

BRITISH VIRGIN ISLANDS COMMERCIAL COURT

In the Matter of Titan Group Investment Limited (In Liquidation) Claim No. BVIHC (Com) 2012/0056

APPLICATION BY JOINT COURT APPOINTED LIQUIDATORS FOR INTERIM REMUNERATION - TWO OF THE FOUR LIQUIDATORS ARE HONG KONG RESIDENT INSOLVENCY PRACTITIONERS - MEANING AND EFFECT OF SECTION 432(5)(A)(VI) OF THE INSOLVENCY ACT, 2003 CONSIDERED

This case concerned an application by Mr. Russell Crumpler of KPMG (BVI) Limited, Mr. Patrick Cowley and Mr. Edward Middleton (in their capacity as Joint and Several Liquidators of Titan Group Investment Limited [In Liquidation]) for an interim payment of their remuneration. The application was opposed. In the course of resolving various issues important general points of practice and legal construction emerged. The Learned Commercial Judge substantially approved all the sums sought by the Liquidators he held that in enacting Section 432(5)(a) (vi) of the *Insolvency Act, 2003*, the legislature did not intend that the Court was to take account of rates chargeable by insolvency practitioners in every jurisdiction and that it must be taken as knowing that many BVI Court ordered liquidations were multi-jurisdictional and would require the appointment of liquidators operating elsewhere.

The Judge held that where foreign liquidators were involved, Section 432(5)(a)(vi) required the Court to take into account the rates charged by firms of similar standing for carrying out similar work in the jurisdiction within which the foreign resident liquidators resided, as well as the current rates in the BVI in respect of the remuneration of the BVI resident liquidator.

The Court also held that liquidators were entitled to recover charges by service provided for work done, provided that the charges were properly incurred, unless those charges were “manifestly excessive”.

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