

Federal Court Restores Commercial Reality and Clarifies the Law on Liquidators' Powers

Introduction

On 12 November 2025, the Federal Court delivered an important judgment that brings much-needed clarity to the powers, responsibilities, and protections available to liquidators acting under the **Companies Act 2016** ("CA 2016").

The decision provides authoritative guidance on what constitutes "*costs and expenses of winding up*" under section 527(1)(a), and on the high threshold applicable to efforts to remove or sue a liquidator.

Brief background

London Biscuits Berhad ("LBB") was ordered to be wound up in January 2020. Its liquidator, Lim San Peen ("LSP"), obtained Court sanction to carry on LBB's business for the purpose of achieving a beneficial winding up.

To preserve value and facilitate a going-concern sale, LSP retained key employees to complete customer orders, maintain operations, and safeguard LBB's goodwill.

Upon completion of the sale process, the employees' termination benefits and indemnity in lieu of notice were paid ahead of unsecured creditors.

An unsecured creditor challenged the payments and sought LSP's removal. The High Court upheld LSP's decisions and granted his discharge, but the Court of Appeal reversed parts of that decision, holding that the payments were not entitled to priority and removing LSP from office.

The matter proceeded to the Federal Court, which addressed three leave questions concerning section 527 and a liquidator's liability for alleged irregular payments.

Dispute Resolution Update

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Decision of the Federal Court

The Federal Court answered the Questions of Law posed in the following manner:

Leave Question 1: Where a liquidator has obtained authority of court under Schedule 12 Part II para 1(a) to carry on the business of the company, whether “*cost and expenses of winding up*” under limb 1(a) of section 527 of the CA 2016 can include Termination Benefits and Indemnity in lieu of Notice payable to employees who are continued to be employed post winding up of a company as part of carrying on of the business of the company?

The Federal Court answered the first question in the affirmative.

It held that where a liquidator has obtained lawful authority under Schedule 12 Part II to carry on the company’s business for a beneficial winding up:

- (i) Employees who continue working post-winding up are essential to the ongoing business and the value-preservation exercise.
- (ii) Termination benefits and indemnity in lieu of notice form part of the commercial cost of continuing that business.
- (iii) Such payments fall within “*costs and expenses of winding up*” and are entitled to priority under section 527(1)(a).

The Court further observed that LSP acted at all times with proper authority and for commercially justified reasons, namely, preserving goodwill, fulfilling outstanding orders, and enabling a going-concern sale for the benefit of creditors.

The Court of Appeal erred in applying authorities arising from receivership rather than liquidation, and in disregarding the statutory structure of section 527.

Leave Question 2: Whether the making of a payment by a liquidator of a company in good faith but which might be in breach of section 527 of the CA 2016 can constitute a ground on which the liquidator can be removed for cause?

The Federal Court answered the second question in the negative and reaffirmed that removal of a liquidator requires cause shown. The discretion is not unfettered. Removal may only be justified where there is evidence of:

- (i) personal unfitness;
- (ii) bias or lack of impartiality;

(iii) a conflict of interest; or

(iv) conduct so unreasonable that no reasonable liquidator would have acted in the same way.

Commercially driven decisions made in good faith, even if subsequently challenged or alleged to be irregular under section 527, do not meet this threshold.

The Federal Court found that the decision to retain and later terminate LBB's employees was commercially rational and taken with the express aim of maximising returns to creditors. There was no wrongdoing, bad faith, or unreasonableness that could justify removal.

Leave Question 3: Whether the making of a payment by a liquidator of a company in good faith but which might be in breach of section 527 of the CA 2016 can constitute a ground on which leave to commence legal proceedings can be granted against the liquidator.

The third question was also answered in the negative. Seeing as the payments were made with authority, in good faith, and for legitimate commercial reasons, there was no basis for granting leave to sue the liquidator.

The Court cautioned that leave should not be granted lightly, as such applications carry serious reputational consequences and could deter capable practitioners from accepting liquidations in complex corporate failures.

Key takeaways

- Termination benefits and indemnity in lieu of notice can be classified as priority "*costs and expenses of winding up*" under section 527(1)(a) where the liquidator is carrying on the company's business pursuant to court authority.
- The Federal Court reaffirmed the strict threshold for removal of a liquidator: only conduct evidencing personal unfitness, partiality, conflict of interest, or objectively unreasonable decision-making will suffice.
- Good-faith commercial decisions, taken with court approval and for the purpose of maximising creditor recovery, warrant protection. Technical or arguable irregularities under section 527 do not, without more, justify removal or leave to sue.

Our Dispute Resolution Partners, [Rabindra S. Nathan](#) and [Sathya Kumardas](#), assisted by Senior Associate, [Saresh Mahendaren](#), and Associates [Mohammed Daud Sulaiman](#) and [Chew Mingyih](#), successfully acted for the liquidator, Lim San Peen, in this matter.

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