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

[2025] SGHC 174

Companies Winding Up No 227 of 2025

In the matter of Section 33 of the Variable Capital Companies Act 2018

And

In the matter of Paragraphs 14(d) and 14(i) of the First Schedule of the Variable Capital Companies Act 2018

And

In the matter of RG Asset-Backed Investment Fund I

Between

Zhong Shan Strategic Fund

… *Claimant*

And

RG Strategy Fund VCC

… *Defendant*

JUDGMENT

[Insolvency Law — Winding up — Sub-fund — Standing — Creditor]
[Insolvency Law — Winding up — Sub-fund — Standing — Contingent or prospective creditor]
[Insolvency Law — Winding up — Sub-fund — Standing — Contributory]

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[Insolvency Law — Winding up — Sub-fund — Grounds for petition — Actual insolvency]
[Insolvency Law — Winding up — Sub-fund — Grounds for petition — Just and equitable jurisdiction]

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Zhong Shan Strategic Fund
v
RG Strategy Fund VCC

[2025] SGHC 174

General Division of the High Court — Companies Winding Up No 227 of 2025
Kristy Tan J
15 August 2025

29 August 2025 Judgment reserved.

Kristy Tan J:

Introduction

1 On 1 October 2018, Parliament passed the Variable Capital Companies Bill (Bill No 40/2018) ("VCC Bill"), providing a legislative framework for the incorporation and operation of a new type of corporate entity, the Variable Capital Company ("VCC"), tailored specifically for investment funds (see Singapore Parl Debates; Vol 94, Sitting No 83; [1 October 2018] (Indranee Rajah, Second Minister for Finance)). Under the Variable Capital Companies Act 2018 (2020 Rev Ed) ("VCC Act"), the sole object of a VCC is to be one or more collective investment schemes in the form of a body corporate (s 15(1)). A VCC can be set up as a single standalone fund, or as an umbrella fund consisting of two or more sub-funds (s 2). The shareholders of a VCC or holders

of shares referenced to a particular sub-fund of the VCC are the investors in that fund or sub-fund as the case may be.

2 In HC/CWU 227/2025 ("CWU 227"), the claimant, Zhong Shan Strategic Fund ("ZSSF"), applied to wind up RG Asset-Backed Investment Fund I ("ABIFI"), a sub-fund of the defendant VCC, RG Strategy Fund VCC (the "Fund"). ZSSF's grounds for its application were that: (a) "[ABIFI] is unable to pay its debts",[1] in particular, because two of ZSSF's requests for redemption of shares were "not fulfilled";[2] and (b) it was just and equitable for ABIFI to be wound up.[3]

3 To my knowledge, there is no prior published decision in respect of an application to wind up a sub-fund under the VCC Act. Having considered the parties' evidence and submissions, I dismiss CWU 227 for the reasons that follow.

Facts

The parties

4 ZSSF is a regulated mutual fund registered in the Cayman Islands, which is managed by Zhong Shan Asset Management Limited, an asset manager licensed by the Securities and Futures Commission of Hong Kong.[4] ZSSF holds participating shares in respect of ABIFI ("Participating Shares").

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1 1st Affidavit of Cai Feiyun filed on behalf of the Claimant on 20 June 2025 ("1CF") at para 4.

2 1CF at paras 10(2)–13.

3 1CF at para 4.

4 1st Affidavit of Punnya Niraan De Silva filed on behalf of the Defendant on 1 August 2025 ("1PNDS") at para 69.

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5 The Fund was incorporated under the VCC Act as an umbrella VCC on 23 April 2021.[5] Its three directors (the "Board" or "Directors") are Mr Stephen John Fisher, Ms Lisa Leung ("Ms Leung") and Mr Punnya Niraan De Silva ("Mr De Silva").[6] Its manager is First Degree Global Asset Management Pte Ltd (the "Fund Manager"),[7] of which Mr De Silva is a licensed person.[8]

6 ABIFI was formed and registered on 7 July 2021 as a sub-fund of the Fund.[9] There are presently three shareholders in respect of ABIFI:

(a) ZSSF, which holds Class C Participating Shares representing 53.6% of the shares in respect of ABIFI;[10]

(b) Ms Leung, who is the sole shareholder of Class A Participating Shares representing 37.99% of the shares in respect of ABIFI;[11] and

(c) Ms Ivy Connie Sun ("Ms Sun"), who holds Class C Participating Shares representing 8.41% of the shares in respect of ABIFI.[12]

7 Offers of shares in the Fund and in respect of ABIFI are made only to accredited investors and by private placement, and the Fund and ABIFI are thus exempt from the authorisation and prospectus requirements under

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5 1CF at p 27.

6 1CF at p 28.

7 1CF at p 28.

8 1CF at p 202; 1PNDS at para 1.

9 1CF at p 28.

10 1PNDS at paras 12–13 and p 37.

11 1PNDS at paras 12–13 and pp 37 and 213.

12 1PNDS at paras 12–13 and pp 37 and 214.

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Subdivisions (2) and (3) in Division 2 of Pt 13 of the Securities and Futures Act 2001 (2020 Rev Ed).[13]

ZSSF's subscription for Participating Shares

8 By two subscription agreements executed by ZSSF on 19 January 2023 and 9 May 2023 (the "Subscription Agreements"), ZSSF made two cash subscriptions in the respective amounts of HK$67m (US$8,535,249.31) and HK$142m (US$18,091,476.62) for Class C Participating Shares in ABIFI.[14]

9 Pursuant to sections 5.1 and 6.11 of the Subscription Agreements,[15] ZSSF agreed to be bound by all the terms and conditions set out in (a) the Constitution of the Fund[16] (the "Constitution"), (b) the Information Memorandum of the Fund dated 27 July 2021[17] (the "Information Memorandum") and Supplemental Memorandum of ABIFI dated 24 November 2021 (as amended and restated on 9 March 2022)[18] (the "Supplemental Memorandum") (together, the "Offering Documents"), and (c) the Subscription Agreements.

The Constitution and Offering Documents

10 The provisions in the Constitution and Offering Documents of salience in the present case are highlighted below.

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13 1PNDS at pp 82–83 and 166; Certified transcript of CWU 227 hearing on 15 August 2025 ("Transcript") at pp 15:11–17:15.

14 1CF at pp 31–111 and 113–193; see 1CF at pp 34, 42, 116 and 124 for the subscription amounts.

15 1CF at pp 54, 64, 136 and 146.

16 1PNDS at pp 45–75.

17 1PNDS at pp 79–161.

18 1PNDS at pp 165–175.

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Constitution

11 Under reg 9(4) of the Constitution, participating shares issued in respect of the Fund or any sub-fund "shall be redeemable at the option of the holders of such Participating Shares in accordance with [the] Constitution and as set out in the Offering Documents". This is described as a redemption right carried by the participating shares.[19]

12 Under reg 26, all shares shall be redeemed at the "Redemption Price".[20] In this connection:

> (a) "Redemption Price" means, in relation to a share, the price equal to the applicable "NAV Per Share" in the capital of the Fund or in respect of a particular sub-fund, as the case may be, adjusted for fees and charges as may be determined by the Directors, as may be further described in the Offering Documents (reg 6).[21]
>
> (b) "NAV Per Share", in relation to a share of a particular class and/or series, means that proportion of the net asset value ("Net Asset Value" or "NAV") of the Fund or any sub-fund, as the case may be, represented by such share, as determined in accordance with the Constitution and Offering Documents (reg 6).[22]

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19 1PNDS at p 50.

20 1PNDS at p 54.

21 1PNDS at p 48.

22 1PNDS at p 47.

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(c) Regulation 39 provides that the Net Asset Value shall be determined on each "Valuation Day",[23] which is such business day "as the Directors may from time to time determine" (reg 6).[24]

13 Regulations 41 and 42 provide that the Directors have the discretion to suspend, *inter alia*, the determination of Net Asset Value and/or the "NAV Per Share" of any class or series of shares, as well as the redemption of shares, for such period as the Directors determine:[25]

Suspension

41. The Directors may, from time to time, in their discretion and for any reason (including in the circumstances as may be disclosed in the Offering Documents), declare a suspension of any of:

(1) the determination of Net Asset Value and/or the NAV Per Share of any particular Class or Series;

…

(3) the redemption of Shares (whether in whole or in part);

…

in each case for the whole or any part of any period and in such circumstances as the Directors may determine.

42. The commencement and termination of any suspension referred to in regulation 41 shall take effect at such times as the Directors shall determine and the Directors shall procure that all affected Members are promptly notified of any such commencement and termination.

14 Under reg 30, when the redemption of shares is suspended, redemption forms containing redemption requests may be withdrawn during the period of

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23 1PNDS at p 58.

24 1PNDS at p 49.

25 1PNDS at pp 58–59.

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suspension, but if not so withdrawn, "the redemption of the Shares shall be made at such time and in such order of priority as the Directors may determine".[26]

Information Memorandum

15 Under section 4.2.2(d) of the Information Memorandum, the rights attaching to the participating shares of each sub-fund include that the participating shares "shall be redeemable at the option of the holders of such Participating Shares in accordance with the Constitution and as set out in [the] Information Memorandum and the relevant Supplemental Memorandum".[27]

16 Under section 5.2.1, a shareholder may redeem his participating shares on any "Redemption Day"; and if he requests the redemption of his participating shares on any particular "Redemption Day", will, with effect from that "Redemption Day", be treated as a creditor of the Fund (rather than as a shareholder) in respect of the "Redemption Price":[28]

> 5.2.1 Redemption of Participating Shares
>
> Subject to the restrictions (if any) as indicated in the relevant Supplemental Memorandum, any Shareholder may redeem his Participating Shares on any Redemption Day in whole or in part provided that he/it completes and sends the Redemption Form … at least 14 Business Days before the relevant Redemption Date or such other period as indicated in the relevant Supplemental Memorandum.
>
> …
>
> The name of a redeeming Shareholder will be removed from the register of members of the Fund as of the relevant Redemption Day. However, notwithstanding that the name of a redeeming Shareholder remains on

[26] 1PNDS at p 56.

[27] 1PNDS at p 104.

[28] 1PNDS at p 112.

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> the register of members of the Fund pending determination of the Redemption Price and payment of the redemption proceeds, *a Shareholder requesting the redemption of all or any part of his/its Participating Shares on any particular Redemption Day will, with effect from that Redemption Day (a) be treated as a creditor of the Fund (rather than as a Shareholder) in respect of the Redemption Price*, and will rank accordingly in the event of a winding up of the Fund; and (b) have no rights as a Shareholder in respect of the Participating Shares being redeemed, save for the right to receive the Redemption Price and any dividend which has been declared in respect of such Participating Shares prior to that Redemption Day …
>
> …
>
> [emphasis added]

17 In this connection, section II sets out the following definitions:

(a) "Redemption Day" means, in relation to a sub-fund, such day(s) "as the Fund Manager may from time to time determine" for effecting any requests for redemption of participating shares in that sub-fund "as indicated in the relevant Supplemental Memorandum".[29]

(b) "Redemption Price" means the price at which a participating share of a sub-fund will be redeemed, as determined under section 5.2.2.[30]

18 Under section 5.2.2, the "Redemption Price" shall be calculated by reference to the proportion of the Net Asset Value of the relevant sub-fund represented by each participating share of that sub-fund on the "Valuation Day" (which is either the relevant "Redemption Day" or such other day as the Fund Manager or the Board may from time to time determine, as indicated in the

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29 1PNDS at p 92.

30 1PNDS at p 92.

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relevant supplemental memorandum),[31] subject (under section 6.3) to adjustment for fees and charges as may be determined by the Fund Manager in consultation with the Board.[32]

19 Under section 5.2.3, a shareholder whose participating shares are being redeemed may, in the discretion of the Board, "receive assets owned by the relevant Sub-Fund in lieu of or in combination with cash". This is referred to as "Non-Cash Redemptions".[33]

20 Under section 6.4, the Board, in consultation with the Fund Manager, may declare a suspension of, *inter alia*, the determination of the Net Asset Value of any sub-fund or class, as well as the redemption of participating shares.[34] In this connection:

(a) Under section 5.2.5, no participating shares may be redeemed where the determination of the Net Asset Value of the relevant sub-fund and/or participating shares of such sub-fund and/or the redemption of participating shares of the relevant sub-fund is suspended.[35]

(b) Under section 6.4, if a redemption request is not withdrawn by a shareholder following a declaration of suspension of the redemption of participating shares, the effective "Redemption Day" "shall fall on the nearest Redemption Day after such suspension is ended, unless the

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31 1PNDS at p 94.

32 1PNDS at pp 113 and 122.

33 1PNDS at p 113.

34 1PNDS at pp 122–123.

35 1PNDS at p 114.

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Board determines otherwise, on the basis of the net asset value per Participating Share as at the last Valuation Day".[36]

21 Under section 6.4, the Board may also postpone the payment of all or a part of the redemption proceeds in specified circumstances:[37]

> **6.4 Suspension**
>
> The Board, in consultation with the Fund Manager, may declare a suspension of:
>
> (a) the determination of the net asset value of any Sub-Fund or Class;
>
> …
>
> (c) the redemption of Participating Shares (whether in whole or in part);
>
> …
>
> The Board may also postpone the payment of all or a part of the redemption proceeds relating to Participating Shares in respect of a particular Sub-Fund *in circumstances where investments of such Sub-Fund cannot, without having a material adverse effect on the remaining Shareholders of such Sub-Fund, be liquidated in a timely fashion to meet redemption requests* and/or until such time as the determination of the net asset value per Participating Share in respect of the relevant Redemption Day has been finalised to its sole satisfaction.
>
> [emphasis added]

22 Section 6.5 provides that where the circumstances giving rise to a suspension continue to be present for a considerable period of time, the Board may consider it appropriate to keep the suspension in place indefinitely. During such suspension or if the Board determines that the investment strategy of the relevant sub-fund should no longer be continued, the Board (as advised by the

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36 1PNDS at p 123.

37 1PNDS at pp 122–123.

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Fund Manager) may decide to embark on an orderly realisation and return of the sub-fund's assets to its shareholders:[38]

> **6.5 Soft Wind Down**
>
> The Board has the power to implement a suspension in respect of any Sub-fund *in the circumstances described under Section 6.4* of this Information Memorandum (Suspension). It is anticipated that any suspension would ordinarily be temporary. However, *there may be situations in which the circumstances giving rise to a suspension continue to be present for a considerable period of time* with the result that the Board considers it appropriate to keep the suspension in place indefinitely. In certain circumstances, even where a suspension has not been declared, the Board may determine that the investment strategy of a Sub-fund should no longer be continued. During any such period of suspension or after having made such determination that the investment strategy should no longer be continued, the Board (as advised by the Fund Manager) may determine that the Sub-fund be managed with the objective of returning its assets to the Shareholders in an orderly manner ("**Orderly Realisation**") if doing so is in the best interests of the Shareholders. An Orderly Realisation shall not constitute a dissolution or winding up of the Sub-Fund for any purposes, but rather only the continued management of its portfolio so as to reduce such portfolio to cash (to the extent reasonably practicable, as advised by the Fund Manager) and return such cash as well as all other assets of the Sub-Fund to the relevant Shareholders. The Board shall promptly communicate to the relevant Shareholders any resolution to proceed with an Orderly Realisation. During an Orderly Realisation, the Board may take such steps as are considered appropriate in the best interests of the relevant Shareholders to effect the Orderly Realisation. The Board shall establish what it considers to be a reasonable time by which the Orderly Realisation should be effected ("**Realisation Period**"). Any resolution to undertake an Orderly Realisation and the process thereof shall be deemed to be integral to the business of the Sub-Fund and may be carried out without recourse to a formal process of liquidation or any applicable bankruptcy or insolvency regime. The Board may cease the Orderly Realisation within the

[38] 1PNDS at pp 123–124.

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> Realisation Period and recommence active trading if the circumstances permit a lifting of any applicable Suspension or, where no suspension is in effect, if the circumstances are such that the investment strategy of the Sub-Fund can then be continued.
>
> The Fund Management Fee, if any, shall be payable during an Orderly Realisation on the same basis as described in the relevant Supplemental Memorandum.
>
> [emphasis added in italics]

Supplemental Memorandum

23 Under section 7 of the Supplemental Memorandum, a holder of Participating Shares may redeem their Participating Shares "on each Redemption Day". The "Redemption Day" is stipulated to be "*the first calendar day of each calendar quarter* and/or such other day as the Board may designate as a Redemption Day in addition thereto or in substitution therefor, either generally or in any particular case" [emphasis added].[39]

24 Section 8 provides that the "tools [which] may be employed by the Fund Manager to manage liquidity risk associated with the Sub-Fund's obligation to meet redemption requests and pay expenses" include that "the Fund Manager may *suspend redemption under exceptional circumstances as set out in Section 6.4 of the Information Memorandum (Suspension)*" [emphasis added].[40] In a similar vein, section 9 provides that "[t]he determination of the net asset value of the Sub-Fund and/or the issuance and/or the redemption of Participating Shares may be *suspended under the circumstances set out in Section 6.4 of the Information Memorandum (Suspension)*" [emphasis added].[41]

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39 1PNDS at p 170.

40 1PNDS at pp 171–172.

41 1PNDS at p 172.

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25 Under section 9, for the purposes of redemptions, "the Valuation Day shall be the last calendar day before the relevant … Redemption Day" and/or such other day as the Board may designate as a "Valuation Day".[42]

26 Section 17 provides that the Supplemental Memorandum "[t]akes [p]recedence" in that its provisions "shall apply notwithstanding anything to the contrary in the Information Memorandum".[43]

ABIFI's investment in connection with the MSLC Property

27 At present, ABIFI's key asset is a subordinated loan exposure linked to the Man Sun Logistics Centre (the "MSLC Property"), a 13-storey industrial warehouse located in Tuen Mun, New Territories, Hong Kong (the "Debt Investment").[44]

28 The MSLC Property is held by Man Sun Property Limited, Man Sun Investment Limited and Grand Hall Limited (together, the "MS Companies"). The ultimate beneficial owner of the MS Companies is Mr Cheung Shun Kut ("CSK"), whose brother is Mr Cheung Shun Yee ("CSY") (together, the "Cheungs"). In 2018, United Overseas Bank Limited ("UOB") had offered facilities in the amount of approximately HK$1.1bn to the MS Companies, secured by a first charge over the MSLC Property, rental assignment and a personal guarantee from CSK. The Cheungs' difficulties with meeting repayment obligations to UOB led to them seeking a refinancing loan.[45]

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42 1PNDS at p 172.

43 1PNDS at p 175.

44 1PNDS at para 14; 1CF at p 243.

45 1CF at p 243.

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29 In this connection, ABIFI undertook the Debt Investment, which was recommended in an Investment Memorandum dated 15 March 2023 issued by the Fund Manager (the "Investment Memo"),[46] and is structured as follows:

(a) ABIFI extended a loan facility of up to HK$300m to Hammer Capital International Limited ("HCIL") in March 2023, on terms including loan maturity of 24 months and payments of a commitment fee and interest.[47] HCIL is a special purpose vehicle company which was incorporated in the British Virgin Islands solely for this loan transaction; it is solely owned by Mr Dickson Cheung Siu Fai, who is no relation to the Cheungs.[48]

(b) ABIFI lent a total of HK$298m to HCIL under this facility (the "ABIFI-HCIL Loan").[49] The ABIFI-HCIL Loan is secured by a pledge over all shares in HCIL in favour of ABIFI, as well as personal guarantees from the Cheungs.[50]

(c) In turn, HCIL lent the funds from ABIFI to the MS Companies.[51] HCIL's downstream loan to the MS Companies is secured by a second-ranking charge (after UOB's first charge) over the MSLC Property.[52]

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46 1CF at para 49 and pp 243–246.

47 1CF at p 244; Transcript at pp 28:12–29:9.

48 1PNDS at para 15(a); 1CF at p 243; Defendant's Written Submissions dated 8 August 2025 ("DWS") at para 61; Transcript at p 29:10–17.

49 1PNDS at para 15(a).

50 1PNDS at para 15(b).

51 1PNDS at para 15(c).

52 1PNDS at para 15(d).

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(d) Most of the funds provided by ABIFI were used by the MS Companies to repay UOB, after which the outstanding principal on the UOB facilities (the "UOB Loan") was reduced to about HK$800m.[53] The UOB Loan was due to mature on 15 August 2025.[54]

30 Under the Debt Investment structure, while ABIFI owes no obligations to repay the UOB Loan, ABIFI has exposure to the loss of capital invested by way of the ABIFI-HCIL Loan.[55] It was stressed in the Investment Memo that the sale of the MSLC Property was "key" to the strategy for ABIFI's exit from the investment.[56] ABIFI's interest in the MSLC Property is indirect and subordinated to that of UOB,[57] and the Investment Memo warned that "collateral risk" was the key risk of the investment:[58]

> This is a mortgage loan facility, the key risk factor is the collateral risk of MSLC. The property price deterioration will depreciate the value of the collateral, resulting in lower recovery value. Besides, MSLC is pledged to UOB under first legal charge by MS Companies. If MS Companies fails [*sic*] to repay the outstanding loan of HK$800 million to UOB at maturity, UOB has first right to enforce MSLC [*sic*].

31 At the time of the Investment Memo, the market valuation of the MSLC Property was estimated to be about HK$1.2bn to HK$1.4bn and there was a party interested in purchasing the property.[59]

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53 1PNDS at para 16.

54 1PNDS at p 203.

55 1PNDS at para 14.

56 1CF at p 245.

57 1PNDS at paras 14 and 17.

58 1CF at p 244.

59 1CF at p 245.

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Events leading up to CWU 227

32 ABIFI had invested in a number of deals, of which, since mid-October 2023, only the Debt Investment remained.[60] ABIFI had successfully exited from the other investments, from which its shareholders, including ZSSF, received returns and dividend distributions.[61] Further, on or around 22 November 2023, ZSSF had requested to redeem its Class C Participating Shares in the redemption amount of HK$50m, and this redemption was effected in January 2024.[62]

33 On or around 18 November 2024, ZSSF submitted a request for the redemption of its Class C Participating Shares in the redemption amount of HK$10m (the "Nov 2024 Redemption Request").[63]

34 On 28 November 2024, the Fund Manager sent a letter to ZSSF, referring to (a) the Nov 2024 Redemption Request and (b) an earlier proposal made by ZSSF "to effect direct ownership of the underlying project of ABIFI through a loan split among all investors", which the Fund Manager termed a "Non-Cash Redemption" ("ZSSF's Proposal").[64]

35 In its 28 November 2024 letter, the Fund Manager made the following key points:

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60 1CF at p 209.

61 1PNDS at para 55.

62 1CF at para 10(1).

63 1CF at para 10(2); 1CF at p 195.

64 1CF at pp 209–210; 1PNDS at pp 183–184.

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(a) *Per* the exit strategy for the Debt Investment, the Fund had proactively engaged in discussions with potential buyers of the MSLC Property. However, the prevailing economic conditions had led to significant downturns in the industrial property market, causing such buyers to retreat. This affected the value of the MSLC Property, resulting in "inevitable impairment provisions to ABIFI" each quarter.[65]

(b) Any abrupt enforcement by UOB of its security over the UOB Loan could result in a total loss for ABIFI and its investors. The Board and Fund Manager had thus decided that "pursuing an orderly realization with the objective of returning [ABIFI's] assets is in the best interests of all investors". The Board and Fund Manager had strategically set aside ABIFI's remaining cash of HK$7m to service the shortfall in interest payments due from the MS Companies to UOB under the UOB Loan, so as to manage and preserve the value of the Debt Investment during this challenging period. If, instead, the remaining cash was to be used for redemption, "the redemption should be opened and notified to all investors on an equity basis, with a warning … that following which ABIFI will not be serving [*sic*] any shortfall interest under the [UOB Loan] and an immediate enforcement of [the UOB Loan] would be inevitable, which may lead to complete losses for investors given the current buyer sentiments".[66]

(c) The Board and the Fund Manager considered ZSSF's Proposal feasible "on the basis that the [MSLC Property] shall be transferred and assigned to the relevant investor prorated to the investor's shareholding

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65 1CF at p 209.

66 1CF at p 209.

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> amount, together with the assumption of the prorated portion of the [UOB Loan]". This approach was likely to be in the best interests of all investors as it enabled them to hold a direct stake in the MSLC Property and make independent decisions according to their market outlook. However, this option was contingent on UOB's approval. The Board and Fund Manager would initiate discussions with UOB if ZSSF confirmed that it would like to proceed with this option.[67]

36 On 24 December 2024, Mr De Silva sent an e-mail to ZSSF, in response to various queries ZSSF had raised.[68] Among other things, he reiterated that:

> (a) The Board and Fund Manager were of the view that utilising ABIFI's remaining cash of HK$7m to cover the shortfall in repayments due to UOB until around mid-2025 was in the best interest of all investors "so as to avoid immediate enforcement by UOB which might result in total loss for [ABIFI's] investors".[69] He added that the Fund might need to raise further funding from ABIFI's investors "by or before Q2 2025" to cover the repayments to UOB.[70]
>
> (b) The Board and Fund Manager had considered ZSSF's Proposal for an "assets split alongside the novation of the underlying loan" and concurred that "such redemption in kind [was] possibly the most

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67 1CF at p 210.

68 1CF at pp 221–226.

69 1CF at pp 221 and 223.

70 1CF at p 221.

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favourable solution in the meantime".[71] ZSSF was asked to indicate if it agreed to proceed in this manner.[72]

37 On 30 December 2024, Mr De Silva sent an e-mail to ABIFI's investors, informing them of the Board's decision to suspend the NAV calculation and the redemption of shares in respect of ABIFI with immediate effect "to protect the overall performance of ABIFI and to safeguard the interests of all investors" (the "Suspension").[73]

38 On 20 January 2025, ZSSF submitted another request for the redemption of its Class C Participating Shares, stating in the "Redemption amount" field of the redemption form: "ALL INVESTMENT" (the "Jan 2025 Redemption Request").[74]

39 On 4 March 2025, ZSSF sent an e-mail to Mr De Silva, requesting for access to the loan documentation between UOB, the MS Companies and HCIL. ZSSF gave two main reasons for its request. First, ZSSF was concerned with the implications of a potential default for ABIFI and the consequential impact on ZSSF's investment in ABIFI (part of which "ha[d] already been felt by [ZSSF] by way of the suspension of redemption"). Second, as the Board was "now encouraging a redemption-in-kind that appear[ed] to involve the investors being a party to or at the very least being directly subject to or otherwise affected by the existing loan arrangements", ZSSF wanted to understand its putative

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71 1CF at pp 221 and 225.

72 1CF at p 225.

73 1CF at p 200; 1PNDS at p 189.

74 1CF at para 13; 1CF at p 204.

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rights and obligations under the "redemption-in-kind arrangement".[75] Arrangements were duly made for ZSSF to review the loan documentation at UOB's offices on 9 April 2025.[76]

40 On 3 April 2025, ZSSF sent an e-mail to Mr De Silva, asking about the outcomes and implications if ZSSF did not pursue "redemption in kind" as an exit strategy.[77]

41 On 22 April 2025, Mr De Silva replied to ZSSF. He conveyed that:[78]

(a) The industrial property market was currently unstable, and property valuations faced downward pressure. If ABIFI decided not to "cover the upcoming interest gap" in May 2025, UOB was likely to take enforcement steps. ABIFI's ability to recover funds depended heavily on UOB's approach; "if [UOB's] first lien is not satisfied in an enforcement sale, there will be no residual value left for our second lien position".

(b) If "redemption in kind" was not deemed a feasible exit strategy for the Debt Investment, "we are looking at liquidating [ABIFI] to repay investors as effectively as possible after deducting the necessary fees".

(c) Pursuing legal action against the Cheungs on their personal guarantees had been considered, but "[w]e are aware of [their] financial situation" and "the recovery potential is expected to be close to zero".

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75 1CF at p 230.

76 1CF at para 26(2).

77 1PNDS at p 200.

78 1PNDS at pp 199–200.

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42 On 5 May 2025, Mr De Silva sent an e-mail to ABIFI's investors.[79] He informed them that:

(a) Based on recent market data, the estimated value of the MSLC Property could fall below HK$780m.

(b) There was an estimated shortfall of HK$5m in the repayments due to UOB in May 2025. ABIFI's remaining cash stood at HK$3.3m (following a drawdown of HK$3.6m in February 2025) and was insufficient to cover the shortfall. If UOB enforced its rights, there was a high risk that the proceeds from any disposal of the MSLC Property would be insufficient to cover the UOB Loan. In such a scenario, ABIFI's investors were unlikely to recover any value from the ABIFI-HCIL Loan.

(c) ABIFI had to decide between three options:

(i) First, ABIFI could fund the repayment shortfall to keep the UOB Loan current. However, additional funding from the investors was required to cover the entire shortfall.

(ii) Second, the investors could agree to a structure where they received "their share of MSLC units and the associated loan" instead of cash upon redemption. ABIFI would coordinate negotiations with UOB in this regard. The investors were asked to indicate their decision on this option by 12 May 2025.

[79] 1CF at pp 213–214.

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(iii) Third, if no action was taken and UOB enforced its first lien, the investors had to be prepared for a total loss on the ABIFI-HCIL Loan.

43 ZSSF was "not able to provide a response", as requested by ABIFI, on the second option (see [42(c)(ii)] above).[80]

44 On 21 May 2025, UOB gave notice of default in respect of the MS Companies' non-payment of the quarterly interest due under the UOB Loan.[81]

45 On 23 May 2025, the Fund Manager sent an e-mail to ZSSF, informing of UOB's notice of default. The Fund Manager explained that in order to further its restructuring discussions with UOB, the interest payment due to UOB had to be made by 27 May 2025. After factoring in, *inter alia*, ABIFI's current cash, there remained a shortfall of HK$1.2m. The Fund Manager sought investors' support to subscribe for shares in respect of ABIFI "covering the HK$1.20 million shortfall … and within [UOB's] timeframe". The Fund Manager cautioned that "any existing ABIFI [s]hareholder that does not participate in the subject raising is likely to have its holding in [ABIFI] significantly diluted".[82]

46 On 26 May 2025, Ms Leung invested an additional HK$1.2m in ABIFI to help cover the shortfall in the interest payment due on UOB Loan. She has not yet been allocated further shares in respect of ABIFI.[83]

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80 1CF at p 236.

81 1CF at p 228.

82 1CF at pp 216–217.

83 1PNDS at para 13 and p 213.

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47 On 26 May 2025, ZSSF's Hong Kong solicitors sent an e-mail to the Fund Manager demanding that it "immediately cease and desist from the new subscription process" proposed in its e-mail of 23 May 2025.[84]

48 On 2 June 2025, the Fund Manager responded by way of an e-mail to ZSSF. The Fund Manager acknowledged that the complexities of the industrial property market and UOB's ongoing deliberations were constraints which impacted the valuation of the ABIFI-HCIL Loan, the determination of ABIFI's NAV and the process for issuing any Participating Shares following subscription. However, raising additional capital through voluntary subscriptions was the only practical option available. No Participating Shares had been issued as yet in respect of the latest subscription application and moneys received by ABIFI. Should the Fund Manager decide that it was feasible to resume the determination of NAV and issuance of Participating Shares for the latest subscription, it would immediately inform all investors prior to such resumption. The Fund would also extend the "HK$1.20 million fundraising subscription period" till 30 June 2025 "with the same NAV determination to be adopted, ensuring that additional subscriptions maintain the same pro-rata effect".[85]

49 On 4 June 2025, UOB confirmed its agreement in principle to extend the repayment period of the UOB Loan by a further 12 months (to 15 August 2026) and proposed adjustments to interest rates and the repayment structure which, according to the Fund, "appear favourable".[86] UOB also proposed arrangements

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84 1CF at pp 233–234.

85 1CF at pp 236–239.

86 1PNDS at paras 56–57 and pp 203–204.

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for the marketing and disposal of the MSLC Property.[87] According to the Fund, the extension granted by UOB "provides valuable breathing room by reducing the risk of forced enforcement and giving us more time to pursue an orderly outcome – whether through a sale, restructuring, or recapitalisation".[88] UOB confirmed on 16 July 2025 that "the [UOB] facility status is now resume normal with no default [*sic*]".[89]

50 On 20 June 2025, ZSSF filed CWU 227.

51 On 17 July 2025, Ms Leung and Ms Sun each sent a letter addressed to ABIFI. They conveyed: (a) their opposition to ZSSF's application to wind up ABIFI as it was not in the best interests of the investors; (b) their support for the Suspension and the Fund's current strategy in relation to ABIFI, which they considered remained commercially viable and should be allowed to run its course; and (c) their willingness to consider contributing to a capital raising if required.[90]

Procedural history

52 There were two significant procedural defects in the originating application initially filed by ZSSF in CWU 227.

53 First, ZSSF incorrectly indicated in the title of the originating application that the application was brought under ss 130(8)(*d*) and 130(8)(*i*) of

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87 1PNDS at pp 203–204.

88 1PNDS at para 57.

89 1PNDS at para 47 and p 193.

90 1PNDS at pp 213 and 214.

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the VCC Act.[91] Section 130 of the VCC Act pertains to the winding up of a VCC, and *not* to the winding up of a *sub-fund* of a VCC. The latter is governed by s 33 of and the First Schedule to the VCC Act (as elaborated at [70]–[79] below).

54 Second, ZSSF incorrectly named ABIFI (instead of the Fund) as the defendant in its application.[92] Section 32(1) of the VCC Act expressly states that a sub-fund of an umbrella VCC is *not* a legal person separate from the VCC, and provides that the VCC may sue or be sued in respect of a sub-fund. Thus, while a sub-fund of an umbrella VCC may be wound up "as if it were a legal person" (as stated in s 33(1)), the correct procedure is for the winding-up application to be brought against the VCC as the named defendant, with the title and prayers of the originating application worded to make clear that it is the winding up of the sub-fund which is sought.

55 ZSSF was permitted to make the necessary amendments to its originating application to correct these two procedural defects. Rule 196(1) of the Variable Capital Companies (Winding Up) Rules 2020 ("VCC (WU) Rules") provides that no proceedings under the VCC Act or the VCC (WU) Rules are invalidated by any formal defect or by any irregularity, unless the court is of the opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the court. In my view, the procedural defects were formal defects which caused no substantial injustice. The Fund was aware from the outset that ZSSF sought the winding up of ABIFI, and was prepared to and did defend the

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91 See CWU 227 Originating Application filed on 20 June 2025.

92 See CWU 227 Originating Application filed on 20 June 2025 and CWU 227 Originating Application (Amendment No 1) filed on 6 August 2025.

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application on that footing. The formal defects could be and were readily cured by ZSSF making the relevant amendments.

The parties' cases

ZSSF's case

56 To recapitulate, ZSSF relied on two grounds for its application: first, that ABIFI was allegedly unable to pay its debts; and second, that it was purportedly just and equitable for ABIFI to be wound up.[93] ZSSF's case on both grounds shifted and evolved in the course of the proceedings.

First ground

57 In the first affidavit filed by ZSSF's director, Mr Cai Feiyun ("Mr Cai"), in support of CWU 227:

> (a) ZSSF claimed that there was a debt due and outstanding from ABIFI to ZSSF arising from the unfulfilled Nov 2024 and Jan 2025 Redemption Requests in "the redemption amount of HK$159[m]".[94] While Mr Cai made passing reference to Mr De Silva's 30 December 2024 e-mail notifying ABIFI's investors of the Suspension (see [37] above),[95] ZSSF did not exhibit the Constitution or Offering Documents and did not refer to any provisions therein concerning redemption or suspension. ZSSF also did not challenge the legitimacy of, or express any objection to, the (continued) Suspension.

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93 1CF at para 4.

94 1CF at para 13.

95 1CF at paras 11–12.

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(b) ZSSF asserted that ABIFI's cash flow was zero as at late May 2025.[96]

(c) ZSSF asserted that ABIFI had "prospective liabilities" in that ABIFI would be "required to step in as the de facto financier" if the MS Companies were unable to meet repayments due under the UOB Loan.[97]

(d) ZSSF asserted its belief that ABIFI would not be able to recover the full principal amount of the ABIFI-HCIL Loan.[98]

58 The Fund then filed Mr De Silva's affidavit in reply, explaining that, pursuant to various provisions in the Constitution and Offering Documents, ZSSF was not a creditor of ABIFI because no "Redemption Day" had been fixed in respect of ZSSF's redemption requests given the Suspension.[99]

59 In Mr Cai's reply affidavit and ZSSF's submissions:

(a) ZSSF did not challenge the validity and construction of the provisions in the Constitution and Offering Documents put forward by the Fund.

(b) Instead, ZSSF argued that the "redemption in kind" raised in Mr De Silva's e-mails of 28 November 2024, 24 December 2024, 22 April 2025 and 5 May 2025 was the "Non-Cash Redemptions"

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96 1CF at paras 14–20.

97 1CF at paras 35–37.

98 1CF at paras 38–46.

99 1PNDS at paras 23–27.

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provided for in section 5.2.3 of the Information Memorandum,[100] and that these instances were "admissions of a debt owed to [ZSSF] (by offering redemption in kind) despite the Suspension".[101] This was particularly so in respect of the Nov 2024 Redemption Request which preceded the Suspension.[102] Alternatively, ZSSF was a contingent creditor.[103]

(c) ZSSF alleged that the Suspension was "a contrived afterthought" to deal with ZSSF's redemption requests.[104]

(d) ZSSF argued that the Fund Manager had accepted that ABIFI ought to be liquidated because Mr De Silva had stated in his 22 April 2025 e-mail that "[i]f redemption in kind is not deemed a feasible exit strategy for this investment, we are looking at liquidating this sub-fund to repay investors as effectively as possible after deducting the necessary fees".[105]

(e) ZSSF argued that ABIFI had to pay management fees to the Fund Manager (the last payment of management fees being S$13,885.02 on 25 April 2025) but had only about S$19,476.82 in cash as of 29 July

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100 2nd Affidavit of Cai Feiyun filed on behalf of the Claimant on 6 August 2025 ("2CF") at para 16.

101 2CF at paras 14, 17 and 22; Claimant's Written Submissions dated 8 August 2025 ("CWS") at paras 20–22.

102 2CF at paras 20–23; CWS at para 22; Transcript at p 82:10–15.

103 CWS at para 23.

104 2CF at paras 24–27.

105 2CF at para 14; CWS at para 15.

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> 2025 which "must have fallen by now, because of, *inter alia*, the expenses that [ABIFI] incurs in [CWU 227]".[106]

Second ground

60 In Mr Cai's first affidavit, ZSSF claimed that it was just and equitable for ABIFI to be wound up "because the principal commercial purpose of [ABIFI] can no longer be achieved".[107] Specifically, the potential sale of the MSLC Property mentioned in the Investment Memo had not materialised;[108] the value of the MSLC Property had dropped significantly from the estimate provided in the Investment Memo;[109] ABIFI was "treating itself as the primary funding source" for repayment of the UOB Loan although the Investment Memo stated that ABIFI would merely provide the ABIFI-HCIL Loan;[110] and ABIFI had not pursued the Cheungs on their personal guarantees although the Investment Memo stated that the provision of these guarantees would mitigate the risks of the ABIFI-HCIL Loan.[111]

61 However, in its submissions, ZSSF shifted its case to argue that it was "unfair" to ZSSF to be "left in its current position" where ZSSF was unable to redeem its Participating Shares because the Suspension was "indefinite".[112] ZSSF's counsel clarified at the hearing of CWU 227 that ZSSF was "not going

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106 2CF at paras 6–7 and 9; CWS at paras 11 and 29–31.

107 1CF at para 48.

108 1CF at para 51.

109 1CF at para 52.

110 1CF at para 53.

111 1CF at para 54.

112 CWS at paras 36–44.

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that far" to contend that there was impropriety in the Board's decision to declare and maintain the Suspension.[113]

The Fund's case

62 The Fund submitted that ZSSF was not a creditor of ABIFI.[114] A redemption request did not give rise to a crystallised payment obligation: section 5.2.1 of the Information Memorandum provided that a shareholder became a creditor only from the "Redemption Day". No "Redemption Day" had been fixed in relation to the Nov 2024 and Jan 2025 Redemption Requests given the Suspension.[115] The Fund Manager's communications with the investors did not contain admissions that ABIFI owed ZSSF a debt.[116] The idea of a non-cash exit was initially proposed by ZSSF itself,[117] and the "liquidation" referred to in Mr De Silva's 22 April 2025 e-mail had to "be understood in the context of the Soft Wind Down mechanism under section 6.5 of the Information Memorandum".[118]

63 The Fund further highlighted that, under section 5.2.2 of the Information Memorandum, redemption proceeds would be determined by reference to ABIFI's NAV as of the relevant "Valuation Day".[119] ABIFI's NAV had declined materially due to a significant reduction in the valuation of the MSLC Property, illiquidity in the Hong Kong commercial real estate market,

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113 Transcript at pp 82:23–85:3.

114 DWS at para 15.

115 DWS at paras 17–18.

116 DWS at paras 39–44.

117 DWS at para 50.

118 DWS at paras 48–49.

119 DWS at para 19.

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and ABIFI's subordinated position *vis-à-vis* UOB which materially impaired recovery prospects.[120] Even if a redemption had been processed, the amount due to ZSSF could well have been negligible or nil.[121] In any event, with the Suspension, no NAV would be calculated and determined, and it was not possible to determine what sum (if any) was owing to ZSSF.[122]

64 As for the Fund Manager's management fees, the Fund submitted that, under section 14(a) of the Supplemental Memorandum, these fees were payable only by holders of Class A Participating Shares, *ie*, Ms Leung in the present case.[123]

65 The Fund pointed out that ABIFI had no legal obligation to make repayment of the UOB Loan.[124] ABIFI had approved a few UOB Loan interest payments out of its own liquidity in late 2024 and early 2025 to strategically protect its indirect and subordinated interest in the MSLC Property, which would have been wiped out if UOB had enforced its security over the MSLC Property.[125] However, ABIFI was not obliged to continue making further payments. ABIFI remained debt-free.[126]

66 The Fund also disputed that it was just and equitable to wind up ABIFI. There was no loss of substratum of ABIFI or unfairness to ZSSF: ABIFI's overall object of returning capital to shareholders remained unchanged and the

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120 DWS at para 20.

121 DWS at para 22.

122 DWS at paras 19 and 23.

123 DWS at paras 53–54.

124 1PNDS at para 43.

125 1PNDS at paras 44–45.

126 1PNDS at para 49.

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Debt Investment structure, which ZSSF had signed up to, remained intact.[127] Further, ABIFI was continuing to explore options for preserving and potentially realising value; this was not a case of a sub-fund that had run its course or failed in its commercial purpose.[128] The risks of suspension of redemptions and market volatility had also been disclosed to and accepted by ZSSF when it invested in ABIFI. It was inappropriate for ZSSF to use CWU 227 to re-write the parties' contractual rights and obligations.[129]

67 The Fund submitted that the Board's decision to impose the Suspension was made after careful consideration.[130] The Suspension applied uniformly to all investors and was not targeted at ZSSF.[131] The Board and Fund Manager intended to keep the Suspension under review and "revisit it when there is sufficient clarity about asset values or when liquidity becomes available – for example, through a sale, refinancing, new capital injection or following the confirmed extension of the senior loan repayment period by UOB".[132]

68 Finally, the Fund submitted that even if the statutory bases for winding up were made out, the court should exercise its discretion to decline to grant a winding-up order because the other two shareholders of ABIFI opposed its winding up; liquidation would not enhance recovery for the shareholders; and

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127 DWS at paras 28–31.

128 DWS at para 32.

129 DWS at paras 33–34.

130 DWS at paras 16(6) and 36–38.

131 DWS at para 16(6).

132 1PNDS at paras 30(ii) and 38.

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CWU 227 was ZSSF's "opportunistic attempt to short-circuit a contractual exit process" and was an abuse of process.[133]

Issues to be determined

69 The issues to be determined are:

(a) whether ZSSF has standing to bring CWU 227;

(b) whether ZSSF has established that ABIFI should be wound up on the ground that ABIFI is insolvent (the "Insolvency Ground");

(c) whether ZSSF has established that ABIFI should be wound up on the ground that it is just and equitable to do so (the "Just and Equitable Ground"); and

(d) whether the court should, in any event, exercise its discretion against making a winding-up order.

The relevant statutory framework

70 I first outline the statutory framework that applies to the application in CWU 227 for a court-ordered winding up of a sub-fund (*ie*, ABIFI) of an umbrella VCC.

71 Section 33(1) of the VCC Act provides that, despite not being a legal person, a sub-fund of an umbrella VCC may be wound up in accordance with s 33(2) as if it were a legal person.

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133 DWS at paras 57–69.

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72 Pursuant to s 33(2) read with s 2(3A) of the VCC Act, the provisions in Pt 10 of the Companies Act (Cap 50, 2006 Rev Ed) (as in force prior to their repeal on 30 July 2020) ("Companies Act") apply in relation to the winding up of a sub-fund of an umbrella VCC as they apply in relation to the winding up of a company limited by shares, subject to s 5 of and the modifications in the First Schedule to the VCC Act.

73 Pursuant to s 5(3)(*a*) of the VCC Act, the incorporated Companies Act provisions apply with the necessary modifications in addition to the specific modifications set out in the First Schedule to the VCC Act.

74 The provisions in the First Schedule to the VCC Act and Pt 10 of the Companies Act which are of particular relevance to CWU 227 are as follows.

Standing to apply to court for the winding up of a sub-fund

75 Paragraph 13 of the First Schedule to the VCC Act applies in place of s 253(1) of the Companies Act in setting out the persons who may apply to court for the winding up of a sub-fund. These include any creditor, including a contingent creditor, of the sub-fund, and a contributory:

> A sub-fund of an umbrella VCC, whether or not it is being wound up voluntarily, may be wound up under an order of the Court on the application of one or more of the following:
>
> …
>
> (*b*) any creditor, including a contingent or prospective creditor, of the sub-fund;
>
> (*c*) a contributory …;
>
> …

76 In respect of a contingent creditor, s 253(2)(*c*) of the Companies Act provides that "the Court shall not hear the winding up application if made by a

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contingent or prospective creditors until such security for costs has been given as the Court thinks reasonable and a prima facie case for winding up has been established to the satisfaction of the Court".

77 In respect of a contributory, s 2(1) of the VCC Act defines "contributory", in relation to a sub-fund, as including the holder of fully paid up shares in the VCC that are issued in respect of the sub-fund. Under s 253(2)(*a*) of the Companies Act (as necessarily modified) read with para 15 of the First Schedule to the VCC Act, a contributory of a sub-fund may not make a winding-up application on, *inter alia*, the Insolvency Ground or the Just and Equitable Ground, unless either of the following conditions is satisfied. One, under s 253(2)(*a*)(i), the sub-fund has no "member" (which, under para 2 of the First Schedule to the VCC Act, refers to the holder of a share issued in respect of the sub-fund). Or, two, under s 253(2)(*a*)(ii):

> the shares in respect of which the contributory was a contributory or some of them were originally allotted to the contributory, or have been held by him and registered in his name for at least 6 months during the 18 months before the making of the winding up application or have devolved on him through the death or bankruptcy of a former holder[.]

Grounds on which a sub-fund may be wound up by the court

78 Paragraph 14 of the First Schedule to the VCC Act applies in place of s 254(1) of the Companies Act in setting out the grounds on which the court may order the winding up of a sub-fund. These include the Insolvency Ground (under para 14(*d*)) and the Just and Equitable Ground (under para 14(*i*)):

> The Court may order the winding up of a sub-fund of an umbrella VCC if —
>
> …
>
> (*d*) the umbrella VCC is unable to pay the debts of the sub-fund;

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> …
>
> (*i*) the Court is of the opinion that it is just and equitable that the sub-fund be wound up;
>
> …

79 In respect of the Insolvency Ground, s 254(2)(*c*) of the Companies Act states:

> (2) A company shall be deemed to be unable to pay its debts if —
>
> …
>
> (*c*) it is proved to the satisfaction of the Court that the company is unable to pay its debts; and in determining whether a company is unable to pay its debts the Court shall take into account the contingent and prospective liabilities of the company.

Section 254(2)(*c*) of the Companies Act (as necessarily modified pursuant to s 5(3)(*a*) of the VCC Act) would operate in conjunction with para 14(*d*) of the First Schedule to the VCC Act to deem the umbrella VCC unable to pay the debts of the sub-fund if it is proved to the court's satisfaction that the umbrella VCC is unable to pay the sub-fund's debts; and in making this determination, the court shall take into account the contingent and prospective liabilities of the sub-fund.

Issue 1: whether ZSSF has standing to bring CWU 227

80 I will consider whether ZSSF has standing to bring CWU 227 as (a) a creditor; (b) a contingent creditor; and/or (c) a contributory, of ABIFI.

Whether ZSSF has standing as a creditor

81 ZSSF relied on the alleged debt owed by ABIFI arising from the unfulfilled Nov 2024 and/or Jan 2025 Redemption Requests as (a) the basis for

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its purported standing as a creditor to make the winding-up application and (b) the primary basis for the purported Insolvency Ground for winding up ABIFI. The parties' dispute over whether ABIFI's indebtedness in respect of the Nov 2024 and Jan 2025 Redemption Requests has been established thus affects both inquiries. The inquiries are nonetheless distinct and should be addressed separately: *Founder Group (Hong Kong) Ltd v Singapore JHC Co Pte Ltd* [2023] 2 SLR 554 ("*Founder Group*") at [24].

82 Where a debt is disputed in good faith and on substantial grounds, the insolvency court will typically dismiss the winding-up application because the claimant would usually be found to have established neither its standing as a creditor to bring the application nor its grounds for obtaining the order it seeks: *Founder Group* at [28(a)]; *Metalform Asia Pte Ltd v Holland Leedon Pte Ltd* [2007] 2 SLR(R) 268 at [62]. In determining whether the debt is disputed in good faith and on substantial grounds, the court applies the approach taken when considering an application for summary judgment and assesses whether the purported debtor has raised triable issues in respect of the dispute: *Founder Group* at [28(a)] and [33]; *Pacific Recreation Pte Ltd v S Y Technology Inc* [2008] 2 SLR(R) 491 ("*Pacific Recreation*") at [23]. There may be cases where deciding whether or not a substantial and *bona fide* dispute exists involves a decision on the merits of the dispute itself, such as where the matter turns on the construction of the relevant documents before the court; in such circumstances, the court may, after hearing the parties' arguments, proceed to decide the issue: *Pacific Recreation* at [21].

83 In my judgment, the Fund has more than raised a substantial and *bona fide* dispute over the debt alleged by ZSSF. I find that there is, in fact, *no* debt due and owing from ABIFI to ZSSF in respect of the Nov 2024 and Jan 2025 Redemption Requests.

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84 First, it is plain from the provisions of the Constitution and Offering Documents, by which ZSSF agreed to be bound (see [9] above), that the mere making of a redemption request by ZSSF did not automatically result in ABIFI owing ZSSF a debt. Rather, under section 5.2.1 of the Information Memorandum, ZSSF would become a creditor of ABIFI to whom a debt in respect of the "Redemption Price" was due, only with effect from the "Redemption Day" on which ZSSF's Class C Participating Shares were redeemed further to its redemption request (see [16] above). Section 7 of the Supplemental Memorandum prevails in providing that the "Redemption Day" is the first calendar day of each calendar quarter and/or such other day as the Board may designate (see [23] and [26], *cf*, [17(a)], above). Indeed, it appears that, prior to the Suspension, the "Redemption Day" was, and was accepted by ZSSF to be, fixed as the first calendar day of each calendar quarter: ZSSF's previous redemption request made on or around 22 November 2023 was only effected in January 2024 and ZSSF took no issue with this timing (see [32] above).

85 Turning to ZSSF's Nov 2024 Redemption Request that is the subject of the present dispute, the "Redemption Day" would similarly have fallen in January 2025. However, prior to that, the Board decided to impose the Suspension on 30 December 2024, which suspended the calculation of ABIFI's NAV as well as the redemption of Participating Shares in respect of ABIFI with immediate effect (see [37] above). Contrary to ZSSF's submission,[134] the fact that the Nov 2024 Redemption Request was made prior to the Suspension is irrelevant because what was suspended was ABIFI's NAV calculation and the

[134] CWS at para 21; Transcript at p 82:10–15.

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redemption of Participating Shares, and not the making of redemption requests *per se*.

86 Section 5.2.5 of the Information Memorandum expressly provides that no Participating Shares may be redeemed where the determination of ABIFI's NAV and/or the redemption of Participating Shares in respect of ABIFI is suspended (see [20(a)] above). This is logical because Participating Shares can only be redeemed at the "Redemption Price", which is calculated with reference to ABIFI's NAV (see regs 6 and 26 of the Constitution at [12] above, and section 5.2.2 of the Information Memorandum at [17(b)]–[18] above); the "Redemption Price" thus cannot be calculated when the determination of ABIFI's NAV is suspended. There is also no "Redemption Day" in play when the redemption of Participating Shares is suspended. Where there are extant redemption requests following the declaration of suspension of the redemption of Participating Shares, these requests may be withdrawn, but if not withdrawn, will nevertheless not be effected until after the suspension has ended (see reg 30 of the Constitution at [14] above, and section 6.4 of the Information Memorandum at [20(b)] above). Accordingly, further to the Suspension, no debt is due and owing by ABIFI to ZSSF in respect of the Nov 2024 and Jan 2025 Redemption Requests.

87 The operation of these contractual provisions in this manner was not seriously challenged by ZSSF. Indeed, as an accredited[135] and sophisticated investor, itself a fund, ZSSF must have been aware of the existence and relevance of these provisions in the Constitution and Offering Documents. Yet, ZSSF did not exhibit these documents, much less cite any of the provisions therein, when it first filed CWU 227 (see [57(a)] above). This invites the adverse

135 1CF at pp 52 and 134

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inference, which I draw, that ZSSF was aware that no debt was contractually due and owing in respect of the Nov 2024 and Jan 2025 Redemption Requests and had, in bad faith, attempted to suppress reference to the contractual provisions which would bear this out.

88 Second, there is no basis for ZSSF to challenge the Suspension.

89 Regulations 41 and 42 of the Constitution (see [13] above), sections 6.4 and 6.5 of the Information Memorandum (see [21] and [22] above), and section 8 of the Supplemental Memorandum (see [24] above) consistently and expressly confer on the Board and Fund Manager the discretion to declare a suspension of, *inter alia*, ABIFI's NAV calculation and/or the redemption of Participating Shares. While reg 41 of the Constitution states that such suspension may be declared "for any reason", the wording in section 6.5 of the Information Memorandum and section 8 of the Supplemental Memorandum adds a refinement. Section 6.5 of the Information Memorandum provides that the Board has the power to implement a suspension in respect of a sub-fund "in the circumstances described under Section 6.4 of this Information Memorandum"; and section 8 of the Supplemental Memorandum provides that the Fund Manager may suspend redemptions "under exceptional circumstances as set out in Section 6.4 of the Information Memorandum". Section 6.4 of the Information Memorandum sets out, *inter alia*, the power of the Board (in consultation with the Fund Manager) to declare various types of suspensions, as well as to postpone the payment of redemption proceeds. While section 6.4 of the Information Memorandum does not explicitly state the circumstances in which suspensions may be declared, the provision does make mention of "circumstances" in which the payment of redemption proceeds may be postponed, *viz*, "in circumstances where investments of [the relevant] Sub-Fund cannot, *without having a material adverse effect on the remaining Shareholders*

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of such Sub-Fund, be liquidated in a timely fashion to meet redemption requests …" [emphasis added]. In my view, construing sections 6.4 and 6.5 of the Information Memorandum and section 8 of the Supplemental Memorandum harmoniously, the Board and Fund Manager's discretion to suspend ABIFI's NAV calculation and/or the redemption of Participating Shares is to be exercised in circumstances where, in their opinion, such calculation and/or redemption would have a material adverse effect on the shareholders (or, as the case may be, the remaining shareholders) of ABIFI. The exercise of this contractual discretion should not be arbitrary, capricious, perverse or in bad faith: *AL Shams Global Ltd v BNP Paribas* [2019] 3 SLR 1189 ("*AL Shams*") at [42]–[47]; *Deutsche Bank AG Singapore Branch v ARJ Holding Ltd* [2025] SGHC 163 at [185]–[188]. Where a party alleges that the discretion was exercised arbitrarily, capriciously, perversely or in bad faith, that party bears the burden of proving so: *AL Shams* at [47].

90 In the present case, Mr De Silva explained on 30 December 2024 when conveying the Board's decision to impose the Suspension that it was done to protect the overall performance of ABIFI and to safeguard the interests of all investors (see [37] above). The Fund has elaborated in these proceedings on the Board's rationale for imposing the Suspension, as follows. Due to volatility in the Hong Kong industrial property market and uncertainty over the position UOB would take, suspending NAV calculations was a prudent measure until the Board had greater clarity.[136] If, instead, redemptions at a nominal value were allowed, that risked raising questions of fairness, triggering further redemption pressure, and undermining the broader objective of preserving long-term value for all investors.[137] Further, if ABIFI's remaining cash had been used for the

136 1PNDS at para 30.

137 1PNDS at para 35.

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redemption of Participating Shares instead of meeting the shortfall in interest payments due under the UOB Loan, an immediate enforcement by UOB against the MSLC Property would have been inevitable and may have led to complete losses for the investors.[138] The Suspension was the only viable option to protect shareholder interests under a period of market distress.[139]

91 In my judgment, the Fund's explanation establishes that the Board's discretion to impose the Suspension had been exercised in line with the contractual requirements in the Offering Documents, *viz*, in circumstances where, in the Board's opinion, proceeding with ABIFI's NAV calculation and the redemption of ZSSF's Class C Participating Shares would have had a material adverse effect on ABIFI's shareholders including Ms Leung and Ms Sun. There is no evidence that the Board's discretion was exercised, or that its opinion was reached, arbitrarily, capriciously, perversely or in bad faith. To the contrary, ZSSF never raised any challenge to the Suspension in the contemporaneous correspondence adduced in evidence or in Mr Cai's first affidavit. It was only in Mr Cai's reply affidavit that ZSSF alleged that the Suspension was "a contrived afterthought" to deal with ZSSF's redemption requests (see [59(c)] above). This allegation was not without irony given how belatedly it was made. In any event, ZSSF failed to substantiate this allegation, and ZSSF's counsel instead represented that ZSSF did not contend that there was impropriety in the Board's decision to declare and maintain the Suspension.[140] For completeness, while Ms Leung sits on the Board as the "Management Shareholder Director" under reg 102 of the Constitution,[141] there

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138 1PNDS at para 34.

139 1PNDS at para 36.

140 Transcript at pp 82:23–85:3.

141 1PNDS at p 66; Transcript at p 28:6–10.

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was no allegation, much less evidence, that the Board had preferred her interests over the collective interest of ABIFI's shareholders in making its decisions, including in respect of the Suspension. In short, ZSSF has not established that the Suspension was imposed otherwise than in accordance with the contractual provisions binding on the parties. It bears repeating that with the Suspension in place, there can be no redemption of Participating Shares, and hence, no debt due and owing to ZSSF in respect of the Nov 2024 and Jan 2025 Redemption Requests.

92 Third, I reject ZSSF's argument that the "offering of redemption in kind" raised in Mr De Silva's e-mails of 28 November 2024, 24 December 2024, 22 April 2025 and 5 May 2025 constituted an admission that ABIFI owed ZSSF a debt in respect of the Nov 2024 and Jan 2025 Redemption Requests despite the Suspension (see [59(b)] above). This argument erroneously conflates the "Non-Cash Redemptions" provided for in section 5.2.3 of the Information Memorandum with the "redemption in kind" discussed in the correspondence between Mr De Silva and ZSSF.

93 Section 5.2.3 of the Information Memorandum provides that a shareholder whose participating shares are being redeemed may, in the Board's discretion, "receive *assets owned by the relevant Sub-Fund* in lieu of or in combination with cash" [emphasis added] (referred to as "Non-Cash Redemptions") (see [19] above). Of significance, (a) in a Non-Cash Redemption under section 5.2.3 of the Information Memorandum, it is the non-cash *assets of ABIFI* (which comprise *only the ABIFI-HCIL Loan*) that would be used, *at the Board's discretion*, to fulfil the redemption request; and (b) a Non-Cash Redemption under section 5.2.3 of the Information Memorandum *remains* a redemption of Participating Shares that is subject to the Suspension.

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94 In contrast, the "redemption in kind" canvassed in the parties' contemporaneous correspondence, which in fact emanated from ZSSF's Proposal, (a) contemplated the transfer of the *MSLC Property* (which is *not* an asset owned by ABIFI) to ABIFI's investors together with their assumption of the UOB Loan, all in proportion to their respective shareholdings in ABIFI; and (b) could only be pursued with the *consent of (inter alia) UOB and ABIFI's investors* (see [34], [35(c)], [36(b)], [39] and [42(c)(ii)] above). It is clear that this "redemption in kind" was *not* the "Non-Cash Redemptions" provided for under section 5.2.3 of the Information Memorandum. Rather, what was mooted in the correspondence was essentially a consensual restructuring of the Debt Investment, the UOB Loan and associated arrangements. The Board and/or Fund Manager's exploration of this option was not tantamount to an admission that any debt was due and owing by ABIFI to ZSSF in respect of the Nov 2024 and Jan 2025 Redemption Requests.

95 I thus conclude that there is no debt due and owing from ABIFI to ZSSF in respect of the Nov 2024 and Jan 2025 Redemption Requests, and ZSSF consequently does not have standing as a creditor to make the winding-up application in CWU 227.

Whether ZSSF has standing as a contingent creditor

96 I next address ZSSF's alternative case that it is a contingent creditor of ABIFI.[142]

97 Under s 124(1)(*c*) of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("IRDA"), a "contingent creditor" with standing to

142 CWS at para 23; Transcript at p 22:2–25.

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apply to court to wind up a company is a person towards whom the company owes an existing obligation, out of which a liability on the part of the company to pay a sum of money will arise at a future date or in a future event, whether such event must or only may occur: *Founder Group* at [40], [42], [43(a)] and [45], referring to *Re People's Parkway Development Pte Ltd* [1991] 2 SLR(R) 567 at [10] and *Community Development Pty Ltd v Engwirda Construction Co* (1969) 120 CLR 455 at 459. A disputed liability may in principle be considered a contingent liability where the liability itself is not disputed and the only dispute is over whether the contingency that crystallises the liability has occurred: *Founder Group* at [45].

98 In my view, these conceptions of "contingent creditor" and "contingent liability" are equally applicable in an application to court to wind up a sub-fund. This is because the references to "contingent creditor" and "contingent liability" in ss 124 and 125 of the IRDA are *in pari materia* to those under their predecessor provisions, ss 253 and 254 of the Companies Act, and a modified form of ss 253 and 254 of the Companies Act (in which the provisions relating to "contingent creditor" and "contingent liability" are not substantively modified) governs an application to court to wind up a sub-fund under the VCC Act (see [75], [76] and [79] above).

99 Applying the above principles, I find that ZSSF is a contingent creditor of ABIFI in respect of the Nov 2024 and Jan 2025 Redemption Requests. Regulation 9(4) of the Constitution (see [11] above) and section 4.2.2(d) of the Information Memorandum (see [15] above) confer on ABIFI's shareholders the right to redeem their Participating Shares at their option, albeit subject to the conditions stipulated in the Constitution and Offering Documents. This gives rise to a corresponding obligation on ABIFI's part to redeem a shareholder's Participating Shares where such option has been exercised, subject to the

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conditions stipulated in the Constitution and Offering Documents. Here, the Nov 2024 and Jan 2025 Redemption Requests have not been effected given the Suspension (which the Board and Fund Manager are entitled to impose). However, as reg 30 of the Constitution (see [14] above) and section 6.4 of the Information Memorandum (see [20(b)] above) make clear, redemptions pursuant to these requests (if they are not withdrawn) must be made after the Suspension ends. There is thus an existing obligation on ABIFI's part to effect the Nov 2024 and Jan 2025 Redemption Requests at a future time after the Suspension ends. On the "Redemption Day" at that future time, ABIFI will then become liable to ZSSF for such "Redemption Price" as will be determined (see section 5.2.1 of the Information Memorandum at [16] above). ZSSF is thus, as the Fund's counsel, Mr Sim Chong ("Mr Sim"), also fairly accepted,[143] a contingent creditor of ABIFI.

100 That said, ZSSF's status as a contingent creditor does not guarantee that ZSSF should be heard on its winding-up application brought based on such standing. Pursuant to s 253(2)(*c*) of the Companies Act, the court shall not hear a winding-up application made by a contingent creditor until such security for costs has been given as the court thinks reasonable and a *prima facie* case for winding up has been established to the court's satisfaction (see [76] above). Neither party addressed me on these qualifications to ZSSF's right, *qua* contingent creditor, to be heard on CWU 227. Ultimately, however, I do not have to decide on how s 253(2)(*c*) of the Companies Act affects ZSSF's application because, as I next explain, ZSSF has, in any event, standing as a contributory to bring CWU 227.

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143 Transcript at p 32:1–7.

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Whether ZSSF has standing as a contributory

101 ZSSF satisfies the definition of "contributory" under s 2(1) of the VCC Act (see [77] above) by virtue of holding fully paid up Class C Participating Shares, which were issued by the Fund in respect of ABIFI (see [8] above). ZSSF also satisfies the condition under s 253(2)(*a*)(ii) of the Companies Act (see [77] above) as its Class C Participating Shares have been held by it and registered in its name since at least 9 May 2023.[144] ZSSF thus has, as Mr Sim also and again fairly accepted,[145] standing as a contributory to bring CWU 227.

Issue 2: whether ZSSF has established the Insolvency Ground

102 ZSSF relied on para 14(*d*) of the First Schedule to the VCC Act for the Insolvency Ground, *ie*, that "the umbrella VCC is unable to pay the debts of the sub-fund" (see [78] above).[146] Under s 254(2)(*c*) of the Companies Act (as necessarily modified pursuant to s 5(3)(*a*) of the VCC Act), this is deemed to be the case if it is proved to the court's satisfaction that the umbrella VCC is unable to pay the sub-fund's debts, and in making this determination, the court shall take into account the contingent and prospective liabilities of the sub-fund (see [73] and [79] above) (the "Modified s 254(2)(*c*)"). Two questions arise:

(a) what is the test under the Modified s 254(2)(*c*); and

(b) applying this test, has ZSSF established ABIFI's insolvency?

144 1CF at p 124.

145 Transcript at pp 30:26–31:21.

146 2CF at para 5(a).

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The applicable test

103 In *Sun Electric Power Pte Ltd v RCMA Asia Pte Ltd* [2021] 2 SLR 478 ("*Sun Electric*"), the Court of Appeal held that the cash flow test, which assesses whether a company's current assets exceed its current liabilities such that it is able to meet all debts as and when they fall due, is the sole and determinative test under s 254(2)(*c*) of the Companies Act (at [56] and [65]). This is because the plain words of the provision imply only a single insolvency test which, by requiring an assessment of the company's present capacity to meet its liabilities as and when they become due, refers to the cash flow test (at [57]–[61]). The balance sheet test, which compares a company's total assets with its total liabilities, is not the intended single test as a company's total assets to total liabilities ratio is not a good indicator of its present ability to pay its debts (at [62]–[63]).

104 In respect of the cash flow test, "current assets" and "current liabilities" refer to assets which will be realisable and debts which will fall due within a 12-month timeframe: *Sun Electric* at [65]. The court considers whether the company's assets are realisable within a timeframe that would allow each of the debts to be paid as and when it becomes payable, and whether any liquidity problem can be cured in the reasonably near future: *CH Biovest Pte Ltd v Envy Asset Management Pte Ltd* [2025] 1 SLR 141 ("*CH Biovest*") at [110]. The debts to be considered need not be already due or demanded, and include contingent and prospective liabilities: *CH Biovest* at [110]. The non-exhaustive factors the court should consider in applying the cash flow test are (*Sun Electric* at [69]; *CH Biovest* at [110]):

(a) the quantum of all debts which are due or will be due in the reasonably near future;

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(b) whether payment is being demanded or is likely to be demanded for those debts;

(c) whether the company has failed to pay any of its debts, the quantum of such debt, and for how long the company has failed to pay it;

(d) the length of time which has passed since the commencement of the winding-up proceedings;

(e) the value of the company's current assets and assets which will be realisable in the reasonably near future;

(f) the state of the company's business, in order to determine its expected net cash flow from the business by deducting from projected future sales the cash expenses necessary to generate those sales;

(g) any other income or payment which the company may receive in the reasonably near future; and

(h) arrangements between the company and prospective lenders, such as its bankers and shareholders, in order to determine whether any shortfall in liquid and realisable assets and cash flow could be made up by borrowings which would be repayable at a time later than the debts.

105 In my view, the cash flow test (with the annotation at [107] below) is also the single test that applies under the Modified s 254(2)(*c*) when assessing if a sub-fund is insolvent. First, given that the same statutory language (adapted to a VCC and its sub-fund) is employed, the reasoning in *Sun Electric* (at [56]–[65]) in favour of the cash flow test is equally applicable to the Modified s 254(2)(*c*). Second, the application of the same insolvency test as that

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for companies to sub-funds of a VCC aligns with Parliament's intent: during the second reading of the VCC Bill, then Second Minister for Finance, Ms Indranee Rajah, stated that "[t]he laws in general principles on corporate liquidation under the winding up provisions of the Companies Act (Cap 50) provide an established framework to ensure that the assets and affairs of sub-funds are dealt with in a fair and orderly manner" (see Singapore Parl Debates; Vol 94, Sitting No 83; [1 October 2018] (Indranee Rajah, Second Minister for Finance)).

106 Where the assets and liabilities of a sub-fund are concerned, under the VCC Act, an asset of a sub-fund refers to an asset that is held by the umbrella VCC for the purpose of or that is attributable to that sub-fund (s 2(3)(*c*)). In a similar vein, a debt or liability of a sub-fund refers to a debt or liability incurred by the umbrella VCC for the purpose of or that is attributable to that sub-fund (s 2(3)(*a*)). The assets and liabilities of each sub-fund of the umbrella VCC must be segregated. In particular, any liability of a sub-fund must be discharged solely out of the assets of that sub-fund (s 29(1)(*b*)). However, under s 29(3):

> (3) An umbrella VCC may allocate any assets or liabilities —
>
> (*a*) that it holds or incurs for the purpose of its sub-funds or in order to enable the operation of the sub-funds; and
>
> (b) that are not attributable to any particular sub-fund,
>
> between its sub-funds in a manner that it considers fair to shareholders.

107 The implications of the above provisions of the VCC Act are that, when applying the cash flow test under the Modified s 254(2)(*c*), the "current assets" to be considered are (a) the assets held by the umbrella VCC for the purpose of or that are attributable to the sub-fund concerned and (b) the assets (if any) held by the umbrella VCC generally for the purpose of its sub-funds or in order to

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enable the operation of its sub-funds, which are not attributable to any particular sub-fund and which the VCC considers fair to shareholders to allocate to the sub-fund concerned. The "current liabilities" to be considered are the obverse of the "current assets" to be considered. Apart from this gloss, the cash flow test should apply in the same manner as outlined in *Sun Electric* and *CH Biovest* (see [104] above), with the factors to be considered adapted for the sub-fund concerned as necessary and applicable.

Application to the facts

108 Applying the cash flow test, I find that ZSSF has not proven that the Fund is unable to pay ABIFI's debts.

109 First, ZSSF has not shown that there are any debts presently due and owing by ABIFI. On behalf of the Fund and Fund Manager, Mr De Silva has deposed that ABIFI is solvent and has no creditors or liabilities.[147] The only debt alleged by ZSSF is that purportedly arising from the Nov 2024 and Jan 2025 Redemption Requests. However, as explained at length at [83]–[95] above, there is no debt due and owing by ABIFI to ZSSF in that regard. Indeed, the fact that ZSSF is a *contingent* creditor in respect of the Nov 2024 and Jan 2025 Redemption Requests (see [99] above) precisely means that ABIFI's liability in that connection is *not* a present liability but will arise only upon the occurrence of future events (see *Founder Group* at [26]).

110 Second, while the court will consider contingent liabilities falling due within a 12-month timeframe under the cash flow test, ZSSF has not shown (a) that the Suspension will or must necessarily be lifted within this timeframe

147 1PNDS at paras 8 and 11.

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and/or (b) that, if and when the Suspension is lifted, ABIFI will necessarily be unable to make payment on the Nov 2024 and Jan 2025 Redemption Requests. I elaborate.

111 In its letter to ZSSF dated 28 November 2024, the Fund Manager stated that the Board and Fund Manager had decided that "pursuing an orderly realization with the objective of returning [ABIFI's] assets is in the best interests of all investors" (see [35(b)] above), although ZSSF's Proposal of a "redemption in kind" was an option that could be considered if ZSSF wished to pursue it (see [35(c)] above). The Suspension was imposed shortly thereafter on 30 December 2024.

112 On 22 April 2025, Mr De Silva conveyed in his e-mail to ZSSF that "[i]f redemption in kind is not deemed a feasible exit strategy for this investment, we are looking at liquidating this sub-fund to repay investors as effectively as possible after deducting the necessary fees" (see [41(b)] above). ZSSF argued that Mr De Silva's statement showed that the Fund Manager accepted that ABIFI ought to be liquidated (see [59(d)] above), whereas the Fund submitted that Mr De Silva's statement was an allusion to the "Soft Wind Down" mechanism under section 6.5 of the Information Memorandum (see [62] above). I reject ZSSF's, and accept the Fund's, characterisation of Mr De Silva's statement.

113 Under section 6.5 of the Information Memorandum (titled "Soft Wind Down"), the Board may undertake an "Orderly Realisation", *viz*, managing ABIFI with the objective of returning its assets to the shareholders in an orderly manner, if doing so is in the best interests of the shareholders; it is expressly provided that an "Orderly Realisation" does not constitute a dissolution or winding up of the sub-fund, but rather, the continued management of its

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portfolio so as to reduce such portfolio to cash and return such cash to the shareholders (see [22] above). Mr De Silva's statement on 22 April 2025 was consistent with what the Fund Manager had earlier conveyed on 28 November 2024: if ZSSF's Proposal was not pursued, the Board intended to continue on the path of "Orderly Realisation", which is provided for under section 6.5 of the Information Memorandum. Of significance, section 6.5 of the Information Memorandum also allows the Board to maintain the Suspension indefinitely while undertaking an "Orderly Realisation".

114 Following UOB's in-principle agreement in June 2025 to a restructuring of the UOB Loan, the looming threat of an immediate enforcement by UOB against the MSLC Property appears to have passed (see [49] above). The Board and Fund Manager have indicated that they will keep the Suspension under review and "revisit it when there is sufficient clarity about asset values or when liquidity becomes available" (see [67] above).

115 Two points emerge from the course of events. One, there is no indication that the Board has ruled out pursuing an "Orderly Realisation" under section 6.5 of the Information Memorandum, in which event the Suspension may remain in place. Two, it appears that if the Board decides to lift the Suspension, the Board will do so only at a time when the Fund is in a position to calculate ABIFI's NAV and pay the corresponding "Redemption Price" in respect of the Nov 2024 and Jan 2025 Redemption Requests, without a material adverse effect on ABIFI's shareholders. It is not for the court to second-guess what commercial decision(s), among the contractually available options, the Board and Fund Manager will take. In short, (a) whether ABIFI's contingent liability in respect of the Nov 2024 and Jan 2025 Redemption Requests will crystallise within the next 12 months (which is the relevant timeframe for assessment) and (b) whether ABIFI will be unable to meet the liability if and when it crystallises

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within that time, are too speculative to permit a conclusion that ABIFI fails the cash flow test on account of this contingent liability.

116 Third, I reject ZSSF's belated suggestion that ABIFI will become insolvent by virtue of having to pay the Fund Manager's management fees and expenses incurred in CWU 227 (see [59(e)] above).

117 In respect of the Fund Manager's management fees, section 14(a) of the Supplemental Memorandum states:

> Management Fees shall be payable by the holders of Class A Participating Shares in the amount set out in the engagement letter between the Fund and the Fund Manager dated 29 October 2021, a copy of which is available from the Fund Manager.
>
> The Manager is authorised to recover Management Fees when due from the Class A Distributable Proceeds or, if no or insufficient Class A Distributable Proceeds are available at the time such fees fall due, from monies attributable to Class A Participating Shares.
>
> Management Fees accrue quarterly and [are] payable quarterly in arrears on the same day as the day of quarterly distribution to Shareholders.

118 It is clear that the Fund owes a legal obligation to the Fund Manager to pay the latter's management fees pursuant to the engagement letter between them. This explains why ABIFI's bank statements showed that management fees in the amount of S$13,885.02 had been paid to the Fund Manager on 25 April 2025.[148] At the same time, section 14(a) of the Supplemental Memorandum imposes an obligation on Ms Leung (as the sole holder of Class A Participating Shares) to pay the Fund Manager's management fees. In my view, although the Fund owes an obligation to pay the Fund Manager, Ms Leung owes

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148 1PNDS at p 33; Transcript at p 76:14–25.

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an obligation to the Fund to make this payment on its behalf. The Fund Manager is authorised to make certain deductions described in section 14(a) of the Supplemental Memorandum with a view to effecting payment by Ms Leung of the management fees, but if those avenues for deduction are not available, the Fund is entitled to (a) ask Ms Leung to make payment directly to the Fund Manager or (b) where the Fund has made payment in the first instance to the Fund Manager, seek repayment of that amount from Ms Leung.[149]

119 As at July 2025, ABIFI held approximately HK$60,418.78, S$5,820.15 and US$2,913.79 in cash[150] (totalling approximately S$19,476.82[151]). This is sufficient to cover the Fund Manager's management fees for the next quarter. More importantly, given Ms Leung's support for ABIFI expressed in her letter of 17 July 2025 (see [51] above) and through her further HK$1.2m capital contribution on 26 May 2025 (see [46] above), there is no reason to think that she is unable to and/or will not honour her obligation to cover the quarterly management fees payable to the Fund Manager. Correspondingly, there is no reason to think that the Fund will be unable to pay any debts for management fees under its engagement letter with the Fund Manager as and when they fall due.

120 As for expenses ABIFI may incur in CWU 227, there is no basis for ZSSF to speculate on their quantum or whether ABIFI can meet them. Indeed, on the dismissal of CWU 227, the Fund would be entitled to seek costs of the action from ZSSF.

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149 See also Transcript at pp 77:16–25 and 79:11–26.

150 1PNDS at para 11 and pp 31–34.

151 2CF at para 7.

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121 For completeness, while the Fund had adduced evidence of the cash held by ABIFI, Mr Sim informed me at the hearing of CWU 227 that the Fund had not adduced evidence of *the Fund's* available assets for allocation to ABIFI. I understood Mr Sim to be referring to the allocation permitted under s 29(3) of the VCC Act (see [106] above). He explained that the Fund had not adduced this evidence apparently because ZSSF had incorrectly articulated in Mr Cai's first affidavit that ZSSF's application was brought on the ground that *ABIFI* (as opposed to *the Fund*) was unable to pay ABIFI's debts. The Fund thus did not think that it had to meet a case that *the Fund* was unable to pay ABIFI's debts.[152]

122 While ZSSF did not phrase the Insolvency Ground appositely in Mr Cai's first affidavit (see [2] above), I have difficulty accepting that the Fund did not appreciate from the outset that what ZSSF sought in substance was to have ABIFI wound up under para 14(*d*) of the First Schedule to the VCC Act, which concerns *the Fund's* ability to pay ABIFI's debts. The Fund's justification for its decision to adduce limited evidence regarding available assets is, to my mind, unduly technical. And, as the Fund did not adduce evidence that it had assets available for allocation to ABIFI, I do not presume that this was so. That said, the only relevant liability of ABIFI that ZSSF has established is the obligation to pay the Fund Manager's management fees, which the Fund has satisfactorily shown can and will be met (see [119] above). In these circumstances, I do not think that the Fund had any evidential burden to adduce further evidence of ABIFI's solvency.

123 I therefore conclude that ZSSF has not established the Insolvency Ground for winding up ABIFI.

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152 Transcript at pp 56:9–61:13.

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Issue 3: whether ZSSF has established the Just and Equitable Ground

124 ZSSF relied on para 14(*i*) of the First Schedule to the VCC Act for the Just and Equitable Ground, *ie*, that "the Court is of the opinion that it is just and equitable that the sub-fund be wound up" (see [78] above). ZSSF's two main reasons in support of this ground were that (a) the commercial purpose of ABIFI could no longer be achieved and (b) it was unfair for ZSSF to be left in its current position of being unable to redeem its Participating Shares due to the indefinite Suspension (see [60] and [61] above).

The applicable principles

125 Paragraph 14(*i*) of the First Schedule to the VCC Act is adapted from s 254(1)(*i*) of the Companies Act, and the principles governing the latter are equally applicable (as necessarily modified) to the former.

126 The notion of unfairness lies at the heart of the court's "just and equitable" jurisdiction under s 254(1)(*i*) of the Companies Act: *Sim Yong Kim v Evenstar Investments Pte Ltd* [2006] 3 SLR(R) 827 at [31]. The test for unfairness is an objective one, being whether a reasonable bystander observing the consequences of the impugned conduct would regard it as having unfairly prejudiced the applicant's interests: *Summit Co (S) Pte Ltd v Pacific Biosciences Pte Ltd* [2006] SGHC 190 at [5]; *RCMA Asia Pte Ltd v Sun Electric Power Pte Ltd* [2020] SGHC 205 at [59]. Of especial relevance to ZSSF's case are the following principles.

127 While the words "just and equitable" are words of the widest significance, they do not give the court *carte blanche*; the jurisdiction must be exercised with caution, especially when a winding up order would have the effect of releasing the applicant from any obligation to comply with the scheme

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of things set forth in the company's constitution: *Tan Yew Huat v Sin Joo Huat Hardware Pte Ltd* [2024] SGCA 27 at [72(a)], citing *Perennial (Capitol) Pte Ltd v Capitol Investment Holdings Pte Ltd* [2018] 1 SLR 763 ("*Perennial*") at [40]. Where the applicant's difficulty in exiting a company does not involve any breach of the company's constitution or the applicant's legitimate expectations, such difficulty of itself does not amount to unfairness that would justify winding up the company on just and equitable grounds: *Gan Yuan Hong v LMO Consulting Pte Ltd* [2025] SGHC 171 at [39(c)].

128 Winding up on the just and equitable ground has been granted where the substratum of the company, *ie*, the main object which the company was formed to achieve, has been lost as that main object can no longer be achieved (see *Grimmett, Andrew v HTL International Holdings Pte Ltd* [2022] 5 SLR 991 ("*Grimmett*") at [58(a)] and [60]). It is not merely the falling away of the substratum that renders it just and equitable for the company to be wound up; it is also the unfairness in one set of shareholders locking other shareholders in a different business that they did not agree to as the commercial risk would have changed: *Grimmett* at [63].

Application to the facts

129 I find that, viewed objectively, ZSSF has not established the requisite unfairness that would render it just and equitable to wind up ABIFI. I address ZSSF's two main arguments in turn.

Alleged loss of substratum of ABIFI

130 In my view, it is incorrect for ZSSF to claim that the principal commercial purpose of ABIFI can no longer be achieved (see [60] above).

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131 First, properly understood, the principal commercial purpose of ABIFI must mean its main object, and that should be determined with reference to the Supplemental Memorandum. Section 2 of the Supplemental Memorandum states that the investment objective of ABIFI is to generate returns from direct or indirect investments.[153] Section 3 of the Supplemental Memorandum elaborates that the Fund Manager intends to achieve ABIFI's objective by investing in opportunities, including in "loans"; such loan investments "may or may not be supported by liquid and/or illiquid collateral … with or without recourse to the debtor and (if applicable) third-party obligor; or uncollateralised and with recourse to the debtor and (if applicable) third-party obligor, senior or subordinated in its claim, and whether or not convertible into other assets".[154] The Debt Investment fits ABIFI's investment objective, and ABIFI has not deviated from its main object.

132 Second, ZSSF's complaint, in truth, was that the Debt Investment had not been commercially successful to date. ZSSF took issue with the non-materialisation of the potential sale of the MSLC Property and the fall in the estimated property value, in contrast to the forecast in the Investment Memo (see [60] above). However, there are three difficulties with ZSSF taking this tack. One, the Debt Investment was undertaken *further to* ABIFI's main object (set out in the Supplemental Memorandum) and is not *in itself* ABIFI's main object. It is an erroneous conflation of the two to say that because the Debt Investment has not been commercially successful, ABIFI's main object has not or cannot be achieved. Two, even if the court were to focus only on the Debt Investment, it is not possible to conclude on the evidence that recovery on the Debt Investment is bound to fail. Three, as a sophisticated investor, ZSSF knew

153 1PNDS at p 169.

154 1PNDS at p 169.

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and accepted from the outset that the Debt Investment carried risks including, as alluded to in the Investment Memo, that the value of the MSLC Property might fall (see [30] above).[155] The materialisation of the risks of the Debt Investment does not reasonably amount to unfairness to ZSSF or indicate that ABIFI's main object cannot be achieved. To the contrary, I agree with the Fund's submission that what ZSSF called frustration of purpose was the very type of risk ZSSF knowingly accepted as part of its investment.[156]

133 Third, ZSSF also took issue with the Board's decisions for the Fund to cover the shortfall in some interest payments due to UOB and not to pursue the Cheungs on their personal guarantees (see [60] above). In this regard, the Fund explained that ABIFI had made the interest payments to strategically protect its indirect and subordinated interest in the MSLC Property (see [65] above), and that ABIFI had not made claims against the Cheungs for now as the prospect of recovery from them was assessed to be low[157] but this remained an option if it became commercially justifiable to pursue such claims.[158] While ZSSF disagreed with the Board's commercial rationale for its decisions, such disagreement does not reasonably amount to unfairness to ZSSF or indicate that ABIFI's main object cannot be achieved. Further, ZSSF had accepted, as stipulated in the Information Memorandum, that as a shareholder, it would have "no right or power to participate in the management" of ABIFI.[159]

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155 1PNDS at para 64 and p 208.

156 1PNDS at para 69; DWS at para 33.

157 1PNDS at paras 50–53.

158 DWS at para 67.

159 1PNDS at p 151.

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134 Fourth, apart from the fact that there is no loss of substratum of ABIFI, there is also none of the unfairness referred to in *Grimmett* at [63] (see [128] above) as ABIFI has neither embarked on nor locked ZSSF into a different business from what ABIFI's investment objective permits and what ZSSF had knowingly signed up to.

Allegation that ZSSF is locked in

135 There is also no merit in ZSSF's claim that it is unfairly locked in its current position because of the indefinite Suspension (see [61] above). ZSSF contractually agreed to the Board's powers to impose the Suspension, including indefinitely (see [22] above). ZSSF has not shown that the Board's discretion to impose and maintain the Suspension was exercised arbitrarily, capriciously, perversely or in bad faith (see [88]–[91] above). The Suspension has in fact been imposed uniformly on all investors in ABIFI, not just ZSSF.[160] It is also not ZSSF's case that it has legitimate expectations of being able to exit its investment in ABIFI otherwise than as provided in the Constitution and Offering Documents. In these circumstances, granting ZSSF's winding-up application would have the effect of allowing ZSSF to be released, at will, from its obligations to comply with the scheme for redemptions and suspensions set out in the Constitution and Offering Documents. In my judgment, this cannot be a just and equitable ground for winding up ABIFI (see [127] above). To the contrary, taking this course would be unfair to ABIFI's other investors who have abided by the same obligations under the Constitution and Offering Documents.

136 I therefore conclude that ZSSF has not established the Just and Equitable Ground for winding up ABIFI.

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160 1PNDS at para 30.

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Issue 4: whether the court should exercise its discretion not to make a winding-up order

137 Even where the statutory grounds for winding up a company have been technically established, the court has a residual discretion to consider whether, in the light of all relevant factors, the company should be wound up: *Perennial* at [82]; *Adcrop Pte Ltd v Gokul Vegetarian Restaurant and Cafe Pte Ltd* [2023] 5 SLR 1435 ("*Adcrop*") at [46]. The factors the court may consider include whether the winding-up application was brought in abuse of process (*Adcrop* at [47]), the utility and effect of a winding-up order and the overall fairness and justice of the case (*Perennial* at [82], citing *Lai Shit Har v Lau Yu Man* [2008] 4 SLR(R) 348 at [33]). Given that para 14 of the First Schedule to the VCC Act is adapted from s 254(1) of the Companies Act, this discretion and the principles pertaining to its exercise are equally applicable when the court considers whether a sub-fund should be wound up notwithstanding that the statutory grounds for winding up have been established.

138 In the present case, given my findings that ZSSF has not established its alleged statutory grounds for winding up ABIFI, the issue of whether I should exercise my discretion to decline to grant a winding-up order does not arise. If, however, the issue arose, I would have exercised my discretion not to make a winding-up order for the following reasons.

139 First, in my view, ZSSF brought CWU 227 in abuse of process. The Fund submitted that ZSSF's application was "tactical", "driven by frustration over the pace or structure of redemption", and "reflected not a concern with [ABIFI's] viability but dissatisfaction with its own commercial outcomes"; this

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was not a proper basis for invoking the court's insolvency jurisdiction.[161] I agree. ZSSF's collateral purpose in bringing its application is further evidenced by:

(a) ZSSF's suppression of the material documents and contractual provisions governing the processes of redemption and suspension, when it first filed its application (see [87] above). The relevant contractual provisions would have made clear that there was no debt due and owing by ABIFI to ZSSF.

(b) ZSSF's shifting and evolving cases on both the Insolvency Ground and the Just and Equitable Ground (see [56]–[61] above).

140 Second, I agree with the Fund's submission that winding up ABIFI presently would likely derail ABIFI's ongoing discussions with UOB, introduce additional cost through the liquidation process, and not enhance the prospect of recovery for ABIFI's investors.[162] In other words, a winding-up order would be of doubtful utility.

141 Third, a winding-up order would be prejudicial to ABIFI's other investors, who together hold at least 46.4% of the Participating Shares in respect of ABIFI and who do not want ABIFI to be wound up.

Conclusion

142 I therefore dismiss CWU 227.

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161 DWS at paras 68–69.

162 DWS at paras 63–64.

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143 Unless the parties agree on costs, they should file their written submissions on costs, limited to five pages (excluding any list of disbursements), within one week from the date of this judgment.

Kristy Tan J
Judge of the High Court

Yeo Lai Hock Nichol and Andrew Ong Yi Kai (Nine Yards Chambers LLC) for the claimant;
Sim Chong (Sim Chong LLC) (instructed), Tan Soo Peng Daniel and Lee Yew Boon (Dan Tan Law LLC) for the defendant.

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