



In The Supreme Court of Bermuda
COMPANIES (WINDING UP) JURISDICTION
2025 No 273

IN THE MATTER OF THAIHOT INVESTMENT BERMUDA COMPANY LIMITED (IN PROVISIONAL LIQUIDATION)

AND IN THE MATTER OF AN APPLICATION FOR LEAVE TO COMMENCE PROCEEDINGS AGAINST THE COMPANY IN PROVISIONAL LIQUIDATION

Application for leave to commence proceedings against the company in provisional liquidation pursuant to section 167 (4) of the Companies Act 1981

Date of Hearing: 8 September 2026

Date of Order: 8 September 2026

Date of Reasons: 2 October 2026

Appearances

Keith Robinson and Siobhan Boyes of Care Olsen Bermuda Limited for the applicant

Conor Doyle of Conyers Dill & Pearman Limited for the provisional liquidators

Delroy Duncan KC and Ryan Hawthorne of Trott & Duncan Limited for the directors

MARTIN J in Chambers

REASONS FOR ORDER

Introduction

1. This is an application by National Trust Limited (“National Trust”) under section 167 (4) of the Companies Act 1981 for leave to commence proceedings against Thaihot Investment Bermuda Company Limited (provisional liquidators appointed) (“the Company”) for common law recognition of a judgment entered against the Company in the Peoples Republic of China (“the PRC”) on 29 November 2024 in an amount of RMB5,912,583,880.74 (US\$879,802,970.38).
2. This single debt represents the largest putative claim against the company and if admitted in the liquidation is estimated to represent 95% of the total value of all potential claims against the Company. The Company is in provisional liquidation, and so the provisional liquidators have not proceeded to a stage where proofs of debt have been formally admitted either for

voting purposes or for ranking as debts that have been admitted to proof. The provisional liquidators have been appointed for almost a year, and they have been engaged in the task of pursuing potential restructuring opportunities, which involve the sale or restructuring of underlying insurance businesses which are regulated in Hong Kong and the PRC. This process is delicate and complex. There is no present indication of how long this process may take. A formal liquidation process of the Company may have implications for the prospective sale, so the Company has not yet proceeded beyond the appointment of provisional liquidators with full powers.

3. In this context, the court must balance the legitimate interests of creditors against the interests of the company and its underlying businesses in the context of a possible restructuring process that may yet take much longer.
4. National Trust could have proceeded to obtain recognition of the PRC judgment by common law enforcement by issuing proceedings and seeking summary judgment on the strength of the PRC judgment had the provisional liquidation not intervened. National Trust is concerned to take all steps necessary and available to protect its position as the Company's single largest creditor, the value of which is likely to equate to 95% of the recovery made in any sale or restructuring process. There is no known dispute and although the provisional liquidators have no basis to think there is any foundation on which the debt could be disputed, they are not legally in a position to admit the claim.
5. In light of the ongoing delay and uncertainty over the provisional liquidation process, National Trust wishes to establish its debt as a Bermuda debt to minimise any potential uncertainty over its position. The provisional liquidators do not oppose the application for permission to commence proceedings but are not in a position to consent to it.
6. On 8 September 2026 the court made the order granting permission to National Trust to commence proceedings in Bermuda in order to establish the PRC debt as a debt recognised by the Bermuda court but on the undertaking given by National Trust not to take any further steps to enforce the judgment without further leave of the court. Because this is an unusual order, the court indicated that it would give short reasons explaining why it considered that it was appropriate to do so in this case.

The general rule

7. When an order is made appointing provisional liquidators, all proceedings by or against the company are immediately subject to an automatic statutory stay of proceedings. This is intended to ensure that the collective enforcement of debts by all creditors can be achieved fairly and equally and to avoid the incidence of unnecessary costs that might erode the assets available to meet creditors' claims. The stay also ensures that any process of enforcement in respect of claims does not allow one creditor to 'steal a march' on others by getting priority in an execution of that judgment.
8. It is for these reasons that in normal circumstances the court will not grant permission to commence proceedings against a company when a provisional liquidator has been appointed, unless there are good reasons that justify it. There are many examples of situations which require the rights of creditors to be determined, and which are not suitable for determination

within the proof of debt regime under the Winding Up Rules, which is a summary process designed to be simplified, quick and cost effective. It is not necessary to catalogue those types of cases, except to state that they usually involve situations which require a determination of the right to an asset or to determine whether the asset or claim falls within or outside the estate.

9. The relevant general principles are described by Kawaley CJ in **Ace Bermuda Ltd v Pedersen**¹ and **Re Kingate Management Limited**² which establish that the relevant factors to be considered are (i) good cause must be shown (ii) no person obtains an advantage (iii) no prejudice is suffered by creditors or affects the orderly winding up (iv) the claim should be one which is not capable of being dealt with in an ordinary winding up and (v) a condition must be imposed not to enforce the judgment without leave of the court.

The relevant circumstances in this case

10. In this case, there is no known dispute over the enforceability of the PRC judgment, nor any ground that would justify opposition to the application for recognition of it as a debt recognised by the Bermuda court. Therefore, any proceedings to obtain judgment will be summary and will not incur substantial cost or drain on the assets of the company. National Trust is by far the most substantial stakeholder in the liquidation (estimated to be over 95%), so any costs that may be incurred will affect the recovery of their debt more than any other. An undertaking has been given not to take further enforcement steps without the leave of the court, which ensures that there is no risk of National Trust seeking to improve its position in relation to other creditors or “steal a march” on them.
11. In my judgment, the conditions described above have been met. While the PRC judgment could be the subject of a claim in the liquidation by way of proof, the court is sympathetic to the concern that while the stay has been imposed for good reason, there has been no progress to a clear plan of restructuring to date, and no progress towards a liquidation, so National Trust is in a state of suspended animation in this liquidation, and has been for over a year. National Trust wishes to clear away any impediment to the acceptance of their claim, given its size and the dominant influence the claim will have on the progress of any restructuring that is proposed or any ultimate liquidation. Any potential issues regarding the recognition of the PRC judgment can be brought to the surface in the common law recognition proceedings in the meantime, and if there are none, judgment can be entered in the normal way. This seems to me to be a sufficiently good cause to grant leave.
12. It is not clear how long the provisional liquidation will take, nor is it clear whether ultimately a winding up order will ever be made. It seems to me that in those circumstances a creditor should be able to take the ordinary steps it would otherwise be able to take to get common law recognition as long as the interests of the other creditors are preserved. In this case the only potential prejudice would be the relatively small costs of the provisional liquidators attending to any formalities in relation to the civil proceedings which will be undefended, and while these costs will fall to the estate, in effect about 95% of those costs will ultimately be borne by National Trust in any event.

¹ [2005] Bda LR 44 at [23]

² [2013] Bda LR 63 [19]

13. The court is conscious that it is not appropriate to grant permission to a creditor to obtain a local judgment in respect of a foreign judgment in every case. Each case depends on its own facts, so this particular case is not to be regarded as setting a general benchmark for all liquidations. However, in this case, the factors mentioned above all support the grant of leave, and the court made the order in terms, subject to the undertaking described above.

Dated this 2nd day of October 2026



THE HON. MR. JUSTICE ANDREW MARTIN
PUISNE JUDGE OF THE SUPREME COURT