



Overview

In the recent decision of *ISM Sendirian Berhad v Queensway Nominees (Asing) Sdn Bhd & Ors*, the Federal Court (“FC”) revisited the scope of minority oppression under section 181 of the Companies Act 1965 (“CA 1965”) [now section 346 of the Companies Act 2016].

The appeal centred on a recurring issue in shareholder disputes: **whether a breach of a shareholders’ agreement can sustain a statutory oppression claim.**

In clarifying its earlier decision in *Jet-Tech Materials Sdn Bhd & Anor v Yushiro Chemical Industry Co Ltd & Ors [2013] 2 CLJ 277 (“Jet-Tech”)*, the FC reaffirmed that to sustain a claim under s.181 of the CA 1965, “*the conduct complained of must relate to or be a matter in the company’s affairs*”.¹

The decision reinforces the distinction between private contractual disputes between shareholders and statutory oppression claims grounded in corporate conduct.

Background

The dispute arose out of a joint venture (“JV”) for an integrated commercial development in Kuala Lumpur known as the “Imbi Project”.

- The Appellant, ISM Sendirian Berhad (“ISM”), owned by Dato’ Ray Cheah (“Dato Ray”) and his wife, held a 30% minority equity stake in five JV companies incorporated to acquire 11 parcels of land for the project.² The remaining 70% majority stake was held by the 6th Respondent, MPH Capital Berhad (“MPHB”).
- The five JV companies (1st – 5th Respondents) were structured as single-purpose vehicles, intended solely for land acquisition for the project rather than ongoing commercial operations³.
- Although a draft shareholders’ agreement was prepared, it was never executed. The parties proceeded on the mutual understanding that they were bound by an oral agreement.⁴

¹ Para [70]

² Paras [23] – [25]

³ Para [79]

⁴ Paras [31], [36], [40]

The dispute concerned funding obligations⁵:

- ISM contended that the funding was split into cash and loan components, limiting its obligation to 30% of the cash portion (approximately 9% of the total acquisition costs).
- MPH B countered that funding obligations must strictly follow a 30:70 equity-based contribution across the board.

Following this disagreement, ISM commenced proceedings under s.181 of the CA 1965⁶ alleging, amongst others, minority oppression, including funding demands, dilution *via* rights issues, and the imposition of interest on shareholder advances.

MPHB counterclaimed, amongst others, seeking a judicial declaration that the JV arrangement had been lawfully terminated by reason of ISM's alleged breach of funding obligations, alongside claims for interest and opportunity costs⁷.

High Court (“HC”) & Court of Appeal (“CA”) Decision

The HC found in ISM's favour on three out of the five grounds. The remaining two grounds were dismissed, and no appeal was pursued against those findings.⁸

The CA reversed this decision, holding that the core dispute concerned the oral shareholders' agreement between ISM and MPH B. As it did not relate to the “*affairs of the company*”, it was a private matter falling outside the statutory scope of s.181 of the CA 1965.⁹

Leave Questions at FC

The FC essentially granted leave on two questions¹⁰: -

Question 1: *whether, as a matter of law, the true ratio decidendi of the FC decision in **Jet-Tech Materials v Yushiro Chemical Industry [2013] 2 CLJ 277 (“Jet-Tech”)** is that the breach of a shareholders' agreement can be actionable under s.181 of the CA 1965 based on oppression, disregard of interest, unfair discrimination or unfair prejudice; and*

Question 2: *whether Jet-Tech, in particular at paragraph 37, is correct in law to hold that breaches of shareholders' agreements are private matters not actionable under s.181 of the CA 1965.*

⁵ Paras [32] – [33]

⁶ Paras [34] (a) – (e)

⁷ Para [35]

⁸ Paras [36] – [39]

⁹ Paras [40] – [41]

¹⁰ Paras [3] (i) & (ii)

Decisions & Key Findings

The FC dismissed both of the Appellant's appeals and found no appealable error warranting appellate intervention.

(1) The Scope of Jet-Tech & "Affairs of the Company"

The FC undertook a close examination of *Jet-Tech*, in particular, on paragraph 37.

- The FC reaffirmed that a claim under s.181 of the CA 1965 requires that the conduct complained of must relate to the "*affairs of the company*". In doing so, it clarified that *Jet-Tech* does not establish a blanket prohibition against oppression claims founded on breaches of shareholders' agreements, and that paragraph 37 must be read in its factual context.

"[70] ... there is no express pronouncement or indication in paragraph 37 or any part of the grounds of judgment that any breach of the shareholders' agreement is not actionable under section 181 of the CA 1965".

- The critical inquiry is whether the conduct complained of, in substance, relates to the affairs of the company.
- The phrase "*affairs of the company*" is broad and encompasses, amongst others, capital structure, dividend policy, voting rights, and generally "*all matters which may come before the board for consideration*".¹¹ However, this broad formulation does not extend to purely *inter se* disputes between shareholders.
- The FC drew a clear distinction: "*the company's affairs cannot be equated with those of its shareholders*". Private arrangements remain a matter for private law remedies, if any¹².
- Applying these principles, the FC held that the principle of law in paragraph 37 of *Jet-Tech* is correct and its application is inherently fact-sensitive. Accordingly, Question 2 was answered in the affirmative.¹³
- On the facts, the five JV companies were passive special purpose vehicles with limited operational activity, incorporated solely for land acquisition, with no substantive business operations. The FC agreed with the CA that, in light of the nature of the JV companies as passive holding vehicles, the dispute did not concern the "*affairs of the company*".¹⁴

¹¹ Paras [66] – [67]

¹² Para [68]

¹³ Para [78]

¹⁴ Para [79]

- In these circumstances, the FC held that the requirement of conduct relating to the “*affairs of the company*” was not satisfied and the oppression claim under section 181 could not be sustained.¹⁵

(2) Establishing a Quasi-Partnership

The FC rejected the Appellant’s alternative argument that the JV amounted to a “quasi-partnership” capable of invoking equitable standards of fairness.

- A quasi-partnership requires a foundation of personal relationship, mutual trust, and confidence, typically arising from prior or long-standing dealings.¹⁶
- On the facts, ISM and MPH B had no prior dealings or business transactions, and their dealings in relation to the JV were limited and commercial in nature¹⁷.
- The JV was negotiated and structured as an arm’s length transaction between business entities, where MPH B treated it purely as a standard commercial investment proposal.
- Accordingly, the factual threshold for a quasi-partnership was not met, and equitable considerations were not engaged.¹⁸

Key Takeaways

- ✓ **Scope of S.181 of the CA 1965 (now s.346 CA 2016) Clarified**
Minority oppression is only engaged where the impugned conduct relates, in substance, to the *affairs of the company*, not merely *inter se* shareholder disputes.
- ✓ **Contractual breaches do not equate to oppression**
A breach of a shareholders’ agreement does not, without more, constitute oppression. The critical inquiry is whether the conduct, in substance, affects “*affairs of the company*”.
- ✓ **Substance over form governs the analysis**
The Courts will examine the substance of the complaint rather than how it is pleaded or labelled.
- ✓ **SPV structure limits oppression claims**
Where JV companies function as passive special purpose vehicles with no substantive business operations, disputes are more likely to be characterised as private commercial disagreements.
- ✓ **Quasi-Partnership remains a high-threshold exception**
Equitable intervention requires clear evidence of relational trust and dependency. Arm’s length commercial dealings, even in a JV context, will generally not suffice.

¹⁵ Para [81]

¹⁶ Para [85], [86], [90]

¹⁷ Para [88] – [91]

¹⁸ Para [91]

Conclusion

The FC's decision confirms that paragraph 37 in *Jet-Tech* should not be read as establishing a categorical exclusion of minority oppression claims simply because the dispute concerns a shareholders' agreement.

The critical inquiry remains whether, in substance, the impugned conduct relates to the "*affairs of the company*" under s.181 of the CA 1965, in which case shareholders' agreement matters could still be the subject matter of a claim under s.181.

Ultimately, the ruling turns on characterisation: whether the alleged wrong implicates the "*affairs of the company*" or remains a private dispute between shareholders.

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Disclaimer : *This is a summary for general reference and should not be relied upon as legal advice. Please refer to the Grounds of Judgment in the Federal Court Civil Appeal No. 02(f)-9-03/2025(W).*