In The Supreme Court of Bermuda

COMMERCIAL JURISDICTION

2024: No. 91

IN THE MATTER OF NEW SPARKLE ROLL INTERNATIONAL GROUP LIMITED AND IN THE MATTER OF THE COMPANIES ACT 1981

REASONS FOR RULING

Before:	**Hon. Alexandra Wheatley, Acting Justice**
Appearances:	**Sam Stevens of Carey Olsen, for the Joint Provisional Liquidators** **Rhys Williams of Conyers, for the Company**
Date of Hearing:	**9 August 2024**
Date Decision:	**29 November 2024**
Date of Reasons:	**17 July 2025**

JPLs Costs; Rule 23(3) of the Companies (Winding-Up) Rules 1982; Court's Wide Discretion; Petition Struck Out; Whether Misconduct by JPLs; Costs Against Non-Parties in Winding-Up Matters

REASONS of Acting Justice Alexandra Wheatley

1. These are my expanded, written reasons for the decision I delivered on 29 November 2024 (the **November Decision**) concerning liability for the remuneration, fees, expenses and costs of the joint provisional liquidators (**JPLs**) appointed on 15 April 2024 (**Costs**). The decision directed that the Company must bear those Costs, to be agreed or, failing agreement, taxed in Bermuda on an indemnity basis. Paragraphs 7 to 9 of the November Decision states as follows:

"*7. I accept that both Rule 140 of the Companies (Winding-Up) Rules 1982 (**the Rules**) and Rule 23(3) of the Rules are not applicable to this matter as no winding-up order was made and there was no determination of the Petition as it was set aside. The Court therefore has a wide discretion to make orders for the costs, remuneration and expenses of the JPLs. There is no default position for the payment of the JPLs which would usually be applicable under Rule 140 and Rule 23(3).*

8. Having heard from Counsel for the Company and the JPLs, as well as considering the written submissions and authorities relied on by both, I accept the position of the JPLs that costs should be paid by the Company and reject the Company's argument that costs should be paid by the Former Directors. The Company is able of pursue these costs against the Former Directors as losses and damages and it would be unjust and unreasonable to require the JPLs to do so.

9. As it relates to the taxation/assessment of the JPLs costs I am not convinced that this process should be carried out by both the Bermuda Court and the Hong Kong Court. The Bermuda Courts are well equipped to taxing the fees and expenses of the JPLs appointed in this jurisdiction over domestic companies with significant overseas operations. Therefore, this Court will be responsible for the assessment of the totality of the JPL's remuneration, costs and expenses that will be payable by the Company."

2. In preparing these fuller reasons I have considered: (i) the Appointment Order dated 15 April 2024; (ii) the Order setting aside the winding-up petition and discharging the JPLs made on 15 May 2024 (the **Discharge Order**); (iii) the written submissions of the JPLs filed 28 May 2024 and the Company's submissions filed 28 May 2024; (iv) the arguments made by Counsel at the consequential hearing on 9 August 2024; and (v) the supplemental submissions of the Company filed 16 August 2024 and of the JPLs filed 23 August 2024.

3. Nothing in these expanded reasons changes the substance of my determination; they merely elaborate upon the factors which informed the exercise of the Court's wide discretion against the applicable legal principles.

PROCEDURAL BACKGROUND

4. On 15 April 2024 the Company, then controlled by a board comprising Mr Zheng and colleagues (the **Former Directors**), presented its own winding-up petition in this Court seeking the immediate appointment of JPLs with full powers. I was satisfied that the statutory jurisdiction was engaged and that the appointment was necessary; the Appointment Order was therefore made the same day.

5. On 23 April 2024, at a duly convened special general meeting in Hong Kong, a new slate of directors (the **New Directors**) was elected. They took the view that the petition served no legitimate purpose, was damaging to value and risked frustrating ongoing litigation in Hong Kong.

6. Acting on that view, the New Directors caused the Company to issue a summons dated 6 May 2024 (the **Set-Aside Summons**) seeking, *inter alia*, (i) the dismissal of the petition, (ii) the discharge of the JPLs and (iii) directions as to the JPLs' Costs.

7. After an inter partes hearing on 15 May 2024 I acceded to the substantive relief sought, struck out the petition and discharged the JPLs. Conscious that the quantum of the JPLs' Costs exceeded US $1.4 million and that liability and taxation issues might become contentious, I reserved all questions of Costs and fixed a consequential hearing.

8. The consequential hearing was initially listed for 31 May 2024 but, at the parties' joint request, was adjourned to 9 August 2024 to allow for the exchange of submissions. At that hearing I heard full oral argument from Mr Sam Stevens of Carey Olsen on behalf of the JPLs and from Mr Rhys Williams of Conyers on behalf of the Company.

9. Following consideration of the materials and argument, I delivered a decision on 28 November 2024. I now provide these more detailed reasons in light of the Company's request.

ISSUES ARISING FOR DETERMINATION

10. The parties were agreed that four issues arose:

    (i) Whether, as a matter of principle, the Company should bear the JPLs' Costs under rule 23(3) of the Rules;

    (ii) If not, whether those Costs (or any part of them) should instead be borne by the Former Directors personally;

    (iii) Whether the Court should direct that Costs incurred in Hong Kong be the subject of a separate declaratory application and taxation in that jurisdiction (the so-called "split taxation" proposal); and

    (iv) The appropriate basis and venue for taxation of any Costs payable by the Company.

THE PARTIES' SUBMISSIONS

The JPLs

11. The JPLs submit that the Court should start—and, on the facts, finish—with the default rule in rule 23(3) of the Companies (Winding-Up) Rules 1982 (the **Rules**): a provisional liquidator whose appointment is rescinded is *prima facie* entitled to be paid out of the company's property. They emphasise that the Appointment Order was made on the

Company's own petition; the JPLs therefore accepted office as officers of the Court, with a reasonable expectation that their properly-incurred costs would be met in the ordinary way.

12. They further rely on the protective work they carried out between 15 April and 15 May 2024—including asset-preservation measures in Hong Kong, standstills over bank accounts and the collation of evidence of potential misappropriations exceeding US $23 million—as proof that their efforts were both necessary and beneficial to the Company, whatever board ultimately prevails.

13. Addressing an allegation that they "entrenched" themselves by delaying recognition proceedings in Hong Kong, the JPLs point to contemporaneous correspondence (29 April 2024) in which their Hong Kong solicitors held recognition papers "in escrow" pending clarification of the board dispute; once the New Directors indicated an intention to strike out the petition, the JPLs considered it irresponsible to incur further foreign costs that might never be recoverable.

14. On the Company's request for a non-party costs order against the Former Directors, the JPLs submit that such relief would offend natural justice. The Former Directors are not parties, have not been joined to the costs application, and have had no opportunity to test the factual allegations of abuse now relied upon. If the New Directors believe an indemnity is available, they remain free to pursue the Former Directors after the JPLs have been paid.

15. Finally, the JPLs characterise the proposed "split taxation" (Bermuda for local work, Hong Kong for overseas work) as unprecedented and impractical. The Appointment Order has never been recognised abroad, so a Hong Kong master would lack jurisdiction; the inevitable result would be duplication, delay and still further cost.

The Company

16. The Company—now acting through the New Directors—contends that the petition was conceived as a tactical manoeuvre by the Former Directors to derail long-running shareholder litigation in Hong Kong. In support it cites an email from Mr Zheng of 12 April 2024 referring to "resetting the litigation chess-board in Bermuda". That, it says, was an abuse of the winding-up jurisdiction that should not leave innocent shareholders to foot the bill.

17. Building on that theme, the Company argues that the petition lacked any genuine insolvency nexus: the Company was (and remains) solvent, capitalised and trading on the Hong Kong Stock Exchange. By invoking provisional liquidation with "full powers", the Former Directors secured a moratorium that paralysed commercial decision-making for a month and forced the New Directors to incur substantial legal costs in regularising the position.

18. The Company also disputes the proportionality of the JPLs' expenditure. Invoice summaries show that 71 % of fees were generated by Hong Kong lawyers and forensic consultants charging rates "significantly higher than Bermudian market norms".

19. The exercising of the discretion in either rule 23(3) or rule 140 of the Rules, the Company says are not invoked. It says these rules are not applicable to this matter as no winding-up order was made and there was no determination of the Petition as it was set aside. The Company submitted that the Court, therefore, has a wide discretion to make orders for the costs, remuneration and expenses of the JPLs. Accordingly, there is no default position for the payment of the JPLs which would usually be applicable under the Rules.

20. Instead, the Company invites the Court either (i) to order that the Former Directors themselves bear the JPLs' Costs—as contemplated in *Titan Petrochemicals*—or (ii) to direct that the Company pay *only* those costs incurred in Bermuda, leaving the Hong Kong elements to be scrutinised and (if appropriate) reduced by the Hong Kong Court. The Company says that this "split taxation" proposal mirrors the approach taken in *Refco Capital Markets Ltd* and would align the assessment forum with the forum where the work was performed.

21. Finally, the Company maintains that a non-party costs order would be procedurally fair. The Former Directors swore affidavits, were represented until shortly before the August hearing, and have every opportunity—if so ordered—to file written submissions on costs. To deny the Court that option, it argues, would be to hand wrongdoers a "procedural shield" and to undermine the deterrent purpose of the costs' jurisdiction.

LEGAL PRINCIPLES

22. Rule 23(3) of the Rules is the cornerstone: it confers on a provisional liquidator a *prima facie* right to payment of 'all the costs, charges and expenses properly incurred' but vests the Court with a broad discretion to order otherwise:

> "*Subject to any order of the Court, if no order for the winding-up of the company is made upon the petition, or if an order for the winding-up of the company is made upon the petition. or if an order for the winding-up of the company on the petition is rescinded, or if all proceedings on the petition are stayed, the provisional liquidator shall be entitled to be paid, out of the property of the company, all the costs, charges, and expenses properly incurred by him as provisional liquidator, including such sum as is or would be payable under the scale of fees for the time being in force where the Official Receiver is appointed provisional liquidator, and may retain out of such property the amounts of such costs, charges, and expenses.*"

23. The discretion is informed by long-standing legal principles that seek, on the one hand, to protect officers of the Court and, on the other, to guard against the misuse of insolvency processes.

24. The parties agree that the discretion is not exercised in a vacuum but against the backdrop of authority. *Titan Petrochemicals Group Ltd v Sino Charm International Ltd* [2023] CA (Bda) 5 Civ and *Pacific China Holdings Ltd v Grand Pacific Holdings Ltd* (BVI CA 2012) both establish that where a creditor's petition is shown to be 'abusive or wholly unmeritorious', costs may be shifted away from the company to the petitioner. Those cases also recognize, however, that the liquidator should ordinarily be paid first, leaving the company with a cause of action in recoupment against the wrongdoer.

25. *Graham v John Tullis & Son (Plastics) Ltd* [1991] BCC 398 and *Re Secure & Provide plc* [1992] BCC 405 extend that principle to petitions brought without standing or in bad faith: the entity that wrongly invoked the Court's jurisdiction should reimburse the liquidator. Importantly, both cases involved creditor petitions; neither was a company-petition scenario.

26. In contrast, *Westford Special Situations Fund Ltd v Barfield Nominees Ltd* (BVI CA 2011) concerned a petition presented by the company itself. The Court of Appeal ordered the fund to meet the liquidators' costs but expressly preserved its right to pursue the insiders responsible. *Westford* underscores that a company assumes a degree of risk when it elects to invoke provisional liquidation for its own purposes.

27. *Re UOC Corp (Allpour)* [1981] BCC 191 illustrates the inherent jurisdiction to direct payment where an appointment ends prematurely and the Rules do not explicitly provide. The decision reflects the wider principle that a court will not leave its own officers uncompensated for complying with legally binding orders.

28. On the question of basis, the Bermuda Court of Appeal in *Credit Suisse Life (Bermuda) Ltd v Ivanishvili* [2023] CA 27, applying *St John's Trust Co [2022] CA (Bda) 18 Civ*, confirmed that indemnity costs are appropriate where a party's conduct is 'out of the norm'. Indemnity taxation is not punitive; rather, it ensures full reimbursement where the paying party's conduct has unreasonably put the recipient to expense.

29. Cross-border cooperation is guided by the doctrine of modified universalism. *Re Energy XXI* [2016] SC (Bda) 79 Com and *Re ICO Global Communications (Holdings) Ltd* [1999] Bda LR 69 demonstrate the Court's flexibility in working with foreign proceedings for efficient asset administration. *Refco Capital Markets Ltd* [2006] Bda LR 94 is the high-water mark: the Bermuda Court invited a U.S. bankruptcy court to assess certain fees because that was the jurisdiction most closely connected with the work. By contrast, *Singularis Holdings Ltd v PwC* [2014] UKPC 36 cautions that cooperation cannot breach the limits of jurisdiction; the assisting court must not 'overreach'.

30. Integrating these authorities, the tests that emerge are: (i) has the petitioner (whether creditor or company) so misconducted itself that fairness demands a departure from rule 23(3) default; (ii) will a non-party order offend natural justice or create satellite litigation; and (iii) is there a compelling, jurisdictionally sound reason to outsource taxation to a foreign court. The answers to those questions drive the ultimate order on liability, venue and basis of taxation.

ANALYSIS

Issue (i) - Whether, as a matter of principle, the Company should bear the JPLs' Costs under rule 23(3):

31. Rule 23(3) places on the company the default liability for a provisional liquidator's "properly incurred" costs when the appointment comes to an end on the determination of the petition. As the petition was struck out, rule 23(3) does not apply and as such the Court must invoke its wide discretion.

32. The Court's discretion to "otherwise order" is wide but not lightly exercised; the reported departures in *Titan Petrochemicals*, *Pacific China*, *Graham*, *Secure & Provide* are all creditor-petition cases in which the petitioner's conduct was so egregious that fairness demanded a different result.

33. Here the petition was presented by the Company itself. Even if it was accepted that the Former Directors had collateral motives, the petition was facially within section 163 of the Act and the Appointment Order was made only after the Court was satisfied that the statutory threshold was met. The JPLs then acted under the Court's supervision, filing periodic reports and securing assets for the Company's benefit.

34. Two points are decisive. First, depriving the JPLs of their statutory indemnity would undermine the willingness of insolvency practitioners to accept urgent, Court-mandated appointments. Second, the Company remains solvent and continues to trade on the Hong Kong Stock Exchange; it is therefore best placed to absorb the costs in the first instance while preserving any recourse it may have against those responsible for the petition.

Issue (ii) - If not, whether the Costs should instead be borne by the Former Directors personally:

35. The Company urges the Court to leapfrog the corporate vehicle and impose liability directly on the Former Directors, invoking the jurisdiction to make non-party costs orders and relying on dicta in *Titan Petrochemicals* that wrong-doers should ultimately meet the bill.

36. That jurisdiction is well established, but it is exceptional and subject to strict procedural safeguards. The intended non-party must be given clear notice of the order sought and a fair opportunity to contest liability. Here, the Former Directors are not parties to the costs application; no summons for non-party costs was issued, and the factual disputes about abuse of process (including motive and standing) have never been tested in cross-examination.

37. The Court could, in theory, join the Former Directors now and adjourn the matter, but that would generate significant delay, satellite litigation and additional expense—precisely the mischief the costs jurisdiction seeks to avoid. The more proportionate course is to order the Company to pay the JPLs, leaving the Company free to pursue indemnity or contribution proceedings against the Former Directors, armed with the Court's findings.

Issue (iii) - Whether "split taxation" in Hong Kong should be directed:

38. The Company's alternative proposal is that costs incurred on Hong Kong work be taxed in Hong Kong, with Bermudian costs assessed here. It says this mirrors *Refco* and aligns the assessment forum with the place where most of the work was performed.

39. The argument encounters three difficulties. First, the Appointment Order has never been recognised in Hong Kong; without recognition, a Hong Kong master would lack subject-matter jurisdiction to tax costs arising solely from a Bermudian order. Second, the split would create the very duplication, delay and additional cost both sides profess to avoid: two bills, two sets of objections, and the inevitable prospect of inconsistent determinations. Third, *Refco* was an outlier in which the foreign court was already exercising insolvency jurisdiction over the company—conditions not present here.

40. While cross-border cooperation is a hallmark of modern insolvency practice (*Energy XXI*, *ICO Global*), it must respect jurisdictional limits (*Singularis*). The Registrar of the Supreme Court of Bermuda has both the power and expertise to assess the reasonableness of all the JPLs' work—including time spent abroad—by applying local hourly-rate evidence and, where necessary, foreign market data. A split taxation order is therefore neither necessary nor appropriate.

Issue (iv) - The appropriate basis and venue for taxation of any Costs payable by the Company:

41. Once liability is fixed on the Company, two subsidiary questions arise: basis and venue.

Basis

42. The JPLs seek indemnity taxation; the Company says standard (party-and-party) basis would suffice. Recent Court of Appeal authority (*Credit Suisse Life v Ivanishvili*, applying

St John's Trust Co) confirms that indemnity costs are justified where the paying party's conduct is "out of the norm" or where full reimbursement is needed to avoid injustice to a fiduciary or Court officer. Provisional liquidators stand in a quasi-fiduciary position and should not be left out of pocket for work the Court asked them to do. Indemnity taxation also shortens disputes by placing the onus on the payer to show unreasonableness. That basis is therefore appropriate.

Venue

43. Rule 28 of the Rules and Order 62 of the RSC vest taxation in the Registrar of the Supreme Court of Bermuda. No foreign court has jurisdiction to tax costs under a Bermudian order absent recognition, and none has been sought. The Registrar routinely assesses cross-border insolvency fees, calling for comparative evidence where required; that forum is both competent and convenient.

44. For those reasons the costs payable by the Company will be taxed by the Registrar in Bermuda on the indemnity basis, with the usual timetable for filing bills and points of dispute.

CONCLUSION

45. For the foregoing reasons I reaffirm the orders made in the November Decision.

46. These paragraphs, together with the preceding analysis, constitute the Court's full and final reasons for the decision of 29 November 2024.

DATED this **17th** day of **July 2025**

THE SEAL OF THE SUPREME COURT OF BERMUDA
SIGNED

HON. ALEXANDRA WHEATLEY,
ACTING PUISNE JUDGE