

## BRITISH VIRGIN ISLANDS HIGH COURT (COMMERCIAL DIVISION)

### ***Chemtrade Limited -v- Fuchs Oil Middle East Limited and Fuchs Petrolub AG Claim*** **No. BVIHC (Com) 0158 of 2010**

SECTION 184I OF THE BVI BUSINESS COMPANIES ACT - MEMBERS REMEDIES - OPPRESSION AND UNFAIR PREJUDICE - APPOINTMENT OF A LIQUIDATOR ON JUST AND EQUITABLE GROUNDS - SECTION 162(1)(B) OF THE INSOLVENCY ACT, 2003

This Claim was brought in the Commercial Court by Chemtrade Limited (“Chemtrade”) against Fuchs Petrolub AG (“Fuchs”), both 50% shareholders of a BVI registered Company called Fuchs Oil Middle East Limited (“FOMEL”). The Claim alleged oppression and unfair prejudice by Fuchs in relation to the conduct of the affairs of FOMEL. Chemtrade sought relief by way of an order that Fuchs be required to buy its shares in FOMEL pursuant to Section 184I(2)(a) of the *BVI Business Companies Act, 2004*. Fuchs denied the allegations of oppression and unfair prejudice and sought the appointment of a liquidator to FOMEL, on the just and equitable ground, pursuant to Section 162(1)(b) of the *Insolvency Act, 2003*.

The trial of this Claim was heard during a six week period alongside a related claim disputing ownership of the shares in Chemtrade (brought by Sheikh Abdullah Ali Alhamrani (“Sheikh Abdullah”) against Chemtrade). Sheikh Abdullah alleged that he was the beneficial owner of the entire share capital of Chemtrade. Chemtrade denied Sheikh Abdullah’s ownership claim and counterclaimed for a declaration that Sheikh Abdullah had no beneficial interest in certain shares of Chemtrade, registered in the names of his five brothers (the “Brothers”).

By Judgment dated 21 December 2012, the BVI Court dismissed Sheikh Abdullah’s claim to ownership and found that Chemtrade was unfairly prejudiced by Fuchs substituting its own opinion of what was in the best interests of FOMEL for that of its board. Although the Court found that Fuchs did not act out of spite or a wish to promote its own interest at the expense of those of the

Brothers, it held that unfairness did not require proof of malice or attempts to achieve unwarranted advantage. As a result, the Court concluded it was unfair to prevent a shareholder with the right to do so from participating, through its appointees, in the board level management of a company. The Court also dismissed Fuchs’ claim for a winding up order. Further to its judgment on the issues, the Court held that an order to compel Fuchs to buy out the Brothers’ shares in Chemtrade was not an appropriate remedy. Instead, the Court decided that the unfair prejudice complained of by the Brothers, of being frozen out of management at the board level, would disappear if FOMEL’s Articles of Association were amended, primarily, to provide that the quorum for meetings of its board shall be any two directors.

This case is noteworthy as the longest trial to date before the BVI Commercial Court since the advent of the Commercial Division of the BVI High Court. Disclosure for trial of both claims ran well over 15,000 documents. The case was also procedurally notable as expert evidence on Saudi Arabian law was adduced and a number of key witnesses giving evidence by video link from Dubai, UAE.

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