

## Liquidators Take Note: No Retrospective Authorisation for Exercise of Liquidators' Powers

*Re Kirkham International Pte Ltd (in compulsory liquidation)* [2023] SGHC 19 (**Kirkham**) has important practical implications for liquidators. The General Division of the High Court (**High Court**) held that a liquidator's appointment of solicitors, when approval is required under section 144 of the Insolvency, Restructuring and Dissolution Act 2018 (**IRDA**), cannot be retrospectively authorised.

### Background

Certain powers of a liquidator in a compulsory winding-up can only be exercised with the authorisation of the High Court or the committee of inspection (**COI**). These powers include the power to appoint a solicitor, the power to bring or defend legal proceedings on behalf of the company, and the power to enter into compromises with debtors or creditors of the company (**liquidator's powers**).

### Changes in the IRDA

In *Kirkham*, the High Court observed that there is a crucial difference between the wording of section 144 of the IRDA and its predecessor provision in section 272 of the Companies Act (which applied prior to the consolidation of corporate and personal insolvency laws under the IRDA). Section 144 of the IRDA specifies that the liquidator's powers can be exercised only "*after authorisation*" by the High Court or COI. The provisions are set out below for comparison.

IRDA	Companies Act
<p>Powers of liquidator</p> <p>144.—(1) The liquidator may, <b>after authorisation</b> by either the Court or the committee of inspection —</p> <p>...</p> <p>(e) bring or defend any action or legal proceeding in the name and on behalf of the company;</p> <p>(f) appoint a solicitor —</p> <p>(i) to assist the liquidator in the liquidator's duties; or</p> <p>(ii) to bring or defend any action or legal proceeding in the name and on behalf of the company; ...</p>	<p>Powers of liquidator</p> <p>272.—(1) The liquidator may <b>with the authority</b> of either of the Court or of the committee of inspection —</p> <p>...</p> <p>(e) appoint a solicitor to assist him in his duties.</p>

The High Court noted (at [15]) that it was not clear why Parliament chose to depart from the previous approach, and there was nothing in the Senior Minister of State for Law's speech in the Second Reading of the Insolvency, Restructuring Bill that explained the departure.

The High Court ultimately held (at [31]) that the legislative language (i.e., the use of the word "after") made it clear that the liquidator's powers under section 144 of the IRDA can only be exercised after the authorisation is granted. It accordingly found that it had no power to authorise the liquidator's appointment of solicitors retrospectively, and only granted authorisation with effect from the making of the court order (at [37]).

### Implications for Liquidators

Liquidators may be concerned about whether it is possible to obtain prospective approval under section 144 of the IRDA from the High Court or COI in all circumstances, particularly where there is an urgent need to bring or defend against legal proceedings. In this regard, some of the High Court's other holdings in *Kirkham* might provide liquidators with a measure of comfort. The High Court held (at [38]) that the absence of authorisation does not render incompetent the proceedings in which the solicitor represented the company/liquidator or deny the solicitor of standing. This would at least mitigate the extent of the problem if a liquidator is not able to obtain approval of the solicitor's appointment in time.

The absence of authorisation only goes towards the question whether the liquidator is entitled to costs out of the estate for the payment of solicitor's fees (at [38]). In this case, the High Court found that there were good reasons for the liquidator to appoint solicitors before seeking authorisation (i.e., waiting for a forensics report before convening a creditors/COI meeting and the urgent need to defend a suit) and held that the legal fees should be paid from the assets of the company instead of being borne by the liquidator personally.

The High Court concluded (at [43]) by warning that "[a]ny liquidator who chooses not to [obtain prospective approval] in the future would run a similar risk of having to incur the legal costs personally, unless there are, as in the present case, good reasons why this should not be ordered".

### Conclusion

Moving forward, liquidators appointed pursuant to a winding-up order should be mindful of *Kirkham* and ensure that approval for the exercise of any of the liquidator's powers under section 144 of the IRDA (whether from the High Court or the COI) is sought before such powers are exercised.

If you would like information or assistance on the above or any other area of law, you may wish to contact the Partner at WongPartnership whom you normally work with or any of the following Partners:



**Joel CHNG**

Partner – Restructuring & Insolvency

d: +65 6517 8707

e: [joel.chng](mailto:joel.chng@wongpartnership.com)

[@wongpartnership.com](mailto:joel.chng@wongpartnership.com)

Click [here](#) to view Joel's CV.



**Clayton CHONG**

Partner – Restructuring & Insolvency

d: +65 6416 2472

e: [clayton.chong](mailto:clayton.chong@wongpartnership.com)

[@wongpartnership.com](mailto:clayton.chong@wongpartnership.com)

Click [here](#) to view Clayton's CV.

 Connect with WongPartnership.

# WPG MEMBERS AND OFFICES

- [contactus@wongpartnership.com](mailto:contactus@wongpartnership.com)

## SINGAPORE

-

WongPartnership LLP  
12 Marina Boulevard Level 28  
Marina Bay Financial Centre Tower 3  
Singapore 018982  
t +65 6416 8000  
f +65 6532 5711/5722

## CHINA

-

WongPartnership LLP  
Shanghai Representative Office  
Unit 1015 Link Square 1  
222 Hubin Road  
Shanghai 200021, PRC  
t +86 21 6340 3131  
f +86 21 6340 3315

## MYANMAR

-

WongPartnership Myanmar Ltd.  
Junction City Tower, #09-03  
Bogyoke Aung San Road  
Pabedan Township, Yangon  
Myanmar  
t +95 1 925 3737  
f +95 1 925 3742

## INDONESIA

-

Makes & Partners Law Firm  
Menara Batavia, 7th Floor  
Jl. KH. Mas Mansyur Kav. 126  
Jakarta 10220, Indonesia  
t +62 21 574 7181  
f +62 21 574 7180  
w [makeslaw.com](http://makeslaw.com)

## MALAYSIA

-

Foong & Partners  
Advocates & Solicitors  
13-1, Menara 1MK, Kompleks 1 Mont' Kiara  
No 1 Jalan Kiara, Mont' Kiara  
50480 Kuala Lumpur, Malaysia  
t +60 3 6419 0822  
f +60 3 6419 0823  
w [foongpartners.com](http://foongpartners.com)

## MIDDLE EAST

-

Al Aidarous Advocates and Legal Consultants  
Abdullah Al Mulla Building, Mezzanine Suite 02  
39 Hameem Street (side street of Al Murroor Street)  
Al Nahyan Camp Area  
P.O. Box No. 71284  
Abu Dhabi, UAE  
t +971 2 6439 222  
f +971 2 6349 229  
w [aidarous.com](http://aidarous.com)

-

Al Aidarous Advocates and Legal Consultants  
Oberoi Centre, 13th Floor, Marasi Drive, Business Bay  
P.O. Box No. 33299  
Dubai, UAE  
t +971 4 2828 000  
f +971 4 2828 011

## PHILIPPINES

-

ZGLaw  
27/F 88 Corporate Center  
141 Sedeño Street, Salcedo Village  
Makati City 1227, Philippines  
t +63 2 889 6060  
f +63 2 889 6066  
w [zglaw.com/~zglaw](http://zglaw.com/~zglaw)

[wongpartnership.com](http://wongpartnership.com)