



**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

Neutral Citation Number: [2025] CIGC (FSD) 27

CAUSE NO: FSD 0029 of 2025 (DDJ)

**IN THE MATTER OF SECTION 131 OF THE COMPANIES ACT (2025 REVISION)
AND IN THE MATTER OF AXIA NETWORK FOUNDATION (IN VOLUNTARY
LIQUIDATION)**

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

CAUSE NO: FSD 0030 of 2025 (DDJ)

**IN THE MATTER OF SECTION 131 OF THE COMPANIES ACT (2025 REVISION)
AND IN THE MATTER OF ANF MERGECO LTD (IN VOLUNTARY LIQUIDATION**

Before: The Hon. Justice David Doyle

Appearances: Andrew Jackson, Charlotte Walker and Ross McLeod of Appleby
(Cayman) Ltd, for the Joint Voluntary Liquidators

Heard: 3 April 2025

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**Ex tempore judgment
delivered:**

3 April 2025

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Supervision Orders pursuant to section 131 of the Companies Act (2025 Revision) – the relevant law and procedure – the evaluative process in respect of the statutory jurisdictional threshold – the discretionary choice of liquidators – Sanction Orders pursuant to section 110(2) and Schedule 3 Part I paragraph 1 of the Companies Act (2025 Revision) – sanction to file petitions for recognition pursuant to Chapter 15 of Title 11 of the United States Code

Introduction

1. In these cases the joint voluntary liquidators (the “JVLs”) of AXIA Network Foundation (in voluntary liquidation) (“ANF”) and ANF MergeCo Ltd (in voluntary liquidation) (“MergeCo”) seek an order that (1) the voluntary liquidation of the relevant company be continued subject to the supervision of the court pursuant to section 131 of the Companies Act (2025 Revision) (“Companies Act”) and (2) if a supervision order is made then the court grant the joint official liquidators (“JOLs”) sanction to file a petition for recognition under Chapter 15 of Title 11 of the United States Code (“Chapter 15”).
2. I have considered the hearing bundles, the skeleton argument of the JVLs dated 27 March 2025, the authorities bundle and the oral submissions of Andrew S Jackson who appears with Charlotte Walker and Ross McLeod this morning on behalf of the JVLs. Mr Jackson, ably assisted by Ms Walker and Mr McLeod, eloquently and helpfully dealt with a number of incoming questions fired at him from the bench. I am grateful to the attorneys for their valuable assistance to the court. It is most appreciated.

The relevant law

3. I have considered the relevant law including:

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- (1) section 131 of the Companies Act;
 - (2) *Re Asia Private Credit Fund* 2020 1 CILR 134 at [89] to [96];
 - (3) *Re Touradji Private Equity Offshore Fund Ltd (in voluntary liquidation)* (FSD unreported judgment Kawaley J 6 February 2023 at [6];
 - (4) *DD Growth Premium 2X Fund* 2013 (2) CILR 361 at [30];
 - (5) *Re ICP Strategic Credit Income Fund Limited* 2014 1 CILR 314 at [9] to [10];
 - (6) *Re Saad Investments Company Limited* (Smellie CJ as he then was in FSD unreported judgment 10 October 2019) at [39];
 - (7) section 110 (2) Schedule 3 Part 1 paragraph 1 of the Companies Act;
 - (8) *UCF Fund Limited* 2011 (1) CILR 305; and
 - (9) *Ascentra Holdings* (FSD unreported judgment of Doyle J delivered on 3 November 2022).
4. Under section 131 of the Companies Act where a resolution has been passed by a company to wind up voluntarily, the liquidators or any contributory or creditor may apply to the court for an order for the continuation of the winding up under the supervision of the Court, notwithstanding that the declaration of solvency has been made in accordance with section 124, on the grounds that:
- (a) the company is or is likely to become insolvent; or
 - (b) the supervision of the Court will facilitate a more effective, economic or expeditious liquidation of the company in the interests of the contributories and creditors.
5. With respect to foundation companies, such as ANF, the Foundation Companies Act (2025 Revision) provides in Part 2 of Schedule 1 at paragraph 14 that section 131(b) of the Companies Act “applies as though the words “in the interests of contributories” were omitted”.

6. Field JA sitting in the Cayman Islands Court of Appeal in *Re Asia Private Credit Fund* 2020 (1) CILR 134 helpfully considered the meaning and effect of section 131(b) of the Companies Act and the approach the court should take in such cases. At [89] Field JA stated:

“s.131(b) provides for jurisdictional thresholds, one of which must be met before a supervision order can be made, namely, that supervision of the court will facilitate a more effective, economic or expeditious liquidation of the company is in the interests of contributories and creditors. And the burden is on the applicant to satisfy the court that the threshold requirements have been met on the material before the court at the time the petition is heard.”
7. Field JA at [90] stated that “the jurisdictional thresholds captured by the words “effective” “economic” and “expeditious” are open textured and of broad meaning... They overlap but at their core they connote separate concepts. The words “facilitate” and “more” are also open textured and of broad application ... In my judgment, if a supervised liquidation is more suitable than a voluntary liquidation on the facts because it has the immediate potential for achieving a more thorough investigation, it will be more effective from the outset than the current voluntary liquidation which lacks such potential ...”.
8. At [91] Field JA added that in deciding whether the threshold has been met the court will make a judgment resulting from an evaluative process in which the words of paragraph (b) are considered in the light of the evidence before it. Field JA felt that the process was “akin but not the same as the exercise of a discretion properly so called.” The court’s decision is “an exercise of judgment based on an evaluation of a number of different factors ...”.
9. At [92] Field JA concluded that if the court formed the view that one or all of the jurisdictional requirements of section 131(b) had been established it did not retain “a residual discretion”.
10. At [93] Field JA felt that “the better view is that the court has to be *satisfied* on the material before it that one or more of the jurisdictional thresholds has been met rather than reaching a conclusion on the balance of probabilities, i.e. applying the civil standard of proof. Field JA added that “the evaluation is akin to that which the court must undertake when deciding to give leave for the issue

and service of a writ of the jurisdiction ...”. In such cases no leave shall be given unless it shall “be made sufficiently to appear” to the court that the case is a proper one for service out.

11. At [95] Field JA added:

“...the standing of the Cayman Islands as an international financial centre is indirectly one of the objectives of s131(b) and that objective is achieved by the court evaluating the criteria in that provision in light of the evidence put before it.”

12. At [96] Field JA stated that once the jurisdictional threshold has been established “the choice of which liquidators are to conduct the supervised liquidation is an exercise of discretion properly so called and where the petitioner is the sole stakeholder in the liquidation ... the petitioner’s choice of liquidator(s) ought generally to be respected ...”

The evidence

13. I have considered the evidence in support of the relief claimed. If I may say so, Christopher Kennedy sets out the position in respect of ANF and MergeCo with crystal clear clarity. His evidence is very well structured and easy to follow. It also addresses all the relevant issues in a relatively concise and well-focused way.

14. It appears that the AXIA Group was originally set up by Paul Ungerman and Nicholas Agar (the “Founders”) in Ontario in early 2018 for the purpose of creating and developing a digital token originally called LinkCoin. The foundational concept behind LinkCoin was to create an inclusive digital token structure (the “Project”) that offered strategies to produce underlying value for a currency in a way that other currencies could not.

15. In 2019 the Project’s corporate structure was moved offshore. The efforts to launch the cryptocurrency tokens were ultimately unsuccessful.

16. In mid-2020 the Ontario Securities Commission (“OSC”) began seeking information and records from the AXIA Group regarding its business activities including the AXIA digital currency. On 26 January 2024 the Ontario Capital Markets Tribunal approved a settlement agreement dated 10

January 2024 between the Founders and OSC regarding allegations relating to the promotion and sale of cryptocurrency tokens.

17. In March 2022, an internal review of the corporate structure and governance of the AXIA Group was commenced.
18. On 11 April 2022 ANF was incorporated under the laws of the Cayman Islands as an exempted foundation company to act as a “fresh start”.
19. In November 2022, Casey McDonald and Laura McGrath were appointed as independent directors of ANF for the purposes of providing governance services and to conduct a review of the overall structure to determine if there was a viable path forward for the Project.
20. On 21 March 2023 MergeCo was incorporated under the laws of the Cayman Islands principally for the purpose of pooling or substantially combining various companies within the AXIA group of companies as part of a wind-down plan and to enable this to be effected within a single jurisdiction. The Cayman Islands was the preferred jurisdiction for the orderly wind down of the AXIA Group in a single jurisdiction because, *inter alia*, it has a statutory merger regime and a sophisticated regime for corporate liquidations.
21. MergeCo was subsequently put into voluntary liquidation on 9 April 2024 followed by ANF on 2 December 2024. The voluntary liquidations were commenced with a view to seeking a court supervised liquidation to better access the robust legal framework which would provide for managing the claims process and distributing assets. This was said to be particularly important in the present context since the digital asset space is a rapidly developing area of law and practice. It is unsurprising that the liquidators want the court to hold their hands whilst traversing this new and challenging territory.

Determination

22. I now come to my determination of the applications for Supervision Orders and for Sanction Orders.

Supervision Orders

23. I am satisfied that it is proper to make Supervision Orders.

The evaluative process in respect of the statutory jurisdictional threshold

24. I accept in respect of ANF and MergeCo that the statutory jurisdictional threshold has been met for the making of Supervision Orders. I agree that the supervision of the court will facilitate a more effective liquidation of the relevant companies in the interests of the relevant stakeholders. This is especially so in light of:

- (1) the multijurisdictional issues relating to the status of crypto currency coinholders which may arise;
- (2) the appointment of official liquidators (with duties to the court) should provide stakeholders with confidence in the liquidation process;
- (3) issues of some complexity are likely to arise in the course of the liquidations (including proofs of debt and distributions) which make it desirable for a level of independent judicial oversight to be provided by the Grand Court;
- (4) the investigative powers afforded to official liquidators and the various statutory provisions should facilitate more effective liquidations for stakeholders as a whole;
- (5) the JOLs, subject to sanction of the court, will be able to file a Chapter 15 petition for recognition to enable them to deal properly with proceedings which are being pursued by Axtra LLC and the AXIA – Axtra Trust in the US District Court for the District of Wyoming, Cheyenne Division (“Wyoming Proceedings”). It may also be necessary for further applications for recognition and assistance to be made in light of the probable need for further investigation and cross-border issues may arise in the multiple jurisdictions in which the AXIA Group operated. Depending on the relevant jurisdiction such applications may not be available to voluntary liquidators; and

- (6) the Supervision Orders will trigger a stay of proceedings pursuant to section 97 of the Companies Act.
25. The supervision of the court may also facilitate the more economic liquidations of the companies in the interests of the relevant stakeholders and it should help to save costs by reducing the likelihood and possibly the magnitude of any dispute with relevant stakeholders during the course of the liquidations.
26. Mr Jackson helpfully brought to my attention [77]-[80] of Field JA's judgment in *Asia Private Credit Fund* which outlined the position and powers of an official liquidator over and above the position and powers of a voluntary liquidator.
27. The JVLs have considered but do not accept a possible argument that voluntary liquidations may be less costly than official liquidations. It is the JVLs' position that voluntary liquidations would be unduly restrictive and without the benefit of additional powers and the stay may ultimately prove to be more expensive than an official liquidation. The JVLs are in a good position to comment on respective costs and the JOLs will no doubt adopt a commercially-minded approach.
28. All in all, I am satisfied that it is appropriate for the Cayman liquidations to proceed under the supervision of the court. The statutory threshold is duly satisfied. Supervised liquidations are more suitable than voluntary liquidations in the particular circumstances of these cases. Having conducted the evaluative process outlined by Field JA in *Asia Private Credit Fund* I am satisfied in light of the evidence before the court that one or more of the jurisdictional thresholds have been met. It has been made sufficiently to appear to the court that these cases are proper ones for Supervision Orders.

The discretionary choice of liquidators

29. The jurisdictional threshold having been established I turn now to exercise the court's discretion in respect of the identity of the liquidators.
30. I am content with the independence of the suggested JOLs, based on the evidence presently before the court.

31. I note the prior involvement of Christopher Kennedy and some of his colleagues in the consideration and implementation of recommendations that ultimately led to the filing of the petitions for Supervision Orders. I also note that they were engaged only by ANF once it was under the independent directorships of Mr McDonald and Ms McGrath, rather than the Founders of the AXIA Group. The prior involvement does not taint the independence of the JVLs who have now become the JOLs. Indeed, this prior involvement may in the long run enable the liquidations to proceed on a more efficient and cost-effective basis than engaging other insolvency practitioners that would need to incur a lot of time and additional cost to get up to speed. In the unlikely event that a conflict does arise the JOLs should make an application to this court for appropriate directions.

The position of others in respect of the making of Supervision Orders

32. I should record that no one has appeared today to oppose the relief sought.
33. I note the provision of O.15 r.3 of the Companies Winding Up Rules (2023 Consolidation) but do not see any need in these cases to adjourn to order further service, notice or advertisement.
34. I note the letter dated 30 May 2024 signed by Casey McDonald and Laura McGrath stated to be directors of AXIA Network Foundation. The letter is addressed to Christopher Kennedy and Alexander Lawson of Alvarez & Marsal Cayman Islands Limited in the following terms:

“Dear Sirs

ANF MergeCo Ltd (in Voluntary Liquidation): Petition for Supervision

As you know, we serve as the directors of AXIA Network Foundation (ANF) which is the sole shareholder of ANF MergeCo Ltd (in Voluntary Liquidation) (Company).

We write further to the appointments of Messrs Christopher Kennedy and Alexander Lawson as joint voluntary liquidators (JVLs) of the Company, regarding the petition which

they propose to present to the Cayman Islands Grand Court, for an Order that the liquidation be brought under the Court's supervision (Petition).

We have considered the Petition and the evidence to be filed in support thereof, including in particular the Second Affidavit of Mr Kennedy. We agree with the JVLs that continuing the liquidation of the Company under the supervision of the Grand Court will provide for a more efficient, economic and expeditious liquidation. We are also of the view that the appointment of any liquidators other than the JVLs would result in the loss of significant knowledge and would, in all likelihood, result in increased costs with no added benefit. Accordingly, we hereby confirm that ANF supports and consents to the making of a supervision order by the Grand Court, in the terms sought by the JVLs' Petition."

35. I note the steps taken by the JVLs to provide information and updates to coinholders and other stakeholders regarding the supervision applications presently before the court.
36. I note the evidence to the effect that on 7 March 2025 following the filing of the supervision petitions an updated report was uploaded on the JVLs' portal (and coinholders had on 12 April 2024 been advised by the JVLs to register on the Portal and opt to receive notifications to ensure they remained informed of developments). The detailed report in respect of MergeCo includes a subsection (section 4.2) which deals with the supervision applications. At section 4.2.4 it is stated:
- "Supervision applications in respect of both MergeCo and ANF were filed with the Grand Court on 17 February 2025. These applications are due to be heard concurrently on 3 April 2025 at 10.00am. Copies of the petitions filed in respect of both applications are included at Appendix A1."
37. I also note the evidence in respect of the JVLs' communications sent to ANF's directors and ANF's registered office following the appointment.
38. I am satisfied that interested parties have been given an adequate opportunity to raise objections to the relief claimed and no objections have been raised.

Form of orders

39. I make Supervision Orders in respect of ANF and MergeCo substantially in terms of the drafts helpfully filed in advance of today's hearing, such orders to include the amendments I specified during my exchanges with counsel.

Sanction Orders

40. The JVLs have also asked this court, if Supervision Orders are made, to grant the JOLs sanction to file petitions for recognition pursuant to Chapter 15, principally to address the Wyoming Proceedings.
41. The plaintiffs in the Wyoming Proceedings seek damages against:
- (1) a company which is stated to have been merged with and into MergeCo such that MergeCo assumed that contingent liability and is now considered to be the appropriate defendant to the claim; and
 - (2) another company which is stated to have transferred its assets and liabilities to ANF, and which company is now dissolved such that ANF is now considered to be the appropriate defendant to the claim.
42. The JVLs have consulted with US counsel and, absent agreement with the plaintiffs in the Wyoming Proceedings, there is a need for the JOLs of ANF and MergeCo to file a petition for recognition pursuant to Chapter 15. The evidence indicates that it is proposed that petitions be filed in the United States Bankruptcy Court (Southern District of New York) ("US Court") pursuant to Chapter 15 for recognition of the official liquidations of ANF and MergeCo as foreign main proceedings together with injunctive or other relief necessary to stay creditors and other parties from taking actions against ANF and MergeCo in the United States of America (the "US").
43. In the circumstances of these two cases I am willing to grant the necessary sanction and do so. The JOLs are permitted and empowered to file petitions in the US Court pursuant to Chapter 15 for

recognition of the official liquidations of the two companies as a foreign main proceedings, together with injunctive or other relief necessary to stay creditors and other parties from taking actions, including commencing or continuing litigation, against ANF and MergeCo in the US and to take such steps arising in connection therewith.

Thanks

44. That completes my judgment in respect of these two cases. I thank the attorneys and the JVLs for their helpful assistance to the court.
45. The attorneys should send the updated draft Orders by email to my PA before 3pm this afternoon.

David Doyle

The Hon. Justice David Doyle
Judge of the Grand Court