<u>CICA upholds decision to wind up AquaPoint L.P. on just and equitable grounds</u>

The Cayman Islands Court of Appeal has dismissed an appeal by the general partner of Aquapoint L.P. and upheld the decision of Justice Doyle to wind up the Partnership on just and equitable grounds. TTA's advisory in respect of the first instance decision can be found here. The CICA judgment means that Martin Trott of R&H Restructuring and Terry Kan of Shinewing can continue their role as joint official liquidators appointed over the Partnership, and the Petitioner, Dr Fan, will be able to receive his proportionate shares in Legend Biotech Corporation, a NASDAQ listed company with a market cap of over $11.58bn, in which the Partnership holds approximately $1.7bn worth of stock. Dr Fan's shareholding in Legend Biotech Corporation would equate to approximately $1.2bn worth of stock.

CICA decision

The first instance decision was based upon four grounds that justified the winding up of the Partnership:

1. That Dr Fan's legitimate expectation that the GP would transfer 10% of the shares in Legend Cayman into his name had been frustrated;
2. That there had been an irretrievable breakdown in the relationship between Dr Fan and Dr Zhang that had begun as one of mutual trust and confidence;
3. That Dr Fan had justifiably lost trust and confidence in the management of the Partnership, judged to the requisite objective standards in the circumstances of the case; and
4. The GP had acted in conflict of interest and breach of its fiduciary duty to act in good faith.

CICA upheld the first ground on the basis that "*the repudiation by the GP of the assurances it gave to Dr Fan…is an egregious act of bad faith*" and that the "*relationship between Dr Fan and Dr Zhang was sufficiently akin to the partnership the of the sort contemplated in <u>Ebrahimi v Westbourne Galleries [1973] AC 360</u>*".

CICA set aside the second ground on the basis that Dr Fan had never been a participant in running the business of the Partnership, and following *<u>Lau v Chu [2020 UKPC 24]</u>*, that was necessary in addition to the relationship akin to a partnership.

The Court clarified that the establishment of the third ground was not dependent on there being a relationship akin to a partnership per *Ebrahimi*, and that on this case the Judge's findings were based upon the GP's failure to honour the assurances given to Dr Fan, which it was obliged to do in good faith, and that the GP's failure to do so amounted to misconduct in the management and affairs of the Partnership. In so finding, it was right that the Judge concluded that Dr Fan had justifiably lost trust and confidence in the management of the affairs of the partnership to the requisite objective standards.

On the fourth ground, the CICA agreed with Justice Doyle's finding that the GP was in breach of fiduciary duties to act in good faith and to avoid a conflict of interest.

The Appeal was accordingly dismissed. A link to the full Court of Appeal judgment can be found here[1].

Comment

The CICA decision confirms that whether it is just and equitable to wind up a partnership (or a company) will depend heavily on the facts and the evidence before the Court, but if a petitioner

---

[1] *Bhavesh Patel led the Travers Thorp Alberga team (consisting of senior associates David Jin and Bryan Little), instructing Ben Valentin QC of Fountain Court chambers, that successfully represented the Petitioner Dr Xiaohu Fan in this matter.*

establishes that they have a legitimate expectation which has been frustrated or demonstrates that they have justifiably lost trust and confidence in the management as a result of specific actions taken by the GP (or the directors in the case of a company), that will be sufficient for equitable considerations to intervene and for a just and equitable petition to be granted.

The decision to set aside the second ground is also important because for a limited partner (or minority shareholder) to rely on a breakdown of a relationship that was based on mutual trust and confidence, they must be able to show that they had been (or had expected to be) a participant in the running of the business. In the case of an exempted limited partnership, normally the running of the partnership is left to the GP and limited partners will therefore need to demonstrate other grounds if they petition for the just and equitable winding up of a partnership.
