

Where Arbitration and Provisional Liquidation Co-Exist: Cayman Islands Court Appoints Provisional Liquidators Notwithstanding Arbitration Stay

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Key Points

- (a) In two related decisions in *Peakwave Investment Management Limited v Energy Evolution GP Limited*¹, the Cayman Islands Grand Court (the court) considered the appointment and powers of provisional liquidators (PLs) in circumstances where a winding-up petition has been stayed in favour of arbitration.
- (b) The court held that it retains jurisdiction to appoint PLs notwithstanding an arbitration stay, but that whether it would exercise its discretion to make such an appointment depends on the facts. Further the court held that, as a matter of Cayman Islands law the appointment of PLs does not automatically displace the management powers of a company's directors.
- (c) Together, the two decisions provide important guidance for practitioners navigating the intersection of winding-up proceedings and arbitration in the Cayman Islands.

Background

The case arose from a joint venture dispute with its origins in a debt-for-equity restructuring. From 2018 onwards, Haitong International Securities Group Limited (Haitong) provided Mr Jiao and his BVI company, Capital Ally Holdings Limited, with debt financing. By 2022, Capital Ally Holdings Limited owed approximately US\$140m to Haitong. That debt was restructured through an investment vehicle in the Cayman Islands – Energy Evolution Fund LP, a Cayman-registered exempted limited partnership (Fund) – which held interests in entities in the People's Republic of China operating in the electric battery sector.

Peakwave Investment Management Limited (Peakwave), an entity associated with Haitong, became a 49% minority shareholder in the general partner of the Fund, Energy Evolution GP Limited (GP). Wealth Train Global Limited (Wealth Train), controlled by Mr Jiao, held the remaining 51% majority stake.

The relationship between Peakwave and Wealth Train was recorded in a shareholders' agreement which contained an arbitration clause covering "any dispute, claim, difference or controversy" arising out of or relating to the shareholders' agreement, with any arbitration to be

¹ [2026] CIGC (FSD) 7 and [2026] CIGC (FSD) 22.

administered by the Hong Kong International Arbitration Centre (HKIAC).

Peakwave alleged that Mr Jiao had caused the diversion of approximately US\$45m in dividends into companies associated with him, when those dividends should have reached the Fund. Central to the dispute was evidence suggesting that, in late 2024, the board of a key subsidiary resolved to pay dividends to the Fund, but Mr Jiao subsequently procured amendments to the dividend resolutions such that the payments were redirected. Peakwave contended that these amendments were made without its knowledge or consent.

On 20 June 2025, Peakwave filed a winding-up petition against the GP on the just and equitable basis and simultaneously sought the appointment of provisional liquidators (PLs). In response, Wealth Train filed a cross-application seeking a stay of the petition and the PLs' appointment in favour of HKIAC arbitration, which it represented would be commenced imminently.

The Parties' Arguments

Wealth Train advanced several arguments in support of its application for a stay. Its primary submission was that the court should hold the parties to their contractual bargain to arbitrate disputes arising under the shareholders' agreement.

Wealth Train argued that Peakwave had alternative remedies available to it, including the possibility of applying for relief from an emergency arbitrator rather than seeking the appointment of PLs from the court. On this basis, Wealth Train submitted that Peakwave could not satisfy the necessity test in s 104(2) of the Cayman Islands Companies Act, which requires an applicant to demonstrate that the appointment of a PL is *necessary* in order to: (i) prevent the dissipation or misuse of the company's assets; (ii)

prevent the oppression of minority shareholders; or (iii) prevent mismanagement or misconduct on the part of the company's directors, because it had elected not to pursue these alternative avenues.

Peakwave accepted that the underlying disputes fell within the scope of the arbitration agreement and did not resist the stay of the petition itself. However, it contended that the court retained jurisdiction to appoint PLs notwithstanding the stay, and that the circumstances of the present case justified doing so. Further, it sought to rely on evidence that there was a material risk of imminent dissipation and diversion of assets.

Peakwave submitted that an emergency arbitrator could not grant the relief it sought – namely, the appointment of PLs – and that statutory remedies are not displaced merely because parties have agreed to arbitrate. It offered a cross-undertaking in damages but argued it should not be required to provide security to support it, submitting that Haitong was good for the money and that Wealth Train was already secured by Peakwave's 49% shareholding and limited partnership interest valued at approximately US\$140m.

The Court's Findings

Jurisdiction to Appoint PLs

The court reaffirmed the overriding principle from *FamilyMart China Holding Co Ltd v Ting Chuan (Cayman Islands) Holding Corp* [2023] UKPC 33 that where parties have agreed to arbitrate, courts should generally hold them to their contractual bargain and refer arbitrable disputes to the tribunal. The petition was accordingly stayed in favour of HKIAC arbitration.

However, the court held that it does have jurisdiction to appoint PLs notwithstanding that a winding-up petition has been or will be stayed in favour of arbitration. A stay of the winding-up

petition is a *pro tanto* stay only – the petition remains in existence and can be revived once the arbitration has concluded.

In reaching this conclusion, the court drew an important analogy to s 54 of the Cayman Islands Arbitration Act 2012, which permits interim relief from the court in support of arbitration. The court reasoned that if parties can invoke this jurisdiction whilst arbitration is ongoing, the same approach should apply to other forms of interim relief that only the court can grant.

The court held that in appointing PLs it exercises a complementary jurisdiction to that of the arbitral tribunal because the tribunal does not have jurisdiction to grant that relief and parties cannot bestow that jurisdiction on the tribunal in an arbitration agreement.

In rejecting Wealth Train's alternative remedies argument, the court held that the availability of an emergency arbitrator did not preclude the appointment of PLs. Statutory remedies are not displaced merely because alternative remedies exist; the question is whether the court should exercise its discretion to grant relief in the circumstances.

The Prima Facie Case Standard

The court addressed how it should approach the prima facie case requirement in the context of an arbitration stay. It clarified that finding a prima facie case does not mean pre-determining the applicant's complaints are valid or trespassing on the tribunal's competence – it simply requires the court to be satisfied there is "an apparently good case that the petitioner will obtain a winding up order in due course".

Applying this standard, the court examined contemporaneous documentary evidence concerning the declaration of dividends, which it found "directly contradicted" Mr Jiao's

explanations for the redirection of funds. The court also noted that any defences based on misrepresentation, quasi-partnership arrangements, estoppel or waiver "appeared ... to be weak". Whilst the court avoided determining arbitrable issues, it was nonetheless required to assess evidential strength for the purposes of satisfying itself that a prima facie case existed.

Limitations on PLs' Powers

Whilst the court exercised its jurisdiction to appoint PLs, it emphasised that their powers should be limited to avoid encroachment on the competence of the tribunal. In this case, the court refused to grant investigatory or discovery powers – such matters would fall within the tribunal's purview.

The court expressed concern that empowering PLs with investigatory functions would lead to "duplication of effort and a waste of resources" where an arbitration is ongoing. This reasoning – grounded in efficiency and cost management – provides helpful guidance on how courts will approach the scope of powers in similar cases.

Subsequent Dispute as to the Scope of the PLs' Powers

The practical consequences of limiting PLs' powers soon came into focus, with the parties disagreeing over scope of the PLs' powers under the Appointment Order. Haitong argued that the PLs had displaced the GP's directors, whilst Mr Jiao contended that the directors retained their management powers.

The court agreed with Mr Jiao. Rejecting the English authorities on which Haitong relied. The court held that s 104(4) of the Cayman Islands Companies Act (which makes clear that a PL shall carry out only such functions as the court may confer on that person and that such powers may be limited by the appointment order) and the

Cayman Islands Companies Winding Up Rules at Order 4 (r 4(3), which also contemplates that PLs may be given only limited powers) are inconsistent with any automatic displacement of directors' powers. This is reflected in the well-established Cayman Islands practice of "soft touch" appointments, which depends on PLs and directors being able to coexist. The PLs here were "watchdogs" – tasked with policing the directors and preventing further dividend diversion, not with running the company.

Haitong's application to expand the PLs' powers was largely dismissed, with only two narrow variations granted: that arbitration correspondence be copied to the PLs, and that the PLs be empowered to communicate with third parties and collect the GP's books and records.

Conclusion

The court has made clear that it will hold parties to their arbitration bargains, but it will not allow arbitration clauses to be used as a means of frustrating legitimate statutory relief. This means where assets require protection by way of interim relief not available to the tribunal, the court may, in the appropriate circumstances, be prepared to appoint PLs to hold the ring. Practitioners should draft appointment orders with care, clearly delineating the division of responsibilities between PLs and the board, and should expect the court to hold parties and PLs to the boundaries of the order as made.

Together, the decisions confirm the Cayman Islands' position as a jurisdiction that respects party autonomy in agreeing to arbitrate whilst maintaining robust mechanisms for asset preservation and the protection of stakeholders' interests.

Further Assistance

For further information, please reach out to your usual Maples Group contact or any of the persons listed below.

Cayman Islands

Nick Herrod

+1 345 814 5654

nick.herrod@maples.com

Mehreen Siddiqui

+1 345 814 5394

mehreen.siddiqui@maples.com

Marit Hudson

+1 345 814 5416

marit.hudson@maples.com

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