Whilst we are fully aware of section 28 which provides the power of the liquidators to give consent in legal action, I would like to draw the court’s attention in the following points:-

As stipulated in paragraphs 28 and 29 of the Company’s skeleton submission, it is stated that the Company is in a limited position to defend the Applicant’s BD proceedings and TY Action.

As a matter of fact, a judgment has been entered against the Company for compensation assessed plus interests and costs on 23rd January 2013. We are currently dealing with taxation of the costs under the BD proceedings.

Further, concerning the related TY Action, we have already obtained the Interlocutory judgment on 24th April 2013 leaving damages to be assessed and costs.

In light of the aforesaid, our application for leave to proceed with the aforesaid proceedings are not for the liquidators to defend the same and that the question of whether it is right and just to do so should not be existed. Therefore, whether the liquidators are in possession of the resources or information to enable them to take an active role to defend the actions is irrelevant to our application.

Further, as stated in paragraphs 5 and 8 of our affirmation filed on 6th August 2013, it is highly unlikely that the Applicant will be able to recover the compensation under the BD proceedings and the damages (to be assessed) under the TY Action from the Respondent. Therefore, the Applicant will apply for payment of the same from the Employees Compensation Assistance Fund Board. In order to do so, it is necessary to fulfill all the statutory conditions under Section 16(3) of the Employees Compensation Assistance Ordinance before our invitation to the Fund Board to admit liability for payment of the applicant’s relief under the said proceedings.

In the circumstances, the Applicant therefore apply to the court for an order to proceed with the taxation proceedings in the BD proceedings and proceed further with the TY Action against the Company pursuant to section 28 of the Companies Ordinance and pray for an order in terms of the Summons filed on 24th July 2013.