公报文章

Cayman Islands Restructuring: What amounts to a "Rational Basis"?
开曼群岛重组事宜：什么可算作"合理依据"？

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In the recent decision of Evergreen International Holdings Limited, delivered on 11 January 2022, the Grand Court of the Cayman Islands made an order for the immediate winding up of a company notwithstanding the company's cross-applications for an adjournment of the winding up petition and the appointment of "light-touch" provisional liquidators for restructuring purposes. The Court dismissed the company's cross-applications on the basis that there was no credible evidence which supported the company's assertion that a viable restructuring was imminent.

开曼群岛大法院最近（**2022** 年 **1** 月 **11** 日）就 **Evergreen International Holdings Limited**（长兴国际(集团)控股有限公司）一案做出了裁决，尽管公司已提交了交相申请以延后清盘呈请并申请为重组任命"轻触式"临时清盘人，但法院仍然下令公司立即清盘。法院驳回了公司的交相申请，理由是没有可信的证据支持公司即将能进行切实可行的重组的主张。

Background

Evergreen International Holdings Limited (the "Company") is an exempted Cayman Islands company listed on the Hong Kong Stock Exchange ("HKSE"), whose principal places of business are the People's Republic of China (the "PRC") and Hong Kong. On 23 September 2021, a creditor served the Company with a statutory demand in respect of an outstanding debt of HK$67,233,452.05. Upon the Company's failure to satisfy the statutory demand, the creditor presented a winding up petition against the Company.

The Company did not dispute the debt but asserted that its cash flow was limited given that it was in the process of selling certain real estate in the PRC, which would purportedly realise substantial value sufficient to repay all creditors. The Company therefore cross-applied for the adjournment of the winding up petition and for the appointment of light-touch provisional liquidators ("PLs") who would oversee a restructuring of the Company.

The Company submitted that while there was no restructuring proposal before the Court, this was not a bar to the appointment of PLs given the Court's wide discretion to make such appointments under section 104(3) of the Companies Act. The Company also cited

背景

长兴国际(集团)控股有限公司（下称"公司"）是一家在香港联合交易所（下称"香港联交所"）上市的、获得豁免的开曼群岛公司，其主要营业地是中华人民共和国（下称"中国"）和香港。2021 年 9 月 23 日，债权人就 67,233,452.05 港币的未偿债务向公司送达了法定要求偿债书。 在公司未能满足该法定要求偿债书后，债权人提交了针对公司的清盘呈请。

公司没有对债务提出异议，但声称因为公司正在出售中国的某些房地，所以其现金流量有限，并称此可实现足以偿还所有债权人的可观价值。公司因此提交了交相申请以延后清盘呈请并申请指派轻触式临时清盘人（下称"临时清盘人"）来监督公司的重组。

公司表示，虽然没有向法院提交重组方案，但这并不妨碍法院指派临时清盘人，因为根据《公司法》第 104(3) 条，法院有充分的自由裁量权进行此类任命。公司还引用了首席大法官在 Sun Cheong Creative Development Holdings Limited （新昌创展控股有限公司）一案中的

the Chief Justice's decision in Sun Cheong Creative Development Holdings Limited where a winding up petition was adjourned, in very different circumstances, in order to facilitate a restructuring which was deemed to be in the best interests of all stakeholders.

裁定，其对清盘呈请做出了延期决定（在非常不同的情况下）以促进被认为是符合所有利益相关者最佳利益的重组。

Court's Ruling

Mrs Justice Ramsay-Hale dismissed the Company's cross-applications and ordered the immediate winding up of the Company on the basis that there was no "rational basis" to grant an adjournment. The Court found that:

(a) the Company's assertions as to value of its real estate assets in the PRC were unsupported by any evidence;

(b) the Company had been unable to produce any audited accounts since December 2018 to support its assertion that it was solvent;

(c) the financial statements before the Court showed that the Company's financial position deteriorated rapidly in 2019; and

(d) the Company had not offered even the outline of a restructuring proposal, despite a restructuring advisor being engaged since April 2021.

In light of the above findings, the Court dismissed the Company's cross-applications which it held had all the hallmarks of a last minute application by an insolvent company of which the Court should be wary.

As per Kawaley J's guidance in Harlequin Hotels and Resorts Limited, "unconvincing … brave last-ditch battles" are unlikely to succeed and "serious applications" tend to be advanced in the following ways:

1. A petition is adjourned while a stay or strike-out application is pending;
2. Substantial evidence of a dispute is put forward by the date of the hearing of the petition;
3. Out-of-court negotiations result in an adjournment by consent; or
4. There are extenuating circumstances and the outline of a legitimate defence to the petition which justify an adjournment.

法院的裁决

Ramsay-Hale 法官阁下驳回了公司的交相申请，下令公司立即清盘，理由是没有“合理依据”批准延期。 法院认定：

(a) 公司没有任何证据支持关于其在中国的房地产资产价值的主张；

(b) 公司自 2018 年 12 月以来一直无法提供任何经过审计的账目来支持其偿付能力的断言；

(c) 向法院提交的财务报表显示，公司的财务状况在 2019 年迅速恶化；以及

(d) 公司尽管自 2021 年 4 月起聘请了一位重组顾问，但其甚至连一份重组方案的大纲都没提供。

鉴于上述发现，法院驳回了公司的交相申请，认为该申请具有一家资不抵债的公司在最后一刻提出申请的所有特征，法院应对此保持警惕。

根据 Kawaley 法官在 Harlequin Hotels and Resorts Limited 一案的指导，“没有说服力的……勇敢的最后一搏”不太可能成功，“认真的申请”常常通过以下方式取得进展：

1. 在暂缓或取消申请未决的情况下，呈请获得延期；
2. 纠纷的实质性证据在呈请的听证之日提供；
3. 庭外谈判导致双方同意延期；或者
4. 情有可原及有对呈请进行合理辩护的大纲以证明延期的合理性。

Comment

However, while a detailed restructuring plan is not required, in exercising its discretion, one factor which the Court will take into account is whether there is a "real prospect" of recovery and whether the proposal is likely to be more beneficial than a winding-up (as per the Chief Justice's guidance in Sun Cheong). Segal J applied this guidance more recently in Midway Resources International in granting the appointment of PLs. Whilst recognising that a fully formulated restructuring plan was not required, Segal J did go on to assess whether there

点评

然而，虽然不需要详细的重组计划，但法院在行使其自由裁量权时会考虑到一个因素，即追偿是否有“真正的前景”以及拟议的方案是否可能比清盘更有益（如同首席大法官在新昌一案中的指导）。Segal 法官最近在 Midway Resources International 一案中应用了该指导来批准任命临时清盘人。虽然认识到无需一个完整制定的重组计划，但是 Segal 法官还是评估了当时提交给法院的草拟方案是否具有“合理依据”。

was a "rational basis" for the draft proposals which were then before the Court.

It is therefore clear that the Court has a wide discretion under section 104(3) and, in appropriate cases, the Court will no doubt grant an adjournment in order to facilitate restructuring where this is found to be in the best interests of all creditors (as demonstrated in cases such as Re Sun Cheong and more recently in Silver Base Group Holdings Limited).

由此可见，根据第 104(3) 条，法院拥有广泛的自由裁量权。在适当的案例中，法院无疑会准予延期以促进被认为符合所有债权人的最佳利益的重组（如 Re 新昌案例和最近的 Silver Base Group Holdings Limited（银基集团控股有限公司）案例所示）。

Recently passed amendments to the Companies Act are designed to facilitate a restructuring outside the context of winding up proceedings. The amended legislation includes similar language to the current section 104(3) test. As a prerequisite to the appointment of a restructuring officer under the new regime, the company must show that it "intends to present a compromise or arrangement to its creditors (or classes thereof) either, pursuant to this Act, the law of a foreign country or by way of consensual restructuring". It is therefore likely that the principles established in the case law under section 104(3) will continue to be applicable under the new regime.

最近通过的《公司法》修正案旨在促进在清盘程序之外的重组。修订后的立法包括与当前第 104(3) 条测试类似的措辞。作为在新的法律制度下任命重组官的先决条件，公司必须展示其"有意根据本法案、外国法律或通过双方同意重组的方式向其债权人（或其类别）提出折衷方案或安排计划"。因此，根据第 104(3) 条在判例法中确立的原则很可能继续适用于新制度。

The Court will no doubt continue to remain astute to carefully scrutinize whether there is (at the very least) a "real prospect" or "rational basis" for a viable restructuring while at the same time recognizing that a detailed, final plan is not required.

毫无疑问，法院会继续保持警觉，仔细审查可行的重组是否（至少）存在"真正的前景"或"合理依据"，同时认识到无需详细的最终方案。

The decision in Evergreen serves as a useful reminder of the importance of advancing credible evidence which establishes, at a minimum, a rational basis for any proposed restructuring and, where possible, consulting with creditors and other key stakeholders to gauge support in advance of an application to appoint officeholders to promote a restructuring.

长兴一案的判决有效地提醒了提交可信证据的重要性，这些证据至少应为拟议的重组提供合理的依据，并在可能的情况下与债权人和其他主要利益相关者进行协商，在申请任命官员以促进重组之前获取他们的支持。

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.

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