Neutral Citation Number: [2025] CIGC (Civ) 19

Cause No: ATT 87 of 2025

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CIVIL DIVISION

IN THE MATTER OF THE LEGAL PRACTITIONERS ACT (2022 REVISION)

AND IN THE MATTER OF AN APPLICATION FOR THE GRANT OF LIMITED ADMISSION AS AN ATTORNEY-AT-LAW TO ANTHONY BESWETHERICK KC FOR THE PURPOSE OF APPEARING, ACTING OR ADVISING IN CAUSE NO. FSD 129 OF 2025 (JAJ)

Appearances:	**Mr Sam Hall of Walkers (Cayman) LLP for the Applicant**
Before:	**The Honourable Justice Jalil Asif KC**
Heard:	**23 May 2025**
Ex tempore judgment delivered:	**23 May 2025**
Finalised judgment approved:	**23 May 2025**

Limited admission of attorney-at-law—admission sought for leading counsel for petition for supervision order— whether admission appropriate in all the circumstances

Limited admission of attorney-at-law—need for evidence to support abridgment of timetable provided in Practice Direction No. 4 of 2012

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JUDGMENT

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1. This is my judgment on an application filed on 21 May 2025 by Mr Anthony Beswetherick KC for limited admission to appear at a substantive hearing listed before me later today, 23 May 2025. The application is supported by an affidavit of Mr Beswetherick sworn on 21 May 2025 and an affidavit of Mr Barnaby Gowrie of Walkers (Cayman) LLP sworn on 20 May 2025.

2. The relevant factual background to Mr Beswetherick's application for limited admission is a dispute between an investor in a fund and the fund manager regarding the management of the fund. On 25 September 2024, the investor, represented by Walkers, filed a petition seeking the winding up of the fund on the just and equitable basis, asserting:

   2.1 a justifiable loss of trust and confidence in the fund's management

   2.2 loss of substratum; and/or

   2.3 a need for an investigation into the fund's affairs.

3. The investor's allegations were framed as being based on a lack of information being provided by the fund manager in response to enquiries from the investor concerning a suspension of redemptions, significant delays in producing the funds' audited accounts, the resignation of the fund's auditors, and an apparent change in the fund's investment objectives.

4. The fund manager resisted the winding up petition, filing a defence and evidence in support. It is not necessary for the purposes of this judgment to say any more about the nature of the dispute on the winding up petition.

5. The winding up petition was listed for hearing before me on 21-23 May 2025. Accordingly, it was advertised in the Cayman Islands, in Dubai and in an international version of an English newspaper on various dates between 2 and 8 May 2025 without any response to the advertisements.

6. By a summons filed on 22 April 2025, the fund manager had applied to adjourn the hearing of the petition on the basis that further evidence filed by the investor was now advancing unpleaded allegations of actual mismanagement of the fund. The fund manager argued that the investor should be required to plead those allegations, and the fund manager should have additional time to respond to them. The fund manager requested that the hearing of the petition listed to commence on 21 May 2025 be delayed until September 2025. I heard that application on 8 May 2025 and refused it.

7. On 13 May 2025, the fund manager essentially conceded its opposition to the winding up petition. The parties agreed that the fund would be put into voluntary liquidation and that the voluntary liquidation would immediately be brought under the supervision of the Court. On 14 May 2025, the sole voting member of the fund passed a resolution to put the fund into voluntary liquidation. On 15 May 2025, the joint voluntary liquidators were appointed. The joint voluntary liquidators appear to have engaged Walkers as their attorneys immediately following their appointment. There has therefore been continuity of representation by Walkers, who can be taken to be very familiar with the underlying issues. Indeed, some aspects of Walkers' skeleton argument in support of the application suggest that Walkers is having difficulty in differentiating between its former engagement by the investor and its current engagement by the joint voluntary liquidators.

8. On 15 May 2025, the parties asked me to stay the winding up petition and to vacate the trial, which I did.

9. On 16 May 2025, the joint voluntary liquidators filed the petition for a supervision order and a summons for directions, both of which are before me later today. Mr Gowrie states that following their initial review of the winding up petition and some of the documents filed in relation to the winding up proceedings, the joint voluntary liquidators consider that it is appropriate that the voluntary liquidation be brought under the supervision of the court pursuant to Companies Act, s.131(b), namely supervision will facilitate a more effective, economic or expeditious liquidation of the company in the interests of the contributories and creditors. Mr Gowrie states that this will enable the joint voluntary liquidators to undertake their own independent investigations and reach their own conclusions on the allegations of mismanagement of the fund.

10. There is no suggestion that the fund is insolvent, and the petition for a supervision order is not opposed by any of the members or any creditors. The petition for the supervision order is therefore unopposed.

11. Against that background, Mr Gowrie says this in his affidavit:

> *"21. Given the complexity of the issues raised in the Proceedings, the Petitioners wish to have the benefit of advice and representation by an experienced advocate who has particular expertise in insolvency and company law.*
>
> *22. With due and appropriate consideration of the internal resources available within Walkers, Walkers and the Petitioners are of the view that the matter is most suitable for a silk with expertise in the area of law that is the subject of the dispute.*
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> *23. There are a limited number of attorneys generally admitted to the inner bar of the Cayman Islands ….*
>
> *24. Out of the identifiable local silks, there are very few who I understand might be available for private instruction. Not all of these specialise in insolvency and company law."*

12. Mr Gowrie points out that Mr Beswetherick was leading counsel for the investor in relation to the winding up proceedings. He then adds:

> *"28. In light of the above, and in consideration of all of the above-mentioned factors, the Petitioners, on the advice of Walkers, have instructed Mr Beswetherick KC as Leading Counsel. This Application is made in the belief that the conditions for the Court to exercise its discretion are met. For the avoidance of doubt, this application is not made merely in order for the work that Mr Beswetherick KC may carry out in the Proceedings may be recoverable on a taxation of costs in this jurisdiction."*

13. Mr Gowrie then provides the evidence required by Practice Direction No. 4 of 2012 concerning the joint voluntary liquidators' wish to instruct Mr Beswetherick, that Walkers have instructed him and that Mr Beswetherick has obtained a temporary work permit to allow him to accept those instructions.

14. Subject to what follows, I am satisfied that Mr Beswetherick is an appropriate person for limited admission as leading counsel in the Cayman Islands in that he meets the qualification requirements in ss.3 and 4 of the Legal Practitioners Act.

15. Section 4 of the Act gives the court a discretion in those circumstances to admit a person to practice as an attorney-at-law: the wording is *"[a] judge shall have power …"*

16. In the exercise of my discretion, I refuse the application.

17. It is well established that applications for limited admission, even for the most eminent Kings Counsel, are not rubber-stamping exercises.

18. In 2009, in the case of *In the Matter of Certain Applications for Limited Admission as an Attorney-At-Law* [2009] CILR 41, Foster Ag J said:

> *"7. Even if it is clear that the person proposed to be admitted has the prescribed qualifications under s.3(1) of the Legal Practitioners Law (2003 Revision) and has come to the Cayman Islands for one of the purposes specified in s.4, in my view the court must still be satisfied that in the exercise of its discretion it is appropriate to admit such a person in all the circumstances. While not in any way intending to suggest an exhaustive list, such circumstances may include the difficulty or complexity of the matter (whether on its facts or in the legal issues involved), the amount at stake in the matter and, in a criminal case, the seriousness of the alleged offence or of the possible sentence. It may also be appropriate on some applications to have regard to the resources and support available to the particular attorney-at-law who has instructed the person proposed to be admitted.*
>
> *8. Nowadays, there are certainly attorneys-at-law in the Cayman Islands who have the qualifications, experience and ability to act and appear as advocates in even the most complex and serious matters, whether criminal or civil, and, certainly on the civil side, many of the firms practising in that field are large international firms with extensive in-house resources and support available to them. This may possibly be less so in the case of some local criminal practitioners when it may be apparent that it may not serve the ends of justice to require a sole practitioner or a small firm to undertake the roles of both instructing attorney and advocate in relation to the trial of a very serious offence, although that may not necessarily always be so. However, in a case, whether civil or criminal, in which a large firm in the Cayman Islands has conduct of the matter it may well be clear that they are well able to undertake both functions and the appropriateness of an overseas lawyer coming to the Cayman Islands to appear, act or advise in the matter and being granted limited admission is less evident. It would all depend on the particular circumstances."*

19. These considerations apply today just as much as they did in 2009. Indeed, there has been significant growth in the size and sophistication of firms of attorneys in the Cayman Islands undertaking work in the Financial Services Division and elsewhere since 2009.

20. In *Re David Mumford QC* (unreported 14/03/22) Doyle J summarised the considerations underpinning the exercise of the discretion to grant limited admission as including the following:

> *"(1) the availability of local lawyers;*
>
> *(2) the importance of protecting and promoting the growth and development of the local Bar and to prevent outsourcing of legal work (save in exceptional cases) that could be done on Island;*
>
> *(3) the need for the parties to have adequate legal representation, taking into account the nature and complexity of the case;*
>
> *(4) the expertise and experience of counsel seeking admission;*
>
> *(5) whether the work was to be conducted in and from the Cayman Islands. Section 4 anticipates that an attorney seeking limited admission will 'come to the Islands';*

(6) the applicant's involvement in the conduct of the litigation;

(7) the public interest in a strong and viable body of local legal practitioners available to meet the public's need for legal advice and representation. This is to promote the rule of law and to ensure effective access to justice. …

(8) taking into account Order 62 rule 18 of the Grand Court Rules, that it would be inappropriate for suitably qualified foreign lawyers to be granted limited admission as Cayman attorneys-at-law simply so that any work in relation to the matter which they will or propose to carry out in their own country may be recoverable on a taxation of costs in litigation in this jurisdiction."

21. It must be remembered that the substantive hearing before me later today is an unopposed application for a supervision order. Many such applications are dealt with on the papers. It is rare that they require an oral hearing. The only unusual feature of the application for the supervision order today is that I am being asked to determine it immediately, without going through the usual steps of advertising the petition and fixing a date for a future hearing. This is argued to be because to do so would be a waste of time and effort given that the winding up petition was advertised earlier this month with no response. That argument is highly likely to find favour.

22. I simply do not accept Mr Gowrie's assertion that the petition for a supervision order raises complex issues. I do not understand why the petition requires advice from and representation by leading counsel at all, let alone an experienced advocate who has particular expertise in insolvency and company law, as asserted by Mr Gowrie. Supervision applications are eminently suitable for many local attorneys to handle. As I have indicated, many are dealt with on the papers without the need for oral argument at all.

23. Further, I do not accept Mr Gowrie's assertion that Walkers does not have suitable internal resources to present an unopposed petition for a supervision order.

24. Mr Hall said in argument that the value in issue, which is over US $300 million, justifies the involvement of leading counsel. Whilst the value in issue may be a relevant criterion, it is not a determinative one. There are cases with modest financial values that raise the most difficult legal questions and, conversely, many very high value cases that are very simple in terms of the real issues.

25. Having regard to all the relevant circumstances, and the considerations identified by Foster Ag J and Doyle J, I do not consider this is an appropriate case for the exercise of my discretion in favour of granting limited admission for leading counsel at this time.

26. Assuming that I make a supervision order on the petition to be heard later today, if the joint voluntary liquidators can demonstrate in the future that the liquidation does raise genuinely complex issues for which leading counsel's input is properly required, the joint voluntary liquidators can make an application for sanction to engage leading counsel at that time supported by evidence to demonstrate why that is appropriate, and leading counsel can apply for limited admission if sanction is given. However, that is not the current situation.

27. I regret to say that the circumstances I have described tend to suggest that the underlying rationale for seeking Mr Beswetherick's limited admission now is for the purpose of ensuring that his work will be recoverable as an expense of the liquidation and on a taxation of costs.

28. For the avoidance of doubt, I direct that the costs of and occasioned by this application shall not be payable as an expense of the liquidation, including any travel and accommodation costs incurred by Mr Beswetherick. I consider that it should have been obvious that leading counsel was not required for the hearing of the supervision application, and that there was therefore no good reason for making the application for limited admission at this time and for Mr Beswetherick travelling to the Cayman Islands.

29. There is a further point. Practice Direction No. 4 of 2012 requires that the application for limited admission and supporting affidavits must be filed not less than 3 business days before the hearing of the application. It also provides that an application will not be listed less than 1 business day before the substantive hearing for which admission is sought. In *Re Alex Potts KC* (unreported 6 March 2024) I indicated the importance of providing the court with evidence to explain any failure to comply with the requirements of Practice Direction No. 4 of 2012, so that the court has material on which it can base the exercise of its discretion to abridge the time limits stated in the Practice Direction.

> *"4. It is important in any application for limited admission that the requirements of s.4 of the Legal Practitioners Act and the Practice Direction are complied with. It has been said on many occasions by different judges that an application for limited admission is not a rubberstamping exercise. The court has to make a positive decision to exercise its discretion to grant the application for limited admission. In order to do so, the court must be presented with sufficient appropriate evidence that addresses all of the applicable requirements of the Act and the Practice Direction. ...*
>
> *10. In any matter where the timetable and the other requirements of the Practice Direction have not been complied with, the affidavit in support of the application must address this and explain why, and why the court should grant the application nonetheless. As mentioned above, this is*

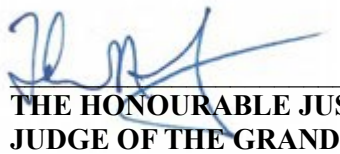
essential so that the court has the necessary evidence properly before it to enable it to exercise its discretion."

30. The failure to comply with the time-line required by the Practice Direction was not addressed by Mr Gowrie in his affidavit. Some limited assertions, unsupported by evidence, were made in the skeleton argument but did not provide any explanation beyond, in essence, saying the application had been filed and listed as quickly as possible after the petition had been listed for hearing. It may be that the truncated time-line was driven by the joint voluntary liquidators' desire to have the petition for the supervision order heard today, 23 May 2025. If so, that was not stated and there is no explanation or evidence why the petition needs to be heard so urgently that the filing dates set out in the Practice Direction should be abridged. If that is not the case, then there is no obvious reason and evidence why they should be abridged.

31. Accordingly, even if I were satisfied the underlying matter was suitable to justify Mr Beswetherick's limited admission, there is no material before me that would allow me to decide it is appropriate to abridge time to hear the application.

32. Mr Gowrie is not alone in the omission to provide the court with evidence relevant to abridgement of the time for filing and listing an application for limited admission or, in other cases, the reasons why counsel should be permitted to appear before signing the Register. I have had to remind attorneys of this requirement on a number of occasions since my judgment in *Re Alex Potts QC*, including having to invite them to file further evidence in support of their application. The court should not have to do so, practitioners should be aware of what is required and ensure that they comply with those requirements. If they do not, they risk having their applications refused or adjourned.

Dated 23 May 2025



THE HONOURABLE JUSTICE JALIL ASIF KC
JUDGE OF THE GRAND COURT