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Insights

UK CORPORATE BRIEFING MAY 2025

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SUMMARY

Welcome to the Corporate Briefing, where we review the latest developments in UK corporate law that you need to know about. In this month's issue we discuss:

Court considers requirement for deed of adherence under articles of association

In this case, the court considered the requirement – in a set of articles of association – that a deed of adherence be executed as a condition of the directors' approval of a share transfer. The buyer had executed the deed provided – but one of the other shareholders hadn't.

Court of Appeal considers meaning of leaver provisions

In the case, the court considered the meaning of "continue in that capacity" in some leaver provisions – which affected when a transfer notice was served and, in turn, the price payable for shares.

COURT CONSIDERS REQUIREMENT FOR DEED OF ADHERENCE UNDER ARTICLES OF ASSOCIATION

Jusan Technologies Ltd v Uconinvest LLC [2025] EWHC 704

This case is just one of a number of preliminary hearings in a complex company dispute. The company in question, Jusan Technologies Limited, owns very substantial assets, primarily in Kazakhstan. One of its shareholders, Uconinvest LLC – a company owned by Mr Orybayev, the former Deputy Prime Minister of Kazakhstan – has made serious allegations against the company and has brought a claim for unfair prejudice (which has yet to be heard). This case relates to the company's application to remove that shareholder from its register of members: it had been entered on the register having acquired shares from the company, which had been held in treasury having been previously sold back to the company by Mr Orybayev himself (for reasons that are unclear).

The company's articles provide that the directors are not to register a transfer to any new shareholder unless it delivers to the company "a deed agreeing to be bound by the terms of any shareholders' agreement… in any form as the directors may reasonably require". The directors had provided a deed that had to be executed by all the other parties to the shareholders' agreement – as that is what the shareholders agreement required. The shareholder executed it, but one of the existing shareholders didn't – which meant that the deed was ineffective.

In defending the company's claim for its removal from the register, the shareholder argued that, by signing the deed that had been provided, it had done all that was required of it. However, the judge held that the purpose of the article was to ensure that any new party became bound by the shareholders' agreement, that that purpose would be defeated if the shareholder were able to deliver a deed that was invalid and still be registered as a member, and so the requirements of the article had not been met and the directors didn't have the power to register the shareholder as a member.

The question, then, was whether the company could rely on the directors' lack of power as grounds to have the shareholder removed from the register. The judge held that it couldn't, because the shareholder could rely on s40 Companies Act 2006: it provides that "in favour of a person dealing with a company in good faith, the power of the directors to bind the company, or authorise others to do so, is deemed to be free of any limitation under the company's constitution" and that, for that purpose, "a person 'deals with' a company if he is a party to a transaction or other act to which the company is a party". The company had argued that s40 didn't apply – on the grounds that a shareholder wasn't included within the meaning of 'person' for the purposes of the provision (because the EU Directive which the provision was amended to give effect to had referred to 'third parties'), and/or that the writing up of the register was not a transaction or other act to which the shareholder was a party. But the judge held that a shareholder could rely on s40 (which could be inferred from the fact that there were special provisions that applied to directors, but none for shareholders) and that the writing up of the register was not in this case a discrete act (which it would have been if the shareholder had acquired shares from another shareholder) – but was part of the acquisition of the treasury shares from the company. Accordingly, the company's claim for rectification – i.e. to remove the shareholder from the register - was dismissed.

Parties will want to learn the lessons of this case and: (1) make sure that the requirements of transfer provisions in the articles are clear; and (2) that the requirement for a deed of adherence to be executed doesn't of itself effectively give existing shareholders a right of veto over future shareholders (although share issues and/or transfers may of course be made expressly subject to approval/conditions – and in this case whether or not the existing shareholder who hadn't executed the deed of adherence could have been compelled to do so wasn't addressed).

COURT OF APPEAL CONSIDERS MEANING OF LEAVER PROVISIONS

Syspal Capital Ltd v Truman [2025] EWCA Civ 469

The Court of Appeal has considered the meaning of “continue in that capacity” in leaver provisions in a company’s articles of association. The articles provided that “If any Employee Member shall cease for any reason….to be employed as an employee, director or consultant of a Group Company (and does not continue in that capacity in relation to any Group Company) then a Transfer Notice shall be deemed to have been served….”. The case turned on whether “continue in that capacity” referred to continuing in the same capacity or continuing in any of those capacities.

The Court of Appeal upheld the High Court’s decision that it referred to continuing in any of those capacities: that made more commercial sense – and the alternative gave rise to permutations that it was improbable that the parties could have intended (e.g. a transfer notice being deemed served when a person ceased to be engaged as an employee but continued as a consultant or vice versa). However, each case turns on its own facts, and the main lesson here is simply to ensure that the drafting is clear.

In this case, for Mr Truman and Syspal Capital Ltd (“SCL”), much turned on the ruling. They owned, respectively, 24% and 76% of Syspal Holdings Limited (“SHL”). Mr Truman had been dismissed as an employee of SCL in October 2022, removed as a director of SCL in November 2022 and then retired as a director of SHL in May 2023. SCL had argued that he was deemed to have served a transfer notice when he ceased to be an employee of SCL – because after that he did not continue as an employee in relation to any Group Company. If that had been right, he would only have been entitled to “Market Value” for his shares – which would include a discount to reflect his minority holding. But Mr Truman successfully argued that the trigger was when he was no longer an employee, director or consultant of any Group Company. And, because that happened when he retired at 65, he was entitled to “Fair Value” – which would not be discounted to reflect his minority holding.

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