

## BERMUDA SUPREME COURT

***Re Kingate Management Limited And The Companies Act 1981 2011 Commercial Court Jurisdiction No. 301 [Original Location: Sc Vol. 76 P 232] (6 March 2012)***

COMPANIES - WINDING UP PETITION - JPLS'  
STANDING TO BRING PETITION

*Re Kingate Management Limited and the Companies Act, 1981, 2011 Commercial Court Jurisdiction No. 301* [original location: SC Vol. 76 p 232] (6 March 2012), is a case involving another round in the 'Kingate' litigation, a multiparty action commenced in 2009 after the Bernard Madoff collapse. The substantive case concerns whether subscription monies paid for shares in a now-insolvent Fund are repayable as a debt or held on trust for the would-be subscribers.

The recent application concerned the winding up of the named (related) company, which was sought by the Joint Provisional Liquidators ("JPLs") or, in the alternative, by the Company itself (acting by its shareholders the directors having resigned). The Court took the opportunity to articulate the legal basis for jurisdiction under the *Companies Act, 1981* and, more specifically, SS. 161 (grounds for winding up by the Court) and 175(1)(a) (applying to JPLs).

In so doing, the Court confirmed that JPLs lacked jurisdiction to wind up a company under S.175(1)(a) in circumstances where there was no practical impediment to the Company itself, or its creditors, seeking the Order. The Court wound up the Company on the basis that the grounds were made out by the Company under S.161(a) or by any potential creditor under S.161(e). In the alternative, the Court could, of its own motion, wind the Company up pursuant to those sections where, as here, the Company was insolvent.

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