IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2025] SGCA 41

Court of Appeal / Civil Appeal No 74 of 2024

Between

Tay Lak Khoon

… *Appellant*

And

(1) Tan Wei Cheong (as Judicial Manager of USP Group Limited)
(2) Lim Loo Khoon (as Judicial Manager of USP Group Limited)
(3) USP Group Limited (under judicial management)

… *Respondents*

Court of Appeal / Civil Appeal No 74 of 2024 (Summons No 9 of 2025)

Between

Tay Lak Khoon

… *Applicant*

And

(1) Tan Wei Cheong (as Judicial Manager of USP Group Limited)
(2) Lim Loo Khoon (as Judicial Manager of USP Group Limited)

(3) USP Group Limited (under judicial management)

… *Respondents*

In the matter of Originating Application No 1024 of 2024

Between

Tay Lak Khoon

… *Applicant*

And

(1) Tan Wei Cheong (as Judicial Manager of USP Group Limited)
(2) Lim Loo Khoon (as Judicial Manager of USP Group Limited)
(3) USP Group Limited (under judicial management)

… *Respondents*

GROUNDS OF DECISION

[Insolvency Law — Administration of insolvent estates — Judicial management — Removal of judicial manager]
[Insolvency Law — Administration of insolvent estates — Judicial management — Counting of votes at creditors' meeting to consider statement of proposals]

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Tay Lak Khoon
v
Tan Wei Cheong (as judicial manager of USP Group Ltd) and others

[2025] SGCA 41

Court of Appeal — Civil Appeal No 74 of 2024 and Summons No 9 of 2025
Sundaresh Menon CJ, Steven Chong JCA, Kannan Ramesh JAD
15 May 2025

2 September 2025

Kannan Ramesh JAD (delivering the grounds of decision of the court):

Introduction

1 Is there due cause for the removal of a judicial manager whose decision based on legal advice that is reasonably relied on, has caused unfair harm to a creditor? This question in turn raises the broader question of what the test is for the removal of a judicial manager for cause. These questions formed the central inquiry in the present appeal which concerned an application by a creditor, pursuant to s 104(1) of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) (the "IRDA"), to remove the judicial managers on the ground that there was a reasonable apprehension of bias. The creditor alleged that such apprehension arose because the judicial managers did not disregard the votes of entities alleged to be related to, or at the very least not independent of, the debtor in a vote on a resolution to approve a statement of proposals. The judicial

managers' riposte was that they acted in good faith in reasonably relying on legal advice which they had obtained on whether the votes should be disregarded in a vote on a statement of proposals. The judicial managers asserted that they had sought legal advice as the legal position on the issue was unclear. A Judicial Commissioner of the General Division of the High Court (the "Judge") held that the judicial managers' decision not to disregard the votes caused the creditor unfair harm. However, the Judge declined to remove the judicial managers, reasoning that there were insufficient grounds to do so. Dissatisfied, the creditor appealed against the Judge's decision.

2 We dismissed the appeal principally on the ground that the judicial managers acted reasonably by relying on the legal advice, as the position in law on the issue concerning the votes was not settled. As the judicial managers did not cross-appeal against the Judge's decision that the votes should have been disregarded, the question of whether the Judge was correct did not arise for our consideration. Nonetheless, as we had reservations about the Judge's conclusion, we make some preliminary observations in these grounds, leaving the question to be fully considered in an appropriate case. We now set out the detailed grounds for our decision and begin by recounting the salient facts.

Facts

The parties

3 The debtor, USP Group Limited (the "Company"), which was the third respondent, is a Singapore-incorporated public company limited by shares. It is the holding company of several subsidiaries (collectively, the "Group"). The appellant, Mr Tay Lak Khoon (the "Appellant"), is a creditor of the Company who is owed about $394,500.

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4 On 11 March 2024, the Company was placed under interim judicial management and Mr Tan Wei Cheong and Mr Lim Loo Khoon, the first and second respondents respectively, were appointed the interim judicial managers. They were appointed judicial managers (the "JMs") on 11 June 2024, when the Company was placed under judicial management (the "JM Order").

Background to the dispute

5 On 24 April 2024, the JMs (then the interim judicial managers) caused the Company to enter into an Implementation Agreement (the "IA") with Hinterland Investments Pte Ltd. As explained in a statement of proposals (the "SOP") which was circulated to the creditors, the purpose of the IA was to allow the Company access to funds that would facilitate the restructuring of the Group.

6 The SOP proposed two resolutions (individually the "First Resolution" and the "Second Resolution" and collectively, the "Resolutions"). The First Resolution sought approval to proceed with a restructuring plan that provided for the implementation of the IA. The Second Resolution sought approval to extend the JM Order by six months to facilitate implementation of the restructuring plan (if it was adopted).

7 A creditors' meeting was convened in September 2024 for the creditors to consider and adopt the SOP, and to vote on the Resolutions. Prior to the creditors' meeting, the Appellant cautioned the JMs that the votes of certain entities should be disregarded as they were under the Company's control as its wholly owned subsidiaries. The JMs responded that this was not a basis to disregard the votes of those entities.

8 At the creditors' meeting, the proxies of three creditors were not permitted to vote for the reasons set out below (at [62]–[63]). The creditors were

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Nine Yards Chambers LLC ("NYC"), UniLegal LLC ("UniLegal") and Nicholas & Tan Partnership LLP ("N&T"). 58.06% in number and 89.31% in value of the creditors present voted in favour of the First Resolution, whilst 60.61% in number and 89.78% in value voted in favour of the Second Resolution. The Appellant, who was present, voted against the Resolutions.

9 Following the creditors' meeting, the Appellant reiterated his objection to the votes of the entities referred to in [7] above and also raised objections to the votes of other entities on the same ground. For the purposes of the present appeal, the entities whose votes were challenged were: Biofuel Research Pte Ltd; Koon Cheng Development Pte Ltd; Supratechnic Pte Ltd; Scientific & Industrial Instrumentation Pte Ltd; Theme A Investment Holdings Pte Ltd; and Hinterland Group Pte Ltd (collectively, the "Entities"). The Appellant contended that the Entities' votes should have been disregarded because they were alleged to be not ordinary, independent and objective creditors of the Company. In substance, the allegation was that the Entities were related to, or at the very least not independent of, the Company. There was good reason for the Appellant's objections. If the Entities' votes were disregarded, the First Resolution would not carry as only 48% in number of the creditors present would have voted in favour of the resolution, which would fall below the requisite majority (see r 34 of the Insolvency, Restructuring and Dissolution (Judicial Management) Regulations 2020). The JMs disagreed with the Appellant's objections. They pointed out that on a vote to approve a statement of proposals, there was no legal basis to disregard the Entities' votes on the ground asserted.

10 Dissatisfied, the Appellant commenced the proceedings below on 4 October 2024 – HC/OA 1024/2024 ("OA 1024") – seeking the following: (a) an order that the votes cast by the Entities be wholly disregarded; (b) a

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declaration that the First Resolution was not validly passed; (c) a declaration that the JMs had acted in a manner that was unfairly prejudicial to the interests of the creditors by taking into account the Entities' votes; and (d) an order for the removal of the JMs.

11 At the same time, the Appellant also filed HC/SUM 2875/2024 ("SUM 2875") for an interim injunction to restrain the JMs from carrying out the restructuring plan in the SOP, until disposal of OA 1024. A consent order was subsequently entered on 17 October 2024, with costs reserved for determination at the hearing of OA 1024.

Decision below

12 Before the Judge, the Appellant argued that the Entities' votes should have been disregarded. The JMs' failure to do so was unfairly prejudicial to the creditors voting against the Resolutions. Further, the JMs' conduct along with their refusal to allow the proxies of NYC, UniLegal and N&T to vote gave rise to a reasonable apprehension of bias.

13 The Judge agreed with the Appellant that the Entities' votes should have been disregarded on the basis asserted and declared that the First Resolution had not been validly passed. Drawing from and analogising with a line of cases that have held that the votes of related parties in a vote on a scheme of arrangement should similarly be disregarded, the Judge reasoned that the Entities' votes should have been disregarded and the JMs' failure to do so caused unfair harm to the Appellant. Nonetheless, the Judge declined to declare that the JMs had acted in a manner that was unfairly prejudicial to the interests of the creditors, reasoning that he did not need to make the declaration. The Judge also declined to remove the JMs as he was of the view that they had made an honest error in taking into account the Entities' votes. Finally, the Judge accepted the JMs'

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justification for not permitting NYC, UniLegal and N&T to vote at the creditors' meeting (see *Tay Lak Khoon v Tan Wei Cheong (as Judicial Managers of USP Group Ltd) and others (Fervent Chambers LLC, non-party)* [2024] SGHC 312 ("GD") at [28], [35], [37] and [44]–[45]).

14 The Judge made no order as to costs on OA 1024 as both the Appellant and the JMs had partially succeeded in the application (GD at [49]). The Judge also made no order as to costs on SUM 2875 because a consent order had been entered in the summons.

15 Dissatisfied, the Appellant appealed against the Judge's decision on the following issues: (a) the refusal to declare that the JMs acted in a manner that was unfairly prejudicial to the creditors; (b) the refusal to remove the JMs; and (c) the refusal to award costs to the Appellant in OA 1024 and SUM 2875.

The parties' cases

16 The Appellant did not pursue his appeal on the Judge's refusal to declare that the JMs' acceptance of the Entities' votes was unfairly prejudicial to the creditors. Instead, the focus of his case was that the JMs' conduct gave rise to a reasonable apprehension of bias and a justified loss of confidence because (a) the Entities' votes were improperly counted, and (b) NYC and UniLegal were improperly not permitted to vote. The Judge therefore erred in refusing to remove the JMs. On costs, the Appellant contended that he should have been awarded the costs of OA 1024 and SUM 2875 because the Judge had held that the Entities' votes should have been disregarded and that the First Resolution had not been validly passed.

17 The Appellant sought to adduce three categories of new evidence on appeal in CA/SUM 9/2025 ("SUM 9"). We address SUM 9 at [66]–[68] below.

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18 The JMs contended that the Appellant failed to demonstrate a reasonable apprehension of bias and a justified loss of confidence in their ability to act impartially. The JMs' primary argument was that their actions were informed by their solicitors' advice on whether the Entities' votes could be counted, which they had reasonably relied on.

19 The JMs further contended that the Judge erred in finding that they had unfairly prejudiced the creditors' interests by taking into account the Entities' votes. Though the JMs did not cross-appeal against the point, they sought to reverse on appeal the Judge's finding that the Entities' votes should have been disregarded, contending that they had acted reasonably in accepting the votes.

20 The JMs did not cross-appeal against the Judge's decision on costs. However, they submitted that if the present appeal was dismissed, costs for OA 1024 and SUM 2875 should be awarded to them. The JMs sought an uplift for indemnity costs, alleging that OA 1024 and the present appeal had been brought in bad faith and for a collateral purpose.

Issues to be determined

21 The following issues arose for our consideration:

(a) Was there due cause for removing the JMs because they accepted the Entities' votes and refused to permit the proxies of NYC and UniLegal to vote?

(b) Should the Appellant have been awarded the costs of OA 1024 and SUM 2875?

22 Before we turn to consider the issues, we make an observation. As noted above at [19]–[20], the JMs did not file a cross-appeal against the Judge's

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decision on costs and on the question of whether the Entities' votes should have been disregarded. A respondent who seeks to challenge a holding of the court below has to file a cross-appeal against that holding (see *Sapura Fabrication Sdn Bhd and others v GAS and another appeal* [2025] 1 SLR 492 at [50]). If not, there is no jurisdiction to consider the issue on appeal. As such, the JMs were precluded from challenging the Judge's conclusions on these issues. Having said that, as we had reservations on whether the Judge was correct in concluding that the Entities' votes should have been disregarded, we make some preliminary observations below on that issue at [78]–[84].

Was there due cause for removing the JMs because they accepted the Entities' votes and refused to permit NYC and UniLegal to vote?

Primary questions

23 Before we turn to the analysis, we first address two primary questions: (a) whether "due cause" must be shown for the removal of a judicial manager, and (b) what the test for the removal of a judicial manager for cause should be.

Due cause

24 Section 104(1)(*a*) of the IRDA provides that the court may, at any time, order the removal of a judicial manager from office. Although s 104(1)(*a*) of the IRDA does not state that due cause must be shown, it is settled that due cause must be shown. In *Clark & another v Finnerty and another* [2010] EWHC 2538 (Ch), when considering para 88 of Schedule B1 of the Insolvency Act 1986 (c 45) (UK) for removal of an administrator (which is broadly similar to s 104(1)(*a*)), the court explained that although the words "on cause shown" were absent in para 88, cause had to nonetheless be shown to justify removal of the administrator (at [8]). We agree.

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The test

25 The principles for the removal of a judicial manager are analogous to the principles for the removal of a liquidator (see Gavin Lightman *et al*, *Lightman & Moss on the Law of Administrators and Receivers of Companies* (Sweet & Maxwell, 6th Ed, 2017) at para 27-003). There is no distinction in the approach to the removal of a judicial manager and a liquidator for cause (see *Sisu Capital Fund Ltd v Tucker* [2005] EWHC 2170 (Ch) at [88]).

26 What is the test for the removal of a judicial manager? We start by considering the two-stage test stated in *DB International Trust (Singapore) Ltd v Medora Xerxes Jamshid and another* [2023] 5 SLR 773 ("*DB International*") for the removal of a liquidator appointed by the court in a compulsory liquidation, under s 139(1) of the IRDA. Section 139(1) is derived from s 268(1) of the Companies Act (Cap 50, 2006 Rev Ed) (the "Companies Act"). The two-stage test is as follows (*DB International* at [13]):

> (a) an assessment by the court of the purposes for which the liquidator was appointed, which is co-extensive with the purposes of the liquidation; and
>
> (b) an assessment by the court of whether the removal of the liquidator is in the real, substantial and honest interest of the liquidation, bearing in mind the purposes for which the liquidator was appointed.

If both steps are satisfied, due cause for the removal of the liquidator would be shown, which would then enliven the court's discretion to remove the liquidator (*DB International* at [13]).

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27 We have three principal difficulties with the two-stage test stated in *DB International*. First, we question whether the first stage is even necessary. In our view, the first stage is in fact subsumed under the second stage. Second, we are unable to see what "honest" meaningfully adds to the inquiry on whether the removal of the liquidator is in the real and substantial interest of the liquidation. In our view, "honest" is not a necessary element of the test. Third, insofar as *DB International* suggested that the court retains a discretion which arises *only after* due cause has been shown, we respectfully disagree. We consider each of these points in turn.

28 *DB International* found support for the two-stage test in certain views expressed by the General Division of the High Court in *Petroships Investment Pte Ltd v Wealthplus Pte Ltd (in members' voluntary liquidation) (Koh Brothers Building & Civil Engineering Contractor (Pte) Ltd and another, interveners) and another matter* [2018] 3 SLR 687 ("*Petroships*"). These views were expressed in the context of the removal of a liquidator in a voluntary liquidation, pursuant to s 302 of the Companies Act (now s 174 of the IRDA). Following a review of English and local authorities, *Petroships* observed at [125] that the principal guide for assessing whether cause had been shown was the real, substantial and honest interest of the liquidation. It was further observed that it was equally important to assess whether cause had been shown with reference to the purposes of the liquidation, citing Bowen LJ in *In Re Adam Eyton, Limited Ex parte Charlesworth* (1887) 36 Ch D 299 ("*Adam Eyton*"). *Petroships* described this at [127] as the two-limb test articulated by Bowen LJ in *Adam Eyton* at 306. With respect, a careful review of *Adam Eyton* shows that Bowen LJ did not articulate a two-limb test. Indeed, none of the other authorities considered in *Petroships* referred to a two-limb test. There is therefore no support in the authorities for the two-limb test stated in *Petroships*.

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29 The issue in *Adam Eyton* was whether Jessel MR in *Re Sir John Moore Gold Mining Company* (1879) 12 Ch D 325 ("*John Moore*") was correct in stating that the unfitness of the liquidator was a pre-requisite for the removal of a liquidator for cause. Delivering the leading judgment, Cotton LJ disagreed with Jessel MR, stating that the test was instead whether it was against the interest of the liquidation not to remove and replace the liquidator. He described the "interest of the liquidation" as those who were interested in the company being liquidated (*Adam Eyton* at 303 and 304). Bowen LJ agreed with Cotton LJ, stating at 306 that the "measure of due cause is the substantial and real interest of the liquidation". While we acknowledge that Bowen LJ did state earlier in the same paragraph that "due cause is to be measured by reference to the real, substantial and honest interests of the liquidation, *and to the purpose for which the liquidator is appointed*" [emphasis added] (at 306), seen in context, he was not articulating a two-limb test as *Petroships* had concluded. Instead, Bowen LJ was simply underscoring the point that the primary consideration was the interest of the liquidation as measured with reference to the purposes for which the liquidator was appointed.

30 In our view, Bowen LJ could not have intended a two-limb test. This is because the first stage is in fact subsumed under the second stage. It is obvious that the context for assessing whether the removal of the liquidator is in the real and substantial interest of the liquidation must be the purposes for which the liquidator was appointed, which in turn must be co-extensive with the purposes of the liquidation. This may explain why none of the cases have stated that the purposes for which the liquidator was appointed or the purposes of the liquidation were separate factors. Indeed, as noted above, even Bowen LJ understood the inquiry as a composite analysis.

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31 There is therefore no support for the two-stage test stated in *DB International*. The first stage is subsumed in the inquiry under the second stage. In our view, the second stage represents the appropriate test for the removal of a liquidator for cause, with one refinement.

32 Before we turn to that, we note that in *Chua Boon Chin v McCormack John Maxwell and others* [1979–1980] SLR(R) 121 at [25], it was suggested that the unfitness of the liquidator was an independent ground for the removal of the liquidator, in addition to the interest of the liquidation. With respect, we disagree. The "real and substantial interest of the liquidation" test encompasses the inquiry on whether the liquidator is fit for office.

33 We now turn to the refinement. If the removal of the liquidator is in the real and substantial interest of the liquidation, it is difficult to see what "honest" adds to that inquiry. The term was first used by Bowen LJ in *Adam Eyton* at 306 (referred to at [29] above). However, almost immediately after that, he dropped the term and only used "substantial and real interest of the liquidation". It is therefore unclear whether Bowen LJ had intended "honest" to be part of the test and if so, in what manner. Notably, Cotton LJ did not adopt "honest" in his test. While some of the authorities that came after *Adam Eyton*, including *Petroships* and *DB International*, cited with approval Bowen LJ's use of "real, substantial and honest", they failed to explain what "honest" adds to the inquiry. They also failed to note that Bowen LJ had dropped the word "honest" subsequently. Accordingly, in our view, "honest" is not a necessary element of the test, which we emphasise, is directed at the "interest of the liquidation".

34 Finally, we turn to the question of when the court's discretion to remove the liquidator is exercised. In our view, insofar as *DB International* suggested that the court retains a discretion which arises *only after* due cause for the

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removal of the liquidator has been shown, we respectfully disagree. This cannot be correct as a matter of principle. There is no support for this proposition in the authorities and there is good reason why that is the case. We struggle to see in what circumstances the court will decline to remove the liquidator where it has already concluded, after weighing all relevant factors, that the best interest of the liquidation is served by the removal of the liquidator. Indeed, *DB International* recognised the difficulty posed by its approach. At [13], it stated that removal would usually be the case if due cause was shown, without positing the situations where the removal of the liquidator would not be the result.

35 In our view, the court's discretion is exercised when weighing the factors – including the view of the creditors in an insolvent liquidation – that are relevant to whether the removal of the liquidator is in the real and substantial interest of the liquidation. If after weighing those factors, the court concludes that the removal of the liquidator is appropriate, an order for the removal of the liquidator should follow.

36 In summary, for the purpose of s 139(1) of the IRDA, the single overarching question is whether the removal of a court-appointed liquidator in a compulsory liquidation is in the real and substantial interest of the liquidation. This represents the test for the removal of the liquidator for cause. The same test, with suitable modifications, would apply to the removal of a judicial manager, for the purposes of s 104(1) of the IRDA. We would add that we see force in the argument that the same approach (with a qualification) should also apply to the removal of a liquidator in a voluntary liquidation, under s 174 of the IRDA, given the similarity in wording between s 139(1) and s 174 of the IRDA. A similar observation was made in *DB International* at [11]. This is subject to the persons interested in the liquidation being different depending on

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whether it is an insolvent or solvent liquidation. It would be creditors in the former (see [37] below) and the members in the latter.

37 Some brief observations on the application of the test. As noted above, the court will weigh all relevant factors when applying the test. One factor will be the views of all stakeholders who have an interest in the liquidation, which in an insolvent liquidation will be the creditors (see *Finnerty and another v Clark and another* [2012] 1 BCLC 286 at [16]). The creditors will also arguably be the relevant stakeholders in a judicial management as in an insolvency process (see s 89(2) of the IRDA). Consideration should also be given to all aspects of the insolvency process (*eg*, the stage of the insolvency process and the incumbent's familiarity with the company) (*Petroships* at [109(g)] and [174]). While not determinative, the more mature or advanced the liquidation or judicial management or where the liquidator or judicial manager has undertaken extensive work in discharging his duties, the more compelling must be the reasons for removal. For example, where the liquidation or judicial management is advanced and the errors were made in good faith and did not cause prejudice to the insolvency process, removal might not be appropriate (see *Procam (Pte) Ltd v Nangle and another* [1990] 1 SLR(R) 605 at [27]). This is for two reasons. First, the removal of the liquidator or judicial manager is disruptive to the insolvency process. Second, the learning curve of the replacement will likely add to the cost burden of the estate. The later in the insolvency process the removal occurs, the greater the disruption and the cost burden will be. The consequences will inevitably be borne by the creditors. On the other hand, in cases where the court is satisfied after taking all the relevant factors into account, including the nature of the liquidator' failing and the stage at which it arose, that it is in the best interest of the liquidation to remove the liquidator, the court will do so. The short point we make here is that it is in this exercise of balancing all the factors that the court's discretion is enlivened.

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38 Having addressed the primary questions, we turn to the first issue.

Removal of a judicial manager on the ground of a reasonable apprehension of bias

39 Bias is a ground for the removal of a liquidator or judicial manager. Bias may manifest itself in two forms – actual bias or a reasonable apprehension of bias (or apparent bias). Actual bias did not arise in the present appeal, but reasonable apprehension of bias did, in view of the Appellant's contention that the JMs' conduct gave rise to that perception. Apparent bias may arise in at least two situations; (a) breach of the fair hearing rule which concerns the impartiality of the decision maker, and (b) breach of the no-interest rule which concerns independence of the decision maker. The second situation was relevant in the present appeal. The test for apparent bias in both situations is the same – whether a fair minded and well-informed observer who takes all relevant factors into account would reasonably apprehend bias.

40 This is an objective inquiry (see *Advance Housing Pty Ltd (in liq) v Newcastle Classic Developments Pty Ltd – as trustee for The Albans Unit Trust* (1994) 14 ACSR 230 at 234 in the case of a liquidator and *BOI v BOJ* [2018] 2 SLR 1156 at [103(b)] in the case of an arbitrator).

41 In Australia, a *single* test applies regardless of whether the decision-maker is a liquidator, administrator, judge or administrative decision-maker, in determining whether there is a reasonable apprehension of bias on the part of a decision-maker (see *Australian Securities and Investments Commission (ASIC) v Franklin (Liquidator)* [2014] FCAFC 85 at [59]; *Korda, in the matter of Ten Network Holdings Ltd (Administrators Appointed) (Receivers and Managers Appointed)* [2017] FCA 914 ("*Ten Network Holdings*") at [74]–[80]). The test is whether a fair-minded observer would reasonably apprehend that the

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decision-maker might not bring an impartial mind to the questions that might have to be decided (see *Australian Securities and Investments Commission (ASIC) v Jones* [2023] WASCA 130 at [196] ("*Jones*")). We agree with this approach. The basis of the challenge against all decision-makers on the ground of apparent bias is fundamentally the same – whether a fair-minded observer might reasonably apprehend bias.

42 Broadly speaking, the reasonable fair-minded observer is imputed with knowledge in two aspects. First, knowledge of the nature of the decision, the circumstances leading to the decision and the context in which the decision was made (*Jones* at [199]). Second, knowledge of the character or ability of the decision-maker (*Jones* at [201]).

43 However, the knowledge that is attributed to the reasonable fair-minded observer is contextual. Such knowledge may therefore differ depending on the specific roles, duties and responsibilities of the decision-maker whose impartiality is being challenged. The need to be careful in attributing knowledge in this regard is self-evident. In the case of an administrator, O'Callaghan J in *Ten Network Holdings* accepted that the reasonable fair-minded observer would have an interest in the independence of insolvency practitioners because the effective operation of the restructuring and insolvency market (and since the administrator is an officer of the court, also the court) relies on the trustworthiness and independence of such officeholders. The reasonable fair-minded observer would thus expect administrators to act objectively in performing their duties (at [79]–[80]).

44 An illustration of how this may play out in relation to the no-interest rule (see above at [39]) is where the administrator is substantially involved with the company prior to its administration such that a conflict of interest could arise or

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impede the fair and impartial discharge of duties by the administrator (see *Commonwealth v Irving & NPC Manufacturing Pty Ltd* (1996) 144 ALR 172 at 177). Thus, in *Ten Network Holdings*, it was held that there were two reasons why a reasonable fair-minded observer would reasonably apprehend that the administrators in that case were biased. First, the administrators, who were nominated by a firm, had a referral relationship with that firm, and might have had to investigate the firm over the course of the administration. Second, the administrators would have to consider whether their pre-appointment payments were voidable preferences in any subsequent liquidation (at [67]).

45 However, certain views expressed in *Petroships* appear to suggest that it would be inappropriate for the reasonable fair-minded observer test to be applied to the removal of a judicial manager. In *Petroships*, it was held that significant weight should be given to the creditor's reasonably held *subjective* belief of bias which resulted in the creditor's loss of confidence in the liquidator's ability to discharge his duties without fear or favour (at [147]). *Petroships* cautioned against analogising such belief, which was described as perceived bias, with apparent bias. Two reasons were offered for this view. First, "apparent bias" was, in the strict sense, a legal test formulated in the context of the principles of natural justice. In contrast, the existence or absence of a subjective belief of bias was not the decisive test in determining whether a liquidator should be removed. Second, the test for apparent bias was hypothetical in nature in that it was based on whether a fair-minded person with knowledge of all relevant facts would have a reasonable suspicion of bias. In contrast, where the creditor was unable to show that he held a subjective belief of bias, the creditor would not be able to demonstrate that he had lost confidence in the liquidator's ability to discharge his duties with competence and impartiality (*Petroships* at [159]–[162]).

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46 With respect, we disagree with the views in *Petroships*, for two reasons.

47 First, the proposition in *Petroships* that subjective belief has significant, though not decisive weight, is unsupported by the authorities. The cases that *Petroships* relied upon, namely *John Moore* and *Adam Eyton*, do not support that proposition. These cases concern the factors that are relevant to the removal of a liquidator.

48 As stated above, in *John Moore*, Jessel MR observed that the liquidator's unfitness for duty could constitute due cause. Unfitness was construed broadly and included personal character, the liquidator's connection with other parties and the nature of the circumstances in which he was "mixed up" (at 331). These were objective circumstances that demonstrated an unfitness to hold office. As noted above at [29], in *Adam Eyton*, Cotton LJ stated that the court could remove that liquidator if it was satisfied that it was against the interests of all who were interested in the company being liquidated that the liquidator remained in office (at 303–304). There was no discussion on the subjective belief of the creditor. Thus, both *John Moore* and *Adam Eyton* do not stand for the proposition that a creditor's subjective belief is relevant.

49 Second, it is difficult to understand the relevance of the creditor's subjective belief. The question ultimately turns on whether the facts demonstrate a reasonable apprehension of bias; it is difficult to see how the creditor's subjective belief makes a difference to this analysis.

50 We are therefore of the view that the creditor's subjective belief of bias is not pertinent to the question of whether there is a reasonable apprehension of bias. However, where relief is sought on the ground that the creditor has lost confidence in the judicial manager's ability to discharge his duties, the

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creditor's belief may be relevant, though the court will consider the weight to be attributed to such subjective belief in light of all the circumstances and having regard ultimately to the best interests of the liquidation or judicial management of the company, as the case may be.

51 Having set out the applicable principles, we turn to explain why we concluded that the JMs' conduct in accepting the Entities' votes did not constitute cause for removal.

There was no due cause for removal as the JMs' conduct in accepting the Entities' votes did not give rise to a reasonable apprehension of bias

52 The question in the present appeal was whether a fair-minded and informed person would reasonably apprehend that the JMs were biased (see *DJP and others v DJO* [2025] 1 SLR 576 at [38]). The fair-minded and informed person would be taken to know the nature of the JMs' decision, the circumstances leading to the decision and the context in which the decision was made. Specifically, the fair-minded and informed person would know the basis of the JMs' decision on whether a vote should be counted or permitted, the circumstances leading to the decision and the context against which the decision was made. These factors would be assessed in the context of a fair-minded and informed person's desire to ensure that insolvency officeholders were trustworthy and independent and were acting objectively in discharging their duties. With that, we turn to the analysis.

53 The issue was whether removing the JMs was in the real and substantial interest of the judicial management of the Company. We did not accept the Appellant's argument that due cause for the removal of the JMs had been made out. We came to this conclusion for the following reasons.

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The JMs were entitled to rely on their solicitors' advice regarding the counting of the Entities' votes

(1) The relevance of legal advice that is relied upon by a judicial manager

54 The principles applicable to reliance on legal advice were set out by this Court in *Turf Club Auto Emporium Pte Ltd and others v Yeo Boong Hua and others and another appeal* [2018] 2 SLR 655 ("*Turf Club Auto*") and *Foo Kian Beng v OP3 International Pte Ltd (in liquidation)* [2024] 1 SLR 361 ("*Foo Kian Beng*"). In the context of directors who took legal advice before undertaking a course of action, this Court held that that the mere fact such legal advice was taken did not necessarily mean that the director had acted in good faith. The court must be provided with sufficient information about the circumstances in which the advice was provided in order to evaluate the extent to which it might be said that the director could fairly rely on the legal advice (*Turf Club Auto* at [338]; *Foo Kian Beng* at [136]).

55 In our view, broadly speaking, these principles are also applicable to insolvency officeholders who rely on legal advice in embarking on a course of action. In this regard, we note that under English law, the general rule is that an administrator may rely on professional advice when discharging his duties as long as the advice relied on appears to be competent. The administrator must show that reliance on the professional advice was reasonable in the circumstances (see *Re Swiss Cottage (38) Properties Ltd (in liquidation) and another company* [2023] 2 BCLC 457 ("*Swiss Cottage*") at [174]). The views expressed in *Swiss Cottage* are consistent with the principles set out in *Turf Club Auto* and *Foo Kian Beng*. The relevant question is whether reliance on the professional advice was reasonable in the circumstances. That is a fact-specific inquiry.

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56 *Swiss Cottage* provides useful guidance on the circumstances when it may be reasonable for a judicial manager (or for that matter, a liquidator) to rely on professional advice. In *Swiss Cottage*, one of the issues was whether the administrators were entitled to rely on the advice provided by real estate agents marketing the sale of certain properties. Various criticisms were levelled against the advice that was given. Johnson J, however, held that the criticisms neither addressed what had actually occurred during the sale of the properties nor explained why the advice provided was so misguided that the lead administrator should have disregarded it (at [266]). The court was of the view that the advice was straightforward, and it was reasonable for the lead administrator to rely on it (at [285]). Although *Swiss Cottage* concerned advice given by a real estate professional to an administrator, in principle there is no reason why the views expressed there should not apply to legal professional advice obtained by an administrator.

57 Consequently, if the advice appeared to be competent, it would be reasonable for an insolvency officeholder to rely on it in making a decision. The advice would not appear to be competent if a reasonable insolvency officeholder in the same position would have harboured concerns that it was not correct. Relying on the advice in such circumstances would not be reasonable.

(2) It was reasonable for the JMs to have relied on the legal advice

58 It was reasonable for the JMs to have relied on the legal advice they had obtained on whether the Entities' votes should be disregarded. The JMs approached their solicitors for advice on whether it was appropriate to count the Entities' votes, in light of the Appellant's objections. They were advised that they should not disregard the votes. There was nothing to suggest that the advice was not competent. It followed that it would not have been apparent to the JMs

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that there was anything wrong with it. Counsel for the Appellant acknowledged that the legal position on whether related party votes at a creditors' meeting to approve a statement of proposals should be disregarded was not settled. The JMs were therefore acting reasonably in declining to disregard the Entities' votes based on their solicitors' advice. Accordingly, the JMs' conduct in counting the Entities' votes could not have given rise to any reasonable apprehension of bias in the mind of a fair-minded and informed observer. Even if the advice was incorrect and the JMs erred in counting the Entities' votes, this was nothing more than an honest mistake. An honest error would not give rise to a reasonable apprehension of bias justifying the JMs' removal (see, *eg*, *Petroships* at [215] and [217]).

59 The Appellant relied on this Court's decision in *Foo Kian Beng*. However, *Foo Kian Beng* is in fact against the Appellant's position. The issue in *Foo Kian Beng* was whether the appellant had breached his director's duty to act in the best interests of the creditors when he authorised certain payments to himself in circumstances where the company was insolvent or in a financially parlous position. The appellant argued that the company was not insolvent as a contingent liability, namely a claim brought against the company, was not reasonably likely to arise. This was because he had obtained legal advice that the claim was not likely to succeed.

60 This Court rejected the argument, holding that there was a paucity of evidence that the alleged legal advice had been given. In this regard, it was observed that the legal advice was extremely cursory, given orally and there were no written notes to document it. Also, the appellant did not call as a witness the solicitor who purportedly gave the advice. It was also observed that there was nothing to suggest that the solicitor had reviewed the relevant documents or conducted a site visit in coming to his conclusion that the company had a

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strong defence to the claim (at [135]). Thus, aside from the evidential question in *Foo Kian Beng* of whether the advice had been given, it was clear that it would not have been reasonable to rely on the advice given the limited information that was evaluated by the solicitor in providing the advice. *Foo Kian Beng* therefore did not assist the Appellant.

61 Hence, it was clear that the Appellant failed to show that the JMs' conduct in refusing to disregard the Entities' votes gave rise to a reasonable apprehension of bias. The JMs had sensibly relied on legal advice in taking into account the Entities' votes given that the legal position was not settled. Even if the JMs had erred in counting the Entities' votes because the advice was not correct (which may not be the case as we discuss below at [78]–[84]), this was nothing more than an honest mistake and could not give rise to a reasonable apprehension of bias.

The JMs were entitled to refuse to allow the proxies of NYC and UniLegal to vote at the creditors' meeting

62 The Appellant also challenged the JMs' refusal to permit the proxies of NYC and UniLegal to vote. Notably, he did not challenge the JMs' refusal to allow N&T to vote. For completeness, N&T was not allowed to vote because it had not filed a proof of debt.

63 In our view, the JMs' refusal was justified. Although creditors were required to submit a proxy form by 3pm on 4 September 2024 if they wished to vote, NYC submitted its proxy form only on 6 September 2024. Creditors who wished to vote were also required to submit their proofs of debt by 5pm on 29 July 2024. UniLegal, however, only submitted its proof of debt and proxy form on 3 September 2024. Since NYC and UniLegal were out of time, the JMs were entitled, and indeed, correct, in the interest of consistency and fairness and as a

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matter of law, to reject the proof of debt and proxy form as the case may be. Therefore, the JMs' act of preventing the proxies of NYC and UniLegal from voting could not give rise to a reasonable apprehension of bias.

There was no justifiable loss of creditors' confidence in the JMs

64 The Appellant alleged that the creditors had lost confidence in the JMs. He relied on eight letters of support from various creditors calling for the JMs' removal by reason of their conduct at the creditors' meeting.

65 As the letters of support concerned the JMs' conduct at the creditors' meeting (*ie*, in counting the Entities' votes as well as not permitting the proxies of NYC and UniLegal to vote), we did not consider that these letters added anything to the analysis since these reasons given for the purported loss of confidence were not valid, for the reasons stated earlier at [54]–[63].

The fresh evidence sought to be adduced by the Appellant amounted to running a new case on appeal and was not relevant

66 To further support his submission that there was due cause for the removal of the JMs, the Appellant sought to adduce fresh evidence by way of SUM 9. We dismissed SUM 9 for two reasons.

67 First, the new evidence was primarily not about the conduct of the JMs at the creditors' meeting, which was the inquiry before the Judge and the subject matter of the appeal. The Appellant sought to adduce the new evidence in order to advance a new case on appeal, which is generally not permitted (see *Nicholas Eng Teng Cheng v Government of the City of Buenos Aires* [2024] 1 SLR 608 at [30]). As an illustration, one of the categories of documents sought to be adduced related to the appointment of a Mr Melvin Tan ("Mr Tan") on 27 September 2024 as a director of Supratechnic (M) Sdn Bhd ("Supra M"). The

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Company was the ultimate parent of Supra M. The Appellant asserted that the appointment ought to have been disclosed to the creditors, but it was not disclosed. Disclosure ought to have been made because Mr Tan was allegedly in a position of conflict of interest by reason of the appointment as he was effectively on both sides of the IA. The JMs' failure to disclose the appointment, it was alleged, fortified the reasonable apprehension of bias. However, it was apparent that the allegation concerning Mr Tan had nothing to do with the votes that were cast on the Resolutions. Mr Tan's appointment occurred after and was unrelated to the creditors' meeting where the Resolutions were passed.

68 Second, in any event, once it was recognised that the JMs reasonably relied on legal advice in accepting the Entities' votes and were justified in preventing the proxies of NYC and UniLegal from voting, it was clear that the new evidence was not relevant. SUM 9 was therefore dismissed.

Conclusion: There was no due cause shown for the JMs' removal

69 In summary, the Appellant failed to show due cause for the removal of the JMs. The JMs' conduct at the creditors' meeting did not give rise to a reasonable apprehension of bias. Further, there was no justifiable loss of confidence in the JMs. There were also no other aspects of the judicial management that pointed to the removal of the JMs. We accordingly dismissed the appeal against the Judge's refusal to remove the JMs.

70 We next turn to explain our reasons for dismissing the appeal against the Judge's decision on costs.

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Should the Appellant have been awarded the costs of OA 1024 and SUM 2875?

Applicable legal principles

71 The principles on the court's power to determine costs are settled. It is a matter of discretion (see O 2 r 13(1) of the Rules of Court 2021 (the "ROC")), with the general rule being that costs should follow the event (see O 21 r 3(2) of the ROC). Ultimately, considerations of fairness and common sense apply, and the costs order must reflect the overall justice of the case (see *BCBC Singapore Pte Ltd and another v PT Bayan Resources TBK and another* [2024] 1 SLR 1 ("*BCBC*") at [25]–[26]).

72 The principles on appellate intervention on the exercise of discretion are also settled. Where a lower court has explained how it decided costs, an appellate court would be slow to overturn the lower court's decision, unless the lower court erred in exercising its discretion (*BCBC* at [27]). The test is whether the lower court: (a) erred in law or principle; (b) considered a matter which it should not have considered; or (c) arrived at a decision that was plainly wrong and was the product of a faulty assessment of the weight of the various factors the court needed to consider (see *Goh Chok Tong v Jeyaretnam Joshua Benjamin and another action* [1998] 2 SLR(R) 971 at [60]).

There was no basis to disturb the Judge's decision to make no order as to costs

73 There was no basis to disturb the Judge's decision to make no order as to costs on OA 1024 and SUM 2875.

74 We start by observing that the appeal on costs was undermined by the fact that the Appellant had failed in his appeal to have the JMs removed for

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cause. That should itself be dispositive of his appeal on costs as he seeks costs below in his favour.

75 In any event, the Judge did not err in making no order as to the costs as regards OA 1024. The Judge reasoned that because each party succeeded on one of the two central issues before him – the permissibility of counting the Entities' votes and the removal of the JMs (the Appellant succeeding on the first and the JMs on the second) – it was appropriate to make no order as to costs (GD at [49]). We saw no reason to disagree with the Judge's view.

76 The Judge likewise did not err in making no order as to the costs of SUM 2875. The Judge reasoned that no order as to costs was appropriate since it was a consent order and thus, there was no successful party, as it were, as the summons was not contested. The Judge was entitled to take this view. In addition, the critical point was that the costs of SUM 2875 were reserved for determination at the hearing of OA 1024. This suggested that it was contingent upon the result of OA 1024. Given that the costs order in SUM 2875 tracked the costs order in OA 1024, the result the Judge arrived at was entirely justified. We therefore saw no error in the Judge's decision.

77 We accordingly dismissed the appeal on costs.

Whether the Entities' votes ought to have been disregarded – some observations

78 The Judge concluded that the JMs ought to have disregarded the Entities' votes on the basis that they were parties that had a special interest in supporting the SOP. In arriving at this conclusion, the Judge relied on the cases involving the counting of related party votes in a scheme of arrangement (GD at [30]–[32]). As noted above, while the question decided by the Judge did not

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arise for our consideration (as the JMs did not cross-appeal the finding), we had some reservations as to whether the Judge was in fact correct. We therefore state our provisional views, leaving the point for full consideration in an appropriate case, while noting that nothing turned on this in the present appeal.

79 When a court considers whether to sanction a scheme of arrangement for the adjustment of debt, it may discount the vote of a creditor who by reason of a personal or special interest in supporting the scheme may disregard the interests of the class and vote solely motivated by such interest (see *The Royal Bank of Scotland NV (formerly known as ABN Amro Bank NV) and others v TT International Ltd and another appeal* [2012] 2 SLR 213 ("*TT International*") at [154]–[155]). This is why the votes of related party creditors are typically disregarded in a scheme of arrangement put forward by a company (see *SK Engineering & Construction Co Ltd v Conchubar Aromatics Ltd and another appeal* [2017] 2 SLR 898 at [64] and [67]).

80 These considerations may not be applicable to a vote to approve a statement of proposals. There are two primary and inter-related reasons for this. First, in a vote on a scheme of arrangement, the personal or special interest (which may take the shape of a relationship with the debtor) may result in the creditor not being able to consult with the other creditors in its class or generally (in the event there are no different classes). The ability to consult is a key ingredient of the scheme of arrangement process and any disruption to that should be zealously guarded against. There is good reason for this which brings us to the second reason. A scheme of arrangement vote allows a majority of creditors or class of creditors to statutorily "cram down" on the rights of dissenting minority creditors, thereby subjugating the latter to the will of the former and enforcing a compromise or adjustment of the latter's rights under a scheme (*TT International* at [54] and [70]). For this to be permissible and

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legitimate, the creditors or a class of creditors must be able to properly consult with each other as to their rights. A personal or special interest might stand in the way of this from happening and serves to disrupt the process. Accordingly, the votes of related party creditors are disregarded because to not do so would be to "cram down" on the rights of the minority dissenting creditors through a voting process that impermissibly (because it is neither transparent nor independent) subjugates their rights to the will of the majority.

81 These concerns do not apply in the context of a vote on a statement of proposals as there is no adjustment of creditor rights as a result of the vote. The statement of proposals is simply a plan of action that sets out the judicial manager's proposed strategy for achieving one or more of the purposes of judicial management as reflected in the order of court appointing the judicial manager (see Harold Foo and Beverly Wee, *Annotated Guide to the Singapore Insolvency Legislation: Corporate Insolvency* (Academy Publishing, 2023) at para 09.273). Therefore, the considerations driving the disregarding of votes in schemes of arrangement are not present in the vote on a statement of proposals.

82 Further, regs 38 and 39 of the Insolvency, Restructuring and Dissolution (Judicial Management) Regulations 2020 ("Regulations") set out restrictions on the creditors who are precluded from voting at the creditors' meeting to approve a statement of proposals. Given that related party creditors are not expressly precluded by the Regulations, disregarding their vote would have the same effect as precluding them from voting and would therefore run contrary to the Regulations. In this regard, unlike the Regulations, r 15.34(2) of The Insolvency (England and Wales) Rules 2016 (SI 2016 No 1024) (UK) expressly provides for disregarding of the votes of related party creditors in an administration. The absence of a legislative provision in similar terms in Singapore suggests that the

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votes of related party creditors are not to be disregarded when voting on a statement of proposals.

83 Finally, a judicial manager, as an officer of the Court, must act in the interests of the company's creditors as a whole (see s 89(2), (4) of the IRDA). As it is the judicial manager (and not the debtor) that puts forward the statement of proposals and it is he who is in control of the debtor, it is questionable whether there is a related party relationship between the debtor and the creditor as described in the line of cases that stand for the view that the votes of related party creditors in a scheme of arrangement should be disregarded. Indeed, it may be an open question on whether this point also applies to a scheme of arrangement proposed by a judicial manager. We say no more.

84 With respect, we therefore question whether the Judge was correct in concluding that the Entities' votes should be disregarded on the basis of their purported relationship with the Company. Nevertheless, we do not express a conclusive view and leave the question for determination in an appropriate case.

Conclusion

85 For the reasons above, we dismissed the appeal and awarded the JMs the costs of the appeal and SUM 9 in the aggregate sum of $75,000 inclusive of disbursements. We did not disturb the costs orders below as there was no cross-

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appeal by the JMs against the costs order made by the Judge. We made the usual consequential orders.

Sundaresh Menon
Chief Justice

Steven Chong
Justice of the Court of Appeal

Kannan Ramesh
Judge of the Appellate Division

Lim Tahn Lin Alfred, Lye May-Yee Jaime and Tan Liqi Joseph (Meritus Law LLC) for the appellant;
Ng Hui Ping Sheila and Chew Jing Wei (Rajah & Tann Singapore LLP) for the first and second respondents;
The third respondent absent and unrepresented.

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