

The Grand Court Follows the Usual Course in an Unusual Liquidation

大法院将按一般程序处理非一般清盘

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.

有关正在进行法定清盘的*Pacific Harbor Asia Fund I, Ltd*（下称“公司”），由于各利益相关方对清盘人身份所持的意见不同，因此大法院指定了来自不同公司的共同法定清盘人（下称“共同法定清盘人”）。大法院指示共同法定清盘人应尽力达成一致协议，以规范彼等的职责和合作。在商讨协议的过程中，共同法定清盘人在如何支付清盘费用的问题上产生了分歧。

公司属于一项母子基金，该母子基金最初由一支离岸子基金（即公司）、一支于特拉华州成立（现时注册地为开曼群岛）的子基金和一支母基金（为一间开曼群岛有限合伙企业，下称“母基金”）组成。公司的主要资产为所持母基金的77%合伙权益。

FTI Consulting的David Griffin和德勤的黎嘉恩先生获委任为公司的共同法定清盘人。Griffin先生曾亦与FTI Consulting的John Batchelor先生一起担任共同自愿清盘人（合称“共同自愿清盘人”）。

待定的事项与黎先生的薪酬有关，法院委任黎先生处理母基金的资产变现事宜。争议的问题是关于黎先生的薪酬和开支是否应以母基金（而非公司）的资产支付。如果命令用母基金的资产支付，则会导致在支付共同自愿清盘人的薪酬和开支前，须优先向黎先生支付其作为共同法定清盘人的薪酬和开支，这就从根本上违反了《公司法》（2016年修订版）和《公司清盘规则》（2008年）规定的法定优先权。

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.

This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.

Griffin先生认为，黎先生仅因担任公司的共同法定清盘人而获授权，因此其薪酬和变现母基金资产的开支属公司的清盘开支，法院不得违反开曼群岛破产法规定的支付顺序。母基金并未清盘，因此法院对母基金行使管辖权不恰当且不合理。母基金是一间独立的豁免有限合伙企业，且未进入任何破产程序。

在判决书中，法院表示赞成Griffin先生的观点，认为黎先生的薪酬属于公司清盘的一项费用。此外，法院确认其并无固有管辖权以变更法律规定的优先支付权。

我们相信，从事破产管理的专业人士（特别是作为自愿清盘人的相关专业人士）将支持法院的决定。判决表明其后获委任的法定清盘人不得逾越自愿清盘人享有的法定优先权。

康德明律师事务所代表David Griffin先生参与本案。

本文并非法律意见，其内容亦非详尽无遗，只可作为概览及一般参考资料。感谢您的垂阅！

FOR FURTHER INFORMATION, PLEASE CONTACT:

Conyers Dill & Pearman
29th Floor
One Exchange Square
8 Connaught Place
Central
Hong Kong
Tel: +852 2524 7106
Fax: +852 2845 9268
Email: hongkong@conyersdill.com
Web: www.conyersdill.com

若需要更多资讯，请联络：

康德明律师事务所
香港中区康乐广场8号
交易广场第1座29楼
电话: +852 2524 7106
传真: +852 2845 9268
电邮: hongkong@conyersdill.com
网址: www.conyersdill.com

ABOUT CONYERS DILL & PEARMAN

Conyers Dill & Pearman is a leading international law firm advising on the laws of Bermuda, the British Virgin Islands, the Cayman Islands and Mauritius. Conyers has over 130 lawyers in eight offices worldwide and is affiliated with the Conyers Client Services group of companies which provide corporate administration, secretarial, trust and management services.

关于康德明律师事务所

康德明律师事务所是一间具有领导地位的国际律师事务所，就百慕大、英属维尔京群岛、开曼群岛和毛里求斯之法律提供意见。康德明拥有分布于世界各地八间办事处内的逾130位律师，并与康德明客户服务公司集团有联属关系，而康德明客户服务公司集团提供公司管理、秘书、信托和管理服务。