IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)
[2020] EWHC 3627 (Ch)

No. CR-2018-001745
CR-2020-004367
CR-2020-004368

Rolls Building
Fetter Lane
London
EC4A 1NL

Wednesday, 16 December 2020

Before:

THE HONOURABLE MR JUSTICE MILES

IN THE MATTER OF **BEAUFORT ASSET CLEARING SERVICES LIMITED (IN SPECIAL ADMINISTRATION)**
AND IN THE MATTER OF **BEAUFORT NOMINEES LIMITED**
AND IN THE MATTER OF **RAVEN NOMINEES LIMITED**
AND IN THE MATTER OF **THE INVESTMENT BANK SPECIAL ADMINISTRATION REGULATIONS 2011**
AND IN THE MATTER OF **THE INSOLVENCY ACT 1986**

Mr Daniel Bayfield and Ms Georgina Peters (instructed by Linklaters LLP) appeared on behalf of the Applicants.

J U D G M E N T

MR JUSTICE MILES:

1 There are three applications before the court: (a) a winding up petition presented by Beaufort Asset Clearing Services Limited ("BACSL") by its administrators dated 7 July 2020 seeking orders under paragraphs 79(3)(b) and 98(2)(c) of Schedule B1 to the Insolvency Act 1986 ("the 1986 Act") for their appointments as administrators to cease to have effect and for their discharge from liability; (b) an order for BACSL to be compulsorily wound up under the 1986 Act; and (c) two winding up petitions presented respectively by Beaufort Nominees Limited ("BNL") and Raven Nominees Limited ("Raven"), in each case seeking an order for their compulsory winding up under the 1986 Act. Neither BNL nor Raven is currently in administration.

2 The petition relating to BACSL was previously before me on 21 July 2020. I gave directions to BACSL's administrators pursuant to paragraph 63 of Schedule B1 and adjourned the petition until today. The background to this matter is set out in some detail in a judgment I gave on 21 July 2020, reported at [2020] EWHC 2309 (Ch) ("the July judgment"). Any interested reader is referred to that judgment.

3 On 1 March 2018 BACSL entered special administration on the FCA's application under Regulation 5(1)(h) of The Investment Bank Special Administration Regulations 2011 ("the IBSA Regulations"). BACSL is an investment bank within the meaning of section 232 of the Banking Act 2009 and is authorised and regulated by the FCA. Its business consisted principally of acting as a custodian of client assets and client money on behalf of clients.

4 On 26 July 2018 Mr Justice Arnold approved a Distribution Plan in respect of BACSL's client assets pursuant to Rule 146(5) of The Investment Bank Special Administration (England and Wales) Rules 2011 ("the IBSA Rules"). The Distribution Plan makes provision for the distribution of BACSL's client assets in accordance with the IBSA Rules but does not, for the most part, relate to client money held by BACSL.

5 By my order of 21 July 2020 the administrators were granted certain relief in connection with the Distribution Plan in the form of a declaration and order that:

(1) Objective 1 of the special administration objectives prescribed by Regulation 10(1) of the IBSA Regulations ("Objective 1"), being the return of client assets as soon as it is reasonably practicable, has been sufficiently achieved and achieved to the extent reasonably practicable in relation to the company; and

(2) the administrators should be at liberty to issue a long stop date notice to clients within the meaning of Clause 1 of the Distribution Plan (as amended on 26 November 2018, 27 February 2019, 30 October 2019, and 21 January 2020).

6 The long stop date notice triggered a notice period of two months under the Distribution Plan which meant that the BACSL petition could only be determined once the notice period had elapsed and the final steps had been taken to end the administration. It was in those circumstances that I adjourned the hearing of the BACSL petition.

7 In addition, by paragraph 5 of the 21 July order, the administrators were permitted to cause BACSL to pay certain amounts of unclaimed client money held by it into the insolvency services unclaimed dividends account with the Bank of England in accordance with the terms of waivers given by the FCA pursuant to section 138A of the Financial Services and Markets Act 2000.

8 The present position is that BACSL continues to hold an outstanding rump of client assets. As at the date of the fourth witness statement of Mr Rackham, 10 December 2020, the aggregate value of those assets was approximately £7.4 million, held for the benefit of 1,396 clients and comprising some 1,917 securities. I have been provided with a table which updates the position to today's date. I need not set out the details of that table, but I can summarise it by saying that since 10 December, further steps have been taken which has reduced the amount of the outstanding rump as further returns have been made to clients. However, for the purposes of this judgment, I will generally refer to the position as of 10 December 2020. The applicants have given an undertaking that the table that I was provided with today will be verified by a statement of truth.

9 If a winding up order is made the remaining client asset portfolio will fall under the control of the official receiver. There is also a balance of client monies which, as of 10 December, was in the sum of about £525,000. This will remain held by BACSL under the control of the official receiver as liquidator for the benefit of clients with relevant proprietary claims.

10 BNL and Raven operated as nominees holding legal title to the client assets held by BACSL for its clients. The petitions to wind up BNL and Raven are founded on the company's special resolutions to wind them up, pursuant to section 122(1)(a) of the 1986 Act. Both companies are wholly owned subsidiaries of BACSL and Mr Rackham, one of the administrators, is the sole director of each company.

11 I turn to the procedural requirements concerning notice to interested parties and the position of the official receiver. I am satisfied that the procedural requirements in relation to the giving of notice of the petitions, gazetting them, and lodging certificates of compliance have been met. The relevant information has been comprehensively addressed in a series of witness statements made by Mr Rackham the latest of which is Rackham 4 dated 10 December 2020.

12 So far as the paragraph 79 application is concerned, the administrators are required to give written notice of the application to, so far as relevant, the creditors and clients and to the FCA (see Rule 221(2)(a)(i), (ii), and (iii) of the IBSA Rules). The application must also attach a statement that the creditors and clients have been notified of the application and copies of any responses to that notification (see Rule 221(2)(b)) and notice must be given at least five business days before the date on which the application is made (see Rule 221(3)). The administrators are also required to provide a copy of the application to the FCA (see Rule 221(4)(a) of the IBSA Rules). The administrators must also, within five business days of filing the application, gazette a notice undertaking to provide the application to any person who requests it (see Rule 221(4)(b)). If the administrator thinks fit, the notice may also be advertised more widely.

13 The steps taken to comply with these requirements are as follows:

(1) before the July 2020 hearing, the administrators had already notified clients of the BACSL petition and Mr Rackham's second statement had been uploaded to the website maintained for the Administration;

(2) the FCA was also notified of the petition and confirmed its consent to BACSL's winding up by email dated 3 July 2020;

(3) on 23 November 2020 the administrators published a further notice on the website notifying all clients and creditors of BACSL of the petition;

(4) on 23 and 24 November 2020 the administrators wrote directly to all remaining clients and creditors and to certain suppliers under post-administration supply contracts informing them of the BACSL petition, including the paragraph 98 application for their discharge from liability, and giving the hearing window fixed for the hearing of the petition;

(5) the FCA has re-confirmed its consent to BACSL being wound up by letter of 30 November 2020; and

(6) on 10 July, a notice in respect of the petition was also published in the London Gazette; and this was repeated on 2 December 2020.

14 No responses to these notices have been received. No objection to the relief being sought was raised before or in the course of this hearing. Moreover, as concerns the paragraph 98 application, no objections or concerns have been raised by any clients or creditors following the notifications and, subject to one point to which I shall return, the administrators are not aware of any claims or potential claims that any party intends to or could sensibly pursue against them in respect of the conduct of BACSL's administration.

15 The administrators' most recent progress report, which is required by Rule 221(1)(a) of the IBSA Rules for the purposes of the section 79 application, was filed on 23 November 2020. The statement required by Rule 221(1)(b), indicating what the administrators think should be the next step for BACSL, is comprised in Rackham 4.

16 Turning to the petitions, the following steps have been taken:

(1) as already mentioned, notice of the BACSL petition was published in the London Gazette on 10 July 2020 and again on 2 December 2020. This is more than seven clear days before the beginning of the hearing window as required by the Insolvency (England and Wales) Rules 2016; and

(2) notices of each of the nominees' petitions were published in the London Gazette on 2 December 2020. Certificates of compliance were filed with the court on 7 December 2020, which was more than five clear business days before the beginning of the hearing window as required by the Insolvency (England and Wales) Rules 2016. The deposit payable to the official receiver in respect of each petition has been paid.

17 By a letter dated 27 November 2020, the official receiver has stated that he/she has no objection to BACSL, BNL, and Raven being wound up and also noted that regular contact has taken place to date between the offices of the official receiver and the administrators to facilitate a smooth handover to the official receiver in the event that the companies are wound up.

18 As I have already mentioned, the 21 July 2020 order permitted the administrators to serve a long stop date notice. This had the effect of affording clients a substantial period of notice, being two months, that the administrators' responsibility for returning client assets would come to an end. The long stop date notice was issued on 23 July 2020 and the long stop date occurred on 23 September 2020. The notice was published on BACSL's website on 23 July 2020 and on or about the same date, the administrators wrote to all remaining clients for whom email or postal addresses were held, notifying them that the long stop date notice had been issued, and directing them to the notice on the website. The notice was also published in the London Gazette.

19 The long stop date notice, as well as notifying clients of the long stop date and the 21 July order, advised clients that if, by the long stop date, BACSL continued to hold assets which the administrators had determined could not be the subject of a Transfer or Distribution (each as defined in the Distribution Plan) for any legal or practical reason, the administrators would not thereafter be obliged to take any further action with respect to such assets pursuant to the Distribution Plan and would be released from any obligations thereunder to seek to return those assets. It went on to say that, alternatively, in certain circumstances, remaining assets may, in the liquidator's discretion, be liquidated with the proceeds of such liquidation being returned to the relevant client subject to any deductions in respect of costs or liabilities to BACSL.

20 The notice therefore reflected two key consequences described in the Distribution Plan in relation to client assets still held by BACSL as at the long stop date.

21 First, where the reason for not returning client assets is because the administrators designated them as Non-Returnable Client Assets (as defined in the Distribution Plan) and they still hold them at the long stop date:

(a) the administrators are not obliged to take any further action with respect to them and are released from any obligations under the Distribution Plan to return them; but

(b) this does not affect the client's rights to the assets otherwise than pursuant to the plan. That follows from clause 10.4.1 of the Distribution Plan.

22 Second, where the reason for not returning assets is because the relevant client has not submitted a completed claimant options form with the instructions required for return by the long stop date, the administrators may, if they deem it appropriate, liquidate that client's assets and return the proceeds to the client net of costs and deductions after discharging any security interest. That is the consequence of Clause 15(4) of the Distribution Plan.

23 In addition, under the Distribution Plan, the administrators are not obliged to return any assets defined as Tainted Client Assets in the Distribution Plan still held at the long stop date and are released from any obligations under the plan to return them but this, once again, does not affect the client's rights to the assets. This is the consequence of Clause 11.3 of the Distribution Plan.

24 When granting permission to the administrators to issue the long stop date notice, I explained in my July judgment at [46]-[50] the extensive steps taken by the administrators to return client assets under the Distribution Plan. I was satisfied that the administrators had taken all reasonable steps to return assets to clients. The outcome of the steps taken up to that date was encapsulated in [49] of the judgment.

25 In my July judgment I also considered the evidence which addressed the outstanding rump of assets held by BACSL at that time which constituted Non-Returnable Client Assets within the meaning of the Distribution Plan, a subset of which was the Tainted Client Assets. The nature and value of the assets, including the reasons for the inability to return them, was addressed in some detail in the judgment. At [65] I concluded, having considered the evidence before the court, that the administrators had sufficiently achieved Objective 1 of the special administration objectives to the extent reasonably practicable in relation to BACSL.

26 One purpose of issuing the long stop date notice was to afford clients a final opportunity to make what was called a Late Claim in respect of client assets during the two-month period

and the winding up petition was deliberately adjourned to a date after the long stop date in order to allow that to happen, and in view of the complexity of BACSL's client asset portfolio and the need to bring an orderly end to the administration. The consequence of the long stop date notice therefore has been that clients have had some 4.5 months to make late claims in respect of client assets. It is also to be borne in mind that the Distribution Plan has been in place now for over two years.

27 I turn to the statutory basis of the relief now sought.

28 By paragraph 79(3) of Schedule B1 to the 1986 Act, an administrator of a company is required to make an application for his appointment to cease to have effect from a specified time if:

(a) the administration is pursuant to an order of the court; and

(b) the administrator thinks that the purpose of the administration has been sufficiently achieved in relation to the company.

29 The reference to the purpose of the administration is a reference to the three administration objectives identified in paragraph 3(1)(a) to (c) of Schedule B1 (in relation to the general law of administrations). This provision applies in the case of a special administration with certain modifications as follows:

(a) Regulation 15(4) of the IBSA Regulations applies certain provisions of Schedule B1 and the other provisions of the 1986 Act in relation to a special administration as in relation to other insolvency proceedings with the various modifications set out in Regulations 15(5) and (6). The applied provisions under Schedule B1 are contained in Table 1 which includes paragraph 79, save for subparagraph (2); and

(b) as to the modifications applied by sub-Regulation 15(5): a reference to an administration order is a reference to a special administration order; a reference to a company is a reference to an investment bank; and a reference to the purpose of the administration is a reference to the special administration objectives.

30 The special administration objectives are provided for in Regulation 10 of the IBSA Regulations.

31 Accordingly, an application to terminate a special administration must be brought if the administrator thinks that the special administration objectives have been sufficiently achieved in relation to the investment bank. Applying Regulation 10, this means that:

(a) the return of client assets as soon as reasonably practicable has been sufficiently achieved (Objective 1);

(b) timely engagement with market infrastructure bodies and the authorities as defined has been sufficiently achieved (Objective 2); and

(c) the administrators have either rescued the investment bank as a going concern or the steps taken to wind it up in the best interests of creditors have been sufficiently achieved (Objective 3).

32 The administrators have reached the view that Objective 1 has been sufficiently achieved. The relief that I granted in July 2020 was premised on my decision that this objective had been sufficiently achieved. Since July 2020 the administrators have taken further steps to return assets to clients and I shall say something more about this in a moment. I am satisfied

on the basis of the detailed evidence contained in Rackham 4 (as updated by the table) that this objective has been sufficiently achieved.

33 I also note that the process which has taken place since July 2020, including the service of the long stop date notice, has given the clients a further opportunity to make submissions to the court in the event that they disagreed with the administrators' assessment as to Objective 1, and no clients have done so.

34 As far as Objective 2 is concerned, the relevant authorities, as far as relevant to BACSL, are the Bank of England, the Treasury, and the FCA. There has been frequent engagement with the relevant bodies. The most important for present purposes is the FCA and it has twice expressed its consent to the BACSL petition, most recently on 30 November 2020. I am satisfied that Objective 2 has been sufficiently achieved.

35 As to the first limb of Objective 3, there has never been any prospect of BACSL being rescued as a going concern as it was heavily insolvent at the date of the administration. So far as the second limb of Objective 3 is concerned, winding up in the creditors' interests, there is no prospect of any dividend being paid to unsecured creditors. There are no secured creditors and there are preferential creditors in the sum of about £3,000. There are no assets available for distribution. Some steps have been taken to realise the assets of BACSL, but there are no further steps to be taken in that regard. Accordingly, there are no further steps to be taken by the administrators to wind up in the interests of creditors and, for these reasons, I am satisfied that that element of Objective 3 has been achieved to the extent that it ever could be.

36 I return to say something more about the steps taken by the administrators since the July 2020 hearing to return some additional client assets to clients where possible. The administrators have continued to identify the different ways in which those assets may be returned and, in addition, in view of the concerns that the administrators have expressed about the official receiver's ability to maintain the custody of and/or access to certain electronically held securities (which was addressed in my July judgment at [63]), further steps have been taken in an attempt to preserve the value of electronically held securities so far as possible. I will say a little more about these two matters before returning to the applications.

37 The first is the outstanding rump of assets. At the time of my July judgment, the remaining rump had an aggregate value of about £10.3 million (as compared with £429 million at the date of administration) and, together with the remaining client money balance of about £3.1 million, was held for a total of 1,682 clients as compared with 14,694 clients with client asset claims at the date of administration. Since July the administrators have managed to reduce the outstanding rump of client assets by some millions.

38 Mr Rackham has also explained the difficulties that the administrators continue to encounter in relation to the Non-Returnable Client Assets and the subset of Tainted Client Assets. Again, I do not need to set out the details of that evidence in this judgment. I am satisfied that the administrators have taken all reasonable steps open to them to seek to return those assets to clients.

39 The second matter I should address concerns the fact that a substantial proportion of the rump assets comprise electronically held securities. The majority of these are held by BACSL's third-party custodian Cortland Capital Market Services ("Cortland") and its sub-custodian, State Street Corporation. As of 6 November 2020, these had a value of about £5.6 million. A smaller proportion were held in the Crest electronic settlement system and again, as of 6 November, these had an aggregate value of about £1.5 million. These amounts have reduced in the period since 6 November.

40 At [63] of the July judgment I explained that there was likely to come a point where it may not be possible for the official receiver to maintain the custody of all the electronically held assets with the relevant custodian or depository and that it was not therefore possible to state at the present time with certainty for how long BACSL will continue to hold all the electronically held assets.

41 Since the July 2020 hearing the administrators have investigated the position with Cortland and Euroclear. As Rackham 4 explains there are two principal issues which may affect the potential treatment and status of these assets if BACSL is wound up. The first concerns the fees or charges that may become payable to either Cortland or Euroclear in connection with their holding of BACSL's client assets. Those fees have been paid to date as part of the Objective 1 costs associated with the return of client assets in BACSL's administration. To take the position of Cortland as an illustration, the monthly administration fees are typically around $250 a month with additional fees charged for the settlement of assets or the withdrawal of assets in the event that a claim is made for their return. The administrators remain committed to paying the monthly administration charges, with some contingency to cover potential transaction fees, for the first three months of BACSL's liquidation by way of pre-funding, but once that pre-funding commitment is exhausted, given that BACSL is insolvent, the fees will not be paid.

42 Having considered the potential consequences of non-payment of these fees, the position now appears to be this. Cortland's sub-custodian State Street has a contractual entitlement to liquidate the assets which are custodied with it and to apply the proceeds to discharge their fees. Accordingly once the pre-funding is exhausted, it is possible that the value of these assets will be diminished to meet the fees. There is a similar problem regarding the fees in relation to Crest.

43 I am satisfied that there are no further steps open to the administrators that they could reasonably take to address or mitigate the potential impact of this issue.

44 The second potential issue regarding Crest is that the official receiver has recently confirmed that their office does not possess access to the Crest gateway, being the virtual terminal provided by a network provider to a Crest user by which messages are transmitted by the use of the Crest system. Such gateway access is required in order to deal with the assets. Currently, BNL and Raven are the relevant participants in the Crest system. Crest accounts are held in their name and BACSL acts as what is called their "sponsor", but their gateway access expires today, 16 December 2020, as their contract with their supplier was terminated with a six-month notice period on 16 June 2020. So, as of today, that contract will have come to an end. In any event, there are no funds within BACSL's estate to pay the costs of extending or renewing the contract and BNL and Raven have no assets of their own.

45 The administrators have discussed the impact of this with Euroclear which operates the Crest system. Euroclear explained that it might be possible for a third-party to provide gateway access for the official receiver as a sponsor but, after extensive investigations by the administrators, it has not been possible to find any third-party provider who might be willing to take on this role. As a result the administrators do not consider there are any further reasonable or proportionate steps that could be taken to keep open the gateway access which is required for dealing with the assets held in Crest. I am satisfied that that is a reasonable view for them to have reached.

46 This means that the accounts will be disabled, and the official receiver will be unable to withdraw the assets from Crest. The administrators believe, however, that it will be possible for a late claiming client to liaise with the official receiver in order to arrange gateway access

though this is likely to be at a significant cost and it is likely that the client will need to put the official receiver in funds to do this. That may present an obstacle to recovery of the relevant assets, but it is a problem that exists in any event. The contract has come to an end today but, in any case, the question for the administrators is whether they have taken all reasonable steps to pursue Objective 1, namely the return of assets to clients and, as I have already said, I am satisfied that they have.

47 I am also satisfied that the administrators more generally have taken reasonable steps in order to return the rump assets to clients and that therefore there are no further steps they can reasonably be expected to take in relation to the assets remaining within the Crest system. The administrators cannot be expected to remain in office indefinitely and bear the costs of doing so personally.

48 It also has to be borne in mind that such late claiming clients have had a period of around two and a half years in which to establish their claims to client assets. Proprietary claims will continue, albeit in light of the matters I have just mentioned it may be more difficult for such clients, if they are able to establish late claims, to have access to those clients without incurring some significant costs.

49 In addition to the attempts to preserve access to electronically held assets, the administrators have considered liquidating certain assets and have done so. This too has reduced the amount of the electronically held assets. The administrators have also converted certain electronically held assets into physically held securities and have also materialised and re-registered certain securities directly into clients' names.

50 I should also mention the position in relation to client money. As I explained in my July judgment, there was an amount of some millions of client money which had not been returned to clients. Further distributions have been made since July. Again, it is not necessary for me to set out the precise amounts in this judgment. I am satisfied on the evidence that the administrators have made all reasonable efforts to return client monies to clients.

51 I turn then to the specific applications before me.

52 As to the winding up petition in respect of BACSL I am satisfied that it is a company within the meaning of section 121(1) of the 1986 Act. It is also heavily insolvent for the purposes of section 122(1)(f), with unsecured debts exceeding £47 million and no prospect of a dividend.

53 I am also satisfied that the fact that BACSL is already in special administration under the IBSA Regulations does not prevent the court making a winding up order in respect of the company. Regulation 8 of the Regulations envisages that in certain circumstances, a petition for winding up of an investment bank may be made. I also note that the FCA itself has the power to petition for the winding up of an authorised person (see section 367 of the Financial Services and Markets Act 2000). The FCA has expressly consented to the winding up order being made.

54 Counsel for the applicants took me to Regulations 20 and 21 of the IBSA Regulations. Regulation 20 addresses the situation of a successful rescue in accordance with the first limb of Objective 3 and (to paraphrase) requires the special administrator, where there has been a successful rescue, to make an application under paragraph 79. Regulation 21 addresses the case where there has not been a rescue, but the administrator believes that Objectives 1 and 2 have been sufficiently achieved. In such a case, by subparagraph (2), the administrator may give notice under paragraph 84 of Schedule B1 (i.e. notice of a dissolution) or make a proposal

for a CVA in accordance with Part 1 of the 1986 Act. There is a contrast between the word "may" used in this rule and the mandatory requirements of Regulation 20 where there has been a successful rescue.

55 As counsel pointed out neither of the routes contained in Regulation 21(2) is available in the present circumstances. A dissolution is not possible where the company still holds client assets. That is a result of paragraph 84 of Schedule B1 to the 1986 Act, as applied and modified by regulation 15 of the IBSA Regulations. There can be no CVA as a CVA is not capable of affecting proprietary rights and here there are remaining client assets.

56 It follows that the two routes which the special administrators are permitted to follow under Regulation 21(2) cannot apply in the present case. It seems to me that, nonetheless, the administrator is entitled to apply under paragraph 79 if he considers that the special administration objectives have been sufficiently achieved. There is nothing in the Regulations to suggest that the special administrator cannot do this. Furthermore, it is well- established that where paragraph 79 applies, the court has power under paragraph 79(4)(d) to make an order for the winding up of the company even in the absence of a winding up petition.

57 Counsel for the applicants also observes that section 140 of the Insolvency Act envisages the situation of a company in administration being wound up.

58 It may be that the reason for why the legislation does not expressly cater for the passage from special administration to liquidation is that the draftsman did not have in mind the case where there remain client assets in the hands of or under the control of the special administrators which they are unable for various reasons to return to clients (as has happened in the present case). But if the court did not have power to wind up the company having brought the administration to an end under paragraph 79 of Schedule B1, it would seem that the special administration would have to continue indefinitely potentially at the personal expense of the special administrator. This seems to me a most improbable legislative intention and it is a further reason for concluding that the court has power to make the orders sought on the present application.

59 I am satisfied that, though there is no express provision under the IBSA Regulations for the passage of the company from administration to liquidation, the IBSA Regulations and Rules do not prevent that passage taking place in an appropriate case. In other words, I consider that the court has power to make an order to wind up a company which is in special administration. It can though only do so if and when the special administration comes to an end because, under the IBSA Regulations, a company may not be wound up while in administration.

60 Turning from jurisdiction to discretion, it appears to me that a compulsory winding up of the company is an appropriate exit route from the special administration in this case. I say this for a number of reasons. First, the administrators' proposals in April 2018 contemplated that if it transpired that there were not enough funds to pay a dividend to unsecured creditors, the administrators might apply to the court for an order ending the administration either by the company being wound up or, alternatively, for it to be dissolved. As I have already said, the company cannot be dissolved in the present circumstances. Clients and creditors have thus been aware of this possibility for some two and a half years and, in any event, have been given the recent notifications about the winding up petition.

61 Secondly, in circumstances where BACSL continues to hold a rump of client assets, not only is this a case where the special administrators cannot, as a matter of jurisdiction, apply for the company to be dissolved or give a notice to that effect, but it is also clearly preferable for the company not to be dissolved. The consequence of a winding up order is that the company will

remain in an insolvency process so as to safeguard, as far as possible, the affected clients' ability to assert their proprietary rights to client assets in the future, and for so long as the official receiver is able to maintain certain of the custody arrangements for the electronically held securities, there is at least the possibility of such late claims being met with a successful outcome.

62 Thirdly, the official receiver is aware of the present hearing and the official receiver's office has confirmed that it has no objection to the winding up. Steps have been taken to ensure, so far as possible, an orderly handover to the official receiver.

63 The court cannot, any more than the administrators can, be satisfied that all clients will continue to have client assets returned to them once the company is in liquidation but that leads to the fourth factor, namely, that administrators cannot be required to keep an administration open indefinitely and personally to incur the costs of maintaining it in operation. There is nothing in the legislation which suggests that administrators are under an obligation to do so. If such a liability were to be imposed on administrators it would tend to discourage insolvency practitioners from accepting appointment as special administrators.

64 Fifthly I am satisfied that the administrators have taken all reasonable steps open to them to facilitate the return of assets and have done all that they can to wind up the affairs of the company in the interests of creditors.

65 I am therefore satisfied that it is appropriate to make a winding up order in respect of BACSL.

66 As to the position of the nominees, the petitions are founded in each case on the companies' special resolutions pursuant to section 122(1)(a) of the 1986 Act. Neither company has any realisable assets or liabilities. The rationale for winding up is clear. Each entity is an asset-holding company whose sole purpose, while BACSL was trading, was to ensure its compliance with applicable CASS rules for safeguarding client assets. The official receiver considers that it would be preferable for these companies also to be wound up if BACSL has been wound up. I consider it is appropriate to wind up these companies.

67 Turning to the application by the administrators for their discharge from liability, the draft order that has been put before me makes provision for the administrators' discharge from liability to take effect with effect from the date falling 28 days from the date on which the administrators' appointment ceased to have effect. This reflects current practice (see, for example, the decision of Hildyard J in *Re Lehman Brothers Europe Ltd* [2020] EWHC 1369 (Ch) at [25]-[27]).

68 There is no objection to this relief from any clients or creditors. However, the updated information provided in the update table explains that a particular client recently raised a claim in respect of some client assets and a client money balance of about £28,000. The update table explains that the client assets were remitted to an address for the client. As to the client money balance, this has been applied to the costs of distributing client money in accordance with the CASS rules on the basis that notice was sent out requiring claims to be notified on two occasions in July and August 2020 and there was no response to those two notices.

69 It appears from the update table that there have been some recent discussions between representatives of the administrators and the particular client in relation to these matters. In appears from the table that the client was specifically informed that the petition would be heard by the court today and the client was invited to respond urgently if he objected to the relief sought by the administrators or if he wished to appear at the hearing. The client has not appeared at this hearing.

70 Counsel for the applicants does not seek any ruling or determination in respect of the potential claims of this client today and I do not make any such determination. The order sought in respect of the administrators' discharge is only to take effect 28 days from the date of the cessation of the administrators' appointments and the client therefore has an opportunity to notify any claims during that period. I am satisfied, given the history, that that is an adequate period for such claims, if any, to be notified.

71 I am asked to make the winding up orders with effect from 11.59 p.m. on 21 December 2020 in exercise of the power under CPR Rule 40.7(1). The administrators consider they need the additional period of time between this hearing and 21 December for practical reasons concerning various administrative tasks and I am prepared to make an order in those terms.

72 I will therefore make orders for the administrators' appointments to cease to have effect and for their discharge from liability, for BACSL to be compulsorily wound up under the 1986 Act, and for each of BNL and Raven to be compulsorily wound up under the 1986 Act.

CERTIFICATE

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