



**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

Cause No FSD 76 of 2017 (RPJ)

**IN THE MATTER OF THE COMPANIES ACT (2016 REVISION)
AND IN THE MATTER OF QUNAR CAYMAN ISLANDS LIMITED**

QUNAR CAYMAN ISLANDS LIMITED

Petitioner

-and-

- 1. MASO CAPITAL INVESTMENTS LIMITED**
- 2. BLACKWELL PARTNERS LLC – SERIES A**
- 3. ATHOS ASIA EVENT DRIVEN MASTER FUND**
- 4. FMAP ACL LIMITED**
- 5. SENRIGAN MASTER FUND**
- 6. PAG ASIA ALPHA LP**
- 7. PAG QUANTITATIVE STRATEGIES TRADING LIMITED**
- 8. PAG-P ASIA FUND L.P.**

Respondents

Before: The Hon Justice Raj Parker

Heard: On the papers

Draft Judgment: 10 June 2021
Circulated

Judgment Delivered: 16 June 2021



HEADNOTE

The fair rate of interest-simple or compound rate calculation of interest on fair value determination-section 238 Companies Act-calculation regarding prudent investor rates-simple interest rate equivalent.

Introduction

1. Following the handing down of the Judgment dated 29 March 2021, the parties have corresponded with a view to agreeing the applicable rates of interest. The experts have also discussed this issue by telephone.
2. However, there remains a disagreement between the parties as to how the prudent investor rates should be calculated. The effect of this disagreement on the total amount of interest payable by the Company is relatively modest, at US\$46,932, and therefore the parties invited the Court to resolve the issue on the papers without the additional cost of a further hearing or formal written submissions.
3. This is the Court's ruling following that request.
4. The parties' disagreement relates to the decision on whether simple or compound interest should be awarded.
5. In relation to the latter question, the Court held as follows:

"[127] There is no legal basis for awarding compound interest, and even if there were by reference to the Delaware jurisprudence, it would not in my view be appropriate to award compound interest where there is no statutory basis for it.

[128] Simple interest should apply."

6. However, earlier in the Judgment, the Court held the following in relation to the calculation of the "prudent investor rates":

*"[91] I accept that the prudent investor rates put forward by Mr Billiet in the Table 2.1 at page 7 of his first report, adjusted to a **simple rate equivalent** in accordance with Appendix 3 on page 49, should be used against a company borrowing rate of 4.3% to calculate the mid points over time."*(my emphasis).

7. The parties' disagreement arises from the way in which Mr Billiet's "simple rate equivalent" should be calculated.

Company's argument

8. The Company's argument is that neither implicit nor explicit compounding are permissible in light of the ruling that simple interest should apply. The end result of the Dissenters' approach would be exactly the same as if the Court had awarded compound interest. By permitting "*implicit compounding*", the Court's rejection of compound interest would for practical purposes be nullified. The Company maintains that this cannot be the correct approach.
9. It is possible to recalculate Mr Billiet's rates without including either implicit or explicit compounding in order to produce a true rate of simple interest. Ms Glass, the Company's expert, considers it is possible to give effect to the Judgment depending upon the Court's intent¹, and she has made the necessary calculations in this regard. She has submitted her calculations, together with a letter dated 31 May 2021, which the Court has considered.
10. In addition the Company points out that the fair rate of interest in the cases of *Integra Group* [2016 (1) CILR 192] and *Shanda Games* (Cause No. FSD 14 of 2016, 16 May 2017) were calculated on a purely simple interest basis without any implicit compounding.

Dissenters' position

11. Mr Billiet has also submitted calculations from the Dissenters for the purposes of comparison and Appleby wrote a letter dated 12 May 2021 setting out the Dissenters' position which the Court has also considered.
12. In a nutshell, the Dissenters say that the Company confuses two different points. The first point is that the Court held that the fair rate of interest should be applied to the fair value on a simple basis and should not be compounded.
13. The second point is that the fair rate of interest is calculated by reference to investor returns that include implicit compounding, because those returns assume that the investor does not withdraw profit within the calculation period. The Court recognised that at paragraph 91 of the Judgment.

Ruling

14. I accept the Dissenters' arguments. As to the meaning and effect of paragraph 91 in relation to the appropriate method for calculating the prudent investor rate and consequently a fair rate of interest, I do not accept that the simple rate equivalent should be ignored. I accept Mr Billiet's view that the concept of investor returns on a

¹ See §17 of her letter dated 31 May 2021.

simple basis is artificial as investments are inherently compounding for the reasons he gives.

15. Interest should be calculated using a simple interest approach, but so as to ensure that interest will equal or approximate amounts that would arise under a compound interest award.
16. As Ms Glass describes at §7 of her letter-the Court accepted Mr Billiet's approach that interest should be calculated using a simple interest approach, but so as to award the same amount of interest that would arise had it been calculated using a compound approach. The rate which achieves that is the simple rate equivalent.
17. Paragraph 91 of the Judgment refers to the midpoint rates in table 2.1 at paragraph 2.12 of BB1, at page 7 (which are the column 1 rates in Appendix 3), which needed to be adjusted so that interest could be awarded and paid on a simple basis.
18. I accept that the column 1 rates in Appendix 3 are intended to be applied with annual compounding to generate interest that is equivalent to the returns that an investment would generate.
19. I accept that neither of the rates in column 1 or column 2 of the table in Appendix 3 of BB1 applied on a simple basis will generate interest that is equivalent to investor returns on a simple basis and ignore the inherent compounding of investments.
20. The rates in column 1 (which are the same as those in table 2.1 at page 7 of BB1) are the closest approximation within the table in Appendix 3 of BB1 to the rates that could be applied on a simple basis to achieve the outcome which takes into account that the investor does not withdraw profit within the calculation period and so does include an element of implicit compounding, as Mr Billiet suggests.

THE HON. RAJ PARKER
JUDGE OF THE GRAND COURT