

UPDATE

# Court of Appeal confirms jurisdiction to hear appeals of Grand Court dissolution orders

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A recent decision of the Cayman Islands Court of Appeal has confirmed its jurisdiction to hear an appeal of a decision of the Grand Court made pursuant to section 152(1) of the Companies Act (2021) Revision to dissolve a Company following its official liquidation.

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## Background

The Joint Official Liquidators (the **JOLs**) of Lung Ming Mining Co Ltd (the **Company**), sought an order of the Grand Court for the dissolution of the Company pursuant to section 152(1) Companies Act (2018 Revision) (the **Companies Act**),<sup>1</sup> and Order 22 under the Companies Winding Up Rules 2018, (the **Application**). The Application was made by the JOLs on the grounds that there were no identifiable assets that could be realised for the benefit of the creditors of the Company. The Company's total indebtedness was approximately \$2.21 billion.

Section 152(1) of the Companies Act provides:

*"When the affairs of the company have been completely wound up the Court shall make an order that the company be dissolved from the date of that order or such other date that the Court thinks fit, and the company shall be dissolved accordingly."*

A controlling shareholder, who was also a former director of the Company, Mr. Xiaoming Li (**Mr. Li**), opposed the Application and produced evidence to the Grand Court purportedly showing that a share transfer to the Company provided it with an asset with realisable value. The purported share transfer occurred after the appointment of the JOLs and only a few weeks before the first dissolution hearing date. Richards J, presiding over the hearing, was not convinced that the evidence produced by Mr Li showed that the Company did in fact have any asset of any realisable value.<sup>2</sup> Richards J granted the Application and an order was made pursuant to section 152 (1) of the Companies Act dissolving the Company (the **Dissolution Order**).

## The Court of Appeal's Jurisdiction to hear an appeal of a dissolution order

Mr Li sought leave to appeal the Dissolution Order in the Court of Appeal. The JOLs opposed the appeal on the basis that the Court of Appeal lacked jurisdiction to hear the appeal. The JOLs raised two principle contentions in this regard:

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<sup>1</sup> The current Revision of the Companies Act is the 2021 Revision. The Grand Court was asked to consider the 2018 Revision which was the relevant Act at the time the Dissolution Order was made.

<sup>2</sup> *In the matter of Lung Ming Mining Co Ltd* (unreported, 27 May 2020) (FSD 127 of 2019) at para 137.

## No restoration after dissolution

The JOLs' essential argument was that once a company is dissolved there is no basis for its restoration and therefore, a dissolution order made by the Grand Court had the character of being a 'final decision'. Such decisions the JOLs contended, are not appealable under the Court of Appeal Act (2011 Revision) (**CA Act**).

The JOLs' relied on the decision of the Chief Justice in *Schramm and Hiscox Syndicate 33 v Financial Secretary*, (2004-05) CILR 39 (**Schramm**), later affirmed on appeal by the Court of Appeal.<sup>3</sup> In *Schramm*, the Chief Justice held that a company which had been dissolved under section 146 of the Companies Act, after having been struck off the Register by the Registrar at the conclusion of a voluntary liquidation, could not be brought back onto the Register.

Relying on that decision, the JOLs argued that because there could be no restoration of a company subsequent to a dissolution order, no appeal was available to the Court of Appeal pursuant to section 6(c) of the CA Act. Section 6(c) provides that:

*"No appeal shall lie...from any decision of the Grand Court in respect of which it is provided by any law in force in the Islands that such decision is to be final".*

In delivering the decision for the Court of Appeal, Rix JA found that the question of whether the Court of Appeal had jurisdiction to hear the appeal of the Dissolution Order turned on whether there is any law in force which provided that a "*decision of dissolution under section 152(1) of the Companies Law [Act] is said to be final.*"<sup>4</sup>

Rix JA found that section 152(1) of the Companies Act did not express in any terms that a dissolution order made by the Grand Court was a final decision and nor did any other provision of the Companies Act, nor any rules of the court,<sup>5</sup> and therefore the Court of Appeal had jurisdiction to hear the appeal of the Dissolution Order.

### *Functi officio*

The JOLs also raised a separate novel argument that, once the Dissolution Order had been made, they were *functi officio* ie the conduct and decisions taken by the JOLs in the course of the liquidation were final and binding and could not subsequently be revoked. Rix JA rejected that submission holding that, "*if an appeal is permissible then whether or not they are functi officio must be subject to any decision on appeal.*"<sup>6</sup>

## Summary

This is the first time the Court of Appeal has been asked to consider whether it has jurisdiction to hear an appeal against an order of the Grand Court dissolving a Company pursuant to section 152(1) of the Companies Act.

The decision itself is a preliminary ruling on jurisdiction only and the Appellant will have to jump another hurdle before the appeal itself is heard, namely obtaining leave to appeal the Dissolution Order. One consideration in particular, which may be difficult for the Appellant to surmount, is that the outcome of any appeal would likely be hollow. A successful appeal would restore the Company to the position it was in had the Dissolution Order not been made, including reinstating the JOLs' functional jurisdiction to carry out the liquidation of the Company under the terms of the Winding-Up Order. The very reason why the JOLs sought the Dissolution Order in the first place was because they had determined that the Company had no assets with a realisable value and so it was appropriate to dissolve the Company. What then might change if their functional jurisdiction was reinstated?

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<sup>3</sup> 2004-05 CILR 104.

<sup>4</sup> At para 15.

<sup>5</sup> At para 16.

<sup>6</sup> At para 21.

# Contacts

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