

Privy Council confirms just and equitable winding up of Cayman Islands exempted limited partnerships

Briefing Summary: In *Aquapoint LP (in Official Liquidation) v Xiaohu Fan* [2025] UKPC 56, the Privy Council confirmed that a Cayman Islands exempted limited partnership ("ELP") can be wound up on grounds that it is just and equitable to do so. This decision establishes that the well-recognised principles applicable to the winding up of companies are equally relevant to ELPs.

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Importantly, the Privy Council emphasised that the inquiry is flexible and fact-specific, and there is no requirement to establish that the ELP was founded a quasi-partnership for equitable considerations to be engaged. This clarification provides greater certainty for investors and stakeholders in an ELP.

Background facts

The petitioner was a research scientist who worked in the field of cell therapy, immunology and cell biology as an employee of the Genscript group. Genscript formed Nanjing Legend Biotechnology Co Ltd ("Legend Nanjing") as the corporate vehicle for a new project to develop novel cell therapies for the treatment of cancer and other purposes. In 2016, Legend Nanjing and the petitioner entered into an agreement, pursuant to which Legan Nanjing agreed to grant him a 10% shareholding.

Subsequently, a Cayman Islands registered exempted limited company, Legend Biotech Corporation ("Legend Cayman") was established as the intended listing vehicle. The petitioner was persuaded to agree to terminate the 2016 agreement; he was assured that his 10% shareholding in Legend Nanjing would be "rolled over" into the arrangement involving a Cayman ELP. Aquapoint LP ("Aquapoint") was accordingly established in 2017 to hold approximately 15% of the shares in Legend Cayman and the petitioner became a limited partner holding 65.96% interest in Aquapoint.

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Following the listing of Legend Cayman on the NASDAQ exchange in 2020, the petitioner sought to withdraw his 10% indirect shareholding in Legend Cayman from Aquapoint. However, Genscript, acting in its capacity as general partner of Aquapoint, used its power under the Limited Partnership Agreement (the "LPA") to prevent him from withdrawing.

As a result, the petitioner initiated proceedings in the Cayman Islands seeking to wind up Aquapoint on just and equitable grounds. The Cayman Grand Court granted the petition and ordered Aquapoint to be wound up. It was held that the petitioner had a legitimate expectation and reasonable understanding that six months after the Legend Cayman IPO he would be entitled to have access to 10% of the shares in Legend Cayman.

An appeal against this decision was dismissed by the Cayman Islands Court of Appeal. Aquapoint then appealed to the Privy Council.

Decision of the Privy Council

The following issues were considered by the Privy Council.

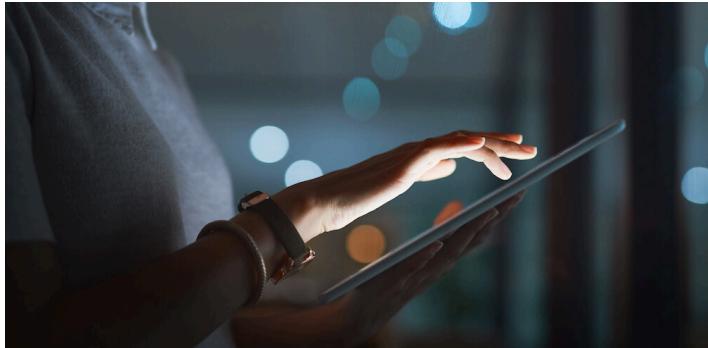
What are the principles applicable in a petition to wind up an ELP? The Privy Council accepted that the principles applicable to the jurisdiction to wind up a company on the just and equitable ground would also be applicable in this instance. With reference to the English Court of Appeal authority *Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360, the Privy Council considered that the court's task is to conclude whether, on the facts and circumstances of the particular case, there exist "*considerations...of a personal character arising between one individual and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way*" (*Wesborune Galleries* at p. 379 per Lord Wilberforce).

When the Privy Council turned to consider the relationship between the parties:

- Aquapoint submitted that such relationship was regulated by contract, and that any complaints made by the petitioner should be adjudicated in accordance with the law of contract instead of through the just and equitable winding up jurisdiction. Accordingly, Aquapoint argued that the petitioner had no grounds to complain, because Genscript was simply exercising its power, as a general partner under the partnership agreement, to refuse its consent to the petitioner's request.
- Interestingly, it was held that the entire agreement clause in the LPA does not oust the jurisdiction of the court to make a winding up order on the just and equitable ground if the circumstances of the case are such as to bring equitable considerations into play. It was held that contractual provisions of this sort are highly relevant to the issue of whether those considerations do come into play, but they are not decisive.

There was also a debate as to whether it was necessary to find that the relationship between the parties was in the nature of a quasi-partnership before the equitable considerations are brought into play. The Privy Council held that a finding of a "quasi-partnership" is an example, not a definition, of the circumstances in which equitable considerations may come into play.

The Privy Council accordingly dismissed the appeal.



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