



Article

Cayman Islands Restructuring: No Place Like Home

Conyers were instructed by Silver Base Group Holdings Limited (“Silver Base”) in relation to a successful application for the appointment of “light-touch” provisional liquidators for restructuring purposes before the Grand Court of the Cayman Islands.

In an important judgment delivered on 8 December 2021, Mr. Justice Doyle emphasised the importance of the laws of the place of incorporation of the relevant company in a restructuring and/or insolvency context.

A link to the judgment is [here](#).

Background

Silver Base is the Cayman Islands-incorporated holding company for a large group specialising in liquor distribution. The Silver Base Group focuses on the sale of premium baijiu (or shaojiu), which is the world's bestselling liquor. The vast majority of the Group's revenue is generated in the People's Republic of China (the “PRC”). The profitability of the Silver Base Group, which has operated since 1997, has been severely impacted by the global pandemic.

A number of creditors based in Hong Kong and the PRC had made demands against Silver Base. At the time of filing in the Cayman Islands, there were existing winding-up proceedings in Hong Kong. Accordingly, the Grand Court raised concerns regarding issues of comity and the scope of recognition of the nominated Cayman Islands officeholders.

Those concerns were dealt with, in part, by modifying the order of appointment of the provisional liquidators to leave scope for the Hong Kong court to determine the existing proceedings, despite the Cayman Islands appointment order and related moratorium. The Grand Court conveyed a message to the Hong Kong Court that, at least from the Cayman Islands perspective, it would be “*sensible and appropriate*” for the Hong Kong Court to recognise and give assistance to the Cayman Islands provisional liquidators to promote a restructuring of Silver Base's debt.

Place of incorporation

It is well-established that the law of the place of a company's incorporation is primarily competent to control all questions concerning a company's existence. This is an essential principle to be taken into account when analysing the position of Cayman Islands companies with substantial operations and/or stock exchange listings in foreign jurisdictions.

Liquidators appointed in jurisdictions other than the place of incorporation may have far greater difficulty in taking effective steps to be recognised and to maximise value in certain locations, such as the PRC for example.

The Cayman Islands has not adopted the UNCITRAL Model Law on Cross-Border Insolvency, which means that the centre of main interests is not necessarily an essential part of the analysis when dealing with international Cayman Islands-domiciled companies and deciding on the proper forum for a potential rescue procedure.

As opposed to being a “letterbox” jurisdiction, as Doyle J observed, the Cayman Islands is “*plainly a jurisdiction of substance which legitimately facilitates world trade and develops the common law to the great economic benefit of many jurisdictions worldwide*” and plays a crucial role in inspiring respect for the rule of law.

Comment

On the same day as the Silver Base judgment was handed down, the Cayman Islands legislature passed the Companies (Amendment) Bill 2021, which aims to introduce a more flexible and effective procedure for insolvency practitioners when dealing with distressed entities.

Therefore, on the eve of the implementation of a bespoke restructuring regime in the Cayman Islands, the Silver Base judgment represents a useful reminder of the starting point for the analysis of the appropriate forum when planning to exercise a collective remedy of this nature.

In the Silver Base judgment, aligned with upcoming innovation and modification, Doyle J also noted that it may be that a detailed protocol can be arrived at for communications between Cayman Islands and foreign courts when dealing with similar cases involving companies with connections to multiple jurisdictions.

Please contact our specialists in Hong Kong and the Cayman Islands to discuss the current state of the law in this area and the impending changes to the restructuring framework.

In relation to the Silver Base proceedings, the Conyers team was led by Norman Hau and Jonathon Milne, with assistance from Róisín Liddy-Murphy and Jasmine Yung.

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