

BERMUDA SUPREME COURT

In the Matter of Proview International Holdings Limited 2011 No. 231

COMPANIES - WINDING UP - FAILURE TO HOLD AGM - ADVERTISEMENT

In the Matter of *Proview International Holdings Limited 2011 No. 231*, concerned a Petition to wind up a company granted at a hearing where only the Petitioner was present. The Court allowed the Petition thereby winding up the Company by reason that it had failed hold an AGM in compliance with S.72 of the CA 1981.

The Company successfully applied to set aside the winding up Order on the grounds that, *inter alia*, the Petitioner lacked standing under the *Companies Act, 1981* (the "Act") and also that the Court had been misled by the Petitioner when it granted the Order. The Judgment is therefore largely about the consequential costs dispute, but, parenthetically, the Court commented on three important practice matters.

First, the Court endorsed the submission by the Company that where the insolvency rules (i.e. those under the *Companies (Winding) Rules 1982*) were silent on any matter, Rule 159 served as a regulatory gateway through to the rules and practice contained in the *Rules of Supreme Court, 1985*.

Second, the Court regarded as "hopeless" a submission by the Petitioner that S.72 of the Act (relating to the requirements to hold AGMs) was somehow freestanding from the requirements SS. 161 and 163 of that same act (relating to the circumstances and provisions for winding up). The Court held: that Part XIII of the Act "*was a comprehensive code for the winding-up of companies under the [1981] Act. It is generally recognised that while other statutory provisions might complement the grounds for winding up set out in section 161, petitioners must nevertheless meet the standing requirements of section 163 (unless these requirements have clearly been modified by the provision the petitioner relies upon)*".

Third, the Court observed that where, as was the case with this Company, the vast majority of creditors were based abroad and might well be unaware of proceedings, it was the modern practice from a natural justice point of view, "*to advertise abroad to ensure that the widest number of people were aware*". Although this remark was obiter, foreign advertisement of petitions may well be prudent if there is any risk that interested parties may be unaware of the petition.

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