1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **FINANCIAL SERVICES DIVISION**
3

4 **Cause No: FSD 127/2019**

5

6 **IN THE MATTER OF THE COMPANIES LAW (2018 REVISION)**

7 **AND IN THE MATTER OF LUNG MING MINING CO., LTD**

8

9 10	**Appearances:**	**Mr. Spencer Vickers of Conyers Dill & Pearman for the Joint Official Liquidators**
11 12 13		**Mr. Tom Lowe Q.C. instructed by Mr. John Harris of Higgs & Johnson for Mr. Xiaoming Li**
14 15		**Mr. Ben Hobden of Conyers Dill & Pearman for the Petitioning Creditor**
16 17		**Ms. Jessica Williams of Harneys for the Creditor, CIC**
18	**Before:**	**The Hon. Justice Cheryll Richards Q.C.**
19	**Heard:**	**20th May 2020**
20	**Decision:**	**27th May 2020**

21

22 **HEADNOTE**

23 ***The Companies Law (2018 Revision) – Sections 152*** *- Whether company has*
24 *asset of value outstanding and affairs of Company completely wound up, whether*
25 *sufficient inquiry made by JOLs.*

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27 **JUDGMENT**

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1. By Summons filed on the 18th November 2019, Messrs. Patrick Cowley and Kris Beighton, the Joint Official Liquidators (the "JOLs") of Lung Ming Mining Co. Ltd ("the Company") applied for its dissolution pursuant to s.152 (1) of the ***Companies Law*** (2018 Revision) and Order 22 of the Companies Winding Up Rules 2018 ("CWR").

2. The Application which was made on the basis that the affairs of the Company have been completely wound up was opposed by Mr. Xiaoming Li, ("Mr. Li"). Mr. Li was the controlling shareholder and is a former director of the Company. It is asserted on his behalf in summary that the Company is the owner of an asset which has significant value and that the JOLs have not properly inquired into or taken account of this asset. On the 20th May 2020, extensive oral arguments were made by both sides in supplement to written arguments. On the 27th May 2020, I gave my decision which was that having reviewed and considered the evidence filed, and submissions made, the requested order for dissolution was granted. I undertook to provide reasons in writing and now do so.

3. I propose to set out the background and events leading up to the application at some length given that the JOLs place significant reliance on the history of the matter in support of their application.

4. The Company was incorporated in the Cayman Islands as an exempted limited liability company on the 6th May 2018. It acted as a holding company with primary business operations in Mongolia and the People's Republic of China (PRC). These operations involved the production of iron ore and the operation of the Mongolia Eru Gol Iron Ore Mines.

5. On the 3rd July 2019, a creditor of the Company, China Development Bank (CDB) filed a Petition for winding up of the Company and sought the appointment of Official Liquidators. The basis for the Petition was that the Company was insolvent and unable to pay its debts. The Petition was heard on the 16th August 2019. By a late application made on the day of the hearing, Counsel on behalf of Mr. Li, while acknowledging the debt owed, opposed the Petition and sought the adjournment of the hearing or alternatively the appointment of provisional liquidators. The Court ruled that no cogent reasons or evidence had been provided such as to ground a basis for an adjournment or the appointment of provisional rather than official liquidators. The Petition of the Creditor was granted and an Order made appointing the JOLs of the Company.

6. Following their appointment, the JOLs identified two other creditors of the Company in addition to CDB. All are banks in the PRC. The Company's total indebtedness is approximately $2.21billion. The First Report of the JOLs was filed with the Court on the 19th September 2019.

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7. The November 2019 Summons was supported by the Second Affidavit of Mr. Cowley dated 27th November 2019. The dissolution hearing was set for the 17th December 2019. The date of the hearing was advertised on the 29th November 2019 in the Cayman Islands Gazette, and on 2nd December 2019 in Mongolia and the PRC. On the 4th December 2019 the JOLs filed their Final Report with the Court.

FINANCIAL STATUS OF THE COMPANY

8. The Final Report of the JOLs records that up to that time Mr. Li had failed to provide a Statement of Affairs and the books and records of the Company. The JOLs therefore relied on information obtained from third parties and stakeholders. An examination of

bank records showed that the two bank accounts of the Company had a nil balance. A cash tracing exercise was performed and there was no evidence of transfers of any principal sums. The JOLs met with Mr. Li on the 8th October 2019. They discussed with him the restructuring which the Company had undergone in 2015. He confirmed to them that there were no major assets currently held by the Company[1] and that there were no realisable assets which were held by the subsidiaries of the Company. On the strength of these representations, and having identified no other material to cast doubt on the veracity of this statement, the JOLs stated that they were not able to justify the taking of further steps to assume control of the subsidiaries. The Report states "*Accordingly the shares of all subsidiaries will be deemed worthless and will therefore be abandoned prior to the dissolution of the Company.*"[2]

9. As set out in the Second Affidavit of Mr. Cowley[3] as at the 25th November 2019, the JOLs concluded that the Company had no identifiable assets which were capable of being realised for the benefit of the creditors of the Company. Additionally they had determined that all material matters in the liquidation had been dealt with and that it was appropriate to proceed with the dissolution of the Company as soon as possible. On the issue of funding, Mr. Cowley stated[4]:

> "*In addition, the creditors of the Company have expressed an unwillingness to provide any funding to allow the JOLs to undertake any additional investigation into the Company's affairs.*"

[1] Paragraph 1, Page 3 of Final Report dated 3rd December 2019
[2] Paragraph 2, Page 4 of Final Report dated 3rd December 2019
[3] Paragraph 17- Second Affidavit of Patrick Cowley dated 25th day of November 2019
[4] Paragraph 18- Second Affidavit of Patrick Cowley dated 25th day of November 2019

THE DISPUTED ASSET

10. One day before the first dissolution hearing date of the 17th December 2019, sttorneys on behalf of Mr. Li notified the JOLs that on the 4th December 2019, an instrument of transfer had been executed by which means a Share in another company: Shiny Glow Limited (SGL) had been transferred to the Company. SGL is registered in the British Virgin Islands. On the day of the hearing, Affirmations were provided by Mr. Li and Mr. Yuanheng Wang dated 17th December 2019. Mr. Wang is the former Counsel to the Company.

11. By way of these Affirmations it was claimed, in summary by Mr. Li, that all the issued shares in a third company, Peace Fame Limited (PFL) which shares had been held by SGL had now been transferred to the Company for a nominal consideration of HK$1.00. The further claim was that, by this means, valuable assets held by a subsidiary of PFL, Erlian Lung Ming Railway Services and Development Company Ltd. ("Erlian"), had been transferred to the Company. PFL is described in its audit statements as a private limited company with its principal activity being investment holding. It was incorporated in Hong Kong on 7th February 2011 and is said to be the 100% owner of Erlian. Erlian owns a real estate asset in Erlianhoate, China, which includes railway infrastructure connecting Mongolia and China ("the Property").

12. By his First Affirmation dated 17th December 2019, Mr. Wang produced a bundle of documents consisting of:

i. SGL's sole director resolutions dated 4th December 2019.

1 ii. Minutes of Extraordinary General Meeting ("EGM") of SGL held on 4th
2 December 2019.
3
4 iii. PFL Register of Members.
5
6 iv. The group structure chart of the Company.
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8 13. The written director resolution which was under the hand of Mr. Li stated in part that it
9 was resolved that *"all shares in Peace Fame Limited, held by the Company, [Shiny Glow*
10 *Limited] be transferred to Lung Ming at nominal consideration of HK $1.00 with*
11 *immediate effect.*" The Share Registers of SGL and the Company were produced
12 showing the transfer from SGL to the Company on the said date.
13
14 14. In his Second Affirmation[5] Mr. Li, stated:

15 *"The effect of the resolutions referred to above is to transfer a valuable real estate*
16 *property held in a Chinese subsidiary (Erlian Lung Ming Railway Services and*
17 *Development Co. Ltd.) back into the ownership of the Company. At the time of the*
18 *2015 restructuring, this asset was valued at some RMB 506.38m but the recent*
19 *valuation is RMB952,940.213.17."*[6]

20 15. Given the then newly provided information, the JOLs requested an adjournment of the
21 dissolution hearing in order to have time to make inquiries. At their request, the hearing
22 was relisted for the 29th January 2020. In the interim there were various exchanges
23 between the JOLs on the one hand, and Mr. Li and Mr. Wang on the other.

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[5] Dated 17th December 2019
[6] Paragraph 4

TIMELINE OF EVENTS AND THE SHARE TRANSFER

16. Counsel on behalf of the JOLs provided a detailed timeline of events which included the following:

16th August 2019	Appointment of JOLs
8th October 2019	Meeting between Mr. Li and the JOLs
4th November 2019	Notice of Extraordinary General Meeting (EGM) of SGL
15th November 2019	Date of bankruptcy Oder of Hong Kong Court against Mr. Li (on appeal)
25th November 2019	Revised notice of EGM of SGL
4th December 2019	EGM of SGL, resolution to transfer all shares of PFL to the Company for the consideration of HK$1.00. Written resolution of directors of SGL and instrument of transfer from SGL to the Company
16th December 2019	JOLs advised of transfer
17th December 2019	First dissolution hearing date
31st December 2019	First Valuation by AP Appraisal Limited valuing Erlian at US$134 million
29th January 2020	Second dissolution hearing date

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THE SECOND DISSOLUTION HEARING DATE- 29TH JANUARY 2020

17. On the second dissolution hearing date, Counsel on behalf of the JOLs submitted that the necessary inquiries had been undertaken and that it was appropriate for an order of dissolution to be made. Evidence in support was provided by way of the Third Affidavit of Mr. Cowley dated 29th January 2020. In summary, the JOLs averred that:

    i) The PFL shares and assets of PFL may be subject to charges and/or contractual restrictions from other creditors and could be subject to litigation claims in China.

    ii) The SGL assets appeared to be subject to transfer restrictions and fettered by creditor claims.

iii) There appeared to be no credible commercial reason for the transfer of an asset said to have been previously valued at $200 million to be transferred for a nominal value.

iv) There was significant doubt as to the validity of the transfer given that:

a) A Honk Kong bankruptcy order had been made against Mr. Li on the 15th November 2019 and it was unknown whether he was able to act as a director of SGL.

b) The purported transfer was at a large undervalue.

c) The Company had gained an asset at a time when it was in official liquidation, without the knowledge of the JOLs and without the Company paying any consideration for such an asset.

d) Mr. Li purported to execute an instrument of transfer as transferee on behalf of the Company on 4th December 2019, after the JOLs had been appointed and when he had no authority to sign such a document on behalf of the Company.

e) The desk top value provided by Mr. Li of the underlying assets of PFL did not take account of the existing liabilities of PFL or SGL.

18. The JOLs gave their view that the only conceivable purpose for the alleged transfer was to delay the dissolution of the Company. They expressed concern that despite Mr. Li having had ample opportunity to discuss matters with them and to enter into restructuring discussions, he nevertheless purported to make a transfer in secret. They concluded that the purported transfer of assets to the Company was not of benefit to creditors because it did not legally occur and that the assets appeared to be subject to transfer restrictions and creditor claims.

19. Mr. Li again objected to the dissolution and Counsel on his behalf argued that the JOLs had not undertaken a proper inquiry in relation to the disputed asset. By his Third Affirmation dated 23rd January 2020, Mr. Li averred that the transfer of the Share was made pursuant to Clause 2.8(b) of a 2015 Payment Agreement between the Company and other entities including CDB, one of its creditors at that time. The Agreement had been entered into as part of a failed restructuring process then undertaken by the

Company. He stated that it was a condition of the Agreement that the transfer of PFL to SGL would be reversed and the shareholding would revert back to the Company if CDB had not been repaid by October 2015.[7]

20. It is not disputed that CDB was not repaid.

21. Mr. Li further stated that an invitation had been extended to the JOLs to visit the Erlian Property so that they could assess its value and that he had provided them with various audit reports, management accounts and valuations in support of the value of the property. He commented that the JOLs had made no effort to verify the true realisable value of the Property for themselves and were assuming that its value was nil. He accused the JOLs of frustrating the return of the Property to the Company and of seeking to ensure that the Property was only available to a single creditor, CDB and of acting in a way which was inconsistent with their obligation to act in the best interests of all the creditors of the Company. Included in his response to the issue of validity of the transfer which was raised by the JOLs was the statement that he had been advised that as a matter of Hong Kong Law, particularly where the transfer of shares is for nominal consideration, that execution of the transfer document by the transferee is not strictly necessary. Further that it was open to the JOLs to consider whether the transfer could be ratified.

22. By his Fourth Affirmation dated 24th January 2020, Mr. Li provided additional information as to the share reversal by which means he says that the Property was transferred back to the Company. He provided as exhibits to his Affirmation, a copy of

[7] Third Affirmation of Xiaoming Li dated 23rd January 2020, paragraph 8

1 an Amendment to Clause 2.8 (b) of the 2015 Agreement dated 5th January 2016. He also
2 produced copy correspondence from creditors, CDB dated 21st July 2016 and Exim Bank
3 dated 20th December 2019 which he said provides evidence of requests for the
4 implementation of the Agreement by the restoration of the Property to the Company.
5 Neither correspondence refers to PFL or Erlian. The Letter from CDB which he
6 produced did not refer to PFL and is in part in the following terms:

7 *"According to the "Payment Agreement" as of June 30, 2016, the Bank had not*
8 *received the repayment funds for the principal and interest of Lung Ming Mining*
9 *Project, and as of July 15, 2016, the Bank had not received any documents*
10 *related to the Share Reversal of Iron Mining International and Shiny Glow.*
11 *Therefore Iron Mining International, Shiny Glow and Lung Ming Mining have*
12 *become joint debtors and the bank hereby sends a letter to inform these*
13 *parties..."* [8]

14

15 Exim Bank sought the performance of the share reversal so as to restore Lung Ming's
16 original equity structure and to restore the assets transferred out during the 2015 re-
17 organization"[9].

18 23. By the Second Affidavit of Mr. Kris Beighton sworn on the 30th January 2020, the JOLs,
19 in response, denied any failure to act in the best interests of the Company and to properly
20 consider the SGL transfer. They expressed the view that the documents provided by Mr.
21 Li did not alter the opinions of the JOLs given the issues as to the validity of the transfer
22 and the likely creditor restrictions in respect of SGL and its subsidiaries.

23

24 24. Mr. Beighton also stated that on the 28th January 2020, Mr. Li filed a proof of debt form
25 in which he claimed to be a creditor of the Company in the sum of approximately US$8

[8] Page 9 of Exhibit XL-4
[9] Page 12 of Exhibit XL-4

million. The JOLs replied on the said day seeking further information as to the lateness of the claim and the absence of the claim from Mr. Li's most recently sworn statement of Affairs as at 3rd January 2020. The JOLs stated view is that on the information known to them, it is likely that Mr. Li is not in fact a creditor of the Company.

25. The second dissolution hearing concluded with the making of a Consent Order. By this Order, the dissolution hearing was again adjourned to give the JOLs a further opportunity to make necessary inquiries and to give Mr. Li another opportunity to provide documents and information to the JOLs in relation to the referenced transfer and asset. The issue of funding for this to occur was resolved upon Counsel for Mr. Li giving an undertaking to take instructions as to whether Mr. Li would be prepared to meet the costs of the JOLs to carry out this further inquiry.

26. The Order dated 29th January 2020 required that the JOLs would provide to Mr. Li a request for documents and information regarding the alleged transfer of the asset from SGL to the Company and for him to respond in 14 days. That time period was extended by the JOLs and the anticipated March 2020 hearing date was delayed until May 2020. Paragraphs 3 and 4 of the Order provided as follows:

> *"If Mr Li and the JOLs agree terms regarding further investigations by the JOLs into the assets allegedly transferred to the Company from Shiny Glow ("**Agreed Investigations**"), Mr Li is to pay the amount agreed in respect of the Agreed Investigations to the JOLs forthwith and in any event within 7 days of receipt of the JOLs' Estimate. Furthermore:*
>
> ………
>
> *If Mr Li and the JOLs are unable to agree terms regarding further investigations into the assets allegedly transferred to the Company from Shiny Glow, and/or Mr Li does not pay the full agreed amount owing to the JOLs in relation to any Agreed Investigations within 7 days of receipt of the JOLs' Estimate, Mr Li will not object to the dissolution of the Company on the basis that the JOLs have not*

incurred further costs in conducting further investigations into the assets allegedly transferred to the Company from Shiny Glow.

Mr Li provide copies of the documents and information requested to the JOLs within 14 days of receipt of the JOLs' List. To the extent that Mr Li is unable to provide such documents and information, Mr Li will provide written reasons as to why such documents and information could not be provided."

THE THIRD DISSOLUTION HEARING DATE- 20TH MAY 2020

27. At the third listing of the dissolution hearing, the Court was provided with a number of additional Affirmations and Affidavits as follows:

    i) Fifth Affirmation of Mr. Li dated 3rd April 2020 and Exhibit XL- 5

    ii) Fourth Affidavit of Patrick Cowley dated 13th May 2020 and Exhibit PC-4

    iii) First Affidavit of Erin Caruana dated 15th May 2020 and Exhibit ELC-1

28. This additional material included a valuation of the Property by AP Appraisal Limited of Hong Kong dated 3rd March 2020[10]. This had been done at the request of Mr. Li and was submitted to the JOLs by him. It gave the net asset value of PFL and its subsidiary as US $106 million. Four legal opinions from PRC[11], the British Virgin Islands[12], Hong Kong[13] and the Cayman Islands[14] as to the validity of the purported transfer were also obtained.

THE LEGAL PROVISIONS - SECTION 152 (1) OF THE *COMPANIES LAW*

29. Section 152 (1) of the ***Companies Law*** (2018 Revision) provides:

[10] Page 50 of Exhibit PC-4
[11] Pages 73 to 76 of Exhibit PC-4
[12] Pages 82 to 86 of Exhibit PC-4
[13] Pages 87- 92 of Exhibit PC-4
[14] Exhibit ELC-1

1 *"When the affairs of the company have been completely wound up, the Court shall*
2 *make an order that the company be dissolved from the date of that order or such*
3 *other date as the Court thinks fit, and the company shall be dissolved accordingly."*
4
5
6 30. Order 22, r.1 of the CWR is in the following terms:
7
8 *"(1) As soon as the affairs of the company have been completely wound up the*
9 *official liquidator shall*
10 *(a) publish his final report and accounts in accordance with Order*
11 *10, rule 3;*
12 *(b) apply to the Court for an order under section 152 that the*
13 *company be dissolved.*
14 *(2) The official liquidator's final report and accounts shall contain –*
15 *(a) notice of the date upon which his application for an order for*
16 *dissolution will be heard by the Court; and*
17 *(b) a statement of the fact that any creditor (in the case of an insolvent*
18 *company) or member (in the case of a solvent company) may*
19 *appear and be heard on the application.*
20 *(3) The official liquidator shall publish a notice of the hearing of the application*
21 *in one or more newspapers circulating in a country or countries in which the*
22 *company appears most likely to have creditors and any such notice shall be*
23 *published at least 14 days prior to the date of the hearing."*
24
25 **THE ISSUES**
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27 **i) <u>Whether Affairs Completely Wound Up</u>**
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29 31. The position of the JOLs is that the PFL Share has not in fact been transferred to the
30 Company and even if it was, that it has no realisable value. It is said that the further
31 investigations undertaken by the JOLs did not disclose any assets of realisable value and
32 that there is no benefit to continuing the Liquidation. Counsel on behalf of the JOLs
33 points to the creditor claims of some $2.2 billion against the Company and highlights
34 the fact that the only person who objects to the dissolution is Mr. Li. Counsel also asked
35 the Court to consider the time period which has elapsed since the appointment of the
36 JOLs. Some nine months have passed since their first appointment and four months since
37 the second dissolution hearing.

32. Counsel on behalf of Mr. Li responds with the submission that the affairs of the Company are not wound up as is required by s.152 of the Law. Counsel submitted that the Law sets out a statutory pre-condition to any order for dissolution which has not been satisfied in this case. The statutory pre-condition is that there must be evidence that the affairs of Company have been completely wound up failing which the Court has no jurisdiction to make such an order. This is not a matter of discretion, if there is jurisdiction, the Court is required to make the Order. Counsel further submitted that the onus is on the Applicants, to satisfy the Court that there is jurisdiction which they have failed to do in this case.

33. Counsel on behalf of Mr. Li referred to the case of ***In re London and Caledonian Marine Insurance Company,***[15] in which the English Court of Appeal considered in the context of a voluntary liquidation, a similar provision to s.152 of the ***Companies Law***. Section 142 of the UK ***Companies Act 1862*** provided that:

> *"As soon as the affairs of the company are fully wound up, the liquidators shall make up an account showing the manner in which such winding-up has been conducted and the property of the company disposed of."*

34. In reliance upon this case Counsel submitted that the similar words in the local provision relate to the practical ability to wind up a company. He argued that this is not an impossible task and has nothing to do with the views of the Liquidators and whether or not they think they can reasonably do what is to be done. He said that at no stage is there a suggestion that there is some form of test of reasonableness or that the Liquidators'

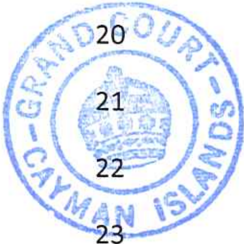
[15] [1879] 11 Ch. D. 140

own views are important. The Court has to form its own view as to whether the Liquidator can do anything in relation to an asset.

35. Counsel further submitted that in this case there is an asset in the name of the Company and that the JOLs have not carried out a detailed investigation into the value of that asset or taken the necessary steps as is required by their Office which could satisfy the Court. He relied on what is said to be the inadequacy of the documentation produced by the JOLs to the Court and their extensive reliance on Mr. Li as a source of information rather than seeking more information from third parties or creditor stakeholders. He also asked the Court to note that the Reports of the JOLs refer to a considerable number of documents but these have not been produced to the Court.

36. Counsel asked the Court to consider that the effect of an order of dissolution would be monumental, it would be to terminate the Company completely and extinguish all creditor and shareholder claims.

37. I accept to a large extent the submissions of Counsel on behalf of Mr. Li as to the way in which this matter should be approached. Central to this matter are legal and factual issues. The cited case of ***In re London and Caledonian Marine Insurance Company,*** albeit in the context of a voluntary liquidation, provides helpful guidance as to the threshold. In that case, the Petitioners sought the winding up of the company by an order of the Court notwithstanding the previous dissolution of the company by voluntary liquidators. They appealed the dismissal of their petition on the basis that it is a condition precedent to the dissolution that the affairs of the company be fully wound up. They submitted that it could not be said that the affairs of the company were fully wound up where a debt of which the company had notice had not been satisfied and that the



property of the company could not be said to have been disposed of where a large sum of money had been left in the hands of the liquidators to cover any future claims.

38. The Appellate Court referred to its earlier decision in the case of ***In re Pinto Silver Mining Company***[16] and dismissed the appeal, concluding that the decision of the Master of the Rolls was correct. The Court stated that some practical and sensible meaning must be put on the words *"as soon as the affairs of the company are fully wound up"* and it meant *"as far as the liquidators can wind them up"*, The Court stated:

> *"Of course, when a question has been decided by the Court once it ought not to be re-argued on immaterial distinctions which practically make no more difference to the real subject-matter of the decision than the name of the parties to the suit; and what was decided in the case to which I have referred was, that we could not put upon these words, "as soon as the affairs of the company are fully wound up," the construction contended for, namely, to make that a condition precedent and construe it to mean that everything had been done which was to be done. We are of opinion that those words could not mean that if there were a single asset outstanding or a single debt unpaid, the affairs of the company were not to be considered as wound up.*
> *Take the case of an insolvent company, insolvent because there were contributories at that time insolvent who had not paid their calls; or suppose there had been judgment against a hundred contributories recovered, and a return made by the sheriff that they had no assets and that he could not levy the amount of the judgment, could it be said that so long as a thing of that kind continued the company could not be fully wound up? Or suppose an outstanding liability under a lease, under the covenants in which the company might be liable any number of years afterwards, could not the company be fully wound up? We must put some practical and sensible meaning on the words, and in my opinion they mean "as far as the liquidators can wind them up;" that is, when the liquidator has done all that he can to wind up the company, when he has disposed of the assets as far as he can realize them, got in the calls as far as he can enforce them, and paid the debts as far as he is aware of them, and has done all that he can do in winding up the affairs, so that he has completed his business so far as he can, and is functus officio ."*

39. The factual issues in this case require a careful examination of all the evidential material placed before the Court. The evidence of the JOLs must not be accepted without scrutiny

[16] 8 Ch.D.273

and due inquiry. This is particularly so where in this case it is urged in opposition to the application which is being made that they have failed to undertake and complete the necessary inquiries and are seeking by the application to favour one creditor over another. The Court must stand back and make an objective assessment of all the material placed before it. The Court must also consider whether there is any indication as to the existence of material which it has not seen which may be of assistance to the considerations at hand.

ii) Conduct and Responses of Mr. Li

40. Counsel on behalf of the JOLs raised the issue of the conduct and responses of Mr. Li. From the evidence, it appears that the JOLs have become increasingly cautious as to the reliability of statements made by him. As I understood it, there is said to be serious cause for concern as to the accuracy of the information which he has provided. Counsel on behalf of Mr. Li responded in part with the submission that rather than 'picking holes' in the information provided by Mr. Li, the JOLs should have and did not widen the ambit of their inquiry beyond Mr. Li.

41. The Affidavits of Mr. Cowley make clear that the JOLs do not accept some of the statements or claims made by Mr. Li on the basis that they are inconsistent, either with previous statements or with documentary material. They point to a number of conflicts between his statements made on different occasions and question his reasons and motives. The matters identified by Counsel for the JOLs included the following.

42. At the meeting with the JOLs on the 8th October 2019, Mr. Li confirmed the adverse financial position of the Company. At that time he did not disclose the existence of the

1 PFL Share. In fact he made no reference to PFL and there was no mention by him that
2 the Company had a right to the Share. Counsel for the JOLs submitted that it is surprising
3 that he would not have then advised the JOLs of what he says is a valuable asset to which
4 the Company was entitled.
5
6 43. Throughout the various meetings with SGL and the EGM on the 4th November 2019,
7 which took place less than a month after Mr. Li had confirmed the adverse financial
8 position to the JOLs, Mr. Li did not communicate with the JOLs as to the existence of
9 and transfer of the asset until the day before the first dissolution hearing.
10
11 44. Counsel also highlighted the fact that initially in the Second Affirmation of Mr. Li dated
12 17th December 2019, he said that the transfer was for HK$1.00 and was a discretionary
13 transfer. There was at that time no mention of the transfer being made pursuant to a
14 2015 Payment Agreement. The records then produced show that Mr. Li as the sole
15 director of SGL chaired the EGM. Paragraph 3 of the Minutes details the special
16 resolution which was passed as follows:

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17 *"To recommend and authorise the directors of the Company (the Directors) to resolve*
18 *at their discretion to transfer or cause to transfer all shares in Peace Fame Limited*
19 *held by the Company to Lung Ming Mining Co. Ltd (Lung Ming) at nominal*
20 *consideration of HK $1.00."*
21
22 45. Thus, following the first dissolution hearing, the JOLs proceeded on the basis that the
23 transfer had been made as a gift. Prior to the second dissolution hearing, Mr. Li filed his
24 Third Affirmation in which he then stated that the transfer was effected as a result of the
25 2015 Payment Agreement and that it was a condition of this Agreement that the transfer
26 of PFL to SGL would be reversed and the shareholding would revert back to the
27 Company if CDB had not been repaid by 15th October 2015.

46. It also appears, Counsel submitted, that Mr. Li may have confused the legal structure under which the Company is operating. In his Affirmations he has said on the one hand that the Property itself was originally an asset of the Company and on the other hand that the PFL share which was transferred to SGL was the asset which would revert back to the Company.[17]

47. There are also further inconsistencies between statements in documents provided by Mr. Li as to the liability position of PFL and the valuation provided on his behalf by AP Appraisal Limited. These will be detailed below.

48. In my view it is undoubtedly the case that the conduct and responses of Mr. Li to the JOLs throughout these proceedings have not assisted his cause. It is surprising that he would not have mentioned the PFL Share or the Erlian Property in the October meeting with the JOLs. The submissions made on behalf of the JOLs on this aspect have merit. However the Court has to examine with care, whether there is any effect of this on the matter and if so to what extent.

iii) The Validity of the Transfer of the PFL Share

49. A central issue joined was the validity of the transfer of the PFL Share.

50. Counsel on behalf of the JOLs submitted that the transfer purported to have been made at a time when the Company was already in Official Liquidation and thus any transfers could only have been legally effected by the JOLs. Instead it was purported to be done

[17] Third Affirmation dated 23rd January 2020 paragraphs 5 and 8 (b), Fourth Affirmation dated 24th January 2020, paragraph 5

without their knowledge. Counsel submitted further that the opinion on Hong Kong Law which had been obtained by Mr. Li says that for the transfer to be an effective transfer, it must be signed by the transferor and transferee. The opinion has a qualifying statement that it is subject to whether or not Mr. Li was authorised to sign the document on behalf of the Company. Further that with regard to the validity of corporate actions, these are governed by the jurisdictions in which the companies are incorporated. As Mr. Li had no authority to sign under the CWR, the Share instrument was not executed by the Company and the transfer was invalid as a matter of Hong Kong law on the basis that it had not been executed by the JOLs.

51. In the Fourth Affidavit of Mr. Cowley, he also expresses concern that the opinion received from the British Virgin Islands was provided after the alleged transfer had taken place, did not comment on the commerciality of the transactions and was subject to a number of assumptions including that the Company as a matter of Hong Kong law became the sole member of PFL on 4th December 2019.

52. Counsel on behalf of Mr. Li submitted that the starting point as to the ownership of the Share is not the transfer, however incompetent that transfer may have been, it is what is now recorded on the Register. He argued with some force that legal title is derived from the registered title and that the invalidity of the transfer no longer matters once ownership is recorded on the Register of Members. He said that the question now for the JOLs is whether it should be reversed and the important issue is whether anyone else can show that they have a better title to it. This will not depend on anyone's personal view but on the surrounding documents.

53. Counsel referenced the documents exhibited including the Register of Members for the Company which shows the Company as having on 4th December 2019 the one Share transferred.[18] Counsel also pointed to the chain of ownership and transfers among the companies dating back to March 2011 when the Share was then on the Register of SGL.

54. Counsel submitted that given that the Registers provide evidence that the Company has legal title to the Share, the question is whether another company has the equitable interest and that for the JOLs it is whether they have a sufficient equitable interest to be able to resist a claim by SGL. The fundamental point said Counsel is that the person on the Register, in this case the Company, is a member with the legal title and standing, unless and until the Register is rectified.

55. In support of his submission, Counsel cited the case of ***Nilon Ltd v. Royal Westminster Investments SA***[19] a case dealing with procedures on rectification of registers and highlighted the following passage:-

> *"There is no doubt that the legislation is primarily concerned with legal title. In Re London, Hamburgh and Continental Exchange Bank, Ward and Henry's Case (1867) LR 2 Ch App 431 Lord Cairns LJ stated what might be thought to be the obvious when he said (at 440) that the object of the section was to secure a list or register which would show who were the shareholders entitled to the profits, and liable to contribute to the debts, of the company. The legislation both in the BVI and in Great Britain is concerned with rectification of the register of members, and membership concerns legal title: Enviroco Ltd v Farstad Supply A/S [2011] UKSC 16, [2011] 1 WLR 921 , at paras 37-38, where Lord Collins said:*
>
> *"37. The starting point is that the definition of 'member' in what is now section 112 of the 2006 Act ... reflects a fundamental principle of United Kingdom company law, namely that, except where express provision is made to the contrary, the person on the register of the members is the member to the exclusion of any other person, unless and until the register is rectified: In re Sussex Brick Co [1904] 1 Ch 598 (retrospective rectification of register did not invalidate notices).*

[18] Page 175 of Exhibit XI-2 to the Second Affirmation of Mr. Li dated 17th December 2019
[19] 2015 UKPC 2

> *38. Ever since the Companies Clauses Consolidation Act 1845 (8 & 9 Vict c 16) and the Companies Act 1862 (25 & 26 Vict c 89) membership has been determined by entry on the register of members. The companies legislation proceeds on that basis and would be unworkable if that were not so ...*"

56. Counsel noted that the case of ***Nilon Ltd v. Royal Westminster Investments SA*** related to a summary proceeding for rectification of the Register and that the Board therein considered that the summary process was inappropriate where there is a dispute as to title and determined that unless one has an immediate right to shares, the appropriate method of challenge is by way of an ordinary action. This means said Counsel that SGL would need to bring suit against the Company in the Cayman Islands if it sought to establish that it and not the Company should be on the Register of Members.

57. Counsel referred to a number of additional cases, the effect of which was to seek to demonstrate that the JOLs were in a strong position by virtue of the recording of the transfer on the Share Register. These included the case of ***Svanstrom and Nine Others v. Jonasson***[20]. Counsel submitted that this establishes that a party does not have the right to bring a derivative claim if he is only a beneficial owner. The Cayman Islands Court of Appeal (CICA) determined that the Respondent as beneficial owner of a minority interest in the 7th and 8th Appellants, did not have locus standi to bring an action on behalf of the company against their director. He was not a registered member of either company and the matter did not fall within any of the established exceptions.

[20] 1997 CILR 192

58. In the matter of ***Natural Dairy (NZ) holdings Limited***[21], the Grand Court held that only a registered shareholder has the right to petition for a winding up. The standing of a shareholder is dependent on the registration which confers legal title.

59. The case of ***Societe Generale de Paris Colladon v Janet Walker***[22], was concerned with a dispute as to who owned certain shares. The Court considered that complete title could not be acquired without registration, the fact that a person has the right to sue, could not confer legal title to the shares themselves. It was concluded that the Appellant did not have good enough equitable title to overcome the decent title of Scott Walker.[23]

60. As I understood the effect of Counsel's submission it is that the ultimate question for the JOLs was not the validity of the transfer but whether or not given that the transfer had been recorded on the Register they had a *"decent enough equitable claim or a claim worth investigating"* such that it should be pursued and which would allow them to measure the chances of successful opposition if challenged by other entities as to ownership.

61. Counsel then submitted that the important question is by what means the Company obtains equitable title, and that consequently the main issue is whether the 2015 Payment Agreement gives the Company a sufficient equitable interest in the shares of PFL to be able to withstand opposition.

[21] [2017] 1 CILR Note 3
[22] 1885 11 APP. Cas. 20
[23] Page 27 and 31 in judgment

iv. The 2015 Payment Agreement

62. There is much disagreement as to the effect of the 2015 Payment Agreement. Clause 2. 8(b) as amended is in the following terms:

> *"If the designated account of CDB does not receive the entire CDB Repayment amount on or before the Termination date, Lung Ming, the Controlling Shareholder, the Special Purpose Company, Iron Mining International, Shiny Glow and the Buyer shall immediately take measures on July 15, 2016 (or other later date as the CDB agrees otherwise in writing) will respond to the changes in the shareholding structure of Lung Ming, Iron Mining International and Shiny Glow due to the equity reorganization and other transactions of Iron Mining International and Shiny Glow under the Basic Transaction Document, restore to the status before the signing of the Basic Transaction Document (including but not limited to Lung Ming re-acquiring and holding all shares of Iron Mining International and Shiny Glow, (hereinafter referred to as "Share Reversal". Notwithstanding..."*[24]

63. The parties to the Agreement[25] were the Company, Mr. Li, (Controlling Shareholder), Chen Caixia, Special Purpose Company[26] (consisting of Mongoli Yiluohe Steel and Iron Mining Company Limited, City Ford Limited and Successful Key Limited), Iron Mining International (Mongolia) Ltd., SGL, Zhongrun Resources Investment Corporation and CDB.

64. Counsel for the JOLs submitted that the transaction which Mr. Li suggests took place i.e. the transfer of the PFL Share is not the Share reversal contemplated by the Payment Agreement. He argued that the factual position is that PFL was never directly owned by the Company before the restructuring Agreement. It had been owned by SGL.

[24] Page 5 of Exhibit XL -4
[25] Pages 217 and 219 of Exhibit XL 3
[26] Defined in Appendix II to the Agreement – page 232 of Exhibit XL 3

65. Counsel also drew the Court's attention to the financial statements of PFL for the years 2014 to 2018 which have been produced by Mr. Li. The Note to the financial statements for the year 2014 indicates the ownership of PFL. It states:

> *"Peace Fame Limited ("the Company") is a private limited company and was incorporated in Hong Kong on 7th February 2011. The directors regard Shiny Glow Limited, a company incorporated in the British Virgin Islands, as being the Company's immediate holding company and Lung Ming Mining Company Limited, a company incorporated in the Cayman Islands, as being the Company's ultimate holding company."* [27]

Thus it is argued that at that time PFL was owned by SGL which was ultimately owned by the Company.

66. However for the year ended 2015, the Notes to the PFL financial statements state "that the directors regard SGL as being the company's immediate and ultimate holding company at the end of the reporting period."[28] Counsel notes that there is no reference at this point to the Company. The JOLs say that what happened factually is that SGL was then no longer owned by the Company. The structure had changed in that instead of the Company owning SGL, both SGL and PFL had been transferred out of the Company.

67. Counsel also pointed to the fact that from the financial statements obtained, SGL appears to be insolvent. It has a claim against it of US$166 million as it is also a debtor of CDB.[29] The means that the transfer of the PFL Share from SGL directly to the Company would effectively undercut and bypass claims which exist at the SGL level which is not what was contemplated by the Payment Agreement.

[27] Page 27 of Exhibit XL-3
[28] Page 47 of Exhibit XL-3
[29] See document produced by Mr. Li to JOLs at page 65 of Exhibit to Fourth Affidavit of Patrick Cowley

68. Counsel on behalf of Mr. Li argued that if SGL was obliged to retransfer the Share to the Company under the Payment Agreement, then it provides a basis for the Company to have an equitable interest in the Share on which the Company could rely if SGL challenged its ownership of it.

69. In response to the submission that the Agreement does not in fact refer to PFL and that PFL is not a party to it, Counsel for Mr. Li submitted that the Agreement is not purporting to be comprehensive. He pointed to the fact that the amended clause 2.8 contains the words *"including but not limited to"*. He said that one cannot say that PFL is excluded, that this is simply not known and that the fact of the obligation to retransfer, does not suggest that the full picture is known by looking at the Agreement.

70. Counsel on behalf of Mr. Li conceded that the JOLs would not know from the wording of the Agreement whether the PFL Share is included therein but said that the JOLs would know this from Mr. Li's Affirmations. Counsel referred to the evidence of Mr. Li as contained and repeated three times in his Affirmations that PFL was originally owned by the Company and that the effect of the Payment Agreement was for there to be a Share reversal.[30] He submitted that when Mr. Li says that the PFL shares revert back to the Company, he must mean the equitable title and not the legal title and that if the Agreement in fact relates to PFL, then it must be that the equitable title reverts back to the Company.

71. Counsel also expressed some further reservation about this by saying that he was not sure whether under Hong Kong law that one can look at extrinsic evidence to interpret

[30] Third Affirmation dated 23rd January 2020 paragraph 9, Fourth Affirmation dated 23rd January 2020, paragraph 5.

the Agreement but said that Mr. Li gives extrinsic evidence which is not contradicted by other evidence or challenged by the JOLs. He urged that one would have expected those other entities who participated in the Agreement to say that there was never any such interest. In the absence of any other statement on the matter, unless Mr. Li is contradicted, there was an obligation to transfer the interest in the PFL Share and the Agreement gave the Company the equity in the PFL Share.

72. In summary, Counsel argued that the work done by the JOLs had been superficial at best in that they had:

a. Spoken only to Mr. Li and were asking him all the questions.
b. Challenged the evidence of Mr. Li without making any further inquiries such as taking steps to obtain information and documentation from the creditors involved in the 2015 restructuring and Agreement.
c. Made no attempt to contradict Mr. Li with evidence from stakeholders such as CDB who had been involved in these matters.

73. It appeared to me that the concessions were rightly made by Counsel on behalf of Mr. Li and that the facts undermine the force of the submissions made by him. Having reviewed the Agreement, on the face of it, PFL is not a party to it.[31] Further, clause 2.8 b, provides for a transfer of SGL back to the Company and not for a transfer of the PFL Share.[32] The Agreement does not appear to require the re-transfer of PFL shares to the Company. The evidence of Mr. Li cannot be considered in a vacuum from the documents which he himself provided. The submission of the JOLs appears to be well founded and would mean that reliance on the terms of the Payment Agreement as a means of establishing equitable title would not be a position of strength.

[31] Pages 217 and 219 of Exhibit XL 3
[32] Page 223 of Exhibit XL 3 - para 2. 8 (b)

1 **v. Ambit of Investigation**

2 74. Counsel for Mr. Li argued that the JOL's own Reports make it clear that they considered
3 further investigations to be necessary and that they have not to date determined what
4 was the position on restructuring and the position with the disputed asset. He points to
5 two passages in the Final Report of the JOLs and submits that it is clear therefrom that
6 the JOLs thought it necessary to investigate and it was the creditors who sought to move
7 to closing.
8
9 75. In that report, the JOLs record that creditors were advised that there were no assets from
10 which any value could be extracted and that "*absent any funding being made available*
11 *by creditors to pursue possible recovery strategies in relation to the 2015 restructuring*
12 *they would need to actively consider commencing the steps required to close the*
13 *liquidation"*[33]. It was agreed at the meeting that at the request of creditors, the JOLs
14 would review the available documentation relating to the 2015 restructuring and
15 consider what steps should be taken to reverse it. Under the heading of First Meeting of
16 the Liquidation Committee ("LC"), the Report states:-

17 "*As requested, the JOLs reported on their review of the Agreements that had been*
18 *made available to them by members of the LC. The JOLs noted that they had not yet*
19 *had the benefit of legal advice in relation to the 2015 restructuring, and nor was it*
20 *clear that the JOLs had yet seen the entirety of the relevant transaction documents.*
21 *However, based on the documents so far obtained, the JOL indicated that, where the*
22 *Company was a party to relevant agreements, the JOLs should be in a position to*
23 *challenge and litigate the 2015 restructuring. However, the JOLs noted two*
24 *important considerations, begin (a) that substantial legal advice would be required*
25 *to determine the merits and likely success of any such challenge, and (b) that, based*
26 *on the agreements and the limited information that has been available to the JOLs*
27 *to date, it was not clear that litigating to achieve the reversal of the 2015*
28 *restructuring would result in any benefits to the creditors of the estate (which would*
29 *not also be available to the creditors anyway as creditors of Iron Mining.*"[34]

[33] Paragraph 3 of page 3 of Final Report - page 20 of Exhibit PC-2Page 20 of Exhibit PC-2
[34] Paragraph 7 of page 4 of Final Report - page 21 of Exhibit PC-2

76. Counsel submitted that it had not been said by the JOLs that they cannot afford to take that advice and urged that it was apparent from this that the members of LC have documents which have not been produced or seen by the Court.

77. He complained that rather than dealing with the fact that there is something worth investigating, the evidence of the JOLs consists mainly of questions as to Mr. Li's statements. He said that it is not right for Mr. Li to bear the brunt of the requests for the provision of documents and that there was no basis to reject Mr. Li's evidence.

78. I consider that the criticism of the JOLs for relying to a significant extent on Mr. Li to provide information is unwarranted. In his capacity as director and former director he is in the best position to provide the information required in order for an assessment to be made. I also consider that any evidence provided by Mr. Li is properly open to be reviewed against the background of the documentary material obtained.

79. Counsel referred to the case of ***Oughtred and IRC***[35], which considered inter alia whether an oral agreement between a mother and son to transfer shares to her gave rise to her having an equitable interest in those shares. Counsel noted that the reasoning of Lord Radcliffe was that the son had, by virtue of the oral agreement created in his mother, an equitable interest in the reversion because the agreement was concerned with property of which specific performance was enforceable. The son then became a trustee for her. Counsel also highlighted the judgment of Lord Jenkins in which the learned Judge stated:

[35] 1960 AC 206

"The constructive trust in favour of a purchaser which arises on the conclusion of a contract for sale is founded upon the purchaser's right to enforce the contract in proceedings for specific performance. In other words he is treated in equity as entitled by virtue of the contract to the property which the vendor is bound under the contact to convey to him."

80. Counsel submitted that by analogy with the present case, the issue was the position with an agreement which is specifically performable, whether it could be enforced against SGL. It is said that the JOLs have not actually investigated this aspect and have not provided a reason for the non-reversal of the transfer made 4th December 2019.

81. I do note that whatever may have been the position in December 2019 at the time of the Final Report, matters including the level of inquiry of the JOLs had moved on considerably by the time of the third dissolution hearing.

vi. Disclaimer

82. Counsel on behalf of Mr. Li argued that the JOLs were seeking to disclaim the Property, it being onerous[36]. The Cayman Islands does not have a law dealing with onerous property. Counsel on behalf of the JOLs submitted in reply that the point re disclaimer of onerous property is misconceived and that the fact that the Cayman Islands does not have a law dealing with such property has no relevance. The position of the JOLs is that on its face it is not onerous property, the PFL Share is not creating ongoing liabilities which would trump other creditors, the Share is simply property which the JOLs consider has no value. I accept the arguments of the JOLs on this point. This is reflective of the evidence which they have presented throughout the progress of this matter.

[36] In re Nottingham General Cemetery Co. [1955] 1 Ch. 683

1
2 **vii. The Value of the Peace Fame Limited Share**

3
4 83. Central to the arguments as to the valuation of the Share was the AP Appraisal valuation
5 dated 3rd March 2020[37]. The valuation document states that it provides a fair value of the
6 100% equity interests of PFL and its subsidiaries as at 17th December 2019. The asset
7 approach rather than the market or income approach is utilised. The Valuer explains this
8 choice by stating that as the company is currently loss making, the validity of the profit
9 making financial forecast cannot be guaranteed. Additionally there is uncertainty as to
10 the revenue to be generated from new customers. The market approach was not utilised
11 because as the company is currently loss making, market multipliers that are derived
12 from comparables cannot be used to form a reliable basis for an opinion on value.[38]

13
14 84. General valuation assumptions adopted in order to support the valuation included that
15 the major shareholder will support and provide interest free financing for the current and
16 future business of the company including but not limited to capital working needs[39].

17
18 85. In arriving at a net asset value of US$106 million for the Property, made up in large
19 measure of the construction said to be in progress, current liabilities were said to be trade
20 and other payables of US$38,481,540.00.Counsel on behalf of the JOLs points out that
21 this figure of US$38,481.540 cannot be accurate given that it is not consistent with the
22 creditor claims given to the JOLs by Mr. Li. The list of creditor claims as at 31st
23 December 2019 which was provided for PFL indicates creditor claims of
24 US$82,226,536.84 and for Erlian it is $93,650,087.00.

[37] Page 50 of Exhibit PC 4
[38] Paragraph1 of Page 53, of Exhibit PC 4
[39] Paragraph10 of Page 55, of Exhibit PC 4

86. No explanation was provided by the Valuer as to how the Valuer came to the lesser figure of $38 million, despite these claims. The JOLs concluded that the valuation must be inaccurate by as much as 80% given the additional information available to them and that when the liabilities are factored in, the net asset balance would be in the region of US $24 million.

87. The JOLs sought to interview the Valuer. The Valuer declined to be interviewed. On the 17th March 2020 the JOLs were advised by Counsel on behalf of Mr. Li to submit their queries in writing.[40] The JOLs wrote on the 14th April 2020 with matters for inquiry which included:-

a. Any evidence as to whether the assumption as to the ability of the shareholder to provide the financing mentioned had been tested;

b. Whether the Valuer took into account the potential impact of obsolescence on the assets.

88. The Valuer declined to respond stating that the valuation was not for any insolvency or court related purpose but was for internal use only.

89. The JOLs also sought from Mr. Li, detailed information as to the current operating situation and business of Erlian. Items 15 a. - f. of their request included requests for information as to the extent of the mining operations, evidence to support the financial performance of the mining operations, information as to the buyers, shipment locations and modes of delivery of the sold product.

[40] Page 60 of Exhibit PC 4

1
2 90. Mr. Li declined to answer requests for information relating to these items on the basis
3 that it is outside the scope of the 29th January Order. No financial statements were
4 provided to the JOLs. The JOLs view is that the economic value of Erlian's business and
5 thus the PFL share is linked to the mining operations and to the need for trains to move
6 ore from mines to buyers and was therefore relevant to the valuation of the PFL Share
7 and was thus within the scope of the Order.
8
9 91. The JOLs also question whether the value ascribed by Mr. Li to the PFL share can be
10 the same as the value of the property of US $138 million.[41] Counsel submits that the
11 value of the Property cannot be the value of the Share and that no assertions are made
12 by Mr. Li as to the value of the PFL share. What was transferred was a share in a
13 company which then owns some land in Mongolia. Significantly say the JOLs, the
14 assertions now being made are in contrast to earlier statements made. Mr. Li submitted

15 a statement of Affairs on the 3rd of January 2020 in which he affirmed that he had made
16 all enquiries and reviewed all such documents which he considered reasonably necessary
17 to enable him to make a complete and accurate statement as to the affairs of the
18 Company. He affirmed details for the financial position of all subsidiaries of the
19 Company including providing an up to date balance sheet for each subsidiary. He gave
20 the value of PFL as nil.[42] This is the only time that he has given a value to PFL and to
21 the share. At that time the PFL share was owned by SGL. The financial statements for
22 SGL indicate that as at 31st December 2018 it held current and non-current assets of
23 US$11,000.00. SGL therefore did not attribute any major value to the PFL Share. This

[41] Third Affirmation dated 23rd January 2020, paragraph 6
[42] Pages 143 to 146 of Exhibit XL-3

1 says Counsel is another piece of evidence which would appear to suggest that the PFL
2 Share is of very little value in the context of this case.
3
4 92. The position of the JOLs is that whatever the value of the Share, it is subject to creditor
5 claims at both the Erlian and PFL levels. Given the existing claim against SGL (which
6 is not reflected in the financial position of the statements provided) and the low level of
7 its assets, Counsel submits that SGL is hopelessly insolvent and "*has no business*
8 *transferring assets whether valuable or not.*"
9
10 93. In summary the submission of Counsel on behalf of the JOLs was that irrespective of all
11 other issues, the critical point is that despite the valuation which Mr. Li ascribes to the
12 Share, the JOLs have come to the determination that the share has no realisable value.
13 While Mr. Li urged that the Court should rely on the value given by AP Appraisal
14 Limited, Counsel on behalf of the JOLs submitted that in matters such as this, a Court
15 does and can rely on the judgment of the JOLs and does give considerable weight to the
16 JOL's views on commercial matters. Counsel placed reliance on the case of ***In the***
17 ***matter of DD Gross Premium 2 X Fund***[43] and submitted that the JOLs are in the best
18 position to take an informed view in the instant circumstances.
19
20 94. Counsel on behalf of the JOLs also relied on the case of ***In re Exten Investment Fund***
21 ***et al.***[44] In that case the principal relief sought in respect of two of the four entities was
22 in part that the date of dissolution of each of two Funds in voluntary liquidation be
23 deferred pursuant to s.151(3) of the ***Companies Law*** (2016 Revision). The Petitioner

GRAND COURT - CAYMAN ISLANDS

[43] 2013 2 CILR 361
[44]. FSD 96 to 99/2017 judgment dated 23rd June 2017.

1 was the sole investor in the Funds. He sought the deferral of the dissolution of the company on the basis that there was a need for an investigation into the company's affairs by independent and experienced Official Liquidators and thus that the affairs of the company were not yet fully wound up. The Voluntary Liquidator opposed the orders sought.

95. In support of his application the Petitioner asserted that he had raised requests for information over a period of almost a year, a number of which had not been answered. He further asserted that there was an ongoing criminal investigation in Switzerland which may have involved an indirect parent company of the Petitioner and there was a need to investigate whether or not the Fund may have claims against any party involved in the criminal proceeding. The Petitioner submitted that no prejudice to any other party would arise from the orders being sought.

96. In considering the matter, the Grand Court referred with approval to two decisions of the Hong Kong Courts and stated:

> *"30. Reference was made to the Hong Kong decision* ***The Commission of Inland Revenue v Fullbright Co. Ltd,*** *HCCW 208/2008. At paragraph [17], Kwan J summarised the approach to be taken in the exercise of the discretion under this provision as follows:*
>
> > *"For the court to exercise its discretion to defer the dissolution of a company, it is necessary to show there is still some aspect of the company's business which has not come to a conclusion, such as assets being found, or disagreement between the creditors and the liquidator as to whether the liquidator's work is completed. In other words, the company is anything other than a shell... "*
>
> *31. In the decision of the Hong Kong Court of Appeal in* ***Kelso Enterprises Limited v Liu Yiu Keung*** *CACY 303/2006, at paragraphs 13, 15, 16 and 20, Rogers VP provides the following useful guidance:*

> "13. *In my view the correct approach to the question of whether a dissolution should be defrred under section 239(4) must start with the question of what it is hoped, and what is likely, to be achieved by deferring the dissolution. Hence the reasons put forward by the applicant must be considered first. In this regard, of course, the interests of the creditor s would be very important. The court must also have regard to the public interest. That public interest includes the proper and effective administration of the liquidation. That, in turn, includes the need that there be investigations into possible past conduct by those running and responsible for the running of the company. The court must then consider whether there is likely to be any detriment to any party by deferring the dissolution.*
>
> ...
>
> *15. The judge dismissed the question of the directors of the company having permitted the company to trade whilst insolvent on the basis that it is unlikely that the applicant would have funded any claim. Questions involved in such actions by directors in knowingly trading whilst the company is insolvent could extend to more serious consequences than a mere civil claim. It is clearly in the public interest that any such conduct be thoroughly investigated and, if appropriate, those responsible brought to book.*
>
> *16. As regards any possible detriment, whether to third parties or other creditors, I see none save that if there have been misdeeds, those responsible might have to account for them. In this regard, a highly important matter, which was referred to by the judge but does not appear to have weighed in this regard, was the fact that the applicant was prepared to fund the further conduct of the litigation. Importantly, therefore, the creditors and any others involved are unlikely to be prejudiced in any way. It could be added that the fact that the applicant is willing to chance its existing funds despite having lost a considerable amount of money already, is a litmus test of the fact that*

> *the major creditor considers that there are stones that need to be turned.*
>
> *....*
>
> *20. It remains to be said that in making the order that has been made there is no guarantee that the applicant will be able to secure recovery whether for itself or the other creditors. It is by no means certain that it may be possible to show any particular wrongdoing to the required standard of proof or that any penalties may be imposed on any parties responsible. Nevertheless, the circumstances would seem to me clear that even on the basis of the public interest alone, there are matters that require proper investigation."*

97. The Court applied the guidance in the latter case and concluded that:

> (a) *"It is clear that aspects of the Company's business remain to be concluded, namely an investigation into the matters raised by the Petitioner in its correspondence prior to the purported completion of the voluntary liquidations and the investigation and possible pursuit of claims in connection with the suspect payments.*
>
> (b) *If the Companies are dissolved, they will not be able to pursue any recoveries in respect of the suspect payments to which they may be entitled.*
>
> (c) *It is in the public interest that any possible past misconduct by those running the Companies is properly investigated and, if appropriate, action is taken".*[45]

98. The Court said that importantly no detriment would flow to any party from the deferral. The Court also noted that the Petitioner was prepared to fund the costs of Court supervised liquidations after already suffering losses and referred to this as a sign that it considered that there were important matters outstanding that required investigation.

[45] Paragraph 47

1 99. Counsel for the JOLs submits that while not directly on point, this case is helpful and
2 that the JOLs invite the Court to consider what is hoped to be achieved by the deferral
3 of dissolution. There has been exploration of the information provided in December
4 2019. There is no suggestion now that Mr. Li will provide further documents. He has
5 already had a significant amount of time to do so. The JOLs have come to a
6 determination that the PFL Share has no value and submit that the affairs of Company
7 have been completely wound up, there would be no benefit to continuing and that it is
8 appropriate that Court should make an order that the Company be dissolved.
9
10 100. Counsel on behalf of Mr. Li submitted that the cited case of ***In the matter of DD Growth***
11 ***Premium 2x Fund*** is not relevant to the instant case. Counsel contrasted the cited case
12 which was concerned with the sanction of Liquidators powers, this being a matter for
13 the Court's discretion. Thus a Liquidator's view on commerciality would be relevant to
14 those circumstances. It was stated therein that:
15
16 *"The court was entitled to sanction the liquidators' powers. When exercising its*
17 *discretion to sanction a power falling within the Companies Law, Schedule 3,*
18 *Part 1, the court would consider all the relevant evidence, including whether*
19 *the proposed transaction was in the best commercial interests of the company,*
20 *but, if the liquidators were attempting to enter into a compromise, the court's*
21 *choice would be between the proposed deal and no deal at all unless it was*
22 *satisfied that there would be better terms or a different offer. The liquidator was*
23 *usually in the best place to take an informed and objective view and this view*
24 *would be given considerable weight when considering whether to sanction the*
25 *power (unless there was a substantial reason for not doing so). There was no*
26 *other method of obtaining the funding for the liquidation and the liquidators had*
27 *negotiated a fair conditional fee agreement with the attorney, which had been*
28 *approved by the creditors' committee. Further, the agreement would not harm*
29 *the position of the creditors if the case were unsuccessful. The court could*
30 *therefore sanction the liquidators' use of their power to enter into the*
31 *conditional fee agreement and would do so (paras. 30–31; para. 50).*
32
33 101. Counsel on behalf of Mr. Li argued that it is clear that there is an asset which has value
34 and that the Court has no jurisdiction to make the requested dissolution order. This on

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the basis that there is said to be an absence of information from the JOLs on the value of the disputed asset such that the Court has not been given a factual basis to uphold the application.

102. Counsel submitted that the terminology used by the JOLs in Affidavit evidence of not being able to *"ascribe a value"* rather than a positive indication as to absence of value was a clear indication that they had not done the necessary work in order to arrive at a valuation for themselves. While they do not trust the value given on behalf of Mr. Li, they do not provide an alternative valuation. He was critical of the approach taken by the JOLs as confusing different methods of valuations. He said that financial statements of affairs are accounting values not fair market values. However even at the lowest end of the JOl's value calculation, US $24 million as a value for the property is a substantial value. It cannot be, said Counsel, that the Erlian land is completely valueless. Counsel highlighted the material produced by Mr. Li which includes pictures of the railway and terminal on the property and said that albeit there is no information as to what has happened to the mine, there is no real evidence that it is worthless. He questioned the reason for the JOLs not providing their own valuation and submitted that while the JOL's position could be understood if there was a funding issue so that the obtaining of advice and other steps could not be taken, there was no evidence from the creditors that they would not provide funding for these matters to be explored.

SUBMISSIONS ON BEHALF OF THE CREDITORS

103. Attorneys on behalf of two of the three creditors were present at the hearing. Counsel on behalf of CDB to which the Company is indebted in the amount of some US$150 million dollars expressed support for the application of the JOLs. He said that the submission of Counsel on behalf of Mr. Li which gave the impression that the creditors had not been engaged with this process and had not had the opportunity to provide documents was not correct.

104. He clarified that the creditors had been given sight of the documents by the JOLs and also had the opportunity to provide documents. He submitted that there is no obligation on a creditor to provide documents in contrast to Mr. Li on whom there is a positive obligation to do so.

105. Counsel said that his client had been provided with the filed documents, had been able do the cost benefit analysis and had decided not to provide funding in these circumstances.

106. Counsel on behalf of the second creditor present indicated that her appearance was limited to appearing and making no objection.

DISCUSSION AND CONCLUSIONS

107. The issue of the validity of the transfer of the Share was argued extensively, with the JOLs maintaining that it was invalid. There are meritorious arguments made by Counsel on behalf of Mr. Li as to legal title. However I do take the view that the more

fundamental question is beyond the formalities of execution of the transfer and the legal title to the Share as recorded on the Register of Members, whether there are creditor restrictions which affect the purported transfer and the value of the PFL Share. It is argued that its value is inextricably linked to the value of the Property owned by its subsidiary. I have therefore considered with some care all the evidence and submissions in relation to value as well as funding.

108. By his Third Affirmation, Mr. Li produced audited financial statements for PFL for the year ending 31st December 2014. PFL recorded a net loss of HK$12,272,020.00 and had net liabilities of HK$21,592,176.00.[46] For the year ended 31st December 2015 the company's current liabilities exceeded its total assets by HK$39,379,384.00. The Auditors stated that the conditions indicated the existence of a material uncertainty which may cast significant doubt as to the company's ability to continue as a going concern.[47] In 2018, it incurred a net loss of HK$11,843,197.00 and its current liabilities exceeded its total assets by HK$60,995.298.00.[48] The Auditors record that the financial statements had been prepared on a going concern basis, on the strength of confirmation from a related company that it would provide such financial assistance as is necessary to maintain the company as a going concern. By the statement of financial position of PFL as at 16th December 2019, its current liabilities exceeded its assets by HK$219, 287,656.00 and it had accumulated losses of HK$60,833,657.00.[49]

109. With respect to the financial position of SGL, according to the accounts of SGL provided by Mr. Li for each of the years 2014 to 2018, the net assets are recorded as

[46] Page 25- Exhibit XL-3 to the Third Affirmation of Mr. Li
[47] Page 43 - Exhibit XL-3 to the Third Affirmation of Mr. Li
[48] Page 112 - Exhibit XL-3 to the Third Affirmation of Mr. Li
[49] Page 157 - Exhibit XL-3 to the Third Affirmation of Mr. Li.

1 US$10,000.00. No value is shown within these records for PFL although SGL is
2 described within PFL's accounts as being its immediate and ultimate holding company.
3
4 110. The Court was left with the clear impression that at the very least PFL was in a less than
5 healthy financial position. SGL which purported to effect the transfer appeared to be
6 worse. On the face of the documents seen, the JOLs must be correct that neither
7 Company appeared to be in a position to be able to transfer assets at will.
8
9 111. Following the 29th January 2020 Order, Item 11 of the JOL's request for information,
10 gave Mr. Li the option of providing a valuation as to the equity value of the PFL shares
11 or having the valuation done by the JOLs. Contained therein was the following
12 statement:

13 *"This request reflects the fact that, if the assignment occurs, the JOLs will*
14 *own the shares of PFL, not the Erlian Property, and therefore need to know*
15 *what value could be realised from the Peace Fame shares."*
16
17 112. Mr. Li chose to have the valuation done at his instruction rather than by the JOLs. Now
18 he complains that the JOLs have not done their own work. This in circumstances where
19 the JOLs have asked to interview the Valuer and have alternatively provided written
20 questions. Neither option has been accepted by the Valuer who is said to have responded
21 as indicated above.
22
23 113. It is difficult not to accept the submissions of Counsel on behalf of the JOLs that this
24 was a defect of Mr. Li's own making on which he is now seeking to rely when he accuses
25 the JOLs of having done only a forensic exercise and not having done their own
26 valuation.

114. In addition to requests for valuation of the PFL share and for all Erlian's filings with PRC Authorities since 1st January 2015, the JOLs sought detailed information as to Erlian's current operating situation and asked 17 sub questions.

115. In his Fifth Affirmation Mr. Li, sought to explain his non-response to some of the requests for information by saying that the Order was concerned with the alleged transfer of assets from SGL to the Company while some of the questions asked of him related to the entirely separate issue of the Company's mining operations in Mongolia and thus were outside the scope of the Order.

116. He further stated that a number of other questions concerned the operation of railway services in Erlian which were not capable of being answered as the facilities are not yet in operation. He produced the business license for Erlian and stated that he is the Legal Representative of the Company as also the only director remaining on the board as well as being its Chairman. He produced what he described as recent photographs of the Erlian facilities and stated:

> *"Although these facilities are not yet operational, the construction of the infrastructure, railway and depot of the plant has been completed, and about 85 % of the equipment has been procured. Pending the supply of the remaining equipment and the installation of the equipment, and subject to any further disruption as a result of the COVID 19 situation, the Erlian facilities are expected to be operational in September 2020.*
> *I estimate that RMB 30 million-40 million (the "Investment Fund") is needed to bring the Erlian facilities into operation.*
> *The Investment Fund is intended to be raised by way of debt financing. Such funding has yet to be secured.*
> *No business plan is available currently. The Erlian Enterprise shall assess the impact of COVID 19….."*

1 117. It is noted that the JOLs persisted in their request for information and that on the 14th April 2020, they repeated their request for information from Mr. Li but did not receive a response.[50]

118. The position of the JOLs as to the information requested appears to be a reasonable one. The questions appeared to be designed to arrive at a picture as to the likely value of the Share and Property. It is unfortunate that Mr. Li chose not to respond. Given his various positions in the company and the fact that he is the only director, he was best placed to provide access to this information. While Counsel for the JOLs robustly described his response as possibly obstructionist, it was at the very least unhelpful in his own cause. It is unclear what other avenue of information the JOLs are to seek to pursue where Mr. Li, has refused to provide same.

119. The Fourth Affidavit of Mr. Cowley deals in some detail with the valuation issue. He states:

> *"Although the JOLs have come to the view that the alleged transfer of the Share has not occurred, we recognise that, in light of our duty to collect and realise the assets of the Company, we must still consider whether there would be any benefit for the creditors of the Company in attempting to obtain the Share to the Company. In this regard the JOLs have reviewed and considered the documents and information provided in response to items 4 to 15 of the Request and note as follows."*[51]

120. Mr. Cowley points out that in assessing the value of the Share, the JOLs considered the risks and costs of realisation of the Share, along with the underlying value of the Share itself. The matters considered under the heading of risks and costs included in particular, the financial position of SGL, the effect of the 2015 Payment Agreement as amended,

[50] Page 99 of Exhibit PC-4
[51] Paragraph 29, Fourth Affidavit dated 13th May 2020,

the valuation of the Share and the current operational status of Erlian being the underlying business wholly owned by PFL.

121. The JOLs observe that in circumstances where the transfer of the asset would leave SGL with assets less than is owed to CDB, the JOLs inquired from Mr. Li whether CDB would confirm that it has no objections to the transfer of the Share to the Company. They were advised in response that the Bank would not do so. The inescapable conclusion is thus that there is a substantial risk that the transfer would be subject to challenge.

122. Mr. Cowley states further that the JOLs noted that there is also a substantial risk that the transfer would be in breach of the duties of the directors of SGL. Further that as officers of the Court they cannot knowingly receive an asset pursuant to a breach of fiduciary duties and cannot assist in such a breach. They conclude that even if the Share could be transferred without a breach, the first risk identified above would remain.

123. With respect to the Payment Agreement, the JOLs sought a legal opinion in order to clarify the effect of paragraph 2.8, specifically as to whether or not the consent of CDB was required in order for SGL to assign the PFL share. Clause 2.8 (e) of the Payment Agreement dated 18th June 2015 between CDB, the Company, Mr. Li, SGL and others provides that none of the Lung Ming parties shall cause any changes to the shareholding structure of SGL or reduce the shareholdings in its subsidiaries without CDB's written consent. There is no evidence seen of signed consent.

124. It was anticipated that an opinion would assist with whether:-

i. There is a risk that creditors of SGL may challenge any attempt to transfer the Share.

ii. The effect of the Payment Agreement and its amendment as relied on by Mr. Li was to prevent a transfer of the share without the consent of CDB as distinct from a Share Reversal in respect of which CDB would not have the right to object.

125. Of the opinions received, that from PRC attorneys was considered by the JOLs to be too narrow in scope in that it did not consider whether the consent of CDB was required in order for SGL to assign the Share to the Company. This in circumstances where the Share Reversal apparently contemplated by the Payment Agreement was retransfer of the shares of SGL and Iron Mining International (Mongolia) limited being returned to the Company and not the PFL Share. The view of JOLs is that the PRC opinion does not provide reassurance given that SGL is indebted to CDB and appears to be insolvent.

126. On the valuation of the Share the JOLs note that the valuation provided by AP Appraisal focuses on the cost of reproducing or replacing the property and does not assist in an understanding as to how the value of US$106 million could be realised, neither is there any indication that the Valuer took into account the potential impact of obsolescence of the assets which the JOLs consider to be a material consideration. Further, in addition to the inconsistency in the liability figures between that stated by the Valuer and that stated in the table of liabilities provided by Mr. Li, the valuation assumes that the ultimate owner of PFL's business will support and provide interest free financing for the business. The JOL's comment that this does not appear to be a reasonable assumption particularly where if the Share was transferred to the Company which itself is insolvent, the

Company would not be in a position to borrow the capital required in order to complete the construction.

127. The JOLs also highlight apparent anomalies in valuations where the Valuer gives the value as US$106 million while filings with relevant Chinese Authorities indicated that by the end of 2018, Erlian had net assets of US $20 million. On the 3rd January 2020, Mr. Li affirmed PFL in his Statement of Affairs as having a nil value and Erlian a value of US $20 million. Not surprisingly, the JOLs questions how it is possible for there to be such significant variations in the values.

128. Mr. Li has indicated that the business operations of Erlian needs to raise US$4 to $5.5 million by way of debt financing to complete construction of Erlian's business premises and that no funder has been identified and the JOLs note that it would also require significant additional working capital to commence operations.

129. The risks and costs identified by the JOLS include:

i) The risks that the assets are already obsolete.
ii) The risks/costs of challenge by CDB.
iii) The risks/costs in relation to obtaining funding to complete constructions and to operate the underlying business.
iv) The risks/costs relating to realising assets in a remote location in Mongolia.
v) The JOLs costs and expenses in respect of such (including any funding costs).

130. Given all of these matters, the conclusion of the JOLs is that they are unable to ascribe any realisable value to the Share on the information provided by Mr. Li.

131. Having reviewed the financial statements provided, the information about the Company itself, the other entities, PFL SGL and their various circumstances of insolvency, the possible creditor claims against them, the possible creditor restrictions, the Court was left with the distinct impression that seeking to realise some value from the disputed asset is very likely an entirely hopeless exercise, where good money will be thrown after bad and where the disputed asset will begin to disappear from view, the closer one gets to it.

132. Secondly, while the distinction between sanction applications and other such discretionary matters is well made by Mr. Li's attorney, the Court considers that there is some weight to be given in circumstances such as these to the experience and expertise of the JOLs as to value and risk. As I read paragraph 35 of the Fourth Affidavit of Mr. Cowley, weighing asserted value against the likely costs and risks of realising that value, the balance does not fall in favour of taking that risk.

133. The JOLs also considered whether there were any other possible assets. A loan to PFL by the Company of approximately US$54 million in or around 2013 was reviewed. Repayment would depend on PFL's ability to pay in circumstances where no evidence was seen that Erlian would be able to repay this loan presently or in the future. The JOLs conclude that given the issues which would arise in respect of enforcement of such loan and in realisation of it and the affirmation of Mr. Li made on 8th October 2019, that no major assets are held by the Company, they are unable to ascribe any realisable value to this loan.

134. In relation to the possible entitlement of the Company to a Share Reversal under the 2015 Payment Agreement in relation to the shares of SGL and IMIML, the JOLs state:

"The shares of Shiny Glow appear to be worthless given its US $166m liability to CDB and its apparent insolvency as discussed above (even if the Peace Fame share was valued at US $106m as asserted.."[52].

135. An investigation was also carried out into the Company's rights to Iron Mining International Mongolia Limited, ("IMIML"). Mr. Li advised that the Company has no interest in that company. Moreover say the JOLs it appears that the Payment Agreement requires IMIML to become a joint debtor with SGL in relation to the US$166 million liability. There is no assertion that the shares of IMIML would be of any value to the Company.

136. The conclusion of the JOLs is that given all these matters, they are unable to ascribe any realisable value to the shares of SGL or IMIML.

137. Having considered all the material provided, I am of the view that on balance, the assertion that the Company has an asset of value, namely the PFL Share, is not made out. In practical terms the asserted value or any value, appears to be either nonexistent or unrealisable. Any attempt to realise it would be fraught with risk and challenges at every step. The transfer to the Company is questionable. Proof of the Company having an equitable interest in the Share is seriously questionable. Whether PFL was a party to the Payment Agreement is on its face doubtful as is whether the Company could effectively withstand a challenge from SGL if it claimed to have a better title. Ultimately even if all this could be overcome, to what end. The Erlian valuation provided is doubtful not taking into account its creditor claims and other factors. Even if SGL was left with Erlian's residual assets of US$24 million through its ownership of PFL, given

[52] Paragraph 41 c. of the Fourth Affidavit of Patrick Cowley

the financial statements provided, SGL is insolvent and PFL itself is in debt. The Company is insolvent and would not be in a position to borrow capital.

138. On balance I conclude that the JOLs are correct in their assessment that no value can practically or realistically be ascribed to this asset. Put another way, from all the evidence that I have seen, there appears to be no real prospect of realisation of some value.

139. I have also considered the positions taken by the creditors. The creditor in common does not seek to pursue this disputed asset. It is telling though not determinative that none of the three creditors ask that this asset be pursued despite the possible suggested residual value after debt of some US$24 million. The Court gives due weight to the views of the creditors.

140. There are also practical considerations as to funding. The JOLs Final Report of December 2019 records that the First Meeting of the Liquidation Committee discussed the steps that could be taken to reverse the 2015 restructuring. Under funding it was noted that there is no cash available to fund the liquidation and that the JOLs remained in discussions with the petitioning creditor in respect of the funding needed to settle all costs of the liquidation to date.

141. At the January hearing Counsel on behalf of the Liquidators made it clear that there was no funding available to fund further inquiries, hence the undertaking given by Mr. Li to do so.

142. The most recent Affidavit of the JOLs in May of 2020 stated that the creditors have all been notified of the various developments throughout the liquidation process and as the matter has progressed towards the dissolution application.

143. Exhibit ELC 1 to the Affidavit of Ms. Caruana refers to the understanding of Counsel to the JOLs that the Company's three creditors were unwilling to fund further investigations into the alleged transfer of the disputed asset and were content to have the Company dissolved.

144. At this hearing Counsel on behalf of the Petitioning Creditor stated in clear and unequivocal terms that no funding will be provided for any further inquiries which are viewed as of doubtful efficacy. There are no funds available from the Company to pursue this disputed asset.

145. Applying the guidance from the cited case of ***In re London and Caledonian Marine Insurance,*** I have asked myself, from all that I have seen and heard, have the JOLs done all they can to wind up the Company? Have they made the necessary inquiries and sought relevant information as far as they possibly can? Have they disposed of the assets as far as they can realise them? In all the circumstances of this case, at this stage, the answer is yes. Applying a practical and sensible meaning to the words of the section, as the said case discusses, this does not mean that if there was a single asset outstanding the affairs of the Company were not to be considered as wound up. This must be particularly so where there are likely substantial risks and costs to be sustained in respect of such action, no funding to undertake such action and the likely result would be of no benefit to creditors. The JOLs have sought extensive and detailed information from the person in the best position to provide it. They have sought information from third party sources. They have carried out an analysis of all the information received. While not by itself determinative of any issue, the effect of the inconsistent statements made by and the conduct of Mr. Li does mean that his assertions are given less weight and due scrutiny

1 particularly where these are inconsistent with documents he has provided or documents
2 which have been otherwise obtained. The creditors have been provided with the relevant
3 documentation, have had input and provided documentation to the JOLs. The Court has
4 been provided with sufficient information in order to make its own assessment.
5
6 146. For all these reasons and considering all the evidential material before the Court and
7 accepting the submissions of the JOLs, I am satisfied that the affairs of the Company
8 have been completely wound up.
9
10 147. I am also satisfied that the JOLs have published and filed their Final Report, that notice
11 of the date of the dissolution hearing was given to the creditors, and that the hearing
12 was advertised in accordance with Order 22 of the CWR. Consequently I am satisfied
13 that the requested order for dissolution may properly be made together with the requested
14 consequential orders.
15
16 **Dated this the 4th day of August 2020**

17
18
19
20 **Honourable Justice Cheryll Richards Q.C.**
21 **Judge of the Grand Court**