Debevoise & Plimpton

The Debrief

Privy Council Abolishes Shareholder Exception to Legal Advice Privilege

26 August 2025

***Jardine Strategic Limited v Oasis Investments II Master Fund Ltd and 80 others (No 2) [2025] UKPC 34**.*

Summary

On 24 July 2025, the Judicial Committee of the Privy Council in *Jardine Strategic Limited v Oasis* Investments II Master Fund Ltd and 80 others (No 2) (Bermuda) handed down a landmark decision, abolishing the long-standing shareholder exception to legal advice privilege, also known as the "Shareholder Rule" in Bermuda and England and Wales. The Privy Council held that the Shareholder Rule, which previously allowed for the production of privileged legal advice to companies' shareholders, was "*a rule without justification [] [l]ike the emperor wearing no clothes*" and that it should no longer be recognised.

Background[1]

The dispute arose from the amalgamation of two companies in the Jardine Matheson group. As part of that amalgamation, minority shareholders had their shares cancelled and were offered $33 per share as fair value. Dissatisfied shareholders initiated statutory appraisal proceedings to seek a determination of the fair value of their shares and, relying on the Shareholder Rule, sought inspection of legal advice obtained by the company. The question was considered at first instance and by the Bermudian Court of Appeal, both of which held that the Shareholder Rule applied. The company appealed to the Privy Council.

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1 *Jardine Strategic Limited v Oasis Investments II Master Fund Ltd and 80 others (No 2)* [2025] UKPC 34 at [1]-[10], [14]-[18].

The Shareholder Rule

The Shareholder Rule has long served as an established exception to legal advice privilege. Rooted in 19th-century English case law, the rule provided that a company could not assert legal advice privilege against its shareholders, except for advice prepared for the purpose of litigation between the shareholder and the company. Initially, the rule was based on the notion that shareholders had a proprietary interest in the company's assets, including legal advice paid for using company funds. More recently, the rule was recast as one of joint interest privilege on the basis that even if legal advice privilege were to apply, shareholders should be able to see the advice because they have a joint interest in the legal advice sought by the company. The rule survived relatively unchallenged throughout the 20th century, but it has come under increasing scrutiny in recent years.

In *Various Claimants v. G4S Plc* [2023] EWHC 2863 (Ch), Michael Green J raised serious doubts as to the justification for the rule, stating that it had a "*somewhat shaky foundation*". Sitting at first instance, however, he acknowledged that he could not depart from it because the rule was well-settled and could only be set aside by the Supreme Court.

In *Aabar Holdings S.á.r.l. v Glencore Plc* [2024] EWHC 3046 (which we reported on, here), Picken J concluded that the Shareholder Rule was "*unjustifiable and should no longer be applied*." Until now though, no appellate court had conclusively abolished the Shareholder Rule.

The Judgment

The Privy Council unanimously held that the Shareholder Rule forms no part of the law of Bermuda and should no longer be recognised in England and Wales. The Board considered the two longstanding justifications for the rule:

Proprietary Justification[2]

The Privy Council rejected the historical foundation of the Shareholder Rule, which held that shareholders had a proprietary interest in the company's assets, similar to beneficiaries in a trust. This analogy was deemed incompatible with long-established company law principles, which recognise the company as a separate legal person such that its shareholders do not have a proprietary interest in its funds.

[2] *Ibid*, at [80]-[82].

Joint Interest Privilege[3]

The Privy Council also rejected the alternative justification for the Shareholder Rule that companies and shareholders share a "*joint legal interest*". The Privy Council found that this approach was an oversimplification of typical commercial reality that would (i) "*discourage companies from obtaining candid legal advice in confidence*", (ii) "*ignore the separate* personality *of the company*", and (iii) "*wrongly assume a simple coincidence of interests*" between company and shareholder. The Privy Council also rejected a more nuanced approach advanced by Kawaley LJ in the Bermudian Court of Appeal which would have required a factual inquiry in each case as to whether a sufficient joint interest existed. The Privy Council considered that such approach would give rise to "*unacceptable uncertainty*" regarding the status any legal advice in future proceedings and that "*the need for certainty as to whether legal advice will be privileged or not demands a bright line, otherwise it will fail to serve the objective of encouraging the taking of legal advice*".

The members of the Judicial Committee of the Privy Council handing down the decision, who are all Justices of the United Kingdom Supreme Court, also issued a *Willers v Joyce* direction in respect of the judgment. Further to this direction, this decision is also binding on all courts in England and Wales. Such a direction, which has only been invoked once before, likely means that this judgment will also carry significant persuasive weight in other common law jurisdictions.

Comment

The Privy Council's ruling represents a significant, and arguably long overdue, reset in the English law on legal advice privilege. By conclusively repealing the Shareholder Rule, the judgment brings English law on privilege in line with the contemporary understanding of corporate personality and the jurisprudence in other common law jurisdictions such as Canada and Australia. It provides much-needed clarity and reassurance to companies that legal advice obtained in confidence will not subsequently become discoverable in proceedings against shareholders.

For legal practitioners, this decision narrows the scope of discovery in disputes between shareholders and companies. It also reinforces the significance and protective scope of legal advice privilege, with the Privy Council reiterating that privilege is a "*fundamental human right long established in the common law and a necessary corollary of the right of any person to obtain skilled advice about the law*".

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[3] *Ibid*, at [83]-[102].

Please do not hesitate to contact us with any questions.

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