IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2025] SGHCR 6

Bankruptcy No 53 of 2025

Between

Ho Sally

… *Claimant*

And

Chan Pik Sun

… *Non-party*

Bankruptcy No 54 of 2025

Between

Wan Hoe Keet (Wen Haojie)

… *Claimant*

And

Chan Pik Sun

… *Non-party*

Bankruptcy No 53 of 2025 (Summons No 535 of 2025)

Between

Chan Pik Sun

… *Applicant*

And

Ho Sally

… *Respondent*

Bankruptcy No 54 of 2025 (Summons No 536 of 2025)

Between

Chan Pik Sun

… *Applicant*

And

Wan Hoe Keet (Wen Haojie)

… *Respondent*

JUDGMENT

[Insolvency Law — Bankruptcy — Trustee in bankruptcy — Perceived lack of independence]

TABLE OF CONTENTS

Re Ho Sally (Chan Pik Sun, non-party) and other matters

[2025] SGHCR 6

General Division of the High Court — Bankruptcy No 53 of 2025; Bankruptcy No 54 of 2025; Bankruptcy No 53 of 2025 (Summons No 535 of 2025); Bankruptcy No 54 of 2025 (Summons No 536 of 2025)
AR Elton Tan Xue Yang
13 February, 3 April 2025

23 April 2025 Judgment reserved.

AR Elton Tan Xue Yang:

Introduction

1 In these debtors' bankruptcy applications, the creditor seeks to intervene to oppose the appointment of the debtors' proposed trustee of their bankruptcy estates and to nominate her own candidate for trustee. There is otherwise no dispute that the bankruptcy orders may be made. The creditor's principal objection to the debtors' nominee rests on the fact that findings of fraud on the part of the debtors have been made in earlier proceedings. The creditor argues that in these circumstances, it is improper or inappropriate for the debtors to have their nominees appointed as trustee in bankruptcy, as the creditor's interests would not be seen to be fulfilled by such an appointment. More directly put, the inference is that the debtors' choice of trustee would be a person favourable to the debtors and their interests. Beyond the fact that the nomination

was made by the debtors, the creditor does not suggest that there is any other connection between the debtors and their nominee.

2 The applications raise for consideration the principle that a trustee in bankruptcy must be a person who not only is, but is also reasonably seen to be, independent. Specifically, it concerns the circumstances in which a prospective trustee cannot reasonably be perceived to be independent or able to act impartially.

Background

3 In Suit No 806 of 2018, Ms Chan Pik Sun ("Ms Chan") commenced proceedings against Mr Wan Hoe Keet (Wen Haojie) ("Mr Wan") and Ms Ho Sally ("Ms Ho"), who are husband and wife, for misrepresentation and lawful and unlawful means conspiracy. The proceedings centred on SureWin4U, a Ponzi scheme that involved participants (as "uplines") receiving money that fellow participants put into the scheme and referral bonuses for bringing in new participants ("downlines"). The scheme eventually collapsed and Ms Chan, who had made substantial investments in the scheme, sought to recover her losses from Mr Wan and Ms Ho, who were "uplines" in the scheme. Ms Chan's claims were dismissed by the General Division of the High Court and she appealed.

4 The Appellate Division of the High Court (the "Appellate Division") allowed Ms Chan's appeal in respect of certain claims for fraudulent misrepresentation (see *Chan Pik Sun v Wan Hoe Keet (alias Wen Haojie) and others and another appeal* [2024] 1 SLR 893 (the "AD's Judgment")). Mr Wan and Ms Ho were found to have represented to Ms Chan that the scheme was safe and profitable, and to have known that the representation was false at the time they made it. They were "in the top echelon of the Scheme and part of the inner circle of the Scheme's founders", "in cahoots with the Scheme's founders

in running the Scheme" and "bedfellows" with the scheme's founders: at [120], [126] and [128]. The Appellate Division ordered Mr Wan and Ms Ho to be jointly and severally liable to Ms Chan in the aggregate sum of HK$36,587,400: at [175]. Costs of S$50,000 for the appeal and S$300,000 for the proceedings below were ordered against them: at [176].

5 Mr Wan and Ms Ho then sought permission to appeal to the Court of Appeal against the decision of the Appellate Division. Permission was denied and additional costs of S$12,000 were ordered against them.

Bankruptcy applications and applications to intervene

6 On 3 January 2025, Mr Wan and Ms Ho filed bankruptcy applications in HC/B 54/2025 and HC/B 53/2025 respectively (collectively, the "Bankruptcy Applications"), seeking bankruptcy orders to be made against themselves. Each sought the appointment of Ms Oon Su Sun ("Ms Oon") of Finova Advisory Pte Ltd as private trustee in bankruptcy ("PTIB"), pursuant to s 36(2) of the Insolvency, Restructuring and Dissolution Act 2018 ("IRDA"). The Bankruptcy Applications came before me.

7 In their respective statements of affairs,[1] Mr Wan and Ms Ho identified Ms Chan as their only unsecured creditor, to whom they owed HK$36,587,400 (being the judgment sum ordered by the Appellate Division), S$350,000 (being costs and disbursements of the appeal and the proceedings below) and S$2,000 (being the balance of the costs ordered by the Court of Appeal following their failed application for permission to appeal, Mr Wan and Ms Ho having paid

[1] Ms Ho's Statement of Affairs in HC/B 53/2025 filed on 3 January 2025 ("Ms Ho's SOA"); Mr Wan's Statement of Affairs in HC/B 54/2025 filed on 3 January 2025 ("Mr Wan's SOA").

S$10,000 of those costs).[2] Mr Wan and Ms Ho named two secured creditors, both in respect of a property they owned (the "Property"): (a) Oversea-Chinese Banking Corporation ("OCBC"), to whom they owed S$1,013,575.29 as the amount outstanding under the mortgage; and (b) the Central Provident Fund ("CPF") Board, to whom they owed S$106,864.49 as the amount to be returned to CPF pursuant to a CPF charge on the Property. After satisfying the debts owed to the secured creditors, a surplus of about S$5.8m was expected.[3] Accordingly, Mr Wan and Ms Ho identified the debts owed to Ms Chan as the main cause of their bankruptcy.[4]

8 On 12 February 2025, Ms Chan's solicitors wrote to the court to raise an objection to the appointment of Ms Oon as PTIB and to propose the appointment of Mr Yiong Kok Kong ("Mr Yiong") of AVIC DKKY Pte Ltd instead. I heard the parties on 13 February 2025 and directed Ms Chan to file an application to intervene in the Bankruptcy Applications and seek the necessary relief. On 27 February 2025, Ms Chan filed applications to intervene in the Bankruptcy Applications and to seek the appointment of Mr Yiong as PTIB in relation to both bankruptcy estates (HC/SUM 535/2025 and HC/SUM 535/2025 respectively).

9 Ms Chan does not dispute that Ms Oon, who is a licensed insolvency practitioner with significant experience in insolvency and restructuring,[5] has the necessary skill to discharge the duties of a PTIB. Ms Chan's objection rests on

---

[2] Ms Ho's SOA, Part II, para 2.2.3; Mr Ho's SOA, Part II, para 2.2.3; 1st affidavit of Chan Pik Sun dated 27 February 2025 ("Ms Chan's Supporting Affidavit"), para 15.

[3] Ms Ho's SOA, Part II, para 2.2.2; Mr Ho's SOA, Part II, para 2.2.2.

[4] Ms Ho's SOA, Part I, para 4.6; Mr Wan's SOA, Part I, para 4.6.

[5] 1st affidavit of Ho Sally dated 3 January 2025, HS-4; 1st affidavit of Wan Hoe Keet (Wen Haojie) dated 3 January 2025; HS-4.

the fact that findings of fraudulent conduct by Mr Wan and Ms Ho have been made by the Appellate Division. Relying on *Re Lim Oon Kuin and other matters* [2024] SGHC 328 ("*Re Lim Oon Kuin*"), Ms Chan argues that these findings of fraud "disqualif[y]" Mr Wan and Ms Ho from nominating a PTIB of their choice.[6] Added to the fact that a PTIB has wide-ranging discretionary powers and duties to investigate the conduct and affairs of the bankrupt under s 22(1) read with s 39(1) of the IRDA, it would be "inappropriate to appoint as PTIB a nominee put forward by [Mr Wan and Ms Ho]".[7]

10 Before me, Mr Qabir Sandhu ("Mr Sandhu"), who is counsel for Ms Chan, states the nature of the objection more directly and candidly: that fraudsters who are made bankrupt on the basis of their fraud should not choose their PTIB, because of the suspicion that the fraudster's choice of PTIB would be someone favourable to them and their interests; indeed, the PTIB would be the "most favourable choice" they can make for themselves. Mr Sandhu emphasises that the submission is advanced without making any allegation or accusation against Ms Oon directly.

11 Ms Chan further highlights that she is the largest and majority creditor of Mr Wan and Ms Ho. According to Ms Chan, due to the accrual of interest, Mr Wan and Ms Ho now owe her HK$57,268,929.43 and S$546,435.35.[8] Mr Wan and Ms Ho acknowledge that Ms Chan is, by some distance, their largest creditor whether secured or unsecured, but they aver that since the filing of the Bankruptcy Applications, Ms Chan is no longer the *sole* unsecured creditor as the intended purchaser of the Property is seeking to claim late completion

---

[6] Creditor's submissions for permission to intervene dated 28 March 2025 ("Ms Chan's Submissions"), paras 9 to 12 and 16 to 17.

[7] Ms Chan's Submissions, para 21.

[8] Ms Chan's Supporting Affidavit, para 24.

interest owing to a delay in completion.[9] At the hearing, Ms Joycelyn Lin ("Ms Lin"), who is counsel for Mr Wan and Ms Ho, explained that proceedings have in fact been brought in HC/OA 277/2025 and that a sum of S$116,916.86, losses and expenses incurred from the delay, and a sanction for completion of the sale of the Property have been claimed as against Mr Wan and Ms Ho. Ms Lin accepted that notwithstanding this claim, Ms Chan remains by far the largest creditor.

12 Finally, Ms Chan contends that Mr Wan and Ms Ho "appear to have actively dissipated their assets".[10] This comprises cash held in certain bank accounts the balances of which Ms Chan says have reduced significantly in a few months, and certain shares that Mr Wan and Ms Ho have transferred to others close to the time of and after the issuance of the AD's Judgment.[11] She also takes issue with the fact that Mr Wan and Ms Ho have disclosed – only at the stage of their reply affidavit to Ms Chan's applications to intervene – that Ms Ho and/or Mr Wan shared personal relationships with the transferees of the shares.[12] In response, Mr Wan and Ms Ho say that the reduction in their bank balances is due to mortgage repayments, expenses incurred on credit cards, living and household expenses, legal expenses and the pre-purchase of certain funeral service packages for themselves.[13] They do not dispute that the share transfers occurred but contend variously that the transfers were not carried out

[9] 2nd affidavit of Ms Ho Sally dated 20 March 2025 ("Ms Ho's Reply Affidavit"), para 13.

[10] Ms Chan's Submissions, para 24.

[11] Ms Chan's Submissions, paras 25 to 26, Ms Chan's Supporting Affidavit, paras 18 and 19.

[12] Ms Chan's Submissions, para 27; see Ms Ho's Reply Affidavit, paras 52 and 55.

[13] Ms Ho's Reply Affidavit, paras 23 to 43.

in furtherance of an attempt to dissipate their assets and/or that the shares were without value.[14]

My decision

Preliminary issues

13 To begin, there is no dispute that Ms Chan should be granted permission to intervene in the Bankruptcy Applications, and I agree. Rule 14(2)(*a*) of the Insolvency, Restructuring and Dissolution (Personal Insolvency) Rules 2020 ("Personal Insolvency Rules") empowers the court to direct that service of an application and the supporting affidavit be effected on, or notice of proceedings be given to, "any person who may be affected by the order or other relief sought". Under Rule 14(3) of the Personal Insolvency Rules, any person who is so served or notified is entitled to be heard. As a creditor of Mr Wan and Ms Ho, Ms Chan falls within the category of persons who may be "affected" if the Bankruptcy Applications are granted in the terms sought by them, *ie*, with Ms Oon appointed as PTIB: see *Re Then Feng* [2022] SGHCR 1 at [9]. It is accordingly in my view right and proper that Ms Chan be heard. In any case, Mr Wan and Ms Ho have themselves served a copy of the Bankruptcy Applications on Ms Chan.[15] In these circumstances, it is not necessary for me to further direct that the papers be served on Ms Chan; she can be heard upon my determination that she falls within the class of persons described in Rule 14(2)(*a*).

14 There is also no dispute that, upon her intervention, Ms Chan is entitled to make submissions on the identity of the PTIB to be appointed,

[14] Ms Ho's Reply Affidavit, paras 48 to 64.

[15] Ms Chan's Submissions, para 7.

notwithstanding that the Bankruptcy Applications are debtors' bankruptcy applications and that Mr Wan and Ms Ho have put forward their own preferred appointee as PTIB. The point is in any case put to rest by the decision in *Re Lim Oon Kuin*, which similarly involved debtors' bankruptcy applications and an objection by creditors to the debtors' proposed PTIB. Jeyaretnam J observed (at [8]) that the court's appointment of a PTIB under s 36(1) of the IRDA is subject to the court's discretion, given the language in s 36(1) that the court "may" appoint a PTIB. He then permitted the creditors to make submissions on how that discretion should be exercised.

15 I turn to the key issue that divided the parties. This is whether – as submitted by Ms Chan – it is improper or inappropriate for Mr Wan and Ms Ho to have their nominee appointed as PTIB, given the findings of fraud on their part made by the Appellate Division. I begin by examining the cases setting out the relevant principles, before turning to consider whether Ms Chan's reliance on *Re Lim Oon Kuin* for her position is sound.

Perceived lack of independence of nominated PTIB

16 The courts have had occasion to consider the perceived lack of independence of a PTIB as a ground of objection to the appointment or continued appointment of a PTIB. Some of these cases involve applications to remove an existing PTIB on this ground, as opposed to objections raised before the appointment of the PTIB (as in the present case), but I see no reason why the court's approach to assessing the objection should be dissimilar: see also *Boral Montoro Pty Ltd v McLachlan* [2007] FMCA 533 ("*Boral Montoro*") at [13]. I will review the cases before summarising the key principles.

Review of the cases

17 In *Re Lamb; Ex parte Registrar in Bankruptcy* (1984) 1 FCR 391 ("*Re Lamb*"), the Federal Court of Australia considered an application for the cancellation of the registration of one Mr Kenneth Wayne Lamb as trustee. At the time of his registration, Mr Lamb was practising as a partner in an accounting firm. He later joined a firm of chartered accountants, this time as an employee, with the firm intending to consider his admission into partnership when he obtained membership of the Institute of Chartered Accountants.

18 Sweeney J observed that a trustee plays a central role in the administration of the bankruptcy estate and is under a general duty to exercise his powers in such a fashion that the objects of the Australian Bankruptcy Act 1966, including those of equality between creditors and fairness to bankrupts and debtors, are served. It is accordingly of "great importance to the community that the role given by the legislature to a trustee, is fulfilled only by persons who are, and who are seen to be, completely independent": at [24].

19 Against this background, Sweeney J drew a distinction between a trustee who is a sole practitioner or partner, and a trustee who is an employee and subject to the control of his employer who would be able to direct what work he would do, the manner in which it would be done, when it should be done, and so on: at [25]–[27]. In his view, Mr Lamb, as an employee, did not have "either the reality or the appearance of independence which is enjoyed by a trustee who is not an employee". Sweeney J reproduced (at [28]) an extract from his earlier decision in *In Re Hetherington, unreported* (Federal Court of Australia, 14 December 1982), where he said the following of a trustee:

> He should earnestly consider whether by becoming controlling trustee he may be exposing himself to a *conflict between interest and duty, or to any conflict between any existing duties flowing*

> *from any relationship with a debtor or a creditor, or any duties attaching to any office or post already held by him, and the duties involved in the proposed office of controlling trustee.* He should not rely upon what he conceives to be his own ability to reconcile any such conflict but should rather ensure that the conflict does not arise. ***A controlling trustee should not be in a position where it may reasonably appear to those who are entitled to the benefit of his impartial discharge of the duties of his office that such a conflict exists****. As the office is a statutory one,* there is also *a public interest that* ***the holder of it should not be, or reasonably appear to be subject to a conflict****.*
>
> [emphasis added in italics and bold italics]

20 Sweeney J surmised that there is a "requirement that a trustee not be placed in a position where it is *difficult for him to act with impartiality, regardless of whether he would in fact act with impartiality*" [emphasis added]. There is a "concern for a trustee to be seen to be independent and not in a position of potential conflict": at [32]. In the circumstances, Sweeney J regarded Mr Lamb's status as an employee to be "fatal" to his continued registration as a person qualified to act as a trustee: at [39]. He adjourned the matter so that Mr Lamb might have the opportunity to consider whether, in light of Sweeney J's analysis, Mr Lamb preferred to apply himself to have his name removed from the register: at [41].

21 In *Boral Montoro*, a decision of the Federal Magistrates Court of Australia, there was no dispute that the bankruptcy application, which was filed by the creditor, ought to be granted. The dispute was over the trustee to be appointed. The debtor opposed the appointment of the creditor's proposed trustee, one Mr Nick Jim Combis. Mr Combis was a member of a firm of accountants, and that firm was a creditor of the debtor.

22 Wilson FM remarked (at [6]) that whilst the trustee's primary duty is to administer the bankrupt's estate for the benefit of her creditors, it cannot

"seriously be gainsaid that the trustee also owes duties to the bankrupt. One of those fundamental duties is to be impartial. It is difficult, at first blush, to see how a trustee who is also a creditor can meet that obligation." There is a well-established "principle that a trustee should not act where there is a perception of a conflict of interest and duty" and that "a trustee of a bankruptcy estate must not only act impartially in the interest of all creditors, but must also be seen to so act": at [14]. This means that a trustee "should consider whether by becoming a trustee he or she may become exposed to a conflict between interest and duty or to any conflict between any existing duties flowing from any relationship with the debtor or a creditor". In fact, the trustee "should not rely upon what [the trustee] conceives to be her or his own ability to reconcile any such conflict but should rather ensure that the conflict does not arise": at [14].

23 On the facts of *Boral Montoro*, Wilson FM considered the fact that Mr Combis was a partner of a firm which was a creditor of the debtor to potentially give rise to a conflict, as Mr Combis might be "perceived by the debtor at least as lacking impartiality": at [15]. Wilson FM observed that the appearance of a conflict was not lost even on Mr Combis or the creditor's solicitors, who advised that Mr Combis' firm would not prove in the bankruptcy so as to dispel any suggestion of a conflict. But Wilson FM regarded this workaround as insufficient: "the matter is not so simple, the appearance of such a conflict already exists and is not dispelled by such an intended course of action": at [15]. He adjourned the matter in order to enable the consent of Mr Combis to be withdrawn: at [17].

24 *In the matter of Pan Sutong, a bankrupt* [2023] HKCFI 2620 involved an application by a creditor for, amongst other things, an order to set aside a resolution passed at a creditors' meeting appointing two individuals from RSM Corporate Advisory (Hong Kong) Ltd ("RSM") as trustees of the property of

the bankrupt, and to replace them with trustees from Deloitte Advisory (Hong Kong) Limited ("Deloitte"). The creditor that filed the application was essentially aligned with the bankrupt, who was seeking through that creditor to dispute the debt and otherwise disrupt and delay the insolvency process.

25 Chan J in the Court of First Instance of the Hong Kong High Court identified the following principles under Hong Kong law governing the appointment of trustees in bankruptcy (at [71]):

> (a) As an office holder, a trustee in bankruptcy must not only be independent of the parties, but must be seen to be so. Any conflict of interest or "over-familiarisation" should be discouraged.
>
> (b) When the conduct of a liquidator has been such as to give rise to a perception, on reasonable grounds, that he was biased, or where his conduct has been such as to give rise to a real and reasonable loss of confidence in him by the creditor, the court may accede to an application to remove him.
>
> (c) A liquidator should not be a person, nor the choice of a person, who has a duty or purpose which conflicts with the duties of the liquidator.

26 On the facts, Chan J observed (at [72]) that there was no suggestion that the RSM candidates had any conflict or that they were not capable of performing their duty as trustee in bankruptcy. In contrast, the following matters gave rise to "an appearance of lack of independence or conflict of interest" on the part of the candidates from Deloitte put forward by the creditor (at [73]):

(a) Deloitte (in the form of Deloitte Touche Tohmatsu, Certified Public Accountants LLP) had been auditors of two companies owned by the bankrupt for over ten years. The trustee in bankruptcy would have to investigate the bankrupt's affairs and assets, which would include these two companies for which Deloitte had been auditors.

(b) The Deloitte candidates were involved in the preparation of a report advocating for debt restructuring and a moratorium on the bankruptcy proceedings. The bankrupt had relied on the report in seeking a stay of execution of the judgment below rejecting the creditor's proposal to appoint the Deloitte candidates.

(c) One of the Deloitte candidates had previously been approached by Bank of China, another creditor of the bankrupt, on whether he could be appointed as liquidator of one of the bankrupt's companies. That candidate, one Mr Lai Kar Yan, had himself declined the appointment on the basis of conflict of interest.

27 In the circumstances, Chan J agreed with the court below that Deloitte's "fingerprints are everywhere" and it could "never be seen to be independent and impartial": at [74]. Chan J dismissed the creditor's application: at [75].

28 *Re X Diamond Capital Pte Ltd (Metech International Ltd, non-party)* [2024] 3 SLR 1228 ("*Re X Diamond*") was a decision of the Singapore High Court. Although *Re X Diamond* involved the appointment of a judicial manager rather than a PTIB, it was cited to me by the parties and I accept that the judgment contains observations that are helpful and broadly applicable. In *Re X Diamond*, the company in question applied to be placed under judicial management. The application was opposed by Metech International Ltd ("Metech"), one of the company's creditors. Metech also opposed the

appointment of the company's nominated judicial manager and proposed its own nominee.

29 Goh Yihan JC (as he then was) considered that Metech did not have standing to oppose the company's nomination, since Metech was not a majority creditor of the company and therefore could not avail itself of the right to be heard in opposition under s 91(3)(*d*) of the IRDA: at [47]. Goh JC further found that there was no merit in Metech's objection to the company's nominee. There was no basis for Metech's suggestion that the company's sole director, one Mr Deng Yiming, might himself be providing funding to the company to make payment of the judicial manager's professional fees: at [48]. Goh JC then reasoned as follows (at [50]):

> More broadly, **I do not think that Metech has cast any valid aspersions on Mr Tam's actual or perceived independence.** Indeed, Metech's only point in this regard is that Mr Deng *may* have wrongfully caused the Company's downfall. As such, the judicial manager appointed should be "free from any association with [the Company] in order to eliminate any notions of perceived bias as the judicial manager may need to conduct investigations into [Mr] Deng himself to uncover any potential wrongdoing on his part". **I do not agree with this because this point, if accepted, would mean that any company, which seeks judicial management because its fortunes have taken a turn for the worse due to internal mismanagement, cannot put forward its own nominee because that nominee may feel, or be perceived to feel, hindered in conducting thorough investigations. Given that a judicial manager is an independent officer of the court, this is not a tenable position to take without serious evidence** (see s 89(4) of the IRDA and the High Court decision of *Re Halley's Departmental Store Pte Ltd* [1996] 1 SLR(R) 81 at [19]). In any event, the allegation that Mr Deng may have engaged in any wrongful conduct is, at this point, entirely speculative.
>
> [emphasis in italics in original; emphasis in bold added]

30 Goh JC allowed the company's application for an order for judicial management and appointed the company's nominee as the judicial manager: at [52].

Summary of principles

31 I pause to summarise what I see as the key principles arising from the cases on objections to the appointment of a PTIB on the ground of the PTIB's perceived lack of independence from the nominating party:

(a) Given the breadth of the powers and discretion accorded to a PTIB and the importance of him exercising those powers in a manner that balances the interests of the creditors and the debtor, a PTIB must be a person who not only is, but is also reasonably seen to be, independent.

(b) The requirement of a reasonable perception of independence means that a PTIB or a prospective PTIB should not be exposed to a position of potential *conflicts of interest*, whether this consists of a conflict between his duties as PTIB and his own interests, or a conflict between the duties of PTIB and other existing duties arising from other relationships, offices, or posts held by him. It is reasonable to think that such conflicts of interest may make it difficult for the PTIB, if appointed, to act with impartiality.

(c) Apart from conflicts of interest, the *conduct* of the PTIB or prospective PTIB may also give rise to a perception, on reasonable grounds, that he lacks impartiality. If the conduct of the appointed PTIB has been such as to give rise to a real and reasonable loss of confidence

that he lacks impartiality, the court may accede to an application to remove him.

32 I should make it clear that from my review of the cases, it is only a *reasonable* perception of lack of independence that should disqualify a prospective PTIB from appointment. In other words, there must be a reasonable basis, founded on grounds such as (but not limited to) a prior connection between the PTIB and the nominating party, to think that the PTIB may struggle to discharge his duties impartially if appointed. Amongst the examples in the cases are where the PTIB's firm is a creditor of the debtor, his firm has previously provided related services to the debtor and the PTIB would have to review the work of his firm if appointed, and where the PTIB himself had previously provided to the debtor services of such a nature or for such a purpose that reveals the PTIB's alignment with the debtor's particular interests in the bankruptcy. In such situations, the courts have found that there are reasonable grounds for a perception that the PTIB lacks independence.

33 Correspondingly, an unfounded or speculative complaint about the PTIB's lack of independence will not suffice to displace the appointment or nomination. As Goh JC observed in *Re X Diamond* (see [29] above), a judicial manager is an independent officer of the court (see s 89(4) of the IRDA) and therefore "serious evidence" is required to take any tenable position that the judicial manager may feel, or be perceived to feel, hindered in conducting thorough investigations. In similar vein, a PTIB is an officer of the court (see s 39 read with s 17(3) of the IRDA). A PTIB is accorded all the functions and duties of the Official Assignee in relation to the conduct of the bankrupt and the administration of the bankrupt's estate, and may exercise all or any of the Official Assignee's powers in relation to the bankrupt and his estate (s 39 read

with ss 22 to 24 of the IRDA). The same reasoning would therefore apply in the context of PTIBs.

Re Lim Oon Kuin

34 I come to *Re Lim Oon Kuin*, on which Ms Chan placed especial reliance for her position that it would not be appropriate for Ms Oon to be appointed, given that she is Mr Wan's and Ms Ho's nominee. In short, I do not accept that *Re Lim Oon Kuin* should be understood as laying down a general principle or policy that debtors against whom findings of fraud have been made will not, as a rule, be permitted to have their nominated PTIBs appointed in the face of objections by creditors. I will explain.

35 In *Re Lim Oon Kuin*, the two debtors filed bankruptcy applications and nominated two individuals as their PTIBs. The nominations were opposed by three non-parties, comprising the largest of the creditors, being Hin Leong Trading (Pte.) Ltd ("HLT"), and the joint and several liquidators of HLT, being Mr Goh Thien Phong ("Mr Goh") and Mr Chan Kheng Tek ("Mr Chan"). HLT, Mr Goh and Mr Chan put forward their own preferred set of nominees, and subsequently also a set of alternative nominees from RSM Corporate Advisory Pte Ltd and BDO Advisory Pte Ltd ("BDO").

36 Philip Jeyaretnam J first considered the general approach to determining how the court should decide between competing nominees. He observed that unlike in the context of the appointment of liquidators and judicial managers in the corporate insolvency context, the bankruptcy regime was directed not only at securing the repayment to the creditors of the bankrupt's debts, but also at giving bankrupts a chance at a fresh start: at [13]–[14]. As such, in the bankruptcy context, the majority creditor's choice of PTIB would not always prevail over the debtor's choices, nor should it even attract the same weight as

it would in the corporate insolvency context. Other factors, such as the nominee's skill and independence, may well feature more prominently in the court's assessment, as compared to a corporate insolvency: at [15].

37 Jeyaretnam J then proceeded to consider the relevance of a nominee's perceived lack of independence. Jeyaretnam J remarked that beyond matters concerning the majority creditor's preferences and the skill and independence of the nominee, "a nominee's *perceived* lack of independence may – depending on the circumstances – also preclude his or her appointment as PTIB" [emphasis in original]. He considered *Boral Montoro* and *Re Lamb* (see [21]–[23] and [17]–[20] above), from which he drew the following point of principle (at [18]):

> Ultimately, whether a complaint discloses valid and sufficient concerns regarding the independence of the nominee will *necessarily depend on the facts of each case*. It also goes without saying that *findings concerning a nominee's independence (or its lack) are not to be made lightly, and that challenges brought on that front must be supported by cogent evidence*: *Re X Diamond* at [50].
>
> [emphasis added]

38 Jeyaretnam J found that the original nominees put forward by HLT, Mr Goh and Mr Chan were unsuitable, not because of any deficiency of expertise or experience on the part of those nominees, but precisely because of such "perceptions of independence": at [32]. In particular, one of the original nominees was a partner at PricewaterhouseCoopers Advisory Services Pte Ltd, which was the same firm that Mr Goh and Mr Chan were either practising at or had a close connection with. This was compounded by the fact that once appointed, the PTIBs would be involved in conducting certain ongoing court proceedings involving Mr Goh and Mr Chan, and in this regard would have to decide whether to continue pursuing those proceedings in circumstances where the proceedings might be adverse to the interests of Mr Goh and Mr Chan.

Further, there was an open question whether Mr Goh would be a witness in one of those proceedings, which could further impinge on the nominee's ability to conduct the proceedings unencumbered by any conflicting interests as a partner of the same firm. Given these circumstances, Jeyaretnam J held that there "would be a *perceived* lack of independence" [emphasis in original] on the part of HLT's, Mr Goh's and Mr Chan's original nominees: at [32].

39 Pausing briefly at this juncture, I emphasise that Jeyaretnam J's finding was plainly that there was a *reasonable* perception of lack of independence on the part of HLT's, Mr Goh's and Mr Chan's original nominees, such that they should not be appointed as PTIBs. Evidence was put forward to show the pre-existing connections between these nominees, on one hand, and Mr Goh and Mr Chan, on the other, and the nature of these connections gave reason to think that the nominees might find it difficult to act independently and impartially. In this regard, it is also clear that Jeyaretnam J applied the principles from *Re Lamb* and *Boral Montoro* discussed above.

40 Turning to the alternative nominees put forward by HLT, Mr Goh and Mr Chan, Jeyaretnam J observed that the debtors had explicitly stated that they had no substantive objections to the appointment of the nominees from BDO: at [33]. Jeyaretnam J considered that "[i]n the absence of disqualifying considerations relating to the skill or independence of [the alternative nominees], the preferences of the majority creditors assumed primary importance". To this end, he went on to examine the *extent* of support for HLT's position and the *reasons* for that support: at [34].

41 On the issue of *extent* of support, Jeyaretnam J noted that the creditors were overwhelmingly in favour of the alternative nominees, with a supermajority that crossed the 75% threshold that would effectively allow the

majority creditors to remove the debtors' nominees should they be appointed as PTIBs, pursuant to s 44(1) of the IRDA read with Regulation 13(4) of the Insolvency, Restructuring and Dissolution (Bankruptcy) Regulations 2020 ("Bankruptcy Regulations"). Counsel for HLT, Mr Goh and Mr Chan confirmed that they had indeed been instructed to seek the removal of the debtors' nominees should they be appointed: at [36]–[37]. Jeyaretnam J took the view that on the facts of the case, the preferences of the supermajority should be accorded significant weight, and that any appointment of the debtors' nominees would likely be "short-lived, absent a dramatic change of heart on the part of the creditors": at [36]–[37]. There was no disagreement by counsel for the debtors that "the court should not lightly embark on such an exercise in futility in making the initial appointment of the PTIBs": at [37].

42 With respect to the *reasons* for the support of the majority creditors' position, Jeyaretnam J observed that the creditors were not objecting to the debtors' nominees as individual nominees, but on the basis of "the propriety of the debtors nominating the PTIB to begin with, considering the underlying fraud the debtors had perpetrated against their creditors": at [38]. The underlying fraud pertained to the debtors' consent to judgment against them, albeit without admission of liability, in respect of claims that implicated them in dishonest conduct. Jeyaretnam J agreed that "the PTIBs would have to investigate the assets of the claimants, and that *in all the circumstances*, the creditor's interest would not be seen to be fulfilled by PTIBs nominated by the claimants themselves *if there was (as here) an objection made to them together with the proffered availability of other suitable nominees*" [emphasis added]: at [38]. In the result, Jeyaretnam J appointed the alternative nominees from BDO as the debtors' PTIBs: at [42].

43 It is evident that Jeyaretnam J's decision was based on a consideration of all the circumstances and also on a highly practical view of the matter. The alternative nominees had the support of a majority – indeed a supermajority – of creditors. There was every reason to think that even if the court appointed the debtors' nominees, they would be replaced in short order with the creditors' preferred nominees through a special resolution passed at a creditors' meeting. The debtors had no substantive objections to HLT's, Mr Goh's and Mr Chan's alternative nominees from BDO. On their part, the creditors had a strong preference against the debtors' nominees, given the debtors' history of fraudulent conduct and the fact that the PTIBs would have to investigate the debtors' assets to seek recovery in relation to the fraud perpetrated by the debtors. Taking these considerations in the round, the appointment of the alternative nominees from BDO was a result that was both principled and practical.

44 The matter can be put another way. As a matter of the creditors' *preference* not to have the debtors' nominees appointed (and this preference would be accorded significant weight given the existence of a supermajority and the lack of opposition to the supermajority's own preferred nominees), it could be understood and appreciated why the creditors were concerned that the debtors should not have their nominees appointed as PTIBs given the backdrop of the findings of fraud made against them and the need for the PTIBs to investigate their assets to recover the proceeds of that fraud. But if brought as a free-standing *ground of objection* on the basis of a perceived lack of independence of the debtors' nominees, it is far from obvious that this alone would have been sufficient. It was not apparent that evidence had been put forward to show any connection between the debtors and their nominees beyond the mere fact that the nominees had been put forward by the debtors, such as

would furnish reasonable basis to think that the nominees would have found it difficult, if appointed, to act with impartiality.

Application to the facts

45 I return to the facts before me.

46 I am unable to accept Ms Chan's submission that it would be inappropriate for Mr Wan and Ms Ho to have Ms Oon, their nominated PTIB, appointed because there is a perceived lack of independence on Ms Oon's part. No evidence is put forward to suggest any sort of connection between Ms Oon, on the one hand, and Mr Wan and/or Ms Ho, on the other, that would provide a reasonable basis to think that Ms Oon would face difficulties in performing her duties independently and impartially if appointed. Nor was the existence of any conflicts of interest or prior conduct by Ms Oon that might have provided such basis pointed out to me. It was certainly not suggested that Ms Oon had any connection to the matters leading up to or involving the findings of fraud made by the Appellate Division. The only connection between Ms Oon, on one hand, and Mr Wan and Ms Ho, on the other, relied upon by Ms Chan is simply that Ms Oon is their nominee. I therefore see no basis to think that Ms Oon, if appointed, would not reasonably be seen to be independent.

47 At the same time, Mr Wan and Ms Ho have raised no objections to Mr Yiong as a prospective appointee. There is no dispute that Mr Yiong, a licensed insolvency practitioner with significant experience in the field,[16] would be qualified to administer the bankruptcy. There is no allegation that Mr Yiong, if appointed, would not be independent or not reasonably seen to be independent from Ms Chan's interests. On her part, Ms Chan has confirmed on affidavit that

[16] Ms Chan's Supporting Affidavit, paras 35 to 37 and CPS-1, Tab 9.

she does not know Mr Yiong and has not known of him prior to the nomination, and that Mr Yiong himself has confirmed that he is free of any conflict of interest and is prepared to act as PTIB in Mr Wan's and Ms Ho's bankruptcy estates.[17]

48 In my judgment, significant weight should be accorded to the fact that Ms Chan is a supermajority creditor. Before me, Ms Lin does not dispute that Ms Chan is the supermajority creditor, even factoring in the claim against Mr Wan and Ms Ho for the delayed completion (see [11] above). Ms Lin also accepts that it would be open to Ms Chan to seek to remove Ms Oon if she is appointed, and replace her with Ms Yiong by way of a special resolution at a general meeting of creditors under s 44(1) of the IRDA read with s 13(4) of the Bankruptcy Regulations. Mr Sandhu confirms that he has, similar to *Re Lim Oon Kuin* (see [41] above), instructions to take steps to seek the removal of Ms Oon should she be appointed. Given these circumstances, any appointment of Ms Oon as PTIB would be short-lived and indeed somewhat of an exercise in futility (see [41] above). In the absence of disqualifying considerations relating to the skill or independence of Mr Yiong that would affect his ability to administer the bankruptcy estates proficiently and independently, it is right that the preferences of Ms Chan as majority creditor assume primary importance (see [40] above). I am therefore of the view that Mr Yiong should be appointed as PTIB in respect of Mr Wan's and Ms Ho's bankruptcy estates upon the granting of the bankruptcy orders.

49 I address, for completeness, Ms Chan's submission that Mr Wan and Ms Ho have been actively dissipating their assets prior to the filing of the Bankruptcy Applications (see [12] above). Having carefully considered the

[17] Ms Chan's Supporting Affidavit, para 38.

argument, I am unable to see a logical nexus between the argument and their position that Ms Oon should not be appointed and that Mr Yiong should be the PTIB. Ms Chan does not suggest that if appointed, Ms Oon would not, or would not be able to, fully and properly investigate the conduct and affairs of Mr Wan and Ms Ho and take the necessary action under s 22 read with s 39(1)(*a*) of the IRDA should she detect any misconduct. Before me, Mr Sandhu confirmed that he was also not making any argument that the alleged dissipation of assets had any connection to Ms Oon. I therefore did not place weight on this argument or think it necessary to come to any findings on the alleged dissipation.

Conclusion

50 Apart from the issue of the PTIB to be appointed, I see no reason why the bankruptcy orders sought by Mr Wan and Ms Ho should not be made. I therefore make the bankruptcy orders but appoint Mr Yiong as the PTIB in respect of both bankruptcy estates. I will hear the parties on costs.

Elton Tan Xue Yang
Assistant Registrar

Joycelyn Lin (PRP Law LLC) for the claimants;
Qabir Sandhu and Clara Lim (LVM Law Chambers LLC) for the non-party.