In The Supreme Court of Bermuda

COMPANIES (WINDING UP) JURISDICTION

2026: No. 217

IN THE MATTER OF MUKWA INVESTMENTS LIMITED

AND IN THE MATTER OF THE COMPANIES ACT 1981 (the *Companies Act*)

AND IN THE MATTER OF THE INVESTMENT FUNDS ACT 2006 (the *2006 Act*)

AND IN THE MATTER OF THE PROCEEDS OF CRIME (ANTI-MONEY LAUNDERING AND ANTI-TERRORIST FINANCING SUPERVISION AND ENFORCEMENT) ACT 2008 (the *2008 Act*)

REASONS FOR MAKING AN ORDER APPOINTING PROVISIONAL LIQUIDATORS

Date of Hearing: **16 October 2026**

Date of Order: **16 October 2026**

Date of Reasons: **23 October 2026**

Appearances:

John Wasty of Appleby Bermuda Limited

Introduction

1. This judgment sets out the reasons for my decision to make an order appointing provisional liquidators in relation to Mukwa Investments Limited (the ***Fund***) following the presentation of a winding up petition by the Bermuda Monetary Authority (the ***Authority***) dated 31 August 2026 (the ***Petition***) in respect of the Fund and two hearings of the Petition. At both hearings the Authority was represented by Mr John Wasty of Appleby (Bermuda) Ltd. The Petition was supported by the First Affidavit of Ms Susan Davis Crockwell (***SDC 1***) sworn on 27 July 2026 together with its exhibit marked SDC-1 and the Second Affidavit of Ms Davis-Crockwell (***SDC 2***) sworn on 23 September 2026, together with its exhibit marked SDC-2.

2. The first hearing of the petition took place on 25 September 2026. Prior to that hearing, Appleby had filed a Skeleton Argument on behalf of the Authority (the ***Skeleton Argument***). At that hearing the Authority consented to the Fund's (very late) request for an adjournment. Ms Fiona Bada of Cox Hallett Wilkinson Limited (***CHW***) appeared at the hearing on behalf of the Fund and undertook to go on the record in that capacity. The hearing was adjourned to 13 November 2026 and directions given for the filing by the Fund of evidence in opposition by 2 October 2026 (and thereafter evidence in reply by the Authority). During the hearing Mr Wasty gave notice to the Fund and explained to the Court that the Authority intended in any event to proceed with its intended application for the appointment of provisional liquidators with limited powers to oversee the management of the Fund in view of the Authority's concerns as to the risks to the assets and position of the Fund.

3. The Fund failed to file any evidence by 2 October 2026 and at 3pm on that day CHW informed the Authority that Mr Hilary Duckworth, one of the directors of the Fund (and the director who was the Authority's primary contact) had resigned that afternoon and that as a result CHW was no longer authorised to act for the Fund and was withdrawing as counsel with immediate effect.

4. On 6 October 2026 the Authority learned that the other director of the Fund, Mr William Saunders had also resigned (apparently on 28 September). The Fund had not given notice to the Authority of either resignation.

5. In view of Mr Duckworth's resignation, but before learning of Mr Saunders' resignation, the Authority applied to have the Petition relisted at the earliest available date so that it could seek an immediate winding up order. This would obviate the need for it to apply for the appointment of provisional liquidators in advance of a winding up order being made. The Authority served the First Affidavit of Ms Larissa Burgess ***(LB 1***) in support of this

application. It requested that its application to relist and bring forward the hearing of the Petition be dealt with on the papers. I acceded to this request, being satisfied that the application was suitable for disposal without a hearing, and directed that the Petition be listed for a remote hearing on 21 October 2026 and directed that notice of the new hearing date be given to the Fund.

6. But I also indicated that I would be prepared to list the hearing sooner than that if the Authority so requested in light of the Authority's concerns (as set out in its evidence) of the risk to the Fund's assets and position in light of the resignation of both its directors and its financial difficulties.

7. On the morning of 16 October Appleby wrote to the Court to confirm that the Authority was concerned about the risk of dissipation and wished to have the petition listed to be heard later that day. Appleby filed a copy of Ms Burgess' Second Affidavit (***LB 2***) (sworn on 8 October) with that letter. Ms Burgess said that the purpose of her Second Affidavit was to place before the Court material information that had come to the Authority's attention since LB 1. Appleby indicated that the Authority would now be seeking an immediate winding up order and the appointment of Mr. Allister Manson of Opus Restructuring LLP in London and Ms. Valma Pipi of Opus Restructuring in Bermuda as liquidators of the Fund with full powers (the draft order filed by Appleby included a paragraph making such an appointment even though the Petition, as I explain below, sought an order that the Official Receiver be appointed as provisional liquidator on the making of the winding up order).

8. I directed that the hearing of the Petition be listed for 4:30pm on 16 October 2026 but that the Authority must give notice of the hearing to the Fund at least one hour before the start of the hearing, by email both the Fund's service provider Cohort Limited (***Cohort***) and to CHW.

9. In advance of that hearing I indicated to Appleby that in view of the terms of the Petition and Appleby's indication that the Authority was seeking the appointment of private insolvency practitioners as liquidators (technically provisional liquidators pending the convening of meetings of creditors and contributories as required under section 171 of the Companies Act) upon the making of the winding up order, I wished to hear submissions on whether the Court had the power to do so. I directed my clerk to send the following email to Appleby:

> *The Judge has asked me to raise one issue with you.*
>
> *He notes that the Authority's draft order (discussed at [22]-26] of the Authority's*

skeleton argument refers to the appointment of JPLs at this stage.

The Judge will wish to hear submissions as to whether the Court may appoint JPLs immediately on the making of a winding up order in view of the terms of sections 170 and 171 of the Companies Act 1981 (see Re John Reid & Sons, Limited [1900] 2 QB 634).

10. Also in advance of the 16 October hearing the Authority filed and served (a) the Third Affidavit of Ms Davis Crockwell (***SDC 3***) in which she updated the Court on recent developments and that the Authority considered that there was currently a real risk of the assets of the Fund being dissipated (she briefly explained the reasons for this view) and (b) the First Affidavit of Nicola Atherton in which she confirmed that notice of the 16 October hearing had been given to the Fund via Cohort and CHW. Appleby also filed the Petitioner's Note which set out the Petitioner's updated submissions including the submission that where there was a risk of the dissipation of the assets of the subject of the petition, the usual order was to appoint provisional liquidators to preserve the *status quo* pending determination of the petition. The Petitioner noted that neither the Fund nor its investors had taken active steps to oppose the Petition or contest the assertions and evidence on which the Petition was based, so that the Court was justified in making orders without further delay. The Petitioner submitted that where a petition was brought in the public interest the Court was permitted in appropriate circumstances to accelerate the hearing of the petition where that was necessary to protect that interest and the company's creditors, investors and shareholders (citing as an example *Secretary of State for Business Innovation and Skills v Combined Maintenance Services* [2014] All ER (D) 181 Lexis Citation 262). The Petitioner said that *Re John Reid* was not a public interest petition case and certainly did not require a delay in the making of the Court's order to protect the public interest and the Fund's stakeholders.

11. At the 16 October hearing the Fund was not represented. Mr Wasty took me carefully through the Authority's evidence in support of the Petition and its assertion that the evidence demonstrated a real risk that the Fund's assets were in jeopardy and of the risk of the dissipation of those assets, and submitted that the Authority had established that the Court had jurisdiction to make and should make an immediate winding up order and appoint Mr. Manson and Ms. Valma Pipi of Opus Restructuring as provisional liquidators (pending the outcome of meetings of creditors and contributories and any application and further appointment made thereafter).

12. Mr Wasty submitted that the Court was able to appoint private insolvency practitioners as liquidators when making a winding up order (so that the Official Receiver did not automatically and necessarily become the provisional liquidator on the making of the winding up order) and said that it was his understanding that this was the recognised and standard practice in this jurisdiction. He had, however, in the short time available been unable to locate any authority in support of that view.

13. I told Mr Wasty that on my reading of sections 170 and 171 of the Companies Act it was required and mandatory that when a winding up order was made the Official Receiver became the provisional liquidator unless the Court had previously (before making the winding up order) appointed someone else as provisional liquidator (which appeared to be accepted and anticipated in the Petition). I explained that while, for the purpose of the hearing, I was prepared to accept Mr Wasty's submission that the practice in Bermuda was to appoint private insolvency practitioners as liquidators when making a winding up order (and that I could see why such a practice would be considered desirable and consistent with the approach adopted in other leading financial centre jurisdictions), in the absence of clear authority which established a proper legal basis for this practice I was not prepared to follow it in this case (while not reaching a firm and final view on the matter until I had the benefit of full submissions on the point).

14. I suggested that in the circumstances it would be appropriate for the Authority to consider inviting the Court not to make a winding up order immediately but instead to proceed with its planned application for the (pre-winding up order) appointment of provisional liquidators. This would enable officers of the Court to be appointed immediately on a clear and secure basis and for those officeholders to take immediate steps to take into their possession and control and protect the assets of the Fund.

15. After taking instructions, Mr Wasty confirmed that the Authority wished to follow this approach and therefore applied for a further adjournment of the hearing of the Petition on the basis that it would as soon as practicable file a summons seeking the appointment of Mr. Manson and Ms. Valma Pipi of Opus Restructuring as provisional liquidators on the basis that the Funds' assets were in jeopardy and that the appointment of provisional liquidators was needed to protect them. Mr Wasty confirmed that the Authority would rely on the evidence it had already adduced to establish the grounds for such an appointment and undertook that the Authority would file the summons on the next business day after the 16 October hearing (which, since the hearing was held on a Friday, would be Monday 19 October). I told Mr Wasty that I anticipated being able to dispose of such an application without the need for a further hearing but would make a final decision on that after having seen the summons and reviewing the evidence adduced by the Authority. It seemed to me that since the Fund had been given an opportunity to participate in the proceedings but had

declined to do so (and indeed in the absence of any de jure directors the Fund appeared to be unable to act) there was no need to delay matters by giving the Fund a further opportunity to make submissions on or adduce evidence in opposition to the Authority's application to appoint provisional liquidators.

16. On 19 October 2026 the Authority issued a summons (the ***JPL Summons***) seeking the appointment of Mr. Manson and Ms. Valma Pipi of Opus Restructuring as provisional liquidators. This was sent to the Court together with a further Petitioners' Note (the ***Further Note***) in which Appleby set out the Authority's arguments as to why the Court had jurisdiction to appoint insolvency practitioners upon the making of a winding up order and should do so in the present case. But the Authority also said that if the Court was not satisfied that it had jurisdiction and should do this, it sought an immediate order appointing Mr. Manson and Ms. Valma Pipi as provisional liquidators and filed a draft of the order to be made for this purpose.

17. The Authority summarised its case as to why the Court had jurisdiction to appoint insolvency practitioners upon the making of a winding up order as follows:

> *2. The gravamen of the Authority's position is that (1) Part XIII of the Companies Act must apply mutatis mutandis (with appropriate adaptations) where the Authority seeks to wind up a fund in the public interest under s 36 of the Investment Funds Act (the IFA). If "shall" in the first sentence of s 171 would prevent liquidators being appointed where a fund is wound up on an Authority petition, s 171 must be disapplied. The Authority is legally required to supervise funds in Bermuda and must be able to wind up a fund which may be involved in money laundering or terrorist financing and have officeholders appointed irrespective of creditor or shareholder approval.*
>
> *3. The Authority has four submissions: (1) Historically, the Bermuda courts have been prepared to appoint liquidators when winding up a company; (2) That order is justified by the plain and ordinary meaning of the relevant provisions; (3) That order is also justified on a purposive construction of the relevant provisions; (4) That order is also justified taking into account the statutory scheme envisaged by the IFA read and understood in conjunction with the Companies Act.*
>
> *4. The Bermuda courts have been prepared to appoint liquidators when make a winding up order in appropriate cases. For example, in (1) Re Loral Space & Communications Ltd [2007] Bda LR 26, per Kawaley J at [5]-[10]*

[AB/9/107] and [27] [AB/9/113] and (2) Re Opus Offshore Ltd [2017] SC (Bda) 14 Com (Opus Offshore), per Hellman J at [95] [AB/10/138].

5. *We submit that these decisions are more authoritative in Bermuda than In re John Reid & Sons Ltd [1900] 2 QB 634 (Reid) [AB/11/139], an English (and therefore merely persuasive) first instance decision that has never been applied in Bermuda.*

6. *In our submission, s 170 confers on the Court a power to appoint a liquidator(s) "[f]or the purpose of conducting proceedings in winding up a company..." 7. Under s 167(1)-(2) of the Companies Act [AB/1/3], where the winding-up of a company is compulsory and not voluntary, it is deemed to commence at the date the petition is presented. 8. Under rule 18 of the Companies (Winding-up Rules) 1982 [AB/2/7], a petition is presented when it is received by the Registry, in this case on 31 August 2026 [HB/1/10]. 9. Accordingly, if a winding up order were made on the Authority's petition, the winding-up would be deemed to have occurred on 31 August 2026, with the corollary that any appointment (even one made in the same order as the winding-up) would take place after the winding-up. Insofar as appointing a liquidator under s 170(1) "[f]or the purpose of conducting proceedings in winding-up a company" connotes an existing winding-up, there would be a winding-up as of 31 August 2026 under s 167(2) because the winding-up is compulsory. 10. The winding-up in Reid was voluntary, and Reid is distinguishable on that basis alone. Submission 3: An order winding up the Fund and appointing liquidators is consistent with a purposive construction of the relevant provisions 11. Further, we submit that a purposive construction of s 170 and s 171 allows the Court to wind up a company and appoint liquidators.*

……

18. On the same day (19 October) I emailed Appleby as follows:

I have read your helpful [Further] Note and the other authorities you have filed but remain of the view that the appropriate course to adopt in the present circumstances is for the Court to adjudicate the Authority's summons seeking the appointment of provisional liquidators, and to grant that application.

It may well be that the local practice is to appoint private liquidators immediately on the making of a winding up order, but it seems to me (at least based on the

rapid reading of the authorities that I have been able to undertake so far) that neither Re Loral Space & Communications Ltd nor Re Opus Offshore Ltd clearly deal with the concern I have (that section 171(1)(a) is in mandatory terms and directs that the OR shall become the provisional liquidator on the making of the winding up order if the Court has not appointed a provisional liquidator before then and this provision qualifies the general power to appoint liquidators in section 170(1)). In Loral the Court had previously appointed JPLs and in Opus the issue was not discussed.

I note the other submissions made in your Note but these do not seem to me to overcome the difficulty in the absence of any clear authority.

As I said at Friday's hearing, it seems to me that the safest course, for the Petitioner and the Court, is to adopt a clearly conventional and authorised procedure and to appoint JPLs (whom the Court will then be able to appoint as liquidators - technically provisional liquidators - if and when the winding up order is made).

Accordingly, I am prepared to appoint Mr Manson and Ms Pipi as JPLs.

19. At the 16 October hearing I had indicated that it seemed to me that the grounds for appointing provisional liquidators in advance of a winding up order were made out. I took the test to be whether (a) it was likely on the evidence that the Court would make a winding up order, when the petitioner moved its application for an order to be made and (b) whether in the circumstances of the case it was just and appropriate to appoint provisional liquidators in advance of a winding up order being made. As I explain further below, in this case, where the Fund had no directors capable of acting and there appeared to be no prospect of new directors being appointed, in view of the Authority's evidence of the Fund's many years of serious and continuing regulatory defaults, and in view of the Fund having apparently valuable real estate assets abroad (held through an intermediate company) it was clear that the appointment of an officer of the Court was expedient and necessary to protect the Fund's assets and in the public interest and the interest of creditors and investors.

20. In my 19 October 2026 email I provided comments on the Authority's draft order and subsequently settled the form of order to be made in the following terms:

> ***UPON*** *the petition presented by the Bermuda Monetary Authority (**Petitioner**) dated 31 August 2026 seeking the winding up of Mukwa Investments Limited (the **Fund**) (**Petition**)*
>
> ***UPON*** *the Petition being heard on 25 September 2026 and upon the Court hearing counsel for the Petitioner and counsel for the Fund and adjourning the hearing to 13 November 2026 and directing the Fund to file any evidence it wished to rely on by 2 October 2026*
> ***UPON*** *the directors of the Fund resigning on 28 September 2026 and 2 October 2026 and the Fund not filing evidence by 2 October 2026 or at all*
>
> ***UPON*** *the Petitioner filing a summons dated 6 October 2026 to vacate the hearing listed for 13 November 2026 and relist it for the first available date*
>
> ***UPON*** *the Petitioner's belief that there was a risk of dissipation of the Fund's assets, including an interest in a SARL in the Democratic Republic of the Congo (the **DRC**)*
>
> ***UPON*** *the Court agreeing to hear the petition on 16 October 2026 on short notice to the Fund*
>
> ***UPON*** *the Court hearing Counsel for the Petitioner on 16 October 2026 and the Fund not appearing and the Court adjourning the hearing of the Petition to allow the Petitioner to file a Summons seeking the appointment of joint provisional liquidators (the **JPL Summons**) and Counsel for the Petitioner undertaking to file the JPL Summons on Monday 19 October 2026*
> ***UPON*** *the Petitioner filing the JPL Summons on 19 October 2026*
>
> ***UPON*** *reading the JPL Summons by the Petitioner together with the evidence adduced in respect of the Petition including: (1) the First Affidavit of Susan Davis-Crockwell sworn 27 July 2026; the Second Affidavit of Susan Davis-Crockwell sworn 23 September 2026; the First Affidavit of Larissa Burgess sworn 6 October 2026; the Second Affidavit of Larissa Burgess sworn 8 October 2026; and the Third Affidavit of Susan Davis-Crockwell sworn 16 October 2026*
>
> ***UPON*** *the Court being satisfied that the proposed joint provisional liquidators are fit persons and that the JPL Summons could be disposed of without the need for a*

further oral hearing and that since the Petitioner is acting pursuant to its statutory and public duties it shall not be required to provide a cross-undertaking in damages

UPON the Court being satisfied that it has jurisdiction and that the Petitioner has established grounds which justify the Court exercising its powers to appoint provisional liquidators

IT IS ORDERED THAT:

1. *The Petition be adjourned to a date to be fixed. The requirement for advertising the Petition pursuant to Rule 19 of the of the Companies (Winding-Up) Rules 1982 be dispensed with.*

2. *Mr. Allister Manson of Opus Restructuring LLP, 322 High Holborn, London and Ms. Valma Pipi of Opus Restructuring (Bermuda) Ltd, 22 Church Street, Hamilton HM 11, Bermuda are appointed Joint Provisional Liquidators (**JPLs**) of the Fund pursuant to section 170(2) of the Companies Act 1981 (and section 36 of the 2006 Act and section 20I of the 2008 Act) with the power to act jointly and severally in their capacity as JPLs.*
3. *The JPLs shall locate, protect, secure, take possession of, collect and get in all the property and assets of the Fund to which the Fund is or appears to be entitled (wherever located) but the JPLs shall not distribute, sell or part with such assets and property without a further Order of this Court.*

4. *For the purpose of fulfilling the functions set out in and subject to paragraph 3 above, the JPLs shall have and may exercise all the powers of a liquidator (1) as set out in section 175(1) of the Companies Act 1981 with the sanction of the Court, except that the JPLs shall not require sanction to instruct counsel and/or commence proceedings in the DRC, and (2) as set out in section 175(2) of that Act without the need for sanction.*

5. *For the avoidance of doubt, the powers of the directors of the Fund are suspended while the JPLs are appointed and in office.*

6. *The JPLs shall investigate the affairs of the Fund and locate, protect, secure and take possession of the Fund's books, papers and records (including the accounting records) of the Fund (wherever located) and the Fund shall provide the JPLs with such information as the JPLs may reasonably require, whether requested by the JPLs or not, in order for the*

JPLs properly to discharge their functions under this Order and as officers of this Court, without purporting to impose any conditions on the provision of such information including confidentiality.

7. *In the event that a winding-up order is made against the Fund, the costs, expenses and fees of the JPLs shall be treated as costs payable out of the assets of the Fund and rule 140 of the Companies (Winding-Up) Rules 1982 shall apply mutatis mutandis.*

8. *Notwithstanding paragraph 6:*

   a. *the Fund shall not be liable in respect of the remuneration of the JPLs until approved by the Court and the JPLs shall submit a report to the Court on a quarterly basis (with a copy to the Petitioner and to the Fund) providing full details of all costs, charges and expenses incurred by them; and*

   b. *the JPLs shall be at liberty to submit to the Registrar of the Supreme Court of Bermuda, bills of costs for taxation for all costs, charges and expenses of those persons or firms employed by them and any such taxation shall be on an attorney-and-own-client basis, with respect to the costs, expenses and fees of attorneys, and on an equivalent basis for other persons.*

9. *The costs of and occasioned by the JPL Summons be paid as a priority out of the assets of the Fund on an indemnity basis as an expense of the liquidation. The costs of and occasioned by the Petition be reserved to the adjourned hearing of the Petition.*

10. *Notice of this order shall be given to the Fund and the Petitioner and the Fund shall have liberty to apply upon giving at least 2 days' notice to the other.*

21. As can be seen the order provides for notice to be given to the Fund and for the Fund and the Petitioner to have liberty to apply. The order also recites my conclusion and decision that the Court had jurisdiction, and that the Authority had established grounds which justified the Court exercising its powers, to appoint provisional liquidators, that I was satisfied that the proposed joint provisional liquidators were fit persons, that the JPL Summons could be disposed of without the need for a further oral hearing and that since

the Authority was acting pursuant to its statutory and public duties it would not be required to provide a cross-undertaking in damages.

The Fund

22. The Fund was incorporated on 25 February 2005 and is authorised as an institutional fund under section 11 of the 2006 Act. The Fund's investment objective is to generate returns by investing in assets located in sub-Saharan Africa. It appears that the Fund has a large number of investors although the precise number is unclear.

23. The Fund's primary investment is a large real estate asset in Kinshasa in the Democratic Republic of Congo (***DRC***) which was valued in 2024 at over $260 million. This investment is held through an intermediary company registered in the DRC, Hawkwood Properties SARL (***Hawkwood***), in which the Fund holds an 80% interest.

The Petition

24. The Authority seeks a winding up order:

    (a). under section 36 of the 2006 Act on the basis that the Fund is operating, or has been operating, in contravention of the 2006 Act.

    (b). under section 20I of the 2008 Act on the basis that the Fund is or has been carrying on business in contravention of the AML Regulations.

    (c). under section 161(e) of the Companies Act on the basis that the Fund cannot pay its debts.

25. In [18] of the Petition, the Authority avers that:

> *[It] presents [the Petition] ... pursuant to section 36 (1)(b) of the [2006 Act] and section 20I of the [2008 Act] on the following grounds:*
>
> *(i) the Fund's ongoing and prolonged regulatory non-compliance and breaches of the [2006] Act and AML Regulations;*
>
> *(ii) the Fund is cash flow insolvent; and*
>
> *(iii) the Fund has failed to adopt adequate governance and service provider frameworks contrary to the requirements of the [2006 Act].*

26. The Petition sets out the Fund's alleged regulatory non-compliance (in [19]-30]), the facts asserted relating to the insolvency and financial position of the Fund ([31]-[36]) and the facts asserted which give rise to the Authority's governance concerns ([37]-[43]).

27. The Petition also avers that the Fund is cash flow insolvent (see [34]) and at risk of a disorderly insolvency (see [35]).

28. The Petition (in the first paragraph of the prayer) asks the Court to make a winding up order "*under the provisions of the [Companies Act, the 2006 Act and the 2008 Act]*." The second paragraph of the prayer seeks an order that "*the Official Receiver be appointed as provisional liquidator of the Fund with full powers*."

The Authority's affidavit evidence

29. I have already identified the main affidavit evidence filed by the Authority.

30. In SDC 1 Ms Davis-Crockwell set out the relevant background facts and the circumstances that had led the Authority to conclude that it was expedient in the public interest to present the Petition. These were summarised in the Skeleton Argument as follows:

> *Regulatory non-compliance*
>
> *29. The facts set out in the First Affidavit [SDC 1] demonstrate inescapable breaches of the [2006] Act and the AML Regulations, which the legislature has explicitly provided constitute grounds for the winding up of an investment fund. The Fund's prolonged regulatory breaches include:*
>
> *i. failure to prepare annual financial statements since 2018, contrary to section 14(1)(a) of the [2006] Act;*
>
> *ii. failure to file compliance statements for the years 2022 to 2025 contrary to section 26(1) of the [2006] Act;*
>
> *iii. failure to maintain adequate books, records and governance arrangements contrary to section 2 of the Minimum Criteria for Licensing in the Schedule to the [2006] Act;*
>
> *iv. failure to demonstrate that it has maintained adequate records, AML systems and controls in accordance with sections 15 and 16 of the AML Regulations;*

v. failure to conduct AML audits contrary to section 17A of the AML Regulations; and

vi. failure to appoint a compliance officer or a reporting officer, contrary to sections 17 and 18A of the AML Regulations.

30. The Fund has been on notice of its numerous and longstanding breaches for a number of years, yet has failed to take any meaningful or effective steps to bring itself back into compliance. The Authority's supervisory team engaged regularly with the Fund from January 2022 regarding the Fund's non-compliances and, over a four-year period, afforded the Fund ample opportunity to remedy those breaches18. The Company has known of the urgent nature of the Authority's concerns since at least 30 June 2026, when the Authority informed the Fund that it had no option but to petition to wind up the Fund19. The Company has also had since the presentation of the Authority's petition on 29 July 2026 to take urgent steps to remedy the myriad failings identified in the First Affidavit.

*31. Since the Authority informed the Fund of its concerns in February 2022, the Fund has provided repeated assurances that the breaches would be resolved. Despite those assurances, no adequate remediation plan has been provided, nor has sufficient information been provided to satisfy the Authority that the Fund is being managed in compliance with the [2006] Act and AML Regulations. The Fund's failure to remediate its regulatory non-compliance appears largely due to a combination of the Fund's lack of liquidity, which has prevented it from retaining service providers and taking the actions necessary to remain compliant, together with deficiencies in the Fund's governance and oversight. Furthermore, in an email from the Fund's legal counsel, Cox Hallett Wilkinson (**CHW**), dated 22 July 2026, CHW indicated that the Fund was working on a remediation plan. However, no timeframe was provided for completion of the remediation plan, nor was the plan provided.*

31. Ms Davis-Crockwell's evidence shows a long history (of over four years) of serious defaults and non-compliance by the Fund and that the Authority had repeatedly given notice to the Fund of the defaults and non-compliance, had undertaken a detailed investigation into the affairs of the Fund (starting in February 2026), had repeatedly required the Fund to remedy the defaults and the Fund's repeated failure to take remedial

action or even prepare a proper remediation plan for approval by the Authority (see in particular [38]-44] of SDC 1).

32. The Authority's evidence as to the Fund's financial position was set out by Ms Davis-Crockwell in Section IV of SDC 1 ([58]-[63]). Her evidence was that the Fund had not maintained an active bank account since at least 2018; that NAV calculations had been suspended since 2014 and the Fund had lacked [an] cash flow since 2018. Operational and regulatory expenses had been paid by Mr Duckworth either personally or through affiliated entities, without written agreements or documentation (other than a board resolution approving the accrual amounts paid to Mr Duckworth. The Fund's management accounts reflected significant related party balances and a S7,652,929 "*incentive fee*" and a $1,296,145 "*management fee*" owing by the Fund to Hawkwood. Ms Davis-Crockwell's evidence was that the last management accounts that the Authority had seen showed that the Fund was owed a receivable of $24,238,267 as a result of granting a loan to Hawkwood, the terms of which have never been documented. The Authority considered that this receivable was not recoverable given that Hawkwood was cash flow insolvent and reliant on the sale of the DRC property to generate liquidity. Ms Davis-Crockwell said that the Authority had therefore concluded that the Fund was cash-flow insolvent with no capacity to satisfy any of its liabilities detailed in these management accounts and had no credible pathway to generate liquidity within a reasonable time.

Cox Hallett Wilkinson Limited's letter dated 24 September 2026

33. CHW sent a letter to Appleby dated 24 September 2026 which set out the Fund's request that the Authority agree to an adjournment of the 25 September 2026 hearing of the Petition "*to allow the Fund additional time to address the matters identified by the Authority and to continue discussions with the Authority and its legal advisers regarding appropriate remedial steps*."

34. In support of that request CHW stated that (a) the Petition had been filed prematurely "*given that, at the time [it] was filed, the Fund and the Authority were engaged in discussions concerning the findings arising from the Authority's investigation and the remedial steps that the Fund could take in response*"; (b) winding up the Fund would not in the circumstances be just and equitable as it would not be in the best interests of the Fund's investor shareholders (the Fund had obtained and CHW attached copies of written confirmations from shareholders representing more that 75% of the investors in the Fund supporting the Fund's position; (c) the Fund had obtained (and copies were attached of) the outstanding audited financial statements for the years 2018 to 2022 inclusive and had directed its administrator to prepare an indicative net asset value calculation for the Fund, which exercise was currently underway; (d) in relation to the Authority's concerns

regarding the liquidity of the Fund and its underlying assets, CHW was instructed that the Fund had received settlement proceeds in the sum of US$1.4 million in connection with litigation which had been ongoing for approximately ten years and that payments have been made to Nyakutombwa Legal Counsel, the Fund's solicitors in Zimbabwe, in accordance with the terms of a letter dated 18 November 2025 (which CHW attached), which CHW stated was evidence of the settlement to Folpud Investments P/L, the shares of which company were held by the Fund, and the related payment arrangements.

35. CHW stated that the Fund's position was that:

(a). an immediate winding up and dissolution of the Fund would not be in the best interests of the investors and, in the circumstances, would not be just and equitable.

(b). investors representing more than 75% of the investors in the Fund had expressed their position that a court-ordered liquidation of the Fund and the sale of its principal asset would result in that asset being realised at an undervalue and would therefore be detrimental to their investment.

(c). the Fund had taken steps to obtain the financial information requested by the Authority and had now obtained the audited financial statements.

(d). the administrator is in the process of preparing its indicative net asset value.

(e). the Fund had taken steps to improve the liquidity of the fund.

(f). the Fund remained willing to engage constructively with the Authority and to take such further remedial steps as the Authority may reasonably require.

The governing legislative provisions

36. Section 36 of the 2006 Act provides that (my underlining):

> *(1) The Authority may present a petition to the Supreme Court for the winding up of a fund which –*
>
> *(a) having been authorised or registered under this Act has had its authorisation revoked or been disqualified from registration; or*
>
> *(b). <u>is operating, or has been operating, as an investment fund in contravention of any provision of this Act</u>.*

(2) On such a petition, the Supreme Court may wind up the fund if it is of the opinion that it just and equitable that the fund be wound up.

(3) Part XIII (Winding Up) of the Companies Act 1981 shall apply to the winding up of a company fund under this section.

37. Section 20I of the 2008 Act provides that (my underlining):

(1) A competent authority may present a petition to the court for the winding up of a company or the dissolution of a firm which –

(a) is or has been a licensed or registered person; or

(b) is carrying on, or has carried on, business in contravention of the provisions of the AML/ATF Regulations or has failed to comply with international sanctions obligations.

(2) On such a petition, the court may wind up the company or dissolve the firm if it is of the opinion that it is just and equitable that the company be wound up or the firm dissolved.

(3) Part XIII (Winding Up) of the Companies Act 1981 shall apply to the winding up of a company under this section."

38. The Companies Act provides as follows (my underlining and emphasis):

Power of Court to appoint liquidators

170. (1). For the purpose of conducting proceedings in winding up a company and performing such duties in reference thereto as the Court may impose, the Court may appoint a liquidator or liquidators.

(2). The Court may on the presentation of a winding-up petition or at any time thereafter and before the first appointment of a liquidator appoint a provisional liquidator who may be the Official Receiver or any other fit person.

(3). <u>When the Court appoints a provisional liquidator, the Court may limit his powers by the order appointing him</u>.

Appointment of liquidators

171. The following provisions with respect to liquidators shall have effect on a winding up order being made –

*(a). **<u>if the Court has appointed no other provisional liquidator prior to the winding-up order being made the Official Receiver shall become the provisional liquidator</u>** and he or the provisional liquidator appointed by the Court shall continue to act as provisional liquidator until another person becomes liquidator and is capable of acting as such;*

(b). the provisional liquidator shall summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the Court for appointing a liquidator in the place of the provisional liquidator;

(c). the Court may make any appointment and order required to give effect to any such determination and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matter aforesaid, the Court shall decide the difference and make such order thereon as it thinks fit;

(d). in a case where a liquidator is not appointed by the Court, the Official Receiver shall be the liquidator of the company;

……

The Authority's submissions regarding the grounds for winding up

39. The Authority noted that there were three distinct grounds for winding up on which it relied. First, breaches of the 2006 Act under section 36(1)(b) such that it was just and equitable to wind up the Fund under section 36(2) of the Act. Second, breaches of the 2008 Act such that it was just and equitable to wind up the Fund under section 20I(2) of the 2008 Act. Third, that the Fund was unable to pay its debts within the meaning of section 161(e) of the Companies Act (as applied to a petition under sections 36(1)(b) and section 20I(1)(b) by section 36(3) of the 2006 Act and section 20I(3) of the 2008 Act). The Authority said

that each of these grounds were independently sufficient to justify a winding up order being made and together they provided a clear justification to wind up the Fund immediately and appoint provisional liquidators.

40. The Authority argued that the evidence established the jurisdictional requirements of section 36(1)(b) of the 2006 Act, section 20I(1)(b) of the 2008 and section 161(e) of the Companies Act (that the Fund was unable to pay its debts) were all satisfied and that as regards the first two statutory grounds, it was in public interest, and as regards the third ground, it was in all the circumstances appropriate, that a winding up order be made.

41. The Authority submitted that while neither section 36 of the 2006 Act or section 20I of the 2008 Act refer explicitly to the public interest, the Court should exercise the jurisdiction to wind up granted thereby with a view to protecting the public interest (citing the judgment of Jonathan Crow KC sitting as a Deputy High Court Judge in England in *In re The Inertia Partnership LLP* [2007] EWHC 502 (Ch)). The Authority said that the Court should follow the approach set out by this Court in *Bermuda Monetary Authority v South of England Protection and Indemnity Association (Bermuda) Limited* [2011] Bda LR 69 in which it was said, in a case where the Authority had presented a winding up petition under the Insurance Act 1978, that:

> "*When the [Authority] exceptionally invites the Court to immediately wind up a trading company in the public interest, the Court must have compelling reasons to reject [the] natural inference that such application is made (a) in good faith and (b) based on sound objective regulatory grounds. On the other hand, the Court must be careful to ensure that the legitimate expectations of persons who establish in Bermuda are not ignored*."

The reasons for my decision to appoint provisional liquidators

42. It seemed to me that the Authority had established that (a) it was likely on the evidence adduced that the Court would make a winding up order on the full hearing of the Petition and (b) that in the circumstances of this case it was just and appropriate to appoint provisional liquidators in advance of a winding up order being made.

43. I was prepared to accept for the purpose of this application the Authority's submissions that the Court should and would exercise the jurisdiction to wind up granted by section 36(1)(b) of the 2006 Act and section 20I(1)(b) of the 2008 with a view to protecting the public interest and should and would give considerable weight to the Authority's views as to what was in the public interest and necessary to enforce the important regulatory rules

and regime with which it was tasked, and that the Court was likely to conclude that it was just and equitable to wind up the Fund and make a winding up order in this case.

44. I was also satisfied that the evidence was on balance sufficient to support the Authority's view that the Fund is unable to pay its debts and that it was likely that the Court would conclude that it was also appropriate to make a winding up order on this ground in this case.

45. The Fund was given following the 25 September hearing an opportunity to put the facts on which it relied in evidence and to appear by counsel at a further hearing to argue and set out its case. However, it chose not to do so and failed to file any evidence or participate further in these proceedings. The Authority's evidence is therefore not challenged by any evidence adduced by the Fund.

46. I noted what was said on behalf of the Fund in CHW's letter of 24 September 2026 and in particular the Fund's statement that it had obtained the outstanding audited financial statements for the years 2018 to 2022 inclusive and had received settlement proceeds in the sum of US$1.4 million. However, I gave these unverified statements little weight and concluded that they clearly did not undermine the Authority's evidence of continuing and serious breaches of the relevant regulatory rules or as to the Fund's insolvency. In the absence of proper verification by way of affidavit evidence the Court is unable to determine that the accounts were properly audited or reliable or that the assertion that settlement proceeds had been received was reliable, let alone that the Fund was now solvent.

47. It therefore seemed to me that the Authority had established that the Court had the power to and should appoint provisional liquidators. The clear power to do so arose under section 170(2) of the Companies Act in a case, such as the present case, where a petition had been presented under the Companies Act in reliance, *inter alia*, on the grounds set out in section 161 of that Act.

48. I was also prepared to assume for the purpose of this application that the Court had the power to appoint provisional liquidators in a case where the Authority had presented a petition seeking a winding up order under sections 36(1)(b) of the 2006 Act and 20I(1)(b) of the 2008. These sections do not expressly provide that the Court may appoint provisional liquidators. They permit the Authority to present a winding up petition and the Court to make a winding up order and then stipulate that "*Part XIII (Winding Up) of the Companies Act 1981 shall apply to the winding up of a company fund under this section.*" It seems to me that this provision should be interpreted as stipulating that all the provisions in Part XIII of the Companies Act that are relevant to a winding up commenced by the Authority's petition under the 2006 and the 2008 Acts apply to such a proceeding, including the Court's

power under section 170 to appoint provisional liquidators on or after the presentation of a winding up petition. Section 170 applies to a winding up petition presented under the jurisdictions established by the 2006 and 2008 Acts. I recognise that this was not an issue on which I received submissions and was not contested by the Fund, so that this view must be considered provisional.

The issue of whether the Court has the power to appoint insolvency practitioners as liquidators on the making of a winding up order

49. As I have noted above, it seems to me that there is an issue as to whether the Court has the power to appoint private practitioners as (provisional) liquidators (rather than the Official Receiver becoming the liquidator) upon the making of a winding up order (where and if the Court has not previously appointed provisional liquidators).

50. It seems to me, based on my reading of the Companies Act, that there is no such power. Section 171(a) of the Companies Act appears to be me to stipulate in mandatory terms that if the Court has not previously (that is before making the winding up order) appointed provisional liquidators, upon the making of a winding up order the Official Receiver becomes the provisional liquidator.

51. I have quoted that subsection above but it is worth setting it out again with the relevant parts highlighted:

> *If the Court has appointed no other provisional liquidator* ***prior to the winding up order being made*** *the Official Receiver* ***shall*** *become provisional liquidator and he or the provisional liquidator* ***[previously]*** *appointed by the Court shall continue to act as provisional liquidator until another person becomes liquidator* ***[pursuant to section 171(c)]*** *and is capable of acting as such.*

52. It seems to me that section 171(a) qualifies the Court's general power in section 170(1) to appoint a liquidator and sets out the manner in which that is to be done on the making of the winding up order.

53. The Companies Act makes express provision for insolvency practitioners to be appointed to undertake tasks that are well suited to them and necessary, despite the appointment of the Official Receiver. The Official Receiver is given the power to apply for the appointment of private practitioners as special managers under section 190.

54. This analysis is also consistent with the approach taken in England to the construction of provisions in the old English companies legislation which are equivalent to section 171 of the Companies Act. In *Re John Reid & Sons Limited* [1900] 2 QB 634 the Divisional Court

held that after an order for the winding-up of a company has been made, the Court has no power to appoint a liquidator other than the official receiver.

55. It also seems to me that *Loral* and *Opus Offshore* are not directly on point or clear enough to overcome and deal with the issue I have identified. *Loral* was a case in which Justice Kawaley had previously appointed provisional liquidators (in advance of making the winding up order) and [8] of his judgment only really references the appointment of a private liquidator by and following the first meetings. *Opus* did clearly involve the appointment of private liquidators on the making of the winding up order but the existence/basis of the jurisdiction to do so was not questioned or discussed.

56. I am aware that there is in Bermuda a practice (which may well be clear and settled) of the Court appointing private practitioners as liquidators when making a winding up order, which has never been challenged. It may well be that this is based on an understanding of the local legislative intent which can be explained and put in evidence in a future case, and which may assist in forming a different view. It may also be that no challenge will ever be made in future cases, in which case it may well be appropriate for the Court to give effect to the practice if satisfied that it is appropriate to do so. But I have to say, for myself, that if the matter is raised and there is a challenge then it will have to be addressed in detail at that point and decided by reference to full submissions, argument and any relevant evidence. I can well understand that the local bar and insolvency profession may well consider that the Court should have the power to appoint insolvency practitioners when making a winding up order and that the Official Receiver should not be required to act as the provisional liquidator in all cases. As I have noted above, I can see the good sense in that and the importance of ensuring that Bermuda is not out of line with other major financial centre jurisdictions. However, to ensure that the matter is put beyond doubt, it may be appropriate to consider amending the relevant provisions of the Companies Act.

Dated this 23rd day of October 2026

THE SEAL OF THE SUPREME COURT OF BERMUDA

MR. NICK SEGAL

ASSISTANT JUSTICE OF THE SUPREME COURT OF BERMUDA