court Justices considered the precedential value of the Board's decisions as regards the law of England and Wales) (**[112-113]**).

The Board therefore declares that this decision of the Board to abrogate the Shareholder Rule for the purpose of litigation should be regarded as binding in the courts of England and Wales.

References in square brackets are to paragraphs in the judgment.

NOTE:
This summary is provided to assist in understanding the Committee's decision. It does not form part of the reasons for that decision. The full opinion of the Committee is the only authoritative document. Judgments are public documents and are available at: Decided cases - Judicial Committee of the Privy Council (JCPC)