

Careful consideration of comity when winding up a Cayman company

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Introduction

On 22 February 2022, Doyle J made a winding up order and appointed joint official liquidators in respect of GTI Holdings Limited (**Company**), a company incorporated in the Cayman Islands. The winding up order was unopposed and Doyle J was satisfied that the company was insolvent. Nevertheless, in a judgment dated 15 March 2022, [1] Doyle J articulated the reasons for his hesitancy in making that winding up order.

Background

On 28 May 2020, the Grand Court of the Cayman Islands appointed joint provisional liquidators of the Company for restructuring purposes (**JPLs**). On 9 November 2020, Harris J of the High Court of the Hong Kong Special Administrative Region (**Hong Kong Court**) recognised the JPLs' appointment for restructuring purposes, thereby allowing the JPLs to exercise certain powers in Hong Kong. His Lordship also indicated that any further applications for assistance from the Hong Kong Court should be directed to him.

The Company later sought an order from Harris J to convene a meeting of its creditors for the purpose of considering and, if thought fit, approving a proposed scheme of arrangement. At a hearing on 20 December 2020, Harris J invited the Company to submit a revised scheme document. After some delay, on 8 November 2021, Harris J directed that a fresh application to convene the scheme meeting be listed for hearing on 29 March 2022.

Linda Chan J of the Hong Kong Court subsequently refused to adjourn a Hong Kong winding a petition and, on 22 November 2021, made a winding up order in respect of the Company. In his judgment, Doyle J's records that Linda Chan J made the winding up order despite the petitioner having consented to the adjournment and in the knowledge that Harris J had listed the Company's application to convene a scheme meeting on 29 March 2022. In making the winding up order, Linda Chan J concluded that the scheme was not feasible and there was no proper basis to adjourn the

petition further.

On 14 January 2022, the JPLs applied to the Grand Court for a winding up order and sought their appointment as joint official liquidators. Notwithstanding the Hong Kong winding up order, the JPLs indicated to Doyle J that if appointed as joint official liquidators, they would consider all options to maximise returns to stakeholders including by continuing to explore the proposed restructuring.

Primacy of the courts of the place of incorporation of a company

In *Sun Cheong Creative Development Holdings Limited*, [2] the Chief Justice of the Grand Court of the Cayman Islands confirmed that where winding up proceedings have been issued in more than one common law jurisdiction but an appointment has yet to be made, the starting point for the Court in applying the principles of modified universalism is to consider which jurisdiction ought to assume primary jurisdiction to deal with the application and supervise the winding up. The Chief Justice observed that recent authorities in both Hong Kong and the Cayman Islands confirm that, consistent with longstanding authority, this will ordinarily be the place of incorporation of the company.

Whilst observing that the Chief Justice's comments were made in the context of an application prior to any appointment having been made, Doyle J ultimately observed after reviewing relevant authorities, including those of the Hong Kong Court, that:

"In international insolvency cases, I agree that it is especially important to adopt a broad internationalist global outlook rather than a narrow, insular territorial approach. As a well-established and fundamental principle of private international law it is also important to have proper regard to the primacy of the law of the place of incorporation. Lord Sumption confirmed such an approach in *Singularis Holdings Limited v PriceWaterhouse Coopers* [2014] UKPC 36 [...]"

In addition, Doyle J emphasised that whilst a winding up in the place of incorporation will normally be recognised and have extra-territorial effect, that is not the case for foreign winding up proceedings, which ordinarily operates only in that foreign jurisdiction. His Lordship cited Harris J's recent decision in *Li Yiqing v Lamtex Holdings Limited* [2021] 622 where Harris J confirmed that a winding up in the place of incorporation will be given extra-territorial effect in Hong Kong, and further observed that as a matter of comity the Hong Kong Court will give considerable weight to the express requests relating to a company from the courts of that company's place of incorporation.

Decision

Satisfied that the Company was unable to pay its debts, Doyle J made the winding up order and appointed the JPLs as joint official liquidators of the Company. The limited effect that the Hong Kong winding up order would have on the Company's subsidiaries outside Hong Kong was, in Doyle

J's view, also a good reason for making the winding up order. His Lordship confirmed that in making the winding up order, he had taken into account the views of stakeholders and, in the interests of comity, the views expressed by the Hong Kong Court and the Hong Kong Official Receiver (who, following the Hong Kong winding up order, was provisional liquidator of the Company in Hong Kong). As Doyle J noted, judges of the Grand Court sensibly have comity considerations at the forefront of their minds when determining issues relating to connected proceedings already before the Hong Kong Court.

Whilst acknowledging they are entirely matters for the Hong Kong Court to consider in due course, Doyle J also expressed his wish that the Hong Kong Court would give the joint official liquidators recognition and assistance, and his view that the Company's creditors ought to be given an opportunity to vote on the proposed scheme of arrangement.

This judgment is a reminder of the importance of comity and cross border cooperation in multi-jurisdictional insolvency proceedings, and the risks of duplication of costs and risks to stakeholders where the principles of modified universalism are engaged.

[1] FSD 102/2020 (DDJ), unreported, 15 March 2022.

[2] FSD 169/2020 (ACSJ), unreported, 20 October 2020.

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Meet the Author



Gemma Bellfield (nee Lardner)

Partner

Cayman Islands

E: gemma.bellfield@ogier.com

T: +1 345 815 1880

Key Contacts



Oliver Payne 彭奥礼

Partner 合伙人

Hong Kong

E: oliver.payne@ogier.com

T: +852 3656 6044



Michael Snape 石迈可

Consultant 顾问

Hong Kong

E: michael.snape@ogier.com

T: +852 3656 6066

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