



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

**CAUSE NO. FSD 128 OF 2021 (RPJ)**

**IN THE MATTER OF THE COMPANIES ACT (2021 REVISION)  
AND IN THE MATTER OF SINA CORPORATION**

**Before: The Hon. Justice Parker**

**Heard: On the papers**

**Draft Ruling Circulated: 3 May 2022**

**Ruling Delivered: 18 May 2022**

**HEADNOTE**

*Section 238 appraisal proceedings-draft directions-need for written submissions and determination rather than seeking to involve the Court in correspondence-redactions in respect of PRC law-discovery-identification of laws-regulatory approval to be sought-subsequent application to Court as necessary if approval not given or where challenge to justification of redaction in these proceedings is made-alternative means of unredacted inspection in PRC subject to conditions-Court's control of discovery process-factual witness timetable extended until discovery given by all parties including discovery arising from third party discovery pursuant to 28 U.S.C. s.1782*

**RULING**

1. Following the handing down of the Court's Judgment on 25 January 2022 (the Judgment), the parties have been attempting to agree the draft directions order. Following a direction from the Court that areas of disagreement needed to be resolved by written submissions rather than by way of correspondence with the Court<sup>1</sup>, the parties have provided written arguments and materials in support of their respective positions on the two outstanding issues which have not been agreed and the Court has agreed to determine them without the need for a hearing.

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<sup>1</sup> *In the matter of Global IP-Cayman* (unreported, 20 July 2020) and *In the Matter of Toledo et al v Walkers (a Firm)* (unreported, 25 January 2022).



## Appendix 5, paragraph 15.16 - PRC redactions

2. The Court determined in its Judgment that it was not necessary at this stage of the proceeding to decide whether certain People's Republic of China (PRC) laws applied and any impact they might have on the Company's discovery in the proceedings. The Court stated at §70 of the Judgment that:

*“the points which Mr Levy QC for the Dissenters makes are not ripe for determination at the relatively early stage of engagement with the relevant PRC authorities, and it is therefore not for the Court to rule on those arguments now”.*

3. Instead, the Court decided to make the usual order for discovery and indicated that the Company should continue to seek the regulatory approvals required to be obtained, on the assumption that certain material fell within the scope of controlled information under PRC laws.<sup>2</sup>
4. The Court indicated that the need for an exercise in examining the documents, the applicable provisions of PRC laws, the risk of prosecution and the nature and extent of that risk, had not yet arisen.<sup>3</sup>
5. The Court said<sup>4</sup>

*“If there are to be any redactions due to PRC law then there should be a provision whereby upon request: a) the parties should give reasons for a specific redaction and b) any document should be made available in unredacted form for electronic inspection by the parties’ representatives within the PRC, subject to signature of an appropriate confidentiality and non-disclosure agreement.”*

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<sup>2</sup> §68 of the Judgment

<sup>3</sup> §70 of the Judgment.

<sup>4</sup> §79 of the Judgment



6. The Dissenters have suggested language which provides that the redaction reason 'PRC Laws' may *only* be used if the Court orders that redactions can be made based on specific PRC laws. The specific wording proposed by the Dissenters is:

*“Reason for Redaction...PRC Laws (subject to an express order from the Court permitting redactions to be made on this basis and specifying the applicable law)”. (emphasis added)*

7. The Company argues that if it is required to redact documents under relevant PRC laws then it will cite which PRC laws apply from the list of PRC laws set out in paragraph 15.16 of Appendix 5 (in accordance with the Judgment) and there is no need to obtain an order permitting the redactions to be made in advance from this Court.
8. The Dissenters take the position that the Company's proposal is inconsistent with the Judgment because the Court has not yet determined whether the Company is permitted to withhold documents and/or make redactions based on the specific PRC laws that were considered at the directions hearing. They say that the Company cannot arrogate to itself the power to decide that it can redact documents that it has to produce in discovery.

### *Decision*

9. The Court will control the discovery process and ultimately whether and in what form any redactions will be made. If there is a dispute about whether any particular redaction is in fact required as a matter of PRC law, and/or justified in these proceedings, then recourse to the Court can be sought at that stage.
10. In the meantime there was no condition imposed that any redaction is to be subject to an express order from the Court permitting the same at this stage.
11. The purpose of the Court's decision was to allow discovery to take place and redactions to be made by the Company without the Court having to determine whether they could be made in advance, which would be likely to delay matters.



12. In that way the Company will a) give discovery in the usual way, b) state, where applicable, the relevant law it is concerned with,<sup>5</sup> c) offer to make the documents available in the PRC (on certain conditions) and d) obtain the relevant PRC approvals as necessary. If there is a problem, then the examination of the relevant PRC laws and their effect can be adjudicated upon by the Court in due course.

### **The Timing of Factual Evidence**

13. The Company seeks to vary paragraph 38 of the draft directions order on the basis that the Dissenters have filed applications in the United States for third party discovery pursuant to 28 U.S.C. s.1782 (s.1782 Applications).
14. The Dissenters object in circumstances where they say the timetable was agreed prior to the directions hearing. They submit that the proper course of action is for the directions order to be made and for any application for variation to be made by summons in the usual way.
15. The Dissenters say that at the time paragraph 38 was agreed it was anticipated by all parties that s. 1782 Applications may be made and indeed provision for such applications was agreed in the Draft Order.<sup>6</sup>
16. The Company says none of the Dissenters apprised the Court or the Company of their intention to issue the s.1782 Applications shortly after the directions hearing on 14 and 15 December 2021, or at any time prior to the handing down of the Judgment (on 25 January 2022), notwithstanding the fact that they had already issued certain of the s.1782 Applications by the time Judgment was handed down, and that the timing of any disclosure made pursuant to the s.1782 Applications would plainly have been relevant to the timetable.<sup>7</sup>

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<sup>5</sup> State Secrets Laws (specifying the applicable law); Confidential Communist Party Information Laws (specifying the applicable law); China Cyber Security Law (specifying the applicable law); PRC Data Security Law; and PRC Personal Information Protection Law.

<sup>6</sup> The Dissenters say that the Company and Court were notified of these applications on 29 and 31 January 2022, pursuant to the terms of the draft directions order that had been agreed.

<sup>7</sup> On 20 and 21 January and 14 April 2022, applications were made by the Maurant Dissenters for discovery orders, including orders allowing them to depose parties, which include personnel of the Company. Between 14 and 26 January 2022, the Collas Crill Dissenters issued their s.1782 Applications.



17. The Company now seeks time for the filing and serving its factual evidence which it says ought not to begin to run until disclosure has been completed, including disclosure ordered consequent to the s.1782 Applications (if any).

*Decision*

18. It seems to me that this is a reasonable request to grant in all the circumstances. I consider it fair to allow the Company to deal with any additional material as might be ordered to be produced from third parties (including material arising from the deposition process) before time starts to run on its preparation of factual evidence, which may well need to take account of this material.
19. It also seems to me to be more efficient and in accordance with the Overriding Objective, that the Company should present its factual evidence with the benefit of any such material, if ordered in the US, which will ultimately save time and costs. In this way the time for factual evidence is to run from the date that all discovery is provided, including any discovery that is provided pursuant to s.1782.
20. It may well be the case that the draft directions order agreed the timing of factual evidence, but the order was not signed or sealed. The Dissenters refer to the English decision *Webb Resolutions Ltd v JV Ltd (t/a Shepherd Chartered Surveyors)*<sup>8</sup> to argue that that the purpose of preparing a draft order is to reflect those matters ruled on by the Court and should not be used as an opportunity to vary or amend the ruling of the Court or to try and include provisions that a party may have wished to argue for at the hearing. It seems to me that is not the position in this case.
21. Whatever might have been in anticipation or actually commenced in relation to the relevant applications in the US, the Court was not put in a position to consider any consequential effects on timetabling, nor was the point argued. There has been to my mind a change of circumstances from the position which prevailed at the time of the hearing which ought now to be taken into account. It seems to me unnecessary that the Company should be directed to issue a summons

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<sup>8</sup> *Webb Resolutions Ltd v JV Ltd (t/a Shepherd Chartered Surveyors)* [2013] EWHC 509

for the variation of the directions as the Dissenters submit. That will simply give rise to more cost and delay.

22. As a consequence I rule now that the Company is to provide factual evidence within 56 days after the date on which the Company and Dissenters have completed disclosure *and* any discovery to be given pursuant to the foreign ancillary relief has been completed.
23. The parties are to draw up an Order which reflects these two determinations for the Court's approval.

Costs will be in the cause.



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**THE HON. JUSTICE PARKER  
JUDGE OF THE GRAND COURT**