

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**
(Civil Jurisdiction)

Company Case
Case No. 25/2857 SC/COMP

**BETWEEN: ROGER JENKINS AS LIQUIDATOR OF
VANUATU MARITIME AUTHORITY**
Applicant

**AND: THE GOVERNMENT OF THE REPUBLIC
OF VANUATU**
Respondent

Date of Conference: 10 October 2025
Before: Justice M A MacKenzie
Counsel: Applicant – Mr M Fleming
Respondent – Mr S Aron

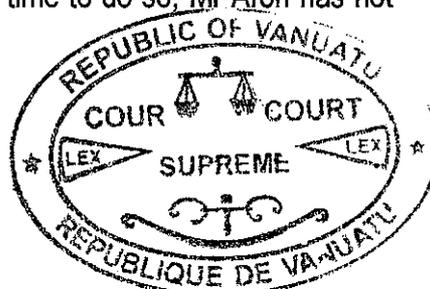
DECISION

The application

1. On 26 September 2025, Mr Jenkins applied for orders and directions (“the application”) pursuant to the Companies (Insolvency & Receivership) Act No. 3 of 2013 (“the Act”). Mr Jenkins is the liquidator of the former Vanuatu Maritime Authority (VMA). He was appointed by a former Prime Minister on 2 July 2008.
2. Mr Jenkins has been the liquidator of the VMA for 17 years. His position is that the liquidation has been completed and so has attempted to bring the liquidation to an end via discussions with the Attorney General, dating back to 2020. There are surplus funds. As at 31 May 2025, the VMA trust bank account holds VT12,508,563.

Position of the Respondent

3. On 29 September 2025, I issued a Minute listing this matter on 7 October 2025. For reasons unrelated to the parties, that listing was vacated, and a new date of 9 October 2025 was given to the parties. But despite having had time to do so, Mr Aron has not taken any instructions from the Respondent.
4. Mr Aron's position can be summarized as follows:



- a. Mr Aron takes no issue with the quantum of the liquidator's remuneration and legal costs, as set out at paragraph 22 of the application.
- b. Mr Aron contends that pursuant to s 51 of the Act, the entire sum held in the VMA Trust Bank Account of VT12,508,563 must be paid to the Registrar to be held on trust. Then it is for the Registrar in accordance with s 51(4) to pay fair and reasonable legal costs. This submission is predicated on Mr Aron's contention that pursuant to s 51(1) of the Act, money representing unclaimed assets of a company excludes expenses and remuneration of the liquidator, and legal costs. Mr Aron provided no authority for that contention.

Outcome

5. After hearing from Mr Fleming and Mr Aron, I made orders that:
 - a. Within 7 days Mr Jenkins is to pay to the Registrar's Trust Account the liquidation surplus funds after deduction of liquidator's fees and expenses, including legal fees, as detailed at paragraph 22 of the application.
 - b. Pursuant to cl14, part 3, schedule 3 of the Act, the expenses and remuneration of the liquidator (including legal costs) are to be paid in the amounts detailed at paragraph 22 of the application.

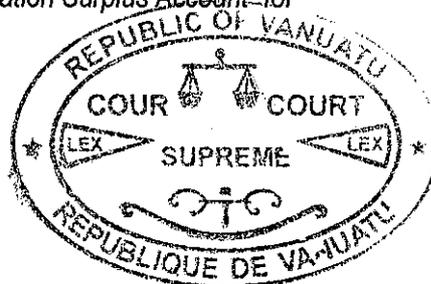
Discussion

6. Section 51(1) of the Act provides that money representing unclaimed assets of a company standing to the credit of a liquidator must, after completion of the liquidation, be paid to the Registrar to be held on trust and dealt with accordance with s 51.
7. Section 51 says:

51 Liquidation surplus account

(1) Money representing unclaimed assets of a company standing to the credit of a liquidator must, after completion of the liquidation, be paid to the Registrar to be held on trust and dealt with in accordance with this section.

(2) At the expiration of a period of 12 months after the date on which the money is paid, the Registrar must, after deduction of any amount required to meet the claim of any person that is established within that period, pay the balance into an account known as the "Liquidation Surplus Account" for distribution in accordance with this section.



(3) Money held in the Liquidation Surplus Account may be invested in accordance with the law regulating the investment of trust funds by trustees and interest paid on any investment must be distributed in accordance with this section.

(4) Money held in the Liquidation Surplus Account may be:

(a) paid or distributed to any person entitled to payment or distribution in the liquidation of a company and to any money representing the surplus assets of which has been credited to the Liquidation Surplus Account; or

(b) paid, subject to such conditions as the Registrar may impose, in meeting costs incurred in the course of liquidation of a company:

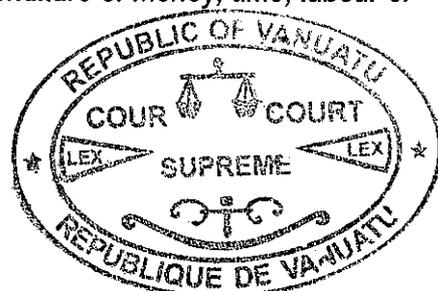
(i) for the purpose of proceedings brought by the company; or

(ii) for legal or other expert advice, or the costs of any expert witness,

if the Registrar is satisfied that it is fair and reasonable for those costs to be met out of the Liquidation Surplus Account.

(5) In making a payment under this section, the Registrar is not required to ascertain that money or sufficient money was received on account of any company to which the claim for payment relates.

8. Notably, s 51(4) does not make any provision for payment of a liquidator's remuneration. In my view, that is because cl 15, part 3, schedule 3 of the Act provides that "*the expenses and remuneration of the liquidator are payable out of the assets of the company*".
9. A statutory provision must be interpreted in light of its purpose and context. If the Court was to interpret s 51 as contended by Mr Aron, there would be an inconsistency between s 51 and the statutory right to pay the expenses and remuneration of a liquidator out of the assets of the company. I consider that legal costs are an expense payable out of the assets of the company in accordance with cl15, part 3, schedule 3. My view is informed by the following two points:
10. Firstly, pursuant to cl 6(c), part 2, schedule 2 of the Act a liquidator has the power to appoint a legal practitioner. Therefore, Mr Jenkins was entitled to appoint Mr Fleming to act for him to bring the liquidation to an end.
11. Secondly, the ordinary meaning of "*expenses*" must include legal costs. Blacks Law Dictionary¹ defines the word "*expense*" as "*n. an expenditure of money, time, labour or resources to accomplish a result*".



12. Therefore, I do not accept that the contention that all the funds currently held in the VMA trust bank account must be paid into the Registrar's trust account prior to deduction of Mr Jenkin's remuneration and legal costs. Having regard to cl 15, part 3, schedule 3, those costs are payable out of the assets of the company. Therefore, I consider that the liquidation surplus is the amount held in the VMA trust bank account after the liquidator's remuneration and expenses are deducted. As noted, Mr Aron provided no legal authority to support the contention that the liquidator's expenses and remuneration cannot be deducted prior to payment of the liquidation surplus funds into the Chief Registrar's trust account.
13. In the context of a liquidation of 17 years, the expenses and remuneration detailed at paragraph 22 of the application seem fair and reasonable. Given the Government's seeming inability to agree to the liquidation ending, then Mr Jenkins was compelled to appoint a lawyer to bring the application for orders and directions.
14. One final matter is that I indicated to Mr Aron that if he wished to challenge the quantum of the costs and expenses sought, then he had 7 days to do so. That would not achieve anything though, because Mr Aron specifically confirmed to the Court that there was no issue with the remuneration and legal costs sought at paragraph 22 of the application.

**DATED at Port Vila this 14th day of October 2025
BY THE COURT**

pp
MA MacKenzie
Justice M A MacKenzie

