

Article

Cayman Islands Restructuring: Comity and Reciprocity

Authors: Norman Hau, Partner | Manwa Yip, Legal Manager | Jonathon Milne, Partner | Sean-Anna Thompson, Associate

In the recent judgment *In the Matter of GTI Holdings Limited* delivered on 15 March 2022¹, the Cayman Islands Grand Court reiterated the importance of principles of comity in cross-border insolvency matters and the central function of the place of incorporation.

A copy of the full judgment is available [here](#).

Background

Winding-up proceedings were filed against GTI Holdings Limited (the “**Company**”) in both Hong Kong and the Cayman Islands. In May 2020, Conyers were instructed by the Cayman Islands Joint Provisional Liquidators (the “**JPLs**”) of the Company, who were appointed on a “light touch” basis for restructuring purposes. Importantly, the JPLs also obtained recognition of their appointment in Hong Kong.

A series of orders followed in both Hong Kong and the Cayman Islands to facilitate the restructuring process, as progress was being made by the JPLs and the Company. In light of the headway that had been made and due to substantial support from creditors, the Hong Kong Court set a date for a convening hearing to occur in March 2022 to consider the restructuring plan and a proposed scheme of arrangement.

However, in November 2021, after the matter was reassigned to a different judge of the Hong Kong Court, a winding-order was made in Hong Kong. This was not expected by the JPLs nor many of the stakeholders for a variety of reasons, not least because the convening hearing had been listed a short time before the winding-up order was made and the Hong Kong Court had recognised the appointment of the JPLs.

Accordingly, as a consequence of the winding-up order, the Hong Kong Official Receiver was appointed to act as provisional liquidator in Hong Kong. Meanwhile, the JPLs remained in place in the Cayman Islands with the primary objective of promoting a restructuring.

The Cayman Islands position

With the backing of key stakeholders, including the directors of the Company, the JPLs applied for a winding-up order in the Cayman Islands and sought appointment as Joint Official Liquidators in an effort to encourage a consistent approach in the best interests of the creditors and other stakeholders.

That application led to the recent judgment of the Grand Court and some helpful observations from Mr. Justice Doyle regarding comity considerations when dealing with parallel proceedings in “*foreign friendly jurisdictions*” as follows:

- “Cayman judges have sensibly had comity concerns at the forefront of their minds when determining issues in proceedings before the Grand Court of the Cayman Islands when there are connected proceedings in foreign friendly jurisdictions such as Hong Kong.”

¹ FSD 102 of 2020 (DDJ)

- *“It is, of course, entirely a matter for the Hong Kong Court but I express the wish that it gives the JOLs recognition and assistance.”*
- *“... it appears, at least to this court, that it may be more effective and efficient and would plainly save time and avoid duplication if the JOLs this court has appointed were also appointed as liquidators in Hong Kong. This, to my mind at least, would appear to be in the best interests of all creditors but at the end of the day it will be a matter for them to vote upon the position as they see fit and subject to any intervention of the Hong Kong Court.”*

Furthermore, the judgment includes a detailed analysis of the prominent and essential role of the place of incorporation in insolvency and/or restructuring proceedings involving international groups. Doyle J made the following points in that regard:

- *“It is a very serious step for a foreign court to make a winding-up order against a company incorporated under the laws of another jurisdiction ... Usually the best and most appropriate way forward is to leave it to the courts of the place of incorporation of the company to deal with applications for winding up orders and to be treated as the courts with primary jurisdiction.”*
- *“I also took into account the fact that a winding up order made by the Hong Kong Court would have limited effect on subsidiaries outside Hong Kong and that an order made by a court in the place of incorporation of the Company should be more effective internationally in accordance with well-established principles of private international law.”*
- *“In the present case, it is to be hoped that the Hong Kong Court would also strive to avoid unnecessary conflict and ensure that the Hong Kong winding up is conducted as ancillary to the principal liquidation of the Company which is incorporated in the Cayman Islands.”*

Comment

It is generally accepted that matters concerning the constitution and management of the affairs of a company are best and most effectively determined by the law of the place of its incorporation. This judgment underscores that fundamental principle and emphasises the need for co-operation and consultation between jurisdictions to avoid conflicting outcomes.

The Conyers team has been engaged on many of the most significant restructuring assignments in the Cayman Islands. Conyers continues to act for and work alongside Osman Mohammed Arab, Lai Wing Lun (both of RSM Hong Kong) and Owen Walker of R&H Restructuring (Cayman) Ltd in their capacity as JOLs of the Company.

Authors and Key Contacts:

Norman Hau

Partner
norman.hau@conyers.com
+852 2842 9548

Manwa Yip

Legal Manager
manwa.yip@conyers.com
+852 2842 9431

Jonathon Milne

Partner
jonathon.milne@conyers.com
+1 345 814 7797

Sean-Anna Thompson

Associate
sean-anna.thompson@conyers.com
+1 345 814 7752

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For further information please contact: media@conyers.com