



**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION**

**CAUSE NO: FSD 271 OF 2023 (DDJ)**

**IN THE MATTER OF THE COMPANIES ACT (2023 REVISION)  
AND IN THE MATTER OF AUBIT INTERNATIONAL**

**Before:** The Hon. Justice David Doyle

**Appearances:** Mr Tom Lowe KC instructed by Mr Erik Bodden and Dr Alecia Johns of  
Conyers Dill & Pearman LLP for the Petitioners/Applicants

Ms Sarah Dobbyn and Mr Cameron Thomson of Sinclair Attorneys for the  
Company

**Heard:** 26 September 2023

**Ex Tempore  
Judgment Delivered:** 26 September 2023

**Draft Transcript of  
Judgment Circulated:** 27 October 2023

**Date Transcript of  
Judgment approved:** 31 October 2023

**HEADNOTE**

*Determination of application for the appointment of joint provisional liquidators – necessity hurdle not jumped*

**EX TEMPORE JUDGMENT**

1. I am conscious of the time so I will deliver a short *ex tempore* judgment with brief reasons.
2. I have considered the Applicants’ hearing bundle, the Company’s and Supporting Creditors’ bundle, the written submissions and the 3 volumes containing a grand total of 86 authorities.
3. I have also considered the oral submissions put before the court this morning in respect of the Applicants’ application for the appointment of joint provisional liquidators (“JPLs”) pending the determination of a winding-up petition.
4. I start from one of the few uncontested facts in this case and that is that the winding-up petition is due to be heard on 16 October 2023. That is not far away.
5. In *ICG i* (FSD unreported judgment reasons delivered 4 August 2021) I referred to the four main hurdles an applicant seeking the appointment of a provisional liquidator pending the determination of a winding-up petition has to jump –
  - (1) the presentation of the winding-up petition hurdle;
  - (2) the standing hurdle;
  - (3) the *prima facie* case hurdle; and
  - (4) the necessity hurdle.
6. In *Position Mobile* (FSD unreported *ex tempore* judgment delivered 7 April 2022) I referred to authorities which stressed that considerable care must be taken before making what is plainly a

draconian order. The remedy is one of the most intrusive remedies in the court's armoury. I declined to appoint JPLs in that case.

7. In other cases I have been persuaded to press the nuclear button and appoint JPLs. In *Principal Investing Fund* (FSD unreported *ex tempore* judgment delivered 17 September 2021 transcript approved 29 September 2021) I pressed the button on an *ex parte* basis. Each case depends on its own facts and circumstances.
8. I have considered the facts and circumstances presently before the court.
9. For the purposes of today's hearing I am willing to accept that at least two of the Applicants have standing as contingent or prospective creditors. A winding-up petition has been presented so that hurdle has also been satisfied.
10. The *prima facie* case hurdle presents some concerns. I keep a mind open to persuasion and the less said at this stage in respect of the merits or otherwise of the winding-up petition the better. Suffice to say I have doubts as to whether the *prima facie* hurdle has been jumped but I do not decide the JPL application on the ground that the *prima facie* hurdle has not been jumped.
11. However the necessity hurdle, in my judgment, presents a formidable obstacle to the appointment of JPLs.
12. As to the necessity hurdle, the Applicants say that the relief they seek is urgent, but I have not been persuaded that there is an urgent necessity to appoint JPLs pending the determination of the winding-up petition in order to prevent any further dissipation or misuse of the Company's assets or mismanagement or misconduct on the part of the Company's directors.
13. I note that counsel accept that the court has a discretion to exercise when considering whether or not to appoint JPLs. I note Parker J's comments in *Al Najah Education Limited* (FSD unreported judgment 9 August 2021) at paragraphs 33 and 34.

14. In the particular circumstances of this case, despite the considerable eloquence of Mr Lowe but noting that the winding-up petition is listed for hearing on 16 October 2023, I have not been persuaded to exercise my discretion in favour of appointing JPLs in the short interim period from now until then. I therefore dismiss the summons dated 11 September 2023.

David Doyle

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**THE HON. JUSTICE DAVID DOYLE**  
**JUDGE OF THE GRAND COURT**