EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS
COMMERICAL DIVISION

IN THE HIGH COURT OF JUSTICE

CLAIM NO. BVI HC (COM) 2014/0171

BETWEEN:

[1] JOHN SHRIMPTON
[2] PITCAIRN LIMITED

Respondents/Claimants

AND

[1] DOMINIC SCRIVEN
[2] ALEXANDER PASIKOWSKI

Applicants/Defendants

~~[3] INTERNATIONAL FINANCE CORPORATION~~
[4] SOCIETE DE PROMOTION ET PARTICIPATION POUR LA COOPERATION ECONOMIQUE
[5] DRAGON CAPITAL GROUP LIMITED

Defendants

Appearances:
Richard Millett QC and Arabella di Iorio for the Applicants
Robin Hollington QC, Adrian Pay and Jeremy Child for the Respondents

---
2016: May 18, 19
2016: June 2

JUDGMENT

Application for summary judgment in respect of only part of Claim – Claim to be bought out without minority discount under section 184 I of BVI Business Companies Act 2004 – Claim based on exclusion from equal status in management (1) in breach of equitable constraints arising from quasi-partnership – alternatively (2) breach of shareholders' agreement – application for summary judgment only in respect of allegation of quasi-partnership – Claim based on breach of

shareholders' agreement left to go to trial in any event. – undesirability of attempt to eliminate only part of Claim – particularly a fact intensive one – undermining the overriding objective of expedition and saving of expense – significance of "no partnership" and "entire agreement" clauses in shareholders' agreement – Question whether quasi-partnership can exist in a company that is deadlocked at board and shareholder level considered.

[1] SHER J [AG] These proceedings involve a claim under section 184I of the BVI Business Companies Act, 2004 that the Claimants' shares in the fifth Defendant, Dragon Capital Group Limited ("the Company"), should be bought out by the Defendants at a fair value i.e. with no discount to reflect their minority status.

[2] The Claimants are John Shrimpton and Pitcairn Limited but for present purposes may be regarded as one because Mr Shrimpton held his stake in the Company partly in his own name and partly through his own company, Pitcairn Limited. Nothing turns upon this split in the registered shareholdings of Mr Shrimpton and his company and, throughout, I shall treat them as one and refer to Mr Shrimpton as the shareholder in respect of both shareholdings.

[3] The contest before me is between Mr Shrimpton and the first two Defendants, Dominic Scriven and Alexander Pasikowski. There are three other Defendants (including the Company itself) who have played no part in this summary judgment application which is before me. The third Defendant was International Finance Corporation, a financial institution which is part of the World Bank I shall refer to it as IFC. (Pursuant to a Consent Order made on 19 June 2015, the Claimants discontinued these proceedings against the IFC.) The fourth Defendant is Promotion et Participation Pour La Cooperation Economique, a French governmental body concerned, as was IFC, to invest in local businesses in developing countries, in this particular case in Vietnam. I shall refer to the fourth Defendant as Proparco as it has been referred to throughout the hearing and I shall refer to IFC and Proparco together as "the institutional investors". The fourth and fifth Defendants have played no part in this summary judgment application.

[4] As I have said, the contest before me is between Mr Shrimpton, on the one hand, and Messrs Scriven and Pasikowski (together "the Applicants") on the other, and it arises by virtue of an application by the Applicants dated 11 December 2015 for summary judgment under EC CPR 15.2(a) to knock out one of two major issues in the amended Statement of Claim (the "ASOC").

That issue, put broadly for the moment, is whether a quasi-partnership existed between them in relation to the Company's business.

[5] This case is going to trial in any event but this partial attack on the ASOC has resulted in over two and a half thousand pages of pleadings and documents being put before the court, not to mention nearly ninety authorities. To be fair only a tiny part of that material was ultimately referred to at the hearing and most of it was put in by Mr Shrimpton's legal representatives; but they were prompted to do so no doubt by this serious attack on Mr Shrimpton's case. At the best of times the court should be slow to entertain a knock-out attack on only one of two or more issues when there is bound to be a trial in any event: see Beverley Modder v Brian Worme[1] in the High Court of Justice, Eastern Caribbean Supreme Court.

[6] This application for summary judgment, however, is a particularly good example of how such an application can delay and derail proceedings as they progress towards trial and how such an application can increase the costs. I mention this in order to discourage litigants from interlocutory steps of this kind in a case like the present one, and I mention it with the overriding objective in mind that the court should be able to deal with cases justly by ensuring that they are dealt with expeditiously and with a saving of expense: see EC CPR 1.1 (1) and (2) (b) and (d). Otherwise there is a risk of an application for summary judgment producing "summary injustice", a phrase I take from Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd[2].

[7] With that introduction, I turn to the pleaded case adumbrated as it is by the evidence filed by Mr Shrimpton. No evidence as to the facts has been put in by the Applicants. Accordingly I take the facts (though I summarize them) from the uncontradicted evidence of Mr Shrimpton. Of course the truth of this evidence will be tested in cross-examination at trial; for the purposes of this summary judgment application these facts must be accepted as true.

[8] The Facts

Mr Scriven and Mr Shrimpton have known each other since the late 1980's. Mr Scriven was a client of the firm in which Mr Shrimpton was working. They became good friends before, in Mr

[1] GDAHCV 2012/0296 at [24]
[2] [2007] FSR 63 at [17]

Shrimpton's words, "ultimately… we decided to become business partners". He adds that he made this point in his presentations to institutional investors so that they understood the nature of the relationship that underpinned his and Mr Scriven's business. The two of them had worked together in the first half of 1994 on the placement of 30% of the shares of a Vietnamese owned company into the hands of foreign investors, which was a first in Vietnam. This led to discussions between them as to how they might arrange other foreign investment in private sector opportunities in Vietnam. In these discussions they described their relationship as a partnership. They launched the venture in a company called Dragon Capital Limited and, again, in Mr Shrimpton's words: "we were entering into this venture as good friends with all that that implies….Mr Scriven and I trusted each other, and thought of the business as a venture that we could work on and grow together. We did not expect that we would be competing with each other or engaging in any one-upmanship when it came to either managing the business or sharing its benefits. As I describe later, over time, we decided that the rewards from our collective effort would be shared between us, while also re-investing a substantial portion of Dragon Capital's earnings in order to make further investments and to expand the business."

[9] He adds that neither of them sought to create a complex agreement or document to regulate the relationship with each other and it was clear from their discussions that they did not see each other as being commercial counterparties at "arm's length" but, rather, as trusted friends first and foremost.

[10] Dragon Capital Ltd was incorporated in September 1994 in the BVI with Mr Shrimpton and Mr Scriven taking equal shareholdings (treating Pitcairn's as Mr Shrimpton's). This equal division of shareholdings was carried into the Company which was formed in 1996 as part of a restructuring of the group and its subsidiaries. Mr Shrimpton provided interest-free loans of US$300,000 and US$635,000 but in light of the relationship of trust and confidence between him and Mr Scriven these loans were undocumented. Business was conducted from the outset on the basis of consensus and reinvesting profits into the business, thus limiting remuneration and dividends.

[11] At the outset, the business recruited a number of former Vietnamese colleagues of Mr Scriven. A Mr Tan was one of them. Although they were involved in management they were not treated as

fully-fledged "partners" to begin with but later became shareholders. A Mr Tuan was offered "partnership" when he joined the business in early 1997, and he became a shareholder in 1998. The Vietnamese partners acquired equity but due to Vietnamese foreign investment restrictions their shares were held by Mr Shrimpton and Mr Scriven for them, such was the relationship of trust and confidence with them. Management, both before and after the Vietnamese became partners, was always by consensus and not majority vote.

[12] There was a mild hiccup in June of 1999 when Mr Scriven indicated that he wished to leave the business. The possibility of Mr Pasikowski joining the business as a partner in Mr Scriven's place was discussed. Mr Scriven's possible departure was seen as a "classic partnership breakup" in which Mr Scriven would take with him a proportionate part of the assets of the Company represented by his proportionate shareholding. In the event, however, Mr Scriven did not leave but sometime later Mr Pasikowski joined. His draft terms of engagement referred to his position as "one of 5 equity partners". A Mr Middlehurst also joined, initially with a view to him becoming a partner, but his requirement of a pre-defined exit was rejected as something considered inconsistent with the partnership nature of the business, and he left.

[13] IFC invested in the Company in 2002 and a shareholders' agreement was entered into between IFC and Mr Scriven, Mr Shrimpton and Mr Pasikowski. The Vietnamese partners who, by then, were only three, Mr Tan, Mr Tuan and a Mr Minh, all of whom had been trusted colleagues of Mr Scriven before they joined and obtained their shareholdings, were not party to the shareholders' agreement, although IFC was told of their interests and was thus aware that special arrangements were in place between the six of them (described as "the DC partners", namely Mr Scriven, Mr Shrimpton, Mr Pasikowski and the three Vietnamese (beneficial) shareholders – though there is no suggestion that IFC knew of the alleged quasi-partnership or any specific understanding that that entailed). There was a "no partnership" clause in the shareholders' agreement proposed by IFC on the basis that IFC did not want the Company to be able to represent that it was a partner of IFC. The purpose of that clause was explained by Mr Shrimpton to the other DC partners and was accepted on that basis.

[14] The shareholders' agreement was adapted and restated when Proparco invested in the Company in 2005. Again, Mr Shrimpton says that Proparco was made aware of the Vietnamese partners'

interests and that the DC partners had arrangements among themselves (though, again, there is no suggestion Proparco knew of the alleged quasi-partnership or any specific understandings that that entailed).

[15] I note here two other provisions of the shareholders' agreement that loomed large in the hearing. One is clause 8.2(b) which contained an agreement by each of Messrs Scriven, Shrimpton and Pasikowski as follows: …"at any meeting of, or in respect of any other vote taken by the shareholders of the Company, he shall vote or cause the Shares he owns to be voted to ensure that each of the Core Shareholders is appointed and remains at all times as a director of the Company with responsibility for the management of the Company and the performance of its agreements and obligations, including those under this Agreement". Messrs Scriven, Pasikowski and Shrimpton were defined as "the Core Shareholders". IFC and Proparco were defined as the "Outside Shareholders" and, although clause 8.2(b) was an agreement amongst the three Core Shareholders, the shareholders' agreement was predominantly an agreement by and between the Company, the institutional investors and the Core Shareholders as a group.

[16] Another important provision in the shareholders' agreement is an "entire agreement" clause. It is clause 19 and I quote the first part of it because it represents the high point, in my judgment, of the Applicants' case on this application: "This agreement sets out the entire agreement and understanding between the Parties with respect to the subject matter of it."

[17] This is a convenient stage at which to note the respective percentage shareholdings of the parties; they are as follows: Mr Shrimpton - 34.68%, Mr Scriven - 36.53%, Mr Pasikowski - 6.61%, the three Vietnamese shareholders - 4.94%, Proparco - 4.7% and IFC - 9.92%. The remainder is, I think, held by employees. These percentages varied over time but not in any way that affects the substance of this application.

[18] The management of the Company continued to be conducted after the investment of the IFC as it had been conducted before. This was true in relation to Proparco as well. IFC and Proparco became in effect minority passive investors. The management continued to be conducted by the DC partners on the basis of consensus. The board of directors of the Company adopted what was merely a supervisory role, meeting infrequently. IFC was entitled to appoint a director to the board

but did not do so until some five years after its investment. This was consistent with the aims and objects of the institutional investors as developmental institutions investing in emerging and developing markets. The IFC has described itself as an international organisation established to provide a source of investment funding in developing nations. Proparco's aim in making its investment, as appears from its pleading, was to contribute to the development of financial intermediation in Vietnam, in particular to the benefit of corporates, at a point when it was underdeveloped. The purpose of such investments is not exclusively to make money but rather to promote the broader developmental objects that they seek to further. In these circumstances these institutions might be expected to be conscious not to upset any pre-existing arrangements by local partners or managers if the business was achieving success, as this business was, producing an annual net profit, for example, in 2006 and 2007 of more than US$100 million in each year. This is an important backdrop to the construction of the shareholders' agreement which turned out, at the hearing, to occupy more time than the skeleton arguments suggested would be the case.

[19] I turn to the events which have given rise to these proceedings. In 2009 issues arose in relation to an investment by funds managed by the Company in a tungsten mine development known as Nui Phao, in Vietnam. The Company appears to have been under considerable financial stress with regard to this investment when the Vietnamese Prime Minister threatened to revoke the Nui Phao mining licences. Mr Shrimpton blamed Mr Scriven at the time. Mr Scriven and Mr Pasikowski now blame Mr Shrimpton. For present purposes all I need to do is record that this led to a serious fallout between Mr Shrimpton and Mr Scriven. The long and the short of it is that at a meeting on the 9th December 2009 the board resolved to create a chief executive officer role and appoint Mr Scriven to that role, creating a reporting line with Mr Shrimpton reporting to Mr Scriven as CEO. Mr Shrimpton was not prepared to continue in the business on this basis and he presented a letter to the board offering to resign on the basis that the company would buy his shares and enable him to withdraw his capital on fair terms. Some days later Mr Scriven wrote communicating the acceptance of the board of the resignation but their rejection of the offer to sell his stake. Mr Shrimpton's case was that this was so obviously contrary to the intended terms of his offer, which required acceptance of both limbs of the offer (or neither of them), that it was quite clear that the relationship had irretrievably broken down. Mr Shrimpton's salary was cut off and he received no further bonuses and he was treated as having resigned.

The essence of the claim in the ASOC

[20] The claim is based on two distinct grounds, either of which is alleged to entitle Mr Shrimpton to have his minority stake purchased on a pro rata basis, i.e. without a discount for its minority status. It is well trodden law that relief by way of a buy-out under section 184I of the 2004 Act will generally be assessed on a pro rata basis where underlying the corporate form and documents there is a quasi-partnership and there has been a breach of the associated equitable constraints on shareholder power: see Re Bird Precision Bellows Ltd[3].

[21] This enables the party who has been unfairly prejudiced to exit the company taking his invested capital with him just as, by analogy, he would have done had the relationship between him and his co- shareholders been a legal partnership and not a company. The concept of quasi-partnership is deployed as a shorthand to describe either the sort of company in which equitable constraints may arise (and add to the relationship between the shareholders under the company's formal constitutional documents) or as a shorthand for the sort of equitable constraints which may arise in such a context. As Lord Wilberforce has told us in Ebrahimi v Westbourne Galleries[4] a company which falls within this description is not a partnership; it is a company but there is "something more" which gives rise to equitable constraints on shareholder power.

[22] The first ground of claim is that the Company was from its inception just such a company and it remained so in 2009 when, in breach of those equitable constraints, Mr Scriven (and others) instituted a vertical hierarchical management structure demoting Mr Shrimpton in the management of the Company and (allegedly) opportunistically interpreted his resignation as an offer capable of acceptance independently of the offer to sell his shares at a fair value. It is necessary to see the pleading in respect of which this first ground of claim is made because the whole of this ground, namely the allegation of quasi-partnership, is under attack in this summary judgment application. I have set that out in the Appendix to this judgment. The Appendix contains paragraphs 6 – 9 and 13 of the ASOC and the relevant answers to requests for further information in respect of paragraph 6.

[3] [1986] Ch. 658
[4] [1973] AC 360

[23] The second and independent ground for the relief claimed is that Mr Scriven (and others) in procuring Mr Shrimpton's exit from the management of the company in 2009 were in breach of section 8.2(b) of the restated shareholders' agreement of 2005 and that breach, on its own, and irrespective of whether a quasi-partnership existed, entitles him to a buy out on a pro rata basis without any discount in respect of his minority shareholding. This second ground is not under attack in this summary judgment application and will be going to trial in any event.

[24] The Summary Judgment Application

On the 11th December 2015, after the Case Management Conference had been listed for hearing on the 19th January 2016, the Applicants issued a notice of application for summary judgment, which is the application before me. They applied for the following two orders:

"1. THAT there be summary judgment under EC CPR Rule 15.2 (a) for the Defendants on the issue of whether, at any time relevant for the purposes of the Claimant's claim, the affairs of the Fifth Defendant were conducted in accordance with the quasi-partnership and/or informal understandings pleaded at paragraph 6 – 9 of the Statement of Claim, or any such quasi-partnership and/or informal understandings.

"2. THAT in light of paragraph 1, the Claimants' claim under s. 184I of the Business Companies Act 2004 (and, if the issue arises the nature and scope of any relief granted pursuant thereto) shall not be determined by reference to the quasi-partnership and/or informal understandings pleaded in the Statement of Claim, or any such quasi-partnership and/or informal understandings."

[26] In short, the application was, in effect, to strike out in its entirety the question whether a quasi-partnership existed at any time relevant to the relief claimed.

[27] The application is based on two broad propositions: (1) that the allegation of quasi-partnership is so weak as to have no real prospect of success because it is vague and unsupported by any relevant allegations of fact; and (2) that Mr Shrimpton has no real prospect of establishing that the alleged quasi-partnership, if it existed, survived the execution of the shareholders' agreements of 2002 and 2005. Mr Millett QC submits that if he is right on proposition (1) he must succeed in striking out the entirety of the case on quasi-partnership. However, if he is unsuccessful in striking

out the allegation of quasi-partnership in this summary way, proposition (2) will strike the death blow to that allegation because the quasi-partnership relationship will have been subsumed within the shareholders' agreement and cannot survive beyond it.

[28] I shall take these propositions in turn. The first proposition, i.e. the alleged weakness of the quasi-partnership allegation, is not fertile ground for a summary judgment application. A more fact intensive area of the law would be difficult to find and the voluminous papers before me do not disappoint if one is looking for intensive fact. The pleadings and evidence in support are bristling with detailed factual allegations that cry out for resolution at trial and not by way of summary judgment.

[29] The features of the present case are, as Mr Hollington QC submits, completely typical of a quasi-partnership which involves an association based on a personal relationship: see Ebrahimi v Westbourne Galleries Ltd[5]., **O'Neill v Phillips**[6]; Strachan v Wilcock[7]; and re: Coroin (No. 2)[8]. The business opportunity in Vietnam was conceived by two very good friends identifying an opportunity which they discussed and developed before the formation of the Company's predecessor. The personal nature of their relationship was illustrated by Mr Shrimpton's injection of substantial loans free of interest without requiring these loans to be documented.

[30] Mr Hollington QC submits that the pleadings and evidence display many of the classic indicia of quasi-partnership, for example, an understanding that the members would be entitled to participate in the management of the Company. He says that this is completely obvious from the express discussions and the context which preceded the formation of the predecessor of the Company. Mr Shrimpton and Mr Scriven described themselves as partners throughout the course of the business and treated each other as such. The development of the business was dependent upon their experience, contacts and personal skills and decisions were taken on the basis of consensus. They relied upon trust and confidence and informality between themselves. The business was conceived before the incorporation of the predecessor of the Company and, according to Mr Shrimpton's

[5] [1973] AC 360 @ 379 to G
[6] [1999] 1 WLR 1092 @1101 D to G
[7] [2006] 2 BCLC 555 @ [19]
[8] [2012] EWHC 2343 @[635]

evidence, the articles of association were "boiler plate" (although they included a restriction on transfer of shares which bound them together in partnership).

[31] What then is the basis for this application for summary judgment which seeks to knock out in its entirety the allegation of quasi- partnership? Mr Millett QC's main submission is founded on the fact that Messrs Scriven and Shrimpton were the sole shareholders and directors of the Company and its predecessor company. Their shareholdings were, in effect, 50:50 such that the Company would inevitably be deadlocked at the shareholder level unless there was consensus between them. Moreover, because they were the only two directors, the Company's board would also be deadlocked in the absence of consensus. The question for the court, he submits, is whether the facts pleaded give rise to the equitable constraints on shareholder power analysed in the ASOC into the four pleaded understandings, namely: (1) Participation (2) Good Faith (3) Consensus and (4) Reinvestment: see paragraph 6 of the ASOC set out in the Appendix to this judgment.

[32] To establish those four understandings Mr Millett submits that Mr Shrimpton must allege and show that conduct of the Company's affairs in accordance with those understandings, viewed objectively, was distinct from compliance with the Company's memorandum and articles, and that that conduct was a departure from the articles of association in their capacity as shareholders. Mr Shrimpton's case only works, he submits, if and to the extent that the conduct of the Company's affairs in accordance with the understandings is materially different and distinguishable from the conduct of those affairs in accordance with the Company's memorandum and articles. If there is no difference, then the conduct of the Company's affairs is referable to the Company's constitution and nothing more. A relationship of trust and confidence, without more, is nowhere near sufficient to establish the equitable constraints pleaded, he submits.

[33] In other words, the fact that Messrs Scriven and Shrimpton had the right to equal involvement in the conduct of the Company's business (at the early stage, before the Vietnamese participants became beneficial shareholders) was an inevitable corollary of their appointment as directors and their 50% shareholdings and had nothing to do with any equitable understandings.

[34] In relation to the "participation" understanding the case boils down, he submits, to an assertion that Mr Shrimpton and Mr Scriven trusted one another and an observation that the Company's business

was conducted in accordance with its memorandum and articles of association. There is, and can in the circumstances be, nothing more than that, and for the purposes of surviving a summary judgment application this is wholly inadequate.

[35] As to the "consensus" understanding the same point is made. By reason of their appointment as sole directors and their respective 50% shareholdings, the Company was deadlocked at both the shareholder and board levels in the absence of consensus between them. Accordingly, consensus was required not because of some equitable constraints but simply because of how the Company was set up on a deadlock basis. Consensus was an inevitable corollary of the fact that the Company was held 50:50, combined with the standard provisions of the articles, which contained no deadlock exit mechanism. Thus, Mr Millett asserts, the allegation of a consensus understanding underlying the corporate form is hopeless.

[36] As to the "re-investment" understanding, apart from it being hopelessly vague because there was no precision as to what "parts" of the earnings of the Company were to be ploughed back and what parts distributed by way of dividend or remuneration, it represents nothing more than an example of the type of matter which would fall to be determined in accordance with the consensus understanding. If that is right, Mr Millet submits, the case in relation to the re-investment understanding is hopeless for the same reasons that apply to the consensus understanding.

[37] I will deal with the "good faith" understanding later in this judgment. It stands on a different footing to the three other understandings in Mr Millett's submissions. For now it is necessary to test his central submission that all these equitable constraints cannot add to the corporate form because the alleged conduct in accordance with those understandings is referable to the corporate constitution alone.

[38] I do not accept this central submission in the context of this summary judgment application. Although I do not decide it, for my part I do not see why the conduct of the Company's affairs cannot be underpinned by both the corporate form as well as the equitable understandings, even if they both produce the same effect. But in any event they are unlikely to produce the same effect. As Mr Hollington submits, if one of two equal director/shareholders actually proceeded to act

without formal sanction, the remedy might well be different if only the corporate constitution held sway. The court might not interfere in the internal management of the company. If, on the other hand, underlying the corporate form there were constraints typical of a quasi-partnership, a wider range of remedies would be available. I pause to note that a company with two directors and equal shareholders is among the classic instances of where a quasi-partnership may arise: Ebrahimi v Westbourne Galleries[9] and In re Yenidje Tobacco Co. Ltd[10].

[39] Mr Millett fails to persuade me in this summary procedure that there was no quasi-partnership at the outset of Mr Scriven's and Mr Shrimpton's launch of this business in 1994 in the corporate form, and in the continuation of that business in the form of the Company in 1996. I have recited some of the indicia of such a quasi-partnership in the evidence and in the pleaded claim in the Appendix. I have not attempted to be exhaustive in this respect but it is not necessary to be so. This fact intensive enquiry will have to go to trial, at which point all the evidence can be tested and looked at in the round to identify the precise ambit and scope of the equitable constraints and understandings, if any, that governed the relationship between these two gentlemen at the start of their business in 1994 and in the ensuing years.

[40] The early period before the Vietnamese participants acquired their shareholdings is important because if there was no quasi-partnership at that early stage it would be much more difficult on the evidence (Mr Millett submits impossible) to establish the creation of one at the time the new shareholders came into the picture. However, I have held that it will be a matter for evidence at trial whether a quasi-partnership existed from the start and I now proceed to hold that it will be a matter for evidence at trial whether the new shareholders became entitled and subject to the constraints under that quasi-partnership when they respectively came into the equity from 1998 onwards.

[41] This part of the case is wholly dependent on the evidence at trial in relation to each one of the new participants, including the Vietnamese partners and Mr Pasikowski who came to be a "partner" as a result of an offer expressed in terms of "partnership". These new participants did not join, Mr Hollington submits, as mere passive investors. They were each well known and trusted individuals and friends. The consensus based approach to decision making remained and was seen as

[9] [1973] AC 360
[10] [1916] 2 Ch 426

significant to the success of the business. The equity of the Vietnamese was held on their behalf by Mr Shrimpton and Mr Scriven without any documentation. Each of them remained a director until the events of 2009 complained of in the ASOC.

[42] I should say a word or two about the constant use of the words "partner" and "partnership". Mr Millett challenges the proposition that the existence of the alleged quasi-partnership and its concomitant understandings is to be inferred from the fact that the shareholders in the Company consistently referred to one another as "partners" and to their relationship as a partnership. Saying it, he says, does not make it so. However, in my judgment, saying it so ubiquitously goes at least some way towards making it so. However, whether it goes far enough (or goes anywhere at all) is essentially dependent on evidence and cross-examination in relation to each and every usage of the term. This sort of question is, par excellence, a matter for trial, as I think I pointed out to Mr Millett when he took me to isolated documents in which the term had been used.

[43] There is no doubt that throughout the life of this business from 1994 until the events of 2009 the six local directors were referred to again and again as partners and the business was referred to in terms of partnership (even by the institutional investors). To reject all this out of hand as providing the court with no assistance in relation to the question whether there is a basis for finding that the shareholders' legal rights have become subject to equitable constraints, as Mr Millett invites me to do on a summary judgment application, is nothing short of absurd. I will not record the many instances and different situations in which the language of partnership has been used. What such usage means is quintessentially a matter for trial.

[44] I have probably said enough so far to indicate that the assertion that there was a quasi-partnership to begin with, which continued after the arrival of the new partners and embraced them, will have to go to trial. I pause to note that I have not overlooked many other submissions of Mr Millett on this part of the case, in particular his criticisms of the ASOC which he uncharitably described as incoherent. To be fair, he has a point in identifying certain infelicities in the drafting. For example, he made much of the fact that in paragraph 9 it is pleaded that the new shareholders became entitled to the benefit of the understandings "to the extent of their respective interests in the Company". The Vietnamese cannot, he says, require participation in management on an equal basis "to the extent" of their 4.9% interest. As to the consensus understanding they either had a

veto or they did not. The extent of their interest is irrelevant in this respect. However, it is extravagant on the basis of such infelicities to ask the court to strike out the pleading on a summary judgment application as having no real prospect of success. Although unhappily drafted, I would read the ASOC as saying that the new shareholders became entitled to the benefit of the understandings "in right of" or "in respect of" their respective interests in the Company. Quite how the court should read it, however, will be a matter for the court at trial. In like manner I would reject the criticism of paragraph 6, which pleads that the working and management practices "arose out of and/or gave rise" to the understandings. Mr Millett has called this his chicken and egg point and the uncertainty of what gave rise to what, he says, is fatal to the ASOC so far as the quasi-partnership allegation is concerned. I do not agree.

[45] I do not think that it is very helpful (particularly in a summary judgment application) to take a surgeon's scalpel to the words of a pleading and subject them to such minute examination in the context of equitable constraints in a quasi-partnership which are, by their nature, less precise than legal rights and obligations.

[46] Another point Mr Millett made is that on Mr Shrimpton's own case the consensus based management was adopted both before and after the Vietnamese partners became partners, and so they became entitled to the benefit of such constraints before they became shareholders. He submits, therefore, that the constraints were not constraints related to their shareholdings but rather were related to their status as managers and again, he submits, this is fatal to the quasi-partnership case. Again I disagree. The evidence suggests to me that when they joined they were invited to do so looking forward to the prospect of becoming shareholders. Again, this is very much a matter for evidence at trial.

[47] I will content myself with just two more arguments put forwards by Mr Millett. First, he says that the pleading of the quasi-partnership is defective because the conduct out of which the understandings arose is not sufficiently pleaded. The pleaded conduct, he says, must identify how, and the precise point in time when, the understandings were reached so that there could be no departure from them. In my judgment this is asking too much, particularly in this summary context. Of its nature a quasi-partnership and its concomitant equitable constraints is protean in nature and may well have

uncertain features which are not written in stone. This reflects Lord Wilberforce's comments in Ebrahimi v Westbourne Galleries[11] when he said: "it would be impossible and wholly undesirable to define the circumstances in which [equitable] considerations may arise". Mr Millett cites Hollington on Shareholders Rights 7th ed at paragraphs 9.34 and 9.35 and the cases there cited. In my judgment, sufficient conduct is pleaded to give the parties proper notice of the quasi-partnership issue. It cannot be said that it is fanciful, or that there is no reasonable prospect that the court at trial will find that a quasi-partnership existed to begin with and continued after the admission of the new partners.

[48] Finally, on this part of the case I should mention the "good faith" understanding. Mr Millett said that this alleged understanding added nothing to the other three understandings. It is a gloss on the others, he said. He relegated the concept of good faith to an "adjectival" status, as merely being a description of the relationship. It can only have content, he submits, if it amounts to an allegation that the shareholders owed one another fiduciary duties which, naturally, the court would be slow to impose on shareholders. Nothing is going to turn on this in this application. Suffice it to say, however, that I do not agree. Certainly, there is no question here of fiduciary duties [cf. McKillen v Misland].[12] However, I think that there is meaning and substantive content in the duty of good faith in a quasi-partnership by analogy with the duty of utmost good faith between partners in a legal partnership.

The effect of the shareholders' agreement on any quasi-partnership

[49] I turn now to the second proposition put forward by Mr Millett, namely, that Mr Shrimpton has no real prospect of establishing at trial that the quasi-partnership survived the conclusion of the shareholders' agreement.

[50] For this purpose I shall focus on the restatement of the shareholders' agreement to which Proparco was added in 2005. I am told that it is in the same form (apart from Proparco's involvement) as the shareholders' agreement of 2002. The latter was not even put before me in the many bundles prepared for the hearing.

[11] Supra at 379E
[12] [2012] EWHC 521 (Ch)

[51] This second proposition on the basis of which the summary judgment application is made is more fertile ground on which such an application can be made because it is largely concerned with questions of construction rather than evidence of fact. It is not surprising that this is an area in which Mr Millett concentrated his fire.

[52] I have identified three features of the agreement so far in this judgment; clause 8. 2 (b) in which the Core Shareholders agreed with each other to ensure that each of them remained in management; clause 16 which provided that nothing in the agreement shall be deemed to constitute a partnership between the parties nor, save as may be expressly set out in it, constitute any party the agent of the other parties for any purpose; and clause 19 which contains the entire agreement clause I have quoted above.

[53] Mr Millet points out that the 2005 shareholders' agreement is a detailed written agreement entered into by sophisticated commercial people with the benefit of professional legal advice and it ought to be construed on this basis.

[54] He emphasizes that although the Core Shareholders are defined as a group (as are the institutional investors who are defined as Outside Shareholders), the agreement is an agreement by and between each and every one of the Core Shareholders and each of the Outside Shareholders and, of course, the Company. He draws this from many parts of the shareholders' agreement (and an accession agreement preceding it whereby Proparco acceded to the shareholders' agreement). Mr Millett is right about this and it is unnecessary to cite all the paragraphs he relies upon. Perhaps the most powerful indication is clause 1.5 under which the rights and obligations of each of the Core Shareholders is expressed to be several and not joint. Clause 8.3 is also important because it provides that each Core Shareholder in his capacity as both a shareholder and director shall ensure compliance by the Company with its obligations under the agreement.

[55] He goes on to draw attention to clause 3.1 which provides that the Company's Board shall be responsible for the overall direction and supervision of the Company and clause 3.2 in which the Company agreed that it would conduct its business in accordance with certain Operating

Guidelines contained in Annex A to the agreement. Those guidelines governed the operations of the Board of directors and contained detailed provisions governing the business of the Company, how it was to be managed and its internal structure and organization. These provisions are comprehensive, and, Mr Millett submits, were on any view intended to be comprehensive and squarely cover the subject matter of the four understandings pleaded as part of the quasi-partnership allegation.

[56] He then points to clause 4 which identified certain specialized matters requiring a special level of shareholder approval, namely unanimous approval of the Outside Shareholders but only majority approval of the Core Shareholders. Proposals for the payment of dividends was one of those specialized matters so that if the Outside Shareholders and Messrs Scriven and Pasikowski decided to distribute all the distributable profits for any given year Mr Shrimpton could not complain. So Mr Shrimpton signed up to being outvoted on specialized matters.

[57] As to the reinvestment understanding, Mr Hollington says that Mr Millett is tilting at windmills because it is clear from the ASOC that this was overtaken by a consensus after 2005 in relation to developing a bonus pool of 25% of the profits, and the re-investment undertaking was superseded. The complaints later in the ASOC in this regard were based on an alleged breach of the shareholders' agreement rather than the reinvestment understanding. That is as may be; nevertheless Mr Millett's point holds good that the shareholders' agreement appears to have covered the same ground as the understandings.

[58] In these circumstances, Mr Millett submits with some force that clause 19, which provides that it represents the entire agreement and understanding between the parties (defined to mean each of Messrs Scriven, Shrimpton, Pasikowski, IFC, Proparco and the Company) relating to "the subject matter thereof" has the consequence that the agreement has swept away any prior understandings, including the four pleaded understandings associated with the alleged quasi-partnership.

[59] Accordingly, says Mr Millett, even if there was a quasi-partnership to begin with in 1994, and even if it survived into the period after Mr Pasikowski and the Vietnamese partners joined, it was

subsumed in the shareholders' agreement and destroyed (so far as inconsistent) by the entire agreement clause (and so did not exist in 2009 when the alleged breach by the creation of a vertical management structure against the wishes of Mr Shrimpton took place).

[60] As I have said there is considerable force in this submission. Mr Hollington's first answer, which does not persuade me, is that clause 19 is expressly qualified in its application to understandings "in respect of the subject matter of it". He submits that such a clause would only be inconsistent with the existence of a quasi-partnership to the extent that the agreement itself was inconsistent with it and therefore, in his submission, clause 19 adds nothing to the agreement. I cannot accept that submission. That view would emasculate an entire agreement clause such as this one.

[61] However, when one looks at the context in which the shareholders' agreement was entered into, with particular regard to the need to protect the investments of the institutional investors, but also to their natural reluctance to interfere with the successful management by the local directors, the shareholders' agreement does not appear to have focussed upon "clearing the decks" so far as the Core Shareholders amongst themselves were concerned. Assuming there was a quasi-partnership in existence at the time, the shareholders' agreement was a singularly inapposite means of sweeping away such quasi-partnership. If it did sweep it away, it looks as if it may have done so by a side wind. The essential concentration, as I have pointed out, was between two sides: the Company and the Core Shareholders, on the one hand, and the Outside Shareholders, on the other. Moreover, the absence of the Vietnamese shareholders in the agreement adds to the uncertainty as to how far the shareholders' agreement swept away understandings that benefited them. Mr Hollington relies heavily on their absence. He asks: "can it seriously be contended that by their execution of the agreement Mr Shrimpton, Mr Pasikowski and Mr Scriven intended to bring to an end the entitlement of the Vietnamese partners to participate in the management such that their directorships became immediately vulnerable to termination, rendering them mere passive investors with no entitlement to realize their shares?" Mr Millett retorts and points out that paragraph 12 of the ASOC explains that although the Vietnamese partners were not made parties to the shareholders' agreement because they could not be shown as shareholders due to the complications arising out of the restrictions regulating Vietnamese ownership of foreign investments, they were "aware of its terms and consented to it" and as directors of the Company

concurred in the Company's accession to the shareholders' agreement. Mr Millett says that they therefore became subject to the shareholders' agreement and took the benefit of it. Mr Millett may well be right in this respect but to found his submission on the limited words in paragraph 12 of the ASOC seems to me to be going too far. Quite what the impact and extent of the Vietnamese partners' "consent" was depends on the evidence of the Vietnamese at trial. To conclude and make a finding on the extent to which they enjoyed the benefit and suffered the burden of the shareholders' agreement on the basis of a few words in the pleading on an application for summary judgment would, in my judgment, be wrong.

[62] Mr Hollington raises another point. Whatever the shareholders' agreement says, Mr Shrimpton's evidence shows that the actual conduct of the Company's business went on as before with the six local directors (and not the Board) managing the business on a consensus basis right up until the events of 2009. Despite the terms of the shareholders' agreement, which envisaged a management structure in which the Board would conduct the day to day management, there were only two Board meetings a year. IFC did not appoint its nominee to the board for five years after 2002. Under the shareholders' agreement the Board would not be quorate without the presence of both nominee directors of the institutional investors. Yet the management continued without Board meetings but rather on the basis of consensus amongst the Vietnamese and Messrs Scriven, Shrimpton and Pasikowski: and the usage of the terms "partner" and "partnership" continued as before. Mr Hollington points to a Corporate Governance Report produced by the IFC after the events of 2009 in which they describe the Company's organisational structure as having "basically stayed the same as it was back in 1994", commenting that its management style "remains characterized as informal and friendship based". This report was prepared with the benefit of interviews of all the local directors except Mr Tan and Mr Shrimpton. It shows, says Mr Hollington, that the quasi-partnership went on after the shareholders' agreement much the same as it had before.

[63] What he draws from all this is that it throws doubt on the proposition that the shareholders' agreement destroyed the quasi-partnership. In other words it reflects back upon that agreement and may affect the construction of it. He recognizes of course that under BVI law, which is the same as English law for this purpose, conduct after the execution of an agreement is not

admissible on a question of construction of it: see Schuler (L) Ag v Wickman Machine Tools Sales Ltd.[13] But he points out that the shareholders' agreement is expressly governed by New York law, in respect of which the Claimants have put in evidence which suggests that where a contract is ambiguous, the court will look to extrinsic evidence including relevant conduct before and after execution of the contract (citing Greenfield v Phillies Records, Inc[14] and Coliseum Tower Assocs. v County of Nassau)[15].

[64] Mr Millett says of course that there is no ambiguity but, when all the evidence is in and the matter is looked at in the round, I am by no means sure that the context I have mentioned, coupled with the absence from the shareholders' agreement of the Vietnamese directors, will not throw up sufficient uncertainty in the court's view to let in evidence of conduct after the execution of the agreement. It is not fanciful to expect that this evidence might resolve the ambiguity in favour of Mr Hollington's client.

[65] This case is going to trial in any event. It would be wrong in my judgment to shut him out of arguing that the quasi-partnership survived the shareholders' agreement. As Mr Hollington has pointed out it is his client who has put in his case on affidavit while the Applicants have put in no evidence of their own. Furthermore, there has not been disclosure yet and it is reasonable to expect that there will be considerable disclosure on the quasi-partnership issue throughout the period from 1994 to 2009. On a summary judgment application the court must take into account not only the evidence actually placed before it but also the evidence that can reasonably be expected to be available at trial: See Royal Brompton Hospital NHS Trust v Hammond (No. 5)[16]

[66] Quite apart from all the above, Mr Hollington submits that even if the shareholders' agreement swept away the quasi-partnership his case is that it was revived afterwards as a result of the conduct of the parties, and its disappearance for a scintilla temporis did not interrupt what was in effect a seamless transition from the period before to the period after the shareholders' agreement. His case in this respect has therefore to go to trial in any event and thus it would be wrong to shut

[13] [1974] AC 235
[14] 780 N.E. 2d 166 (N.Y. 2002)
[15] 769 N.Y.S 2nd 293, 296 (app. Div. 2003)
[16] [2001] EWCA Civ. 550

him out of arguing, as a matter of construction, that the agreement did not destroy the quasi-partnership.

[67] There is one other consideration of some importance. It will have been noticed from the form of the application itself which is quoted in paragraph [24] above that the application seeks to shut out any relief in the main action being determined "by reference to the quasi-partnership and/or informal understandings pleaded" in the ASOC. Mr Hollington points out that even if the quasi-partnership was swept away by the shareholders' agreement and never revived, its existence in the years before (when profits were ploughed back so as to swell the value of the shares) would remain relevant to the question of a minority discount in the valuation of his client's shares on a buy out ordered by the court in awarding the relief claimed in the ASOC. So even if Mr Millett is right in his contention that the shareholders' agreements of 2002 and 2005 swept away the quasi-partnership, they would not sweep away the need to investigate the existence of the quasi-partnership in the years 1994 to 2002.

[68] I have now dealt with what seems to me to be the high point of Mr Millett's case. There is another point I should mention and that is his submission that clause 16 of the shareholders' agreement (the "no partnership" clause which I have quoted above) itself sweeps away the quasi-partnership. The evidence is that this clause was introduced at the behest of IFC who, quite naturally, did not want the Company to be able to represent itself as a partner of the IFC. The clause is directed to the issue of whether the agreement creates a legal partnership. A quasi-partnership is not a legal partnership and, accordingly, I do not think this point advances the Applicants' case on this application. Mr Millett in his skeleton argument said: "It is inescapable that the reason why this common provision was added was precisely to avoid the introduction of equitable concepts arising from partnership between any of the parties". There was no evidence to support this bold submission. Mr Scriven put in none. Nothing suggests that this submission is even remotely correct. The only evidence of the reason behind the clause is that put in by Mr Shrimpton.

[69] I hope I have done justice to Mr Millett's excellently presented submissions. It is impractical in a judgment like this exhaustively to record everything that is argued. Mr Millett took me, for example, to the subscription agreements entered into by IFC in 2002 and Proparco in 2005 and to other

detailed provisions in the shareholders' agreement. None of these excursions persuaded me that I should strike out any part of the claim on this summary judgment application and I think it would unduly burden this judgment to record these detailed excursions.

[70] I should however perhaps mention one other clause of the shareholders' agreement and that is clause 1.6 which seems to suggest that the Core Shareholders would in all matters operate by majority vote. This clause was not mentioned in either skeleton and its deployment by Mr Millett came as a complete surprise to Mr Hollington at the hearing. It was deployed by Mr Millett to reverse the effect of clause 8.2(b) and, if correct, would mean that the only basis for grounding the relief claimed in the action would be the quasi-partnership. Success on this summary judgment application could thus be determinative of the outcome of the entire proceedings. There is no need, nor would it be desirable, for me to go into the detailed argument surrounding clause 1.6. Mr Hollington said it was meaningless. I mention the point to show that I have not overlooked it.

[71] All things considered, I think this application for summary judgment should fail. The claim for relief based on the existence of a quasi-partnership between 1994 and 2009 has a "realistic " as opposed to a "fanciful" prospect of success which is the test I must apply: see Swain v Hillman.[17] I therefore dismiss the application.

APPENDIX

Quasi-partnership and the introduction of new shareholders

"6. Mr Shrimpton and Mr Scriven founded the first entity in the Group in 1994 and subsequently, in 1996, the Company on the basis of their relationship of mutual trust and confidence. When the Company was incorporated on 28 May 1996, Mr Shrimpton and Mr Scriven were appointed as the only directors. At all material times, until the events hereinafter described, Mr Shrimpton and Mr Scriven were referred to and called themselves "co-founding partners". Mr Shrimpton and Mr Scriven (the Co-founding Partners) established working and management practices between them,

[17] [2001] 2 All ER 91 at 95

on the basis of the said relationship of mutual trust and confidence, which arose out of and/or gave rise to the following fundamental understandings between them (the Understandings), namely that they would treat each other as partners, and:

(a) each would be entitled to be and to remain involved on an equal basis with each other in the executive management of the Group and the Company's business (and as a director of any corporate body through which the same would be conducted) (the Participation Understanding);

(b) each would show the utmost good faith towards the other in all their dealings in relation to the affairs of the Group (the Good Faith Understanding);

(c) decisions on major issues affecting the business of the Group and the Company would be first sought to be reached on a consensus basis before actions were taken, including asset acquisitions and disposals, and the organisation of the Group's management (the consensus Understanding); and

(d) parts of the earnings of the Company would be reinvested back into the Company, even at the expense of personal remuneration and withdrawal of accrued capital from the business (the Reinvestment Understanding).

7. Subsequently, from 1998 onwards, the shareholding in the Company was gradually expanded to include Mr. Pasikowski and, due to restrictions of the State Bank of Vietnam regulating Vietnamese ownership of foreign investments such as shares in the Company, indirectly, Mr. Tuan, Mr. Tan and Mr. Minh (together, the New Partners, and the last three, the Vietnamese Partners). Each of the New Partners became in due course a director of the Company.

8. The Co-founding Partners, together with the New Partners as they were brought in to the executive management, at all material times, until the events hereinafter described, were referred to as and called themselves either "partners" or the "DC Partners" (the DC Partners).

9. As the New Partners were brought in to the executive management of the Company and the Group, each of them subscribed to and became entitled to the benefit of the Understandings to the

extent of their respective interests in the Company, it being understood between the Co-founding Partners and the New Partners that the Co-founding Partners:

(a) would together be the senior partners in and members of the executive management of the Group and the Company's business;

(b) would continue to participate on an equal footing in the executive management of the Group and the Company's business (and as a director of any corporate body through which the same would be conducted); and

(c) would continue to receive broadly equal amounts of income from the Company in the form of remuneration, bonuses and dividends.

(together, the Co-founding Partner Understanding). Any reference hereinafter to the Understandings includes the Co-founding Partner Understanding.

The said relationship between the DC Partners, based on the Understandings, is referred to as the Quasi-Partnership."

"13. At the time of their investments, the Institutions were aware of and accepted the Quasi-Partnership amongst the DC Partners and that the Company would continue to be run by the DC Partners in same way as it had been run in the past and as set out in the section headed above Quasi-partnership and the Introduction of new shareholders, subject to the terms of the Shareholders' Agreement including, in particular, the obligation of the DC Partners to consult with and seek the approval of the full Board, which included the nominees of the Institutions, as was appropriate. In practice, as the Institutions knew and accepted, the Company continued to be run by the DC Partners who conducted its affairs amongst themselves on the basis that they remained bound by and entitled to the benefit of the Understandings. Reference will be made to documents, including board papers, too numerous to list here in which words were used which expressly indicated the partnerial nature of the relationship between the DC Partners."

To complete the picture of the pleading under attack I quote from the responses to Mr. Scriven's request for further information concerning the paragraph 6 of the ASOC which is under attack.

"The best particulars that the Claimants can reasonably be expected to give prior to disclosure and the contents of witness statements are as follows. The Understandings and each of them

were reflected in and/or arose out of the working and management practices of the Company and the Group, including Dragon Capital Limited insofar as its activities preceded those of the Company. Those practices had developed the following features from 1994 in relation to Dragon Capital Limited and were carried over in relation to the Company from 1996 onwards:

(a) The partnerial relationship referred to in the Responses above;

(b) Each of Mr. Shrimpton and Mr. Scriven was a director of the Company and most of the subsidiaries of the Group, and was involved in the executive management of the Company and the Group;

(c) Each of Mr. Shrimpton and Mr. Scriven participated in the management the Company on an equal basis in the sense that: (i) neither had a reporting line to the other; (ii) neither had superior voting rights to the other with respect to any decisions affecting the Company; (iii) each consulted the other on all significant decisions affecting the Company; and (iv) neither had a title that differed from the other;

(d) On all major decisions affecting the Company, consensus was sought between the DC Partners, who were originally just Mr. Shrimpton and Mr. Scriven, and no significant decisions were taken unless supported by a consensus of opinion as between Mr. Shrimpton and Mr. Scriven;

(e) Broad parity of remuneration was maintained as between Mr. Scriven and Mr. Shrimpton;

(f) Mr. Shrimpton and Mr. Scriven acted towards each other openly and with candour;

(g) Mr Shrimpton and Mr Scriven trusted one another and had confidence that each would honour their respective roles;

(h) From 1994, Mr Shrimpton had provided interest-free and undocumented loans both to Dragon Capital Limited and to Mr Scriven in order respectively to assist funding the early operation of the Group business and concurrently to help ensure that Mr Scriven enjoyed parity with Mr Shrimpton in terms of his financial interest;

(i) Mr Shrimpton and Mr Scriven managed the Company in the absence of a written agreement setting out the terms of their relationship;

(j) Regarding dividends and save in relation to a dividend declared in exceptional circumstances in 2000 and 2003, from early 1995, Mr Shrimpton and Mr Scriven had decided not to distribute the Company's profits by way of dividends, but rather to reinvest them back into the Company. Mr Shrimpton and Mr Scriven together decided to focus on channelling revenue towards Dragon Capital Limited (and later, the Company) with the objective of maximising earnings and capitalising on the price earnings ratio of the Dragon Capital business. For example, in view of the continuing need for reinvestment, no dividends were declared by the Company during the year ended 31 December 2001 despite the company making consolidated net profit of US$471,338 (an increase of 181.6% compared to the previous year) and having net retained earnings of US$2,335,242 (an increase of 25.3% compared to the previous year).

With effect from the 2004 financial year onwards, distribution of a portion of the company's earnings occurred each year by way of a dividend, save that the dividend proposed by the Board in relation to the 2013 financial year has not been approved by Messrs Scriven and Pasikowski and no dividend has yet been proposed in relation to the 2014 financial year, the unaudited results for which showed an improvement on the 2013 financial year's net profit. However, even where dividends were declared Mr Shrimpton, Mr Scriven and the other DC Partners decided to retain a more substantial portion of the company's earnings for reinvestment. The above features of the Company's working and management practices developed and continued on a year-by-year basis from 1995 onwards (save that the loans stated above were repaid upon the restructuring of Dragon Capital Limited into the Company), and those practices continued after the admission of the New Partners into the Company and the Quasi-Partnership.

Jules Sher QC
Commercial Court Judge (Ag)
2nd June 2016