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

[2026] SGHC 61

Companies Winding Up No 453 of 2025

In the matter of Section 246 of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of Alsen Chance Holdings Limited (in liquidation)

Between

Alsen Chance Holdings Limited (in liquidation)

… *Applicant*

And

Standard Chartered Bank (Singapore) Limited

… *Non-party*

Companies Winding Up No 454 of 2025

In the matter of Section 246 of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of Brightstone Jewellery Limited (in liquidation)

Between

Brightstone Jewellery Limited (in liquidation)

… *Applicant*

And

Standard Chartered Bank (Singapore) Limited

… *Non-party*

Companies Winding Up No 456 of 2025

In the matter of Section 246 of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of Brazen Sky Limited (in liquidation)

Between

Brazen Sky Limited (in liquidation)

… *Applicant*

And

(1) BSI Bank Limited (in liquidation)
(2) Hans Peter Brunner

… *Non-parties*

Companies Winding Up No 457 of 2025

In the matter of Section 246 of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of Blackstone Asia Real Estate Partners Limited (in liquidation)

Between

Blackstone Asia Real Estate
Partners Limited (in liquidation)

… *Applicant*

And

Standard Chartered Bank
(Singapore) Limited

… *Non-party*

JUDGMENT

[Insolvency Law — Cross-border insolvency — Winding up of foreign companies — Standing to participate]
[Insolvency Law — Winding up — Standing — Contingent creditor]

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Re Alsen Chance Holdings Ltd (in liquidation) (Standard Chartered Bank (Singapore) Ltd, non-party) and other matters

[2026] SGHC 61

General Division of the High Court — Companies Winding Up Nos 453, 454, 456 and 457 of 2025
Aidan Xu J
2 February 2026

19 March 2026 Judgment reserved.

Aidan Xu J:

1 This concerned four winding-up applications brought by various foreign companies ("Applicants"), each currently undergoing liquidation in the British Virgin Islands ("BVI"), seeking to be wound up in Singapore. The background to these applications is my previous decision in *Re Blackstone Asia Real Estate Partners Ltd* [2025] SGHC 191 ("Model Law Judgment"), in which I held that Art 23(9) of the UNCITRAL Model Law on Cross-Border Insolvency ("Model Law"), as adopted in Singapore by way of s 252 and the Third Schedule of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("IRDA"), operates to bar foreign representatives from bringing avoidance claims relating to transactions which were entered into before the Model Law's entry into force in Singapore (at [36]).

2 Against this backdrop, the Applicants filed the present applications. The stated purpose of the applications is to allow the Singapore liquidators to pursue

various avoidance claims against two banks, as well as the employees of one of the banks, in respect of transactions which occurred before the Model Law came into force in Singapore, under ss 238 and 239 of the IRDA. This was, as I noted in the Model Law Judgment (at [53]), a possible workaround to my decision.

3 The two banks and one of the employees ("Non-Parties"), against whom the avoidance claims are to be brought, sought to participate in the winding-up applications. The Applicants objected to their participation. A preliminary issue thus arose as to whether the Non-Parties had the requisite standing to participate in the winding-up applications.

4 At the time I heard the parties on this preliminary issue, the Applicants' appeals against my decision in the Model Law Judgment were still pending. The Court of Appeal has since dismissed the appeals in *Blackstone Asia Real Estate Partners Ltd v Standard Chartered Bank (Singapore) Ltd* [2026] SGCA 12. As I explain further below (see [37]), however, the outcome of the appeals did not have any bearing on my decision here.

5 After considering the parties' arguments, I find that the Non-Parties do not have standing to participate in the winding-up applications.

Background

The parties

6 The applicants in HC/CWU 453/2025, HC/CWU 454/2025 and HC/CWU 457/2025 are Alsen Chance Holdings Ltd, Brightstone Jewellery Ltd and Blackstone Asia Real Estate Partners Ltd respectively. Each of these companies is currently in liquidation in the BVI. The non-party in these applications is Standard Chartered Bank (Singapore) Ltd ("SCB").

7 The applicant in HC/CWU 456/2025 is Brazen Sky Ltd ("Brazen Sky"). As with the other applicants, it is currently in liquidation in the BVI. The non-parties in HC/CWU 456/2025 are BSI Bank Ltd ("BSI") and Mr Hans Peter Brunner ("Mr Brunner").

Procedural history

8 The Applicants were placed into liquidation in the BVI at various points from December 2021 to March 2024. This was for the purposes of investigating the Applicants' involvement in allegedly fraudulent transactions.[1]

9 These foreign liquidations were all granted recognition under the Model Law in Singapore between 2022 and 2024.[2] Following this, the Applicants filed the applications for standing under the Model Law to pursue avoidance actions under ss 238 and 239 of the IRDA against, among others, the Non-Parties.

10 The applications were dismissed on 24 September 2025 (see Model Law Judgment). On 7 November 2025, the Applicants appealed against my decision. The appeals were dismissed on 11 March 2026 (see *Blackstone Asia Real Estate Partners Ltd v Standard Chartered Bank (Singapore) Ltd* [2026] SGCA 12).

11 On 28 November 2025, the Applicants filed the winding-up applications in the present case. It is not disputed that the purpose of these applications is to ultimately allow the Singapore liquidators to pursue avoidance claims against

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1 1st Affidavit of Toni Shukla in HC/CWU 453/2025, HC/CWU 454/2025 and HC/CWU 457/2025 dated 28 November 2025 ("TS-1") at paras 13, 24 and 33; 1st Affidavit of Toni Shukla in HC/CWU 456/2025 dated 27 November 2025 ("TS-1 (CWU 456)") at para 11.

2 TS-1 at paras 15, 26 and 35; TS-1 (CWU 456) at para 13.

the Non-Parties in respect of transactions which occurred before the Model Law came into force in Singapore.

12 At the case conference, the Non-Parties indicated that they were seeking to participate in the substantive hearing for the winding-up applications. The Applicants objected to their participation. I thus directed for submissions to be filed on the issue of standing. Following the hearing, I gave directions for further submissions to be filed.

The parties' cases

SCB's arguments

13 SCB submits that it has standing to participate for three main reasons. First, SCB is a contingent creditor of the Applicants. The possibility of adverse costs orders being made against the Applicants in favour of SCB in the ongoing litigation between the parties constitutes a contingent liability of the Applicants to SCB.[3] Given that contingent creditors have the standing to present a winding-up application, it follows that contingent creditors would also have the standing to participate in and oppose a winding-up application.[4]

14 Second, SCB relies on the decision of *PricewaterhouseCoopers v Saad Investments Co Ltd* [2014] 1 WLR 4482 ("*Saad Investments*"), where the Privy Council allowed a party who was not a creditor or contributory of the company to intervene in the winding-up proceedings, on the basis that that party was the direct target of the winding-up order.[5] As the winding-up applications here were brought for the purpose of allowing the Applicants to eventually pursue claims

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3 SCB's Written Submissions dated 26 January 2026 ("SCB's WS-1") at para 8.

4 SCB's WS-1 at para 7.

5 SCB's WS-1 at paras 11–12.

against SCB, SCB is a direct target of the winding-up applications and therefore has the requisite standing to participate based on *Saad Investments*.[6]

15 Finally, given that SCB would in due course be affected by any winding-up order made against the Applicants in its absence, it would be entitled to apply to set aside the winding-up order under r 12(7) of the Insolvency, Restructuring and Dissolution (Corporate Insolvency and Restructuring) Rules 2020 ("CIR Rules"). It would therefore conserve judicial time and resources to allow SCB the opportunity to be heard at this stage.[7]

BSI's arguments

16 The arguments raised by BSI were largely the same as SCB. Relying on *Saad Investments*, BSI argues that it is a direct target of, or would be directly affected by, any winding-up order made against Brazen Sky, and thus possesses the requisite standing to participate in Brazen Sky's winding-up application.[8]

17 BSI also argues that it is a contingent creditor of Brazen Sky. Similar to SCB, BSI argues that the possibility of costs orders being made against Brazen Sky in favour of BSI renders BSI a contingent creditor of Brazen Sky.[9] Aside from this, BSI also relies on a contractual indemnity undertaken by Brazen Sky in favour of BSI. BSI alleges that Brazen Sky is liable to indemnify BSI for all liabilities arising from SIC/OA 28/2025 ("OA 28"), which likewise renders BSI a contingent creditor of Brazen Sky.[10]

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6 SCB's WS-1 at paras 13–17.

7 SCB's WS-1 at paras 18–19.

8 BSI's Written Submissions dated 26 January 2026 ("BSI's WS-1") at paras 4–9.

9 BSI's WS-1 at paras 16–18.

10 BSI's WS-1 at paras 12–15.

Mr Brunner's arguments

18 Mr Brunner does not claim to be a creditor of the Applicants, whether contingent or otherwise. However, in alignment with SCB and BSI, Mr Brunner relies on *Saad Investments* to argue that he has standing to participate in the hearing of Brazen Sky's winding-up application, given that he is a direct target of the winding-up order sought.[11]

The Applicants' arguments

19 The Applicants take the position that the Non-Parties are not contingent creditors. The mere possibility of adverse costs orders being made against them as a result of their participation in legal proceedings cannot possibly render the Non-Parties contingent creditors of the Applicants. The obligation to pay costs does not exist until the court exercises its discretion to order costs. A contingent liability must be premised on a pre-existing obligation that only becomes payable upon the occurrence of a future event.[12]

20 In relation to *Saad Investments*, the Applicants' position is that it should not be followed under Singapore law. In the alternative, even if it is accepted as good law, *Saad Investments* involved highly unusual circumstances and did not apply to the Non-Parties in the present case. The fact that claims may be brought against the Non-Parties if the winding-up applications are granted would not be sufficient to grant them standing.[13] The Non-Parties need to additionally identify a "well arguable point" on the merits as to why the winding-up orders ought not

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11 Written Submissions of Hans Peter Brunner dated 26 January 2026 at paras 9–21.

12 Applicants' Written Submissions dated 26 January 2026 ("AWS-1") at paras 2–4.

13 AWS-1 at paras 6 and 10.

to be made, such that their participation would be in the "interests of justice".[14] The exception in *Saad Investments* should only apply in exceptional situations and ought to be construed narrowly.[15]

21 As for the provisions of the CIR Rules relied on by the Non-Parties, the Applicants argue that these provisions are irrelevant to the question of standing, as they only deal with procedural matters such as how notice may be given.[16]

Issues to be determined

22 The issues to be determined are thus as follows:

(a) whether the Non-Parties are contingent creditors of the Applicants; and

(b) if not, whether the Non-Parties fall within the exception in *Saad Investments*.

23 Having considered the parties' arguments, I find that the Non-Parties do not have standing to participate in the winding-up applications. The Non-Parties are not contingent creditors of the Applicants, nor do they fall within the scope of the exception in *Saad Investments*.

The Non-Parties are not contingent creditors of the Applicants

24 The starting point is the general rule that only the company, a creditor, a contributory, the Official Receiver, or the proposed liquidator of the company ("Accepted Class") has the right to appear and be heard on an application for

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14 AWS-1 at paras 7–9.

15 AWS-1 at paras 6 and 13.

16 AWS-1 at para 15.

the winding up of the company: *Ang Chek Chin v ANS Import & Export Pte Ltd* [2020] 5 SLR 1002 ("*Ang Chek Chin*") at [15]. While "not an immutable rule", a person who is not part of the Accepted Class generally does not have standing to participate in the hearing of a winding-up application: *Ang Chek Chin* at [15]; see also *Saad Investments* at [31].

25 The parties do not dispute that a contingent creditor would fall within the Accepted Class for the purposes of the general rule. What the parties dispute is whether the Non-Parties are contingent creditors of the Applicants.

26 In *Re People's Parkway Development Pte Ltd* [1991] 2 SLR(R) 567 ("*People's Parkway*"), the court adopted the following definition of a "contingent creditor" (at [10]):

> The expression 'contingent creditor' is not defined in the Companies Act 1948, but must, I think, denote a person towards whom under an existing obligation, the company may or will become subject to a present liability on the happening of some future event or at some future date.

27 Thus, for a contingent liability to exist, the debtor must be subject to an "existing obligation" which will or may become payable on the occurrence of a future event. This would clearly include an obligation to make payment under a guarantee or bond upon the occurrence of a stipulated event. But where the very existence of the payment obligation is in dispute, there would be no contingent liability to speak of. Such a liability either existed, or it did not: *Founder Group (Hong Kong) Ltd v Singapore JHC Co Pte Ltd* [2023] 2 SLR 554 ("*Founder Group*") at [42] and [45].

The possibility of adverse costs orders

28 In my view, the possibility of adverse costs orders being made does not constitute a contingent liability of the Applicants, and does not confer standing to participate in the hearing of the winding-up applications on the Non-Parties.

29 The Non-Parties primarily argue that they are contingent creditors of the Applicants based on the possibility of costs orders being made in their favour in the ongoing litigation between the parties.[17] The contingent liability to pay costs arose the moment the litigation commenced and would crystallise depending on the exercise of the court's discretion to award costs.[18]

30 The Non-Parties (namely, SCB and BSI) rely on the decision of the UK Supreme Court ("UKSC") in *In re Nortel GmbH (in administration)* [2013] 3 WLR 504 ("*Nortel*") to support their position that the possibility of costs orders should be regarded as a contingent liability which arises the moment litigation is commenced. In *Nortel*, Lord Neuberger of Abbotsbury PSC held that an order for costs is provable as a contingent debt in a liquidation. His Lordship reasoned as such (at [89]):

> In my view, by becoming a party to legal proceedings in this jurisdiction, a person is brought within a system governed by rules of court, which carry with them the potential for being rendered legally liable for costs, subject of course to the discretion of the court. An order for costs made against a company in liquidation, made in proceedings begun before it went into liquidation, is therefore provable as a contingent liability under rule 13.12(1)(b), as the liability for those costs will have arisen by reason of the obligation which the company incurred when it became party to the proceedings.

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17 SCB's WS-1 at paras 7–8; BSI's WS-1 at paras 16–18.

18 SCB's WS-1 at paras 7–8; BSI's WS-1 at paras 16–18.

31 *Nortel* was considered in *Lim Siew Soo v Sembawang Engineers and Constructors Pte Ltd* [2021] 4 SLR 556 ("*Lim Siew Soo*"). The question before the court in *Lim Siew Soo* was whether a successful party in litigation would be entitled to be paid its entire costs from the beginning of legal proceedings under the estate costs rule where the litigation was commenced before the winding-up order was made. It was in this context that Justice Vinodh Coomaraswamy held that the correct conceptualisation of a costs order is that the liability to pay costs arises only when the court actually exercises its discretion to award costs. Until that point, no liability to pay costs exists. Coomaraswamy J thus concluded that liability under a costs order cannot be resolved into a pre-liquidation component and a post-liquidation component, and the entirety of the liability under a costs order would constitute a liquidation expense within the scope of s 328(1)(*a*) of the Companies Act (Cap 50, 2006 Rev Ed). The relevant portions of the court's reasoning are set out as follows (at [100] and [103]):

> 100 … The basis of the liability to pay costs is the court's exercise of a statutory discretion in the present, not the court's recognition of a liability in the past. Until that discretion is actually exercised, no liability to pay costs exists. The basis of a paying party's liability under a discretionary costs order (as opposed to an order for costs as of right) is not historical. The parties' historical conduct, if it has increased or diminished the quantum of the solicitor and client costs paid by the receiving party, may be one of the factors on which the court's discretion to award costs is exercised. But that is all it is: a factor. It is not the basis of the order.
>
> …
>
> 103 In my view, therefore, a paying party's liability under a costs order arises *only* at the time the order is made and arises in the *full* quantum of the costs awarded, whether that quantum is fixed then or by taxation subsequently. The liability cannot therefore, in any legal sense, be resolved into a pre-liquidation component and a post-liquidation component any more than the substantive claim in the dispute can be resolved into a pre-liquidation component and a post-liquidation component. To attempt to do so would be wholly artificial. That is so even though the costs order is awarded in a factual sense

> as an indemnity to the receiving party for both its pre-liquidation and post-liquidation costs.
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> [emphasis in original]

32 Regarding *Nortel*, while the court did not go so far as to say that *Nortel* was wrongly decided, it raised several concerns regarding the conceptualisation of a costs order as giving rise to a contingent liability from the moment litigation is commenced. These may be summarised as follows:

(a) First, if the making of a costs order involves the recognition of a pre-existing liability, that would mean that the making of the costs order operates to extinguish the liability of the opposing litigants to pay costs, aside from the paying party's liability. However, a costs order does not, by its terms, extinguish any liability, much less a contingent liability. It only creates a liability: *Lim Siew Soo* at [102] and [106].

(b) Second, characterising a costs order as a contingent liability was a "pragmatic solution" to the specific issue in *Nortel*. By characterising the potential liability to pay costs as a contingent liability, such liability would be provable in a liquidation. A claimant engaged in litigation with a company who goes into liquidation would thus be entitled to prove, as a contingent creditor, for both its substantive claim and legal costs. This would, in turn, further the policy of insolvency law by encouraging such a claimant to resolve its claim within the proof of debt regime instead of continuing to pursue litigation: *Lim Siew Soo* at [107].

(c) Finally, from a purely conceptual perspective, the court endorsed the analysis in *Glenister v Rowe* [2000] Ch 76 ("*Glenister*") at 84B–85B and 85D–85F that "the commencement of litigation creates merely a risk of liability under a costs order and therefore creates neither a contingent liability nor an actual liability": *Lim Siew Soo* at [108].

33 In my view, the conceptualisation of a costs order in *Lim Siew Soo* ought to be preferred. I agree with the analysis in *Glenister* that the commencement of litigation only creates a risk of liability to pay costs. It does not impose a present obligation on the parties to pay costs upon the exercise of the court's discretion to award costs at the conclusion of the litigation. The liability to pay costs only arises when the court actually exercises that discretion. Prior to that, there is no existing obligation between the parties that could crystallise into a liability. The possibility of adverse costs orders being made therefore cannot be characterised as a contingent liability as defined in *Founder Group* and *People's Parkway* (see [26]–[27] above).

34 In this regard, I note that the holding in *Nortel* was made in the context of the proof of debt regime, which only comes into play after a winding-up order has been made. What constitutes a contingent liability in the context of the proof of debt regime would, in turn, depend on the definition of a provable debt under s 218 of the IRDA. That was how the UKSC approached the issue in *Nortel*. It does not follow that every contingent liability which is provable in a liquidation would also be a contingent liability for the purposes of standing in a winding-up application. The making of a winding-up order carries serious consequences. It is clear from s 124(2)(*d*) of the IRDA that the standing of a contingent creditor to present a winding-up application is viewed with greater circumspection. The same should also apply to the standing of a creditor who is seeking to intervene in a winding-up application. Accordingly, I do not regard the holding in *Nortel* to be applicable in the context of the present case. The implication of the holding in *Nortel* is that in every case of ongoing litigation, the parties to the litigation would be contingent creditors of one another merely based on the possibility of future costs orders being made. They would, in turn, be entitled to apply to wind up the parties on the opposing side or, as is the case here, to intervene in such winding-up applications. That would be the case regardless of the nature of the

substantive claims involved or the respective capacities of the parties in those separate proceedings. That cannot be right. It would, in my view, involve taking an overly broad view of what constitutes a contingent liability for the purposes of standing in a winding-up application.

35 To be clear, this does not call into question the correctness of what was decided in *Nortel* in the context of the proof of debt regime. There may well be policy considerations at play that would justify conceptualising a costs order as giving rise to a contingent liability upon the commencement of litigation which crystallises upon the court's exercise of discretion to award costs in the context of the proof of debt regime, as alluded to in both *Nortel* (at [93]) and *Lim Siew Soo* (at [107]). Those considerations do not, however, have any bearing on this case.

36 Accordingly, I conclude that the possibility of adverse costs orders being made does not constitute a contingent liability. It is a liability which only comes into existence at the point when the court exercises its discretion to order costs, whether at the conclusion of the proceedings or otherwise. The Non-Parties thus cannot be regarded as contingent creditors of the Applicants on this ground, and do not have standing to participate in the hearing of the winding-up applications.

37 To avoid doubt, as noted above (see [4]), the appeals against my decision in the Model Law Judgment were still pending at the time the parties were heard on the issue of standing. This formed part of the ongoing litigation that the Non-Parties relied on to establish their standing in the present case. The appeals have since been dismissed. The fact that the Non-Parties have been successful in the appeals does not, however, impact their standing in the present case. While SCB and BSI were awarded costs of $25,000 each (see *Blackstone Asia Real Estate Partners Ltd v Standard Chartered Bank (Singapore) Ltd* [2026] SGCA 12 at

[92]), this would mostly be covered by the security for costs furnished by the Applicants in the appeals, and assuming the shortfall is paid, SCB and BSI would not have established their standing as creditors. In any event, the standing of the Non-Parties as contingent creditors was also premised on other ongoing litigation between the parties, and my analysis above in respect of the possibility of costs orders being made in these other proceedings would remain unchanged.

Brazen Sky's indemnity to BSI

38 Aside from the above, BSI also argues that it is a contingent creditor of Brazen Sky based on an indemnity under the standard conditions of the parties' banking relationship. This provides that Brazen Sky is obliged to indemnify and hold BSI harmless "against all liabilities, obligations, losses, damages, legal costs, expenses and disbursement that [BSI] incurs to, arising from or as a result of … Brazen Sky's commencement of [OA 28]".[19] BSI relies on this indemnity in its Defence and Counterclaim in OA 28.[20] While Brazen Sky denies that it is liable to indemnify BSI, the existence of the indemnity itself is not denied.[21] The only dispute is over whether the indemnity has been triggered.[22]

39 In my view, the indemnity undertaken by Brazen Sky does, in principle, constitute a contingent liability owed to BSI. This does not, however, mean that BSI has standing to participate in Brazen Sky's winding-up application.

40 As explained, a contingent liability requires an existing obligation which will or may become payable on the occurrence of a future event. An example of

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19 TS-1 (CWU 456) at para 33.

20 BSI's WS-1 at para 14.

21 BSI's WS-1 at para 14.

22 BSI's WS-1 at para 15.

this would be an existing obligation to make payment under a guarantee upon a given event taking place, such as the default of the principal debtor (see [26]–[27] above). An indemnity operates in a similar manner to a guarantee and would ordinarily give rise to a contingent liability as well. While there are some differences in terms of how an indemnity and a guarantee operate (see generally *TA Private Capital Security Agent Ltd v UD Trading Group Holding Pte Ltd* [2024] 6 SLR 601 at [54]), these differences do not affect the characterisation of an indemnity as a contingent liability in general.

41 Indeed, in the present case, the indemnity provided by Brazen Sky is an existing obligation to compensate BSI for all liabilities arising from the claims made in OA 28 by Brazen Sky against BSI. That obligation arose the moment the parties entered into a banking relationship, and would crystallise into a liability to pay a monetary sum to BSI if the claims in OA 28 are made out and BSI is entitled to rely on the indemnity provided by Brazen Sky. It is immaterial that the claims are currently subject to pending litigation in OA 28. It is likewise immaterial that whether BSI is entitled to invoke the indemnity in response to Brazen Sky's claims is also being disputed in OA 28. These issues ultimately go towards whether the indemnity provided by Brazen Sky has been triggered, and do not affect the continued validity of the underlying obligation that Brazen Sky is subject to. As observed in *Founder Group* (at [45]), a disputed liability remains in principle a contingent liability where the underlying obligation itself is not disputed and the only dispute is whether the contingency that crystallises the liability has occurred.

42 While the indemnity may be characterised as a contingent liability in principle, I find that it is too remote to render BSI a contingent creditor of Brazen Sky in the present case for the purposes of standing to participate in the winding-up application of Brazen Sky. In my view, where the likelihood of the

contingency occurring is too remote, a putative creditor who seeks to rely on such a contingent liability cannot be regarded as a contingent creditor for the purposes of standing in a winding-up application. Such a requirement has been alluded to in a number of cases. For instance, it was suggested in *Nortel* (at [77]) that for an underlying obligation to give rise to a contingent liability, there must at least be a "real prospect of that liability being incurred". Similarly, in the context of a director's duty to consider the interests of creditors, it was accepted in *Foo Kian Beng v OP3 International Pte Ltd* [2024] 1 SLR 361 (at [134]) that a contingent liability must be "reasonably likely to materialise" for it to be taken into account in assessing the company's solvency. In terms of the valuation of contingent liabilities, it has been suggested that a contingent liability should be valued in full where there is a "real prospect that the relevant contingency will occur": *Christie, Hamish Alexander v Tan Boon Kian* [2021] 4 SLR 809 at [60].

43 While these cases involved a different context, the requirement that there must at least be a "real prospect" of the relevant contingency occurring is, to my mind, a necessary constraint on the standing of a contingent creditor to present or intervene in a winding-up application. Such a limitation would be consistent with the approach taken in the context of a disputed petition debt. In that context, it is trite that where the petition debt is disputed in good faith and on substantial grounds, the claimant would have no standing as a creditor to present a winding-up application: *Founder Group* at [32]. Similarly, where contingent liabilities are concerned, a dispute over whether the contingency has occurred or is likely to occur should also be relevant to the question of whether a contingent creditor has standing. Where the likelihood of the contingency occurring is too remote, a claimant cannot be said to have established its standing as a creditor, and thus should not be allowed to present or, as is the case here, intervene in a winding-up application. Such a requirement would not be inconsistent with what was decided in *Founder Group*. In that case, the Court of Appeal accepted (at [45])

that a liability would in principle remain contingent in nature if the only dispute was over whether the contingency that crystallises the liability has occurred. But whether the likelihood of the contingency occurring was relevant to the question of standing was not considered by the Court of Appeal.

44 Returning to the facts of the present case, I am satisfied that BSI has not established its standing as a creditor, as the liability that is said to arise from the indemnity undertaken by Brazen Sky is too remote. As noted above, BSI relies on the indemnity as part of its Defence and Counterclaim in OA 28. On its own case, Brazen Sky's liability to indemnify BSI hinges on Brazen Sky's claims in OA 28 first being established. Once BSI's liability to Brazen Sky is determined, there is also the further issue of whether BSI is entitled to invoke the indemnity against Brazen Sky. That, in turn, depends on whether the liabilities incurred in OA 28 are a result of BSI's own wrongful acts.[23] All of these issues, which go towards whether Brazen Sky's liability to BSI under the indemnity has indeed crystallised, are currently subject to pending litigation. In the circumstances, I find that the contingent liability relied on by BSI is simply too remote, and that BSI accordingly has not established its standing as a creditor to participate in Brazen Sky's winding-up application. In concluding as such, I express no view on the merits of the ongoing litigation between Brazen Sky and BSI in OA 28.

45 Furthermore, leaving aside the issue of remoteness, BSI's standing as a creditor of Brazen Sky may also be questioned on another basis. The nature of an indemnity is such that the quantum payable by the indemnifying party would be determined by the liabilities incurred by the indemnified party. Therefore, by definition, even if the contingency crystallises, the quantum payable by Brazen Sky under the indemnity would not exceed the value of the claims against BSI

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[23] BSI's WS-1 at para 14.

in OA 28, which altogether represent the liabilities for which BSI is allegedly indemnified. The indemnity operates to extinguish or set off the liabilities owed by BSI to Brazen Sky, if indeed the claims in OA 28 succeed. But it would not result in a net liability owed by Brazen Sky to BSI, regardless of the outcome of the litigation in OA 28. Thus, I am satisfied that BSI's standing as a creditor of Brazen Sky has not been made out.

46 Accordingly, even if the indemnity is, in principle, a contingent liability, it does not confer standing on BSI to participate in the winding-up application of Brazen Sky.

The Non-Parties do not fall within the exception in *Saad Investments*

47 I turn to the applicability of the exception in *Saad Investments*.

48 As explained (at [24] above), the general rule is that only persons within the Accepted Class will ordinarily have standing to participate in the hearing of a winding-up application. As the Non-Parties are not contingent creditors of the Applicants, they do not fall within the Accepted Class, and generally would not have standing to participate, unless the exception in *Saad Investments* applies.

49 *Saad Investments* concerned an application to wind up a Cayman Islands company in Bermuda. The purpose was to enable the liquidators to invoke s 195 of the Companies Act 1981 (Bermuda) ("Bermuda CA") against the company's auditors to require them to produce documentation relating to the company. The winding-up order was granted by the Supreme Court of Bermuda. An order for the auditors to produce all documents relating to the affairs of the company was made in a subsequent application. The auditors applied to set aside the order for production on the ground that the court had no jurisdiction to make the winding-up order, as the company was an overseas company which did not trade or carry

on business in Bermuda. This was dismissed both at first instance and on appeal. However, the auditors succeeded before the Privy Council. The Privy Council first held that the Supreme Court of Bermuda did not have jurisdiction under the Bermuda CA to wind up an overseas company which was not trading or carrying on business in Bermuda (at [16]–[18] and [23]). The Privy Council went on to consider the issue of standing, and pointed out two "unusual" features about the case. First, the ground of opposition to the winding-up order was based purely on jurisdiction. Second, the auditors were "a stranger to the winding up only in the most technical sense" (at [31]). After all, the auditors were the "sole direct targets" of the winding-up order (at [33]). It was in those circumstances that the Privy Council held that the auditors possessed the requisite standing to raise the issue of whether the Supreme Court of Bermuda had the jurisdiction to grant the winding-up order when they challenged the order for production (at [33]). Had the auditors been given the opportunity to be heard at the hearing of the winding-up application, the issue of jurisdiction would likely have been raised (at [38]). To deny the auditors the opportunity to challenge the making of the winding-up order would thus constitute a "denial of natural justice" (at [37]).

50 In reaching this conclusion, the Privy Council emphasised that the "mere fact that a person rightly anticipates that his or her rights will be detrimentally affected as a result of the winding up order would normally be quite insufficient to justify that person being added as a party" (at [36]). It is only in exceptional circumstances that the court will allow a person who is not part of the Accepted Class to participate in the hearing of a winding-up application.

51 The exception in *Saad Investments* was briefly considered in *Ang Chek Chin*, where the court observed as follows (at [19]):

> I was of the view that *PWC v Saad* does not detract from the general principle that, in a winding-up application, only the

> class of persons has a right to be heard. *PWC v Saad* can be distinguished as the respondent had applied for a winding-up order in Bermuda for the sole purpose of obtaining a relief against PWC via the Bermuda CA. The Privy Council had found that PWC was the "sole direct targets" of the winding-up application in Bermuda. In such a case, where a relief sought is directed at a specific person, he should be given an opportunity to be heard on the matter, as any order granted may affect that person. This is consistent with the general principle that a person who is a subject of an application should be given notice of the application and an opportunity to be heard or to respond. This is also embodied in r 7 of the CWU Rules, which provides that (subject to any express exceptions) a winding-up application must be served on the party affected, and an interlocutory application must be served on every person against whom an order is sought.

52 On the facts, the court found that the exception did not apply. The non-parties were mere employees of the company. The purpose of their intervention was merely to "set some facts straight", and they were not seeking to oppose or challenge the winding-up application. While they argued that the winding up of the company would "jeopardise the livelihood of its employees", the non-parties were not otherwise the targets of the winding-up application. The "very limited exception" in *Saad Investments* thus did not apply to the non-parties (at [20]).

53 In the present case, it is undisputed that the sole purpose of the winding-up applications is to allow the liquidators to eventually pursue avoidance claims against the Non-Parties in respect of transactions that occurred before the Model Law came into force in Singapore. In my view, however, even if this made the Non-Parties the "sole direct targets" of the winding-up applications, this would not be sufficient to entitle them to participate under *Saad Investments*. The key distinguishing point is that the Non-Parties would not be detrimentally affected by the making of any winding-up order, nor would their rights be interfered with in any way. The avoidance claims may well be brought against the Non-Parties in due course if the winding-up applications are successful, but that is a separate point altogether. The Non-Parties would, at that stage, be entitled to defend the

claims on the merits. There is simply no prejudice caused to the Non-Parties by denying them the opportunity to contest the winding-up applications that would result in a denial of natural justice. As I explain further below (at [57]–[62]), the winding-up applications deal with entirely different issues, which do not require the participation of the Non-Parties to be effectively determined by the court. In contrast, in *Saad Investments*, it would appear that the auditors' main objection to the order for production was that the Supreme Court of Bermuda did not have the jurisdiction to make the winding-up order in the first place. As they did not have notice of the winding-up application, they were not able to raise this issue at an earlier stage, and could only do so when they sought to set aside the order for production after it had already been granted. The jurisdictional issue was not properly considered by the court as a result. The fact that the winding-up order was sought for the sole purpose of obtaining relief against the auditors was not the only factor considered by the Privy Council. Rather, it was the totality of all these circumstances that led the Privy Council to conclude that there would be a denial of natural justice if the issue of jurisdiction could not be raised by the auditors.

54 I accept that the focus of the discussion in *Ang Chek Chin* in relation to *Saad Investments* was on the "sole direct targets" requirement. That being said, the circumstances in *Ang Chek Chin* could be clearly distinguished on this point, and it was not necessary for the court to consider the other circumstances which were relevant to the Privy Council's decision. In my view, the fact that the Non-Parties may be the "sole direct targets" of the winding-up applications does not constitute a sufficient reason for the exception in *Saad Investments* to apply, and nothing in *Ang Chek Chin* should be read as suggesting that to be the case.

55 The Applicants submit that for the exception in *Saad Investments* to be invoked, the Non-Parties must show, in addition to them being the direct targets

of the winding-up application, that there is a "well arguable point" as to why the winding-up order should not be granted, and that there is some novel issue that must be fully ventilated in the "interests of justice".[24] They find support for this from the following passage in *Saad Investments* (at [32]):

> … However, if, as in this case, the contention raises a well arguable point that, on the face of the court papers, there was no jurisdiction to make the order, it would have to be seriously addressed, and if the contention was made out, the court would have to consider what the interests of justice require. …

56 For the purposes of the present case, it is not necessary for me to decide whether these other requirements must be satisfied in every case where a person who is not part of the Accepted Class seeks to appear and be heard in a winding-up application. What I would accept is that there must be something more, apart from being the sole direct target of a winding-up application, for a person to be entitled to participate in the hearing itself.

57 In this regard, the decisions of *Reignwood International Investment (Group) Co Ltd v Opus Tiger 1 Pte Ltd* [2021] SGHC 133 ("*Reignwood*") and *Shanghai Shipyard Co Ltd v Opus Tiger 1 Pte Ltd* [2022] 1 SLR 643 ("*Shanghai Shipyard*") offer a useful parallel to the present case. The issue in both cases, among others, was whether an intended defendant to a derivative action could be joined to an application for leave to commence the said derivative action under s 216A of the Companies Act (Cap 50, 2006 Rev Ed). While the issue was analysed under the joinder rules of the Rules of Court (2014 Rev Ed), I find the reasoning in both cases to be instructive, and the parties were directed to file further submissions on these cases.

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[24] AWS-1 at para 9.

58 In *Reignwood*, the court held that the sole issue in a s 216A application is whether the court should sanction a deviation from the fundamental principle of majority rule by compelling the company to litigate contrary to the will of its shareholders and directors (at [109]). Therefore, the only persons who would be directly concerned with this issue or have an interest in it are the insiders of the company (at [110]). The court noted that the specific requirements under s 216A were "simply not matters on which an intended defendant [who is not an insider of the company] can or should assist the court" (at [132]). The issues arising in an application for leave to commence a derivative action were simply different from those arising in the derivative action itself (at [169]). As regards the latter, an intended defendant will have the opportunity to contest those issues once the derivative action is commenced (at [170]).

59 While the Court of Appeal disposed of the appeal on a separate point, it affirmed the reasoning in *Reignwood* above as follows (see *Shanghai Shipyard* at [24]):

> We agree with the Judge that the sole issue in a s 216A application is whether the court ought to sanction a deviation from the principle of majority rule by compelling a company to litigate contrary to the will of its shareholders and directors. That issue, which is one concerning the management of the company, is *exclusively* for its insiders. From a legal perspective an intended defendant who is not also an insider of the company can have no interest in the management of the company, even if it is concerned not to be sued by the company. To allow an intended defendant of proposed derivative proceedings to have a say on how the company's claim against *itself* should be managed smacks of the most extreme conflict of interest. Permitting the joinder of such a party to a s 216A application will therefore run contrary to the notion that the affairs of a company should be run in its best interests. One of the main factors that a court hearing a s 216A application has to consider is whether granting the application would be in the company's interests. A prospective defendant, even one who has some basis to believe that the intended claim will fail, can have nothing relevant to say on that point. [emphasis in original]

60 Accordingly, the Court of Appeal concluded that the non-joinder of the intended defendant "will not prevent the complete and effectual determination of the s 216A application" (*Shanghai Shipyard* at [25]), and that "the interest of an intended defendant who is not also an insider of the company in the s 216A application cannot be characterised as anything but a mere commercial interest in its outcome" (*Shanghai Shipyard* at [28]).

61 Similarly, in the present case, the sole issue in a winding-up application is whether the grounds relied on for winding up (*eg*, the company's inability to pay its debts) have been made out, and where foreign companies are concerned, whether that company has a substantial connection with Singapore, as required under s 246(1)(*d*) of the IRDA. It is readily apparent that a person who is within the Accepted Class, such as an insider or a creditor of the company, would be well placed to submit and give evidence on such issues. In contrast, an intended defendant to a potential avoidance claim, who is neither a creditor nor an insider of the company, is unlikely to have anything relevant to say on these issues that cannot equally be said by a member of the Accepted Class.

62 The Non-Parties have, of course, asserted that they are able to contribute something relevant to the effective determination of the winding-up applications. While the Non-Parties have not been permitted to file affidavits to substantiate their assertions thus far, it seems clear based on the factors under s 246(3) of the IRDA that the Non-Parties' participation would not be required for the court to effectively determine whether the Applicants have a substantial connection with Singapore. The relevant matters, which relate to, among other things, how the Applicants conducted business within the jurisdiction and the resolution of their disputes, may be properly placed before the court by the Applicants, without the involvement of the Non-Parties. Again, I would highlight that the nature of the jurisdictional issue in *Saad Investments* was such

that it could and should have been raised by the liquidators or by the court. Had that been done, the auditors' intervention would not have been necessary: *Saad Investments* at [34] and [38]. That is plainly not the case here. The IRDA provides a clear jurisdictional basis for the Applicants to be wound up in Singapore.

63 Accordingly, I conclude that the exception in *Saad Investments* does not apply in the present case, and the Non-Parties do not have standing to participate in the hearing of the winding-up applications.

64 For completeness, I briefly address SCB's argument that it ought to be allowed to participate in the winding-up applications because it is a party who would, in due course, be affected by any winding-up order granted, and would accordingly be entitled to apply to set aside such orders under r 12(7) of the CIR Rules. Allowing SCB to participate would thereby conserve judicial resources.[25] I reject this argument. As explained above (at [53]), the Non-Parties would not be affected by the making of the winding-up orders themselves. They would, of course, be affected if and when the avoidance claims are brought against them. But that is separate from the winding-up applications. I thus find it doubtful that the Non-Parties would fall within the scope of r 12(7) of the CIR Rules, as they do not constitute persons who would be affected by the making of the winding-up orders, if any. In addition, I do not regard r 12(7) of the CIR Rules as being capable of conferring standing on a party who is otherwise not entitled to appear and be heard at the hearing of the application. If a party is not entitled to appear, it does not matter that the order was made in his or her absence, and r 12(7) of the CIR Rules cannot possibly entitle such a party to apply to set aside such an order thereafter.

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[25] SCB's WS-1 at paras 18–19.

Conclusion

65 For the above reasons, I find that the Non-Parties do not have standing to participate in the winding-up applications. Accordingly, I decline to grant the directions sought by the Non-Parties.

Aidan Xu
Judge of the High Court

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