

# Policy considerations recognised in the Bermuda Supreme Court's interpretation of s103(3) of the Companies Act 1981

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Section 103 of the Companies Act 1981 of Bermuda allows for shareholders of not less than 95% of the shares in a company (or any class of shares in a company) to issue a notice to acquire the shares of those holding the remaining shares on the terms set out in such a notice.

But what of a situation where the minority shareholder(s) applies to the Bermuda Supreme Court under section 103(2) of the Act to appraise the value of the shares to be purchased from him and the identity or composition of the holders of the 95% majority shares changes prior to the Court's appraisal? Do the minority shareholders remain under a statutory obligation to sell to the 'new' owners?

This was the preliminary point raised by the Applicant in MFP-2000, LP v Viking Capital Limited and MISA Investments Limited (2014) Bda LR 6. On 7 February 2014, Mr. Justice Hellman ruled that the mechanism provided by section 103 for the acquisition of shares in a company by holders of not less than 95% of such shares means the holders of such shares at the date when a section 103 Notice is given. According to Mr. Justice Hellman's ruling, broad policy

considerations, including Bermuda's economic dependence on international business influenced this interpretation of the legislature's intent in drafting that section of the Act.

Additionally, Mr. Justice Hellman cited the purpose of Part VII of the Act, within which section 103 is contained, which is to "facilitate corporate restructuring". On this basis, it was held that "there is no obvious commercial reason why a purchaser, having served a section 103 Notice, should be required to retain at least 95% of the shares before the appraisal process has been concluded".

The apparent indication of this ruling is that an intending purchaser who holds not less than 95% of shares is not precluded from selling those majority shares between the time of giving a section 103 Notice, and actual acquisition or Court appraisal of the minority shares.

See court judgment [here](#).