

In the Matter of Pacific Harbor Asia Fund I, Ltd

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In the matter of Pacific Harbor Asia Fund I, Ltd (In Official Liquidation) (the “Company”) the Grand Court appointed joint official liquidators (“JOL”) from different firms due to the differing opinions of various stakeholders as to the identity of the liquidators. The Grand Court directed the JOLs to endeavour to agree a protocol to govern their respective responsibilities and provide for co-operation between them. While negotiating the protocol the JOLs reached an impasse in relation to agreeing how the costs of the liquidation were to be paid.

The Company is part of a master/feeder structure which initially comprised the Company as an offshore feeder fund, a Delaware (now domiciled in Cayman) feeder fund and the master fund which is a Cayman Islands Limited Partnership (“Master Fund”). The Company’s main asset is its 77% partnership interest in the Master Fund.

Mr. David Griffin of FTI Consulting and Mr. Lai Kar Yan of Deloitte were appointed as JOLs of the Company. Mr. Griffin had also previously been a Joint Voluntary Liquidator along with Mr. John Batchelor also of FTI Consulting (together the “JVL”).

The issue for determination related to the remuneration of Mr. Lai, who was appointed by the Court for the purpose of realising the assets of the Master Fund. It was contended that Mr. Lai’s remuneration and expenses should be paid out of the Master Fund’s assets, rather than the Company’s assets. The effect of such an order would be for Mr. Lai’s remuneration and expenses as JOL to be paid before the remuneration and expenses already incurred by the JVLs, essentially a reversal of the statutory priority under the *Companies Law (2016 Revision)* and *Companies Winding Up Rules, 2008*.

Given that Mr. Lai’s authority was derived solely from his appointment as JOL of the Company, Mr. Griffin’s position was that Mr. Lai’s remuneration and expenses incurred in realising the assets of the Master Fund were expenses of the liquidation of the Company itself and that the Court had no jurisdiction to depart from the waterfall of payments as stipulated by Cayman Islands insolvency law. The Master Fund was not in liquidation and it was not appropriate or permissible for the Court to exercise jurisdiction over the Master Fund, which is a separate exempted limited partnership, and not subject to any insolvency proceedings.

In its judgment, the Court agreed with the position taken by Mr. Griffin and held that Mr. Lai’s remuneration would be a cost of the liquidation of the Company. Furthermore, the Court confirmed it has no inherent jurisdiction to vary the priority of payments as laid down by law.

The Court’s decision will be welcomed by insolvency practitioners, particularly those taking appointments as voluntary liquidators. The judgment sends a clear message that a subsequently appointed official liquidator cannot leapfrog a voluntary liquidators’ statutory priority.

Conyers Dill & Pearman acted for Mr. David Griffin.

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