

Cayman staycation: another way to end official liquidations

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The Cayman Islands team obtained what may be the first instance of a permanent stay of an official liquidation of a Cayman Islands company.

Few would disagree that when a company is placed in official liquidation, that is the penultimate step before the company's death. Official liquidators will realise the company's assets and distribute them to stakeholders, before the company's eventual, but inevitable dissolution.

But does official liquidation have to be the end of the company? Can anything be done to halt the march towards dissolution?

Carey Olsen recently acted for the Joint Official Liquidators in a case which appears to be the first instance of a permanent stay of a Cayman Islands liquidation, given in order to permit the company to return to trading. In *World Properties Ltd* (28 March 2024, FSD 49 of 2018 (IKJ)), Justice Kawaley granted orders permanently staying a supervision order granted by him on 9 May 2018.

The power to stay a liquidation arises from statute; section 111(1) of the Companies Act. This provision reflects an equivalent in commonwealth statutes, where permanent stays have been more regularly ordered, though still remain rare. The same provision is also often utilised for stays pending appeal, but given those stays are temporary, the matters the court will take into account are quite different.

Judicial comment on a permanent stay makes for an entertaining read; judges have variously described a permanent stay of liquidation as "to say the least ... somewhat paradoxical" and "a contradiction in terms". The effect of a

stay, if granted, is that winding up proceedings are indefinitely stayed, and the process and activity of winding up is stayed, but any steps taken prior to the stay remain valid. While the statute provides that a court will grant a stay when provided evidence that the proceedings "ought" to be stayed, it is well established that the court will take following matters into account:

- Whether creditors have had their interests settled, both present and future debts. Notably however, there is no absolute rule that a winding up cannot be stayed unless all present debt is discharged.
- The position of the joint official liquidators. It is essential that any outstanding fees of the liquidators and expenses of the liquidation be accounted for prior to the granting of a stay.
- Shareholders, who must agree to the stay or otherwise be given the opportunity to receive that they might have if the liquidation was taken to its conclusion.
- The public interest. The court will want to understand why the company was placed into liquidation in the first place, and if it will return to trading under the same management as those who led it into liquidation. The court will obviously be reluctant to resurrect a badly managed company.

In *World Properties*, the Company was established as a holding vehicle for investments by the patriarch of the family. Upon his death, his children fell into two camps, who disagreed over the way in which investments should be managed. The Company was placed into official liquidation. After various skirmishes, a final settlement was reached. Where the Company was solvent, and all stakeholders supported a stay of liquidation (which was a condition of settlement), Justice Kawaley concluded that the stay was in the best interests of the Company and contributories.

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While the facts in this case were as straightforward as they might be, already Carey Olsen has seen further queries about permanent stays, and it will certainly be interesting if this becomes a more popular remedy in the Cayman Islands.



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