

The Emperor Has No Privilege: Privy Council Rejects the Shareholder Rule

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Jardine Strategic Ltd v Oasis Investments II Master Fund Ltd and others [2025] UKPC 34

Allowing an appeal from the decision of the Court of Appeal for Bermuda, the Board of the Privy Council unanimously rejected the “*Shareholder Rule*”, a long-standing exception to the rule on privilege which prevented a company from asserting legal advice privilege against its own shareholders.

The Board of the Privy Council also made a *Willer v Joyce* direction, meaning that the decision binds the courts of England and Wales.

Facts and Background

The “*Shareholder Rule*” has formed a part of English law since the 19th century. The rule provided that a company could not assert legal advice privilege against its own shareholders, except where documents were created specifically for the purpose of litigation by or against those shareholders. The rule was justified on the basis that shareholders had a proprietary interest in the company’s property, including its legal advice.

Since the “*Shareholder Rule*” arose, the landmark late Victorian case *Salomon v Salomon & Co Ltd* (1897), established that a company is a separate legal entity distinct from its shareholders. Despite this, the Shareholder Rule persisted in case law, never

adequately addressing the implications of *Salomon*.

In *Jardine*, a dispute arose from a restructuring within the Jardine Matheson group. Shareholders who opposed the merger were offered a fixed price for their shares but they disputed the fairness of the price, and, during the litigation, they sought disclosure of the legal advice that the company had received on valuation. The company claimed legal advice privilege, but the shareholders argued the shareholder rule prevented privilege from applying.

The Bermuda courts at first instance and on appeal upheld the Shareholder Rule.

Judgment

The Privy Council unanimously ruled that the Shareholder Rule neither exists in Bermudian law nor should it continue in England and Wales.

The Privy Council compared the rule to the children's story *The Emperor's New Clothes*, stating that: "*Like the emperor wearing no clothes in the folktale, it is time to recognise and declare that the Rule is altogether unclothed.*"

The Board emphasised the following points:

1. The Board pointed to the fact that the original rationale for the Shareholder Rule (that a shareholder has a proprietary interest in a company of which it is a shareholder) is inconsistent with the fundamental principle that a company is legally separate from its shareholders.
2. The Privy Council also rejected the idea that the company-shareholder relationship should be treated as giving rise to joint interest privilege. As shareholder and company interests can sometimes diverge and companies can owe duties to multiple shareholders, who will often have competing or opposed interests. Extending joint interest privilege to cover all company-shareholder communications would discourage companies from seeking frank legal advice and undermine the principle of separate legal personality.

Commentary

The Privy Council's judgment represents a significant evolution in the law of legal professional privilege in company-shareholder contexts and reinforces the distinct legal personality of companies.

The decision provides greater certainty that legal advice obtained during transactions, restructurings, or valuations will remain protected, will not be disclosable to shareholders at a later date.