

## Privy Council Abolishes the Shareholder Rule Under English Law

31 July 2025

The Judicial Committee of the Privy Council (the Board) delivered a landmark judgment on 24 July 2025 in *Jardine Strategic Limited v Oasis Investments II Master Fund Ltd and Others* [2025] UKPC 34, emphatically abolishing the so-called “Shareholder Rule,” finding that the Shareholder Rule forms no part of the law in Bermuda. The importance of this decision is magnified as a result of the Board issuing a *Willers v Joyce* direction, declaring that its decision should be treated as abrogating the Shareholder Rule for the purposes of litigation in England and Wales.

The Board held that companies *are* entitled to assert privilege against shareholders, rejecting the long-standing principle that shareholders have a right to access legal advice obtained by the company that is paid for out of company funds (except where legal advice is sought when litigation against the shareholder is commenced or contemplated).

This decision brings significant clarity and certainty to the law of privilege in the corporate context.

### Background

The dispute arose from the amalgamation of Jardine Strategic Holdings Ltd and JMH Bermuda Ltd, both part of the Jardine Matheson group. As a result of the amalgamation, all shares in Jardine Strategic were canceled, and dissenting shareholders were offered \$33 per share as “fair value.” Some shareholders, dissatisfied with this valuation, triggered the statutory appraisal mechanism under the Bermuda Companies Act 1981, seeking a court determination of the fair value of their shares.

During the ensuing litigation, the dissenting shareholders sought disclosure of legal advice received by Jardine Strategic in connection with the determination of the \$33 per-share value. The company resisted disclosure, asserting privilege over the legal advice. The lower courts in Bermuda held that the Shareholder Rule applied. The company appealed to the Privy Council.

## The Privy Council's Decision

The Privy Council undertook a comprehensive review of the origins and justifications for the Shareholder Rule. The Board noted that, until very recent times, the Shareholder Rule was taken as read and applied without challenge, and therefore, there was no further examination of the justification for it. However, at the same time, the original proprietary justification for the Shareholder Rule had faded quietly away.

The Board considered two of the bases upon which the Shareholder Rule was said to exist.

- **Proprietary Justification:** The Board found that the original proprietary justification for the Shareholder Rule (that shareholders are the beneficial owners of company property) is fundamentally inconsistent with modern company law, which recognises the company as a separate legal entity. Furthermore, the Board noted that the proprietary basis for the Shareholder Rule has long been discredited and is no longer supported in case law or academic commentary. Thus, the Board concluded that the automatic, status-based Shareholder Rule is "a rule without justification," in truth has always been a rule without justification and should be abolished. Scathingly, the Board stated that "[I]ike the emperor wearing no clothes ... it is time to recognise and declare that the Rule is altogether unclothed."
- **Joint-interest Privilege:** The Board rejected the argument that the company-shareholder relationship should be treated as a form of "joint interest privilege," akin to relationships such as trustee-beneficiary or partners. The Board noted that when the company shareholder relationship is looked at squarely on its own, it is clear that there is no sufficient analogy with those other relationships to justify its inclusion within the joint interest family of relationships, noting that the interests of companies and shareholders are not always aligned and that shareholders are not a homogeneous group with a single shared interest. The Board considered that a broadly based exception from legal advice privilege between a company and its shareholders, founded upon a supposed joint interest between them 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 contrary to the typical commercial reality.

The Board also considered and rejected a more nuanced, case-by-case approach, advanced by the Bermuda Court of Appeal. This approach would allow shareholders to override privilege where, on the facts, there was a “sufficient joint interest” in the subject matter of the legal advice. The Board found this approach to be equally problematic. It would introduce unacceptable uncertainty. Directors and companies would be unable to predict, at the time they seek legal advice, whether that advice would be protected from disclosure in future litigation with shareholders. A case-by-case approach would force directors to assume that their legal advice might not be confidential. 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 Board therefore rejected both the automatic Shareholder Rule and any nuanced, fact-specific exception, holding that privilege should apply between companies and shareholders as it does in other contexts.

## Broader Implications of the Decision

This judgment has immediate and far-reaching implications for companies, shareholders and legal practitioners:

- **Legal Certainty:** Companies can seek and receive legal advice in confidence, without fear that such advice will later be subject to disclosure to shareholders in litigation, except where the usual exceptions to privilege apply such as waiver or statutory exception.
- **Alignment With Modern Company Law:** The decision now aligns the law of privilege in the context of a company and its shareholders with the fundamental principle of separate corporate personality, moving away from outdated analogies with trusts and beneficiaries.
- **Impact on Litigation Strategy:** Shareholders involved in disputes with companies can no longer rely on the Shareholder Rule to access the company’s privileged legal advice, which will make it more challenging to obtain internal company documents in shareholder actions.
- **Guidance for Other Jurisdictions:** While the decision is directly binding in Bermuda and, by virtue of the *Willers v Joyce* direction, in England and Wales, it may be

persuasive in other common law jurisdictions considering the status of the Shareholder Rule.

In summary, the Privy Council's decision marks a significant shift in the law of privilege in the corporate context, providing clarity and reinforcing the protection of confidential legal advice for companies facing shareholder litigation.

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