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DOES SIZE OF DEBT ALWAYS PREVAIL?

Determinative Factors for Court-Appointed Liquidators and Judicial Managers in Singapore

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What factors are considered when a court decides to appoint an insolvency practitioner as a judicial manager or liquidator, in circumstances where two or more nominees are put forward by different stakeholders in insolvency proceedings? Would a creditors' nomination, or the size of the debt owed, take precedence over other relevant factors? This article will examine the key factors relevant to the court's exercise of discretion in relation to the appointment of insolvency office holders in Singapore, with reference to recent Singapore cases including *Re Hodlnaut Pte Ltd* [2022] SGHC 209 as well as decisions from other Commonwealth jurisdictions.

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I. Introduction

1 This article examines the various factors that a court takes into account in the appointment of competing nominees for court-appointed insolvency office holders in the context of liquidation and judicial management in Singapore, with reference to case authorities in Singapore as well as from major Commonwealth jurisdictions.

II. Requirements under Singapore law for appointment as liquidator or judicial manager

2 The licensing and regulatory regime for insolvency practitioners in Singapore was introduced when the Insolvency, Restructuring and Dissolution Act 2018[1] came into force on 30 July 2020. The licensing officer appointed by the Minister ("Licensing Officer") under s 49(1) of the Insolvency, Restructuring and Dissolution Act 2018[2] ("IRDA") oversees the licensing and regulation of all insolvency practitioners in Singapore with a stated purpose of ensuring "the fair and responsible administration of insolvency and debt restructuring matters in Singapore".[3]

3 Under the IRDA regime, other than the Official Receiver (as defined under s 2 of the IRDA), only a "licensed insolvency practitioner" may act as a liquidator[4] or judicial manager.[5] An insolvency practitioner's licence may only be granted to a person who is a solicitor, a public accountant or a chartered accountant,[6] subject to any future qualifications that are recognised by the Minister's order.[7]

4 To be granted an insolvency practitioner's licence or a renewal of the licence, the applicant must pay the prescribed fee,[8] and have at least one of the following relevant work experience: (a) acted as an insolvency practitioner in relation to a corporation

1 Act 40 of 2018.
2 2020 Rev Ed.
3 See Ministry of Law, "Licensing & Regulation of Insolvency Practitioners Division" (23 July 2020) <https://www.mlaw.gov.sg/about us/what we do/licensing and regulation of insolvency practitioners division/> (accessed 30 August 2023). The Licensing Officer is supported by the Ministry of Law's Licensing and Regulation of Insolvency Practitioners Division, and is assisted by assistant licensing officers appointed under s 49(2) of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed).
4 Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) s 48(1)(*a*).
5 Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) s 91(3)(*a*).
6 Within the meaning given under s 2(1) of the Singapore Accountancy Commission Act 2013 (2020 Rev Ed).
7 Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ss 50(1) and 50(2). See also Insolvency, Restructuring and Dissolution (Insolvency Practitioners) Regulations 2020 reg 5.
8 Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) s 51(4)(*a*) read with Insolvency, Restructuring and Dissolution (Insolvency Practitioners) Regulations 2020 reg 5(1)(*b*).

or an individual under the IRDA or under any corresponding previous law; (b) assisted another person in that person acting as an insolvency practitioner in relation to a corporation or an individual, under the IRDA or under any corresponding previous law, for a minimum of three continuous years of which two years' experience must be at a supervisory level; or (c) acted as a solicitor for a creditor or a debtor in relation to a bankruptcy application, or for a creditor or a bankrupt in relation to the administration of any bankruptcy, under the IRDA or under any corresponding previous law within the last three years before the date of the application for a grant of an insolvency practitioner's licence.[9]

5 The above requirements apply differently in a members' and creditors' voluntary liquidation. Unlike in a creditors' voluntary liquidation, liquidators appointed in a members' voluntary liquidation do not have to be a "licensed insolvency practitioner".[10]

6 The court in a compulsory winding up[11] and judicial management[12] exercises its discretion in the appointment of a liquidator or judicial manager. The court may also be called to exercise this discretion in a creditors' voluntary winding up when an application is made under s 167(2) of the IRDA for an order directing that the person nominated as liquidator by the company is to be liquidator instead of, or jointly with, the person nominated by creditors.

7 The insolvency regime under the IRDA is similar to those in several other Commonwealth jurisdictions where courts generally also exercise their discretion in the appointment of

9 Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) s 51(4)(*b*) read with Insolvency, Restructuring and Dissolution (Insolvency Practitioners) Regulations 2020 reg 5(3).

10 Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) s 47(2)(*b*) read with s 48(1).

11 See s 134(*a*) of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed).

12 See s 91(3)(*c*) of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed).

insolvency office holders.[13] For example, the UK courts have held that "the appointment of the office-holder has to achieve justice between all the interested parties" and in considering factors similar to those considered by the Singapore courts, have held that "the same broad principles apply in both liquidation and administration".[14] The factors relevant to the exercise of the courts' discretion are discussed below in turn.

A. Factor 1: Value of the creditor's debt

8 In a situation where competing nominees are put forward by different creditors or different groups of creditors, the first and perhaps most significant factor to be considered is the value of the creditors' debts. The value of each creditor's debt will have significant weight accorded to it. The above principle has been statutorily prescribed including under ss 201(1) and 201(2) of the IRDA in relation to liquidation, and under s 91(3)(*d*) of the IRDA in relation to judicial management.

9 The High Court in *Re Hodlnaut Pte Ltd*[15] ("*Re Hodlnaut*") observed that "[t]here is something to be said for the proposition that significant weight should be given to the choice made by the largest creditor or group of creditors".[16] The reason for this ought to be intuitive – the wishes of the majority creditors generally prevail because they have the primary interest in the outcome of the liquidation.[17] Further, from a practical standpoint, the likelihood of a liquidation/restructuring proceeding smoothly would be where the liquidators/judicial managers enjoy the support of its majority creditors.[18]

13 See, *eg*, Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32) (HK) s 194(1)(c); Companies Act 2016 (Act 777) (M'sia) ss 407 and 477(1)(c); and Insolvency Act 1986 (c 45) (UK) s 139(4).

14 *Stanley International Betting Ltd v Stanleybet UK Investments Ltd* [2012] 1 BCLC 1 at [36].

15 [2022] SGHC 209.

16 *Re Hodlnaut Pte Ltd* [2022] SGHC 209 at [11].

17 *Cai Shuyi v The Joint and Several Liquidators of Blockchain Group Co Ltd* [2019] HKCU 2208 at [9] and [19].

18 *Cai Shuyi v The Joint and Several Liquidators of Blockchain Group Co Ltd* [2019] HKCU 2208 at [18].

10 That said, it is not invariably the case that the court will endorse or adopt the choice made by the largest creditor or group of creditors, as pointed out by Aedit Abdullah J in *Re Hodlnaut*.[19] For example, the views of the majority creditor may not always prevail if there are counterbalances to the weight to be given to their views, such as where the alternative nominee has already investigated many issues that will need to be dealt with in the course of the administration, or where it will be helpful to the administration process that they be appointed without delay.[20]

11 The court may also have regard to the characteristics of each creditor in determining the weight to be given to each of their views. In the Hong Kong case of *Re Value Food Supply Ltd*[21] ("*Re Value Food*"), the court preferred the nominee put forward by the minority creditors in value, as most of the creditors in the majority group were associated with the company, whose "circumstances may reasonably be thought to suggest that they will be influenced by considerations other than simply maximising the recovery for unsecured creditors".[22] The court found that it ought to give due weight to the views of the "independent" creditors, rather than "simply determining arithmetically which of [the] competing candidates has got the most votes".[23]

12 A similar rationale was under consideration in the Singapore High Court case of *Korea Asset Management Corp v Daewoo Singapore Pte Ltd*[24] ("*Daewoo*"). This matter involved a different context – being an application by the majority creditor for leave to commence compulsory winding-up proceedings of the debtor company when the company was already in the process of voluntary winding up. V K Rajah JC (as he then was) observed that while the views of the majority creditors were important, the position was quite different where they were related entities. In such a situation, considerations of fairness and commercial

19 *Re Hodlnaut Pte Ltd* [2022] SGHC 209 at [11] and [13].
20 See *Healthcare Management Services Ltd v Caremark Properties Ltd* [2012] EWHC 1693 (Ch) at [29].
21 [2021] HKCU 4883.
22 *Re Value Food Supply Ltd* [2021] HKCU 4883 at [12].
23 *Re Value Food Supply Ltd* [2021] HKCU 4883 at [12].
24 [2004] 1 SLR(R) 671.

morality require that the court exercise greater caution in giving weight to the views of the majority creditors.[25] An example the court gave was the scenario where there is some basis for an independent minority creditor to suggest that it is or might be marginalised or disregarded in a liquidation process besieged by the majority creditors, most of whom are related entities. In this situation, the court ought to carefully assess how it can grant a platform to that creditor to vindicate its rights, which could take the form of an order for replacement of liquidators with an objective third party who has no apparent relationship with the company's management, shareholders or the related major creditor(s).[26]

B. Factor 2: Debtor's nomination versus *creditor's nomination*

13 When there are competing nominations between creditor(s) on the one hand and the debtor company on the other, the creditor's nomination will generally take precedence.

14 Section 167(1) of the IRDA provides that where the creditors and the debtor company nominate different liquidators in a creditors' voluntary winding up, the person nominated by the creditors shall be appointed the liquidator.[27] This provision is intended to ensure that the creditors' choice of liquidator prevails and that they therefore have control of an insolvent liquidation.[28]

15 In the context of judicial management, s 91(3)(*d*) of the IRDA provides that where a nomination is made by the debtor company, a majority in number and value of creditors may be heard in opposition to the nomination, and the court may then invite the creditors to nominate another person.[29] These provisions above are consistent with the principle that a company whose debts far exceed its assets in effect belongs to its creditors,

25 *Korea Asset Management Corp v Daewoo Singapore Pte Ltd* [2004] 1 SLR(R) 671 at [52].
26 *Korea Asset Management Corp v Daewoo Singapore Pte Ltd* [2004] 1 SLR(R) 671 at [52].
27 Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) s 167(1).
28 *Woon's Corporations Law* (Walter Woon gen ed) (LexisNexis Singapore, 2022) at paras 3505–3550.
29 Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) s 91(3)(*d*).

and so the main focus would be to ensure that the interests of the creditors are protected to the fullest extent.[30]

16 The preference for creditors' nomination over that of debtors' is also based on the principle that a liquidator or judicial manager should not only be independent but also be seen to be independent, in order for the impartial and effective discharge of his duties.[31] In *Petroships Investment Pte Ltd v Wealthplus Pte Ltd*,[32] Vinodh Coomaraswamy J explained this on two grounds:[33]

> Instrumentally, conduct on the part of a liquidator which leads to a perception of bias engenders distrust in the liquidator amongst the stakeholders in the liquidation. That distrust is inimical to the interest of the liquidation because it may cause the liquidation to be side-tracked into value-destroying satellite litigation by those stakeholders challenging the liquidator's every act or omission or seeking to remove or replace him.
>
> Conceptually, a liquidator performs more than a merely administrative role in overseeing the liquidation. He also performs a quasi-judicial role, for example, in adjudicating proofs of debt … And that quasi-judicial role has an institutional character: in a compulsory liquidation he is an officer of the court … and in both compulsory and voluntary liquidation he is subject to the court's supervision … Therefore, he ought not only to be actually free of bias; he ought to be perceived to be free of bias …

17 In situations involving suspected impropriety within the company, the liquidator also wears the hat of investigator and sometimes that of "prosecutor".[34] In such cases, so that the liquidator is not perceived as having had any relationship with the company's officers or shareholders, it is unsurprising that the court will favour the appointment of the creditors' nominee.

30 *Re Genesis Technologies International (S) Pte Ltd* [1994] 2 SLR(R) 298 at [8]; *Korea Asset Management Corp v Daewoo Singapore Pte Ltd* [2004] 1 SLR(R) 671 at [36].

31 See, *eg*, *Re Hodlnaut Pte Ltd* [2022] SGHC 209 at [12], where the High Court preferred an appointment that "would avoid as best as possible any concerns about independence".

32 [2018] 3 SLR 687.

33 *Petroships Investment Pte Ltd v Wealthplus Pte Ltd* [2018] 3 SLR 687 at [151] and [152].

34 *Korea Asset Management Corp v Daewoo Singapore Pte Ltd* [2004] 1 SLR(R) 671 at [54].

The above considerations would apply equally to the appointment of a judicial manager, who may be called upon to investigate the affairs of the company under judicial management and the conduct of its officers. In *Re Hodlnaut*, Abdullah J decided on the appointment of interim judicial managers on the basis that it was "best to have an appointment that would avoid as best as possible any concerns about independence: the process will be likely be [*sic*] complicated enough as it is".[35]

18 In Australia, the courts appear to have taken a stricter view in a number of cases that liquidators *should not* be chosen by the directors or other principals of the company, as it is considered to be in the interests of creditors that someone entirely independent undertakes that role.[36] It was later clarified in a subsequent case that this rule was not meant to confine the unfettered discretion of the court in the appointment of a liquidator.[37] In these authors' view, this should be the preferred approach, *ie*, retaining the discretion and flexibility to appoint the directors'/company's choice of insolvency practitioner where it is appropriate to do so in the circumstances of a given case. This could be possible, for example, in a scenario where there are no allegations concerning the directors' conduct and there are no objections or concerns expressed by creditors.

C. Factor 3: Actual or potential conflict of interest

19 Another factor related to the need for independence is whether the insolvency practitioner may be affected by potential conflicts of interest or bias. The court will not normally appoint as liquidator a person who may be placed in a position where his interest and duty may conflict.[38] An example cited by the Singapore court of how a liquidator's interest and duty may conflict is one where a liquidator is also a director of the company and has been in capacities that have brought him into close relationship with

35 *Re Hodlnaut Pte Ltd* [2022] SGHC 209 at [12].
36 *Workers Compensation Nominal Insurer v Denny Earthmoving & Bulk Haulage Pty Ltd* [2008] NSWSC 1167 at [11]; *Avant Garde Investments Pty Ltd v Cheema* [2020] FCA 98 at [10], [12] and [16].
37 *Deputy Commissioner of Taxation v W.D. Hall Pty Ltd* [2017] FCA 767 at [6].
38 *Chua Boon Chin v McCormack John Maxwell* [1979–1980] SLR(R) 121 at [20].

the other directors of the company. His interest may interfere with his duties as liquidator if, for example, during the course of the liquidation he has to decide whether to commence legal proceedings against the directors and himself as director.[39]

20 In Singapore, the Licensing Officer has imposed conditions under s 52 of the IRDA, to be complied with by all licensed insolvency practitioners ("Conditions").[40] Paragraph 22 of the Conditions state that if, in the course of an insolvency or debt restructuring appointment, circumstances arise that may lead to a conflict of interest or may compromise the insolvency practitioner's independence, he must disclose this to his client and creditors as soon as reasonably practicable, and obtain their consent to continue acting. The Insolvency Practitioners Association of Singapore (IPAS)'s Code of Professional Conduct and Ethics also states that practitioners should take reasonable steps to identify circumstances that could pose a conflict of interest,[41] and where such conflicts of interest threaten (among other things) the objectivity or professional behaviour of the practitioner that cannot be eliminated or reduced to an acceptable level, the practitioner should not accept that engagement or should resign from the engagement, as the case may be.[42]

21 In an application for a judicial management order, the IRDA prohibits the auditor of the company from being nominated as a judicial manager.[43] The IRDA also requires that the person nominated to act as a judicial manager must file with the court a statutory declaration that the person is not in a position of conflict of interest in accepting the appointment and performing the role of judicial manager.[44]

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39 *Chua Boon Chin v McCormack John Maxwell* [1979–1980] SLR(R) 121 at [26]. For another example of a court rejecting the appointment of a liquidator on the basis of conflicts of interest, see *Power v Petrus Estates Ltd* [2008] EWHC 2607 (Ch).

40 "Conditions Imposed by the Licensing Officer for the Grant or Renewal of Insolvency Practitioner's Licence" <https://lripd.mlaw.gov.sg/files/General%20Licence%20Conditions.pdf> (accessed 30 August 2023).

41 IPAS Code of Professional Conduct and Ethics, Part B, para 9.1.

42 IPAS Code of Professional Conduct and Ethics, Part B, para 9.5.

43 Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) s 91(3)(*a*).

44 Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) s 91(3)(*b*).

D. Factor 4: Common insolvency officer for group entities

22 When group companies enter an insolvency process such as judicial management or liquidation, it is usually the case that a common judicial manager or liquidator is appointed to the companies within the same group.[45] This has mainly been explained on the grounds of practical and commercial efficiency as well as cost savings, although the above is subject to the requirement that the judicial manager/liquidator must be alive to any actual or potential conflicts of interests arising by virtue of taking on multiple appointments in respect of related group companies.

23 The English courts have recognised the merits of appointing a common insolvency officer in respect of group companies. In the English case of *Re British National Life Assurance Association*,[46] Malins VC refers to "the great inconvenience which would arise from having a number of separate liquidators mixed up with these affairs" and to the fact that:[47]

> … everybody must see what the consequences would be of having separate sets of liquidators of each of the thirty-nine companies [within the same group] going about the same offices, looking over the same books, searching through the same papers, and substantially engaged about the same business.

24 However, the courts will generally not appoint a common insolvency officer in the case of an actual or serious conflict of interest. In the English High Court case of *Re Wallace Smith & Co Ltd*,[48] joint liquidators of an English company applied to wind up a Canadian company within the same group, and applied to be appointed liquidators of that Canadian company if the order was made. The court held that if appointed to both companies, the liquidators "would be subject to an acute conflict of duties", and

45 See, *eg*, UK Privy Council decision of *Parmalat Capital Finance Ltd v Food Holdings Ltd* [2008] BCC 371 at [13] for the English approach; *Re Chilia Properties Pty Ltd* [1997] 73 FLR 171 at 173; and *Willow Court Retirement Village Pty Ltd v ASIC* [2007] NSWSC 76 at [11] for the Australian approach.
46 (1872) LR 14 Eq 492.
47 *Re British National Life Assurance Association* (1872) LR 14 Eq. 492 at 498–499.
48 [1992] BCLC 970.

not merely a potential conflict, as there was substantial litigation afoot between the English and the Canadian companies.[49]

25 The nature of the conflicts of interest discussed in this section involves situations where the interests of one group company are in conflict with those of another group company. The above is accordingly distinct from the types of conflicts of interest which arise due to the insolvency officer's own personal interests, as discussed above.[50]

26 In the case of a potential (and not actual) conflict of interest, the courts in both England and Australia have demonstrated their willingness to appoint a common insolvency officer across multiple group companies despite a *possibility* of conflict, subject to appropriate safeguards.[51] In this regard, the courts in these jurisdictions have allowed such appointments, while stating that any conflict of interests that does arise can be dealt with if and when such conflict arises, including by seeking the court's directions at that juncture. As observed by Hoffman J in *Re Arrows Ltd*:[52]

> It is by no means uncommon in the case of the insolvency of a substantial group of companies for cross-claims and conflicts of interest to arise between companies within the group. *That does not usually deflect the court from appointing a single firm of insolvency practitioners in the first instance to deal with the whole insolvency of the group, leaving the question of potential conflict of interests to be dealt with if and when it arises*. [emphasis added]

27 In the English Court of Appeal case of *Re Esal (Commodities) Ltd*,[53] Dillon LJ observed that insolvency practitioners ought to be well accustomed to dealing with any such potential conflicts that may arise between companies of the same group.[54]

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49 *Re Wallace Smith & Co Ltd* [1992] BCLC 970 at 988.
50 See paras 19–21 above.
51 See, *eg*, *Parmalat Capital Finance Ltd v Food Holdings Ltd* [2008] BCC 371 at [13]; *Australian Securities and Investments Commission v Westpoint Corporation Pty Ltd* (2006) 227 ALR 623 at 629.
52 [1992] BCC 121 at 123.
53 [1989] BCLC 59.
54 *Re Esal (Commodities) Ltd* [1989] BCLC 59 at 65.

28 One of the court-ordered safeguards against potential conflicts of interest is to appoint separate teams of solicitors. In *In re Western Life Assurance Society, Ex parte Willet*,[55] the English court *per* Giffard LJ held that the potential conflicts of interest arising from appointing the same liquidator in respect of two related companies could be addressed by appointing separate solicitors in respect of each entity, who would take care of the interest in respect of which they were appointed.[56]

29 Another possible safeguard is the court ordering a carve-out in respect of the liquidator's scope of work which gives rise to the potential conflict of interest. In the Australian case of *Hayes v 5G Developments Pty Ltd*,[57] the liquidator of a company (Denham Constructions) had sought to be appointed as liquidator of another related company (Denham Wyndham), on the basis that he had undertaken extensive investigations and was familiar with the group's affairs. A potential conflict of interest arose as Denham Constructions would be filing a proof of debt of approximately $12m against Denham Wyndham. The court approved the appointment, but also ordered that a special purpose liquidator be appointed specifically to receive service of Denham Constructions' proof of debt and to determine whether that proof of debt ought to be admitted or rejected.[58]

E. Factor 5: Cost savings

30 The question of which nominee is the more cost-effective option is also a relevant factor for the court's consideration. The question of potential cost savings can be a relevant factor in the context of group entities, as discussed in the preceding section. It can also be a relevant factor in situations that do not involve group entities. There can be possible arguments based on cost savings if, for example, the potential nominee has some familiarity with or has done some prior work in respect of the

55 (1870) LR 5 Ch App 396.
56 *In re Western Life Assurance Society, Ex parte Willet* (1870) LR 5 Ch App 396 at 399. A similar suggestion was raised in *Re Arrows Ltd* [1992] BCC 121 (at 123F).
57 [2019] FCA 1541.
58 *Hayes v 5G Developments Pty Ltd* [2019] FCA 1541 at [148].

company in question. This is, however, a factual question that the court will assess. In *Re Hodlnaut*, the High Court of Singapore considered costs to be a relevant factor, but concluded on the facts of that case that there would not be substantial differences in costs between the candidates proposed.[59]

31 In other instances, the fact that one set of appointees is a substantially more cost-effective option could be a deciding factor where other factors are finely balanced, and there are no other reasons for the court to prefer one nominee over another. This was the case in *Re Maxwell Communication Corporation plc*[60] ("*Re Maxwell*"), where the English High Court preferred one set of administrators over another, on the basis that the former (which had been appointed some weeks earlier by the banks to investigate the company's affairs), were already in possession of significant amounts of information and were able to carry on the administration more cheaply, effectively and quickly on account of their existing knowledge of the company.

32 In *Kathryn Ma Wai Fong v Shunrise Megaway Sdn Bhd*,[61] the Malaysian High Court considered competing nominations for a liquidator of a company with its registered address in Kuala Lumpur, Selangor, but which had conducted its trading activity with its creditors in Sibu, Sarawak. There were two competing nominees, one based in Kuala Lumpur, and the other based in Sibu, both of whom in the court's view were equally experienced and qualified. As a tiebreaker, the court then considered potential cost savings, in particular the costs of repeated air travel between Kuala Lumpur and Sibu, to be a decisive factor and held that "it does not make any sense for a more expensive liquidator from afar to be appointed when an equally competent and qualified local liquidator is available at less cost".[62] As a matter of commercial and logical justification, the court found it would be in the best interest of creditors and contributories to reduce the

59 *Re Hodlnaut Pte Ltd* [2022] SGHC 209 at [13] and [14].
60 [1992] BCLC 465.
61 [2019] 7 MLJ 458.
62 *Kathryn Ma Wai Fong v Shunrise Megaway Sdn Bhd* [2019] 7 MLJ 458 at [8].

cost of liquidation so that there would be more funds available for distribution to creditors.

33 At a practical level, the courts have also acknowledged that it is not always a straightforward matter in determining the estimated costs of the insolvency practitioners, given that this would necessarily be a forward-looking exercise. A bare comparison of hourly rates would not provide a complete picture, as it would not be determinative of the overall fees;[63] there would also be limitations in relying solely on fee estimates provided by the insolvency practitioner. In any event, the Singapore courts have held that while insolvency practitioners "have a right to be fairly and reasonably remunerated", "they have no legitimate expectation to be remunerated on a time costing basis as a matter of right".[64] The court will carefully scrutinise the remuneration claimed and assess if it is fair and reasonable based on the value that the insolvency practitioner has brought to bear.[65] That said, when faced with a potential appointee who provided an estimate or a benchmark for her remuneration and another who was silent on the same, the Malaysian court had looked favourably upon the former, as it allowed for transparency for the benefit of the company's creditors and contributories.[66]

F. Factor 6: Operational and practical considerations

34 Cost-effectiveness is not the only practical consideration that the court gives weight to. A court may consider the background, qualifications and experience of the insolvency practitioner to assess his/her suitability for the role. For example, in the Malaysian High Court case of *MCC Overseas (M) Sdn Bhd v TY Land & Development Sdn Bhd*,[67] the court in considering the *curriculum vitae* of two competing sets of liquidators, concluded that one of the factors in favour of the eventual appointee was

63 *Haselgrove v Lavender Estates Pty Ltd* [2009] NSWSC 1076 at [104].
64 *Re Econ Corp Ltd* [2004] 2 SLR(R) 264 at [45].
65 *Re Econ Corp Ltd* [2004] 2 SLR(R) 264 at [49]; *nTan Corporate Advisory Pte Ltd v TT International Ltd* [2017] SGHC 207 at [36] and [37].
66 *Re Rentak Arena Development Sdn Bhd; Ex parte Spanland Sdn Bhd* [2020] MLJU 2133 at [20] and [22].
67 [2020] MLJU 2522.

that he had "experience in abandoned projects", compared to the other nominee which made "no specific reference to the any [*sic*] experience in abandoned projects".[68] As a general observation, it would not be surprising if the insolvency practitioner's subject matter expertise and experience may be given more weight if the subject matter of the relevant insolvency process is one that requires specialised domain knowledge.

35 Courts have also considered the relevance of physical presence and geographical location when picking between competing appointees. This has come into play in jurisdictions such as in Australia, where a court preferred one set of liquidators over another as the former had offices in several different cities where the winding-up activities of the company were expected to take place.[69] The court in that case took the view that the eventual appointees would "bring to bear the synergies of a national organisation".[70] It is not difficult to see how a similar reasoning could apply in the case where an insolvent company has operations, assets, debtors and stakeholders spanning multiple countries. In such a case, an insolvency practitioner from a firm with a presence in multiple jurisdictions would likely have an advantage over one who is not able to count on similar support from his firm.

36 A court will generally prefer to facilitate an outcome that best serves the interests of key stakeholders and achieve the aims of the particular insolvency process, and occasionally this simply manifests in appointing an insolvency practitioner with a strategy that would best achieve those outcomes. This was the case in *Stanley International Betting Ltd v Stanleybet UK Investments Ltd*,[71] where the court considered the administration strategies of both competing nominees, and made the appointment based on the strategy that was more likely to deliver a better outcome.[72]

68 *MCC Overseas (M) Sdn Bhd v TY Land & Development Sdn Bhd* [2020] MLJU 2522 at [28].
69 *Haselgrove v Lavender Estates Pty Ltd* [2009] NSWSC 1076 at [104].
70 *Haselgrove v Lavender Estates Pty Ltd* [2009] NSWSC 1076 at [104].
71 [2012] 1 BCLC 1.
72 *Stanley International Betting Ltd v Stanleybet UK Investments Ltd* [2012] 1 BCLC 1 at [53]–[55].

37 In Singapore, practical considerations are one of the relevant factors by which the court determines whether an existing liquidator should be removed and replaced, pursuant to the court's power under s 174 of the IRDA. These practical considerations include (a) the costs, delay and disruption associated with the removal and replacement of the current liquidator; (b) the stage of the liquidation; (c) the familiarity of the current liquidator with the company; and (d) the impact of the removal on the liquidator's professional standing and reputation.[73]

G. Factor 7: Past conduct

38 The past conduct of the insolvency practitioner in question is also one that is given weight by the courts. The potential relevance of the insolvency practitioner's past conduct may be broadly categorised as follows:

(a) conduct of an insolvency practitioner in a past matter being a relevant factor for his/her appointment in a future, unrelated matter ("First Category");

(b) conduct of an insolvency practitioner in a past or existing matter being relevant for his/her appointment in a different capacity in a future, related matter (for example, where a scheme manager/judicial manager is appointed as the company's judicial manager/liquidator (as the case may be) after the original scheme/judicial management did not achieve its desired outcomes) ("Second Category"); and

(c) conduct of an insolvency practitioner in an existing matter being a factor for his/her removal as judicial manager/liquidator ("Third Category").

39 As regards the First Category, the Singapore Court of Appeal highlighted that the appointment of a liquidator in a compulsory winding up is always subject to the court's discretion, and the

73 *Petroships Investment Pte Ltd v Wealthplus Pte Ltd* [2018] 3 SLR 687 at [174]. See also *Liquidators of Ace Class Precision Engineering Pte Ltd v Tan Boon Hwa* [2022] 3 SLR 539 at [152] and [153].

court is entitled to take into account the conduct or misconduct of the nominated liquidator in previous cases.[74] However, it remains to be seen how or to what extent the court will take into account such previous conduct in a future case.

40 Under the First Category, from a regulatory standpoint, the licensing regime under the IRDA also empowers the Licensing Officer to take into account whether an applicant is a "fit and proper" person to hold or continue to hold a licence.[75] The "fit and proper" criterion includes disclosures as to the licensing applicant's past conduct,[76] as well as any matter that the Licensing Officer considers relevant. As such, if the licence application is denied and/or is only granted subject to conditions which affect the insolvency officer's ability to be appointed, this "fit and proper" requirement effectively acts as a statutory bar to appointment as liquidator or judicial manager.

41 The Second Category is a fairly broad one. The past involvement of the insolvency practitioner in question may indicate the potential for operational efficiency or cost savings.[77] For example, an insolvency practitioner may already be familiar with the company and its affairs if the insolvency practitioner undertook relevant investigative work in a different capacity prior to his/her appointment,[78] or by virtue of a prior appointment in a different capacity in an insolvency or restructuring process of the company.[79]

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74 *Tan Ng Kuang Nicky v Metax Eco Solutions Pte Ltd* [2021] 1 SLR 1135 at [89].

75 Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) s 51(5)(*a*).

76 See Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) s 51(8), especially s 51(8)(*b*), which states that a relevant matter for the licensing officer's consideration is whether judgment had been entered against the licensing applicant in civil proceedings that involves a finding of fraud, dishonesty or breach of fiduciary duty on the part of the applicant.

77 See paras 30–33 above.

78 As was the case in *Re Rentak Arena Development Sdn Bhd; Ex parte Spanland Sdn Bhd* [2020] MLJU 2133 and *Re Maxwell Communication Corporation plc* [1992] BCLC 465.

79 Such as in the winding up of Hin Leong Trading (Pte) Ltd, where the judicial managers of the company applied to wind up the company and were appointed as its liquidators, notwithstanding objections from the debtor company's shareholders (see Grace Leong, "Hin Leong Trading, Once One of Asia's Top Oil Traders, to be Wound Up", *The Straits Times* (8 March 2021)).

42 As regards the Third Category, the decision of the Singapore High Court in *DB International Trust (Singapore) Ltd v Medora Xerxes Jamshid*[80] summarised a number of considerations in the court's removal of a liquidator under s 139(1) of the IRDA. In this case, the liquidator in question was removed by the court on grounds that (a) he had failed to display sufficient vigour in carrying out his duties; (b) he had in some respects failed to comply with his statutory obligations; and (c) there was a justifiable loss in the creditors' confidence in the liquidator.[81] The court however emphasised that his removal was not due to any finding of impropriety or misconduct.[82]

III. Conclusion

43 The following table summarises the key factors as discussed above.

Factor	Description
Value of debt	A candidate nominated by the majority creditors by value will generally be preferred. However, this may not always be the case, such as where there are concerns over the independence of the majority creditors, or doubts over their status as creditors.
Creditor's *versus* debtor's nomination	A candidate nominated by the creditors will generally be preferred over one that is nominated by the debtor company.
Conflicts of interest	Generally, a candidate will not be appointed if the appointment would place the candidate in a position of conflict of interest.

80 [2023] SGHC 83.

81 *DB International Trust (Singapore) Ltd v Medora Xerxes Jamshid and another* [2023] SGHC 83 at [79].

82 *DB International Trust (Singapore) Ltd v Medora Xerxes Jamshid and another* [2023] SGHC 83 at [83].

Group entities	An insolvency practitioner's existing appointment with respect to a company within a group of companies may generally favour their appointment to another related company within the same group of companies, unless doing so would give rise to an actual conflict of interest. Depending on the circumstances, it may be possible to address potential conflicts of interest by implementing safeguards.
Cost savings	All else being equal, the more cost-effective candidate will generally be preferred, especially if expected cost savings for one candidate over another are significant.
Operational and practical considerations	Operational and practical considerations such as the candidate's experience with the relevant subject matter or geographical location may favour the appointment of one candidate over another.
Past conduct	Previous conduct/experience of the insolvency practitioner may be relevant. Misconduct in prior matters may result in the rejection of a particular candidate. On the other hand, prior involvement and familiarity with a given or related matter may be a factor which favours appointment.

44 The key or determining factor for the appointment of an insolvency practitioner in many cases will be the views of the majority non-related creditors by value. In the cases surveyed, the courts have consistently emphasised that the views of non-related creditors by value will be accorded significant weight. The emphasis is also on the non-related nature of the relevant debt, as the independence and objectivity of the insolvency officer is considered crucial in discharging their duties in the interests of the creditors and as an officer of the court. In this regard, a conflict between the insolvency officer's personal interests with their professional duties will be a compelling reason for the court to refuse the appointment. Additional factors that may come into play include appointments in the context of a group of companies, experience and qualifications, commercial and operational factors, and costs considerations.