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CASE REVIEW SECTION

In the Matter of Axia Network Foundation (In Voluntary Liquidation)

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Synopsis

In *In the Matter of Axia Network Foundation (In Voluntary Liquidation)*,¹ the Cayman Islands Grand Court (the 'Court') brought the voluntary liquidation of two companies that operated in the digital asset space under court supervision pursuant to section 131 of the Companies Act (as revised) (the 'Act'). The Court brought the liquidations under its supervision as it was satisfied that this would facilitate a more effective liquidation of the companies in the interests of the stakeholders as a whole because (among other things): (i) the multijurisdictional and complex issues that may arise (particularly in respect of the status of crypto currency coin holders) meant that a Court based process could operate to reduce the likelihood and magnitude of disputes; (ii) official liquidators have greater investigative powers than voluntary liquidators and, because they owe duties to the Court, should provide stakeholders with more confidence in the liquidation process; and (iii) foreign recognition of the liquidations that may be required to facilitate asset recoveries were likely to be more readily available to official liquidators.

The *Axia* decision provides important guidance as to the factors that the Court will evaluate in determining applications for Court supervision and highlights the benefits of a court supervised liquidation as opposed to a voluntary liquidation in the Cayman Islands. Voluntary liquidations serve a purpose and are an efficient and economic option for many solvent liquidations but, in certain cases, Court supervision can be more efficient, expeditious or economic.

A. Voluntary liquidations in the Cayman Islands

The commencement of a voluntary liquidation is usually a simple procedure that does not require the sanction of or action by the Court. In most cases it is commenced by the passing of a shareholders' resolution requiring the company to be wound up voluntarily (although it may also be commenced on other grounds including automatically upon the happening of a particular event if the company's articles provide for such).²

A voluntary liquidator does not have to hold any specific professional qualifications.³ They will act as an agent of the company with wide powers to deal with the affairs of the company without sanction of the Court and their authority to bind the company will displace the authority of the directors to do so.⁴ Shareholders of the company can remove a voluntary liquidator by ordinary resolution.⁵

Upon the commencement of the voluntary liquidation, there is no automatic moratorium prohibiting the commencement of legal proceedings against the company.⁶

Voluntary liquidation is for solvent companies and the voluntary liquidator must file signed declarations of solvency from the company's directors within 28 days of the commencement of the liquidation and, if they fail to do so, the liquidation is brought under the supervision of the Court.⁷

B. Supervision orders under section 131 of the Companies Act

Even where declarations of solvency have been filed, the voluntary liquidator or any contributory or creditor

Notes

1 [2025] CIGC (FSD) 27.

2 Section 116 of the Act.

3 Section 120 of the Act.

4 See section 119(5) of the Act which provides that the powers of the directors cease on the appointment of a voluntary liquidator unless the company in a general meeting or the liquidator sanctions their continuance.

5 Section 121 of the Act.

6 Contrast with the automatic moratorium that applies in respect of an official liquidation or a provision liquidation. See section 97(1) of the Act. Although this moratorium does not prevent secured creditors from enforcing their security.

7 Section 123 of the Act.

may apply to the Court at any time for an order for the continuation of the liquidation under the Court's supervision on the grounds that (i) the company is or is likely to become insolvent (section 131(a) of the Act); or (ii) the supervision of the court will facilitate a more effective, economic or expeditious liquidation of the company in the interests of the stakeholders of the company (section 131(b) of the Act). A court supervised liquidation is effectively the same as an official liquidation.

If a supervision order is made, the Court will appoint a qualified insolvency practitioner as official liquidator of the company to replace the voluntary liquidator (where the voluntary liquidators are themselves qualified insolvency practitioners, while it will always turn on the specific facts of the case, it will often be the case that the voluntary liquidators are appointed as official liquidators).⁸

The Cayman Islands Court of Appeal⁹ has set out the approach the Court should take in applications under section 131(b) of the Act, in broad terms:

- The burden is on the petitioner to satisfy the Court that the jurisdictional threshold of section 131(b) has been met, being that the supervision of the Court will facilitate a more effective, economic or expeditious liquidation of the company in the interests of the stakeholders of the company.
- The words 'effective', 'economic' and 'expeditious' are separate concepts and only one needs to be established by the petitioner to meet the jurisdictional threshold.
- A Court supervised liquidation will be more effective than a voluntary liquidation if it has the immediate potential for achieving a more thorough investigation.
- The Court can take into account the view of the stakeholders but not at the expense of failing to undertake a full and careful assessment of the objective factors in the application. Where these factors are finely balanced, the wish of the stakeholders might tip the decision in favour of a supervised one.

C. In the Matter of Axia Network Foundation (In Voluntary Liquidation)

Axia Network Foundation (in voluntary liquidation) and ANF MergeCo Ltd (in voluntary liquidation) (the 'Axia Companies') were part of the Axia Group which was set up for the purpose of creating and developing

a digital token. The Axia Companies are foundation companies, which are a Cayman Islands vehicle commonly used in the digital assets space. A foundation company is a body corporate with a legal personality distinct from that of its members, directors, officers and founder, therefore, it has the capacity to sue, be sued and hold property. In this case, the Court found that section 131(b) applies to foundation companies in the same way as a company under the Act.¹⁰

The Axia Companies were placed into voluntary liquidation and the voluntary liquidators applied for Court supervision of the liquidations on the basis that Court supervision would provide better access to the legal framework around official liquidations which would be more effective for managing the claims process and distributing assets. The liquidators asserted this was particularly important in this case because the digital asset space is a rapidly developing area of law and practice.

The Court determined that the supervision of the Court would facilitate a more effective liquidation of the relevant companies in the interests of the relevant stakeholders because:

- Multijurisdictional issues relating to the status of crypto currency may arise (the implication being that liquidators under court supervision would carry greater weight outside of the Cayman Islands).
- Leading on from the above, the official liquidators will be able to (subject to Court sanction) file a Chapter 15 petition for recognition in the United States and it may be easier for official liquidators (rather than voluntary liquidators) to obtain recognition in other jurisdictions.
- The appointment of official liquidators who owe duties to the Court should provide the stakeholders with more confidence in the liquidation process.
- A level of independent judicial oversight by the Court was desirable as issues of complexity were likely to arise.
- Official liquidators have greater powers, including investigative powers, than voluntary liquidators which should facilitate more effective liquidations for stakeholders as a whole.
- The order for supervision of the Court would trigger a moratorium on proceedings against the Axia Companies.
- The supervision of the Court may facilitate more economic liquidations. This was because Court supervision may save costs by reducing the likelihood

Notes

⁸ Section 132 of the Act.

⁹ *In Re Asia Private Credit Fund* [2020] (1) CILR 134.

¹⁰ Pursuant to Part 2 of Schedule 1 of the Foundation Companies Act (2025 Revision).

and possibly the magnitude of any dispute with stakeholders during the liquidations.¹¹

D. Comment

The voluntary liquidation process may be the faster and more economic route for many solvent companies that are winding down and will likely be the most appropriate route where the liquidation is a ‘simple or clearly defined one with not too many rough edges’.¹² However, the *Axia* decision highlights the circumstances where the Court’s supervision can provide important benefits to the liquidation of a solvent company.

The petitioner must always establish one of the jurisdictional thresholds of section 131(b) and present evidence to show that Court supervision would be either more efficient, economic or expeditious. While each case turns on its own facts: (i) the ability of liquidators to obtain sanction or directions from the Court for certain decisions; and (ii) the fact that supervision brings into play the formal proof of debt process that does not exist for voluntary liquidations and has its own specific appeal process where a proof of debt has been rejected, may be factors to support an application for supervision. Further, these two factors may, depending on the facts of the case, give rise to a more effective, economic and efficient liquidation process by creating a specific forum for disputes within the liquidation process which may provide more certainty and finality for all stakeholders in a shorter window of time. However, the *Axia* decision should not be seen as encouraging liquidators to seek Court supervision to provide themselves with comfort and mitigate their own risk because they will have the ability to seek Court sanction when faced with a difficult decision. While every case is fact specific, the *Axia* decision reiterates that the jurisdictional threshold set out in the statute must be met before a supervision order can be made. Although the Court’s supervisory jurisdiction is available for the resolution of points of law or principle or to provide guidance where there is genuine uncertainty, it is important for liquidators to have a degree of autonomy in managing the liquidation and the Court’s supervision should not replace

the need for liquidators to exercise their commercial judgement.

Court supervision may garner greater stakeholder confidence for various reasons including because shareholders do not have power to remove an official liquidator by ordinary resolution as they can with a voluntary liquidator. For example, this may be particularly appropriate where the manager of a fund has appointed its own choice of voluntary liquidators in defiance of the choice of the stakeholders in the liquidation.¹³ Court supervision may be more effective in such scenarios where there is a lack of trust and confidence between the voluntary liquidators, shareholders and creditors.

Further, official liquidators have greater powers than voluntary liquidators and such greater powers may be necessary for complex liquidations. In particular, official liquidators have the power, among other things, to (i) require directors and officers to submit a statement dealing with a range of matters (and it is an offence to fail to provide such a statement);¹⁴ (ii) examine certain individuals concerned with the management of the company and those individuals are subject to a duty to cooperate with an official liquidator;¹⁵ and (iii) commence proceedings, among other things, in respect of fraudulent dispositions of company property.¹⁶

Finally, where foreign recognition is required, Court supervision may be more effective than a voluntary liquidation. A Court supervised liquidation may facilitate the recognition of the liquidation by courts in jurisdictions that may not otherwise recognise a liquidation commenced by a shareholders’ resolution and without a Court order. This could be important in cross-border liquidations if the liquidators need to realise assets located in other jurisdictions and to seek the assistance of the courts in those jurisdictions.

Solvent companies in the Cayman Islands that are looking to wind down have the flexibility of utilising the route that is most appropriate in the circumstances, be that a voluntary liquidation or a Court supervised liquidation. This decision illustrates that in the developing digital assets space, Court supervised liquidation may be more appropriate.

Notes

- 11 While the Court did not specifically spell the point out it is likely that: (i) the formal proof of debt process that exists for official liquidations (but not voluntary liquidations) with the specific process for appealing a rejection of a proof of debt; and (ii) the ability for the liquidators to seek sanction for certain decisions (which itself could provide a focused forum for objections from stakeholders) were influential in this factor.
- 12 *Re Touradji Private Equity Master Fund Ltd* (unreported, Cause No. FSD 244, 245 and 246 of 2022, Judgment 6 February 2023) at [17] in which the Court stated that ‘[v]oluntary liquidations usually run smoothly when the process is a simply or a clearly defined one with not too many rough edges’.
- 13 An example that was given by the Cayman Islands Court of Appeal in *In Re Asia Private Credit Fund* [2020] (1) CILR 134.
- 14 Section 101 of the Act.
- 15 Section 103 of the Act.
- 16 Section 146 of the Act.

International Corporate Rescue

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