

Snapshot – Fair rate of interest in section 238 proceedings to include a compounding element

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The Grand Court of the Cayman Islands has recently approved an approach to determining the fair rate of interest in section 238 proceedings, which includes an element of compounding in its calculation.

In its earlier March 2021 decision (which is discussed in more depth [here](#)) the Court in *Qunar* had held that the fair rate of interest to be awarded to dissenting shareholders was the midpoint between: (i) the rate of return which a prudent investor in the dissenting shareholders' position could have obtained if they had the money to invest (the **Prudent Investor Rate**); and (ii) the rate at which the Company could have borrowed the amount representing the fair value of the dissenting shareholders' shares. The Court had then indicated that, as there was no legal basis or statutory basis for awarding compound interest, this blended rate (the **Midpoint Rate**) was to be applied on a simple interest basis.

However, in the latest *Qunar* judgment, the Court was asked to determine whether the Dissenters could include an element of compounding in calculating the Prudent Investor Rate to be used as the input to the Midpoint Rate calculation. The Company argued that since the Court had already confirmed in its previous decision that the Midpoint Rate was to be applied on a simple interest basis, this necessarily meant that the Prudent Investor Rate must also not include any element of compounding. The Dissenters, on the other hand, argued that the commercial reality was that prudent investors generally do not withdraw profits during the course of their investing, and since the Prudent Investor Rate is designed to reflect a theoretical investment return, it must implicitly take account of the compounding nature of investment returns even if the Midpoint Rate did not then expressly do so.

The Court preferred the Dissenters' argument and found that to reach a fair interest rate it was necessary to incorporate the practical reality that investors' rates of return are inherently compounding in nature. As such, the Court applied what it described as a "simple rate

equivalent" to the Prudent Investor Rate, which recognised an implicit compounding on investment returns during the time that the Dissenters were kept out of their funds.

On the facts of the particular case, this revised approach only had a modest effect on the total amount of interest that was awarded (as the Dissenters had achieved less than a 3% uplift on the merger price). However, the decision is of significant importance to Cayman appraisal proceedings more generally, as the recognition that prudent investors implicitly benefit from compounding investments will likely have the effect of increasing the amount of interest that is awarded in future cases.

This judgment shows that the Cayman Islands Courts are continuing to adopt a commercially-guided approach to this rapidly developing area of law.

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