

Using insolvency powers to make claims for fraud: important Supreme Court decision

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Companies are habitually used as part of a corruption scheme. Such companies often have only a single director, or a small number of directors, and are beneficially owned by the wrong-doers.

Insolvency powers can be effective tools to obtain compensation for victims of fraud or corruption, in the right circumstances.

A state could, for example, apply to Court for a liquidator to be appointed over a company used for corruption.

Amongst other things, a liquidator is entitled to bring claims against the company's former directors for their wrongdoing in involving the company in a corruption scheme. Claims can also be made against third parties dishonestly assisting with or participating in that wrongdoing. The intention is to repatriate recoveries to the victim state (subject, of course, to the rights of any other creditors).

A liquidator's claim against directors could be based on breaches of the obligations ("fiduciary duties") they owe to act in the best interests of the company. Involving the company in criminal conduct, or other wrongdoing, is plainly a breach of those duties. There are various other claims that might be available, including the powers of an insolvency court to require those knowingly participating in fraud to contribute to the debts of the company.

The effectiveness and availability of the insolvency powers has been confirmed and emphasised by the much anticipated decision of the UK Supreme Court in *Jetivia SA & Anor v Biltta (UK) Ltd (In Liquidation) & Others*.

The Court decided:

- Directors could not defeat a claim by liquidators on the basis that the wrongdoing of the directors should be attributed to the company, even where all directors and shareholders had knowingly participated in the wrongdoing. It therefore rejected the directors' argument that the company was itself a "wrongdoer" and unable to sue its former directors because of the English law principle that a claimant cannot rely on its own illegal actions to make a claim.
- The English Courts have power to require fraudulent foreign defendants to contribute to the debts of an insolvent company.

However, the Court also emphasised that victims remain entitled to make a claim against a company that has been used to receive or launder the proceeds of corruption or fraud. In those circumstances, the acts of the directors are attributable to the company they have caused to be involved in wrongdoing.

Click on the following for: [our longer explanation of the case](#); [the full judgment](#); and [a summary of the case published by the Supreme Court](#).

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