



**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

CAUSE NO. FSD 268 OF 2021 (IKJ)

IN THE MATTER OF THE COMPANIES ACT (2023 REVISION)

**AND IN THE MATTER OF PRINCIPAL INVESTING FUND I LIMITED (IN OFFICIAL
LIQUIDATION)**

Before: The Hon. Justice Kawaley

Appearances: Mr Jason Mbakwe of Carey Olsen on behalf of the Joint Official
Liquidators (“JOLs”)

Heard: 25 January 2024

Ruling Delivered: 25 January 2024

240125- In the matter of Principal Investing Funds I- FSD 268 of 2021 (IKJ) Ex Tempore Judgment

EX TEMPORE JUDGMENT

Introductory

1. The present application is brought by the Joint Official Liquidators ("JOLs") of the Company (PIF) seeking, by Summons dated the 18 December 2023, the following substantive relief. Directions that the JOLs may divide the whole or part of the PIFs' property amongst the members of PIF.
2. The short point of law and practice which the present application raises is the question of the legal source of the JOLs' power to make a distribution *in specie*.
3. The short answer to that question, in my view, is that the JOLs have the power, certainly with the sanction the Court, to make a distribution in whatever form the stakeholders wish. And no doubts about that jurisdiction properly arise.

Background to the application

4. The background to the present application can be stated shortly. It is that there is one ultimate beneficial owner, Mr Wang, and one Management Shareholder, which has been referred to by the acronym FPIL.
5. As it happens, the Articles deal with the question of distributions *in specie*. And, because of this, the JOLs sought the support of the Management Shareholder. It is worth reciting the Article as it might well be in standard form. Article 50.3 provides as follows:

"If the Company shall be wound up (whether the liquidation is voluntary or by under the supervision of the Court) the liquidator may, with the authority of a resolution or resolutions passed by the holders of Management Shares, divide among the Members in specie the whole or any part of the assets of the Company, and whether or not the assets shall consist of property of one kind or shall consist of property of different kinds, and may for such purposes set such value as the liquidator deems fair upon any one or more class or classes of property, and may determine how such division shall be carried out as between the Members or different classes of Members. The liquidator may, with the like authority, vest any part of the assets in trustees upon such trusts for the benefit of Members as the liquidator, with the like authority, shall think fit and the liquidation of the Company

may be closed and the Company dissolved, but so that no Member shall be compelled to accept any shares or other property in respect of which there is a liability.”

6. It was entirely logical in my view that in light of that Article the liquidators initially sought the approval of the Managing Shareholder. And against the contentious history of the present liquidation, it was entirely unsurprising that the cooperation sought was not forthcoming¹.
7. In these circumstances, the JOLs were compelled to apply to Court and to seek to identify an alternative legal basis on which the Court would authorize those distributions *in specie* which the sole economic stakeholder wishes to receive.

Legal findings

8. Reliance was primarily placed on the provisions of the Companies Winding Up Rules Order 18, rule 5 (1), which states as follows:

“Distribution of Assets in Specie (O.18, r.5)

5. *(1) The official liquidator has power to divide the whole or part of the company's property in its existing form, according to its estimated value, amongst the company's creditors or members.”*

9. Placing primary reliance on that paragraph, concern then focused on whether or not there was a restriction on that general power imposed by paragraph 3, which provides as follows:

“(3) In the case of a solvent company, the official liquidator may divide the whole or part of the company's property (after having paid its debts in full) amongst the members in the following manner —

(a) in accordance with any specific provision in this regard contained in the company's articles of association; or

¹ I observed in the course of argument that Forbes Hare (on behalf of FPIL) were in substance correct to assert in correspondence that any approval authority vested in the Management Shareholder should not be exercised on the directions of the JOLs.

- (b) *(b) in the absence of any relevant provision in the company's articles of association, with the authority of an ordinary resolution passed by the company's members; or*
- (c) *in accordance with a direction of the Court made upon the application of any member or the voluntary liquidator.”*

10. In my judgment paragraph 3 of CWR Order 18 is of marginal relevance in the present case. Because there is no question of the economic stakeholders in the Company having their rights determined by the Articles themselves. Although Article 50.3 in the present case provides a mechanism for approving a distribution *in specie*, it does not make substantive provision as to what shares, or interest, the stakeholders in the Company should receive².
11. When one is looking at what powers the liquidators have with the consent of the sole economic stakeholder, the answer would logically have to be that they have the powers conferred on them by the Act and the Rules.
12. In this regard, Mr Mbakwe was happy in the course of argument to agree that the starting point for analysing these powers, which I may say have not been addressed by any known authority, is the Companies Act (2023 Revision) itself. Section 110 (1) provides:

“110. (1) It is the function of an official liquidator —

- (a) to collect, realise and distribute the assets of the company to its creditors and, if there is a surplus, to the persons entitled to it; and*
- (b) to report to the company’s creditors and contributories upon the affairs of the company and in the manner in which it has been wound up.*

(2) The official liquidator may —

- (a) with the sanction of the Court, exercise any of the powers specified in Part I of Schedule 3; and*
- (b) with or without that sanction, exercise any of the general powers specified in Part II of Schedule 3.”*

² In the course of argument I observed that despite the fact Article 50.3 purported to confer approval authority for a distribution *in specie* on the Management Shareholder in an official liquidation, as a matter of law any such authority purportedly vested in the Management Shareholder effectively faded away in the liquidation context.

13. If one looks at Schedule 3 Part I, paragraph 3 provide as follows:

“3. Power to dispose of any property of the company to a person who is or was related to the company.”

14. Additionally relevant are the provisions of Section 115 (1) of the Act:

“115. (1) The Court shall, as to all matters relating to the winding up, have regard to wishes of the creditors or contributories and for that purpose it may direct reports to be prepared by the official liquidator and meetings of creditors or contributories to be summoned.”

15. It follows that where the JOLs have consulted with the sole economic stakeholder who wishes to receive a distribution *in specie* of the assets of the Company, by way of bringing the liquidation to an end, the JOLs with the sanction of the Court clearly are entitled to make such a distribution. I would add that it is important to remember, when construing the Winding Up Rules, that the Rules are made to give effect to the statute, and not the other way around. As I observed in *Re Oriente Group Limited*, FSD 231/2022 (IKJ), Judgment dated 8 December 2022 (unreported) at paragraph 29:

“...subsidiary legislation must be construed in conformity with the primary legislation under which the subsidiary legislation was made and cannot be used as aide for ascertaining the meaning of the primary statute...”

Conclusion

16. For these reasons, I am satisfied that the JOLs are entitled to the Order that they seek in this matter.



**THE HONOURABLE MR JUSTICE IAN RC KAWALEY
JUDGE OF THE GRAND COURT**