

## UPDATE

# Jersey court's power to order the winding up of a company on just and equitable grounds

Update prepared by Bruce Lincoln (Partner, Jersey) and Andrew Bridgeford (Consultant, Jersey)

---

In this update we look at a recent decision of the Jersey court in which it exercised its jurisdiction to order the winding up of a Jersey company which had been operating in the financial services industry on 'just and equitable' grounds under Article 55 of the Companies (Jersey) Law 1991.

---

The jurisdiction of the court to order the winding up of a Jersey company on 'just and equitable' grounds under Article 55 of the Companies (Jersey) Law 1991 (the **Companies Law**) substantially corresponds to the equivalent power of the English court under section 122(1)(g) of the Insolvency Act 1986.

The remedy is discretionary and approached flexibly by the Jersey courts. The recent case of *Lumiere Wealth Limited* concerned a company in the financial services sector under investigation by the Jersey Financial Services Commission, where there was a need for the winding up to be conducted by an independent liquidator appointed by, and accountable to, the court.

## Types of cases

Four broad categories of case can be identified where the Jersey courts have been willing to order the winding up of a company on just and equitable grounds. These are where:

1. there has been a loss of substratum, ie frustration of the purpose which the company was intended to fulfil;
2. there is a deadlock between the shareholders;
3. there is a desire to keep an insolvent company trading for the benefit of a company's clients and creditors, there being no exact equivalent in Jersey to a UK administration order; and
4. there is the need for an independent investigation into the company's affairs by a liquidator who is appointed by and accountable to the court.

The last type of case often involves a company in the financial services sector, and there is usually both a pressing need to protect the interests of the company's clients and investors and a wider public policy imperative for the winding up of financial services companies to be achieved cost-effectively and under the supervision of the court. The recent judgment in *Re Lumiere Wealth Limited* is an example of just such a case.

## Re Lumiere Wealth Limited

Lumiere Wealth Limited (**LWL**) was majority owned by the Providence Group. It was a regulated financial services company in Jersey, conducting investment advisory and general insurance mediation business. LWL recommended that its clients invest in a closely related Guernsey investment fund; employees of LWL also invested in another related fund. Ostensibly, the funds invested in entities operating factoring businesses in Brazil, which were themselves part of the Providence Group. It appeared, however, that only a small part of the funds was actually invested in the factoring businesses. The rest was diverted for use elsewhere in the Providence Group and other companies owned by an ultimate beneficial owner of the

group, Antonio Buzanelli. A similar diversion of funds appeared to have taken place in relation to monies placed with US investment funds in the same group.

Regulatory action had been taken in the US, placing the US companies and Mr Buzanelli under investigation. The Guernsey parent of Lumiere had been placed into insolvent liquidation and administration managers had been appointed over the funds and their manager.

The Jersey Financial Services Commission directed LWL not to offer investment advice in relation to the fund and commenced an investigation.

LWL was not insolvent but risked becoming insolvent to the extent that claims by investors exceeded its insurance cover of £5 million.

The directors sought the winding up of the company under the court's power to order a winding up under the 'just and equitable' jurisdiction. This was supported by the Jersey Financial Services Commission. As and when the company actually became insolvent there would have been a declaration by the court that the assets of the company were *en désastre* (an insolvency process in Jersey equivalent to compulsory liquidation). This, however, would likely have been a more expensive option: it would involve official fees being charged in the winding up (in the form of the Viscount's costs) as well as those of insolvency practitioners which the Viscount would likely have had to appoint to assist her conduct the process. The third option of a voluntary insolvent winding up (known as a creditors' winding up under the Companies Law) was possible but would not have directly involved any court supervision of the winding up, which in the circumstances was needed.

The court referred to the earlier case of *Representation of Maltese Holdings and Zollinger Investments* [2012] JRC 239 and noted that one set of circumstances where it was appropriate for the court to exercise this jurisdiction was where (a) there was a need to investigate the affairs of a company, (b) there was a need to protect investors and (c) it is in the best interests of stakeholders for the process to be overseen by a liquidator who is directly accountable to the court. All three circumstances were met. The court therefore ordered LWL to be wound up on the just and equitable grounds as sought by its directors.

The proposed liquidators, partners of Deloitte, drew to the court's attention a potential conflict of interest, given their position as liquidators or administrators of the fund and other entities in the Providence Group. The court accepted, however, Deloitte's submission that this was outweighed by the benefit to investors given that Deloitte had now acquired detailed knowledge of the group and the interests of the fund and LWL were aligned. Deloitte were to continuously monitor the position and report to the court if an actual conflict of interest should arise.

### **The flexible approach by the court**

This case thus illustrates the flexible approach that the Jersey courts have taken in relation to just and equitable winding-up and its willingness to adopt the best mechanism for the winding up of a company for the benefit of creditors, clients and the wider public interest. Where the wider public interest is engaged in an insolvency in the financial services sector, it can be important for the court to retain overall supervision. The just and equitable winding-up route facilitates that.

## Contacts

---

**Bruce Lincoln**  
Partner, Jersey  
+44 1534 676 461  
bruce.lincoln@mourant.com

**Andrew Bridgeford**  
Consultant, Jersey  
+44 1534 676 586  
andrew.bridgeford@mourant.com

---

This update is only intended to give a summary and general overview of the subject matter. It is not intended to be comprehensive and does not constitute, and should not be taken to be, legal advice. If you would like legal advice or further information on any issue raised by this update, please get in touch with one of your usual contacts. © 2018 MOURANT OZANNES ALL RIGHTS RESERVED

[Document Reference]