

UPDATE

## Another case study in pragmatism by the Jersey court in assisting liquidators in the conduct of the winding up of a Jersey company

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In a recent decision of the Royal Court of Jersey, Mourant Ozannes sought and obtained directions in the conduct of a summary winding up of a Jersey company enabling certain assets held by the company on behalf of unidentified third parties to be appointed to Her Majesty's Receiver General in order to allow the winding-up to be concluded.

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### Introduction

As part of a rationalisation of a large international banking group, a decision was taken to wind-up a particular company within that group (referred to in the judgment as **AMJE**), which had previously been used to provide discretionary wealth management services to its clients. AMJE was placed into a summary winding-up and joint liquidators (Andrew Isham and Andrew Wood of Deloitte, the **Joint Liquidators**) were appointed. However, there were a small number of equities held by AMJE whose beneficial owners it proved impossible to identify. So long as AMJE continued to hold these assets, it was not possible to conclude the winding-up.

Directions were sought from the Royal Court to allow the assets to be appointed to Her Majesty's Receiver General (**HMRG**) in order to facilitate an orderly winding-up and dissolution of AMJE.

### Background

AMJE was a Jersey company that had been registered with the Jersey Financial Services Commission (the **JFSC**) and authorised to conduct Fund Services Business and Investment Business. The decision was taken in 2016 that it should cease to trade, further to which it proceeded to contact its clients to obtain instructions regarding their portfolios. While the vast majority of clients were successfully contacted and their portfolios dealt with according to their instructions, for a small number of equities, notwithstanding various enquiries that were undertaken, AMJE was unable to identify the underlying owners (the underlying owners of these equities are referred to in the judgment as the **Unknown Clients**). In accordance with its terms of business, AMJE sold the relevant equities held on behalf of the Unknown Clients, realising cash proceeds of approximately £227,000 (these proceeds are referred to in the judgment as the **Cash Assets**).

### Winding up of AMJE and discussions with HMRG

Following their appointment, with assistance from Mourant Ozannes, the Joint Liquidators looked at potential mechanisms for dealing with the Cash Assets so that the winding-up could be concluded.

Various options were considered (there being no clear statutory mechanism for dealing with the situation or reported instance of the Jersey court addressing the particular circumstances facing AMJE) and it was ultimately decided that the most appropriate route appeared to be to seek to transfer the Cash Assets to be held by HMRG. The Joint Liquidators entered into discussions with HMRG who confirmed that he would be willing to accept such a transfer provided it was approved by the court.

As part of these discussions, a mechanism was agreed with HMRG to enable any of the Unknown Clients to seek to reclaim any of the Cash Assets to which they could show they were entitled during a 10 year period following the dissolution of AMJE (subject to passing the necessary KYC and AML checks).

This proposed arrangement also received approval from the JFSC (who had been consulted by AMJE as part of its cessation of business plan, ultimately leading to the agreed revocation of AMJE's licence). AMJE also liaised with the Comptroller of Income Tax, who did not raise any objection.

### **Article 186A of the Law**

In order to obtain the court order required by HMRG as a pre-condition to accepting the Cash Assets, as well as providing appropriate protection to AMJE/the Joint Liquidators should any of the Unknown Clients seek in due course to complain about what had been done with their assets, AMJE, acting by the Joint Liquidators, applied for directions from the Royal Court pursuant to Article 186A of the Companies (Jersey) Law 1991 (the **Law**) authorising the appointment of the Cash Assets to HMRG.

Under Article 186A, the court has wide powers to determine questions referred to it by a relevant party in relation to any matter arising in the course of a winding-up for which that party is responsible.

The wording of Article 186A of the Law suggests that, in a summary winding up (as opposed to a creditors' winding-up), the appropriate applicant is the company, rather than its liquidators. Hence the application was made by AMJE acting by the Joint Liquidators.

### **Decision**

The Royal Court deemed it appropriate to exercise its powers under Article 186A of the Law and authorised the appointment of the Cash Assets to HMRG for the following reasons<sup>1</sup>:

The Cash Assets did not belong to AMJE, but were held on behalf of the Unknown Clients;

AMJE had ceased trading and liquidated all assets leaving it as a solvent but dormant company which was serving no purpose. It was the responsibility of the Joint Liquidators to wind-up the company without unnecessary delay or expense which was not possible while it held the Cash Assets of the Unknown Clients;

AMJE had made appropriate efforts to identify the Unknown Clients and had considered additional options, but they were ultimately ruled out;

The mechanism agreed with HMRG allowed the Unknown Clients to recover their assets for up to 10 years following the dissolution of AMJE;

If the court were to refuse approval, it would leave AMJE and the Joint Liquidators potentially exposed to claims by the Unknown Clients for disposing of the Cash Assets; and

Alternative options for dealing with the Cash Assets had been considered, but they had been deemed unsuitable.

### **Conclusion**

The judgment is noteworthy because it shows the flexibility of the application of Article 186A of the Law and the willingness of the Jersey court to adopt a pragmatic approach to practical difficulties faced by, and to lend assistance to, liquidators in achieving an orderly winding-up of a Jersey company.

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<sup>1</sup> The full judgment is available via the Jersey Legal Information Board website ([www.jerseylaw.je](http://www.jerseylaw.je)), with citation [2019] JRC 148

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