

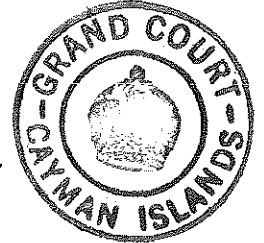
1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**  
2 **FINANCIAL SERVICES DIVISION**

3  
4 **CAUSE NO: FSD 25 OF 2013 (AEFJ)**

5  
6 **IN THE MATTER OF THE COMPANIES LAW (2012 REVISION) (AS AMENDED)**

7  
8 **AND IN THE MATTER OF TANGERINE INVESTMENT MANAGEMENT LIMITED**

9  
10 The Hon Mr. Justice Angus Foster  
11 In Chambers as Open Court  
12 Thursday, 4<sup>th</sup> April 2013



13  
14 **Appearances:** For the Petitioner (Novus International Investments Limited) – Mr.  
15 Matthew Goucke and Mr. John O’Driscoll of Walkers

16  
17 For the Receivers of the Axiom Portfolios – Mr. Paul McGrath QC  
18 instructed by Ms. Alexia Adda of Harneys

19  
20 For the Cayman Islands Monetary Authority (“CIMA”) Mrs. Gail  
21 Johnson-Goring and Ms Nedra Ebanks

22  
23 Also present: Mr. Ian Stokoe of PriceWaterhouseCoopers and Mr. Mike  
24 Saville of Grant Thornton, Cayman

25  
26  
27 **RULING**

28 **Introduction**

- 29  
30 1. This ruling concerns to the appropriate person to be appointed jointly as an Official  
31 Liquidator of a company, which is the subject of a winding up order pursuant to a creditor’s  
32 petition, in the particular circumstances. The petitioner on the one hand and the Court  
33 appointed receivers of two segregated portfolios of which the company was the investment  
34 manager on the other hand, differ as to whether one of the receivers should be appointed as  
35 an official liquidator jointly with one of the petitioner’s own choice of official liquidators.  
36

37 **Background**

- 38  
39 2. The company to be wound up is Tangerine Investment Management Limited (“Tangerine”).  
40 There was no question that Tangerine should be wound up pursuant to the winding up  
41 petition dated 12<sup>th</sup> February 2013 of a creditor, Novus International Investments Limited, to  
42 which Tangerine is indebted in the principal sum of £437,500 plus interest pursuant to an  
43 agreement between them. The debt was not disputed and the winding up petition was not  
44 opposed. Accordingly, at the hearing of the petition before me on 4<sup>th</sup> April 2013 I ordered

1 that Tangerine should be wound up pursuant to the Companies Law (2012 Revision) (“the  
2 Law”) with one of the petitioner’s choices appointed as official liquidator. The only disputed  
3 issue, which was reserved, was who should be appointed jointly as the other official  
4 liquidator.

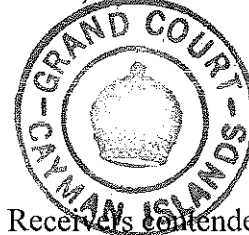
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- 6 3. Tangerine was formerly the investment manager of two segregated portfolios (together “the  
7 Axiom Portfolios”) of 2 segregated portfolio companies, JP SPC 1 and JP SPC 4 respectively  
8 (together “the Segregated Portfolio Companies”) in what is effectively a master/feeder fund  
9 type structure. On 12<sup>th</sup> February 2013 on the petition of the directors of the Segregated  
10 Portfolio Companies the joint receivers (“the Joint Receivers”) of the Axiom Portfolios were  
11 appointed by the Court pursuant to Section 224 of the Law on the statutory ground that the  
12 assets attributable to the Axiom Portfolios were likely to be insufficient to discharge the  
13 claims of their creditors. The Court appointed Mr. Hugh Dickson and Mr. Mike Saville of  
14 Grant Thornton Cayman and Mr. James Earp of Grant Thornton UK as the Joint Receivers  
15 and they have been acting as such since then.
- 16
- 17 4. Although not strictly relevant to Section 224 of the Law, it was also made clear at the  
18 hearings on 31<sup>st</sup> January and 1<sup>st</sup> February 2013 which led to the order on 12<sup>th</sup> February 2013  
19 that, in light of a substantial report to the directors of the Segregated Portfolio Companies by  
20 KPMG, the Axiom Portfolios, or one or other of them, has significant potential claims  
21 against Tangerine and its principal, Mr. Timothy Schools, whose actions had led to the  
22 Axiom Portfolios’ financial difficulties, for fraud, misrepresentation and/or other  
23 misfeasance. It was also clear that Tangerine had been incorporated specifically to carry on  
24 the business of investment manager to the Axiom Portfolios and that was its sole business.
- 25
- 26 5. The assets of the Axiom Portfolios are receivables from loans ostensibly made for specific  
27 purposes to certain English law firms. Tangerine as investment manager to the Axiom  
28 Portfolios was either directly, or indirectly through related persons or entities, responsible for  
29 selection of the law firms concerned, procuring payment of the loans and generally dealing in  
30 that respect with the financial resources of the Axiom Portfolios, which of course ultimately  
31 derive from their investors, now their creditors.

32

33 **The Arguments**

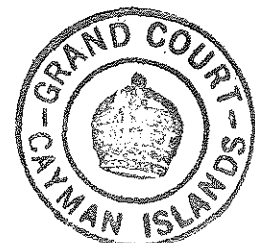
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- 35 6. In the circumstances which I have outlined above the Joint Receivers contended that it would  
36 be appropriate and beneficial for one of them, namely Mr. Saville of Grant Thornton  
37 Cayman, to be appointed as an official liquidator of Tangerine jointly with Mr. Ian Stokoe of  
38 PriceWaterhouseCoopers (“PwC”), one of the petitioner’s nominees whom I appointed as an  
39 official liquidator at the hearing on 4<sup>th</sup> April 2013. The petitioner opposed that proposal but  
40 suggested that as far as it goes any common interest between the official liquidators of



1 Tangerine and the Joint Receivers of the Axiom Funds respectively could be accommodated  
2 by a protocol between them.

- 3
- 4 7. The Joint Receivers were, as I have said, appointed on 12<sup>th</sup> February 2013, some 7 weeks  
5 before the hearing of the winding up petition in respect of Tangerine. They had already  
6 carried out substantial work in investigating the relationship between Tangerine and the  
7 Axiom Portfolios and the actions and activities of Tangerine as their investment adviser.  
8 Furthermore, the Joint Receivers have from the start had the detailed report to the directors of  
9 the Segregated Portfolio Companies by KPMG to which I have referred, which already goes  
10 a considerable way in investigating the details of the relationship between Tangerine and the  
11 Axiom Portfolios and the actions of Tangerine and Mr. Schools, although more investigative  
12 work is still needed. The Joint Receivers had therefore already acquired considerable  
13 knowledge of matters directly relevant to whoever was to be appointed as official liquidators  
14 of Tangerine and they are continuing to investigate those issues.
- 15
- 16 8. The Joint Receivers submitted that to require a fresh set of professionals from PwC to re-do  
17 and complete all this work and to acquire the knowledge already available or to become  
18 available to the Joint Receivers made no sense. It would involve incurring significant  
19 duplicated costs and unnecessary delay. I should mention as well that, although not as such  
20 the subject of evidence at the hearing of the winding up proceedings relating to Tangerine, it  
21 was known to the Court through its involvement in the receivership of the Axiom Portfolios,  
22 that the Joint Receivers had recently obtained directions from the Court that they may  
23 exercise the relevant powers which an official liquidator would have pursuant to the  
24 provisions of the Law to assist the Joint Receivers to fulfil their duties of closing down the  
25 businesses of the Axiom Portfolios and the distribution of their assets to those entitled to  
26 have recourse to them pursuant to Section 224(3) of the Law. The Joint Receivers were also  
27 recently authorised by the Court to seek recognition from the High Court of England and  
28 Wales in furtherance of their duties, given that the assets of the Axiom Portfolios are located  
29 there and further investigative work and possibly legal proceedings to discover or secure  
30 assets may be required there.
- 31
- 32 9. The Joint Receivers contended that, given that Tangerine's sole business was as investment  
33 manager to the Axiom Portfolios and given the accepted state of the Axiom Portfolios and  
34 the nature of the allegations surrounding how they got into that state, there was clearly very  
35 considerable overlap in the tasks and responsibilities of the Joint Receivers on the one hand  
36 and whoever was appointed as official liquidators of Tangerine on the other hand. They  
37 argued that there is a clear common interest between Tangerine and the Axiom Portfolios and  
38 their respective creditors in ascertaining where Tangerine and its principals had transferred or  
39 procured the transfer of funds belonging to the Axiom Portfolios and on what terms and



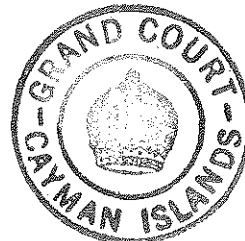
1 whether they had been in accordance with the terms agreed between Tangerine and the  
2 directors of the Segregated Portfolio Companies on behalf of the Axiom Portfolios.

3  
4 10. Leading counsel for the Joint Receivers said that they were fully alive to the potential for  
5 conflict of interest between the Axiom Portfolios and Tangerine in light of the possible future  
6 claims against Tangerine on behalf of the Axiom Portfolios. However, he argued that such  
7 future potential conflicts of interest were not fatal to their proposal. They submitted that if  
8 such a conflict of interest did arise in future there are well established procedures for  
9 accountants for dealing with conflicts of interest and also procedures approved by the Courts,  
10 which may of course give appropriate directions as necessary in such circumstances. The  
11 Joint Receivers contended that the potential for such conflict of interest in the future would  
12 depend upon the precise circumstances at the time and should not deter the Court from the  
13 obvious benefits in terms of cost, time and efficiency of enabling one of the Joint Receivers  
14 to be appointed as a joint official liquidator of Tangerine and thereby to directly participate  
15 and bring his knowledge to the winding up of Tangerine for the overall benefit of its  
16 creditors.

17  
18 11. The Joint Receivers' proposal was supported by a creditor of Tangerine, Mr. Steven  
19 Goodman of Singapore, who gave notice of intention to appear at the winding up hearing,  
20 although in the event he did not appear and was not represented at the hearing. Mr.  
21 Goodman claimed to be a creditor of Tangerine in the sum of £\$25,770,076 plus the costs of  
22 litigation which he is bringing against Tangerine in England. In his notice of appearance  
23 dated 14<sup>th</sup> March 2013 filed on his behalf by a local law firm, Mr. Goodman supported the  
24 winding up of Tangerine and also the petitioner's proposal that Mr. Stokoe and Mr. Walker  
25 of PwC should be appointed as joint official liquidators. However, Mr. Goodman apparently  
26 later changed his mind in the latter respect and in a subsequent e-mail addressed to Mr.  
27 Saville he said he supported the Joint Receivers' proposal that one of them should be  
28 appointed a joint official liquidator. No other creditor gave notice of intention to appear or  
29 appeared at the winding up hearing.

30  
31 12. The Joint Receivers' proposal was also supported at the hearing by counsel for CIMA. CIMA  
32 initially took a neutral position but having heard the submissions of counsel for the petitioner  
33 and leading counsel for the Joint Receivers, counsel for CIMA forcefully supported the Joint  
34 Receivers' position that Mr. Saville should be appointed as a joint official liquidator.

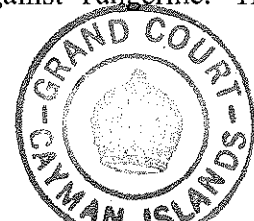
35  
36 13. The petitioner sought the appointment of Mr. Ian Stokoe and Mr. David Walker, both of  
37 PwC, as joint official liquidators of Tangerine. They both swore the usual formal affidavits  
38 confirming their qualifications and willingness to act as official liquidators. They are of  
39 course both well known to the Court as experienced official liquidators. There was no  
40 objection to them per se.



1 14. Counsel for the petitioner objected to the Joint Receivers' proposal that one of them should  
2 be appointed as one of the joint official liquidators; indeed he contended that the Joint  
3 Receivers had no locus to be heard at all on any aspect of the winding up proceedings,  
4 including in relation to who should be appointed as official liquidators of Tangerine. He  
5 submitted that the Axiom Portfolios have no separate legal identity (see Section 216(2) of the  
6 Law) and are simply portfolios of the Segregated Portfolio Companies. Since they are not  
7 legal entities they could not, it was argued, be creditors and their Joint Receivers therefore  
8 had no legal standing in the winding up proceedings. He contended that the claimant in  
9 respect of any alleged indebtedness of Tangerine to the Axiom Portfolios could only be the  
10 Segregated Portfolio Companies, the assets of which happen to be segregated into portfolios,  
11 including the Axiom Portfolios. Reference was also made in support of this proposition on  
12 behalf of the petitioner to Section 218(1) of the Law and to paragraph 18 of the unreported  
13 Reasons for Judgment of the Court of Appeal in *Re ABC Company (SPC)*, released on 25<sup>th</sup>  
14 May 2012. In light of these arguments, upon which I expressed no view at the hearing, I  
15 agreed to hear the submissions of leading counsel for the Joint Receivers on the merits of  
16 their proposal de bene esse, and they were as outlined above.

17  
18 15. It was also pointed out on behalf of the petitioner that it was the Joint Receivers, not the  
19 Segregated Portfolios Companies, who through their attorneys had on 27<sup>th</sup> March 2013 given  
20 notice of appearance at the winding up proceedings to support the winding up of Tangerine  
21 and to seek the appointment of Mr. Saville, together with an appointee from PwC, as joint  
22 official liquidators. It was submitted that, apart from the fact that the notice of appearance  
23 should have been given by the Segregated Portfolio Companies, the Joint Receivers' notice  
24 of appearance was defective in any event as it did not state the amount and nature of the debt  
25 allegedly due in accordance with the Companies Winding Up Rules (the "CWR") O.3  
26 r.8(2)(c). Counsel referred in this regard to *HSH Cayman 1 GP Limited and ors v ABN Amro*  
27 *Bank N.V. London Branch* [2010] 1 CILR 114 in support of an argument that this failure to  
28 comply with the CWR was fatal and that accordingly the Joint Receivers could not be heard.  
29 It was contended that therefore not only did the Joint Receivers have no locus to appear and  
30 be heard at the winding up hearing but that they had failed to comply with the mandatory  
31 requirements of CWR O.3 r.8 in respect of their notice of intention to appear in any event.

32  
33 16. With regard to the merits of the Joint Receivers' proposal, counsel for the petitioner opposed  
34 the appointment of Mr. Saville as a joint official liquidator on the ground of conflict of  
35 interest. It was argued that if Mr. Saville was appointed as a joint official liquidator he would  
36 obtain information that could be of benefit to the Axiom Portfolios but detrimental to  
37 Tangerine's creditors. Counsel pointed out that the Joint Receivers admit that with Mr.  
38 Saville as a joint official liquidator he may obtain information through the liquidation of  
39 Tangerine which would enable the Joint Receivers to by-pass the usual discovery processes  
40 in the event that the Axiom Portfolios were to bring proceedings against Tangerine. He



1 submitted that it was possible that the independent official liquidator of Tangerine could  
2 form the view that records he obtained should not be handed over to Mr. Saville in his  
3 capacity as a Joint Receiver and that this would result in a clear conflict of interest. He  
4 contended that the Joint Receivers were trying to by-pass the usual discovery processes and  
5 could obtain documentation that was clearly privileged. Counsel for the petitioner placed  
6 considerable reliance on the judgment of Quin J in *Re DD Growth Premium Master Fund*  
7 [2009] CILR Note 11, a copy of the full Ruling in which, dated 8<sup>th</sup> April 2009, was made  
8 available at the hearing before me. That case concerned a Master/Feeder type structure in  
9 respect of which the Hon. Judge declined to appoint the joint provisional liquidators of the  
10 Feeder Fund as joint provisional liquidators of the Master Fund on the ground that to do so  
11 would be likely to create a future conflict of interest. After reviewing various authorities the  
12 Hon. Judge expressed the view that it was in the best interest of creditors to avoid such a  
13 conflict of interest. It was argued for the petitioner that this approach was equally applicable  
14 to the present case.  
15

#### 16 **Conclusions**

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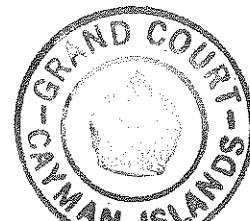
- 18 17. The position of a receiver of a segregated portfolio and his status is a novel area of the law in  
19 this jurisdiction. Although the decision of the Court of Appeal in *Re ABC Company (SPC)* is  
20 of assistance in the present context in confirming that a segregated portfolio has no separate  
21 legal identity from the segregated portfolio company, that case largely concerned the  
22 question whether a receivership order in respect of an individual segregated portfolio could  
23 be made on the application of a shareholder of the portfolio on just and equitable grounds.  
24
- 25 18. On balance I concluded that in the instant case the Joint Receivers should be heard on their  
26 proposal that one of them should, in the particular circumstances, be appointed as a joint  
27 official liquidator of Tangerine. Although the Axiom Portfolios do not have separate legal  
28 identity, it is nonetheless the Joint Receivers who have the statutory responsibility under the  
29 Law for the orderly closing down of the business of the Axiom Portfolios and the distribution  
30 of their assets to those entitled to them. There is no liquidator of the Segregated Portfolio  
31 Companies or either of them. It is the Joint Receivers who now have the functions and  
32 powers of the directors in respect of the business and assets of or attributable to the Axiom  
33 Portfolios; the functions and powers of the directors in respect of the Axiom Portfolios have  
34 ceased (see Sections 226(1)(b) and (6)(a)) of the Law). Furthermore a receiver of a  
35 segregated portfolio is expressly empowered by the Law to do all such things as may be  
36 necessary for the purposes of his duties under the Law (see Section 226(1)(a) of the Law) and  
37 in exercising his functions and powers the receiver is deemed to act as the agent of the  
38 segregated portfolio company (see Section 226(3) of the Law). In these circumstances,  
39 although if it was necessary for the Joint Receivers to pursue assets of the Axiom Portfolios  
40 by way of litigation, for example, they would have to do so in name of the Segregated



1 Portfolio Companies or one or other of them, that did not seem to me to preclude the Joint  
2 Receivers from making representations to the Court in support of their contention that one of  
3 them should be a joint official liquidator of Tangerine in the particular circumstances, for the  
4 reasons outlined above. It is the Joint Receivers who speak for the Axiom Portfolios and  
5 notwithstanding that in some circumstances they may require to procure the Segregated  
6 Portfolio Companies, or one or other of them, to act on behalf and in the interest of the  
7 Axiom Portfolios, or one or other of them, it does not necessarily follow, in my opinion, that  
8 the Joint Receivers could not themselves to be heard as such on an issue of direct relevance  
9 to their duties under the Law, such as the issue in the present case. Indeed, it seemed to me  
10 desirable, not least in the interests of the creditors of Tangerine, that the Joint Receivers'  
11 proposal, for the reasons they submit, should be heard by the Court in determining who best  
12 to appoint as its officers as official liquidators to conduct the winding up pursuant to the  
13 Court's ultimate supervision.

14  
15 19. In light of my views above, it did not seem to me essential that the notice of appearance filed  
16 by the Joint Receivers should have been in the name of the Segregated Portfolio Companies  
17 rather than, as it was, in the name of the Joint Receivers. Indeed the notice was more strictly  
18 accurate and understandable being in the name of the Joint Receivers since it was they who  
19 intended to appear on the hearing of the winding up petition of Tangerine to support the  
20 winding up order and to support their proposal for the appointment of one of them as a joint  
21 official liquidator. As I have already explained, at the hearing I agreed to hear leading  
22 counsel for the Joint Receivers on the merits of their proposal de bene esse but for the  
23 reasons explained in this Ruling, I have concluded that the Joint Receivers were entitled to be  
24 heard and to make their submissions and should do so and accordingly I had unqualified  
25 regard to them.

26  
27 20. With regard to the form of the Joint Receivers' notice of appearance, leading counsel for the  
28 Joint Receivers explained to the Court that the omission of the amount and nature of the debt  
29 from the notice was inadvertent and apologised for it. He submitted that it was a technicality  
30 in the circumstances of the present case. The initial indications are that the Axiom Portfolios  
31 or one or other of them have been deprived of at least £52m paid out during the period of  
32 Tangerine's responsibility, although this was still under investigation by the Joint Receivers.  
33 This position was clearly set out in the affidavit of Mr. Saville in support of the Joint  
34 Receivers' proposal, which is on the Court file available to anyone having any interest in  
35 Tangerine to see. It was submitted for the Joint Receivers that the omission from the notice  
36 of appearance was a genuine but relatively minor inadvertence and could not have caused  
37 any prejudice or confusion to Tangerine or to any creditor, shareholder or other interested  
38 party. In fact the only creditor to participate, Mr. Goodman, had made it clear that he was  
39 well aware of the Joint Receivers' proposal and supported it. In my view the omission of the



1 amount and nature of the debt claimed by the Axiom Portfolios was most unlikely to have  
2 caused any prejudice or confusion to any interested party. The relationship between  
3 Tangerine and the Axiom Portfolios, which was the sole business of Tangerine, would have  
4 been well known to any person or entity having any interest in Tangerine, including the  
5 potential claims of the Axiom Portfolios, which have been widely reported in the press. It  
6 would have come as no surprise to any person or entity interested in Tangerine and in the  
7 petition to wind it up that the Joint Receivers of the Axiom Portfolios were proposing to  
8 appear at the hearing of the petition. Having regard to the background circumstances the  
9 likelihood that the inclusion in the Joint Receivers' notice of appearance of the amount and  
10 nature of the debt claimed on behalf of the Axiom Portfolios would have made any  
11 difference to the attitude of any other creditor or shareholder seems to me very remote. The  
12 circumstances in the present case were significantly different from the circumstances in the  
13 *HSH Cayman I* case. While the Court of Appeal in that case have, of course, emphasised the  
14 importance of complying with the CWR, the admitted inadvertent omission of the Joint  
15 Receivers to state the amount and nature of the debt in their notice of appearance did not, in  
16 my opinion in the particular circumstances of this case, warrant either adjourning the hearing  
17 to enable the Joint Receivers to file an amended notice of appearance or disallowing the Joint  
18 Receivers from appearing and being heard on their proposal. Neither course would have  
19 achieved any benefit in the instant case nor would either course have been, from a practical  
20 perspective, in the interests of the creditors of Tangerine or have assisted in achieving a just  
21 and appropriate decision on the question of who should be the official liquidators.  
22

23 21. It was not entirely clear to me why the petitioner was from a practical perspective opposed to  
24 the Joint Receivers' proposal in the circumstances. One would have thought that, as a  
25 creditor of Tangerine, the petitioner would in the circumstances be in favour of reducing time  
26 and expense by the official liquidators in duplicating work already carried out and knowledge  
27 already acquired by the Joint Receivers of the Axiom Portfolios. The petitioner was  
28 obviously well aware of the relationship between Tangerine and the Axiom Portfolios and  
29 the consequent community of interest between them in identifying what happened to the  
30 monies of the Axiom Portfolios controlled and paid away by Tangerine. Clearly if Mr.  
31 Saville was appointed as a joint official liquidator his duty would be to act in best the  
32 interests of the creditors of Tangerine. As a Joint Receiver of the Axiom Portfolios his duties  
33 are to their creditors. It was quite properly recognised that there could be a potential future  
34 conflict between the respective interests of these creditors but the cost saving and increased  
35 efficiency as a result of having Mr. Saville as one of the joint official liquidators would, it  
36 seems to me, have been obvious to the petitioner.  
37

38 22. With respect to the Court in the *DD Growth* case I agreed with leading counsel for the Joint  
39 Receivers that there was no significant consideration by the Court in its Ruling of the  
40 benefits of having the same individuals as joint provisional liquidators of both the Feeder

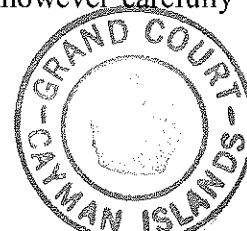


1 Fund and the Master Fund. An arrangement such as was being proposed in that case is not,  
2 in my experience, unusual in a Master/Feeder Fund Structure in this jurisdiction in light of  
3 the common overlapping interests and in order to avoid duplication of work and additional  
4 cost. There are well established means by which a conflict of interest arising in such  
5 circumstances may be obviated, such as by appointment of a conflict liquidator later or other  
6 appropriate directions of the Court which do not appear to have been considered. I did not  
7 agree with the argument of counsel for the petitioner which was to the effect that the decision  
8 in the *DD Growth* case amounts to a statement of principle applicable to all circumstances.  
9 In my view the Court must always consider the particular circumstances of the case and it  
10 may well be that the benefits to be achieved by having common liquidators or receivers of  
11 more than one company outweigh the disadvantage of a potential future conflict of interest,  
12 particularly if there are workable means of dealing with the latter. I should mention also that  
13 counsel for the petitioner submitted that in England the appointment of a common official  
14 liquidator to different companies is confined to the position when the companies concerned  
15 are members of the same group of companies. Although several of the English authorities  
16 referred to by leading counsel for the Joint Receivers did relate to group companies, in one of  
17 the principal authorities, *Re Arrows Limited* [1992] BCC 121 the companies concerned were  
18 not strictly in the same group. In that case Hoffman J (as he then was) agreed that the  
19 appointment of the same firm of insolvency practitioners to be both provisional liquidators  
20 and receivers of the various companies concerned was "*eminently sensible*". He went on to  
21 say:

22 *It is by no means uncommon in the case of the insolvency of a substantial group of*  
23 *companies for cross claims and conflicts interest to arise between companies*  
24 *within the group. That does not usually deflect the Court from appointing a*  
25 *single firm of insolvency practitioners in the first instance to deal with the whole*  
26 *insolvency of the group, leaving the question of potential conflict of interest to be*  
27 *dealt with if and when it arises."*

28  
29 That is the proposal of the Joint Receivers in the present case, namely that the question of  
30 potential conflict of interest should be dealt with if and when it arises. As I have said, it  
31 seems to me that the appropriateness of having the same insolvency practitioners as  
32 liquidators or as receivers of different companies should not be restricted to particular  
33 defined situations but must depend on the particular circumstances in each case and the  
34 discretion of the judge having regard to those circumstances.

35  
36 23. Counsel for the petitioners also argued that the need for the Joint Official Liquidators of  
37 Tangerine who the petitioner proposed and the Joint Receivers to co-operate and share  
38 information could and should be achieved by means of a written protocol between them  
39 rather than by appointing Mr. Saville as one of the official liquidators. Although I initially  
40 found this proposal attractive, I concluded that such a protocol, however carefully worded,



1 would not allow for the flexibility and adaptability which would be achieved by the direct  
2 participation of Mr. Saville as a joint official liquidator. It seems to me inevitable that as  
3 steps are taken in the winding up and in the necessary investigative process and information  
4 obtained matters will develop, quite likely in unexpected or unanticipated ways, which will  
5 require a flexibility of approach. That will in my view more easily and effectively be  
6 achieved if the two individuals, Mr. Stokoe and Mr. Saville, are working closely with each  
7 other as joint official liquidators rather than being reliant upon the interpretation of a formal  
8 written protocol between the joint official liquidators on the one hand and the Joint Receivers  
9 on the other.

10  
11 24. Although it is obvious in the present case that there is potential for a future conflict of  
12 interest such conflict will not necessarily arise. If it does and cannot be resolved through the  
13 means commonly adopted, such as the appointment of an independent conflict liquidator, in  
14 this case possibly another member of PwC, or through other co-operative and constructive  
15 means, it may be resolved by directions from the Court at the time. However, I am confident  
16 that if Mr. Saville was to be appointed as joint official liquidator he and Mr. Stokoe could  
17 and would work together successfully in a constructive and effective manner. I do not see  
18 why they should not be able to do this so as to achieve the maximum efficiency and avoid  
19 duplication of work, reduce time and save costs.

20  
21 25. Accordingly on balance I concluded that it was desirable and appropriate in the particular  
22 circumstances for Mr. Michael Saville of Grant Thornton Cayman to be appointed as an  
23 official liquidator of Tangerine jointly with Mr. Ian Stokoe of PwC, who I had appointed on  
24 4<sup>th</sup> April 2013. On 17<sup>th</sup> April 2013, in order to avoid continuing uncertainty, I duly appointed  
25 Mr. Saville for the reasons now set out in this Ruling. As I said at the time, I fully expect  
26 that as officers of the Court and as experienced insolvency practitioners Mr. Stokoe and Mr.  
27 Saville, as joint official liquidators, will work together as such to the fullest extent in order to  
28 achieve the objectives outlined above and that they will also seek to resolve as far as  
29 possible, with the assistance of the Court if necessary, in a constructive, economic and  
30 practical manner any conflict of interest which may arise in future having regard to the said  
31 objectives.

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33 Dated 25<sup>th</sup> April 2013

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**The Hon. Mr. Justice Angus Foster**  
**JUDGE OF THE GRAND COURT**

