Neutral Citation Number: [2025] CIGC (FSD) 104

Cause No: FSD 2025-0291 (JAJ)

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

IN THE MATTER OF THE COMPANIES ACT (2023 REVISION)

AND IN THE MATTER OF ASIA TELEVISION HOLDINGS LIMITED

Appearances:	**Mr Andrew Ayres KC of counsel instructed by Mr Peter Sherwood of Carey Olsen for the Petitioner**
	Ms Gemma Bellfield and Mr Corey Byrne of Ogier for Oriental Textile Products Ltd and Mr Zha Xiaogang
Before:	**The Honourable Justice Jalil Asif KC**
Heard:	**24 October 2025**
Ex tempore judgment delivered:	**27 October 2025**
Finalised judgment approved:	**30 October 2025**

Insolvency—appointment of provisional liquidators on petition of company to facilitation restructuring—approach to exercise of power in Companies Act, section 104(3)—whether appointment of provisional liquidators "appropriate"

Practice and procedure—importance of proper compliance with GCR O.41 concerning contents of affidavits—exposure to adverse costs consequences for breaches

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JUDGMENT

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A. Introduction

1. This is my judgment on a summons filed on 17 October 2025 by Asia Television Holdings Ltd to appoint provisional liquidators. The basis for the summons is said to be to facilitate a restructuring of the Company. The Company says it has not used the restructuring officer regime because of board-level disputes between the directors, or putative directors, of the Company.

2. As a result of a request when the summons was filed that the court deal with the summons as a matter of urgency, it was listed for hearing on Friday 24 October 2025, one week after the summons was filed. I am giving this *ex tempore* judgment on Monday 27 October 2025 the next working day following that hearing.

3. The appearances on the hearing of the summons have been Mr Andrew Ayres KC and Mr Peter Sherwood of Carey Olsen for the Company, and Ms Gemma Bellfield and Mr Corey Byrne of Ogier for Oriental Textile Products Ltd and Mr Zha Xiaogang.

4. Oriental Textile Products Ltd is a company with a shareholding of approximately 18.65% of the shares in the Company. However, it is unlikely that Oriental has standing to pursue its objections to the petition, simply because it appears that the Company is very substantially insolvent and so the real economic interest lies with the creditors rather than the members. However, Ms Bellfield and Mr Byrne also represent a creditor, Mr Zha Xiaogang, who is owed around HK $71 million and who therefore has standing to raise the objections that have been put forward to the appointment of provisional liquidators.

5. The materials before me comprise the winding up petition, which I have read, along with the summons for the appointment of the provisional liquidators. In terms of the evidence, I have two affirmations of Ms Tang Po Yi, who is one of the Company's purported directors, and I will explain why I use that description later in this judgment. I then have three affidavits from the proposed provisional

liquidators dealing with their suitability for appointment, and lastly, an affidavit sworn by a member of Carey Olsen's staff exhibiting various documents, and I will come back to that affidavit later in this judgment as well. On behalf of Oriental and Mr Zha, there is an affirmation of Tsun Kok Chung Richard with a very substantial exhibit putting forward Oriental's and Mr Zha's position as regards the potential appointment of provisional liquidators.

6. I am not going to keep anyone in suspense any longer. I will say at the outset that I have concluded that I am not satisfied that it is appropriate to appoint provisional liquidators in the circumstances of this case. I will now set out the reasons why I have reached that conclusion.

B. Summary of the parties' positions

7. I can summarise the Company's position as follows. The Company is insolvent and at substantial risk of collapse. The Company has overdue debts of more than HK $811 million, roughly US $104 million. During July and August 2025, a number of statutory demands were served on the Company. On 15 August 2025, a secured creditor appointed a receiver over the Company's assets. The debt owed to that secured creditor is such that there is unlikely to be anything left for the unsecured creditors. On 11 September 2025, a winding-up petition was filed in Hong Kong which is due to be heard on 19 November 2025.

8. Mr Ayres submitted that the Company's attempts to restructure its debts so far have not succeeded, at least in part, due to an ongoing dispute at board level over who are the persons entitled to be the directors of the Company. Mr Ayres has submitted that in those circumstances it is appropriate to appoint provisional liquidators to manage a possible restructuring. Mr Ayres prays in aid that the appointment of provisional liquidators is supported by a substantial proportion of the creditors, including the secured creditor.

9. In broad summary, Mr Zha's grounds for opposing the appointment of provisional liquidators are, first of all, that the requirements of section 104(3) of the Companies Act are not satisfied. Secondly, it is said that the summons to appoint provisional liquidators is an abuse of process for various reasons, including that:

    9.1 the urgency asserted by the Company has been manufactured and is not genuine;

9.2 the Company is trying to pre-empt a decision of the High Court of Hong Kong in proceedings due to be heard by that court on 31 October 2025, which is likely to resolve the board-level dispute and give some certainty as to who are the current directors of the Company and therefore who it is that is entitled to control the Company;

9.3 Ms Tang and the other directors purporting now to act on behalf of the Company have no authority to do so: they had no authority to pass the resolution to seek the winding up of the Company or to seek the appointment of provisional liquidators because they were removed as directors of the Company in August 2025;

9.4 the summons is procedurally defective in various respects; and

9.5 the Company has failed in its duty to make full and frank disclosure to the court in relation to the summons.

10. I should record at this point that, although Ms Bellfield and Mr Byrne have appeared at the hearing of this summons, it is formally still *ex parte* on notice in circumstances where the Company's creditors and members have not been given the period of notice required under the GCR in order for the summons to be treated as a normal *inter partes* summons.

11. As a fallback position, if I do not dismiss the Company's summons, Mr Zha invites me to adjourn it to a date after 31 October 2025 to see what transpires before the High Court in Hong Kong in relation to the determination of who are the current directors of the Company. This would also have the benefit that the summons could be prepared and argued on an *inter partes* basis in the normal way.

12. Before I leave this outline of the parties' positions, I record that Mr Ayres responds to the suggestion that 31 October 2025 is a key date by arguing that it is unclear whether the High Court in Hong Kong will, in fact, give judgment on 31 October 2025 on the question of the identity of the directors and, even if it were to do so, then it may well be that whoever is the losing party pursues an appeal. For those reasons, Mr Ayres submits on behalf of the Company that 31 October 2025 should not be taken necessarily as being dispositive of the question as to who are the Company's directors.

C. The facts

13. With that introduction to the issues, I can summarize the relevant facts as follows. The Company was incorporated as long ago as January 2005 and has been, up until recently, successful in operating in a number of different areas of business within Hong Kong and the People's Republic of China, through operating subsidiaries. However, over the last 12 to 18 months or so, and perhaps slightly longer, the Company's financial position has been deteriorating. On 28 March 2025, the Company made a formal announcement that it proposed a placement of new shares in order to raise approximately HK $20.56 million. I infer that the Company's management had recognised by that time that the Company's financial position was getting significantly worse.

14. On 22 April 2025, the Hong Kong Stock Exchange wrote to the Company seeking information about its plans for fundraising, which is consistent with the Company and the HKSE being aware that the Company was at risk of failing.

15. Shortly following this, on 30 April 2025, the Company's annual report for 2024 was published. This showed a decrease in revenue of 24% and a net loss on the year of RMB 143 million or approximately US $20 million. Unhealthily, the annual report showed that the Company's current liabilities exceeded its current assets by RMB 77.6 million, roughly US $10 million, and the Company's cash at bank was only RMB 4.6 million. All in all, this was not a very healthy financial picture.

16. On 16 May 2025, lawyers acting for the Company responded to a query from the HKSE explaining that the Company was exploring making a rights issue with a view to raising HK $200 million, and a share placement to raise an additional HK $100 million. The Company provided details of its creditors and stated that the Company was in discussion with a number of those creditors regarding a possible capitalisation of their debts. The letter indicated that a number of debts owed to those creditors were already overdue in May 2025.

17. The next important event was on 25 June 2025, when the Company held its annual general meeting. At the AGM, the shareholders voted by a significant margin, just over 74%, against giving the directors a general mandate to issue new shares. That vote made any share placement or rights issue problematic without a further vote of the shareholders to approve such a step.

18. On 27 June 2025, a group of shareholders including and aligned with Oriental, who I will refer to as the Objector Group, requisitioned the directors to convene an EGM of the Company under Article 58 of its Articles of Association. The stated purpose for requisitioning the EGM was to pass resolutions to remove the majority of the Company's directors and to leave the Company with two directors, both of whom were aligned with Oriental and Mr Zha.

19. On 17 July 2025, the last day on which the Company's board could properly respond to that requisition, the board resolved to hold an EGM on 27 August 2025. The Objector Group complains that when the Company's board made that decision, the board did not specify the time or location for the EGM and that those omissions have the result that the board did not successfully convene an EGM within the time required by Article 58. I will come back to that point later in this judgment.

20. The following day, 18 July 2025, the Company published a notification on the HKSE website announcing that the EGM would take place on 27 August 2025. This notice also did not include details of the time or location where the EGM would take place. Instead, it stated that the Company:

> *"[…] will despatch a circular […] together with relevant notice convening the EGM […] as soon as practicable."*

The language of the notice suggests that the board considered that the EGM would be convened by the notice that was to be sent out, i.e. it had not yet been formally convened. The Objector Group considered that the board had not properly complied with its obligation under Article 58 to convene the EGM within 21 days from the requisition, and therefore, on 23 July 2025, the Objector Group publicly announced their own rival EGM to be held on 12 August 2025.

21. The next day, on 24 July 2025, Appleby provided advice to the Company that the board's EGM had been validly convened and concluded that, as a result of that, the EGM called by the Objector Group was invalid. Based on that advice, I infer, the Company published a notification that day disputing the validity of the EGM to be held on 12 August 2025 and positively asserting that the EGM called by the board to be held on 27 August 2025 was the EGM that should be treated as being valid.

22. On 26 July 2025, the first statutory demand was served on the Company for HK $53 million. Three days after that, on 27 July 2025, Ms Zha Mengling, who is Mr Zha's daughter, was suspended as a director of the Company by the other directors for alleged misconduct in relation to a share allotment

that had taken place in 2024. This decision was apparently made on the basis of an anonymous tip-off, which is not in evidence before me.

23. On 31 July, the Objector Group confirmed, in a further public announcement, that it was planning to proceed with its EGM on 12 August 2025.

24. In a public notice published on 1 August, the Company continued to dispute the Objector Group's ability to call an EGM and repeated its assertion that the EGM called by the board and due to be held on 27 August 2025 was the only one that was valid.

25. On 2 August 2025, the second director of the Company who was aligned with the Objector Group, Mr Liu Minbin, was suspended by the other directors for alleged misconduct in relation to the 2024 share allotments. This left the Company, assuming those suspensions were valid, under the control of a group of directors who have been described in the hearing before me as the Removed Directors. The reason that they have been described in those terms is that at the EGM held by the Objector Group on 12 August 2025, the majority of the meeting, which I am told comprised some 54% of the total shareholding in the Company, voted in favour of removing all of those directors, and to leave Ms Zha and Mr Liu as the sole directors of the Company.

26. In light of their advice on 24 July 2025, which I have set out earlier, it is relevant that on 11 August 2025 and contrary to their earlier advice, Appleby advised the Removed Directors that the EGM to be held on 12 August 2025 by the Objector Group would be irregular, rather than void, provided that there was no fraud on the minority, and that the irregularity in relation to that EGM meeting could be cured, essentially, by ratification of any decisions at a regularly called EGM of the members of the Company. Also on 11 August 2025, trading in the Company's shares was suspended, and trading has continued to be suspended at all times since then.

27. I should also say in relation to the EGM on 12 August 2025, that the Company complains that its two representatives who intended to attend that EGM, Mr Lu Zhiqiang and Ms Tang Po Yi, were delayed entry by up to about 30 minutes, with the result that they were only able to attend the latter part of the meeting. The Objector Group's response to that is that no steps were taken to exclude Mr Lu and Ms Tang from the meeting, that they simply needed to go through security arrangements imposed by the

venue in order to be screened and admitted to the meeting room and, in any event, the vote would have passed whether or not Mr Lu and Ms Tang had been admitted into the meeting when it started at 9:00 am.

28. After that EGM, on 15 August 2025, Kingston Finance Ltd, who is the secured creditor, appointed a receiver. I have been shown a copy of a letter dated 15 August 2025 from RSM HK Business Advisory Ltd recording its appointment as receiver over the Company's assets and business. That letter indicates that Kingston is owed HK $482 million, roughly US $62 million, which is why, as I indicated earlier in this judgment, it seems likely that Kingston will take all of the assets of the Company if there is a liquidation, leaving nothing for the unsecured creditors or for the members.

29. The pace picked up in the latter part of August and in September 2025. On 19 August 2025, Ms Chen Lili served a statutory demand against the Company for a debt of HK $7.4 million. This followed a statutory demand served on 8 August 2025 by Mr Zha for a sum of HK $20 million, which is only part of the HK $76.8 million that he is owed by the Company.

30. Ms Tang states in her second affirmation affirmed on 17 October 2025 that she has met all of the Company's expenses since 25 August 2025 by way of director's loans. This is another straw indicating that by 25 August 2025, the Company's financial position had become pretty dire in that it was only being held up by loans being made by a director.

31. On 26 August 2025, the Company commenced proceedings against Ms Zha and Mr Liu in relation to the 2024 share allotments. That is the first of three currently ongoing proceedings before the High Court in Hong Kong.

32. On 27 August 2025, the EGM convened by the Company took place. On this occasion, the Objector Group complains that their representative was not admitted to the meeting. They say that, as a result, the meeting was not properly constituted because shareholders were not admitted.

33. In any event, the EGM held on 27 August 2025 did not resolve any matters of substance and simply determined that the EGM should be adjourned until the conclusion of certain investigations regarding the 2024 share allotments, which has not happened.

34. On 29 August 2025, a Company called Glowing Bonus served a third statutory demand on the Company. This one was for HK $70 million.

35. On 11 September 2025, the Objector Group commenced its originating summons proceedings in Hong Kong in relation to the two EGMs, challenging the Company's EGM and seeking declarations that the EGM held on 12 August 2025 by the Objector Group had been validly called and that the resolutions passed at that EGM were validly passed, with the result that the Removed Directors were properly removed as directors of the Company on that occasion.

36. On the same date, 11 September 2025, Ms Chen petitioned to wind up the Company on the basis of her unpaid statutory demand. The date fixed for the first hearing of the winding up petition is 19 November 2025.

37. Moving on in the chronology, on 19 September 2025, the first hearing of the Objector Group's originating summons in relation to the EGMs took place before Deputy Judge Lam. I am told in the evidence of Ms Tang that the judge indicated during the course of that hearing that he intends the hearing on 31 October to be a substantive hearing, at which he intends to decide the originating summons.

38. One week after that hearing, on 26 September 2025, the Objector Group filed a summons to amend the originating summons to add various allegations. It may therefore be possible, but I do not put it any higher than that, that the Company might seek an adjournment of the hearing on 31 October 2025 in order to respond to the amendments. It is a matter of speculation whether Deputy Judge Lam would accede to such an application if it were made. It seems to me that I should proceed on the basis that the hearing on 31 October 2025 will proceed as a substantive determination of the originating summons.

39. The evidence is that on 15 October 2025 the Company's cash-at-bank had reduced to only HK $71,000. On the same date, 15 October 2025, Ms Chen and another of the Company's creditors wrote letters of support stating that they would be willing to explore a potential restructuring if independent officeholders were appointed over the Company in place of its board by 19 November 2025. It is not clear whether those letters of support were written in the context of an understanding

on the part of the creditors that there was likely to be an application in the Cayman Islands to appoint provisional liquidators or were intended to be in support of possible steps to be taken in Hong Kong.

40. On Friday, 17 October 2025, as I have indicated, the Company filed its winding up petition and summons to appoint provisional liquidators and the majority of the evidence in support of the summons and the petition was sworn on the same day.

41. Finally, of relevance, on 21 October 2025, i.e. Tuesday of last week, three further letters of support were written by creditors, including Kingston, which do seem to be written in the context of an understanding that an application was to be made in the Cayman Islands to appoint provisional liquidators over the Company. These letters again impose a condition that any appointment should take place before 19 November 2025.

D. The law

42. Having gone through the underlying facts in a little detail, I can now turn to the question of the applicable law. I will deal first with section 104 of the Companies Act which, in its revised form, provides as follows. First, section 104(1) gives the court the general power to appoint a provisional liquidator. It is in the following terms:

> *"(1) Subject to this section and any rules made under section 155, the Court may, at any time after the presentation of a winding up petition but before the making of a winding up order, appoint a liquidator provisionally."*

I interpose that a winding up petition has been presented in respect of the Company, but no winding up order has been made, so the jurisdiction in section 104(1) is engaged in relation to the Company.

43. Section 104(2) provides that:

> *"(2) An application for the appointment of a provisional liquidator may be made under subsection (1) by a creditor or contributory of the company or, subject to subsection (6), [by CIMA] on the grounds that:*
> *(a) there is a prima facie case for making a winding up order; and*
> *(b) the appointment of a provisional liquidator is necessary in order to:*
> *(i) prevent the dissipation or misuse of the company's assets;*
> *(ii) prevent the oppression of minority shareholders; or*
> *(iii) to prevent mismanagement or misconduct on the part of the company's directors."*

44. Section 104(2) thus sets out relatively specific requirements which need to be met in respect of a creditor's or a contributory's summons to appoint provisional liquidators. By contrast, subsection (3) gives a much broader discretion. It states:

> *(3) An application for the appointment of a provisional liquidator may be made under subsection (1) by the company and on such an application the Court may appoint a provisional liquidator if it considers it appropriate to do so."*

45. In my view, the legislature having selected, in its amended form, a broad power to appoint a provisional liquidator if the Court considers it is "appropriate" to do so, it is clearly intended that the court's powers are not limited to the kinds of situations described in section 104(2) in relation to a creditor's or contributory's grounds for an application.

46. For completeness, section 104(4) provides that a provisional liquidator shall carry out only such functions as the court may confer and that the provisional liquidator's powers may be limited by the order appointing that person. So, in other words, the provisional liquidator is strictly controlled by the court and is only authorised to do what the court allows the provisional liquidator to do.

47. It is common knowledge that the current wording of section 104(3) was introduced with effect from 31 August 2022 to replace the previous language, which was much more prescriptive in terms of the circumstances in which the court could appoint provisional liquidators on the application of the company in question.

48. The courts have not yet needed to consider in detail what are the limits on when it is "appropriate" to appoint provisional liquidators within the meaning of the new wording of section 104(3), and particularly in the context of the introduction of the restructuring officer regime.

49. It is clear that the jurisdiction to appoint a provisional liquidator remains available in a restructuring situation, as well as in a liquidation situation. This was confirmed by Kawaley J in *Re Oakwise Value Fund* (unreported, 16/12/24).

50. In my judgment, it may be "appropriate" to appoint provisional liquidators where broader powers are likely to be necessary, or are likely to be of utility, than the powers that could be granted under the restructuring officer regime. Two examples of cases where this approach was taken were put before

me by counsel, both of which are previous decisions of mine. In *Re Kingkey Financial International (Holdings) Limited*, (unreported, 12/04/24), I concluded that it was appropriate in that case to appoint provisional liquidators because there was internal board disagreement which meant that allowing the directors to continue in their management role, which is the approach taken by the restructuring officer regime, was not really going to be a workable solution to the problem facing that particular company.

51. The second example was *Re New Horizon Health Limited* [2025] CIGC FSD 84, where I concluded that it was appropriate to appoint provisional liquidators because, again, broader powers were needed that would be available under the restructuring officer regime. In that case, it was the power to investigate an apparent internal fraud within the company concerning the manipulation by one of the directors of sales data in order to overstate the company's revenue, with significant potential regulatory impacts for the company.

52. Nevertheless, there is still a question mark over the extent to which the requirements developed by the courts based on the old language of section 104(3) continue to apply when determining whether the appointment of provisional liquidators is "appropriate" within the meaning of the new section 104(3).

53. I have found some useful assistance from two cases before the amendment to section 104(3) was made. The first is *Re Sun Cheong Creative Development Holdings Limited* [2020] 2 CILR 942, which was put before me by way of a quotation from that case by Kawaley J in *Re Oriente Group Limited* [2022] 2 CILR 391. However, I found it more useful to go back to the underlying judgment. *Re Sun Cheong Creative* is a judgment of former Chief Justice Smellie. He said, at paragraph 35, and it is important to bear in mind that Smellie CJ was discussing the old language of section 104(3):

> *"35. Under ss.104(3) and 95(1) of the Companies Law, the court has a broad and flexible discretion. The breadth and flexibility of this discretion was first described by this court in* In re Fruit of the Loom *(Cause 823 of 1999; [2000] CILR N–7). The breadth of the court's discretionary power under s.104(3) to facilitate the rescue of a company was described as follows (Cause 823 of 1999, at 7–8):*
>
> > *'The discretionary power vested in the Court by section 99 [as it then was] of the Companies Law is* very wide*. As the orders already made herein recognise, the power admits of a discretion which the Court will be prepared to use to appoint provisional liquidators as the basis for the rescue of a company. This is subject to the Court being satisfied that such appointment would be for the benefit of those having the financial interests in the company to be rescued. This Court must be satisfied that the order would*

> *be for the general benefit of creditors and subject to creditors' prior interests, the benefit of shareholders.*
>
> *In the absence of jurisdiction given by specific statutory powers in the Courts for the making of administration orders over the affairs of companies, it is apt that the* flexible discretionary power *given in section 99 for the appointment of provisional liquidators be used to enable the rescue of a company where it is just to do so in the sense described above.' [Emphasis added.]*

54. Chief Justice Smellie in *Re Sun Cheong Creative* continued at paragraph 37 (omitting citations):

> *"37 As to how the court's broad discretion is to be exercised, there is no prescriptive list of factors to be taken into consideration. However, matters to which the court may have regard include:*
>
> *(a) The express wishes of creditors (though the court should be cautious not to 'count up the claims of supporting and opposing creditors,' […];*
>
> *(b) Whether the refinancing is likely to be more beneficial than a winding-up order […];*
>
> *(c) That there is a real prospect of refinancing and/or a sale as a going concern being effected for the benefit of the general body of the creditors […]; and*
>
> *(d) The considered views of the board as to the best way forward […]"*

55. In my view, notwithstanding that the learned Chief Justice was addressing the old section 104(3) in that passage of his judgment in *Re Sun Cheong Creative*, his comments were expressed at a high level of generality and were addressed at the discretion that he had earlier described as being a broad and flexible one. I consider that those comments regarding the broad and flexible nature of the discretion and the factors to which the court may give weight continue to apply with equal force to the proper interpretation of the new section 104(3), where the statute is expressed in broad terms, simply requiring that the court considers the appointment of a provisional liquidator to be "appropriate".

56. The list of factors that may be relevant is not closed, as Smellie CJ indicated in paragraph 37 of Smellie CJ's judgment by using "includes" to introduce his list, but it is a useful indication of some of the factors that are likely to be of significance in most cases, where the appointment of provisional liquidators is being sought by a company.

57. The second case that I found of some assistance, is a judgment of Segal J in *Midway Resources International* (unreported, 30/03/21) where Segal J said this at paragraphs 65 to 67:

> *"65. […] I am satisfied that the evidence now shows both that the Company intends to present a compromise or arrangement to its creditors and to promote a restructuring of the Group and that the Restructuring Proposals are coherent and appear to offer Zarara's creditors an apparently attractive alternative to an insolvent liquidation of Zarara (and the Company). There appears to be a rational basis for accepting the Restructuring Proposals, provided that the assumptions on*

> *which they were based were validated […] There would also appear to be reasonable basis for putting in place a restructuring of the Company's debt and balance sheet, if the Restructuring Proposals are approved and implemented, to allow the Company's creditors and shareholders to access and have the benefit of the recoveries to be made […].*
>
> *66. As I have noted, the restructuring negotiations are at a relatively early stage. […] It remains to be seen whether Zarara's creditors […] are willing to support the Restructuring Proposals on their current or possibly on revised terms. […] These problems, as I have said, give rise to serious doubts and concerns as to the prospects of success of the Restructuring Proposals. Nonetheless, I am satisfied that all is not yet lost and there remain a number of ways in which the restructuring negotiations could be put back on track. […]*
>
> *67. In the circumstances, it seems to be right and appropriate to appoint the PLs in order to assist in and facilitate the restructuring negotiations and to give the Company and them the opportunity to stabilise the position and seek to have constructive discussions with the creditors […]"*

58. In my view, those passages illustrate that the court may be willing to appoint provisional liquidators even where there are significant challenges to the success of the intended restructuring. However, it is notable that Segal J described the restructuring plan in that case as being "coherent", as providing "a rational basis for accepting the proposals", and demonstrating that it was likely to result in a better outcome for creditors, and possibly for members.

59. The parties also referred me to the decision of Kawaley J in *Re Oriente Group Limited* [2022] 2 CILR 391. I did not find that case to be of assistance in relation to the interpretation of section 104(3) because Kawaley J in that case was dealing with the scope of the new restructuring officer regime, and how the discretion to appoint restructuring officers should be exercised; he was not considering the proper interpretation of the new section 104(3).

60. Ms Bellfield in the skeleton argument on behalf of Oriental and Mr Zha referred to the old categories of what used to be called "full powers" appointments and "light touch" appointments under section 104(2) of the Companies Act and the old version of section 104(3) respectively, before the introduction of the restructuring officer regime. Ms Bellfield complained that the Company is trying to obtain a "full powers appointment" under the guise of a "light-touch" restructuring application without satisfying the thresholds needed and the evidential requirements for the appointment of provisional liquidators on a "full powers" basis.

61. I am sceptical that it is apt to continue to make those distinctions to the appointment of provisional liquidators on an application by a company or by creditors or contributories, given the changes to the

wording of section 104(3) and the bringing into force of the restructuring officer regime, but I do not express a final conclusion on that question, as it is not necessary for me to do so in this case.

62. Before leaving the applicable law, I record that section 97(1) of the Companies Act imposes an automatic stay on other proceedings, where a provisional liquidator is appointed. Section 97(1) reads:

> *"(1) When a winding up order is made or a provisional liquidator is appointed, no suit, action or other proceedings, other than criminal proceedings, shall be proceeded with or commenced against the company except with the leave of the Court and subject to such terms as the Court may impose."*

63. The draft order sought by the Company expressly excludes from the scope of the stay under section 97(1) two of the current proceedings in Hong Kong. First, the Company's writ action against Mr Liu and Ms Tang in relation to the share allotments in 2024; and secondly, the Hong Kong EGM proceedings which are due to be heard on 31 October 2025. However, the draft order does not exclude from the effect of the stay Ms Chen's winding up proceedings, which are due to have a first hearing on 19 November 2025. Those proceedings would therefore be caught by the stay if I were to appoint provisional liquidators.

E. Discussion

64. There is a question in my mind why the parties have not held a third EGM, chaired by someone independent, at which the presence of everyone who wants to attend is permitted and facilitated, rather than the two slightly unsatisfactory EGMs that have been held, where both sides say that their side was not given proper access, with a view to all of the relevantly interested parties voting, or voting again, on the resolutions as to the composition of the Company board.

65. It seems to me that such a course may well have avoided the Hong Kong proceedings regarding the validity of the EGMs and could have provided a quick and straightforward route at least to determine the question of who is in control of the Company, even if questions regarding the share allotments in 2024 might still have needed to have been addressed.

66. Mr Ayres, on behalf of the Company, has submitted that that could not have happened due to the existence of the issue regarding the validity of the share allotments in 2024. Ms Bellfield disputes

that and says that even without counting the shares allotted in 2024, the shareholders supporting the Objector Group's position would be sufficient to pass resolutions to remove the Removed Directors, formally and finally, from their role within the Company.

67. I cannot reach a conclusion, and it would be wrong for me to try to do so, as to who, as between the disputing parties, is correct on what would have been the outcome if a third EGM had been called and had taken place, but it is, perhaps, unfortunate that the parties did not consider that as an option and seek to work together in a way that might have provided a quicker and easier solution to the problems facing them.

68. The first point that I should address is the question of the standing or the authority of the Removed Directors to pass a resolution for the Company to present the winding up petition and to give instructions to Carey Olsen to apply for the appointment of provisional liquidators.

69. Mr Zha complains that the Removed Directors who have been purporting to give instructions for the Company, including Ms Tang, do not have any such authority because they were removed as a result of the resolutions passed at the EGM held on 12 August 2025. Mr Zha says that, as a result, any resolution to put the Company into liquidation that was passed by the Removed Directors is invalid. Further, Ms Tang and the other Removed Directors have no authority to instruct Carey Olsen; they have no authority to bring the current proceedings; and the petition, as a result, has not been properly verified by a director, officer, or agent, contrary to CWR O.3, r.3(3).

70. Mr Zha argues that the Removed Directors have to show that they have authority to act for the Company, and they cannot do so.

71. Mr Ayres, on behalf of the Company, or perhaps I should say the Removed Directors, responds that, at this stage, the court only has to be satisfied that it is sensibly arguable that the Removed Directors have authority to give instructions on behalf of the Company.

72. It occurred to me, in the course of considering my judgment, that the answer might be provided by the internal management rule, in other words the rule in *Royal British Bank v Turquand* (1856) 6 E&B 327. However, having thought about it further, it seems to me that rule probably does not apply

because everyone is on notice that there is a real dispute as to position and authority of the directors, and the internal management rule is only applicable where there is no such notice to external third parties that the authority of those in apparent control of the company is in question.

73. Both parties drew my attention to a decision of Nourse J (as he then was) in *Re Windward Islands (Enterprises) UK Limited* (1988) 4 BCC 158. (Although the case was reported in 1988, Nourse J's judgment was actually given in 1982.) The judgment concerned whether a meeting called by a board of directors of a company had to take place within the 21-day period for the board to announce the meeting. Nourse J held that it did not. The second point in issue in that case was whether the long-stop period of 3 months for calling a meeting specified in what was section 132(3) of the United Kingdom Companies Act 1948 applied to a meeting convened by the directors, as well as to a meeting convened by requisitionists. The learned judge concluded that it did not.

74. I did find that case to be of assistance in determining the issues regarding whether the directors, in this case, had validly convened the EGM on 17 August 2025 in circumstances where they had not specified any time or location for the EGM, and as a result, whether the Objector Group was entitled to convene its own rival EGM.

75. In my judgment, the court does not have to determine at this stage on the balance of probabilities whether the directors have authority to act for the Company and therefore have standing. If that were the case, then it would be impossible in any case to make any decisions regarding issues such as the ones that have arisen in this application pending trial of the question of who it is who is entitled to act on behalf of the company. That would present an unrealistic and uncommercial block on the ability of a company to continue to operate in the face of management disputes, and it is not a practically sensible or an appropriate legal conclusion to reach.

76. I therefore agree with Mr Ayres that, at this stage, it is an "arguability" test that should be applied in determining whether the Removed Directors have the ability to give instructions on behalf of the Company and to resolve for the Company to petition for its winding up.

77. None of the following matters have been argued and it is therefore unclear to me: (a) whether it is necessary, when convening an EGM, to include a time and location in any notice of the EGM;

(b) whether, if that is a requirement, a failure to include such information in a resolution to call an EGM is a procedural irregularity that can be cured; (c) whether, if it is a requirement that was not properly complied with, that failure triggered the ability for the Objector Group to convene their rival EGM; and (d) whether the holding of the rival EGM by the Objector Group is void or is voidable, whether it is merely procedurally irregular, and whether any such regularity could be cured by holding a new EGM to ratify whatever decisions were made.

78. Having briefly looked at each of those issues, I consider that each of them is reasonably arguable either way. Both sides' positions on those points are seriously arguable, in the sense that they are not fanciful and, as a result, it is seriously arguable and certainly not fanciful that the removed directors do have authority to act for the Company and have standing to present the petition and the application to appoint provisional liquidators.

79. Returning to section 104(3), I consider that Mr Ayres is correct that it appears the Company is insolvent and is at risk of collapse. It is correct that the Company has very substantial overdue debts of an excess of HK $811 million, in other words, more than US $104 million. There has been a long period of ongoing financial failure within the Company: in July and August 2025, a number of statutory demands were served; in August 2025, Kingston appointed a receiver over the Company; on 11 September 2025, Ms Chen filed a winding-up petition.

80. It is also right, as Mr Ayres submits, that the Company's attempts to restructure its debts have not succeeded and, at least in part, that is because of the ongoing dispute at the board level as to the correct composition of the board.

81. I recognise, as Mr Ayres invites me to, that the application to appoint provisional liquidators is supported by a substantial proportion of the creditors.

82. I am therefore entirely satisfied that my jurisdiction is properly engaged to appoint provisional liquidators if I consider that is appropriate.

83. Against that, I agree with Ms Bellfield's submission that the Company has been in serious financial difficulties since at least March 2025 when the Company announced its proposed placement in order

to raise funds. In April 2025, the publication of the Company's annual report demonstrated very poor financial prospects for the Company. In May 2025, the Company intended to raise $300 million through a combination of a rights issue and share placement. However, on 25 June 2025 at the AGM, the ability to pursue that intended route was blocked by the shareholders voting against giving the directors a mandate to issue new shares.

84. As of 25 June 2025, it should therefore have been clear to the Company's management that the proposed route towards the restructuring was not going to be open to the Company unless it obtained the buy-in of the shareholders to authorise the issue of new shares.

85. Instead of taking that action, in July and August 2025 statutory demands were served and on 11 September 2025, Ms Chen presented a winding up petition.

86. The material before me includes evidence from Ms Tang Po Yi in her second affirmation describing the Company's restructuring plans. Starting at subparagraph 40(e), she says:

> *"(e) The Company prepared a term sheet on (i) the proposed placing of new shares to raise a total of HK $100 million […] and (ii) rights issue (two rights shares for every one share) to raise a total of approximately HK $200 million […]. In [the Company's attorneys'] letter dated 11 June 2025 to the HKEX, the Company set out its proposal to:*
>
> *i. Use the HK $100 million proceeds from the Placing for salaries, rent and rates, utilities expenses, administrative and professional fees, working capital for media cultural entertainment, and working capital for sale of finished fabrics and processing, printing and subcontracting services in the PRC.*
>
> *ii. Use the HK $200 million proceeds from the Rights Issue for the repayment of loans."*

87. Ms Tang goes on at paragraph 40(f):

> *"(f) However, at the annual general meeting of the Company on 25 June 2025, the proposed resolution to grant general mandate to the directors to issue shares was not passed."*

She exhibits a copy of the poll results.

88. In paragraph 40(g), Ms Tang says:

> *"(g) The Company has been communicating with creditors of the Company, including Glowing Bonus and Kingston Finance, in relation to a potential loan capitalisation, which involves the issuance of capitalisation shares to set off debts in the total amount of HK $476.40 million, which would result in a substantial decrease in the overall level of indebtedness of the Company. Back in May 2025 when such communications were still ongoing, it was understood that no imminent action would be taken by the creditors against the Company to demand for immediate payment."*

89. I pause here to stress that Ms Tang refers to communications that were taking place in May 2025, when they were ongoing, but her language indicates that that is no longer the case. The inference I draw is that, since the AGM and the decision of shareholders not to authorise the issuance of new shares, any such discussions with creditors about capitalisation shares have stalled.

90. Ms Tang continues in paragraph 40:

> *"(h) The Company's subsidiaries had different plans and strategies to generate income across the A TV Group's 6 business segments to reduce the Company's net loss position. These plans include to focus on the process, printing and sales of finished fabrics and subcontracting services in the PRC, to generate sponsorship revenue from its media, cultural and entertainment segments from livestreaming initiatives and the Miss Asia competitions held across various districts in China from June to December every year.*
>
> *(i) The Company also provided further details of the proposed use of proceeds from the Placing and Rights Issue in [the Company's attorneys'] letter dated 11 June 2025 to the HKEX."*

91. In paragraphs 41-43, Ms Tang's evidence is as follows:

> *41. As I hope is clear from the above, the Company has a genuine intention to restructure its debts (and/or to present a restructuring plan). That remains the case, notwithstanding the fact that various creditors of the Company have now served statutory demands, and the HK Petition has been presented against the Company.*
>
> *42. In respect of the statutory demands that have been served on the Company by Mr Tsun, Ms Chen and Glowing Bonus more recently in August 2025, and the HK Petition filed by Ms Chen, the Company has been actively engaging with the relevant creditors in response to the debts owed to them.*
>
> *43. I personally have been in close contact and frequent discussions with such creditors, including Glowing Bonus and Kingston Finance. From such discussions, I understand that both had been supportive of restructuring the Company's debts owed to them, until news started to surface about the Company's internal conflicts (which are elaborated upon in the sections below) which caused them to be concerned with the Company's ability to pay its debts, and I believe this to be the reason that they decided to exercise their rights to appoint receivers and enforce the debt against the Company respectively."*

92. I interpose here that the news about the internal conflicts within the Company clearly became public in around early August 2025. Kingston's appointment of a receiver was on 15 August 2025, and the statutory demands were served in July and August 2025. Ms Tang's evidence is phrased in a way to give the historical picture. The inference to be drawn from these paragraphs of Ms Tang's affirmation is that since August 2025, there has not been very much progress with any discussions or proposals to restructure the debts owed by the Company.

93. Finally, of relevance, Ms Tang says at paragraph 44 of her second affirmation:

> *44. Ahead of this application, I have reached out to various creditors to gauge their support of the Company's intention to restructure. As stated above, Ms Chen and Glowing Bonus have responded in support […]. Ms Chen and Glowing Bonus together hold 23.6% of the unsecured debts owed by the Company. I have also reached out to Kingston Finance and anticipate to receive their response in due course. Together, the debts owed by these three creditors represent 69% of the total debts."*

and it is fair to record, on behalf of the Company, that Kingston Finance and two other creditors, as I have indicated, wrote letters of support on 21 October 2025, which are in the evidence and which I have been shown.

94. However, there is no indication in Ms Tang's evidence of what is the nature of the proposed restructuring and what form it is likely to take, particularly in light of the shareholders' refusal to authorise at the AGM any issuance of new shares by the directors.

95. The creditor support to which Ms Tang refers is simply for the appointment of provisional liquidators or, more accurately, for an unspecified an office holder. None of the creditors have suggested in their letters of support that they have any idea what form the restructuring is intended to take and it is completely opaque to me what it is that the Company intends to do in order to salvage the current dire financial position.

96. Notwithstanding my comments about the lack of clarity on what form the restructuring might take, I do not agree with the submission for Mr Zha that that is necessarily fatal to the appointment of provisional liquidators, given the broad terms of the discretion in section 104(3). But it is not a promising starting point for the Company's attempt to satisfy the court that it is appropriate to appoint provisional liquidators that there really is no indication of what the restructuring is going to comprise, and how it is going to be approved by the various persons with an interest in the outcome, as far as the Company is concerned.

97. The absence of those factors might have been mitigated by urgency. However, as is apparent from the history dating back to March 2025, at least, and the Company's recognition in March 2025 that urgent action was needed to stabilise its finances, there is a serious question mark over the extent of genuine urgency in this case.

98. Finally, Ms Bellfield complains that there is no information regarding how the provisional liquidators would be paid. The Company's bank account is under the control of the receiver, and Ms Bellfield points out that the Company is already seriously insolvent, and that the appointment of provisional liquidators is likely to increase the deficit, further prejudicing creditors and, to the extent that they may have any financial interest, the remaining members of the Company.

99. I agree with Ms Bellfield that this is a concern. However, given that it appears that Kingston is a secured creditor, and it is likely to empty the pot in an insolvency, it may well be that the provisional liquidators will simply not be paid at the end of the day. It is not uncommon for liquidators and provisional liquidators to find out that there are no assets in order to cover their fees and expenses.

100. Secondly, assuming I were to appoint provisional liquidators and if there were to be a successful restructuring, it is fairly easy to infer that that outcome would likely be the result of work done by the provisional liquidators. In those circumstances, it is unlikely that the unsecured creditors and members would begrudge paying the provisional liquidators as part of the overall restructuring package, if the Company is saved as a result and their financial position were to be improved, bearing in mind that they are currently almost certainly "out of the money".

101. So, whilst I have sympathy for Mr Zha's complaint about a lack of clarity on funding for the provisional liquidators, I do not consider that to be a block to an appointment, if I were otherwise persuaded it was appropriate.

102. Next, Mr Zha submits that the application is an abuse and provides various reasons for that. The first is that the urgency has been entirely manufactured by the Company against the chronology that I have already described in some detail. Mr Zha complains that there is no explanation:

    102.1 why no steps were taken by the Company earlier;

    102.2 why the need to appoint provisional liquidators became so urgent that an application had to be filed on 17 October 2025, the Friday before last, with a request that it be dealt with by no later than 31 October 2025, in other words, within 14 days; and

    102.3 why the Company has not applied to the High Court in Hong Kong to appoint provisional liquidators.

103. The skeleton argument for Oriental and Mr Zha sets in paragraphs 25 to 26 the following position:

> *"25. There is no risk prejudice to the Company from the Hong Kong EGM proceeding. The matter before the HK Court in this hearing relates to the composition of the Board, which does not present any risk to the Company's ability to continue as a going concern […]. Indeed, it presents no risk to the Company whatsoever. The HK EGM Proceeding is in substance a dispute between two factions of shareholders […]. The Company is the subject matter of the proceedings and should simply be awaiting the Court's order as to the proper constitution of the board. It is the Removed Directors, and not the Company, who are likely to be prejudiced by any determination of the HK EGM Proceeding, which no doubt explains their insistence on the hearing of the summons taking place before the HK Hearing.*
>
> *26. In addition, the HK EGM proceedings were first filed on 11 September 2025, and the Company has been aware of the HK Hearing since the first hearing in the HK EGM Proceeding on 19 September 2025, when it was listed. As such, it is entirely unclear, and no explanation is offered by the Petitioner as to why the HK EGM Proceeding suddenly requires urgent action."*

104. Against this, it is right to record, as set out in the Company's draft order, that the Hong Kong EGM proceedings are excluded from the automatic stay under section 97(1) of the Companies Act. This suggests that the Company's request that the summons be heard before the likely determination of the originating summons proceedings on 31 October 2025 is not an attempt to pre-empt the decision of the Hong Kong Court on the composition of the board. But if that is the case, then it does underline the question, what is the reason for the urgency demanded by the Company, and for the request by the Company when the application to appoint provisional liquidators was filed that it should be determined before 31 October 2025.

105. The letter from Carey Olsen to the court on 17 October 2025 certifying the urgency of the summons, said this:

> *"**Certification of urgency***
>
> *As set out at section C of the Winding Up Petition and detailed at section C of Tang 2, the Company is facing significant financial difficulties and is presently unable to pay debts that have fallen due. Section D of the Winding Up Petition sets out the details of debts which are due and the creditors of the Company. Several of these creditors have begun enforcement actions against the Company with a Petitions presented and receivers appointed in Hong Kong in respect of certain debts.*
>
> *The Applicant has been able to negotiate with the creditors petitioning for its winding up in Hong Kong (the "Petitioning Creditors") who have agreed that if independent officeholders in the form of provisional liquidators can be appointed immediately (and in any event before the winding up hearing in Hong Kong on 19 November 2025), then those creditors would be prepared to suspend the winding up of the Company and explore a potential restructuring.*
>
> *The Applicant is therefore seeking the appointment of provisional liquidators on an urgent basis and before 31 October 2025 if at all possible, so that they can liaise with the Petitioning Creditors, creditors and receivers and continue the [sic]*

> *For the reasons summarised in this letter (and set out in more detail in Tang 2), we certify that the hearing of the PL Summons is urgent.*
> *Accordingly, we would be most grateful if the matter could be listed for a hearing of two hours on any available date between 23 and 31 October 2025."*

106. Now, that letter raises some questions in my mind. First of all, it really does not support the stated need for the summons to be determined by 31 October 2025. The key date that is referenced in the letter is the hearing of the winding up petition in Hong Kong on 19 November 2025.

107. On that, it became common ground during the course of argument on this summons that the hearing of the winding up petition on 19 November 2025 would not be a hearing at which a winding up order is likely to be made. It is much more likely to be a directions hearing, with the winding up petition being referred on for hearing by a judge on a later date. I say that because it became common ground that a winding up order would only be made on 19 November 2025 if the petition were unopposed by anyone and that it is highly likely that it will be opposed by at least the Objector Group and probably by the Company as well. That 19 November 2025 date is therefore questionable as providing a reason why the hearing of the summons is properly to be described as urgent.

108. The other basis that was put forward in support of needing a hearing before 31 October 2025 by Mr Ayres in the course of argument is the general desirability of the provisional liquidators being appointed as early as possible so that they have an opportunity to get into post and to start negotiations with the Company's creditors well in advance of 19 November 2025. That, no doubt, is a laudable aim, but it is not sufficient to justify saying that this summons is so urgent that it has to be determined before 31 October 2025. I therefore have some real concerns about the basis on which this summons was described as being urgent, and that an urgent listing was sought, inconveniencing other court users, for whom work on their cases has had to be pushed back to accommodate the hearing of the Company's summons.

109. The next issue raised by Mr Zha is that the summons is an exercise in futility on the basis of the well-known Hong Kong decision of Harris J in *Re Silver Base Group Holdings Ltd* [2022] HKCFI 2386 and that as a result of that decision, it is unlikely that the High Court in Hong Kong would recognise the appointment by this court of provisional liquidators, in particular, because the Cayman Islands is not the centre of main interests for the Company.

110. I have carefully read the judgment in *Re Silver Base.* In fact, Harris J in that judgment did not make a conclusive statement that the High Court of Hong Kong will not recognise provisional liquidators appointed by the Grand Court. The learned judge's comments are clearly *obiter dicta* in the sense that the question of recognition did not arise for determination in order to resolve the issues that were actually before Harris J. That is not to underplay the importance of what is said by way of general guidance on the view of the High Court in Hong Kong, but it is, as I have indicated, not binding *dicta*.

111. Starting at paragraph 3 of Harris J's judgment in *Re Silver Base*, he says:

> *"3. There is one other matter that I will comment on, although it is not necessary for me to decide it. The Cayman Liquidators' decision not to pursue their Recognition Application is partly a consequence of my recent decision in* Re Global Brands Holding Ltd*. I held that in future foreign liquidators should be recognised and assisted if they were appointed in a company's centre of main interests ("COMI") rather than the place of incorporation, unless they happened to be the same. The Cayman Liquidators recognise that the Company's COMI is not in the Cayman Islands. Initially, they took the view that they could, however, properly seek limited recognition, what I call in* Global Brands*, managerial recognition, of their authority as the duly appointed agents of the Company appointed in accordance with the law of its place of incorporation, which established principles of private international law recognise determines matters of internal management and authority to represent a private foreign company. In* Global Brands*, the company was not in liquidation in Hong Kong. It seems to me that if a foreign company is in liquidation in Hong Kong then the principle I have just explained may be qualified. A number of matters will need further consideration in the future:*
>
> *(1) What, if any, recognition should be granted to a foreign liquidator appointed in the place of incorporation (if it is not the COMI) if the company is wound up in Hong Kong? In such circumstances, should the Hong Kong court proceed on the basis that within its jurisdiction only the Hong Kong appointed liquidator is the duly authorized agent of the company?*
>
> *(2) It is commonly assumed that if a company is in liquidation in its place of incorporation and wound up in another jurisdiction, the latter is to be treated as an ancillary liquidation. Should this be the case if the place of incorporation is not the COMI and the reality is, as is commonly the case with letter box jurisdictions, that a company's connection with it is formal and it has no assets, creditors or debtors located there? There is no practical reason for requiring realisations to be transferred to the liquidators appointed in the place of incorporation if all the creditors, or the large majority, are located in Hong Kong and the Mainland. On the contrary, it just increases cost and delay. It also needs to be borne in mind that proceeding on the basis of the liquidation in the place of incorporation (which is not COMI) is the main liquidation involves recognizing it; which is inconsistent with (1)."*

112. It is important to understand that Harris J was not making a final determination on the question of recognition in Hong Kong of foreign office holders, but he does raise important and obviously significant questions about the utility of appointing liquidators or provisional liquidators in the Cayman Islands where the reality is that the COMI of the company is in Hong Kong, particularly

where there is a winding up in Hong Kong already in place or on foot, and where a winding up order may well be made in Hong Kong in the near future.

113. My interpretation of *Re Silver Base* is therefore that it sounds a strong note of caution regarding the extent of recognition likely to be accorded by the High Court in Hong Kong to Cayman Islands' appointed liquidators and provisional liquidators in cases where the COMI is not in the Cayman Islands.

114. In this case, there is no dispute that the Company's COMI is in Hong Kong. There is therefore a serious question mark regarding the utility of any appointment of provisional liquidators by this court. This flows from the real uncertainty whether the High Court in Hong Kong would recognise such an appointment and more particularly whether it would recognise an appointment in circumstances where there is an outstanding winding up petition, and the purpose of the appointment is to try to achieve a restructuring, which will necessarily have to take place primarily in Hong Kong. It seems to me that it is inconsistent with facilitating a restructuring for this court to generate further issues for resolution in Hong Kong regarding, for example, recognition of Cayman appointed provisional liquidators, which is simply going to delay and add to the cost, which will affect all involved in this unfortunate case.

115. Finally, it seems to me that whilst comity is an issue that needs to be considered, it is not, and it should not be allowed to be, an overriding consideration. This court does have its own jurisdiction to exercise, even if, in certain situations, it may exercise it in a way that is not appreciated by the High Court in Hong Kong. However, comity is a factor that it is appropriate that I consider in the overall balance. In this case, given the three ongoing proceedings in Hong Kong, including the outstanding winding up petition, I consider that there is little of real utility to be achieved in this jurisdiction by appointing provisional liquidators, and that, it makes much more sense for any action to be taken in Hong Kong where the High Court can consider all of the relevant issues in the round and with a full understanding of everything that is happening before the High Court.

116. In conclusion:

116.1 I am not satisfied that this application to appoint provisional liquidators is urgent, and that it has been properly advanced on the basis that it is urgent. I form that view having regard to the lengthy chronology of financial difficulty on the Company's side.

116.2 I am not satisfied that there is any substantial material to indicate what is the nature of the proposed restructuring plan that is going to take place, and how it will be achieved. Whilst there is evidence of significant attempts to restructure the Company up until about June or July 2025, there is no indication of any ongoing and significant, debate with any real concrete proposals since about the end of June or the middle of July of this year.

116.3 The background is one of internal dispute, which was something that I took into account in *KingKey* as justifying the appointment of provisional liquidators. But in this case, there are ongoing Hong Kong proceedings to resolve that question, which are likely to be decided on 31 October 2025, and I consider that it is better for the Hong Kong court to reach its own conclusions on how that internal management dispute should be resolved. This issue, however, raises the question, which is one of the points raised by Ms Bellfield on behalf of Mr Zha, whether the reality is that the winding up petition and the summons to appoint provisional liquidators is being used strategically in order to achieve some benefit on behalf of the Removed Directors in Hong Kong proceedings. It also raises a question the underlying reasons for making this application in the Cayman Islands, rather than in Hong Kong. I cannot decide those questions now, but I take notice of them.

116.4 As I have indicated, there is a real risk that the High Court in Hong Kong would not recognise any appointment of provisional liquidators made by this court, which I cannot discount.

116.5 There is the issue of comity which, whilst it is not an overriding consideration, is something to weigh in the balance.

117. Having put all five of those factors in the balance, my conclusion, as I have expressed at the beginning of this judgment, is that I am not persuaded that is "appropriate" within the meaning of section 104(3) of the Companies Act that I should accede to the application to appoint provisional liquidators.

F. Postscript regarding content of affidavit evidence

118. Finally, by way of a postscript, there is a procedural issue that I need to raise. One of the affidavits relied on by the Company was sworn by a member of staff at Carey Olsen. I have raised with all of the parties that the affidavit in question fails to comply with GCR O.41, r.5(3). In particular, the affidavit is sworn by an attorney and is not limited to matters of which the attorney has direct personal knowledge, which is the requirement in GCR O.41, r.5(3). Instead, the affidavit is full of hearsay evidence and, even worse than that, despite the deponent having stated at the outset of the affidavit that they will identify the sources of all information provided in the affidavit where the information is not within their personal knowledge, they have not indicated anywhere who are the persons who are the source of the information contained in the affidavit.

119. This is a recurrent problem in cases that have come before me in the last few months. It is at least the third, and possibly the fourth or fifth case where this issue has arisen. In two of those cases, the other party has objected to the evidence in question for this reason. In three of them, the other party has not. In those two cases before this one, and equally in this case, it has not made a difference in terms of the decision that I have made, but it is not good enough. As I said, in *Phoenix Commodities Pvt Ltd* [2025] CIGC (FSD) 68, attorneys practicing in this court should know what the Rules require and should comply with the Rules.

120. The reason for and importance of GCR O.41, r.5(3) was explained by Kawaley J in *Torchlight GP Ltd v Millinium Asset Services Pty Ltd* [2018] 1 CILR 244 at paragraphs 81-83. In that case, Kawaley J indicated that if it had not been for the fact that the evidence in the affidavit in question had subsequently been adduced through another deponent, the grant of leave to serve out would have been set aside. Breaches of GCR O.41, r.5(3) may therefore have serious real-world consequences.

121. It really is not satisfactory for evidence to be put before the court that does not comply with GCR O.41, r.5(3). In *Phoenix Commodities*, I indicated that failures to comply with the Rules might well result in costs being disallowed or adverse cost orders.

122. I repeat that warning again, if practitioners do not comply with the Rules, they risk having the cost of preparing the affidavits in question disallowed because the other party certainly, and probably the attorney's own client, should not be paying for work product that is defective.

123. I will say no more about that, other than to acknowledge the sincere apology that was given by Carey Olsen, and the offer to swear and file an affidavit complying with the Rules. I am not going to require that in this case, as the matters covered in the affidavit in question are peripheral, but I do strongly encourage all attorneys appearing in the Civil Division and the FSD to make sure that they know and understand and comply with all of the requirements of GCR O.41.

Dated 30 October 2025

THE HONOURABLE JUSTICE JALIL ASIF KC
JUDGE OF THE GRAND COURT