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**Neutral Citation Number: [2026] CICA (Civ) 16**

**IN THE CAYMAN ISLANDS COURT OF APPEAL**
**ON APPEAL FROM THE GRAND COURT OF THE CAYMAN ISLANDS**
**FINANCIAL SERVICES DIVISION**

**CICA CIVIL APPEAL No. 0005 and 0014 of 2026**
**(formerly FSD 0005 of 2026 (JAJ))**

**BETWEEN**

**RAFFLES INTERIOR LIMITED**

**APPELLANT/RESPONDENT**

**-AND-**

**HAN VISION HOLDINGS LIMITED**

**APPELLANT/RESPONDENT**

**Before:** The Rt Hon Sir John Goldring, President
The Hon Sir Michael Birt, JA
The Hon Clare Montgomery KC, JA

**Appearances:** Mr Hermann Boeddinghaus KC, Mr Nigel Smith and Ms Jasmin Davies, Carey Olsen for Raffles Interior Limited

Ms Blair Leahy KC, Mr Hamid Khanbhai, Mr. Jordie Fienberg, Campbells LLP for Han Vision Holdings Limited

**Heard:** 2 September 2026
**Draft circulated:** 15 September 2026
**Judgment delivered:** 17 September 2026

## JUDGMENT

**Clare Montgomery JA**

### Introduction

1. This case concerns fundamental disagreements between the directors of Raffles Interior Limited, a Cayman Islands holding company listed on the HK Stock Exchange (the company). Its board, as presently constituted, is controlled by a group of directors led by the senior executive director, Mr Ding (the controlling directors). The majority shareholder in the company at present is Han Vision Holdings Ltd (Han Vision). Han Vision acquired majority control of the company from Ultimate Global (a company part owned by Mr Ding) on 29 July 2025 for HKD$33.6 million. It is controlled by Mr Zheng and he is formerly the Chairman and remains an executive director of the company.

2. The existing state of affairs is under challenge. In the case of the control of the board, Han Vision wishes to remove the controlling directors at an EGM that it validly requested on 21 November 2025 but which has been postponed twice by the controlling directors, most recently to 18 September 2026. An AGM due to be convened on 30 June 2026 has also been postponed in order to hold the ring on this appeal. This gives rise to what I will call the postponement issue.

3. In the case of Han Vision's majority interest, that is under threat of dilution as a consequence of a board-approved resolution made on 9 January 2026 to authorise the issue of 200 million new shares, said to be required to provide urgently needed liquidity for the company (the new shares).

4. Han Vision obtained an ex parte injunction restraining the issue of the new shares by the company on 11 January 2026. The injunction was discharged by the Honourable Justice Asif KC (the Judge) on the return date of 16 February 2026. In his written reasons for judgment the Judge

explained that he would have continued the injunction on the basis of American Cyanamid, but because he considered that the continuation of the injunction would, as a practical matter, finally determine the underlying contest between the parties without a trial, American Cyanamid did not apply. He held that the principles in Cayne v Global Natural Resources plc [1984] 1 All ER 225 ("Cayne") and NWL Ltd v Woods [1979] 1 WLR 1294 ("NWL"), required him to discharge the injunction because he was not satisfied that he would grant summary judgment in favour of Han Vision.

5. The discharge of the injunction is the subject of an appeal by Han Vision on the basis that the injunction should have been continued. Leave to appeal (insofar as required) was granted on 21 March 2026 and a stay pending appeal was ordered to continue until the hearing of the appeal. At the hearing the full Court ordered the stay to continue pending this judgment.

6. In relation to the postponement issue, in a judgment dated 23 June 2026, the Judge held that on the true construction of the Articles of the company the directors had no power under Article 64E to postpone the requisitioned EGM to a date after 20 January 2026 or the AGM beyond 30 June 2026. The Judge also held that the controlling directors should be restrained from taking any step at the EGM or AGM to prevent Han Vision's resolutions being put to a vote, to prevent Han Vision from voting, or to decline to count Han Vision's votes on the ground of any alleged conflict of interest. The company sought a stay of these decisions and (if leave was required) leave to appeal on the basis of the Judge's legal error in interpretation.

7. At the hearing the full Court granted leave to appeal if it was required and indicated it would deal with the substantive appeal. As with the Han Vision appeal, a stay was ordered pending this judgment. I should add that although the company suggested that it was not expecting to deal with the substantive appeal before the full Court, it had stated in its skeleton argument at [7] that it was contending that the application for leave and the appeal should be heard together. Permission was given to the company to file further written submissions after the conclusion of the oral hearing. 40 pages of submissions were submitted by the company pursuant to the permission of the court. I do not consider that any disadvantage has been caused to either side by the decision to treat the hearing as a rolled-up hearing.

**Fresh evidence**

8. Both the company and Han Vision have applied to adduce further evidence. Both parties accept that Ladd v Marshall principles govern applications to adduce fresh evidence on an appeal from an interlocutory decision in the Cayman Islands: see Scully Royalty Ltd v Raiffeisen Bank International AG (CICA (Civil) Appeal No. 21 of 2020) at [27]-[45].

9. Han Vision wishes to adduce evidence from Stuart D'Addona. This evidences the decision of certain minority shareholders claiming to hold 10.57% of issued shares to requisition a Minority Shareholder EGM on 11 August 2026. This meeting is said, on the basis of unanimous votes cast by minority shareholders holding 26.6% of issued shares in the company (that is a majority of minority shareholders), to have approved a resolution to remove the controlling directors. The evidence is said to be relevant to the issue whether the company and its controlling directors are operating in the interests of the minority shareholders. The Minority Shareholder EGM also (depending on whether it was validly adjourned as the controlling directors claim) may have been effective to reconstitute the board. Since the events recorded post-date the hearing before the Judge, the evidence is said to be properly admissible as fresh evidence as it deals at least with the controlling directors' argument that they have been acting in part to protect the interests of minority shareholders in the company.

10. In addition, application is made to introduce evidence of an Executive Report: Financial Analysis, Cash Flow Forecast & Financing Assessment dated 12 March 2026 and a series of unaudited financial statements recording that the company had a cash runway of 1 year as at January 2026. This evidence is relied on to demonstrate there was no immediate need for new shares to be issued in order to keep the company solvent, notwithstanding the company having stated the new share issue was "necessary, urgent and unavoidable".

11. The company for its part seeks leave to adduce communications with the HK Stock Exchange (HKEX) containing guidance on the resumption of the listing of the company, its shares having been suspended since 4 November 2025. It also seeks to adduce a further statement from Mr Ding dealing with the updated management accounts of the Company to 30 June 2026 and exhibiting correspondence in connection with the Minority Shareholder EGM and its purported

postponement pursuant to Article 64E until 2 September 2026. We were informed at the hearing that there has been a further postponement to 18 September 2026 and the validity of the meeting is the subject of separate proceedings due to be heard on 8 September 2026.

12. The full Court permitted the evidence to be heard de bene esse and for reasons that will be apparent from my judgment I consider it was all admissible as fresh evidence.

**The restraint order**

13. At the heart of Han Vision's appeal is the argument that the Judge was wrong not to apply the American Cyanamid principles as the injunction did not engage the 'no trial' exception. Alternatively, it is argued that Han Vision would have been entitled to summary judgment so that an injunction should have been continued in any event, given the Judge's approach to the principles in Cayne.

14. Finally, it is said that the Judge was wrong in his approach to the principles in NWL and Cayne. In particular it is submitted that he was wrong to impose a summary judgment threshold. Han Vision argues that although the court must have regard to the respective merits of the cases in assessing the relative impact of any injunction, the Judge must simply consider the "broad principle: what can the court do in its best endeavours to avoid injustice?" (Cayne at page 232c).

15. <u>American Cyanamid:</u> The conclusion that there is a so-called 'no trial' exception to the American Cyanamid principles appears to me to be fully justified on the case law. The factual conclusion reached by the Judge that the injunction obtained by Han Vision would effectively put an end to the claim so that the no trial principle was engaged was a conclusion that was open to him on the evidence and there was no obvious flaw in the evaluative judgment that underpinned it.

16. As the Judge observed in refusing leave to appeal in relation to this aspect of his judgment, this aspect of the Han Vision appeal amounted to an invitation to this Court to re-weigh the same evidence and arrive at a different discretionary conclusion. This is precisely the exercise from which this Court should abstain on an appeal from an interlocutory, evaluative decision: see Merkanti Holding plc v Raiffeisen Bank International AG (CICA (Civil) Appeal No 14 of 2021 at [6].

17. It was well within the range of rational evidential evaluation that if the injunction were continued, Han Vision would obtain control of the company through the replacement of its board at the EGM, the proposed placement would be abandoned, and the claim would not be pursued to trial, so that the question as to the proper exercise of the board's powers to pursue the placement in the best interests of the company would never be tried.

18. Summary Judgment: Han Vision argues in the alternative that it was entitled to summary judgment and thus an injunction should have been granted since its case that the new share issue was undertaken to protect the controlling directors' position by creating or destroying a majority and that this was an improper purpose was overwhelming, see Chimaera Capital Ltd v Pharmaust Ltd [2007] FCA 1539. However the evidence of purpose was not all one way. There was some evidence concerning the company's deteriorating liquidity position and the claimed proper purpose for concluding that the placement was required had to be tested in evidence.

19. Han Vision argued before us that the legitimacy of the purpose of the board did not arise because the board had not considered the relevant factors or principles. However, in my view there was sufficient evidence before the Judge that the question of the propriety of the new share issue had been considered by the board and that the controlling directors may have acted for a proper motive. That evidence may have been strongly contestable for the reasons identified by Blair Leahy KC on behalf of Han Vision, but in my view could not be said to be overwhelmingly so. Accordingly, the Judge was not plainly wrong in deciding that Han Vision would not be entitled to summary judgment.

20. <u>The scope of the decision in Cayne:</u> The central issue before the full Court is the scope of the Cayne principles and their application in the Cayman Islands. The parties agree that the relevant principles are to be found in NWL and Cayne.

21. In NWL the House of Lords was dealing with a case in which the injunction (or the refusal of the injunction) would effectively determine the dispute between the parties. Although it was concerned with a statutory scheme in relation to trade disputes, the House of Lords decided the case by reference to broad expressions of principle applicable to all cases where the result of an injunction application would likely determine the case.

22. Lord Diplock said at p 1306 F-G: "Cases of this kind are exceptional, but when they do occur they bring into the balance of convenience an important additional element. In assessing whether what is compendiously called the balance of convenience lies in granting or refusing interlocutory injunctions in actions between parties of undoubted solvency the judge is engaged in weighing the respective risks that injustice may result from his deciding one way rather than the other at a stage when the evidence is incomplete." Lord Diplock concluded at p 1307 A-C: "Where, however, the grant or refusal of the interlocutory injunction will have the practical effect of putting an end to the action because the harm that will have been already caused to the losing party by its grant or its refusal is complete and of a kind for which money cannot constitute any worthwhile recompense, the degree of likelihood that the plaintiff would have succeeded in establishing his right to an injunction if the action had gone to trial, is a factor to be brought into the balance by the judge in weighing the risks that injustice may result from his deciding the application one way rather than the other."

23. The House of Lords rejected the argument that the likelihood of success at trial was "to be accorded overriding or paramount importance". It held instead that the likelihood of success was but one factor in assessing where the balance of justice lay. Lord Fraser at p 1309C-D cited the principles of Scots law in holding that "the likelihood of successfully establishing the defence would be treated by the court as a matter of importance, and in a case where the court considered that the respondent would probably be entitled to rely on the defence, it might be slow to grant an interlocutory injunction which would in practice exclude the defence. But that would be a matter for the court to decide in the circumstances of each particular case." In his view at p 1310 "the likelihood of success should be regarded as <u>one</u> of the elements of the balance of convenience" in this type of case (emphasis added).

24. In Cayne the Court of Appeal held that it should follow the spirit of the decision in NWL in cases where the balance of convenience test was not appropriate because the practical effect of the injunction was to end the action. Eveleigh LJ stated that in these cases the court should ask itself; "what can the court do in its best endeavour to avoid injustice", see p232 g-h. Although Eveleigh LJ went on to say that the presence of an overwhelming case might justify a conclusion in favour of that case, there is nothing in his judgment to suggest that the strength of the case was anything other than a factor in the assessment of the balance of justice albeit a potentially weighty one.

Kerr LJ agreed that NWL applied and that the practical realities were relevant to the question as to how the discretion of the court should be exercised and emphasised at p234g "the grant or refusal of an injunction is ultimately a matter of statutory discretion and that the powers of the court cannot be fettered by decisions in general terms when the facts of the cases will vary infinitely". May LJ framed the question as whether an injunction "is likely to do an injustice" at p238f if the effect is to preclude the possibility of a full trial.

25. The broad questions of justice set out in NWL and Cayne are reflected in the commentary in the White Book which states that, where a trial is in fact unlikely to take place, the court "may be entitled to approach the matter on a broad principle by asking 'what can the court do in its best endeavour to do justice' (sometimes known as the 'broad brush' approach)". In Commercial Injunctions; Gee 7th Ed it is observed that where "the dispute will be in substance effectively determined by the decision on the interim injunction, there should be some assessment of the claimant's prospects of success at the final trial." It is not suggested in either text that the absence of a case for summary judgment is determinative of whether an injunction should be granted.

26. The decision in Cayne has been considered in the Cayman Islands (see Xie v XIO GP Ltd [2019] 1 CILR note 6). The Judge in this case determined that Cayne and NWL should be applied and the parties agreed before this Court that the principles in NWL and Cayne apply in the Cayman Islands.

27. I agree that the principles in NWL and Cayne apply in the Cayman Islands. However, in my judgment the question of whether Han Vision had a case for summary judgment was not the only relevant factor that the Judge should have considered. Instead, he should have made an assessment of the relative merits of the claims on both sides and determined the relative injustice that might flow from the grant or the refusal of the injunction. The fact that there would not be summary judgment in the case in favour of Han Vision was merely one factor, albeit a powerful one, in the assessment of the court.

28. This is because the core question for the court was whether the continuation of the injunction was likely to do an injustice to the company or do greater injustice to Han Vision (see Cayne at 233f-g). This question is materially identical to the need identified by Lord Diplock in NWL at 1306-

1307 to weigh: "the risks that injustice may result from [the judge] deciding the application one way rather than the other."

29. This is not a question that the Judge asked or answered. He decided the case at [68] on the basis that he "should not continue the injunction" unless he would "give summary judgment". He treats this question as a threshold question as his heading to this part of the judgment states in terms.

30. I consider that the identification of this as a threshold issue misstates the test in Cayne. The existence of a case for summary judgment is but one component in the analysis of the court as to the balance of justice.

31. In addition, contrary to the approach of the Judge evident at [70], the balance of justice is not merely concerned with the injustice caused to the company by the loss of a trial. Any injustice to Han Vision arising from the refusal of the injunction also has to be weighed in the balance.

32. Given my view that the Judge did not address the relevant question and thereby erred in law, it falls to this Court to identify the course that it considers will carry the lower risk of injustice if it should turn out that the injunction may be wrongly granted or refused.

33. In assessing the risks of injustice to the parties, I consider that the unwinding of the harm caused to Han Vision by the loss of a majority position following a new share issue would be difficult if not impossible to achieve. Any claim for the recovery of damages for this loss would be fraught with difficulty. This was also the conclusion reached by the Judge at [56]. He held that the loss of the majority stake "would be very difficult to undo or to compensate by way of damages."

34. By contrast a restriction on issuing new shares does not appear to me to cause any substantial injustice to the company. It is the interest of the company rather than the interests of the controlling directors that is relevant. True it is that the company will not have the benefit of a determination of the bona fides of members of its board if the controlling directors are removed before their legitimate purpose in issuing the new shares can be assessed at trial (the purpose trial). However, as the Judge concluded, that purpose was unlikely to be determined at trial in any event because the EGM was always likely to take place before any purpose trial, with or without an injunction.

35. However, even if the loss of the purpose trial were a direct consequence of the continuation of the injunction, that would not appear to me to risk real injustice to the company (as opposed to the controlling directors individually). The injustice occasioned by the loss of the opportunity for a finding of proper purpose in the making of a board resolution for the company is limited. It seems to me that there would only be a significant injustice caused to the company if the solvency of the company were actually threatened by the continuation of the injunction. I am not satisfied that there is any evidence to support this contention.

36. First, the continuation of the injunction does not prevent the board taking other non-diluting steps to raise capital or cash as needed. There is also no sufficient evidence that the company was or is at real risk of collapse without the issue of new shares. The fact that the available cash had apparently fallen at the year end of 2025 to SGD $6.2m as compared with c.SGD$15m at the year end of 2024 did not demonstrate there was or is an immediate cash requirement, only capable of resolution through a new share issue.

37. The interim accounts from June 2025 did not suggest that there were any concerns about the liquidity of the company even though it held only SGD $6.4m at that stage. Indeed this cash holding formed the basis for the warranty at sale that the company had sufficient working capital for the year from 24 July 2025 (ie a 12 month runway).

38. The fresh evidence as to the financial position of the company appears to me to strengthen my conclusion and I consider it should be admitted. As at the end of 2025 (ie 9 days before the 200m new shares were authorised for issue) the cash or cash equivalents stood at SGD $6.2m (that is only marginally below the level at the half year 2025 which supported the warranty of a 12 month runway). Although the board paper produced on 9 January 2026 claimed that the new issue was needed to reinforce the liquidity position it made no claim of a threat to solvency. It merely stated that the issue of new shares was the most "expedient and strategic solution". The company sought to justify this decision in front of the Judge by reference to a single sheet of paper said to amount to a "Balance sheet as at Dec2025".

39. On the evidence before us, including all the fresh evidence, the continuation of the injunction does not appear to be likely to stifle the company's ability to raise cash. It remains open to the company to secure bank borrowing or an injection of capital by way of a rights issue. The fresh

evidence confirms that the level of certainty of successful fund raising by way of a new issue of shares is "low" as opposed to the "medium – high" level of certainty attaching to a rights issue/bank borrowing.

40. I am not persuaded that the injunction gives rise to any real risk that the business might collapse into insolvency. The controlling directors claim that there was a cash runway on the basis of the figures at the end of 2025 of a mere 3 months, appeared to be wholly at odds with the 12 month runway which was warranted in the sale agreement in July 2025 based on the same or similar levels of cash.

41. Accordingly, given the substantial risk of material injustice to Han Vision if the injunction is not continued as compared with the lack of any real injustice to the Company if the injunction is continued, the balance of justice comes down strongly in favour of continuing the injunction notwithstanding that the strength of Han Vision's case would not be sufficient to lead to summary judgment.

42. For these reasons I would allow the Han Vision appeal, set aside the discharge and costs order and grant the injunction in the terms set out in the draft order provided to the Court to continue until further order of the Grand Court.

**The postponement issue**

43. The company accepts that the Judge was right to decide the proper construction of the company's Memorandum and Articles of Association as a preliminary issue. It argues that, properly construed, Article 64E gives the controlling directors power to postpone the requisitioned EGM beyond the period stipulated in Article 58 to a date after 20 January 2026 and the 2026 AGM beyond 30 June 2026.

44. Article 58 of the Articles governs the requisition of an EGM by members holding 10% or more of the voting rights. A requisitioned meeting "shall be held within two (2) months after the deposit of such requisition", and if within 21 days the board fails "to proceed to convene such meeting" the requisitionists may convene it themselves. It does not explicitly address whether a meeting,

once validly convened in accordance with Article 58, may be postponed under Article 64E beyond two months.

45. Article 64E deals with the power of postponement. It provides that the directors may change or postpone the meeting to another date, if "in their absolute discretion, [they] consider that it is inappropriate, impracticable, unreasonable or undesirable for any reason to hold the general meeting" on the appointed date. The Article contains subparagraphs (a) to (d), including provision for notice of postponement, for fixing the new date, and, at (d), for confining the need to give notice of the business to be conducted at the postponed meeting.

46. It is common ground that the court is required to determine the meaning of the relevant words in context. Articles of a company fall to be read as a whole and as a business document, construed so as to give them reasonable business efficacy, see Re Global-IP Cayman Bronzelink Holdings Limited [2021] (1) CILR 228 at [43(v)].

47. This is a task that is normally carried out with only limited reference to the background facts for the reasons explained in DnaNudge Ltd v Ventura Capital GP Ltd [2023] EWCA Civ 1142 at [51]; “the process of interpretation to arrive at the true meaning of a provision in a company's articles of association must concentrate on the natural and ordinary meaning of the words used, when viewed in light of the scheme and purpose of the articles in general, any extrinsic facts about the company or its membership that would reasonably be ascertainable by any reader of the company's constitution and public filings at Companies House, and commercial common sense."

48. The argument between the parties is in essence whether a power to postpone beyond two months would be unworkable and lack business efficacy so as to invest the words used with particular meaning.

49. Given the extraordinary nature of the general meeting provided for in Article 58, the use of the imperative word ‘shall’ and the anti-avoidance mechanism implicit in the power to self-convene, I agree with the Judge that the power of postponement cannot have been intended to be available to be used to extend the period in which a meeting is to be held beyond 2 months.

50. The company accepts that the constitutional division of responsibility within the articles of association must be respected but argues that different companies might make different provisions as to where boundaries may be drawn.

51. There is though no suggestion in the evidence that the founding shareholders or the shareholders when the company was listed on the HKEX, would have any reason to confer on its directors powers to control the holding of extraordinary general meetings by the operation of a power of postponement beyond the mandatory time limits specified in Article 58.

52. The company claims that the potential for tyrannical postponement by postponing directors (on its construction of the power) is met by the need for the directors to act in good faith. However, this is no answer to the Judge's point that the construction favoured by the company would in practice give an unfettered discretion to the directors to postpone meetings unless and until the convening members were able to bring a claim against the board before a Court (as has been the case with the Minority Shareholder EGM). In common with the Judge I do not consider a discretion that is unfettered in practice can be justified as it subverts the balance of control between the members and the board.

53. The company's contention that it would make no business common sense to truncate the power of postponement is based on assertion rather than any analysis or reasoning. Given the central role of the EGM in controlling the activities of the board of directors, it would prevent the use of an EGM to provide timely limits on the power of the board if there was a power to postpone of the type suggested.

54. The business efficiency argument in favour of limits to the power to postpone is even more evident in the case of the claimed power to postpone the AGM beyond 30 June of each year, in circumstances where the financial year end for the company is the calendar year end.

55. Article 56 provides that the AGM "shall be held for each financial year" and "must be held within six (6) months after the end of the company's financial year (unless a longer period would not infringe the rules of the Listing Rules)". The HKEX listing rules, by rule 13.46(2)(b), do not permit the AGM to be held later than 6 months after the financial year end. It is suggested that a company may apply for an extension of the 6 month period (see note 2 to the rules). Even if this is correct (it is disputed by Han Vision) there is no suggestion that an application for an extension

has been made to the HKEX. Nor has the company made any amendment to Article 56 to extend the 6 month period.

56. In my view there is no basis for construing the power to postpone under Article 64E as permitting a postponement of an AGM beyond the mandatory time limits set in Article 56 (and the listing rules). I consider that the power to postpone must have the same meaning and effect in the case of all general meetings, whether extraordinary or annual.

57. In my judgment the company can take no comfort from its argument that there is no proviso in Article 64E which it says has "unambiguous breadth".

58. Given the clear purpose of Articles 56 and 58, Article 64E cannot be read as taking precedence over Articles 56 and 58 merely because there is no proviso.

59. The sequence in which the Articles appear also does not seem to me to provide any reliable guide to precedence. Articles 64A-H appear amongst a group of Articles (61-65) under the heading "Proceedings at General Meetings". The heading and the content of these Articles appear to confirm that the Articles in this section are concerned with procedural rather than substantive matters. If I am correct in this analysis, it is not tenable to suggest that these procedural provisions take precedence over the mandatory provisions about meetings.

60. Even if (as is suggested by the company) Article 64E was a later addition, that does not provide any support for the contention that it should be construed as taking precedence. Indeed, if it was a later addition intended to take precedence over Articles 56 and 58, the need to state this intention cannot have been overlooked by the draftsman.

61. The business need for the time limits in Articles 56 and 58 to take precedence appears to me to be clear. In both cases the time limits are workable and generous. They do not support the proposition that there would be any business necessity to have a postponement power to hold the meetings outside the mandatory time limits, merely because it might be "inappropriate, impracticable, unreasonable or undesirable for any reason".

62. Accordingly, I do not consider that there is any viable basis for contending that the Judge was wrong to construe the Articles in the way he did. In my judgment, the power to postpone cannot be read as allowing postponement beyond the mandatory time limits in Articles 56 and 58.

63. The Company's argument that, provided any meeting is convened within the specified time limits, it may be postponed beyond the limit makes no sense. Treating the mandatory timing elements in Articles 56 and 58 as governing only the convening of the meeting, not the time at which it is held, finds no support in the language of the Articles. If the intention was merely to set a time limit as to the dates when the meeting "shall be convened to be held" that could have been clearly stated. In my judgment the language requiring that a meeting "shall be held" means exactly that; the meeting must be held. A meeting postponed is not a meeting that has been held.

64. The argument that the power of adjournment may be exercised to interrupt a meeting, and lead to it being completed beyond the time limits, does not appear to me to support a similar power of postponement by parity of reasoning, because in the case of an adjournment a meeting has at least arguably been "held".

65. The suggestion that broader powers of postponement might need to be conferred upon a listed public company to avoid oppression of the minority by the majority shareholders also appears to be hopeless. Under Article 58 an EGM may be requisitioned by shareholders holding a mere 10% of the issued shares.

66. There is certainly no reason for conferring a wide postponement power on directors under the listing rules. Rule 14 (5) of the HKEX Core Shareholder Protection Standards issued by the HKEX emphasises the importance of the power of minority shareholders to convene an extraordinary general meeting. A power to convene a meeting would be meaningless if that power could be deprived of any force by practically unfettered powers of postponement.

67. For these reasons I consider that the construction arguments advanced by the company in its oral submissions and in its lengthy post hearing written appeal submissions are untenable. I consider that the Judge's construction of the Articles was plainly right.

**Restraint on the conduct of the EGM /AGM**

68. The company also appeals the order of the Judge insofar as it restricts the controlling directors from interfering with the process of voting at the EGM/AGM. The order appears to have been made on the assumption that there was no valid basis for preventing Han Vision's resolutions being put to the vote and voted on by Han Vision. The company contends that this is not a legitimate assumption. It is said to involve a contested matter of fact rather than one of mixed fact and law. This is coupled with the argument that the practical effect of the order is to guarantee that the EGM will be held, and the board will be replaced; thus in effect the order is final in character since there will never be a trial once the controlling directors have been replaced. It is submitted that the Cayne principles apply with equal force to this order which will have effect as if it were an injunction.

69. In my view the starting point is that Han Vision has the right to vote its shares at the EGM or the AGM even if that may lead to the removal of the controlling directors (see Paringa Mining and Exploration Co v North Flinders Mines Ltd (1988) 14 ACLR 587).

70. I do not consider that the 'caretaker' director arguments (based on Woonda Nominees Pty Ltd v Chng [2000] WASC 173) add anything to the point. As the Court pointed out in Chimaera Capital Ltd at [86] the term "'caretaker' is a metaphorical adjective". It should not obscure the ordinary analysis of directorial powers and duties. The controlling directors are not entitled to prevent the majority shareholder from pursuing whatever course it wishes in voting its shares where there is no evidence that it is unfairly oppressing the minority by doing so: Hogg v Cramphorn Ltd [1963] 1 Ch 254 at 268B-F.

71. Article 73(2) confirms the right of all shareholders to speak and vote at a general meeting. The Appellants have referred the court to paragraph 13.40 in the listing rules to suggest that Han Vision might be required to abstain from voting but it is not evident that any of the rules requiring abstention (rules 6.12(1), 6.13, 7.19(6)(a), 7.19(7), 7.19(8), 7.24(5)(a), 7.24(6), 7.24(7), 13.36(4)(a), 13.36(4)(b),14.90(2), 14.91(1), 17.03C(1) and 17.04) are engaged.

72. There therefore appears to be no basis on which the company might legitimately seek to impede Han Vision's participation at the EGM and AGM. None was suggested at the hearing other than

the shadowy assertion that the law of conflict might apply. However, I do not consider that voting to remove the controlling directors gives rise to any actionable conflict in the circumstances of this case.

73. I accept that the principles in Cayne might apply if there was some legitimate objection to be raised to Han Vision moving resolutions and voting its shares. However, in asking "what can the court do in its best endeavour to avoid injustice" (Cayne at 232c per Eveleigh LJ) it remains unclear that any injustice might be visited upon the company by the restraint ordered by the Judge. For the reasons given earlier I do not accept that the Cayne question can be answered simply on the basis that Han Vision would not get summary judgment.

74. There is no reason in principle or justice for Han Vision not to vote its shares to remove the controlling directors even if the company would be very unlikely thereafter to issue the new shares or pursue any litigation to trial. The argument that Han Vision might be lawfully prevented from voting its shares on the grounds of conflict of interest was not supported by any identifiable principle of law or evidence advanced on behalf of the company.

75. I was not impressed by the company's argument that the "vital" nature of the work of its Independent Board Committee into the conduct of Mr Zheng justifies a restriction on the rights of Han Vision at the general meeting. There is no clear basis on which it is said that the work of independent review would be impeded as the result of Han Vision voting to replace the controlling directors with new directors. Any new directors will have their own duties to the company. Three of them will have to be independent under the HKEX rules. They will all be subject to the obligations imposed by the HKEX.

76. If it is the case that the investigation is required by the HKEX, there is no evidence that it will cease merely on the change of directors. The HKEX has its own mechanisms to enforce good corporate governance in listed companies. In the circumstances I would be willing to admit the fresh evidence about the further guidance provided by the HKEX and the company's own announcement, but I do not consider that it alters my assessment of the case. The practical realities in my view are that the investigation will have to be completed to the satisfaction of HKEX whether or not there is a change of composition of the board.

77. I have considered the evidence of Stuart D'Addona. In my view the evidence is admissible as fresh evidence to rebut any suggestion by the company that Han Vision's determination to remove the controlling directors is intended to allow it to oppress the minority shareholders. It is clear from the vote of the minority shareholders at their EGM that the majority of the minority support the removal of the controlling directors.

78. For all these reasons I would dismiss the appeal of the company.

**Sir John Goldring, President**

79. I agree.

**Sir Michael Birt, JA**

80. I also agree.