



Important decision for directors of companies in “soft touch” provisional liquidation

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The recent English Judgment of *System Building Services Group Limited*¹ has potentially important implications for the directors of offshore companies in “soft touch” provisional liquidation, suggesting that their duties under the Companies Act 1981 may persist notwithstanding the appointment of an office holder to support and facilitate their restructuring efforts.

The English Court has held that the general duties of directors of an English company survive the company’s placement into administration and creditors’ voluntary liquidation. Given the underlying similarities between these English corporate rescue mechanisms and the offshore “soft touch” provisional liquidation regime, an offshore court may consider the reasoning in *System Building Services Group* as persuasive when determining the scope and extent of the duties of directors of a company in “soft touch” provisional liquidation.

Systems Building Services Group Limited (**Company**) was placed into administration under the UK Companies Act 2006 (**UK Companies Act**). The administration was converted into a creditors’ voluntary liquidation in July 2013 and the Company was subsequently dissolved. However, the company was restored by a different liquidator after dissolution for the purpose of pursuing several claims against a director of the Company. The liquidator alleged that a director of the

Company had breached his statutory duties as a director of the Company under the UK Companies Act during the course of the administration.

Arguments on behalf of the director that “... once a company enters into administration or CVL, the ‘general duties’ of a director under [the UK Companies Act] only survive in respect of any exercise by that director of powers qua director, preserved by or permitted in accordance with the [UK Insolvency Act]”² were roundly rejected by the court which found, the general duties owed by a director to a company in administration or insolvency survive administration and creditor’s voluntary liquidation intact concluding that such duties, “...run parallel to the duties owed by an administrator or liquidator appointed in respect of the company.”³

In light of this decision, directors of companies in or contemplating “soft touch” provisional liquidation should carefully consider the extent to which their general duties to creditors are at issue and in particular the form of order appointing the provisional liquidators to ensure the scope of their duties in implementing the anticipated restructuring are clearly defined.

¹ (1) *Stephen John Hunt (As Liquidator of Systems Building Services Group Limited)* (2) *System Building Services Group Limited – In Liquidation (Acting by its Liquidator) and (1) Mr Brian Michie; and (2) System Building Services Limited* [2020] EWHC 54 (Ch)

² *Ibid* at [46]

³ *Ibid* at [60]

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