

## Re Grand TG Gold Holdings Limited – A Modern Approach in Aid of Restructuring?

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Conyers Dill & Pearman advised Grand TG Gold Holdings Limited (listed in Hong Kong, Stock Code: 8299, hereinafter the “Company”) in respect of winding up proceedings filed against it in the Cayman Islands in the midst of its application to the Stock Exchange of Hong Kong for resumption of trading. The Cayman Court (Segal J) adopted a relatively unusual approach and adjourned the petition to enable the resumption proposal to be further advanced. In so doing he had to balance the interests of the creditors who supported the resumption proposal and the interests of the creditors who were pressing for the immediate winding up order and the appointment of liquidators.

### The key takeaway points are as follows:

1. The Court found that the Company was unable to pay its debts for the purposes of Section 92 of the *Companies Law, (2013 Revision)*, and that the petitioning creditor had standing to present the petition, however the Judge decided that it would not be appropriate to make an immediate winding up order and granted an adjournment for a period which he considered would be: (i) long enough to allow the Company to make progress in advancing its resumption proposal and in seeking the Listing Committee’s approval; but (ii) short enough to permit a further review of the insolvency determination made by the Court, to ensure that the position of creditors is being protected and to review whether a winding up order should be made at a later point. The appropriate period was five weeks on the facts of that case.
2. The Court recognised that a winding up order is a class remedy and that the Court should take into account the views of other creditors and may decline to make a winding up order in exceptional circumstances or special reasons, even if the petitioner has demonstrated the company’s inability to pay its debts.
3. The Court in this case was persuaded that the resumption proposal presented by the Company was credible and had a clear chance of being successful and, if successful, such proposal was likely to result in substantial benefits to the Company’s creditors as a whole. The proposal involved a debt for equity swap and an underwritten capital raising exercise through an open offer to shareholders, permitting the Company to pay in full all creditors who did not consent to the debt cancellation and swap and provide the Company with working capital to allow it to resume operations and trading of its shares on the GEM market of the Stock Exchange of Hong Kong. The Court noted that it had been formulated with the assistance of an experienced adviser and the proposed underwriter had indicated that it was interested in underwriting the proposed open offer.
4. The support from a significant group of creditors was a factor (in our view, an important one) in the Court’s decision making process. And also a factor, albeit of lesser significance, was the potential damage to the re-listing prospects if an immediate order were to have been made.
5. The Court also thoroughly considered the proper and serious concerns that were raised by the petitioner, but on balance favoured an adjournment over an immediate winding up order.

Eventually, upon the petitioner’s application and consent of the parties, the Court granted leave to withdraw the winding up petition on 26 April 2017.

This is a good example of how the pragmatic approach, generally adopted by the Cayman Court, facilitates a potentially difficult restructuring scenario in Hong Kong. The Court's assessment of the merits of the resumption proposal has just been proven correct: the Company successfully completed the contemplated fund raising by way of an Open Offer and has resumed trading in the Stock Exchange of Hong Kong on 9 May 2017.

The Conyers team consisted of Partner Fraser Hughes based in the Cayman Islands and Counsel Norman Hau based in Hong Kong.

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