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Removed director: Quorum decorum means court won't restore him

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In the recent case of **Harlequin Chemicals Ltd et al v Wener Urban and Anthony Saville et al** the Royal Court of Guernsey considered the Court's ability to retrospectively change a company's share register.

Specifically, the judgment considered whether a resolution to remove a director of the company, claimed to have been passed properly, was in fact valid.

The matter turned on whether the meeting at which the resolution was supposedly passed was quorate or not.

The quorum requirements under the company's articles were straightforward: a meeting of the shareholders required two members of the company to be present, together holding **at least 5%** of the company's shares.

Two persons did in fact attend that meeting – one a shareholder in his personal capacity, the other on behalf of a corporate shareholder - and the shareholding percentage requirement was met. On the face of it the meeting was quorate.

However, it subsequently became apparent that, as a result of certain events (including a forged transfer transferring its shares away), the corporate shareholder did not hold any shares in the company at the time of the meeting and that it was not recorded on the company's register of members. Consequently the quorum requirement that two members of the company be present was not met and the validity of the resolution passed at that meeting was in question.

The Court was therefore asked in this instance to recognise and exercise its power to rectify the company's share register as from an earlier date – effectively to retroactively include the corporate shareholder on the share register, with the result that the meeting would be considered quorate and the resolution valid.

The Court accepted that it had such a power - noting similarities with England and Jersey in that respect - but recognised that the power was entirely discretionary and dependant upon certain important factors.

Considering authorities from those jurisdictions, the Court stated that the proper approach in Guernsey was that:

*"...the court can order retrospective rectification of the Company's share register **in order to do justice to the applicants**, and will do so, if and **insofar as it can be satisfied that the rights of any third parties will not thereby be unfairly prejudiced**, or, put another way, that doing so will not work any real injustice to any such persons."*

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To that end, the Court confirmed that it was prepared to order rectification of the share register of the company but that it shall not adversely affect the rights of any person who was not a party to the proceedings without further order.

Directors and shareholders should be alive to these issues, particularly in the context of wider commercial disagreements featuring disputes as to meetings, resolutions and corporate decision making.

To discuss this decision further contact Gareth Bell, David O'Hanlon or Tom Cutts-Watson.

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