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MAN ISLANDS COURT OF APPEAL
FROM THE GRAND COURT OF THE CAYMAN ISLANDS
SERVICES DIVISION

CICA NO. 0004 of 2025
CICA NO. 0015 of 2025
(formerly FSD 0375 of 2024 (DDJ))

IN THE MATTER OF THE COMPANIES ACT (AS REVISED)
AND IN THE MATTER OF PETROSAUDI INTERNATIONAL (IN OFFICIAL LIQUIDATION)

BETWEEN:

MR TAREK OBAID

Appellant

-and-

MS ANGELA BARKHOUSE IN HER CAPACITY AS OFFICIAL LIQUIDATOR OF BRIDGE GLOBAL ABSOLUTE RETURN FUND SPC (IN OFFICIAL LIQUIDATION)

Respondent

Before:	The Hon Sir Richard Field JA The Hon Sir Michael Birt JA The Hon Clare Montgomery KC JA
Representation:	Tom Lowe KC with Peter Sherwood and Tom Stuart of Carey Olsen Cayman Ltd for the Appellant Lexa Hilliard KC, instructed by Mourant Ozannes (Cayman) LLP for the Respondent
Heard:	2 & 3 March 2026
Draft Judgment circulated:	4 July 2026
Judgment delivered:	24 July 2026

JUDGMENT

Sir Richard Field, JA

Introduction

1. This is an appeal against: (i) the order dated 6 May 2025 made *ex parte* by Justice Kawaley winding up PetroSaudi International ("the Company" or "PSI"), a Cayman Islands exempted

limited liability company, on the Petition presented on behalf of Bridge Global Absolute Return Fund SPC ("Bridge Global" and "the Petitioner) by Ms Angela Barkhouse ("Ms Barkhouse"), the Official Liquidator of Bridge Global, a Cayman Islands exempted limited liability segregated portfolio company; and (ii) the order dated 16 October 2025 made by Doyle J refusing to set aside the aforesaid order of Justice Kawaley dated 6 May 2025.

2. The Appellant is Mr Tarek E A Obaid ("Mr Obaid") who co-founded in 2005 the PetroSaudi Group ("the PS Group") belonging to PetroSaudi International Ltd ("PSIL") an oil exploration and production company based in Saudi Arabia beneficially owned by Mr Obaid who is its sole director.

3. PSIL sits at the head of the PS Group. It is the 100% parent of PetroSaudi Holdings (Cayman) Limited ("PSHCL"), which in turn is the 100% parent of PSI. Beneath PSI there are a number of 100% owned subsidiary companies and sub-subsidiary companies including PetroSaudi Oil Services Limited ("PSOSL"), PSI Group Services Limited ("PGSL") and PSOS Finance Limited ("PSOS Finance").

4. In addition to seeking the winding up of the Company, the Petition sought the appointment of Ms Barkhouse and Ms Toni Shukla ("Ms Shukla") as the Joint Official Liquidators ("the JOLs") of the Company and an order that the Company be restored to the Register of Companies since it had been struck off that Register on 30 April 2024 because its registered office provider, Campbells Corporate Services Limited, had resigned due to non-payment of fees.

Bridge Global's claims against PSI as a contingent creditor

5. The Petition pleads that Bridge Global is a contingent creditor of PSI on the basis that it has contingent claims against PSI exceeding US$1,830,000,000 for breach of contract, breach of trust, dishonest assistance, knowing receipt, unlawful means conspiracy and unjust enrichment arising out of a series of allegedly dishonest transactions involving and resulting from the establishment of a joint venture company formerly known as 1MDB-PetroSaudi Limited ("the JV Co") between the 1 Malaysia Development Berhad ("1MDB") and PSHCL, pursuant to a Joint Venture Agreement ("the JVA") dated 28 September 2009 signed by Mr Obaid on behalf of PSIL and the JV Co.

6. 1MDB is a sovereign wealth fund created by the Malaysian Government which has been the victim of a number of notorious frauds perpetrated, inter alios, by the then Prime Minister of Malaysia ("Najib Razak"), who was sentenced in Malaysia to twelve years' imprisonment (later reduced to six years by the Malaysia Pardons Board) for corruption, money laundering and abuse of power and Mr Jho Low ("Mr Low"), a Malaysian financier who so far has escaped justice and is reported in the media to be hiding in China or Hong Kong or Myanmar. It is an important part of Bridge Global's case that Mr Obaid was involved in a number of these frauds by arranging for large sums received from 1MBD under or in connection with the JVA to be re-routed to Mr Low and on occasion to himself. On 28 August 2024, Mr Obaid was convicted by the Swiss Federal Court of embezzling US$1.8 billion from 1MDB and sentenced to seven years' imprisonment and ordered to pay civil damages of US$1.748 billion. He is presently appealing against the conviction which remains suspended until the appeal has been decided.

7. It is alleged in the Petition that in January 2010, Mr Obaid, using money paid to the JV Co by 1MDB pursuant to the JVA caused PSOSL to arrange for a drilling contract with Petróleos de Venezuela, SA ("PDVSA") pursuant to which a drilling ship named *The Neptune Discoverer* was purchased by PSOSL and used to drill for oil. PetroSaudi Oil Services (Venezuela) Ltd ("PSOSVL"), a Barbados company which is a sub-subsidiary of PSI, was used to operate *The Neptune Discoverer* and exercised the contractual right to collect the contract receipts that began to be received from PDVSA in early August 2010. At that time PSOSL spent a further US$ 13,000,000 obtained from 1MDB under the JVA to part-purchase an additional drilling ship called *The Saturn* for use in performing the drilling contract with PDVSA. When PDVSA fell into very substantial arrears under the contract there was a UNCITRAL arbitration that led to an award in favour of PSOSVL in the sum of approximately US$ 380 million, plus interest and legal costs, for which an escrow account was established by Clyde & Co to provide partial security for PSOSVL's claims. Following the issue of an *in rem* arrest warrant obtained by the US Department of Justice ("the DOJ") in Forfeiture Proceedings in the US District Court, Central District of California, targeting the escrow funds, the High Court of England and Wales on 13 April 2022 froze the funds on an application by the UK National Crime Agency in aid of the aforesaid Forfeiture Proceedings which remains the situation today.

8. The Forfeiture Proceedings were started in 2020. The DOJ's first Complaint was dismissed on the application of PSOSVL on the basis that the arbitration award was insufficiently connected to the allegation that US$ 700 million owned by 1MDB had been wrongfully

routed to PSIL and thence to Mr Low. However, on 14 October 2021, the US District Court declined to dismiss the DOJ's Third Amended Complaint on the application of PSOSVL holding that this pleading adequately traced 1MDB funds through the purchase of *The Neptune Discoverer* and *The Saturn* to the arbitration award.

9. No doubt it was the existence of the potential asset in favour of PSOSVL constituted by the arbitration award and the US District Court's refusal to strike out the Third Amended Complaint that triggered the presentation of the Petition to wind up the Company.

10. The allegations pleaded by the DOJ in the Third Amended Complaint are extensively relied on in the Petition and the second affidavit of Ms Barkhouse in support thereof. Briefly stated, it is averred therein that Bridge Global suffered losses of around US$1,830,000,000 principally as the result of : (i) the misuse of the investment made by 1MDB and PSHCL in the JV Co under which 1MDB was to contribute US$ 1,000,000,000 in exchange for 40% of the shares in the JV Co and PSIL was to contribute certain energy assets and retain 60% of the shares in the JV Co; and (ii) the subsequent restructurings made by 1MDB and affiliated companies in respect of the 40% shareholding in the JV Co. Bridge Global also avers that it was falsely represented in the JVA that PSHCL had lent the JV Co US$700,000,000 and the repayment of this sum by 1MDB was paid into an account which in fact was operated by Mr Low called the Good Star Account. This was the US$700,000,000 that had been pleaded in the DOJ's unsuccessful First Complaint.

11. In March 2010, 1MDB exited the JV Co by selling its 40% equity interest back to the JV Co for US$1,200,000,000 which was paid for using Islamic Debt Notes as part of a Murabaha financing agreement between the JV Co and 1MDB. In addition,1MDB made available a loan facility to the JV Co of up to US$ 1,500,000,000 which it is alleged was used by the JV Co to pay: (i) US$300,000,000 to an account in Mr Obaid's name; (ii) US$100,000,000 to PSI to fund "various costs" in Venezuela; and (iii) US$100,000,000 to the PSHCL account. In February 2011, the JV Co drew down a further US$330,000,000 on the loan facility ostensibly for oil and gas exploration in Saudi Arabia but between 20 May 2011 and 25 October 2011 this money was also transferred to the Good Star Account.

12. In June 2012, 1MDB exchanged the Islamic Debt Notes for a 49% shareholding in PSOSL and a call option to acquire the remaining 51% shareholding in that company. Thereafter, 1MDB International Holdings Ltd ("1MIHL"), a BVI subsidiary of 1MDB, acquired a 49% equity stake in PSOSL together with a call option over the remaining PSOSL shares in

exchange for the redemption of the Islamic Debt Notes. The US$300,000,000 remaining after the alleged misuse of US$700,000,000 that was part of the US$1,000,000,000 which 1MDB had contributed under the JVA in exchange for 40% of the shares in the JV Co, was paid into PSI's account. Later, US$185,000,000 of the US$300,000,000 was paid into the PSOSL account. It was this money that PSOSL used to fund the drilling project with PDVSA.

13. Later in 2012, 1MIHL transferred its 49% shareholding in PSOSL and the call option to Bridge Partners International Investment Limited ("BPIIL") in exchange for six promissory notes for an aggregate principal amount of US$ 2,318,000,000. These notes were used by Brazen Sky Ltd (Brazen Sky"), a wholly owned subsidiary of 1MDB, to subscribe for 2,318,000,000 shares in the Bridge Global Segregated Portfolios at an aggregate subscription price of US$ 2,318,000,000. On 12 September 2012, Bridge Global acquired 10,000 shares in BPIIL.

14. On 8 April 2014, a Deed of Termination was entered into by PSI, 1MIHL and 1MDB. One of the many clauses of this document provided for the sale by 1MIHL of its PSOSL shares to PSI for US$1.00. It is contended by the Petitioner that the effect of this clause was that PSOSL ceased to be owned by 1MDB and BPIIL, in consequence of which no interest in PSOSL was held, directly or indirectly, in the Bridge Global Segregated Portfolios or by Brazen Sky.

15. It was Ms Hilliard's submission at the hearing that at the heart of Bridge Global's case against PSI was a claim for damages for the loss of the value of the investment in Bridge Global Segregated Portfolios caused by the sale by 1MIHL and 1MDB of their valuable 49% interest in PSOSL under the Deed of Termination and the wrongful use of much of the money contributed by 1MDB under the JVA, including that used to finance the Drilling Contract with PDVSA, that had led to the US$ 380 million odd in the escrow account now held by the UK National Crime Agency by order of England and Wales High Court.

The steps taken on behalf of Bridge Global leading to the ex parte winding up order made by Kawaley J on 6 May 2025

16. Notwithstanding that: (i) the PSOSVL award remained frozen by order of the England and Wales High Court; (ii) PSOSVL was actively defending the US Forfeiture Proceedings; and (iii) PSI had no material external creditors, at the same time the Petition was presented on 16

December 2024, Ms Barkhouse on behalf of Bridge Global took steps to obtain by *ex parte* summonses the following orders that were granted by Kawaley J:

> (1) That the proceedings be anonymized in the Court's Cause List and in any record thereof and until the conclusion of the hearing of the Petition or further order shall not be entered on the Register of Writs and Other Originating Processes;
>
> (2) That until further order, pursuant to O. 24, r.6 of the Companies Winding up Rules ("CWR") and the inherent jurisdiction of the court, all information and documentation filed in relation to the Petition be sealed and kept confidential and not be available for inspection except with the leave of the court;
>
> (3) That any person served with the Petition and other documents filed in the proceedings shall not disclose the existence of any orders or documents filed and the fact of the proceedings to any person other than to their own legal advisers;
>
> (4) That Ms Barkhouse and Ms Shukla be appointed Joint Provisional Liquidators ("JPLs") of the Company (PSI) with the extensive powers customarily conferred on JPLs;
>
> (5) That the powers of PSI's Board of Directors be suspended save in so far as the JPL's might restore such powers;
>
> (6) That the requirement on the Petitioner to provide the Company with at least four clear days' notice of an application to appoint provisional liquidators shall be dispensed with;
>
> (7) That the requirement on the Petitioner to serve the Petition, together with the verifying and supporting affidavits and notice of hearing on the Company and file an affidavit of service of the presentation of the Petition be dispensed with;
>
> (8) That the Petitioner shall not be required to advertise the Petition pursuant to O. 3, r. 6 of the CWR;
>
> (9) That the winding up petition be determined administratively on the papers without the need for an oral hearing.

17. CWR O.3, r.5 requires a petitioner's attorney prior to presenting a creditor's winding up petition to apply in writing to the Registrar of the FSD to have the proceeding assigned to a FSD Judge and to fix a hearing date. In accordance with this provision, the attorneys then acting for the Petitioner, Baker and Partners Cayman Ltd, wrote to the FSD Registrar by letter dated 16 December 2024 requesting the Chief Justice to assign the Petition to an FSD judge. However, the letter did not stop there. It enclosed the aforesaid summonses, the related draft orders and the Petition and the documents relating thereto and went on to request that the relief sought should be granted in five sequential stages: (i) the assignment of the proceedings to a FSD judge; (ii) the granting of the sealing and gagging orders sought; (iii) the granting of the order for the restoration of PSI to the Register of Companies; (iv) the order for the appointment of JPLs and the issuing of directions in respect of the Petition; and finally (v) the making of the winding up order "either administratively on 'the papers' or at an in person hearing".

18. No skeleton arguments were included in the documents that were enclosed in the letter.

19. In the event, the order appointing the JPLs was never served and because of the gagging order made by Kawaley J on 24 December 2024 no-one other than the Petitioner and Ms Barkhouse's team knew of the appointment of the JPLs and their assumption of control of PSI's subsidiaries until 25 April 2025 when Mr Obaid and his legal adviser Mr Kerman were provided with a letter that the JPLs had sent to Campbells (whose address had been PSI's registered office) that gave notice of the JPLs' appointment.

Events following Mr Obaid becoming aware of the Winding Up Order

20. On 20 May 2025, Mr Obaid filed a Notice of Appeal in respect of the winding up order made on the papers by Kawaley J shortly after it was made known to him. At the time of filing, neither the Petition nor the materials filed in support were available to him. These materials were provided by the JOLs in two tranches several weeks later, on 6 and 10 June 2025 respectively.

21. Following receipt of these materials, on 11 June 2025 Mr Obaid filed summonses in the Grand Court which sought to set aside the winding up order and to have the Petition relisted for an advertised *inter partes* hearing with directions for evidence.

22. It was argued on behalf of PSI that *either* the PSI winding up order was liable to be set aside on the basis that the Grand Court had no jurisdiction to make a winding up order on an *ex parte* basis without notice to the Company (the "Jurisdictional Argument") or, alternatively, that the Grand Court's jurisdiction to make an *ex parte* winding up order was necessarily subject to the Petition being relisted for an *inter partes* return date.

23. Those acting for PSI wrote to the JOLs on 1 July 2025 to propose that, on the basis that some form of return date for the Petition was inevitable, the parties should agree to the Pbeing relisted, and to agree a timetable for the exchange of evidence. This proposal was rejected by the JOLs and no directions for the filing of evidence were given. In the result, when PSI's two summonses were listed for a hearing in chambers on 16 October 2025 challenging the winding up order and the appointment of JPLs, the proposed hearing was not listed as a hearing of the Petition in open court and the evidence PSI would have filed in support of its summonses was not served.

24. At the outset on 16 October 2025, Doyle J indicated that he would hear the parties and rule on the “Jurisdictional Argument” as a preliminary matter, but if he determined that the Winding Up Order was not void for lack of jurisdiction, he would prefer to go immediately on to proceed on the basis of an *inter partes* return date hearing of the Pat the same hearing.

25. Counsel for the Company, Mr Sherwood of Carey Olsen, initially objected to this course of action, noting that PSI had suggested this to the JOLs, but they had rejected the proposal and so the date had not been set down as a hearing of the Petition and the Company had not filed substantive evidence. However, in view of the strongly expressed preference of Doyle J, and upon Doyle J confirming that he would not rule on the disputed debt at the hearing, Counsel for PSI reluctantly consented to the judge’s proposal.

26. Doyle J dismissed the Company’s submission that the court had no power to make an *ex parte* winding up order. In § [21] of his judgment dated 23 October 2025, he accepted the submission advanced by Mr. Quest KC for the JOLs that the court had had jurisdiction to make the winding up order in light of the wording of GCR O. 9, r. 4(3): “*Unless the court otherwise directs*, a petition which is required to be served on any person must be served on the person not less than 14 days before the day fixed for the hearing of the petition”. [Emphasis supplied] Doyle J also observed that the court had a very wide discretion when dealing with a winding up petition as was clear (so he said) from section 95 (1) (d) of the

Companies Act (2023 Revision) ("the Act") that provides that upon hearing the winding up petition, the court may "[make] any other order that it thinks fit".

27. In §§ [25] – [26] of his judgment, Doyle J referred to: (i) *Lancefield v Lancefield* [2002] BPIR 1108 where Neuburger J (as he then was) held that the English court had power "in an appropriate case, to order of its own motion the winding up of a company without a petition before it"; and (ii) *Re Graico Property Co Ltd (in admin)* [2016] EWHC 2827 (Ch) which followed the approach taken in *Lancefield*.

28. In § [27], Doyle J stated that, in his judgment, even though Kawaley J had jurisdiction to make the order he did, fairness and justice required that Mr Obaid be given an opportunity at an inter partes hearing to challenge the making of the *ex parte* winding up order, but that Mr Obaid had now had his day in open court.

29. In §§ [34] – [37] Doyle J rejected PSI's reliance on the approach taken by this Court in *GFN Corporation* [2009] CILR 650 ("*GFN")* that the normal rule was that a petitioning creditor must demonstrate on the balance of probabilities that he was a creditor and where the debt relied on by the petitioning creditor is bona fide contested on substantial grounds, the petition should be dismissed or stayed. He did so on the ground that, subsequent to the *GFN* decision, the Act had been amended to allow "any creditor or creditors (including any contingent or prospective creditor or creditors)" to petition for a winding up order. Doyle J also found on the evidence before him that the Petitioner, plainly on the balance of probabilities, had claims that were sufficient to establish standing to petition for a winding up order as a contingent creditor in the light of the decisions in *Re Atom Holdings* [2023] (2) CILR 106 ("*Atom Holdings*") and *Aubit International* (FSD 217 of 2023, unreported 17 October 2023) ("*Aubit International")*.

30. In § [38], Doyle J held that there was need for an investigation that justified winding up the Company on the just and equitable ground. As a result, he held that he did not need to make any finding as to insolvency.

31. Responding to the submission advanced on behalf of PSI that the JOL's did not meet the independence requirement under Regulation 6(1) of the Insolvency Practitioners' Regulations (2023 Consolidation), Doyle J in § [44] of his judgment accepted PSI's submissions that the JOLs would be in a position of conflict as regards any adjudication that they would have to make (as liquidators of PSI) on any proof of debt they lodge in the

liquidation of PSI on behalf of Bridge Global. However, he did not accept PSI's submission that the taking on by the JOLs of the conduct of the US Forfeiture Proceedings on behalf of PSOSVL would involve a serious conflict of interest. In his view, the conflict in respect of any proof of debt by Bridge Global was manageable as "conflict liquidators" could be appointed to adjudicate Bridge Global's proof if necessary. This conflict alone was not sufficiently material to disqualify the JOLs.

32. For the reasons he gave in his judgment, Doyle J dismissed both PSI's summonses that were before the court.

The Appellant's Grounds of Appeal.

GROUND 1 – LACK OF JURISDICTION TO WIND UP THE COMPANY WITHOUT NOTICE OR A HEARING

33. In the light of the procedural protections mandated by the Act, CWR and GCR requiring service of the Petition on the Company and notice of the date of the hearing thereof, the Court lacked jurisdiction to make an *ex parte* winding up order and accordingly the winding up order granted by Kawaley J was a nullity and therefore incapable of being approved by Doyle J.

GROUND 2 – EVEN IF JURISDICTION EXISTED, IT WAS NOT APPROPRIATE TO EXERCISE IT ON THE FACTS.

GROUND 3 – THE COURT DID NOT HAVE JURISDICTION TO WIND UP THE COMPANY BECAUSE THE PETITIONER LACKED STANDING AS A CONTINGENT CREDITOR AS REQUIRED BY SECTION 94 (1) (b).

GROUND 4 – THE FAILURE TO APPLY THE PROPER TEST IN RESPECT OF THE NEED FOR AN INVESTIGATION.

34. The Court erred in finding that there was a need for an investigation which constituted a separate ground for making the winding up order.

GROUND 5 – THE JOLS LACKED THE NECESSARY INDEPENDENCE.

35. The Judge erred in holding that the JOLs were independent.

The case advanced by the Appellant

GROUND 1 – LACK OF JURISDICTION TO WIND UP THE COMPANY WITHOUT NOTICE AND WITHOUT A HEARING

36. A compulsory winding-up order is among the most consequential orders a court can make against a company. Accordingly, before such relief be granted, fairness requires that the petition be served on the company and publicly advertised so that the company, creditors and contributories have a real opportunity to be heard. It follows that the Court had no authority to make the immediate final winding up order *ex parte* that Kawaley J did on 6 May 2025.

37. If there be concern about preserving assets or preventing interference with records pending the hearing of a winding up petition, the proper course is to apply for interim protective measures, most obviously, the appointment of provisional liquidators. In this case, to dispense with the requirement of service of (i) the Petition (ii) the JPL order and (iii) the winding up order, was perverse, unprecedented and a clear denial of justice.

38. The Act, the CWR and the GCR contain a self-contained scheme for the filing and service of creditor petitions as follows.

39. First, in contrast to the provisions for an application to appoint restructuring officers (section 91C(1) of the Act) or provisional liquidators (CWR O.4, r.1(2)), there is no express provision in the Act for an application for a winding up order to be made *ex parte*.

40. Second, CWR O.3 r.5(3) contains a mandatory service requirement for creditor petitions.

> *"[The] petition, together with the verifying and supporting affidavits <u>and notice of hearing</u> ... <u>shall be served</u> upon the company by delivering them to the company's registered office immediately after the petition has been presented."*

Thus, in contrast to the equivalent provision for the advertisement of the petition (CWR O.3, r.6(1)), the Court has no discretion to dispense with service of the petition or notice of the hearing.

41. Third, where (as in this case) the application for winding up is combined with an application for restoration to the Register, there is a further mandatory service requirement in GCR O.102, r.18 with no discretion for dispensation, which reads in relevant part:

18. (1) An application by a creditor under Section 159 of the Law may be combined with an application under Section 94 of the Law and may be made by petition… in which case O.3 of the Companies Winding Up Rules (as amended and revised) shall apply.

(2) A petition under this rule shall be served on —

(a) the last known registered office of the company; and

(b) the Registrar of Companies.

(3) Unless the Court otherwise directs, a petition under this rule shall be advertised in accordance with O.3, r.6 of the Companies Winding Up Rules (as amended and revised).

(4)…

(5) …

42. Fourth, CWR O.24 r.1(2) incorporates the GCR in general terms stating that "*the general provisions of GCR O.9 shall apply to every petition presented under these Rules*." However, CWR O.1 r.4(1) specifies precisely how service of a winding up petition is to be effected:

> "*Every petition… required to be served by these Rules shall be served in accordance with GCR O.10 and O.65, unless some other method of service is expressly required or permitted by the CWR*."

In other words, the mandatory service provisions of the CWR as regards winding up petitions take precedence over the general service provisions of the GCR.

43. Practice materials reinforce these safeguards, which the Court is expected to honour unless a rule expressly allows deviation:

(i) The FSD User Guide (at section C4.3) expressly states that a creditor petition invokes class rights, and that notice and an open-court hearing are integral to allow creditor and contributory participation.

(ii) Practice Direction No. 4 of 2017 requires (at 1(b)) a hearing date to be endorsed or separately noticed before the filing/entry of a Creditor's Petition on the Register.

44. The Bill of Rights guarantees a fair and public hearing in the determination of legal rights (Constitution, s.7) and the sequence prescribed by the CWR is the means by which that guarantee is given practical effect in winding-up proceedings. A final order made without notice and without a hearing cuts across those protections and a party's basic rights of audience.

Misapplication by the Court below

45. Doyle J erred for the following reasons in treating GCR O.9, r. 4(3) as providing latitude for a creditor to dispense with service altogether:

(i) CWR O.24 r.1(2) incorporates GCR O.9 only where consistent with the CWR, and CWR O.3 r.5(3) imposes a mandatory service requirement that GCR O.9 cannot impliedly override.

(ii) Properly construed, GCR O.9, r.4(3) :"*Unless the Court otherwise directs, a petition which is required to be served on any person must be served on the person not less than 14 days before the day fixed for the hearing of the petition"*, does not provide the Court with discretion to dispense with service. The natural and plain reading of this provision, particularly when construed in the context of the scheme for winding up discussed above, is that it provides the Court with a discretion over *when* service is to occur, not over *whether* service must occur.

(iii) The Judge's reference to Neuberger J's observation in *Lancefield v Lancefield* (op.cit.) about "*an order of its own motion winding up a company without a petition before it*" ignores the fact that that was not a case where the Company had no notice. The Company was in fact before the Court and all the relevant parties were agreed that there should be a winding up order. As later emphasised in *Rendle v Panelform Ltd* [2020] EWHC 2810, the *Lancefield* jurisdiction arises only where the absence of opposition to a winding up order is so clear, and the circumstances so exceptional, that bypassing the petition process does not cause prejudice.

(iv) *Re Graico Property Co Ltd* (op.cit.) referred to by the Judge, concerned administrators applying to end an administration, not a creditor's petition. There, Norris J relied on the *Lancefield* jurisdiction to make a winding-up order without a petition only because the company was already before the Court, all creditors had been notified, no creditor objected, and the relief was the only practical way of concluding the administration. It has nothing to do with dispensing with service of a creditor's petition on a company that might oppose it.

(v) An order should never be made on a petition which the company has any prospect of defending (see Rendle (op.cit.) at [21] (*"...in contrast to Lancefield, it cannot be said in this case that if a petition were presented there is no possibility of anyone objecting to the Company being wound up.")*. To do so is an obvious denial of justice.

GROUND 2 - EVEN IF JURISDICTION EXISTED, IT WAS NOT APPROPRIATE TO EXERCISE IT ON THE FACTS

46. Even if (contrary to the statutory scheme) the Court had jurisdiction to dispense with service and proceed without notice to the Company, it was not remotely appropriate to do so in this case. This was not a director-initiated petition; the Company was not before the Court; the merits were contested; there was no unanimity among those entitled to be heard; urgent systemic risk was not identified; and Provisional Liquidators had already been appointed (although their appointment was similarly flawed). Accordingly, there was no rational basis for depriving the company of the procedural protections mandated by the CWR.

GROUND 3: THE COURT DID NOT HAVE JURISDICTION TO WIND UP THE COMPANY BECAUSE THE PETITITONER LACKED STANDING AS A CONTINGENT CREDITOR AS REQUIRED BY SECTION 94(1) (b) OF THE ACT.

The errors committed by the Judge in holding that that Bridge Global was a contingent creditor within section 94 (b) of the Act

47. The Judge ignored:

(i) The long-established practice of refusing to grant a winding up petition where the debt relied on by the petitioner is bona fide disputed on substantial grounds (see eg *Mann v Goldstein* [1968] 1 WLR 1091 at p 1094; *Stonegate Securities Ltd v Gregory* [1980] 1 Ch 576 at p. 580; *Re Lympne Investments Ltd* [1972] 1 WLR 523; *Re Bayoil* [1999] 1 WLR 147; *GFN* where Vos JA observed at §[94] (a) & (b) that the normal rule was that the court will stay or dismiss a petition where there is a substantial dispute as to the existence of the debt but in an appropriate case the winding up court could determine the question of a disputed debt, for instance where the court doubts the debt is actually disputed or where, if the creditor established his debt, he would otherwise lose his remedy altogether.

(ii) The authorities and text book writers that have accepted that a liability is contingent only if it arises from an existing obligation that has bound the company, even if the liability to make payment will only arise on a future event (see eg at 558 per Pennycuick J in *Re William Hockley Ltd* [1962] 1 WLR 555 ("*Hockley")*; *Re Dunderland Iron Ore Company Ltd* [1909] 1 Ch 446; *Green v SCL Group* [2019] 2 BCLC 664; *Customs and Excise Commissioners v Broomco (1984) Ltd (formerly Anchor Foods Ltd),* [1999] 1 WLR 1139; *Community Development Pty Ltd v Engwirda Construction Co* [1969] 120 CLR 455 at 459 (High Court of Australia); *Treadtel International Pty v Cocco* [2016] NSWCA 360 (NSW Court of Appeal); *Re Shinsun* [2023] (1) CILR 473 at §[67] per Doyle J; *Re Leading Hotels Group Limited* [2023] HKCFI 770 at §[95], §[97] and §[107]; Derek French, *Applications to Wind Up Companies* (4th Ed), at [7.319]; McPherson & Keay *The Law of Company Liquidations* (5th Ed) at 12-020 to 12-022 and 12-027.

48. The reasoning of Kawaley J in *Atom Holdings,* adopted by Doyle J in §§ [34] – [37] of his judgment, was deeply flawed. It elides two different issues: (i) standing for section 94 determines when a company should be subjected to liquidation; (ii) the threshold in Section 139 for proving determines who can participate in distributions.

<u>The Petitioner's Claim Was Wholly Disputed</u>

49. There is no serious question that the alleged claims on which the Petition was founded are *bona fide* disputed on substantial grounds. The debt is premised entirely on facts alleged in the DoJ's Third Amended Complaint in the US Forfeiture Proceedings and the allegations in the Third Amended Complaint are being vigorously contested by PSOSVL in the US Forfeiture Proceedings.

50. Further, the claims alleged in the are plainly not of the nature suitable to be determined in a creditor winding up petition since, apart from anything else, they cannot be decided without discovery, witness testimony and cross-examination. They are also loosely and inadequately pleaded and fail to identify any dealing, transaction, duty, or fact capable of giving rise to an existing legal obligation owed by PSI to Bridge Global. In particular, Bridge Global was not a party to the 2014 Deed of Termination, the steps said to support a USD 1.83 billion "loss" suffered by Bridge Global concern transfers of BPIIL shares among third-party BVI entities and nowhere is it explained why Bridge Global is the correct party to bring any claim against PSI when it was an SPV with no pre-existing assets and is alleged by the DoJ to have been a

shell company involved in a fraudulent series of transactions designed to conceal the fraud on 1MDB in 1MDB's own books and records.

51. Finally, the question of limitation was not addressed at all by the JOLs in the materials presented to Justice Kawaley, even though the events giving rise to the alleged claims all took place between 2012 and 2014 and an action in tort becomes time barred after six years from when the cause of action accrued under section 4(1) of the Limitation Act (1996). Further, an extension of the period of limitation under section 37(1) of that Act where any given fact has been concealed will require the Court to undertake an extensive factual analysis to determine when time should be deemed to have started running which can be a complex area for dispute, see eg *Ritchie Capital v Lancelot* [2021 1 CILR 128]

GROUND 4 — THE FAILURE TO APPLY THE PROPER TEST IN RESPECT OF THE NEED FOR AN INVESTIGATION

52. Since about 2010, a number of Cayman decisions have held that the need for an investigation is a separate ground for winding up relying entirely on the earlier Cayman decisions where this had been held to be the case.

53. The reasons that have been given to justify the finding that the need for an investigation are inconsistent with the fundamental principle that is respected in England that winding up is a statutory jurisdiction which depends on one of the grounds in section 92 being made out: the target company has to be shown to be unable to pay its debts (section 92(d)) or it is just and equitable in the opinion of the Court to wind up the Company (section 92(e)).

54. The need for investigation as a free-standing ground undermines this legislative scheme.

55. Even if a free-standing “need for investigation” could ever ground a creditor’s petition (which is not accepted), the circumstances here fall far below anything that justify such an exceptional step.

GROUND 5 — THE JUDGE ERRED IN HOLDING THAT THE JOLS WERE INDEPENDENT

56. As Doyle J accepted, the standard of independence required for official liquidators is set out in *Re Hadar Fund* (2013 (2) CILR N [4]). It is not sufficient that liquidators are honest and capable; the Court has to consider whether any existing professional or economic relations with the company precludes the appearance of "complete impartiality". In doing so, the Court

must consider whether any such relationship is sufficiently material to the liquidation in question that a fair-minded stakeholder would reasonably object to the appointment.

57. Ms Barkhouse and Ms Shukla are separately appointed to 1MDB entities such as Brazen Sky and Bridge Global and on Kroll's own website Ms Barkhouse's notable experience is said to include her appointments as liquidator to investigate the 1MDB losses. Further, the JOLs have argued that their appointment to PSI is necessary in order to investigate whether any further 1MDB funds can be recovered from PSI and repatriated to Malaysia. At the same time, the DoJ is prosecuting the US Forfeiture Proceedings in order to seize the US$329 million belonging to PSOSVL and return it to 1MDB which are being resisted by PSOSVL. It follows that the JOLs' duty to be impartial in defending PSOSVL's case in the Forfeiture Proceedings that it is entitled to the frozen US$329 million arbitration award is in conflict with their involvement in seeking to achieve recoveries in favour of 1MDB such that a fair-minded observer would not accept that the JOLs can now be relied on fairly and independently to conduct PSOSVL's defence in the Forfeiture Proceedings.

The Respondents' case in reply advanced by Ms Lexa Hilliard KC

GROUND 1: THE COURT DID NOT HAVE JURISDICTION TO WIND UP THE COMPANY WITHOUT NOTICE AND WITHOUT A HEARING

58. The Appellant's argument that Kawaley J did not have jurisdiction to make a winding up order *ex parte* is wrong. There is no statutory bar to a winding up order being made *ex parte*. Whilst the making of a winding up order *ex parte* is very unusual, this was not a usual case. The fraud was very substantial and in order to catch the perpetrators and protect assets a high degree of secrecy was required. Kawaley J was aware of the fraud as he was already seized at the time of several related matters involving the fraud where the files were also sealed and confidential.

59. It is well established that the Grand Court has jurisdiction to make *ex parte* orders in winding up proceedings as Kawaley J did when making the following orders: (a) the sealing order; (b) the appointment of the JPLs; (c) the order restoring the Company to the Register; and (d) issuing directions dispensing with the requirement (i) to serve the Petition on the Company, (ii) to advertise the Petition and (iii) to provide notice to the Company of the application to appoint JPLs.

60. Having failed to appeal against the order dispensing with the requirement to advertise the Petition, Mr Obaid's ground of appeal that Kawaley J erred in making the winding up order without advertising the winding up hearing must fail.

61. As to the failure to give notice of the petition, the Company had been struck off the Register of Companies on 30 April 2024 resulting in its dissolution and therefore had no board acting and no registered office where a notice of the petition could be served. There is no requirement to give notice of the petition to "*those acting as its board*" as contended by the Appellant.

62. Further, as Doyle J rightly observed at §§ [20] and [21] of his judgment O.9, r.4(3) of the Grand Court Rules (which is applied by O.24, r.1(2) of the CWR) expressly provides that the Court may direct that a petition is not to be served before the hearing of the petition. Mr Obaid did not seek to set aside the Directions Order and has not appealed it. The Court is, therefore, entitled to proceed on the basis that Mr Obaid accepts that the order dispensing with service of the Petition was rightly made.

63. Kawaley J exercised his discretion to dispense with service and was entitled to do so given the extraordinary breadth and complexity of the fraud in this case: see *In the Matter of the Real Estate and Finance Fund* [2002 2 CILR 272] at [45].

64. Yet further still, after the Company had been restored to the Register, its registered office was named in the restoration order as Kroll (Cayman) Ltd which is the office of Ms Barkhouse, one of the JOLs. It would have been an entirely academic exercise to formally serve the petition on Kroll's office when it was the same office as one of the JOLs.

65. Still further, the making of the winding up order *ex parte* was not a denial of justice. On 25 April 2025 the JPLs, although under no obligation to do so, notified Campbells, the Company's former registered agent of their appointment. Mr Kerman (on behalf of Mr Obaid) acknowledged in his affidavit dated 11 June 2025 that he and Mr Obaid became aware that *"steps had been taken to wind up the Company in the Cayman Islands"* on 25 April 2025 (when they were in receipt of the letters that the JPLs had sent to Campbells). It is also apparent from the letter dated 9 May 2025 from Mr Obaid's attorneys, Carey Olsen, that Mr Obaid was aware by 28 April 2025 of the advertisement in the Cayman Islands Gazette giving notice of the appointment of the JPLs. Mr Obaid had 10 days to object before the winding up

order was made and did not do so. His assertions of denial of justice in such circumstances are manufactured and ring hollow.

66. In any event, and irrespective of the clear jurisdiction of the Court to make the orders that it did, Mr Obaid had a full opportunity to seek to set aside the *ex parte* winding up order at the *inter partes* hearing that took place before the Judge on 16 October 2025 rendering academic the issues raised in Ground 1. In *G v. S* [1992 -93 CILR 203] at lines [5] to [25] the Court of Appeal approved the well-established principle drawn from the Privy Council case *Minister of Foreign Affairs, Trade & Industry v. Vehicles & Supplies Ltd* [1991] 1 WLR 550 that an *ex parte* order is provisional only and that it is open to review at an *inter partes* hearing.

GROUND 2 - EVEN IF JURISDICTION EXISTED, IT WAS NOT APPROPRIATE TO EXERCISE IT ON THE FACTS

67. Ground 2 is a re-hash of Ground 1 except that it appears to be an attack on how Kawaley J exercised his discretion rather than an assertion of a misapplication of a legal rule.

68. In *In the matter of HSH Cayman I GP Limited & Ors* [2010] (1) CILR 375 Chadwick P at § [30] confirmed that an appellate court is only entitled to interfere in an exercise of discretion by a judge in the following limited circumstances: (1) where the judge has misdirected himself with regard to the principles in accordance with which his discretion had to be exercised; (2) where the judge, in exercising his discretion has taken into account matters which he ought not to have done or failed to take into account matters which he ought to have done; or (3) his decision was plainly wrong.

69. As Doyle J observed, a judge has a wide discretion in respect of winding up orders.

70. As already submitted, the CWR do not require the hearing of a winding up petition to be advertised and O.3, r.6(1) provides that the advertisement of a creditor's petition may be dispensed with. Kawaley J dispensed with advertisement of the Petition. The evidence of fraud and the risk of dissipation of the proceeds of the arbitration award set out in Ms Barkhouse's second affidavit provided ample justification for Kawaley J to exercise his discretion to make an order dispensing with advertisement of the Petition.

71. Similarly, the CWR do not require a petitioner to satisfy the Court that the winding up hearing will not be opposed by any interested party or the Company as a condition of the Court

dispensing with advertisement of the Petition. The discretion is at large. In circumstances where the Court is persuaded that there is an appreciable risk that giving notice would frustrate the actions of the JPLs a Judge's order dispensing with advertisement cannot be the subject of serious challenge.

72. Irrespective of whether Kawaley J had jurisdiction to make the winding up order, Mr Obaid had, in any event, a full opportunity to put in evidence and arguments at the *inter partes* hearing before Doyle J in opposition to the winding up order and chose not to do so. As noted by the Judge at § [27] of his judgment, *"He has had his day in open court"*.

GROUND 3 – NO JURISDICTION BECAUSE THE PETITIONER LACKED STANDING AS A CONTINGENT CREDITOR AS REQUIRED BY SECTION 94(1) (b) OF THE ACT.

73. Mr Obaid does not claim in this appeal that the Petitioner had no standing to present the Petition pursuant to which the JPLs were appointed. His complaint is that the Petitioner had no standing for the Court to make the winding up order. S.94(1)(b) of the Act provides that a contingent creditor may present a petition. The Petitioner is a contingent creditor.

74. The Court of Appeal decided *GFN* at a time when s.96 of the Act did not include contingent creditors as being entitled to present a winding up petition. At the time the petition herein was presented, contingent creditors were within the class entitled to present a petition.

75. Mr Obaid does not in his appeal seek to set aside the order appointing the JPLs. He must therefore be taken to accept that for the purpose of that stage of the winding up proceedings the Petitioner had a *prima facie* or good arguable case that it was a contingent creditor.

76. The complaint in Ground 3 is that the Petitioner did not demonstrate sufficient standing at the hearing of the Petition to obtain the winding up order before Kawaley J or at the subsequent hearing before Doyle J. As the hearing before Kawaley J was *ex parte* the question of whether the Petitioner had standing before Kawaley J was overtaken by the *inter partes* hearing before Doyle J at which, after extensive argument, Doyle J found that the Petitioner did have standing.

77. Ground 3 appears to refer to the principle confirmed by the Supreme Court in *Re Nortel GmbH* [2014] AC 209 that a contingent debt is one where the debtor incurs an obligation which may subsequently give rise to a debt. Such obligations can be contractual, statutory or

tortious: Per Neuberger JSC at paragraphs 76 and 93 and Sumption JSC at paragraphs 130 – 136; see also *In re T&N Ltd* [2006] 1 WLR 1728 at paragraphs 46 and 60 where it was held that T&N was subject to contingent liabilities to pay damages to those who had been carelessly exposed to asbestos by the actions of T&N and who may later suffer compensable loss resulting in claims for damages in negligence against T&N.

78. The claims that the Petitioner has against the Company are predominantly tortious. A person becomes subject to a contingent liability to pay damages to another when that person has conspired with others to cause harm to the other by unlawful means. Doyle J was well aware of what a contingent creditor was. He had recently decided *Shinsun Holdings (Group) Co Ltd* ("*Shinsun")* and he referred to *In the Matter of Atom Holdings.* He will also have been well aware of the discussion of contingent creditors by the Supreme Court in *Re Nortel GmbH* and that to be a contingent creditor the Company must be subject to an existing obligation.

79. Doyle J considered all the evidence placed before the Court and concluded that the Petitioner was a contingent creditor. That was a finding that was open to him derived from the very substantial evidence of fraud set out in Ms Barkhouse's second affidavit. Doyle J's finding that the Petitioner was a contingent creditor carried with it the finding that the Company had been subject to an obligation not to commit the tort of fraud. The Company had breached its obligation not to commit fraud thereby resulting in a claim by the Petitioner for substantial damages.

80. As regards the test to be applied at the hearing of a winding up petition to determine whether a winding up should be made, *GFN,* whilst helpful, does not address the position of a contingent creditor where the claim may (or may not) result in an award of damages. It cannot be the case that a contingent creditor must establish at the hearing of a petition that on a balance of probabilities it will inevitably recover substantial damages. If that was the test a petitioner with a contingent debt would be in the same class as a creditor with an undisputed debt. The Companies Act, s.94 distinguishes between a creditor and a contingent creditor. The test, therefore, must be slightly different.

81. It is implicit in Doyle J's reasoning that where a petition is based on a contingent debt the Court must be satisfied on a balance of probabilities that the petitioner <u>is</u> a contingent creditor. In other words, the Court does not need to be satisfied that the petitioner will, on a balance of probabilities, recover damages if the claim is litigated. Rather the Court must be satisfied on a balance of probabilities that the petitioner has claims of sufficient substance that they might (but might not) result in an award of damages.

82. In this case given the detail of the evidence before the Court, Doyle J was entitled to conclude, as he did, that the Petitioner did have claims of sufficient substance that they might result in award of damages.

83. The unlawful means deployed in the conspiracy were that pursuant to the Termination Deed dated 8 April 2014, 1MIHL sold its shares in PSOSL Cayman to the Company for US$1. As the ultimate value held through PSOSL Cayman was purportedly US$2.318 billion, the sale of that interest for US$1 was at an astonishing undervalue. Mr Obaid and the Company must have known that by causing 1MIHL to transfer its shares to the Company, Mr Terence Geh who executed the Termination Deed in his capacity as a director on behalf of 1MDB and 1MIHL breached his fiduciary duty to 1MDB and 1MIHL. The Company and Mr Obaid, therefore conspired to dishonestly assist Mr Geh to breach his fiduciary duty to 1MDB and 1MIHL and thereby caused harm to the Petitioner. As a result of the breach of fiduciary duty and the conspiracy, the Petitioner suffered the loss of its interest in PSOSVL: see generally, Civil Fraud (2018) Thomas Grant KC and David Mumford KC, Chapter 2, 2-001-2-091.

84. The Deed of Termination was also a fraudulent disposition: see Fraudulent Dispositions Act (1996 Revision). The Company was a party to a conspiracy with Mr Obaid and others to injure the Petitioner by unlawful means, namely pursuant to a breach of the Fraudulent Dispositions Act. By reason of the Limitation Act, section 37(1) the limitation period for bringing a claim in tort for a conspiracy to injure by unlawful means is extended until the Petitioner could with reasonable diligence have discovered the fraud.

85. Further, if the Termination Deed is set aside, the Petitioner will have a claim against the Company for unjust enrichment.

86. It was highly relevant that the Petitioner, having provided cogent evidence of the fraud perpetrated against it, Mr Obaid, despite having a full opportunity to do so, did not file evidence that even began to address the claims of the Petitioner. It is well established that once a petitioner has demonstrated a *prima facie* case that a debt (including a contingent debt) is owing, the burden is on the debtor company to show that the debt is *bona fide* disputed on substantial grounds: see *Allied Leasing and Finance Corporation v. Banco Economico SA* [2000 CILR 118] at lines [20] –[30]; *In the Matter of Pan African Niger Limited* (unreported, FSD 233 of 2022, 29 August 2024) at paragraphs 12 to 21 and 29 *In the Matter of Green Dragon Gas Limited* (unreported, FSD 197 of 2020, 7April 2021) at paras 48 to 62; *In the*

Matter of Diversified Settlements Fund (unreported, FSD 84/of 2020, 15 October 2020) at paras 14 to 21. For the purpose of its application for the appointment of JPLs the Petitioner did establish a *prima facie* case that the contingent debt relied on in support of the Petition arose from an obligation that might (or might not) result in an award of damages. Mr Obaid did not seek to set aside the appointment of the JPLs and has not appealed that appointment. Accordingly, the burden rested on Mr Obaid to demonstrate that the Petitioner's contingent debt was *bona fide* disputed by the Company on substantial grounds.

87. The evidence filed on behalf of Mr Obaid was the affidavit dated 11 June 2025 of Mr Kerman who was not in a position to give any direct evidence which went towards demonstrating that the Petitioner's contingent debt was *bona fide* disputed on substantial grounds. Even Mr Kerman's hearsay evidence did not attempt to address the evidence of fraud that supported the Petition. Pursuant to an agreed timetable for service of evidence Mr Obaid had an opportunity until 29 August 2025 to file further evidence. He did not do so.

88. On the basis that the Company failed to lead any evidence that the Petitioner's contingent debt was *bona fide* disputed on substantial grounds, paragraph 2 of the Respondent's Notice argues that there was no requirement for the Petitioner to demonstrate on a balance of probabilities that it was a contingent creditor. There would have been such a requirement if the Company had filed evidence demonstrating that the contingent debt was *bona fide* disputed on substantial grounds. The absence of such evidence should have led Doyle J to conclude that the Petitioner did not need to go beyond demonstrating that it had a *prima facie* or good arguable case that it was a contingent creditor.

GROUND 4 — THE FAILURE TO APPLY THE PROPER TEST IN RESPECT OF THE NEED FOR AN INVESTIGATION

89. This Ground is confusing but appears to be little more than a rehash of Ground 3. First, there is no evidence that Kawaley J concluded that the Petitioner's legal claims were disputed. On the contrary, the fact that Kawaley J made the winding up order demonstrates that he concluded on the basis of the evidence filed by the Petitioner that on a balance of probabilities/alternatively that the Petitioner had a *prima facie* case or a good arguable claim that the Petitioner was a contingent creditor. Having concluded that the Petitioner had standing to petition, Kawaley J then would have proceeded to consider whether he should exercise his discretion to make the winding up order on one or more of the circumstances in the Companies Act, section 92. As Kawaley J proceeded to make the winding up order he

must have been satisfied that one or more of the circumstances in section 92 relied on by the Petitioner applied. The circumstances relied on by the Petitioner were that the Company was unable to pay its debts and/or it was just and equitable that the Company should be wound up because the fraud cried out for an independent investigation: see the Petitioner's skeleton argument before Kawaley J.

90. Doyle J, at the *inter partes* hearing, did not address the insolvency ground relied on by the Petitioner for the winding up order although he could have done. Instead, Doyle J exercised his discretion to make a winding up order on the just and equitable ground because, as he found: *The circumstances of this case cry out for a full investigation into the affairs of [the Company] and for any wrongdoers to be brought to justice."*

91. In the circumstances Doyle J's exercise of his discretion to confirm the winding up order made by Kawaley J on the just and equitable ground and not to accede to the Company's summons to set aside the winding up order cannot be faulted. On the evidence the fraud was so cogent and serious that irrespective of the Company's insolvency Doyle J was fully entitled to conclude that the winding up order not be set aside.

GROUND 5 — THE JUDGE ERRED IN HOLDING THAT THE JOLS WERE INDEPENDENT

92. The JOLs filed sworn evidence as to their independence and demonstrated sufficient professional qualifications to be appointed as liquidators.

93. Doyle J was right to be satisfied that the JOLs met the independence requirement. The decision whether or not an officeholder is independent is an evaluative one which is not open to review unless it is plain that the judge below was wrong: see *Scully Royalty Limited v. Raiffeisen Bank International Limited AG* [2022] (1) CILR 118] at paragraph 54.

94. The Appellant is wrong in Ground 5 to argue that the only functions that the JOLs could perform in the liquidation are ones that could not be performed independently. The liquidation is at an early stage. The scope of the investigations that the JOLs must carry out is very wide.

95. What is said is that the JOLs are not sufficiently independent to adjudicate the proof of debt of the Petitioner. Adjudication of proofs is unlikely to take place for many months, if not

years. Doyle J was satisfied that when the time came that task could be adequately addressed by the appointment of a conflict liquidator. Doyle J was fully entitled to reach that conclusion.

96. It is well established that officeholders of companies one of which has a claim against the other can be managed, if necessary, by the appointment of a conflict liquidator: see *Parmalat Capital Finance Limited v. Food Holdings Limited and Dairy Holdings* [2008 CILR 202] at [12]-[14]; see also *Tangerine Investment Management Limited* [2013 (1) CILR 375] at [21] – [24].

97. As Doyle J found, there was also no conflict in the JOLs' taking control of PSOSVL's defence in the DOJ forfeiture proceedings in the US once they are in full control as directors of PSOSVL. If the JOLs are unable to take control of PSOSVL, and its defence in those proceedings, and the DOJ decides to withdraw from the proceedings for any reason, Mr Obaid (who currently has carriage of PSOSVL's defence) will be able to gain control of the proceeds of the arbitration award for his own personal benefit to the detriment of PSOSVL and the Company. There is no conflict between the interests of the Petitioner and those of the Company. On the contrary it is Mr Obaid who has the conflict in that he is seeking to defend the DOJ proceedings, using the funds of PSOSVL, unchecked by the JOLs, and for his own personal benefit.

Discussion and decision

GROUND 1 – LACK OF JURISDICTION TO WIND UP THE COMPANY WITHOUT NOTICE AND WITHOUT A HEARING.

98. I accept Mr Lowe's submission that the Act, the CWR and the GCR contain an exhaustive set of procedural requirements for the filing and service of creditor petitions that leave no scope for the implication of a power in the court to make an *ex parte* winding up order as Kawaley J did in these proceedings. I reach this conclusion for the following reasons.

1. CWR O. 3 r. 5(3) (that appears under the heading "Presentation and Service of Creditor's Petition") provides:

   "Every creditor's petition, together with the verifying and supporting affidavits and notice of hearing (if the hearing date is not endorsed upon the petition itself), ***shall*** *be served upon the company by delivering them to*

the company's registered office immediately after the petition has been presented." [Emphasis supplied]

2. GCR O. 102, r.18 provides:

   (1) An application by a creditor under Section 159 of the Law may be combined with an application under Section 94 of the Law and may be made by petition in Form No. 68 of Grand Court Rules - Vol II - Forms (as amended and revised), in which case O.3 of the Companies Winding Up Rules (as amended and revised) ***shall*** *apply.*

   (2) *A petition under this rule* ***shall*** *be served on — (a) the last known registered office of the company; and (b) the Registrar of Companies.*

   (3) *Unless the Court otherwise directs, a petition under this rule* ***shall*** *be advertised in accordance with O.3, r.6 of the Companies Winding Up Rules (as amended and revised).*

   (4) *The petition shall be verified by an affidavit that the statements in the petition are true or are true to the best of the deponent's knowledge, information and belief.*

   (5) *If the petitioner seeks a winding up order, the petition must be supported by an affidavit sworn by the person nominated for appointment as official liquidator and containing the information required by O.3, r.4 of the Companies Winding Up Rules (as amended and revised).* [Emphasis supplied]

3. Whilst CWR O.24, r. 1 (2) provides that the general provisions of GCR O. 9 shall apply to every petition presented under these Rules, the mandatory service provisions of the CWR take precedence over the general service provisions of the GCR by virtue of GCR O.9 r (1) and r. 4 (2) that provide:

   O.9, r.1 *"Every petition, summons, order or other document* ***required*** *to be served by these Rules,* ***shall*** *be served in accordance with GCR Orders 10 and 65, unless some other method of service is expressly* ***required*** *or permitted by these Rules."*

   O.9, r.4(2) "If a petition is ***required*** *to be served on any person, it* ***shall*** *be indorsed with the hearing date or accompanied by a notice of hearing.* [Emphasis supplied]

4. These provisions which make no allowance for an *ex parte* winding up order are to be contrasted with the separate provisions for applications to appoint restructuring officers (section 91 C (1) of the Act) and provisional liquidators (CWR O. 4,r. 1(2))[1] which do allow for *ex parte* orders to made for the appointment of such officers.

5. Paragraph C4.3 of the Financial Services Division Guide provides:

> Hearings in open Court
>
> "By presenting a winding up petition the creditor/contributory is invoking class rights and every other member of the class is entitled to be heard. For this reason the notice of the hearing will require to be advertised unless all those in the class can be given notice in some other way. Depending on the likely whereabouts of the members of the class, the Court may require such advertisement to be in a newspaper or newspapers overseas. It also follows that the hearing of winding up petitions will always take place in open Court."

6. The aforementioned procedural provisions requiring the giving of notice to the target company of a hearing on the winding up petition reflect the fact that a winding up order is a final as distinct from an interlocutory order which has very serious consequences for the company. Contrary to Ms Hilliard's submission, a winding up order made *ex parte* is not an interim order made in contemplation of a hearing on a return date.

7. The fact that PSI had been struck off the Register of Companies on 30 April 2024 because its registered office had resigned in response to non-payment of fees does not cure the failure of the Petitioner to serve the petition given, in particular, the mandatory terms of GCR O. 102, r.18 (2). Further and in any event, PSI had been

[1] "*The company shall be entitled to at least 4 clear days' notice of the application unless the Court is satisfied that there is some exceptional circumstance which justifies the application being made ex parte."*

restored to the Register of Companies prior to the making of winding up order on 6 May 2025 with its registered office named in the order as Kroll (Cayman) which is the office of Ms Backhouse but no attempt was made to serve the Petition at that office or at Cambell's office, the last known registered office of the company.

99. For the reasons given in paragraph 98 above, I find that Kawaley J had no jurisdiction to make the *ex parte* order winding up the company. I further find that by virtue of this lack of jurisdiction, that order was a nullity. I do so for three reasons. First, it seems to me that as a matter of basic principle, an order made by a court without jurisdiction to make it is something that totally lacks any valid legal effect. Secondly, Ms Hilliard conceded in the course of her submissions that if the meaning and effect of the statutory, GCR and CWR provisions governing the service and filing of creditor winding up petitions precludes the implication of a power to make an *ex parte* winding up order, any such order purportedly made would be a nullity.[2] Thirdly, I adopt the reasoning of Hoffmann J (as he then was) in *Re Calmex* (1988) 4 BCC 761 when deciding an application to rescind a winding up order that had been made by mistake: the wrong target company had been named in the petition. Hoffmann J accepted that the court had a power to rescind the order under the Insolvency Rules 1986. When deciding whether there were good grounds, he said:

> *"As for the grounds for exercising the jurisdiction, they are plain enough. As Lord Greene M.R. said in Craig v. Kanssen (1943] KB 256 at p.262:*
>
> *" ... a person who is affected by an order which can properly be described as a nullity is entitled ex debito justitiae to have it set aside ... Apart from proper ex parte proceedings, the idea that an order can validly be made against a man who has had no notification of any intention to apply for it has never been adopted in this country. It cannot be maintained that an order which has been made in those circumstances is to be treated as a mere irregularity and not as something which is affected by a fundamental vice*:"
>
> *The company is therefore entitled to have the order rescinded. I declare it to have been a nullity and it follows that the order staying proceedings had nothing upon which it could fasten and was also a nullity."*

[2] See Transcript, Day 1, p.148 line 18 – p.149 line 1

100. In my judgment, it follows from the conclusion that the *ex parte* order made by Kawaley J was from the outset a nullity, that none of Doyle J's rulings following the hearing on 16 October 2025 can have had any legal effect. As agreed between Doyle J and counsel for the Company, the first issue on which Doyle J heard argument was the issue whether Kawaley J had had jurisdiction to make the *ex parte* winding up order the Company was seeking to have set aside. For the reasons I have given, that order was a nullity and with respect to Doyle J, there was no conceivable basis on which he could have legally affirmed Kawaley's order which was in the form of a final, rather than an interlocutory order, and thus outside the width of the decision of the Privy Council's statement of principle in *Minister of Foreign Affairs, Trade & Industry v Vehicles & Supplies Ltd* that was approved by this Court in G v S [1992 – 93 CILR 203], as noted by Ms Hilliard. Thus, Doyle J erred in holding that under GCR O. 9, r.4(3) service of the petition could be dispensed with altogether, notwithstanding the mandatory service requirement imposed under CWR O.3, r.5(3) and notwithstanding that, plainly, when construed in the context of GCR O.9, r.4 as a whole, O. 9, r. 4 (3) provides a discretion only as to when service is to be effected and not as to whether service can be entirely dispensed with. In addition, the decisions in *Lancefield v Lancefield* [2002] BPIR 1108 and *Re Gracio Property Co Ltd (in administration)* [2016] EWHC 2827 (Ch) referred to by Doyle J in his judgment do not in my view provide any counterweight to the effect of the procedural rules considered in paragraph 99 above. In both of those decisions the principal parties were before the court. In *Lancefield,* it was common ground that the company should be wound up. In *Gracio*, the company was before the court; all creditors had been notified; it was manifest that the Administration had to be terminated and that the company should be wound up because it was hopelessly insolvent; and accordingly it was appropriate to proceed on the basis that there was a creditor's petition before the court, in response to which the Court could there and then make the necessary winding up order.

101. It follows in my judgment that the Company succeeds on this first ground of appeal and is accordingly entitled to an order setting aside the *ex parte* winding up order dated 6 May 2025.

GROUND 2 -- EVEN IF JURISDICTION EXISTED, IT WAS NOT APPROPRIATE TO EXERCISE IT ON THE FACTS.

102. I accept Mr Lowe's submissions on this ground of appeal in preference to those advanced by Ms Hilliard.

103. Thus I accept Mr Lowe's contention that if, notwithstanding the statutory scheme that has already been referred to at length, in paragraph 98 above, the court had jurisdiction to make the winding up order sought in the Petition *ex parte,* this was so far from being an appropriate case to make such an order that, if it were made, it would be set aside on the ground that it went well beyond the judge's margin of appreciation and was plainly wrong.

104. As Mr Lowe argued, it was clear from the Petition and the supporting evidence dealing with the US Forfeiture Proceedings that the merits of the Petitioner's claims including the alleged insolvency would be hotly challenged given that those proceedings had been contested all the way by PSOSVL, a 100% sub-subsidiary of the Company which was effectively owned by Mr Obaid of which he was the sole director. Moreover, there was no need for any additional security that an *ex parte* winding up order might be thought to provide given that the JPLs had been appointed with sweeping powers well before 6 May 2025 and the award proceeds were already secured by the freezing order made by the English High Court. Furthermore, by the date of the ex parte order on 6 May, the JPLs had written to the former registered office concerning their appointment and notice had also been published in the Gazette as described at paragraph 65 above. Accordingly, even if there had originally been any justification for proceeding ex parte (which in my judgment there was not for the reasons just described), such justification had plainly disappeared by 6 May.

GROUND 3 – NO JURISDICTION BECAUSE THE PETITIONER LACKED STANDING AS A CONTINGENT CREDITOR AS REQUIRED BY SECTION 94(1) (b) OF THE ACT.

<u>The Respondent's Notice dated 16 January 2026</u>

105. For the avoidance of doubt, when dealing with this Ground 3, I have taken into consideration the Respondent's Notice dated 16 January 2026 that pleads: "This appeal should be dismissed in its entirety. The orders and judgment of Doyle J dated 23 October 2025 appealed against should be upheld and affirmed on the basis that the grounds set out therein were rationally supportable on the evidence before the Grand Court and/or the following further grounds:

<u>Appeal Ground 3</u>

1.The Hon Mr Justice Kawaley was correct to conclude that the Petitioner had standing to wind up the Company as a contingent creditor based on claims for knowing receipt, dishonest assistance, unjust enrichment and unlawful means conspiracy. Doyle J was also correct to hold, as he did, that the Petitioner had standing as a contingent creditor and had shown on a balance of probabilities that there was an existing obligation owed by the Company which could give rise to a debt. The Respondent contends in the first instance, that these findings were correct and should not be set aside or varied on appeal.

2. Further and alternatively, to establish standing as a contingent creditor, the Petitioner was only required prove that it had a good arguable claim in relation to the contingent debt, not that it was in fact a creditor on the balance of probabilities."

The two limbs of Ground 3

106. This Ground 3 of appeal has two limbs. The first involves the contention that the claim advanced by the Petitioner as a contingent creditor under section 94(1) (b) of the Act was bona fide and strenuously disputed by the Company and for that reason, in accordance with long established practice mandated by high authority, the Court ought not to have made the winding up order it did dated 6 May. I shall call this limb "the bona fide dispute issue".

107. The second limb involves the contention that the Petitioner is not a contingent creditor for the purposes of section 94 (1) (b) of the Act because the claim sought to be advanced by the Petitioner does not have the necessary characteristics to constitute a provable contingent debt. I shall refer to this limb as the "contingent creditor issue".

108. Perhaps understandably, both Mr Lowe (to a very limited extent) and Ms Hilliard (to a much greater extent) tended to merge these two limbs in their written and oral submissions but in my view it is important to keep them separate.

The bona fide dispute issue

109. In *Mann v Goldstein* (op cit), as is revealed by the following passage in the judgment therein at pp 1098 - 1099, Ungoed-Thomas J took the view that where a debt relied on by a creditor petitioning for a winding up order was bona fide disputed by the target company the issue went to the *locus standi* of the petitioner who, under the relevant winding up statutory provisions, had to be a "creditor".

" For my part, I would prefer to rest the jurisdiction directly on the comparatively simple propositions that a creditor's petition can

> *only be presented by a creditor, that the winding up jurisdiction is not for the purpose of deciding a disputed debt (that is, disputed on substantial and not insubstantial grounds), since, until a creditor is established as a creditor he is not entitled to present the petition and has no locus standi in the Companies Court; and that, therefore, to invoke the winding up jurisdiction when the debt is disputed (that is, on substantial grounds) or after it has become clear that it is so disputed is an abuse of the process of the court"*

110. This passage was gratefully adopted by Buckley LJ in *Stonegate Securities v Gregory* (op. cit. at p 580, A-C) who said that in his opinion a petition founded on a debt which is disputed in good faith on substantial grounds is demurrable for the reason that the petitioner is not a creditor of the company within the meaning of the relevant statutory provision and the question whether he is or is not a creditor of the company is not appropriate for adjudication in winding up proceedings.

111. This view has not been universally accepted. *In Parmalat Capital Finance Ltd v Food Holdings Ltd* (in liquidation), on appeal from this Court to the Privy Council, one of the issues was whether the debt alleged in the winding up petition was disputed and if so whether the winding up order should not have been granted. In giving the judgment of the Privy Council, Lord Hoffmann said at [9]

> *"The next question is whether the debt is disputed. If a petitioner's debt is bona fide disputed on substantial grounds, the normal practice is for the court to dismiss the petition and leave the creditor, first, to establish his claim in an action. The main reason for this practice is the danger of abuse of the winding-up procedure. A party to a dispute should not be allowed to use the threat of a winding-up petition as a means of forcing the company to pay a bona fide disputed debt. This is a rule of practice rather than law and there is no doubt that the court retains a discretion to make a winding-up order, even though there is a dispute: see, for example, Brinds Ltd. v. Offshore Oil N.L. (2). However, the Board does not find it necessary to examine the limits of the discretion, because they consider that there is no substantial dispute."*

112. Over a long period of years differing opinions have been expressed in numerous authorities as to whether there is indeed such a rule of practice and whether it is sufficient for the petitioner to have good arguable case that his claim is good or whether the governing test is

the balance of probabilities. Many of these authorities were reviewed by Vos JA in his masterly judgment delivered in *GFN*. This was an appeal from the decision of Chief Justice Smellie who had held in the Grand Court that even though there was a rule of practice that a petition founded on a disputed debt would not ordinarily be allowed to proceed, it could be departed from in appropriate circumstances such as were before the court.

113. Having reviewed a very large number of authorities, Vos JA summarised their effect as follows in paragraph 94 of his judgment:

> *"(a) A person with a good arguable case that a debt is due and owing to him from a company may present a petition to wind up as a "creditor" under s.96 of the Companies Law.*
> *(b) The normal rule of practice is that the court will dismiss or stay a petition in circumstances where there is a bona fide and substantial dispute as to the existence of the debt upon which the petition is based.*
> *(c) In an appropriate case, however, the winding-up court can refuse to dismiss or stay the petition and can determine the question of a disputed debt in the petition itself.*
> *(d) Appropriate cases include those where the court doubts that the debt is actually disputed bona fide on substantial grounds, or where the creditor, if he established his debt, would otherwise lose his remedy altogether, or where other injustice might result.*
> *(e) Where the winding-up court decides to hear a petition based on a disputed debt, it will only make a winding-up order on the grounds that the company is unable to pay its debts or that it is just and equitable to wind up, having determined that the petitioner is, on a balance of probabilities, a creditor of the company.*
> *(f) The trilogy of Russian bank cases[3] may constitute a single legitimate exception to para. (e) above. It is, however, beyond the scope of this judgment to express a concluded view on the correctness of those decisions."*

[33] *In re Russian & English Bank* [132] Ch 663; *In re Russian Bank for Foreign Trade* [1933 Ch 745; *In re Tavarishestvo Manufactur Ludwig Rabenek* [1944] Ch 404

114. In paragraph 101 of his judgment, Vos JA went on to reject for the following reasons the argument that the legislature intended that a creditor be permitted to obtain a winding up order without establishing his standing as a creditor:

> *"(a) it would be remarkable if the court were prepared to exercise a statutory jurisdiction to put into effect a process of collective execution against the assets of the company for the benefit of all the creditors at the behest of someone who had no legitimate interest in the affairs of the company;*
> *(b) since the legislature has laid down that only a creditor or contributory (or, in some cases, other specified persons) can present a petition to wind up, one would expect that creditor to establish his status before any final order is made at his instigation;*
> *(c) if it were to be held that a petitioning creditor could proceed to obtain a winding-up order without establishing his debt, companies would be at greater risk and have less protection from those wishing to damage them than the legislature can, it seems to me, have possibly intended; and*
> *(d) as I have shown, on a proper analysis, the authorities provide no significant support for the proposition that a winding-up order can be made without the petitioning creditor establishing his standing as a creditor."*

115. In paragraph 34 of his judgment dated 23 October 2025, Doyle J rejected the Company's submission based on the reasoning in *GFN* that a petitioning creditor must first demonstrate on the balance of probabilities that it is a creditor. He did so on the ground that, subsequently to the *GFN* decision, section 94 (1) (b) had been amended to include in the class of those entitled to present a winding up petition contingent and prospective creditors. Ms Hilliard submits that Doyle J is not be taken as having decided that this Court's decision in *GFN* was no longer good law; she also contends in paragraph 41 of her written submissions that, in any event, the reasoning of Vos JA, with which Chadwick P and Motley JA agreed, was strictly *obiter* because the Court of Appeal in fact held that there was no bona fide or substantial dispute that the petitioner was a creditor of the company. Ms Hilliard further submitted orally that anyway on the basis that GFN remains good law, the case fell within Vos JA's observation that a person with a good arguable case that a debt is due and owing to him from a company may present a petition to wind up as a 'creditor ' under s.96 of the Companies Law when those words are read across to a contingent creditor.

116. Mr Lowe submits that the amendment to section 94 (1) (b) does not invalidate the approach

taken in *GFN* to creditors.

117. I accept Mr Lowe's submission. In my judgment, this Court's judgment in *GFN* in respect of creditor petitions that are bona fide disputed on substantial grounds remains the governing authority on this issue, notwithstanding the subsequent amendment to section 94 (1) (b) of the Act and notwithstanding Ms Hilliard's submission that Vos JA's judgment is strictly *obiter dicta*.

118. I find that even if Kawaley J had power to issue the winding up order dated 6 May 2025 *ex parte,* he should not have issued that order because it should have been plain from the Petition and the evidence served in support thereof that the Petitioner's claim would be or might well be hotly disputed on substantial grounds including whether the Petitioner's claims were statute barred. He therefore should have directed that there be a hearing to determine whether the court should or should not order the winding up of the Company in light of the reasoning in *GFN* particularly at paragraph 94 (b). In this regard it is to be noted that in answer to Lady Justice of Appeal Montgomery's question posed during the hearing: "Is the forfeiture proceeding in the US contested?", Ms Hilliard's answered: "Well it is being contested by Mr Obaid on behalf of PSOSVL and the joint provisional liquidators are seeking to intervene in those proceedings."[4] Ms Hilliard also submitted that the Petitioner's case went beyond the DOJ's case in the Forfeiture Proceedings in that it relied in part on Ms Barkhouse's own investigations into PSI's involvement in the alleged fraud asserted by the Petitioner.

119. With respect to Doyle J, I incline to the view that he is to be taken as having held that the *GFN* principles were no longer to be regarded as binding since he did not go on to assess the Petitioner's claim in the light of those principles, including in particular that expressed in paragraph 94 (b). If I am wrong about that, I find that Doyle J erred in not applying the principle expressed in paragraph 94 (b) adversely to the Petitioner's claim and in not taking into account in favour of PSI that the evidence it had intended to serve in disputing the Petitioner's claim at the requested hearing to challenge the winding up order had not been served because of the stance adopted by the JOLs. Accordingly, with respect to Doyle J, I find that he erred in finding that the Petitioner had proved on a balance of probabilities that it was a contingent creditor and that it had standing to present the petition. Instead, he should have directed that there be a hearing following the service of the Company's evidence to

[4] Transcript, Day 2, p. 36 lines16 -22

determine whether the petition should be stayed or dismissed in light of Vos JA's conclusions expressed in paragraph 94 of his judgment in *GFN*.

Conclusion

120. If I be wrong in concluding that the winding up order dated 6 May 2025 is a nullity, I would hold that Doyle J's order following the hearing on 16 October 2025 dismissing the two summonses filed by PSI should be set aside and replaced with the direction referred to in the last sentence of the immediately preceding paragraph.

The contingent creditor issue

121. Following the passing of the UK Companies Act 1907 which provided in section 28 thereof that "any contingent or prospective, creditor shall be a creditor entitled to present a petition for winding up the company" there were a number of important decisions over time on what are the constituent elements of a contingent debt.

122. In *Re William Hockley Ltd* (op.cit.) by the time the creditor's petition came on for hearing the target company no longer owed the creditor the debt it asserted based on a judgment obtained against the company. The company had paid the sum due to the Sheriff acting on the creditor's writ of *fieri facias* based on the judgment against the company. The petition was therefore dismissed but each side contended that they should have their costs of the petition, the company submitting that no costs should be awarded to the petitioner because at the time it presented its petition it was not a contingent creditor relying on the judgment against the company.

123. In deciding that the creditor was not a contingent creditor as of that date, Pennycuick J said:

> *The expression " contingent creditor " is not defined in the Companies Act, but must, I think, denote a person towards whom under an existing obligation, the company may or will become subject to a present liability upon the happening of some future event or at some future date. (See Buckley on the Companies Act, 13th ed., notes at pp. 460 to 462).*

124. Pennycuick J's definition of a contingent creditor was adopted in: *Green v SCL Group* [2019] 2 BCLC 664 at [89] (Norris J); *Re Shinsun Holdings (Group) Co Ltd* (1) CILR 473 ("*Re Shinsun")* where Doyle J accepted that the *Hockley* definition remained "good law"; *In the Matter of Leading Hotels Group Ltd* [2023] HKCFI (Deputy High Court Judge Suen SC); and in *Community Development Pty Ltd v Engwirda Construction Co* [1969] 120 CLR 455 where the High Court of Australia held that a builder was entitled to petition for a winding up order as a contingent creditor under section 221 of the Companies Acts 1961- 1994 (Q) for sums due for work done under a building contract that contained a Scott and Avery clause and required certification of the work, Kitto J stating at p. 459

> *"In In re William Hockley Ltd. (1962) 1 WLR 555, at p 558, Pennycuick J. suggested as a definition of "a contingent creditor" what is perhaps rather a definition of "a contingent or prospective creditor", saying that in his opinion it denoted "a person towards whom, under an existing obligation, the company may or will become subject to a present liability upon the happening of some future event or at some future date". The importance of these words for present purposes lies in their insistence that there must be an existing obligation and that out of that obligation a liability on the part of the company to pay a sum of money will arise in a future event, whether it be an event that must happen or only an event that may happen."*

125. The claims for damages that the Petitioner proposes to bring against PSI were described by Ms Hilliard as being "predominantly tortious" including unlawful means conspiracy, fraud, dishonest assistance in breaches of fiduciary duty and dishonest receipt of property obtained in breach of fiduciary duty. Mr Lowe submits that these claims are no more than claims and do not constitute the Petitioner a contingent creditor because there is no existing legal obligation that could constitute liability for the debt claimed if certain future events occurred which is a fundamental element in the *Hockley* definition of a contingent creditor.

126. Ms Hilliard accepts that the Petitioner must show an existing liability owed by PSI to the Petitioner and contends that it is to be found in a legal duty owed by PSI not to inflict damage on the Petitioner tortiously by fraudulent means which she contended was a finding that was inherent in Doyle J's conclusion that the Petitioner was a contingent creditor. She accepted that it is not enough for a petitioner merely to assert that it has a claim for damages. However, once a putative contingent creditor had demonstrated to the standard of a good arguable case that it had suffered damage as a result of the target company's tortious acts, it will be entitled to be treated as a contingent creditor. In her submission, this approach did not undermine the

distinction between a petitioning creditor and a petitioning contingent creditor because the former was entitled *ex debito justiciae* to a winding up order if the alleged debt was not disputed, whereas the outcome of the petition presented by a contingent creditor depended on the discretion of the court.

127. Amongst the several authorities Ms Hilliard cited in support of her submissions were *Re Dollar Land Holdings plc* [1994] 1BCLC 404 ("*Dollar Land"*) and *In re Millennium Advanced Technology Ltd* [2004] 1 WLR 2177 *("Millennium AT").*

128. In *Dollar Land* the petitioner ("W") provided a guarantee for a bank loan to the company in return for a 25% participation in a property. When this property was not purchased W sought to be released from his guarantee and he commenced proceedings for a mandatory order that the guarantee be released and for damages and at the same time presented a petition to wind up the company in his capacity as a contingent or prospective creditor. On the company's application to have the petition struck out, Sir Donald Nicholls VC held that W was a contingent or prospective creditor with respect to the company's failure to obtain a release of the guarantee and ordered that the company be wound up on just and equitable grounds.

129. As recorded in the headnote, in *Millennium AT* a local authority (Tower Hamlets London Borough Council) paid regeneration grants to the company for use in providing technology training to underprivileged people. Under the terms of the grant, if any of the conditions of the grant were breached by the company, it could be required to return the monies to the authority. The authority alleged the grant money had been misapplied by the company with the effect that it had become a contingent or prospective creditor and it petitioned for the winding up of the company under section 122 (1) (g) of the Insolvency Act 1986 on the ground that it was just and equitable to do so. The company applied for the petition to be struck out. Mr Michael Briggs QC (as he then was), sitting as a deputy High Court judge, dismissed the application. He held that whether a petition was based on insolvency or the just and equitable ground, there was a requirement that the creditor should be petitioning by pursuing his private interest attributable to his status as a creditor; that that requirement did not go to his standing, but the court had to be satisfied thereof if the petition was not to be an abuse of process; that the desire on the part of a creditor essentially collateral to his status as such, to achieve a public interest in petitioning for the winding up of a company which had appropriated public funds for private gain, was not an alternative justification; but that, while it may not have been the authority's principal motive for presenting the petition, there could be discerned within its petition a sufficient private interest as a contingent or prospective

creditor in having the company wound up; and that the assertion of the petition of a public interest reason for the winding up did not render the proceedings as a whole an abusive process.

130. Further in support of her submissions, Ms Hilliard placed considerable reliance on the judgment of David Richards J (as he then was) in *Re T&N Ltd.* In this case, as the headnote relates, T&N Ltd was part of a group of companies who mined asbestos and manufactured asbestos products which were faced with an increasing number of claims brought by individuals who had suffered serious illnesses by being exposed to asbestos dust. This group of companies entered into a settlement agreement, which proposed schemes of arrangement or CVAs. A central feature of the proposals was that not only persons who had already made or were entitled to make asbestos related claims but all potential future claims should be bound by the schemes or CVAs. The Administrators applied for declarations as to whether (i) a claimant in respect of a future asbestos claim against the UK debtor could be a "creditor" of the UK debtor bound by a scheme of arrangement sanctioned under section 425 of the Companies Act 1985 or a CVA approved under Part 1 of the Insolvency Act 1986; (ii) if the companies were to be wound up, a future asbestos claimant (defined either as someone without an accrued cause of action as at the liquidation date, or with an accrued cause of action which accrued after the liquidation date) would have an admissible claim for the purposes of proof for a winding up pursuant to rules 12.3 (1) and 13.12 of the Insolvency Rules 1986.

131. David Richards J held that "creditors" in section 425 of the 1985 Act was not limited to persons who had a provable debt in the winding up of a company and there was no clear requirement that "creditors "for the purposes of a CVA under the 1986 Act was restricted to persons with a provable debt so that the term should be given as wide a meaning as in section 425 of the 1985 Act. Future asbestos claimants (as defined) were creditors for the purposes of both schemes under s. 425 and CVAs approved under Pt 1 of the 1986 Act. However, future asbestos claims as defined were not provable debts for the purpose of winding up.

132. Ms Hilliard also placed some reliance on the judgments of Lords Neuberger and Lord Sumption in the UK Supreme Court decision in *Re Nortel GmbH* [2014] AC 209 which she submitted confirmed "the principle that a contingent debt is one where the debtor incurs an obligation which may subsequently give rise to a debt." In this case, the question was whether the non-contractual liability imposed by a Financial Support Direction issued by the UK Pension Regulator to two employer companies after they had gone into liquidation was to be

treated as a liability incurred pre-liquidation so as to be provable under Insolvency Rule 13.12 (1)(b) as “[a] debt or liability to which the company may become subject after the relevant date by reason of any obligation incurred before that date”. The Supreme Court gave this question an affirmative answer.

133. At [77] of the judgment, Lord Neuberger said:

> *“However, the mere fact that a company could become under a liability pursuant to a provision in a statute which was in force before the insolvency event, cannot mean that, where the liability arises after the insolvency event, it falls within rule 13.12(1)(b). It would be dangerous to try and suggest a universally applicable formula, given the many different statutory and other liabilities and obligations which could exist. However, I would suggest that, at least normally, in order for a company to have incurred a relevant “obligation” under rule 13.12(1)(b), it must have taken, or been subjected to, some step or combination of steps which (a) had some legal effect (such as putting it under some legal duty or into some legal relationship), and which (b) resulted in it being vulnerable to the specific liability in question, such that there would be a real prospect of that liability being incurred. If these two requirements are satisfied, it is also, I think, relevant to consider (c) whether it would be consistent with the regime under which the liability is imposed to conclude that the step or combination of steps gave rise to an obligation under rule 13.12(1)(b).”*

134. Lord Sumption said at [130] – [131]

> *“130. The critical question is what constitutes an “obligation incurred” for the purpose of rule 13.12(1)(b) of the Insolvency Rules 1986. The context shows it means a legal rule applying before the date when the company goes into liquidation which may, contingently on some future event, give rise to a “debt or liability” arising after that date. But it cannot extend to every legal rule which may on any contingency have that effect. Otherwise every debt or liability would be provable irrespective of the date when it accrued, unless the law changed after the company went into liquidation. Since the scheme depends on there being a common date as at which the fund falls to be valued and distributed pari passu, that cannot be right. Some limitation must be read into sub-paragraph (b). But what limitation?*

131. The paradigm case of an "obligation" within the sub-paragraph is a contract which was already in existence before the company went into liquidation. It is implicit in the argument of those who contend on this appeal that there is no provable debt in this case that contract is not just the paradigm case but the only one. Yet when one asks what it is about a contract that qualifies it as a relevant source of obligation, the answer must be that where a subsisting contract gives rise to a contingent debt or liability, a legal relationship between the company and the creditor exists from the moment that the contract is made and before the contingency occurs. The judgment of Lord Reid in In re Sutherland (dec'd) [1963] AC 235 was concerned with a very different statutory scheme, but his analysis is nevertheless illuminating because it makes precisely this point at pp 247-8: "It is said that where there is a contract there is an existing obligation even if you must await events to see if anything ever becomes payable, but that there is no comparable obligation in a case like the present. But there appears to me to be a close similarity. To take the first stage, if I see a watch in a shop window and think of buying it, I am not under a contingent liability to pay the price: similarly, if an Act says I must pay tax if I trade and make a profit I am not before I begin trading under a contingent liability to pay tax in the event of my starting trading. In neither case have I committed myself to anything. But if I agree by contract to accept allowances on the footing that I will pay a sum if I later sell something above a certain price I have committed myself and I come under a contingent liability to pay in that event."

135. I reject Ms Hilliard's submission that the status of a contingent creditor is affected by the fact that the court will have a discretion whether to grant such a creditor's winding up petition whereas a creditor relying on an undisputed debt is entitled to a winding up order *ex debito justitiae.*

136. I also reject Ms Hilliard's submission that the requirement made clear in *Hockley* that for a petitioner to establish that it is a contingent creditor it must demonstrate that the company is under an existing legal obligation which could in future give rise to an enforceable debt, can be satisfied by relying on a general legal duty owed by the company not to cause loss to third parties including the petitioner. I am of this view because I am satisfied that Ms Hilliard's postulated general duty not to cause loss is not an "obligation" of the sort contemplated in the *Hockley* formulation, that being an accrued legal obligation in respect of a particular contemplated subject matter which will be the source of future financial liability depending on the occurrence of future events. If this submission of Ms Hilliard's were well founded,

putative petitioners with shadowy claims to be creditors could out-flank the requirement that a petitioning creditor must demonstrate that it is owed a presently enforceable debt by claiming to be a contingent creditor.

137. I was assisted in reaching the conclusion expressed in paragraph 137 above by the decision of the New South Wales Court of Appeal in *Treadtel International Pty Ltd v Cocco* [2016] NSWCA 360. The question in that case was whether the Respondent, Mr Cocco, ought at first instance to have been granted leave to amend a pleading to include a claim for damages against the Appellant. In order to bring this claim, Mr Cocco, had to show he was a creditor or a contingent creditor in accordance with s. 462 of the Corporations Act (Cth). The NSWCA reversed the decision below by which leave to amend had been granted. The proposed claim was vaguely and inconsistently pleaded and it was clear that the Respondent did not have any standing as a creditor. The lead judgment was given by Barrett AJA who said in paragraph 58:

> *"The rationale of the several decisions I have mentioned concerning contingent and prospective creditors is, it seems to me, that such a creditor will not be permitted to apply for winding up unless there is an existing obligation of the company (as required by the decision in Community Development Pty Ltd v Engwirda Construction Co), which obligation can be viewed with a high degree of assurance as a source of financial liability. Thus, in a case such as Re PMC Investments Pty Ltd, a defaulting purchaser under a conveyancing transaction may be seen to be subject to a relevant obligation where the standard contractual position is uncontroversial and the value of the property is shown to be such that the default has occasioned loss to the vendor, even though no proceedings for damages have crystallised that liability. But the position is otherwise where, as in Thomas v Mackay Investments Pty Ltd, the existence of the obligation, as well as the quantification of any damage, is dependent on the resolution of disputed or otherwise unclear legal rights and duties by means of proceedings for damages brought against the company."* [Emphasis supplied]

138. I was unpersuaded by Ms Hilliard's reliance on *In re T&N Ltd; Atom Holdings; Dollar Land; Millenium AT* and *Re Nortel* in support of her submission as to the nature of the pre-existing obligation referred to in *Hockley.*

139. As already related, *In re T&N Ltd* was primarily concerned with the effect of provisions in Schemes of Arrangement and CVAs in regard to the proof of claims made thereunder and it

was held that future asbestos claims (as defined) were **not** provable debts for the purpose of winding up.

140. *In Atom Holdings*, I find that Kawaley J erred in finding at [40] that it was clear "as a matter of principle" that standing to petition to wind up a company under section 94 of the Act as a contingent (or prospective) creditor, as much as standing to petition as a creditor, was to be defined by reference to the standing to prove in the liquidation under s.139 (1). As Mr Lowe correctly submits, section 139 does not equate a "contingent debt" with the act of filing a proof of debt. Rather, it says that once such a debt exists, it may be admitted to proof. It also refers specifically to 'claims' against the company.

141. In paragraph 37 of his judgment dated 23 October 2025, Doyle J relied on *Atom Holdings* and *Aubit International* in reaching his conclusion that the petitioner had established standing to seek the winding up of PSI as a contingent creditor. With respect to him, he erred in doing so given the aforementioned error committed by Kawaley J in *Atom Holdings* and the identical error he himself committed in paragraph 26 of his judgment in *Aubit International.*

142. In both *Dollar Land* (at pp 407b to 408a) and *Millenium AT* (at para 47) the petitioners' claims were held to be *unanswerable* whereas that is far from being the case in these proceedings where the Petitioner's claims are hotly disputed.

143. As to *Re Nortel,* I accept Mr Lowe's submission that this authority did not change the accepted notion of what amounts to a contingent creditor founded on the decision in *Hockley* for the following reasons: (i) the Supreme Court was not construing the expression "contingent creditor" but "obligation" (which in context meant a prospective or contingent obligation); (ii) Lord Sumption's explanation for the paradigm contingent liability in contract was focused on the pre-existing legal relationship when he said "*where a subsisting contract gives rise to a contingent debt or liability, a legal relationship between the company and the creditor exists from the moment that the contract is made and before the contingency occurs."* (at p249 [131]); (iii) *Hockley* and the other authorities which support it were not overruled or even mentioned; and (iv) the statutory context was about the "*proving*" of debts where the policy of the legislation tends to be to create as wide a net as possible.

<u>Conclusion</u>

144. If my conclusion that the winding up order dated 12 May 2025 is a nullity be wrong, I would propose that for the reasons given in paragraphs 134 – 143 above the orders made by Doyle

J dismissing the two summonses before him on 16 October 2025 be set aside and replaced by an order setting aside the aforesaid winding up order dated 12 May 2026.

GROUND 4 — THE FAILURE TO APPLY THE PROPER TEST IN RESPECT OF THE NEED FOR AN INVESTIGATION

145. In paragraph 38 of his judgment, Doyle J stated that there was plainly a need for an investigation and that on the authority of paragraph 35 of his judgment in *Aubit International*, this was a free-standing ground for a winding up order. The paragraph Doyle J was referring to reads:

> *"There is a weight of first-instance authority as outlined in Seahawk China Dynamic Fund (FSD 23 of 2022 (DDJ) ("Seahawk"), unreported judgment 9 August 2022) paragraphs 63-80 to the effect that the need for an investigation can be a free-standing basis for a winding up order. Asia Private Credit Fund [2021] CILR 134 provides some appellate support, albeit by way of a footnote (footnote 9) and perhaps without the benefit of full argument. In the circumstances of this case, however, I am satisfied that it is appropriate to make a winding-up order on two grounds namely, the inability to pay debts ground and the just and equitable ground."*

146. Two of the judgments referred to at paras 63-80 in *Seahawk* are the judgments of Henderson J in *In Re Paradigm Holdings* [2004 – 5] CILR 542 ("*Paradigm")* and *Re Parmalat Capital Finance Ltd* [2006] CILR 171 ("*Parmalat")*.

147. In *Paradigm* Henderson J, citing Palmer's Company Law 22nd ed paras 81-08 at p 887 (1976) and *Re Peruvian Amazon Co. Ltd* (1913), 29 TLR 384, observed that a necessity for a full investigation was one of the traditional reasons for making a winding up order under the just and equitable ground.

148. In *Parmalat* Henderson J cited *Re Gordon & Breach Science Publishers* [1995] 2 BCLC 189; *In Re Pantmaenog Timber Co Ltd* [2004] 1 AC 158 ("*Pantamaenog")* and *Bell Group Fin. (Pty) v Bell Group (UK) Holdings* Ltd [1996] BCC 505 ("*Bell Group*") as authority for the proposition that the need for an investigation was a free standing ground for making a winding up.

149. In *GFN* at first instance [2009] CILR 135, Smellie CJ relied at paragraphs 39-42 of his judgment on the decision of Chadwick J (as he then was) in *Bell Group* and the authorities *Krasnapolksy Restaurant & Winter Gardens* [1892] 3 Ch 174 ("*Krasnapolksy*") and *Pantamaenog* cited in *Bell Group* for concluding that the need to investigate the failure of the *GFN* group to repay the debts amounting to US$ 137 million owed to the petitioner which had only received US$60,000, justified winding up the company on the just and equitable ground.

150. In *GFN* in this Court, the question whether the need for an investigation was a free-standing ground for a winding up order was expressly left open by Chadwick P who stated that the Court *"heard no argument on that question. It can await further consideration by this court when the need arises."*

151. In *ICP Strategic Credit Income Fund Ltd* FSD No 82 of 2010, unreported, 10 August 2010) (*"ICP")* Andrew Jones J referred to no authority but stated at [8] "*In the circumstances of this case, I also accept that the need for such an investigation is a sufficient justification for making a winding up order."*

152. In *Madera Technology Fund (CI), Ltd*, FSD No 54 of 2021, unreported 10 November 2021, it was common ground that the need for investigation was a free-standing ground. Citing *Paradigm* and *GFN* at first instance, Richards J noted at [76]: "*It is accepted that the need for an investigation can be a free-standing basis for the making of a winding up order on the just and equitable ground*".

153. In *Washington Special Opportunity Fund, Inc*., FSD No 151 of 2015, unreported, 1 March 2016) ("*Washington Special"),* Mangatal J at [122] also referred to *Parmalat*, *GFN* and *ICP* as the "*leading Cayman cases on this area*" and stated:

> "*These, and other cases, demonstrate that it has been accepted in this jurisdiction that the need for an investigation into the affairs of a company can be a freestanding basis for the making of a winding-up order on the just and equitable ground. For a contrary view, see the Second Edition of Derek French's work Applications to Wind Up Companies, paragraph 7.7.6.2."*

154. Finally, in *Baosheng Media* Group Holdings Ltd (unreported, FSD No 113 of 2024, 30 October 2024) at [30] Doyle J refused to strike out a just and equitable shareholder's petition

holding that the need for investigation could form the basis of a just and equitable winding up.

155. Mr Lowe submits that the aforementioned decisions holding that the need for an investigation can be an independent ground for a winding up order should not be followed. He cites paragraph 7.7.6.2 of the Second Edition of Derek French's work Applications to Wind Up Companies to which Mangatal J had referred in *Washington Special* which reads:

> *A need to investigate a company's affairs does not in itself justify winding up on a contributory's petition. Re Berlin Great Market and Abattoirs Co is to the contrary and so is Re Manchester and Liverpool Transport Co Ltd though the judge in the latter case emphasised that there were very peculiar circumstances. A need to investigate a company may be a sufficient reason for ordering a winding up by the court on a public interest petition.*

156. Mr Lowe contends that the reasoning in these cases is contrary to the statutory winding up scheme centred on section 92 (d) & (e). In his submission, the separate winding up grounds specified in these paragraphs - (d) the company is unable to pay its debts; (e) the Court is of opinion that it is just and equitable that the company should be wound up – are the foundation of the jurisdiction to wind up a company so that no discretion to order a winding up exists unless one of those grounds is made out. To uphold the need for an investigation as a free-standing ground for a winding up order cuts across the accepted notions of proof and rewards creditors who cannot show insolvency but want the benefit of far-ranging discovery. Whilst the need for a investigation might conceivably arise as a result of equitable considerations as between a company and a shareholder, third party creditors do not have a relationship with a debtor beyond the circumstances giving rise to debt: there is no equity of discovery. Further, there are well-established scenarios where a just and equitable petition may succeed such as "a breakdown of trust and confidence," "gross misconduct" or "oppression", but not less. A need to investigate should not replace the need to show that the company has actually engaged in misconduct or wrongdoing.

157. Mr Lowe also submitted that in any event, the circumstances in the instant case fell far below anything that could justify such an exceptional step as issuing a winding up order based on the need for an investigation. Doyle J's conclusion rested solely on paragraphs 135–137 of the Petition and paragraph 70 of the Petitioner's skeleton dated 31 January 2025, yet neither of these materials provides a factual basis to support a need for investigation.

158. Paragraphs 135–137 of the Petition merely assert, in general terms, that winding up is "essential" to "fully explore" PSI's involvement in the 1MDB Fraud and supposed "asset stripping", and that the "scope and extent" of the fraud is unclear. The only concrete point advanced is that liquidators would have powers to compel interviews. Nothing in these paragraphs points to misconduct by PSI, missing documents, unexplained transactions, or any factual trigger that could justify a need for investigation by JOLs.

159. Paragraph 70 of the Petitioner's skeleton goes no further. It states only that PSI has an indirect interest in the Escrowed Funds; the Petitioner believes PSI and its subsidiaries were "conduits" to the Fraud; Mr Obaid has been convicted in Switzerland; and investigations might identify "further 1MDB funds received by the Company".

160. Properly analysed, this material does not justify an investigation; it simply invites the Court to appoint liquidators so that they can look for a claim. That is precisely the type of far-reaching discovery by liquidation that *GFN* warns against. A winding-up cannot be used to determine whether the petitioner might have a claim. Standing and grounds must be established first.

161. More fundamentally, no allegation, let alone evidence, suggested that PSI held documents, information, or internal records illuminating the 1MDB transactions on which the Petitioner relies. The Murabaha financing, the transfer of the 49% PSOSL interest, the promissory note structure, and the creation of the Bridge Global units (as fully discussed in Appendix 1 of the Appellant's skeleton) were all entirely independent of PSI. It is difficult to conceive of a case less suited to the exceptional step of winding up on investigative grounds. Ms Hilliard submitted at the hearing that the expression "just and equitable" is very broad and wide entitling the court to take into account whatever it considers just and equitable and a need to investigate is an obvious ground within the just and equitable ground in section 92 (e).

162. Ms Hilliard argued that this Court should give considerable weight to the Cayman decisions holding that the need for an investigation is a separate ground for winding up bearing in mind that they go back as far as *Paradigm* (2004), *Parmalat* (2006) and *GFN* at first instance (2009). She also suggested that this Court should be cautious before overturning the Cayman decisions where the need for an investigation was a useful basis for making a winding up order. The judges who made these decisions were "the ones at the coal face". They had a great deal of experience and should be trusted only to make a winding up order on the separate

ground of the need for an investigation where the facts are such that, as Doyle J said in this case, "they cry out for an investigation". In her submission, to overrule the Cayman cases "would cut across the jurisdiction in the Cayman Islands which is rightfully respected, respected because the judges are relied on to effectively smell out mendacity and fraud when they see it … it would be … a strong step to take and a retrograde step."[5]

163. Ms Hilliard laid considerable emphasis on the decision of Chadwick J in *Bell Group* and she also relied on *Krasnapolsky* and *Crigglestone,* the authorities cited in *Bell Group*. In response to Mr Lowe's contention that paragraphs 135–137 of the Petition and paragraph 70 of the Petitioner's skeleton dated 31 January 2025 relied on by Doyle J were an inadequate basis for concluding that there was a need for an investigation, Ms Hilliard submitted that Doyle J's findings amply justified the need for an investigation against the background of the fraud.

164. As noted above, *Bell Group* was cited by Henderson J in *Parmalat.* In this case, the petition before Chadwick J sought under section 122 of the UK Insolvency Act 1986 the winding up of Bell Group (UK) Holdings Ltd ("BG(UK)"), a company incorporated in England that was hopelessly insolvent. The petitioner, Bell Group Finance (Pty) Ltd ("BGF") was a Western Australia company that was a creditor of BG(UK). BGF was in liquidation and it and BG(UK) were both members of the Bell Group of companies that had granted comprehensive security over their properties in favour of Westpac Banking Corporation ("Westpac"). Sometime previously, Westpac had appointed administrative receivers under these securities in respect of the Bell group companies. BGF's liquidator, Mr Woodings, was concerned to investigate the circumstances in which the securities over the Bell Group assets had been granted. It was suspected that the security had been granted, to the knowledge of Westpac, in breach of the directors' duties to act in the interest of the companies. In particular, Mr Woodings wanted to have access to documents and information which were in England. The petition was opposed by the administrative receivers and by Westpac.

165. Section 122 of the UK Insolvency Act 1986 was in the same or very similar terms as section 92 of the Cayman Islands Companies Act providing that a company could be wound up if it was unable to pay its debts and if the court was of the opinion that it was just and equitable that the company be wound up. Section 124A of the 1986 Act empowered the Secretary of State to present a petition for the winding up of a company where he thinks it expedient in the public interest that the company be wound up. On the presentation of a petition under that

[5] Transcript, Day 2 pp 53 line 25 and p 54 lines 12-22

section the court would make a winding up order if they thought it just and expedient to do so. Section 125 (1) provided that the court should not refuse to make a winding up border on the ground only that has no assets.

166. In the course of his judgment, Chadwick J said:

> *"In my view there is no doubt that the court has jurisdiction to make a winding-up order in circumstances in which the company has no assets and where the only purpose of the order would be to enable an investigation to take place into the company's affairs. That must follow from the legislation itself. Section 125(1) of the Insolvency Act 1986, to which I have already referred, enjoins the court not to refuse a winding-up order on the ground only that the company has no assets. Lack of assets cannot by itself be a ground for refusing an order if there is some other reason to make one.*
> *Section 122(l)(g) empowers the court to make a winding-up order if it is of the opinion that it is just and equitable that the company should be wound up. The court has power to, and not infrequently does, make a winding-up order on that just and equitable ground on the basis of a petition presented by the Secretary of State under s. 124A where the factor which has caused the Secretary of State to take the view that it is expedient in the public interest that the company be wound up is the need for an investigation." (p.512D-F)*
> *"Apart from the guidance from the statute itself, there are decisions in this division which point the other way. In Re Krasnapolsky Restaurant & Winter Garden Co [1892] 3 Ch 174, Vaughan Williams J said this at p. 178:*
>
> > *"If the circumstances are such as to suggest that an investigation into the circumstances of the company, under the Companies (Winding-up) Act 1890, will be likely to turn out to the advantage of the unsecured creditors, that alone is a sufficient ground for making a compulsory order. In other words, if the circumstances appearing by affidavit are sufficient to shew, prima facie, that an investigation into the formation or promotion of the company or the issuing of debentures or shares is required, that alone is an advantage to the unsecured creditors. They are the persons who have the greatest interest in such an investigation being held, and I believe it was in their interest that the Legislature intervened."*

It is necessary to keep in mind that, prior to 1907, there was no provision in the company's legislation comparable to that now found in the proviso to s. 125(1) of the Insolvency Act 1986. Even in the absence of such a provision, it was recognised as early as 1892 that the need for an investigation was itself of sufficient advantage to justify the making of a winding-up order in the interests of an unsecured creditor. That principle was reaffirmed by Buckley J and by the Court of Appeal in Re Crigglestone Coal Co Ltd [1906]2 Ch 327. At p. 332 Buckley J said this:

> *"The company will often put forward, as if it were matter of defence, that there are no assets to wind up. It is not matter of defence at all. The Court has often refused an order upon that ground, but not because it lies in the debtor's mouth to say that he is not amenable to the jurisdiction because he has no property, but because the Court does not make an order where no benefit can result. If the order will be useful (not necessarily fruitful) there is jurisdiction to make it. This view is illustrated by the fact that in many cases, and particularly since the Act of 1890, the Court will make an order, not because there are assets, but in order to provide the machinery for ascertaining whether there cannot be shewn to be assets. In Re Krasnapolsky Restaurant & Winter Garden Co is an illustration of this."*

When the matter went to the Court of Appeal, Sir Richard Collins MR posed the question, at p. 337:

> *'Is there any possibility of the creditors reaping any fruits out of it? It seems to me that the onus is clearly on the debenture-holders to negative that possibility.'*

He gave his answer in these terms:

> *"If there is a reasonable probability, or even a reasonable possibility - I think it may be put as high as that - that the unsecured creditors will derive any advantage from a winding-up, the order ought to be made in order that they may be heard in the debenture-holders' action, and not have the proceedings left in the hands of other persons who are antagonistic to their interests." (p 512H-513E)*

> *"In my view the question which the court has to ask in each case in which there are no assets is whether it is indeed just and equitable to make a winding-up order? It may well be just and equitable to make such an order in order to enable an investigation to take place. In circumstances in which I find that assets having a book value of some £353m nil realisable value, it seems to me that an investigation is undoubtedly called for.*
>
> *In those circumstances I am satisfied that it is just and equitable to make a winding-up order in this case so that a liquidator of BG (UK) can consider whether there is any advantage to the creditors in his or her liquidation in co-operation with the Australian liquidators. As I have already indicated, in reaching a decision on that point the liquidator will have regard only to the interests of the creditors in the liquidation of BG (UK) and will be at liberty to seek directions from the court in case of difficulty." (p. 514 B-D)*

167. Mr Lowe points out that Chadwick J hung his justification for ordering the winding up of the company on the direction to the court in section 125(1) of the Insolvency Act 1986 not to refuse a winding-up order on the ground only that the company has no assets. However, the decision is nonetheless a powerful example of how a winding up order on the just and equitable ground to allow for an investigation into certain pertinent events can serve the interests of unsecured creditors. In this connection I think it appropriate to consider the two cases cited by French in his para 7.7.6.2 as being contrary to his view that the need for an investigation is not a ground for winding up on the just and equitable ground: *Re Berlin Great Market and Abattoirs Co* [1871] XXIV NS LT 773 and *Re Manchester and Liverpool Transport Co Ltd* (1903) 19 TLR 227.

168. In the first of these two cases, *Re Berlin Great Market and Abattoirs Co,* a shareholder presented a petition for the compulsory winding up of the company making allegations as to the dealings of the directors with the assets of the company which appeared to require investigation. Giving judgment, Lord Romilly said he would make a compulsory order. The allegations contained in the petition with reference to the dealings of the directors with the assets of the company clearly required to be investigated. If he were to allow the petition to stand over in order that the company might pass resolutions for a voluntary winding up, the result would be that the directors would have the entire control of the winding up which was objectionable.

169. In *Re Manchester and Liverpool Transport Co Ltd* (1903) 19 TLR 227, after incorporation of the company, the directors issued a prospectus inviting applications for 150,000 ordinary shares of £1 each. The prospectus stated, inter alia, that the company had been organised to undertake the transport of merchandise between Manchester, Liverpool and Birkenhead through the Manchester Ship Canal. The prospectus further stated that the company had entered into two agreements with the Manchester Ship Canal Company and the Trafford Park Estates Company (Limited) for the grant of leases of sites on or adjoining the ship canal. The consideration for these agreements and a contract for the construction of the necessary vessels, together with a guarantee of the subscription of the capital of the company up to £100,000 was to be the issue of 65,000 deferred shares as fully paid to the vendors or their nominees. The petitioners alleged they had not been able to ascertain by whom the guarantee of the subscription of the capital of the company up to £100,000 was given and it would now appear that they were liable under the guarantee and a number appeared to have moved to France. The company was presently unable to pay its debts but the assets were of considerable value and in these circumstances it was just and equitable that the company be wound up in order that an investigation be made into the circumstances under which the guarantee had not been enforced by the directors. Mr. Justice Byrne noted that this was a very peculiar case in its circumstances and it was hopeless to suppose that a winding up order would produce any return to the shareholders unless something was recovered from the persons who gave the guarantee. He cited the dictum of Lord Justice Vaughan Williams in *Krasnapolski Restaurant* that is referred to in *Bell Group* and said that for the petitioners opposing the making of a winding up order to succeed they had to show the company would obtain no advantage from the order proposed to be made. He went on to state, “if the circumstances are such as to suggest that an investigation into the circumstances of the company under the Company Winding Up Act 1890 will be likely to turn out to be the advantage of the unsecured creditors, that alone is sufficient ground for making a compulsory order.” After careful consideration of the very peculiar circumstances of the case, he made the usual order for the compulsory winding up of this company.

170. Referring by footnote to the judgment of Lord Wilberforce in *Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360, the first section of the passage in Palmer’s Company Law 28 ed at para 81-08 referred to by Henderson J in *Paradigm* reads:

> *“It has sometimes been suggested that there is an exhaustive list of situations that may fall within the scope of the “just and equitable” clause but it now seems that, although such classification may be convenient for purposes of presentation, the words “just and*

equitable" require a more flexible interpretation. In the words of Lord Wilberforce: "illustrations may be used, but general words should remain general and not be reduced to the sum of particular instances."

171. Para 81-08 then lists nine different instances that had been held to fall within the just and equitable clause including that the company was a "bubble", "deadlock", "loss of the substratum" and "a full investigation was necessary" the latter being referenced to *Re Peruvian Amazon Co Ltd* (1913) 29 TLR 384. In that case the company had been formed to purchase from the firm of Arana & Hermanos their rubber estates and the business conducted thereon located on the upper Amazon. Subsequently a report was published that revealed that the running of these estates involved atrocities inflicted on indigenous workers employed by the firm. When this state of affairs became known, the company went into voluntary liquidation and Arana was appointed as liquidator. Certain shareholders objected strongly to the appointment of Arana as liquidator and applied for a compulsory liquidation to be conducted by a different liquidator. After having set out in considerable detail the findings in the report, Mr. Justice Swinfen Eady made a compulsory winding up order on the ground that there ought to be the fullest possible investigation as to how the business had been conducted.

172. It will be recalled that in *Paradigm* Henderson J cited *Re Gordon & Breach Science Publishers* [1995] 2 BCLC 189 and *In Re Pantamaenog Timber Co Ltd* [2004] 1 AC 158. As Mr Lowe observed in paragraph 118 of his written submissions: (i) the former case concerned the conversion of a voluntary liquidation into a compulsory liquidation and the Court (Robert Walker J) did not hold that the need for an investigation is a free-standing ground to wind up a company but observed that in a compulsory liquidation a creditor is entitled to an independent investigation; and (ii) the latter case concerned the powers of Official Receivers to provide information to the Secretary of State in disqualification proceedings and the House of Lords did not decide that the need for an investigation is a ground for winding up but did decide that the compulsory liquidation of a company served a public interest in allowing the company to be investigated.

<u>Conclusion</u>

173. Having reviewed the pertinent authorities cited to the Court, I turn to give my conclusion on the issue raised in this 4th Ground of Appeal. As was noted in paragraph 81-08 in the 22nd edition of Palmer's Company Law, the time for the application of a fixed exhaustive list of situations that may fall within the scope of the "just and equitable" clause has had its day and a more flexible interpretation of the clause is now the modern approach. This was recently

confirmed by the Privy Council in *Aquapoint LP (in Official Liquidation) (Appellant) v Xiaohu Fan (Respondent) (Cayman Islands)* [2025] UKPC 56 where, in the context of a case concerning a just and equitable winding up of an exempt limited partnership under section 36(3)(g) of the Exempt Limited Partnership Act where the issue was the role of equity to enable the court to subject the exercise of legal rights to equitable considerations, Lord Richards at [53] approved what Lord Wilberforce said in Westbourne Galleries at 374H: *"there has been a tendency to create categories or headings under which cases must be brought if the clause [ie the power to wind up a company on the just and equitable ground] is to apply. This is wrong. Illustrations may be used, but general words should remain general and not be reduced to the sum of particular instances".*

174. Given the approach adopted in *Aquapoint* based on Lord Wilberforce's judgment in *Westbourne Galleries* and in light of the several English authorities in which winding up orders on the just and equitable ground have been made to enable investigations to be conducted for the benefit of unsecured creditors eg *Re Berlin Great Market and Abattoirs Co* [1871] LT 773; *Re Manchester and Liverpool Transport Co Ltd* (1903) 19 TLR 227; *Krasnapolksy Restaurant & Winter Gardens; Re Crigglestone Coal Co Ltd* [1906] 2 Ch 327; *Re Peruvian Amazon Co Ltd*; and *Bell Group*, I find that the Cayman Islands courts have and have had at all material times jurisdiction to make winding up orders on the just and equitable ground where there was good evidence that unsecured creditors would benefit from an investigation and the petitioners involved had standing to seek a winding up order under section 94 (1) of the Act.

175. I wish to stress that it must be clearly understood that the need for an investigation cannot be deployed to escape the necessity of establishing standing to present a petition where there are difficulties in demonstrating that the petitioner is a creditor or a contingent creditor or a prospective creditor.

176. I therefore conclude that Doyle J would have had jurisdiction in these proceedings to hold that the Company should be wound up on the just and equitable ground if the Petitioner had had standing as a contingent creditor under section 94 (1) of the Act and the evidence disclosed the need for an investigation into the dealings of the Company with 1MDB.

GROUND 5 — THE JUDGE ERRED IN HOLDING THAT THE JOLS WERE INDEPENDENT

177. In my judgment, Doyle J's decision not to declare that Ms Barkhouse and Ms Shukla there and then lacked the necessary independence to be appointed JOLs based on his view that if at a future time the steps they were taking did involve a conflict of interest such as their adjudication of the debt owed to the Company and taking over PSOSVL's participation in the Forfeiture Proceedings, "conflict" liquidators could be appointed, is a decision he was entitled to come to and is not susceptible to successful challenge by PSI.

Overall conclusions

1. The Company succeeds on its first ground of appeal and is entitled to an order setting aside the *ex parte* winding up order by Kawaley J dated 6 May 2025 on the basis that that order was and is a nullity

2. By reason of conclusion 1, the orders made by Doyle J following the hearing on 16 October 2025 are of no legal effect.

3. The appellant succeeds on Ground 2. Even if the Court had jurisdiction to make an *ex parte* order, it would have been a plainly wrong exercise of discretion to make the 6 May 2025 winding up order *ex parte.*

4. On Ground 3 (1) -- [refusal to adjourn the hearing of the petition on the ground that the petitioner's claim was bona fide disputed on substantial grounds]: If conclusion 1 be wrong, Doyle J's order dismissing the two summonses before the court on 16 October 2025 should be set aside and replaced with a direction that there be a hearing following the service of the Company's evidence to determine whether the Petition should be stayed or dismissed in the light of Vos JA's conclusions expressed in [94] of his judgment in *GFN.*

5. On Ground 3 (2) -- [the Petitioner did not have standing as a contingent creditor]: If conclusion 1 be wrong, the orders made by Doyle J dismissing the two summonses before him on 16 October 2025 should be set aside and replaced by an order setting aside the winding up order dated 6 May 2025.

6. The Respondent succeeds on Ground 4. The Cayman Islands courts have, and have had at all material times, jurisdiction to make winding up orders on the just and equitable ground where there was good evidence that unsecured creditors would benefit from an investigation and the petitioner(s) involved had standing to seek a winding up order under section 94 (1) of the Act.

7. The Respondent succeeds on Ground 5. There is no basis for setting aside Doyle J's decision that Ms Barkhouse and Ms Shukla did not lack the necessary independence to be appointed JOLs of the Company.

The Hon Clare Montgomery KC, JA

178. I agree.

Sir Michael Birt, JA

179. I also agree.