

LEGAL INSIGHT

Consolidation of Dissenters' Rights under Cayman Islands Merger Law

Introduction

In our previous publication [Interim Payment Relief: New Developments Regarding Dissenters' Rights under Cayman Merger Law](#), we discussed a new and significant development for minority shareholders in their quest to obtain the "fair value" for their shares in the context of a merger take-private carried out under the Cayman Islands statutory merger regime¹ (the "[Cayman Merger Law](#)"). In an interim judgement issued on 26th January 2017 in the matter of [Blackwell Partners LLC et al v. Qihoo 360 Technology Co Ltd.](#), the Court decided that interim payments pursuant to the Grand Court Rules (G.C.R.)² could be requested by dissenting shareholders and granted by the Court during the judicial proceedings initiated under Section 238 of the Cayman Merger Law³. Dissenters' rights to interim payments now seem entrenched after a second decision was issued on 8th August 2017 in the matter of [Qunar Cayman Islands Ltd.](#)

Building Blocks of the Dissenters' Rights to Interim Relief:

Building upon the reasoning previously adopted by the Court in [Qihoo 360 Technology Co Ltd.](#), the recent ruling in [Qunar Cayman Islands Ltd.](#) provides further guidance on interim relief available as part of proceedings initiated under Section 238 of the Cayman Merger Law.

1. Availability of Interim Relief Confirmed: As expected, the recent judgment followed [Qihoo 360 Technology Co Ltd.](#) and confirmed that requests for interim payment can be made by dissenting shareholders as part of the Section 238 proceedings, and that the Court has jurisdiction to grant such payments, in an amount determined to be "just". In the matter of [Qunar Cayman Islands Ltd.](#), the "just" payment was deemed to be equal to the amount of the merger consideration which had been offered generally to the shareholders by the company.

2. Evidence Needed for Interim Relief to be Granted: At this stage, it seems unlikely that any interim payments ordered as part of Section 238 proceedings will exceed the merger consideration as approved as part of the merger agreement, especially if, as was the case in [Qunar Cayman Islands Ltd.](#), the request for interim relief is made before any expert report is submitted on valuation issues. For the purposes of interim relief, however, the Court appears willing and able to rely entirely on the company's affirmations that the merger price represented the fair value of shares, without requiring dissenters to present any additional "fair value" evidence.

3. Costs of the Interim Relief Application: At this stage, and taking account that interim payments in the context of judicial proceedings initiated under Section 238 of the Cayman Merger Law are a new development, the Court decided not to grant the dissenters' request that the company bear the costs of the application. However, in the future, it cannot be excluded that such request for costs be granted by the Court.

**This is not intended to be a substitute for specific legal advice or a legal opinion.
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¹ Part XVI (sections 232 to 239A) of the Cayman Islands Companies Law.

² Order for interim payment in respect of sums other than damages (O.29, r.12).

³ Under the Cayman Merger Law, shareholders who elect to dissent from the merger have the right to receive payment of the “fair value” of their shares if the merger is consummated, but only if they deliver to the company, before the shareholders’ vote which approves the merger, a written objection (and then comply with all procedures and requirements of Section 238 of the Cayman Islands Companies Law)