IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

Cause No: FSD 228/2018

BETWEEN:

CHILDREN'S INVESTMENT FUND
PLAINTIFF

AND:

1. TCI ADVISORY SERVICES LLP
FIRST DEFENDANT

2. MR. ABC
SECOND DEFENDANT

Appearances: **Mr. James Eldridge and Mr. Paul Smith of Maples and Calder on behalf of the Plaintiff**

Before: **The Honourable Justice Cheryll Richards Q.C.**

Heard: **10th January 2019**

HEADNOTE

***The Companies Law (2018 Revision) – Sections 46** Rectification of the Register*

JUDGMENT

INTRODUCTION

1. By originating summons filed 7th December 2018, the Plaintiff Company, ("the Fund") seeks orders pursuant to s.46 of the Companies Law (2018 Revision) that the Register of Members of the Company be rectified so as to record that the classes of shares issued to the First Defendant on the 1st April 2016, 1st February 2017, 1st April 2017 and 1st February 2018, and any of these subsequently transferred to the Second Defendant were not USD Distributing Management Shares but were USD Management Shares. The application is supported by the Affidavits of four witnesses - James Hawks, Matthew King, Mr. ABC and Rachel Baxendale.

2. The Defendants do not oppose the application. The Plaintiff has put the United Kingdom taxation authorities, HM Revenue and Customs, ("HMRC") on notice of this application and provided them with drafts of the Affidavits in support of it. By letter dated 21st December 2018, HMRC responded, indicating that as the case appears to be a dispute between shareholders, the Commissioners of HMRC do not intend to provide any input into the case.

FACTUAL CIRCUMSTANCES

3. The Fund is an exempted limited Company incorporated in the Cayman Islands since 2003 and is a registered mutual fund with the Cayman Islands Monetary Authority ("CIMA"). The Plaintiff is a "feeder fund" for the Children's Investment Master Fund which is also an exempted limited company incorporated in the Cayman Islands. The Master Fund has a current net asset value of approximately $20 billion.

4. The First Defendant is the Investment Advisor which provides investment advisory services to TCI Fund Management Limited which entity is now the Plaintiff's investment manager.

5. The Second Defendant, Mr. ABC, is a partner of the First Defendant. As part of his compensation and incentive package, he receives, on an annual basis, a management fee amount and an incentive fee amount. A percentage of these amounts would be used to purchase Management Shares in the Fund.

6. Management Shares are defined in the Articles of Association of the Company[1] to be Ordinary Shares issued as Management Shares of any Class, including (for the avoidance of doubt) Malaysian Ringgit Management Shares and South Korean Won Management Shares.

[1] Page 5 of the Articles of Association

7. Distributing Management Shares are defined as Ordinary Shares of such par value as the Directors may determine at the time of issue, issued as Distributing Management Shares and having the rights provided for under these Articles and the Offering Memorandum.

8. By Articles 10 and 11, Management Shares and Distributing Management Shares may only be issued by the Company to, or acquired by, the Directors, members, partners, officers, employees or affiliates of the Manager or Investment Manager including members of the immediate families of such persons, and trusts or other entities for their benefit.

9. It is the responsibility of Mr. Matthew King who is employed as a partner and Chief Financial Officer of TCI Fund Services LLP to calculate the incentive amounts for those persons entitled to receive Management Shares and to ensure that the subscriptions for these shares were completed by transferring same initially to the First Defendant and then to the respective persons.

10. Mr. King explains that, as the First Defendant has numerous share classes denominated in different currencies, it is the practice of the First Defendant to invite its partners and employees to nominate the particular share class which they wish to be purchased on their behalf.

11. In the case of the Second Defendant, Mr. ABC, the evidence is that he was entitled by virtue of his employment contract to receive Management Shares on each of four occasions which are the subject of this application. On each of those occasions he selected USD shares, reporting and distributing in nature. Details of his selections are as follows:

i. In respect of the issue of shares made 1st April 2016 – he indicated by email dated 23rd March 2016, stating that he would like fund investment of management shares in USD in reporting class with distribution rights.[2]

ii. In respect of the issue of shares made 1st February 2017 – he indicated by email dated 24th January 2017, that he would like USD reporting and Distributing Management Shares.[3]

iii. In respect of the issue of shares made 1st April 2017 - he indicated by email dated 28th March 2017[4] that he would like USD reporting and Distributing Management Shares.

iv. In respect of the issue of shares made 1st February 2018 – he indicated by email dated 29th January 2018[5] that he would like USD Distributing Management Class, reporting status.

[2] Page 45 exhibit to the Affidavit of Matthew King
[3] Page 66 exhibit to the Affidavit of Matthew King
[4] Page 106 exhibit to the Affidavit of Matthew King
[5] Page 146 exhibit to the Affidavit of Matthew King

THE ERROR

12. By his Affidavit dated 5th December 2018, James Hawks states that he is a partner of TCI Fund Services LLP and the General Counsel of the TCI investment management group. TCI Fund Services LLP provides middle and back office services to TCI Fund Management Limited.

13. Prior to the 29th June 2015, the Fund's investment manager was the Children's Investment Fund Management (UK) LLP. As at that date, the investment management business was transferred to TCI Fund Management Limited as part of an internal group re-organisation. In tandem, revised offering documentation and notices of the change in identity of the investment manager were prepared and circulated.

14. The Articles of Association of the Fund provides that the Fund's share capital consists of ten (10) Founder Shares and a quantity of Ordinary Shares of par value of US$0.01 each, and ordinary shares in other currencies and Management Shares. By Article 6.2, the Founder shares have voting rights in respect of resolutions relating to the creation of one or more additional classes of shares. By Articles 12 and 13 the Directors have power *inter alia* to issue classes and/or series of shares in the future that have different redemption or other rights or preferences and the power to resolve the Class of any Share on or before its allotment.

15. Mr. Hawks states that by written resolution dated 23rd June 2015, the sole holder of the Founder shares sought to create a new class of shares to be designated as Distributing Management Shares. Following the necessary resolutions, the Articles of Association of the Fund were amended and adopted as at 23rd June 2015 to add a new Article 11B. This provided *inter alia* that:

> "*The Distributing Management Shares shall be denominated in such currency as the Directors may determine but may have, as their reference currency, a basket of one or more currencies as determined by the Investment Manager from time to time in its sole and absolute discretion...*"

16. By written resolution dated 29th June 2015, it was resolved by a committee of Directors to issue the shares of the New Class, being the Distribution Management Shares in accordance with the terms of the Fund offering documents. These documents were in two parts. The Base Offering Memorandum relates to offers of Ordinary Shares of different classes not including Management Shares. The Supplemental Offering Memorandum relates to Multi-Currency Management Shares and Distributing Multi-Currency Management Shares and identifies them as shares which are available denominated in US Dollars and or Sterling "*but which shall have as their reference currency a basket of one or more currencies as determined by the Investment Manager from time to time.*"

17. Mr. Hawks further states that the combined effect of the documents was to create and authorise the issue of US Dollar Distributing Multi-Currency shares and Sterling Distributing Multi- Currency Management shares. They did not create or authorise the issue of US Dollar Distributing Management Shares.

18. In paragraph 10 of his Affidavit, under the heading discovery of the error, Mr. King states that in finalising the subscription agreements to give effect to the choices made by Mr. ABC, it was assumed that the Fund had, as part of the new issue of shares, created USD Distributing Management Shares and that there was a subclass of USD Distributing Management Shares which had been approved by HMRC in the United Kingdom as a reporting fund.

19. Thus, in respect of the first date, following receipt of the selection of Mr. ABC of USD Distributing Management Class Shares, Mr. King (together with a colleague, Mr. Joe Flynn), completed an "Additional Subscription Form" dated 29th March 2016[6] in respect of the shares to be purchased on Mr. ABC's behalf. The form appears to have been altered by hand to add a box for "*Distributing Management Class*". This box was ticked together with boxes for US Dollar denomination of shares and for reporting funds for United Kingdom taxation purposes. Three similar boxes are ticked for the Additional Subscription Forms completed by Mr. King on the 30th January 2017[7], March 2017[8] and January 2018[9].

[6] Page 53-54 Exhibit Bundle
[7] Page 93 Exhibit Bundle
[8] Page 111, Exhibit Bundle
[9] Page 150, Exhibit bundle

20. Given the Fund offering documents, the only type of Distributing Management Shares created were Distributing Multi-Currency Management Shares which were shares which did not have the approval of HMRC as a reporting fund.

21. Thus in respect of the first two purchases, Mr. ABC has been recorded on the Register of Members as the holder of shares which do not exist. There has been a partial transfer of shares to Mr. ABC in respect of the third purchase and the fourth is still held by the First Defendant and has not yet been transferred into Mr. ABC's name.

22. Mr. King states that, had the error been identified at the material time, he would have advised Mr. ABC that he (Mr. ABC) would need to select a different class of shares and that the class with the characteristics closest to that which he selected were USD Management Shares (RB). This share class was denominated in USD and was registered with HMRC as a reporting fund. The only feature that it lacked was distribution rights.

23. It was submitted by Counsel on behalf of the Fund that the practical effect of this is the same as no distributions have been made in the intervening period and further that the Share Class USD Management Shares (RB) is materially identical to the Share Class selected by Mr. ABC. In his Affidavit dated 6th December 2018, Mr. ABC indicates his support for the application for rectification.

THE LEGAL PRINCIPLES

24. Pursuant to s.40 of the Companies Law, the Fund is required to maintain a register of members.

25. Pursuant to s.46 of the Companies Law, a company's register of members may be rectified by the Court. Section 46 provides:

> *"If the name of any person is, without sufficient cause, entered in or omitted from the register of members of any company, or if default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member of the company, the person or member aggrieved or any member of the company or the company itself may, by motion to the Court, apply for an order that the register be rectified; and the Court may either refuse such application with or without costs to be paid by the applicant or it may, if satisfied of the justice of the case, make an order for the rectification of the register, and may direct the company to pay all the costs of such motion, application or petition, and any damages the party aggrieved may have sustained. The Court may, in any proceeding under this section, decide any question relating to the title of any person who is a party to such proceeding to have his name entered in or omitted from the register, whether such question arises between two or more members or alleged members, or between any members or alleged members and the company, and generally, the Court may, in any such proceeding, decide any question that it may be necessary or expedient to decide for the rectification of the register:*
> *Provided that the Court may direct an issue to be tried, on which any question of law may be raised."*

26. The principles applicable to an application for rectification were recently summarised by the Learned Chief Justice in the case of ***Project Panther Ltd. v Comerica Bank and Trust N.A***[10]. as follows:

[10] FSD 130/2018

"i. *Jurisdiction to order rectification of the register of a company incorporated in the Cayman Islands is vested exclusively in the Cayman Islands Court irrespective of whether the register is kept outside the jurisdiction;*

ii. *The summary remedy provided by section 46 (and initiated by originating summons) will usually be appropriate but ought not to be used where the case is particularly complex, where the rights of third parties intervene or where the applicant relies on allegations of misrepresentation or fraud which ought to be clearly set out in pleadings or where the applicant seeks further relief other than rectification;*

iii. *Where the company has notice of a dispute it may itself apply to the court for an order under the section;*

iv. *The court's power to order rectification is discretionary;*

v. *The power to remove the name of a person which is entered on the register of members "without sufficient cause" has been widely construed. The jurisdiction to order rectification is not restricted to cases where a person has been entered on the register improperly, but extends to all cases where the entry was without sufficient cause;*

vi. *In other words, it is not necessary for the applicant to show any deliberate wrongful act or fault by the company - it is sufficient to show that the register of members is incorrect because an entry has been omitted or made in error;*

vii. *When the court entertains the application, it is bound to go into all the circumstances of the case, and to consider what proper reasons the applicant has to call for its interposition and the purpose for which relief is sought. In short, as section 46 explicitly recognises, it should have regard to the "justice of the case";*

viii. *Where the court orders the removal of a person's name from the register of members on an application for rectification of the register on the basis that the person has never been a member of the company, the order may operate retrospectively and not just from the date of the order."*

27. The court noted that a number of cases dealing with rectification demonstrate that where (even in the absence of fraud or other improper conduct) there is no contract or the relevant contract is found to have been void, the court will order that the putative shareholder be removed from the company's register of members.[11]

[11] Paragraph 21 supra

28. In the circumstances of that case where the document effecting the shareholding had been declared by a court of competent jurisdiction to be void, the court concluded that the justice of the case dictated that the register of members should be amended to reflect that position by removing the name of the putative shareholder from the register.

29. In the instant case what is being sought is rectification of the register to reflect the ownership of and or transfer to the First and Second Defendants of a different class of shares.

30. In this regard, Counsel on behalf of the Fund drew to my attention the cases of ***In re Transatlantic Life Assurance Co. Ltd***[12] and ***Re Thundercrest Ltd.***[13]

31. The case of ***In re Transatlantic Life Assurance Co. Ltd*** was considered by the Court in the case of ***Project Panther Ltd v. Comerrica Bank & Trust N.A.*** as being one of three cases in which the Courts determined that the document by which the putative shareholder became a shareholder was void.

32. In ***In re Transatlantic Life Assurance Co. Ltd***, the Court considered the ambit of s.116 of the Companies Act 1948 which is in similar terms to s.46 of the Companies Law.

[12] [1980] 1 WLR 79
[13] [1995] 1 BCLC 117

33. In that case an initial transfer of 50,000 shares had been made with the required regulatory approval. A further transfer of 200,000 shares had been made without the required regulatory approval and was therefore invalid and void by reason of the Exchange Control Act 1947. The court held that the entry recording the ownership of the additional 200,000 shares had been made without sufficient cause. In the course of its judgment, the court gave its view that s.116 of the Companies Act was wide enough in its terms to empower the court to order rectification of the register in relation to some only of a shareholder's shares and stated:

> *"In my judgment the wording of section 116 of the Companies Act 1948 is wide enough in its terms to empower the court to order the rectification of a company's register by deleting reference to some only of a shareholders' shares. This section can, in my judgment, still operate, even though the proposed rectification does not involve the entire deletion of the name of the registered holder concerned as a member of the company concerned, in as much as he, or it, is still properly shown as the holder of other shares to which the rectification does not relate. I therefore conclude that the court has jurisdiction to order the rectification sought in the present case."*

34. In the latter case of ***Re Thundercrest Ltd.***, the relevant section under consideration was s.359 of the UK's Companies Act 1985, also in similar terms to s.46 of the Companies Law. The plaintiff was one of three members of a company. The company proposed to allot 30,000 new shares, 10,000 to each member. Following non-delivery of the plaintiffs' provisional allotment letter, the two other members purported to allot themselves the entirety of the 30,000 shares to include the 10, 000 shares (5,000 each) which had been provisionally allotted to the plaintiff. On the application of the plaintiff, the court ordered that the register be rectified so as to cancel the allotment of the additional 5,000 shares to each of the other two members of the company.

35. The court noted the need for caution where third party rights may have become involved in the course of a large allotment of shares. In such a case where a mistake has occurred, it may well be that the mistake cannot be undone and the register cannot be rectified where those rights have accrued. The alterative remedy in those circumstances would be in compensation or damages.

36. Counsel on behalf of the Fund submitted that in the instant case there were no third parties who would be adversely affected should rectification be granted except for the possible effect on the tax liabilities of Mr. ABC. Counsel's submission is supported by the evidence of Mr. King. At paragraphs 17 and 18 of Mr. Kings' Affidavit, he explains that, while the most immediate consequence of the error is that Mr. ABC will not actually have any shares in the Fund, a second consequence is that Mr. ABC will not obtain the UK tax treatment which he desired in respect of his investment in the Fund. Profits arising from a redemption of the shares which are not treated as a reporting fund are taxed as income, at a rate which can be as high as 45% rather than as a capital gain (as would obtain for a reporting fund) which would attract a top rate of 20%. He further states that if the error is rectified there will be no impact on the Fund's other shareholders and creditors and that in terms of financial performance, there would have been no difference between the USD Distributing Management Shares had they existed and USD Management Shares, as the respective net asset values of the Shares are the same.

37. Having seen the contemporaneous and clear requests of Mr. ABC and reviewed the company and Fund Issue documents produced by Mr. Hawks and Mr. King, I am satisfied that an error was made.

38. This came about in part because of the issue of a new Class of shares in 2015 and the failure to advert to the substance of the offering, to wit that these were Multi-Currency Management Shares rather than US Dollar shares.

39. I accept Counsel's submission that the current entries in the Register of Members cannot stand as they record ownership of a Class of Shares which does not exist. The entries are invalid. They have been made without sufficient cause.

40. I accept further that the justice of the case requires that the Register of Members be rectified so as to place Mr. ABC in the position he would have been in had the error not been made.

41. I am also satisfied that given the wide ambit of s.46 of the Companies Law as discussed in the cases referenced above, that in the circumstances of this case, rectification of the Register is permissible.

RECTIFICATION- THE COMMON LAW POSITION

42. In furtherance of the indication given by the Fund to HMRC by letter dated 16th November 2018, Counsel on behalf of the Fund also drew to my attention a number of cases dealing with the common law power of rectification. He urged however that I need not go so far as to consider them as the statutory position is clearly satisfied.

43. Counsel also submitted that in keeping with the view of the court in the case ***of Bank of America Trust and Banking Corporation (Bahamas Limited) and Bank of America Trust and Banking Corporation (Cayman) Limited and the Attorney General and the Personal Representative of Mr. Joseph S. Stauffer Deceased,***[14] the issue of the payment of taxes in another country is not a relevant factor in this case.

44. In that case, on an application for a declaration as to the validity of a charitable trust, the Plaintiffs and the First Defendant, the Attorney General, sought the issue of a notice of proceedings to the Canadian Revenue Authorities pursuant to GCR O.15, r.13A. This was sought on the basis that those Authorities would be bound by the judgment of the Court on the validity of the trust. The Court declined to issue the said notice giving its view that the indirect purpose of any such participation would be the enforcement of a foreign tax claim and concluded that to permit participation in the proceedings would be an attempt to influence the judgment of the court for the ultimate purpose of collecting income tax in Canada.

45. I have considered the cases as to the common law position by way of general principles.

[14] GC 391 of 2006 , 4th June 2007

46. The leading case is that of ***Racal Group Services Ltd. v. Ashmore and Others***[15] in which by deed of covenant executed on the 19th July 1988, the Plaintiff sought to give effect to a resolution of its parent company to pay GBP 70,000.00 to a charitable trust as an annual payment over a four year period. An initial draft of the deed was amended so that the last payment was made within three years of the first payment. As drafted, the period did not exceed three years and thus the payments did not fall within the relevant exemption sections of the Income and Corporation Taxes Act. The Plaintiff therefore had no right to deduct tax before making the payments to the Charity. On discovery by the Revenue of the issue, the Plaintiff applied to Court for an order rectifying the deed of covenant to change the wording so that the period of the charitable gift extended beyond three years. The appellate court held that the learned judge at first instance was correct in refusing the application. The court stated that an applicant's desire to secure a fiscal advantage by rectification of a written instrument was not material, provided that there was an issue capable of being contested between the parties. In noting that there had been no supplemental deed of rectification between the parties as in the case of ***Whiteside v. Whiteside***[16], the Court found that there was in the case an issue between the plaintiff and the Trust namely whether the Plaintiff was entitled to deduct tax before paying the funds over to the Trust.

[15] [1995] STC 1151
[16] [1950] Ch. 65

47. In its judgment, the Court made general observations on the doctrine of rectification including that equity has power to rectify a written instrument so that it accords with the true intention of the maker. An applicant would be required to establish his case by clear evidence. The Court stated:

> "*Foremost in what must be shown is the true intention to which effect has not been given on the instrument.*"

48. The Court referred to the guidance given in the case of ***Thomas Bates and Son Ltd. v. Wyndham's (Lingerie) Ltd.***[17] that the civil standard of balance of probabilities is applicable to an action for rectification but that some convincing proof was required in order to counteract what is shown on the face of the document sought to be rectified. The Court agreed with the learned judge's summary of the authorities as follows:

> "*In my judgment the principle established by these cases is that the court will make an order for the rectification of a document if satisfied that it does not give effect to the true agreement or arrangement between the parties, or to the true intention of a grantor or covenantor and if satisfied that there is an issue, capable of being contested, between the parties ...it being irrelevant first that rectification of the document is sought or consented to by them all, and second that rectification is desired because it has beneficial fiscal consequences. On the other hand, the court will not order rectification of a document as between the parties or as between a grantor or covenantor and an intended beneficiary, if their rights will be unaffected and if the only effect of the order will be to secure a fiscal benefit.*"

[17] [1981] 1 WLR 505

49. The Court held that it could not rectify a document only on the ground that it failed to achieve the fiscal objective intended. Of import is the specific intention of the grantor as to how this objective was to be achieved. The Court concluded that on the available evidence there was real doubt as to what was the specific intention of the Plaintiff and no evidence as to what was intended to be the dates of payments. It followed that rectification was refused as the Plaintiff had failed to establish that the covenant as existed did not give effect to its intention.

50. In ***Re Strain (deceased) Allnutt and another v. Wilding and others***[18] the Court held that it had no jurisdiction to order rectification of a trust in circumstances where the mistake as to the trust had not been as to the language, terms, meaning or effect, but as to its tax-consequences. The court stated:

> *"In other words, rectification is about putting the record straight. In the case of a voluntary settlement, rectification involves bringing the trust document into line with the true intentions of the settlor as held by him at the date when he executed the document. This can be done by the court when, owing to a mistake in the drafting of the document, it fails to record the settlor's true intentions. The mistake may, for example, consist of leaving out words that were intended to be put into the document; or putting in words that were not intended to be in the document; or through a misunderstanding by those involved about the meanings of the words or expressions that were used in the document. Mistakes of this kind have the effect that the document, as executed, is not a true record of the settlor's intentions."*

[18] [2007] EWCA Civ. 412

51. In ***Giles v RNIB***[19] the Court identified the criteria for the grant of the discretionary remedy of rectification as set out in the case of ***Racal Group Services Ltd. v. Ashmore*** as being:

i. The claimant's case should be established by clear evidence of the true intention to which effect has not been given in the instrument;

ii. There must be a flaw in the written document such that it does not give effect to the parties'/donor's agreement/intention, as opposed to the parties/donor merely being mistaken as to the consequences of what they have agreed/intended; for example it is not sufficient merely that the document fails to achieve the desired fiscal objective;

iii. The specific intention of the parties/donor must be shown; it is not sufficient to show that the parties did *not* intend what was recorded; they also have to show what they did intend, with some degree of precision;

iv. There must be an issue capable of being contested between the parties notwithstanding that all relevant parties consent.

52. In that case, the Court considered that the criteria for rectification of the deed of variation was met and found that in light of the Claimant's letters to the four charities, there was contemporaneous and convincing proof of error and clear evidence as to what the claimant intended to achieve by the deed of variation The court found this proved with the required precision even though there was more than one route to achieving this within the deed of variation.

[19] [2014] EWHC 1373 (Ch) [2014],

53. It was not necessary for an actual dispute to exist and it was irrelevant that there was consent from all parties given that there were potential issues which affected the rights of persons concerned.

54. In ***Prowting 1968 Trustee One Ltd. v. Amos –Yeo***[20] the issue was as to the transfer of a certain number of shares by way of two share acquisition agreements. The shares were to have been transferred in order to meet the requirements for Entrepreneurial Relief under the relevant Tax Code. In order to qualify the amount to be transferred had to be at least 5 % of the nominal share capital. By an error in calculation, the amount transferred was less than 5%. The Court held that that the fact that the precise number of shares was to be determined did not prevent the intention of the parties from being sufficiently specific.

55. In ***RNC Trustees (CD) Limited and others v. Mrs. Janatha Stubbs and others***[21], the court applied the test set out in ***Giles v. Royal National Institute of Blind People and others.*** The court granted an application for rectification in circumstances where there was contemporaneous evidence of correspondence as to the instructions given to drafters of two deeds as to what the trustees wanted to achieve. The resulting deeds made changes which were not intended and there was evidence of the specific intention of the trustees to achieve something other than what was done.

[20] [2015] EWHC 2480 (Ch)

[21] [2017] EWHC 189 (Ch.)

56. The Court found that there was an issue arising other than a fiscal one, which was as to the nature of the interests of the beneficiaries. The court recognized that if there had not been adverse tax consequences, the parties might not have thought that it was necessary to apply to rectify the deeds but was of the view that the need for rectification could be made out in the case without having to refer to the tax consequences of the mistake. The court stated:

> "*The mistake in the sense of a mismatch between the trustees' intention and the effect of the Deeds exists independently of the fiscal consequences even though the motivation in seeking the remedy from the court is based on those consequences.*"

CONCLUSION

57. Having reviewed these authorities I am satisfied that although it is not necessary to have recourse to the common law, (given the statutory provision), that permitting rectification in the circumstances in this case would *not* fall afoul of these general principles. The circumstances are such that the criteria would be met for rectification. There is a qualifying mistake, there is clear evidence of the true intention of the parties and the Register is flawed in that it does not give effect to that intention. Further, the mistake is not only as to the consequences of the issue of shares but there is plainly an issue between the parties as to the ownership and transfer of shares which is separate from the fiscal effect of the class of shares allotted to Mr. ABC.

58. In summary in reviewing these general principles there are no circumstances which would cause me to hesitate as to the appropriateness of a rectification order in this case. I accept Counsel's submission that both avenues for rectification would have been open to the Fund.

59. For all the foregoing reasons particularly as to the ambit of the statutory provision, I concluded that there is a proper basis for the making of an order for rectification pursuant to section 46 of the Companies Law (2018 Revision) and I granted the order sought.

Dated this the 23rd day of January 2019

Honourable Justice Cheryll Richards Q.C.
Judge of the Grand Court