

Royal Court orders “just and equitable” winding up of BetIndex

In a recent judgment, *In the Matter of BetIndex Limited* [2021] JRC 309, the Royal Court has ordered that BetIndex Limited (“**BetIndex**”) be placed into a “just and equitable” winding up under the terms of Article 155 of the Companies (Jersey) Law 1991 (the “**Law**”). The case is of interest in that the Royal Court had previously placed BetIndex into an English-law administration. When that process failed, the Court determined that an Article 155 “just and equitable” winding up order was better suited to maximise the returns for creditors, rather than declaring the company en désastre.

BetIndex, a Jersey-incorporated company, previously operated an online gambling platform where customers (known as traders) could buy ‘shares’ in professional footballers which would fluctuate in value depending on (1) trading activity in relation to that player and (2) their performance on and off the pitch as tracked by the platform. BetIndex’s business model relied on high prices and trading volumes of shares in order to generate commissions. The impact of Covid-19, when many professional football matches were cancelled, led to a reduced demand for shares, falling share prices, reduced customer confidence and panic selling. This culminated in significant negative press coverage when BetIndex’s UK and Jersey gambling licences were revoked in March 2020.

At that stage, BetIndex’s directors believed the company could be rescued as a going concern if it was placed into an English-law administration rather than a Jersey désastre or winding-up (both of which conclude with the automatic dissolution of the company). In March 2021, the Royal Court issued a letter of request to the English High Court requesting that BetIndex be placed into administration. An English administration then commenced with two insolvency practitioners appointed with their appointment recognised in Jersey. That process ultimately failed and the English Court ordered that the administration be discharged subject to the Royal Court agreeing to either place BetIndex into a just and equitable winding up or declaring it en désastre.

The administrators therefore applied to the Royal Court for an order that BetIndex be placed into a just and equitable winding up with those individuals appointed as joint liquidators. This application was supported by a number of stakeholders, including representatives for the customers, other creditors and a member of the creditor’s committee. The application was however resisted by BetIndex’s parent company (itself also in administration) on grounds that:

1. a creditors’ voluntary liquidation, whether in the UK or Jersey, was preferable on the basis that the creditors would be able to appoint liquidators of their choice and have a greater voice in the course of that process; and
2. the appointment of the former administrators as liquidators was in any event inappropriate on the basis that their previous conduct in relation to the administration of BetIndex was

BRIEFING NOTE

potentially actionable meaning that those individuals would be operating under an irreconcilable conflict of interest.

The Court has previously held in *Poundworld (Jersey) Ltd* [2009] JRC 042 that it should be cautious before ordering a just and equitable winding up, the starting point being that insolvent companies should be liquidated through a creditors' winding up with the involvement of creditors. A just and equitable winding up under Article 155 of the Law should therefore only be ordered where the Court is satisfied that there are special circumstances justifying the exercise of that jurisdiction in the best interests of creditors. Despite that opposition, the Court held that a just and equitable winding up was appropriate in the circumstances of this case and that the former administrators should be appointed as the joint liquidators. The Court's reasoning was that:

- a. BetIndex's insolvency was a high-profile matter affecting thousands of customers and could adversely impact the reputation of Jersey. It was therefore in the best interests of the public for the Court to supervise its winding up;
- b. There were likely to be serious issues relating to the adjudication of creditors' claims which would likely need to be resolved by the Court. It therefore made sense for the Court to be involved from the outset;
- c. Having initiated the administration process in the first instance, the Court was already involved with the matter. Equally, a just and equitable winding up provided a flexible approach where the Court could make whatever orders it deemed appropriate;
- d. Furthermore, a just and equitable winding up was to be preferred to a *désastre* procedure as that would require use of public funds via the Viscount's office; and
- e. The administrators had accumulated significant expertise in relation to BetIndex's affairs and appointing other individuals and advisers would incur significant costs needlessly. Given their professional backgrounds, the Court was confident that they would deal with any conflict of interest arising in accordance with their professional duties.

The case is a helpful demonstration of the Jersey Court's willingness to adopt a flexible approach to ensure the best possible outcome for creditors.

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