

## BRITISH VIRGIN ISLANDS COURT OF APPEAL

***Staray Capital Limited And Marlon Ray  
Chen -v- Cha, Yang BVIHCMAP 2013/0009  
(July 2014)***

AMENDMENT TO COMPANY'S ARTICLES OF  
ASSOCIATION BY SHAREHOLDERS' RESOLUTION  
- COMPULSORY REDEMPTION OF SHARES  
PURSUANT TO SHAREHOLDERS' RESOLUTION -  
WHETHER RESOLUTION IN INTERESTS OF  
COMPANY - APPLICATIONS TO ADDUCE FRESH  
EVIDENCE

This was an Appeal by Staray Capital Limited ("Staray") and Marlon Ray Chen against the learned Commercial Judge's decision that a redemption notice issued pursuant to amended articles, to redeem Mr. Cha's shares was invalid. Mr. Cha cross appealed. He challenged the findings that: (i) a shareholders resolution to amend the articles of association of Staray was in the interest of the company and that (ii) he was not entitled to relief under Section 184I of the *BVI Business Companies Act* (the "Act") because he had not been unfairly prejudiced.

The Court of Appeal dismissed both the appeal and counter appeal and held, *inter alia*, that even if an amendment to a company's articles of association operates to the disadvantage of a minority shareholder, this did not automatically mean the resolution which amended the articles was passed in bad faith particularly where, as here, the amendment applied equally to all the shareholders of Staray.

The Court also held that since the redemption notice issued pursuant to the relevant article was an invalid notice and of no effect, Mr. Cha would not have suffered any prejudice and as such, a Court would not exercise its discretion under Section 184I(2) of the Act to grant any of the reliefs outlined in that subsection. The Court of Appeal observed the role of the Section 184I jurisdiction was to protect shareholders against the breach of the terms on which they agreed the affairs of the company should be conducted and against inequity resulting from the

exercise of strict legal power of those conducting the affairs of the Company.

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