

Company & Commercial - Cayman Islands

Grand Court rules on loss of substratum

Contributed by [Appleby](#)

July 19 2010

The Grand Court decision in *In Re Freerider Ltd*, which was delivered on May 13 2010 provides useful guidance regarding 'loss of substratum', one of the bases which justifies a winding-up on just and equitable grounds. Traditionally, this test was said to have been met where a company had become incapable of achieving its purpose. In *Freerider*, the court held that a company incorporated in Cayman for tax reasons which ultimately failed to achieve its intended tax benefits had lost its substratum and so should be wound up.

Freerider Ltd was incorporated as part of a corporate structure set up to develop and exploit a device known as TheWheel, a self-propelling electric wheel which offers significant energy savings. The intention was that Freerider would hold the IP rights to TheWheel, while its development and marketing would be carried out under licence by a Dutch company, which would pass profits back to Freerider by way of royalties.

After the structure had been set up, the Dutch tax authorities ruled that Freerider was resident in the Netherlands and that tax was therefore payable on payments to it.

Meanwhile, the relationship between the two majority shareholders broke down. One of the shareholders – the device's inventor – petitioned to wind up Freerider on just and equitable grounds. The other majority shareholder opposed the petition.

The court held that winding-up was justified on a number of grounds, including loss of substratum.

The court considered the test for loss of substratum proposed in *In re Belmont Asset Based Lending Ltd*. According to that test, if the circumstances are such that it is impractical (if not actually impossible) for a company to carry on its business in accordance with the reasonable expectations of its participating shareholders, it can be considered just and equitable to wind up the company. The court also referred to older cases in which it was held that a company has lost its substratum if the underlying purpose for which it was incorporated is not achievable. The court held that both tests had been met in *Freerider*.

This case demonstrates that the Cayman courts are willing to take a commercial view in relation to substratum arguments in appropriate cases in order to assist investors in Cayman companies.

For further information on this topic please contact [Jeremy Walton](#) or [Katie Brown](#) at Appleby by telephone (+1 345 814 2013) or by fax (+1 345 949 4901) or by email (jwalton@applebyglobal.com or kbrown@applebyglobal.com).

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).

ILO is a premium online legal update service for major companies and law firms worldwide. In-house corporate counsel and other users of legal services, as well as law firm partners, qualify for a free subscription. Register at www.iloinfo.com.

Authors

[Jeremy Walton](#)



[Katie Brown](#)

