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Cause No: FSD 2025-0173 (JAJ)

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

IN THE MATTER OF THE COMPANIES ACT
AND IN THE MATTER OF ENERGY EVOLUTION GP LIMITED

BETWEEN:

PEAKWAVE INVESTMENT MANAGEMENT LIMITED

Petitioner

-and-

(1) ENERGY EVOLUTION GP LIMITED
(2) WEALTH TRAIN GLOBAL LIMITED

Respondents

Appearances:	**Mr Alex Potts KC of counsel instructed by Mr Spencer Vickers and Ms Sean-Anna Thompson of Conyers Dill & Pearman LLP for the Petitioner** **Mr Matthew Bradley KC of counsel instructed by Mr Brett Basdeo and Ms Laure-Astrid Wigglesworth of Walkers (Cayman) LLP for the Second Respondent**
Before:	**The Honourable Justice Jalil Asif KC**
Heard:	**8 August 2025**
Decision and brief reasons:	**12 August 2025**
Judgment:	**5 February 2026**

Practice and procedure—stay of proceedings in favour of foreign arbitration—jurisdiction of court to order interim relief where substantive proceedings stayed

Insolvency—winding up petition stayed in favour of foreign arbitration—whether court retains jurisdiction to appoint provisional liquidator

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JUDGMENT

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A. Introduction

1. There have been several recent decisions of the Grand Court considering the interaction between winding up proceedings and contractual agreements between the parties to arbitrate any disputes that arise between them. The Petitioner's summons in this case raises a different aspect within the same overall topic, namely, can and should the Grand Court appoint provisional liquidators when there is an ongoing arbitration process. Against that, there is a cross-summons filed by the Second Respondent to stay the proceedings in favour of arbitration, including the summons to appoint provisional liquidators. In addition to those points of principle, the Petitioner contends that I should refuse the application for a stay of the winding up petition in this case because there is no merit in the claims being advanced in the arbitration.

2. I heard oral argument on the summonses on 8 August 2025. I gave the parties my decision on 12 August 2025, together with brief reasons for my conclusions. As I now explain more fully in this judgment, I concluded that the Grand Court does have power to appoint provisional liquidators notwithstanding the existence of an arbitration. However, any such appointment should be carefully controlled in its scope so that it does not impermissibly encroach on those aspects of the dispute between the parties that are properly before the arbitral tribunal.

3. I did not accept the Petitioner's argument that the claims in the arbitration have no merit. I concluded that I should stay the winding up petition until the conclusion of the arbitration. However, I considered it necessary and appropriate to appoint provisional liquidators to protect the company's assets from the risk of dissipation pending the outcome of the arbitration, with powers that are limited in scope to avoid trespassing upon those matters that the parties have agreed by their contract should be resolved by arbitration.

B. Essential background

4. The essential underlying facts, based upon the matters asserted in the evidence filed by the parties, and without making any findings of fact at this stage of the proceedings, are as follows.

5. Peakwave Investment Management Limited, the Petitioner, is a special purpose vehicle used by Haitong International Securities Group Ltd for the purpose of the joint venture investment transaction giving rise to the dispute. Haitong's counterparty is Mr Jiao Shuge. Mr Jiao has been involved in multiple investment projects with Haitong since 2017. From 2018 onwards, Haitong provided Mr Jiao and his BVI company, Capital Ally Holdings Limited, with substantial sums by way of debt financing. The investment structure giving rise to these proceedings was established on 20 June 2022 as part of a debt for equity restructuring of the debts owed by Capital Ally to Haitong in the sum of US $140 million.

6. The investment vehicle for the joint venture is a Cayman-registered exempted limited partnership named Energy Evolution Fund LP ("the Fund"). The general partner of the Fund is Energy Evolution GP Limited ("the GP"), which is a Cayman-registered exempted company and is the First Respondent. Mr Jiao, through Wealth Train Global Limited, which is the Second Respondent, owns 51% of the shares in the GP and Haitong owns 49% through Peakwave. Peakwave and Wealth Train concluded a shareholders' agreement in March 2023, including a broad arbitration clause, covering *"any dispute, claim, difference or controversy arising out of, relating to or having any connection with [the shareholders agreement]"*. The arbitration clause provides that any arbitration is to be administered by the HKIAC.

7. Through intermediate entities within the structure, the Fund has interests in certain profitable enterprises in the PRC involved in the electric battery sector. Haitong complains that substantial dividends that have been declared and apparently paid by the operating companies since about May 2023 have not reached the Fund at the head of the structure. Haitong claims that Mr Jiao has caused the intermediate companies in the structure to divert such dividends into other companies associated with Mr Jiao. Haitong has apparently been aware of the diversion of dividends since at

least September 2023 but asserted before me that it did not take action sooner because it was hoping to resolve matters amicably and because of concerns about commercial sensitivity.

8. Haitong says that it has certain protections in its favour included in the shareholders' agreement in respect of the GP and in the limited partnership agreement as regards the Fund. Nevertheless, it says that Peakwave is a minority shareholder in the GP, without board control, and is therefore dependent upon Jiao and his nominees complying with duties of good faith, fair dealing and proper purpose, which Haitong says Mr Jiao has breached.

9. Mr Jiao says that the dividends declared in 2023 and 2024 are referable to profits made by the underlying operating companies in 2022, and therefore pre-date the formation of the Fund and the Fund is not entitled to receive them. Further, he contends that he and Haitong's senior management agreed during 2024 that he should retain the dividend payments to compensate him for substantial sums he is owed by Haitong in respect of other joint venture projects which they have entered into. He says that there was then a change in Haitong's management in about April 2025, following Haitong's acquisition by Guotai Junan Securities, another Chinese financial institution. Mr Jiao says that the new management disavowed the previous oral promises made to him regarding settlement of the sums owed to him and ceased settlement discussions.

C. <u>The current proceedings</u>

C.1 The ex parte on notice hearing on 30 June 2025

10. In the circumstances I have outlined, Peakwave filed a winding up petition against the GP on the just and equitable basis on Friday 20 June 2025, alleging that it has been subject to minority oppression by Wealth Train. On the same date, Peakwave filed a summons seeking to appoint provisional liquidators over the GP. The summons was listed for hearing on Monday 30 June 2025 on an *ex parte* on notice basis. Notwithstanding that the Fund is essentially an asset holding vehicle, with no business of its own, Peakwave sought wide powers in the summons for the provisional liquidators to replace the GP's current management and to take over the operation of the GP and, through it, the Fund, and maintained that position in its skeleton argument dated 20

June 2025. Peakwave acknowledged the existence of the arbitration clause in the shareholders' agreement but argued that it was appropriate for Peakwave to proceed with the petition and summons because the arbitral tribunal could not grant the relief that Peakwave was seeking.

11. Peakwave served the petition and summons on Wealth Train on Thursday 26 June 2025. In response, on Saturday 28 June 2025, Wealth Train prepared a cross-summons and supporting material seeking to stay the winding up proceedings in favour of an arbitration administered by the HKIAC, which it indicated it intended to commence imminently. Wealth Train filed its summons and supporting documents on Monday 30 June 2025.

12. At the hearing of Peakwave's summons on 30 June 2025, Peakwave was represented by Mr Alex Potts KC and Conyers Dill & Pearman LLP. Wealth Train was represented by Mr Nick Dunne of Walkers (Cayman) LLP. Mr Potts adopted a less robust position than was set out in his skeleton argument. He submitted in the course of argument that the provisional liquidators' role would be to secure the GP's documents and assets and that the court would not be determining any issues between the parties by making such an order, so there would be no prejudice to Mr Jiao / Wealth Train resulting from the appointment of provisional liquidators.

13. Mr Dunne complained on Wealth Train's behalf that Mr Jiao had not had enough time to consider the substantive issues raised by Peakwave and had been focussed on preparing Wealth Train's application for a stay of the petition. He said that Peakwave now appeared to accept that the dispute with Wealth Train would have to be determined in an arbitration and complained that winding up proceedings should not be used as a vehicle for interim relief in support of a foreign arbitration. Mr Dunne complained that Peakwave's conduct was bordering on an abuse of process and that there was no good reason why Peakwave could not have applied for an injunction or interim relief from an emergency arbitrator rather than seeking the appointment of provisional liquidators. Mr Dunne foreshadowed Wealth Train's argument that procedurally, the Grand Court should stay the winding up petition as the first application to be considered, so that the Court would not get to the stage of hearing the summons to appoint provisional liquidators. He

submitted that it felt inherently wrong to appoint provisional liquidators and then immediately to stay the winding up proceedings.

14. On the basis of undertakings and cross-undertakings, I adjourned both Peakwave's summons and that of Wealth Train for further hearing during the week of 4 August 2025 and made limited orders for interim relief restraining Mr Jiao from transferring any dividends out of the structure in the meantime.

C.2 The arguments at the hearing on 8 August 2025

15. The two summonses were fixed for further hearing on 8 August 2025. Peakwave was again represented by Mr Alex Potts KC and Conyers Dill & Pearman LLP. Wealth Train was represented by Mr Matthew Bradley KC, instructed by Walkers (Cayman) LLP.

16. Peakwave's case was that that there was a material risk of imminent dissipation and/or diversion of at least US $12.2 million from within the structure in respect of dividends that had recently been declared and a further sum in respect of dividends expected to be declared by the operating companies during the fourth quarter of 2025; dissipation of assets or income of US $45 million that had already occurred in respect of the dividends that had already been diverted out of the structure, and a risk of ongoing misconduct in the management of the GP's and the Fund's affairs. Mr Potts submitted that this justified the appointment of provisional liquidators.

17. Mr Potts argued that the statutory requirements of section 104(2) of the Companies Act were satisfied, and that I should conclude that it is necessary in the circumstances to appoint provisional liquidators, so that they are able to take control of the GP, the Fund and the Fund's subsidiaries in time to ensure that Mr Jiao is not able to divert the further dividends out of the structure. Mr Potts also argued that the provisional liquidators would need powers to investigate the management of the GP and the Fund and seek recognition of their appointment by and possible assistance from foreign courts. Mr Potts argued that Peakwave's delay in making its application since it learned of Mr Jiao's diversion of the dividends was explicable by Haitong's concern over commercial sensitivity and because Haitong genuinely hoped to be able to resolve matters with Mr Jiao.

18. Peakwave offered a cross-undertaking in damages, but Mr Potts argued that Peakwave should not be required to give security to support the cross-undertaking. He submitted that Peakwave or Haitong are good for the money; that it is unlikely that the GP or the Fund would suffer any material damage by the appointment of provisional liquidators; and Wealth Train is already secured to the extent that Peakwave owns 49% of the shares in the GP and is a limited partner in the Fund with an interest deemed to be worth US $140 million.

19. In response to Wealth Train's application to stay the proceedings in favour of arbitration, Mr Potts submitted that: (a) the evidence does not show there is a substantial or genuine and serious dispute as regards the matters alleged in the winding up petition; and (b) if the winding up petition were to be stayed, that would not be a dismissal of the petition, and so the court would retain jurisdiction to grant interim relief in support of the petition, including appointing provisional liquidators.

20. Mr Bradley's first argument for Wealth Train was that all of the persons before the court are parties to the arbitration agreement and that section 4 of the Foreign Arbitral Awards Enforcement Act and the associated case law therefore requires that the winding up petition be stayed. Secondly, Mr Bradley argued that Peakwave's summons to appoint provisional liquidators should also be stayed because: (a) there would be no jurisdictional basis to appoint provisional liquidators if the winding up petition were to be stayed; (b) to appoint provisional liquidators whilst staying the petition would be inconsistent with the statutory scheme, which envisages that the winding up petition should be advanced whilst the provisional liquidators are in post; (c) the court cannot properly complete its consideration of whether to appoint provisional liquidators without impermissibly trespassing on or usurping the function of the arbitral tribunal; and (d) the appointment of provisional liquidators is not a remedy available in support of an arbitration.

21. Mr Bradley contended that there were a variety of other remedies available to Peakwave, short of the appointment of provisional liquidators which it had chosen not to pursue. Accordingly, Peakwave could not satisfy the necessity test in section 104(2) of the Companies Act.

22. Mr Bradley submitted that I should therefore stay the winding up petition and the summons to appoint provisional liquidators or stay the petition and dismiss the summons.

D. Jurisdiction issue

23. The overriding principle is that where parties have agreed to arbitrate their disputes and unless all parties elect not to rely on the arbitration agreement, the court should respect that agreement, should hold the parties to their bargain and should send those matters that are properly arbitrable to the tribunal to decide: see *FamilyMart China Holding Co Ltd v Ting Chuan (Cayman Islands) Holding Corp* [2023] UKPC 33.

24. Where the court is asked to give relief that only the court can grant, such as a winding up order, against the background of an arbitration agreement, the court should defer to the arbitration agreement so far as it can, depending on the issues raised and the relief sought: *FamilyMart* at [75]-[78] and [96].

25. Generally, to achieve this, the court should stay the court proceedings to allow the arbitral tribunal to determine those factual and legal disputes that are properly arbitrable: *FamilyMart* at [64]-[65]. The stay is a *pro tanto* stay only: *FamilyMart* at [60]. It follows that the stay can be lifted as and when appropriate.

26. Having completed its function, the tribunal should remit the matter, or more accurately, the parties should apply to lift the stay on the court proceedings so that the court can consider whether to grant the statutory or other relief, which only it has jurisdiction to grant, on the basis of the factual and legal findings in the tribunal's award.

27. The fact that the winding up petition (or other legal process) is stayed to await the determination of the arbitration does not have the effect that the petition ceases to exist or to be valid and relevant. It is merely in abeyance as a result of the *pro tanto* stay. In substance, the parties have outsourced the determination of the arbitrable factual and legal disputes to the tribunal, but the

court retains overall control of the winding up petition, which is something within the exclusive jurisdiction of the court.

28. The court proceedings and the arbitration are thus complementary – they are component parts of the overall resolution of the parties' dispute. The court should give appropriate respect to the arbitration agreement concluded by the parties, which allocates to the arbitral tribunal those aspects of the dispute that the parties have decided it should have authority to determine, but the court retains its jurisdiction and power to rule upon those aspects of the dispute that are not properly arbitrable, usually because of the nature of the relief sought.

29. Linked with this, the court retains power to grant forms of interim relief that only the court has statutory jurisdiction to grant, notwithstanding that the arbitration is in progress and the powers of the tribunal to order interim relief. One example, referenced in argument by Mr Bradley, is relief in support of an arbitration under s.54 of the Arbitration Act 2012. This clearly involves one of the parties to the arbitration agreement invoking a jurisdiction outside the scope of that agreement whilst the arbitration is ongoing. It demonstrates that the existence of an arbitration does not have the effect that the parties cannot seek relief in other forums, where appropriate.

30. In my judgment, in principle and by analogy, the same approach should apply to other forms of interim relief that only the court can grant, and which the arbitral tribunal does not have jurisdiction or power to grant, such as the appointment of provisional liquidators in support of a winding up petition. Provided that the statutory test in section 104(2) of the Companies Act is satisfied, it is nothing to the point that the winding up petition in respect of which the appointment of the provisional liquidators is sought has been or will imminently be stayed: the winding up petition remains in existence and the stay is likely to be lifted once the tribunal has completed its function. The fact that a winding up petition has been stayed does not and should not have the effect that the appointment of provisional liquidators is rendered nugatory. Provisional liquidators may still have an important role to play in preserving assets and documents and in managing the company and its business while the arbitration proceeds to a conclusion.

31. The court exercising its jurisdiction to give relief pursuant to statute, for example appointing provisional liquidators, is not a trespass on the jurisdiction of the tribunal because the tribunal does not have jurisdiction to grant that relief, and the parties cannot bestow that jurisdiction on the tribunal by their arbitration agreement.

32. My conclusion on the jurisdictional question is therefore that the court does have jurisdiction to appoint provisional liquidators notwithstanding that a winding up petition is stayed or is shortly to be stayed in favour of arbitration.

33. The questions that then arise in this case concern whether and how the court should exercise its discretion in the following respects:

    33.1 should the court stay the petition?

    33.2 should the court stay the summons to appoint provisional liquidators?

    33.3 should the court appoint provisional liquidators?

    33.4 If so, what powers should the court give to the provisional liquidators?

E. <u>Should the court stay the petition?</u>

34. The argument before me on this point was whether there is a "dispute" between the parties, for the purposes of section 4 of the Foreign Arbitral Awards Enforcement Act (1997 Revision). I carefully read through the Notice of Arbitration filed with the HKIAC following the hearing. On the basis of the evidence before me at that time, in particular the shareholders agreement and limited partnership agreement, I concluded that the claims that Mr Jiao and Wealth Train were advancing in the Notice of Arbitration appeared to be weak. However, I could not properly conclude that they have no merit whatsoever or that there was no "dispute" between them and the Haitong parties, as Mr Potts submitted to me. I therefore concluded that I should stay the petition pursuant to section 4 of the Foreign Arbitral Awards Enforcement Act to enable the arbitral tribunal to determine the facts and merits of the claims, along with the counterclaims that I anticipated that Peakwave would advance in response.

F. Should the court stay the summons to appoint provisional liquidators?

35. Consistently with the analysis on jurisdiction above, my conclusion is that the court should not stay a summons to appoint provisional liquidators simply because there is an ongoing arbitration or because the underlying winding up petition has been stayed. The court is exercising a parallel and complementary jurisdiction to that of the arbitral tribunal, which does not have power to appoint provisional liquidators. It is appropriate for the court to consider whether the statutory grounds to appoint provisional liquidators are made out, and in particular whether the appointment is necessary, but being mindful not to overstep the proper boundary between matters for the court and matters that the parties have decided are for decision by the arbitral tribunal.

36. I agree with Mr Bradley's submission that the court should be careful not to overstep its role and should respect the dispute resolution mechanism selected by the parties and the competence of the arbitral tribunal. However, the potential remedies available by recourse to the tribunal or to the court supervising the arbitration that Mr Bradley argued Peakwave should have pursued are alternatives to and not replacements for a statutory remedy. An applicant is entitled to pursue the statutory remedies that Parliament has given to it and it has not contracted out of those remedies simply by concluding an arbitration agreement.

37. The requirements in s.104(2) of the Companies Act are:

    37.1 there must be a prima facie case for making a winding up order

    37.2 the appointment of provisional liquidators must be necessary:

        (a) to prevent the dissipation or misuse of the company's assets;

        (b) to prevent the oppression of minority shareholders; or

        (c) to prevent mismanagement or misconduct on the part of the company's directors.

38. The requirement that the applicant must show a *prima facie* case for making a winding up order does not mean that the court is pre-determining that the applicant's complaints are valid, as submitted by Mr Bradley on behalf of Wealth Train. It does not follow from a finding that there is a

prima facie case that the petitioner will necessarily succeed at the hearing of the petition. If that were the case, there would be no need for a trial. At the interim stage, the court must simply be satisfied that there is an apparently good case that the petitioner will obtain a winding up order in due course. The court's assessment of the case therefore does not require the court to make a determination of any issues that are more properly for decision by the arbitral tribunal and is therefore not prohibited as a trespass on the competence of the tribunal.

39. For these reasons, I concluded that the court is not required to stay its consideration of a summons seeking the appointment of provisional liquidators simply because it has stayed the associated winding up petition in favour of arbitration.

G. Should the court appoint provisional liquidators in this case?

40. In this case, based on the evidence I saw and the arguments presented, I was satisfied that there is a *prima facie* case that a winding up order will be made. The complaints made by Peakwave appeared to be *bona fide* and were supported by the evidence put before the court. I considered it is at least reasonably arguable that Peakwave's delays in pursuing relief are excusable for the reasons that Mr Potts put forward, and do not amount to a waiver.

41. Mr Jiao and Wealth Train disagreed that the Haitong entities' complaints are valid, but they did not seek to argue that the complaints do not have any substance at all. Instead, Mr Jiao's position was closer to that of confession and avoidance in that he alleged that he and Wealth Train were entitled to divert the payments of dividends due to wider attempts between the ultimate parties in interest to resolve broader disputes between them, and that he was therefore entitled to ignore the strict terms of the appliable contracts in order to do so.

42. The contemporaneous documentary evidence concerning the declaration of dividends appears directly to contradict Mr Jiao's explanations and justifications for his actions. I concluded that there does appear to be a strong evidential case to support Peakwave's allegations that Mr Jiao orchestrated the dissipation or misuse of the GP's or the Fund's assets in the sense that they were

not dealt with in accordance with the agreements between the parties, and that there has been mismanagement or misconduct on the part of the GP's directors in that Mr Jiao and Wealth Train have acted directly contrary to the terms of those agreements. In addition, I considered there to be some limited evidence of oppression of Peakwave's interests.

43. Further, I considered that any case based on misrepresentation, quasi-partnerships, estoppel or waiver that Mr Jiao or Wealth Train intended to raise, as adverted to in the Notice of Arbitration, appears against the background of the contemporaneous contractual documents that I was shown by Mr Potts to be weak.

44. I therefore concluded that it was necessary to appoint provisional liquidators to prevent the continuation of the dissipation or misuse of the GP's and the Fund's assets and mismanagement or misconduct on the part of the GP's directors.

45. However, I considered that the provisional liquidators' powers should be strictly limited to what is absolutely necessary and should avoid encroachment on the competence of the tribunal. I invited the parties to consider the detailed terms of the appointment order with that principle in mind.

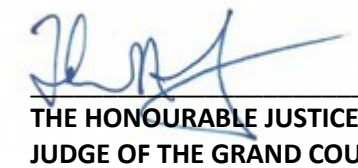
46. I indicated that my view was that the order should not require or permit the provisional liquidators to embark upon any investigation. I did not consider that was necessary, and that it was for the parties before the arbitral tribunal to pursue discovery and to argue out the facts, and for the tribunal to decide them, rather than for the provisional liquidators to try to do so. In addition, I was concerned that empowering the provisional liquidators to embark on an investigatory function would lead to duplication of effort and a waste of resources.

47. Secondly, I was concerned that a number of the provisions in the draft order prepared on behalf of Peakwave purported to enable the provisional liquidators to take direct action in respect of subsidiary companies of the Fund. I indicated to the parties that I did not consider that the court has power to make such orders.

48. Thirdly, I informed the parties that I was not satisfied that the evidence before the court supported the grant of certain of the powers sought, having regard to *Re UCF Fund* [2011] 1 CILR 305. I invited Peakwave's legal team to consider carefully what powers were properly supported by the evidence before the court.

49. With further input from the court, an order appointing provisional liquidators was finalised on 1 September 2025.

Dated 5 February 2026



THE HONOURABLE JUSTICE JALIL ASIF KC
JUDGE OF THE GRAND COURT