In The Supreme Court of Bermuda

COMMERCIAL JURISDICTION
2025 No: 195, 205 and 223

IN THE MATTER OF SECTION 106(2) OF THE COMPANIES ACT 1981
IN THE MATTER OF GOLDEN OCEAN GROUP LIMITED
IN THE MATTER OF THE MERGER BETWEEN GOLDEN OCEAN GROUP LIMITED AND CMB. TECH BERMUDA LTD

BETWEEN:-

1) FOURWORLD GLOBAL OPPORTUNITIES FUND, LTD
2) FOURWORLD SPECIAL OPPORTUNITIES FUND, LLC
3) FW DEEP VALUE OPPORTUNITIES FUND I, LLC
4) CORBIN ERISA OPPORTUNITY FUND, LTD
5) ALPINE PARTNERS (BVI), LP
6) OASIS CORE INVESTMENTS FUND LTD

Plaintiffs

And

1) GOLDEN OCEAN GROUP LIMITED
2) CMB. TECH BERMUDA LTD
(the successor of the First Defendant)

Defendants

JUDGMENT
(Cash Action)

Dates of Hearing:	Wednesday 21 January 2026 and Thursday 22 January 2026
Date of Judgment:	Thursday 21 May 2026
Plaintiffs (1)-(4) FourWorld Dissenters:	Mr. Sharif Shivji KC of Counsel (4 Stone Buildings) and Mr. Mark Chudleigh and Mr. David Thom (Kennedys)
Plaintiff (5) Alpine Partners (BVI), LP:	Mr. Jonathan Adkin KC of Counsel (Serle Court) and Ms. Hannah Tildesley and Ms. Kiara Wilkinson (Walkers (Bermuda) Limited)
Plaintiff (6) Oasis Core Investments Fund Ltd.:	Mr. Richard Millett KC of Counsel (Essex Court Chambers) and Mr. Matthew Watson (Carey Olsen Bermuda Limited)
Defendant (Post-Merger Successor) CMB. Tech Bermuda Ltd (D2) (Successor of the First Defendant Golden Ocean Group Limited):	Mr. Stephen Midwinter KC of Counsel (Brick Court Chambers) and Mr. Rhys Williams and Ms. Mariangela Bucci of Conyers Dill & Pearman Limited

Trial: Section 106(2) of the Companies Act 1981 - Whether a merging company's statement of fair value in a meeting notice constitutes a binding offer of a cash payment to a dissenting shareholder - Whether a dissenting shareholder has a stand-alone statutory right to payment of the fair value sum stated in a meeting notice in lieu of seeking a Court appraisal pursuant to section 106(6) of the Companies Act 1981 – Whether a merging company's statement of fair value in a meeting notice must be stated in cash terms - Claim that a dissenting shareholder is entitled to be paid in cash at the fair share value – Statutory Interpretation- Legislative history to section 106 of the Companies Act 1981 -Valuation of shares held by a dissenting shareholder in a share for share merger

JUDGMENT of Shade Subair Williams J

INTRODUCTION

1. In this case I am concerned with the construction of section 106(2) of the Companies Act 1981 ("CA 1981").

2. The Plaintiffs' case is that when a merging company states its determination of the fair value sum of its shares in its meeting notice to shareholders in accordance with section 106(2), the dissenting shareholders are entitled to treat the merging company's statement as a binding offer of prompt payment of that same sum in cash terms.

3. However, in this case, the statement of fair value and the merger consideration was made in the terms of a share exchange arrangement. This gave rise to the following questions of legal principle for my consideration:

   (i) Does a dissenting shareholder have a statutory right to forego the share for share merger consideration and opt for a cash payment instead?

   (ii) Does a merging company have a duty to state its determination of fair share value in the meeting notice in cash terms?

   (iii) If so, does a statement in the meeting notice of the merging company's determination of fair value in cash terms operate as a stand-alone statutorily binding offer of payment which may be accepted by dissenting shareholders in lieu of recourse to the Court appraisal regime under section 106(6)?

4. These issues are said to be novel under Bermuda law. I was informed by Counsel that no Court at any level has previously determined the proper construction of section 106(2) nor has any Bermuda Court undertaken an appraisal of shares held by a dissenting shareholder in a share for share merger.

5. By an Order made by Mussenden CJ on 10 October 2025 the Court directed that the trial of this action be split between (i) the Cash Action and (ii) the Appraisal Action. At the 10 October hearing, the Defendant sought a direction for the granting of leave to adduce expert evidence. However, some confusion arose as to whether Mussenden CJ declined to decide the issue of expert evidence or whether he refused the application. At the close of that hearing, it is said that the Chief Justice informed the parties that reasons for his decision(s) would be provided. However, by the time of the trial of these applications and at the time of writing, the Chief

Justice's reasons had not (yet) been provided. On 1 December 2025, the Defendant filed a summons formally seeking leave to rely on expert evidence on questions relating to quantum in respect of the fair value of the dissenting shareholders' shares in Golden Ocean and CMB Tech.

6. This judgment is made in answer to the issues raised in the trial of the Cash Action and in answer to the Defendant's summons for leave to adduce expert evidence.

7. At the hearings before me, each party was represented by a team of experienced and skilful advocates led by eminent London Silks providing tremendous assistance to this Court in the presentation of the competing arguments. Having reserved to consider the evidence and submissions put before this Court, I now provide my judgment based on the reasoning outlined herein.

THE ORIGINATING SUMMONSES

8. For the hearing of the trial, three separate actions commenced by way of Originating Summonses filed by dissenting shareholders in respect of a statutory merger pursuant to Part VII of the CA 1981. The consolidation is permitted under Order 4 Rule 10(a) of the Rules of the Supreme Court ("RSC") on the basis that the First to Sixth Plaintiffs (collectively the "Plaintiffs" / the "Dissenters" / the "Dissenting Shareholders"), by their claims made under section 106 of the CA 1981, raise a common question of law as between themselves.

9. Further, each of the Plaintiffs seek an order for a cash payment of the fair value of their common shares held in Golden Ocean Group Limited (the "Golden Ocean") and they each seek declaratory relief on the construction of section 106(2), hence the actions proceeded by way of Originating Summons in accordance with RSC Order 5 Rule 4(2).

THE EVIDENCE

10. This Court is not required to resolve any controversial issues of fact. I have thus treated the evidence before me as proven, save where the evidence contains statements of opinion and or argument.

11. In support of the First to Fourth Plaintiffs (the "FourWorld Plaintiffs"), evidence was filed by Mr. David Thom, a Senior Associate of Kennedys Chudleigh Ltd and Mr. John Addis, the Chief Investment Officer of FourWorld Capital Management LLC. The case for the Fifth Plaintiff, Alpine Partners (BVI), LP ("Alpine") was supported by evidence sworn by an

associate of Walkers (Bermuda) Limited, namely Ms. Kiara Wilkinson. Evidence on behalf of the Sixth Plaintiff, Oasis Core Investments Fund Ltd ("Oasis"), was provided by the affidavit evidence of Mr. Oliver Mackay, Counsel at Carey Olsen Bermuda Limited.

12. The Defendants (collectively the "Defendants" / the "Company") filed evidence sworn by Mr. Ludovic Saverys, a director of CMB Bermuda, Mr. Peder Simonsen, the Chief Executive Officer of Golden Ocean from 29 May 2024 through to 20 August 2025 and evidence from Mr. Samuel Hudson, an associate in the litigation department of Conyers Dill & Pearman Limited ("Conyers").

13. The relevant facts all relate to a statutory merger (the "merger") between Golden Ocean and CMB. Tech Bermuda Ltd. ("CMB Bermuda" / the "Surviving Company"). The merger was completed on 20 August 2025 (the "merger date"). The merger consideration in this case was transacted as a share for share merger, such that the shareholders of Golden Ocean were paid in shares of CMB Bermuda's parent company, CMB Tech NV ("CMB Tech" / the "Parent Company"). Where I refer to CMB Bermuda and CMB Tech collectively, or where the distinction between the two entities is of no consequence, I shall employ the term "CMB".

The Defendant Companies

14. Golden Ocean was incorporated as a Bermuda exempted company limited by shares. It was a public drybulk shipping company which operated internationally through its subsidiaries in Bermuda, Norway and Singapore. Golden Ocean's fleet, said to have consisted of 89 drybulk vessels (owned or chartered-in) with an average age of 8.2 years and aggregate carrying capacity of 13.6 million dwt., transported a broad range of major and minor bulk commodities, including ores, coal, grains and fertilizers, using worldwide shipping routes. Golden Ocean also traded its common shares on Nasdaq Global Select Market ("Nasdaq") and Euronext Oslo Stock Exchange ("Euronext Oslo") under the symbol "GOGL".

15. CMB Bermuda was also incorporated as a Bermuda exempted company limited by shares. It is a wholly owned subsidiary of CMB Tech, a public shipping company limited by shares incorporated in Belgium and trading on the New York Stock Exchange ("NYSE"), Euronext Brussels stock exchange ("Euronext Brussels") and, since the merger, Oslo Stock Exchange ("OSE") under the symbol "CMBT". CMB Tech, with its subsidiaries in Belgium, France, Japan, Luxembourg, Greece, Hong Kong, the Netherlands, Namibia, Singapore and the United Kingdom, is a diversified maritime group which operates an international shipping business and specialises in the development, production and distribution of ammonia/hydrogen fuels. It owns, operates and designs large marine and industrial applications that run on dual fuel or monofuel (diesel-)hydrogen and (diesel-)ammonia engines. According to a Proxy Statement issued to Golden Ocean shareholders on 16 July 2025, CMB Tech's fleet during that period

consisted of 160 vessels comprising 38 crude oil tankers, five container vessels, 30 drybulk vessels, 16 chemical tankers, 67 offshore wind transportation vessels and four workboats, tugs and ferries.

CMB's Acquisition of Golden Ocean Shares from Hemen

16. On 12 December 2024 CMB Tech entered discussions with Hemen Golding Limited ("Hemen") to discuss the possibility of CMB Tech purchasing Hemen's controlling interest shares in Golden Ocean. Mr. Saverys' evidence was that CMB Tech viewed the prospect of such a transaction as a transformational acquisition. It saw Golden Ocean as a suitable target for a merger which would facilitate asset and business growth.

17. Three months later, on 12 March 2025[1], CMB Tech acquired (through CMB Bermuda) approximately 40.8% of Golden Ocean's issued and outstanding shares at the purchase price of USD $14.49 per share, totalling USD $1.179Billion for 81,363,730 common shares. Mr. Saverys' evidence is that the $14.49 figure represented the high-end range of the net asset value (the "NAV") of Golden Ocean's shares at that time. Mr. Saverys' evidence was that this topped contemporaneous open-market trading prices, for which the volume-weighted average price (the "VWAP") as at 12 March 2025 was USD $8.10. Mr. Saverys stated that for the preceding two months, the VWAP was USD $9.54 and USD $9.72.

CMB's Acquisition of Golden Ocean Shares from the Open Market

18. In early April 2025, CMB purchased 17,036,474 common shares (representing approximately 8.5% of the issues and outstanding common shares in Golden Ocean) directly on the open market. This increased CMB's ultimate ownership in Golden Ocean to a total of 98,400,204 shares, accounting for approximately 49.4% of Golden Ocean's issued shares.

Financial advice to Golden Ocean on Merger Consideration: The Fairness Opinion

19. Following discussions held between Golden Ocean and CMB on or around 28 March 2025, on 2 April 2025 Golden Ocean's board of directors established a transaction committee (the "Transaction Committee") to evaluate and negotiate the contemplated merger. On 7 April 2025 the Transaction Committee retained DNB Bank ASA ("DNB Carnegie") for financial advice on the contemplated merger. That financial advice came in the form of a fairness opinion (the "fairness opinion") from DNB Carnegie. The fairness opinion evaluated the exchange ratio of Golden Ocean shares to CMB Tech shares as the merger would provide for a share swap arrangement whereby CMB Tech would issue CMB Tech shares in consideration for all outstanding shares in Golden Ocean which it did not already (directly or indirectly) own. The

[1] Mr. Thom's first affidavit at para [11] referred to a Share Purchase Agreement executed on 4 March 2025.

exchange ratio evaluated was 0.95 CMB Tech shares in exchange for each Golden Ocean share which was assigned the same USD $14.49 value mirroring CMB Tech's purchase price from Hemen which was calculated based on the NAV. Each 0.95 CMB Tech share, for the purpose of the merger, was valued at USD $15.23. Again, this was based on an NAV calculation.

20. The ultimate purpose of the fairness opinion was to advise on the fairness of the merger from the financial point of view of Golden Ocean shareholders. Mr. Saverys' evidence is that DNB Carnegie not only has experience with the shipping industry but that it also has a familiarity with both CMB Tech's and Golden Ocean's business activities.

Board Approval of the Merger

21. On 12 April 2025 the merger was proposed to Golden Ocean in a draft term sheet presented by CMB Tech. Following the negotiation of the precise terms of the merger, on 22 April 2025 CMB Tech presented a final term sheet (the "final term sheet") to the Transaction Committee with a unanimous recommendation in favour of the contemplated merger. The final term sheet was expressly stated to be a non-binding summary of the key terms of the contemplated merger, and it set out the basis for further negotiation and documentation in respect thereof.

22. The final term sheet was approved by Golden Ocean's board of directors on the same day as it was presented to the Transaction Committee and was announced publicly via an appendage to press releases for both CMB Tech and Golden Ocean. In the joint press release, the Transaction Committee stated that:

"*The disinterested directors of Golden Ocean have analysed the values of both companies in a possible stock-for-stock merger. We have concluded unanimously that the proposed exchange ratio based on a net asset value of CMB.TECH of 15.23 USD per share and a value of 14.49 USD per Golden Ocean share is fair, and believe this proposed merger is in the best interests of the company and its stakeholders*."

The Plaintiffs' purchase of Golden Ocean Shares

23. The evidence put forth by the Plaintiffs did not divulge the precise date of the purchase of their shares in Golden Ocean. However, on the evidence of Mr. Hudson of Conyers, the Plaintiffs purchased their shares after the merger had already been publicly announced. This means, as Mr. Hudson stated, that the Plaintiffs had full knowledge that the merger consideration would be paid by way of an exchange of Golden Ocean shares for CMB Tech shares.

24. The FourWorld Plaintiffs acquired legal and beneficial ownership in a total of 6,605,831 common shares in Golden Ocean. On the evidence of Mr. Thom, the following number of common shares was purchased by each investment fund:

Plaintiff	Fund Description	Number of Common Shares held in Golden Ocean
The First Plaintiff	FourWorld Global Opportunities Fund, Ltd, a company limited by shares incorporated in the Cayman Islands	1,215,297
The Second Plaintiff	FourWorld Special Opportunities Fund, LLC, a limited liability company incorporated in the State of Delaware USA	1,011,700
The Third Plaintiff	FW Deep Value Opportunities Fund I, LLC, a limited liability company incorporated in the State of Delaware USA	1,215,297
The Fourth Plaintiff	Corbin ERISA Opportunity Fund, Ltd, a company limited by shares incorporated in the Cayman Islands	3,163,537

25. Mr. Thom's evidence is that on the merger date, each of the FourWorld Plaintiffs' shareholdings in Golden Ocean remained as outlined above.

Alpine and Oasis

26. Ms. Wilkinson's evidence was that Alpine, pre-merger, held 8,275,000 common shares in Golden Ocean and Mr. Mackay's evidence was that Oasis held 9,010,000 common shares in Golden Ocean.

The Merger Agreement Formalised

27. The formal merger agreement (the "merger agreement"), dated 28 May 2025 and transacted pursuant to Bermuda law, provided that Golden Ocean would merge with and into CMB Bermuda such that CMB Bermuda would be the surviving company under the continued governance of the CA 1981. The "merger consideration shares" represented the cancellation and conversion of existing shares in Golden Ocean (other than treasury shares and shares held by CMB Bermuda) into CMB Bermuda shares at a 1:1 ratio. In consideration for the merger consideration shares, Golden Ocean shareholders would receive newly issued shares in CMB Tech at a ratio of 0.95 CMB Tech shares for each merger consideration share.

28. It was expressly stated in the merger agreement that any shareholder who did not vote in favour of the merger would have their shares automatically cancelled and converted into a right to receive the merger consideration pursuant to section 3.1(a) of the merger agreement, with the right to apply to the Court to have the fair value of their shares determined.

The SGM Notice and the Proxy Statement/Prospectus to Golden Ocean Shareholders

29. On or around 18 July 2025 the shareholders of Golden Ocean, including the Plaintiffs, received notice (the "SGM Notice") of the Special General Meeting (the "SGM") which was fixed to be held in Bermuda at Hamilton Princess on 19 August 2025. The SGM Notice was enclosed with a press release posted to Golden Ocean's website together with a combined Proxy Statement / Prospectus (the "Proxy Statement") dated 16 July 2025.

30. The SGM Notice signalled the holding of a vote for the approval of Bye-Law 77A which would allow for the merger to be approved by a simple majority vote of the shareholders. The principal purpose for the SGM, however, was for the Board to obtain the shareholders' approval to proceed with the merger.

31. In the SGM Notice, Golden Ocean advised the shareholders that it considered the merger consideration to be fair and in the best interests of Golden Ocean and its shareholders. Golden Ocean also informed the shareholders that it had taken this decision upon the unanimous recommendation of a special transaction committee comprised solely of disinterested directors with no financial interest in the transactions contemplated by the merger.

32. Golden Ocean also informed its shareholders that for each of them who owned common shares which were tradeable on Nasdaq, their converted shares would also be tradeable on Nasdaq. The same applied to the shares which were traded on Euronext Oslo. Further, Golden Ocean advised that the CMB.TECH ordinary shares were to be issued as merger consideration were also approved for listing on the New York Stock Exchange.

33. As for the position taken on the fair share value of each Golden Ocean common share and the rights of any dissenter to seek an appraisal from the Court, Golden Ocean made the following statement in the SGM Notice:

"*For the purposes of Section 106(2)(b)(i) of the BCA, the Golden Ocean board of directors has determined the fair value for each Golden Ocean common share to be $14.49 subject to adjustment, pursuant to the terms of the Merger Agreement) and pursuant to the automatic conversion in the Merger Agreement to be equal to the Merger Consideration. Golden Ocean's shareholders who are not satisfied that they have been offered fair value for their shares and who do not vote in favour of the Merger may exercise their appraisal rights under the BCA to*

have their application for appraisal of the fair value of their shares appraised by the Supreme Court of Bermuda (the "Bermuda Court"). Golden Ocean's shareholders intending to exercise appraisal rights MUST file their application for appraisal of the fair value of their shares with the Bermuda Court within ONE MONTH of the notice convening the Special General Meeting and otherwise fully comply with the requirements for seeking appraisal under the BCA.

34. In addition to the SGM Notice, on or about 18 July 2025, the shareholders were sent a letter from Mr. Patrick De Brabandere, the Chairman of the Board of Directors of Golden Ocean., which accompanied a proxy statement containing, *inter alia*, the following statements:

Q: What will I receive for my Golden Ocean common shares if the Merger is completed?

A: At the Effective Time, each issued and outstanding Golden Ocean common share will be canceled, and such shares (other than those shares that CMB.TECH, Merger Sub, Golden Ocean or any of their respective subsidiaries own) will be automatically converted into the right to receive 0.95 CMB.TECH ordinary shares, subject to adjustment pursuant to the terms of the Merger Agreement (the "Exchange Ratio") in the following manner: (i) at the Effective Time, each such Golden Ocean common share will be automatically converted into one Surviving Company Share, and (ii) on the Closing Date, each such Surviving Company Share will be contributed to CMB.TECH by way of the Contribution in Kind in exchange for 0.95 CMB.TECH ordinary shares, subject to any adjustments pursuant to the terms of the Merger Agreement.

Subject to, among other things, approvals from the NYSE and Euronext Oslo as well as publication of the EU Exemption Document, Contributing Golden Ocean Shareholders that own Golden Ocean common shares that trade on Nasdaq will receive their portion of the Merger Consideration in CMB.TECH ordinary shares that trade on the NYSE, and Contributing Golden Ocean Shareholders that own Golden Ocean common shares that trade on Euronext Oslo (as recorded in the Norwegian central securities depository,

Euronext Securities Oslo (Verdipapirsentralen) ("VPS")) will receive their portion of the Merger Consideration in CMB.TECH ordinary shares that are expected to be registered in VPS and trade on Euronext Oslo shortly after completion of the Merger.

For the purpose of giving effect to the Contribution in Kind, the Exchange Agent has been appointed, subject to approval by the Special General Meeting, and CMB.TECH and Golden Ocean have entered into an agreement with the Exchange Agent under which it will be authorized to act as agent for the Contributing Golden Ocean Shareholders, with the right of sub-delegation, for the Merger and, among other things, to act as agent solely in the name and on behalf of and for the account and benefit of the Contributing Golden Ocean Shareholders,

to effect the Contribution in Kind and the receipt of the Merger Consideration and delivery thereof to such shareholders.

The aggregate number of CMB.TECH ordinary shares issued pursuant to the Merger may be adjusted if, prior to the Effective Time, (i) the outstanding number of CMB.TECH ordinary shares or Golden Ocean common shares has changed into a different number of shares or a different class by reason of any stock dividend or distribution, subdivision, reclassification, recapitalization, stock split, reverse stock split, stock consolidation, combination, repurchase, exchange of shares or other similar change or event or (ii) the outstanding number of CMB.TECH ordinary shares or Golden Ocean common shares has changed into a different number of shares or a different class by reason any issuance of additional shares of stock, CMB.TECH or Golden Ocean has issued any securities of a different class or type other than the CMB.TECH ordinary shares or Golden Ocean common shares, or CMB.TECH or Golden Ocean has issued a cash dividend or other distribution, in accordance with the Merger Agreement. Any Golden Ocean common shares that Golden Ocean, CMB.TECH, Merger Sub or their respective subsidiaries hold will be canceled, and no consideration will be delivered for those canceled shares. The Exchange Ratio and the Merger Consideration will not be adjusted to reflect changes in the price of Golden Ocean common shares or CMB.TECH ordinary shares prior to the Effective Time.

The value which the Merger Consideration represents on the basis of the market price of CMB.TECH ordinary shares will increase or decrease in accordance with fluctuations in such market price. You should obtain current share price quotations of CMB.TECH ordinary shares, which are listed on the NYSE and Euronext Brussels under the symbol "CMBT." Golden Ocean common shares are listed on Nasdaq and Euronext Oslo under the symbol "GOGL." Based on the closing price of CMB.TECH ordinary shares on the NYSE of $8.87 on April 22, 2025, the last trading day before the public announcement of the Merger, which occurred prior to the open of trading on April 23, 2025, the Exchange Ratio represented approximately $8.43 in CMB.TECH ordinary shares for each Golden Ocean common share. Based on the closing price of CMB.TECH ordinary shares on the NYSE of $9.21 on July 15, 2025, the latest practicable date before the date of this proxy statement/prospectus, the Exchange Ratio represented approximately $8.75 in CMB.TECH ordinary shares for each Golden Ocean common share.

CMB.TECH will not issue any fractional ordinary shares. Instead, each record holder of Golden Ocean common shares otherwise entitled to a fraction of a CMB.TECH ordinary share (after aggregating all fractional shares of CMB.TECH ordinary shares to be received by such person) will be entitled to receive an amount of cash (without interest, rounded to the nearest whole cent) equal to the product of (i) such fraction and (ii) $14.49 (subject to adjustment, pursuant to the terms of the Merger Agreement). Holders of Golden Ocean common shares

otherwise entitled to a fraction of a CMB.TECH ordinary share that hold shares through a bank, broker, trustee or other nominee will receive cash in lieu of fractional shares, if any, determined in accordance with the policies of such bank, broker, trustee or other nominee. For more information, the section entitled "The Merger - Merger Consideration."

...

Q: How has the announcement of the Merger affected the trading price of Golden Ocean common shares*?*

A: On April 22, 2025, the last trading date before the public announcement of the Merger, Golden Ocean common shares closed on Nasdaq at $7.04 per share. On July 15, 2025, the trading date immediately prior to the date of this proxy statement/prospectus, the Golden Ocean common shares closed on Nasdaq at $8.20 per share.

35. As stated in Mr. Saverys' evidence, the Proxy Statement confirmed that Golden Ocean, the Transaction Committee and the Parent Company all determined the exchange ratio using the same share price of USD $14.49 per Golden Ocean share, which was also the same purchase rate paid to acquire the Golden Ocean shares from Hemen. Pointing out that the Golden Ocean shares were trading at around USD $8.00 per share and that the Plaintiffs were able to take advantage of the lower market price when they acquired their shares from Golden Ocean, Mr. Saverys maintained in his evidence the fairness of the USD $14.49 sum as the value for the exchange ratio. Mr. Saverys also explained in his evidence that when Hemen's Golden Ocean shares were acquired, Hemen was controlled by Norwegian shipping magnate, Mr. John Fredriksen; thus, the acquisition of those shares from Hemen was a sale transaction carried out at arms-length. Against that background, Mr. Saverys added at paragraph [54]: "*Fixing a fair value for the contemplated merger at anything less than USD 14.49 was likely to be heavily criticised by Golden Ocean shareholders*."

The Merger Resolution Passed at the SGM

36. On 19 August 2025 the SGM was held at Hamilton Princess. By 92.72% of the shares present and represented the resolution was approved in favour of the merger and its contractual arrangements.

The Merger Date

37. The last day on which Golden Ocean shares were publicly traded on the Nasdaq and Euronext Oslo stock exchanges was 19 August 2025.

38. Mr. Thom stated in his second affidavit at para [11] that on 20 August 2025 at 8:30am CEST, the Parent Company announced that the Merger had completed earlier that day and that the effective time was "*20 August 2025, before market opening CEST*". This date has been defined as the "merger date".

Passing of the Merger Consideration to the Dissenters

39. On the merger date, upon the effective time, all the shares in Golden Ocean were cancelled in return for 0.95 ordinary shares in the Parent Company.

40. Computershare Inc. together with its wholly-owned subsidiary, Computershare Trust Company N.A. ("Computershare") served as the exchange agent (the "Exchange Agent") in that it maintained the Parent Company's share register and provided confirmation statements to the Golden Ocean shareholders. The effect of the exchange was such that the FourWorld Plaintiffs, in exchange for their Golden Ocean shares, now held 6,275,539 shares in the Parent Company. Mr. Thom in his second affidavit at para [13] particuarised the holdings as follows:

Plaintiff	Fund Description	Number of Golden Ocean Shares cancelled	Number of Common Shares held in CMB Tech
The First Plaintiff	FourWorld Global Opportunities Fund, Ltd, a company limited by shares incorporated in the Cayman Islands	1,215,297	1,154,532
The Second Plaintiff	FourWorld Special Opportunities Fund, LLC, a limited liability company incorporated in the State of Delaware USA	1,011,700	961.115
The Third Plaintiff	FW Deep Value Opportunities Fund I, LLC, a limited liability company incorporated in the State of Delaware USA	1,215,297	1,154,532
The Fourth Plaintiff	Corbin ERISA Opportunity Fund, Ltd, a company limited by shares incorporated in the Cayman Islands	3,163,537	3,005,360

41. Mr. Thom's evidence was that by the end of August 2025, each of the FourWorld Plaintiffs (save FourWorld Special Opportunities Fund LLC) had received cheques for US$ 2.17 in lieu of fractional shares in the Parent Company. That sum was calculated on the basis of the NAV

at US$ 14.49 as assigned to each Golden Ocean share and the NAV at US$ 15.23 per 0.95 of each CMB Tech share.

42. The cash payments in lieu of fractional ordinary shares in the Parent Company were explained in the Proxy Statement as follows:

"*CMB.TECH will not issue any fractional ordinary shares. Instead, each record holder of Golden Ocean common shares otherwise entitled to a fraction of a CMB.TECH ordinary share (after aggregating all fractional shares of CMB.TECH ordinary shares to be received by such person) will be entitled to receive an amount of cash (without interest, rounded to the nearest whole cent) equal to the product of (i) such fraction and (ii) $14.49 (subject to adjustment, pursuant to the terms of the Merger Agreement). Holders of Golden Ocean common shares otherwise entitled to a fraction of a CMB.TECH ordinary share that hold shares through a bank, broker, trustee or other nominee will receive cash in lieu of fractional shares, if any, determined in accordance with the policies of such bank, broker, trustee or other nominee. For more information, the section entitled "The Merger - Merger Consideration*."

…

Q: How will Golden Ocean common shareholders receive the Merger Consideration?

A: Following the Merger, if you are a shareholder of record at the Effective Time, you will receive a letter of transmittal and instructions on how to obtain the Merger Consideration. You will receive your respective portion of the Merger Consideration after the exchange agent receives your properly completed letter of transmittal and/or such other documents that may be required by the exchange agent. If you hold your shares in "street name" (including those Golden Ocean shareholders that hold shares through VPS in Oslo) please contact your broker, bank, trust or other nominee for information as to how it will effect the surrender of your Golden Ocean common shares in exchange for the Merger Consideration in accordance with the terms of the Merger Agreement. Subject to, among other things, approvals from the NYSE and Euronext Oslo as well as publication of the EU Exemption Document, Contributing Golden Ocean Shareholders that own Golden Ocean common shares that trade on Nasdaq will receive their portion of the Merger Consideration in CMB.TECH ordinary shares that trade on the NYSE, and Contributing Golden Ocean Shareholders that own Golden Ocean common shares that trade on Euronext Oslo (as recorded in VPS) will receive their portion of the Merger Consideration in CMB.TECH ordinary shares that are expected to be registered in VPS and trade on Euronext Oslo shortly after completion of the Merger."

43. Ms. Wilkinson in her evidence stated that Alpine received 7,861,250 shares in the Parent Company by way of merger consideration, representing 0.95 CMB Tech shares for each Golden Ocean share held by Alpine.

44. Mr. Mackay's evidence was that the merger consideration which passed on to Oasis was 8,559,500 ordinary shares in the Parent Company, also on the ratio of 0.95 CMB Tech shares for each Golden Ocean share held by Oasis.

Dissenters' Sale of Parent Company Shares

45. The entire of Alpine's holdings in the Parent Company were sold between 25 August 2025 and 19 September 2025. Ms. Wilkinson's evidence was that those shares were sold at an average price of US$8.4268 per share which, applying the 0.95 conversion ratio, equated to US$8.005 per Golden Ocean share.

46. Oasis produced a copy of daily broker confirmations establishing the average sale price of its shares in the Parent Company was $8.149300 per share which, as Mr. Mackay stated in his evidence, was virtually identical to the 20 August 2025 VWAP of $8.147 per share (both rounding up to $8.15 per share).

THE STATUTORY FRAMEWORK – PART VII OF THE CA 1981

47. Part VII of the CA 1981, entitled "Arrangements, Reconstructions, Amalgamations and Mergers" applies to:

Section	Descriptive Summary
Schemes of arrangement and reconstruction Ss 99-101	A Court sanctioned compromise or arrangement between a company (group) and one or more classes of its members and or creditors to effect a debt-reduced solvent reorganisation of the company(group).
Squeeze-outs upon transfer S 102	As between more than one company: Squeeze-outs upon transfer of at least 90% of a company's shares where a minority of the targeted company is forced to sell their shares to the purchasing company
Squeeze-outs by holders S 103	Internal to a company: Squeeze-outs by holders of at least 95% of shares in a company where the minority of holders of 5% or less of the shares in a company are forced to sell their holdings to the majority Ian Kawaley's[2] Offshore Commercial Law in Bermuda (2nd Ed.)§10.51: "*Bermuda has a second entirely bespoke provision which enables a forced buyout by shareholders holding a 95% stake in the company of the interests of the remaining minority shareholders. The only remedy available to the minority shareholder is the right to an appraisal of the value of his shares by the court*." (Kiernan Bell)

[2] Former Chief Justice and current President of the Court of Appeal of Bermuda

Amalgamations and mergers Ss 104-109	*Jardine Strategic Limited v Oasis Investments II Master Fund Ltd and 80 others* [2025] UKPC 33 at para [5]: "*An amalgamation results in those companies continuing as one company (section 104), while a merger involves the undertakings, assets and liabilities of the companies vesting in one of the companies as the surviving company (section 104H). There are no common law means of achieving an amalgamation, or (save by a novation of liabilities with the consent of all creditors) a merger, of registered companies. They require statutory authority*." (Lord Richards)

48. Section 103 provides:

"***Holders of 95% of shares may acquire remainder***

103 (1) The holders of not less than ninety-five per cent of the shares or any class of shares in a company (hereinafter in this section referred to as the "purchasers") may give notice to the remaining shareholders or class of shareholders of the intention to acquire their shares on the terms set out in the notice. When such a notice is given the purchasers shall be entitled and bound to acquire the shares of the remaining shareholders on the terms set out in the notice unless a remaining shareholder applies to the Court for an appraisal under subsection (2):

Provided that the foregoing provisions of this subsection shall not apply unless the purchasers offer the same terms to all holders of the shares whose acquisition is involved.

(2) Any shareholder to whom a notice has been given under subsection (1) may within one month of receiving the notice apply to the Court to appraise the value of the shares to be purchased from him and the purchasers shall be entitled to acquire the shares at the price so fixed by the Court.

(3) Within one month of the Court appraising the value of any shares under subsection (2) the purchasers shall be entitled either—

(a) to acquire all the shares involved at the price fixed by the Court; or

(b) cancel the notice given under subsection (1).

(4) Where the Court has appraised any shares under subsection (2) and the purchasers have prior to the appraisal acquired any shares by virtue of a notice under subsection (1) then within one month of the Court appraising the value of the shares if the price of the shares they have paid to any shareholder is less than that appraised by the Court they shall either—

(a) pay to such shareholder the difference in the price they have paid to him and the price appraised by the Court; or

(b) cancel the notice given under subsection (1) and return to the shareholder any shares they have acquired and the shareholder shall repay the purchasers the purchase price.

(5) No appeal shall lie from an appraisal by the Court under this section.

(6) The costs of any application to the Court under this section shall be in the discretion of the Court.

(6A) Where the purchaser is entitled and bound to acquire shares pursuant to subsection (1) or has determined in accordance with subsection (3)(a) to proceed to acquire all the shares involved at the price fixed by the Court, on the expiration of one month from the date on which the notice was given, or, if an application to the Court to appraise the value of the shares to be purchased is then pending, from the date that application has been disposed of, the purchaser may—

(a) transmit a copy of the notice to the subject company together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the purchaser and on its own behalf by the purchaser; and

(b) pay or transfer to the subject company the amount or other consideration representing the price payable by the purchaser for the shares which by virtue of this section the purchaser is entitled to acquire, whereupon the subject company shall register the purchaser as the holder of those shares.

(6B) Any sums received by the subject company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which the sums or other consideration were respectively received.

(7) In this section "price" shall include not only monetary price but also the monetary value of any shares or other securities offered by the purchasers in exchange for the shares to be acquired."

49. Section 105(1)(d) envisages that the shares of the merging company will be converted into shares or other securities of the surviving company. The subsection requires the merger agreement to state the manner by which this will be done.

50. Section 105(1)(e) applies where any of the merging company's shares are *not* to be converted into securities of the surviving company. In such a case, the merger agreement must state the amount of money or securities that the merging company shareholders are to receive in addition to or instead of securities of the surviving company. Otherwise put, the merger agreement must provide for payment to each merging company shareholder an amount of money or other securities which would be additional to or in lieu of securities of the surviving company.

51. Section 105(1)(f) requires the merger agreement to state the manner of payment of money to each shareholder instead of the issue of fractional shares of the surviving company or of any other securities.

52. Section 105(1)(d)-(f) provides:

> ***Amalgamation agreement or merger agreement***
> *105(1) Each company proposing to amalgamate or merge shall enter into an agreement setting out the terms and means of effecting the amalgamation or merger and, in particular, setting out —*
>
> *(a) ...*
> *(b) ...*
> *(c) ...*
> *(d) the manner in which the shares of each amalgamating or merging company are to be converted into shares or other securities of the amalgamated or surviving company;*
>
> *(e) if any shares of an amalgamating or merging company are not to be converted into securities of the amalgamated or surviving company, the amount of money or securities that the holders of such shares are to receive in addition to or instead of securities of the amalgamated or surviving company;*
>
> *(f) the manner of payment of money instead of the issue of fractional shares of the amalgamated or surviving company or of any other securities which are to be received in the amalgamation or merger;*
> *(g) ...*
> *(h) ...*
> *(i) ...*

53. Shareholder approval is required by sections 106(1) and 106(5) which provide:

Shareholder approval

106(1) The directors of each amalgamating or merging company shall submit the amalgamation agreement or merger agreement for approval to a meeting of the holders of shares of the amalgamating or merging company of which they are directors and, subject to subsection (4), to the holders of each class of such shares.

… …

(5) An amalgamation or merger agreement shall be deemed to have been adopted when it has been approved by the shareholders as provided in this section.

54. Section 106(2) governs the meeting notice. It mandates the sending of the meeting notice to each shareholder of the merging company in accordance with the notice provision prescribed by section 75. Section 106(2) also sets out the requisite information to be contained in the notice. That information consists of:

- a copy or summary of the merger agreement;
- a statement of the fair value of the shares as determined by the merging company; and
- a statement that dissenting shareholders are entitled to be paid the fair value of their shares.

55. Section 106(2) states:

(2) A notice of a meeting of shareholders complying with section 75 shall be sent in accordance with that section to each shareholder of each amalgamating or merging company, and shall—

(a) include or be accompanied by a copy or summary of the amalgamation agreement or merger agreement; and

(b) subject to subsection (2A), state—

(i) the fair value of the shares as determined by each amalgamating or merging company; and

(ii) that a dissenting shareholder is entitled to be paid the fair value of his shares.

56. The stated effect of section 106(2A) is such that a failure to state that dissenting shareholders are entitled to be paid the fair value of their shares will not invalidate the merger. Section 106(2A) provides:

(2A) Notwithstanding subsection (2)(b)(ii), failure to state the matter referred to in that subsection does not invalidate an amalgamation or merger.

57. Of note, it is stated under section 106(2A) that a failure to state the company's determination of fair value does not invalidate the merger. On this point, Ms. Bell in her contributing chapter to Ian Kawaley's Offshore Commercial Law in Bermuda (Second Edition) wrote at [10.80] [footnotes omitted]:

"*10.80 Section 106(2A) of the CA 1981 specifically provides that an amalgamation/merger will not be invalidated for failure to comply with section 106(2)(b)(ii) leading to the possible corollary that failure to comply with the other requirements would invalidate the amalgamation/merger. This has never been determined by the court. At the very least a company which fails to comply with the requirements of section 106(2) faces the risk of injunctive relief restraining the holding of the meeting to vote on the amalgamation. Injunctive relief was granted in Re British Marine Mutual Hull Insurance Association (Bermuda) Ltd. The special general meeting to vote on the amalgamation was restrained until the company complied with the requirements of section 106(2) by stating the fair value for its shares*."

58. Section 106(6) is the section which confers a right on a dissenting shareholder to seek the Court's fair value appraisal of the shares in circumstances where the dissenting shareholder "*is not satisfied that he has been offered fair value for his shares*." Section 106(6) provides:

"*(6) Any shareholder who did not vote in favour of the amalgamation or merger and who is not satisfied that he has been offered fair value for his shares may within one month of the giving of the notice referred to in subsection (2) apply to the Court to appraise the fair value of his shares.*"

59. Sections 106(6A) and 106(6B) provide:

(6A) Subject to subsection (6B), within one month of the Court appraising the fair value of any shares under subsection (6) the company shall be entitled either—

(a) to pay to the dissenting shareholder an amount equal to the value of his shares as appraised by the Court; or

(b) to terminate the amalgamation or merger in accordance with subsection (7)."

(6B) Where the Court has appraised any shares under subsection (6) and the amalgamation or merger has proceeded prior to the appraisal then, within one month of the Court appraising the value of the shares, if the amount paid to the dissenting shareholder for his shares is less

than that appraised by the Court the amalgamated or surviving company shall pay to such shareholder the difference between the amount paid to him and the value appraised by the Court.

ANALYSIS OF ISSUES

THE CASH CLAIMS (Liability)

60. The Plaintiffs say that the merger consideration constitutes a wrongful conversion of its shares in Golden Ocean and that payment of the fair share value under section 106(2)(b) requires payment to be made in cash currency. The relief sought by the Plaintiffs in the Cash Action is in the form of a declaration by this Court stating that the Plaintiffs are entitled, pursuant to section 106(2) of the CA 1981, to payment in cash in the sum of US$14.49 for each of its common shares held in Golden Ocean.

61. The question of a cash payment is premised on the question as to whether section 106 (2) provides a stand-alone entitlement to be paid the stated sum in a meeting notice which represents the sum determined by the merging company to be the fair value of the shares. That, all parties agree, is a question of statutory interpretation.

62. That said, it is also a question of fact whether it can be said that Golden Ocean determined and stated in the SGM Notice the fair value of its shares in cash terms. Further below, I return to this crucial question of fact after outlining the relevant statutory framework.

63. I will first address the following three issues:

    (i) Whether the dissenters' right to be paid fair value under section 106(2) is a distinct statutory right to payment in cash

    (ii) Whether Golden Ocean had a legal obligation to state and determine the fair value of its shares in cash terms and

    (iii) The legal effect of a statement of fair value in a meeting notice pursuant to section 106(2)

64. Mr. Midwinter KC submitted that section 106(2) refers only to the 'fair value' of the Golden Ocean shares. His overarching argument is that while dissenting shareholders have the right to be paid the fair value of their shares if the merger is approved, the mechanism by which s.106 gives effect to that right is not restricted to a cash currency payment. On his argument, the

legislative purpose for requiring a company to state the 'fair value' in a meeting notice is to enable shareholders to see what the merging company considers to be the fair value of their shares for the purpose of deciding whether to vote for or against the merger. A company's statement of fair value in a meeting notice thus allows shareholders to decide whether they agree if the merger consideration fairly reflects the valuation stated in the meeting notice.

65. Evident from the *Jardine* case, the Privy Council formed a broad view that the purpose of a merging company's statement of fair value in a meeting notice is to position dissenting shareholders to choose between (i) accepting payment of the stated sum determined by the company to be fair value for the shares or (ii) seeking a Court appraisal under section 106(6). This Court is guided by the views expressed by the Board, not only because the *obiter dicta* of the Privy Council constitute highly persuasive law by virtue of its hierarchical judicial status, but also because the reasoning provided by the Board was fundamentally logical and sound.

66. Mr. Shivji KC invited this Court to apply a contextual and purposive construction of section 106 to support a finding that the dissenting shareholders have a right not to be deprived of their shares without "prompt payment of adequate compensation". It is stated at paragraph [10.59] of Offshore Commercial Law in Bermuda that notwithstanding some material differences, the Bermuda legislature drew heavily on the Canada Business Corporations Act (the "CBCA") in passing sections 104 through to 109, for which there is no English statutory equivalent. The enactment of the CBCA is said to have been led by a report entitled "Proposals for a New Business Corporations Law for Canada" by Robert WV Dickersons and others (1971) (the "Dickerson Report"). This background is included at paragraphs [43]-[44] of the Privy Council's judgment in *Jardine* where paragraph 347 of the Dickerson Report is quoted as follows:

"*"In short, if the majority seeks to change fundamentally the nature of the business in which the shareholder invested, and if the shareholder dissents from the change, he may demand that the corporation pay him the fair value of his shares as determined by an outside appraiser… Instead of placing the minority shareholder at the mercy of the majority, these provisions permit the minority shareholder to withdraw from the enterprise…".*"

67. Mr. Shivji KC relied on Canadian caselaw to make good the purposive construction supporting the right of a dissenting shareholder to bow out of a proposed merger arrangement for payment at fair value in cash. He flagged the decision of the Alberta Court of Queen's Bench (the "Alberta Court") in *Canadian Gas & Energy Fund Ltd v Sceptre Resources Ltd* [1985] 5 WWR 43 where Forsyth J was concerned with an application brought by dissenting shareholders under section 184 of the CBCA, 1974-75-76 (Can.), c33 in relation to an "arrangement" which was carried out by way of an exchange of shares.

68. On the facts of *Canadian Gas & Energy Fund Ltd*, the company, Francana Oil & Gas Ltd ("Francana") held a special meeting on 14 May 1982 for its shareholders to consider and vote on an arrangement pursuant to which those shareholders would exchange their shares for common shares of Sceptre Resources Limited ("Sceptre") on the basis of 2.15 Sceptre common shares for each Francana share (the "arrangement"). The dissenting minority shareholders brought the action before the Alberta Court under section 184 of the CBCA. Section 184(1)(c) permitted shareholders to dissent in circumstances where the corporation resolved to amalgamate with another corporation. Subsection (3) entitled a dissenting shareholder "*to be paid by the corporation the fair value of the shares held by him in respect of which he dissents*". Subsection (7) was a provision setting out a dissenting shareholder's obligation to send the corporation a written notice containing under sub-paragraph (c) "a demand for payment of the fair value of such shares".

69. Subsections (11)-(12) and (14) of the CBCA set out in the clearest of terms a regime, independent of any Court procedure, whereby the dissenting shareholder could accept an offer by the corporation of payment at fair value. Those subsections provided:

"…
(11) On sending a notice under subsection (7), a dissenting shareholder ceases to have any rights as a shareholder other than the right to be paid the fair value of his shares as determined under this section except where

(a) the dissenting shareholder withdraws his notice before the corporation makes an offer under subsection (12),

(b) the corporation fails to make an offer in accordance with subsection (12) and the dissenting shareholder withdraws his notice, or

(c) the directors revoke a resolution to amend the articles under subsection 167(2) or 168(4), terminate an amalgamation agreement under subsection 177(6) or an application for continuance under subsection 182(6), or abandon a sale, lease or exchange under subsection 183(8),

in which case his rights as a shareholder are reinstated as of the date he sent the notice referred to in subsection (7).

(12) A corporation shall, not later than seven days after the later of the day on which the action approved by the resolution is effective or the day the corporation received the notice referred to in subsection (7), send to each dissenting shareholder who has sent such notice

(a) a written offer to pay for his shares in an amount considered by the directors of the corporation to be the fair value thereof, accompanied by a statement showing how the fair value was determined; or

(b) if subsection (26)[3] applies, a notification that it is unable lawfully to pay dissenting shareholders for their shares …

(14) Subject to subsection (26), a corporation shall pay for the shares of a dissenting shareholder within ten days after an offer made under subsection (12) has been accepted, but any such offer lapses if the corporation does not receive an acceptance thereof within thirty days after the offer has been made."

70. Subsections (15) and (16) of the CBCA envisage a Court appraisal process where the corporation and dissenting shareholders failed to reach an agreement on payment for fair value. Those subsections read:

"…
(15) Where a corporation fails to make an offer under subsection (12), or if a dissenting shareholder fails to accept an offer, the corporation may, within fifty days after the action approved by the resolution is effective or within such further period as a court may allow, apply to a court to fix a fair value for the shares of any dissenting shareholder.

(16) If a corporation fails to apply to a court under subsection (15), a dissenting shareholder may apply to a court for the same purpose within a further period of twenty days or within such further period as a court may allow …"

71. Although the facts in *Canadian Gas & Energy Fund Ltd* were, on Forsyth J's assessment, triggered the provisions of section 184(1)(c), Francana underscored that the right of the dissenting minority shareholders came about pursuant to application under section 185.1 whereby the corporation applied to the Alberta Court for an order approving the arrangement on the basis that the corporation was not insolvent and wanted to "effect a fundamental change in the nature of an arrangement". Section 185.1(4) allowed the Alberta Court to make an order permitting a shareholder to dissent under section 184.

72. Crucially, Francana's submission was that the Alberta Court could fix the fair value for the dissenters' shares in Francana, not in cash terms, but in terms measured by the equivalent amount of Sceptre shares. Francana's case was that the Alberta Court was so empowered because the arrangement itself was an exchange of shares. Paragraphs [9]-[22] of Forsyth's judgment are worthy of full quote:

[3] Subsection (26) exempts a corporation from having to make payment if it is effectively insolvent.

"…
[9] This raises the first issue to be determined at this point, namely, whether "payment" of the fair value of the shares is to be in cash as the plaintiffs request, or in shares of Sceptre as contemplated by Francana. Neither party has referred to any decided case that deals with the exact issue before me.

[10] In my view, the definition of the word "paid", "payment" or "pay" as it appears in s. 184 does not differ depending on the route taken that results in triggering the dissenting minority shareholders' statutory right to appraisal of the fair value of their shares.

[11] In Jepson v. Can. Salt Co., [1979] 4 W.W.R. 35, 7 B.L.R. 181 (Alta. T.D.), Laycraft J. (as he was then) commented on the effect of s. 184. He stated at pp. 43-44:

> *Under earlier legislation a dissident shareholder could hamper or prevent the operation of the company by litigation challenging an amalgamation approved by the majority and it was undoubtedly thought desirable to prevent any such impasse in the corporation's activities. Under the new statute, however, the dissident shareholder cannot impede corporate operations. His right is converted to a simple right to be paid the fair value of the shares.*

[12] Bruun and Lansky in their article, "The Appraisal Remedy for Dissenting Shareholders in Canada: Is it Effective?", 8 Man. L.J. 683 (1978), submit that the purpose of s. 184 is to allow a minority interest to withdraw from a corporation and receive the independently appraised value of his shares. This is most applicable to protect the minority shareholder of a closely held company where there may be restrictions on the sale of their shares.

[13] A further purpose, it is submitted, of the right to dissent provision, and in turn receive a fair value appraisal, is to observe that the rights of a minority shareholder are adequately protected against the potential powers of the majority. The Canada Business Corporations Act generally supports the policy of corporate growth and contemplates the freeze out of minority shareholders: Lange, Donald J., "Freeze Out Amalgamations: the Federal and Ontario Positions", 27 Chitty's L.J. 217 at 218 (1979).

[14] The Francana-Sceptre transaction is clearly not a freeze out as that term is commonly understood, though Vorenberg has defined the term in "Exclusiveness of the Dissenting Stockholder's Appraisal Right", 77 Harv. L. Rev. 1189 at 1192 (1964), as follows:

> *In its broadest sense, it might be taken to describe any action by those in control of the corporation which results in the termination of a stockholder's interest in the enterprise.*

[15] The dissenting minority shareholders fall into the above definition, as the amalgamation of Francana and Sceptre effects a fundamental change in the shares which are different from the ones the shareholder chose to invest in. The appraisal remedy is available based on the dissenting vote in the amalgamation proposal. While there was no suggestion during the course of the trial of coercion by the majority, and in fact the majority support the reorganization and offer as a sound business purpose, the dissenting minority shareholders are entitled to the statutory appraisal right upon satisfying one of the triggering events set out in s. 184(1).

[16] Counsel for Francana submits that it is within the court's discretion, and appropriate under these circumstances, once fair value has been determined, to pay the dissenters in shares of Sceptre. This would reflect equality in treatment between the majority and the minority in the share exchange reorganization for sound business purposes. The most compelling reason is that these are shares of a publicly traded company, and if they are not wanted, they can be sold freely, allowing the dissenter to choose a more appropriate investment.

[17] In light of the purposes of s. 184, one of which appears aimed at the protection of the minority shareholder in a closely held corporation, this leads to a consideration of whether "payment" may be defined as cash where there is a restricted market, or defined as cash or shares or whatever the court deems appropriate under the circumstances, in a publicly traded corporation. Competing policies arise. While it is arguable that a shareholder in a restricted market needs the protection of s. 184 and is therefore entitled to cash, it is submitted by Francana that the dissenting Francana shareholders have the protection of the Ontario Securities Commission and the ability to freely liquidate their shares at will; and while they may have to resort to s. 184 so that they receive fair value, they are not necessarily entitled to be paid in cash.

[18] The words "paid", "payment" or "pay" may under certain circumstances communicate ambiguous ideas, and certainly there is judicial authority to suggest that payment in discharge of an obligation or debt may be made by the delivery of money or other value by a debtor to a creditor, and accordingly under certain circumstances payment may be effected by the transferring of something other than money to the party entitled to receipt of same. However, one must consider those terms as they appear in s. 184 with the intent and purpose of the section.

[19] The appraisal remedy is available based on a dissenting vote in the amalgamation. The dissenting shareholders acting in their own interest and for whatever reason have chosen not to participate in the new amalgamated company. The Canada Business Corporations Act has not made a distinction between the form of payment for a shareholder faced with a restricted

market for his shares and a shareholder who may freely trade his shares publicly. In such a situation, it is clear that s. 184 contemplates the majority buying out a minority.

[20] In that regard, reference is made to the case of Bradley Resources Corp. v. Kelvin Energy Ltd., a recent decision of the Court of Appeal of Alberta, Calgary Appeal No. 17269 [not yet reported]. The judgment of the court was delivered by Kerans J.A. from the bench on 27th March 1985. In that case the court was concerned with the provisions of s. 184 of the Business Corporations Act of Alberta, 1981 (Alta.), c. B-15. That section and the other relevant sections relating to the rights of dissenting shareholders are in practically identical terms as the provisions under consideration in this case under the Canada Business Corporations Act. The two statutes appear to track each other almost in identical terms. At pp. 5-6 of his judgment, after discussing s. 184, which gives a shareholder an appraisal right and which represents a major intervention against traditional majority power in a corporation, he goes on to state:

> *We agree that the purpose of the legislation is to give a shareholder the right to refuse to participate in ventures not originally contemplated for the company. The right to appraisal and payment, while not designed to give the dissenting shareholder any new priority over creditors, is obviously designed to give him, as against the majority, the right to walk away fully paid from a company which takes a dramatic new turn in the road. We adopt this analysis by R. B. Kuzyk in Dissenting Shareholders Appraisal Right, L.E.S.A. 1984:*
>
> *"The shareholder of a corporation has made an economic investment in the corporation, and his investment is premised upon the maintenance of certain fundamental ground rules. Both the Companies Act (Alberta) and the BCA recognize that certain changes to the structure of the corporation affect these fundamental ground rules, and so are accorded special treatment. The holders of a majority of the shares of the corporation have a right to control the corporation, but this must be balanced against the right of the minority shareholders to ensure that the fundamental nature of their economic investment in the corporation does not change without their consent."*

[21] Accordingly, on a consideration of the purpose and intent of the Act, and in particular those sections dealing with the rights of minority shareholders, I am satisfied that the first issue must be resolved in favor of the plaintiffs, in that payment of the fair value of the shares held by the plaintiffs is to be in cash and not in shares of the new Sceptre as argued by the defendant, Francana.

[22] In light of my determination that s. 184(1) and the associated sections are brought into play and that payment in the context of the Act means cash, the court must now turn to the consideration of the fair value to be established for the shares of dissenting shareholders pursuant to the provisions of subs. (20) of s. 184 previously quoted."

73. The above passages from the judgment of Forsyth J in *Canadian Gas & Energy Fund Ltd* render it unequivocally clear that the Alberta Court, in considering the scope of the ambiguous terms "pay" "paid" and "payment", interpreted section 184 using a purposive approach by reference to Canada's legislative history. It was open to the dissenting minority to possibly impede a company's operations by challenging a majority-approved amalgamation. However, as Laycraft J is quoted to have said in *Jepson v. Can. Salt Co.,* [1979] 4 W.W.R. 35, 7 B.L.R. 181 (Alta. T.D.), that statutory right was "*converted to a simple right to be paid the fair value of the shares.*" The public policy consideration that was relevant to the development of Canada's statutory law as it relates to amalgamations ultimately came down to the balance and preservation of a company's commercial right to develop and grow its business operations and the right of a minority dissenting shareholder to exit a plan or arrangement in which he did not invest and to be promptly compensated with payment for his shares at fair value and in cash.

74. Mr. Millett KC urged this Court to construe section 106 of the CA 1981 in a way which adequately recognises the overarching policy concerns raised in the Dickerson Report. Indeed, I found the relevant extracts from the Dickersons Report to be of real assistance in evaluating the purpose behind the statutory merger scheme in Bermuda, particularly because it spells out the policy concerns which influenced Canadian statute law from which the Bermuda Legislator is said to have drawn heavily on in passing section 106. That background is relevant to the Court's construction of the provisions impacting on the rights of dissenting shareholders.

75. In this case, similar to *Canadian Gas & Energy Fund Ltd*, the Defendant equated the fair value payment to the merger consideration and proposed payment in the form of the share for share arrangement. That calls for a construction of section 106 which allows payment of fair value to be made in kind. However, the effect of construing section 106 in that way means that the dissenting shareholders would be barred from withdrawing from the arrangement proposed by the merger which is the very arrangement to which they dissented. I do not see how that would align with any purpose behind the statutory scheme which is aimed to enable shareholders to dissent and walk away from a fundamentally new business brought on by the merger. The central purpose of the provisions permitting a dissenting shareholder to be paid fair value is to allow that shareholder to bow out of the merger with a full cash payment for his shares at fair value.

76. Mr. Shivji KC also compared section 106 of the CA 1981 to section 103 (squeeze-outs by holders). Under section 103 the holders of at least 95% of a company's shares, referred to as the "purchasers", may give notice to the remaining shareholders of their intention to buy up that minority of shares on the terms set out in the notice. Under subsection (1) the purchasers are expressly "*entitled and bound to acquire the shares of the remaining shareholders on the terms set out in the notice unless a remaining shareholder applies to the Court for an appraisal* ...". The Court appraisal regime is carved out under subsection (2) for the benefit of any

shareholder given notice. However, unlike section 106(6), section 103(2) does not expressly state that the shareholder seeking the Court appraisal is "not satisfied" with what has been offered as the purchase price. The top-up provision which appears under section 106(6B) parallels section 103(4).

77. Interestingly, subsection (7) defines the term "*price*" to include both "*monetary price*" and "*monetary value of any shares or other securities offered by the purchasers in exchange for the shares acquired*." On my analysis, that is a significant distinction between section 103 and section 106. For merger related fair value appraisals, Parliament did not insert any similar wording to specify that the meaning of "payment" extended beyond monetary terms. That strongly supports a conclusion that the Legislature intended to mark this difference between these two sections which both fall within Part VII of the CA 1981.

78. Turning to the constitutional and common law perspective, Mr. Shivji, citing the Grand Court decision from the Cayman Islands in *Re Changyou.com Ltd* FSD 120 of 2020 (28 January 2021), per Smellie CJ[4], submitted that the dissenters have a fundamental right not to be deprived of their property without prompt and adequate payment.

79. In *Re Changyou.com Ltd* CICA (Civil) Appeal No 6 of 2021 the Cayman Islands Court of Appeal, upholding the first instance decision of Smellie CJ, recognised the right of a dissenter to these constitutional and common law protections. Martin JA delivering the judgment for the Court said at paragraphs [39]-[40]:

"*In the present case, the relevant fundamental right relied on is the right not to be deprived of property without the means of obtaining adequate compensation. This right has long been recognised at common law: see, for example, the statement of Brett MR in the English Court of Appeal decision of A-G v Horner (1884) 14 QBD 245, 257, that "It is a proper rule of construction not to construe an Act of Parliament as interfering with or injuring persons' rights without compensation, unless one is obliged so to construe it". The right is assured by section 15 of the Bill of Rights ("the Bill of Rights") annexed to the Cayman Islands Constitution Order 2009 ("the Constitution Order"), set out in paragraph 55 below.*

The Petitioners suggested, as the Chief Justice had held, that the application of these principles of interpretation led clearly to the conclusion that the legislature had conferred a right of appraisal on all dissenters from statutory mergers, regardless of whether the merger was a longform or a short-form merger. This was said to follow from the clear and unqualified language of section 238(1). That subsection was not expressed to be limited to members who dissented only from a long-form merger, and the language did not expressly or impliedly

[4] The Right Honourable Sir Anthony Smellie is currently a Privy Counsellor, a Justice of Appeal in the Court of Appeal for Bermuda and the former Chief Justice of the Cayman Islands.

exclude members who dissented from a short-form merger. The purpose of the subsection was clear: the merger and consolidation provisions set out in section 233 permitted a majority of shareholders compulsorily to deprive minority shareholders of their property against their will, and in return the minority was given an entitlement to be paid fair value for their shares. That purpose was equally relevant to long-form and short-form mergers, and was designed to avoid the possibility that a shareholder might be deprived of his property against his will without the means of obtaining fair value. The subsequent subsections of section 238 were procedural, and could not be elevated to the status of substantive provisions which, by a side-wind and without expressly saying so, excluded short-form mergers from the scope of the appraisal right conferred in unqualified terms by subsection 238(1). The Chief Justice was right to recognise at [124] that the Company's contention to the contrary would exclude the Petitioners from the appraisal regime "only because of an apparent mismatch between the mechanical provisions of that section, with the right of appraisal by the court given by section 238 itself"."

80. Section 13(1) of the Bermuda Constitution provides general protection against the deprivation of one's property, subject to various exceptions listed within the same section. Relevant to the present case, the exception specified under section 13(1)(c)(i) applies to a deprivation of property by which there is provision in law for the taking or acquiring of that property, so long as it is done in exchange for "prompt payment of adequate compensation".

81. Section 13(1) of the Bermuda Constitution provides:

Protection from deprivation of property

13 (1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say—

(a) the taking of possession or acquisition is necessary or expedient in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilisation of any property in such manner as to promote the public benefit or the economic well-being of the community; and

(b) there is reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property; and

(c) provision is made by a law applicable to that taking of possession or acquisition—

(i) for the prompt payment of adequate compensation; and

(ii) securing to any person having an interest in or right over the property a right of access to the Supreme Court, whether direct or on appeal from any other authority, for the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled, and for the purpose of obtaining prompt payment of that compensation; and

(d) giving to any party to proceedings in the Supreme Court relating to such a claim the same rights of appeal as are accorded generally to parties to civil proceedings in that Court sitting as a court of original jurisdiction.

82. Similar to the stance taken by the Cayman Islands Grand Court and Court of Appeal in respect of the rights assured by *section 15 of the Bill of Rights*, I find that dissenting shareholders are equally entitled to the constitutional protections guaranteed by section 13 of the Bermuda Constitution. In the context of this case, that protects the dissenters from the cancellation of the shares without adequate compensation. Adequate compensation in a fair valuation case refers to payment of the shares at fair value.

83. Mr. Shivji KC also addressed me on the legislative history to section 106 of the CA 1981. That of course, is of assistance to this Court as a secondary tool in aid of the exercise of statutory interpretation. No controversy arose on the basic legal principles relevant to statutory interpretation. Mr. Millet KC took this Court to the judgment of Lord Hodge, Deputy President of the United Kingdom's Supreme Court (as he then was) in *R(O) v Secretary of State for the Home Department* [2023] AC 255 at paragraphs [29]-[30] where it states:

"*29 The courts in conducting statutory interpretation are "seeking the meaning of the words which Parliament used": Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG [1975] AC 591, 613 per Lord Reid. More recently, Lord Nicholls of Birkenhead stated: "Statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context." (R v Secretary of State for the Environment, Transport and the Regions, Ex p Spath Holme Ltd [2001] 2 AC 349, 396.) Words and passages in a statute derive their meaning from their context. A phrase or passage must be read in the context of the section as a whole and in the wider context of a relevant group of sections. Other provisions in a statute and the statute as a whole may provide the relevant context. They are the words which Parliament has chosen to enact as an expression of the purpose of the legislation and are therefore the primary source by which meaning is ascertained. There is an important constitutional reason for having regard primarily to the statutory context as Lord Nicholls explained in Spath Holme, p 397: "Citizens, with the assistance of their advisers, are intended to be able to understand parliamentary enactments,*

so that they can regulate their conduct accordingly. They should be able to rely upon what they read in an Act of Parliament."

30 External aids to interpretation therefore must play a secondary role. Explanatory Notes, prepared under the authority of Parliament, may cast light on the meaning of particular statutory provisions. Other sources, such as Law Commission reports, reports of Royal Commissions and advisory committees, and Government White Papers may disclose the background to a statute and assist the court to identify not only the mischief which it addresses but also the purpose of the legislation, thereby assisting a purposive interpretation of a particular statutory provision. The context disclosed by such materials is relevant to assist the court to ascertain the meaning of the statute, whether or not there is ambiguity and uncertainty, and indeed may reveal ambiguity or uncertainty: Bennion, Bailey and Norbury on Statutory Interpretation, 8th ed (2020), para 11.2. But none of these external aids displace the meanings conveyed by the words of a statute that, after consideration of that context, are clear and unambiguous and which do not produce absurdity. In this appeal the parties did not refer the court to external aids, other than explanatory statements in statutory instruments, and statements in Parliament which I discuss below. Sir James Eadie QC for the Secretary of State submitted that the statutory scheme contained in the 1981 Act and the 2014 Act should be read as a whole."

84. As Mr. Midwinter KC correctly submitted, the proper approach to construing section 106 is similar to the approach required for construing a contract or any other document. In summary, the Court will first look at the words of the statute and their plain meaning in the literal sense. The second part of the exercise may involve the use of external aids, such as explanatory notes and memorandums, but only to the extent that it may provide some background and context into the intention of Parliament in enacting the legislation. Furthermore, the Court will only assess Parliament's intention using an objective analysis, having regard to the language used in the enacted provision. Lord Hodge quoted Lord Nicholls in *Spath Holme* [2001] 2 AC 349, 346 as follows:

"*The task of the court is often said to be to ascertain the intention of Parliament expressed in the language under consideration. This is correct and may be helpful, so long as it is remembered that the 'intention of Parliament' is an objective concept, not subjective. The phrase is a shorthand reference to the intention which the court reasonably imputes to Parliament in respect of the language used. It is not the subjective intention of the minister or other persons who promoted the legislation. Nor is it the subjective intention of the draftsman, or of individual members or even of a majority of individual members of either House... Thus, when courts say that such-and-such a meaning 'cannot be what Parliament intended', they are saying only that the words under consideration cannot reasonably be taken as used by Parliament with that meaning*."

85. Returning to section 106, the original enactment was amended in 1994 and then again in 2011. It was not until the passing of the latter set of amendments that the statutory regime extended its scope to include mergers. So, from 1981 through to 2011, section 106 only referred to amalgamations.

86. In reference to amalgamations, section 106, in its original version, entitled dissenting shareholders under subsection (2)(b) to be paid the fair value of their shares. This included a proviso stating that an amalgamation would not be invalidated by the company's failure to state the fair share value.

87. However, under the original enactment, section 106(6), provided:

"(6) Any shareholder who did not vote in favour of the amalgamation or merger and who is not satisfied that he has been offered paid fair value for his shares may within one month of the giving of the notice referred to in subsection (2) apply to the Court to appraise the fair value of his shares for the proper valuation of his shares and section 103 shall apply mutatis mutandis to such application"

88. Section 103, as I have pointed out further above, concerns the share price where holders of at least 95% of shares in a company seek to squeeze out the minority shareholders by forcing them to sell their holdings to the majority. That section of the CA 1981 allows a shareholder to seek relief in the form of a Court appraisal of the minority shares in question. So, where the original section 106(6) speaks to the remedy of a Court valuation of shares applying *mutatis mutandis*, it necessarily arose under circumstances where the dissenting shareholder was not satisfied that he had been paid fair value for his shares, having opted out of the amalgamation.

89. Beyond the wording of section 106, I found the Explanatory Memorandum (the "Explanatory Memorandum") to the Companies Amendment Bill 1994 to be useful as an extrinsic aid in this exercise of statutory interpretation. In its most relevant part, it stated:

"*Clause 16 of the Bill amends section 106 of the Act. Section 106 deals with the approval of shareholders in respect of an amalgamation. The main problem associated with section 106 arises in the context of dissenting shareholders. The section suggests that a dissenting shareholder can only apply to the Court for a proper valuation of shares after the completion of the amalgamation. Thus amalgamating companies cannot determine the liability due to dissenting shareholders before completion of the amalgamation. The amendments effected to section 106 are intended to overcome this hurdle*."

90. What is plainly suggested by the Explanatory Memorandum is that the purpose of the Companies Amendment Bill 1994 (the "1994 Amendment Bill") was to provide a statutorily

recognised scheme whereby amalgamating companies would formally determine their liability to dissenting shareholders before completion of the amalgamation. When the Companies Amendment Act 1994 (the "1994 Amendment Act") was passed, section 106(2) was complemented by subsection (2A) in similar form to the current provision, only that it applied only to amalgamations. Under the 1994 Amendment Act section 106(2)-(2A) provided:

(2) A notice of a meeting of shareholders complying with section 75 shall be sent in accordance with that section to each shareholder of each amalgamating company, and shall—

(a) include or be accompanied by a copy or summary of the amalgamation agreement; and

(b) subject to subsection (2A), state—

(i) the fair value of the shares as determined by each amalgamating company; and

(ii) that a dissenting shareholder is entitled to be paid the fair value of his shares.

(2A) Notwithstanding subsection (2)(b)(ii), failure to state the matter referred to in that subsection does not invalidate an amalgamation.

91. The 1994 Amendment Act introduced other changes. Relevant to the present case, subsection (6) was amended and subsections (6A)-(6D) were introduced. Those provisions are identical to the current provisions under section 106, again save that they refer to amalgamations only, not to mergers. Subsection (6) and (6A)-(6B) under the 1994 amendments provided as follows:

"*(6) Any shareholder who did not vote in favour of the amalgamation and who is not satisfied that he has been offered fair value for his shares may within one month of the giving of the notice referred to in subsection (2) apply to the Court to appraise the fair value of his shares.*

(6A) Subject to subsection (6B), within one month of the Court appraising the fair value of any shares under subsection (6) the company shall be entitled either—

(a) to pay to the dissenting shareholder an amount equal to the value of his shares as appraised by the Court; or

(b) to terminate the amalgamation in accordance with subsection (7)."

(6B) Where the Court has appraised any shares under subsection (6) and the amalgamation has proceeded prior to the appraisal then, within one month of the Court appraising the value of the shares, if the amount paid to the dissenting shareholder for his shares is less than that

appraised by the Court the amalgamated company shall pay to such shareholder the difference between the amount paid to him and the value appraised by the Court.

92. What is key about the statutory developments which occurred between the passing of the original version of section 106 and the 1994 Amendment Act is that Parliament introduced a distinction between a pre-closing and a post-closing regime. The requirement of the amalgamated companies to state the fair value in the meeting notice was to offer the dissenting shareholders the opportunity to accept the amalgamated companies' 'offer' of a fair value payment without having to resort to a Court appraisal. As I see it, that explains why the word 'paid' was removed and replaced with the word 'offered' under section 106(6).

93. The term 'paid' under the original enactment envisaged only a post-amalgamation Court appraisal scheme where the dissenting shareholders would have been paid what the amalgamated companies considered to be fair value. However, with the 1994 amendments, the amalgamated companies' statement of fair value took on the meaning of an offer to shareholders who, in lieu of favouring the amalgamation, sought instead to vote against the amalgamation and steer clear of the plan for an amalgamation upon payment of their shares at fair value. That created a pre-closure scheme, independent to any Court appraisal process, which was the very purpose explained in the Explanatory Memorandum.

94. In 2011, the Companies Amendment (No. 2) Act 2011 (the "2011 Amendment Act") was passed bringing in the current provisions. It is clear by the 2011 Amendment Act that its only real purpose was to extend the regime to include its application to a merger.

FINDINGS ON THE LAW:

95. Having examined the constitutional perspective, the wording of section 106(2), the policy concerns outlined by the Dickerson Report and the statutory development of the scheme entailing a pre-closure offer of payment to dissenting shareholders I am bound to accept the submissions of Mr. Shivji KC and his colleagues representing the Plaintiffs. I agree that the statutory entitlement to be paid the merging company's determination of fair value is distinct from the right to bring appraisal proceedings before the Court under section 106(6).

96. Section 106(2)(b)(i) requires a company not only to determine the fair value of the shares but to also state that fair value in the meeting notice. Notwithstanding, section 106(2)(b)(ii) indeed requires the merging company to state in the meeting notice that a dissenting shareholder is "entitled to be paid the fair value of his shares". In my judgment, the statute's use of the term "paid" plainly signifies payment of a cash sum as opposed to payment in kind. And the statement of fair value in cash terms is the company's offer of fair value. Dissenting

shareholders thus have a right to accept that offer and be paid in the cash terms stated in the meeting notice. Otherwise, a dissenting shareholder, whether satisfied or unsatisfied by the merging company's statement of fair value, would be required to seek the Court's appraisal in a share for share merger. Clearly, that is not what Parliament intended and clearly that is not a proper application of the constitutional right to adequate compensation for the deprivation of one's property, i.e. the cancellation of the Golden Ocean shares.

97. At the hearing before me, I was initially impressed with Mr. Midwinter KC's skilfully crafted submission that a stand-alone entitlement to be paid any cash sum stated in a merger notice requires one to impose on section 106 a reading of an additional right which is not provided for in the wording of the section. As Mr. Midwinter KC put it: that is not what section 106 says.

98. Mr. Midwinter KC argued that section 106(2) does not create an additional right to be paid the cash sum of the figure stated in a meeting notice. His position was that if the merger agreement gained shareholder approval, the merger agreement would be adopted under section 106(5), and the shareholders would become entitled to the merger consideration in accordance with the merger agreement. On Midwinter KC's submissions, a dissenting shareholder's election is binary: either (i) the merger consideration is accepted (notwithstanding that the dissenting shareholder did not vote in favour of the merger) or (ii) the dissenting shareholder seeks the Court's appraisal of fair value under section 106(6). The statutory term 'fair value', on Mr. Midwinter KC's submissions, may take the form of money or shares or both. According to the Defendants, a merging company may therefore determine and state the fair value of the shares under section 106(2)(b)(i) in terms other than a purely cash sum.

99. Mr. Millet KC, however, urged this Court to be guided by the commentary made by the Privy Council in the *Jardine* case on the construction of section 106. Whilst the Board was not required to determine the question as to whether a merging company is obliged under Bermuda statute law to state and determine the fair value of its shares in cash terms, it nevertheless carried out an in-depth examination of section 106. Lord Richards in the opening statement of the Board said:

"*This appeal raises a point of some importance in the application of the provisions contained in the Companies Act 1981 of Bermuda ("the Act") for the amalgamation or merger of companies. The issue turns on the proper construction of section 106*."

100. The *ratio* in *Jardine* was a question of standing as to whether (a) the date of the meeting notice or (b) the date of the meeting itself marked the share registration deadline for those claiming an entitlement to vote on the amalgamation. The surgical search for the locus standi was induced by appraisal proceedings brought by dissenting shareholders who had acquired a

significant number of shares after the date of the meeting notice. At each stage of the litigation leading up to the appeal to the Board, it was held that shareholders entitled to bring appraisal proceedings were not restricted to those registered at the date of the meeting notice. That conclusion drawn at first instance by Hargun CJ (as he then was) and the Court of Appeal was further upheld by the Judicial Committee of the Privy Council (the "Board" / the "Privy Council").

101. That being the case, in *Jardine* the Board made observations in *obiter* as to the binding legal effect of a merging company's determination and statement of fair value made in a meeting notice. In that case the parties were all agreed that section 106(2) requires the merging company to determine and state a monetary sum as the fair value of the shares. At paras [34]-[35] the Board opined:

"*34. …This requirement applies whether, as may usually be the case, the amalgamation is on terms that the shareholders will receive shares in the continuing company or, whether, as here, the amalgamation agreement provides for a purely cash price. In the latter case, this is a somewhat formal requirement given that the fair value would normally be the same as the cash price but it is clearly an important statement in other cases*.

35. The Company submits that section 106(2) entitles dissenting shareholders to receive the stated cash value instead of the shares or other consideration provided by the amalgamation proposal. The reference in section 106(6) to a shareholder who is not satisfied that he has been offered fair value for his shares is a reference back to the amount of fair value stated in the notice of meeting in accordance with section 106(2). If the shareholder is not content to be paid that amount, he may apply for a court appraisal. The overall result is that a dissenting shareholder can either elect to be paid the amount determined by the company to be the fair value or apply for a court appraisal."

102. It is beyond implicit from the above statement made by Lord Richards that where the merger consideration is not a purely cash price but instead entails the receipt of shares in the surviving company (or its parent company, as is the present case), the fair value of the merging company's shares must nevertheless be determined and stated in cash terms. Lord Richards continued:

"…
36. The respondents submit that section 106 does not give dissenting shareholders an entitlement to be paid the amount stated in the notice. The statement required by section 106(2)(b)(ii) that "a dissenting shareholder is entitled to be paid the fair value of his shares" is not a reference to "the fair value" stated in the notice as required by sub- paragraph (b)(i) but is informing shareholders that they have a statutory right to apply for a court appraisal.

37. The Board sees considerable force in the Company's reading of section 106 in this respect. It is not easy otherwise to see the purpose of requiring the company to state the fair value in the notice, nor is it clear why a dissenting shareholder must apply for a court appraisal rather than simply requiring payment of the fair value as determined by the company if the dissenting shareholder is content with that amount. Additionally, section 106(6B) is difficult to fit with the respondents' reading. However, it is not necessary to resolve this point because, even assuming the Company's reading is correct, the Board is satisfied that its construction of section 106 as regards standing to bring appraisal proceedings is wrong."

103. These observations from the Privy Council are of real assistance to this Court. As a starting point, the duty of the merging company to determine and state the fair value is not disturbed by the currency of the merger. Whether or not the merger consideration is made in cash terms, the company must comply with section 106(2)(b)(i) by determining and stating the fair value of the shares in the meeting notice. Lord Richards considered that this process would likely be a formality where the merger consideration is a cash sum because the per share cash sum of the merger consideration would in all probability be the same figure as the company's determination of the fair value per share. By implication, the exercise of determining and stating the fair value of each share would not be as straightforward where the merger consideration is not in cash terms but in kind. That is because section 106(2)(b)(i) requires the statement of fair value to be stated in cash terms.

104. Why then has Parliament required a merging company under section 106(2)(b)(i) to state the fair value of each share in cash terms? Logic determines that the statement of fair value is of significance to the statutory scheme. Clearly, the statement has no bearing on the Court's independent appraisal under section 106(6). So, the statement of fair value under section 106(2)(b)(i) is important in its own right. That, on my assessment of section 106, aligns only with the conclusory remarks made by the Board: the statement of fair value under section 106(2)(b)(i) creates a stand-alone entitlement for the benefit of a dissenting shareholder who wishes to opt out of a share for share merger scheme.

105. By virtue of section 106(6B), a dissenting shareholder, whose shares have been appraised by the Court after the completion of the merger, is entitled to be paid a 'top up' if the amount paid to that shareholder is less than the fair value amount appraised by the Court. As put by Kawaley J (as he then was) in *Artha Master Fund LLC v Dufy South America* [2011] Bda LR 17: "*The task of the Court is to determine whether its appraisal of the fair value is greater than the Defendant's assessment or not*." As I see it, the entitlement to a top-up further supports the Court's recognition of a stand-alone scheme.

106.In the merger context, a company's legal obligation to state the fair value of its shares in a meeting notice is for the purpose of entitling the shareholders who did not vote in favor of the merger to be paid for their shares at the stated fair value in cash terms. That is not a right to be paid both the merger consideration in kind and the cash sum. It is a right to be paid the cash sum in lieu of proceeding with the merger. Of course, where the merger consideration itself is in cash currency, it is only predictable that the merging company will contend that the sum of the merger consideration is also the company's determination of the fair value of the shares to be cancelled.

107.In the share for share merger scenario, there is no difference in principle. The meeting notice must still inform the shareholders about the terms of the proposed merger agreement which accounts for the merger consideration. That is the purpose of section 106(2)(a) which requires the merging company to provide shareholders with a copy or summary of the merger agreement . Separately, section 106(2)(b) also requires the meeting notice to do two things for the benefit of possible dissenters. Firstly, under section 106(2)(b)(i) the meeting notice must state what the company has determined to be the sum representing the fair value of the shares. That is not a requirement to restate the merger consideration which would already be made known by virtue of section 106(2)(a). The requirement under section 106(2)(b)(i) is to state the fair value for the benefit of dissenters who wish to opt out of the merger scheme and instead be paid the fair value of their shares. That is why the second limb of section 106(2)(b) also addresses the rights of dissenters. Under section 106(2)(b)(ii) the merging company must tell those who wish to dissent "*that a dissenting shareholder is entitled to be paid the fair value of his shares".* This statement to the shareholders under section 106(2)(b)(ii) is clearly informing the dissenters that they are entitled to be paid what the company stated under section 106(2)(b)(i) to be the fair value of the shares.

108.The statutorily required statement of fair value by the company thus operates as a binding offer under Bermuda law. That is implicitly recognised under section 106(6) which applies to any shareholder who did not vote in favour of the merger and "*who is not satisfied that he has been offered fair value for his shares*".

109.For these reasons, I am bound to find that the fair value of the shares must therefore be determined and stated by the company in cash terms for the benefit of a dissenter who wishes to walk away with prompt payment at fair value in compensation for the cancellation of his shares. That is why it would be wrong to construe section 106(2)(b)(i) as a requirement to merely restate the merger consideration.

FINDINGS OF FACT:

Whether Golden Ocean stated and determined the fair value of its shares in cash terms

110. This issue is purely a question of fact.

111. Golden Ocean's determination of the fair value of each of its shares was stated in the following terms in the SGM Notice:

> "*For the purposes of Section 106(2)(b)(i) of the BCA, the Golden Ocean board of directors has determined the fair value for each Golden Ocean common share to be $14.49 (subject to adjustment, pursuant to the terms of the Merger Agreement) and pursuant to the automatic conversion in the Merger Agreement to be equal to the Merger Consideration* [my emphasis]. *Golden Ocean's shareholders who are not satisfied that they have been offered fair value for their shares and who do not vote in favor of the Merger may exercise their appraisal rights under the BCA to have the fair value of their shares appraised by the Supreme Court of Bermuda (the "Bermuda Court"). Golden Ocean's shareholders intending to exercise appraisal rights MUST file their application for appraisal of the fair value of their shares with the Bermuda Court within ONE MONTH of the notice convening the Special General Meeting and otherwise fully comply with the requirements for seeking appraisal under the BCA.*"

112. Section 106(6) is only triggered when a dissenting shareholder is not satisfied that he has been offered fair value for his shares. In this case, the dissenting shareholders were offered a 0.95 CMB Tech shares for each Golden Ocean share and payment for their fractional shares. That was both the merger consideration and the fair value offer made. The offer was not a cash payment of $14.49. The $14.49 merely marked the exchange ratio and the statement of that information in the SGM Notice simply disclosed the manner in which each Golden Ocean common share, par value of $0.05 per share was to be cancelled and automatically converted into the right to receive 0.95 CMB Tech ordinary shares.

113. In my judgment, Golden Ocean failed in its duty to state and determine the fair value of its shares in cash terms. In stating the fair value of its shares, it did so by reference to the valuation method ($14.49 NAV) underlying the exchange ratio with CMB Tech shares using the same valuation method ($15.23 NAV). That was not a statement of fair value in cash terms as required on a proper construction of section 106(2). Instead, the share price of $14.49 per Golden Ocean share was stated and used as a quantitative measure to assess the number of CMB Tech shares that would be given to shareholders in the exchange. Had the exchange ratio instead been based on the market trading price of both companies, the share exchange would have been calculated on the basis of $8.87 (per CMB Tech share on the eve of the merger

announcement) to $7.04 (per Golden Ocean share on the eve of the merger announcement). Instead, the exchange ratio was calculated on the NAV basis.

114. So, on the facts of this case, I do not find that the merging company made any declaration in the SGM Notice that the $14.49 figure was Golden Ocean's determination of the fair value for each Golden Ocean share in monetary terms. The $14.49 sum was not a cash offer to its shareholders marking fair value, it was a metric used to quantify the exchange for CMB Tech shares.

115. Had Golden Ocean instead carried out its legal obligation to state in the SGM Notice the fair value in cash terms, that would have constituted the "offer" referred to in section 106(6). In such circumstances, as envisaged by the statutory scheme, it would have been open to the dissenting shareholders to accept the offer as representing the fair value of the shares and to walk away with that cash sum. However, if the dissenting shareholders were not satisfied that the company's statement of fair value in cash terms did not qualify as an offer of fair value for their shares, the dissenting shareholders would be entitled to seek, as the alternative and final remedy, the Court's appraisal of the fair value of the shares pursuant to section 106(6).

116. It thus follows that on the findings of this Court, Golden Ocean failed in its duty to state and determine the fair value of its shares in cash terms and that is why I am also bound to find that Golden Ocean failed to satisfy the requirements of section 106(2)(b)(i) by restating the merger consideration in the exchange ratio terms.

CASH CLAIMS (ENFORCEMENT)

117. This issue raises the question as to whether the correct mechanism for the enforcement of the Plaintiffs' right to payment in cash is by way of an appraisal action pursuant to section 106(6) or whether it is more so a claim for a debt in damages.

118. Stating the obvious, Golden Ocean's failure to state its fair value determination did not dispossess the Plaintiffs of their right to be paid a cash sum marking the fair value of the Golden Ocean shares. The effect of the missing statement from the SGM Notice disclosing the fair value of the Golden Ocean shares in pure cash terms means that the Plaintiffs have been deprived of the opportunity to accept a cash sum offer from Golden Ocean pursuant to section 106(2). Thus, their recourse is now to their Court appraisal rights under section 106(6).

CASH CLAIMS (QUANTUM / THE CREDIT ISSUE)

119. On the submissions advanced by Mr. Adkins KC, the credit issue is premised on a finding of this Court that not only are the dissenting shareholders entitled to be paid in cash but that they are also entitled to be paid the cash fair value of $14.49. However, as earlier explained in this judgment, I do not accept that the Golden Ocean's reference to the $14.49 sum was a statement of fair value of its shares in cash terms as is required by section 106(2)(b)(i). The statement of fair value in the SGM Notice was nothing more than a regurgitation of the merger consideration. It was made by reference to the exchange ratio. The cash sum stated was the NAV sum used to work out the exchange ratio of the Parent Company shares which were equally measured according to the NAV. Golden Ocean's reference to the $14.49 sum cannot appropriately be taken out of that context. For those reasons the $14.49 figure is not to be treated as a proper statement of fair value in the SGM Notice of fair value per share in cash terms.

Issue as to whether the same valuation method ought to be employed for assessing the Golden Ocean Shares and the CMB Tech Shares

120. Having found that section 106 provides a stand-alone entitlement to be paid in cash, the next step in these proceedings requires a determination as to the amount to be paid in cash for each Golden Ocean share and the amount to be credited for each Parent Company share. These are questions to be reserved for the Appraisal Action.

121. Notwithstanding, I received submissions from Counsel on the question as to whether the valuation methodology used for each of the Golden Ocean common shares held by the Plaintiffs ought to mirror that used to measure the CMB Tech shares. So, the question canvassed before this Court was whether the dissenting shareholders, having purchased their shares on the open market, ought to be paid for their new shares in the Parent Company on a market price valuation basis as opposed to a valuation based on the NAV.

122. In this case, the merger consideration shares in the Parent Company were sold on the open market by two of the Plaintiffs, namely Alpine and Oasis.

123. The entire of Alpine's holdings in the Parent Company were sold between 25 August 2025 and 19 September 2025. Ms. Wilkinson's evidence was that those shares were sold at an average price of US$8.4268 per share which, applying the 0.95 conversion ratio, equated to US$8.005 per Golden Ocean share.

124. Oasis produced a copy of daily broker confirmations establishing the average sale price of its shares in the Parent Company was $8.149300 per share which, as Mr. Mackay stated in his

evidence, was virtually identical to the 20 August 2025 VWAP of $8.147 per share (both rounding up to $8.15 per share).

125. Mr. Midwinter KC accepted that if this Court found, as it has in principle, that section 106(2) confers a right on dissenting shareholders to be paid the fair value sum stated in the notice of special general meeting (if stated in cash terms), the Plaintiffs must obviously give credit for the value of the CMB Tech shares that they received on the same basis on which the value of the Golden Ocean shares was calculated. He argued that there could be no rational basis for giving credit for the CMB Tech shares on market price analysis, while allowing the Plaintiffs to receive payment for the Golden Ocean shares by reference to their NAV. On Mr. Midwinter KC's submissions, the valuation approach for the CMB Tech shares should be no different from the approach used to value the Golden Ocean shares. The result, he submitted, is that the credit to be given equals the payable sum such that no payment is due.

126. Counsel for the Plaintiffs, however, argued that the sum to be credited for each CMB Tech share should be valued by the VWAP on the merger date, 20 August 2025. Again, the Defendant objects to this approach and submits that the statute is silent on this issue which has never previously been determined by any Court. The Defendant's overarching position is that the same valuation methodology used to determine the fair valuation of each CMB Tech share should also be used to determine the fair valuation of each Golden Ocean Share. Furthermore, the Defendant's position is that if the Court prefers the market price approach, then it should be guided by the actual sale price of the Parent Company shares sold by the Plaintiffs.

The VWAP and Market Trading Prices of the Golden Ocean Shares

January to March 2025

127. Mr. Saverys stated that for January 2025 and February 2025, the VWAPs of the Golden Ocean shares were USD $9.54 and USD $9.72, respectively. The evidence before this Court in respect of March 2025 was that the VWAP of the Golden Ocean shares was USD $8.10 as at 12 March 2025.

22 April 2025 (Merger Announcement) and July 2025

128. In the Proxy Statement, shareholders were informed that on 22 April 2025, the last trading date before the public announcement of the Merger, Golden Ocean common shares closed on Nasdaq at $7.04 per share. It was also stated that on 15 July 2025, the eve of the date of the Proxy Statement, the Golden Ocean common shares closed on Nasdaq at $8.20 per share.

The VWAP and Market Trading Prices of the Parent Company Shares

22 April 2025 (Merger Announcement) and July 2025

129. The evidence before this Court is that on 22 April 2025 the closing price of the Parent Company's ordinary shares on the NYSE was $8.87. On 15 July 2025 the closing price of the Parent Company's ordinary shares on the NYSE was $9.21. The Proxy Statement provided as follows:

"*The value which the Merger Consideration represents on the basis of the market price of CMB.TECH ordinary shares will increase or decrease in accordance with fluctuations in such market price. You should obtain current share price quotations of CMB.TECH ordinary shares, which are listed on the NYSE and Euronext Brussels under the symbol "CMBT." Golden Ocean common shares are listed on Nasdaq and Euronext Oslo under the symbol "GOGL."* ***Based on the closing price of CMB.TECH ordinary shares on the NYSE of $8.87 on April 22, 2025, the last trading day before the public announcement of the Merger, which occurred prior to the open of trading on April 23, 2025, the Exchange Ratio represented approximately $8.43 in CMB.TECH ordinary shares for each Golden Ocean common share***. *Based on the closing price of CMB.TECH ordinary shares on the NYSE of $9.21 on July 15, 2025, the latest practicable date before the date of this proxy statement/prospectus, the Exchange Ratio represented approximately $8.75 in CMB.TECH ordinary shares for each Golden Ocean common share*."

The Merger Closing Date (20 August 2025)

130. The VWAP of the Parent Company's ordinary shares on the New York Stock Exchange was, according to Bloomberg reports, US$ 8.1470 as of the merger date.

131. From the evidence before this Court, I have created the below two tables using a simple mathematical approach. Table 1 sets out the various values of the Plaintiffs' Golden Ocean shares according to the trading price on the final trading day, the VWAP as at 12 March 2025 and the NAV. Table 2 similarly sets out the various values for the CMB Tech shares.

Table 1 (Golden Ocean Shares)

Plaintiff	**Total Number of GOLDEN OCEAN Ordinary Shares**	**Trading Price of GOLDEN OCEAN Shares on 22 April 2025 ($7.04 per share and at $7.92)[5]**	**VWAP Golden Ocean Shares as at 12 March 2025 ($8.10 per share)[6]**	**US $14.49 NAV Value of GOLDEN OCEAN Shares[7]**
The First Plaintiff FourWorld Global Opportunities Fund	1,215,297	US$ 8,555,690.88 US$ 9,625,152.24	US$ 9,843,905.70	US$ 17,609,653.53
The Second Plaintiff, FourWorld Special Opportunities Fund, LLC	1,011,700	US$ 7,122,368.00 US$8,012,664.00	US$ 8,194,770.00	US$ 14,659,533
The Third Plaintiff FW Deep Value Opportunities Fund I, LLC,	1,215,297	US$ 8,555,690.88 US$ 9,625,152.24	US$ 9,843,905.70	US$ 17609653.53
The Fourth Plaintiff Corbin ERISA Opportunity Fund, Ltd	3,163,537	US$ 22,271,300.48 US$25,055,213.04	US$ 25,624,649.70	US$ 45,839,651.13
The Fifth Plaintiff Alpine	8,275,000	US$ 58,256,000.00 US$65,538,000	US$ 67,027,500.00	US$ 119,904,750
The Sixth Plaintiff Oasis	9,010,000[8]	US$ 63,430,400.00 US$71,359,200	US$ 72,981,000.00	US$ 130,554,900

[5] This is calculated by multiplying the total number of Golden Ocean Shares by 7.04 and 7.92, respectively
[6] This is calculated by multiplying the total number of Golden Ocean Shares by 8.10
[7] This is calculated by multiplying the total number of Golden Ocean Shares by 14.49
[8] Golden Ocean Shares (See para [4] of Mr. Mackay's Second Affidavit)

Table 2 (CMB Tech Shares)

Plaintiff	**Merger Consideration: Number of Ordinary Shares in CMB Tech[9]**	**US $ Sale Price of total number of CMB Tech Shares SOLD**	**Trading Price of CMB TECH Shares on 22 April 2025 ($8.87 per share)[10]**	**US$ VWAP of CMB TECH Shares as at 20 August 2025 (US$ 8.1470 per share)[11]**	**US $15.23 NAV Value of CMB TECH Shares**
The First Plaintiff FourWorld Global Opportunities Fund	1,154,532	No evidence that shares in Parent Company were sold	US$ 10,240,698.84	US$ 9,405,972.204	US$ 17,583,522.36
The Second Plaintiff, FourWorld Special Opportunities Fund, LLC	961,115	No evidence that shares in Parent Company were sold	US$ 8,525,090.05	US$ 7,830,203.905	US$ 14,637,781.45
The Third Plaintiff FW Deep Value Opportunities Fund I, LLC,	1,154,532	No evidence that shares in Parent Company were sold	US$ 10,240,698.84	US$ 9,405,972.204	US$ 17,583,522.36
The Fourth Plaintiff Corbin ERISA Opportunity Fund, Ltd	3,005,360	No evidence that shares in Parent Company were sold	US$ 26,657,543.20	US$ 24,484,667.92	US$ 45,771,632.80
The Fifth Plaintiff Alpine	7,861,250	US$ 66,241,375[12]	US$ 69,729,287.50	US$ 64,045,603.75	US$ 119,726,837.50
The Sixth Plaintiff Oasis	8,559,500	US$ 69,753,929.94[13]	US$ 75,922,765.00	US$ 69,734,246.50	US$ 130,361,185

[9] This is calculated by multiplying the total number of Golden Ocean Shares by 0.95

[10] This is calculated by multiplying the total number of CMBTech shares by US$8.87.

[11] This is calculated by multiplying the total number of CMBTech shares by US$8.147.

[12] Ms. Wilkinson's evidence was that the CMB Tech shares were sold at an average price of US$8.4268 per share which, applying the 0.95 conversion ratio, equated to US$8.005 per Golden Ocean share.

[13] See para [27] of Mr. Mackay's First Affidavit. The Parent Company shares were sold for $8.149300 per share

If the Exchange Ratio had been based on a Relative Discounted Cash Flow Analysis for Golden Ocean Shares

132. Both Mr. Saverys and Mr. Simonsen agreed in their evidence that if the exchange ratio had instead been based on relative discounted cash flow valuations, the exchange ratio would have sooner been in the range of 0.8 per Golden Ocean share to 0.95 per Parent company share. Table 3 below reflects this evidence of an exchange ratio based on relative discounted cash flow valuations:

Table 3 (If exchange ration based on relative discounted cash flow valuations)

Plaintiff	Number of CMB Tech Shares based on relative discounted cash flow valuations[14]	US $ Sale Price of total number of CMB Tech Shares SOLD	Trading Price of CMB TECH Shares on 22 April 2025 ($8.87 per share)[15]	US$ VWAP of CMB TECH Shares as at 20 August 2025 (US$ 8.1470 per share)[16]	US $15.23 NAV Value of CMB TECH Shares[17]
The First Plaintiff FourWorld Global Opportunities Fund	972,237.6	No evidence that shares in Parent Company were sold	US$ 8,623,747.512	US$ 7,920,819.73	US$ 14,807,178.65
The Second Plaintiff, FourWorld Special Opportunities Fund, LLC	809,360	No evidence that shares in Parent Company were sold	US$ 7,179,023.20	US$ 6,593,855.92	US$ 12,326,552.80
The Third Plaintiff FW Deep Value Opportunities Fund I, LLC,	972,237.6	No evidence that shares in Parent Company were sold	US$ 8,623,747.512	US$ 7,920,819.73	US$ 14,807,178.65
The Fourth Plaintiff Corbin ERISA Opportunity Fund, Ltd	2,530,829.6	No evidence that shares in Parent Company were sold	US$ 22,448,458.55	US$ 20,618,668.75	US$ 38,544,534.81

[14] These figures represent 80% of the total number of Golden Ocean Shares

[15] This is calculated by multiplying the total number of CMBTech shares (if exchange ratio is based on relative discounted cash flow valuations) by US$8.87.

[16] This is calculated by multiplying the total number of CMBTech shares (if exchange ratio is based on relative discounted cash flow valuations) by US$8.147.

[17] This is calculated by multiplying the total number of CMBTech shares (if exchange ratio is based on relative discounted cash flow valuations) by US$15.23.

The Fifth Plaintiff Alpine	6,620,000	US$ 66,241,375[18]	US$ 58,719,400.00	US$ 53,933,140	US$ 100,822,600
The Sixth Plaintiff Oasis	7,208,000	US$ 69,753,929.94[19]	US$ 63,934,960	US$ 58,723,576.00	US$ 109,777,840

133. So, by way of illustration, the first and the third of the Fourworld Plaintiffs, having likely paid approximately $7.92 per share, each acquired a total of 1,215,297 Golden Ocean shares on the open market. As can be seen from Table 1, that would have been at a total purchase price of US$ 9,625,152.24 per plaintiff. The Plaintiffs accept that the Defendant is entitled to a credit for the Parent Company shares which were transferred pursuant to the merger but contend that this should be based on the market price of the shares as at the date of receipt, being the merger date i.e. 20 August 2025. As can be seen from Table 2 the VWAP of the Parent Company shares as at 20 August 2025 was 8.147 per CMB Tech share, totalling a credit sum of US$ 9,405,972.204. That is the sum which the First and Third Fourworld Plaintiffs say should be credited to CMB Bermuda for the Parent Company shares.

134. Notwithstanding, the Plaintiffs seek payment for the Golden Ocean shares based on the $14.49 NAV. The statutory interpretation grounds on which that value was sought have been refused in this Judgment. However, in the context of a section 106(6) Court appraisal, three questions arise in relation to the valuation method to be applied to the Golden Ocean shares:

(i) Why is there such a significant difference between the market trading price and the NAV of Golden Ocean and the Parent Company shares?

(ii) Is there any justification for employing different valuation methods for the Plaintiffs' shares held in Golden Ocean and CMB Tech?

(iii) Is expert evidence required to resolve these issues?

135. These questions were addressed in the evidence before this Court.

136. Maintaining that the Plaintiffs have suffered no loss, Mr. Saverys stated in his evidence at para [80]-[81]:

[18] Ms. Wilkinson's evidence was that the CMB Tech shares were sold at an average price of US$8.4268 per share which, applying the 0.95 conversion ratio, equated to US$8.005 per Golden Ocean share.
[19] See para [27] of Mr. Mackay's First Affidavit

….Although the Plaintiffs have declined to adduce any evidence of the price at which they acquired their Golden Ocean shares, if, as I believe, those shares were purchased after the announcement of the Merger/Record Date, but prior the Merger Date, the Plaintiffs are likely to have paid an everage [average] *price of approximately USD 7.92 per share, being the average trading price of Golden Ocean shares during that period. Notable, the shares traded as low as USD 7.04 in the same period*.

The Plaintiffs now complain that they were compelled to give up their Golden Ocean shares (purchased for approximately USD 7.92 per share) and say that the Court must order CMBT to pay them USD 14.49 per Golden share in cash…"

137. Mr. Saverys offered an explanation for the 43% discount between the trading price of Golden Ocean shares and the valuation of the shares based on an NAV analysis. Equally, he sought to explain Parent Company shares were also at a 43% discount to the NAV. Mr. Saverys said that shipping is a highly capital-intensive industry as a shipping company's principal assets would be its vessels. Mr. Saverys explained that an investor purchasing shares on the open market is unlikely to be positioned to force the realisation of value through the sale of those assets.

138. So, the average investor in the shipping industry is more driven by the prospect of receiving dividend payments. Mr. Saverys also explained that the volatile and cyclical nature of the shipping industry can cause modest fluctuations to result in sharp profitability swings. To that end, Mr. Saverys produced a chart illustrating a 20-month pre-merger period showing Golden Ocean's and CMB Tech's share fluctuations. Based on these factors, Mr. Saverys suggested that the trading price marked by any one particular day would result in "*incredibly misleading and unreliable valuation of the company or its shares*." [68]

139. Mr. Saverys also invited the Court to consider the position had the merger not closed and the shareholders been left to convert their shares to cash. Mr. Saverys' evidence is that on the day before the merger announcement, CMB Tech's shares were trading for USD $8.87 and Golden Ocean's shares were trading for USD $7.04. He states that had the merger exchange ratio been based on the market price, the exchange ratio would have been 0.79 CMB Tech shares for each Golden Ocean share.

140. In those circumstances, the shareholders would have been left to sell their shares on the market for approximately USD $8.00 per share. Mr. Saverys' evidence is that the purpose of the fair value being stated in the SGM Notice was to inform the Golden Ocean Shareholders of the dollar value of their shares for the purpose of the merger (as opposed to open market trading).

141. Mr. Saverys underscored the need for a consistent approach for any comparative analysis between the valuations of the Golden Ocean shares and the Parent Company shares. At para [72] of his first affidavit he said:

"*It is of course important that, whatever basis is chosen to calculate the exchange ratio, the methodology is the same on both sides of the equation. If the figure used to value the Golden Ocean share was its trading price, but the figure used to value the CMBT shares was its NAV, then the Golden Ocean shareholders would be subject to the 43% discount but the CMBT shareholders would not. Calculating the 'fair value' in this was would therefore produce and 'unfair' result*."

142. Mr. Saverys continued at paras [74]-[76] and at [83]-86]:

"*However, for the reasons set out above, CMBT did not consider that trading price was an appropriate valuation methodology, and that the fairest approach was to use NAV-for-NAV for the Exchange Ratio, and that the NAV for the Golden Ocean shares would be the figure of USD 14.49.*

A key factor in this decision was that the Merger Consideration was shares in CMBT payable to all shareholders, including dissenting shareholders. It would make no sense for CMBT to agree to purchase shares for the cash price of USD 14,49 which were being sold on the open market on the day of the merger for as low as USD 7.85.

For the reasons set out above, the Exchange Ratio was based on NAV-for-NAV and the dollar figure stated in the Notice was the agreed NAV of USD 14.49 for Golden Ocean, rather than the trading price.

…

…

However, I note that while the Plaintiffs accept that they must give credit for the CMBT shares, they insist that the credit should be the volume weighted average price on 20 August 2025, of USD 8.147 per share.

This is despite the fact that the Plaintiffs admit that they sold the CMBT shares for a price in excess of USD 8.147 per share. In fact, they admit that CMBT shares were sold for as high as USD 9.56 per share.

The Plaintiffs assert that the Court must apply different valuation methodologies to the shares, where there has been a 'share for share' exchange. They say that when valuing the Golden Ocean shares, the Court should apply a 'fair value' that is <u>not</u> based on trading value, but

instead on NAV. Conversely, when valuing the CMBT shares, the Court should simply adopt the average trading price on a single day.

If the Court accedes to this invitation, it will result in the Plaintiffs receiving a windfall in the millions of dollars. The Dissenters received CMBT shares of equal value to the Golden Ocean shares. They now seek an additional payment of USD 161,271,471. "

143. Mr. Simonsen of Golden Ocean agreed with Mr. Saverys' analysis of the differences between the market trading price and the fair value figure assessed at $14.49 NAV per Golden Ocean share. Mr. Simonsen's evidence was that the $14.49 figure exceeded the NAV assessment undertaken internally by Golden Ocean's management. He said that the determination of the exchange ratio on an NAV for NAV basis was not only fair in methodology but also common for mergers such as the merger in the present case. By way of illustration, Mr. Simonsen pointed to the 25 April 2025 presentation from DNB Carnegie to the Transaction Committee, which referred to six other comparable shipping industry mergers transacted over a preceding five-year period on a share for share exchange determined on a NAV for NAV basis.

144. The evidence of both Mr. Saverys and Mr. Simonsen explains the gap between the market trading price/VWAP and the NAV within the shipping industry. That evidence also illustrates the unfairness in the use of different valuation methods for the Plaintiffs' shares held in Golden Ocean and those held in CMB Tech. In my judgment, the same valuation method for valuing the Golden Ocean shares should be the same method for valuing the CMB Tech shares.

THE APPLICATION FOR LEAVE TO ADDUCE EXPERT EVIDENCE

145. The Defendant, by summons filed on 1 December 2025, seeks leave to adduce expert evidence on these quantum issues. The relief prayed was in the following terms:

"…

1. The trial of the actions shall be limited to determining the following issues:

a. …

b. …

c. If dissenting shareholders are entitled or required to be paid the fair value of their shares in cash and they have in fact received shares, what credit must the dissenting shareholders give for those shares? In particular, is the credit to be given (i) the fair value of those shares or something else (and how is that value to be measured) and (ii) measured by reference to their value as at the date of the amalgamation or as at the date when the cash payment is made or at another date?

d. *Applying the appropriate valuation methodology determined pursuant to issue (c), what is the value of the Plaintiffs' shares in CMB. Tech and GOGL respectively?*

2. *The Parties have leave to file expert evidence in relation to issues (c) and (d).*"

146.Mr. Hudson stated in his evidence at paragraphs [18]-[22]:

Expert Evidence

18. Since the Court cannot determine the Plaintiffs' claims without also determining the value of the Golden Ocean and CMBT shares, the Defendant respectfully seeks leave to adduce expert evidence to assist the Court in what will be a difficult and complex valuation exercise and to ensure a fair hearing.

19. While the Defendant is able to adduce factual evidence as to the valuation of Golden Ocean and CMBT shares, the Defendant respectfully seeks leave to adduce expert evidence to assist the Court in what will be a difficult and complex valuation exercise and to ensure a fair hearing.

20. At a hearing on 10 October 2025, at which directions were given for the determination of the Cash Claims, the Defendant sought directions for the Cash Claims and the 'appraisal actions' to be case managed together. There could then be directions for the hearing of any preliminary issues, such the First Question set out above. [The 'First Question' refers to the question as to whether section 106 provides a stand-alone entitlement to be paid in cash.] *If the First Question was answered in favour of the Plaintiffs, the Court could then consider how best to determine the Second Question and the Third Question, given the evident overlap between the question of 'fair value' of Golden Ocean in the Cash Claim and the appraisal actions*. [The 'Second Question' refers to the question as to the amount to be paid in cash for each Golden Ocean share. The 'Third Question' refers to the question as to the amount to be credited for each Parent Company share.]

21. The Plaintiffs invited the Court to give directions that the Cash Claims be heard together, but separately from the appraisal actions, and for the Cash Claims to be listed without any directions for the filing of evidence. The Defendant asserted that evidence would be required, including expert evidence. The Plaintiffs objected on the basis that no expert evidence was required and no application had been made for leave. The Court granted the Plaintiffs proposed direction, but providing that "evidence" be filed, which the Plaintiffs clarified was "lay" evidence. Unfortunately, no reasons have been provided by the learned Chief Justice.

22. As such, the Court has not determined any application for leave to adduce expert evidence."

147. The remaining issues relevant to the appraisal action and the Defendant's application for leave to call expert evidence are as follows:

(i) Which single valuation method is appropriate for determining both (a) the credit to be given to the Defendant for the Parent Company shares given to the Plaintiffs pursuant to the merger and (b) the fair value of the Golden Ocean shares?

and

(ii) By reference to which date is the valuation to be measured?

148. In light of the findings I have made in this Judgment, it does not seem to me that these particular issues call for expert evidence. These questions are more so a matter for argument and it may be the case that these remaining issues are settled between the parties without need for further Court proceedings. However, should any of the parties, having considered the effect of this Judgment, deem it necessary to adduce expert evidence at this stage of the proceedings, they may address the Court further on the basis for such a request.

ISSUE OF STANDING

149. The issues as to standing fall into the following categories:

(i) Whether the statutory entitlement created by sections 106(2) are reserved only for shareholders who had shares at the "record date" (the "Relevant/Record Date Issue").

and

(ii) Whether the Plaintiffs have recourse to section 106 as dissenting shareholders in respect of all the shares that they held at the date of the merger (the "Dissenting Issue")

The Relevant/ Record Date Issue

150. Mr. Saverys in his evidence stated his belief that the Plaintiffs purchased their shares after the 22 April 2025 merger announcement and "most likely" after 16 July 2025, being the date of the press release (enclosing the SGM Notice and the Proxy Statement) announcing the plan of merger on the Golden Ocean website (the "Record Date"). On the Defendants' case, the Record Date marks the deadline for eligibility to vote at the SGM. The Defendants' position is that

voting was reserved only for Golden Ocean shareholders of record up to 16 July 2025 and not beyond. This is derived from the following statement appearing in the SGM Notice:

"*Only holders of record of Golden Ocean common shares at the close of business on 16 July 2025, the record date for the Special General Meeting, are entitled to notice of, and to vote at, the Special General Meeting and any adjournments thereof, and only holders of record of Golden Ocean common shares are entitled to exercise the appraisal rights conferred on dissenting shareholders by Bermuda law. Each Golden Ocean common share entitles its holder to one vote on all matters that come before the Special General Meeting*."

151. However, in the *Jardine* case the Privy Council was clear that shareholders entitled to apply to the Court under section 106(6) are those who were registered at the date of the meeting. This is what was referred to as the "relevant date". In this case the relevant date would be 19 August 2025 being the date that the SGM was held at Hamilton Princess. Earlier in this judgment I outlined the relationship between section 106(2) and 106(6). While those two provisions contain separate limbs of a dissenter's entitlement to relief, the former operating as an out of Court binding offer and the latter being the Court appraisal process, I see no basis for construing section 106 as being capable of referring to different relevant dates. Either a shareholder is eligible to seek relief under section 106 or he is not. For these reasons, this Court will apply the *obiter* in *Jardine* as the basis for setting the relevant date as 19 August 2025. In my judgment, it was not open to the Defendant to exclude dissenters from the statutory entitlement as prescribed by Bermuda law.

The Dissenting Issue

152. Mr. Midwinter KC submitted that the statutory rights of a dissenting shareholder apply only in respect of shares that 'dissented'. I pause here to consider whether the reference to the requirements of a meeting notice under section 106(2)(b)(ii) whereby the meeting notice must state "*that a dissenting shareholder is entitled to be paid the fair value of his shares*" applies to shareholders who, in lieu of dissenting, abstained from a merger vote. I have found that section 106(2) carves out a stand-alone entitlement for dissenting shareholders to be paid the cash sum stated in the meeting notice which represents the merging company's determination of fair value, so long as it is stated in cash terms as opposed to a dollar reference to the measurement used for the exchange ratio.

153. That being the case, I have also found that section 106(2) is the first remedial step available to a dissenting shareholder under the merger statutory scheme. Where a dissenting shareholder is not satisfied that he has been offered fair value (in cash terms) in the meeting notice, the second and final stage of the remedial process is under section 106(6). Necessarily, the reference to "*any shareholder who did not vote in favour of the …merger*" under section 106(6)

refers to the same dissatisfied "*dissenting shareholder*" who had a separate entitlement to accept the company's statement of fair value in cash in the meeting notice. That is because that same shareholder is the dissenting shareholder contemplated in section 106(2) who, having considered the company's statement of fair value in the meeting notice, is subsequently availing himself under section 106(6) because he "*is not satisfied that he has been offered fair value for his shares*".

154. That makes the wording of section 106(6) relevant to the question as to whether a shareholder who abstained is equally entitled to relief under sections 106(2) and 106(6). While section 106(2) expressly refers to a "dissenting shareholder", section 106(6) is drafted in terms which invite, on a plain and literal construction of the wording, inclusion of abstainers. In my judgment, there is no justification for looking behind this wording for the possibility of construing the section more narrowly. If the Legislature intended to exclude shares which were abstained from the merger vote, it would have surely stated so in equally plain language. It did not.

155. On the facts of this case, the Defendants say it is not possible for Golden Ocean or CMB Bermuda to know how any individual shares were voted. A total of 145,000,000 shares were voted, 135 million of which were voted in favour of the merger. On the facts before the Court 9,300,000 votes were voted against the merger and a lesser number resulted in abstentions. Mr. Midwinter KC argued that because the Plaintiffs acquired a large number of shares shortly prior to the special general meeting, it remains unclear how each of the Plaintiffs' shares at the date of the merger were in fact voted. Otherwise put, there is no way of knowing whether any of those votes were casted in favour of the merger by the shareholders from whom the Plaintiffs acquired them. His bottom-line submission was that any shares which were voted in favour of the merger would automatically be disqualified from the section 106 regime. In Mr. Midwinter KC's written submissions he provided the following example:

" *By way of example, one of the Plaintiff groups (Fourworld) says in its evidence that it held 6,650,831 shares at the date of the merger, and a payment is sought in this claim in respect of all of those shares. However, Fourworld itself voted against the merger agreement in respect of only 2,865,797 of those shares. The remaining 3,740,034 shares were apparently acquired after votes had been cast and Fourworld itself accepts that it does not know and cannot establish how those shares were voted.*"

156. Mr. Saverys was critical of the Plaintiffs for not having adduced evidence showing how previous holders of these Golden Ocean shares cast their votes, if the shares were in fact voted. However, the Plaintiffs pointed out that their shares were acquired through their brokers and custodians and were held pursuant to the indirect holding system by the Depositary Trust Company (the "DTC") in fungible bulk. The evidence before this Court was that entities

holding accounts with the DTC had nothing more than pro rata ownership of the total number of undifferentiable shares registered in the name of Cede. So, ownership was not identifiable by any particular share as the shares were not held by the DTC in separate accounts to mark the individual beneficial owners of the shares.

157. However, Mr. Shivji KC and Mr. Adkin KC both argued that section 106 speaks about dissenting shareholders not shares that were dissented. The position advanced by the Plaintiffs was that a dissenting shareholder is any shareholder who did not vote in favour of the merger, not the holder of any share which was not voted in favour of the merger.

158. Mr. Addis' evidence is that the FourWorld Plaintiffs, prior to registering the Golden Ocean shares in their names, held their Golden Ocean shares indirectly via the DTC indirect holding system, whereby the shares were held in the name of Cede & Co ("Cede"). He explained that the DTC is the central securities depositary for shares and other securities in the United States. Exhibited to his evidence was what he described as the DTC's latest version of its "Disclosure Framework" by way of a more detailed explanation of the operation of the DTC system.

159. Mr. Addis stated in his evidence at paragraphs [9]-[10] that none of the FourWorld Plaintiffs voted in favour of any of the resolutions considered at the SGM, including the resolution seeking the approval of the merger. Mr. Addis specified that the FourWorld Plaintiffs voted against the resolutions and set out the below detail from the confirmations from "Broadridge's ProxyEdge / the Institutional Shareholder Services' ProxyExchange voting platforms" (Exhibit [JA-1/4]):

Plaintiff	Fund Description	Number of Golden Ocean Votes against the merger
The First Plaintiff	FourWorld Global Opportunities Fund, Ltd, a company limited by shares incorporated in the Cayman Islands	353,536
The Second Plaintiff	FourWorld Special Opportunities Fund, LLC, a limited liability company incorporated in the State of Delaware USA	13,217
The Third Plaintiff	FW Deep Value Opportunities Fund I, LLC, a limited liability company incorporated in the State of Delaware USA	353,536
The Fourth Plaintiff	Corbin ERISA Opportunity Fund, Ltd, a company limited by shares incorporated in the Cayman Islands	2,145,508

160. At para 11 of Mr. Addis' affidavit, he stated that the FourWorld Plaintiffs acquired other Golden Ocean shares in addition to the shares listed above. He stated that these shares were re-registered in the name of the FourWorld Plaintiffs (from Cede). That brought the total number of Golden Ocean shares held by the FourWorld Plaintiffs to that which I have tabled further above in summarising the evidence before this Court.

161. In Ms. Wilkinson's second affidavit she stated that 5,337,546 Golden Ocean shares were acquired by Alpine before 16 July 2025 and the remaining 2,937,454 shares were acquired on or after 16 July 2025. Prior to the shares being registered in Alpine's name, Alpine also acquired the Golden Ocean shares through its prime broker and also held its shares in the name of Cede. This was said to have been achieved in the standard manner via the DTC. As at 1 August 2025, the entire of the 8,275,000 common shares in Golden Ocean were registered in Alpine's name. This is supported by a "*Computershare Direct Registration Advice*" exhibited to Ms. Wilkinson's second affidavit. Notwithstanding, Ms. Wilkinson stated at paragraph [14] of her second affidavit that Alpine did not vote in favour of the proposed merger, adding that Alpine voted against the merger in respect of 5,337,546 shares as per the voting confirmation exhibited to her affidavit.

162. Mr. Mackay's evidence was that Oasis used the same DTC system and that as at 13 August 2025 all 9,010,000 common shares were registered in Oasis' name. Further, Mr. Mackay stated in his second affidavit at paragraph [8] that the entire of its 9,010,000 common shares in Golden Ocean were held in Oasis name as at 13 August 2025.

163. I accept these points argued by the Plaintiff on the Dissenting Issue, as it relates to standing. Section 106 cannot be reasonably construed to support a finding that the Legislator intended to impose on a dissenting shareholder the burden of demonstrating that each and every share under previous ownership was not voted in favour of the amalgamation or merger. Against this factual background establishing a commercial norm of acquiring shares on the market through a broker in the lead up to an SGM, it is sufficient, in my judgment, for a shareholder to show that he did not vote in favour of the merger.

COSTS

164. Any party may be heard on the issue of costs by filing a Form 31D within 30 days of the date of this Judgment.

Dated this 21st day of May 2026



HON. MRS. JUSTICE SHADE SUBAIR WILLIAMS
PUISNE JUDGE OF THE SUPREME COURT