COLLAS CRILL

Case update: Winding up a Jersey company on just and equitable grounds

MAY 2024

The Jersey Court of Appeal (the **CoA**) has recently handed down a judgment in Aston Martin Lagonda Ltd v Ferguson & Ors [2024] JCA 071 which explores and develops a number of useful principles relating to winding up a company on 'just and equitable' (**J&E**) grounds pursuant to article 155 of the Companies (Jersey) Law 1991 (as amended) (the **Companies Law**).

The just and equitable regime in Jersey

A winding up on J&E grounds is a procedure that is used to end the life of a company when, for some reason, other procedures to wind up or liquidate the company cannot be used, or are not appropriate, in the circumstances.

Please click here for our practical guide on placing a Jersey company into a J&E winding up.

The provisions in the Companies Law relating to winding up on J&E grounds are based on section 122 of the UK Insolvency Act 1986. Consequently, the Royal Court of Jersey (the **Jersey Court**) has said that it will have regard to English cases when interpreting the meaning of the words 'just and equitable'.

Takeaway points from *Aston Martin*

- **A flexible interpretation of J&E:** What is J&E in the context of winding up is to be given flexible meaning. The CoA noted the Jersey Court's earlier position that it would be wrong to attempt to prescribe the circumstances in which it would be J&E to wind a company up. That said, there remain conventional and well established categories, such as a loss of substratum, deadlock, justifiable loss of confidence due to mismanagement, and a breakdown in trust and confidence.
- **Alternative remedies:** A winding up on J&E grounds should only be granted as a last resort. Whilst it is for the applicant to show that it is J&E to wind up the company, the CoA held that it was for the convened party, opposing the winding up, to prove that the applicant has unreasonably failed to pursue an available alternative remedy.

Aston Martin

AMWS Limited (**AMWS**) was a joint venture company incorporated for the purpose of facilitating business for Aston Martin. AMWS had two shareholders: Aston Martin (**AML**) and Bespoke Limited (**Bespoke**) (together, the

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Investors) who each held a 50% share. Part of the AMWS structure was the Aston Martin Heritage business owned by AMW Limited (**AMW)**, a wholly-owned subsidiary of AMWS.

AMWS was formed to hold the shares of AMW for the purposes of acting as a "buffer" between the Investors and AMW. Issues began when the relationship between the Investors broke down and AMWS was not seen to be fulfilling its role. Due to the ongoing dispute between the Investors, the directors of AMWS made an application for a winding up order on J&E grounds, alleging that AMWS was deadlocked as the Investors were unable to reach agreement, each having lost trust and confidence in the other. Furthermore, that the directors were unable to make any decisions in respect of the future of AMW, to the financial detriment of AMWS. AML opposed the application.

The Jersey Court granted the application and AML appealed to the CoA, who dismissed the appeal on the following grounds:

Deadlock

Whether there is a paralysing deadlock between a company's shareholders is a question which predominantly turns on the facts of each case. There is no precise definition of the term for the purpose of winding up on J&E grounds. Here, the issue was whether there was a functional deadlock in AMWS, on the basis that the Investors were unable to work together and the directors were unable to resolve the dispute. As such, AMWS could no longer function in its role as a buffer. This inability to function at board or shareholder level meant that AMWS was not able to meet its main object and the principal reason for its incorporation. If so, a winding up would be appropriate.

The Jersey Court held that there was no deadlock in relation to the management of AMWS at director level and that the directors were "perfectly capable of making decisions". In this sense, the deadlock was seen as more of an "impasse", as the directors were unable to resolve the dispute between the Investors. It observed however that, unless this dispute was resolved, there was a risk that AMW would be struck off the register or its value significantly diminished.

The CoA held that the term "*impasse*" amounted to a "functional deadlock" of a "paralysing kind". The CoA further noted that business matters connected with AMW might be very relevant to whether there is a deadlock in AMWS itself.

Loss of substratum

If a company loses its substratum, it means that the purpose(s) for which it was initially incorporated has been abandoned. This abandonment of a company's main objects would be grounds for it being wound up. The Jersey Court noted that the impasse it identified could be characterised as a loss of substratum, as AMWS could not function as a dispute resolution mechanism, which was the purpose for which it was formed.

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The CoA agreed and held that the deadlock and loss of substratum were separate grounds for winding up AMWS, independent of each other.

Loss of trust and confidence

It was argued before the Jersey Court that a breakdown in trust and confidence may justify a winding up of a company, but this could only be ordered if AMWS was a corporate quasi-partnership. The Jersey Court held that there had been a breakdown of trust and confidence and, despite the corporate structure, the dispute had the hallmarks of a breakdown in relationship between partners in a joint venture partnership.

However, the CoA held that, there must be "something more", such as an association formed or continued on the basis of a personal relationship, involving mutual trust and confidence, before it could subject the shareholders' legal rights to equitable considerations. It held that there were no allegations or evidence to support the finding of a quasi-partnership.

Conclusion

This is an area where there is a growing body of Jersey case law, and the Jersey Court has been previously prepared to give the words "just and equitable" a wider interpretation than the English courts. This decision reinforces the flexible approach in Jersey and provides helpful guidance on the considerations given to winding up a company on J&E grounds.

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