

**IN THE HIGH COURT OF JUSTICE OF THE ISLE OF MAN  
CIVIL DIVISION  
CHANCERY PROCEDURE**

**IN THE MATTER** of the Companies Act 1931

and

**IN THE MATTER** of BANNERS BROKER INTERNATIONAL LIMITED (IN LIQUIDATION)

and

**IN THE MATTER** of the Judgment dated 9 December 2016

and

**IN THE MATTER** of the Application dated 19 July 2016

and

**IN THE MATTER** of the Order of the 14 March 2014 and Order of the 26 February 2014

**HIS HONOUR THE DEEMSTER DOYLE  
FIRST DEEMSTER AND CLERK OF THE ROLLS**

**UPON** the above being called in the presence of counsel for the Joint Liquidators of Banners Broker International Limited (in liquidation) ("BBIL") Mr Miles Andrew Benham and Mr Paul Robert Appleton ("the Joint Liquidators") and msi Spergel inc and upon consideration had and for the reasons stated in the judgment delivered this day **IT IS ORDERED** that:

1. The liquidation of BBIL in the Isle of Man is hereby stayed until further Order and the Joint Liquidators are, subject to compliance with the following Orders, hereby released;
2. The court hereby sanctions the Joint Liquidators entering into the Transition Service and Assignment Agreement (the "Assignment Agreement") which assigns, transfers and conveys to msi Spergel inc, the Canadian court appointed Receiver of BBIL (the "Receiver"), on an "as is where is" basis all of the Joint Liquidators' rights, titles and interests in and to the BBIL estate and the Joint Liquidators should sign the Assignment Agreement forthwith;
3. The Receiver of BBIL shall via Manx advocates make any appropriate filings with the court, including those necessary to complete in due course the winding up of the affairs of BBIL;
4. Notice of the making of these Orders shall be advertised in:

- 4.1 The London Gazette;
  - 4.2 One Isle of Man newspaper; and
  - 4.3 On the BBIL website operated by the Receiver and on the EPIQ website;
5. The costs of and incidental to the application of the Joint Liquidators and their agents shall be payable from the assets of BBIL as an expense of the liquidation of BBIL.

Dated 9 December 2016



**SEAL OF THE HIGH COURT**

**IN THE HIGH COURT OF JUSTICE OF THE ISLE OF MAN  
CIVIL DIVISION  
CHANCERY PROCEDURE**

**IN THE MATTER of BANNERS BROKER INTERNATIONAL LIMITED (IN LIQUIDATION)**

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**Judgment delivered on 9 December 2016  
by His Honour the Deemster Doyle  
First Deemster and Clerk of the Rolls**

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*Introduction*

1. Miles Andrew Benham and Paul Robert Appleton are the joint liquidators (the "Joint Liquidators") of Banners Broker International Limited (in liquidation) ("BBIL"). The Joint Liquidators have applied for various Orders. A Canadian court has appointed msi Spergel inc as the Receiver (the "Receiver") of BBIL. I am grateful to Christopher Webb who appeared for the Joint Liquidators and the Receiver for his helpful assistance to the court in respect of this matter.

*Orders*

2. For the reasons specified in this judgment I have been persuaded to grant the following Orders:
  - (1) the liquidation of BBIL in the Isle of Man is hereby stayed until further Order and the Joint Liquidators are, subject to compliance with the following Orders, hereby released;
  - (2) the court hereby sanctions the Joint Liquidators entering into the Transition Service and Assignment Agreement (the "Assignment Agreement") which assigns, transfers and conveys to the Receiver, on an "as is where is" basis all of the Joint Liquidators' rights, titles and interests in and to the BBIL estate and the Joint Liquidators should sign the Assignment Agreement forthwith;
  - (3) the Receiver of BBIL shall via Manx advocates make any appropriate filings with the court, including those necessary to complete in due course the winding up of the affairs of BBIL;
  - (4) notice of the making of these Orders shall be advertised in:
    - (a) The London Gazette;
    - (b) one Isle of Man newspaper; and

- (c) on the BBIL website operated by the Receiver and on the EPIQ website;
- (5) the costs of and incidental to the application of the Joint Liquidators and their agents shall be payable from the assets of BBIL as an expense of the liquidation of BBIL.

*Jurisdiction*

3. I am satisfied that the court has jurisdiction to grant these Orders.
4. Under section 194(1) of the Companies Act 1931 this court has a wide power to make an order staying winding up proceedings:
- “... either altogether or for a limited time, on such terms and conditions as the court thinks fit”.
5. Deemster Kerruish in *Navigator Gas Transport plc* (judgment 4 July 2006) did not consider that the permanent stays sought by the Committee of Inspection in that case were detrimental to any creditor. The learned Deemster noted that the continuation of the liquidations would be against the wishes of the secured creditors. The learned Deemster saw no prejudice to anyone in granting permanent stays. The learned Deemster also considered the “commercial morality and the interests of the public at large”.
6. Derek French in *Applications to Wind Up Companies* second edition at page 369 states:
- “A stay may be ordered if it is more convenient to wind up the company in another jurisdiction. [Footnote 265: *Re Oriental Bank Corporation* (1884) 10 VLR (E) 154; *Re Stewart and Matthews Ltd* (1916) 26 Man R 277 – in both cases no creditor objected].”
7. At page 1071 of McPherson’s *Law of Company Liquidation* third edition by Andrew R Keay it is stated:
- “The effect of an order staying the winding up, if expressed in unlimited terms, is that the winding-up process comes to an end – the whole effect of the winding up ceases, and the company can thereupon resume the conduct of its business and affairs as if no winding up existed. The liquidator is entitled to a discharge.”
8. In this case the affairs of BBIL will still be subject to the Canadian orders made and the powers of the Receiver. Moreover, the winding up in the Isle of Man will not be formally concluded until the receivership is concluded in Canada.
9. Under section 184(2)(h) of the Companies Act 1931 the liquidator in a winding up by the court shall have the power “to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets”. The Joint Liquidators have power to enter into the Assignment Agreement. Moreover, under section 184(3) of the Companies Act 1931 the exercise by the Joint Liquidators of the powers conferred by section 184 is subject to the control of the court.

*Reasons for making the Orders*

10. I am satisfied that it is appropriate to make the Orders for the following reasons.
11. As matters stood prior to the making of the Orders, BBIL had court-appointed Joint Liquidators in the Isle of Man and a Canadian court-appointed Receiver in Canada. There was the risk of a lot of duplication of cost and effort.
12. Chief Justice Kawaley in *Energy Development Group Limited (in provisional liquidation)* [2016] SC (Bda) 89 Com, in a judgment delivered on 4 November 2016, skilfully and pragmatically dealt with concerns over duplication of costs in Hong Kong and Bermuda of a provisional liquidation of a company incorporated in Bermuda and listed on the Hong Kong Stock Exchange, when he directed at paragraph 16 that the division of labour should be guided by the overarching principles that:
  - “(a) the Hong Kong office-holders should have primary carriage of the Hong Kong-based work; and
  - (b) the Bermuda officer-holders should have primary carriage of the Bermuda-based work ...”
13. In the circumstances of the case presently before me it is more appropriate to stay the Manx liquidation in favour of the continuation of the Canadian receivership.
14. I should record that during the hearing I put it to Mr Webb that perhaps a simpler way of avoiding duplication would be for the Joint Liquidators to be substituted by Philip Gennis, the Senior Principal of the Receiver. This suggestion did not find favour and the Joint Liquidators required the court to determine their application for a stay and their release as liquidators.
15. It was initially the view of the Joint Liquidators that the centre of main interests was the Isle of Man. However, as matters have progressed it has become apparent that the centre of main interests is in reality and substance Canada.
16. The Ontario Superior Court of Justice in Canada by various orders appointed the Receiver and requested the assistance of the Manx court.
17. It makes a great deal of commercial and practical sense for the Receiver to progress matters in Canada and for the Joint Liquidators in the Isle of Man to stand down. The Committee of Inspection can see this sense and did not oppose the making of the Orders. No creditor objected to the making of the Orders. Indeed, no one has opposed the making of the Orders. It is just and convenient for the Manx liquidation to be stayed and for the Canadian receivership to continue. This will avoid unnecessary duplication and should save a significant amount of time and money.
18. The Orders will cause no undue prejudice to anyone and the Orders do not offend against “commercial morality” or “the interests of the public at large”. The Receiver will remain in existence and in control over the assets and affairs of BBIL until the receivership is concluded.

*Ancillary matters in respect of dissolution*

19. Under section 212(1) of the Companies Act 1931, when the affairs of BBIL have been completely wound up the court shall make an Order that BBIL be dissolved from the date of the Order and BBIL shall be dissolved accordingly. Under section 212(2) of the Companies Act 1931 the Order shall within 14 days from the date thereof be reported to the relevant department who shall make in its books a minute of the dissolution of BBIL.
20. The Receiver (a member of the Canadian Association of Insolvency and Restructuring Practitioners) by letter dated 25 November 2016 has confirmed:

"... its willingness to undertake all necessary functions and requirements on the conclusion of the winding up to ensure that [BBIL] is removed from the company registry. We will also ensure that the necessary paperwork is filed at the Isle of Man Companies Registry and that all necessary steps under statute and procedure are carried out as soon as possible to effect the dissolution of [BBIL] in the Isle of Man. We confirm that the receivership estate will be responsible for any and all costs associated with the conclusion of the winding up of [BBIL]."
21. It would be useful if a copy of the Receiver's final report filed with the Canadian court prior to discharge and release could also be filed in the Isle of Man together with a copy of the final Canadian Order. The Manx court may, in compliance with relevant statutory provisions at the appropriate time, make an Order confirming that BBIL is dissolved pursuant to section 212 of the Companies Act 1931.

*Conclusion*

22. In all the circumstances of this case having considered the evidence, the law and the submissions, I was persuaded that it was appropriate to make the Orders which I have made, in effect staying the Manx liquidation in favour of the continuation of the receivership in Canada, releasing the Joint Liquidators, sanctioning the entering into of the Assignment Agreement, requiring the Joint Liquidators to enter into the Assignment Agreement forthwith and providing for filings, notice of the making of the Orders, costs and making comments in respect of certain ancillary matters.

