

BERMUDA SUPREME COURT

In the Matter of Z-obe Holdings Limited
[2017] SC (Bda) 16 Com (21 February 2017)

WINDING-UP - COMPANY PETITION -
APPOINTMENT JOINT PROVISIONAL LIQUIDATORS
TO MONITOR IMPLEMENTATION OF INSOLVENT
RESTRUCTURING BY BOARD OF DIRECTORS-
WHETHER JURISDICTION EXISTS TO UTILIZE
PROVISIONAL LIQUIDATION PROCEEDINGS IN AID
OF A RESTRUCTURING WHICH IS DESIGNED TO
RESULT IN THE PETITION BEING ULTIMATELY
DISMISSED-COMPANIES ACT, 1981, SECTIONS 164
AND 170

Z-obe Holdings concerned a company that had been in provisional liquidation in Hong Kong since June 2014. The Hong Kong provisional liquidators had identified a potential investor and sought to restructure rather than wind-up. The company subsequently presented a petition in Bermuda and applied to appoint the same provisional liquidators in the Bermuda proceedings with their powers restricted to the explicit purpose of affecting the restructuring. In providing reasons for allowing the appointment, the Court reiterated that it has, for 20 years, construed the relevant provisions of the *Companies Act, 1981* so as to enable it to appoint provisional liquidators with limited powers in order to allow the company to implement a restructuring. The fact that it was proposed that the winding-up proceedings be adjourned (and may ultimately be dismissed) did not impact this position. Reiterating the sentiment of both *Energy XXI (In the Matter of Energy XXI Ltd [2016] SC (Bda) 79 Com)* and *C&J In the Matter of C & J Energy Services Ltd [2017] SC (Bda) 20 Com*, the Judge held that the Court has a broad discretion to adjourn a petition for good reason and that power was clearly flexible enough to encompass an adjournment to enable alternatives to a winding-up to be explored. Should the alternatives no longer be realistic, the Court may, on the application of creditors, determine that it's no longer appropriate to continue to adjourn the winding-up petition. This is unlikely where the majority of creditors are in favour of the adjournment.

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