



## **Singapore High Court—decision to stay or terminate winding-up orders**

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This article was extracted from a LinkedIn post by Yeoh Lian Chuan, Managing Director of Sabara Law LLC—[The judge ventures into the legacy of the void... \(re: staying or terminating a winding-up order\)](#).

In *Interocean Holdings Group (BVI) Ltd v Zi-Techasia (Singapore) Pte. Ltd. (in liquidation)* [2014] 2 SLR 485, the Singapore High Court ruled that a winding-up order cannot be rescinded or set-aside, but could be stayed permanently.

The Court held:

"... In Singapore, a winding-up order once perfected is one of those strange creatures that cannot be set aside or revoked. At least, there is no express provision in the Act permitting this ..."

The Court in *Interocean* cited the judgment of Gillard J in a decision of the Courts of Victoria, *Krextil Holdings Pty Ltd v Widdows; Re Brush Fabrics Proprietary Limited* [1974] VR 689.

In a recent case, *In the matter of Section 279 of the Companies Act (Cap. 50) and In the matter of Construction Professional Resources Pte Ltd* [2019] SGHC 168—Choo Han Teck J. noted that "...where there is no legislation on this point, there will be doubts as to whether the court can terminate a winding up after the order has been made."

Choo J then noted that "... As can be seen in the *Interocean* and *Krextilite* cases, the courts there hesitated from venturing into the void ..."

However, Choo J felt that "... to decline to make such an order (terminating a winding-up) just because there is no express legislative power may create greater legal problems than to have a court terminate the order on another basis ..."

For example, a stay order "... has the bizarre effect that a company that has been ordered 'wound-up' regains all its powers in fact, but remains legally wound-up. What happens when it is unable to pay its debts to new creditors? The new creditors cannot wind up a company that has already been wound up; and they are not parties who are entitled to rescind the stay order."

Choo J then suggested that the inherent power of the Court could be invoked. But is Choo J correct? In my mind, a company is a juridical person created purely by statute, and the process for its winding-up is also fundamentally a creature of statute.

In the absence of any specific provision to terminate a winding-up, a stay appears to me the nearest available solution, notwithstanding the conceptual difficulties. It is not easy to see how, in the absence of legislative power, the inherent jurisdiction of the Court can be used to justify terminating the winding-up.

Choo J's comment about Courts hesitating from venturing into the void reminded me of *StarCraft II*, and made me think that the current less than ideal situation is a legacy of the void.

Parliament should step in to fix it. Come on Jim. Go Sarah.

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