COLLAS CRILL

Re Asia Television Holdings Ltd [2025] CIGC (FSD) 104 – judgment date 30 October 2025

OCTOBER 2025

Court: Grand Court (Cayman Islands)
Subject: Insolvency, appointment of provisional liquidators on petition of company to facilitate restructuring, approach to exercise of power in Companies Act, s. 104(3), whether appointment of provisional liquidators is 'appropriate'
Judges: Asif J

Summary

This decision provides guidance on when it is 'appropriate' to appoint company-initiated provisional liquidators (**PLs**) under section 104(3) of the Companies Act: relevant factors include a coherent restructuring plan, genuine urgency, and consideration of comity/utility where the company's COMI and key proceedings are not in the Cayman Islands.

Putting various factors in the balance, the Court declined to appoint PLs to facilitate a restructuring of a company.

Further details

The company was insolvent and at substantial risk of collapse. A secured creditor had appointed a receiver over the company's assets, a number of statutory demands had been served on the company and a winding-up petition was filed in Hong Kong (due to be heard on 19 November 2025). There were further ongoing Hong Kong proceedings concerning an internal dispute which was likely to be decided on 31 October 2025. It was not in dispute that the company's COMI was Hong Kong. The company applied for the appointment of PLs under s. 104(3) of the Companies Act.

Guidance – Section 104(3) provides that the Court may appoint a PL upon the company's application, 'if it considers it appropriate to do so'.

The Court provided guidance on when it may be 'appropriate' (the potentially relevant factors listed below are not exhaustive):

1. It may be appropriate if broader powers are likely to be necessary or are likely to be of utility than the powers available under the restructuring officer regime (e.g. when there is an internal board disagreement or because the power to investigate an apparent internal fraud).
2. The Court may be willing to appoint PLs even where there are significant challenges to the success of the intended restructuring.

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3. While lack of clarity on what form the restructuring might take is not necessarily fatal to the appointment of PLs, if the purpose of the appointment is to facilitate a restructuring, there should be an indication of what the restructuring will comprise and how it will be approved by those persons with an interest in the outcome.
4. The absence of clarification concerning the nature of the restructuring might be mitigated by urgency.
5. Comity is an issue that should be considered in the overall balance although it is not an overriding consideration.
6. It is less likely to be appropriate if there are significant questions about the utility in appointing PLs in the Cayman Islands - where the reality is that the company's COMI is in another jurisdiction, particularly if there is a winding up already and a winding up order may well be made in that jurisdiction in the near future and/or there is a risk regarding the extent of recognition likely to be accorded by the courts in that foreign jurisdiction.

Application – Although the Court had jurisdiction and there was some creditor support, it held that appointment was not appropriate: having regard to the lengthy chronology of financial difficulty it was not properly advanced on the basis of urgency; the Court was not satisfied that there was any substantial material to indicate what was the nature of the proposed restructuring plan and how it would be achieved; while there was a background of internal dispute, there were ongoing Hong Kong proceedings to resolve that and it was better for the Hong Kong court to determine the issue (which also raised the question as to whether the summons to appoint PLs was strategic); and, there was a real risk that the High Court in Hong Kong would not recognise the appointment of PLs made by the Cayman Islands Court.

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