

The proper purpose duty (part 2) – takeovers and disputes onshore and offshore

Takeovers (or intended takeovers) very often bring the proper purpose duty into play – both domestically and offshore.

In recent years, the duty has become a common feature of offshore litigation, particularly in relation to defensive takeover strategies, many of which have a long history in the US and Canada but little precedent in England & Wales.

Both corporate lawyers and litigators need to understand the scope of the proper purpose duty and how challenges may be brought in reliance on the duty both in the UK and offshore context.

In this session James Potts KC & Andrew Blake highlighted:

- The (often overlooked) differences in approach towards the ‘proper purpose’ doctrine in commonwealth and North American jurisdictions; and
- Potential differences amongst different offshore jurisdictions.

10 points that were covered:

1. The proper purpose duty: why does it matter onshore and offshore?
2. The proper purpose duty in England, and in the Privy Council
3. The North American perspective: Delaware and Canada
4. The UK perspective: the Takeover Code
5. The offshore company regimes
6. Rights issues
7. Poison pills
8. Takeover defence more generally including proxy battles
9. Procedural routes of challenge
10. Key points to look out for

List of cases referred to

Teck Corporation v Millar [1972] BCJ No. 566 (Canada)

Howard Smith Ltd v Ampol Petroleum Ltd [1974] AC 821 (Australia)

Hogg v Cramphorn Ltd [1967] Ch 254 (England and Wales)

Stena Finance BV and another v Sea Containers Ltd and others (1989) 39 WIR 83 (Bermuda)

Cayne v Global Natural Resources plc [1984] 1 All ER 225 (England and Wales)

Eclairs Group Ltd v JKC Oil & Gas plc [2015] UKSC 71 (England and Wales)

Stobart Group Ltd v Tinkler [2019] EWHC 258 (England and Wales)

Grand View Private Trust Co Ltd v Wong and others [2022] UKPC 47 (Bermuda)

Tianrui (International) Holding Co Ltd v China Shanshui Cement Group Ltd (Cayman Islands) [2024] UKPC 36 (Cayman Islands)

IGlobe Capital LLC v Sinovac Biotech Ltd [2025] UKPC 3 (Antigua)