In The Supreme Court of Bermuda

CIVIL JURISDICTION
(Commercial Court)
2026 No: 49

IN THE MATTER OF BERKING RE LIMITED

AND IN THE MATTER OF THE INSURANCE ACT 1978

AND IN THE MATTER OF THE COMPANIES ACT 1981

JUDGMENT

Hearing Dates:	Wednesday 1 April 2026 / Wednesday 29 April 2026 / Thursday 11 June 2026
Date of Judgment:	Friday 24 July 2026
The Petitioner (Bermuda Monetary Authority):	Mr. Henry Tucker (Harneys Bermuda Limited)
The Company (Displaced Board of Directors):	Mr. James Sellick (Walkers Bermuda Limited)

The Bermuda Monetary Authority's Petition for a Winding Up Order on Grounds of Insolvency And Breaches of the Insurance Act 1978 and on Just and Equitable Grounds and Public Interest Companies Act 1981

JUDGMENT of Shade Subair Williams J

Introduction

1. This Court is concerned with a winding-up petition (the "Petition") presented by the Bermuda Monetary Authority (the "Petitioner"/ the "Authority"/ the "BMA") against Berking Re Limited (the "Company"). The application before the Court is for a winding up order against the Company.

2. The Company was incorporated in Bermuda on 11 February 2022 and was registered as a Class 3A insurer on 6 January 2023 with an authorized share capital of USD120,000.00. The Company underwrites personal accident, short-term critical illness and commercial general liability protection to unaffiliated insurers in China and, since 2024, in Vietnam.

3. The Petition was filed on 13 February 2026 pursuant to section 35 of the Insurance Act 1978 (the "Insurance Act") and sections 161(e) and 161(g) of the Companies Act 1981 (the "CA 1981"). In answer to the Petitioner's summons filed on 25 February 2026, the Court appointed Ms. Rachelle Frisby and Mr. Robert Cowie of Interpath (Bermuda) Limited and Mr. Fergal Power of Interpath (Hong Kong) Limited to serve as Joint Provisional Liquidators (the "JPLs") with full powers pursuant to section 170(3) of the CA 1981.

4. The Petition was listed before me on 1 April 2026. On that occasion Counsel, Mr. James Sellick, for the Displaced Board of Directors (the "Displaced Board") sought an adjournment of the Petitioner's application to wind up the Company. The adjournment application was opposed by Counsel, Mr. Henry Tucker, for the Petitioner; however, I granted the adjournment to allow the Displaced Board the opportunity to file evidence in opposition of the application for a winding up order.

5. On 29 April 2026, the hearing of the Petition resumed, and I heard competing submissions from Counsel for the Petitioner and the Displaced Board on the application for a winding up order. Having reserved judgment, the matter was fixed to be mentioned on 11 June 2026 to afford the parties an opportunity to update the Court on any relevant developments in relation to the Company's financial position.

6. On 11 June 2026 Counsel, Mr. Sellick, invited me to further adjourn the Petition. However, I informed the parties that I would instead rule on the merits of the winding up application argued before me.

7. This is my decision on the Petitioner's application for the Company to be wound up.

The Application for a Winding Up Order

8. The Petition was verified and supported by the affidavit evidence of the Deputy Director in the Insurance Supervision Department of the BMA. Evidence from Mr. Darren Street of the BMA was also filed in further support of the Petitioner's application to wind up the Company. Opposing the winding up application, the Displaced Board filed evidence from a former director of the Company, Ms. Ivy Yanhua Gao.

9. It is stated in the Petition that in 2025 the Company's financial position deteriorated and that it had no capital support from its parent company, PFY Health Technology Co Ltd ("PFY"), a company incorporated in the Cayman Islands. The Company is wholly owned by PFY and PFY is in turn owned by nine entities in various other jurisdictions.

10. It is the Petitioner's case that the Company is insolvent within the meaning of section 33 of the Insurance Act. This is said to have culminated in several material incidents of non-compliance with the Company's obligations under the Insurance Act.

11. Notwithstanding, the Petitioner says that it, the Authority, permitted the Company several months of opportunity to secure remediation of its non-compliances prior to the presentation of the Petition. At paragraph 8 of the Petition it states:

    "*…In the seven months preceding this Petition, the Company has repeatedly demonstrated through unfulfilled capital commitments and a pattern of non-compliances and governance issues that it is unable to adequately remediate the Company's non-compliances or access capital sufficient to avoid an insolvency. The Authority has therefore determined that it is in the best interest of policyholders and the public to wind up the Company*."

12. The Petition for the winding up of the Company is brought under section 35 of the Insurance Act in reliance on each of the statutory grounds contained in that section. The Petitioner's case is that:

    (i) the Company has breached its obligations under the Insurance Act
    (ii) the Company is insolvent and
    (iii) it is just and equitable and a matter of public interest that the Company is wound up

13. Below I set out the Petitioner's factual case in relation to each of these grounds which led to the filing of the Petition on 13 February 2026.

Alleged beaches of obligations under the Insurance Act

14. Under section 35(1)(b) of the Insurance Act the Authority is statutorily entitled to present a petition for the winding up of an insurance company where an insurance company has *"failed to satisfy an obligation to which it is or was subject by virtue of* [the Insurance Act]".

<u>Failure to Maintain Sufficient Capital</u>

15. The Petition alleges that the Company's failure under section 35(1)(b) was in the form of breaches of its obligations prescribed by sections 4(1) and 4(2A) of the Schedule (the "Schedule") of the Insurance Act. Those provisions require the Company to conduct its business in a prudent manner such that Company is under a duty to maintain sufficient capital to meet its particular obligations.

16. Sections 4(1) and 4(2A) of the Schedule provide:

"*4(1) The registered person conducts, or, in the case of a registered person which is not yet carrying on business, will conduct its business <u>in a prudent manner</u>.*"

"*4(2A) A registered person that is an insurer shall not be regarded as conducting its business in a prudent manner unless it maintains, or as the case may be, will <u>maintain sufficient capital</u>" to enable it to meet its insurance obligations given the size, business mix, complexity and risk-profile of its business.*"

17. The Petitioner's case is that as of November 2025, the Company failed to meet the applicable minimum margin of solvency ("MMS"), notwithstanding the Authority's previous deadline extensions[1] to enable the Company to access and secure its investment assets held in the Cayman Islands. The Petitioner alleges that the Company's failure to meet its MMS constitutes a breach of the minimum registration requirements under section 6(4) of the Insurance Act which provides:

"*6(4) The Authority shall not register a body corporate as a Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer under section 4 unless it is satisfied that the amount of the available statutory capital and surplus of the body corporate on the date of registration meets—*

(a) its minimum margin of solvency; and
(b) its enhanced capital requirement."

[1] First Affidavit of Sarah Matchett paragraphs 26

18. In the evidence produced by the Petitioner it is explained that a breach of the MMS is treated by the Authority as a breach of the Minimum Criteria for Registration under section 6 and the Schedule. Ms. Matchett's evidence is that this generally demonstrates serious financial deterioration that may present risks to policyholders should an insurer face unexpected claims or adverse events.

<u>Failure to maintain adequate corporate governance structures</u>

19. The evidence before this Court is that the Company's sole resident director, as was provided by Artex, resigned on 10 April 2025.[2] This is said to have put the Company in breach of sections 8C(2) and 8C(4)(c) of the Insurance Act . Section 8C provides:

"***Class 3A, Class 3B, Class 4, Class C, Class D and Class E insurer to maintain head office in Bermuda***

8C (1) Every Class 3A, Class 3B, Class 4, Class C, Class D and Class E insurer that satisfies the requirements of subsection (2) shall maintain its head office in Bermuda.

(2) <u>The insurance business of the insurer must be directed and managed from Bermuda</u> and, in determining whether the insurer complies with this requirement, the Authority shall consider, inter alia, the factors set out in subsection (3).

(3) The factors referred to in subsection (2) are—

(a) where the underwriting, risk management and operational decision making of the insurer occurs;

(b) whether the presence of senior executives who are responsible for, and involved in, the decision making related to the insurance business of the insurer are located in Bermuda;

(c) where meetings of the board of directors of the insurer occur.

(4) Notwithstanding the considerations set out in subsection (3), <u>the Authority may also have regard to the following matters</u>—

(a) the location where management of the insurer meets to effect policy decisions of the insurer;

[2] First Affidavit of Sarah Matchett paragraphs 67

(b) the residence of the officers, insurance managers or employees of the insurer; and

(c) the residence of one or more directors of the insurer in Bermuda.

(5) Subsection (1) shall not apply to a Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer which has a permit under section 3 of the Non-Resident Insurance Undertakings Act 1967 or a permit under section 134 of the Companies Act 1981."

20. The duration of breach of sections 8C(2) and 8C(4)(c) of the Insurance Act is said to have continued from 10 April 2025 through to October 2025 ending with the appointment of Mr. Justin Doherty as the new sole resident director of the Company[3]. However, Mr. Doherty resigned on 28 November 2025[4]. At paragraph 12 of the Petition it states: "*Both resignations were prompted by concerns with the Company's financial circumstances, a lack of support from PFY, a general failure to maintain adequate controls over regulatory compliance, and a lack of appropriate governance structures*."

21. Ms. Gao's evidence was that the Company did not seek to replace Mr. Doherty because the now Displaced Board was focused on the planned IPO of its parent company. The Displaced Board considered that it would be better placed to appoint a resident non-executive director ("INED") after the completion of the IPO. Ms. Gao said that Mr. Henry Komansky, a Bermuda qualified attorney, had been put forward and approved by the BMA for the role. That being the case, Mr. Komansky subsequently declined the offer on account of the Company's lack of capital and the BMA's related concerns.

22. The evidence before this Court is that by 23 December 2025 the Company had no INEDs nor any Bermuda resident directors. Under paragraph 13 of the Petition, it is said that the Company also breached its duties under sections 1A and 4(3) of the Schedule insofar as it relates to the duty to maintain adequate accounting, business records and adequate control systems under the Minimum Criteria for Registration.

23. Sections 1A and 4(3) of the Schedule state as follows:

"*1A Insurers shall implement corporate governance policies and processes as the Authority considers appropriate given the nature, size, complexity and risk profile of the insurer*."

[3] First Affidavit of Sarah Matchett paragraph 33
[4] First Affidavit of Sarah Matchett paragraphs 48-49

"*4(3) A registered person shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will <u>maintain adequate accounting and other records of its business and adequate systems of control of its business and records</u>*."

24. The Company represented to the Authority that it would outsource its internal audit function to Resources Limited. However, in June 2025 the Authority discovered that the Company never secured these or any other audit services and that the Company instead continued its operations without any audit supervision[5].

25. Ms. Gao explained in her evidence that the BMA withheld approval of the Company's attempts in September 2025 to secure PFK Antares Bermuda Ltd as both its external and internal auditor. So, on 1 October Mr. Grant Thornton was appointed as the Company's outsourced internal auditor. Notwithstanding, Ms. Gao accepted that the audit work was not commenced beyond the planning stage due to the Company's focus on the IPO.

26. Similarly, the Authority has received expressions of grave concern from both PWC and Artex, insofar as it relates to the Company's internal actuarial function.[6] However, Ms. Gao stated in her evidence that the Company prepared an updated actuarial framework document that was shared with the BMA on 10 October 2025. She said that on 11 August 2025 Ms. Lei Sun (aka Lisa Sun), a highly skilled actuary, was appointed as an actuarial officer to lead the actuarial team.

<u>Failure to report on material changes to business operations</u>

27. The Petitioner alleges that in July 2024 the Company wrote an "iPhone mobile replacement liability" reinsurance contract with the People's Insurance Company of China (Hong Kong).[7] This constituted new business which fell outside of the Company's business plan and was carried out without regulatory approval. The Petitioner says that this policy was revealed during the course of its onsite review of the Company in June 2025.

Allegation of Insolvency

<u>The Vanguard Asset</u>

28. The evidence before this Court is that between January 2025 and April 2025, the Company acquired 3,300 shares in Vanguard Fund SPC ("Vanguard SPC"), a regulated private fund

[5] First Affidavit of Sarah Matchett paragraphs 13, 19, 38 and 54
[6] First Affidavit of Sarah Matchett paragraphs 68
[7] First Affidavit of Sarah Matchett paragraph 25 and 69

domiciled in the Cayman Islands. The Company's holdings are worth approximately $3,300,000.00 (the "Vanguard asset" / the "Vanguard shares").

29. Ms. Gao's evidence was that the Company formally requested the redemption of the Vanguard shares on 26 September 2025 followed by repeated requests made in October and November 2025. As no response was received from Vanguard SPC, the Displaced Board sought to issue instructions to Counsel to commence arbitration proceedings in Hong Kong. However, this was not actioned prior to the appointment of the JPLs.

The Affiliated Transaction

30. The Company also recorded a $1,000,000.00 receivable owing from an affiliated entity PFY Health Technology (Hong Kong) Co. Ltd pursuant to an IT services contract (the "Affiliated Transaction").

31. The Petitioner says this receivable resulted from a questionable transaction that was aborted following scrutiny by Artex [8] and the Authority. The counterparty to the Affiliated Transaction never made repayment, consistent with the doubt recoverability expressed by the Company's service providers have real as to the of this asset.[9] On that basis, the Authority sought to exclude the Affiliated Transaction from the statutory capital calculations.

The Company's financial position minus the Vanguard Asset and the Affiliated Transaction

32. On the Petition it is said that the Company's assets came to $4,048,760 against its total liabilities of $4,049,462.00 based on the 31 December 2025 management accounts.[10]

33. In her evidence, Ms. Gao accepted that if the debt owed by Vanguard is fully excluded, the solvency ratio as at 31 December would fall to 31% which materially below the statutory minimum of 120%.

Underwriting Losses

34. The JPLs reported that the Company made an underwriting loss in each of the three financial years to date. That trend was said to continue in the two-month period ending on 28 February 2026, resulting in a cumulative loss of US$ 3,300,000.00.

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[8] First Affidavit of Sarah Matchett paragraphs 16-17, 32 and 36

[9] First Affidavit of Sarah Matchett paragraphs 23-24 and First Affidavit of Darren Street paragraph 12d)

[10] First Affidavit of Sarah Matchett paragraph 55 and 63-64

35. In Ms. Hatchett's third affidavit at para [7] she refers to the Company's 31 January 2026 management accounts showing that the Company experienced underwriting losses of $400,492.00 and a net loss of $447,787.00 in January 2026, leaving the Company insolvent on a balance sheet basis by no less than $448,489.00.

36. In Ms. Hatchett's third affidavit, she also explained that the Company has minimal liquidity to cover its operating expenses, which according to the January 2026 accounts, totaled approximately $266,710.00.

37. The Authority's concern that the Company will not be able to meet its obligations to policy holders and cedents was a primary basis for the filing of the Petition. This was aggravated by the material increase in the Company's loss ratio assumptions. The Authority expressed concern that while cedents may be able to draw on letters of credit[11] from HSBC, there remains the issue of the Company's lack of capital and solvency shortfalls which may increase the costs of borrowing in the future.

<u>Statutory framework for winding up on grounds of insolvency</u>

38. Under section 35(1)(a) of the Insurance Act, the Authority may present a Petition in circumstances where the insurer is unable to pay its debts within the meaning of sections 161 and 162 of the CA 1981.

39. Section 35(1) provides:

"***Winding up on petition of Authority***

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(1) The Authority may present a petition for the winding up, in accordance with the Companies Act 1981, of an insurer, being a company which may be wound up under that Act, on the ground—

(a) <u>that the insurer is unable to pay its debts within the meaning of sections 161 and 162 of the Companies Act 1981</u>; or

(b) that the insurer has failed to satisfy an obligation to which it is or was subject by virtue of this Act; or

(c) that the insurer has failed to satisfy the obligation imposed upon it by section 15 as to the preparation of accounts or to produce or file statutory financial statements in

[11] Third Affidavit of Sarah Matchett paragraphs 13-17

accordance with section 17, and that the Authority is unable to ascertain its financial position.

(2) In any proceedings on a petition to wind up an insurer presented by the Authority under subsection (1), evidence that the insurer was insolvent—

(a) at the close of the period to which the statutory financial statements last prepared under section 15 relate; or

(b) at any date specified in a direction under section 27(2), shall be evidence that the insurer continues to be unable to pay its debts, unless the contrary is proved.

(3) If, in the case of an insurer, being a company which may be wound up under the Companies Act 1981, it appears to the Authority that it is expedient in the public interest that the insurer should be wound up, it may, unless the insurer is already being wound up by the Court, present a petition for it to be so wound up if the Court thinks it just and equitable for it to be so wound up.

(4) Where a petition for the winding up of an insurer is presented by a person other than the Authority, a copy of the petition shall be served on the Authority, and it shall be entitled to be heard on the petition."

40. Section 33 of the Insurance Act provides that an insurer shall be deemed unable to pay its debts if at any time the value of its assets does not exceed the amount of its liabilities. In such cases, the insurer would be deemed insolvent for the purpose of section 161(e) of the CA 1981.

41. Section 33 provides:

*"**Margin of solvency for general business***

(1) An insurer, being a company that may be wound up under the Companies Act 1981, carrying on general business shall be deemed for the purposes of section 161 of the Companies Act 1981 (winding up of company by the court) to be unable to pay its debts if at any time the value of its assets does not exceed the amount of its liabilities and the provisions of this Act as to winding up shall have effect accordingly.

(2) For the purposes of this section in computing the amount of liabilities of an insurer, all contingent and prospective liabilities shall be taken into account but not liabilities in respect of share capital.

(3) For the purposes of this section the value of any assets and the amount of any liabilities shall, subject to subsections (4) and (5), be determined in accordance with any applicable regulations making provision as to the taking into, or leaving out of, account of assets or liabilities for any purpose.

(4) *In the case of an insurer which carries on long-term business as well as general business, the amount of the liabilities of its long-term business at any time shall, for the purposes of this section, be taken to be—*

(a) an amount equal to the total amount at that time standing to the credit of the insurer's long-term business fund; or

(b) the amount of those liabilities at any time as determined in accordance with any applicable regulations, whichever is the greater.

(5) Regulations may require that, in every statutory financial return prepared by an insurer carrying on general business, there shall be included a certificate as to solvency (to be called a "solvency certificate")—

(a) in such form and signed by such persons as may be prescribed by the regulations; and

(b) containing such a statement with respect to the assets and liabilities of the insurer as may be so prescribed,

and if any such insurer fails to comply with the regulations so made the value of its assets shall, in any proceedings under this section for the winding up of the insurer, be deemed, until the contrary is proved, not to exceed the amount of its liabilities by the amount required by subsection (1).

(c) Nothing in this section shall be taken as affecting the manner in which, on a winding up, any assets or liabilities are required to be dealt with whether by virtue of section 36 or otherwise."

42. At paragraph [18] of the Petition, it provides:

"*…The Authority has given the Company many months to arrange the return of all assets and to demonstrate to the Authority that the assets on which it relies to meet its statutory capital and solvency requirements are liquid and accessible (and therefore eligible for purposes of statutory capital). The Company has been unable to do so. In the period from*

June 2025 to present, the Company and PFY have made and breached several commitments to the Authority relating the provision of replacement capital. In the same period, the Authority has also received information from the Company's service providers indicating that recovery of the Vanguard funds and the Affiliated Transaction receivable is unlikely. Similarly, AM Best has expressed serious concerns with the financial state of the broader group and PFY's ability to provide capital support, including the risk of contagion to the Company and other group entities. The Authority therefore believes that the Company is insolvent with the meaning of section 33 of the Insurance Act based on a true and accurate accounting of its current statutory capital."

Public Interest / Just and Equitable Grounds

43. Paragraphs [19]- [25] of the Petition sets out the reasons for the Company to be wound up as a matter of public interest and on just and equitable grounds. Section 35(3) of the Insurance Act provides that the Authority may present a petition to the Court where it appears that "…*it is expedient in the public interest that the insurer should be wound up…"*. In such circumstances the Court will make the winding up order against a company where *"the Court thinks it just and equitable for it to be so wound up"*.

Breached undertakings

44. On these grounds, the Petitioner points to various breached undertakings made by the Company.

45. On 18 August 2025 the Company, via the Company's representative, Independent Management Limited ("IML"), supplied an undertaking from PFY stating that it had allocated $15,000,000.00 to the Company and that "*sufficient monetary funding amounts remain available and payable on demand…to maintain an ECR of 200% or more at all times.*". The Petitioner says that the Company failed to disclose that the availability of such funds was contingent upon a successful IPO.

46. At paragraphs [31]-[33] Ms. Gao offered the following explanation in the Company's defence:

"*31. The Company accepts that unfortunately an inaccurate undertaking was provided on 18 August 2025 by PFY which stated that US$15 million remained available for injection into the Company when that was not accurate. This issue was raised by the BMA on 9 September 2025 during a telephone call where the BMA stated that a review of financial documents* *provided to the BMA by Artex Risk Solutions (Bermuda) Ltd. indicated that PFY did not have such funds available. The Company immediately accepted this during the phone call.*

32. The reason that PFY gave the 18 August 2025 undertaking was on the basis that it intended to conduct a capital raise in December 2025 (i.e. the planned IPO), following which time additional funds would be available and could be provided to the Company on demand. PFY did not seek to mislead the Authority deliberately and it thought the funds would be available. The distinction in this regard between immediately available funds and future funds was not properly grasped.

33. The BMA did not during the call on 9 September ask for an updated letter of undertaking. Rather, the BMA indicated that the telephone call would be followed by a letter in writing with further requests. The Company awaited that letter before taking further steps. It is for that reason that an updated undertaking was not provided immediately following the telephone call, as the Company had waited to receive the BMA's written request which was received on 25 September 2025. The revised undertaking was then promptly provided on the same day (25 September 2025)."

47. However, to establish a trend of breached undertakings, the Petitioner pointed to a 19 November 2025 undertaking from the Company in which it was stated that PFY would contribute $1,000,000.00 to the Company by the week of 24 November 2025 and that the Vanguard Asset would be returned by "no later than 5 December 2025". An additional $1,500,000.00 by 12 December 2025 was promised in the event of failure to redeem the Vanguard Asset by 5 December 2025. The undertaking provided that this was "to ensure the Company maintains a solvency ratio above 200% at year end".[12]

Reputational Considerations

48. The Petitioner says that the Company has generally failed in its duties to deal with the Authority and its Bermuda-resident service providers in an open and transparent manner. Consequently, the Company poses a risk of reputational harm to the jurisdiction which promotes itself and jurisdiction for prudent insurers. By way of example, the Petitioner referred to the Company's consecutive downgrades[13] and its withdrawal from AM Best credit rating without notice to the Authority or its Bermuda-resident service providers. The Petitioner says that it learned of this fact via a media outlet.[14]

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[12] First Affidavit of Sarah Matchett paragraph 22 and 31, 34-35, 44-45, 51 and 71-72

[13] First Affidavit of Sarah Matchett paragraphs 8-9, 28-30 and 70

[14] First Affidavit of Sarah Matchett paragraph 56-58 and 62

49. The Petitioner also flagged its concern for PFY's planned IPO in the United States and the risk of PFY's misleading reliance on the Company's status as a regulated entity to market the IPO. In its concluding paragraph [25], the Petitioner states:

"*The Authority has concluded that the Company's conduct and its potential to damage policyholders and the jurisdiction's reputation are sufficient to make a winding up order expedient in the public interest and just and equitable in all the circumstances.*"

Updates following the filing of the Petition

50. After the 13 February 2026 filing of the Petition, the Petitioner filed the *ex parte* summons for the appointment of the JPLS on 25 February 2026 and the Order granting the JPLs full powers was made on 27 February 2026. This was followed by the advertising of the Petition on 13 March 2026 and the first hearing of the Petition on 27 March 2026.

51. By way of update to the Court, the Petitioner filed evidence from Mr. Darren Street and Mr. Nicholas Howard of the BMA. In Mr. Street's affidavit evidence, he sets out various exchanges in correspondence between the Authority and the JPLs in March 2026. Exhibited to his evidence is a document from the JPLs entitled "Update as at 21 March 2026 for the Bermuda Monetary Authority on the Provisional Liquidation to date" (the "JPLs' March 2026 Update" / the "Update"). It is stated in the JPLs' March 2026 Update that the JPLs met with the Displaced Board on 17 March 2026 and that the Displaced Board cooperated with the JPLs in the making of their enquiries.

<u>The Company's Frozen Bank Account</u>

52. In the Update the JPLs reported that they received confirmation from HSBC that the Company operates one general account which, during that period, had a balance of US$ 9,864.08. That account was said to be frozen but able to receive incoming payments. However, Ms. Gao's evidence was that the Company's accounts with HSBC have been unfrozen since 9 April 2026.

<u>The Company's Letters of Credit and "Peak Re"</u>

53. The JPLs advised that the Company's Letters of Credit are all in favour of a Hong Kong reinsurance company called Peak Reinsurance Company Limited ("Peak Re"), an entity which the JPLs were unable to match to the cedent contact information provided to them by Peak Re's insurance manager.

54. The JPLs explained that the Company has three Letters of Credit in issue for a total of CNY 14,800,000 (approximately US$ 2,149,193.58) and that as at 20 March 2026, the USD equivalent of the CNY total was US$ 2,149,193.25 with a 17% buffer applied, such that the collateral requirement was US$ 2,514,556.10. The JPLs stated that the most recent information they had was that the balance was US$ 2,444,832.95 which fell short of the collateral requirement as the effective buffer fell under 13.76%. This was highlighted in Mr. Street's evidence where he pointed out that the Company has insufficient assets to collateralize the Letters of Credit that have been issued to cedants and that neither the Company nor IML on its behalf have advised the Authority of this material development.

55. Ms. Gao, on the other hand, said that none of the LOCs have been called upon, given that the Company has managed to pay off its claims.

<u>New Capital and The Company's March 2026 solvency estimate</u>

56. Mr. Street's evidence was that on 19 March 2026, IML advised that the Company had secured a commitment of US$ 2,000,000.00 from its shareholder, "CVV", and that these funds were expected to be remitted by no later than end of the month. The information provided to the Authority was that US$ 1,000,000.00 would be applied to settle the receivable in the Affiliated Transaction and US$ 1,000,000.00 would be injected as new capital into the Company. Mr. Street added that the JPLs were not initially copied to this correspondence but that they later confirmed that IML shared the relevant materials with them.

57. On 20 March 2026 the Authority performed its own analysis of the solvency and liquidity impact of the proposed US$ 2,000,000.00 injection from CVV. Mr. Street, in his evidence, accepted that this sum would positively impact on the Company's ability to meet its MMS requirements, calculating a lower excess sum of $US 758,414.00 in contrast to the prior deficit of negative $US 241,586.00, based on the February 2026 management financial statements.

58. However, on 21 March 2026, the Company, via IML, submitted an updated end of March solvency estimate (the "March 2026 solvency estimate") to the Authority. Mr. Street's evidence was that the March 2026 solvency estimate disclosed an increased excess of MMS to the sum of $899,102, materially resulting from a further reduction in the uninsured loss recovery. Also, on the Authority's review of the March 2026 solvency estimate, it noted, with concern, numerous emails which indicated the existence of urgent settlement requests in respect of loss amounts due to brokers and cedants.

59. Ms. Gao, however, stated in her evidence that the financial position of the Company improved significantly on 31 March 2026 with the receipt of the US$ 2,000,000.00 sum. She stated that the net sum transferred, after direct payment of service provider fees, was US$ 1,836,685.27 and that US$ 1,000,000.00 of that sum was applied in settlement of the Affiliated Transaction.

60. Ms. Gao's evidence was that the management accounts were completed on 31 March 2026 and that Mr. Justin Doherty of IML produced projections for the Company for 2026, incorporating the US$ 2,000,000.00 capital injection. Projections for 2027 and 2028 were also performed by IML on the contention that a forward analysis offers better insight into the Company's financial position and prospects rather than the limited perspective to be gained from reliance on the March 2026 figures alone. She said that IML used the projected year-end 2026 figures to prepare the Bermuda Solvency Capital – 15, based on the projected 31 March 2026 actuals to demonstrate the expected position at year end. Her evidence was that the Company realized a profit of $165,000 for 2026. Her evidence was also that the Company remains in a strong position for the year ended 2026, with a solvency ratio 151%, that being well above the statutory minimum. That said, she conceded that both assets and liabilities decreased compared to the previous year due to the settlement of claims and the reduction in loss reserves.

61. Ms. Gao stated that as of 31 March 2026 the Company's final contracts came to an end which accounts for the absence of any further recorded premiums for the remainder of the year or subsequent years, given the Company's pending "runoff" status. She said that the Company's plan was to await the further injection of significant capital from its parent company, PFY, after the completion of the IPO by end of 2026. At that point, the Company would be positioned, on her evidence, to apply to the BMA to lift any restrictions on its license in order to resume Company operations.

62. Notwithstanding, at paragraph 27 of Mr. Street's first affidavit, he stated:

"*Taken as a whole, the Authority's position is that, even if the USD 2 million from CVV were received in full and in cash, and even if the MMS shortfall were thereby technically addressed, the contribution does not in itself resolve the deeper and more fundamental concerns that underpin the Petition. …the Company's financial position has been characterized by sustained volatility, unreliable financial information and an inability to access or verify the recoverability of key assets. The Authority cannot be satisfied, on the current evidence, that the USD 2 million will prove sufficient to address the Company's solvency position given these uncertainties*."

Update on the recovery of the Vanguard Asset

63. The Displaced Board advised the JPLs of their efforts to recover the Vanguard asset. The JPLs were told that since February 2026, Vanguard SPC was non-responsive and stopped issuing up-to-date statements on the Vanguard asset. Subsequently, the Displaced Board instructed Counsel in Hong Kong but did not have funds available to pay for the legal services.

64. The recovery of the Vanguard asset is now the subject of pending arbitration proceedings which is to be funded pursuant to an arrangement between the JPLs and PFY, as the "Funder." The detail of the proposed funding arrangement was set out in the JPLs' 10 June 2026 Letter of Undertaking to PFY. That said, Mr. Howard stated in his 10 June 2026 affidavit that the agreement to fund the arbitration had not been finalized and that the letter before action stage had not yet been reached.

65. In another 10 June 2026 letter to the Court, Mr. Sellick, on behalf of the Displaced Board, wrote:

"*We continue to act for the Displaced Board of the Company in the above matter. This letter has been authored to provide the Hon. Justice Subair Williams with an update, before the mention hearing takes place tomorrow morning.*

As demonstrated by the factual summary provided within the JPLs' report of 9 June 2026 (paras2.1 to 2.18), exhibited to the First Affidavit of Nicholas Howard (dated 10 June 2026), the JPLs and the Displaced Board have had very productive communications regarding funding in respect of recovery of the Vanguard asset. Final instructions are currently being taken in respect of the letter of undertaking (referred to at para 2.17), bearing in mind the time zone difference with China, and it is anticipated that a signed letter of undertaking will be available by the time of tomorrow's hearing."

66. Ms. Gao stated that the debt owed by Vanguard remains on the balance sheet as the Company intends to recover the Vanguard asset in the pending arbitration proceedings. However, this runs in contrast to the position taken by the BMA that the Vanguard asset is to be disregarded for the purpose of calculating the company's assets and liquidity in the statutory context. Mr. Howard pointed out that the Vanguard asset may have even dissipated without the ability to be traced or recovered, even in the event of a possible successful arbitration award.

The Relevant Legal Principles

<u>Winding Up Orders *Ex Debito Justitiae*</u>

67. Section 161 of the Companies Act 1981 prescribes the circumstances in which a company may be wound up by the Court. Section 161(e) provides the statutory basis for a petition being presented on the grounds that the company is unable to pay its debts.

68. In *Re LAEP Investments Ltd* [2014] Bda LR 35 *and Re Gerova Financial Group Ltd* [2012] Bda LR 43, it was held:

    "*a petitioner who can prove that a debt is unpaid and that the company is insolvent is entitled to a winding up order ex debito justitiae, which has been taken to mean that, in accordance with settled practice, the court can exercise its discretion in only one way, namely by granting the order sought* (Andrew Keay's McPhearson's Law of Company Liquidation, 2nd English Edition at Paragraph 3.033, see also *In re Douglas Griggs Engineering Ltd.* [1963] Ch. 19 at 23 and *Western of Canada Oil, Re* (1873) 17 Eq.1)

69. In *Bowes v Hope Life Insurance Co* (1865) 11 H.L.C. 389; 11 E.R.1383 Lord Cranworth stated that:

    "*…not a discretionary matter with the court when a debt is established, and is not satisfied, to say whether the company shall be wound up or not; that is to say, if there be a valid debt established, both at law and at equity. One does not like to say positively that no case could occur in which it would be right to refuse it; but ordinarily speaking, it is the duty of the court to direct a winding up*."

70. Lord Cranworth's summary has been criticized for having too widely stated the *ex debito justitiae* principle without mention of the exceptions which would justify a refusal of a winding up order. The Court's unfettered discretion to adjourn a petition for good reason (see *Z-OBEE Holdings Limited* [2017] Bda LR 19 at paragraph 10).

71. Neuberger J (as he then was) in *Re Demaglass Holdings Ltd* [2001] BCLC 633 at 638a said:

    "*…the petitioning creditor has to establish the possibility of the prospect of some sort of benefit from a winding up. The test, however, appears to be a low one. In Re Crigglestone Coal Company, Limited [1906] 2 Ch 327 Collins, MR, appears to have thought that the petitioner need only show a reasonable possibility of some advantage (see 333A). The other two members of the Court of Appeal seem to have considered that the test was even lower than that. Romer LJ at 338 observed that he could not say that the prospect was "hopeless".*

At 339 Cozens-Hardy LJ said the evidence against the petitioners "did not support the contention that there is no possibility" of a dividend being paid to the unsecured creditors."

72. The Petitioner must demonstrate that the benefit of a winding up order is not for the Petitioner individually but for the wider benefit of the class to which the Petitioner belongs. The right *ex debito justitiae* is not the Petitioner's individual right but a representative right. (See Buckley J in *Crigglestone Coal Co, Re* [1906] 2 Ch. 327 at 331-332. and para 3.054 of Andrew Keay's McPhearson's Law of Company Liquidation, 2nd English Edition)

'Just and Equitable' Principles:

73. In the Privy Council decision in *Loch v John Blackwood Ltd* [1924] AC 783 at page 790 Lord Shaw said:

"*It is undoubtedly true that at the foundation of applications for winding up, on the 'just and equitable' rule, there must lie a justifiable lack of confidence in the conduct and management of the company's affairs*."

74. See also *Capital Partners Securities Co Ltd v Sturgeon Central Asia Balanced Fund Ltd [2017] Ba LR 78* paragraph 77:

"*These principles were not in dispute. Mr. Atherton QC referred the Court to various authorities, including the Caymanian Grand Court decision in Re The Washington Special Opportunity Fund, FSD No. 151 of 2015, Judgment dated March 1, 2016 (unreported). In the latter case, in which Mr. Atherton QC successfully appeared for the fund, Ingrid Mangatal J refused to wind up the fund because its management's conduct did "not cross the forbidden line so as to constitute a visible departure from the standards of fair dealing and the conditions of fair play which a shareholder is entitled to expect" (transcript, at page 59)*."

Analysis and Decision

75. In this case, the Petitioner seeks a winding up order not only because the Company is insolvent in the statutory context, giving rise to the *ex debito justitiae* principle, but also because the Company has breached its obligations under the Insurance Act to such an extent that it has become just and equitable and a matter of public interest that the Company be wound up.

76. In objecting to a winding up order on the grounds that it is insolvent, the Displaced Board relied on the inclusion of the Vanguard asset and its capital injection of US$ 2,000,000.00 on 31 March 2026, giving way to a stated profit of $165,000 for 2026 and a solvency ratio

exceeding the statutory minimum. However, as pointed out in Mr. Howard's evidence, since November 2025, the Authority has treated the Vanguard asset as unrecoverable and unavailable as an asset to back insurance liabilities. By consequence, the Company would fail to meet its MMS obligations, and its April 2026 management accounts would establish that the Company's adjusted net assets/liabilities are negative US$ 197,325.00. Mr. Howard said that the exclusion of the Vanguard asset would mean that the Company's capital and surplus for the purposes of the Insurance Act is negative US$ 240,245.00, resulting in a solvency margin deficit of US$ 1,240,245, rendering the Company statutorily insolvent.

77. Whichever the case, one cannot properly ignore the fact of the Company's declining assets and the termination of its insurance contracts resulting in the absence of current or expected premiums. The fact of the matter is that the Company's prospects of maintaining minimal liquidity to cover its operating expenses are variable and contingent on the possible success of recovery of the Vanguard asset and further capital injections from its parent company in the event of a successful IPO. Failing that, it is reasonable to conclude that more imminent solvency shortfalls, increased loss ratio assumptions, and further borrowing at more costly rates are a certainty. This is indeed calamitous because there is no evidence to underpin any reasonable confidence in favour of recovery of the Vanguard asset or even the IPO.

78. The exercise of judicial discretion in this case must entail careful consideration of the harmful effects of allowing the continued operation of an insolvent or near-insolvent reinsurance company in a jurisdiction globally esteemed for its proficient and sophisticated regulatory regime and profitable insurance industry.

79. In this case, the Petitioner has cited numerous and meritorious grounds for alleging regulatory breaches, the more grave of which entails the lack of internal auditory controls, the absence of any INEDs and the lack of reliable and transparent communication with the Authority. In my judgment, the Company's failure to address these crucial issues on the basis of its decision to divert its focus on the IPO is beyond unsatisfactory. Against this background, it is equally unacceptable that the Company saw fit to write and issue any policies which trespassed the limits of its business plan and regulatory approval.

80. In my judgment, the regulatory breaches cited by the Petitioner are neither minor nor incidental. The evidence before this Court establishes an executive culture of misleading the Authority as a means of engaging and continuing business operations non-compliant with statutory standards. This is illustrated, *inter alia*, by the statements carelessly made to cause the Authority to reasonably but wrongly understand that PFY had allocated $15,000,000.00 in capital funds to the Company for its immediate access and ability to maintain its capital requirements "at all times". Ms. Gao, in her affidavit evidence, accepted the inaccuracy of that undertaking and I find that her explanation as to why the said undertaking was not

sooner corrected falls short of addressing why or how such a misleading statement was made to the Authority in the first instance.

81. The purported $15,000,000.00 was not the only example of breached undertakings cited. In addition to other false statements about the Company's expected capital injections, the Company failed to report various material events to the Authority. The Company's consecutive downgrades and its withdrawal from AM Best credit rating without notice to the Authority or its Bermuda-resident service providers are stunning incidents of regulatory breach, particularly because the Authority discovered this information during the course of its onsite reviews and via media outlets.

82. In the judgment of this Court, the nature and extent of these ill practices by the Company give rise to the winding up order sought by the Company.

Conclusion

83. I grant the Petitioner's application for the Company to be wound up under the provisions of the CA 1981 and the Insurance Act.

84. The costs of and occasioned by the Petition are to be paid as a priority out of the assets of the Company on an indemnity basis as an expense of the liquidation.

Dated this 24th day of July 2026

THE SEAL OF THE SUPREME COURT OF BERMUDA

SIGNED

JUSTICE SHADE SUBAIR WILLIAMS
PUISNE JUDGE OF THE SUPREME COURT