



Neutral Citation Number: [2025] CIGC (FSD) 84

Cause No: FSD 2025-0193 (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 NEW HORIZON HEALTH LIMITED

Appearances: Mr Alex Potts KC of counsel instructed by Mr Erik Bodden and Mr Jordan McErlean of Conyers Dill & Pearman LLP for the Petitioner

Before: The Honourable Justice Jalil Asif KC

Heard: 6 August 2025

Ex tempore judgment delivered: 6 August 2025

Finalised judgment approved: 25 August 2025

Winding up—whether to appoint provisional liquidators or a restructuring officer—relevance of powers to be exercised by office holder to the appropriate appointment

JUDGMENT

1. This is an application by summons filed on 8 July 2025 by New Horizon Health Limited, as petitioner, to appoint provisional liquidators.
2. I will deal with the background very briefly indeed. New Horizon Health Limited operates predominantly in China. It is in the business of assisting with screening and diagnosis of cancers of various kinds and has developed products to provide early screening, particularly for bowel cancer.
3. It appears to have been successful for a number of years. **But** in 2023, there were complaints made by a third party that the company's sales figures did not appear to be justifiable. This generated an internal investigation which has raised questions about the reliability of sales data within the company and some suggestions that the company's revenue, as a result, has been overstated.
4. The company's accounts for 2023 have not been completed as a result of question marks over the accuracy of the data on which they are based and Deloitte, who were formerly the company's auditors, have resigned.
5. New auditors have been appointed but have not yet been able to complete their audit of the accounts for 2023. All of this led to the removal of one of the directors of the company, who may have had some involvement in the matters for concern.
6. The directors appointed, largely, a new management team, who have been investigating and trying to resolve the issues but those issues have not yet been resolved.
7. As a result of all of this, the Hong Kong Stock Exchange suspended trading in the company's shares in March 2024, and trading remains suspended. The Hong Kong Stock Exchange has indicated that unless it is satisfied about steps taken within the company to address the outstanding issues by 27 September 2025, then it intends to move to de-list the company's shares from the Hong Kong Stock Exchange. That would obviously be a very serious outcome for the company.

8. The current board of the company has determined that it would be in the company's best interests to appoint provisional liquidators, who would be able to continue the ongoing investigations into the management of the company, backed by their statutory powers, and at the same time to attempt to achieve a rescue of the company, or perhaps a restructuring, to allow it to continue or its business to continue in operation.
9. It is clear from the material that I have seen that the company does have valuable assets and appears to have a viable business if the internal difficulties can be resolved. In those circumstances, whilst the company does not currently have a re-structuring plan, it seems to me that the board of directors have an intention to try to achieve a restructuring, which brings this case into the territory where it is appropriate to appoint provisional liquidators with a view to trying to achieve such a restructuring, if that is possible.
10. Against that background, Mr Alex Potts KC, who has appeared for the company today, has helpfully taken me to the Companies Act to establish my jurisdiction to grant relief under section 104(1) of the Companies Act in circumstances where the winding up petition, which has been presented by the company itself, is for winding up on the just and equitable basis.
11. Mr Potts and I discussed briefly during the course of argument the difference between the appointment of a restructuring officer and the appointment of provisional liquidators, and the two cases of *Kingkey Financial International (Holdings) Limited* (unreported, 12/04/24), which was a decision of mine, and *Oakwise Value Fund SPC* (unreported, 16/12/24), which was a decision of Justice Kawaley on a similar issue.
12. I have no hesitation in saying that in this particular case, in my view, the powers of a restructuring officer would not be sufficiently broad or are unlikely to be sufficiently broad to cover all of the various steps that this company is likely to need to happen in order for a rescue to be successful. The additional powers that are likely to be available to a provisional liquidator makes the appointment of provisional liquidators a preferable one for this particular company. Having considered the circumstances of the company, it seems to me that there is good reason to appoint provisional liquidators, and that it is appropriate to do so within the meaning of section 104(3) of the Companies Act.

13. Substantively, the next point to mention is that, as in *Kingkey*, the liquidators who are proposed to be appointed are Mr Martin Trott within the Cayman Islands and Mr Jonathan Lai, also known as Lai Wing Lun, and Mr Osman Mohammed Arab in Hong Kong. In *Kingkey*, Mr Potts, as part of the company's obligation of full and frank disclosure, referred me to some criticisms of Mr Lai and Mr Arab by Justice Linda Chan in the Hong Kong Court of First Instance. Similarly, during the course of the hearing of this application today, Mr Potts has referred me to the Hong Kong Court of Appeal's decision in which that court refused leave to appeal against Justice Linda Chan's order for costs. The Hong Kong Court of Appeal did not consider it necessary to make any findings on the merits of Justice Linda Chan's comments regarding Mr Lai and Mr Arab but indicated that it did not think she could be criticised for some of the findings that she had made.
14. As I indicated during the course of argument this morning, the decision of the Hong Kong Court of Appeal does raise some question marks. However, there is no opposition from anyone to the appointment of the proposed provisional liquidators today; there does not appear to have been any professional sanction placed on them in relation to the matters about which Justice Linda Chan complained; and Mr Trott remains content to work with those two gentlemen as co-liquidators. In those circumstances, it seems to me that there is no bar to me approving those two individuals as provisional liquidators of this company. When anyone makes an application to remove them or to substitute new provisional liquidators, the court can consider at that stage whether a proper basis for removal is made out. I make clear that, at this stage, I do not form any view or express any view at all about whether such an application would be meritorious or would be likely to succeed.
15. I take on board Mr Potts' comment that it is likely that in anyone's professional career there are going to be occasions where criticisms are made. As I said to Mr Potts in argument, having indicated that I have given express thought to the identity of the provisional liquidators and that I have concluded that there is no bar to the proposed provisional liquidators being appointed, I really do not need to say anything further about it.
16. For all of those reasons, I will make an order largely in terms of the draft that was put before me. The only area in which I do not currently accept the terms of the draft order is in relation to paragraph 3(c) of the draft order, where a request is made to sanction in advance the engagement of counsel, solicitors or attorneys, as the provisional liquidators reasonably consider appropriate. As I indicated

to Mr Potts, on the basis of *Re UCF Fund* [2011] 1 CILR 305, it is premature to ask for sanction to be granted before the proposed attorneys have been identified and terms of engagement have been finalised, so that the court can perform its proper function of making sure that those attorneys are suitable and are not conflicted, and that the terms of engagement on which those attorneys will act are reasonably acceptable in the context of the likely winding up of the company or potential winding up of the company.

17. So, I will adjourn that aspect of the summons only, and the company may file further evidence once the provisional liquidators have identified the firm they wish to engage and the terms of that proposed engagement. So long as the appointment is not contentious, I will be content to deal with that on the papers.
18. Finally, I should say that the summons also asks for certain evidence to be sealed and, by way of an oral application today to amend the summons, that the application is extended to cover the Second Affirmation of Naxin Yao and the First Affirmation of Lai Wing Lun. This is on the basis that those two affirmations and the exhibits to each of them contain commercially sensitive information regarding the ongoing investigations within the company – including draft reports which, because they are draft and have not been finalised, are therefore not to be relied on. In addition, they ought not to be in the public domain because they may make allegations against certain persons which have not yet been finalised, and which it would be unfair to those persons to have disseminated in circumstances where the reports are still only drafts and the investigations have not been concluded.
19. I am satisfied that those are good reasons for both of those affirmations and their exhibits to be sealed until further order. As I indicated to Mr Potts, there should be a backstop date such that any sealing should terminate at the conclusion of the winding up of the company. If, for some reason, it is not wound up, then the provisional liquidators, or official liquidators if they are appointed in due course, or indeed the company, can make a further application under the liberty to apply provision in the order to finalise the status or the sealing status of the affirmations and their exhibits.

Dated 25 August 2025



**THE HONOURABLE JUSTICE JALIL ASIF KC
JUDGE OF THE GRAND COURT**