



Radcliffe Chambers
11 New Square Lincoln's Inn
London WC2A 3QB

T: 020 7831 0081
E: clerks@radcliffechambers.com
W: radcliffechambers.com

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RE ZIGLU –

SPECIAL ADMINISTRATION AND CHOICE OF ADMINISTRATORS

James Morgan KC, Radcliffe Chambers

14 July 2025

On 7 July 2025, ICC Judge Agnello KC made a special administration order in respect of an e-money institution (**Ziglu Ltd**) pursuant to the **Payment and Electronic Money Institution Insolvency Regulations 2021 (Regulations)** and appointed David Shambrook and Damian Webb of RSM UK Restructuring Advisory LLP as administrators (**RSM**). A key policy behind the Regulations is to avoid delay and to reduce costs in relation to the return of safeguarded funds to customers.

The interesting point that arises from the Judge's (as yet) unreported judgment is the question of choice of administrators.

The administration application was made by the directors, but the company's secured creditor (**Factortech**) attended the hearing and argued that its own choice of administrators should be appointed. It was common ground that RSM had been providing advice to the company pre-appointment and that administrators would have to carry out investigations post-appointment. Factortech relied on the decision of Lewison J in **Med-Gourmet Restaurants Ltd v Ostuni Investments Ltd** [2013] BCC 47 and in particular the general proposition that an administrator should not be the nominee of a person against whom the company has hostile or conflicting claims or whose conduct in relation to the affairs of the company will be under investigation.

The Judge rejected Factortech's arguments and appointed the directors' nominees. Her reasoning was, in summary, that:

1. **Med-Gourmet** could not be read as saying that, whenever directors were to be the subject of investigation by the administrators, the appointees should not be their nominees. It was necessary to consider whether there was in fact actual bias or the appearance of bias. The ultimate question was whether the choice was conducive to the proper operation of the process of administration and to justice as between all those interested in the administration;
2. The special administration regime under the **Regulations** was notably different from an administration under Schedule B1 and the same principles did not necessarily apply. In particular, there was no objective focusing on the position of the secured creditor;

3. The FCA had a particular role in the special administration and it could be taken to be representing and protecting the interests of the company's customers. Whilst the FCA did not appear at the hearing, they were broadly supportive of RSM's appointment on the following grounds: (1) RSM were familiar with the company on account of their prior involvement which would save costs as compared to a new practitioner getting up to speed and (2) RSM, which had been engaging with the FCA, appeared independent and the FCA were of the view that the practice of an insolvency practitioner working closely with a firm prior to an appointment does not impact on impartiality;
4. In light of the FCA's preference for RSM, the likely costs and delay that would be caused by appointing alternative administrators and the public interest in putative administrators being able to carry out pre-appointment work (including liaising with the FCA), it was appropriate to appoint RSM;
5. There was no basis for appointing an additional administrator solely to carry out investigations – this was likely to be a relatively small special administration and there was no justification for such additional costs.

This appears to be the first decision on choice of administrator in a special administration under the **Regulations** and should be a welcome one for insolvency practitioners. It is clearly desirable, if not to say essential, for proposed administrators to have early engagement with the company, the FCA and other stakeholders so that they hit the ground running once appointed. Such early engagement will often be at the invitation of the company and its directors. The Judge's approach confirms that this should generally be seen as a positive, rather than anything resembling a red flag.

James Morgan KC was instructed for the Applicants by Addleshaw Goddard (Adam McCarron, Andrew Robertson and Lauren Wright)

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