**EASTERN CARIBBEAN SUPREME COURT**
**TERRITORY OF THE VIRGIN ISLANDS**

**IN THE HIGH COURT OF JUSTICE**
**COMMERCIAL DIVISION**

**CLAIM NO. BVIHC (Com) 2024/ 0303**

**IN THE MATTER OF BYBIT FINTECH LIMITED (IN LIQUIDATION)**

**AND**

**IN THE MATTER OF THE INSOLVENCY ACT 2003**

**BETWEEN:**

**[1] Jeongmin Hwang**

Applicant

**-and-**

**[1] Wesley Edwards**
**[2] Barry Lynch**

Respondents

**Appearances:**

Mr.Michael Fay KC of ABVI LAW for the Applicant
Mr. Joseph Curl KC, and with him, Mr. Mathew Freeman and Mr. Scott Tollis, both of Maples & Calder BVI, for the Respondents

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2025: February 13, July 2 and 3
August 18.

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## JUDGMENT

### Introduction

[1] **MITHANI J. (Ag)**: In this application ("the Application", "this Application" or "these Proceedings"), issued on 21 January 2025, the Applicant is Mr. Jeongmin Hwang. I will refer to him in this judgment ("this Judgment" or "the Judgment") as the "Applicant" or "Mr. Hwang"**.** The respondents to the Application are Mr. Wesley Edwards ("Mr. Edwards") and Mr. Barry Lynch ("Mr. Lynch"), the joint liquidators of Bybit Fintech Limited ("the Company" or "Bybit BVI").

[2] The Applicant seeks the removal of Mr. Edwards and Mr. Lynch as the joint liquidators of the Company. Unless the context otherwise requires, the expression "Joint Liquidators" in this Judgment shall mean either or both Mr. Edwards and Mr. Lynch.

[3] The Joint Liquidators were appointed by this Court ("this Court" or "the Court") on an application made by the Applicant for a liquidation order ("the Liquidation Order Application"). The Joint Liquidators were, therefore, the nominees of the Applicant for such appointment and were appointed to that office on 23 September 2024, when the Court made a liquidation order ("the Liquidation Order") in relation to the Company.

[4] The Application for the removal of the Joint Liquidators is made pursuant to s. 187 of the **BVI Insolvency Act 2003** ("the **BVIIA 2003**")[1]. In summary, the Applicant alleges that the Joint Liquidators:

(a) failed to call an initial meeting of the creditors of the Company, following their appointment as joint liquidators of the Company;

[1] References to section numbers on their own in this Judgment is to section number of the BVIIA 2003.

(b) failed to disclose to the Applicant or the Court, at the time of their appointment, proper or sufficient details of an alleged conflict of interest;

(c) failed to take any or any sufficient steps to preserve, protect and collect the assets of the Company; and

(d) have lost the confidence of all (i.e., 100%) or, at any rate, a substantial majority, of the creditors of the Company.

[5] The chronology leading to the hearing (or more accurately, the adjourned hearing) of the Application before me on 2 and 3 July 2025 ("the Adjourned Hearing") needs brief mention.

[6] The only known creditors of the Company are the Applicant, and a creditor identified in this Application (because of concerns accepted as genuine by the High Court in England and Wales for his/her safety and security) as "Creditor IV"[2]. For the purpose of this Application, I will treat them as creditors of the Company (i.e., that they have some unspecified claim in the liquidation), even though their claims remain to be fully determined by the Joint Liquidators.

[7] The Application was brought by the Applicant by way of an ordinary application dated 21 January 2025. The first hearing of the Application came before me on 13 February 2025. At that stage, I was informed that all the creditors of the Company (i.e., all 100% of the known creditors of the Company) supported the removal of the Joint Liquidators.

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[2] I will, for the sake of convenience, when referring to the Applicant, include any company or entity controlled by him, as the context may require; and, likewise, when referring to Creditor IV, include any company or entity controlled by them, also as the context may require.

[8] Unfortunately, the Application could not be determined at the hearing on 13 February 2025 because there was insufficient hearing time allocated to it. It had to be adjourned, part heard, to another date. The date ultimately given to the parties was the date of the Adjourned Hearing, i.e., 2 and 3 July 2025.

[9] Between the initial hearing date and the date when the Application was finally heard, Creditor IV made what can only be described as a complete *volte face* concerning her[3] position on the Application: rather than support the Application, Creditor IV withdrew her support for it. The position she now maintains is that the Joint Liquidators have done a competent job in the conduct of the liquidation affairs of the Company, and she wishes them to remain in office. Creditor IV has neither been asked to be joined in the Application as a respondent nor did she appear at the hearing of the Application.

[10] I requested an explanation from the Joint Liquidators for the sudden change in position that had occurred with Creditor IV. That was purportedly provided by Messrs Walkers, her legal practitioners, by way of an email dated 2 July 2025, sent to the Joint Liquidators' legal practitioners, in which they said:

> "Our client does not wish to actively participate in the removal application. However, to the extent our client is being asked whether they either support or oppose the removal of the Liquidators (and by extension the application), they oppose it."

[11] Subsequently, Messrs Walkers sent the following additional email, on the same date, to the Joint Liquidators' legal practitioners:

> "The liquidators have provided written updates to our client which included a summary of steps being taken to secure assets held by Bybit Seychelles. Our client further understands that proceedings for injunctive relief are pending and are due to be heard in a few weeks. Having taken account of these factors and the information provided by the liquidators, our client has

[3] I understand that Creditor IV is female. I will, therefore, refer to Creditor IV in the feminine gender. If I am mistaken about this, I apologise. In any event, the use of the masculine or feminine gender to describe any person in this Judgment is also to be construed as referring to the other gender or neuter genders and vice versa, and includes a person who is transgender, or is gender-neutral, non-binary or agender, or identifies themselves in this or any other way.

reached the conclusion that the liquidators are pursuing the liquidation in an appropriate manner and does not consider there to be any obvious justification for there to be a change of liquidators at this time."

[12] On 3 July 2025, Mr. Andrew Chissick of Messrs Walkers furnished an affidavit purportedly dealing with this point. Three paragraphs of this affidavit need to be mentioned. First para. 12, in which Mr. Chissick says:

> "On 3 June 2025, Maples [legal practitioners for the Joint Liquidators] contacted Walkers to enquire as to [Creditor] IV's position regarding the application for the removal of the Joint Liquidators … [Creditor IV] had previously been in support of the … Application. At the time of expressing that support, [Creditor] IV had not instructed BVI legal counsel and had limited visibility on the activities of the Joint Liquidators."

[13] As I have explained throughout this Judgment, once an application is made to remove a liquidator, the liquidator should refrain from seeking opposition (or, for that matter, support) for the application. The most he should do is inform the creditors that an application to remove him has been made, defend allegations of wrongdoing made against him, and leave it up to the creditors to decide whether they should support or oppose the application.

[14] Second and third, in paras. 12 and 13 of his affidavit, Mr. Chissick says this:

> "Since that time [i.e., 13 June 2025], the Joint Liquidators have provided updates to [Creditor] IV as to the steps they were taking (including in relation to securing assets held by Bybit Technology Limited …).
>
> "In the light of the updates, and having consulted their advisors (some of whom attended the First Creditors' Meeting at which the Joint Liquidators had explained the position they had adopted), [Creditor] IV has concluded that their previous support of … the Application was wrong. [Creditor] IV now considers that the Joint Liquidators should not be removed from their appointment …".

[15] Much of the information that Creditor IV provided about the change in her position was only made available to the Court at the Adjourned Hearing. It is right that I point out at the outset that the reasons given for that change of position are entirely

unconvincing. It came quite some time after the initial hearing of the Application – on the material before me, it was on 13 June 2025, when Walkers wrote to the Joint Liquidators' legal practitioners confirming that they no longer supported the Application.

[16] I have not seen the communication passing between Maples and Walkers[4]. I do know, therefore, what it says. One would expect that communication to have been produced to the Court. However, it was not. Quite why it was withheld from the Court is not clear to me. However, the change in the position of Creditor IV cannot simply be explained by the fact that she received advice from BVI counsel who, having made enquiries about how the Joint Liquidators were performing their duties, were satisfied that the Joint Liquidators were doing a reasonable job. It did not require BVI counsel to make those enquiries to come to that conclusion. The firm, previously instructed in the matter by Creditor IV, Keystone Law, could have made the same enquiries. However, it either did not (which would be quite bizarre) before reaching the opposite conclusion or, having made those enquiries, nonetheless reached that conclusion before Walkers persuaded Creditor IV that this conclusion was incorrect.

[17] Nor is the reference to obtaining information from the first meeting of creditors persuasive. In fact, without a detailed explanation, paras. 12 and 13 of Mr. Chissick's affidavit are inherently inconsistent with the subsequent events that took place. The meeting of creditors took place on 22 January 2025, so, based on what is said in those paragraphs, the explanation that the Joint Liquidators gave about the position they had adopted was fully known to Creditor IV's representatives, who had attended the meeting. Yet on 13 February 2025, at the initial hearing of the Application, Creditor IV had maintained active support for the Application.

[18] Paragraphs 12-14 of Mr. Edwards' affidavit dated 24 June 2025 offered the following additional information:

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[4] I have not gone through the documents included in the hearing bundles with a fine-tooth comb, stand corrected if I am wrong.

> "Prior to the first hearing of the Removal Application, Mr. Hwang's counsel communicated to the Court that "the Removal Application is supported by (i) Creditor IV… (ii) the Creditors Committee – who have resolved to join the Removal Application if necessary" and that "…the [Removal Application] is supported by 100% of the creditors and by the Creditors Committee".
>
> Since that hearing, the Joint Liquidators have liaised with both Mr. Hwang and Creditor IV, through their respective counsel, to update them on the progress of the liquidation proceedings and to scrutinize, and request information pertaining to, their respective claims. It should also be noted that Creditor IV's English solicitor attended the virtual creditors' meeting that took place on 12 February 2025, as she had attended (remotely) the first hearing of the Removal Application on 13 February 2025. Consequently, and with the benefit of local BVI legal advice from Walkers, Creditor IV was able to take a fully informed view of the liquidation, having heard the Joint Liquidators' detailed explanations put forward at the creditors' meeting, in response to Mr. Hwang's position as advanced by leading counsel and Mr. Child.
>
> On 13 June 2025, Maples received a letter from Walkers, as counsel to Creditor IV, confirming that their client has withdrawn support for the Removal Application and that their client wishes for the Joint Liquidators to remain in office."

[19] The letter dated 13 June 2015 refers to an email dated 3 June 2025 in which Walkers stated that:

> "… you asked for clarification on our client's position regarding the application dated 21 January in which Mr. Hwang seeks the removal of your clients as liquidators of Bybit BVI (the "Removal Application"). We hereby confirm that IV no longer supports the Removal Application and wishes for your clients to remain as liquidators of Bybit BVI."

[20] The failure to disclose the chain of communication between Maples and Walkers is concerning. The communication passing between Maples and Walkers raises more questions than it answers. Neither Mr. Edwards' affidavit dated 7 February 2025, nor his affidavit dated 24 June 2025, provides any further elucidation on this point.

[21] I entirely reject the explanation for the change of position of Creditor IV. Whatever the reason for that change, it was not because of the advice that she had received

from Walkers or her other advisers that the Joint Liquidators were doing a reasonable job.

**Background**

[22] For the purposes of this Judgment, the background facts and circumstances leading to the making of the Application need only be stated briefly.

[23] The Company was incorporated in August 2018 and operated a cryptocurrency trading platform. The brand “Bybit” (formerly operated by the Company) is a cryptocurrency centralised exchange trading platform conducting business online using the URL www.bybit.com. Bybit has a 24-hour trading volume of over USD40 billion and is described as a top three cryptocurrency exchange by volume, with 20 million users.

[24] At some point in the past, the Company’s business was transferred to a company incorporated in the Republic of Seychelles, also known as Bybit Fintech Limited, i.e., known by the same or similar name as the Company but an entirely separate entity from the Company. The reason that the Seychelles company (“Bybit Seychelles”) allegedly took over the business of the Company was due to what has been described in these proceedings as “regulatory and compliance” reasons in the BVI.

[25] Bybit Seychelles has been described in these proceedings by the Joint Liquidators as a stakeholder in the liquidation of the Company. However, other than “acquiring” the business of the Company for no or no proper consideration and in what appears to be a breach of s. 184 of the **Business Companies Act** (“the **BCA 2004**”)[5], it is not easy to see what interest it has in the liquidation of the Company. Some suggestion was made on the first day of the hearing that the shareholders of the

[5] Whether or not this “acquisition” is lawful is not a matter for determination in this Application.

Company and those of Bybit Seychelles were the same or were closely connected. However, that does not give Bybit Seychelles any stake in the Company, a point which I understand the Joint Liquidators now accept.

[26] The Company was struck off from the BVI Register of Companies on 10 December 2021, following the resignation of its (then) Registered Agent, and subsequently dissolved. It was restored pursuant to a restoration application dated 25 June 2024 ("the Restoration Application") which was heard at the same time as, but immediately prior to, the making of the Liquidation Order by means of what is commonly referred to in England and Wales as a "double-barrelled order", i.e., an order that a company struck off the Register of Companies should first be restored to the Register of Companies ("the Restoration Order") and then placed into liquidation. The Restoration Order and the Liquidation Order (under which the Joint Liquidators were appointed liquidators of the Company) were made by me on 23 September 2024.

[27] The Applicant claims to be owed a substantial amount of money – some USD 735 million or thereabouts – from the Company ("the Applicant's Claim"). The amount alleged to be due to him is disputed by ByBit Seycheles (and has neither been admitted to proof by the Joint Liquidators nor determined by a court). It is, therefore, currently the subject of detailed enquiries and investigations by the Joint Liquidators.

[28] Creditor IV alleges that the Company also owes her substantial amounts of money, stated to be 47.67584342 BTC; and 1,305.957393 ETH ("Creditor IV's Claim"). As is the position with the Applicant's Claim, the amount alleged to be due to her has neither been admitted to proof by the Joint Liquidators nor determined by a court. Like the Applicant's Claim, it is also currently the subject of detailed enquiries and investigations by the Joint Liquidators.

[29] Neither the amount of the Applicant's Claim nor of Creditor IV's Claim requires any further comment in this Judgment.

[30] As I have stated above, the Liquidation Order and the appointment of the Joint Liquidators under it, were made by me on 23 September 2024, on the application of the Applicant. The application was supported by Creditor IV, who was the only other known creditor of the Company.

[31] Bybit Seychelles did not have standing to appear at the hearing of the Liquidation Order Application. However, it had sought to "intervene" in the Restoration Application not because it opposed the making of a restoration order but because it wished to see the affairs and management of the Company handed back to the directors of the Company. The transcript of the hearing, at p. 41 ff, sets out the contentions advanced by Bybit Seychelles.

[32] I am not entirely clear what standing Bybit Seychelles had to intervene in the Restoration Application. In effect, it was opposing the making of the Liquidation Order, which it had no standing to do. The Joint Liquidators appear to accept that Bybit Seychelles is neither a creditor nor a contributory of the Company. On that basis, I cannot see how it could have any say on the Liquidation Order Application.

[33] The suggestion that I should restore the Company to the Register of Companies and hand its management to the directors simply did not appear to be appropriate to me. It was something which the Registrar, who appeared at the hearing, was opposed to, not least because the Court might be acting in breach of s. 218A of the **BCA 2004** if it took that course of action. At any rate, my reason for refusing to accede to the suggestion made by Bybit Seychelles was two-fold: first, the Liquidation Order Application was, in effect, unopposed; and second, and more importantly, handing the management of the Company to its directors would have exposed the Company to an unacceptable risk that the assets of the Company might be dissipated if the Company was simply restored to the Register without being placed into liquidation The risk appeared to me to be particularly high, given that all or a substantial amount of the assets of the Company had been transferred to Bybit Seychelles before the Liquidation Order Application. In addition, the Liquidation Order Application was based on the insolvency of the Company, initiated by a

creditor, i.e., the Applicant, whose debt appeared to me (at least in part) to be undisputed. Accordingly, the prospect of handing the affairs of what was an insolvent company back to its directors was not something I could countenance. I expressed this concern in the following terms, though I also made it clear that I was not suggesting that what I was saying might happen (see Transcript of the 23 September 2024 hearing, at pp. 52-3):

> "One thing that concerns me about the suggested course of action is this, that it would be, it would be pure folly for this Court to countenance the restoration of the company and to allow the company to be run by its directors whilst the petition is adjourned to a final hearing with evidence on both sides."
>
> 'To countenance the possibility of directors taking over the company before it goes into liquidation, if it does go into liquidation, is, as I say, pure folly because one simply cannot fathom what might happen to … the assets of the company in the meantime."

[34] There was some mention by the Applicant's counsel of there being a conflict in the Joint Liquidators being appointed as liquidators of the Company. That was mentioned to me as an abundance of caution. Although the nature of the conflict was not mentioned at the hearing of the Liquidation Order Application, counsel who appeared on behalf of the Applicant stated that he had been assured by Mr. Edwards, who had attended the hearing, that there was no real conflict: see the transcript of that hearing, at p. 58.

[35] It is plain from the exchanges I had with counsel that my primary concern at the hearing was that the business affairs and management of the Company should not be handed back to the directors of the Company for the reasons I have already mentioned. I was satisfied that, even though a substantial amount of the indebtedness relied upon in support of the Liquidation Order Application was disputed, there was a significant amount that was undisputed. The undisputed amount had not been paid, and it was clear, therefore, that the Applicant could properly be described as a creditor of the Company, having standing to bring the

Liquidation Order Application. Nor had Mr. Edwards, who was present at the hearing, stated, that his preliminary enquiries about the indebtedness due to the Applicant (which he must have conducted before agreeing to accept appointment as joint liquidator) suggested that the whole of the amount of the indebtedness alleged to be due to the Applicant (i.e., including the amount said to be the subject of the Liquidation Order Application) was disputed. If he had, the Liquidation Order may not have been made, and he and Mr. Lynch would not have been appointed joint liquidators of the Company.

[36] So far as the Joint Liquidators suggest that the "conflict" point was finally resolved at the hearing of the Liquidation Order Application, that is not correct. Nor is it accurate for them to say that the conflict point raised by the Applicant was, as is suggested on their behalf by Mr. Curl KC at para. 55 of his skeleton argument, "opportunistic and reverse-engineered."

[37] The suggestion made by Mr. Curl at para. 57 of his skeleton argument is also incorrect. He states in that paragraph that "the Court was aware on 23 September 2024 that A&M acted in the FTX proceedings. The Applicant was also aware. Although the point had originally been put in issue in evidence filed on behalf of Bybit Seychelles … it was evidently considered by Bybit Seychelles to be such a bad point that no submissions (either written or oral) were made on it before Mithani J. Instead, it was raised by counsel for the Applicant for the sake of good order. There has been no material change of circumstance affecting the position since that time."

[38] I was, of course, informed of a potential conflict, but other than being informed that there might be one, I was not told what the conflict was, nor did I feel it appropriate to enquire into it[6]. I was clear that, as the Liquidation Order Application was based on a debt, a significant part of which was undisputed, I could make a liquidation

[6] The alleged conflict is considered in more detail below.

order against the Company. If that later turned out to be correct, it was open for any interested party to apply to rescind or discharge the Liquidation Order. Similarly, if, after the making of the Liquidation Order, it became apparent that the Joint Liquidators should not have been appointed because they were involved in a conflict or should not continue in that office because to do so would place them in a position of conflict, an application could be made for their removal if they did not resign. I took this approach on the express statement made by counsel for the Applicant at the hearing that he had been assured that the Joint Liquidators would not be involved in any conflict if they accepted the appointment.

[39] As Mr. Fay KC, on behalf of the Applicant, says at paras 19 and 20, the position could not have been made clearer by me at the hearing on 23 September 2024:

> "In the presence of Mr. Edwards and without demur from him, Mr. Child [counsel for the Applicant] stated in open court on 23 September 2024 that '… [Bybit SL] did raise the issue of a potential conflict of interest with regard to the proposed Joint Liquidators, Alvarez & Marsal through Mr. Wes Edwards who is in the room now. Mr. Edwards, whom I've known for many years, has advised me that there is no real conflict.' The learned Judge did not consider it necessary to deal with the issue and stated: 'Well that's fine. If there is a conflict, you can apply to have the liquidators removed. I mean. There's also the possibility of a rescission application. I don't know. But as far as conflicts are concerned …"
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> "In the circumstances, it is clear that Justice Mithani (i) accepted at face value without further enquiry that there was no conflict of interest, (ii) did not consider the conflict of interest point to be resolved at the hearing, and (iii) specifically contemplated that an application might be made to remove the JLs, or possibly an application to rescind the order."

[40] There is no substance, therefore, in the suggestion made by the Joint Liquidators (so far as they make it) that counsel for the Applicant accepted that there was no conflict in the Joint Liquidators being appointed as joint liquidators of the Company, still less any acknowledgment by me that there was no such conflict. The Applicant is perfectly entitled to raise the issue of conflict at this stage, whether or not he was previously satisfied that there was no conflict. While his motive for raising it may be

something which this Court will consider in deciding whether a liquidator should be removed, the determination of the existence of any conflict is entirely for the Court.

[41] The right to bring an application for the removal of a liquidator is, in one sense, personal, i.e., it can only primarily (but not exclusively) be exercised by a creditor of a company *qua* creditor (or a member of the company *qua* member). However, where it is exercised, it is exercisable for the benefit of all the creditors (or members of the company), a point expressly made clear by the opening words of s. 187, which allows the court to remove a liquidator of its own initiative. It follows that once such an application is issued and is based on an actual or perceived conflict, it is ultimately for the court to decide whether the conflict exists and whether the liquidator should be removed on account of that conflict.

[42] Of course, it is entirely proper and appropriate for a liquidator to defend any allegations of impropriety (including any allegation of conflict) made against him. However, it seems to me to be inappropriate for the liquidator to suggest that there is no conflict because the Applicant has conceded that issue, and, as stated in para. 57 of Mr. Curl's skeleton argument, there has been no "change of circumstances" since the Applicant allegedly conceded it. I should also add that there being no challenge to what the Applicant's counsel said at the hearing of the Liquidation Order Application, the Applicant must be right that Mr. Edwards assured his counsel that there was no conflict in the Joint Liquidators accepting appointment as joint liquidators and that he was entitled to rely, and did rely, upon that assurance. As I have indicated below, the approach of the Joint Liquidators on this and many other matters (to which I refer in more detail below) is wrong.

[43] For my part, I also make it clear that I cannot discern any improper motive on the part of the Applicant in seeking to remove the Joint Liquidators. The suggestion by the Joint Liquidators that the Applicant may be motivated by the refusal of the Joint Liquidators to admit the entirety of his claim, without proper evidence to support it, seems to me to be no more than a bare assertion. If the Applicant believes, even for a moment, that his claim in the liquidation of the Company might be viewed and

treated more favourably by Mr. Russell Crumpler and Mr. Christopher Farmer, the joint liquidators ("the Proposed Joint Liquidators") that he proposes should be appointed in place of the Joint Liquidators, he would be seriously mistaken. If the Proposed Joint Liquidators (both partners in a well-known firm of insolvency practitioners in this jurisdiction) did so, it would not only affect their professional standing and good name (and the standing and good name of their firm) in this territory and create serious issues for them with their regulators, but would make them liable to be removed by any other creditor, or a member, of the Company. I should also note that it is no part of the Applicant's case that the Joint Liquidators have not dealt with his proof of debt in the correct manner in the liquidation. For the purpose of this Judgment, I am satisfied that the Joint Liquidators have dealt with his proof in the proper manner.

[44] I should add that even if I am wrong about the motive of the Applicant, for all the reasons referred to in this Judgement, I do not believe that it would warrant the Joint Liquidators remaining in office.

**The Law**

[45] An application for the removal of a liquidator of a company is governed by s. 187 of the **BVIIA 2003**, the material provisions of which state as follows:

> "(1) The Court may, on application by a person specified in subsection (2) or on its own motion, remove the liquidator of a company from office if—
>
> (a) the liquidator—
>
> (i) is not eligible to act as an insolvency practitioner in relation to the company;
>
> (ii) breaches any duty or obligation imposed on him or her by or owed by him or her under this Act, the Rules or the Regulations made under section 486

or, in his or her capacity as liquidator, under any other enactment or law in the Virgin Islands;

(iii) fails to comply with any direction or order of the Court made in relation to the liquidation of the company; or

(b) the Court is satisfied that—

(i) the liquidator's conduct of the liquidation is below the standard that may be expected of a reasonably competent liquidator;

(ii) the liquidator has an interest that conflicts with his or her role as liquidator; or

(iii) that for some other reason he or she should be removed as liquidator.

(2) An application to the Court to remove the liquidator of a company may be made by—

(a) the creditors' committee;

(b) a creditor or member of the company; or

(c) the Official Receiver.

(3) Where the Court removes a liquidator from office under this section:

(a) if, following his or her removal, there is at least one liquidator remaining in office, the Court may appoint an eligible insolvency practitioner as liquidator in his or her place …"

[46] Section 187 is broadly similar to s. 108(2) of the **Insolvency Act 1986 of England and Wales** ("**IA 1986**"), which states that an English and Welsh court "may, on cause shown, remove a liquidator and appoint another." The words "cause shown" are not used in s. 187, though cases under that provision use those words as a shorthand way of describing the requirements of s. 187(1), which is an essential prerequisite to the making of an order to remove a liquidator under s. 187.

[47] There are similarities between s. 187 and s. 108(2) of the **IA 1986**. However, it must be noted that the two provisions are cast in substantially different terms. The words of s. 187 are clear enough, and this Court should hold to those words when deciding how it should exercise its discretion. This Court will rarely be assisted by fact-specific cases decided in England and Wales or, for that matter, even in this jurisdiction, to enable it to determine how s. 187 should be applied. This point was made clear in **Chu Kong v Ocean Sino Limited (in liquidation)**[7] by reference to a three-stage test formulated by counsel in that case, and adopted by Ellis JA, at [25]:

> "[25] Between the parties, there is no dispute that there are three stages for a court to consider on an application for the removal of liquidators. At stage 1 – the court must determine whether the applicant has standing to apply for the removal of the liquidator(s). In this appeal, there is no contention as to the correctness of the Judge's disposal of this issue and this Court is not required to address it. At stage 2 – the court must consider and determine whether 'due cause' has been shown for the removal of the liquidator(s). This issue is the gravamen of Ground 1 of this appeal. Finally, at stage 3, even if (1) and (2) are proven, the court must then consider and determine whether it should exercise its discretion to remove the liquidator(s)."

[48] Ellis JA went on to say:

> "[37] The Court has a wide discretion as to the circumstances in which it may remove a liquidator and it is not confined to or dependent on proof of misconduct, personal unfitness or any breach of their statutory obligations. Instead, it is now clear that whether good cause has been shown is to be measured by reference to the real and substantial interests of the liquidation and the purpose for which a liquidator is appointed. What will amount to good cause will depend upon the particular circumstances of each individual case. Failure on the part of a liquidator to conduct the liquidation in a vigorous, efficient and cost-effective manner may provide good cause, as may a conflict of interest or loss of confidence in the liquidator on the part of one or more creditors. However, in the latter case the concerns must be real and reasonable.

[7] [2023] BVIHCMAP2021/0048.

> [38] The fact that a liquidator's conduct has been shown in one or possibly more than one respect to have fallen short of the ideal will not afford good grounds to support an application to remove a liquidator. The court must also bear in mind that in almost any case where an order to remove a liquidator is made the same will likely have undesirable consequences in terms of costs and delay. In seeking to strike a careful balance in each case the court should take into account whether, on the evidence before it, it could be confident that if left in situ the liquidator would not repeat matters complained of and could be relied upon to complete the liquidation in accordance with his obligations.
>
> [39] Throughout, the burden is fairly and squarely on the applicant who seeks the removal, to show sufficient good cause for the same and it is clear that the alleged failings of the Liquidator would need to be real, material and reasonable."

[49] So far as stage 2 is concerned, it has long been said, by reference to s. 108(2) of the **IA 1986** (and its forebear legislation) that the requirement to "show cause" means that" you must look wider afield, and see what is the purpose for which the liquidator is appointed ... due cause is to be measured by reference to the real, substantial, honest interests of the liquidation, and to the purpose for which the liquidator is appointed. Of course, fair play to the liquidator himself is not to be left out of sight, but the measure of due cause is the substantial and real interest of the liquidation"[8]

[50] The burden and standard of proof were expressly mentioned in **Chu Kong** but are worth reiterating. As Ellis JA observed in **Chu Kong**, it is for an applicant to demonstrate that the requirements of s. 187 are met and that the court should exercise its discretion in favour of removing the liquidator, i.e., that all three stages referred to above should be satisfied. The standard of proof is the usual civil standard of proof – the balance of probabilities. However, there may be circumstances in which the evidential burden will shift from an applicant to a respondent: see **Halsbury's Laws of England**.[9]

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[8] see Re Adam Eyton Ltd ex parte Charlesworth (1887) 36 Ch D 299 at 306, per Bowen LJ, cited with approval by Ellis JA in Chu Kong, at [94].
[9] 5th Edition, Reissue, Civil Procedure, Volume 12, 2020, paras. 699 and 700.

**The approach of the joint liquidators to the application**

[51] The approach of the Joint Liquidators to the Application has been fundamentally incorrect.

[52] As I indicated in my exchanges with Mr. Curl, I would expect a liquidator against whom an application to remove has been made to remain largely neutral and neither support nor oppose the making of an order for his removal. If, as in this case, allegations of serious impropriety are made against him, he must, of course, respond to those allegations but still adopt an impartial and neutral attitude to the proposal to remove him and leave it to the court to decide whether, based on the material placed before the court, a sufficient basis is shown for his removal. He can always defend the allegations in any subsequent proceedings that any interested party may bring against him.

[53] This principle has been endorsed in England and Wales, where an application is made to remove a liquidator or trustee in bankruptcy. For example, in the English and Wales case of **Fakhry v Pagden and another**,[10] David Richards LJ (as he then was, with whom Floyd and Newey LJJ agreed) said, in the context of the removal of a liquidator under s. 108(2) of the **IA 1986**, at [40]:

> "The role of the present liquidators should have been confined to providing information to the court. On applications of this sort, liquidators are expected to adopt a neutral position: see, for example, in the context of a petition to wind up a company already in voluntary liquidation, **Re Roselmar Properties Ltd (No 2) (1986) 2 BCC 96,157, [1986] Lexis Citation 1118**. If the application to remove the present liquidators had been made on grounds that reflected on them personally, for example their competence or integrity or that their conduct required investigation, they could be heard in opposition to that relief."

[10] [2020] EWCA Civ 1207.

[54] As **Fakhry**, which will be familiar to Mr. Curl as he appeared for the appellants, states, adopting a position of neutrality where allegations of serious impropriety have been made does not mean that a liquidator cannot defend those allegations and be heard on the application to remove him. He can, and must, defend them, but should leave the ultimate decision whether to remove him to the court,[11] i.e., he should not fight, at all costs, to continue in office, as the Joint Liquidators have done in these Proceedings.

[55] The obvious inference that could arise from the Joint Liquidators taking what can only be described as an unnecessary hostile approach to the Application is that they wish to continue with the liquidation of the Company because there are fees to be made from it. Reputable liquidators should avoid inferences of this nature being made against them, especially in circumstances where all the creditors or a substantial majority of the creditors[12] have lost trust and confidence in them, and continuing with the liquidation will bring nothing but trouble to them. As Lord Nottingham LC observed in **Uvedale v Ettrick**,[13] a case on the removal of a trustee of a trust, "I like not that a man should be ambitious of a Trust, when he can get nothing but trouble by it."

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[11] The best examples of this come from the England and Wales "conversion" cases, i.e., cases in which a company is in voluntary liquidation, but a creditor seeks the winding up of the company because he wishes to replace the voluntary liquidator. The position, established by a wealth of authority, is that the voluntary liquidator is entitled to defend any allegations of impropriety made against him, but otherwise must remain neutral on the application to wind up the company. Those cases include Re Riviera Pearls Ltd [1962] 1 WLR 722; Re Medisco Equipment Ltd [1983] BCLC 305; and Re Magnus Consultants Ltd [1995] 1 BCLC 203. While the remedy to wind up a company that is in voluntary liquidation is still available in England and Wales because it is enshrined in statute (under s. 116 of the IA 1986), that remedy has fallen largely into disuse (other than in public interest petitions under s. 124 of the IA 1986) by the power of a majority of creditors to remove a liquidator under s. 171 of the IA 1986, and by the decision of Lightman J in Re Inside Sport Ltd (in liquidation) [2000] 1 BCLC 302 in which he stated that a creditor or contributory who was dissatisfied with a liquidator appointed in a voluntary liquidation should resort to s. 171, rather than seek the winding up of the company.

[12] The statement (i.e., that all the known creditors of the Company, i.e., the Applicant and Creditor IV) wished to have the Joint Liquidators removed) was plainly correct when the Application first came before me. The position changed before the hearing in July 2025, but it is also clear that, despite this change, the Applicant — a substantial (if not the majority) creditor of the Company — was against the Joint Liquidators remaining in office. I make it clear that, so far as it is suggested that the Applicant did not have standing to bring the Application, that suggestion is wrong.

[13](1682) 2 Ch Cas 130 at 131.

[56] It is also appropriate to mention the following commentary in **Lewin on Trusts**,[14] at 14-084, in the context of a trustee of trust, which, it seems to me, also applies to a liquidator:

> "A trustee pressed to resign will often do so on similar considerations, though his amour propre may be wounded. And in **Letterstedt v Broers, Lord Blackburn** said [**at (1884) 9 App. Cas. 371 at 386–387, PC**]: 'As soon as all questions of character are as far settled as the nature of the case admits, if it appears clear that the continuance of the trustee would be detrimental to the execution of the trusts, even if for no other reason than that human infirmity would prevent those beneficially interested, or those who act for them, from working in harmony with the trustee, and if there is no reason to the contrary from the intentions of the framer of the trust to give this trustee a benefit or otherwise, the trustee is always advised by his counsel to resign, and does so. If, without any reasonable ground, he refused to do so, it seems to their Lordships that the Court might think it proper to remove him; but cases involving the necessity of deciding this, if they ever arise, do so without getting reported. It is to be lamented that the case was not considered in this light by the parties to the Court below, for, so far as their Lordships can see, the Board would have little or no profit from continuing to be trustees, and as such coming into continual conflict with the appellant and her legal advisers, and would probably have been glad to resign, and get out of an onerous and disagreeable position.' It is perhaps a matter for regret, but the approach of professional and corporate trustees (and their counsel) is rather different nowadays. A remunerated trustee has something to lose by removal, and sometimes much to lose, including professional or commercial reputation, and any trustee may consider that duty requires a continuation in office where the troubles affecting the trust arise primarily from disagreements or hostility between beneficiaries."

[57] It is also necessary in a case such as this for a liquidator to draw to the attention of the court the up-to-date position concerning the progress of the liquidation. This should include the views of the creditors and members (if there is likely to be a surplus) about the liquidator continuing in office, the assets in the liquidation together with the valuation of such assets, the extent of the creditors' claims in the liquidation, how far it has been possible to agree those claims and what steps he intends to take if he is not satisfied by the evidence provided by the creditor in

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[14] 20th Edition, 2023, Eds: Lynton Tucker *et al*, Sweet and Maxwell.

support of the claim, and a full receipts and payments account showing the assets which has managed to collect and the assets that remain to be collected, the steps he has taken to collect them, and the fees charged (or chargeable) to the liquidation. As Harman J observed in the "conversion" case of **Re Medisco Equipment Ltd**[15] (but the observations apply equally to a case where the removal of a liquidator is sought under s. 187 of the **BVI 2003**):

> "… a voluntary liquidator … can, and, indeed, perhaps should, give evidence of what he has found and what the present position is for the assistance of the court, and can properly appear by counsel, but he should not press a view one way or the other; he should merely be there to assist."

[58] There is good reason why this information is necessary in a case for the removal of a liquidator. It goes to the question of how the Court should exercise its discretion at stage 3 of the three-stage process referred to in **Chu Kong**. Thus, for example, if stages 1 and 2 are made out and the allegation against the liquidator does not involve fraud or a serious want of probity, the court is unlikely to exercise its discretion to remove him under stage 3 if very little work remains to be done by the liquidator to bring the liquidation to a conclusion.

[59] I will stand corrected if I am wrong. While Mr. Edwards' affidavit dated 24 June 2025 provided some information about the progress that the Joint Liquidators had made in the liquidation, it was not nearly as detailed as I would have expected it to be.

[60] It is also right that all the creditors are informed of what is going on in the liquidation, particularly in a case such as this, where there are only two known creditors of the Company. For example, I am not aware of when the Applicant discovered that an application for a freezing injunction had been made against Bybit Seychelles. However, on the first day of the Adjourned Hearing, I was told that the Applicant had

[15] [1983] BCLC 305 at 306.

not seen any documentation relating to the application and why it was made so late after the Joint Liquidators had been appointed. That is completely unacceptable, particularly as part of the Applicant's concern arose from the fact that the Joint Liquidators had not taken any steps to bring into their custody or control either what Mr. Fay called the assets belonging to the Company wrongly "appropriated by Bybit Seychelles to itself" ("the Misappropriated Assets"), or what Mr. Edwards referred to in his affidavit dated 24 June 2025 as "the ring-fenced" assets.

[61] Paragraphs 16-25 of Mr. Edwards' affidavit dated 24 June 2025 gave some information about the steps taken by the Joint Liquidators to take control of the "ring-fenced" assets. However, that was only a few days before the Adjourned Hearing. The Joint Liquidators gave no information to the Applicant about this before 24 June 2025. In addition, no explanation was given to this Court about why the information was not made available to the Applicant when the application for the freezing injunction was made or why documentation supporting the application for the injunction was not supplied to the Applicant. If the Joint Liquidators had information or documentation that they believed the Applicant should not have, they could have at least provided the information and documentation that they were able to supply to him and given him an explanation why the rest of that information could not be provided to him.

[62] Even as a non-party, r. 3.16 of the **Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023** ("**ECSC CPR**") permits the Applicant to inspect documents filed with the Court, subject to and upon the provisions specified in that rule. The provisions of this rule (and **ECSC CPR** 2.7) primarily reflect the "open justice" principle. i.e., that the public must be able to follow a case that is proceeding through the courts and how and why a judge has decided a case in a particular way: see **Cape Intermediate Holdings Ltd v Dring**[16] and **Moss v The Upper Tribunal**,[17] decided under the provisions of **E&W CPR** 5.4C and the inherent

[16] [2019] UKSC 38.
[17] [2024] EWCA Civ 1414.

jurisdiction of the English and Welsh Courts. On this basis, a creditor, such as the Applicant, has at least the same right (if not better) to inspect court documents as an entire stranger, with the court having the final say about whether the Applicant should be allowed to see a particular document. It is, therefore, difficult to see why the Joint Liquidators could not have supplied some of the underlying documents relating to the freezing injunction to satisfy the Applicant that they were acting with reasonable dispatch.

[63] It should also be mentioned that the information provided in the 24 June 2025 affidavit is not nearly as complete as it should be. For example, it is telling that the affidavit only referred to the hearing of the injunction application on 14 July 2025. It did not refer to the fact that on or about 14 March 2025, I had refused the Joint Liquidators' certificate of urgency seeking an urgent hearing date of the application for the injunction.

[64] For these reasons, the overall approach of the Joint Liquidators in their response to the Application has been substantially short of the standards that I would expect from a professional liquidator.

**Summary of the grounds of the application and of the joint liquidators' opposition to the application**

[65] In summary, the grounds relied upon by the Applicant in seeking the removal of the Joint Liquidators are:

(a) the failure of the Joint Liquidators to hold an initial creditors' meeting ("Ground 1");

(b) a conflict of interest relating to A&M's involvement in the FTX restructuring proceedings ("Ground 2");

(c) the failure on the part of the Joint Liquidators to protect and preserve the assets of the Company ("Ground 3"); and

(d) a loss of confidence by all the known creditors of the Company in the Joint Liquidators. However, though this ground must now be read in the light of the change in the position of Creditor IV as a loss of confidence in the Joint Liquidators by the Applicant ("Ground 4").

[66] The basis of the Joint Liquidators' opposition to the Application may be summarised as follows:

(a) the Applicant has no proper standing to bring the Application, i.e., the requirements of stage 1 are not met;

(b) the Joint Liquidators reasonably chose not to call an initial meeting (and had given notice of this fact, as they were required to do) but arranged one upon the Applicant's request;

(c) there is no actual or perceived conflict of interest, and in any event, even if there is, that conflict can be managed by appropriate safeguards being put in place to avoid such conflict;

(d) the Joint Liquidators are properly investigating the Company's position before commencing costly litigation, which is a rational commercial decision for them to make;

(e) the alleged loss of confidence is unjustified and is primarily motivated by the Applicant's dissatisfaction with the Joint Liquidators scrutinising his large, mostly unsubstantiated claim; and

(f) even if the requirements of stage 2 are satisfied, the exercise of the discretion of the Court under stage 3 militates against the removal of the Joint Liquidators.

**Analysis and Discussion**

**Stage 1 – Standing of the Applicant**

[67] The basis upon which it is said that the Applicant has no proper standing to bring the Application is set out in the following paragraphs of Mr. Curl's skeleton argument:

> "39 At stage 1 (i.e. standing), the Applicant relies on his status as a creditor in order to establish his standing to apply under **s.187** of the **IA 2003**. It has been held many times that it is not enough for a person to satisfy any "technical" standing requirement (such as being a creditor or member as the case may be); they will lack "substantial" standing if they are not also acting in the same capacity as the one on which they rely in seeking the relief in issue: see **Re Fairfield Sentry Ltd (in liquidation); ABN AMr.o Fund Services (Isle of Man) Nominees Ltd v Krys [2017] BVIHCMAP** … **at [22]-[41]**, per **Pereira CJ**, interpreting the advice of **the Privy Council** (on appeal from the Cayman Islands) in **Deloitte & Touche AG v Johnson [1999] 1 WLR 1605, 1610D-E, 1611H**, per **Lord Millett**.
>
> 40. With these authorities in mind, it is worth having regard to the substance of the Applicant's position today: if the Court draws the inference identified at §28 above, then the Removal Application has been made by the Applicant to avoid engaging with the Joint Liquidators' reasonable requirement that he provide further detail to substantiate the Claim. Accordingly, his 'technical' capacity as a creditor depends upon first satisfying the very process that he challenges by means of the Removal Application.
>
> 41. Even if one assumes in the Applicant's favour that he has 'technical' standing as to the 'acknowledged' portion of the Claim, his 'substantial' capacity on the Removal Application appears to be to avoid scrutiny of the balance of the Claim (which is by far the greater part of it), which, on any view, is not a proper basis for the Applicant to invoke any "technical" status as a creditor.

> Accordingly, on a fair view, the Applicant lacks standing to seek the removal of the Joint Liquidators, given the substance of his position."

[68] The Joint Liquidators do not dispute that – whether or not the Applicant can establish the entirety (or indeed any part of his claim) – he has some claim which, at the time of the Liquidation Order Application, was undisputed and acknowledged by the Joint Liquidators as being due and owing to him. It was that debt which allowed the making of the Liquidation Order Application and the appointment of the Joint Liquidators under it. Nor does it appear to me, apart from the "substantial standing" point, that he is unable to rely on that undisputed indebtedness in bringing the Application.

[69] The standing of the Applicant, based on whether it is substantial, is impugned on the basis that his motive for bringing the Application was to further his own private interest in having the debt due to be alleged to him to be admitted to proof, i.e., as Mr. Curl states "to avoid scrutiny of the balance of the Claim …"

[70] I have already indicated that I do not accept that contention. However, even if I am wrong about that, I do not consider that the decision of the Privy Council in **Deloitte & Touche AG v Johnson**[18] supports the contention that Mr. Curl advances before this Court.

[71] The **Deloitte & Touche** case involved an application by the applicants to remove the liquidators of a company that was involved in litigation against them. The applicants were neither creditors nor members of that company. The Privy Council found that even though the statutory provision under which the applicants had sought to remove the liquidators did not restrict them from applying to remove the liquidators, they did not have proper standing to do so because they had no genuine interest in the liquidation of the company. Lord Millett, giving the judgment of the Board of the Privy Council, said, at 491:

[18] [2000] 1 BCLC 485.

> "Where the court is asked to exercise a statutory power, therefore, the applicant must show that he is a person qualified to make the application. But this does not conclude the question. He must also show that he is a proper person to make the application. This does not mean, as the appellants submit, that he 'has an interest in making the application or may be affected by its outcome'. It means that he has a legitimate interest in the relief sought. Thus even though the statute does not limit the category of person who may make the application, <u>the court will not remove a liquidator of an insolvent company on the application of a contributory who is not also a creditor</u>: see **Re Corbenstoke Ltd (No 2) [1990] BCLC 60**. This case was criticised by the appellants: their Lordships consider that it was correctly decided."
>
> (Emphasis supplied).

[72] Lord Millett went on to say, later on in his judgment on the same page:

> "The company is insolvent. The liquidation is continuing under the supervision of the court. <u>The only persons who could have any legitimate interest of their own in having the respondents removed from office as liquidators are the persons entitled to participate in the ultimate distribution of the company's assets, that is to say the creditors.</u> The respondents are willing and able to continue to act, and the creditors have taken no step to remove them. The appellants are not merely strangers to the liquidation; their interests are adverse to the liquidation and the interests of the creditors. In their Lordships' opinion, they have no legitimate interest in the identity of the liquidators, and are not proper persons to invoke the statutory jurisdiction of the court to remove the incumbent office-holders."
>
> (Emphasis supplied).

[73] There might have been some basis for suggesting that the Applicant did not have standing to bring the Application *qua* creditor if there was evidence that there would be a full distribution to all the creditors of the Company of the entire amount of their claims in the liquidation of the Company and, consequently, there would be a surplus for distribution to the members of the Company. However, whatever the Joint Liquidators may say about this (see especially paras. 65, 72-73, 80 of Mr. Edwards' affidavit dated 7 February 2025 and paras. 16-19 of Mr. Edwards' affidavit

dated 24 June 2025), there is no proper basis to support this premise for the reasons summarised below. There is, therefore, no basis to contend that the Applicant does not have sufficient standing to bring the Application on this premise.

[74] The substance of this point has been acknowledged in other contexts, most notably in the context of public interest proceedings. In **Re Adbury Park Estates Ltd, Juer v Lomas**,[19] for example, a case involving an application for a disqualification order under s. 4(1)(b) of the **Company Directors Disqualification Act 1986** ("the **CDDA 1986**"), which applies in England, Wales and Scotland, the court confirmed that even though a member of an insolvent company fell within the category of persons referred to in s. 16(2) of the **CDDA 1986**, who were entitled to apply for a disqualification order under s. 4(1)(b) of the **CDDA 1986**, such a person would also need to establish that he had a sufficient legitimate interest in the relief sought. Jacob J concluded, based on the principles set out in **Deloitte & Touche AG v Johnson** and the cases that preceded it, that a member with no financial or other interest in any possible disqualification against the respondents, who were the joint liquidators of the company against whom the disqualification was sought, had no proper standing to bring an application for a disqualification order under s. 4(1)(b) of the **CDDA 1986**. This reasoning was revised by Newey J (as he then was) in a subsequent case, **Re Asegaai Consultants Ltd, Wood and Earp v Mistry**,[20] though for the purposes of this Judgment, it does not require any treatment or further mention. The important point to state here is that unless it is obvious that a creditor (or member) will derive no tangible benefit from a liquidation, such as where it is plain that there will be no distribution of dividend to the class of creditors of the company of which the applicant is a member, I can see no basis why he should not be entitled to seek the removal of the liquidator in that liquidation.

[19] [2003] BCC 696.
[20] [2012] EWHC 1899 (Ch).

[75] This point was also acknowledged in **Fakhry**, both at first instance[21] and on appeal[22] There are, on the facts, few similarities between the standing of the applicant in those cases upon which Mr. Curl relies and the Applicant in the present case.

[76] Importantly, however, the decision in **Deloitte & Touche AG v Johnson** must now be read in the light of the decision of the Supreme Court in **Brake and another v The Chedington Court Estate Ltd**[23] another case in which Mr. Curl appeared on behalf of the applicant, in which Lord Richards JSC (with whom the other justices agreed) said at [97], in the context of the standing of an applicant under ss. 303(1) and 168(5) of the **IA 1986**:

> "Submissions were made to the Court of Appeal in the present case, which laid emphasis on **Lord Millett's** observation that the applicant in **Deloitte & Touche** was not only a stranger to the liquidation but 'its interests are adverse to the liquidation and the interests of the creditors'. **Asplin LJ** was, in my view, right … to reject this as a touchstone for the circumstances in which an application can be made under **section 303(1) or section 168(5) of the IA 1986**. This may be illustrated by the example of a creditor who challenges acts, omissions or decisions of the trustee or liquidator as they impact on his claim as a creditor. It cannot be doubted that the creditor would have standing under **section 303(1)** or **section 168(5)** in those circumstances, but it would be irrelevant whether his challenge was, or was not, adverse to the interests of creditors generally. Indeed, the challenge might be adverse to the interests of all the other creditors. The same would be true of applications by third parties, such as the landlord in **In re Hans Place Ltd**. In many cases, the fact that the application is adverse to the interests of the bankruptcy or liquidation or to the interests of creditors will indicate a lack of standing, but it is not, in my view, a wholly accurate approach. Insofar as **Males LJ** suggested otherwise in **In re Edengate Homes (Butley Hall) Ltd at para 36**, I would respectfully disagree. The issue is whether the challenge is brought by the creditor in its capacity as a creditor …"

[77] The general principles affecting standing were set out by Lord Richards as follows:

> "8. I agree with the observation of **Peter Gibson LJ** in **Mahomed v Morris [2000] EWCA Civ 46, [2000] 2 BCLC 536 at para 26**: 'It

[21] [2019] EWHC 540 (Ch).
[22] [2020] EWCA Civ 1207.
[23] [2023] UKSC 29, [2023] 1 WLR 3035.

could not have been the intention of Parliament that any outsider to the liquidation, dissatisfied with some act or decision of the liquidator, could attack that act or decision by the special procedure of **section168(5)**'.

9. Limitations apply also to bankrupts, creditors and others who are connected with the bankruptcy or liquidation. In accordance with the principles that serve to confine standing under these sections, the authorities have established the following propositions. First, subject to very limited exceptions discussed below, a bankrupt must show that there is or is likely to be a surplus of assets once all liabilities to creditors, and the costs and expenses of the bankruptcy, have been paid. The same is true of a contributory of a company holding fully paid shares, although there has been no decided authority on this point. Second, a creditor will not have standing, except as regards a matter which affects the creditor in its capacity as such. As a matter of principle, this limitation applies also to bankrupts, even when they can demonstrate a surplus. Third, there are other, very limited, circumstances which will provide standing to an applicant, whether or not the applicant is the bankrupt, a creditor or a contributory. So far as the authorities go, those circumstances are confined to cases where the challenge concerns a matter which could only arise in a bankruptcy or liquidation and in which the applicant has a direct and legitimate interest.

[13] The processes of bankruptcy and insolvent liquidation are primarily for the benefit of creditors. They necessarily have an interest in the proper administration by the trustee or liquidator of that process. Equally, though, their standing to challenge the trustee or liquidator is limited to matters which affect their interests as creditors under the statutory trust, and not in some other capacity.

[24] The Court of Appeal [in **Mahomed v Morris [2000] EWCA Civ 46, [2000] 2 BCLC 536]** held that the applicants lacked standing under section 168(5) to challenge the decision of the liquidators to compromise the dispute. It was not enough 'that the person claiming to be aggrieved by the act or decision of the liquidator in respect of assets of the company is a surety when his subrogation rights do not in any way depend on the company being in liquidation' (para 26 per **Peter Gibson LJ**). The applicants were 'outsiders to the liquidation' (para 28 per **Peter Gibson LJ**)."

[78] In **McAteer v Hat & Mitre plc (in Creditors' Voluntary Liquidation) and Toone and another**,[24] Sir Anthony Mann, sitting as a Judge of the High Court of England and Wales, also a case in which Mr. Curl appeared, explained what these passages meant. Referring to the speech of Lord Richards at [24], above, he said:

> "[87] The same must apply if the applicant had the technical status of a contributory, whose position, for these purposes, is analogous to a bankrupt in a bankruptcy. Another way of putting the point is that an applicant has to have an interest which takes him/her beyond being just an 'outsider' to the insolvency…"
>
> [88] Thus someone with technical standing such as a contributory or creditor cannot use that as a peg to hang an application on if in substance he/she is not applying in that capacity."

[79] On this basis, it is difficult to see how the standing of the Applicant can be challenged even if all the creditors of the Company are paid in full. The interest of the Applicant arises solely *qua* creditor. He has ample standing, therefore, to make the application.

[80] Stage 1 is, therefore, entirely made out.

**Stage 2 – Grounds relied upon in support of the Applicant**

Ground 1 – failure to give notice that the first meeting of creditors would not be called

[81] Paragraph 4(a) of the Application provides a summary of this ground in the following terms:

> "The Joint Liquidators failed to call a meeting of creditors in accordance with **section 179 of the Insolvency Act [2003]** and/or provide notice of their intention to do so and/or failed to provide reasons for not doing so."

[24] [2024] EWHC 1601 (Ch).

[82] Section 179 of **BVIIA 2003** requires that a liquidator must call a first meeting of creditors within 21 days of his appointment. However, under s. 183 of the **BVIIA 2003**, the requirement to call a first meeting of creditors may be dispensed with if the liquidator considers it unnecessary to call such a meeting.

[83] There is no dispute that a first meeting of creditors was not called under s**.** 179. However, the Joint Liquidators assert that they had given notice to the creditors to dispense with the first meeting under s. 183.

[84] Section 183 of the **BVIIA 2003** states that:

> "A liquidator appointed by the Court is not required to call a meeting of creditors under section 179 if:
>
> (a) he considers that, having regard to the assets and liabilities of the company, the likely result of the liquidation of the company and any other relevant matters that it is not necessary for a meeting to be held;
>
> (b) he gives notice to the creditors stating:
>
> (i) that he does not consider it necessary for a meeting to be held:
>
> (ii) the reasons for his view, and
>
> (iii) that a meeting will not be called unless 10 per cent in value of the creditors give written notice to the liquidator within ten days of receiving the notice, that they require a meeting to be called; and
>
> (c) no notice requiring a meeting to be held is received by him."

[85] The position of the Applicant is summarised in the following paragraphs of Mr. Fay's skeleton argument:

“39 There is no dispute that the Joint Liquidators did not call a meeting of the creditors in accordance with section 179.

a. After various requests made by Mr. Hwang, the JLs finally called a meeting by an undated Notice sent to Mr. Hwang on 22 January 2025 – giving notice of a meeting on 12 February 2025.

i. Paragraph 56 of Mr. Edwards' affidavit accepts that such an undated notice of a meeting of the creditors was given to Mr. Edwards and Creditor IV for the first time on 22 January 2025.

b. The JLs offered, on 22 January 2025, to hold the meeting on an earlier date than 12 February 2025 if the creditors agreed.

c. On 23 January 2025, Mr. Hwang and Creditor IV suggested a meeting at 10:00 am BVI time on 31 January, 1 February or 2 February 2025. No response to that suggestion was made until 30 January 2025.

d. On 30 January 2025, the JLs (i) confirmed that they were not available on 31 January 2025, (ii) did not refer to the suggested dates of 1 February 2025 and 2 February and did not assert that they were unavailable on those dates, (iii) did not suggest any further dates prior to 12 February 2025, and (iv) confirmed that the meeting would take place on 12 February 2025.

40. The question therefore arises as to whether the JLs complied with section 183.

41. Mr. Hwang states that he was not given any notice under section 183 – see paragraphs 34 to 39 of his affidavit.

a. He further states that he did not see the publications made by the JLs, and that those publications only came to his attention when Mr. Child of Agon Litigation independently came upon them.

b. In the circumstances, the evidence of Mr. Hwang (unless challenged by the JLs and disbelieved by the Court) clearly establishes that no **section 183**

**Notice** was given to him at the relevant time or at all.

c. Mr. Hwang was not given a **section 183 Notice**, notwithstanding that the JLs were aware of his and his legal practitioner's contact details, and were in contact with him at the relevant time. Indeed, at paragraph 52(c) of his affidavit, Mr. Edwards confirms that the JLs were in regular contact with Mr. Child in his capacity as counsel for Mr. Hwang. It would have been easy to give Mr. Hwang notice if the JLs had wanted to do so, but for reasons not explained by Mr. Edwards, no such notice was given.

42. The evidence of Mr. Edwards on the question of notice is very carefully drafted, and it is as relevant to note what Mr. Edwards does not say as it is to note what he does say."

[86] On behalf of the Joint Liquidators, Mr. Curl responds to this allegation in his skeleton argument (by way of summary) in the following terms:

"… their appointment, the Joint Liquidators decided not to call a creditors' meeting. That decision was widely advertised … This was a reasonable (indeed obvious) decision to take in circumstances where the Applicant (one of only two parties claiming to be creditors) was responsible for appointing the Joint Liquidators and shared common legal representation with them. As soon as the Applicant raised the point (which he did by a letter dated 17 December 2024), the Joint Liquidators offered a regular update call with him (by a letter dated 23 December 2024). The Joint Liquidators subsequently gave notice of a creditors' meeting to address the Applicant's concern."

[87] The detail of Mr. Edwards' response to the Applicant's allegation is contained in his affidavits sworn on 7 February 2025 and 24 June 2025.

[88] In his 7 February 2025 affidavit, Mr. Edwards provides the following explanation about the allegation made by the Applicant:

"50 It was during the period within which the Joint Liquidators were under counsel from Agon Litigation that they took the decision they would not be calling a first meeting of creditors on the basis they did not consider it necessary, as is our right pursuant to **Section 183 of the Act**.

51 The first meeting of creditors is an opportunity for putative creditors to:

(a) propose an alternative liquidator(s);

(b) establish a creditors' committee; and/or

(c) receive an update on the progress of the liquidation.

52 In circumstances where:

(a) Mr. Hwang had himself proposed and sought the appointment of the Joint Liquidators and had not raised any desire to replace them at that stage;

(b) There were, and remain, insufficient putative creditors to form a creditors' committee (**Section 423(3)** requiring a minimum of 3 creditors to form such a committee) – this point appears to have been entirely overlooked by Mr. Hwang's advisers; and

(c) The Joint Liquidators and their teams were in regular contact with Mr. Child, in his capacity as counsel for both the Joint Liquidators and Mr. Hwang, who was fully apprised of progress; and

(d) There was, and remains, a funding agreement in place within which there is an express mechanism to deal with further reporting and updates by the Joint Liquidators to Mr. Hwang;

the Joint Liquidators did not consider it to be in the best interests of the liquidation estate to hold the first meeting of creditors, hence they dispensed with it.

53 The decision not to call a first meeting of creditors was also communicated in a series of notices issued by the Joint Liquidators … , whilst under the counsel of Mr. Child and Agon Litigation. They were widely advertised, including in the BVI Beacon, International FT, Coindesk, and the BVI Gazette. The relevant wording of the notice was as follows:

'NOTICE IS HEREBY GIVEN pursuant to Section 183 of the Act, that the Joint Liquidators of the Company are of the view that, having regard to the assets and liabilities of the Company and the likely result of the liquidation of the Company it is not necessary for a meeting of creditors to be held pursuant to Section 179 of the Act. Accordingly, a meeting of creditors will not be called unless 10 per cent in value of the creditors give written notice to the Joint Liquidators within ten days of receiving this notice, that they require a meeting to be called; and no notice requiring a meeting to be held is received by the Joint Liquidators.'

54 At paragraph 37 of Hwang 3, Mr. Hwang explains his understanding and belief that Mr. Child *"independently discovered that an advertisement had been published by the Joint Liquidators"*. Without waiving privilege over the communications between the Joint Liquidators and Mr. Child, during that early period where Agon Litigation acted as the Joint Liquidators' counsel, I can confirm that Mr. Child was informed by the Joint Liquidators of the intended publication in the media outlets particularised in paragraph 53 above. Notwithstanding that Mr. Child maintains his position that he did not know the Joint Liquidators had dispensed with the need to call the first creditors' meeting, the Joint Liquidators are of the view that he, and therefore Mr. Hwang, ought to have known had he reviewed the notices (in draft and/or as published) when they were sent to him.

55 Notwithstanding Mr. Hwang's concerns regarding our dispensation with calling a first meeting of creditors within the statutorily prescribed timeframe, we noted his request to meet with the Joint Liquidators, made for the first time in the ABVI Letter, and acceded to that request in Maples' response of 23 December 2024. By that response, the Joint Liquidators:

(a) assured Mr. Hwang that any such complaints can, and should, be directed to the Joint Liquidators as they arise, to enable us to engage with and respond to them appropriately (and without undue delay);

(b) highlighted to Mr. Hwang that, pursuant to the funding agreement entered into between him and the Joint Liquidators, there is an express mechanism which permits him to request and receive updates on the progress of the liquidation from the Joint Liquidators;

(c) to remedy any future concerns by Mr. Hwang that he has not been adequately apprised of developments in the liquidation, offered a monthly catch-up call between him and/or his counsel and the Joint Liquidators and/or Maples; and

(d) invited Mr. Hwang to propose mutually convenient times for the proposed monthly catch-up call.

56 The Joint Liquidators also issued a formal notice calling a creditors' meeting on 22 January 2025. That notice has been served on ABVI Law and the second putative creditor, referred to as Creditor IV, and the Joint Liquidators are actively liaising with both putative creditors to find a mutually convenient date to hold that meeting."

[89] In his 24 June 2025 affidavit, Mr. Edwards qualified what he had said in the above paragraphs of his 7 February 2025 affidavit in the following terms:

"7 At paragraph 54 of Edwards 1, I make the following statement:

'I can confirm that Mr. Child was informed by the Joint Liquidators of the intended publication in the media outlets… the Joint Liquidators are of the view that [Mr. Child], and therefore Mr. Hwang, ought to have known had [Mr. Child] reviewed the notices (in draft and/or as published) when they were sent to him.'

8 At the first hearing of the Removal Application, there was cause to correct the abovementioned wording, which I repeat in this affidavit for the purpose of formally correcting the record.

9 The advertisement notices referred to at paragraph 54 of Edwards 1, which stipulated, amongst other things, that the Joint Liquidators had dispensed with calling a first meeting of the creditors pursuant to **Section 179 of the Act**, were not in fact sent directly to Mr. Hwang or Mr. Child. Instead, the Joint Liquidators provided to Mr. Child details of the media outlets in which the advertisement was placed.

10 Notwithstanding the fact that the notices themselves were not sent to Mr. Child or Mr. Hwang, I verily believe that the creditors were given due notice of the Joint Liquidators' decision to dispense with a first meeting of the creditors, in compliance with **Section 183 of the Act**, as Mr. Child was acting as the Joint Liquidators' legal representative at the time as well as legal representative to Mr. Hwang and I reasonably assumed that he would have checked the notices having been informed of their whereabouts, had he wished

to take instructions from Mr. Hwang on the issue of a creditors' meeting.

11 The Joint Liquidators subsequently chose to appoint Maples and Calder as their primary legal representatives, predominantly because Bybit Seychelles challenged his impartiality in a letter dated 4 November 2024, … but Mr. Child was aware of the relevant notices prior to being disinstructed."

[90] This explanation does not satisfy me that the requirements of s. 183 were satisfied by the Joint Liquidators.

[91] I accept that it was open to the Joint Liquidators to dispense with the first meeting of creditors. I also accept that it was not open to the creditors of the Company (being, so far as I am aware, still just the two creditors known to the Joint Liquidators, i.e., only the Applicant and Creditor IV) to form a creditors' committee because s. 423 of the **BVIIA 2003** expressly states that such a committee can only be formed if there are three or more known creditors of the Company[25]. The real issue is whether sufficient notice was given to the creditors to dispense with the meeting. I am not satisfied that it was. I further accept that a notice given under s. 183 does not require a person to have received the notice, provided it was "given" to him, as required by s. 183.

[92] In his oral submissions, Mr. Curl suggested that the word "gives" in s. 183 means the giving of notice by sending or serving it or by publicising it in the manner in which it was done by the Joint Liquidators, as set out in Mr. Edwards' above affidavit.

[93] I do not consider that the requirements of s. 183 are satisfied by publication in the manner asserted by Mr. Edwards. Mr. Curl states that, if combined with s. 495 of the **BVIIA 2003**, it is clear that the word "gives" in s. 183 includes "giving notice" by advertisement.

[25] I should make it clear that I do not accept the contention advanced by Mr. Fay that it is possible to "split" or "assign" a debt into two or more separate debts, as he suggested in the course of his oral submissions, so as to make it possible for there to be two or more creditors for the same amount of the initial debt.

[94] Section 495 is cast in the following terms:

> "(1) Subject to subsection (2), all notices required or authorised to be given by or under this Act or the Rules shall be in writing.
>
> (2) Subsection (1) does not apply where:
>
> (a) this Act or the Rules provide otherwise; or
>
> (b) the Court requires or permits a notice to be given in some other way."

[95] The argument continues that the only requirement is that a notice in compliance with s. 183 must be in writing. There is no requirement to send or serve the notice. Accordingly, and broadly in line with the statutory principle of construction known as the "Expressio unius" principle, i.e., expressing one thing excludes another, the requirement in s. 183 is satisfied by the notice being publicised.

[96] As the authors of **Bennion Bailey and Norbury on Statutory Interpretation**,[26] explain at para. [23.12] (disregarding the footnotes in that paragraph)

> "Expressio unius principle – expressing one thing excludes another
>
> (1) Where an Act mentions one or more things, by implication it excludes other things of the same kind.
>
> (2) This principle is often expressed in the latin maxim *expressio unius est exclusio alterius* (to express one thing is to exclude another), or for short, the *expressio unius* principle.
>
> (3) It applies in particular where a general formula is accompanied by words of extension or exception naming only some members of that class. The remaining members of the class are taken to be excluded from these words.
>
> (4) There is no room for the application of this principle where some reason other than the intention to exclude certain things exists for mentioning some but not others."

[26] 8th Edn, 2020, Eds Bailey and Norbury.

(4) Where an Act mentions one or more things, by implication it excludes other things of the same kind.

(5) This principle is often expressed in the latin maxim *expressio unius est exclusio alterius* (to express one thing is to exclude another), or for short, the *expressio unius* principle.

(6) It applies in particular where a general formula is accompanied by words of extension or exception naming only some members of that class. The remaining members of the class are taken to be excluded from these words.

(4) There is no room for the application of this principle where some reason other than the intention to exclude certain things exists for mentioning some but not others."

[97] I disagree with Mr. Curl's contention for several reasons. They include the following.

[98] First, the word "gives" is an ordinary word of the English Language. In the context of giving notice about something, such as a meeting or to alert someone about what the person wishes or intends doing, it simply cannot include advertisement or publication unless that method of communication is expressly agreed between the giver and recipient of the notice or prescribed in a statutory provision or as a result of the application of another established legal principle.

[99] Second, the **BVIIA 2003** makes a careful distinction between situations where notice may be given by advertisement or publication and notice which must be "given" or "sent" (which appears to me to be used synonymously with the word "given") in the conventional manner and/or also advertised and publicised. Examples include ss. 26, 27, 82, 95, 100, 104, 118, 165, 178, 179, 239, 285, 326, 333 and 370 of the **BVIIA 2003**, though some of these provisions (such as those relating to the administration of companies) are not yet in force. There is simply no basis to contend that advertisement or publication by itself is sufficient.

[100] Third, while I have not gone through the bundles with a fine toothcomb, I cannot see that before Mr. Curl's oral submissions on 3 July 2025, it had ever been suggested on behalf of the Joint Liquidators that they had thought that advertising or publicising

the notice in the BVI Gazette and the other publications referred to above was intended to comply with the Joint Liquidators' obligation under s. 183. It seems clear that having failed to "give" (by way of a prescribed or accepted form of communication) the notice required under s. 183 (I have no doubt inadvertently at the time), the Joint Liquidators attempted to justify that failure by advancing an argument about the meaning of the word "gives", which simply does not withstand the scrutiny of this Court. They should have acknowledged their mistake, and if they had, their conduct could not have been criticised. The explanation that Mr. Curl gave on their behalf about what the heavily redacted document (that was produced for the first time on Day 2 of the hearing) said – if it was simply dealing with the advertisement of the Joint Liquidators' appointment as opposed to compliance with s. 183 – does not justify whatsoever for their breach of s. 183.

[101] It would have been more credible for them to have "come clean" rather than raise what I consider to be a spurious argument to justify their failure to give notice dispensing with the requirements of s. 183. If they had stated frankly both to the Applicant and to this Court that the failure was inadvertent, I would have been prepared to waive that failure, which I cannot see would have justified their removal: see, by way of examples, **AMP Enterprises Ltd v Hoffman**[27] and **Re G2F Ltd, Bike IT v Craig**[28] The failure, after all, was a technical one, inadvertent and rectified by the meeting being called, so neither the Applicant nor Creditor IV could be said to be prejudiced by it. The attempt to defend their indefensible position does them no credit at all.

[102] I make it clear that I do not consider that it is sufficient compliance with s. 183 for Mr. Child, counsel for the Applicant, knowing where the advertisements dispensing with the requirements of that provision were going to be placed. The fact is that both the Applicant and Creditor IV were entitled to be "given" notice under s. 183, and while I agree with Mr. Curl that does not mean "serving" the notice in the legal sense

[27] [2002] EWHC 1899 (Ch).
[28] [2007] All ER (D) 511 (Jul).

in which that word is used, it meant “sent”, which I regard, in this context, as being synonymous with the word “given”.

[103] The Applicant’s case on this allegation is not just that there was a failure by the Joint Liquidators to comply with s. 183, but also that there was an attempt by them to mislead the Applicant. Mr. Fay summarises this part of his case in the following sub-paragraphs of para. 49 of his skeleton argument:

> “c. On 11 February 2025, ABVI Law made a request pursuant to **[ECSC] CPR 28.16** requiring the JLs to produce copies of the following documents referred to in paragraph 54 of Mr. Edwards affidavit.
>
> > i. each and every of notices (in draft and/or as published) that were sent to Mr. Childs
> >
> > ii. copies of each of every document sending the notices to him.
>
> d. In response to that **[ECSC] CPR 28.16** request, Maples produced:
>
> > i. one redacted exchange of emails.
> >
> > > 1. Whilst the unredacted parts of the emails refer to the JPLs advertising their appointment in various publications – the email does not make any mention of any decision not to hold a first meeting of the creditors in the email or refer to any publication of such decision.
> > >
> > > 2. The email does not purport to attach any documents.
> > >
> > > > a. Typically, an email shows if it has any attachments, and the lack of any reference to an attachment suggests that there was no attachment. The part of the email where the fact of an attachment would typically be shown is not redacted.

b. It follows that it is unlikely that there was any attachment.

ii. copies of pages 174 to 179 of the exhibit to Mr. Edwards affidavit - the documents show the pagination of that bundle.

1. It is clear beyond peradventure that the email disclosed by the JLs pursuant to CPR 28.16 did not attach the paginated documents produced by Maples pursuant to the CPR 28.16 request – since the paginated versions did not exist at that time.

e. The veracity of the statement made by Mr. Edwards in paragraph 54 (to the effect that copies of notices that there would be no first meeting of the creditors were provided to Mr. Child) is called into question by the documents that were disclosed pursuant to the CPR 28.16 request. He has been unable to produce any document evidencing that the contents of the notices were given to Mr. Child.

f. Mr. Edwards should apologise to the Court for either:

i. the statement made in paragraph 54 of his affidavit; or

ii. if there are other documents giving the notices to Mr. Child, for not disclosing those documents pursuant to the CPR 28.16 request."

[104] Mr. Edwards has made amends of sorts in paras. 7-11 of his 24 June 2025 affidavit, the text of which is reproduced above.

[105] For the purpose of deciding the Application, and for the reasons set out below, I do not have to make any finding on this (so-called "misleading") aspect of the Applicant's case and do not, therefore, do so.

[106] I should add, for the sake of completeness, that I do not criticise the Joint Liquidators for deciding not to call a first meeting of creditors for all the reasons they give.

However, the main thrust of the Joint Liquidators' case on this allegation rests on two points:

(a) First, the Applicant had no cause to complain about the failure to comply with s. 183 because he and/or his counsel were fully aware that the Joint Liquidators intended to dispense with the calling of the first meeting of creditors, whether or not formal notice was given to him. That, as it seems to me, proceeds on a fundamental misconception about compliance with s. 183. The fact that the Applicant had actual or constructive notice that the first meeting of creditors would be dispensed with is not the issue. The issue is whether <u>all the creditors</u> were given notice of the Joint Liquidators' intention not to call the meeting, whether or not they received that notice. There can only be compliance with s. 183 if all the creditors, not just the Applicant, were or ought to have been aware (by the "giving" of notice to them) that the first meeting of creditors would be dispensed with.

(b) Second, the failure to comply with s. 183 is not corrected, *ex post facto*, by the subsequent calling of the meeting of creditors at the behest of a creditor who has the right to do so under s. 183, though it is a failure that is capable of being waived and, so far as is necessary, I am prepared to waive it.

[107] I accept, as I believe I have already said, that the breach of s. 183 was technical. However, I find that Joint Liquidators had failed to comply with the requirements of s. 183, and instead of admitting their default, sought to put forward a protracted and, in the event, a spurious case that they had complied with it.

[108] For these reasons, I find the substance of Ground 1 to be made out.

Ground 2 – Conflict

[109] I have dealt with the summary of the Applicant's case on this allegation above.

[110] The allegation is set out in more detail at paras. 14 to 24 of the Applicant's affidavit dated 21 January 2025 under the heading "The Joint Liquidators' Conflict":

> "14. The Joint Liquidators are members of A&M. Unknown to me until immediately prior to the hearing of my Liquidation application, which culminated in the Joint Liquidators' appointment under the Order, A&M was (and may continue to be) directly involved in the FTX Litigation. The FTX Litigation involves claims made by FTX against Bybit Seychelles — which is the company that is the recipient of the business, assets and undertaking of Bybit BVI
>
> a. A&M are retained by FTX in that litigation and thus has an interest in securing the assets currently held by Bybit Seychelles;
>
> b. prima facie, those assets held in the name of Bybit Seychelles comprise former assets of Bybit BVI that were appropriated, without any legal or commercial justification, from Bybit BVI to Bybit Sychelles;
>
> c. as liquidators of Bybit BVI, the Joint Liquidators (who are employees of A&M) should be seeking to assert Bybit BVI's interest in those assets; and
>
> d. there is a clear conflict of interest (the "Conflict").
>
> 15. The Joint Liquidators did not make adequate disclosure of the Conflict prior to their appointment. Had I known the true extent of their conflict, I would not have sought to have them appointed and would have sought to have non-conflicted liquidators appointed. I am completely dissatisfied with the Joint Liquidators and a significant part of my dissatisfaction arises as a result of the Conflict regarding the FTX Litigation and their apparent failure to take steps to ensure that Bybit Seychelles does or has not used assets properly belonging to Bybit BV to settle that litigation or otherwise take steps to protect Bybit BVI's assets in that regard.

16. The Joint Liquidators failed to voluntarily provide any particulars to me regarding the Conflict and kept it secret from me until shortly before the hearing at which they were appointed. The first time I became aware of the Conflict was as a result of Bybit Seychelles filing an Affidavit in opposition to the Liquidation in which Mr. Zhou Yuchen, on behalf of Bybit Seychelles, stated that it was inappropriate that the Joint Liquidators be appointed because A&M:

> *'has also played a significant role in the restructuring and bankruptcy proceedings of FTX Trading Ltd and related companies of the FTX Group, and has been retained as advisors to FTX, with fees billed in excess of US$28 million as at June 2023 based on news reports (exhibited at pages 169-170 is a copy of a Bloomberg news article indicating the same). FTX (in administration) has brought proceedings against Bybit seeking the recovery of US$953 million in a complaint in Delaware, and Bybit is opposing. There is a clear and obvious conflict in allowing insolvency practitioners from A&M to act as joint liquidators of Bybit BYVI, particularly in circumstances where A&M have also been advising FTX in its restructuring and bankruptcy, including in all likelihood in respect of its actions against Bybit …'*

17. I was advised by Mr. Child that, as a result of discovering this allegation in the above Affidavit, Mr. Child contacted one of the Joint Liquidators, Mr. Edwards, the day before the hearing of that application. I further understand that at that time Mr. Edwards confirmed that there was no conflict and Mr. Child relied upon those assurances. Unfortunately, that statement was incorrect. Indeed, as mentioned below, it appears that Mr. Edwards was not only aware of the Conflict but was aware that it was significant enough that it would have to be brought to the attention of the Delaware Court in the FTX Litigation. The Joint Liquidators continue to vacillate between asserting that there is no Conflict and asserting that A&M has put an information wall in place (and has taken other steps) to deal with the Conflict.

18. Given the pressing matters which needed to be attended to in advance of the hearing of the Liquidation application, in-depth consideration or investigation of the allegations

made by Bybit Seychelles regarding the Conflict was not possible prior to the Liquidation hearing the next day.

19. I emphasise that at all material times, my suggestion to the Court that the Joint Liquidators should be appointed was driven in large part because of the complexity of the issues to be contemplated regarding Bybit BVI and the Joint Liquidators association with A&M. The materials filed in support of their appointment (all of which were provided to the Joint Liquidators in advance of the applications) emphasised their suitability for the role because of the A&M global network of professional insolvency practitioners providing sophisticated international insolvency and liquidation services.

20. Subsequent to the Order, further consideration was given regarding the Conflict and as a result I became very concerned. I accordingly instructed Mr. Child to write to the Joint Liquidators on my behalf and on 21 October 2024 a letter was sent by Mr. Child to the Joint Liquidators expressing my concerns and seeking further clarification (the “21 October Letter”) …

21. I adopt the concerns set out in the 21 October Letter, including that:

    a. A&M was hired and acting as a financial advisor to FTX regarding the FTX Litigation — again, litigation directly involving Bybit Seychelles;

    b. A&M was advising regarding the plan in the FTX bankruptcy; and

    c. A&M had purportedly charged USD37 million (plus USD1.1 million in expenses) for their services to FTX;

    and that none of these circumstances were adequately disclosed to me or to the Court by the Joint Liquidators prior to their appointment.

22. The Joint Liquidators responded to the 21 October Letter in a letter dated 23 October 2024 (the “23 October Letter”) … The 23 October Letter raised the conflicts provision in the agreement relating to their Pre-Appointment Role and for the first time advised that:

    a. A&M had set up an “Information Wall” regarding the Conflict and had implemented a plan to avoid the Conflict (which, depending on the issues they encountered, included the appointment of an independent third-party liquidator);

b. A&M's "Legal and Conflicts Team had apparently perceived that it would be prudent to make specific disclosure of the Conflict to the Delaware Court in the FTX Litigation — although apparently despite the same facts applying to the Conflict no such disclosure in the BVI proceedings had been deemed necessary by the Joint Liquidators or by the A&M "Legal and Conflicts Team; and

c. despite the facts referred to in their letter and despite the steps referred to in their letter to try to deal with the Conflict, the Joint Liquidators were of the view that no Conflict existed.

23 The 23 October Letter did not address the circumstances in which the FTX Litigation might involve assets which ultimately belonged to Bybit BVI and how the Joint Liquidators planned to deal with that possibility in light of A&M's direct role in the FTX Litigation and the Joint Liquidators' duties under the IA in relation to Bybit BVI.

24 Whilst I was not satisfied with the Joint Liquidators' position and answers expressed in their 23 October Letter, I was also I was also concerned that steps to preserve and protect the assets of Bybit BVI had stalled as a result of the Joint Liquidators nat being funded, I was thus focussed on providing the Stage One funding for the Liquidation as reflected in the Liquidation Funding Agreement and moving matters forward regarding the Joint Liquidators' preserving and protecting assets of Bybit BVI. I therefore did not immediately take further steps to resolve the Joint Liquidators' Conflict."

[111] The Applicant went on to say in his affidavit under the heading "The FTX Litigation Settlement":

"25. I was advised by Mr. Child and believe that:

a. On 4 November 2024, he independently discovered from online media that the FTX Litigation had purportedly been settled;

b. based on media reports, it appeared that the settlement involved a significant payment and other consideration from Bybit Seychelles to FTX; and

c. he immediately contacted the Joint Liquidators with regard to his discovery regarding settlement of the FTX Litigation.

26. I understand that Mr. Child was summarily dismissed by the Joint Liquidators as their counsel on 4 November 2024.

27. The Joint Liquidators wrote to Mr. Child on 5 November 2024 (the "5 November Letter") setting out the reasons for dismissing Mr. Child, none of which referred to the Conflict or the FTX Litigation. As a result of his request to the Joint Liquidators, I was advised by Mr. Child and believe that he received permission from the Joint Liquidators to share the 5 November Letter with me and he did so …

28. In my view, taken on the face of the 5 November Letter, the Joint Liquidators at least appear to have acceded to pressure from counsel for Bybit Seychelles to release Mr. Child (who had been entirely successful against Bybit Seychelles in the face of their opposition to the Liquidation in the Liquidation application) as their legal counsel. They appear to have bowed to threats and pressure from Bybit Seychelles to refuse to provide information, records and documents to the Joint Liquidators which Bybit Seychelles was statutorily obliged to provide, until Mr. Child (clearly a thorn in Bybit Seychelles' side having successfully answered their last-minute opposition to the Liquidation), was dispensed with[29]. I find it ironic that the Joint Liquidators would bow to pressure to release Mr. Child as their counsel on the purported grounds of an alleged conflict which did not exist whilst at the same time the Joint Liquidators are now resisting their own removal for the Conflict which clearly does exist.

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[29] I should make it clear that I do not consider that the Joint Liquidators' refusal to continue with the services of Mr. Child can, in any way, be subject to criticism. It is entirely a matter for the Joint Liquidators to decide whom they should employ.

29. Despite the contents of the 5 November Letter, I believe that it cannot be coincidental that

a The proceeds of the Litigation Funding Agreement were received by the Joint Liquidators on 4 November 2024, which funds would not have been forthcoming had I known that I would not have had the comfort of Mr. Child acting as legal counsel for the Joint Liquidators; and

b. The termination of Mr. Child occurred on 4 November — immediately after receipt of that payment and Mr. Child discovering that day that the FTX Litigation had been settled (which in my view should have resulted in action from the Joint Liquidators to preserve and protect the assets of Bybit BVI in relation to that settlement before they were transferred away to FTX).

30. I was astounded regarding the loss of Mr. Child to the Joint Liquidators and in relation to the Liquidation.

31. Further, contrary to the 5 November Letter, which stated:

> *The JLs shall continue to work with Agon as counsel to Mr. Hwang and, in doing so, hope to utilise the ingrained knowledge and case background that Agon has built up to date*

I am advised by Mr. Child and believe that between 4 November 2024 and 23 December 2024, neither the Joint Liquidators nor their current BVI legal counsel have approached or had any discussions whatsoever with either Mr. Child, Agon Litigation or myself regarding any substantive matters relating to the Liquidation. On 23 December 2024, after I had asked the Joint Liquidators to resign, the Joint Liquidators did offer to meet with me. ABVI Law's letter dated 10 January 2025 accepted that offer but no meeting date has been confirmed by the Joint Liquidators, although they repeated the offer (ignoring that it had already been accepted) on 15 January 2025. Thus, the Joint Liquidators have not done what they said they would do in their letter dated 5 November 2024. To my knowledge, the Joint Liquidators took no steps to preserve and protect the assets and undertaking of Bybit

BVI in relation to the FTX Litigation prior to or in relation to the FTX settlement. In fact, the Joint Liquidators' First Report to Creditors dated as late as 22 November 2024 (the "First Report to Creditors"), makes no mention of FTX at all. All of the above served to heighten my existing concerns regarding the Conflict."

[112] In paras. 11-14 of his first affidavit in opposition to the Application, sworn on 7 February 2025, under the heading "Executive Summary", Mr. Edwards responds to what the Applicant says in the following terms:

"11 On the face of it, the principal ground for the Removal Application is an allegation of conflict of interest that was first raised against the Joint Liquidators in evidence filed the day before the hearing on 23 September 2024 at which the Joint Liquidators were appointed. This evidence was not filed by Mr. Hwang but by a company incorporated in the Republic of the Seychelles, that until recently had the same name as the Company ("**Bybit Seychelles**") in the course of an application by Bybit Seychelles to intervene in those proceedings. The facts giving rise to the allegation were accordingly known to Mr. Hwang prior to the Joint Liquidators' appointment, and were subsequently addressed by the Joint Liquidators, to Mr. Hwang's satisfaction, via counsel then acting both for Mr. Hwang and the Joint Liquidators, Mr. Child of Agon Litigation. The allegation has recently resurfaced, almost immediately after the Joint Liquidators requested further details of Mr. Hwang to substantiate his claim; first in the form of a letter from Mr. Hwang's new counsel, ABVI Law (who have been instructed by Mr. Hwang in addition to Agon), and, very shortly thereafter, in the form of the Removal Application.

12 The allegation has not been particularised to date, beyond Mr. Hwang's reference to public reports which link A&M to overseas litigation involving the FTX Group. Nevertheless, I surmise Mr. Hwang's complaint to be that there is a conflict of interest in having insolvency practitioners from the BVI and Cayman offices of Alvarez & Marsal (the **"A&M JL Teams"**) acting as joint liquidators of the Company, in circumstances where affiliated Alvarez & Marsal offices in the United States and elsewhere (the **"A&M FTX Teams"**) were engaged to provide advisory services to the FTX Group in relation to its restructuring and bankruptcy (the "**FTX Proceedings**"). As part of the FTX Proceedings, the public record in Delaware shows that recoveries were sought, and a subsequent settlement reached, by the FTX Group as against Bybit Seychelles (the "**Alleged Conflict**"). The substance of the Alleged Conflict

appears to be that the A&M JL Teams and the A&M FTX Teams were, or might have found themselves, in competition for the same assets in respective proceedings against Bybit Seychelles. In fact, and as I explain in more detail below, there was at no point any realistic possibility of such a conflict arising, both because of the proprietary nature of the claim brought on behalf of the FTX Group and the likelihood that there are sufficient assets available to Bybit Seychelles to satisfy the known potential claims in the Company's liquidation.

13 The public record in Delaware also makes clear that:

13.1 The FTX Proceedings are under the control of, and are conducted by, a Chapter 11 Trustee, who is the ultimate decision-maker in that litigation;

13.2 The A&M FTX Team is just one of many professional service providers whose expertise, the public record suggests, has been drawn upon from time-to-time by the Trustee; and

13.3 The Alleged Conflict relates to a settlement reached as a result of a proprietary claim, and therefore (as addressed further below) the Joint Liquidators have been advised that there was and is no realistic prospect that they would find themselves in competition for the assets recovered in the FTX Proceedings.

14 Since the Alleged Conflict was first raised by Bybit Seychelles shortly before the hearing at which the Joint Liquidators were appointed, the Joint Liquidators' position has consistently been that (i) the Alleged Conflict does not constitute an actual conflict of interest; (ii) the settlement is something of a red-herring, by virtue of, amongst other things, the settlement being the result of a proprietary claim; and (iii) even if there were a reasonable perception of conflict arising from it, which is denied, the Joint Liquidators have gone above and beyond what is strictly required in order to manage the position by, amongst other things, the implementation of a strict information wall as between the A&M JL Teams and the A&M FTX Teams (the **"Information Wall"**).

15 Aside from the Alleged Conflict, the balance of the Removal Application comprises allegations of technical non-compliance with certain provisions of the Insolvency Act and a general complaint regarding lack of progress in the liquidation to date. For the reasons set out below, the Joint Liquidators consider the positions they

have taken to be fair, reasonable and materially compliant, and the recovery strategy they have adopted in the liquidation to be both rational and commercially shrewd in all the circumstances. It is inferentially clear, and we would respectfully invite the Court to conclude, that Mr. Hwang has brought the Removal Application not because of any genuine concern over the Alleged Conflict or any reasonable dissatisfaction with the performance of the Joint Liquidators, but rather because the Joint Liquidators are taking an even-handed approach towards the Company's liquidation and are not simply acting at his direction. This is clear from the fact that Mr. Hwang only latched on to the Alleged Conflict as a ground to object (for the first time) to the Joint Liquidators holding office immediately after we had sought properly particularised information from him to substantiate his claim in the liquidation.

16 The Joint Liquidators therefore oppose the Removal Application and, respectfully, consider the relief sought should be refused."

[113] Mr. Edwards expands upon this "Executive Summary" in paras 17-48 of his first affidavit. The relevant excerpts from those paragraphs are as follows:

"17 On 1 March 2024, I was approached by Mr. Child, acting on behalf of Mr. Hwang, to act as a Joint Liquidator of the Company. I was asked by him to clear any conflicts of interest and was provided with the following party names for that purpose: Mr. Hwang; the Company; Bybit Seychelles; Bybit Fintech Limited incorporated in the United Kingdom ('**Bybit UK**'); Ben Zhou; and Mong, Nguyen LY (together, the **'Relevant Parties'**). On the same day, an A&M conflict check procedure was initiated (the '**First Conflict Check**').

18 On 12 March 2024, A&M's legal and conflicts team provided final clearance confirming that there were no conflicts, such that the A&M JL Teams would be free to accept the proposed appointment, should it be ordered by the BVI Court. On the same day, following that final clearance, I confirmed to Mr. Child that A&M was not aware of any relationship that would create a conflict of interest with the Relevant Parties.

19 On 13 March 2024, I provided Mr. Child with a draft engagement letter to engage myself, Barry Lynch and other members of the A&M JL Teams, as required, to assist in the pre-liquidation planning and other work to be performed until such time as the Eastern Caribbean Supreme Court may grant an order to wind-up the Company and appoint Barry Lynch and I to act as Joint

Liquidators. The final [sic] execution version of that engagement letter, dated 2 April 2024 … reads [inter alia] as follows:

> *'[6.] Conflicts*
>
> *A&M is not currently aware of any relationship that would create a conflict of interest with the Client or the Company or those [Relevant Parties] of which you have made us aware. Because A&M is a consulting firm that serves clients on an international basis in numerous cases, both in and out of court, it is possible that A&M may have rendered or will render services to or have business associations with other entities or people that have or may have relationships with the Client or the Company, including creditors of the Client or the Company. A&M will not be prevented or restricted by virtue of providing the services under this Agreement from providing services to other entities or individuals, including entities or individuals whose interest may be in competition or conflict with the Client or the Company, subject always to our professional obligations including appropriate arrangements to ensure that the confidentiality of information is maintained.'*
>
> …

21 On 22 September 2024 (i.e. the day before the hearing of the Liquidation Application that had been filed three months earlier), Bybit Seychelles filed two applications seeking intervenor status to oppose the Liquidation Application. Contained within its applications was an allegation by Bybit Seychelles that there was a '*clear and obvious conflict*' which ought to prevent the A&M JL Teams acting as Joint Liquidators of the Company. As noted above, that allegation stemmed from an advisory role played by the A&M FTX Teams in the FTX Proceedings. I exhibit the First Affirmation of Zhou Yuchen (**'Yuchen 1**) … where the allegation is made at paragraph 72. This was the first time the Alleged Conflict had been raised.

22 On the same day, I received a telephone call from Mr. Child who, having reviewed Yuchen 1, sought clarification in respect of the Alleged Conflict. I confirmed that, having considered the points raised in Yuchen 1 and consulted internally, I was satisfied that the Alleged Conflict did not give rise to a conflict of interest and that accordingly there remained no conflict of interest that would prevent the Joint Liquidators from accepting the proposed appointments.

…

25 Prior to our formal appointment, an additional conflict check was initiated (the **'Second Conflict Check'**), which A&M undertakes routinely in circumstances where there has been a passage of time between the initial check and the formal appointment (in this case, a period of almost seven months).

26 As part of the Second Conflict Check procedure, and through discussions with the A&M legal and conflicts team (conducted as a result of, amongst other things, the allegation contained in Yuchen 1), Mr. Lynch and I elected, out of an abundance of caution, to institute a formal information barrier between (i) those personnel at the A&M FTX Teams that had worked on, or may work on, the advisory engagement connected to the FTX Proceedings; and, (ii) those personnel at the A&M JL Teams, including the Joint Liquidators, who were working on, or may work on, matters relating to the liquidation of the Company (defined above as the Information Wall).

27 Mr. Hwang appears to suggest that the implementation of the Information Wall was a concession or recognition by the Joint Liquidators that the Alleged Conflict was well-founded. This is not the case and Mr. Hwang's suggestion indicates a misunderstanding about the function of such an information wall. Whilst not strictly required, by virtue of there being no actual conflict of interest nor any
reasonable risk of such a conflict posed by the advisory role played by the A&M FTX Teams in the FTX Proceedings and the Joint Liquidators' appointment, we nevertheless considered the Information Wall to be a prudent step to provide comfort to the Relevant Parties, including Mr. Hwang and Bybit Seychelles. The Information Wall ensured that:

(a) no A&M employee working on one engagement would have access to, or work on, the other;

(b) all information obtained by A&M in connection with either engagement, or by or on behalf of either client and/or their affiliates, will be maintained as confidential and inaccessible to all other A&M personnel (including, but not limited, to those working on the other engagement), using such safeguards as are necessary to prevent access to such information by those not working on the other engagement …

28 In addition to the institution of the Information Wall, the A&M legal and conflicts team drafted the following precautionary disclosure to the United States Bankruptcy Court for the District of Delaware (the **'Delaware Disclosure'**):

> *'On September 23, 2024, Wesley Edwards, a Senior Director of A&M affiliate, Alvarez & Marsal (BVI) Limited and Barry Lynch, a Managing Director of A&M affiliate, Alvarez & Marsal Cayman Islands Limited, together ('A&M BVI Engagement Team'), were appointed as Joint Liquidators of Bybit Fintech Limited – in Liquidation, a company incorporated in the BVI ('Bybit BVI') at a hearing of the Eastern Caribbean Supreme Court, Claim No. BVIHC(COM)2024/0303. The Debtors have brought avoidance proceedings against Bybit Fintech Limited, a company incorporated in the Seychelles ("Bybit Seychelles") and its affiliated entities (the 'Bybit Action') seeking the recovery of [US$953 million] in digital assets that were preferentially transferred to Bybit Seychelles and the turnover of certain Debtor assets contained in Bybit Seychelles exchange accounts. A&M BVI is not involved in the Bybit Action. Further, A&M BVI Engagement Team has agreed that should a situation arise whereby the Debtors submit a proof of debt or otherwise pursue litigation adverse to Bybit BVI, A&M BVI Engagement Team will recuse itself from such proof of claim and/or any disputes or litigation and those will be adjudicated by an independent third-party liquidator and not by A&M BVI Engagement Team. A&M has set up a formal information barrier between the A&M BVI Engagement Team managing the liquidation and the A&M personnel who are providing services to the Debtors.'*

29 Whilst the Delaware Disclosure was not ultimately submitted to the United States Bankruptcy Court, by virtue of the approved settlement superseding that intended step, it was shared with FTX who were aware of the disclosure and did not consider it problematic or impactful. For good order, the A&M legal and conflicts team (distinct from the Joint Liquidators) also raised the Alleged Conflict and the Joint Liquidators' appointment with

Sullivan & Cromwell, in its capacity as US counsel to FTX, who in turn concurred with A&M's view that no conflict of interest exists.

30 On 21 October 2024, the Joint Liquidators received a letter from Agon Litigation … raising some points pertaining to the Alleged Conflict and seeking comfort regarding it (the 'Agon Letter'). Relevantly, given the position now asserted by Mr. Hwang, the Agon Letter did not suggest that there in fact existed a conflict or that the Joint Liquidators were unable properly to continue to act. Instead, the Agon Letter sought confirmation, on behalf of Mr. Hwang, that A&M did not perceive there to be any conflict and requested clarification of A&M's role in order that Mr. Hwang might 'satisfy himself that there is no actual or appearance of conflict." I provided a detailed response to the Agon Letter (the **'JL Response'**) … within two days addressing each of Mr. Hwang's queries and setting out, amongst other things, the above steps that had been taken by A&M Caribbean, and the wider group. I confirmed that:

(a) whilst the A&M FTX Teams had been engaged to provide advisory services as part of the FTX Proceedings, I do not have, nor had I ever had, any involvement in the A&M FTX Team's role in relation to FTX nor do I have, or have ever had, access to information that relates to that engagement;

(b) following a comprehensive review of the First Conflict Check and the Second Conflict Check, A&M formed the view, which Mr. Lynch and I shared (and continue to share), that there was no conflict of interest, perceived or otherwise, with respect to A&M, the Relevant Parties and FTX;

(c) based on the publicly available information, including those materials enclosed with the Agon Letter, the only likely connection between the Company and FTX is that Bybit Seychelles would be an opposing party/defendant in the respective claims. To that extent, the interests of the FTX debtors and the Joint Liquidators would likely be aligned, or at the very least would be neutral, in terms of investigating claims and potential actions that could be taken against Bybit Seychelles and its former and/or current management, or other parties;

(d) whilst I consider it unlikely that a conflict of interest will arise as between the Joint Liquidators and the A&M FTX Teams advising FTX, this could, and indeed has been, controlled through well-established cross border insolvency protocols (including the institution of the Information Wall);

(e) should a situation arise whereby FTX submits a proof of debt to the Joint Liquidators, it may be that we decide that proof should be adjudicated by an independent third party 'conflict' liquidator;

(f) Should FTX pursue any litigation against the Company, it may be that we decide to appoint an independent third-party 'conflict' liquidator to manage that specific piece of litigation on behalf of the Company; and

(g) Should any situation arise which presents an actual, perceived or potential conflict of interest, we may decide to seek directions and/or sanction from the Eastern Caribbean Supreme Court in respect of it.

31 At paragraph 23 of Hwang 3, Mr. Hwang alleges that the JL Response did not address the means by which the Joint Liquidators might deal with the possibility of a conflict by virtue of *'A&M's direct role in the [FTX Proceedings]'*. With respect, the JL response does deal with that very point, by confirming that, in the event of an actual conflict, the Joint Liquidators would consider all appropriate steps including the appointment of 'conflict' liquidators to deal with those discrete aspects of the liquidation. This is an entirely conventional step for liquidators to take and it has been approved by the Courts as an appropriate and pragmatic means of managing conflicts on a number of occasions.

32 This exchange took place during a time where Mr. Hwang and the Joint Liquidators were negotiating the terms of a funding agreement, under which it was proposed that Mr. Hwang would provide funding for the Joint Liquidators to undertake their duties and responsibilities under the Insolvency Act.

33 Following the JL Response, I received an email from Mr. Child dated 28 October 2024 **…** which confirmed that: *'…[Mr. Hwang] and his Asian team have received [the JL Response] to the conflict issue and thank you for it. As a result, I have no instructions to seek further clarification or focus further on the issue.'*

34 … At this stage, on the basis Mr. Hwang, had (a) accepted the explanations contained in the JL Response and, with the benefit of legal advice, (b) agreed to continue with his funding of the liquidation by entering into a new agreement after receiving those explanations, I considered the matter resolved. I should add that there has been no material change of circumstance since Mr. Child's email was received on 28 October 2024 that might provide a rational explanation for Mr. Hwang's change of position on the Alleged Conflict. As I shall explain in the following paragraphs, the real source of Mr. Hwang's dissatisfaction appears to be the fact that the Joint Liquidators have taken an even-handed and appropriate professionally sceptical approach to his claims.

…

35 Since the Joint Liquidators' appointments, Mr. Hwang has filed a claim in the liquidation dated 12 November 2024 … We have been taking steps to investigate, amongst other things, that claim.

36 During the Liquidation Application, serious allegations of illegal market manipulation practices were made by Bybit Seychelles against Mr. Hwang … In brief summary, Bybit Seychelles alleges that the profits made by Mr. Hwang were the result of him engaging in trading activities, referred to as 'spoofing', involving the opening of multiple different accounts intended, and ultimately used, to intentionally manipulate the cryptocurrency markets in breach of the Company's policies and Terms and Conditions. Bybit Seychelles has maintained those allegations, and provided further detail about them via Harneys as their BVI counsel, during the period since the Joint Liquidators were appointed … Obviously, if proved to the requisite standard, these allegations may be relevant to our adjudication of Mr. Hwang's claim. I remain open minded about whether those allegations can, or will, be made out, but Mr. Lynch and I are duty-bound to investigate them given that the allegations have been articulated in a reasoned way and cannot be dismissed as entirely lacking in substance.

37 Notwithstanding Bybit Seychelles' allegations, upon inspecting Mr. Hwang's claim, the Joint Liquidators identified a number of possible deficiencies and averments that also required further clarification and/or evidence in order to substantiate. Among other things, and by way of example, Mr. Hwang's claim includes an unexplained interest element that appears to equate to 40% per annum compounded, the effect of which is that approximately three-quarters of Mr. Hwang's total claim is comprised of asserted interest but without any reasoning or documentary support. As a result, on 16 December 2024, the Joint Liquidators wrote to Mr.

Hwang … seeking information and documents relating to his claim and those allegations made by Bybit Seychelles during the Liquidation Application, and subsequently…

38 Instead of responding to that letter and answering the queries raised, on 17 December 2024 the Joint Liquidators unexpectedly received a letter from ABVI Law, said to have been sent on behalf of Mr. Hwang, alleging, amongst other things, that '*the conflict of interest is real'.* This was the first time we had received any communications from ABVI Law, and was the first mention of the Alleged Conflict by anyone on Mr. Hwang's behalf since Mr. Child's email of 28 October 2024. As mentioned above, the email of 28 October 2024 clearly stated that Mr. Hwang was content with the explanations he had received. There has been no suggestion on Mr. Hwang's behalf of any material change of circumstance relevant to the Alleged Conflict between 28 October 2024 and 17 December 2024 that might have provided a proper rational basis for Mr. Hwang's changed position.

…

41 A&M is a leading global professional services firm that provides advisory, business performance improvement and turnaround management services, including the provision of formal insolvency services. A&M employs over 11,000 people across six continents, in more than 40 countries from over 85 offices. A&M's clients include corporates, individuals, boards, private equity firms, trusts, banks, funds, law firms and government agencies. A&M serves 249 of the Fortune Global 500, 65 of the Fortune 100, 47 of the FTSE 100, 223 of the S&P 500 and 25 of the 29 Global SIFI Banks.

42 Given the demand for A&M services and A&M's global reach, it is not uncommon that affiliated entities within the group may have provided, or will provide, services to or have business association with entities or individuals whose interests may be in competition, hence why that condition is express in our terms of engagement.

43 Notwithstanding the size and reach of the A&M group, I am aware that any insolvency practitioner appointed to the position of liquidator of a BVI incorporated company becomes an officer of the Eastern Caribbean Supreme Court pursuant to Section 184 of the Insolvency Act, and will be bound by the duties granted to them pursuant to the Act and any court order. In accordance with Section 487(1)(b) of the Insolvency Act, the Insolvency Code of Practice determines the procedures to be followed by, and the conduct expected of, a BVI licensed insolvency practitioner (a **'BVI IP'**). This includes, but is not limited to, always ensuring that a BVI IP

conducts insolvency work with proper regard for the ethical principles of integrity, objectivity, competence, due skill and courtesy, and the spirit that underlies them. A BVI IP must not only be satisfied as to the actual objectivity which they can bring to their judgments, decisions and conduct, but also must be mindful of how their objectivity will be perceived by others.

44 A&M has long established a set of strong procedures, systems and supervisory standards to enable its insolvency practitioners to comply with all regulations by which they are bound, and which relate to the conduct of insolvency work for which they are responsible. This includes those duties and obligations set out above, by which the Joint Liquidators (and all officeholders licensed across the A&M Caribbean offices) are expected to, and do, adhere.

45 This also includes, but is not limited to, procedures designed to ensure that when deciding whether to accept an appointment, the A&M insolvency practitioner considers all threats to their own independence, the personnel required to form the wider engagement team, and to the firm itself. The A&M conflict check procedure has been designed to search a database of known clients and engagements to identify potential conflicts and inform employees within the firm about a potential engagement, in order to identify any personal or professional conflicts.

46 I am satisfied by undertaking the First Conflict Check, the Second Conflict Check, and instituting the further measures addressed hereinabove, the Joint Liquidators have complied fully with the duties expected of them and have gone above and beyond to eliminate any reasonable possibility or perception of conflict.

47 Mr. Lynch and I are aware of, and take extremely seriously, the principles and obligations set out above and contained in Chapter IV of the Insolvency Code of Practice. In observance of the Code, we will continue to monitor the situation and, naturally, will take appropriate action including, if necessary, to apply for the appropriate relief and/or directions, should an actual conflict arise that we feel unable to satisfactorily manage. Evidence of our doing so can be found in our quick response to those concerns raised by Bybit Seychelles regarding the Joint Liquidators' engagement of Agon Litigation, who were swiftly replaced as the Joint Liquidators' counsel by Maples on 5 November 2024, following the reasonable identification of a conflict, as explained in our letter to Agon Litigation of that date …"

(Emphasis provided by the express terms of the affidavit).

[114] This rather prolix explanation about the lack of any conflict boils down to five points upon which the Joint Liquidators rely.

[115] First, they say that as joint liquidators, they are far removed from the FTX Proceedings (and any matters arising from those proceedings) to be involved in any real or perceived conflict. Whether or not that is so, there is, in my view, not just the potential to be involved in one, but also a real perception of conflict.

[116] There must be a real risk of a potential conflict where insolvency practitioners from the BVI and Cayman offices of A&M are acting as joint liquidators of the Company, in circumstances where affiliated A&M offices in the United States and elsewhere are engaged to provide advisory services to the FTX Group in relation to its restructuring and bankruptcy. Mr. Edwards may genuinely believe that there is no, and was at no point any, realistic possibility of a conflict arising (as he describes them) between the A&M JL Teams and the A&M FTX Teams in respect of the proceedings brought against Bybit Seychelles. Still, the fact that one potentially exists or may arise in the future makes it inappropriate for them to continue in office.

[117] Second, Mr. Edwards relies on the fact that (as he describes them) the First Conflict Check and the Second Conflict Check were clear must mean that the Applicant and, more importantly, this Court can be satisfied that none exists. This position is entirely untenable. No amount of conflict tests can lead this Court to conclude that no conflict arises where it is satisfied, as I am, that there is a potential risk of conflict.

[118] Third, he suggests that erecting, or having erected, information barriers would be sufficient to eliminate any risk of potential conflict. Other than in obvious cases, and this is not one of them, it is difficult to see how this would allay the Court's concern about managing the risk of conflict. It does not satisfy my fears in the matter. The need to erect information barriers potentially suggests a risk of conflict and the Joint Liquidators' inability to manage it otherwise than by having such barriers in place.

[119] Fourth, the suggestion by Mr. Edwards that, should FTX pursue any litigation against the Company, "it may be that <u>we decide</u> to appoint <u>an independent third-</u>

party 'conflict' liquidator to manage that specific piece of litigation on behalf of the Company" is an unattractive option for the Court to consider. (Emphasis supplied).

[120] I accept that many English and Welsh cases have referred to the possibility of "conflict liquidators" (or administrators) being appointed in appropriate cases. They include **York Gas Ltd (in liquidation)**[30] (a decision referred to by Mr. Curl), **Sisu Capital Fund Ltd v Tucker**,[31] **Re Angel Group Ltd**,[32] **Re Comet Group Limited, Khan v Institute of Chartered Accountants in England and Wales**,[33] **Re Zinc Hotels (Holdings) Ltd**,[34] **Microcredit Ltd v Andrew Rosler**[35] and, most recently, **Noal SCSp v Novalpina Capital LLP**.[36]

[121] Leaving aside the issue of the extra costs that would be involved in this and the third liquidator coming up to speed, it is difficult to see how a situation of conflict can be managed in this way. Of course, there is no objection, in principle, to liquidators agreeing between themselves how their workload should be divided. However, the overall responsibility for the liquidation affairs of the company must rest on all of them jointly and severally. I find it impossible to see how they can agree among themselves that one or more of their numbers should be excluded entirely from knowing about certain aspects of the liquidation. Even if one disregards ss. 184-186 of the **BVI 2003**, which imposes statutory duties on a liquidator (including joint liquidators) to carry out certain functions in relation to the liquidation of a company, there is nothing in the insolvency legislation in this jurisdiction that permits the responsibilities of a joint liquidator to be restricted to the performance of part only of the overall duties imposed upon the joint liquidators.[37] To do so would amount to an

[30] [2010] EWHC 2275 (Ch).
[31] [2005] EWHC 2170 (Ch).
[32] [2015] EWHC 3624 (Ch).
[33] [2018] EWHC 1378 (Ch).
[34] [2018] EWHC 1936 (Ch), [2018] BCC 968.
[35] [2021] EWHC 1627.
[36] [2025] EWHC 54 (Ch).
[37] I do not consider the provisions of s. 493 of the BVIIA 2003 (which is the broad equivalent of s. 231 of the IA 1986) to alter this position, despite some authorities to the contrary, such as Re Angel Group Ltd [2015] EWHC 3624 (Ch). That provision simply allows jointly appointed office holders, *inter alia*, to exercise a function or power of their office to be performed or exercised by any one of them or any two or more of them

abrogation of the joint and several responsibilities of joint liquidators. Even disregarding the strict legal position concerning those responsibilities, it would create insurmountable problems if two of the three liquidators resigned as liquidators or lost their qualification to continue in office. It follows that I do not feel able to agree that "conflict liquidators" can be appointed to companies. So far as these cases suggest that it is possible to do so, despite the standing of the judges who decided them, I respectfully disagree with them and would refuse to follow them.

[122] Paragraph 5.7 of the **"INSOLVENCY CODE OF PRACTICE"**, issued under s. 487 of the **BVIIA 2003,** makes the position referred to above clear:

> "5.7 **Joint appointments**
>
> A licensee who is invited to accept an insolvency appointment jointly with another insolvency practitioner should be guided by similar principles to those set out in relation to sole appointments. Where a licensee is precluded by this Code from accepting an appointment as an individual, a joint appointment will not render the appointment acceptable."

[123] Further, and in any event, even if, contrary to my observations, I considered that I did have the power to make such an appointment, I would refuse to do so in the present case for several reasons. They include the following.

[124] It is difficult to see how the conflict that arises in the present case can be said to be so distinct and separate from the overall liquidation that it would be possible for the conflict liquidator to deal with the "conflict" part of the liquidation and disregard the

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together, except so far as the order, deed, instrument or resolution appointing them otherwise provides. It does not permit the responsibilities of joint liquidators to be limited in any way. Any court order or instrument appointing joint liquidators that contains a provision seeking to do so would have an *ultra vires* effect. Whatever the division of labour between the joint liquidators, the real issue is whether one joint liquidator can be excluded from having any role over a particular part of the liquidation affairs of the company, while at the same time being liable and responsible for how the other parts of the liquidation affairs are conducted by the other joint liquidator or liquidators, despite having no control over those affairs or being entitled to know how they are carried out. I do not believe that he can.

rest of it. That would simply not be practicable when the only known asset of the Company is inextricably mixed up with the complex relationship that arises between the Company, its creditors and members, and Bybit Seychelles.

[125] In addition, I do not see why a conflict liquidator should be appointed simply to allow the Joint Liquidators to remain in office. The liquidation of the Company has not reached an advanced stage. On balance, therefore, it would be far more appropriate to appoint new liquidators than continue with the Joint Liquidators and appoint now or in the future a conflict liquidator. Furthermore, I do not see how a conflict liquidator can be appointed by the Joint Liquidators of their own motion, without the agreement of all the creditors or an application being made to the court: see, by way of example, **Re Barings Plc**,[38] Neuberger J (as he then was).

[126] Fifth, and finally, Mr. Edwards claims that, having previously been satisfied that there was no risk of conflict, it ill-behoves him now to complain about it. I do not accept what Mr. Edwards says. Issues relating to conflict are for the Court, not a creditor. If a creditor or member raises a conflict, but not a third party, such as Bybit Seychelles, it is for the Court to determine whether it would warrant the removal of a liquidator. For the reasons explained throughout this judgment, while the motive of an applicant, and the delay in raising the issue may be relevant in the exercise by the Court of its discretion, it will be rare for the Court to allow a liquidator to continue in office where a clear case of conflict or a risk of it (actual or perceived) arises. As already mentioned above, in such a case, the Court can remove a liquidator on its own initiative.

[127] For the sake of completeness, I should refer to paras. 49-55 of Mr. Edwards' fourth affidavit, sworn on 24 June 2025, in which he says:

> "49 One of Mr. Hwang's central grounds for seeking to remove the Joint Liquidators is the fact he considers there to be a conflict of interest which, he says, ought to prevent our continuing in office. The Joint Liquidators' response to that alleged conflict is addressed in detail

[38] No.006303 of 1996 (20 September 2001, unreported).

at paragraphs 17 – 48 of Edwards 1. In view of the alleged conflict, Mr. Hwang proposes that Mr. Russell Crumpler and Mr. Christopher Farmer of Teneo (the **'Teneo Nominees'**) be appointed as liquidators of the Company in place of Barry Lynch and me.

50 The alleged conflict and the Teneo Nominees were also addressed by Mr. Hwang's counsel, Mr. Fay KC, at the first hearing of the Removal Application. At that hearing, amongst other things, Mr. Fay said the following:

> *"Now by way of comparison, it took the Teneo team – now Teneo is, well, that's the biggest insolvency practice here. It is not as big as A&M worldwide. They were able to clear the conflict overnight, but the fact that it took [A&M] 12 days suggests that they were investigating Something".*

51 I remind the Court that the nature of the alleged conflict relied upon by Mr. Hwang as a ground for Removal Application arises from an advisory function in the US bankruptcy of FTX for which members of the wider A&M network have been engaged. As I made clear in Edwards 1, the Joint Liquidators and our team have had no involvement in the FTX bankruptcy, nor do we have any visibility over that engagement save for information that is in the public domain.

52 Given the resolve with which Mr. Hwang has maintained his allegations of conflict against the Joint Liquidators, both in his evidence and his counsel's submissions, it comes as some surprise to me that he does not have the same concerns regarding the Teneo Nominees' interest in the FTX proceedings.

53 It has been well publicised that the Teneo Nominees are the liquidators of Three Arrows Capital ("3AC"), a major creditor in the US bankruptcy of FTX. As part of existing proceedings, on 13 March 2025, the Bankruptcy Court for the District of Delaware authorised the Teneo Nominees to amend 3AC's proof of claim in the FTX bankruptcy from US$120 million to c.US$1.5 billion … It is therefore squarely in the interests of the Teneo Nominees for the FTX bankruptcy to remain as cash and asset rich as possible, given the significant claim they, as liquidators of 3AC, are pursuing the FTX estate for in the United States.

54 While Mr. Hwang appears totally dissatisfied with the continuing appointment of the Joint Liquidators by virtue of A&M's limited advisory role in the FTX Litigation, he is seemingly content to

recommend the appointment of the Teneo Nominees, whose very interests are served by the settlement monies resulting from the Bybit Seychelles negotiation being paid to FTX (which settlement monies Mr. Hwang says ought to have been injuncted prior to that transfer).

55 Such is a matter for Mr. Hwang, the Teneo Nominees and this Honourable Court, but I raise the point principally to illustrate, respectfully, the flawed approach to conflicts that Mr. Hwang has presented in his evidence."

[128] I am not sure that it is open to the Joint Liquidators to raise a potential conflict between the Applicant and the Joint Liquidators as some sort of "defence" to the allegation of conflict made against them. The conflict may be relevant to the motive of the Applicant. However, as I have already stated, I can see no basis for the Joint Liquidators to continue in office on the ground that appointing the Proposed Joint Liquidators will be no better.

[129] I make it clear that I do not have sufficient information about the FTX to say whether the Joint Liquidators are, as the Applicant maintains, in a direct, or even indirect, conflict by continuing to act as joint liquidators. Nor is it appropriate for me to probe into either the issues involved in the FTX litigation or to form a view on how it is conducted and whether it may be conducted in a way that may remove any actual or potential conflict. The decision of the Privy Council in **Parmalat Capital Finance Ltd v Food Holdings Ltd (in liq)**[39] makes it clear that any conflicts of interest can be dealt with by the court (on the application of the liquidators) when they arise. However, on the material I have been referred to, there is a sufficient risk of a conflict, or a perception of it, <u>now</u>. In those circumstances, the Joint Liquidators should not continue in office.

[130] For the sake of completeness, I should say that I agree with Mr. Fay that neither the deed of indemnity nor the ring-fencing of the assets referred to in Mr. Edwards' 24 June 2025 affidavit makes any material difference on this issue. The fact that the

[39] [2008] UKPC 23.

Joint Liquidators have had to resort to litigation against Bybit Seychelles rather suggests that they are themselves not entirely confident that they can rely on any assurances given by that company to them about the availability of assets to pay the claims of creditors in full.

[131] In my judgment, the perception of conflict is real. The measures that Mr. Curl has in mind might or might not work. However, most of what he says about addressing issues of conflict is generic, offering statements on how conflicts in any given situation may be avoided. They do not address the specific conflict which may arise in the present circumstances. Much of his focus has been on the motive of the Applicant for bringing the Application, which, as I have already determined, does not advance the opposition of the Joint Liquidators in any significant way.

[132] I accept, of course, that the risk of conflict may often be avoided by sufficient measures being put in place to address that risk. However, this is not one of those situations.

[133] There will be cases in which a firm of lawyers that has previously acted for the company is instructed to continue acting in the claim by the liquidator on behalf of the company. There can usually be no objection to that, and, in fact, it would make perfect sense for that firm to continue acting in the claim to avoid the costs of the liquidator instructing fresh lawyers. Nor can there usually be any objection to a firm of lawyers previously retained by a creditor to act in a claim by the liquidator against the former directors of the company for fraudulent or insolvent trading or to impugn an antecedent transaction that the company has entered into in favour of a director or a third party, though this now happens less frequently in the UK because liquidators (and the administrators) of companies have, since 1 October 2015, power to assign such claims to third parties under s. 246ZD of the **IA 1986**.[40] In

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[40] Section 246ZD of the IA 1986 of England, Wales, and Scotland states that an office-holder may assign a right of action (including the proceeds of an action) arising under, *inter alia*, any of the following: (a) s. 213 or s. 246ZA of the IA 1986 (fraudulent trading); (b) s. 214 or s. 246ZB of the IA 1986 (wrongful trading, the rough equivalent of "insolvent trading" in this jurisdiction); (c) s. 238 of the IA 1986 (transactions at an undervalue (England and Wales)); (d) s. 239 of the IA 1986 (preferences (England and Wales)); (e) s. 242 of

pre-packs in the UK,[41] for example, the same firm of lawyers is often instructed to act on behalf of both the administrator of the company and the purchaser of the assets from him, with any necessary "Chinese Walls" being erected to keep, maintain and preserve confidential and privileged information separate between the two different parts of the firm that acts for those parties.

[134] In England, Wales and Scotland, express guidance is provided about what may amount to a conflict and how the risk of conflict can be avoided. This guidance is contained in the "Insolvency Code of Ethics", published on 26 Feb 2020, and reviewed on 1 Jul 2025, referred to in many of the cases cited above. The relevant guidance is included under the heading "CONFLICTS OF INTEREST AND PROFESSIONAL AND PERSONAL RELATIONSHIPS". It encompasses precisely the type of situation here, where insolvency practitioners are urged to be cautious about whether the acceptance of appointment would place them in a position of conflict.

[135] There is nothing equivalent or similar in this jurisdiction. However, the Code of Ethics does not say anything new. It is primarily based on common sense.

[136] Much of what is said in the Code of Ethics is also reflected, and succinctly stated, in the following paragraphs of "INSOLVENCY CODE OF PRACTICE" issued in this jurisdiction under s. 487 of the **BVIIA 2003**:

> "2. **Threats to objectivity and conflicts of interest**
>
> The greatest threat to a licensee's objectivity is likely to be a conflict of interest. A licensee must be aware of actual or potential conflicts

the IA 1986 (gratuitous alienations (Scotland)); (f) s. 243 of the IA 1986 (unfair preferences (Scotland)); and (g) s. 244 (extortionate credit transactions).

[41] The provisions relating to the making of administration orders against companies are not yet in force in this jurisdiction, and even when they are, they are not likely to involve "pre-packs" in the sense that they arise and are known in the UK. However, it is given by way of example to illustrate the point. The guidance on pre-pack in the UK is contained in SIP 16, entitled "Pre-Packaged Sales in Administration".

of interest in the form of self-review threats and self-interest threats.

4. **Self-interest threats to objectivity**

4.1 Nature of self-interest threats

A self-interest threat is one which could affect the reasoning a licensee applies because it is, or might be, affected by considerations that either favour or are prejudicial or disadvantageous to the licensee.

4.2 Improper influence

It is improper for a licensee to be influenced by

(a) *a significant financial or other benefit accruing, or which might accrue*, or

(b) the avoidance of disadvantage to himself or to anyone with whom he is associated or connected.

5. **General considerations**

5.3 Perception of objectivity

The licensee must not only be satisfied as to the actual objectivity which he or she can bring to his or her judgments, decisions and conduct, but also must be mindful of how his or her objectivity will be perceived by others. *Sometimes, the mere perception of risk or conflict will tend to undermine confidence in the licensee's objectivity, and so make acceptance or continuation of an appointment unwise."*

(Emphasis in italics supplied).

[137] In my judgment, there is a clear risk of a potential conflict in the present case. As Mr. Fay correctly observes, at para. 25 of his skeleton argument:

"25. In summary, with respect to the conflict issue:

a. there is a clear and obvious conflict in A&M acting for FTX is seeking to recover assets (whether on a proprietary basis or otherwise) from Bybit SL and as JLs of the company seeking to recover assets (whether on a proprietary basis or not, and possibly the same assets) from Bybit SL.

b. the conflict has been recognised by:

i. the advice apparently Given by the A&M conflicts and legal team to the JLs

ii. the intended disclosure to the US Bankruptcy Court (which disclosure was only not made because the proceedings settled).

iii. the disclosure to FTX's legal counsel in the US Bankruptcy proceedings.

iv. the Information Wall within A&M.

1. Whilst the Information Wall may allay some of the concerns about the conflict, it does not eradicate them and/or excuse the failure to disclose the conflict

c. Even if, which is denied, the representation by A&M of FTX in the Bankruptcy proceedings against Bybit SL and the appointment of the JLs as liquidators does not amount to a strict conflict … [Mr. Edwards] did not reveal:

i. the possibility of a conflict;

ii. the matters set out in subparagraph (b) of the previous paragraph.

d. In those circumstances:

i. There are good reasons for Mr. Hwang … to lose confidence in the JLs…

ii. the JLs, in failing to provide any proper details of the possible conflict when questioned about the same immediately prior to their appointment on

> 23 September 2024, and merely stating that there was 'no real conflict', have failed to live up to the standards to which they should be held by the Court and any creditor, and should not be entitled to profit from such behaviour."

[138] I do not consider that the alleged safeguards referred to by Mr. Edwards or his written or oral submissions sufficiently address how those risks can be avoided. At best, there is a perceived risk that by fighting over the ownership of the same assets or seeking to make a claim based on Misappropriated Assets or the ring-fenced assets, the Joint Liquidators may not be (or be seen to be able) to act in the best interests of the liquidation of the Company. Even if this proves to be completely ill-founded, it could give rise to more litigation against the Joint Liquidators, which will only be prejudicial to creditors (and members) of the Company.

[139] This allegation is made out in full.

[140] For the reasons referred to below, I am clear that the risk is sufficient to make it inappropriate for the Joint Liquidators to continue in office. This allegation, in itself, would be sufficient for the removal of the Joint Liquidators from office.

Ground 3 – failure to protect and preserve the assets of the Company

[141] The allegation, which is the subject of this ground, is summarised in ground 4(c) of the Application in the following terms:

> "[The Joint Liquidators] have failed to preserve and protect the assets of the Company by failing to take any appropriate steps in the liquidation since their appointment to preserve, protect and gather in the assets of the Company."

[142] This allegation is elucidated at para. 32 of the Applicant's affidavit dated 21 January 2025:

> "To my knowledge, the Joint Liquidators took no steps to preserve and protect the assets and undertaking of Bybit BVI in relation to the FTX

Litigation prior to or in relation to the FTX settlement. In fact, the Joint Liquidators' First Report to Creditors dated as late as 22 November 2024 (the "First Report to Creditors"), makes no mention of FTX at all."

[143] Mr. Edwards responds to this allegation, on behalf of the Joint Liquidators, at paras 69-73 of his 7 February 2025 affidavit, in which he says this:

"69 Contrary to Mr. Hwang's suggestion, the Joint Liquidators have taken immediate and significant steps to identify and preserve assets sufficient to meet any creditor claims…

70 As is clear from section 3 of the first report to creditors, the Joint Liquidators were in the information-gathering phase of the liquidation and were awaiting further documents from Bybit Seychelles that we considered essential to continue our substantive investigations. At the same time, the Joint Liquidators were assessing, and taking advice in respect of, their options to compel production of documents in the event Bybit Seychelles did not comply with our requests. Furthermore, the A&M JL Teams identified a Puerto Rican bank account in the Company's name and obtained further information in respect of that account.

71 Insofar as Mr. Hwang's claim is concerned, and as noted above, the Joint Liquidators have obtained assurances from Bybit Seychelles (via reputable BVI legal practitioners) that it has ringfenced relevant assets to meet, in full, Mr. Hwang's claim and will continue to ringfence those funds pending adjudication by the Joint Liquidators …

72 The Joint Liquidators are continuing to liaise with Bybit Seychelles' BVI counsel to (i) have those ringfenced funds transferred to, and held in, a separate account; (ii) reach an agreement that the separate account be held by a designated custodian nominated by the Joint Liquidators; (iii) receive confirmation that those funds will be released to the Joint Liquidators in the event we admit Mr. Hwang's claim (in part or in full); and (iv) have Bybit Seychelles execute a Deed indemnifying the Company against all valid creditor claims.

73 For the reasons set out in some detail above, and in light of the unusual complexities in this case to which I have made reference, I believe that a consensual arrangement of the type we are pursuing, which would see assets made available to satisfy all claims in full, to be preferable to scattergun litigation and/or wide-

ranging recognition proceedings which may ultimately prove to be unnecessary (and therefore result in a profligate depletion of the Company's assets and the funding provided by Mr. Hwang). Whilst Mr. Hwang and/or Creditor IV might have their own views on how the liquidation ought to be carried out, which views Mr. Lynch and I are happy to canvass and consider where appropriate, the Joint Liquidators are independent officers of the court and cannot delegate their responsibilities to or take directions from those putative creditors and embark upon suggested courses which we do not consider to be in the interests of the liquidation estate. From our years of considerable relevant experience in similar liquidations, we sought advice in respect of the proposed strategy and have pursued the course we consider to be best, in all the circumstances and for all those with a realistic interest in the liquidation. In circumstances where Bybit Seychelles has undertaken to ringfence sufficient funds to meet creditor claims in full, and appears to have ample cash reserves to enable it to do so, the Joint Liquidators did not consider it possible, nor necessary, to injunct the settlement funds paid out by Bybit Seychelles as a result of the FTX Litigation. Nevertheless, the Joint Liquidators sought advice from US counsel as to the likelihood that any of the assets of Bybit Seychelles that are subject to the Settlement Agreement might have been available to be claimed by the Joint Liquidators to satisfy the claims of the Company. That advice … and over which the Joint Liquidators have chosen to waive privilege, confirmed to the Joint Liquidators that there was no reasonable likelihood and that, in any event, the Joint Liquidators would be likely to have been denied standing to mount any challenge to the Settlement Agreement in the Delaware court. For the avoidance of doubt, the Joint Liquidators have chosen to waive privilege over this piece of legal advice only and that waiver does not extend beyond the written advice exhibited."

[144] The updated position of the Joint Liquidators is included in the following paragraphs of Mr. Edwards' 24 June 2025 affidavit:

"15 Since the first hearing of the Removal Application, the Joint Liquidators have continued to progress the liquidation in accordance with their obligations and mandate. In so doing, we have, amongst other things:

15.1 executed a legally binding agreement with Bybit Seychelles to have assets sufficient to meet as-yet unadjudicated creditor claims (subject to conditions) secured in separate wallets over which the Joint Liquidators have been granted monitoring access, alongside an indemnity in respect of the Joint Liquidators' reasonable fees; 1See paragraph 3 of the Applicant's written submissions filed on 12 February 2025.

15.2 issued injunctive proceedings against Bybit Seychelles seeking, amongst other things, the delivery up of assets sufficient to meet the entirety of creditor claims into wallets held and controlled by a third party custodian;

15.3 commenced proceedings and obtained disclosure in the Seychelles necessary to identify the ownership structure of Bybit Seychelles;

15.4 scrutinised creditor claims and sought further information and/or disclosure from each of Mr. Hwang and Creditor IV for the purposes of adjudicating those claims;

15.5 investigated Bybit Seychelles' allegations against Mr. Hwang of market manipulation, including to facilitate discussions between the market manipulation teams of A&M and Bybit Seychelles, respectively, cumulating in a meeting between both parties on 8 April 2025. Following the meeting, the market manipulation team of A&M have continued to liaise with Bybit Seychelles in an effort to obtain the information necessary to conduct a proper assessment of whether Mr. Hwang engaged in a market manipulation scheme ... The Joint Liquidators have reviewed and will continue to review, in conjunction with A&M's market manipulation team, information provided by Bybit Seychelles. Once sufficient information has been received, the A&M market manipulation team will prepare a summary findings report; and

15.6 without waiving privilege, will engage DLA Piper to provide legal advice on certain cross-border matters arising in the course of the liquidation, including potential litigation options in Singapore and Dubai to support the Joint Liquidators' effort to secure assets.

16 The Joint Liquidators have executed a Deed of Indemnity with Bybit Seychelles, the terms of which require, amongst other things, the exchange to place assets sufficient to meet creditor claims into designated 'warm wallets' which the Joint Liquidators are able to monitor. By the Indemnity, Bybit Seychelles have also agreed to meet the Joint Liquidators' reasonable fees upon provision of a BVI court order approving those fees. 1

17 Bybit Seychelles has also acknowledged that the Joint Liquidators were lawfully appointed and are the appropriate arbiters of the creditor claims; ergo, it has agreed to be bound by our adjudication of those claims.

18 Since agreeing the terms of the Indemnity, Bybit Seychelles has set up separate warm wallets, into which it has transferred the following assets:

18.1 1,005.5 EOS;

18.2 565.7 BTC; and

4 18.3 1,108,056 USDT

(together, the "Ring-Fenced Assets")

19 The Joint Liquidators have been provided with links to each of these wallets, allowing us to monitor the Ring-Fenced Assets. A member of our team checks these frequently to ensure the assets are not moved or otherwise diluted."

[145] I do not consider that any of the points raised by Mr. Edwards have substance. If there were any substance in them, it would not have been necessary for the Joint Liquidators to issue injunctive proceedings against Bybit Seychelles to take the ring-fenced assets into their custody or control.

[146] It is important to start with s. 185 of the **BVIIA 2003**, the relevant provisions of which state:

"(1) The principal duties of a liquidator of a company are:

(a) to take possession of, protect and realise the assets of the company;

(b) to distribute the assets or the proceeds of realisation of the assets in accordance with this Act; and

(c) If there are surplus assets remaining, to distribute them, or the proceeds of realisation of the surplus assets, in accordance with this Act;

(2) The liquidator shall, subject to this Act and the Rules, use his own discretion in undertaking his duties …"

[147] It is also necessary, in this context, to refer to s. 207 of the **BVIIA 2003**, the relevant provisions of which are in the following terms:

"(1) Unless and to the extent that this Act or any other enactment provides otherwise, the assets of a company in liquidation shall be applied:

(a) in paying, in priority to all other claims, the costs and expenses properly incurred in the liquidation in accordance with the prescribed priority;

(b) after payment of the costs and expenses of the liquidation, in paying the preferential claims admitted by the liquidator in accordance with the provisions for the payment of preferential claims prescribed;

(c) after payment of the preferential claims, in paying all other claims admitted by the liquidator; and

(d) after paying all admitted claims, in paying any interest payable under section 215.

(2) Subject to section 151, the claims referred to in subsection (1)(c) rank equally between themselves; if the assets of the company are insufficient to meet the claims in full, they shall be paid rateably.

(3) Any surplus assets remaining after payment of the costs, expenses and claims referred to in subsection (1) shall be

distributed to the members in accordance with their rights and interests in the company …"

[148] I accept Mr. Curl's argument that the duty in s. 185(1)(a) is not couched in absolute terms, such as to make it necessary for a liquidator to take every conceivable step to bring the assets of a company into his control or custody. The provisions of sub-section (2) of that section give the liquidator a certain element of discretion in deciding how he should discharge his duty under s. 185(1)(a). However, I respectfully disagree with him when he says that the liquidator is entitled to exercise this discretion in every situation which may arise.

[149] Mr. Curl refers to the passage at [50] from Ellis JA to support what he says. However, it is appropriate to consider that passage and the passage at [49] of her judgment:

> "49 When these two statutory provisions [i.e., ss 185 and 207] are read together, it is clear that the primary duty of a liquidator is to take possession of, protect and realise the assets of the company. The liquidator is then obliged to distribute the assets or the proceeds of realisation of the assets for the purpose of paying the costs and expenses properly incurred in the liquidation (even a simple solvent liquidation results in the incurring of costs and expenses, which must be paid first). Thereafter, the liquidator is obliged to then pay any creditors (a solvent liquidation will often have creditors). <u>If there are no creditors[42], it is only then that there is a duty in respect of any surplus after the payment of the costs, but that duty is to distribute the assets or the proceeds of realisation of the assets to the contributories</u>."
>
> (Emphasis supplied).

[150] The interests and broad discretion referred to by Ellis JA only come into play where there is likely to be a surplus to the contributories. As she correctly says, at [50]:

[42] I accept that this must, of course, include a situation where there are creditors, but they have, or are all likely, to be paid.

> "In undertaking these duties, it is clear that <u>the Liquidators have broad discretion as to whether to distribute assets to contributories or to realise the assets and distribute the proceeds of the realisation to the contributories</u>. That would be a discretion to be exercised as they saw fit in what they considered to be the best interests of the contributories."
>
> (Emphasis supplied).

[151] It follows that where it is not clear whether the creditors will not be paid in full, the liquidator does not have the broad discretion that Mr. Curl contends for.

[152] In the present case, there is no evidence to suggest that all the creditors will be paid in full. In fact, the contrary of this assertion is true. Mr. Edwards acknowledges the substance of this point at para. 20 of his 24 June 2025 affidavit:

> "The Ring-Fenced Assets <u>are insufficient to meet the entirety of the creditor claims as submitted in the liquidation to date</u>. In particular, the 565.7 BTC is far less than what is sought by Mr. Hwang in his claim. Bybit Seychelles justified this reduction in their letter of 18 December 2024, in which they admitted that the figure accounts for deductions made by Bybit Seychelles of 836.6 BTC by reason of what it considers to be unlawful activity by Mr. Hwang. By placing only 565.7 BTC in the "warm wallet", Bybit Seychelles has effectively prejudged Mr. Hwang's claim without reference to the Joint Liquidators. We consider this to be contrary to the Deed of Indemnity and Bybit Seychelle's previous admission that the Joint Liquidators were the correct party to adjudicate the Hwang claim."
>
> (Emphasis supplied).

[153] It must follow from this that the liquidator cannot simply sit back and refuse or defer exercising the power for any of the reasons advanced by Mr. Curl. He must, as the provision states, take all necessary steps to take possession of, protect and realise the assets of the company. That does not, of course, mean that he must resort to expensive and risky litigation to do so. But sitting back and doing little or nothing – as has happened in this case until the Joint Liquidators decided to bring injunctive proceedings – is simply not a choice open to the liquidator. The liquidator will need to undertake a careful balancing exercise to determine what steps he must take to comply with this duty. Provided he does so, and where appropriate and perhaps out

of an abundance of caution, obtains the approval of the creditors (or the creditors committee if there is one) or the members, where appropriate, he will not be subject to any criticism – see **Re Longmeade Ltd (in liquidation)**.[43]

[154] On behalf of the Joint Liquidators, Mr. Curl says that a decision whether or not to commence litigation is a matter for the discretionary commercial judgment of a liquidator. He refers to the decision of Snowden J (as he then was) in **Re Longmeade Ltd (in liquidation)**[44] in which Snowden J said:

> "I consider that the established legal principles outlined above can and should be applied to the modified regime concerning the commencement of proceedings by a company in compulsory liquidation post-26 May 2015. I would therefore summarise the position as follows:
>
> (i) a decision by liquidators appointed by the court as to whether to commence proceedings in the name of the company is essentially a commercial decision which the liquidators are entrusted to take without obtaining sanction from the court or the liquidation committee;
>
> (ii) in taking that decision, the liquidators should act in what they believe to be the best interests of the insolvent company and all those who have an interest in its estate;
>
> (iii) the liquidators may, but are not obliged to, consult the creditors (or contributories) who have an interest in the estate;
>
> (iv) the liquidators should normally give weight to the reasoned views of the majority of such creditors (or contributories), provided that they are uninfluenced by extraneous considerations;
>
> (v) if all those who are interested in the insolvent estate are fully informed and are unanimously of the same view, the liquidators should ordinarily give effect to their wishes;
>
> (vi) the court should not generally become involved in giving directions to liquidators as to how to make commercial or administrative decisions; and

[43] [2016] EWHC 356 (Ch), at [66].
[44] [2016] EWHC 356 (Ch), at [66].

> (vii) the court should not generally interfere with a commercial or administrative decision of liquidators after the event, unless it is a decision that was taken in bad faith or was a decision that no reasonable liquidator could have taken."

[155] I accept that a decision to issue proceedings falls into the category of decision-making that should only be impugned where it is perverse or irrational. Thus, a liquidator will not be expected to take risky litigation where he has no funds to do so (or even if he has) unless a creditor is prepared to indemnify him against his costs (including any adverse costs that may be ordered against him) out of his funds to take such litigation. So far as the Applicant suggests otherwise, that has to be wrong. The position could not have been made clearer by Ellis JA in **Chu Kong**, at [53]:

> "Ultimately, the liquidator is under a duty to obtain the best value reasonably obtainable. Thus, if the procuring of a wholly owned subsidiary to bring proceedings against wrongdoers for compensation will result in a greater value that they offered for the shares by any third party, the liquidator is under a duty to procure that the subsidiary takes such proceedings, provided of course, the liquidator has funds available to do so and is not personally at risk."

[156] In the present case, no circumstance militating against the Joint Liquidators taking this course of action arose. The Joint Liquidators did bring proceedings to secure the ring-fenced assets, but only after the Application was made or threatened. So far as they delayed in doing so, it was not a rational decision for them to have taken. The position might have been different if, for example, they did not have the funds with which to conduct the litigation, but that was not the case. It must be noted that all the Company's assets were transferred to Bybit Seychelles, necessitating urgency to either bring those assets under their control or prevent their disposal by Bybit Seychelles.

[157] So far as the Joint Liquidators suggest that the creditors are likely to be paid in full, I have seen no evidence about the views of the members of the Company on the

Joint Liquidators continuing to remain in office. Their views are essential if there is to be any distribution to them.

[158] Nor does it seem to me that the members' interests carry any weight, which is part of the reason that the Joint Liquidators give for not taking prompt action. So far as the views of the members on the continuation of the Joint Liquidators in office are concerned, I have seen no material expressing their wishes in any of the documents included in the hearing bundles that I was referred to. In any event, so far as their views are concerned, several matters are appropriate for mention.

[159] In the first place, it must be remembered that this is an insolvent litigation. There may well, as the Joint Liquidators believe, be a surplus to the members of the Company after the payment of all the debts of the Company and the expenses of the liquidation. However, this is not guaranteed and will largely depend on the steps that the Joint Liquidators take to collect and protect the ring-fenced assets of the Company in compliance with their duty under s. 185 and the ultimate amount of the claims of the creditors, either admitted to proof or determined by the Court.

[160] Second, and I make no apology for repeating this, there is no evidence that there will be a surplus. On the contrary, every suggestion is that there will not be one if the amounts claimed by the Applicant and Creditor IV are admitted to proof or determined by the Court to be due and owing from the Company to them.

[161] Third – and importantly – the Joint Liquidators appear to me to be running arguments which are inherently inconsistent with each other. Either there will be a surplus, in which case the Joint Liquidators may be justified in not taking risky and expensive steps to protect the assets of the Company, or there will not be, in which case the Joint Liquidators must take some steps to protect those assets and bring them under their control. Unless it is clear that there will be a surplus for the members, and this can usually only be judged when at least some assets belonging to the company are recovered and are sufficient to discharge the claims of all the creditors in the liquidation, there is simply no basis upon which a liquidator can

refuse to comply with his obligation under s. 185 on the ground that there may be a surplus for distribution to the members. I accept that once that point is reached – i.e., when there is undoubtedly going to be a surplus for the members – the liquidator can justifiably refuse to collect other assets in the liquidation on the basis that once a distribution to the creditors of their admitted or determined claims is made, it is open for the liquidator to make a distribution of any surplus assets *in specie* if the articles of association of the company permit him to do so. In those circumstances, collecting and realising those assets would not be appropriate. The suggestion that there may be a surplus is simply not borne out by the facts — a point that the carefully drafted submission at para. 52 of Mr. Curl's skeleton argument seems to recognise: " … the Applicant overlooks the real possibility that if he is right and the Company has a good proprietary claim to significant assets in the hands of Bybit Seychelles, then the value of the Company is likely to break in the members' interest…". This assertion is little more than a *non-sequitur*.

[162] Fourth, there is, on the facts, no real reason why the injunctive proceedings against Bybit Seychelles could not have been brought earlier. There is an important point to mention in this context. The Applicant made a payment of $50,000 on account of the Joint Liquidators' costs in the liquidation. He also made a loan to the Company for $1 million (or agreed to advance that sum to the Joint Liquidators) to deal with the liquidation affairs of the Company. I do not know much about the latter amount, as I was not taken through the papers explaining how that sum was to be utilised. However, if I am correct (and I stand to be corrected if I am wrong) that this amount was paid to cover the liquidation costs or part of those costs until the Joint Liquidators received sufficient realisations of the assets of the Company, I question why it was not used to protect the Company's assets.

[163] Finally, I should mention one further matter in the context of the injunctive proceedings taken by the Company against Bybit Seychelles. I first became aware of this at the Adjourned Hearing. I was informed that I had refused a certificate of urgency in relation to the listing of an application for an e*x parte* injunction for a

freezing order over the ring-fenced assets against Bybit Seychelles. I had done so because, given the delay on the part of the Company in bringing those proceedings, I did not consider that it should be dealt with urgently. I had not realised, when I refused the certificate of urgency, that it related to the dispute between the Company and Bybit over those assets and that my refusal of the certificate might become relevant to the determination of the Application. I was told that the application had been listed to be heard before Wallbank J on 14 July 2025, though it was initially listed before me. On the basis that Mr. Fay informed me that the Applicant did not have any information about the application for the freezing injunction, I felt I should not deal with it because I did not wish to be fixed with information about the application which the Applicant had not been able to see. I have not seen any documentation about the application since the date when the request for the certificate of urgency was placed before (and refused by) me. I understand that Wallbank J declined to grant the freezing injunction. I have no information about the application for the freezing injunction beyond that. However, what this demonstrates is that the Joint Liquidators were aware of the need to bring this asset under their control but failed to do so. When they did take steps to get it under their control, the delay in acting promptly militated against the exercise of the discretion of the Court in their favour, to the possible detriment of the creditors of the Company.

[164] What the above delay also demonstrates is that the liquidators: (a) had the funds at their disposal to bring the proceedings seeking to establish the claim of the Company over that asset or, at least, knew that, whether or not they had funds, that was a vital step which needed to be taken to protect that asset from being put out of the reach of the creditors of the Company but which they did not take; and (b) only took protective measures to obtain control of the assets after the Applicant had complained that they had failed to do so in his written evidence in support of the Application. It did not appear to them to be important to take those steps on their own initiative.

[165] At the Adjourned Hearing, Mr. Fay complained that the Applicant had little or no information about the injunctive proceedings, other than the fact that they had been taken. That complaint is amply justified on the facts of this case. There was no good reason not to inform the Applicant about the steps being taken to protect assets, which the Applicant had every right to know. He could have applied to the Court to see those documents under **ECSC CPR** 2.7 and 3.16, as to which, see above. As I have already indicated, if there was any question that the Applicant might see documents which he was not entitled to see, the Joint Liquidators could always have withheld those documents and invited the Court to make the final decision about whether they should be disclosed. The failure on their part to provide any information about the injunctive proceedings was inexcusable.

[166] The fact (if that be the case) that the refusal of the Court to grant urgent relief may not have prejudiced the Company and, therefore, the Applicant *qua* creditor is irrelevant. In the context of the Application, causation issues of this type are largely immaterial to consider at stage 2, though they may be relevant at stage 3. The fact is that it was only a few weeks after the making of the Liquidation Order that they decided to take any action. The purported explanation in Mr. Edwards' written evidence affidavit is inadequate. Nor is the contention advanced by Mr. Curl that the 6 months or so after the making of the Liquidation Order is too short a period for the Joint Liquidators' performance in the handling of the liquidation affairs of the Company to be judged. The Joint Liquidators should have acted with substantial urgency so far as the protection of the ring-fenced assets was concerned. They failed to do so.

[167] This allegation is made out in full.

[168] For the reasons referred to below, I am clear that this allegation is sufficient, on its own, to make it inappropriate for the Joint Liquidators to continue in office.

Ground 4 – loss of confidence by the creditors of the Company in the Joint Liquidators

[169] As stated above, the Applicant advanced this ground based on the premise that, at the time when the Application was made, the two known creditors of the Company, being the Applicant and Creditor IV, wished to see the Joint Liquidators replaced because they had lost confidence in them. This ground must now be read in the light of the change in the position of Creditor IV, who no longer supports the Joint Liquidators' removal.

[170] I have already indicated above that I am unable to accept the explanation that Creditor IV gives for her *volte face*, from actively supporting the Application to actively opposing it.

[171] If the initial hearing of the Application on 13 February 2025 had been effective, this ground would have been made out. In my judgment, the additional part of the ground, *viz*, that the creditors had lost confidence in the creditors, would have been unnecessary and would not have been needed to be proved. That is because the fact that all the known creditors of the Company, i.e., the Applicant and Creditor IV, wished to see the Joint Liquidators would, by itself, have amounted to sufficient "cause" for their removal. I consider this to be clear from the plain and natural meaning of the words "that for <u>some other reason</u> he or she should be removed as liquidator" of s. 187(1)(b)(iii), even if they were to be read *ejusdem generis* to the words in the preceding sub-paragraph of s. 187(1)(b), i.e., s. 187(1)(b)(ii). that preceded it. (Emphasis supplied). Accordingly, in that event, the second stage of the test would be satisfied even if the Joint Liquidators had done a perfectly satisfactory job in the conduct of the liquidation affairs of the Company. In any event, even if "loss of confidence" was a requirement of the "cause shown" test at stage 2, there would, in my judgment, be a strong presumption (rebuttable by the liquidator)[45] that the creditors only wished to remove the liquidator because they had no confidence in him.

[45] i.e., effectively, the shifting of the evidential burden from an applicant to a respondent: see Halsbury's Laws of England, 5th Edition, Reissue, Civil Procedure, Volume 12, 2020, paras. 699 and 700.

[172] Section 172 of the **IA 1986**, as it applies to England, Wales and Scotland, allows the majority of the creditors of a company which is in compulsory liquidation to remove a liquidator at a meeting of the creditors of the company called for that purpose without having to resort to an application to the court to remove him. There is no similar provision to this effect in this jurisdiction. However, despite this, I am satisfied that where all the creditors (or a substantial majority of the independent creditors) wish to see a liquidator replaced, that will, by itself, amount to a sufficient "cause" to remove him under s. 187 of the **BVIIA 2003**, i.e., without an applicant having to prove any more, subject always to the exercise of the court of its stage 3 discretion. It cannot be right for a liquidator, in such a case, to continue in office where none of the creditors wish him to remain in office.

[173] There have been several cases in England and Wales in which a creditor of a company has sought to wind up a company that is in voluntary liquidation because he considers it desirable to replace the voluntary liquidator with the Official Receiver. These so-called "conversion" cases include **Re Palmer Marine Surveys Ltd**,[46] in which[47] the High Court in England exercised its discretion to wind up the company because, *inter alia*, the majority of creditors in value supported the making of the winding up order. Hoffmann J (as he then was) held that the continuation of the voluntary liquidation would have left them with a legitimate sense of grievance that the insolvency affairs of the company were being conducted by a liquidator who, though he may have acted scrupulously fairly, might not be seen to be independent.

[174] It follows that if the Application had been effective on 13 February 2025, when it initially came before me, I would have been satisfied that the Applicant had made out this ground. I would have been prepared, therefore, to remove the Joint Liquidators from office, subject to the exercise by me of the discretion set out under stage 3. The discretion might have been exercised against the Applicant if the liquidation had reached a stage where it was all but completed – see **Re Medisco**

[46] [1986] BCLC 106.

[47] There is no equivalent of this procedure, which is enshrined in s. 116 of the IA 1986, in the BVI.

**Equipment Ltd**,[48] referred to below. Otherwise, it would be difficult to know why they should not have been removed. The critical point here is that the delay in the relisting of the Application to 2 and 3 July 2025 cannot be laid at the door of the Applicant.

[175] The change in the position of Creditor IV from active support for the Application to active opposition to it between the initial hearing date of the Application on 13 February 2025 and the Adjourned Hearing, i.e., on 2 and 3 July 2025, does not seem to me to be of any material significance for several reasons. They include the following.

[176] First, if the Application had been fully dealt with on 13 February 2025, the cause for the removal of the Joint Liquidators would have been made out. The subsequent change of position would not have made it possible for this Court to review its decision, not just because the other grounds of removal were made out, but also because it would only have been one of many factors that the Court would have needed to consider in deciding how to exercise its discretion.

[177] Second, as noted above, it is very difficult to see why the change in the position of Creditor IV came about. No proper explanation has been given to me about the reason for the change in that position.

[178] Third, since part of the debt due to the Applicant formed the basis of the Liquidation Order Application, that part, or at least a portion thereof, was undisputed for the purpose of making the Liquidation Order under which the appointment of the Joint Liquidators is derived. While that part is now subject to dispute, the fact is that the Joint Liquidators believed there was an undisputed part (however small that may have been) and they were prepared to accept appointment on that basis. In contrast, no part of the amount claimed by Creditor IV has been admitted to proof or even acknowledged as being due and owing.

[48] [1983] BCLC 305.

[179] Fourth, the Applicant disbursed his own funds (and has agreed to make other funds available to the Joint Liquidators) to enable the liquidation to be initiated and progressed and stands to lose those funds if the Joint Liquidators fail to recover sufficient assets to pay the expenses of the liquidation. His view on whether the Joint Liquidators should remain in office should carry more weight than that of Creditor IV, who has not explained her change of position from supporting the Application to opposing it.

[180] In those circumstances, this Court is entitled to accord more weight to the views of the Applicant than Creditor IV, and I do so.

[181] Accordingly, this ground is made out in full, even on the changed position that applied at the date of the Adjourned Hearing.

[182] For the reasons referred to below, I am clear that this allegation is sufficient, on its own, to make it inappropriate for the Joint Liquidators to continue in office.

**Stage 3 – Residual jurisdiction of the Court to refuse to remove a liquidator**

Introduction

[183] The decision in **Chu Kong** makes it clear that even where a court is satisfied that the requirements of stage 2 are satisfied, it must consider whether the exercise of its discretion militates against the removal of a liquidator.

[184] Several of the facts and matters that underpin the decision of a court when deciding whether cause has been shown will also be relevant in deciding how the court should exercise its discretion under Stage 2. In addition, the following factors may be relevant for the Court to take into account:

(a) As noted throughout this Judgment, it is unnecessary for the Court to find wrongdoing or fault on the part of a liquidator. The essential principle is whether the liquidation affairs of the Company are being carried out properly.

(b) If there is wrongdoing or fault and it is material, such as to endanger the liquidation assets, the court is likely to exercise its power to remove the liquidator. However, if there is some proper criticism of the liquidator, but it is minor and will not affect the administration of the company's liquidation affairs, it may not be necessary to remove the liquidator.

(c) Whether the liquidator is or may be involved in a conflict, actual or perceived.

(d) Whether it is in the best interests of the general body of creditors to replace the liquidator. In this context, the wishes of the creditors and, where appropriate (i.e., where there is likely to be a surplus), the contributories of the company will be relevant. The court has to make a balanced judgment, taking a broad view about what is in the interests of the creditors and contributories as a whole. This is particularly important where, as here, there are (now) competing points of view.

(e) In the absence of significant wrongdoing or fault, whether it has become impossible or difficult for the liquidator to complete the administration of the liquidation affairs of the Company. A breakdown of the relationship between the liquidator and some of the creditors will not, without more, justify his replacement. If, however, the breakdown of relations makes the task of the liquidator difficult or impossible, replacement may be the only option. The last thing the creditors – and indeed the Court – would want is to have the type of issues that have arisen in the Application arise in the future.

(f) The additional cost of replacing a liquidator will be a relevant consideration.

(g) The court must review what has been done to administer the liquidation affairs of the company and what remains to be done. It must consider this alongside the size of the liquidation and the scope and cost of the work which will be needed.

(h) The motive of the applicant seeking the removal.

(i) The motive of any creditor and, where appropriate, any member, in resisting the removal of the liquidator.

(j) The motive of the liquidator in seeking to continue in office.

(k) The stage at which the liquidation has reached and how long it will be necessary for the liquidation to be continued.

(l) The complexities involved in administering the liquidation, and the known expertise and experience of the liquidator in the area of work involved in the liquidation.

(m) The professional standing, reputation, and independence of the Liquidator. This is particularly important where, as here, the only known creditors have competing claims or interests.

(n) Whether the continuation of the liquidator in office would leave the creditors of the company (particularly independent creditors) with a legitimate sense of grievance that the insolvency affairs of the company were being conducted by a liquidator who is not, or might not be seen to be, independent.

(o) If the liquidator appears to show bias against a creditor. Actual bias does not need to be shown. Perceived bias will be sufficient.

(p) Where the liquidator, without reasonable excuse, fails or refuses to provide information relating to the liquidation affairs of a company to a creditor or member who has requested that information.

(q) The costs of replacing the liquidator, i.e., how much the transition to the new liquidator would cost.

(r) The fees the new liquidator will charge for administering the liquidation affairs of the Company and how they compare with the fees charged by the current liquidator.

(s) The delay in making the application for the removal of the liquidator.

(t) In the case of a complex liquidation having substantial assets, whether the size of the liquidator's practice or business is sufficient to enable him to discharge his duties and functions as liquidator effectively.

(u) "Expediency", though this will usually be limited where it is "temporarily expedient" for the liquidator to remain in office, for example, pending the completion of a major transaction affecting the assets of the company, as was the position in **Brudenell-Bruce v Moore**,[49] a case on the removal of a trustee of a trust.

(v) Whether the liquidator can bring to the table his unique expertise to the administration of the liquidation, which may not be available, or readily available, if another liquidator were to be appointed in his place.

[49] [2014] EWHC 3679 (Ch).

(w) where a creditor is the only person prepared to indemnify a liquidator to take steps in a liquidation with insufficient assets that may substantially benefit the liquidation (as a whole), but only on condition that his choice of liquidator should take those steps.

(x) The position adopted by the liquidator to the application made for his removal.

[185] The above factors that a court should take into account are not exhaustive. Not all the above factors will be relevant in every case. While the court will consider the above factors, and any other factors it considers are appropriate, the weight that it gives to those factors will vary according to the circumstances of each individual case. In the final analysis, the function of the court is to ask what is in the best interests of the creditors and, where appropriate, the members of the Company, looking at their interests as a whole.

[186] Just as a claim involving the removal of a trustee of a trust is not like an ordinary civil claim, "in which one party of necessity seeks to prove the facts of its cause of action against another party"[50], neither is an application to remove a liquidator. This means that a court does not need to make definitive findings about any allegation of impropriety made against a liquidator, and I do not do so. It simply considers an overview of the facts to determine whether a sufficiently clear case to warrant the removal of the liquidator is made out, i.e., essentially a broad-brush approach to the facts. The court regularly does so in other situations, even in a claim where a claimant needs to prove the facts of a case to establish a cause of action, such as in relation to an application for security for costs or permission to serve proceedings outside the jurisdiction of the court. In such cases, the court does not make definitive findings but takes a broad-brush view of the facts on the material presented to it.

[50] See Schumacher and Long v Rodman [2019] EWHC 753 (Ch), at [18]. See also Letterstedt v Broers (1884) 9 App. Cas. 371 at 386, PC; and St John's Trust Company (PVT) Limited v Medlands (PTC) Limited [2021] CA (Bda) 20 Civ, at [56].

For this reason, it is also very unusual for a court to hear oral evidence from the parties, and I did not hear any in this case.

[187] On an overall review of the material, and with the caveats expressed above about the findings I make for the purposes of the Application not being definitive, I come to the unhesitating conclusion that all the grounds are made and that, other than Ground 1, each of the grounds would warrant the discretion of this Court being exercised in favour of the removal of the Joint Liquidators. The findings are made based on my having considered the material I was taken through and the written and oral submissions made on behalf of the parties. I have neither considered any other material included in the hearing bundles lodged for the purposes of the Application nor the transcripts of the Adjourned Hearing on 2 and 3 July 2025.

The exercise of the discretion in more detail by reference to relevant factors

[188] The power of a court to remove a liquidator is discretionary. It is wide and unfettered, subject only to the limitation that it should be exercised judicially, taking into account all the circumstances of a particular case and having regard to the purpose for which the discretion exists.[51] The authorities under s. 187 of the **BVIIA 2003** or under s. 108(2) of the **IA 1986** to remove a liquidator may provide limited assistance on how this Court should approach the exercise of its discretion. However, each case will turn on its own individual facts and circumstances. Just because the circumstances of a particular case display similarities to another case does not mean that the court must slavishly follow that case.

[189] On the basis that each of the Grounds is made out, it is difficult to see how this Court can take any action other than to remove the Joint Liquidators. I have already

[51] See, for example, Ottway v Jones [1955] 1 WLR 706 at 714, [1955] 2 All ER 585 at 591, per Parker LJ: "[The discretion] is, on the face of it, completely unfettered. I say 'on the face of it' because, of course, the discretion cannot be exercised arbitrarily; it must be exercised judicially and on fixed principles dictated by reason and justice."

indicated that, other than Ground 1, each of the other Grounds would, on its own, warrant the removal of the Joint Liquidators.

[190] It is also difficult to see how any of the factors that the Court should usually take into account would militate against the Court taking that course of action. Nonetheless, it is appropriate for me to mention whether some of these factors, as they apply to the present circumstances, may warrant the Court taking a different course of action.

[191] I set out below (to the extent not already dealt with above)[52], each of the relevant factors that I need to take into account, on the facts of this case, in deciding how I should exercise my discretion on the Removal Application.

[192] It is an axiomatic principle of the exercise of any discretion that a court has that the court cannot apply some sort of scoring framework, ascribe a score for each factor, and come to its overall decision based on those scores. Each case will be fact-specific, and the discretion must be exercised, based on all the circumstances of the case. In other words, the Court should take a holistic approach to the exercise of its discretion.

Criticisms of the Joint Liquidators

[193] As already stated above, the authorities make it clear that a court does not have to find wrongdoing or fault on the part of a liquidator to warrant his removal. If there is wrongdoing or fault that has caused substantial loss to the Company, the court is very likely to exercise its power to remove the liquidator. However, if there is minor criticism of the liquidator and it does not affect the overall administration of the liquidation affairs of the company trust or its assets, the court is unlikely to remove him. Indeed, even a serious mistake not causing such loss may not be sufficient to

[52] So far as I have already dealt with any factor, such as in relation to the approach that Joint Liquidators should have taken to the Application, I do not intend to repeat it, other than, where appropriate, to refer to it briefly.

remove his. As Nourse LJ observed in **Re Edennote Ltd**[53] in a passage approved by Ellis JA in **Chuh Kong**, at [124]-[125]:

> "...[the judge below] said that the decision in **Re Keypak Homecare Ltd [1987] BCLC 409** was founded on and usefully illustrated the general principle that a liquidator must act in the interests of the general body of creditors and should not continue in office if in the circumstances the creditors no longer had confidence in his ability to realise the assets of the company to their best advantage and to pursue claims with due diligence...Again, I respectfully agree. But there is an important qualification, which is indeed accepted by [counsel for the applicants]. The creditors' loss of confidence must be reasonable. Moreover, the court does not lightly remove its own officer and will, amongst other considerations, pay a due regard to the impact of a removal on his professional standing and reputation."

[194] I have not made any definitive findings of misconduct against the Joint Liquidators in the sense that the findings cannot simply be carried through to other proceedings involving the Joint Liquidators without having to be reproved against them. However strongly I may have expressed the conduct of the Joint Liquidators, my findings must be restricted to the Application. They cannot have any wider application and cannot, therefore, be binding on the parties in other proceedings. The parties will be aware of cases which set out when factual findings made in one set of proceedings may be used in other proceedings, such as **Hunter v Chief Constable of West Midlands**,[54] **Johnson v Gore Wood & Co**,[55] and **Ashmore v British Coal Corp**,[56] including the summary of the relevant principles set out in **Re Queen's Moat House Plc, Secretary of State for Trade and Industry v Bairstow**[57] I say nothing further about this.

[195] However, even on the limited basis referred to in this Judgment, the findings I have come to must mean that I must remove the Joint Liquidators from office. However,

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[53] [1996] 2 BCLC 389 at 398.
[54] [1982] AC 529.
[55] [2002] 2 A.C. 1.
[56] [1990] 2 Q.B. 338.
[57] [2003] EWCA Civ 321, [2004] Ch 1.

it is appropriate that I deal specifically, albeit briefly, with some of the factors referred to above that I have found make the case for their removal unassailable.

The Joint Liquidators' motive to continue in office

[196] I have already referred to this above. In the absence of any good reason being given by the Joint Liquidators to continue remaining in office, the likely reason for the Joint Liquidators wanting to continue in office is the fees that they expect to make out of the vast amount of work that they are likely to be involved in the administration of the liquidation affairs of the Company. Otherwise, it is not easy to see why they would wish to continue remaining in office.

[197] The Joint Liquidators do not refer to any particular skill that they have, or the personnel at their BVI or Cayman offices have, which the Proposed Joint Liquidators do not have, to warrant their remaining in office.

Size of the Joint Liquidators' and the Proposed Joint Liquidators' businesses

[198] Nor is there anything about the size of the Joint Liquidators' national or international practice that makes it more appropriate for them to continue in office than to have the Proposed Joint Liquidators appointed in their place. Both practices are perfectly able to handle this type of liquidation. The Proposed Liquidators are part of a firm, which, though not as large as A&M worldwide, is understood to be the largest insolvency practice in this jurisdiction.

[199] In an appropriate case, the Court will give weight to this factor, such as in **Brudenell-Bruce**, cited above, a case involving the removal of a trustee of a trust. However, this situation does not apply here.

[200] It follows that, in the exercise of my discretion, this factor should be afforded little, if any, weight.

Costs of replacing the Joint Liquidators

[201] I accept that a significant amount of costs and expenses will be incurred in the transfer of the liquidation to the Proposed Joint Liquidators, which would be avoided if the Joint Liquidators continued to remain in office. There will inevitably be a significant amount of duplication of work by the Proposed Joint Liquidators if they are appointed in place of the Joint Liquidators. However, this factor is more than outweighed by the other countervailing factors that favour removal in the present case. In addition, the liquidation of the Company is in its early stages, having only been in place for some 6 months. There is, therefore, every reason why the Joint Liquidators should be replaced now rather than after the liquidation has been in place for a lengthy period of time.

The Applicant's motive to remove the Joint Liquidators

[202] A creditor or contributory seeking the removal of a liquidator is, in effect, applying to the court to exercise its supervisory or quasi-supervisory jurisdiction over a liquidation. In seeking such removal, the applicant acts for himself and the other creditors having an interest (actual or contingent) in the liquidation. In other words, the Court will take into account his motive for bringing the removal application if it is satisfied that the motive is to seek some sort of personal advantage to him, such as is suggested by Mr. Edwards.

[203] For the reasons already indicated, there is no substance in this allegation. Specifically, the Joint Liquidators' allegation about the Applicant's motive to appoint new joint liquidators proceeds on the basis that the new joint liquidators may treat the Applicant more favourably than the Joint Liquidators are prepared to do.

[204] I have already indicated that this is premised on little more than speculation: of course, it may happen. However, it is essential to note, as I have already indicated, that the Proposed Joint Liquidators (like any other liquidator) will be under the

general supervision of this Court. The Applicant will know that the Court will not hesitate to remove the Proposed Joint Liquidators (in the same way as it has decided to remove the Joint Liquidators in these proceedings) if they do not behave independently, even-handedly, reasonably, and with integrity.

Delay in applying to remove the Joint Liquidators

[205] There has been no delay in making the Application. The contrary suggestion made by the Joint Liquidators is wrong. In any event, the alleged delay in this case has little significance in the overall balancing exercise that I need to undertake in deciding whether to remove the Joint Liquidators.

Wishes of the other known creditors

[206] I have dealt with this above.

[207] The most that can be said on behalf of the Joint Liquidators is that Creditor IV now does not support the removal of the Joint Liquidators. However, this change of position must be considered with some circumspection. Further, and in any event, the other factors to which I have referred above weigh heavily against the Joint Liquidators remaining in office.

[208] For all the reasons referred to above, I come to the firm conclusion that the Applicant should succeed in the Application.

**Conclusion**

[209] The substantive order I will make is that the Joint Liquidators should be removed as joint liquidators and replaced by the Proposed Joint Liquidators.

[210] I sound a word of caution. As stated above, there has been some suggestion that the Proposed Joint Liquidators may not be entirely independent or seen to be, both

of which requirements are essential for their appointment as replacement liquidators. Other than what Mr. Edwards has said above, I have no further information about this. I know that those advising the Proposed Joint Liquidators will advise them to ensure that they are fully aware of this. This Court will not hesitate to remove them if they are found to be involved in a conflict, whether actual or perceived.

[211] I should also clarify that, until the Proposed Joint Liquidators are in place, I do not believe I should be involved in adjudicating any claims brought or to be brought by the Company or the Joint Liquidators against any third party. If and when the Joint Liquidators are replaced, I can deal with such claims or applications in the usual way.

**Matters outstanding and arising**

[212] There are several matters that the Court will need to deal with arising from my judgment, such as costs[58].

[213] Subject to the above, there is no good reason for the removal of the Joint Liquidators to be delayed. There are no imminent transactions, such as was the case in **Brudenell-Bruce**, to make it necessary for the Joint Liquidators to continue being involved in the liquidation as a temporary expedient.

[214] I invite counsel to lodge an approved minute of an order to reflect my judgment at least 48 hours before the hearing.

**Acknowledgments**

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[58] This will need to include the costs of any interlocutory matter that may have been held over to be determined at the Adjourned Hearing.

[215] I again express my deep and sincere gratitude to counsel, both for the manner of the presentation of their clients' cases and for their cooperation throughout the trial. The skeleton arguments were not just comprehensive but prepared to the highest possible standard. I do not say this out of politeness, convention, or courtesy. I say it because it is true.

[216] I regret the length of this judgment. However, it reflects the excellent quality of the arguments that were advanced before me. While the Judgment does not (and does not need to) deal with every conceivable point that arose in the course of the hearing of the Application, its length also reflects the many points that were raised for the first time on behalf of the Joint Liquidators.

**Abbas Mithani KC**
High Court Judge (Ag)

**By the Court**

**Registrar**