

BERMUDA SUPREME COURT

***In the Matter of Sea Containers Ltd. [2012]
SC (Bda) 26 Com (10 May 2012)***

COMPANIES - WINDING UP - JPLS' APPLICATION
FOR A LETTER OF REQUEST - STATUTORY BASIS
OF JURISDICTION

In this case, the Company in question was wound up by Ground CJ in January 2010. The Company is the parent of four UK Companies undergoing liquidation proceedings in the English High Court. As such, the settlement of these claims turns on issues of English law.

JPLs' sought an application for a Letter of Request to seek assistance from an overseas Court. The Court took the opportunity to make clear the statutory basis of jurisdiction to direct that liquidators may seek assistance from an overseas Court under the *Companies Act, 1981* and the common law principles governing the exercise of the Court's discretion to sanction that assistance.

First, the Court acknowledged that there is no direct authority relating to the Court's jurisdiction to issue a Letter of Request. As such, the Court referred to Section 175(1)(a) of the *Companies Act 1981* which allows for the JPLs' to seek the permission of the Court to bring "*any action or other legal proceeding in the name and on behalf of the company*". Further, it was noted that it is known practice for liquidators to bring proceedings both locally and abroad, and that insolvency proceedings overseas may be motivated by a more practical approach of having the appropriate forum determine the issues at hand.

Second, the Court pointed out that the exercise of the Court's discretion when permitting overseas assistance from a foreign Court is based upon common law. The Court further noted that while letters of request in relation to obtaining foreign evidence in local courts is provided for under Order 39 Rule 3 of the Rules of the Supreme Court, there is however no statutory equivalent under insolvency law. What is more, the Court expressed that the issue should also be determined by practical 'case

management' and that the Court should take into account the most suitable forum for determining the issues. As such, the Court granted the application made.

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