Michaelmas Term
[2025] UKPC 56
Privy Council Appeal No 0007 of 2024

JUDGMENT

Aquapoint LP (in Official Liquidation) (Appellant) *v* Xiaohu Fan (Respondent) (Cayman Islands)

From the Court of Appeal of the Cayman Islands

before

Lord Sales
Lord Leggatt
Lord Burrows
Lord Richards
Dame Janice Pereira

JUDGMENT GIVEN ON
27 November 2025

Heard on 31 March 2025

Appellant
Tom Smith KC
Chris Keefe
Peter Burgess
Geoffrey Sykes
(Instructed by Walkers (Cayman) LLP and Blake Morgan LLP (London))

Respondent
Ben Valentin KC
Bhavesh Patel
(Instructed by Seladore Legal Limited and Travers Thorp Alberga (Cayman Islands))

LORD RICHARDS:

Introduction

1. This is an appeal against an order made to wind up AquaPoint LP ("Aquapoint") on the grounds that it was just and equitable to do so. The appeal raises issues as to the circumstances in which the exercise of legal rights may be subject to equitable constraints.

2. Aquapoint is an exempted limited partnership ("ELP") formed in the Cayman Islands under the Exempted Limited Partnership Act ("the ELP Act"). The ELP Act requires an ELP to consist of one or more general partners and one or more limited partners. The general partner has full responsibility for the management and conduct of the ELP's business and is liable for the ELP's debts in the event of a shortfall in its assets. A limited partner must not take part in the management of the ELP and is not liable for its debts and obligations except as may be provided by the partnership agreement.

3. Aquapoint has one general partner and three limited partners. The general partner is GenScript Corporation ("Genscript"), incorporated under the laws of Delaware. Genscript is and has at all material times been controlled by Dr Fangliang (Frank) Zhang. The petitioner, Dr Xiaohu (Frank) Fan, is one of the limited partners, with a 65.96% interest in Aquapoint. The other limited partners are Ms Ye (Sally) Wang, with a 32.98% interest (now held in a family trust), and Genscript, with a 1.06% interest.

4. Aquapoint was established in 2017 to hold approximately 15% of the shares in Legend Biotech Corporation ("Legend Cayman"), a company incorporated in the Cayman Islands and formed by Genscript. It was established in preparation for an initial public offering ("IPO") and listing of the shares of Legend Cayman on the NASDAQ stock exchange in New York. The IPO and listing occurred in 2020. Dr Fan's interest as a limited partner in Aquapoint equates to nearly 20 million shares in Legend Cayman, which is approximately 10% of its share capital ("the 10% shareholding").

5. The essence of Dr Fan's case is that, in order to induce him to become a limited partner in Aquapoint, Genscript (acting by Dr Zhang and Ms Wang) gave him assurances that he would be able to withdraw the 10% shareholding from Aquapoint six months after the IPO, but that, in breach of those assurances, Genscript prevented him from doing so by exercising its power as general partner under the partnership agreement to refuse its consent to the withdrawal. The trial judge found that the assurances had been given so as to induce Dr Fan to become a limited partner in Aquapoint. Those findings were not challenged on appeal.

6. The essence of Aquapoint's case is that, by refusing its consent to Dr Fan's request, Genscript was simply exercising its legal power under the partnership agreement and that the prior assurances given to Dr Fan provided no basis on which the court could conclude that it was just and equitable to wind up Aquapoint.

7. At first instance, in a judgment dated 10 June 2022 Doyle J accepted Dr Fan's case and ordered Aquapoint to be wound up. For the reasons given in a judgment dated 4 October 2023 (Civil Appeal No 14 of 2022), the Court of Appeal (Goldring P, Field and Birt JJA) dismissed Aquapoint's appeal. Aquapoint appeals to the Board.

Facts

8. Genscript was founded in 2002 by Dr Zhang and others, including Ms Wang. The Genscript group operates in the biological and medical research sector. Its principal operations are in Nanjing and Zhenjiang in the People's Republic of China ("the PRC").

9. Dr Fan is a research scientist who carried out important work on cell therapy, immunology and cell biology as an employee of the Genscript group.

10. In 2014, Genscript launched a new project to develop novel cell therapies for the treatment of cancer and other purposes. Dr Fan accepted appointment as the project's chief scientific officer and, in that capacity, he was closely involved in the development of various therapies. In March 2016, he was with others responsible for the invention of a ground-breaking therapy for the treatment of multiple myeloma patients. It is common ground that he made a significant contribution to the success of the business.

11. In November 2014, Genscript formed Nanjing Legend Biotechnology Co Ltd ("Legend Nanjing") in the PRC as the vehicle for the new project and with a view to an IPO and listing of its shares.

12. As Doyle J recorded in his judgment at para 4, "Dr Zhang astutely recognised that Dr Fan could play a key role in significantly adding to the value of the business and wished to encourage him to remain within the business with the incentive of financial rewards". On 1 January 2016, Legend Nanjing, acting by Dr Zhang, and Dr Fan entered into an agreement ("the 2016 Agreement") under which Legend Nanjing agreed to grant Dr Fan a 10% shareholding in Legend Nanjing on terms that, prior to Legend Nanjing's IPO, he would not transfer the shares or create any security interest over them without Legend Nanjing's approval.

13. Later in 2016, Genscript established Legend Cayman as the intended listed vehicle for the Legend business. Genscript, acting by Dr Zhang and Ms Wang, proposed to Dr Fan that the 2016 Agreement should be terminated and that Dr Fan should become a limited partner in an ELP which would hold approximately 15% of the shares in Legend Cayman. Discussions and communications to this end began in July 2016.

14. Critical to the issues in this appeal are the assurances given to Dr Fan during these discussions. The assurances and their context were summarised by Field JA in his judgment (with which Sir John Goldring P and Birt JA agreed) at para 12:

> "When Dr Fan was approached with Dr Zhang's new strategy, his chief concern was that he should still be entitled after the IPO to be registered as the owner of 10% of the shares in the listing entity, as he had been under the 2016 Agreement in respect of 10% of the shares in Legend Nanjing. He made this very clear on several occasions to Ms Wang and Dr Zhang who both assured him that the 2016 Agreement would be 'rolled over' into the arrangement involving a Cayman ELP. Dr Fan relied on these assurances when signing the 2017 Agreement: he would not have signed the constituent agreements if the assurances had not been given. His interest in the partnership under the 2017 Agreement was the equivalent of 10% of the shares in Legend Cayman which was the same percentage he was promised in respect of the shares in Legend Nanjing. In the light of these matters the judge held that Dr Fan had a legitimate expectation and reasonable understanding that 6 months after the Legend Cayman IPO he would be entitled to have access to 10% of the shares in Legend Cayman."

15. The discussions were successfully concluded in May 2017. Aquapoint had been formed pursuant to an initial partnership agreement made on 16 February 2017 between Genscript as the general partner and a nominee company as the initial limited partner. On 25 May 2017, Dr Fan entered into a subscription agreement, pursuant to which he subscribed for a partnership interest in Aquapoint (representing 65.96% of the partnership interests) ("the Subscription Agreement"). Also on 25 May 2017, Genscript as general partner and Ms Wang and Dr Fan as newly admitted limited partners entered into an amended and restated limited partnership agreement ("the LPA"), and the initial limited partner withdrew from the partnership. On 9 June 2017, Dr Fan entered into a written acknowledgement of the termination of the 2016 Agreement. These agreements and acknowledgement are together referred to as "the 2017 Agreement" in this judgment and in the judgments of the courts below.

16. The assurances previously given to Dr Fan were repeated in early June 2017. For example, in WeChat exchanges with Dr Fan, Ms Wang said "The best news for you is that your stake in Nanjing Legend will be turned into shares in Cayman Legend" and "This agreement is not to change any material personal interests of yours. It's only intended to make the original agreement legitimate, and to create scope for future development".

17. The sole asset of Aquapoint was, in 2017, and remained, at the date of the Court of Appeal's judgment, its holding of 30,320,000 ordinary shares in Legend Biotech, representing 15.6% of its issued share capital in 2017.

18. In October 2017, Dr Fan paid RMB 2.5 million, the sum fixed by the 2016 Agreement, in respect of his underlying interest in 10% of the shares of Legend Cayman, of which RMB 2 million was reimbursed to him over a four-year period.

19. The shares of Legend Cayman were listed on the NASDAQ exchange on 5 June 2020. The listing documents stated that the existing shareholders of Legend Cayman, which of course included Aquapoint, agreed not to dispose of their shares in the six months after the listing.

20. The lock-up period following the listing expired in December 2020. What then happened is summarised by Field JA in para 15 of his judgment:

> "Following the end of the 6 month lock in period, Dr Fan informed Ms Wang and Dr Zhang that he wanted access to 10% of the Legend Cayman shares held by [Aquapoint]. He first suggested that ALP be dissolved to achieve this and was invited to serve a written request that his Legend Cayman shares be sold subject to the [general partner] exercising its discretion accordingly. He then proposed that 2 million Legend Cayman ADS [American Depositary Receipt] shares (equivalent to 20 million ordinary shares) be sold as an interim measure whilst the differences between him and Dr Zhang and Ms Wang were sorted out. At a meeting on 26 February 2021, Dr Zhang refused Dr Fan's sales plan, mentioning that maybe Dr Fan would be able to sell about 30,000 Legend Cayman ADS shares raising about US$ 1 million, which would have meant that it would have taken over 300 years for Dr Fan's total shares to be sold. Dr Zhang's declared reason for this response was that the company needed to raise funds and Dr Fan's sales plan would 'crash the stock price'. Dr Fan then asked Dr Zhang on 5 March 2021 for an offer to allow the sale of a reasonable amount of

> his shares to which Dr Zhang responded the same day, stating that the Legend Cayman management team and board were only prepared to sell 200,000 ADS shares producing around $US4.5 million and this was a final offer. This offer Dr Fan accepted, but no steps were taken by [Genscript] to implement it. Instead, Dr Zhang let Dr Fan know that he had been instructed not to sell the shares. Following a chasing letter from Dr Fan's attorneys, Travers Thorp Alberga ('TTA'), [Aquapoint's] then attorneys, Dentons, stated in a letter dated 21 May 2021 that Dr Fan had not adopted the correct methodology for attempting to transfer his interest in the partnership and added that he could not be allowed to sell 10% of the Legend Cayman shares on account of the impact this would have on the share price. Five days later, by a letter dated 26 May 2021, Dentons, on behalf of [Aquapoint], offered to release 5% of the Legend Cayman shares held under Dr Fan's interest in the partnership followed by 3.5% every year thereafter but Dr Fan rejected this offer."

21. On 9 June 2021, Dr Fan presented his petition to wind up Aquapoint.

The 2017 Agreement

22. The legal relations between the partners in Aquapoint are governed by the 2017 Agreement (principally, the LPA) and by the ELP Act.

23. By clause 2 of the LPA, the parties acknowledged that Aquapoint was formed as an ELP and that "[e]xcept as otherwise expressly provided for herein, the rights and obligations of the Partners shall be as provided for in the [ELP Act]". The limitations on the liability and authority of the limited partners are set out in clause 3, while clause 4.1 gives to Genscript as the general partner "full power and authority to conduct, administer, manage, control and operate the Partnership Business".

24. Clause 7.1 provides for a capital account to be established in the partnership accounts for each partner's capital interest. Each capital account was to be initially equal to the relevant partner's capital contribution. The contributions agreed under the terms of the LPA were RMB 2.5 million for Dr Fan, RMB 1.25 million for Ms Wang and RMB 40,000 for Genscript, in each case to be paid in cash on or before 29 December 2017.

25. Clause 7.7 (headed "No Right of Withdrawal") is of central importance in this appeal. It provides:

> "No Limited Partner will be permitted to withdraw from the Partnership, or to withdraw any part of its Capital Account, save with the prior consent of the General Partner, which consent may be given or withheld for any reason (or no reason at all) in the sole and absolute discretion of the General Partner."

26. Clause 9 provides for the General Partner to distribute any partnership assets which it does not, in its discretion, consider to be necessary to the operation of the partnership, at the time or times determined by the General Partner. Any distribution is to be made to the partners pro rata to their respective interests as determined by reference to their capital contribution.

27. Clause 12.11 is an entire agreement clause which provides, among other things, that the LPA "cancels and supersedes any prior understandings and agreements between the parties with respect to such subject matter." It goes on to provide that:

> "There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties with respect to the subject matter of this Agreement other than those expressly set forth in this Agreement and/or the other documents required to be delivered pursuant to such agreements."

28. By the Subscription Agreement, Dr Fan agreed to pay RMB 2.5 million to Aquapoint as a capital contribution and agreed to be bound by all the terms and provisions of the LPA.

29. Clause 5 of the Subscription Agreement provides:

> "To induce the Partnership to accept this subscription, the Subscriber hereby makes the following representations, warranties and covenants to the General Partner, the Partnership and counsel to the Partnership: […]
>
> (e) in formulating a decision to invest in the Partnership, the Subscriber has not relied or acted on the basis of any representation or other information purported to be given on behalf of the Partnership or the General Partner except as set forth in the Partnership Agreement (it being understood that no person has been authorised by the Partnership or the General

> Partner to furnish any such representation or other information)."

30. Clause 7 of the Subscription Agreement provides:

> "The Subscriber hereby represents and warrants to the General Partner and the Partnership as follows: […]
>
> (b) the Subscriber has reviewed and understands the Partnership Agreement and this Subscription Agreement […]
>
> (c) the Subscriber acknowledges and agrees that, except as set forth in the Partnership Agreement, this Subscription Agreement or an additional written document (executed by a director or officer of the General Partner) which clearly and explicitly indicates that the Subscriber is entitled to rely thereon, the Subscriber has neither received, nor is entitled to rely upon, any representations or warranties from the Partnership, the General Partner, or any partner, member, director, officer, employee or agent thereof […]
>
> (d) the Subscriber is aware that except as provided in the Partnership Agreement, the Subscriber will have no right to withdraw from the Partnership or to receive distributions in liquidation of the Partnership Interest […]."

31. By clause 7(g), Dr Fan also represents and warrants that he had sought independent legal and other advice to the extent that he deemed necessary or appropriate. He did not in fact seek legal advice because, as Doyle J found, he trusted Dr Zhang and Ms Wang.

The ELP Act

32. The ELP Act has been amended and republished in revised form a number of times since its enactment. The 2021 revision applies to the present proceedings. An ELP may be formed for any lawful purpose to be undertaken in or from within the Cayman Islands

or elsewhere, but it may not undertake business with the public in the Islands save as necessary for its business outside the Islands (section 4(1)).

33. An ELP does not have separate legal personality but is a form of partnership. To constitute an ELP, it must be registered with the Registrar of Companies. As earlier noted (see para 2 above), an ELP must include at least one general partner and at least one limited partner. A general partner is liable for all the debts and liabilities of an ELP to the extent of any deficit of assets and is responsible for the conduct and management of the business of the ELP, while a limited partner is normally liable only to the extent provided in the partnership agreement (section 4(2)). A limited partner is not permitted to take part in the conduct of the business and loses its limited liability status if it does so (sections 14(1) and 20(1)).

34. Section 3 of the ELP Act provides:

> "The rules of equity and of common law applicable to partnerships as modified by the Partnership Act (2013 Revision) but excluding sections 31, 45 to 54 and 56 to 57 shall apply to an exempted limited partnership, except where they are inconsistent with the express provisions of this Act."

35. Section 19 provides:

> "(1) A general partner shall act at all times in good faith and, subject to any express provisions of the partnership agreement to the contrary, in the interests of the exempted limited partnership.
>
> (2) Subject to any express provisions of the partnership agreement to the contrary, a limited partner of an exempted limited partnership in that capacity does not owe any fiduciary duty in exercising any of its rights or authorities or otherwise in performing any of its obligations under the partnership agreement to the exempted limited partnership or any other partner".

36. Section 36 makes provision for the winding-up of an ELP, to which the provisions in the Companies Act and the Companies Winding Up Rules apply with modifications necessary for the different status of an ELP and subject to any special rules that may be made by the insolvency rules committee. A limited partner is treated as if it were a shareholder and a general partner is treated as if it were a director.

37. Of particular relevance to this appeal is section 36(3)(g) which provides:

> "(3) …the provisions of Part 5 of the Companies Act …shall apply to the winding up of an exempted limited partnership and for this purpose – […]
>
> (g) on application by a partner, creditor or liquidator, the court may make orders and give directions for the winding up and dissolution of an exempted limited partnership as may be just and equitable."

38. Part 5 of the Companies Act contains the provisions for the winding up of companies. Section 92(e) provides that a company may be wound up by the court if "(e) the Court is of the opinion that it is just and equitable that the company should be wound up".

The judgments below

39. The facts on which Dr Fan relied for his case that it was just and equitable to wind up Aquapoint were essentially those summarised above. He had been assured by Dr Zhang and Ms Wang on behalf of Genscript that he would be entitled to receive a 10% shareholding in Legend Cayman, notwithstanding the termination of the 2016 Agreement and the formation of Aquapoint. He had relied on these assurances in entering into the 2017 Agreement, but Genscript had then used its legal power under the LPA to prevent him from withdrawing from Aquapoint and receiving the 10% shareholding in Legend Cayman. His case was that it was those facts, seen in their context, which made it just and equitable to wind up Aquapoint. Having heard oral evidence from Dr Fan, Dr Zhang and Ms Wang, Doyle J found that the assurances alleged by Dr Fan had been given and that he relied on them in entering into the 2017 Agreement and becoming a limited partner in Aquapoint. There was no appeal against those findings.

40. As identified by the Court of Appeal, there were four grounds on which Doyle J held that it was just and equitable to wind up Aquapoint.

41. The first ground was that, as a consequence of the assurances which Dr Fan received from Dr Zhang and Ms Wang which induced him to agree to the termination of the 2016 Agreement and to enter into the 2017 Agreement and become a limited partner in Aquapoint, "the relationship between Dr Fan and Dr Zhang was sufficiently akin to partnership of the sort contemplated by Lord Wilberforce in [*Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360 ("*Westbourne Galleries*")] for the assurances to be of a character arising between one individual and another that made it inequitable for

[Genscript] to insist on a claimed entitlement to refuse to agree to Dr Fan's request to have 10% of the Legend Cayman shares transferred to him" (para 63 of Field JA's judgment). The Court of Appeal upheld this ground. Reliance by Genscript on the entire agreement clause in the LPA and the provisions of the Subscription Agreement whereby Dr Fan agreed that he was not relying on any representations to become a limited partner in Aquapoint was "inconsistent with the free-standing duty to act in good faith which I find to be engaged in respect to the assurances, the honouring of which is a matter that I find affected the conscience of [Genscript]" (para 66 of Field JA's judgment).

42. The second ground, which the Court of Appeal did not uphold, was that the relationship between the partners was one of mutual trust and confidence which, as a result of Genscript's refusal to consent to Dr Fan's withdrawal, had irretrievably broken down. Giving the judgment of the Board in *Lau v Chu* [2020] UKPC 24, [2020] 1 WLR 4656, Lord Briggs said at para 15 that "where the company is a corporate quasi-partnership, an irretrievable breakdown in trust and confidence between *participating* members may justify a just and equitable winding up" (emphasis added). Dr Fan was a limited partner in Aquapoint who was therefore prohibited from taking part in the conduct of its business. Relying on what Lord Briggs had said, Field JA said at para 71 "I find myself constrained to conclude that in respect of this second winding up ground, Dr Fan had to establish that he was a participant in running the business of [Aquapoint] which was a condition that on the evidence he was never going to be able to satisfy".

43. The third ground, which was upheld by the Court of Appeal, was that Dr Fan had justifiably lost trust and confidence in the conduct and management of Aquapoint's affairs as a result of Genscript's failure to honour the assurances given to Dr Fan.

44. The fourth ground, also upheld by the Court of Appeal, was that Genscript was in breach of its duty to act in good faith and to avoid conflicts of interest when it refused its consent to Dr Fan's withdrawal from Aquapoint. While agreeing with Doyle J's conclusion on this ground, Field JA pointed out at para 75 of his judgment that "this conclusion is dependent on the judge's finding that [Genscript] frustrated Dr Fan's legitimate expectation that [Genscript] would transfer into his ownership 10% of the Legend Cayman shares contrary to the good faith duty it owed in regard to the assurances" so that in substance and form the first and fourth grounds duplicated each other.

Jurisdiction to wind up an ELP on the just and equitable ground

45. While it is not in doubt that the court has jurisdiction to wind up an ELP on the ground that it is just and equitable to do so, there appears to have been some uncertainty as to the statutory provision under which this power arises. Doyle J noted at para 157 of his judgment that there had been a debate in cases at first instance as to whether the jurisdiction arose under section 35(e) of the Partnership Act, as applied by section 3 of

the ELP Act, or under section 92(e) of the Companies Act, as applied by section 36(3) of the ELP Act. As it was common ground that the court had jurisdiction to wind up an ELP if it was just and equitable to do so, he considered that it was unnecessary to enter into the debate. The Court of Appeal considered it inappropriate to decide the issue in the absence of submissions on it.

46. The Board has likewise received no submissions on this point, which is of no significance to the parties given their common position that the court has power to wind up an ELP on the grounds that it is just and equitable to do so. It is perhaps less than satisfactory that a court should make orders while being uncertain of the source of its power to do so. While acknowledging that it has received no submissions on the point, the Board's present view is that the power arises simply under section 36(3)(g) of the ELP. An ELP is a special form of partnership created by the ELP Act. The primary source of legal provision for the nature and attributes of an ELP, and the court's jurisdiction in relation to an ELP, is the ELP Act. Section 36(3)(g) provides in terms that "on an application by a partner …, the court may make orders …for the winding up and dissolution of an exempted limited partnership as may be just and equitable". There would not seem to be any need to look further for the court's jurisdiction to wind up an ELP on the just and equitable ground.

47. As regards the principles to be applied in deciding whether it is just and equitable to order the winding up of an ELP, the submissions of both parties before the courts below, and before the Board, have been made on the basis that the principles developed in relation to the winding up of companies by UK and Commonwealth courts, including the Board, apply. In a "closing observation" at the end of his judgment, Field JA drew attention to the marked differences between an ordinary partnership governed by the Partnership Act, an ELP, and a company incorporated under the Companies Act. He said that he would have been interested to hear argument as to whether "just and equitable" in section 36(3)(g) of the ELP Act "was to be construed in an expansive and flexible way, taking full account of the special nature of an ELP and less account of the overseas jurisprudence".

48. Neither party took up this invitation before the Board and both proceeded, as they had below, to argue the case on the basis of the principles established in the authorities as regards the winding up of companies. Field JA was right to draw attention to the special characteristics of an ELP, which differentiate it from both an ordinary partnership and a registered company. Unlike partners in an ordinary partnership, limited partners in that capacity do not owe fiduciary duties (section 20(2)) and a general partner's duty to act in the interests of the ELP is subject to any express provisions of the partnership agreement to the contrary. The nature of a limited partner's interest has a good deal in common with that of a shareholder in a company, but nonetheless an ELP is not a separate legal person and the property and rights of an ELP are held on trust "as an asset of the exempted limited partnership in accordance with the terms of the partnership agreement", such that limited partners have a proprietary interest in the partnership assets.

49. Like the Court of Appeal, the Board will apply the principles applicable to the jurisdiction to wind up a company on the just and equitable ground. On the facts of this case, it does not appear to the Board to be wrong to do so. Given the status of an ELP as a type of partnership, as opposed to a registered company, it appears to the Board to be highly unlikely that the principles would be less generous to a petitioning partner in an ELP than to a petitioning shareholder of a company.

Winding up a company on the just and equitable ground: general principles

50. Companies registered under companies legislation are creatures of statute and so the power to bring them to an end by winding up and the circumstances in which this can be achieved are necessarily matters for statutory provision. In the United Kingdom, the power of the court to wind up a company on the grounds that it is just and equitable to do so has been included in legislation since the mid-19th century, starting with the Joint Stock Companies Winding Up Act 1848. It has likewise appeared, and continues to do so, in many other jurisdictions, including the Cayman Islands. There has likewise developed a uniformity of approach to the interpretation and application of this power.

51. The analysis of the just and equitable ground for winding up by Lord Wilberforce in his speech in *Westbourne Galleries*, a decision of the House of Lords, has proved to be of central and enduring importance. Lord Wilberforce's approach was endorsed by the House of Lords in *O'Neill v Phillips* [1999] 1 WLR 1092 and applied to petitions for relief in respect of unfairly prejudicial conduct in the affairs of a company under what is now section 994 of the Companies Act 2006.

52. It is appropriate to quote extensively from Lord Wilberforce's speech but before doing so, it is helpful to set out a passage from the judgment of Smith J in the Australian case of *In re Wondoflex Textiles Pty Ltd* [1951] VLR 458 at 467, which Lord Wilberforce quoted:

> "It is also true, I think, that, generally speaking, a petition for winding up, based upon the partnership analogy, cannot succeed if what is complained of is merely a valid exercise of powers conferred in terms by the articles: ... To hold otherwise would enable a member to be relieved from the consequences of a bargain knowingly entered into by him: . . . But this, I think, is subject to an important qualification. Acts which, in law, are a valid exercise of powers conferred by the articles may nevertheless be entirely outside what can fairly be regarded as having been in the contemplation of the parties when they became members of the company; and in such cases the fact that what has been done is not in excess of power will not

> necessarily be an answer to a claim for winding up. Indeed, it may be said that one purpose of [the just and equitable provision] is to enable the court to relieve a party from his bargain in such cases."

53. In *Westbourne Galleries*, Lord Wilberforce said at pp 374H: "there has been a tendency to create categories or headings under which cases must be brought if the clause [ie the power to wind up a company on the just and equitable ground] is to apply. This is wrong. Illustrations may be used, but general words should remain general and not be reduced to the sum of particular instances".

54. Having reviewed earlier authorities, none of which was a decision of the House of Lords, Lord Wilberforce said at p 378 that those cases amount to "a considerable body of authority in favour of the use of the just and equitable provision in a wide variety of situations, including those of expulsion from office" (that being the principal ground on which the petitioner relied in *Westbourne Galleries*) and then said at pp 379-380 in a celebrated passage:

> "My Lords, in my opinion these authorities represent a sound and rational development of the law which should be endorsed. The foundation of it all lies in the words 'just and equitable' and, if there is any respect in which some of the cases may be open to criticism, it is that the courts may sometimes have been too timorous in giving them full force. The words are a recognition of the fact that a limited company is more than a mere legal entity, with a personality in law of its own: that there is room in company law for recognition of the fact that behind it, or amongst it, there are individuals, with rights, expectations and obligations inter se which are not necessarily submerged in the company structure. That structure is defined by the Companies Act and by the articles of association by which shareholders agree to be bound. In most companies and in most contexts, this definition is sufficient and exhaustive, equally so whether the company is large or small. The 'just and equitable' provision does not, as the respondents suggest, entitle one party to disregard the obligation he assumes by entering a company, nor the court to dispense him from it. It does, as equity always does, enable the court to subject the exercise of legal rights to equitable considerations; considerations, that is, of a personal character arising between one individual and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way.

> It would be impossible, and wholly undesirable, to define the circumstances in which these considerations may arise. Certainly the fact that a company is a small one, or a private company, is not enough. There are very many of these where the association is a purely commercial one, of which it can safely be said that the basis of association is adequately and exhaustively laid down in the articles. The superimposition of equitable considerations requires something more, which typically may include one, or probably more, of the following elements: (i) an association formed or continued on the basis of a personal relationship, involving mutual confidence—this element will often be found where a pre-existing partnership has been converted into a limited company; (ii) an agreement, or understanding, that all, or some (for there may be 'sleeping' members), of the shareholders shall participate in the conduct of the business; (iii) restriction upon the transfer of the members' interest in the company—so that if confidence is lost, or one member is removed from management, he cannot take out his stake and go elsewhere.
>
> It is these, and analogous, factors which may bring into play the just and equitable clause, and they do so directly, through the force of the words themselves. To refer, as so many of the cases do, to 'quasi-partnerships' or 'in substance partnerships' may be convenient but may also be confusing. It may be convenient because it is the law of partnership which has developed the conceptions of probity, good faith and mutual confidence, and the remedies where these are absent, which become relevant once such factors as I have mentioned are found to exist: the words 'just and equitable' sum these up in the law of partnership itself. And in many, but not necessarily all, cases there has been a pre-existing partnership the obligations of which it is reasonable to suppose continue to underlie the new company structure. But the expressions may be confusing if they obscure, or deny, the fact that the parties (possibly former partners) are now co-members in a company, who have accepted, in law, new obligations. A company, however small, however domestic, is a company not a partnership or even a quasi-partnership and it is through the just and equitable clause that obligations, common to partnership relations, may come in."

55. In *O'Neill v Phillips*, Lord Hoffmann giving the only reasoned speech drew a direct parallel between the concept of unfair prejudice in a company context and Lord Wilberforce's approach to the just and equitable ground for winding-up. The parallel was

"in the principles upon which [the court] decides that the conduct is unjust, inequitable or unfair" (p 1100).

56. Lord Hoffmann said at p 1098 that Parliament had chosen fairness as the criterion for relief "to free the court from technical considerations of legal right and to confer a wide power to do what appeared just and equitable". At the same time, this was not an unfettered power but one which must be used having regard to the particular context and background, which had two features identified by Lord Hoffmann at pp 1098-1099:

> "First, a company is an association of persons for an economic purpose, usually entered into with legal advice and some degree of formality. The terms of the association are contained in the articles of association and sometimes in collateral agreements between the shareholders. Thus the manner in which the affairs of the company may be conducted is closely regulated by rules to which the shareholders have agreed. Secondly, company law has developed seamlessly from the law of partnership, which was treated by equity, like the Roman societas, as a contract of good faith. One of the traditional roles of equity, as a separate jurisdiction, was to restrain the exercise of strict legal rights in certain relationships in which it considered that this would be contrary to good faith. These principles have, with appropriate modification, been carried over into company law.
>
> The first of these two features leads to the conclusion that a member of a company will not ordinarily be entitled to complain of unfairness unless there has been some breach of the terms on which he agreed that the affairs of the company should be conducted. But the second leads to the conclusion that there will be cases in which equitable considerations make it unfair for those conducting the affairs of the company to rely upon their strict legal powers. Thus unfairness may consist in a breach of the rules or in using the rules in a manner which equity would regard as contrary to good faith."

57. There are a number of important points of direct relevance to the present appeal which emerge from the speeches of Lord Wilberforce and Lord Hoffmann:

(i) The choice of "just and equitable" as a ground for a winding-up order is a deliberate choice to introduce equitable principles into what is an essentially statutory scheme.

(ii) It was natural for Parliament to introduce these principles, given that company law was a development from the law of partnership under which dissolution would be ordered where it was just and equitable to do so.

(iii) The application of equitable principles is not subject to a scheme of categories into which a particular case must fall. As Lord Scarman said in the context of the power to grant injunctions, "the width and flexibility of equity are not to be undermined by categorisation": *Castanho v Brown & Root (UK) Ltd* [1981] AC 557 at 573, quoted in *Wolverhampton City Council v London Gypsies and Travellers* [2024] AC 983 at para 21. Lord Wilberforce could not have been clearer on this: "It would be impossible, and wholly undesirable, to define the circumstances in which these considerations may arise" (p 379E).

(iv) In particular, the relevant circumstances are not restricted to cases where the parties have previously been in partnership or where the arrangement between the parties is in effect a partnership in corporate form (a so-called "quasi-partnership"). Consistently with what he said in the passage quoted in sub-para (iii) above, Lord Wilberforce was careful to say in the same paragraph, when identifying three particular characteristics which might bring equitable considerations into play, that they were typical, not exclusive.

(v) The role of equity is more general. It is, as it always is, to enable the court "to subject the exercise of legal rights to equitable considerations; considerations, that is, of a personal character arising between one individual and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way".

(vi) At the same time, the commercial context and the fact that the parties have become shareholders in a company, governed by the companies legislation and by the articles of association by which they agree to be bound, means that in the great majority of cases the legislation, articles and any other agreements binding the shareholders will be a sufficient and exhaustive statement of their rights and expectations. As Lord Hoffmann said in *O'Neill v Phillips* at pp 1098-1099: "a member of a company will not ordinarily be entitled to complain of unfairness unless there has been some breach of the terms on which he agreed that the affairs of the company should be conducted".

The present appeal

58. As earlier stated, Field JA identified four distinct grounds on which Doyle J had found that it was just and equitable to wind up Aquapoint. In truth, however, they boil down to one ground: in the light of the assurances given to Dr Fan to induce him to give

up his rights as regards shares in Legend Nanjing and to become a limited partner in Aquapoint, Genscript was not entitled to exercise its power under the LPA to refuse consent to Dr Fan's request for the shares in Legend Cayman attributable to his interest in Aquapoint.

59. The attempt to separate this single ground into four separate grounds reflects the tendency of practitioners and courts to try to slot cases into categories, despite Lord Wilberforce's warning not to do so. Different catchphrases are used for this purpose – "quasi-partnership", "legitimate expectations", "a loss of mutual trust and confidence". Correctly understood and applied, these phrases may have some value but they must not disguise that, in cases like the present, the court's task is to conclude whether, on the facts and circumstances of the particular case (which do not involve breaches of the law or the articles of association or other contracts, when different considerations apply), there exist "considerations…of a personal character arising between one individual and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way" (*Westbourne Galleries* at p 379 per Lord Wilberforce).

60. The broad submission of Aquapoint is that where parties have expressly regulated their relationship in relation to the matter about which complaint is made, it is the contract which governs the relationship and any complaint must be adjudicated in accordance with the law of contract. It is not suggested by Dr Fan that there was any invalidity or flaw in the 2017 Agreement or specifically in clause 7.7 of the LPA. Assuming the contract to be valid and enforceable, it is not the proper role of the just and equitable winding up jurisdiction to ameliorate or change the effect of the contract. The decisions of the courts below to the contrary are wrong as a matter of principle and are unsupported by the authorities. Aquapoint notes that countless parties across all jurisdictions hold investments or business operations through a company or partnership in which the participants' relationships are governed by carefully drafted articles of association, shareholders' agreements and partnership agreements. It submits that the reasoning of the courts below would undermine the certainty essential to the operation of such arrangements in a commercial context by enabling a party to seek to rely on some other matter as giving rise to alleged unfairness and as justifying a winding up order, even though no remedy was available under the law of contract. In particular, it submitted that it would undermine the attraction of establishing and investing in ELPs, contrary to the interests of the Cayman Islands' economy.

61. As the judgment of Lord Wilberforce in *Westbourne Galleries* at p 379C and of Lord Hoffmann in *O'Neill v Phillips* at pp 1098-1099 make clear, this broad submission is correct in the great majority of cases. However, contrary to the dire predictions advanced on behalf of Aquapoint, the decisions of the courts below do not pose a widespread threat to certainty in the establishment and operation of commercial concerns. A similar submission by the respondents in *Westbourne Galleries* did not deter Lord Wilberforce and the other members of the House of Lords: see [1973] AC 360 at 369D. In particular, whether or not the facts of this case justify the winding up of Aquapoint,

those facts are very unusual and similar facts are highly unlikely to arise in the case of the vast majority of ELPs.

62. As Lord Hoffmann said in *O'Neill v Phillips* and as Lord Wilberforce explained in *Westbourne Galleries*, Aquapoint's broad submission is not invariably correct. The articles of association in the latter case permitted the shareholders by a majority vote to remove a director. That was a valid provision, and it was not suggested that the majority shareholders had acted in breach of their rights under the articles in removing Mr Ebrahimi as a director or that any remedy lay against them or the company under the law of contract. Nonetheless, the particular circumstances of the personal relationship between the shareholders meant that the exercise of that undoubted legal right was subject to equitable restraints.

63. Mr Smith KC on behalf of Aquapoint sought to distinguish the relevant article in *Westbourne Galleries* from clause 7.7 of the LPA on the grounds that the latter expressly provided that the prior consent of Genscript was required to a withdrawal from the partnership which could be withheld for any reason (or no reason) in Genscript's sole and absolute discretion, whereas in *Westbourne Galleries* the articles simply provided that a director could be removed from office by an ordinary resolution of the shareholders. He submitted that the articles of association in *Westbourne Galleries* did not deal with the unspoken understanding that Mr Ebrahimi would remain a director involved in the management of the company, whereas the LPA in the present case was inconsistent with any understanding that Dr Fan would be entitled to withdraw a 10% shareholding in Legend Cayman from Aquapoint.

64. The Board does not accept this suggested distinction. The right of a shareholder to cast a vote on a resolution, including a resolution to remove a director, is a personal right which is not generally subject to any restriction. The exercise of a shareholder's right to vote is, as a matter of law, in the sole and absolute discretion of the shareholder and it may be exercised for any reason or for no reason. There is no need to spell this out in the articles. By contrast, clause 7.7 conferred a power on Genscript which it was required by section 19 of the ELP Act to exercise in good faith and, subject to any express provisions of the LPA, in the interests of Aquapoint. Section 19 permits a relaxation of a general partner's fiduciary obligations but only as expressly provided in the partnership agreement. The relaxation as regards Genscript's power to give or withhold consent to a withdrawal of a partner was therefore required to be expressly stated in the LPA. The effect of clause 7.7 was not, as Mr Smith submitted, to distinguish it from a shareholder's right to vote to remove a director but to put the power under clause 7.7, to some extent, on the same footing as a shareholder's right to vote by freeing it from a restriction otherwise imposed by section 19.

65. It follows that the Board does not accept Mr Smith's associated submission that where a contractual provision "covers the field", there is no room for the imposition of

equitable considerations. If covering the field meant that, in the light of all the relevant circumstances, there was no room for any equitable considerations, the submission would be unexceptionable. But Mr Smith had a narrower meaning in mind, one which confined the inquiry to the construction of the contractual provisions. As the Board has already noted, the terms of the contractual provisions will be a highly relevant factor, but they cannot alone demonstrate that there is no room for equitable considerations, as *Westbourne Galleries* shows.

66. Aquapoint submitted that the approach taken in *Westbourne Galleries* was not applicable to the present case because, on a true analysis, it stands as authority for the proposition that, in the case of a quasi-partnership company, where the understanding or expectations that give rise to the petitioner's complaint are not dealt with in the company's constitutional documents, the exercise by a party of a right under the constitution may be subject to equitable restraint to give effect to the undocumented understanding or expectation. However, where the parties have negotiated a tailor-made contract governing their relations in the company, the just and equitable winding up jurisdiction does not permit the court to disregard the parties' agreement.

67. This submission seeks to draw two distinctions between the present case and the principles stated by Lord Wilberforce. First, it is said that the principles apply only in the case of a "quasi-partnership company". This point is addressed below.

68. Secondly, the parties in *Westbourne Galleries* had adopted standard form Table A articles without any apparent negotiation, whereas the LPA is a tailor-made agreement which was negotiated over several months by the parties. Mr Smith stressed that not only does clause 7.7 of the LPA specifically deal with the withdrawal of a limited partner but clause 12.11 of the LPA and clauses 5 and 7 of the Subscription Agreement ("the entire agreement clauses") clearly provide that the LPA and associated documents constitute the entire agreement between parties with respect to the subject matter of the LPA, that they cancel and supersede any prior understandings and agreements and that the parties have not relied on any representations, warranties or undertakings, express or implied, outside the terms of the agreements. The Board accepts that this is a relevant factor when considering whether equitable principles come into play, but it cannot be a decisive factor. On the facts of a particular case, it may be correct to conclude that the negotiation of a specific agreement did not exclude equitable considerations.

69. Aquapoint relied on a number of authorities which illustrate the importance of specifically negotiated and detailed agreements between the parties in deciding whether there was any room for the existence (or continued existence) of equitable considerations applicable to the exercise of legal powers, whether arising under those agreements or otherwise.

70. In particular, Mr Smith relied on *In re Virginia Solution SPC Ltd* (CICA (Civil) Appeal No 4 of 2022) (unreported) 28 July 2023 ("*Re Virginia Solution*"), a decision of the Court of Appeal of the Cayman Islands (Sir John Goldring P, Martin and Moses JJA). Virginia Solution SPC Ltd ("Virginia Solution") was a Cayman Islands company with two shareholders, Augusta Healthcare Inc ("Augusta") and Valley Health System ("Valley"), both of which were described in the judgment of Martin JA as "regional community health systems operating in the State of Virginia in the United States". They, together with three other healthcare providers based in Virginia, established Virginia Solution in 2004 to provide insurance cover for the shareholders. The principles governing the operation of Virginia Solution were discussed and developed by the five shareholders over the next few years. In 2009, the parties agreed a participation agreement, a dividend policy and revised articles of association ("the 2009 documents"). From 2014, the only shareholders were Augusta and Valley and thereafter a series of amendments to the participation agreement were made. By the end of 2016, the retained profits of Virginia Solution amounted to over US$24 million. Augusta and Valley disagreed as to the amount of dividends that should be paid in 2017. Attempts to resolve these differences failed and in January 2020 Valley presented a petition to wind up Virginia Solution on the just and equitable ground on the basis that Augusta had refused to agree to the payment of dividends in accordance with the dividend policy.

71. In refusing to agree the payment of dividends on the basis of the dividend policy, Augusta was not acting in breach of any legal obligation. The issue was therefore whether, on the facts, there existed equitable considerations affecting the exercise of its legal rights. The trial judge found that at inception the relationship between the shareholders was a "quasi-partnership" in the sense that the exercise of legal rights was subject to equitable considerations. The Court of Appeal held that she was entitled to make that finding, although as Martin JA observed at para 45 the circumstances of the company and its shareholders did not come close to the paradigm case for the intervention of equitable principles. However, the Court of Appeal held that the position changed in 2008-2009 when the founding members decided to record the basis of their participation in the 2009 documents. Martin JA said at para 46:

> "The context of those documents was the impending arrival of a new member; and the inevitable inference is that the existing members recognised that the informal arrangements which had previously governed their participation could not safely continue, even if the new member or subsequent members agreed to subscribe to the underlying ethos adopted by the founding members."

72. Martin JA identified the participation agreement as the key document. It was expressed to prevail in the case of conflict with the articles, and it contained an arbitration clause and an entire agreement clause. It provided that the declaration of dividends was to be the province of the board of directors. He said at para 48 that "it defined

comprehensively the obligations of the members and the company and provided a remedy for any failure to meet those obligations …there was no scope for the superimposition of equitable considerations".

73. There are numerous other cases in which the existence of particular contractual arrangements have been held to be inconsistent with the possibility of equitable considerations either arising at all or continuing in place: see, for example, *Third v North East Ice & Cold Storage Co Ltd* [1998] BCC 242, *In re Coroin Ltd* [2012] EWHC 2343 (Ch), [2013] 2 BCLC 583, *In re Migration Solutions Holdings Ltd* [2016] EWHC 523 (Ch) and *Cool Seas (Seafoods) Ltd v Interfish Ltd* [2018] EWHC 2038 (Ch).

74. The Board regards it as important to acknowledge and repeat that, in a corporate context, equitable considerations as regards the exercise of legal rights will not generally apply, but nonetheless whether they do apply and the relevance of contractual arrangements between the parties are to be decided on the facts and circumstances of the case.

75. The critical fact in the present case is that the very arrangements on which Aquapoint relies to say that there is no room for equitable considerations – the 2017 Agreement – were entered into by the parties on the basis of the assurances given by Dr Zhang and Ms Wang that Dr Fan's unqualified entitlement to receive a 10% shareholding in the Legend vehicle (Legend Cayman in place of Legend Nanjing) would not be affected by the terms of the 2017 Agreement. That was the agreed basis on which the parties entered into the 2017 Agreement. It is wholly inconsistent with the facts, as found by the judge, to suggest that, by virtue of the terms of the 2017 Agreement including the entire agreement clauses, Dr Fan and the other parties were agreeing that Dr Fan's entitlement to a 10% shareholding was cancelled and that Genscript was entitled to refuse consent to his withdrawal from Aquapoint without regard to the assurances which he had been given. It may well be that, as a matter of contract law, the entire agreement clauses prevented Dr Fan from placing reliance on the assurances – the Board is not concerned to decide that question but will assume that it is correct – but that does not oust the jurisdiction of the court to make a winding up order on the just and equitable ground if the circumstances of the case are such as to bring equitable considerations into play. Contractual provisions of this sort are highly relevant to the issue whether those considerations do come into play, but they are not decisive.

76. It is relevant to mention that no new partners were admitted to Aquapoint after the 2017 Agreement was made and, although it made provision for the admission of new partners, there is no evidence that the admission of new partners was contemplated, in contrast to the position in *Re Virginia Solution*. The admission of new partners without knowledge of the assurances given by Dr Zhang and Ms Wang would clearly be a relevant factor, although not always decisive: see, for example, *In re Edwardian Group Ltd* [2018]

EWHC 1715, [2019] 1 BCLC 171 at para 157, and at paras 133-134 (commenting on *Fisher v Cadman* [2005] EWHC 377 (Ch), [2006] 1 BCLC 499).

77. Turning to the "quasi-partnership" issue raised by Mr Smith as a basis for his submission that the approach in *Westbourne Galleries* does not apply to the present case, this raises a central issue as to the circumstances in which the exercise of legal rights may be subject to equitable considerations for the purposes of the winding up jurisdiction.

78. Mr Smith submitted that *Westbourne Galleries* requires the court to find that a quasi-partnership exists among the participants, which in turn requires the court to find that the three indicia (or something close to them) identified by Lord Wilberforce at p 379F-G (quoted in para 54 above) are present. Of those indicia, Mr Smith submitted that only the third (restrictions on the transfer of members' interests) was present. That, he correctly submitted, could not be sufficient on its own to bring equitable considerations into play, because very large numbers of private companies have such restrictions with no basis for suggesting that they constitute "quasi-partnerships".

79. The fundamental flaw, in the Board's view, with Mr Smith's submission is his treatment of a finding of a "quasi-partnership" as essential to the application of equitable considerations to the exercise of legal rights. The Board has noted above in para 57 that Lord Wilberforce was careful not to restrict the application of equitable considerations to "quasi-partnerships".

80. It is in the Board's view a misreading of Lord Wilberforce's speech to treat the existence of a "quasi-partnership" as essential to the application of equitable considerations to the exercise of legal rights. On the contrary, it is clear from his speech that he gave the indicia of a quasi-partnership as examples, albeit common ones, of the circumstances in which equitable considerations will be applied.

81. The fundamental principle that Lord Wilberforce was applying was that the just and equitable provision enables the court "as equity always does" to subject the exercise of legal rights to considerations "of a personal character arising between one individual and another". This requires a close examination of the relationship between the individuals which led to or provides the context for their association as shareholders (or as partners in an ELP).

82. On the facts of the present case, the Board considers that Doyle J was fully entitled to conclude that the relationship between Dr Fan, Dr Zhang and Ms Wang was a personal relationship of a type that brings equitable considerations into play, and that the Court of Appeal was right to uphold his decision. Dr Fan was a highly respected research scientist who had worked for some years at a senior level in the Genscript group, itself controlled by Dr Zhang. From that sprang the Legend project in which Dr Fan was to (and did) play

a key role on the basis of an agreement with Genscript that he would be entitled to a 10% shareholding in the listed Legend company. When Dr Zhang wanted to use Legend Cayman in place of Legend Nanjing as the corporate vehicle for the listing of Legend shares, he and Ms Wang gave the assurances to Dr Fan.

83. It is understandable that parties, in formulating their cases in petitions for a winding up order on the just and equitable ground, have tended to focus their attention on the features which may go to make a "quasi-partnership". It is in such cases that the application of equitable considerations will most commonly arise. But "quasi-partnership" is itself a term of somewhat uncertain scope, and it is certainly not a term of art. In particular, the vice in focusing solely on "quasi-partnerships" is that it leads wrongly to the view that equitable considerations can only apply in those cases where it was agreed or understood that the petitioner would participate in the conduct of the business and that a winding up order is appropriate only where the petitioner has been excluded from participation in the business. Courts have made it clear over the years since *Westbourne Galleries* (see, for example, *Fisher v Cadman* at para 84) that this view is erroneous but the point has not always been heeded.

84. In the present case, it is unnecessary to decide whether the relationship between the general and limited partners of Aquapoint had the characteristics typical of a "quasi-partnership", but it appears to the Board that it did not have those characteristics. It was simply a passive vehicle for holding shares in Legend Cayman and there was, for example, no agreement or understanding that any partner other than Genscript would participate in the conduct of the business, such as it was. A restriction on the transfer of partners' interests could not by itself suffice. But, as emphasised above, a finding of a "quasi-partnership" is an example, not a definition, of the circumstances in which equitable considerations may come into play.

Availability of alternative remedies

85. It is well established that the court may, and usually will, refuse to make a winding up order on a shareholder's petition where one or more alternative remedies are available to the petitioner and the petitioner is acting unreasonably in not pursuing them.

86. Aquapoint submit that there are two alternative remedies available to Dr Fan.

87. First, it is said that Dr Fan could issue proceedings for breach of contract. This is a surprising submission, in view of Aquapoint's fundamental position that there has been no breach of contract. Aquapoint may well be, indeed probably is, right about that. It follows that such proceedings are not a reasonable alternative remedy.

88. Second, it is said that Dr Fan could bring a derivative action on behalf of Aquapoint against Genscript for breach of its duty of good faith under section 19(1) of the ELP Act. A derivative action would at best bring a remedy for Aquapoint (although it is not clear what that remedy would be), not for Dr Fan, and it could not therefore be an adequate remedy for Dr Fan personally. It is true, as confirmed by the Board's decision in *Tianrui (International) Holding Co Ltd v China Shanshui Cement Group Ltd* [2024] UKPC 36, [2025] AC 709, that if Aquapoint were a company and Dr Fan were a shareholder in it, he could bring a personal claim against Aquapoint. The same may well be true in relation to an ELP (although the proceedings would have to be brought against the general partner: see section 33(1) of the ELP Act). But Dr Fan would need to establish that Genscript had not acted in good faith within the meaning of section 19(1), which is directed to the fiduciary duty owed by a general partner to the ELP, that is, the partners as a whole, rather than to any individual partner in respect of assurances given to that partner personally. It is not clear that it would be established, but it is not necessary to a successful petition for winding up on the just and equitable ground.

89. The Board is accordingly satisfied that there were no alternative remedies reasonably available to Dr Fan.

Conclusion

90. For the reasons given above, the Board will humbly advise His Majesty that this appeal should be dismissed.