

UPDATE

Universality and comity: Royal Court of Jersey and Lydian International

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As a major offshore financial centre, the Royal Court is often faced with cross-border insolvency matters. In the [Representation of Lydian International Limited \[2020\] JRC 207](#), the Royal Court granted assistance to the Ontario Superior Court of Justice by making orders in Jersey to implement a restructuring taking place under the laws of Canada, including the winding up of Lydian International Limited on a just and equitable basis.

Lydian International, formerly listed on the Toronto Stock Exchange, was the holding company of the Lydian Group, a group of companies managed and directed out of Canada, whose primary business interest was the development of a gold mine in Armenia.

The Lydian Group was unable to complete construction of the mine due to, among other things, purported unlawful actions and inactions of the government of Armenia. This caused the Lydian Group catastrophic losses which culminated in Lydian International and certain other group entities applying for insolvency relief in Canada under the Companies' Creditors Arrangement Act (CCAA).

Following failure of restructuring efforts a "plan of arrangement", with the purpose of restructuring the Lydian Group, was sanctioned by the Canadian Court under the CCAA and the Business Corporations Act (British Columbia). The Canadian Court also issued a letter of request asking the Royal Court to consider Lydian International's application to be wound up in Jersey pursuant to the plan and on just and equitable grounds.

The Royal Court has jurisdiction to wind up companies where it is "just and equitable" to do so under Article 155 of the Companies (Jersey) Law 1991. A key advantage of a just and equitable winding up process is that it allows flexibility for the Court to supervise the manner in which the winding up is conducted. The Royal Court accepted that the winding up of Lydian International was a necessary and final part of the plan's execution and further acknowledged that the substratum of Lydian International had gone and there was no purpose in keeping the company going. Joint liquidators from Deloitte were appointed to oversee the liquidation.

This case shows that the Royal Court continues to apply the principle of universalism, which is that national courts should strive to administer the estate of insolvent companies in the spirit of international comity, and that such insolvencies should be managed by a single officeholder as a single estate and that this should be recognised globally. The case also illustrates the application of the principle of comity, which is that the Royal Court will assist foreign courts in insolvency matters when it considers it appropriate to do so.

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