

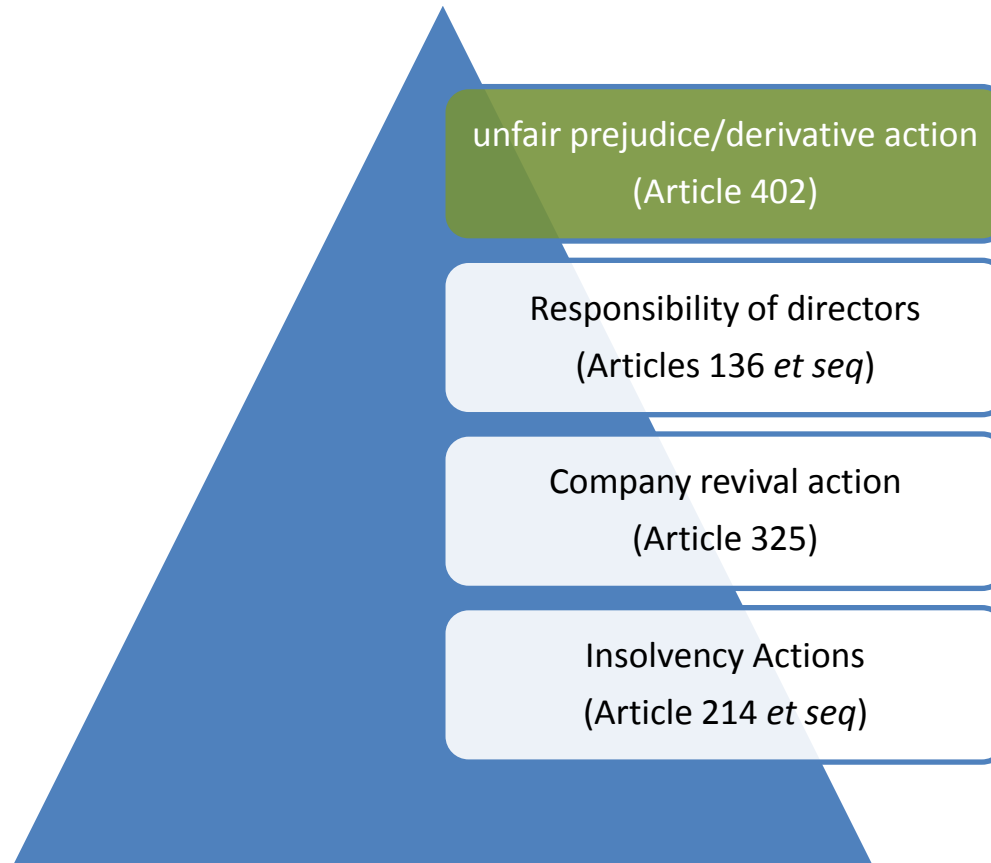
***A REVIEW OF RECENT CORPORATE
LITIGATION IN MALTA AND THE
EVOLUTION OF SPECIFIC REMEDIES***

Antoine Cremona

Partner

March 2015

Corporate Remedies



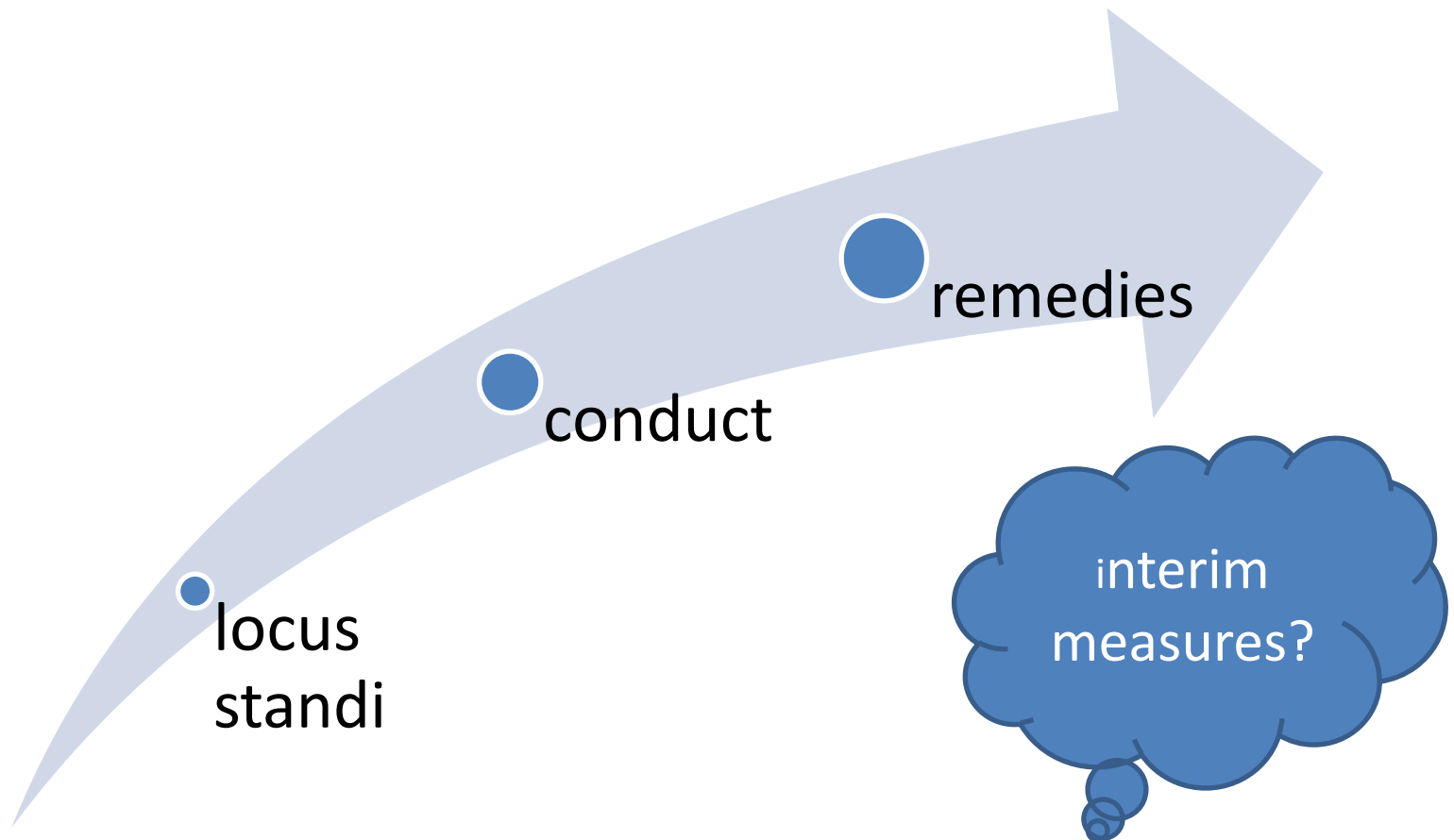
Unfair Prejudice Remedies: Restoring Balance



Article 402 (1): Substantive Aspect

Any member of a company who complains that the affairs of the company have been or are being or are likely to be conducted in a manner that is, or that any act or omission of the company have been or are or are likely to be, oppressive, unfairly discriminatory against, or unfairly prejudicial, to a member or members or in a manner that is contrary to the interests of the members as a whole, may make an application to the court for an order under this article

The different elements of Article 402 (Companies Act)



Who is a “member”?

- *Gordon Mizzi, Corinne Apap Bologna et vs Dr. John C. Grech, Maurice Mizzi, Jeffrey Mizzi et*
(COA 29.04.2008)
- *Perit Raymond Vassallo vs Anthony Parlato Trigona et*
(COA 24.06.2011)
- *Jean Karl Soler et vs Raymond Vassallo*
(COA 10.03.2011)
- *Suzanne Busuttil et vs Francis Busuttil & Sons Ltd*
(COA 31.01.2014)



Matrimonial and Succession Issues

Michael Debono qua Trustee of The J Saliba Trust vs Mario Debono et

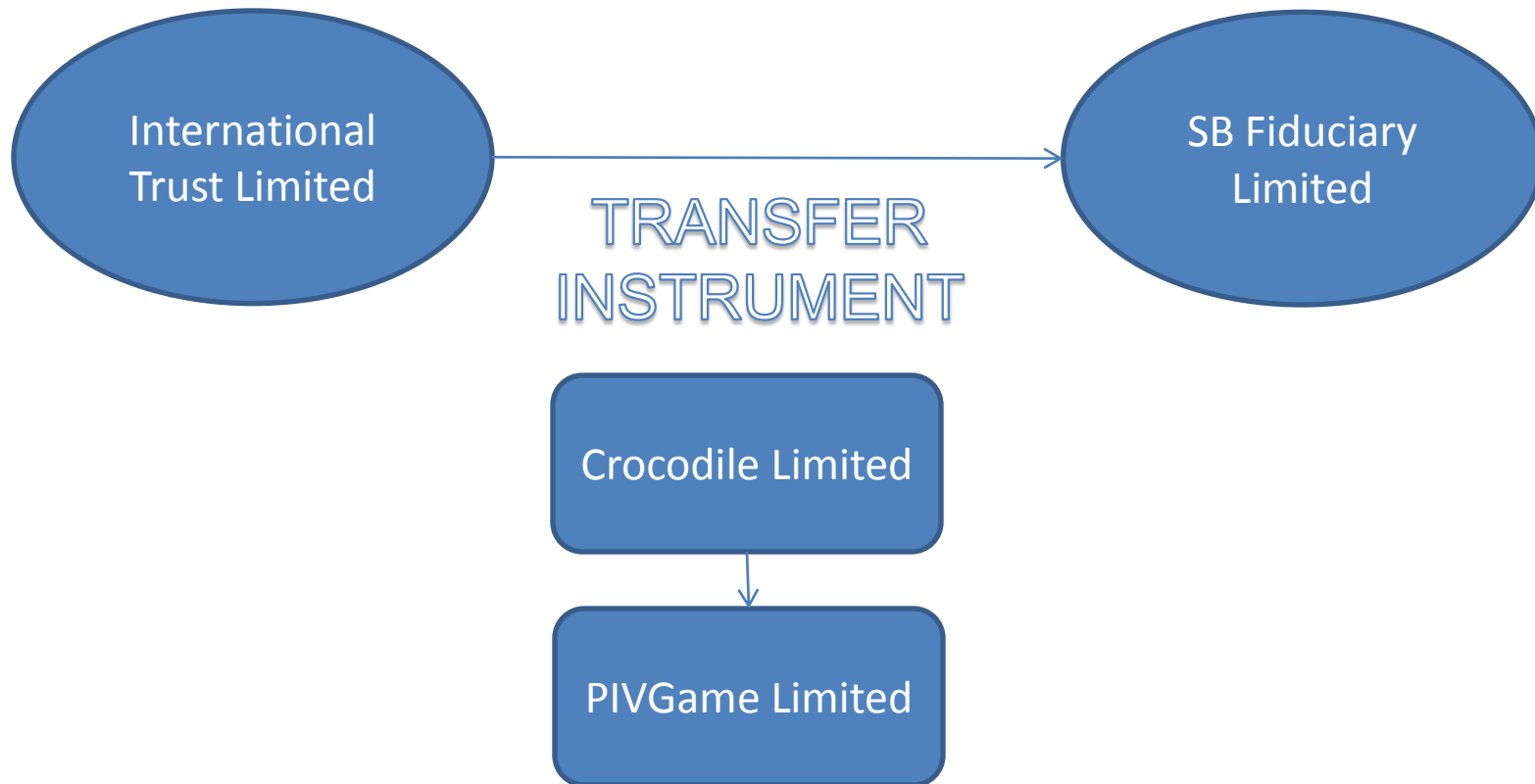
(28.12.2012 JZM)

One Share – 402 available ?

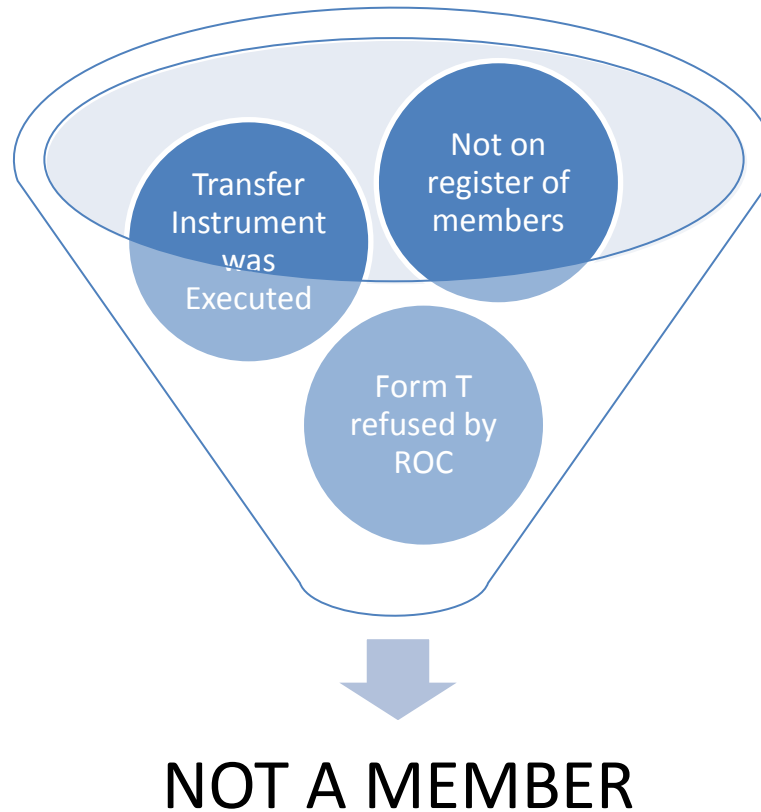
Francis J Vassallo & Associates Limited vs Dr Anthony Cutajar noe

(04.07.2013 JZM)

SB Fiduciary Limited v Crocodile Ltd et (2015)



SB Fiduciary Limited v Crocodile Ltd et (2015)



Can the court issue interim measures?

- *Joseph M Vella et vs Vella Brothers Limited*
(09.03.2007)
- *Lonavi Properties vs Balkan Power Invest Holding Limited et*
(FHCC 09.06.2011)
- *PADA Builders Limited vs Philip Agius & Sons Limited et*
(FHCC 26.08.2011)
- *Suzanne Busuttil vs Francis Busuttil & Sons Limited et*
(FHCC 16.02.2015)

Derivative Action?

- Two schools of thought
- Emanuel Chircop et vs Carmel sive Charles Busuttil et (Continental Postform) (FHCC12.11.2013)
- George Borg vs Primrose Poultry Products Limited et (FHCC 16.01.2012)
- Perit Raymond Vassallo pro et noe vs Perit Raymond Carbonaro et (PA 30.01.2014)
- Saviour Ellis et vs Rita Ellis et (COA 03.11.2009)

Remedies (1) – 402(3)

- a) regulating the conduct of the company's affairs in the future
- b) restricting or forbidding the carrying out of any proposed act
- c) requiring the company to do an act which the applicant has complained it has omitted to do
- d) providing for the purchase of the shares of any members of the company by other members of the company or by the company itself and, in the case of a purchase by the company, for the reduction accordingly of the company's issued share capital

Remedies (2)

- e) directing the company to institute, defend, continue or discontinue court proceedings, or authorising a member or members of the company to institute, defend, continue or discontinue court proceedings in the name and on behalf of the company
- f) providing for the payment of compensation by such person as may have been found by the court responsible for loss or damage suffered as a result of the act or omission complained of, to the person suffering the said loss or damage
- g) dissolving the company and providing for its consequential winding up

THANK YOU!

Revival Actions: Article 325 (4) of the Companies Act

- The name of the company is restored (if all requisites are met) by a Maltese court
- This will enable any creditor of the company to enforce its right of action against the company
- Recent cases



Revival Action: Essential Requisites

- Any member or creditor of the company, or any other interested
- They must be aggrieved by the fact that the name of the company has been struck off the register
- The Court may order that such name be restored to the register
- Result: The company shall be deemed to have continued in existence as if its name had not been struck off
- 5 years prescriptive period