

Cayman Court supports practical approach to adjudication of debts in liquidation

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How should liquidators deal with the administrative burden of adjudicating thousands of low-value proof of debts in a liquidation estate, without exhausting the limited assets available in the liquidation estate? The Grand Court recently sanctioned a pragmatic solution.

Introduction

Premier Assurance Group SPC Ltd (in official liquidation) (the **Company**), an exempted segregated portfolio company, was placed into controllership on 29 September 2020, [1] and then subsequently into liquidation on 27 October 2020 with Jeffrey Stower and Jason Robinson of KPMG appointed as joint liquidators (the **JOLs**). One of the segregated portfolios of the company, the Premier Assurance Segregated Portfolio, had offered life assurance portfolios to 11,160 participants (the **Participants**), all of whom had a claim in the liquidation. In circumstances where it was not practical to manually adjudicate 11,160 proofs of debt, an application was brought to sanction an alternative means of adjudicating the debts in a cost-effective manner. [2]

Background

Information concerning the status of the insurance policies issued to the Participants was derived from the Company's database and was sufficient to determine the account value of each policy held by a Participant.

Accordingly, the JOLs proposed to (a) admit to proof the claims of the Participants in respect of the amounts recorded as due to them in the SVRs and without requiring them to lodge proofs of debt; (b) to send to each Participant a notice of admission informing the Participant that his or her proof had been admitted (the **Draft Notices**); and (c) afford each Participant the opportunity to dispute the amount admitted to proof within 21 days.

The JOLs estimated that the streamlined method proposed would achieve a cost saving to the

insolvent estate in the region of US\$2.6 million and allow the adjudication process to be completed within a much shorter time frame.

The Companies Act (2021 Revision)

In order to obtain the order sanctioning the alternative process proposed by the liquidators, the JOLs applied to the Grand Court for authorisation to do so under section 110(2) (a) of the Companies Act (2021 Revision) (the **Companies Act**). Under that provision, the Court has wide powers to determine questions referred to it by a liquidator "in any way relating to or affecting the assets or the winding up of the company".

The Court considered previous cases, such as in *Re Centaur Litigation SPC* in which the Court (a) had sanctioned an alternative form of proofs in circumstances where it was cost effective to do so and (b) confirmed that it is within its jurisdiction to sanction the JOLs' dispensation of the requirement for formal proofs of debt. [3] In the circumstances of this case, the Court was satisfied that the alternative method proposed was cost effective and valid, and that the decision to dispense with formal proofs of debt was within the liquidators' powers and capable of sanction.

Sanction of the decision

The Court summarised the principles to be applied to the sanction of a liquidator's powers, as follows: "the Court should ordinarily respect the commercial judgment of the liquidator and grant sanction, unless the course of action proposed by the liquidator is regarded by the Court as so unreasonable or untenable that no reasonable liquidator would take it".

The Court deemed it appropriate to sanction the alternative format for proofs of debt for the following reasons:

- The JOLs were satisfied that it was both cost-effective and quicker than the conventional approach
- The JOLs were satisfied as to the accuracy of the relevant database
- The proposal was reasonable in circumstances where the significant majority of claims were likely to be below US\$20,000
- Most of the Participants speak only Spanish and there was a risk that some may undervalue their claims, submit a proof in an incorrect form, or not submit one at all
- There was little to no risk of prejudice to the Participants because they retained the right to dispute the value of the claim and submit a further proof of debt (which, if rejected by the liquidators, could be appealed to Court within 21 days in the normal way)

Conclusion

The judgment is noteworthy because it shows the flexibility of the application of Section 110(2) (a) of the Companies Act and the willingness of the Grand Court to adopt a pragmatic approach to practical difficulties faced by, and to lend assistance to, liquidators in achieving an orderly winding-up of a Cayman company.

[1] *In the Matter of Premier Assurance Group SPC Ltd (in Controllershship)* (FSD Cause No. 210 of 2020)

[2] *In the Matter of Premier Assurance Group SPC Ltd (in Official Liquidation)* (FSD Cause No. 264 of 2020)

[3] Following Kawaley J in *Re Herald Fund SPC (in Official Liquidation)* [2018] (2) CILR 162].

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Meet the Author



[Max Galt](#)

Associate

[Cayman Islands](#)

E: max.galt@ogier.com

T: +1 345 815 1830

Key Contacts



Gemma Bellfield (nee Lardner)

Partner

Cayman Islands

E: gemma.bellfield@ogier.com

T: +1 345 815 1880

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