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Grand Court's approach to pre-trial specific discovery applications in a winding up petition

OCTOBER 2026

In *Tianrui (International) Holding Company Limited v China Shanshui Cement Group Limited & Ors* [2026] CIGC (FSD) 74 (***Tianrui***), the Grand Court of the Cayman Islands (the **Court**) considered the extent to which a petitioner may obtain specific discovery shortly before the trial of a shareholder winding up petition. The Court ordered targeted searches where specific and significant gaps had emerged, but made clear that further discovery addressing less significant gaps would be hard to justify where it risked jeopardising the trial date.

Specific discovery in the Cayman Islands

Discovery in civil proceedings before the Court is governed by Order 24 of the Grand Court Rules (**Court Rules**). O.24, r.8 provides that discovery will not be ordered unless necessary either for disposing fairly of the proceedings or for saving costs.

Order 3, rule 12(1)(i) of the Companies Winding Up Rules empowers the Court to give such directions as to discovery as it considers appropriate on a contributory's petition. In *Re Global Cord Blood Corporation* [2023 (2) CILR 298] (***Global Cord Blood***), Kawaley J held that discovery practice under the Court Rules is analogous and highly persuasive in the winding-up context.

The discovery dispute in Tianrui

Tianrui (International) Holding Company Limited (the **Petitione**r) is pursuing a petition to wind-up China Shanshui Cement Group Limited (the **Company**) on just and equitable grounds. Among its complaints is the alleged improper issue of convertible bonds which diluted the Petitioner's shareholding in the Company. The trial of the petition is scheduled to begin on 12 October 2026.

Discovery in the proceedings had been conducted under a detailed discovery protocol (the **Discovery Protocol**) which the parties negotiated over several years and which sets out the custodians, date ranges and keyword search terms for each party's discovery.

The Petitioner applied in May 2026 for further, wide-ranging specific discovery from the Company and the Second and Third Respondents, whose nominees sat on the Company's board, including:

1. From the Company: further searches of its existing Discovery Protocol custodians for correspondence with additional subscriber email addresses identified from the Company's own discovery, non-disclosure

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agreements entered into by bondholders/new shareholders, and KYC information; and

2. From the Second and Third Respondents: communications with the bondholders/new shareholders, including instant messages[1], and court documents filed in related Hong Kong proceedings on whose findings the Respondents were expected to rely.

The Company and the Respondents argued (and gave evidence) that they had complied with the Discovery Protocol, and that the requests went beyond it, were too wide, would be disproportionate and would jeopardise the trial date. The Company proposed that any further searches should be confined to its existing Discovery Protocol custodians and data, using agreed keywords, and be capable of completion before trial.

The Second Respondent offered to produce documents from the Hong Kong proceedings that it could disclose without breaching the implied undertaking against collateral use. On communications with the bondholders/new shareholders, its pre-hearing evidence that all such documents had been disclosed proved incorrect in important respects and had to be corrected after the hearing. It also emerged that its server retention policy automatically deleted emails after 14 days (since extended to 30 days) unless saved by the user, with the result that potentially relevant emails could not be produced in the proceedings. The Second Respondent also asserted that it did not have possession, custody or power over the instant messages sought. The Petitioner contended that the Second Respondent had misled the Court with its evidence, that it should be inferred that the Second Respondent had failed to comply with its discovery obligations, and sought orders for further evidence.

The Third Respondent offered certain documents from the Hong Kong proceedings but said it held no responsive communications.

The Court's approach to requests for specific discovery before an imminent trial

Justice Segal followed Kawaley J's ruling in *Global Cord Blood* and approached the specific discovery applications on the same basis that such an application would be considered under the Court Rules, namely that discovery would only be ordered where necessary for disposing fairly of the matter or for saving costs. The Company also relied on *In the matter of Thalassa Investments LP* [2026] CIGC (FSD) 32, in which Chief Justice Ramsay-Hale stated that the Court is required to guard against discovery which is *"unnecessarily wide, burdensome, or which would expand the proceedings into collateral or historical matters"*.

The Judge held that the imminent trial was obviously of great significance to the Petitioner's application, though it would not be determinative if a gap of enormous significance had to be filled in order for there to be a fair trial. Conversely, discovery that would put the trial date at risk was unlikely to be justified for less significant gaps, which the Petitioner could explore in cross-examination at trial. Notably, however, in this case the Respondents' key witnesses would not be called to give evidence at trial and the Petitioner would accordingly be deprived of that opportunity.

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The Judge also considered it significant that the Discovery Protocol was intended to define the parties' discovery obligations comprehensively: further searches for matters newly revealed by the discovery given to date may be permissible, but not where nothing new had been discovered.

While declining to make findings on the Petitioner's allegations of misleading the Court and deliberate breach, which were matters properly for trial, Segal J recognised that the Second Respondent had had to correct its evidence and had admitted to failing to discover all relevant documents, and that some gaps in the record had not been adequately explained.

Having regard to these competing factors, Segal J determined that to the extent any further searches for documents were found to be necessary and justified, those searches should be applied to the Company's custodians identified in the Discovery Protocol and to data and documents already collected from them. While the Judge recognised that this was not ideal, *"in view of the very short period between now and the start of the trial seems to me to be a fair and proportionate general approach, with exceptions to it requiring a strong justification"*.

The specific discovery orders made by the Court

1. The Court required further targeted searches to be undertaken, for example for further communications and relevant NDAs, limited to the existing Discovery Protocol custodians.
2. It declined to order the wide-ranging KYC searches, which would be too onerous to complete before trial, or wide-ranging searches for the Respondents' communications (including instant messages), which came too late and were undermined by evidence that they would be unproductive. However, given the "not entirely reassuring" corrective evidence, the Second Respondent's deponent was required to identify the source of her instructions if it wished to rely on that evidence.

On the Hong Kong documents, Segal J accepted that these were important and ordered the Respondents to disclose their own witness statements and written submissions from those proceedings, together with transcript extracts of their factual witness evidence, and indicated that they should seek permission from the other parties to the Hong Kong proceedings to provide their evidence and submissions, addressing the implied undertaking concerns.

Implications of Tianrui and practical considerations for discovery strategy

Tianrui confirms, following *Global Cord Blood*, that discovery practice under the Court Rules is highly persuasive in shareholder winding-up petitions. Late applications that risk jeopardising the trial date face a higher threshold and will face difficulties unless the missing documents are significant and required for a fair trial.

Parties should therefore review discovery carefully and identify any gaps as early as possible so that concerns can be addressed well before trial, in particular in relation to data held on mobile devices which can be complex and time-consuming to obtain. Careful consideration should be given to seeking such data, and to appropriate search parameters, at the earliest possible stage of the proceedings so that they can be built into

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any applicable discovery orders or protocols. This is especially so in the case of agreed discovery protocols which – as was made clear in Tianrui – the Court will be slow to re-open where nothing new has emerged from discovery.

Late discovery requests should be carefully tailored to the importance and accessibility of the documents. In *Tianrui*, the Petitioner succeeded where it tied requests to specific documents that had emerged from discovery, and failed where it sought wide-ranging discovery that would be onerous to complete before trial.

The criticism of the Second Respondent's server retention policy, the consequent failure to give full discovery, and its incorrect evidence highlight the importance of preserving potentially relevant documents early and the reputational and procedural risk of filing incorrect evidence. Litigation holds should be implemented as soon as proceedings are reasonably anticipated, and litigants must be prepared to justify any retention policies if discovery failings arise. Deponents must equally ensure that evidence on discovery compliance is accurate before it is filed.

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[1] Placing reliance on the English Court of Appeal ruling in *Phones 4U Ltd (in administration) v. EE Ltd* EWCA Civ 116 which had previously been applied by Segal J in *Abraaj Holdings (in Official Liquidation) v. GHF Group Ltd* (Unreported, 19 July 2022).

For advice on discovery strategy, shareholder disputes or contested winding-up petitions in the Cayman Islands, contact our Litigation and Dispute Resolution team.

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COLLAS CRILL

For more information please contact:



Ciara Hansen

Associate | Cayman

t: +1 345 914 9608 | **e:** ciara.hansen@collascrill.com



Rocco Cecere

Partner | Cayman

t: +1 345 914 9630 | **e:** rocco.cecere@collascrill.com



Matthew Dors

Partner | Cayman

t: +1 345 914 9631 | **e:** matthew.dors@collascrill.com



Zachary Hoskin

Partner | Cayman

t: +1 345 914 9663 | **e:** zachary.hoskin@collascrill.com



Harry Rasmussen

Counsel | Cayman

t: +1 345 914 9608 | **e:** harry.rasmussen@collascrill.com



Nicholas Batten

Senior Associate | Cayman

t: +1 345 914 9619 | **e:** nicholas.batten@collascrill.com

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