Dear Clients and Friends,

I would like to highlight several cases in this July issue of ONC Corporate Disputes and Insolvency Quarterly. Of particular interest to insolvency practitioners would be the Hong Kong case *Wan Po Jun Mary Paulin v Au Yeung Yee Man, representative of the estate of Au Yeung Wing Hong* HCA 1478/2009. In this case, the court reaffirmed the important principle that the bankrupt's estate, which vests in the trustee in bankruptcy upon commencement of bankruptcy, will NOT reverse back to the bankrupt upon the automatic discharge of the bankruptcy order. Another interesting case is *Foo Tsing also known as Nelson Foo v Roeders Geschaeftsfuehrungs GMHB also known as Rӧders Geschäftsführungs GMBH and Another* HCCW68/2016, in which Harris J refused to grant a minority shareholder an injunction to prevent the majority from removing him as a director, notwithstanding that the court recognized that there existed mutual intention that the minority shareholder shall participate in the management of the company. In the English decision of *Schlosberg v Avonwick Holdings Ltd and others* [2016] EWHC 1001 (Ch), the English High Court held that a bankrupt retains legal professional privilege in documents delivered to the trustee in bankruptcy. Hence, the trustee in bankruptcy has no right to waive the privilege. Last but not least, in the Singaporean case of *Living the Link Pte Ltd v Tan Lay Tin Tina* [2016] SGHC 67, the High Court of Singapore held a company director to be personally liable for procuring unfair preferences transactions, for she owes a fiduciary duty to take into account the interests of the company’s creditors when a company is insolvent, or near insolvency. The case resonates with the Court of Final Appeal decision in *Moulin Global Eyecare Holdings Ltd v Olivia Lee Sin Mei* (2014) 17 HKCFAR 466, where the CFA allowed a claim to proceed against a director, who procured early repayment to a creditor, on the basis of breach of fiduciary duties.

As always, your comments and suggestions are most welcome. If we have missed any case which you regard as important, please kindly let us know and we shall endeavour to include them in the future.

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The Bankrupt’s estate, which vests in the trustee in bankruptcy upon commencement of bankruptcy, will not reverse back to the Bankrupt upon the discharge of the bankruptcy order

1. **Wan Po Jun Mary Paulin v Au Yeung Yee Man, representative of the estate of Au Yeung Wing Hong** HCA 1478/2009

Mr Au-yeung Wing Hong (the “Deceased”) died on 11 April 2008. The plaintiff was the cohabitee of the Deceased. In his will, the Deceased left his estate, one Property, to his son and daughter. Probate was granted to the defendant, his daughter, as the sole executor.

The plaintiff commenced proceedings against the defendant, claiming that she had a half share in the Property, by way of resulting trust. As a result of the series of litigation, the plaintiff incurred liabilities to pay the defendant’s costs. She failed to pay the costs and was made a bankrupt on 11 April 2011. Her claim was stayed.

The defendant counterclaimed against the plaintiff to recover vacant possession of the Property. The plaintiff's bankruptcy was discharged on 11 April 2015. The trustees in bankruptcy (“TIB”) indicated that they allow and consent the plaintiff to use the rights vested in the TIB to defend the counterclaim (litigation right). But the TIB refused to assign or release any beneficial interest in the Property to the plaintiff (property rights). The defendants sought to strike out the defence to the counterclaim, alleging that the pleadings disclose no reasonable defence.

Upon the making of a bankruptcy order, the bankrupt’s property will vest in the TIB. The property vested in the TIB is not returned to the bankrupt upon the automatic discharge of the bankruptcy order: ss.12, 32 and 58 of the Bankruptcy Ordinance (Cap 6).

The Court held that in order for the plaintiff to defend the counterclaim successfully, the plaintiff must establish that she has a beneficial interest in the Property: *Cheung Wing Kwan Tommy v Hong Kong Export Credit Insurance Corp* [2012] 2 HKLRD 1255; *Health v Tang* [1993] 1 WLR 1421. But she cannot establish such an interest because any such interest she may have had is vested in the TIB. Hence, she has no defence.

The Court ordered the plaintiff’s defence to counterclaim be struck out and judgment be entered for the defendant on the counterclaim.
The fact that a company incurred significant loss such that there is no reasonable hope that the company would return to profitability may justify the winding up of the company on just and equitable ground.

2. Tsoi Kwong Shi v Asia Fortune Media Group Ltd CACV248/2015

The 1st respondent is the founder of the subject Company. The petitioner became a shareholder of the Company in 2014. Since then, the petitioner has been holding 40% of the shares, and the 1st respondent 60%. Both of them are directors of the Company.

After the relationship between the parties turned sour, the petitioner presented a petition for the winding up of the company and the appointment of provisional liquidators, on the basis, *inter alia*, that he was unfairly prejudiced as a minority shareholder. The trial judge refused the application for appointment of provisional liquidators. The petitioner appealed.

For an application for the appointment of provisional liquidators, the petitioner must satisfy two requirements. First, there is a *prima facie* case for a winding-up order. Second, the appointment is appropriate.

The Court of Appeal found that the Company had been running at a loss since late 2014, and the 1st respondent had withdrawn large sum of money from the Company for his personal use. The Court considered that when a company has incurred significant losses such that there was no real prospect that the company would return to profitability, the Court may draw the inference that the directors’ decision was improperly influenced by their desire to continue in office and in control of the company and to draw remuneration and other benefits for themselves. In such circumstances, the Court may conclude that the affairs of the company are being conducted in a way which is unfairly prejudicial to the members, and winding up of the company on the just and equitable ground would be justified: *Davis & Co Ltd v Brunswick (Australia) Ltd* [1936] 1 All ER 299; *Re Ching Hing Construction Company Ltd* HCCW 889/1999. In view of the serious risk that the assets of the Company were being wasted and dissipated, the Court of Appeal took the view that the appointment of provisional liquidators would be appropriate: *Re Union Accident Insurance Co. Ltd* [1972] 1 All ER 1105.

Appeal was allowed.
For the purpose of an inspection order, “records of the specified corporation” refer to documents which are “owned by” or “belong to” the corporation. Entitlement to have possession of the document is not sufficient to make the documents part of the records of the specified corporation.

3. **Leung Chung Pun v Masterwise International Ltd and Others HCMP2681/2012**

Pursuant to section 150FA of the predecessor Companies Ordinance (Cap 32), Masterwise was ordered to produce various classes of documents under an Inspection Order, which include records of Shenzhen Fifu Company Limited, a wholly owned subsidiary of Masterwise, and Huizhou Fifu Electronics Co Ltd, which is in turn a wholly owned subsidiary of Shenzhen Fifu. Both Shenzhen Fifu and Huizhou Fifu are incorporated in PRC.

Masterwise applied for an order that it is not required to produce various documents, on the ground that Masterwise “is not currently entitled as a matter of legal right to have possession of them.” Both parties produced expert opinions with regard to whether a shareholder is entitled to inspect and make copies of the company’s documents under the PRC Law.

However, Chow J considered the expert evidence on PRC Law irrelevant, because the question is whether those documents can properly be regarded as forming part of the records of Masterwise, not whether Masterwise is currently entitled as a matter of legal right to have possession of the documents.

First of all, the Court’s jurisdiction to make an order under section 152FA is restricted to the records of the specified corporation. And generally, the documents of a subsidiary are not the documents of its parent company. Chow J then referred to the recent decision of the Court of Appeal in **Hao Xiaoying v Wong Yiu Lam William and 2 Others CACV 70/2015**, in which the Court of Appeal clarified that “records of the specified corporation” mean documents which are “owned by” or “belong to” the corporation, regardless of possession. The Judge therefore drew the conclusion that a document belonging to a subsidiary does not become part of the records of the parent company merely because the parent company has possession, or is entitled as a matter of legal right to have possession of the document.

The plaintiff’s case is that Masterwise is entitled to call for the outstanding documents from Shenzhen Fifu and Huizhou Fifu as the holding company. Chow J considered it insufficient to make the requested documents part of the records of Masterwise for the purpose of section 152FA.
A minority shareholder is not entitled to an injunction to prevent the majority tabling a resolution to remove him as a director even if there exists mutual understanding that he shall participate in the management of the company.

4.  *Foo Tsing also known as Nelson Foo v Roeders Geschäftsführungs GMHB also known as Röders Geschäftsführungs GMBH and Another*  HCCW68/2016

The Petitioner held 20% of the shares in Roeders (China) Limited (the “Company”). The remaining 80% shares were held by the 1st respondent, Roeders Germany. The Petitioner, among other things, sought an injunction to prevent his removal as a director of Roeders (HK) Ltd, which is a subsidiary of the Company at a general meeting. The Petitioner contended that there was a mutual understanding between him and Jürgen that the petitioner and Jürgen, directly or indirectly through Roeders Germany on his behalf, would be entitled to equal participation in the management of the business.

Harris J found that such understanding was far from a binding agreement that if at some time in the future, differences arose between the parties, the majority shareholder could not remove the Petitioner as a director of the Company or one of its subsidiaries.

Harris J referred to his own decision in *Mandarin Capital Advisory Limited* [2011] 2 HKLRD 1003 that a majority shareholder’s right to remove directors under section 462 of the Companies Ordinance (Cap 622) (or its predecessor section 157(B), Cap 32) should not be easily restricted. Strong evidence would be required of an unqualified right to participate on the part of the respondent in the management of a company all the time that he remained a shareholder. This requires something more than an allegation that it is unfairly prejudicial for the respondent to be excluded from management of a company. What the Court anticipates will normally be a written agreement between shareholders, which contains an express prohibition against removal of a director all the time he remains a shareholder, which can be enforced by injunction.

The Court recognized that the removal of the petitioner as a director, coupled with other factors, might constitute unfair prejudice, but it does not follow that the majority shareholder is bound not to exercise its statutory right to remove him as a director. In conclusion, the Court refused to grant the injunction.
Singapore High Court endorsed the Universalist approach in cross-border insolvency by locating the primary place of insolvency proceedings at the center of main interest of the insolvent company.

5.  *Re Opti-Medix Ltd (in liquidation) and another matter* [2016] SGHC 108

Medical Trend Limited and Opti-Medix Limited (collectively, the “Companies”) were incorporated in the BVI. Their main business was in Japan. The proceeds of the business were however transferred to their bank accounts in Singapore. Late 2015, bankruptcy orders were granted by the Tokyo District Court, and the Applicant was appointed as their Bankruptcy Trustee. The Applicant sought the recognition in Singapore of the foreign insolvency proceedings in respect of the Companies.

The primary issue before the Court was whether liquidation in a jurisdiction other than that of the place of incorporation should be recognized.

The Court recognized that in cross-border insolvency, there has been a general movement away from the traditional, territorial focus on the interests of the local creditors, towards recognition that universal cooperation between jurisdictions is a necessary part of the contemporary world. Under the Universalist approach, one court takes the lead while other courts assist in administering the liquidation. Further, the Court accepted that the place of incorporation may be an accident of many factors, and may be far removed from the actual place of business. The approach of locating the primary place of insolvency proceedings at the center of main interest (“COMI”) of the company has much to commend it as a matter of practicality. In the present case, Japan was the only COMI for the Companies. The Court agreed with the statement made by Lord Hoffman in *Re HIH Casualty and General Insurance Ltd* [2008] 1 WLR 852 that for companies incorporated in offshore island, they usually don’t have real connection with the place.

The Court agreed that Japan was essentially the sole place where actual business was carried on. Singapore was primarily a center for managing funds received in the first instance in Japan. Further, there was no competing jurisdiction interested in the winding-up of the Companies. On the other hand, Japan had moved in favor of liquidation. To hinder the orderly dissolution of the Companies in this situation would serve no purpose.

In conclusion, the High Court of Singapore allowed the application and granted recognition of the bankruptcy orders of the Tokyo District Court and the appointment of the Applicant as the Bankruptcy Trustee of the Companies in Singapore.
Where winding up is on the ground of insolvency, the applicant has to show that the company has returned to solvency in order to successfully stay the winding up proceedings.

6. Phang Choo Ong v Gilcom Investment Pte Ltd [2016] SGHC 97

The defendant, Gilcom Investment Pte Ltd ("Gilcom") was ordered to be wound up on the ground that it was deemed to be unable to pay its debts after it failed to comply with a statutory demand for payment of a debt under a default judgment against it. The plaintiff, Mr. Phang Choo Ong ("Phang"), the sole director and shareholder of Gilcom, applied for a stay of the winding up of Gilcom on the ground that Gilcom intended to apply to set aside the default judgment. It was alleged that the default judgment was irregular or, alternatively, that Gilcom had a defence on the merits.

The High Court of Singapore dismissed the application. Under section 279(1) of the Companies Act, which is in similar language to section 181 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32), the Court has power to stay the winding up proceedings. For the Court’s exercise of discretion under section 279(1) of the Companies Act, the applicant has to show that the state of affairs that required the company to be wound up no longer exists. Where the winding up was on the ground of insolvency, the applicant has to show that the company is solvent: In the matter of Glass Recycling Pty Ltd [2014] NSWSC 439. Further, a stay would be refused if granting a stay would be detrimental to commercial morality and the interests of the public at large. In particular, where the company is insolvent, carrying on business and obtaining credit would present a grave commercial risk to persons dealing with it, and such companies should remain wound up: Re Mascot Home Furnishers Pty Ltd (in liquidation) [1970] VR 593. A stay would also be refused if the interest of the creditors, the members and the liquidator are not protected.

The High Court considered that whether Gilcom might succeed in setting aside the default judgment was irrelevant. To show that the state of affairs that required the company to be wound up no longer exists, Phang had to show that Gilcom was in fact able to pay its debts. Consideration of commercial morality and interests of the public also dictated that a stay should be refused if Gilcom was insolvent.

The Court found that there was no evidence that Gilcom was solvent. Indeed, the evidence before the Court confirmed that Gilcom was insolvent. Further, there was no evidence that interests of creditors and the liquidator would be taken care of if a stay were to be granted. The Court hence dismissed the application for a stay of the winding up.
Directors could be made personally liable by procuring unfair preferences transactions, for they have a fiduciary duty to take into account the interests of the company’s creditors when a company is insolvent, or near insolvency.

7. Living the Link Pte Ltd v Tan Lay Tin Tina [2016] SGHC 67

Early 2007, on the conceptualization of Tina Tan, Living the Link Pte Ltd (“Living”) was incorporated to operate the retail of high fashion brands. Unfortunately, due to the global financial crisis, Living closed the business on 31 July 2009. Prior to the voluntary liquidation, the remaining inventory and certain shares held by Living were transferred to its associate companies. The liquidators sought a reversal of the impugned transactions on the basis that these transactions were undue preferences. It was also alleged that Tin Tan breached her duties as Living’s director by procuring these transactions.

On the facts, the High Court of Singapore was satisfied that part of the impugned transactions constituted unfair preferences. The Court therefore had to decide whether Tina Tan was per se in breach of her duties as director, and if so what orders, if any, should be made against her. The Court was of the view that the finding that the transactions were undue preferences ipso facto led to the conclusion that Tina Tan had breached her fiduciary duty to ensure that the company’s assets are not misapplied to the prejudice of creditors’ interests. As to the appropriate order, the Court noted that to-date there was no reported decision by Singapore Courts on what orders can or should be made against the directors as a defendant in such proceedings. The liquidators sought an order that Tina Tan be required to pay a sum equal in value to the undue preference transactions to Living.

The Court agreed with the English Court of Appeal’s decision in Liquidator of West Mercia Safetywear Ltd v Dodd and another (1988) BCC 30, in which a director was made personally liable for procuring an undue preference. The Court found that holding a director who procures an undue preference directly responsible for restoring the company to the position it would otherwise have been in is not only just, but also in line with the clear direction of the Singapore Court of Appeal in Liquidators of Progen Engineering Pte Ltd v Progen Holdings Ltd [2010] 4 SLR 1089 that a director has a fiduciary duty to take into account the interests of the company’s creditors when a company is insolvent, or near insolvency.

The Court therefore ordered Tina Tan to repay a sum equal in value to the undue preference transactions to Living. This liability is joint and several with the liability of the associate companies to reverse the undue preferences transactions.
English High Court held that cause of action for financial provision in divorce proceedings does not vest in the trustee in bankruptcy

8. Ian Robert (Trustee in Bankruptcy of Mr. Elichaoff deceased) v Sarah Jane Duncanson Woodall [2016] EWHC 538 (Ch)

Mr. Elichaoff was made bankrupt on 7 July 2009 pursuant to a petition presented on 9 March 2009. Subsequently, he passed away. The trustee in bankruptcy (“TIB”) sought, among other things, a lump sum payment or other financial provision to be paid by Ms. Woodball under sections 23, 24 of the Matrimonial Causes Act 1973 on the basis that the cause of action is an asset of the estate which vested in him upon his appointment.

The TIB contended that causes in action, as property of the bankrupt estate, vest in a trustee in bankruptcy upon his appointment unless the claims are of an entirely personal nature: section 283 of the Insolvency Act and Heath v Tang [1993] 1 WLR 1421. The TIB observed that claims for financial provisions will not be entirely personal because they may include sums which will be paid to creditors.

In disagreement with the TIB, the English High Court held that the true construction of sections 23 and 24 of the Matrimonial Causes Act 1973 is that they create rights which can only be pursued by the spouses themselves. The rights do not extend beyond joint lives. The Court noted that section 21(1) of the Matrimonial Causes Act 1973 provides that financial provision orders under section 23 are for the purposes of “adjusting the financial position of the parties to a marriage and any children of the family in connection with proceedings for divorce, nullity of marriage or judicial separation.” Equivalent wording is used in section 21(2) for section 24. It makes clear that the Parliament intends that the orders are for the parties to the marriage and for the benefit, when appropriate, of their children.

The Court concluded that the right to seek financial provision does not vest in the TIB. Hence, the Court granted the application to strike out the relief claimed within the TIB’s application.
Court may adjourn the hearing of creditors’ petition if it is satisfied that an ulterior object exists, unless the petitioner can show that it is in the interest of the creditors as a whole that an immediate order be made.


Aabar Block S.A.R.L and Edgeworth Capital (Luxembourg) S.A.R.L (together the “Petitioners”) presented a bankruptcy petition against the debtor, Mr. Glenn Maud, who sought an adjournment, on the basis that the Petitioners were also pursuing the petition for a collateral purpose.

The English High Court agreed court proceedings may not be used for the purpose of obtaining for the person some collateral advantage to himself, and not for the purpose for which such proceedings are properly designed and exist. An abuse of process will be found to exist if the sole purpose of a petitioner is collateral, but a mixed motive will not amount to an abuse: *Hicks v Gulliver* [2002] BPIR 518.

Case law suggests that there is a subtle distinction between collateral purpose and ulterior object. A petitioner may have more than one purpose for presenting a petition and if one of the purposes is not proper it is ulterior to the bankruptcy scheme. If the only reason for presenting the petition is improper it is collateral and an abuse of process. If the Court is satisfied that an ulterior object exists the burden of proof switches to the petitioner to prove on balance of probabilities that an immediate order is required in the interests of the class or it is otherwise necessary.

On the facts, the Court found that there was insufficient evidence to support an ulterior object. The Petitioners, as judgment creditors for a very large sum, are *prima facie* entitled *ex debito justitiae* to a winding up order. The burden shifts again to Mr. Maud to provide credible evidence as to why a bankruptcy order should not be made. In these circumstances, the Court concluded that it was appropriate to make a bankruptcy order.
A Bankrupt retains legal professional privilege in documents which form part of his estate and the trustee in bankruptcy has no right to waive the privilege

10. **Shlosberg v Avonwick Holdings Ltd and others [2016] EWHC 1001 (Ch)**

Shlosberg, a Russian businessman, is the beneficial owner of Webinvest Ltd (“Webinvest”). Webinvest entered into a loan agreement with Avonwick Holdings Ltd (“Avonwick”), under which Avonwick agreed to advance US$100 million to Webinvest. Shlosberg personally guaranteed Webinvest’s obligations under the loan agreement. Webinvest failed to repay the loan. Avonwick, acting by Dechert, commenced proceedings against Webinvest and Shlosberg for repayment of the debt. Judgment was entered in favour of Avonwick. Neither Webinvest nor Shlosberg paid any sum in respect of the judgment. On Avonwick’s petition, a bankruptcy order was made against Shlosberg and trustees in bankruptcy (“TIBs”) were appointed.

After having obtained permission from the court, Avonwick started proceedings against, among others, Shlosberg, for unlawful means conspiracy, which claim is founded on fraud and if established would survive the discharge of Shlosberg’s bankruptcy. Avonwick again instructed Dechert to act for it.

Shortly after their appointment, the TIBs also retained Dechert as their solicitors. Upon the request of the TIBs, Dechert obtained a large amount of privileged documents from the bankrupt’s former solicitors, which included confidential and privileged advice on resisting Avonwick’s claims. The bankrupt claimed that Dechert had inadequate internal safeguards to protect his privilege and sought an order that Dechert cease acting for Avonwick as claimants in the conspiracy proceedings against him.

There is no dispute that many of the documents are privileged and confidential. Dechert contends, however, that the benefit of Shlosberg’s privilege has passed to the TIBs as part of the bankrupt estate, by virtue of section 306(1) of the Insolvency Act 1986.

Subject to limited exceptions, all property belonging to or vested in the bankrupt forms part of the bankrupt’s estate, and thus vests in his trustee. However, property which is “peculiarly personal” to the bankrupt does not form part of the bankrupt’s estate. In **Haig v Aitken** [2001] Ch 110, Rattee J held that a bankrupt’s estate does not include the bankrupt’s personal correspondence which is of nature peculiarly personal to him and his life as a human being.

The Court considered that privilege is not a “property” within the meaning of Insolvency Act 1986. The only effect of privilege is to enable the beneficiary of the privilege to resist compulsory disclosure of information in court proceedings: **B v Auckland District Law Society**
[2003] 2 AC 736. It is not a marketable right, it has no commercial value and it cannot be realized or distributed to creditors.

Even if privilege would otherwise amount to property, the Court agreed with the leading judgment given by Conrad JA in the Canadian case of Deloitte & Touche Inc v Bennett Jones Verchere (2002) 206 DLR (4th) 280 that such privilege is peculiarly personal to the bankrupt. While there may be a physical record or document which records the communication, the essence of the document is still the confidential communication to which privilege attaches. The right to exercise privilege does not depend upon ownership of the paper on which the privileged information is recorded. It is not the ownership of the paper which matters, but the right to control the dissemination and use of the information recorded on the paper.

In conclusion, the Court found that the TIB did not acquire the benefit of Shlosberg’s privilege, save for one category of documents. Taking into account that no information barrier has been put in place within Dechert between those advising Avonwick and those advising the trustees and the fact that a large quantity of documents have been reviewed in detail by Dechert, the Court held that it was appropriate to grant an injunction requiring Dechert to cease acting for Avonwick.
New York Court held that whether a derivative action can be brought on behalf of a foreign company is determined by the law of the place of incorporation.


The plaintiff is a shareholder of defendant Scottish Re Group Ltd, a Cayman Islands reinsurance company. The plaintiff brought both direct and derivative causes of action in the state of New York against various entities and individuals. The defendants sought to strike out the derivative causes of action for lack of standing.

Order 15, Rule 12 A of the Grand Court Rules of the Cayman Islands provide that a plaintiff shareholder who commences a derivative claim must seek the leave of the Cayman Islands Court to continue that claim where the defendant has given notice of intention to defend. The plaintiff, who failed to seek leave, argued that the relevant rule was procedural, not substantive, and so had no application in New York. The Supreme Court of New York disagreed, holding that the rule is substantive, rather than procedural and therefore governs the plaintiff’s derivative claims. Failure to comply with the relevant rule meant that the plaintiff lacked standing to bring the derivative actions.

The position in New York is in fact consistent with the position in Hong Kong. In *East Asia Satellite Television (Holdings) Ltd v New Cotai LLC & Ors* [2011] 3 HKLRD 734, the Hong Kong Court of Apel held that whether a derivative action can be brought on behalf of a foreign company is a matter of substantive law, determined by the law of the place of incorporation. Similarly, in *Wong Ming Bun v Wang Ming Fan* [2014] 1 HKLRD 1108, Peter Ng J quoted the following passage from Graeme Johnston, *The Conflict of Law in Hong Kong*, at p.592: “The ability to bring a derivative action in Hong Kong is a matter for the law of the place of incorporation of the company, though it is also necessary to comply with Hong Kong procedural requirements for the bringing of such actions.”
Grand Court of Cayman Islands granted anti-suit injunction, placing emphasis on the public interest in the orderly winding up of the company’s affairs on a worldwide basis


The Fund is a Cayman Islands exempted company which operated as an open ended investment fund. The Fund went into voluntary liquidation and Joint Official Liquidators ("JOLs") were appointed. International Tropical Timber Organization ("ITTO") was the Fund’s largest creditor. Without notifying the JOLs, it commenced proceedings in the Supreme Court of Barbados, seeking a receivership order and the appointment of a bankruptcy trustee over the Fund. The JOLs applied for an anti-suit injunction restraining ITTO from continuing the Barbados Proceedings.

The Chief Justice of the Grand Court of Cayman Islands held that the Court has jurisdiction to restrain a creditor over whom it has personal jurisdiction from the institution or continuance of proceedings in a foreign court, where the effect of those proceedings would be to subvert the universal collective process of the liquidation. The Chief Justice went on to say that there was in fact public interest in the ability of a court exercising insolvency jurisdiction in the place of the company’s incorporation to conduct an orderly winding up of its affairs on a worldwide basis.

The Court was satisfied that it had jurisdiction over ITTO, as it was a shareholder of the Fund and had submitted a Proof of Debt. Noting that the appointment of bankruptcy trustee in Barbados would definitely interfere with the conduct of the Cayman Islands liquidation, the Court granted the anti-suit injunction.

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**Important:** The law and procedure on this subject are very specialised and complicated. This article is just a very general outline for reference and cannot be relied upon as legal advice in any individual case. If any advice or assistance is needed, please contact our solicitors.

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