

## BERMUDA SUPREME COURT

***MFP-2000, LP -v- (1) Viking Capital Limited  
(2) Misa Investments Limited [2014] SC  
(Bda) 6 Com (7 February 2014)***

SECTION 103 OF THE COMPANIES ACT, 1981 -  
SHARES - COMPULSORY PURCHASE - MINORITY  
SHAREHOLDER - STATUTORY INTERPRETATION

### Ruling on Preliminary Point

Under section 103 of the *Companies Act, 1981* (the “1981 Act”), the holders of not less than 95% of the shares in a company can issue a notice (“a Section 103 notice”) to acquire the shares of the remaining shareholders on the terms set out in the notice, or, if any of the remaining shareholders applies to the Court, at a price to be set by the Court.

In this matter, the Respondents gave notice to the Applicant under Section 103(1) of their intention to acquire the Applicant’s ordinary shares in Viking River Cruises Limited (the “Company”) at a price specified in the notice. The notice was dated 29 September 2011 and the Respondents received it on 4 October 2011. The Respondents had the right to issue the notice because they held more than 95% of the ordinary shares in the Company. On 24 September 2012, the Respondents transferred all of their shares in the Company to a company called Viking Cruises Ltd (“VCL”). By an originating summons dated 28 October 2011, which was issued pursuant to Section 103(2), the Applicant applied to the Court to appraise the value of its shares.

The point arising by way of preliminary issue is whether the Respondents, who no longer hold more than 95% of the ordinary shares in the Company, are still entitled under Section 103(2) to acquire the Applicant’s shares at a price to be fixed by the Court.

Justice Hellman noted that the Applicant’s construction was the one which best fits the language of the text but, in considering the statutory context (i.e. that the dominant purpose of all these provisions is to facilitate corporate restructuring), the Respondents’ construction of Section 103 is the one which best

gives effect to that purpose. Justice Hellman found that there was no obvious commercial reason why a purchaser, having served a Section 103 notice, should be required to retain at least 95% of the shares before the appraisal process has been concluded. Conversely, it was noted that there is no economic prejudice to the minority shareholder if, at the date of appraisal or purchase, the purchaser no longer holds at least 95% of the shares or indeed any shares.

Justice Hellman thereby held that Section 103 provides a mechanism whereby the holders of not less than 95% of the shares in the company can purchase the shares of the minority. That means the holders of not less than 95% of the shares at the date when a Section 103 notice is given. The majority need not retain their shares until the minority shares have been acquired or the notice cancelled.

This decision is currently subject to an appeal.

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