



Neutral Citation Number: [2025] CIGC (FSD) 68

Cause No: FSD 2025-0050 (JAJ)

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

IN THE MATTER OF THE COMPANIES ACT (2025 REVISION)

AND IN THE MATTER OF ICM SPC

BETWEEN:

PHOENIX COMMODITIES PVT LTD (in liquidation)

Petitioner

-and-

ICM SPC

Respondent

Appearances: Mr Ben Hobden and Mr Luke Fraser of Harney Westwood & Riegels (Cayman) LLP for the Petitioner

Mr David Alexander KC of counsel and Mr Corey Byrne of Ogier (Cayman) LLP for the Respondent

Before: The Honourable Justice Jalil Asif KC

Heard: 27 June 2025

Judgment: 24 July 2025

Practice and procedure—affidavits and affirmations for interlocutory applications—importance of limiting content to matters of evidence—importance of compliance with GCR O.41, rr. 12, 14 and 15 in respect of exhibits

Practice and procedure—stay of winding up petition where debt based on judgment under appeal—principles to be applied

Practice and procedure—temporary case management stay in interests of justice and to promote the overriding objective—principles to be applied

[2025] CIGC (FSD) 68 - Phoenix Commodities PVT Ltd v ICM SPC

JUDGMENT

A. Introduction

1. By a summons filed on 14 March 2025, ICM SPC seeks a stay of a winding up petition presented on 7 March 2025 by Phoenix Commodities PVT Ltd. The Petitioner opposes that application for reasons that are set out later in this judgment. I refer to ICM SPC as the Respondent in this judgment notwithstanding that it is the party that has filed the summons before me today.
2. The Respondent is represented by Mr David Alexander KC, instructed by Mr Corey Byrne of Ogier (Cayman) LLP and the Petitioner is represented by Mr Ben Hobden and Mr Luke Fraser of Harney Westwood & Riegels (Cayman) LLP. I am grateful to both parties for their clear, succinct and helpful written and oral submissions.
3. In addition to the parties' respective skeleton arguments, the materials before me comprise affidavits and exhibits sworn for the purpose of the current proceedings and affidavits and exhibits sworn for the purpose of previous proceedings before Justice Doyle. Those materials in turn include documents generated in related proceedings between the same parties at first instance and on appeal in the British Virgin Islands.
4. The Respondent advances two jurisdictional bases for its application for a stay:
 - 4.1 the inherent jurisdiction, namely the general power of the court to control its own procedure to prevent it being used to achieve injustice; and
 - 4.2 the court's case management power to manage the order in which different proceedings are heard to avoid inconsistent decisions or where the outcome of one set of proceedings may have an important effect on the conduct of another.
5. The Petitioner responds that there is no legitimate reason justifying a stay and any potential benefits do not outweigh the prejudice to the Petitioner. It argues that all the substantive points that the

Respondent seeks to raise now can be argued at the hearing of the winding up petition. It relies on the comment by Justice Doyle in response to the Respondent's earlier application to restrain presentation of a winding up petition that "*the approach of the [Respondent] bears all the hallmarks of an entity seeking to avoid or delay the payment of a clear liability.*" The Petitioner invites me to dismiss the Respondent's summons and to order directions towards an early hearing of the winding up petition.

B. Incidental procedural issues

6. At the commencement of the hearing, I raised with counsel that one party had failed to comply with GCR O.41, r.12(6) in that the exhibits to their filed affidavits do not include indexes, and both parties had failed to comply with GCR O.41, rr. 14 and 15 in that copies of originating process, pleadings, affidavits and other documents filed in court are exhibited to affidavits when they should not be, and multiple copies of the same documents are exhibited.
7. This seems to be a recurring issue in cases that have come before me. Consistently with the overriding objective, these rules within GCR O.41 are aimed at promoting the efficiency of proceedings and avoiding unnecessary cost for litigants using the court by making it easier and quicker for the litigants, their attorneys and the court to navigate the documents. These rules facilitate this by precluding the need to exhibit documents that prove themselves; and discouraging wasteful duplication of material before the court.
8. In a number of cases where I have raised this in recent months, attorneys appear to be surprised by the requirements of GCR O.41. There is no excuse for senior attorneys, charging premium hourly rates, to be unfamiliar with, or worse to ignore, the requirements of the Rules. Failing to comply with the Rules is contrary to the duty of the parties under the overriding objective to assist the Court to progress cases expeditiously and economically, and results in avoidable inflation in the fees that litigants must pay.
9. A similar issue arises in relation to the content of affidavits and affirmations put before the court. In many cases, these contain summaries of exhibited documents and passages of supposition or argument, which are matters for a skeleton argument. None of this is appropriate for inclusion in an affidavit, affirmation or witness statement, which should be limited to the factual evidence that the particular witness is competent and properly able to put before the court. The inclusion of extraneous

[2025] CIGC (FSD) 68 - Phoenix Commodities PVT Ltd v ICM SPC

matters again leads to duplication, inefficiency, wasted time and effort and unnecessarily increased costs for litigants using the court. Attorneys should ensure that inappropriate material does not seep into affidavits, affirmations or witness statements for which they are responsible for filing. Failure to adhere to these principles risks the costs of preparation of affidavits, affirmations or witness statements being reduced or disallowed, and, potentially, adverse costs orders.

C. Underlying facts

10. With those introductory comments, I now turn to the substance of this application. The Petitioner is a BVI incorporated company. It was placed into voluntary liquidation in the BVI on 20 April 2020 by a shareholders' resolution. Voluntary liquidators were appointed on 8 May 2020. The identity of the Petitioner's liquidators has changed over time, but the liquidation of the Petitioner has not yet concluded.
11. The Respondent is a segregated portfolio company incorporated in the Cayman Islands. It has two segregated portfolios, Ancile Opportunity and Recovery Fund Segregated Portfolio ("ASOR") and AF-KY A&SP WD Segregated Portfolio ("AF-KY").
12. On 16 December 2021, the Petitioner's liquidators sent a Notice to the Respondent stating that, in accordance with section 193 of the BVI Insolvency Act 2003, the Petitioner's liquidators had settled the list of the Petitioner's members and had included ASOR as a shareholder of the Petitioner in respect of 440,935 shares. The Respondent responded that it disputed the inclusion of ASOR as a member of the Petitioner.
13. On 24 February 2022, the Respondent filed an originating application in the BVI seeking an order that ASOR be removed from the list of the Petitioner's members. The Respondent's case was that ASOR had never agreed in writing to become the holder of any of the Petitioner's shares and that the purported issuance of shares to ASOR was void. The matter was tried in the Commercial Division of the BVI court in September 2023 before Justice Mangatal, who reserved judgment. Justice Mangatal then demitted office at the end of 2023. On 30 May 2024, Justice Webster handed down a judgment, written by Justice Mangatal, in which she concluded that ASOR had agreed in writing to become the holder of the Petitioner's shares. On 9 July 2024, Justice Webster made an order dismissing the

Respondent's originating application. On 11 July 2024, the Respondent filed a Notice of Appeal to the BVI Court of Appeal. On 25 July 2024, the liquidators filed a Counter-Notice.

14. In the meantime, on 5 June 2024, the Petitioner's liquidators made a call on ASOR to pay US \$90.72 per share, totalling just over US \$40 million. During June and July 2024, the attorneys on each side debated whether the Petitioner was entitled to make the call.
15. On 12 November 2024, the Petitioner's liquidators served a statutory demand upon the Respondent at its registered office in the Cayman Islands in respect of the unpaid call.
16. This generated further correspondence between the attorneys on each side regarding whether there was a *bona fide* dispute on substantial grounds in relation to the debt on which the statutory demand was based, namely the call on the Petitioner's shares. On 2 December 2024 the parties agreed a form of undertakings by which, among other things, the Petitioner's liquidators undertook not to present a winding up petition in reliance on the statutory demand pending the outcome of an application by the Respondent to restrain presentation of a winding up petition; and the Respondent undertook to file such an application by 6 December 2024.
17. On 5 December 2024, the Respondent filed its summons in the Grand Court to restrain the Petitioner from presenting a winding up petition. The Respondent disputed the debt on the grounds that:
 - 17.1 the alleged debt was not due and payable to the Petitioner's liquidators;
 - 17.2 because ASOR had disputed the call, the Petitioner's liquidators should proceed by an application under s.205 of the BVI Insolvency Act to enforce the call rather than simply demanding payment of the alleged debt;
 - 17.3 the judgment of Justice Mangatal did not include any findings on any terms of the agreement purportedly reached between the Petitioner and ASOR and the Petitioner's liquidators had been unable to identify any documents which showed that ASOR had agreed to make a cash payment for the shares, so that there was no basis for the Petitioner's liquidators to make a call on the shares.
18. Justice Doyle heard the Respondent's summons on 26 February 2025. The Petitioner's liquidators argued, among other things, that the Civil Procedure Rules for the Eastern Caribbean Supreme Court

provide that an appeal does not of itself operate as a stay of execution of the decision of the court below and the Respondent had not applied in the BVI for a stay of Justice Mangatal's judgment. They argued that the debt was therefore due and there was no genuine dispute of the debt on substantial grounds. Justice Doyle accepted that argument and dismissed the Respondent's summons. He noted in the course of his judgment that although Justice Mangatal's judgment was under appeal, it remained in effect.

19. On 28 February 2025, the Respondent sought an undertaking from the Petitioner's liquidators not to present a winding up petition pending determination of the Respondent's appeal in the BVI proceedings, or until the Respondent had applied to the Court of Appeal in the BVI for a stay of Justice Mangatal's judgment. The Petitioner's liquidators refused.
20. Also on 28 February 2025, the Respondent applied to the Court of Appeal in the BVI for a stay of Justice Mangatal's judgment pending determination of its appeal against that judgment, and for an urgent interim stay until its primary stay application had been determined.
21. On 6 March 2025, the Respondent filed a Notice of Appeal and Grounds of Appeal in the Cayman Islands against Justice Doyle's dismissal of its application to restrain the presentation of a winding up petition. I was told in oral argument that that appeal is due to be heard at the next sitting of the Court of Appeal commencing on 8 September 2025.
22. The Petitioner's liquidators filed a winding up petition and summons for directions on 7 March 2025, which was assigned to me, and served the petition on the Respondent's registered office on 10 March 2025.
23. On 10 March 2025, the Court of Appeal in the BVI granted the Respondent's application for an interim stay of Justice Mangatal's judgment. On 9 April 2025, the Court of Appeal in the BVI heard argument on the Respondent's application for a stay pending the determination of the appeal and reserved judgment, which has not yet been handed down. Counsel indicated to me in oral argument that they anticipate the appeal in the BVI proceedings will be heard in October 2025.
24. In parallel with events in the BVI, the summons for directions in respect of the winding up petition was originally listed before me for hearing on 19 March 2025. However, as mentioned earlier, the

[2025] CIGC (FSD) 68 - Phoenix Commodities PVT Ltd v ICM SPC

Respondent filed the current summons to stay the winding up petition on 14 March 2025. The hearing on 19 March 2025 was therefore vacated at the parties' joint request. A date for hearing the Respondent's summons and the Petitioner's summons for directions was canvassed in early April 2025, but the earliest date proposed by the Respondent was 27 June 2025 due to the unavailability of the Respondent's leading counsel and attorneys. I expressed dissatisfaction with this delay at the time but was constrained to approve a hearing date of 27 June 2025 by the Respondent's stated unavailability and the absence of any real opposition by the Petitioner.

D. The relevant law

25. There was no substantive difference between the parties on the applicable law. I can therefore set it out briefly, as follows.

D.1 Stay pursuant to the inherent jurisdiction to avoid injustice

26. Mr Alexander starts with *Bremer Vulkan Schiffbau und Maschinenfabrik v South India Shipping Corporation Ltd* [1981] AC 909 where, in the context of strike out for want of prosecution, the inherent jurisdiction of the court was described by Lord Diplock sitting in the English House of Lords at 977 as being "a general power to control its own procedure so as to prevent its being used to achieve injustice." Mr Alexander also cites *Owners of Atlantic Star v Owners of the Bona Spes* [1974] AC 436 and *Reichhold Norway ASA v Goldman Sachs International* [1999] EWCA Civ 1703 as authorities for the proposition that the court's power is to stay the whole or any part of proceedings. He submits that the jurisdiction is unfettered (subject to any statutory restrictions) and depends only on the exercise of the court's discretion in the interests of justice.

27. Turning more specifically to the situation of a stay of winding up proceedings based upon a judgment of a foreign court, both parties referred to the judgment of Kawaley J in *Re Guoan International Ltd* (unreported, 29 October 2021), and the learned judge's references in his judgment to and reliance upon the Hong Kong cases of *Re Shiamas International Ltd* [2014] HKCFI 1601, *Re Rotegear Corporation Limited* [2009] HKEC 1874 and *Re Sky Talent Properties Limited* [2004] HKEC 472. These cases indicate that the court will consider staying a winding up petition where either execution of the judgment on which it is based has been stayed pending an appeal or, where there is no stay of execution, the appeal has very strong prospects of success.

[2025] CIGC (FSD) 68 - Phoenix Commodities PVT Ltd v ICM SPC

28. I draw the following principles regarding stays of winding up proceedings where the debt is based upon a judgment under appeal from Guoan and the cases considered by Kawaley J in his judgment in that case:

28.1 A judgment creditor is not prevented from presenting a winding up petition based upon an unpaid judgment debt or arbitration award by the fact that the judgment or award is subject to an outstanding appeal where the applicable procedural rules in the country where the judgment or award has been obtained do not provide that an appeal results in an automatic stay of enforcement.

28.2 There are two alternative routes by which a judgment debtor may persuade the court to stay a winding up petition based on a judgment or award. The first is by obtaining a stay of enforcement of the judgment or award giving rise to the debt and then relying upon that stay before the court seized of the winding up proceedings to argue that the debt is not due and payable. Where a stay has been granted in the country where the judgment or award originated, the court seized of the winding up proceedings will usually acknowledge that stay and accept that it provides a proper basis to stay the winding up proceedings until determination of the substantive appeal.

28.3 The second route, where there is no stay of enforcement in place, is for the judgment debtor to persuade the court seized of the winding up proceedings that the judgment debtor has very strong prospects of its appeal succeeding. This is a high threshold for the following overlapping reasons:

(a) The court before whom the appeal is progressing is usually best placed to determine whether a stay pending appeal is justified, informed by its appreciation of the likely merits of the appeal. If it has refused a stay, that is usually an indication that it considers the judgment creditor should be permitted to take whatever enforcement action it wishes notwithstanding the pending appeal. As a matter of comity, the court seized of the winding up proceedings should pay heed to the position of the other court and should not delay the progress of the winding up petition merely because the judgment upon which it is based is under appeal. It may find, however, that there are other reasons that justify a stay.

(b) If the judgment debtor has not applied for a stay of execution where the judgment or award was pronounced, that is likely to found inferences by the court with conduct of

the winding up proceedings that the judgment debtor would be unlikely to obtain a stay of enforcement and to succeed on the appeal. To displace those inferences and persuade the court to stay the winding up proceedings, the judgment debtor must show that the appeal has very strong prospects of success.

- (c) In addition, the making of a winding up order would not of itself prevent the appeal from proceeding: a liquidator could pursue the appeal if they consider it in the interests of the company and if contributories or creditors are willing to fund the appeal. Very strong prospects of success are therefore required to avoid a winding up order and to allow the company to keep control of the conduct of the appeal itself.
- (d) As a matter of comity, the Grand Court is keen not to do anything that undermines the integrity of parallel or related proceedings before the courts or a tribunal in another jurisdiction. The corollary is that where a foreign court or tribunal has adjudicated upon a matter and has given a judgment or award that is final and conclusive between the parties, absent a stay, the Grand Court will respect that judgment or award and will only delay the pursuit of a winding up petition where there is a clear and compelling basis to do so.

D.2 Case management stay to control the order in which proceedings are determined

29. The considerations underpinning a case management stay are different from those relating to a stay of proceedings where the underlying judgment is under appeal. The main Cayman Islands authorities on case management stays where there are other proceedings which were relied on by counsel before me are Doyle J's judgment in *Re New Silk Route Advisors LP* (unreported, 10/01/22), Parker J's judgment in *The Port Fund LP v Walkers* (unreported, 27/06/22), the judgment of Segal J in *Abraaj SPV 108 Limited v 1 GCP SPV 21 Limited* (unreported, 14/06/24), and Doyle J's judgment in *Re TFKT True Holdings* (unreported, 03/10/24). These judgments build on and refine the statements made by the English Court of Appeal in *Reichhold Norway ASA v Goldman Sachs International* [1999] EWCA Civ 1703 and the Cayman Islands Court of Appeal in *Nanfong International Investment Limited* [2018] 2 CILR 321 applying *Reichhold*.

30. Drawing on those judgments, I can summarise the principles relevant to temporary case management stays in the following way:
- 30.1 The principles to be applied are the same whether the proceedings are all being conducted before the Grand Court or whether there are relevant proceedings before the courts of another country. However, in the latter case, the Grand Court's ability actively to manage the various disputes, and the options available to it, are necessarily curtailed by the involvement of another court elsewhere.
- 30.2 The Grand Court has a wide discretion to order a temporary case management stay in the interests of justice. This requires good reason, applying the overriding objective and having regard to the relevant facts of the particular case under consideration.
- 30.3 The Grand Court must exercise its discretion cautiously, considering the likely benefits and disadvantages of imposing a temporary case management stay, including (a) the interference with the plaintiff's / claimant's right to proceed with proceedings properly commenced and (b) the duty on the court under the overriding objective to facilitate the advancement of proceedings rather than their delay, but the court will not hesitate to order a stay in an appropriate case.
- 30.4 The applicant can establish good reason for a temporary case management stay by demonstrating that it would better serve the interests of justice and the overriding objective to defer the hearing of one or more proceedings, applications or issues in favour of a determination in another forum. Usually, this will be by showing that the decisions in the other proceedings are likely to be determinative or to have an important effect on the proceedings currently before the Grand Court and a case management stay will therefore save expense or allow the court to deal with the matter in a more proportionate way, as per the overriding objective.
31. Lord Bingham's description in *Reichhold* of the need for "rare or compelling circumstances" seems now to be of doubtful continued application, at least in the Cayman Islands. Whilst it was endorsed in 2020 by the UK Supreme Court as being the applicable test in *Unwired Planet International Ltd v Huawei Technologies (UK) Co Ltd* [2020] UKSC 37, the Privy Council in *FamilyMart China Holding Co Ltd v Ting Chuan (Cayman Islands) Holding Corp* [2023] UKPC 33 suggested, without deciding the point, that it is unlikely to be the correct test in the context of a stay of winding up proceedings in

[2025] CIGC (FSD) 68 - Phoenix Commodities PVT Ltd v ICM SPC

favour of arbitration. Moreover, in *Athena Capital Fund Sicav-Fis SCA v Secretariat of State for the Holy See* [2022] EWCA Civ 1051, Males LJ, with whom Peter Jackson and Birss LJ agreed, analysed Lord Bingham's judgment in *Reichhold* and stated that the test laid down in that case is the interests of justice, and that Lord Bingham's use of "rare or compelling circumstances" as a description of when the interests of justice test will be met is not part of the ratio of *Reichhold*.

32. This judicial scepticism towards the need for "rare or compelling circumstances" has been adopted by Doyle J, Parker J and Segal J in the Cayman Islands in the cases mentioned earlier, on the basis that the approach to active case management by the Court has moved on significantly since 1999 when *Reichhold* was decided, when active case management was in its infancy, and that the growth in cross-border international litigation since 1999 also has the result that circumstances justifying a temporary case management stay will be less rare than formerly. There is the additional factor that, because of its pre-eminence in financial services work, the Cayman Islands is generally likely to have a higher proportion of cross-border international litigation than England & Wales.

E. The Respondent's arguments

33. The Respondent's primary submission is that it has now obtained an interim stay of Justice Mangatal's judgment from the Court of Appeal in the BVI. The circumstances are therefore different from the position before Justice Doyle when he refused the Respondent's application to restrain the presentation of the winding up petition. The Respondent submits that the Court should pay heed to the interim stay granted in the BVI and should stay further progress of the winding up petition in the Cayman Islands until the conclusion of the hearing of the appeal in the BVI. As a fall-back position, the Respondent submits that the Court should stay the petition at least until the determination by the Court of Appeal in the BVI of the Respondent's application for a stay pending appeal. The Respondent also says that its appeal has strong prospects of success, although Mr Alexander did not seek to argue that basis for a stay before me orally and principally relied on the stay in the BVI that the Respondent has now obtained.

34. As to a temporary case management stay, the Respondent argues that there are good reasons in the interests of justice to order a temporary case management stay. Mr Alexander submits that:

34.1 The appeal in the BVI is likely to have an important impact on the petition. If the appeal were to succeed, then there was never a valid debt on which the petition could properly have been founded.

34.2 The outcome of the BVI appeal is likely to be determinative of the winding up petition.

34.3 A temporary case management stay will eliminate the risk of inconsistent judgments and the risk that the Respondent is wrongly wound up. Mr Alexander argues that whilst it may technically be possible to restore the Respondent to the Register if the winding up order is set aside, the reality is that the Respondent's business is likely to be destroyed if the Respondent is wound up in the interim. In addition, the petition seeks the winding up of the Respondent company, not just the ASOR segregated portfolio, so there is a risk that the Respondent's other segregated portfolio, AF-KY, which has not had any involvement with the Petitioner and is not involved in the present dispute, may be wound up as well.

34.4 A temporary case management stay accords most closely with the need for comity and would demonstrate due deference to the Court of Appeal in the BVI in relation to its competence to interpret the relevant statutory provisions in the BVI, namely s.49 of the Business Companies Act.

34.5 The BVI appeal is expected to be heard in October 2025, so any delay in the Petitioner's ability to pursue the petition is limited to a few months, and any resulting prejudice to the Petitioner in its ability to complete its own winding up is commensurately limited.

34.6 Unnecessary duplication of court time and costs would be avoided, and the court's limited resources would not be wasted.

35. Mr Alexander prays in aid certain statements made during the hearing of the Respondent's application to the Court of Appeal in the BVI for a stay pending the appeal:

35.1 In response to a question from the Hon Vicki Ann Ellis JA, the Petitioner's leading counsel said:

"If I can agree with my Lady ... If a stay is granted, then one says, all right, well, that issue [i.e. whether or not ASOR is a shareholder] is up in the air."

[2025] CIGC (FSD) 68 - Phoenix Commodities PVT Ltd v ICM SPC

As I understand it, Mr Alexander relies on this to show that the Petitioner accepts that the effect of the grant of the interim stay in the BVI is that the alleged debt is genuinely disputed on substantial grounds.

35.2 Ellis JA queried whether the winding up petition in the Cayman Islands was “*not a domino effect*” of Justice Mangatal’s judgment. Mr Alexander relies on this to demonstrate the causative effect of Justice Mangatal’s judgment in respect of the winding up petition, and hence that a stay of the judgment should in turn be a contraindication to the winding up petition advancing. However, I note that the transcript shows that the Petitioner’s leading counsel disagreed with Ellis JA’s question and described the Petitioner’s liquidators’ approach as previously being one of caution, but where the balance had now tipped in favour of proceeding to enforce the call on the shares notwithstanding the Respondent’s appeal. It appears from this that at an earlier stage the Petitioner’s liquidators had wished to have support from a judgment that the Respondent was properly included on the list of members but no longer consider that necessary.

35.3 Ellis JA said at the conclusion of the argument:

“I suspect this is likely to be one of the most interesting appeals that comes across this Court for 2025 when it does come on for hearing.”

Mr Alexander appears to rely on this to support his argument that there is real merit in the Respondent’s appeal in the BVI.

36. The evidence filed on behalf of the Respondent additionally raises certain aspects of alleged prejudice to the Respondent if a stay is not granted, relating to the alleged adverse impact upon the Respondent’s other segregated portfolio, AF-KY, which has a number of investors and is involved in pursuing litigation in the Ukraine, Slovakia, the Czech Republic, Brazil and the Ivory Coast, although Mr Alexander did not spend time on these points in oral argument:

36.1 The Respondent argues that it and AF-KY will suffer reputational harm if the winding up petition is advertised (which would normally be the next step in its progress), as well as providing AF-KY’s litigation counterparties with a strategic advantage.

36.2 The Respondent asserts that it and AF-KY will be prejudiced if a winding up order is made because AF-KY will no longer be able to continue to manage its litigation matters, and its relationship with certain lenders will be damaged.

36.3 The Respondent says that it would lose its regulatory status if a winding up order is made, and it is uncertain that that could be reversed if the winding up order is later set aside.

37. Finally, the Respondent complains that any liquidator appointed over the Respondent would be conflicted in their willingness to pursue the BVI appeal since they will have been appointed on the application of the Petitioner, which has an interest in stopping the appeal from going forwards.

F. The Petitioner's arguments

38. The Petitioner says that there are no legitimate reasons for a stay, and any potential benefits do not clearly outweigh the disadvantage to the Petitioner. The Petitioner urges me to dismiss the Respondent's summons and to give directions for the early hearing of the winding up petition.

39. Mr Hobden argues that there is no substance to the Respondent's assertions of prejudice:

39.1 Advertisement of the petition is unlikely to cause any prejudice. Both Justice Mangatal's and Justice Doyle's judgments are already in the public domain, as the Respondent recognises. Justice Mangatal's judgment makes highly critical comments regarding the individual behind the Respondent and the Respondent's conduct, and Justice Doyle's judgment makes clear that a winding up petition is likely to be the next step to be taken by the Petitioner in the Cayman Islands. In addition, the petition has been published on the Offshore Alert website for many months.

39.2 The Petitioner rejects the Respondent's suggestion that it will suffer harm if a winding up order is made because the ability of AF-KY to manage its investments in litigation matters will be impacted. The Petitioner responds that AF-KY is a separate portfolio, apparently solvent, and will not be affected by any shortfall in respect of the ASOR portfolio. Moreover, the Petitioner submits, professional liquidators are used to managing complex litigation and that a liquidator appointed over AF-KY would be able to do so with no difficulty. The Petitioner also criticises the Respondent for failing to give any specific details about the litigation matters in question.

39.3 The Respondent's argument that it will suffer prejudice in its dealings with lenders is not backed up with any evidence.

- 39.4 There is no evidence or explanation how a winding up of the Respondent would adversely affect its regulatory position. Mr Hobden submits that the Respondent has failed to show that it could not regain its regulatory position if a winding order were to be reversed, and in addition there is no evidence that the Respondent needs to be regulated and what would be the consequences if it lost that status.
- 39.5 It is improper to suggest that an appointed liquidator, as an officer of the court, will not pursue the BVI appeal properly and in the Respondent's best interests.
40. Mr Hobden adds the technical point that the stay of Justice Mangatal's judgment does not in fact achieve anything, since her judgment simply dismissed the Respondent's application to be removed from the Petitioner's list of members. The position is therefore that the ASOR remains a member of the Petitioner, and the BVI stay does not change that.
41. Mr Hobden goes on to say that the Respondent can raise all the points regarding its inclusion as a member of the Petitioner, and hence the validity of the call on the shares, at the hearing of the winding up petition. If the court determines that the debt is not due, or the Respondent is not insolvent, or that it is not just and equitable to wind up the Respondent, then the court will refuse to make a winding up order. Any debate about the effect of the appeal in the BVI or as to its outcome, should take place at the hearing of the winding up petition and not in the context of a separate application to stay the petition.
42. The Petitioner therefore argues that the Respondent is simply seeking to delay the inevitable payment of a clear liability. Mr Hobden says that this is part of a pattern of behaviour by the Respondent, and he criticises the Respondent for failing to apply for a stay when Justice Mangatal's judgment was delivered and failing to request that the BVI appeal be heard on an expedited basis. He says that the Respondent has not advanced the listing of the BVI appeal promptly.
43. Mr Alexander responds to that last point that it was not clear that a stay of Justice Mangatal's judgment was required until after Justice Doyle rejected the Respondent's summons to restrain presentation of a petition, and that the Respondent applied to the Court of Appeal in the BVI promptly, once that became clear.

G. Decision

44. I apply the principles outlined earlier in this judgment to the question whether I should grant a stay of the winding up petition on the basis that the judgment on which the debt is based is under challenge. In my judgment, the position before me today is significantly different from that which was presented to Justice Doyle when the Respondent applied to restrain presentation of a winding up petition. The Court of Appeal in the BVI has since then granted an interim stay of Justice Mangatal's judgment. I acknowledge Mr Hobden's technical point that the stay does not in fact affect ASOR's continuation as a member of the Petitioner. But, in my view, the Court of Appeal in the BVI must be taken to have intended that the stay had effect in preventing the Petitioner from pursuing enforcement of its putative right to make a call on the shares until the BVI Court of Appeal determines the Respondent's substantive application for a stay. Otherwise, the BVI Court of Appeal would be acting in vain.
45. I consider that, as a matter of comity, I should therefore pay heed to the decision of the Court of Appeal in the BVI to stay Justice Mangatal's judgment. In my view, the effect of that stay is that there is an unresolved question whether ASOR is correctly listed as a member of the Petitioner. I therefore conclude that it is appropriate to order a stay of the winding up petition, which is based upon the validity of ASOR being listed as a member, for so long as Justice Mangatal's judgment in the BVI is stayed, whether on the basis of the current interim stay or if the BVI Court of Appeal decides to continue the stay when it gives judgment on the Respondent's substantive application for a stay.
46. In these circumstances, I do not need to consider whether the Petitioner has demonstrated that it has very strong prospects of success in its appeal to the Court of Appeal in the BVI and, as indicated earlier in this judgment, Mr Alexander did not seek to rely on that ground as a basis for a stay.
47. As to the question of a case management stay, the competing considerations are finely balanced. However, in my judgment, a temporary case management stay pending the determination of the Respondent's appeal in the BVI will better serve the overall interests of justice and the overriding objective. My reasons for reaching this conclusion are:
- 47.1 the outcome of the appeal is likely to be determinative of the winding up proceedings – if the Respondent's appeal succeeds, then there was never a valid debt, and if it fails, then there is unlikely to be any proper basis for the Respondent to challenge a winding up order;

- 47.2 it is appropriate for this court to respect the competence of the Court of Appeal in the BVI to determine issues of BVI statutory law regarding whether ASOR is correctly listed as a member of the Petitioner, and to defer its consideration of matters dependent on the outcome of that appeal;
- 47.3 applying the overriding objective, staying the winding up proceedings on a temporary basis is likely to avoid unnecessary duplication of time and costs, and unnecessary use of limited court resources – there is a significant risk that the parties would expend substantial resources preparing for a winding up petition that then falls by the wayside if the Respondent’s appeal were to succeed;
- 47.4 I accept the Respondent’s argument that, if it were to be wound up and the Court of Appeal in the BVI then allows its appeal, it is likely to be difficult, if not impossible, to restore the Respondent to its pre-winding up position, which amounts to significant prejudice;
- 47.5 the impact on the Petitioner’s entitlement to have its petition determined promptly is proportionate in that it is likely to be delayed by a few months, at most, in circumstances where the Petitioner’s own liquidation has been ongoing for nearly 5 years and where the hearing of the stay application was itself delayed for almost 3 months due to the unavailability of the Respondent’s counsel and attorneys and absence of any real opposition to that delay on the part of the Petitioner; and
- 47.6 the Petitioner’s position that the winding up petition should proceed and that the Respondent’s arguments should be considered at the hearing of the petition seems to me to be contrary to the overriding objective in that it invites the parties to incur substantial time and costs which might well be completely unnecessary, depending upon the outcome of the Respondent’s appeal in the BVI.
48. I do not consider that the progress of the Respondent’s appeal against Justice Doyle’s refusal to restrain presentation of a winding up petition is relevant to my consideration of the question of a temporary case management stay of the winding up petition. I therefore do not tie the duration of the case management stay to the outcome of that different appeal.
49. Within 7 days of handing down of this judgment, counsel should indicate: (a) whether they wish to be heard on any consequential matters and on costs, providing their agreed available dates and time

estimate for a hearing; or (b) whether they will submit written submissions on those points within 14 days. In either case, counsel should provide a draft order, agreed, if possible, in advance of the hearing or with their written submissions.

50. In case it is of assistance to the parties, my preliminary view is that costs should follow the event and should be payable on the standard basis. If the parties agree, then they may simply include such a provision in the draft order to be submitted.

Dated 24 July 2025



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