Collas Crill Caribbean Brief

Key offshore updates in one place

Welcome to the Collas Crill Caribbean Brief – a concise round-up of significant recent decisions and legal developments affecting offshore and cross-border litigation.

Key contacts

Justina Stewart
Partner
+1 345 914 9622
justina.stewart@collascrill.com

Rocco Cecere
Partner
+1 345 914 9630
rocco.cecere@collascrill.com

Matthew Dors
Partner
+1 345 914 9631
matthew.dors@collascrill.com

Zachary Hoskin
Partner
+1 345 914 9663
zachary.hoskin@collascrill.com

Michael Adkins
Partner
+44 (0) 1481 734 231
michael.adkins@collascrill.com

David O'Hanlon
Partner
+44 (0) 1481 734259
david.ohanlon@collascrill.com

Contributing authors

Nicholas Batten
Senior Associate
+1 345 914 9619
nicholas.batten@collascrill.com

Joshua Hamlet
Senior Associate
+1 284 852 6348
joshua.hamlet@collascrill.com

Tom Goodwin
Associate
+1 345 914 9642
tom.goodwin@collascrill.com

Contents

Judicial Committee of the Privy Council

Case	*Attorney General of Trinidad and Tobago v CL Financial Ltd (In Liquidation)* [2025] UKPC 41
Court	Privy Council (from the Court of Appeal of the Republic of Trinidad and Tobago)
Subject	Level of detail required in support of approval of liquidators' remuneration on a time basis
Judges	Lord Hodge, Lord Briggs, Lord Leggatt, Lord Stephens, Lord Richards

Summary: In this important decision, the Board carried out a detailed analysis of authorities in a wide range of common law jurisdictions and provided valuable guidance on the level of information liquidators should provide when seeking approval of their remuneration.

The company was wound up, with the Government of Trinidad and Tobago being its largest creditor. The court order setting out the basis of the liquidators' remuneration provided that this would be "on the basis of the reasonable time expended" at hourly rates for different grades of Grant Thornton personnel. The Government challenged the company's application for the liquidators' remuneration, partly on the basis that insufficient information was provided. The Court of Appeal overturned the High Court's approval of the remuneration.

The Board concluded that the liquidators' remuneration report and affidavit evidence provided far from sufficient information in support of their application for approval. Following the filing by the liquidators of further evidence in support, their application is to be re-heard.

Key principles and guidance: Contrary to the Government's submissions, when dealing with the Government as a creditor, the Court and liquidators must treat it in the same way as other creditors.

The Board summarised a number of basic principles that are widely accepted across common law jurisdictions:

1. Liquidators and other officeholders appointed to administer an insolvent estate occupy a fiduciary position and they may not apply assets of the estate for their own benefit without proper authority.
2. Therefore, the burden is on officeholders to justify any remuneration for which they seek approval.
3. It follows that, if after considering the evidence and having regard to the guiding principles there remains any element of doubt, such doubt should be resolved by the Court against the officeholder.
4. The Court should give weight to the fact that the officeholder is an officer of the Court and, where applicable, is a member of a regulated profession and as such is subject to rules and guidance as to professional conduct. It may be assumed, unless the evidence suggests otherwise, that the officeholder is behaving with integrity. It does not, however, follow that the work undertaken by the officeholder was reasonable and proportionate on an objective basis. That is an issue to be decided by the Court, the creditors' committee or others responsible for approving the remuneration.
5. The remuneration fixed by the Court should be fair and reasonable for the work properly undertaken.

Indeed, in most authorities in relevant jurisdictions, there is an overall requirement that the remuneration be fair and reasonable. This will permit and indeed require the Court to override the result reached by an assessment of time reasonably spent or by the application of a percentage to recoveries or distributions. The Board referred to this general position as remuneration being "at large".

While the Court's order in this case provided for remuneration on a time basis, it also required that the remuneration be "on the basis of reasonable time expended". As such, it was not enough for the liquidators to show that they and their staff worked a certain number of hours. It required them to show that it was necessary or reasonable to have undertaken and continued with that work and that the work was undertaken at an appropriate level of seniority. The consideration in the authorities of the level of renumeration where it is "at large" is relevant to the level of information required to show that reasonable time has been expended.

The issue of the appropriate level of information to be provided to the Court cannot be reduced to a single formula and will always be dictated by the circumstances of the particular case. The two high-level principles are that:

1. there must be sufficient information to enable the Court to have a clear view of what the officeholder has done; and
2. the information should be proportionate to the size of the insolvency and to the cost of preparing the information.

Turning in more detail to proportionality, more detail is, or is likely to be, required in a complex liquidation. In a small liquidation, where the circumstances of the liquidation are straightforward and the costs of preparing detailed information could have a material effect on distributions, information on a more general basis will normally be sufficient.

However, liquidators are not required to provide "details of every phone call or email". The level of detail required is not that seen in detailed bills of costs by solicitors for the taxation or assessment of their costs. The Judge at first instance was right to say that the necessary level on information can be "reasonably particularised without necessarily providing every item".

It was accepted that a liquidator is under a duty to keep proper records in relation to time spent. The Board made it clear that the records should be available if specific charges require more detailed justification.

Certain of the Government's objections were dismissed (e.g. the appointment of corporate directors over subsidiaries).

While it is widely accepted that overhead costs should not generally be charged separately (as they should be included in hourly rates), the relevant Practice Direction provides that if these are exceptionally sought, detailed explanations as to why they should be allowed are required.

Case	*Kenneth M Krys (as Liquidator of Fairfield Sentry Ltd (In Liquidation)) v Farnum Place LLC* [2025] UKPC 43
Court	Privy Council (from the Court of Appeal of the Eastern Caribbean Supreme Court (BVI))
Subject	Material changes in circumstances as ground for retrospective sanction for successful US appeal
Judges	Lord Sales, Lady Rose, Lord Richards

Summary: Kenneth Krys (KK), as the liquidator of Fairfield Sentry Ltd (Sentry), a BVI company, successfully appealed to the Privy Council against refusal of sanction to pursue a second appeal in the US.

Sentry was subject to winding-up proceedings in the BVI and New York. Sentry had a claim in the liquidation of another entity, BM. Fairfield agreed, under a US law-governed contract, to sell that claim

to Farnum. The sale was for a fixed price, and subject to approval from both BVI and US bankruptcy courts. Before the court approvals were secured, the value of the BMM claim rose significantly in value.

Both the US Bankruptcy Court and BVI High Court (BVIHC) then approved the sale contract. KK appealed the US approval in the US District Court (USDC), which the USDC dismissed. KK then sought to appeal the USDC decision, to the US Court of Appeals for the Second Circuit (SCCA). However, under an existing BVIHC court order, the BVIHC had to sanction any appeal to the SCCA. The BVIHC refused to grant the Appellant this sanction. KK appealed that refusal to the SCCA, in the Eastern Caribbean Court of Appeal (ECCA). The ECCA hearing took place in July 2014. Pending its full judgment, the ECCA granted the Appellant an interim sanction to take necessary steps to protect its position regarding the disputed USDC decision.

Therefore, KK appealed the USDC decision to the SCCA. The SCCA allowed the Appellant's appeal in September 2014. The Appellant gave the ECCA a copy of the SCCA decision. However, the ECCA gave judgment in March 2022, dismissing the Appellant's appeal. The ECCA determined that the BVIHC had been entitled to refuse the Appellant its sanction to appeal to the SCCA, despite the fact that the ECCA had several years' notice that KK had already successfully appealed to the SCCA. The ECCA made no mention of KK's successful appeal or the orders authorising on an interim basis the steps taken by KK to prosecute the US appeal.

Material change in circumstances: The Board was in no doubt that the SCCA decision was a material change in circumstances which the Court of Appeal should have taken into account. The decision was the outcome of the very appeal for which sanction was sought. Moreover, one of the principal reasons given by the Judge at first instance was that he was being asked to sanction "a period of indeterminate further delay". However, that delay had clearly ceased by no later than October 2015.

Having failed to take into account a material change in circumstances, the ECCA's decision had to be set aside.

Determination of the sanction application: Neither party supported the matter being remitted. Given the extant delay and the fact that the Board was in as good a position as the ECCA to determine whether sanction should be granted, the Board proceeded to determine the same.

In granting sanction, the Board rejected the suggestion that KK would be acting contrary to the terms of the agreement of the sale to Farnum of the BM claim. Moreover, the Board rejected Farnum's submission that, without sanction the US appeal was a nullity; there was no evidence of US law to support this and in any event it seemed highly implausible.

The Board considered that without sanction for the US appeal, it might be that the liquidator could not recoup the costs involved from Sentry's estate. However, the Board made it clear that in the circumstances, and given the very significant benefit of the US appeal to the estate, that would be a perverse result.

Case	*Fang Ankong & anr v Green Elite Ltd (In Liquidation)* [2025] UKPC 47
Court	Privy Council (from the Court of Appeal of the Eastern Caribbean Supreme Court (BVI))
Subject	Breach of fiduciary duty, payments for improper purpose, *Duomatic* principle
Judges	Lord Briggs, Lord Sales, Lord Hamblen, Lord Burrows, Lord Richards

Summary: In unanimously dismissing the appeal, the Board found that, in determining whether payments had been made for an improper purpose, on the facts general purpose could not be separated from its implementation, and applied the *Duomatic* principle.

Green Elite's (GE) sole purpose was to effect an employee share benefit scheme (Scheme). GE's directors were F and three intended beneficiaries of the Scheme (Bs). GE sold its only assets. The proceeds were paid first to F's personal bank account. F then paid the same to Bs. No board meeting approving the payments was held. GE claimed *inter alia* orders that the directors account to it for the sale proceeds on grounds of breach of fiduciary duty.

At first instance, it was found that GE's shareholders had agreed no more than GE would be set up as a vehicle for the Scheme, but that the decision on how to reward Bs would be taken later. No such agreement was reached, with critical parameters left undetermined.

Certain directors appealed to the Privy Council, with grounds including that:

1. there was no breach of fiduciary duty because payments by F were not made for an improper purpose as GE's general purpose was to provide the Scheme – F was simply exercising the general powers of management conferred by the articles on directors, and F had not acted dishonestly; and
2. if the payments were made for an improper purpose, there was valid assent by application of the *Duomatic* principle.

Fiduciary duties and improper purpose: It was an essential part of the agreement/understanding that implementation of the general purpose was to be agreed between the shareholders (which did not occur). This could not be treated separately from the general purpose, nor did the directors have authority to determine the implementation themselves.

***Duomatic* principle:** In a matter which is *intra vires* a company and lawful, the shareholders can give their consent not only by a formal resolution passed at a general meeting but also by their unanimous consent given informally by the shareholders who would be entitled to vote on such a resolution. Not even an informal meeting is required. Further, the assent need not have the particular features of a binding contract. What matters is whether the shareholders intended to bind themselves legally *as if they had passed a formal resolution*.

However, there was no agreement by all shareholders entitled to vote, to the payment to F, and then to Bs. Therefore, there was no *Duomatic* approval.

Case	*Maso Capital Investments Ltd and another v Trina Solar Ltd* [2025] UKPC 48
Court	Privy Council (from the Court of Appeal of the Cayman Islands)
Subject	Merger appraisals, share valuation methodology, approach to determination of appeals
Judges	Lord Lloyd-Jones, Lord Hamblen, Lord Leggatt, Lord Burrows, Sir Popplewell

Summary: The Board's decision brought to a close the long-running *Trina Solar* fair value appraisal.

The case arose from the 2016 take-private of Trina Solar by its Chairman and CEO, Mr Gao, at US$11.60 per share. Certain shareholders exercised their statutory right of dissent and applied to the Grand Court for a determination of the fair value of their shares under section 238 of the Cayman Islands Companies Act. At first instance, Segal J adopted a blended approach to valuation, weighting the merger price (45%), adjusted market trading price (30%) and discounted cash-flow (25%) to reach US$11.75 per share.

On appeal, the Cayman Islands Court of Appeal held that no weight should have been given to the merger price, citing deficiencies in the market check, conflicts inherent in the management buy-out, and weaknesses in the fairness opinion, and reallocated that weighting to the DCF analysis.

The Privy Council overturned that approach and reinstated the first-instance decision.

The Board's approach: The Board relied upon the well-established principles to be applied by an appellate court to findings of fact or evaluative assessments of a lower court. In the absence of some identifiable error such as a material error of law, an appellate court will not interfere with findings of fact or evaluative assessments of a lower court unless the judge's decision is plainly wrong, in the sense that it was one which no reasonable judge could have reached, or (which is the same) lies outside the bounds within which reasonable disagreement is possible; if the decision does not come within that category it is irrelevant that the appellate court would have reached a different decision.

Applying such principles, the Board found that trial judges have a broad discretion to weigh methodologies, including merger price even where the sale process was imperfect. It held appellate Courts should intervene only where findings are plainly wrong, and that while Delaware appraisal authorities (where a similar regime exists) are persuasive, they are not binding. The Grand Court's blended valuation methodology was therefore restored.

Court of Appeal (Cayman Islands)

Case	*Suning International Group Co Limited and Suning.com Co Ltd v Carrefour Nederland BV* [2025] CICA (Civ) 11
Court	Court of Appeal (Cayman Islands)
Subject	Enforcement of arbitration awards, New York Convention, GCR O.73 (Part II), relevance of service provisions under Hague Convention
Judge	Field, Birt and Beatson JJA

Summary: The Court of Appeal unanimously dismissed an appeal challenging an *ex parte* order to

enforce a Hong Kong arbitral award in the Cayman Islands, reinforcing the jurisdiction's pro-enforcement stance under the New York Convention and for swift enforcement of arbitral awards.

The Defendants had challenged the order on grounds including improper service, arguing that the Judge had been wrong to permit service directed on the Defendants' Hong Kong solicitors, who had acted in the arbitration, rather than through Hague Convention channels.

Hague Convention: The Court clarified that, while the Court retains a wide discretion to order alternative service under O.73 r.31(6), the Hague Convention could not simply be ignored and that applicants must show "good reason" before departing from Hague Convention procedures. The Court outlined specific evidence requirements to demonstrate "good reason", including where a state has made an objection under Article 10 whether there are 'special' or 'exceptional' circumstances.

Despite finding that the initial application had lacked the proper evidence to justify bypassing the Hague Convention, the Court of Appeal treated the service defects as irregularities and declined to set aside the Judge's order, observing that to do so would be a "*triumph of form over substance*". However, it came with a clear warning that, following the Court's clarification on service, a failure to follow the now clarified approach in the future would likely to result in service being treated as ineffective.

Grand Court (Cayman Islands)

Case	*In the matter of TROOPS INC* [2025] *CIGC (FSD) 76*
Court	Grand Court (Cayman Islands)
Subject	*Ex parte* application to appoint joint provisional liquidators, the necessity hurdle
Judge	Doyle J

Summary: In dismissing an *ex parte* application to appoint joint provisional liquidators ("**JPLs**"), Doyle J emphasised that the appointment of JPLs is one of the most intrusive remedies in the Court's armoury (a "nuclear option") and should not be taken unless there are strong grounds justifying the same. Further, it is a very serious step to appoint JPLs on a without-notice basis over a Cayman company with many subsidiaries in other jurisdictions. Of the "four main hurdles" to be satisfied, the application failed on necessity.

The Petitioner sought the appointment of JPLs, pending enforcement of a Hong Kong judgment of approx. US$52 million, arguing that urgent action was required pending the appeal to protect the assets of the company and prevent further dissipation which had allegedly occurred through a series of fraudulent transactions in a reverse takeover.

The necessity hurdle and availability of alternative remedies: The "four main hurdles" that must be cleared for the appointment of JPLs, as set out in *Position Mobile Ltd SEZC* (see FSD 79 of 2022 (DDJ) at [133] for Doyle J's summary of wider relevant principles and guidance), are: (i) presentation of a winding up petition; (ii) standing; (iii) a *prima facie* case; and (iv) necessity. As to "necessity", the appointment must be necessary to prevent one or more of: the dissipation/misuse of assets; oppression of minority shareholders; or mismanagement/director misconduct.

While the first three hurdles were cleared, the "necessity" hurdle was not. Alternative remedies were reasonably available to the Petitioner (e.g. widening the scope of interim relief already granted by the

Hong Kong Court, seeking injunctive relief in other jurisdictions). Accordingly, less draconian relief than an *ex parte* JPL order, a nuclear option, was available.

Case	*Re: New Horizon Health Limited* [2025] CIGC (FSD) 84
Court	Grand Court (Cayman Islands)
Subject	Winding-up, whether to appoint provisional liquidators or a restructuring officer, relevance of powers to be exercised by office holder to the appropriate appointment, sanction of engagement of attorneys
Judge	Asif J

Summary: The Court provided further clarification of the circumstances in which provisional liquidators (PLs) may still be appointed despite the introduction of the restructuring officer (RO) regime.

The petitioner, a Hong Kong-listed company, faced a number of unresolved accounting issues which had resulted in the removal of one director and suspended trading and risked potential de-listing.

The company presented a winding-up petition, on the just and equitable basis, and applied for the appointment of PLs, who would be able to continue the ongoing investigations into the management of the company and also attempt to achieve a rescue or restructuring, so as to allow the company to continue or its business to continue in operation. There was no restructuring plan.

The Court sanctioned the appointment of PLs, but declined to sanction the engagement of counsel, solicitors or attorneys.

This decision underscores that the RO regime has not displaced the PL jurisdiction, particularly where wrongdoing is suspected and operational stabilisation is required.

Reasons for decision: The Court held that the powers of a RO would not be sufficiently broad for the company's needs in the circumstances and that the additional powers of a PL make the appointment preferable. It concluded that there was good reason to appoint PLs and that it was "appropriate to do so" within the jurisdiction in s 104(3) of the Companies Act where the application is made by the company.

The Court also considered concerns raised in prior Hong Kong proceedings about two of the three proposed liquidators but found no professional sanctions and approved their appointment, noting that any future challenge could be brought separately. Asif J also referred to two judgments where the Court preferred to appoint PLs: *Kingkey* (unreported, 12/04/24) and *Oakwise* (unreported, 16/12/24)

Following *Re UCF Fund* [2011] 1 CILR 305, the Court declined to approve the appointment of attorneys. Such approval would be premature before the proposed attorneys had been identified and their terms of engagement finalised, so that the Court could then perform its proper function of ensuring those attorneys were suitable and not conflicted, and that their terms of engagement were reasonably acceptable.

Case	*Kryo Group Ltd v Securus Co Ltd and Another* [2025] CIGC (FSD) 93
Court	Grand Court of the Cayman Islands
Subject	GCR Order 63, rule 3, open justice, application to seal court file to protect allegedly confidential information in pleading, whether pleaded information is confidential
Judge	Asif J

Summary: The Grand Court dismissed an application to seal a number of documents on the court file and anonymise proceedings in a commercial dispute involving estate and tax planning transactions.

The decision provides a helpful summary of relevant law, and highlights that open justice, protected by the Constitution and the GCR, remains the default position under Cayman law, such that restrictions on access will only be granted where strictly necessary in the interests of justice.

Further details: Kryo Group argued disclosure of the names of lenders and borrowers breached contractual and common law duties of confidentiality, and risked commercial harm if made public. The Defendants opposed the application, noting the pleadings were already restricted to the parties and the court file was not open to public inspection without leave.

Asif J accepted the information was confidential between the parties under relevant agreements, but held that there was no breach since the information was already known to both the Plaintiff and the Defendants, and material remained accessible only to the parties and the Court. The Court therefore declined to seal the requested documents, observing the GCR already prevented non-parties from inspecting the court file without leave. The Court emphasised that sealing orders are exceptional and confidentiality concerns should instead be managed through targeted preventative measures if third-party access is later sought, including redactions or applications to prevent inspection.

Case	*Linksure Global Holding Limited v Infinite Solution Limited and Ors* [2025] CIGC (FSD) 95
Court	Grand Court (Cayman Islands)
Subject	Leave to serve out of the jurisdiction, reliance on GCR O.11, r.1(1)(ff) where defendant was director or officer of another defendant, extension of validity of writ to enable service by Hague Convention methods
Judge	Asif J

Summary: The Plaintiff, a Cayman company, alleged that the three Defendants had conspired to prevent an IPO it was pursuing in order to force the Plaintiff to comply with a put option. The First Defendant is another Cayman company and investor in the Plaintiff. The Second Defendant, in Singapore, is a nominee director of the Plaintiff. The Third Defendant, in Hong Kong, is a director of the First Defendant.

The Court granted leave for service out of jurisdiction on the Second and Third Defendants and extended the validity of a writ to prevent expiry prior to service.

The decision reinforces the willingness of the Court to anchor jurisdiction to the Cayman Islands and its practical approach to cross-border commercial litigation.

Further details and novel application of GCR: The Court was satisfied that the Second and Third Defendants were necessary and proper parties under Grand Court Rule O.11, r.1(1)(c). The Court was also satisfied that there was a good arguable case that the Second and Third Defendants were within gateway (ff) in that they are directors of Cayman Islands companies and the claims against them arise out of their conduct as directors of those companies.

Critically, the Court endorsed the novel application of O.11, r.1(1)(ff) to the Third Defendant, who was not a director of the Plaintiff (and therefore did not owe directors' duties directly) but a director of the First Defendant, accepting that it was reasonably arguable that the rule's reach extended to such connected parties.

The Court was satisfied that, even if there will be few, if any, witnesses physically located in the Cayman Islands, it was clearly the most appropriate forum (the Plaintiff and First Defendant were both Cayman companies, the claims were going to involve largely issues of Cayman law, and litigating elsewhere would necessitate costly Cayman law expert evidence).

Recognising the inherent delays in Hague Convention service, the Court granted a six-month extension of the writ to facilitate overseas service.

Case	*RCF VII Sponsor LLC and Another v Blue Gold Ltd* [2025] CIGC (FSD) 94
Court	Grand Court of the Cayman Islands
Subject	Injunction to restrain extraordinary general meeting, whether to excuse party from requirement to provide a cross-undertaking as to damages
Judge	Asif J

Summary: The Grand Court granted an *ex parte* injunction restraining Blue Gold Limited from proceeding with an EGM intended to cause the passing of a resolution which would have the effect of determining that the Plaintiffs' shares were to be treated as restricted from trading.

Somewhat unusually, the second Plaintiff was not required to provide a cross-undertaking.

This decision highlights the Court's readiness to act quickly to safeguard shareholder rights where there is a risk of irreversible harm from board action.

Further details - The plaintiffs argued that the proposed resolution would unlawfully override shareholder rights under the defendant's Articles, breach directors' duties, and contravene assurances given during the SPAC business combination that their shares would remain freely tradable.

In granting the injunction, Asif J identified four serious issues to be tried:

(i) whether the proposed resolution would unlawfully override shareholder rights under the defendant's Articles;

(ii) whether the EGM was called for an improper purpose;

(iii) whether contractual or estoppel-based assurances protected the shares from restriction; and

(iv) whether the board's actions attempted to pre-determine matters already before the Court.

The Court concluded that damages would be difficult to quantify, and the balance of convenience strongly favoured maintaining the status quo until the issues could be determined.

Asif J also notably excused the second plaintiff, S&R Capital, from giving a cross-undertaking as to damages, as is commonly required with injunctions. Two reasons were given. First, RCF's (the First Plaintiff's) willingness to provide a full cross undertaking covering any potential damages, and second, the low likelihood that the defendant would suffer any loss as a result of the injunction. The Court noted the issue would be reconsidered at the return date once fuller evidence and submissions were available.