

Determining “Fair Value” in Cayman Islands Appraisal Cases

Evolution of Valuation Approaches

AUTHORS

Paul Zurek

Alexander Vasaly

Matt Lord

In recent years, the Grand Court of the Cayman Islands (the “Grand Court”) has heard a number of “appraisal cases”—cases in which shareholders who dissent against a proposed merger or acquisition petition the Grand Court for an appraisal of the “fair value” of their shares—and has engaged with different valuation approaches in the context of determining fair value of a target company’s shares.

Section 238 of the Cayman Islands Companies Act (“Section 238”) entitles shareholders of a Cayman Islands-incorporated company to receive the fair value of their shares (plus applicable interest) upon dissenting from a merger or consolidation.¹ Section 238 also details the petition process that follows a dissent.² The Grand Court is presently comprised of nine Grand Court Justices.³ As of the date of this publication,

Justices Parker, Segal, Kawaley, and Jones (retired) have provided written opinions on the determination of fair value under Section 238.

We examine the seven Cayman Islands appraisal cases to date in which the Grand Court has ruled on fair value.

While Section 238 outlines the petition process for dissenting shareholders, it does not provide guidance for how fair value should be determined.⁴ Similarly, the Cayman Islands Companies Act does not define “fair value,” leaving interpretation to the Grand Court.⁵

In all Section 238 decisions to date that the authors are aware of (seven in total), the Grand Court has held that “fair value” refers to the value of a business as a going concern as of the valuation date, which is defined as the point in time immediately preceding merger approval (e.g., when shareholders approved the merger at an extraordinary general meeting).⁶ The Grand Court has also explained that fair value “is defined as the highest price at which an asset would change hands in a transaction between a willing buyer and a willing seller acting at arm’s length in an open and unrestricted market, where neither are under any compulsion to buy or sell and both have knowledge of the facts.”⁷

Additionally, the Grand Court has ruled that fair value does not include advantages which accrue to the company after the merger, including anticipated synergies.⁸ Further, in 2020 the Judicial Committee of the Privy Council (the final court of appeal for the Cayman Islands) ruled that the Grand Court should value the actual shareholding that the shareholder owns (rather than a pro rata share of the company as a whole), which may therefore include adjustments to value, to the extent necessary, for the fact that a dissenter may have a minority shareholding.⁹

We examine the seven Cayman Islands appraisal cases to date in which the Grand Court has ruled on fair value, which are listed in **Table 1**.¹⁰ We highlight the valuation approach that the Grand Court adopted in each case, as well as briefly summarize the circumstances that the Grand Court discussed in selecting its preferred approach.

Table 1: Summary of Transactions in Cayman Islands Appraisal Cases

	Re Integra Group	Re Shanda Games Limited	Re Qunar Cayman Islands Limited	Re Nord Anglia Education Inc	Re Trina Solar Limited	Re FGL Holdings	Re Xingxuan Technology Limited
Transaction Approval Date (Valuation Date)	5/21/2014	11/18/2015	2/24/2017	8/21/2017	12/16/2016	5/29/2020	8/21/2017
Public or Private Target Firm	Public	Public	Public	Public	Public	Public	Public*
Equity Valuation Implied by Transaction Price	\$89.7 Million	\$1.9 Billion	\$4.4 Billion	\$4.3 Billion	\$1.1 Billion	\$2.7 Billion	\$480 Million

*Denotes subsidiary of public company.

PREFERRED VALUATION APPROACHES AND WEIGHTINGS

The parties' experts in each case proposed one or more valuation approaches for the purpose of determining fair value: (i) discounted cash flow ("DCF") analysis; (ii) relative valuation based on comparable companies and/or precedent transactions; and (iii) reliance on, or deference to, either the deal price or the company's share price prior to the merger. When experts have put forth more than one valuation methodology, the experts have applied percentage weightings to the estimates under each of the methodologies. As summarized in **Table 2**, dissenters' experts have generally relied upon DCF valuations, while the companies' experts have generally relied upon a combination of DCF valuations and deal price or share price, with more weight given to the latter in recent cases (excluding *Re Xingxuan Technology Ltd.*, in which the dissenters expert's opinion was unopposed).¹¹

Each of the three broad valuation approaches (DCF, relative valuation, deference to market price or transaction price) has been adopted by the Grand Court, but in cases in which both parties have put forth expert valuation opinions (i.e., excluding *Re Xingxuan Technology Ltd.* (2024)), the Grand Court has recently relied more heavily on market or transaction price than DCF or relative valuation. For instance, in the *Re FGL Holdings* ruling in September 2022, Justice Parker relied solely on the transaction price, concluding that it provided a "sound indicator of value because the sales process was well designed, at arm's length and represented a willing transaction between a buyer and seller."¹² We discuss the seven cases in our sample below.

In *Re Integra Group* (2015), *Re Shanda Games* (2017), and *Re Qunar Cayman Islands Limited* (2019), the Grand Court accepted one of the valuation approaches offered by either the dissenters' expert or the company's expert.

Table 2: Valuation Methodology Weightings in Cayman Appraisal Cases

	Re Integra Group	Re Shanda Games Limited	Re Qunar Cayman Islands Limited	Re Nord Anglia Education Inc	Re Trina Solar Limited	Re FGL Holdings	Re Xingxuan Technology Limited
Date of Judgment	8/28/2015	4/25/2017	5/13/2019	3/17/2020	9/23/2020	9/20/2022	9/24/2024
<i>Methodology Adopted by Court</i>							
Discounted Cash Flow	75%	100%	50%	40%	25%	0%	0%
Comparable Companies and/or Precedent Transactions	25%	0%	0%	0%	0%	0%	100%
Transaction Price	0%	0%	0%	60%	45%	100%	0%
Unaffected Market Price	0%	0%	0%	0%	0%	0%	0%
Adjusted Market Price	0%	0%	50%	0%	30%	0%	0%
<i>Methodology Adopted by Dissenters' Expert</i>							
Discounted Cash Flow	75%	100%	100%	100%	100%	85%	0%
Comparable Companies and/or Precedent Transactions	25%	0%	0%	0%	0%	0%	100%
Transaction Price	0%	0%	0%	0%	0%	15%	0%
Unaffected Market Price	0%	0%	0%	0%	0%	0%	0%
Adjusted Market Price	0%	0%	0%	0%	0%	0%	0%
<i>Methodology Adopted by Company's Expert</i>							
Discounted Cash Flow	0%	100%	50%	0%	20%	0%	
Comparable Companies and/or Precedent Transactions	0%	0%	0%	0%	0%	0%	
Transaction Price	0%	0%	0%	100%	40%	0%	
Unaffected Market Price	0%	0%	0%	0%	0%	0%	
Adjusted Market Price	100%	0%	50%	0%	40%	100%	

The parties' experts in each case proposed one or more valuation approaches for the purpose of determining fair value: (i) discounted cash flow ("DCF") analysis; (ii) relative valuation based on comparable companies and/or precedent transactions; and (iii) reliance on, or deference to, either the deal price or the company's share price prior to the merger.

In *Re Integra Group (2015)*, Justice Jones stated that due to specific factors, such as the lack of liquidity of Integra's shares, the "publicly traded price [was] not [...] sufficiently reliable to exclude some alternative valuation approach or methodology,"¹³ and he wholly adopted the approaches and weightings offered by the dissenting shareholders' expert:

I have come to the overall conclusion that the Court's valuation of Integra should be done in the way recommended by [dissenting shareholders' expert]. He combined an income approach using a DCF methodology with a market approach, using a guideline public company methodology. He places greater weight on the DCF methodology (giving it a 75% weighting) than the guideline public company methodology (giving it a 25% weighting).¹⁴

In *Re Shanda Games (2017)*, both experts concluded that fair value should be determined using only the DCF methodology.¹⁵ Justice Segal noted that there was no dispute among the experts with regards to the appropriate valuation approach and accepted the DCF methodology, giving no weighting to any other approach.¹⁶

In *Re Qunar Cayman Islands Limited (2019)*, Justice Parker stated that "[t]he DCF and market trading approach both have advantages and disadvantages."¹⁷ However, he noted that the dissenters' expert did not sufficiently demonstrate that the market for Qunar's shares was not efficient and that the share price did not properly reflect the company's value.¹⁸ Ultimately, Justice Parker concluded that 50% weighting on the DCF methodology and 50% on the adjusted market price put forth by the company's expert was more appropriate than the 100% weighting placed on the DCF methodology proposed by the dissenting shareholders' expert who assigned no weighting to market evidence.¹⁹

Following *Re Qunar Cayman Islands Limited (2019)*, the Grand Court has used its own valuation weightings rather than adopting the weightings put forth by the parties' experts. In his decision in *Re Nord Anglia Education Inc (2020)*, Justice Kawaley wrote that Section 238 "permits 'adapting or blending' the approaches proposed by the Expert valuers,"²⁰ and he noted that determining the weightings to be "a very difficult question."²¹ The dissenting shareholders' expert placed 100% weighting on the DCF approach and the company's expert placed 100% weighting on the transaction price; Justice Kawaley concluded that weightings of 60% transaction price and 40% DCF valuation were appropriate because he had "used the DCF valuation as a cross-check for the Transaction Price rather than the other way around."²² Justice Kawaley considered the transaction price to be relevant to the assessment of fair value because, as he noted, "it does reflect an arm's length bargain negotiated between loosely related parties through the agency of closely connected human actors,"²³ and was not "so seriously lacking in credibility that the starting point [for the valuation] should be a DCF analysis, with some account being given to the negotiated Transaction Price."²⁴ However, Justice Kawaley did accept that circumstances of the transaction process justified weighting an approach beyond just the transaction price as the sole determinant of fair value.²⁵

In *Re Trina Solar Limited (2020)*, Justice Segal noted that, if "the merger is the product of arm's-length negotiation and a robust, non-conflicted market check," and "bidders were given an opportunity to learn more than market participants through due diligence, involving confidential non-public information," he considered the transaction price "to be preferred to the market price" and accordingly it should "be given substantial weight," though "subject to testing and checking by a DCF valuation."²⁶ Under the circumstances, he determined that

“some but not all of these requirements [were] satisfied” and that “[o]n balance, these factors seem to... justify giving some additional weight to the Merger Price but not to prefer it to the exclusion of the adjusted market price.”²⁷ Regarding DCF valuation, Justice Segal found that “the Company’s failure to provide clear explanations of the analysis and reasoning for inputs and forecasts and to adduce additional evidence to explain the basis for key elements of the Management Projections mean that reduced weight is to be given to those inputs and forecasts.”²⁸ Justice Segal further noted that “the disputes between and the very different views regarding the future of the industry” expressed by the parties’ industry experts underscored the uncertainty of the financial projections.²⁹ He ultimately determined that a DCF valuation was “subject to material uncertainties and therefore [that valuation] should be discounted.”³⁰ Justice

The recent rulings underscore the relevance of the transaction process and transaction price to the assessment of fair value.

Segal placed weightings of 45% on the transaction price, 30% on the adjusted market price, and 25% on the DCF valuation.³¹ In doing so, Justice Segal “accept[ed] the main elements of the opinion of the Company’s valuation expert... that it is appropriate to give weight to each of the three valuation methodologies.”³² The company’s expert assigned 40% weighting to the transaction price, 40% weighting to the adjusted market price, and 20% weighting to a DCF valuation; Justice Segal “ma[d]e a modest adjustment to these weightings.”³³ By contrast, the dissenters’ expert relied only on a DCF valuation.³⁴

In *Re FGL Holdings (2022)* ruling, Justice Parker noted that the transaction price “provides a sound indicator of value because the sales process was well designed, at arm’s length and represented a transaction between a willing seller and buyer.”³⁵ However, unlike the prior rulings, Justice Parker found no deficiencies in the design or execution of the transaction

process, concluding that “FGL and FNF engaged in an appropriately designed and reasonably robust transaction process resulting in a deal price that was seen by all interested parties to be fair at the time.”³⁶ He assigned 100% weighting to the transaction price, which diverged from the methodologies proposed by either expert.³⁷ The dissenters’ expert proposed 85% weighting on a DCF valuation and 15% weighting on the transaction price, while the company’s expert assigned 100% weighting to the adjusted market price.³⁸

Most recently, in *Re Xingxuan Technology Ltd. (2024)*, the dissenters expert’s valuation opinion was uncontested by the company.³⁹ The company claimed it was unable to retain counsel due to “dire” financial difficulties.⁴⁰ As a result, Justice Kawaley ordered the case to proceed on an unopposed basis.⁴¹ In his report, the dissenters’ expert rejected the transaction price as evidence of fair value, claiming that the transaction process was not competitive and there was insufficient information to support the transaction price.⁴² The dissenters’ expert also rejected the DCF approach due to a lack of reliable historical data and insufficient information to evaluate management forecasts.⁴³ Instead, the dissenters’ expert opined that a comparable company relative valuation approach, specifically a valuation based on the Enterprise Value-to-Gross Merchandise Value (an alternate measurement of sales) ratio, was the appropriate valuation methodology for the company because it was a “very standard way of valuing [food delivery] businesses.”⁴⁴ Justice Kawaley concluded that the expert’s unchallenged opinion should not be rejected unless it either: 1) “is unsustainable either on its face or having regard to the underlying facts”; or 2) lacks commercial rationality even after the expert was afforded an opportunity to address the issue at or before trial.⁴⁵ Having found that dissenters expert’s valuation was not “unsustainable” or lacking “commercial rationality,” Justice Kawaley accepted the expert’s unchallenged valuation in its entirety. Nevertheless, Justice Kawaley noted that an uncontested fair value hearing was the legal equivalent of a “‘Black Swan’ event.”⁴⁶ As a result, it is not clear to what extent this decision is reflective of the Grand Court’s broader preferences for valuation approaches.



Putting aside *Re Xingxuan Technology Ltd. (2024)* due to its unique circumstances, the 2022 decision in *Re FGL Holdings*, assigning 100% weighting to the transaction price, marks a departure from the Grand Court's prior adoptions of blended valuation approaches. Further, the decision in *Re FGL Holdings* is the first instance in which the Grand Court did not incorporate a DCF valuation into its determination of fair value. Indeed, prior to *Re*

FGL Holdings (2022), the DCF valuation approach was the only valuation methodology that the Grand Court deemed relevant in all five prior rulings. The recent rulings underscore the relevance of the transaction process and transaction price to the assessment of fair value, especially in instances where no deficiencies are found in the design and execution of the transaction process.

ABOUT THE AUTHORS

[Paul Zurek](#) is a financial economist specializing in securities, valuation, financial markets, risk management, and statistical analysis. He consults to clients at all stages of litigation across a range of industries. Dr. Zurek is an experienced expert witness and provides expert testimony in large, complex matters. He also teaches corporate finance at Stanford Law School. Dr. Zurek coheads Cornerstone Research's Valuation, M&A, and Bankruptcy practice.

[Alexander Vasaly](#) specializes in matters related to valuation, mergers and acquisitions, and private equity and venture capital. Mr. Vasaly coheads Cornerstone Research's real estate practice.

[Matt Lord](#) specializes in valuation, economic damages, data analytics, and cost accounting. Mr. Lord consults on M&A appraisal matters.

ENDNOTES

- ¹ Cayman Islands Companies Law (2023 Revision), Section 238(1).
- ² Cayman Islands Companies Law (2023 Revision), Section 238.
- ³ Cayman Islands Law Courts, Judges of the Grand Court, <https://judicial.ky/grand-court-judges/>.
- ⁴ Cayman Islands Companies Law (2023 Revision), Section 238(11) ("At the hearing of a petition, the Court shall determine the fair value of the shares of such dissenting members as it finds are involved, together with a fair rate of interest, if any, to be paid by the company upon the amount determined to be the fair value.>").
- ⁵ Judgment, *Shanda Games Ltd v Maso Capital Investments Ltd*, Judicial Committee of the Privy Council, January 27, 2020 ("Shanda Games Judgement (2020)"), ¶¶27, 50.
- ⁶ Reasons, *In Re Integra Group*, The Grand Court of the Cayman Islands, August 28, 2015 ("Integra Reasons (2015)"), ¶27; Judgment, *In Re Shanda Games Limited*, The Grand Court of the Cayman Islands, April 25, 2017 ("Shanda Games Judgment (2017)"), ¶¶82–83; Judgment, *In Re Qunar Cayman Islands Limited*, The Grand Court of the Cayman Islands, May 13, 2019 ("Qunar Judgment (2019)"), ¶¶1, 8; Judgment, *In Re Nord Anglia Education Inc*, The Grand Court of the Cayman Islands, March 17, 2020 ("Nord Anglia Judgment (2020)"), ¶56; Judgment, *In Re Trina Solar Limited*, The Grand Court of the Cayman Islands, September 23, 2020 ("Trina Solar Judgment (2020)"), ¶9; Reasons for Decision, *In Re FGL Holdings*, The Grand Court of the Cayman Islands, September 20, 2022 ("FGL Reasons for Decision (2022)"), ¶¶1, 23, 63; Judgment, *In Re Xingxuan Technology Limited*, The Grand Court of the Cayman Islands, September 9, 2024, ("Xingxuan Technology Judgment (2024)"), ¶2.
- ⁷ Shanda Games Judgement (2020), ¶38; FGL Reasons for Decision (2022), ¶268.
- ⁸ Qunar Judgment (2019), ¶39.
- ⁹ Shanda Games Judgement (2020), ¶42; Cayman Islands Law Courts, Court of Appeal, <https://judicial.ky/structure-of-the-courts/court-of-appeal/>.
- ¹⁰ See, Integra Reasons (2015); Shanda Games Judgment (2017); Judgment, *In Re Shanda Games Limited*, The Court of Appeal of the Cayman Islands, March 9, 2018; Shanda Games Judgement (2020); Qunar Judgment (2019); Nord Anglia Judgment (2020); Trina Solar Judgment (2020); FGL Reasons for Decision (2022); Xingxuan Technology Judgment (2024).
- ¹¹ The Adjusted Market Prices in Table 2 refer to hypothetical estimates of what the trading prices of the companies' shares, on a standalone basis, would have been on the valuation dates. In *Re Qunar Cayman Islands Limited* and *Re Trina Solar Limited*, and *Re FDL Holdings*, the company's expert calculated the hypothetical trading price on the valuation date by adjusting the observed trading price for the company's publicly traded shares immediately preceding the merger announcement for potential changes in the market price between the time of the merger announcement and the valuation date. See, Qunar Judgment (2019), ¶118; Trina Solar Judgment (2020), ¶115; FGL Reasons for Decision (2022), ¶161.
- ¹² FGL Reasons for Decision (2022), ¶572.
- ¹³ Integra Reasons (2015), ¶52. Integra's shares were listed on the London Stock Exchange, but Dissenter's expert concluded that Integra's shares exhibited a relative lack of liquidity by analyzing 1) the company's annual trading volume as a percentage of the "free float," 2) the number of days on which the shares were not traded in each year, 3) the median bid-ask spread over each year, and 4) the dollar volume of daily trading. See, Integra Reasons (2015), ¶¶2, 41.
- ¹⁴ Integra Reasons (2015), ¶53.
- ¹⁵ Shanda Games Judgment (2017), ¶83.
- ¹⁶ Shanda Games Judgment (2017), ¶83.
- ¹⁷ Qunar Judgment (2019), ¶176.
- ¹⁸ Qunar Judgment (2019), ¶¶174–175.
- ¹⁹ Qunar Judgment (2019), ¶176.
- ²⁰ Nord Anglia Judgment (2020), ¶235.
- ²¹ Nord Anglia Judgment (2020), ¶235.
- ²² Nord Anglia Judgment (2020), ¶¶235–236.
- ²³ Nord Anglia Judgment (2020), ¶120.
- ²⁴ Nord Anglia Judgment (2020), ¶235.
- ²⁵ Nord Anglia Judgment (2020), ¶134.
- ²⁶ Trina Solar Judgment (2020), ¶340.
- ²⁷ Trina Solar Judgment (2020), ¶340.
- ²⁸ Trina Solar Judgment (2020), ¶339.



- ²⁹ Trina Solar Judgment (2020), ¶¶339.
- ³⁰ Trina Solar Judgment (2020), ¶¶339.
- ³¹ Trina Solar Judgment (2020), ¶¶8.
- ³² Trina Solar Judgment (2020), ¶¶8.
- ³³ Trina Solar Judgment (2020), ¶¶8.
- ³⁴ Trina Solar Judgment (2020), ¶¶8.
- ³⁵ FGL Reasons for Decision (2022), ¶¶572.
- ³⁶ FGL Reasons for Decision (2022), ¶¶574.
- ³⁷ FGL Reasons for Decision (2022), ¶¶601.
- ³⁸ FGL Reasons for Decision (2022), ¶¶¶155, 178.
- ³⁹ Xingxuan Technology, Judgment (2024), ¶¶6.
- ⁴⁰ Reasons for Decision, *In Re Xingxuan Technology Limited*, The Grand Court of the Cayman Islands, January 9, 2024, ¶¶6.
- ⁴¹ Xingxuan Technology, Judgment (2024), ¶¶6.
- ⁴² Xingxuan Technology, Judgment (2024), ¶¶34.
- ⁴³ Xingxuan Technology, Judgment (2024), ¶¶57.
- ⁴⁴ Xingxuan Technology, Judgment (2024), ¶¶¶35, 59.
- ⁴⁵ Xingxuan Technology, Judgment (2024), ¶¶23.
- ⁴⁶ Xingxuan Technology, Judgment (2024), ¶¶9.

The views expressed herein are solely those of the authors, who are responsible for the content, and do not necessarily represent the views of Cornerstone Research.

© 2025 by Cornerstone Research, Inc. All rights reserved.