IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 308

Originating Application No 555 of 2022

In the matter of Section 180(7) of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of MCL Land (Vantage) Pte Ltd (in Members' Voluntary Liquidation)

Between

The Management Corporation Strata Title Plan No 4701

… *Applicant*

And

MCL Land (Vantage) Pte Ltd
(In Members' Voluntary Liquidation)

… *Respondent*

GROUNDS OF DECISION

[Insolvency Law — Dissolution — Deferment of dissolution]

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v
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Goh Yihan JC
5 October 2022

9 December 2022

Goh Yihan JC:

1 The applicant is the management corporation for the development known as Lake Grande, which is located at 2, 4, 6, 8 and 10 Jurong Lake Link, Singapore 648131 ("the Development"). The respondent is the developer of the Development. This was the applicant's application to defer the dissolution of the respondent pursuant to s 180(7) of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("the IRDA").

2 I was originally scheduled to hear the parties on an expedited basis on 5 October 2022. This was because the respondent would have been dissolved on 7 October 2022, rendering any decision after that date moot. However, before the hearing took place, the parties agreed to record a consent order on 3 October 2022. Accordingly, I vacated the scheduled hearing. Further, being

satisfied that the draft order was in accordance with the terms of s 180(7) of the IRDA, I approved the following consent order between the parties on 5 October 2022:

> (a) That, pursuant to s 180(7) of the Insolvency, Restructuring and Dissolution Act 2018, the date which the dissolution of the Defendant is to take effect be deferred until after their outstanding obligations and liabilities to the Claimant be discharged, or until after the outstanding obligations and liabilities are assigned or novated to a third party to be agreed;
>
> (b) That there be no order as to costs; and
>
> (c) That there be liberty to apply.

3 Because there has not been a local decision on the application of s 180(7) of the IRDA ("s 180(7)"), as well as its predecessor provision, s 308(6) of the Companies Act (Cap 50, 2006 Rev Ed) ("the Companies Act"), I set out the reasons for my decision in these grounds. However, before I do so, and although it is strictly not necessary for me to do so, I will briefly explain why I have decided to issue grounds even though the parties had recorded a consent order and did not make any detailed submissions on the law before me.

4 In the first place, this is not a situation where the parties have settled their dispute through a private commercial agreement pending the issuance of a court judgment after full arguments were heard. Unlike cases such as *Barclays Bank plc v Nylon Capital LLP* [2012] 1 All ER (Comm) 912 ("*Barclays Bank*"), the consent order in the present case was not a private commercial agreement between the parties. Rather, the consent order was made pursuant to the terms

of s 180(7). As such, I did not think that the principles laid down in *Barclays Bank* (and referred to by the Court of Appeal in *Tan Ng Kuang Nicky (the duly appointed joint and several liquidator of Sembawang Engineers and Constructors Pte Ltd (in compulsory liquidation)) and others v Metax Eco Solutions Pte Ltd* [2021] 1 SLR 1135 at [82]), in relation to when a court can give judgment when parties had settled after a case has been fully argued, applied in the present case. Furthermore, despite the parties not having made arguments before me, I had to be satisfied that I was exercising my discretion under s 180(7) in a manner that was consistent with the law. Put differently, it would not be right for me to approve the consent order without applying my mind to whether it is consistent with the terms of s 180(7). This alone would require me to consider the reasons for approving the consent order, which would explain why I have decided to issue grounds.

5 Second, in light of the fact that the parties had reached an agreement to record a consent order, I wrote to the parties out of an abundance of caution to ask if they had any concerns should I issue grounds in the circumstances. I did so because one of the relevant factors in *Barclays Bank* (at [76]), which I do not think applies in any event, is the concerns of the parties to the litigation. In the end, neither party replied to say they had any concerns. In fact, the respondent, which is the party whose dissolution is being deferred, wrote in to say expressly that they had no concerns with me issuing grounds in the present case. Accordingly, I did not see the parties' interests, if at all relevant in the circumstances, as an impediment towards the issuance of grounds.

6 For these reasons, including the provision of guidance on the application of s 180(7) in the absence of any local precedent in this regard, I decided to issue

these grounds despite the parties having agreed to record a consent order without having made full arguments before me.

Background facts

7 The present application had come about in the following way. The applicant first learned that the respondent was in voluntary liquidation when its managing agent received an email from the respondent's customer management manager, Mr Bradford Thong ("Mr Thong"), on 25 July 2022. Mr Thong had signed off as representing "MCL Land (Vantage) Pte Ltd (In Liquidation)", despite having corresponded with the applicant previously as a customer management manager of MCL Land Limited, the parent company of the respondent. Having investigated further following this email, the applicant discovered that the respondent had been in members' voluntary liquidation since 12 May 2021. Because the respondent had held a final general meeting on 1 July 2022, the applicant believed that the respondent is due to be dissolved sometime in early October 2022.

8 However, there were two outstanding matters that had arisen in June and July 2022 which had not been resolved between the parties:

(a) On or about 1 June 2022, the applicant was notified by the respondent that Fermax Asia Pacific Pte Ltd, one of the respondent's sub-contractors for the Development, was discontinuing an app which was necessary for the operation of the video intercom system built into the Development. Without the app or a reasonable replacement, the video intercom system would be effectively defunct. The applicant was in the process of discussing a solution to this with the respondent.

(b) On or about 7 July 2022, the applicant had sent the respondent a list of defects in the common area for the respondent to rectify. Mr Thong had informed the applicant that the respondent or MCL Land Limited were reviewing the list of defects with the main contractor. While the main contractor had attended to some of the matters on the list of defects, most of the defects remained unresolved without a firm commitment from the respondent to rectify them.

9 While the applicant was prepared to resolve these matters in due course, its approach changed as soon as it discovered the respondent's imminent dissolution. The applicant became concerned that, if the respondent were to be dissolved, then there would be no party responsible for these two outstanding matters. The applicant therefore took steps and instructed its solicitors to write to the respondent and MCL Land Limited on 29 August 2022. The purpose of the correspondence was to invite the respondent to formally assign its outstanding obligations and liabilities to MCL Land Limited. This would allow the applicant to continue the resolution of the two outstanding matters with MCL Land Limited even after the respondent was dissolved.

10 On 5 September 2022, MCL Land Limited responded to say that it was "prepared, on a goodwill basis and without accepting any liability or obligation whatsoever" to work with the main contractor for the Development to resolve the defects issue. However, MCL Land Limited did not wish to formally take over the respondent's obligations and liabilities. It also did not address the other outstanding matter in relation to the video intercom app.

11 Accordingly, the applicant made the present application to defer the date of the respondent's dissolution until after the respondent's outstanding

obligations and liabilities owed to the applicant are discharged, either through amicable settlement or litigation. Alternatively, the applicant applied to defer the date of the respondent's dissolution until its obligations and liabilities are assigned or novated to a third party to be agreed between the parties. Ultimately, the applicant's main concern was to have a party be responsible for the two outstanding matters, whether this was the respondent or otherwise.

The applicable law

Overview

12 The present application was made pursuant to s 180(7), which provides as follows:

> **Final account and dissolution**
>
> **180.**— (7) Despite subsection (6), the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

For completeness, since s 180(7) refers to s 180(6) of the IRDA, the latter subsection provides as follows:

> **180.**— (6) On the expiration of 3 months after the lodging of the return with the Registrar of Companies and with the Official Receiver, the company is dissolved.

Essentially, the company is automatically dissolved under s 180(6) on the expiration of three months after the liquidator's lodgement of the return with the Registrar of Companies and the Official Receiver, and no further formality is required. This is then subject to any court order made under s 180(7) deferring the date of dissolution upon an application of the liquidator or any other interested person. Section 180(7) was previously s 308(6) of the Companies Act

("s 308(6)") until it was repealed following the IRDA coming into force in July 2020.

13 Despite s 180(7) being part of Singapore law in one form or another long before 2020, the Singapore courts have never considered its application in a substantive decision. Indeed, there has only been one decision which referred to s 308(6), and this is the High Court decision of *Vasudevan v Icab Pte Ltd* [1987] SLR(R) 46 ("*Vasudevan*").

14 The plaintiff in *Vasudevan* had made an application under s 308(6) for the dissolution of the defendant to be deferred until after the determination of a lawsuit between the parties. However, while the plaintiff had cited two foreign cases in support of his application under s 308(6), Chan Sek Keong JC (as he then was) did not consider those cases to be relevant to the section. The learned judge therefore dismissed the application on the basis that the plaintiff had not substantiated its application under s 308(6) as a matter of law. Accordingly, *Vasudevan* does not constitute a relevant local case for the application of s 180(7) in the present application.

15 Notwithstanding the lack of a local precedent, I was of the view that s 180(7) should be analysed in two steps. First, I had to consider who, apart from the liquidator as expressly provided for, was "any other person who appears to the Court to be interested" (which I will henceforth refer to as a "person interested") for the purposes of s 180(7). Second, I had to consider how I should exercise my discretion under s 180(7) to defer the dissolution of a company. In particular, I had to consider the relevant factors that should affect the exercise of my discretion to order such a deferment.

Who is a "person interested" for the purposes of s 180(7)?

16 In analysing s 180(7), I first considered who is a "person interested" for the purposes of s 180(7). More specifically, I was concerned with who comes within the definition of "any other person who appears to the Court to be interested" within the context of s 180(7). While the word "interested" appears over 20 times in the IRDA, and it is mostly used to describe a "person interested" or an "interested person", it is never explicitly defined. This is not surprising. Indeed, in a different context, the Court of Appeal in *Singapore Shooting Association and others v Singapore Rifle Association* [2020] 1 SLR 395 (at [155]) held that the expression "any person interested in the charity" is one incapable of any precise meaning.

17 However, while the expression "person interested" is not defined in the context of s 180(7), this does not mean that the courts have a free rein in defining the expression. Indeed, as ICC Judge Barber noted in *Re BCB Environmental Management Limited (in liquidation); Hellard and another v Registrar of Companies and others* [2021] 1 All ER 1221 (at 1229), it is important that courts do not attempt to legislate on the meaning of an expression which Parliament has deliberately left open. The learned judge had said this in the context of the meaning of a "person … interested" for an application to restore a company to the register under s 1029(2) of the Companies Act 2006 (c 46) (UK). It is, therefore, important to interpret "person interested" as it appears in s 180(7) in its specific context. I derived support for this approach from Megarry J's perceptive remarks in *Re Roehampton Swimming Pool Ltd* [1968] 1 WLR 1693 (at 1698), which were made in the context of an order for the revival of a defunct company:

> *The word 'interest' is, of course, susceptible of more meanings than one; and like so much of the English language, its meaning often has to be discerned from the context.* In relation to making an order for the revival of a defunct company, it seems to me to be more probable that the word refers to a pecuniary or proprietary interest than that it embraces all matters of curiosity or concern. … I cannot conceive that Parliament intended that a man who felt a lifelong concern for dissolved companies should be free to gratify his passion by reviving them under section 352, however deep and genuine his feelings, and whether his affections were spread among all such unfortunates, all concentrated on one favoured corporation. …
>
> [emphasis added]

18 With this broad approach in mind, I turned to s 180(7). In this regard, in the English High Court decision of *Re Border Control Solutions Ltd; Kumar v Secretary of State for Business, Energy and Industrial Strategy and another* [2022] 1 BCLC 454 ("*Re Border Control*"), ICC Judge Barber had to interpret ss 205(3) and 205(4) of the Insolvency Act 1986 (c 45) (UK) ("IA 1986"), which provide as follows:

> **Dissolution otherwise than under ss 202-204**
>
> …
>
> (3) The Secretary of State may, on the application of the Official Receiver or any other person who appears to the Secretary of State to be interested, give a direction deferring the date at which the dissolution of the company is to take effect for such period as the Secretary of State thinks fit.
>
> (4) An appeal to the court lies from any decision of the Secretary of State on an application for a direction under subsection (3).
>
> …

While ss 205(3) and 205(4) are not identical with s 180(7) of the IRDA, they are significantly similar. In particular, s 205(3) replicates largely the "person interested" provision found in s 180(7), albeit differing in terms of whether it is the Secretary of State or the Court who should assess such interest. In my view,

notwithstanding this difference, the interpretation of s 205(3) in *Re Border Control*, in particular, in relation to the meaning of "person interested" in a highly similar context, was helpful in my interpretation of s 180(7).

19 In *Re Border Control*, Kumar was the sole director and shareholder of Border Control Solutions Ltd ("BCS"). BCS entered into liquidation in 2018. The Official Receiver had initially sought to defer BCS's dissolution as more time was needed to conduct investigations into its affairs. The Secretary of State, pursuant to s 205(3) of the IA 1986, in turn ordered that BCS's dissolution would be deferred until May 2025, as opposed to February 2021. It subsequently turned out that the Official Receiver's investigations would be completed much earlier, during the course of 2021. This meant that the deferment sought was no longer needed. Kumar sought to challenge the deferment under s 205(4) on the basis that the continuing period of deferment suggested that investigations were ongoing, which cast aspersions of Kumar's conduct as a director of BCS, and which, in turn, made it difficult for him to obtain financing for his new business ventures. In this context, Judge Barber had to consider who had standing under s 205(4) to bring an appeal against the Secretary of State's decision. The learned judge agreed with counsel that such persons had to encompass those who had standing to apply to the Secretary of State under s 205(3), which therefore necessitated the interpretation of the "person interested" expression in that section. The relevance of *Re Border Control* to the present case is due to the similarity between the "person interested" expression in s 205(3) of the IA 1986 and s 180(7) of the IRDA.

20 In considering this issue, Judge Barber first noted (at [12]) that s 205(4) of the IA 1986 does not expressly address the issue of who has standing to bring an appeal (similar to the situation under s 180(7) of the IRDA). Instead,

Judge Barber derived considerable support from the Privy Council decision of *Deloitte & Touche AG v Johnson* [1999] 1 WLR 1605 ("*Deloitte*"). In that case, the Privy Council had to consider an application to remove liquidators brought by a defendant to proceedings instituted by the liquidators on behalf of the company. However, the defendant was a stranger to the liquidation. The key question that emerged thus was whether the defendant had standing as a person interested. Lord Millett, who delivered the decision of the Board, said that there are two different kinds of cases that must be distinguished when considering a party's standing to make an application to court. The first is when the court is asked to exercise a power conferred on it by statute. In such a case, the court must interpret the statute and consider if the applicant comes within the category of persons identified in the statute. If not, the court has no jurisdiction to consider the matter. Neither s 205(3) of the IA 1986 nor s 180(7) of the IRDA expressly defines the category of persons who may be interested.

21 The second kind of case identified by Lord Millett in *Deloitte* is when a court is asked to exercise a statutory power on the application of a person with a sufficient interest to make it. Lord Millett explained that judicial restraint is required so that the court does not accord too wide a meaning to the expression (or create too broad a category of persons who are interested). Lord Millett's solution was to ask if the applicant has a "legitimate interest in the relief sought". This is narrower than an applicant who merely "has an interest in making the application or may be affected by its outcome" (see *Deloitte* at 1611).

22 Returning to *Re Border Control*, Judge Barber similarly applied the "legitimate interest" test to s 205(3) of the IA 1986. Specifically, in considering "who appears to the Secretary of State to be interested", the learned judge held

that an applicant must demonstrate a "legitimate interest" in the relief sought (at [21]). On the facts of the case, Judge Barber found (at [23]) that Kumar had standing to bring the appeal. This was because as the sole director and shareholder of BCS, Kumar was clearly affected by the continuation of the deferment. The deferment had clearly affected Kumar's ability to pursue new business ventures. Accordingly, pursuant to ss 205(3) and 205(4) (being a person "interested" in a deferral by the Secretary of State under s 205(3) so as to have standing under s 205(4) to appeal), Kumar had a legitimate interest in the relief sought by the appeal before Judge Barber.

23 In my judgment, given the similarity in the relevant wordings between s 205(3) of the IA 1986 and s 180(7) of the IRDA, the "legitimate interest" test is an appropriate one to apply in determining who is a "person interested" within the terms of s 180(7). More specifically, I considered that "a person who appears to the Court to be interested" as referred to in s 180(7) must be one who has a legitimate interest in the deferment of the dissolution, and not merely one who has an interest in making the application or one who may be affected by its outcome.

24 I also found it appropriate to refer briefly to the Australian authorities. In this regard, the relevant provisions, ss 509(5) and 509(6) of the previous Australian Corporations Act 1989 (Cth) ("the Australian Act") (these are now found in ss 509(1) and 509(2) of the present Australian Corporations Act 2001 (Cth)) provide as follows:

> **Final meeting and dissolution**
>
> …
>
> (5) Subject to subsection (6), at the end of the period of 3 months after the lodging of the return the company is dissolved.

> (6) On the application of the liquidator or of any other party who appears to the Court to be interested, the Court may, before the end of the period of 3 months referred to in subsection (5), by order, declare that subsection (5) is not to apply in relation to the company and specify the date on which the company is to be dissolved and, where the Court makes such an order, the company is dissolved on the date specified in the order.

As can be observed, s 509(6) of the Australian Act is highly similar to s 180(7) of the IRDA.

25 The Australian jurisprudence has developed in a more piecemeal fashion compared to the English authorities, but the relevant cases have generally held that a person seeking to maintain a claim against the company (see the Federal Court of Australia decision of *Programmed Maintenance Services Ltd v Ranelagh House Pty Ltd (in liq)* [2008] FCA 1974 at [6]–[8]), or a person who is at risk of its claim being defeated if the company is deregistered (see the Federal Court of Australia decision of *Commonwealth of Australia v Castel Electronics Pty Ltd, in the matter of Castel Electronics Pty Ltd* [2022] FCA 432 at [9]) may fall within the definition of a "person interested". Broadly speaking, this coheres with the English position as the focal point is whether the applicant has a *legitimate interest* in the deferment of the dissolution. For completeness, the "person interested" must make the application for deferment prior to the expiration of the three months period after the lodgement of the relevant documents by the liquidator as the company would cease to exist after that (see above at [12]; see also, the Supreme Court of Western Australia decision in *Re Steelmaster Pty Ltd (in liq); Kenney v McCann (as liquidator of Steelmaster Pty Ltd)* [1992] 6 ACSR 494 at 495).

When should a court exercise its discretion under s 180(7) to defer the dissolution of a company?

The "proper purpose" test

26 Having resolved the meaning of a "person interested" within the terms of s 180(7), I turned next to consider when a court should exercise its discretion under that subsection to defer the dissolution of a company. For reasons I will develop, I applied a "proper purpose" test in considering whether to exercise my discretion.

27 I start with examining the English authorities. In *Re Border Control*, on the substantive aspects of the application, the court found that it would have been appropriate for the Secretary of State to have deferred the dissolution for a period of six months to enable further time to investigate the affairs of the company (due to suspicions of wrongdoing), but that a period of five years was unnecessarily long (at [56]–[57]). Thus, the continued existence of the company was necessary for the purpose of investigation. It is clear that having a beneficial purpose to be served by the deferral is important. For example, in the English Court of Appeal decision of *Stanhope Pension Trust Ltd and another v Registrar of Companies and another* [1994] 1 BCLC 628 at 635, an order for deferral could serve the purpose of enabling a company to claim under an indemnity for rent due.

28 Turning then to the Australian decisions, I derived considerable support from the Supreme Court of South Australia decision of *Kerol Pty Ltd and another v Vergeld Engineering Pty Ltd and others* (SASC, Burley J, No SCGRG-97-1497, 30 April 1998, unreported, BC9801788) ("*Kerol*"). In that case, the plaintiffs sought an order under s 509(5) of the Australian Act to

defer the dissolution of the defendant company so that they (the plaintiffs) can maintain proceedings in the District Court against the company. Those proceedings related to an alleged breach by the company and others of a restraint of trade clause contained in a contract for the sale of a business.

29 Burley J explained that the discretion to defer the dissolution should only be exercised where:

> (a) an interested party who has standing under any of the provisions of the Law, needs to take an application relating to the administration of the liquidation;
>
> (b) the continued existence of the company is necessary in order to effect some proper purpose.

On the facts of *Kerol*, the learned judge held that (a) would cover any application made to recover the surplus assets from the respective contributories, and (b) would cover the maintenance of proceedings in the District Court against the company by the plaintiffs. As such, the general proposition which I derived from *Kerol* is that the guiding principle in the exercise of my discretion under s 180(7) to defer the dissolution of a company is whether the continued existence of the company is necessary in order to effect some "proper purpose".

30 The principles of law enunciated in *Kerol* then culminated in the seminal decision of the Supreme Court of New South Wales in *Re Rosaub Pty Ltd (in liq)* [2005] 54 ACSR 371 ("*Re Rosaub*"). In determining whether the court should exercise its discretion to grant a deferral of dissolution, the court had this to say (at [10] and [12]):

> 10 In relation to the substantive question, the legislation does not seek to define or qualify the court's discretion except in a timing sense (in that an order under s 509(6) can only be made before the end of 3 months after the lodgment of the

> s 509(3) return or, as here, the s 509(4) return). Case law provides little guidance as to considerations relevant to the exercise of the discretion. Judge Burley, a Master of the Supreme Court of South Australia, dealing with an earlier version of s 509(6) in *Kerol Pty Ltd v Vergeld Engineering Pty Ltd* (SASC, Burley J, No SCGRG-97-1497, 30 April 1998, unreported, BC9801788) expressed the opinion that the discretion is properly exercised where 'the continued existence of the company is necessary in order to effect some proper purpose'. To like effect is the decision of Austin J in *Re Walker (as liq of SC Australia Pty Ltd)* [1999] NSWSC 176 where an order was made because, if deregistration was not deferred, certain persons 'would suffer a loss to which there is no particular reason to subject them'.
>
> …
>
> 12 I am satisfied that, if some apparently beneficial purpose will, according to the evidence, be served by a deferral, the deferral should be granted, particularly where it is the liquidator who puts forward the need for deferral. Creation of an opportunity to explore fully the possibility of further and hitherto unrecognised avenues of recovery for the benefit of the administration must, of its nature, represent such a beneficial purpose.

31 Barrett J first noted in *Re Rosaub* that the legislative provision does not seek to define or qualify the court's discretion (except in a timing sense with the three-month deadline). Barrett J then proceeded to restate the principles from cases such as *Kerol* and also made his own observations of the relevant principles:

> (a) The discretion is properly exercised where "the continued existence of the company is necessary in order to effect some proper purpose" (see *Re Rosaub* at [10], citing *Kerol*).
>
> (b) An order should be made where, if dissolution was not deferred, certain persons "would suffer a loss to which there is no particular reason to subject them" (see *Re Rosaub* at [10], citing *Re Walker (as liq of SC Australia Pty Ltd)* [1999] NSWSC 176).

(c) Further, "if some apparently beneficial purpose will, according to the evidence, be served by a deferral, the deferral should be granted, particularly where it is the liquidator who puts forward the need for deferral", and that the "opportunity to explore fully the possibility of further and hitherto unrecognised avenues of recovery for the benefit of the administration must, of its nature, represent such a beneficial purpose" (see *Re Rosaub* at [12]).

Barrett J was satisfied in *Re Rosaub* (at [13]) that the exercise of discretion to order deferral was appropriate in that case as the company may pursue the possibility of recovering moneys under an insurance claims support scheme.

32 The broad principles laid down in *Re Rosaub* have since been followed and applied without modification by various Australian decisions such as *Re ACN 002 408 040 PTY LTD (in liq)* [2013] 94 ACSR 485 ("*Re ACN*") (at [11]–[12]), *Re Santos Petroleum Operations Pty Ltd (in liq)* [2016] SASC 201 ("*Re Santos*") (at [8]), and *Campbell-Wilson v Australian Securities and Investments Commission* [2017] FCA 391 (at [12]).

33 More broadly, the Supreme Court of South Australia in *Re Santos*, after having set out the law based on *Kerol* and *Re Rosaub* (at [7]–[8]), also attempted to elaborate upon the underlying rationale behind s 509(6) of the Australian Act (the analogue of s 180(7) of the IRDA) and stated as such (at [9]): "The provision is a beneficial or remedial provision which permits a court to avoid an unintended outcome arising from a rigid application of the three month time period for deregistration required by s 509(5). As such, it provides a broad discretion and should not be read narrowly", and at the end of the day, "[a]s

Judge Burley said [in *Kerol*], it is available to be used for a *proper purpose* of the company" [emphasis added].

Primary example of "proper purpose"

34 Accordingly, from these principles, what amounts to a "proper purpose" would depend on the facts of each case. However, it is possible to lay down some general examples of when it might be said that the continued existence of the company is necessary in order to effect some "proper purpose".

35 From the cases, the primary example is where there is pending proceedings against the company, which would require the continued existence of the company (*eg*, in *Re ACN*, it was held that a law firm which had performed legal work for the company should be allowed to pursue its arguable claims in outstanding legal fees against the company facing deregistration). Thus, in the Supreme Court of New South Wales decision of *Billingham re W M Ritchie (Aust) Pty Ltd* [2007] NSWSC 325, Barrett J ordered, pursuant to s 509(6) of the Corporations Act 2001, that the Australian Securities and Investment Commission ("ASIC") deregisters the company concerned, W M Ritchie, six months later than when it was supposed to be deregistered.

36 The reason for this was that the liquidators of W M Ritchie had become aware of proceedings brought against W M Ritchie belatedly, after they had completed their administration and distributed the surplus to the members. As such, the liquidators of W M Ritchie sought an order under s 509(6) to defer the deregistration of the company, so that they can enter into discussions to reach a commercial resolution of the proceedings. The liquidators had requested for a period of six months to enable them to take such steps as may appear appropriate once they have made a full assessment of the overall position. Barrett J thought

that this was a "good and valid reason" for deferring the deregistration of W M Ritchie (at [8]).

37 However, the mere existence of pending proceedings does not automatically lead to an order for deferment. Thus, in *Kerol*, Burley J held that there would be no point in deferring the dissolution even if there were pending proceedings, if no useful purpose would be served by doing so. For example, in that case, there would no point in deferring the dissolution to maintain the District Court proceedings if any judgment obtained in such proceedings could not be satisfied. However, on the facts of *Kerol*, the learned judge granted a deferment because there was an arguable possibility of the company being able to recover its surplus assets. This could be done through the liquidators making an application to recover those assets and being indemnified by the plaintiffs accordingly. On the length of the deferment, the learned judge held that it would be appropriate to defer the dissolution of the company for a period of time to enable the District Court proceedings to be continued against the company.

38 Also, the position of the liquidator may not necessarily detract from allowing deferment of dissolution. In *Kerol*, in the course of his consideration whether to exercise his discretion to defer the dissolution of the company, Burley J also discussed if the position of the liquidator in relation to the District Court proceedings was a relevant factor in the exercise of his discretion. If dissolution is deferred, then the applicants would be able to continue proceedings against the company. On this front, the liquidator must then decide if he is able to defend those proceedings. If he has no funds to cover the cost of defending the proceedings, his duty would cease with a request for funding to any persons (who have interest in defending those proceedings) if such a request

is not met. As such, the learned judge opined that the position of the liquidator did not detract from the making of an order for deferment.

39 Lastly, even where there was an existence of a proper purpose to seek a deferment of dissolution, that "must be balanced against the liquidator's interest and, possibly, that of other creditors and contributories in bringing the winding up to an end at the earliest practicable time" (see *Re ACN* at [12]). Any order extending the time should be for the shortest practicable period. This is why the court in *Re Border Control* (at [55]–[57]) was loathe to agree with the long period of deferral extending to five years granted by the Secretary of State when a duration of six months would have been sufficient to investigate the affairs of the company and the prolonged deferral thus "serves no useful purpose".

Summary of the proper application of s 180(7)

40 In summary, in the absence of any previous or binding authority, I decided that the following principles are to guide the proper application of s 180(7):

(a) The "legitimate interest" test should be applied in determining who is a "person interested" within the terms of s 180(7). More specifically, a "person who appears to the Court to be interested" as referred to in s 180(7) must be one who has a legitimate interest in the deferment of the dissolution, and not merely one who has an interest in making the application or one who may be affected by its outcome.

(b) The "proper purpose" test should guide the exercise of the court's discretion under s 180(7) to defer the dissolution of a company. More specifically, the court must consider whether the continued

existence of the company is necessary in order to effect some "proper purpose". While what amounts to a "proper purpose" will depend on the facts of each case, a primary example of such a "proper purpose" is the existence of pending proceedings against the company that are arguable, which would require the company's existence to resolve.

(c) Ultimately, quite apart from these two tests, the court should assess the facts in the round and decide if the exercise of the discretion to defer the dissolution of the company would be an appropriate one to take in the circumstances. Any order extending the time should be for a reasonable period only to eschew unnecessary delay.

Application of the law to the present application

41 Having considered the applicable principles as above, I proceeded to apply them to the present application.

42 First, applying the "legitimate interest" test, I decided that the applicant was a "person interested" within the terms of s 180(7). In my judgment, the applicant, being the management corporation of the Development, clearly had a legitimate interest in the deferment of the respondent's dissolution given that there were the two outstanding matters which had not yet been resolved between the parties (see above at [8]). I did not think that the applicant was merely a party who would be affected by the outcome of the dissolution. Rather, there was a close relationship between the applicant as the management corporation of the Development, and the respondent, as the developer of the Development. I found that this close relationship conferred on the applicant a legitimate interest in the deferment of the respondent's dissolution. This meant that the

applicant had the requisite standing to enter into an agreement to record the consent order with the respondent in the first place.

43 Second, applying the "proper purpose" test, I decided that the continued existence of the respondent was necessary in order to effect some "proper purpose". While the present case did not concern a pending proceeding against the respondent, it did concern two outstanding matters which could only be resolved by the respondent, either directly or through assignment. There is the risk that if the respondent were to be dissolved, then there would be no party responsible for these two outstanding matters. I did not think that it was satisfactory for the respondent as the developer of the Development, which meant that it was the primary point of contact for the applicant, to leave the two outstanding matters unresolved, without so much as informing the applicant of its pending dissolution.

44 Third, I considered the facts of the present application in the round. In my view, while there will be other parties whose interests will be best served by the scheduled dissolution of the respondent, the primary party to whom the respondent is responsible is the applicant. As I said above, it was not satisfactory for the respondent to leave the two outstanding matters unresolved.

45 Therefore, it seemed to me appropriate to defer the dissolution of the respondent to a date after its outstanding obligations and liabilities to the applicant are resolved. I agreed with the terms of the consent order that this deferment should reasonably be until such a date as the respondent discharging, assigning, or novating its obligations and liabilities to a third party as agreed.

Conclusion

46 For all these reasons, pursuant to s 180(7), I approved the consent order as agreed between the parties. I was satisfied that the consent order was consistent with the terms of s 180(7).

Goh Yihan
Judicial Commissioner

Tan Siew Bin Ronnie, Twang Kern Zern and Simone Bamapriya Chettiar (Central Chambers Law Corporation) for the applicant; Chua Sui Tong and Ng Tse Jun Russell (Rev Law LLC) for the respondent.