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

[2026] SGHC 102

Originating Application No 390 of 2023 (Summons No 3747 of 2025)

In the matter of Section 29 of the Mutual Assistance in Criminal Matters Act 2000

And

In the matter of Paragraph 7(1) of the Third Schedule to the Mutual Assistance in Criminal Matters Act 2000

And

In the matter of Order 53 Rule 11 of the Rules of Court 2021

And

In the matter of oCap Management Pte Ltd (in liquidation)

Between

Attorney-General

… *Applicant*

And

Liquidators of oCap Management Pte Ltd

… *Non-party*

Version No 1: 13 May 2026 (17:24 hrs)

JUDGMENT

[Insolvency Law — Winding up — Whether restraint order in relation to assets of company in liquidation should be varied — Paragraph 7(5) of the Third Schedule to the Mutual Assistance in Criminal Matters Act 2000 (2020 Rev Ed)]

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Re oCap Management Pte Ltd (in liquidation)

[2026] SGHC 102

General Division of the High Court — Originating Application No 390 of 2023 (Summons No 3747 of 2025)
Aidan Xu J
9 March 2026

13 May 2026 Judgment reserved.

Aidan Xu J:

1 HC/SUM 3747/2025 ("SUM 3747") of HC/OA 390/2023 ("OA 390") is an application by the liquidators of oCap Management Pte Ltd ("Company") to vary the restraint order previously granted by this court under paragraph 7(1) of the Third Schedule to the Mutual Assistance in Criminal Matters Act 2000 (2020 Rev Ed) ("MACMA"). In essence, the liquidators seek the further release of two categories of funds. The first consists of fees and disbursements incurred by the liquidators for work done amounting to S$178,560.25 ("Incurred Fees"). The second consists of fees and disbursements to be incurred by the liquidators in pursuing two claims against third parties, which the liquidators estimate will amount to around S$2,997,500 ("Future Fees"). The Attorney-General ("AG") takes no position in respect of the Incurred Fees, but objects to the release of the Future Fees.

2 For the reasons that follow, I decline to vary the restraint order in respect of the Future Fees, but I allow the release of the Incurred Fees.

Background

3 The background to this application was set out in my previous decision in *Re oCap Management Pte Ltd* [2024] 4 SLR 1039 ("Judgment"). I summarise only the material facts briefly.

Circumstances leading up to OA 390

4 The Company was first placed into creditors' voluntary liquidation on 10 December 2020, and was subsequently wound up by the court on 15 March 2021.[1]

5 On 10 March 2022, the German authorities instituted criminal proceedings against various individuals for alleged offences involving Wirecard AG and its subsidiaries ("Wirecard Group"). The Company is implicated in these criminal proceedings. In particular, Dr Markus Braun was charged with offences of embezzlement involving loans from the companies in the Wirecard Group to the Company amounting to €210m. These loans were allegedly used to disguise the Wirecard Group's true financial position and divert moneys out of the Wirecard Group. The German authorities are seeking a confiscation order over the value of the proceeds of crime obtained by the Company amounting to €210m in the German proceedings (Judgment at [7]).

6 In contemplation of this confiscation order, the German authorities had made a request for assistance to the AG pursuant to s 29(1)(*b*) of the MACMA, seeking Singapore's assistance to restrain the Company from dealing with any of the moneys deposited with Citibank NA ("Citibank") in two bank accounts ("Bank Accounts"), which could be subject to that confiscation order.

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[1] 1st Affidavit of David Kim dated 30 May 2023 at paras 13 and 18.

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The proceedings in OA 390

7 On 18 April 2023, the AG applied for a restraint order under s 29(2)(*b*) read with paragraph 7(1) of the Third Schedule to the MACMA, pursuant to the request for assistance from the German authorities. This sought to restrain the Company and Citibank from dealing with the moneys in the Bank Accounts. At the hearing for OA 390, the liquidators relied on paragraph 14(2) of the Third Schedule to the MACMA to argue that the restraint order should be subject to certain carve-outs to allow the liquidators to deal with a portion of the moneys in the Bank Accounts.

8 On 3 November 2023, I issued the Judgment, in which I held that the statutory requirements for the grant of the restraint order under s 29(2)(*b*) read with paragraph 6 of the Third Schedule to the MACMA had been satisfied (see Judgment at [12]–[15]). I also set out the applicable principles for determining the scope of any carve-outs from the restraint order under paragraph 14(2) (see Judgment at [78]).

9 Based on these principles, the parties were directed to file submissions on the amount with which the liquidators should be allowed to deal, and which should be carved out from the restraint order. The liquidators sought to exclude a total sum of between S$3,645,590 and S$3,809,338, which comprised:[2]

(a) past fees and costs incurred by the liquidators and their solicitors for work done amounting to S$815,590; and

(b) future fees to be incurred by the liquidators and their solicitors, estimated to be between S$2,830,000 and S$2,993,748.

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2 2nd Affidavit of Cameron Lindsay Duncan dated 12 January 2024 at para 15.

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10 On 5 March 2024, I allowed the exclusion in respect of the past fees and costs. However, I declined to grant the exclusion in respect of the future fees as there was insufficient evidence to show that these were necessary. In deciding as such, I expressly indicated to the liquidators that they "may wish to consider whether any further work is in fact required before distribution is made of what assets exist in hand or can be recovered in the circumstances".[3] In total, the past fees with which the liquidators were allowed to deal under the original restraint order in HC/ORC 1413/2024 ("ORC 1413") amounted to S$850,222.69.[4]

11 Subsequently, ORC 1413 was varied by consent in HC/ORC 3208/2024 ("ORC 3208") to include Goods and Services Tax totalling S$75,626.54 levied on those past fees, bringing the total amount in the carve-out to S$925,849.23.[5]

The application in SUM 3747

12 Since then, the liquidators have continued to perform additional work in the Company's liquidation, incurring further fees amounting to S$178,560.25 (*ie*, the Incurred Fees). These fees comprise:[6]

(a) S$44,904.34 for work done by the solicitors of the liquidators in respect of the examination of Mr James Henry O'Sullivan ("Mr O'Sullivan") in HC/OA 924/2023 ("Examination Proceedings");

(b) S$15,667.72 for work done by the solicitors of the liquidators after the Examination Proceedings, which included the updating

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3 AG's Bundle of Documents for SUM 3747 ("AGBOD"), Tab 1.

4 AGBOD, Tab 2.

5 AGBOD, Tab 3.

6 3rd Affidavit of Cameron Lindsay Duncan dated 9 December 2025 ("CLD-3") at para 37 and Tab 3 at pp 74–75; AG's Written Submissions ("AGWS") at para 10.

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of a claims memorandum ("Claims Memorandum") on the merits of the Company's potential claims against third parties to account for information obtained from the Examination Proceedings; and

(c) S$117,988.19 for work done by the liquidators, including: (i) the day-to-day administration of the Company's liquidation; (ii) attending meetings with entities of the Wirecard Group (who are the majority creditors of the Company) to provide updates on the liquidation of the Company, including updates on potential claims after taking into account the information obtained from the Examination Proceedings; (iii) the actions to be taken after the Examination Proceedings; (iv) the initiation of public examination proceedings in the Isle of Man; (v) assessing the merits of the potential claims; and (vi) reviewing the Claims Memorandum.

13 On 5 June 2025, the solicitors of the liquidators wrote to the Attorney-General's Chambers ("AGC") to seek a further variation of ORC 3208 by way of consent in respect of the Incurred Fees.[7]

14 In their letters, the liquidators also indicated their intention to apply for a variation of ORC 3208 in respect of the Future Fees, in addition to the Incurred Fees.[8] The liquidators explained that, after reviewing the information obtained from the Examination Proceedings, they were able to identify two claims which they intend to commence (collectively, "Anticipated Claims"), namely:[9]

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7 CLD-3, Tab 3 at pp 73–102.

8 CLD-3, Tab 3 at pp 105 and 110.

9 CLD-3, Tab 3 at p 110; AGWS at para 11.

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(a) a claim against former directors and potential shadow and/or *de facto* directors of the Company for losses suffered by the Company due to a questionable declaration of dividends, which is valued at approximately S$10.14m ("Dividends Claim"); and

(b) a claim against Ontario Inc for breach of an agreement to assign proceeds from an asset disposal to the Company, which is valued at approximately S$1.95m.

15 The liquidators have been unable to obtain third-party funding to pursue the Anticipated Claims, whether from the Wirecard Group or from other third-party funders.[10] They explain that the funds previously provided by the Wirecard Group, which were subject to a maximum aggregate cap, have been exhausted.[11] However, the liquidators were able to obtain funding from Athos Asia Event Driven Master Fund ("Athos") for the limited purpose of bringing an application to vary the restraint order in respect of the Future Fees.[12]

16 As the parties were ultimately unable to agree on the proposed variation of the restraint order, the liquidators commenced the present application in SUM 3747 on 9 December 2025, seeking the release of the Incurred Fees and Future Fees from the Bank Accounts.

17 Subsequently, on 8 January 2026, the AGC wrote to the solicitors of the liquidators to confirm if they will be providing a creditors' resolution approving the Incurred Fees under s 139(3) of the IRDA.[13] A creditors' meeting was thus

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10 CLD-3 at para 35.

11 CLD-3 at para 32.

12 CLD-3 at para 53.

13 AGBOD, Tab 4 at pp 18–19.

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convened by the liquidators on 20 January 2026, where the Incurred Fees were approved by a majority of not less than 75% in value and 50% in number of the creditors present and voting under s 139(3)(*b*) of the IRDA.[14]

The parties' cases

The liquidators' case

18 The liquidators argue that the requirements under paragraph 14(2) of the Third Schedule to the MACMA have been satisfied in respect of the Incurred Fees and Future Fees. Regarding the Incurred Fees, the liquidators argue that the fees are a fair, reasonable and proportionate reflection of the value of the services rendered by the liquidators and their solicitors, having regard to the factors in *Re Econ Corp Ltd* [2004] 2 SLR(R) 264 ("*Re Econ*").[15] The fees have also been approved by the creditors. Accordingly, they submit that the Incurred Fees were properly incurred within the meaning of paragraph 14(2)(*b*) and thus should be carved out from the restraint order.

19 As for the Future Fees, the liquidators rely on both paragraph 14(2)(*a*) and 14(2)(*b*). In relation to paragraph 14(2)(*a*), the liquidators submit that they would be inhibited from exercising their functions without access to the Future Fees. These functions include the pursuit of the Anticipated Claims, which goes towards realising and maximising the Company's assets, and would ultimately serve the goal of distribution to creditors.[16] In relation to paragraph 14(2)(*b*), the liquidators submit that the pursuit of the Anticipated Claims is necessary,[17] and

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14 AGBOD, Tab 4 at pp 24–28.

15 Liquidators' Written Submissions ("LWS") at paras 52 and 60.

16 LWS at paras 41, 43, 45 and 47.

17 LWS at paras 62 and 66.

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that the incurring of the Future Fees would be proper.[18] The pursuit of the claims represents the best chance of maximising the recovery to creditors.[19] Given the lack of third-party funding and the reasonableness of the past expenses that were incurred by the liquidators, there is no need for any downward adjustment to the quantum of the Future Fees.[20]

The AG's case

20 As mentioned, the AG takes no position in respect of the Incurred Fees, but objects to the release of the Future Fees on the basis that the liquidators have not proven that they are necessary and proper.[21] In this regard, the AG points to the following factors:[22]

(a) First, the liquidators have not been able to obtain any third-party funding to pursue the Anticipated Claims, despite numerous attempts to secure such funding. This is an indication that the funders have assessed the Anticipated Claims to lack merit, and that the prospects of recovery are so uncertain that funding would not be financially viable for them.[23]

(b) Second, the terms of the funding agreement between Athos and the Company are unduly onerous. Athos stands to enjoy a substantial yield of up to 20% from its investment in the event that the Future Fees are released,[24] and if the Anticipated Claims succeed, a further payout of

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18 LWS at paras 62 and 66.

19 LWS at paras 62 and 66.

20 LWS at paras 65 and 72–73.

21 AGWS at paras 20–21.

22 AGWS at para 22.

23 AGWS at para 24.

24 AGWS at para 27.

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at least 30% of the returns.[25] A substantial portion of the benefits from the release of the Future Fees will therefore go to Athos, and not to the creditors of the Company or the victims of the offences involving the Company.[26] While the liquidators have undertaken that no moneys will be paid to Athos until the Company receives the amounts in relation to the Anticipated Claims, and that any unused moneys will be returned if proceedings are not ultimately commenced,[27] these undertakings do not materially detract from the onerous terms of the funding agreement and the other concerns raised.[28]

(c) Third, there is no evidence of creditor support for the pursuit of the Anticipated Claims. Although the majority creditors of the Company (comprising various entities in the Wirecard Group) previously provided funding for the liquidators to investigate the Anticipated Claims and the Company's affairs, they have declined to extend any further funding for the claims to be pursued, which suggests that they do not have faith that the claims will succeed.[29] There was also no indication of support at the latest creditors' meeting (where the Incurred Fees were approved), even though the Anticipated Claims were raised.[30]

(d) Finally, the Future Fees represent almost 30% of the Company's remaining net assets of around S$10.28m (comprising S$10.14m in the

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25 AGWS at para 29.

26 AGWS at para 31.

27 Letter from Bird & Bird ATMD LLP dated 24 March 2026.

28 Letter from AGC dated 1 April 2026.

29 AGWS at pars 34–37.

30 AGWS at para 42.

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Bank Accounts and S$141,227.16 in the estate).[31] Such expenditure would be disproportionate and could not be justified by the expected returns, especially in light of the sums to be paid to Athos.[32]

My decision

21 In summary, I decline to vary the restraint order in respect of the Future Fees, but I allow the release of the Incurred Fees.

22 While the AG takes no position in respect of the Incurred Fees, it is still necessary for the court to assess whether the incurred expenses were properly incurred under paragraph 14(2)(*b*) of the Third Schedule to the MACMA. The fact that the Incurred Fees were approved by the creditors is not determinative of whether the variation should be granted. Ultimately, given the AG's lack of objection, I find that it would be proper for the Incurred Fees to be released, and that no reduction is necessary. That said, it would have been preferable if prior authorisation from the court had been obtained.

23 As for the Future Fees, I am not satisfied that the work to be done by the liquidators in pursuing the Anticipated Claims is necessary, or that the costs to be incurred will be proper. There are serious doubts about the prospects of these claims succeeding, and the expected returns do not justify the incurring of such substantial expenses. In these circumstances, the dominant consideration is the protection and preservation of the Company's assets, and the liquidators' focus should be on completing the liquidation process and distributing the remaining assets.

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31 AGWS at para 43; CLD-3, Tab 3 at p 113; Letter from Bird & Bird ATMD LLP dated 10 March 2026.

32 AGWS at paras 44 and 46.

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Issues to be determined

24 The sole issue to be determined in the present application is whether the requirements under paragraph 14(2) of the Third Schedule to the MACMA have been satisfied in respect of the Incurred Fees and Future Fees respectively. As I noted previously, the court's power to vary or discharge the restraint order under paragraph 7(5) may be exercised where the requirements of paragraph 14(2) are met (Judgment at [47]).

The Incurred Fees

25 I turn to address the Incurred Fees first.

26 As outlined above (at [12]), the Incurred Fees (totalling S$178,560.25) were for work done by the liquidators and their solicitors from 1 January 2024 to 31 May 2025. This included the day-to-day administration of the Company's liquidation as well as engagement with the Company's creditors, which would not generally raise any concerns. However, the work undertaken also included the continued pursuit and completion of the Examination Proceedings, as well as various other preparatory steps towards the pursuit of the Anticipated Claims, such as reviewing the Claims Memorandum, gathering information relating to the potential claims, and negotiating with various litigation funders. Such work naturally raised greater concerns, as it was of a nature for which the court had previously determined that funds should not be released (see [9]–[10] above).

27 Paragraph 14(2)(*b*) of the Third Schedule to the MACMA restricts the court's power to grant a restraint order where this would prevent the payment of expenses which were properly incurred. In assessing whether the expenses were properly incurred, the test is whether the sum is a "fair, reasonable and proportionate reflection of the value of the services rendered" (Judgment at [73],

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citing *Kao Chai-Chau Linda v Fong Wai Lyn Carolyn* [2016] 1 SLR 21). This should be read holistically, having regard to the factors in *Re Econ*, which are: (a) the time spent by the liquidators on the matter; (b) the value brought to bear by the liquidators; (c) the reasonableness of the charge out rate; (d) the complexity of the matter; (e) the effectiveness of what was done; and (f) the functions and responsibilities of the liquidators (Judgment at [73]).

28 Further, as observed previously, it is not sufficient for the liquidators to rely on the statutory grounds under the IRDA to justify their claim. They must still satisfy the court that the expenses have been properly incurred, even if the grounds on which they rely do not typically require the court's intervention. For example, ss 139(3)(*a*) and 139(3)(*b*) of the IRDA allow the remuneration of the liquidators to be determined by agreement with the committee of inspection, if any, or by a resolution passed by the requisite majority of creditors. However, in the context of paragraph 14(2)(*b*) of the Third Schedule to the MACMA, the fact that the requirements of ss 139(3)(*a*) or 139(3)(*b*) of the IRDA are satisfied is not determinative of whether the expenses have been properly incurred. The court must be the final arbiter of the matter, and the fact that the expenses have been approved by the creditors is not sufficient (Judgment at [76]–[77]).

29 In the present case, I note with some concern that despite the existence of the restraint order, the work was undertaken by the liquidators without prior authorisation from the court. This was particularly concerning given that some of the work undertaken related to the assessment of the Anticipated Claims, for which this court had previously declined to provide funding. The better course would have been for the liquidators to seek specific authorisation from the court before incurring such substantial expenses. If the liquidators wished to continue with the examination of Mr O'Sullivan (or any other person), they could have, for instance, sought authorisation from the court under s 188(4)(*b*) of the IRDA.

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More generally, the liquidators could have applied to the court for directions if they were unsure as to whether any particular work should be undertaken under s 145(3) of the IRDA. In the circumstances, given that most of the Company's funds were subject to the restraint order, and the remaining moneys in the estate would clearly not have been sufficient to pay for those expenses, the liquidators should not have undertaken such work without at least seeking directions from the court.

30 Had the matter been raised, such expenditure may not necessarily have been blessed by the court. As will be discussed below in relation to the Future Fees (see [39]–[41]), the ambit of the work to be done by the liquidators should have been circumscribed by the terms of the restraint order, under which certain funds had already been made available to the liquidators. The liquidators should, as a starting point, bear in mind that limitation when deciding whether any particular work should be undertaken. Some assessment of potential claims and gathering of information may be justified, so that the liquidators can assess if anything should be raised to the court, but the threshold for such action to be taken should be quite substantial. Indeed, if the liquidators decide to undertake work and incur expenses that would require a further release of funds under the restraint order without seeking prior authorisation from the court, they run the risk that such expenses may not ultimately be paid.

31 On the whole, however, I am satisfied that the Incurred Fees were a fair, reasonable and proportionate reflection of the value of the services rendered by the liquidators and their solicitors. The sum of S$178,560.25 was not excessive, given the time expended by the liquidators,[33] the complexity of the work done,[34]

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33 LWS at para 53.

34 LWS at para 55.

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and the rates that were charged.[35] Although some of the work in relation to the Anticipated Claims may not have been strictly necessary and should have been approved by the court first, they were mainly preparatory steps and I accept that some assessment of possible claims by the liquidators is justified. The fees were thus properly incurred by the liquidators under paragraph 14(2)(*b*) of the Third Schedule to the MACMA.

32 Further, I note that in the present case, the payment of the Incurred Fees has been approved by the Company's creditors under s 139(3)(*b*) of the IRDA, and the AG is not taking a position on the release of the Incurred Fees.[36] In the circumstances, I am satisfied that there is no need for any reduction to be made to the quantum of the Incurred Fees. However, I emphasise that in future cases, care should be taken before such expenditure is incurred, and the better course would be for the liquidators to seek specific authorisation from the court before undertaking such work, as discussed above (at [29]).

33 Accordingly, I allow the variation in respect of the Incurred Fees.

The Future Fees

The applicable principles

34 Turning to the Future Fees, the applicable principles were set out in the Judgment. I summarise the key points briefly.

35 Paragraph 14(2) of the Third Schedule to the MACMA provides:

> (2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the General Division of the High Court by

[35] LWS at para 58.

[36] AGWS at para 20.

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> paragraphs 7 to 11 and 12A or on a receiver so appointed must not be exercised in relation to any subject property held by the company in relation to which the functions of the liquidator are exercisable —
>
> > (*a*) so as to inhibit the liquidator from exercising those functions for the purpose of distributing any property held by the company to the company's creditors; or
> >
> > (*b*) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.

36 Turning first to paragraph 14(2)(*a*), it was held that this applies not only where granting the restraint order would inhibit the liquidators from performing the act of distribution itself, but also where it would inhibit the liquidators from performing other functions which serve the ultimate end of distribution. This is to ensure that, even if a restraint order is granted, the liquidation process would not be "stymied indefinitely" and the liquidators may continue to exercise their functions, at least up to the point of completion of distribution to creditors. Such an approach strikes the appropriate balance between the winding up regime and the MACMA regime, and provides assurance to the liquidators that they would actually be paid for their expenses (Judgment at [40], [43] and [48]).

37 As for paragraph 14(2)(*b*), it was held that this would restrict the court's power to grant a restraint order over realisable property if: (a) expenses were, or will be, incurred in the winding up in respect of such property; and (b) the incurring of such expenses was, or would be, proper (Judgment at [65]). This includes not only expenses which have been incurred, but also those which will be incurred (Judgment at [66]). In assessing the projected future expenses of the liquidators, the court identified three non-exhaustive factors (Judgment at [68]):

> (a) First, whether the anticipated work to be done for the remainder of the liquidation is necessary. This requirement of necessity strikes the

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right balance between the interest in not bringing the liquidation process to a halt, and the interest in facilitating the provision and obtaining of international assistance in criminal matters (Judgment at [69]).

(b) Second, whether there is any access to third-party funding. If the liquidators have access to third-party funding, the value of the property that is to be excluded from the restraint order would need to be adjusted downwards (Judgment at [70]).

(c) Third, whether the past expenses of the liquidators have been reasonable. If the liquidators have incurred significant expenses without making good progress in the liquidation, the court might infer that the anticipated expenses are not an accurate estimate of what is necessary to conduct the liquidation, such that a downward adjustment is required (Judgment at [71]).

38 These factors go towards both the quantum of the expenses that will be incurred and the assessment of whether such expenses will be properly incurred, and it would not be necessary to consider these factors twice over in applying paragraph 14(2)(*b*). As noted previously, the "determination of what expenses are necessary in the future will inevitably involve an implicit consideration of whether such expenses are proper" (Judgment at [72]).

39 All things considered, it is clear that the overarching requirement under paragraph 14(2)(*b*) is really one of necessity. The work for which expenses are to be claimed must be necessary. What is necessary cannot be defined precisely, and much will depend on the context and circumstances. In certain situations, where there is, through some good fortune, a pool of funds readily recoverable with little risk and effort, clawback actions may indeed be necessary. However, aside from such situations, one would generally hesitate to describe a clawback

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action, especially one carrying a real risk of failure, as necessary. Where there is a high degree of risk or speculation, the focus of the liquidators should shift away from recovery, and they should instead focus primarily on winding down the company.

40 Where there is a restraint order in place, this indicates that prosecutorial and law enforcement agencies have assessed that there is a need to preserve the funds of the company, both for investigative purposes and to protect defalcated assets for the benefit of the victims of crime. Given the public and state interests involved, if there is any contest or tension between the criminal process and the insolvency process, the latter must generally give way to the former, especially if there is some element of risk or uncertainty in respect of the actions proposed by the liquidators. Further, victims of crime should not generally be exposed to added risk. While there are mechanisms in place for liquidators to ascertain the wishes of creditors (see s 145(2)(*a*) of the IRDA) or to seek their approval for certain actions (see s 144(1) of the IRDA), there are no equivalent mechanisms for the liquidators to seek the consent of the victims or to check their views. As noted previously, the making of a restraint order means that the creditors are no longer the only stakeholders interested in the assets of the company; the interests of the victims are equally at stake (Judgment at [77]). In my judgment, to strike an appropriate balance between the competing regimes under the IRDA and the MACMA, the dominant consideration of the liquidators must be the protection and preservation of the assets of the company, for the benefit of both the victims of crime and the creditors of the company. As a general rule, this means that the liquidators should eschew risky options in favour of safer ones, especially where the upside is not at all clear or certain and would require the liquidators to incur substantial expenses, thereby diminishing the remaining pool of assets.

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41 In other words, in this context, the actions undertaken by the liquidators should generally be prophylactic or defensive in nature, and should be limited. To be clear, this is not to say that no active measures should ever be undertaken. As alluded to above (at [39]), it may be the case that some active measures carry so little risk and almost guaranteed returns that they ought to be pursued by the liquidators. Absent such circumstances, however, any active measures would, to my mind, require more to justify than simply the prospect of greater recovery for creditors, particularly where this would come at the expense of the remaining assets of the company and the interests of the victims.

42 With these principles in mind, I address each limb of paragraph 14(2) in turn.

Application to the facts

*Paragraph 14(2)(*b*) of the Third Schedule*

43 Turning first to paragraph 14(2)(*b*), I find that the liquidators have not established that the pursuit of the Anticipated Claims would be necessary.

44 The liquidators point to a number of factors which they say demonstrate the need for the carve-out to be granted in respect of the Future Fees:

> (a) The remaining funds in the estate (of around S$141,225.16) are not sufficient for the liquidators to complete the Company's liquidation and perform their statutory duties, and any further inflow of funds (apart from the pursuit of the Anticipated Claims) is unlikely.[37]

[37] LWS at paras 35 and 38.

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(b) The liquidators have fully expended their previous funding from the Wirecard Group and have not been able to obtain any further third-party funding for the pursuit of the Anticipated Claims, aside from the funding agreement with Athos.[38]

(c) After reviewing the information obtained from the Examination Proceedings and assessing the merits of the claims, the liquidators have determined that the pursuit of the Anticipated Claims represents the best avenue of recovery for the Company's creditors, and that this would fall within the scope of their functions.[39]

(d) The liquidators say that there is some degree of urgency for the Future Fees to be released, as the Dividends Claim will soon be barred by the applicable limitation period under the Limitation Act 1959 (2020 Rev Ed).[40] They emphasise that it has been five years since the Company was wound up and four years since the imposition of the restraint order, which has stymied the liquidation process of the Company indefinitely and resulted in prejudice to its creditors.[41]

(e) The proceeds from the Anticipated Claims that may be returned to the entities of the Wirecard Group (who are the majority creditors of the Company) will ultimately be subject to the control and supervision of Dr Michael Jaffé, the insolvency administrator of Wirecard AG.[42] As

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38 LWS at paras 35 and 65.

39 LWS at paras 41, 43 and 66.

40 LWS at para 46.

41 LWS at para 46.

42 LWS at para 43.

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a result, any concerns that the proceeds will flow to the wrongdoers are misplaced.

45 With respect, none of these factors go to show that it would be necessary for the Anticipated Claims to be pursued, so as to justify the carve-out in respect of the Future Fees. While some of these factors may be relevant in determining whether a clawback action would be beneficial for the Company's creditors, the necessity of pursuing such an action must be assessed against the restraint order that is in force, given the competing interests at play. As noted above (at [40]), the public and state interests underlying the restraint order under the MACMA will generally override the interests of creditors. This means that, in striking the appropriate balance between the competing regimes, the court should generally lean against allowing clawback actions to be pursued, unless such actions carry little risk and cost, yet offer significant upside. Such instances will, of course, be rare, and the court will require strong evidence that the pursuit of the claims would be necessary. In the majority of cases, the liquidators should adopt a more defensive and minimalist approach, and move towards the dissolution of the company. Expenses should be minimised where possible to protect and preserve the Company's remaining assets (see [40]–[41] above).

46 In the present case, the liquidators have not put forward any reason that would override the defensive or minimalist posture that should be taken. On the contrary, the evidence shows that the pursuit of the Anticipated Claims carries a significant degree of risk and uncertainty. When viewed against the substantial expenses that will have to be incurred, I am amply satisfied that such work will not be necessary, and that the requirements of paragraph 14(2)(*b*) have not been satisfied in respect of the Future Fees.

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47 The absence of any meaningful third-party funding for the pursuit of the claims is particularly telling. According to the liquidators themselves, they have approached "approximately five" litigation funders, all of whom have declined to provide funding for the Anticipated Claims.[43] In my judgment, the consistent rejection by multiple sophisticated commercial funders suggests that the claims are viewed as either lacking in merit or having poor prospects of actual recovery. This is significant given that the potential recovery of around S$12.09m would normally be attractive to litigation funders if the prospects of those claims were genuinely strong. The liquidators' explanation is that these rejections were due to the funders' "own internal considerations",[44] and do not necessarily mean that the claims lack merit. I accept that litigation funders will consider other factors apart from the merits of the claims in assessing whether a funding arrangement is financially viable. However, the fact that different funders have arrived at the same conclusion raises at least serious questions about the prospects of those claims succeeding. The onus is on the liquidators to explain otherwise, and it is insufficient for them to simply suggest that there could be other reasons at play.

48 As it was, the only funding arrangement secured by the liquidators was with Athos, but this arrangement is notably limited and onerous. For one, Athos only agreed to provide funding for the limited purpose of bringing the present application, and not for the pursuit of the Anticipated Claims themselves.[45] The terms of the agreement also entitle Athos to decline, at its discretion, to provide after-the-event insurance to satisfy any adverse costs orders in relation to the Anticipated Claims, which the liquidators require to commence those claims.[46]

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43 CLD-3, Tab 3 at p 111.

44 CLD-3, Tab 3 at p 111.

45 CLD-3, Tab 3 at p 111.

46 CLD-3, Tab 5 at p 157.

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In return, Athos is entitled to be made whole and to a payment of up to 20% of the funds advanced upon the success of the present application, and in the event that the Anticipated Claims succeed, to at least 30% of the proceeds.[47] Although the liquidators have undertaken that no moneys will be paid to Athos unless the Company has received amounts in relation to the Anticipated Claims,[48] this does not change the fact that substantial returns have been promised to Athos. Taken together with the limited extent of Athos's obligations under the agreement, the clear inference to be drawn is that the proposed litigation has been assessed to carry a high degree of risk.

49 Most significantly, the majority creditors of the Company, consisting of various entities from the Wirecard Group holding over 97% of the Company's debt, have declined to provide further funding for the pursuit of the Anticipated Claims. These creditors have already invested substantially in the liquidation process, having provided multiple rounds of funding to enable the liquidators to carry out certain investigative work into the affairs of the Company.[49] Throughout the process, the liquidators had extensive discussions with these creditors on the findings from the Examination Proceedings, the assessment of the Anticipated Claims, and the estimated costs to be incurred.[50] These creditors are thus in the best position to evaluate the merits and enforceability of the Anticipated Claims. They also have the most to gain from any successful recovery in respect of the Anticipated Claims. Their refusal to fund the pursuit of these claims, despite the obvious potential benefit to them, speaks volumes about the prospects of these claims succeeding.

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47 CLD-3, Tab 5 at p 158.

48 Letter from Bird & Bird ATMD LLP dated 24 March 2026.

49 CLD-3 at paras 32–35 and Tab 3 at p 111.

50 CLD-3 at para 33 and Tab 3 at p 111.

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50 The proportionality of the proposed expenditure must also be taken into consideration. The liquidators essentially seek to spend a further S$2,997,500 – almost 30% of the Company's remaining net assets – to pursue claims that, even if successful, would only yield a net return of between S$5.5m to S$8.5m, after deducting the estimated litigation costs and the necessary payments to Athos.[51] At the hearing, the liquidators asserted a figure of S$7.36m, premised on certain assumptions about the trial length – which would, in turn, affect the percentage return to which Athos is entitled – and the cost of the insurance to be procured.[52] These assumptions notably represent the most favourable scenario possible for the Company: one in which it recovers the full amount of S$12.09m, and pays Athos the minimum percentage return of 30%. Even if I accept the liquidators' estimated figure of S$7.36m, this potential return, while not insignificant, represents only approximately 3% of the Company's total unsecured debt of S$218m. The risk-reward ratio is particularly unfavourable when considered against the backdrop of the restraint order and the competing interests of the victims who may ultimately benefit from the German confiscation proceedings. In addition, as highlighted by the AG, there is no provision in the Future Fees for costs to be incurred in respect of enforcement efforts.[53] This raises questions about the completeness of the liquidators' estimated figures and the possibility of further funding applications being required in the future. I would also note that the liquidators have not demonstrated that the potential defendants possess sufficient assets to satisfy any judgment. In the circumstances, I am of the view that the potential rewards from pursuing the Anticipated Claims do not justify the incurring of such substantial expenses. On the evidence before me, there is simply nothing that would justify granting the carve-out and displacing the

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51 AGWS at paras 29 and 46.

52 Letter from Bird & Bird ATMD LLP dated 10 March 2026.

53 AGWS at para

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criminal law protection over the funds in favour of a risky and unsubstantiated course of action, with only a forlorn hope of recovery.

51 Accordingly, I decline to grant the variation in respect of the Future Fees under paragraph 14(2)(*b*).

*Paragraph 14(2)(*a*) of the Third Schedule*

52 Turning next to paragraph 14(2)(*a*), I am satisfied that declining to grant the variation in respect of the Future Fees would not inhibit the liquidators from exercising their functions.

53 This follows logically from my conclusion above that the pursuit of the Anticipated Claims would not be necessary. The liquidators argue that in light of the insufficient funds in the estate, they would be inhibited from pursuing the Anticipated Claims if the Future Fees are not released. The pursuit of the claims would, if successful, enlarge the pool of assets available for distribution, and would, in that sense, ultimately serve the end of distribution, thereby satisfying the requirements of paragraph 14(2)(*a*).[54] However, this argument presupposes that the pursuit of the Anticipated Claims forms part of the functions exercisable by the liquidators. The requirement of necessity informs the scope of any carve-outs under the restraint order, whether under paragraph 14(2)(*a*) or 14(2)(*b*). If the liquidators' proposed course of action is not necessary, it will not form part of the functions exercisable by the liquidators under paragraph 14(2)(*a*), even if it is, in some sense, linked to the ultimate goal of distribution.

54 The liquidators referred me to a number of authorities, where the courts have described the pursuit of claims as forming part of a liquidator's duties. For

[54] LWS at paras 35, 41, 43, 45 and 47.

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instance, in *Petroships Investment Pte Ltd v Wealthplus Pte Ltd* [2015] SGHC 145, the liquidator's power to bring or defend legal proceedings in the name of the company was described as being associated with the liquidator's core duty to get in, realise and distribute the company's assets (at [157]). In the same vein, in *Geocon Piling & Engineering Pte Ltd v Multistar Holdings Ltd* [2016] SGHC 240, it was stated that "recovering and realising the company's true assets, by action if necessary, is just as much part of a liquidator's duties as is ascertaining and repaying the company's true liabilities" (at [153]).

55 These authorities, which were in the context of a normal liquidation, do not assist the liquidators. It bears emphasis that the present case involves rather unique circumstances, in which virtually all of the Company's assets are subject to the restraint order under the MACMA. While the pursuit of potential claims to recover assets and maximise returns to creditors would ordinarily form part of a liquidator's functions, that function may be displaced or deprioritised where a restraint order is in place. As explained, the dominant consideration of the liquidators in this context ought to be the protection and preservation of the Company's assets (see [40] above). These assets should not be placed at risk to pursue speculative claims. It is also clear from the wording of paragraph 14(2) that the role of the liquidators in this context is very much circumscribed. The wording expressly contemplates that their focus ought to be on the distribution, rather than the recovery, of assets. In this context, the liquidators should simply aim to distribute what remains of the Company's assets, rather than take steps to recover further assets in a bid to maximise the returns to creditors.

56 Accordingly, I decline to grant the variation in respect of the Future Fees under paragraph 14(2)(*a*).

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Conclusion

57 For the above reasons, I find that the liquidators have failed to show that the incurring of the Future Fees falls within the scope of paragraph 14(2) of the Third Schedule to the MACMA. Such expenditure would not be necessary and proper, and the liquidators will not be inhibited from exercising their functions if the Future Fees are not released. The liquidators should focus on completing the liquidation process, and distribute what remains of the Company's assets to its creditors. That is all they should do.

58 In the circumstances, therefore, the following orders are made:

(a) The restraint order is varied to permit the liquidators to deal with S$178,560.25 of the moneys in the Bank Accounts for the payment of the Incurred Fees.

(b) The application for the release of the Future Fees in the sum of S$2,997,500 is dismissed.

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59 Costs directions will be given separately.

Aidan Xu
Judge of the High Court

Gan Yingtian Andrea, Tan Choon Kia Lewis and Bharat S Punjabi (Attorney-General's Chambers) for the applicant;
Balakrishnan Ashok Kumar, Nee Hoong Yi Adriel and Shu Kit (Bird & Bird ATMD LLP) for the non-party.

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