

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FSD 16 OF 2009 ASCJ

IN THE MATTER OF THE COMPANIES LAW (2007 REVISION)

AND IN THE MATTER OF THE SPHINX GROUP OF COMPANIES (IN OFFICIAL LIQUIDATION) AS CONSOLIDATED BY THE ORDER THIS COURT DATED 6TH JUNE 2007

IN CHAMBERS

BEFORE THE HON. CHIEF JUSTICE

HEARD ON 11TH NOVEMBER 2010

Appearances: Mr. Lowe QC and Ms. Cherry Bridges for the Joint Official Liquidators of the SPhinX Group of Companies (“the JOLs”)
 Mr. Ritchie and Mr. Collier for DB
 Mr. Guy Manning for DPM
 Ms. Dobbyn and Mr. Mulligan for the AFC (Mr. McKiel a liquidator)

RULING

1. I begin by stating that I must empathize with DB’s concerns that the strict requirements of the Companies Law or contract law – however the law is to be properly described and applied – must be observed before the Court may direct the pooling of corporate assets with all the implications of the alterations of rights of the stake holders that such a direction would involve.
2. However, the question whether the Court must resolve the Ranking issues before it resolves the issues whether there has been co-mingling of assets and what are the strict legal consequences of co-mingling if it has occurred (including possibly an order for the pooling of assets), remain essentially case management issues at this stage.

3. Viewed in that way, it is immediately apparent that Issues 3 and 4(a) and (b) on co-mingling can and should – as far as is practicable – be determined before Issue 5 (on Ranking).
4. This is so for whatever the rights of the stake holders may be determined to be as between each other for the purposes of ranking, that determination cannot change the realities of co-mingling, if indeed it turns out that the assets have been hopelessly co-mingled.
5. It follows then that the Court can and should continue to direct the hearing for determination of Issues 3 and at Issues 4(a) and (b) before Issue 5; with Issue 4(c) to be taken with Issue 5 and that the May hearing should remain fixed for those purposes.
6. As to the time tabling – I do not think that the scheduling can here be fundamentally affected by the delays in the requests for further information or by delay in the exchange of Case Statements.
7. Accordingly, I direct the following timetable:

Completion of Service of Factual Evidence:	27 th March 2011
Completion of Service of Expert Evidence:	31 ST March 2011
Case Management Conference:	1 st April 2011
Notice to cross-examine:	13 th April 2011
Skeletons:	28 th April 2011
Hearing:	9 th May 2011

8. No Order as to costs.

Hon. Anthony Smellie
Chief Justice

Delivered orally on March 8 2011
Issued on 6th July 2011