Neutral Citation Number: [2025] CIGC (FSD) 121

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 161 OF 2018 (NSJ)

IN THE MATTER OF THE COMPANIES ACT (2025 REVISION)

AND IN THE MATTER OF CHINA SHANSHUI CEMENT GROUP LIMITED

AND

CAUSE NO. FSD 93 OF 2019 (NSJ)

TIANRUI (INTERNATIONAL) HOLDING COMPANY LIMITED

PLAINTIFF

AND

CHINA SHANSHUI CEMENT GROUP LIMITED

DEFENDANT

Before:	**The Hon Justice Segal**
Appearances:	**Ms Gemma Bellfield and Corey Byrne of Ogier (Cayman) LLP appeared for Tianrui;** **Mr Alex Potts KC, instructed by Jonathon Milne and Clare Bradin of Conyers Dill & Pearman LLP appeared for CNBM;** **Ms Shelley White, Laure-Astrid Wigglesworth and Alexandra Stasiuk of Walkers (Cayman) LLP appeared for ACC;** **Mr Vernon Flynn KC instructed by Quentin Cregan and Adrian Davey of Maples and Calder (Cayman) LLP (in FSD 93 of 2019) and by Denis Olarou and Jasmin Davies of Carey Olsen (in FSD 161 of 2018) appeared for the Company**
Heard:	**11 November 2025**
Draft Ruling circulated:	**5 December 2025**
Final Ruling:	**11 December 2025**

RULING

Introduction

1. On 11 November 2025 I heard three summonses in connection with two sets of related proceedings.

2. The first set of proceedings is FSD 161 of 2018 (the ***Petition Proceedings***) relating to the just and equitable winding up petition (the ***Petition***) presented by Tianrui (International) Holding Company Limited (***Tianrui***) as a contributory in respect of China Shanshui Cement Group Limited (the ***Company***), to which Asia Cement Corporation (***ACC***) and China National Building Material Co Ltd (***CNBM***) are also respondents. The second set of proceedings is FSD 93 of 2019 (the ***Writ Proceedings***) commenced by Tianrui by writ (the ***Writ***) against the Company. The relevant background can be found in the Privy Council's judgment in the Writ Proceedings (*Tianrui (International) Holding Company Ltd v China Shanshui Cement Group Ltd* [2024] UKPC 36 at [6] to [27]).

3. On 24 June 2025 Tianrui issued a summons (the ***Tianrui Petition Summons***) in the Petition Proceedings and a summons (the ***Tianrui Writ Summons***) in the Writ Proceedings. In both these summonses Tianrui sought the following orders:

   (a). that the Petition Proceedings and the Writ Proceedings be heard together (and that documents disclosed in the Petition Proceedings shall serve as discovery in the Writ Proceedings and that evidence filed in the Petition Proceedings shall serve as evidence in the Writ Proceedings) (the ***Joint Trial Order***).

   (b). leave to adduce and rely on certain evidence obtained by subpoena in the United States pursuant to 28 USC section 1782 (the ***Section 1782 Order***).

   (c). an order that a single trial of both the Petition and the Writ now be listed with a time estimate of eight weeks (the ***Trial Date Order***).

   (d). fourthly, an order that the parties agree on directions for the filing and exchange of evidence in both the Petition Proceedings and the Writ Proceedings within 21 days

of the trial date being listed failing which the parties file draft orders so that the Court can determine any disputes and settle the directions to be made (the ***Exchange of Evidence Order***).

4. In the Tianrui Writ Summons Tianrui also sought leave to file an amended Writ and statement of claim and directions for the filing of an amended defence and amended reply. These applications were not opposed.

5. On 9 October 2025 the Company issued a summons in the Writ Proceedings (the ***Company's Summons***) seeking an order that the Writ Proceedings be stayed until the conclusion of the Petition Proceedings (the ***Stay Order***).

6. At the hearing, Ms Gemma Bellfield of Ogier appeared for Tianrui; Mr Alex Potts KC appeared for CNBM; Ms Shelley White of Walkers appeared for ACC and Mr Vernon Flynn KC appeared for the Company.

7. At the end of the hearing I told the parties that:

(a). I had decided that Tianrui's applications for a Joint Trial Order should be dismissed and that steps should now be taken to progress the Petition Proceedings promptly to a trial during the Winter Term 2026. I explained that while I could see arguments on both sides and considered that there was clearly a substantial overlap between both sets of proceedings (which relate to a largely common factual background and raise many of the same factual disputes), as a practical matter the further delay to the trial of the Petition that would result if that trial had to wait until the Writ was ready for trial was likely to be substantial and cause serious prejudice to the Company (and ACC and CNBM), as well as being inconsistent with the overriding objective.

(b). I had decided not to grant the Stay Order sought by the Company, at least in the form set out in the Company's Summons. While I consider that, on balance, the proper course is to press ahead with the Petition Proceedings in order to get to a trial as soon as practicable without waiting for the Writ Proceedings to catch-up, it is important to minimise the prejudice caused by separating the Writ Proceedings

from the Petition Proceedings by ensuring that the Writ Proceedings continue to advance and are well advanced by the time of the trial of the Petition so that if appropriate, a trial of the Writ can be listed promptly thereafter. I said that I was therefore minded to allow the Writ Proceedings to continue at least to the point where discovery by list and inspection had taken place and to direct that a further CMC be listed thereafter at which the position could be reviewed and further orders made although I wished to give further consideration to the precise directions to be made and would explain my final decision in my written note of my ruling. After further reflection, I have concluded that this is the right approach.

(c). I requested the parties to seek to agree the timetable to trial and a suitable trial window. It was now necessary to give directions for the filing of evidence and for the steps up to trial. I encouraged the parties, based on their update on the timetable to trial, to propose and seek to agree a range of dates for the trial window which, subject to my availability, could be agreed by all parties and kept open so that the trial could take place within that window. There would need to be another CMC after the evidence had closed, when the precise length and dates for the trial (within the trial window) could be agreed or ordered. I will wait to see what the parties discuss but I suspect that the prudent approach would be for the trial window to be from mid-October 2026 to mid-December 2026 with a view to firming up on the trial dates no later than the end of March 2026.

(d). I reserved my decision on Tianrui's application for the Section 1782 Order.

8. I have concluded that:

(a). directions should be given for the progress of the Petition Proceedings to trial as soon as practicable and that the timetable established by the Court's order dated 7 February 2022 should be maintained, subject only to the need to adjust and update the timetable to accommodate the fact that Tianrui has missed the 10 October 2025 deadline for the filing of its evidence and the fact the dismissal of its application for an adjustment to that timetable as recorded in this Ruling. On the basis that Tianrui should have been ready to file its evidence nearly two months ago I express the hope in the discussion below that it will be able now to complete and serve its

evidence with only a minor delay (of no more than one month). I wish the parties to seek to agree the adjusted timetable by 15 December 2025. This should include a date for PTR/CMC to follow the filing of Tianrui's evidence in reply. I also wish the parties to refresh their views, based on this timetable, as to an estimate of a trail window (a period during which the trial might reasonably be expected to be listed) recognising that the final decision on the trial dates will need to await the filing of all the evidence and the PTR/CMC.

(b). directions should be given for the progress of the Writ Proceedings up to the completion of the discovery process (discovery protocol, discovery by list and inspection) to be followed by a further CMC (if possible, to be listed at the same time as the PTR/CMC in the Petition Proceedings). Tianrui's application in the Tianrui Writ Summons for permission to amend the Writ and Statement of Claim (which as I understand it was not opposed) and for the filing of an Amended Defence and to file a Reply to the Amended Defence is granted. The parties should seek to agree the timetable and appropriate directions by 15 December 2025.

(c). for the time being there will be no order directing that the documents discovered in the Petition Proceedings be treated as discovered in the Writ Proceedings (or vice versa) or that evidence adduced in the Petition Proceedings shall stand as evidence in the Writ Proceedings (although this issue may need to be reviewed at a later stage).

(d). accordingly, Tianrui's applications for the Joint Trial Order, the Trial Date Order and the Exchange of Evidence Order are dismissed.

(e). I do not consider that Tianrui is currently entitled to the Section 1782 Order although I shall not dismiss its application at this stage. It will be open to Tianrui to amend the application and seek different orders in accordance with the guidance I give below.

(f). if the parties are unable to agree the relevant directions by 4pm on 15 December 2025 they should by that time file a draft of the required forms of order identifying what is agreed and what is in dispute (identifying alternative draft paragraphs) with

brief explanations of their positions and I shall then settle the orders to be made on the papers.

The application for the Joint Trial Order

9. Tianrui sought case management orders that the trial of the Petition Proceedings and the Writ Proceedings be heard together and that evidence filed in one proceeding be treated as having been adduced in both. It was implicit I think that Tianrui also wished the two sets of proceedings to be case managed together. Tianrui did not however seek to join CNBM and ACC to the Writ Proceedings so that there would be a commonality of parties to the two sets of proceedings.

10. Tianrui pointed out that it was not seeking consolidation under GCR O.4, r.4(1) given that (a) this rule did not apply to the Petition Proceedings which were governed by the Companies Winding Up Rules and (b) CWR O.24, r.1(5) suggested that petition proceedings may be heard together but not consolidated. However, Tianrui accepted, as did the other parties, that the principles applicable to an application for consolidation were relevant to an application for a case management order for there to be a single trial of the two separate sets of proceedings.

11. Tianrui noted that the Court was given by GCR O.4, r.4 the power to consolidate two sets of proceedings where it appeared that (a) some common question of law or fact arises in both or all of them, (b) the rights or relief claimed are in respect of or arise out of the same transaction or series of transactions or (c) for some other reason it was desirable to make an order for consolidation. Tianrui also noted that the Court's discretion under GCR O.4, r.4(1) must be exercised in line with the overriding objective, which is "*to enable the Court to deal with every cause or matter in a just, expeditious and economical way*" and that Justice Kawaley had said in *In re Nord Anglia Education Inc* [2018 (1) CILR 164] at [8] (albeit in a different context) that "[e]*xpedition and economy are explicitly given a higher priority in this court's rules than under the English CPR*." Tianrui also referred to the judgment of Justice Williams in *Carpenter v Caymanian Status Bd* [2017 (1) CILR 336].

12. All parties accepted that the judgment of Chief Justice Smellie (as he then was) in *Omni Securities v Deloitte* (unreported, 14 June 2024) gave authoritative guidance in this area. It was noted that at [64] Smellie CJ had observed (my underlining):

> *" - in exercising its discretion, the Court had to balance the desirability of trying together actions involving common or overlapping issues of law or fact against the possibility that consolidation would cause undue prejudice to one of the parties. Actions would be consolidated despite such prejudice if a fair trial could not be achieved without the causes being tried together (for example because the outcomes might otherwise be contradictory and deprive the plaintiff of a remedy against either defendant…).*
> *Where the issues of law or fact in the different actions are the same or substantially overlap, it may well be just and convenient that actions be consolidated. But the commonality of issues is not necessarily determinative. Disproportionate or undue prejudice to one party or another might none the less require the discretion which reposes with the judge to be exercised against consolidation. Indeed, in recognition of the infinite variability of the circumstances of cases, Scrutton, L.J. in Payne prefaced his words cited above with the cautionary statement (ibid.) that "it is impossible to lay down any rule as to how the discretion of the Court ought to be exercised." This axiom was readily accepted by all the counsel in the arguments before me. ...".*

13. Tianrui argued that it was clear that the central complaints in both the Petition Proceedings and the Writ Proceedings were the circumstances surrounding the issue of the bonds and the allegation that ACC and CNBM acted in concert with the bondholders (together with and/or through the Company) to issue the bonds to connected parties. In the Petition Proceedings these allegations form the basis of Tianrui's claim that it is just and equitable to wind up the Company and in the Writ Proceedings they form the basis for the relief sought against the Company. In its defence to both the Petition and the Writ, the Company made the same complaints against Tianrui, namely that Tianrui had allegedly mismanaged the Company and caused financial difficulties prior to May 2018 and that the bond issue was therefore justified and for a proper purpose. ACC and CNBM's defences to the Petition raised the same complaints as the Company. Tianrui submitted that, in the circumstances, there would be a substantial saving of costs, Court time and resources if both the Petition Proceedings and the Writ Proceedings were case managed, heard and determined together given the common questions of fact and law and the fact that both proceedings concern rights arising under the same series of transactions (i.e. the bond issues).

14. Tianrui argued that the Writ Proceedings could rapidly catch up with the Petition Proceedings. Discovery in the Writ Proceedings was now a straightforward matter because the Company had already provided discovery in the Petition Proceedings. The Writ Proceedings were concerned solely with the bond issues which was one of the key issues in the Petition Proceedings. Accordingly, Tianrui and the Company had already provided discovery in relation to the issues in the Writ Proceedings. Assuming that the Company had adequately complied with its discovery obligations in the Petition Proceedings (Tianrui reserved its position on this issue), then it would have no further substantial discovery obligations in the Writ Proceedings. Notwithstanding the short timetable proposed for filing amended pleadings, the Writ Proceedings should easily be able to catch up to the Petition Proceedings within a matter of a few weeks. The Company had made much of the significant volume of discovery produced by the other parties in the Petition Proceedings which it had not reviewed (the other parties had produced a total of 23,410 documents) but the proposed timetable left ample time for the Company to review this discovery. Tianrui said that the historical cause of the delay to the Petition Proceedings had been the Company's own conduct, including its two unsuccessful strike out applications so that it was disingenuous for it (and CNBM and ACC) to complain about delay.

15. Tianrui also argued that the Joint Trail Order would avoid the risk of different and conflicting decisions. Tianrui said that it was ominous that the Company seemed to be content for the complaint about the bond issues to be finally determined in the Petition Proceedings in which it was only the subject matter and not an active participant. This gave rise to a risk of inconsistent judgments. Tianrui was concerned that if the two sets of proceedings are heard sequentially rather than concurrently, the Company will seek to argue that it is not bound by the Court's findings in the Petition Proceedings and attempt to engineer a complete retrial of the same issues in the Writ Proceedings. This would lead to significant additional costs for both parties and a significant waste of Court resources.

16. There is no doubt that there is a substantial overlap between the Petition Proceedings and the Writ Proceedings. They rely on a common factual background and raise many of the same factual disputes. Both the Petition and the Writ rely on Tianrui's assertion that from early 2015 CNBM and ACC agreed to act together with a view to taking over control of the Company against the interests of and by way of diluting the shareholding of Tianrui,

that CNBM and ACC have exercised control over the Company since May 2018 and procured and directed the Company to enter into the two bond issues and the conversion agreements in August, September and October 2018. Both sets of proceedings are premised on the claim that the directors acted for an improper purpose and in breach of duty when they approved the bond issues and the conversion agreements.

17. But there are material differences. The parties to the Petition and the Writ are different, the formulation of Tianrui's complaints derived from the common facts are different and the relief sought is different. The Petition seeks a winding up order. The Writ (and the Statement of Claim filed in the Writ Proceedings) as currently drafted seek (a) a declaration that the bond issues, the share conversion and the New Share Issue and the shares and securities issued after 1 August 2018 are all void or (b) if they are not void, an order setting aside the bond issues, the share conversion and the shares and securities. In the amendments to the Writ and Statement of Claim for which Tianrui now seeks permission (in amended drafts dated June 2025), Tianrui amended the relief sought by removing the claim for these declarations and the application for an order to set aside the bonds. The amendments substitute and add (a) a declaration that the exercise by the directors of their powers when issuing the bonds, when agreeing to their accelerated conversion and when issuing the new shares had been invalid and (b) a claim for damages "*as a result of*" these "*breaches of power*."

18. Furthermore, while the Company is a party to the Petition Proceedings its role is limited since I decided that the Petition Proceedings should proceed as an *inter partes* dispute between Tianrui on the one side and CNBM and ACC on the other. As a result, the Company has taken no active role in the Petition Proceedings since my judgment dated 27 January 2021 (and the August 2021 order which followed), save in a limited manner in relation to discovery. On the other hand, the Company is the sole defendant in the Writ Proceedings and intends actively to defend them.

19. There are also differences in the procedural stage reached in each set of proceedings. In the Petition Proceedings, directions were given in an order dated 7 February 2022 (the ***February 2022 Order***). This order made provision for the agreement of the discovery protocol for the Petition Proceedings and provided for a timetable for the completion of discovery in accordance with that protocol, for inspection and for the filing of evidence.

Discovery has been completed and Tianrui was required to file and serve its evidence by 10 October 2025. However, it has not yet done so (it now seeks a variation of the timetable laid down in the February 2022 Order). Had Tianrui complied with the February 2022 Order CNBM's and ACC's evidence would have been due on 5 December 2025. However, because of the lengthy appeal process relating to the Writ Proceedings, no steps in the discovery process have been taken. Before the Writ Proceedings had been restored by the judgment of the Privy Council delivered on 14 November 2024 the Writ Proceedings had been struck out by the Court of Appeal since 1 July 2022 at which stage the pleadings had not closed and no discovery process had commenced.

20. There was a dispute as to how long it would take for the Writ Proceedings to catch-up with the Petition Proceedings. The Company, CNBM and ACC submitted that it was not a simple task, as Tianrui had claimed, of just treating the documents discovered to date in the Petition Proceedings as being discovered in the Writ Proceedings and moving to the evidence stage in the Writ Proceedings.

21. For one thing, the Company's discovery in the Petition Proceedings had been limited and it had not undertaken the discovery exercise required for the Writ Proceedings. Two issues arose. First, the time it would take for the Company to complete the further steps needed to complete the discovery process in the Writ Proceedings and secondly whether the Company would also, if there was to be a single trial with common discovery and evidence, need to give further discovery in the Petition Proceedings.

22. As regards discovery in the Writ Proceedings, the Company noted that no discovery protocol had yet been agreed for the Writ Proceedings and it had not yet substantively reviewed its own documents with any active defence of the Writ Proceedings in mind. The Company's evidence (set out in paragraph 9 of the Affirmation of Mr Chang – ***Chang 1*** - sworn on 9 October 2025) was that it needed to review the approximately 85,000 documents it had already disclosed with a view to identifying the issues relevant to the defence of the Writ Proceedings for the purpose of agreeing a discovery protocol. It would thereafter have to review Tianrui's discovery to check whether any issues arose. The process of agreeing the discovery protocol and completing the discovery process for the Writ Proceedings was likely to take many months. If material progress in the Petition

Proceedings were to have to wait until the Writ Proceedings had caught up there would therefore be a substantial delay in getting the Petition Proceedings to trial.

23. The Company said that such a delay would further prejudice its position and that it had already suffered material prejudice as a result of the delay in the progress of the Petition Proceedings. Mr Chang (at [14] of Chang 1) said that the Petition Proceedings had caused significant obstruction to the Company's business and gave the following examples: (a) the Company's monthly payments had been capped; (b) its ability to raise financing had been limited; (c) it had received complaints from potential business partners; (d) it continued to have to spend monies in the two sets of proceedings and (e) it had been unable to operate normally and has been practically unable to pay dividends to shareholders.

24. The Company further noted that it had also not carefully and critically reviewed the extensive range of documents discovered to date in the Petition Proceedings. If that discovery, including documents discovered by CNBM and ACC, was to be treated as discovery for the purpose of the Writ Proceedings, the Company would need to review those documents (including documents that might not necessarily be relevant to the Writ Proceedings) and assess whether issues needed to be raised. The Company did not actively participate in the negotiations of the Petition Proceedings Discovery Protocol and would need to review whether it was adequate from the Company's perspective.

25. As regards the Petition Proceedings, the Company was concerned that if it was to be a participant in a single trial for the Writ Proceedings and the Petition Proceedings it would need to review and assess the impact of all the evidence adduced in the Petition Proceedings, irrespective of whether it was directly relevant to the Writ Proceedings or filed by witnesses who were not giving evidence in the Writ Proceedings. The Company said that it would in effect be forced to take an active role in the Petition Proceedings (or at least incur significant costs in reviewing documents discovered and evidence adduced in the Petition Proceedings) despite the Court having ruled that it was not a party to the underlying shareholder dispute and should generally not spend the Company's money on the litigation of that dispute.

26. The Company also and separately said that it would be unfair if Tianrui was permitted to rely on discovery and evidence adduced by CNBM and ACC, who were not parties, in the Writ Proceedings. CNBM and ACC also objected to the overriding of Tianrui's implied undertaking not to use documents discovered in the Petition Proceedings in other proceedings. CNBM is concerned that the Joint Trial Order will give Tianrui an unfair and inappropriate procedural advantage because it will allow the documents disclosed and evidence adduced in the Petition Proceedings to be relied on in the Writ Proceedings.

27. The Company, CNBM and ACC also submitted that there were likely to be problems in managing a single joint trial. In addition to increasing costs by requiring parties to attend parts of the trial which did not directly relate to their case, it was difficult to see how the giving of evidence and the making of submissions in relation to the two separate cases could be made to fit together. Further and importantly, Tianrui would be forced to argue for inconsistent results and remedies at the same hearing.

28. Accordingly, the Company, CNBM and ACC argued that granting Tianrui's application for the Joint Trial Order would result in considerable further delays to the Petition Proceedings which had commenced as long ago as 2018, which would cause particularly serious prejudice to the Company (and as a result to CNBM and ACC's interest as shareholders). Further, it would also result in material additional costs and ordering that all evidence would be treated as filed in both sets of proceedings would produce serious procedural unfairness. As Smellie CJ had said in *Omni,* even where there was a commonality of issues between the two sets of proceedings (and the Company, CNBM and ACC argued that there was only a limited overlap in this case), that was not necessarily determinative. Where ordering a joint trial and joint case management of the Petition Proceedings and the Writ Proceedings would cause disproportionate or undue prejudice to some parties, then the Court should decline to make such an order. This was the position here.

29. It seems to me that in the circumstances, in particular in a case involving litigation that has already taken many years, while the arguments are finely balanced, the best way of dealing with the Petition Proceedings and the Writ Proceedings in a just, expeditious and economical manner is to give directions for the Petition Proceedings to proceed to trial as rapidly as possible and for the Writ Proceedings to progress in parallel to the point

where discovery has been completed. This will ensure that the fact that the Writ Proceedings are significantly behind the Petition Proceedings will not further delay the already long delayed trial of the Petition and that, by the time of the trial of the Petition, the Writ Proceedings will have made substantial further progress and be in a position where they can progress to a trial if appropriate within a relatively short time after the trial of the Petition.

30. The Petition Proceedings are already well advanced. The February 2022 Order already establishes a timetable for the filing of evidence and I do not see why, subject to some minor adjustments to take account of the fact that this ruling is being handed down after the recent date (10 October) by which Tianrui was supposed to have filed its evidence, that timetable should be materially amended or delayed. The parties will need to review again and seek to agree the adjusted timetable for the filing of the evidence and I wish to hear from them as to what is proposed. Tianrui should be ready or nearly ready to file its evidence and should wish to do so without delay if it genuinely wishes matters to progress rapidly. If Tianrui is ready to file/serve its evidence within a month of say 15 December (15 January 2026), CNBM, and ACC would have until 15 March 2026 to file their evidence in response and Tianrui would have until 30 April to file its reply evidence. A CMC/PTR could be listed in mid-May (I will be sitting in Hong Kong in June and unavailable for remote hearings then). The CMC/PTR will be the point at which a reliable time estimate of the trial can be made and the trial dates firmly fixed. However, I do not see why the parties cannot at this stage discuss and seek to agree a range of dates for the trial (a trial window) which may have to be adjusted at the CMC/PTR but which the parties will seek to stick with if possible. If delays are going to be caused by the unavailability of leading counsel it may be necessary for one or more parties to change counsel now so as to avoid such delays. Since the change would take place well in advance of the trial window and will involve additional costs, the new leading counsel would have plenty of time to get up to speed. It should be realistic to have a trial window for shortly after the start of the Winter Term, covering October-November 2026.

31. Further consideration will need to be given by the parties, and in the absence of agreement, by the Court as to the timetable and directions for agreeing a discovery protocol and for completing discovery in the Writ Proceedings. It seems to me that the Writ Proceedings should be allowed to progress to this point with a further CMC to

follow thereafter. While it appears that further work will be needed on the discovery process in the Writ Proceedings, the timetable should be shorter than that for the Petition Proceedings because the work done in connection with the Petition Proceedings will be relevant and of assistance. A discovery protocol for the Writ Proceedings can address the extent to which discovery already given in the Petition Proceedings could be treated as given in the Writ Proceedings. Assuming that the discovery protocol could be agreed within a month of, say, 15 December and the period for completing discovery was eight rather than the twelve weeks set out in the February 2022 Order that would mean that inspection could be completed by the end of March. The evidence in the Writ Proceedings will be completed, assuming the timetable I have sketched above is realistic, shortly thereafter and it would be possible to list the further CMC at the same time as the PTR/CMC in the Petition Proceedings. At this point Tianrui and the Company will have a clear picture of the witnesses they wish to call and evidence they wish to file in the Writ Proceedings and the use of evidence in the Petition Proceedings and the relationship between the evidence in the Petition Proceedings and the Writ Proceedings can be reconsidered and further directions given.

32. I suspect that at least in practical terms Tianrui would need to decide at, and no later than, the time of the PTR/CMC in the Petition Proceedings whether it wishes to obtain a winding up order rather than seek the relief in the Writ Proceedings. As I understand it, while Tianrui wished there to be a joint trial of the Petition and the Writ, in the absence of this it still wishes to press ahead first with the Petition and to seek a winding up order.

33. But I agree that because of the inconsistent remedies sought in the Petition and the Writ it would be inappropriate and disproportionate to have a joint trial. It would mean, on Tianrui's case as I understand it, that both sets of proceedings would be tried and that Tianrui would then have the right and ability to elect (at the end of the trial and before judgment) as to which remedy it wished the Court to grant.

34. If the trial of the Petition Proceedings goes ahead and a winding-up order is made, it would be open to the liquidators to bring any proceedings to challenge the validity of the bond issues, the accelerated conversions and the share issues and the directors' decision making in connection therewith. If they did so, perhaps funded by Tianrui, there might be no need to continue the Writ Proceedings. It would also be necessary to consider

whether Tianrui could and would be permitted to continue the Writ Proceedings after the making of a winding up order. If Tianrui wished to pursue a claim for damages, it might be possible for that to be adjudicated and dealt with in the winding up. If the Petition is dismissed, it would then be open to Tianrui to proceed with the Writ Proceedings (it would need to assess whether it was worthwhile doing so in light of the Court's findings and decision in the Petition Proceedings). If the Writ Proceedings had reached the discovery stage by the time of the trial of the Petition it would be possible to have a further CMC after judgment in the Petition Proceedings for the purpose of giving further directions in light of that judgment.

35. This seems to me to be a fair and proportionate procedural route to follow that balances the competing claims and interests of the parties.

36. I accept that the delay in progressing the Writ Proceedings is largely the result of the appeals process. There was first an appeal to the Court of Appeal (who allowed the Company's appeal of my decision that the cause of action on which the Writ was based was properly formulated and actionable) and then an appeal to the Judicial Committee of the Privy Council (who allowed Tianrui's appeal and upheld my decision). I have taken into account this factor and that it would be unfair to penalise Tianrui for the consequences of a long appeal process.

37. But the fact that CNBM and ACC are not parties to the Writ Proceedings raises various issues and complications for joint case management and a joint trial. As non-parties they are not and cannot be required to give discovery and I accept that the Court needs to be cautious before requiring their discovery in the Petition Proceedings to be used in the Writ Proceedings. It seems to me that a decision to require this is best taken after it is clear how discovery is to be conducted in the Writ Proceedings (at least after the discovery protocol in those proceedings has been agreed or settled by Court order). The Court will then be able to compare the discovery in both sets of proceedings and consider the risk of prejudice to CNBM, ACC and the Company. The same reasoning applies to allowing evidence adduced in the Petition Proceedings to be used and relied on in the Writ Proceedings. The Court needs to have a better understanding than it does now of precisely who the witnesses will be and the evidence to be filed in the Petition

Proceedings in order to be able to assess whether it is justifiable to require/permit such evidence to be admitted in the Writ Proceedings.

38. Because CNBM and ACC are not parties to the Writ Proceedings they may well not be bound by the findings made by or decisions of the Court in those proceedings by way of *res judicata*. But if the Writ Proceedings go to trial after the trial and judgment in the Petition Proceedings, further consideration will need to be given to this issue (including whether there is a basis for a claim based on the privity in interest principle) and as to whether CNBM and ACC can be affected by findings and decisions made in the Petition Proceedings (otherwise than on the basis of the *res judicata* doctrine). The Company is however a party to both the Writ Proceedings and the Petition Proceedings, albeit only a non-protagonist party/capacity in the Petition Proceedings for limited purposes. A question will arise as to whether the Company will be bound by findings of fact made in the Petition Proceedings. It seems to me that these issues, which will substantially depend on the evidence filed in, conduct of and findings and decisions made in the Petition Proceedings are best left to be further considered at a later stage, probably after the trial and judgment in the Petition Proceedings (or possibly at the CMC before that trial).

39. There is also an issue as to whether any other parties will wish to be joined or should be joined to the Writ Proceedings on the basis that their rights and interests may be affected by a decision on the propriety of the exercise of the directors' powers and the "*validity*" of the decision to authorise the Company to enter into the bonds, to agree to the accelerated conversion of the bonds and to issue the shares. Once again, this is an issue best left to a later stage in the Writ Proceedings.

40. All of the factors support a case management decision to direct that the Petition Proceedings proceed to trial first and as rapidly as possible.

41. To that extent I agree with the position and submissions of CNBM (and ACC) and the Company. But I would note that I do not see that there would be insuperable difficulties in case managing a joint trial, if one were otherwise appropriate. It would be possible to structure the trial so that the common witnesses were cross-examined by all parties and the separate witnesses were cross-examined by the relevant opposing party and then for Tianrui to make submissions in both the Petition Proceedings and the Writ Proceedings,

for CNBM and ACC to make submissions in the Petition Proceedings and for the Company to make submissions in the Writ Proceedings. I also do not see why it would necessarily be the case that the Joint Trial Order would require the Company to participate in the Petition to a greater extent than it is currently entitled or required to do. It should be possible for practical steps to be taken to ensure that the Company's role in the joint trial remained focused dealing with the facts (factual disputes) and submissions in the Writ Proceedings and to the giving of discovery and evidence where necessary in the Petition Proceedings.

Tianrui's application for the Section 1782 Order

42. In the Tianrui Petition Summons and the Tianrui Writ Summons, Tianrui seeks the following orders (the ***Section 1782 Applications***):

> *"[Tianrui] has leave to adduce and rely on evidence produced under subpoena by certain financial institutions and The Clearing House Payments Company in Case No: 19-mc-00545 in the US District Court for the Southern District of New York pursuant to USC section 1782."*

43. Tianrui said that in both the Petition and the Statement of Claim in the Writ Proceedings it was alleged that on 6 August 2018 and 30 August 2018 the bondholders had entered into subscription agreements with the Company under which they were issued with convertible bonds by the Company and that ACC and CNBM and the bondholders were connected or associated with one another and formed a concert party for the improper purpose of diluting the shares of Tianrui. There was an issue as to whether any payments had in fact been made for the issue of the bonds, the identity of the persons who had made any payments and the timing of any payments. Tianrui said that these questions were highly relevant to the issue of whether a concert party existed and the legitimacy, genuineness or propriety of the relevant subscription agreements (which required in clause 4.2(a) that the subscription price for the convertible bonds be remitted in US dollars by wire transfer to the Company's account with the Hong Kong branch of the Far Eastern International Bank). Tianrui had applied to the US District Court for the Southern District of New York (the ***SDNY Court***) pursuant to 28 U.S.C. section 1782 to subpoena all US banks that provide correspondent banking services in respect of US dollar

transactions (the ***US Banks***) together with The Clearing House Payments Company in order to see whether there was any documentary record of any US dollar payments to the Company at the relevant time. The subpoenas issued under the section 1782 application sought records of wire transfers initiated in or received between the Company, ACC, CNBM and the bondholders between June 2018 to December 2018 and the documents obtained pursuant thereto had allegedly shown no evidence of US dollar payments having been made by any of the bondholders to the Company over the relevant period. Tianrui argued that the result of the subpoenas was relevant evidence in both the Petition Proceedings and the Writ Proceedings and that it was entitled to place this evidence before this Court so that it could rely on the evidence at trial and ask the Court to draw such inferences as may be appropriate based on the balance of the evidence before the Court at trial. It may be appropriate to ask the Court to infer from the absence of evidence of payment by the bondholders (if that turns out to be the case at trial) that the subscription agreements were not genuine. In any event, the documents obtained as a result of the section 1782 subpoenas were discoverable as train of inquiry documents.

44. The Company and CNBM had intervened and opposed the relief sought by Tianrui in the section 1782 proceedings but on 22 October 2020 the SDNY Court had issued an order granting the section 1782 application "*subject to an appropriate protective order*" and subject to Tianrui's agreement to limit the proposed 1782 subpoenas to records regarding wire transfers conducted between June 2018 and December 2018. On 18 November 2020 the SDNY Court made an amended protective order (the ***Protective Order***). The Protective Order provided (in [2]) that the documents obtained pursuant to the section 1782 subpoenas be used exclusively in the course of these (the Cayman Islands) proceedings and (in [4]) bear the designation "*Attorneys Eyes Only*." It also provided (in [5]) that Tianrui must "*seek relief from the [SDNY Court] or [this Court] regarding the use of the 1782 Documents*." [6] of the Protective Order provided as follows (underlining added):

> *"In the event [Tianrui] wishes to disclose Discovery Material referencing Intervenors in the Non-U.S. Proceedings beyond review by Outside Counsel, counsel for Applicant shall advise Outside Counsel for CSC (both in this 1782 Proceeding and in the applicable Non-U.S. Proceeding) and seek agreement on the manner of such disclosure.*

> *If [Tianrui] seeks to disclose such Discovery Material in connection with a court filing, hearing, trial, proceeding, or appeal, and no agreement is reached with Outside Counsel for CSC, then Applicant shall seek an order from the court in such Non-U.S. Proceeding to file, admit into evidence or disclose at a hearing or proceeding, as the case may be, such Discovery Material under seal or by equivalent procedure to prevent the disclosure of such Discovery Material to the general public.*
>
> *Nothing herein precludes this Court from considering the rulings by the court(s) in the Non-U.S. Proceedings regarding the disclosure of Discovery Material in connection with any dispute regarding disclosure of Discovery Material to Applicant."*

45. Tianrui said that its primary position was that the section 1782 documents were not confidential and should be disclosed following this Court making the Section 1782 Order together if required with an order that these documents be sealed from access by the general public as required by the Protective Order. Tianrui's alternative case, if the Court concluded that the section 1782 documents were confidential, was that the Court should nevertheless allow use of the material while protecting confidentiality. That could be achieved if the section 1782 documents were disclosed in a confidential affidavit that could only be reviewed by the Court and the attorneys for the parties. The other parties could also consider appropriate further orders for the trial including that these documents be included in a separate confidential bundle or only subject to cross examination in a closed hearing.

46. There was no dispute that in this jurisdiction documents obtained under 28 U.S.C. section 1782 have frequently been admitted into evidence. Proceedings under 28 U.S.C. section 1782 to obtain evidence for use in Cayman proceedings are not abusive even though the material sought might not be useful in those proceedings (see *Phoenix Meridian Equity Limited v Lyxor Asset Management S.A.* [2009 CILR 342], Smellie CJ at [24] and *Nokia Corp v InterDigital Technology* [2004] EWHC 2920 (Pat). CNBM said that it did not, at least for the purposes of this application, submit that the mere fact (in isolation) that Tianrui had made a section 1782 document production application gave rise to an abuse of process in the context of the Petition Proceedings. However, CNBM raised two fundamental objections to the application made in the Tianrui Petition Summons (CNBM was not a party to the Writ and so was not concerned with the related application in the Tianrui Writ Summons).

47. First, CNBM argued that it was an abuse of process, and unreasonable, for Tianrui to seek to circumvent the Protective Order. The order sought by Tianrui in [2] of the Tianrui Petition Summons was an unconditional permission to "*adduce and rely on evidence produced*" and obtained in the section 1782 proceedings. But the Protective Order, as I have already noted, requires in [6] that if Tianrui wishes to "*disclose*" the section 1782 documents in these proceedings it must "*seek an order from [this Court] to file, admit into evidence or disclose at a hearing or proceeding, as the case may be, such Discovery Material under seal or by equivalent procedure to prevent the disclosure of such Discovery Material to the general public*." The Tianrui Petition Summons failed to seek such an order. The first step that was required to comply with the SDNY Court's order was for an order to be sought and made by this Court equivalent to that made by the Protective Order to ensure (essentially an order for a confidentiality club) that the section 1782 documents could only be seen and reviewed by the parties' attorneys. CNBM understood that these documents included documents relating to their bank accounts which were highly sensitive and which should not be shown to their competitors (including Tianrui) let alone to the public. CNBM, being a company based in the PRC, was also subject to stringent local law requirements regarding disclosure and the transmission of documents which had to be carefully considered and taken into account.

48. CNBM said that it appeared from the relevant correspondence that Tianrui did not want such an order to be made. Mr Potts referred me to the recent letter from Ogier (Tianrui's Cayman attorneys) dated 16 October 2025 to the other parties' attorneys in which Ogier set out, under the heading "*Proposal for s1782 Documents*" Tianrui's position. Tianrui appeared to want CNBM (and ACC and the Company) formally to acknowledge and admit for the purpose of the trial of the Petition (and the Writ) that the section 1782 documents "*did not contain any evidence that the Bondholders remitted payment to Far Eastern International Bank Co Ltd and/or the Company between June and December 2018 in accordance with the eight separate subscription agreements to purchase those bonds between the Bondholders and the Company dated 6 August 2018 and/or 30 August 2018*." Ogier said that if such a stipulation could be agreed Tianrui would withdraw its application for the Section 1782 Order.

49. Secondly, as I understood it, CNBM argued that even if Tianrui had sought an order preserving the confidentiality of the section 1782 documents in the Petition Proceedings,

the Court should not grant the relief sought. Tianrui had failed to establish that, or explain with particulars, why any of the section 1782 documents were relevant. It had not filed a confidential affidavit (available only to the attorneys) setting out details of the relevant section 1782 documents which would allow the Court to be satisfied that those documents were in fact relevant to the Petition Proceedings. Tianrui's case was based on general assertions and the evidence of its own US counsel, Mr Grossman. Tianrui should have sought permission to file a confidential affidavit in which the documents it wished to adduce in evidence were identified so that the Court, with the benefit of submissions from the other parties, could consider and decide, in a private hearing to which only the attorneys would be admitted, whether they were relevant and therefore admissible, and if so on what terms. In the absence of such evidence and such a process, the Court should dismiss Tianrui's application. Furthermore, Tianrui had asserted that the section 1782 documents were relevant because they could be used to establish a negative, namely that the bondholders had not paid the relevant US bank in US dollars to discharge their obligations to pay the subscription price. CNBM said that this was insufficient to establish relevance.

50. CNBM also referred to the detailed and fully negotiated discovery protocol regulating discovery in the Petition Proceedings, which had taken into account the need to respect relevant confidentiality and disclosure restrictions including those arising because CNBM is a Chinese party with special restrictions on the disclosure and transmission of documents in and from the PRC. Tianrui had argued that a primary consideration for the Court ought to be whether the section 1782 documents were relevant and would be disclosable in the hands of the parties and had referred to the Court's power (under GCR 24, r.3 and r.8) to order discovery of documents relating to any matter in question, which power extended to train of inquiry documents (citing *Thorpe v CC of Greater Manchester* [1989] 1 WLR 665 at 668). But, CNBM said, if Tianrui was seeking relief on the basis that the section 1782 documents were discoverable and should have been discovered, it should have made an application for specific discovery on a proper basis with evidence in support justifying such an order and any departure from or extension of the existing discovery protocol.

51. ACC said that it was not directly involved in this issue and for itself had no particular confidentiality concerns. However, ACC supported CNBM's submissions on this issue

and agreed that as matters currently stood Tianrui had failed to show that any of the section 1782 documents were relevant.

52. The Company said that it adopted a neutral as position as regards Tianrui's application in the Tianrui Petition Summons for permission to adduce and rely on the section 1782 documents in the Petition but since it argued that the Writ be stayed until after the determination of the Petition it considered that it was premature for it to address the position in the event that its application for a stay was dismissed.

53. It seems to me that Tianrui's Section 1782 Applications should, at least as presently formulated, be dismissed.

54. First, the terms of the Protective Order appear to be clear. If Tianrui wishes to obtain an order from this Court permitting it to adduce the section 1782 documents in evidence it must seek an order that requires those documents to be sealed and kept confidential. It seems to me that Judge Furman's order (having been told by the Company and CNBM that Tianrui was a commercial competitor) permitted disclosure of the section 1782 documents subject to the attorneys' eyes-only qualification on the basis that confidentiality would be protected and preserved if those documents were to be filed and put in evidence in these proceedings. Paragraph [6] of the Protective Order referred to the need to prevent disclosure to the general public but it seems to me that a prudent construction of that paragraph suggests that Judge Furman had in mind that, subject to further applications to her and amendments of the Protective Order, the regime established by the Protective Order would be respected in this jurisdiction and in these proceedings.

55. The Protective Order states in the final paragraph of [6] that "*Nothing herein precludes this Court from considering the rulings by the court(s) in the Non-US Proceedings regarding the disclosure of Discovery Material in connection with any dispute regarding disclosure of Discovery Material to [Tianrui].*" This indicates to me that Judge Furman was making it clear that the SDNY Court would review and consider amendments to the Protective Order in light of rulings made by this Court. But I cannot read this paragraph or the Protective Order as a whole as permitting Tianrui to apply for relief from this Court that disregarded and completely ignored the clear direction in [6] that it should seek an

order requiring the section 1782 documents to be sealed and protected from disclosure. Nor would I be prepared to make such an order before a further application had been made to Judge Furman to confirm that she would sanction and permit the relief sought from this Court (if necessary, by making an amendment to the Protective Order). Mr Grossman (who is not an independent expert but the US attorney for Tianrui) seemed to suggest (see [33] of his First Affidavit) that this Court could and should make an order permitting the 1782 documents to be adduced in evidence and relied on in these proceedings without restrictions and that if that were done he believed (his "*expectation*" was) that upon a subsequent application to the SDNY Court that court would "*defer to [this Court's] rulings about the use and the method of use regarding the 1782 Documents.*" But it would, in my view, be a fundamental failure to respect the SDNY Court and its order, and of comity to another court, for me to go ahead without any reference back to Judge Furman and permit Tianrui to act in breach of the Protective Order.

56. Mr Grossman also referred (once again at [33] of his First Affidavit) to the option of this Court granting the Section 1782 Applications on a conditional basis, namely that the orders sought by Tianrui would be granted "*conditional upon the SDNY Court lifting the "attorneys-eyes only*" designation. I can see that this might make sense in appropriate circumstances and accept that the purpose and effect of the section 1782 jurisdiction is to assist the foreign court and to act in a manner that is ancillary to the foreign proceedings so that if this Court considered that as a matter of local procedural and substantive law it was appropriate that some or all of the section 1782 documents be adduced in evidence (or discovered) then the SDNY Court was likely, subject to any requirements of applicable US Federal or State law, to amend its order to facilitate this. But I am not satisfied that this is such a case. First, albeit a minor matter, I have not been provided with a form of draft order for this purpose (although this is not entirely trivial as the draft order would contain relevant recitals and set out precisely what was proposed). Secondly, I am not yet satisfied that there is a proper basis for admitting the section 1782 documents into evidence in the Petition Proceedings or the Writ Proceedings.

57. Secondly, it seems to me that it would be wrong to grant the Section 1782 Applications as currently formulated. First, if the documents produced in response to the section 1782

subpoenas are to be put in evidence in the proceedings in this jurisdiction, it will be important to understand and see precisely what documents are involved in order to assess not their relevance but rather what protections are needed to preserve confidentiality and the interests of those whose information is to be disclosed. Secondly, I cannot at present see why it would be of assistance just to adduce the documents in evidence (by way of a document dump). What Tianrui wishes to do is rely on the result of the searches conducted pursuant to the section 1782 subpoenas to say that none of the wire transfers (or other documents relating to fund transfers) evidenced payments by (or on behalf) of the bondholders. This could, for example, be confirmed by a suitable expert witness who examined the documents (subject to suitable confidentiality restrictions) and described what documents were produced and examined and explained his/her conclusions and if the other parties wished to appoint an expert to check the position and review the documents they could be permitted to do so (subject to the same restrictions). The section 1782 documents individually and separately are not relied on to prove a relevant fact. It is the documents taken together in light of and in response to the search terms set out in the subpoenas that Tianrui wishes to rely on.

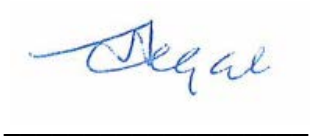
58. Little or no detail has yet been provided as to precisely what documents are included in the section 1782 documents. I have seen what documents the section 1782 subpoenas sought and can see that the relevant financial institutions were asked to provide "*logs or spreadsheets listing all wire transfers initiated or received by any*" of the Company, CNBM, ACC and the original bondholders (being Cithara Global, TFI Asset Management, Chiang Ching Feng, Wonderful Sky Financial Group, Wong Ham Chi, Luk Ching Sanna and Greater Bay Investment Fund) in which transfers the financial institution acted as an intermediary bank or correspondent bank to CHIPS, Fedwire or otherwise facilitate an interbank funds transfer as well as records relating thereto. The request was limited to wire transfers occurring during the period from 1 July 2018 to the date of the subpoena. Tianrui in its skeleton argument said that the section 1782 documents showed no evidence of US dollar payments by any of the bondholders to the Company in this period but no further details have been provided. Presumably, the section 1782 documents contain lists and details of many wire transfers and payments which identify the ultimate payor and payee and the other banks involved in the fund transfers. If such documents are to be adduced in evidence it will be important to be

satisfied that confidentiality and the rights and interests of those who are referred to are properly protected.

59. As I have said, it seems to me that relevance has to be tested by reference to the totality of the documents produced in response to and in light of the searches required by the section 1782 subpoenas. I am not persuaded by Mr Potts' argument that the section 1782 documents, or at least evidence (for example by way of affidavit) as to the result of the searches mandated by the subpoenas, cannot in principle be treated as relevant if all the documents do is show, or all the result of the searches show is, that the inquiry made by and in the section 1782 subpoenas resulted in no evidence of payments (wire transfers) having been made by the bondholders to Far Eastern International Bank or US banks providing correspondent banking services in respect of US dollar transactions. As Tianrui said, whether the bondholders paid any subscription monies and whether the subscription agreements were genuine are issues in the Petition Proceedings and the Writ Proceedings. Documents produced by relevant financial institutions in response to a mandatory search that do not identify any payments (and to that extent show that no payments were) made in US dollars by the bondholders in the relevant period are relevant to these issues. The documents evidence the result of the search and it would be open to Tianrui to assert, if this can be proved, that such a search would have identified any such payments but did not do so. The weight to be given to the results of the subpoena search will depend on evidence as to whether the search would have revealed the wire transfers that evidenced such payments by the bondholders and whether the section 1782 documents that were produced by the financial institutions concerned do not or could not relate to payments by the bondholders, as well as other evidence adduced at trial.

60. It seems to me therefore that Tianrui needs to give further thought to precisely what it wants to achieve and what relief to seek. If it wishes to obtain permission to adduce the section 1782 documents into evidence it will need properly and carefully to address what is needed to protect the confidentiality of the documents both to comply with the Protective Order and to protect the rights and interests of those who are referred to or whose confidential information is contained in the documents. It will need to seek an order permitting it to file an affidavit which may only be read by the parties' attorneys and considered at a private hearing which either exhibits the section 1782 documents or gives a sufficient description of them to enable the Court to assess what protections need

to be in place and Tianrui will need to propose, and seek to agree with at least CNBM and the Company, suitable protective measures to apply up to and at trial. Alternatively, Tianrui can consider my alternative suggestion in which the documents are adduced in evidence but only made available for inspection and review by the parties' attorneys and experts. If, however, Tianrui wishes to argue that any of the section 1782 documents are within the possession, custody or control of CNBM and the Company and relevant, such that they should have already been discovered in the Petition Proceedings, Tianrui can make an application for further or specific discovery.



The Hon. Justice Segal
Judge of the Grand Court, Cayman Islands
11 December 2025