

公报文章

Cayman Islands Restructuring: Comity and Reciprocity

开曼群岛重组：礼让与互惠原则

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In the recent judgment *In the Matter of GTI Holdings Limited* delivered on 15 March 2022¹, the Cayman Islands Grand Court reiterated the importance of principles of comity in cross-border insolvency matters and the central function of the place of incorporation.

A copy of the full judgment is available [here](#).

Background

Winding-up proceedings were filed against GTI Holdings Limited (the “**Company**”) in both Hong Kong and the Cayman Islands. In May 2020, Conyers were instructed by the Cayman Islands Joint Provisional Liquidators (the “**JPLs**”) of the Company, who were appointed on a “light touch” basis for restructuring purposes. Importantly, the JPLs also obtained recognition of their appointment in Hong Kong.

A series of orders followed in both Hong Kong and the Cayman Islands to facilitate the restructuring process, as progress was being made by the JPLs and the Company. In light of the headway that had been made and due to substantial support from creditors, the Hong Kong Court set a date for a convening hearing to occur in March 2022 to consider the restructuring plan and a proposed scheme of arrangement.

However, in November 2021, after the matter was reassigned to a different judge of the Hong Kong Court, a winding-order was made in Hong Kong. This was not expected by the JPLs nor many of the stakeholders for a variety of reasons, not least because the convening hearing had been listed a short time before the winding-up order was made and the Hong Kong Court had recognised the appointment of the JPLs.

Accordingly, as a consequence of the winding-up order, the Hong Kong Official Receiver was appointed to act as

于最近在 2022 年 3 月 15 日¹ 对共享集团有限公司 (*GTI Holdings Limited*) 作出的判决中, 开曼群岛大法院重申礼让原则在跨境破产事宜中的重要性及成立地的核心作用。

完整判决的文本可于[此处](#)查阅。

背景

在香港及开曼群岛均有人对共享集团有限公司 (下称“**公司**”) 提出清盘程序。于 2020 年 5 月, 康德明律师事务所获公司的开曼群岛共同临时清盘人 (下称“**共同临时清盘人**”) 的委任行事, 该等共同临时清盘人就重组目的以“低度干预”基准获委任。重要的是, 共同临时清盘人亦在香港获得对其委任的认可。

当共同临时清盘人与公司正在取得进展, 一系列命令在香港及开曼群岛随之下达, 推进了重组进程。鉴于已取得的进展并由于债权人的大力支持, 香港法院排期于 2022 年 3 月进行关于准许召开债务偿还安排会议的聆讯, 以审议重组计划及拟议债务偿还安排。

然而, 于 2021 年 11 月, 当此案件移交予香港法院的另一位法官后, 香港法院颁布了清盘令。出于各种原因, 这超出共同临时清盘人或众多持份者的预期, 尤其是因为关于准许召开债务偿还安排会议的聆讯是在清盘令颁布不久之前排定, 而香港法院已认可共同临时清盘人的委任。

因此, 清盘令颁布后, 香港破产管理署署长获委任为香港的临时清盘人。与此同时, 共同临时清盘人仍在开曼

¹ FSD 102 of 2020 (DDJ)

provisional liquidator in Hong Kong. Meanwhile, the JPLs remained in place in the Cayman Islands with the primary objective of promoting a restructuring.

The Cayman Islands position

With the backing of key stakeholders, including the directors of the Company, the JPLs applied for a winding-up order in the Cayman Islands and sought appointment as Joint Official Liquidators in an effort to encourage a consistent approach in the best interests of the creditors and other stakeholders.

That application led to the recent judgment of the Grand Court and some helpful observations from Mr. Justice Doyle regarding comity considerations when dealing with parallel proceedings in “foreign friendly jurisdictions” as follows:

- *“Cayman judges have sensibly had comity concerns at the forefront of their minds when determining issues in proceedings before the Grand Court of the Cayman Islands when there are connected proceedings in foreign friendly jurisdictions such as Hong Kong.”*
- *“It is, of course, entirely a matter for the Hong Kong Court but I express the wish that it gives the JOLs recognition and assistance.”*
- *“... it appears, at least to this court, that it may be more effective and efficient and would plainly save time and avoid duplication if the JOLs this court has appointed were also appointed as liquidators in Hong Kong. This, to my mind at least, would appear to be in the best interests of all creditors but at the end of the day it will be a matter for them to vote upon the position as they see fit and subject to any intervention of the Hong Kong Court.”*

Furthermore, the judgment includes a detailed analysis of the prominent and essential role of the place of incorporation in insolvency and/or restructuring proceedings involving international groups. Doyle J made the following points in that regard:

- *“It is a very serious step for a foreign court to make a winding-up order against a company incorporated under the laws of another jurisdiction ... Usually the best and most appropriate way forward is to leave it to the courts of the place of incorporation of the company to deal with applications for winding up orders and to be treated as the courts with primary jurisdiction.”*
- *“I also took into account the fact that a winding up order made by the Hong Kong Court would have*

群岛留任，主要目标是推进重组。

开曼群岛的立场

在包括公司董事在内的主要持份者的支持下，共同临时清盘人在开曼群岛申请了清盘令，并寻求委任为共同正式清盘人，致力鼓励采取符合债权人及其他持份者最佳利益的一致做法。

该申请导致大法院最近作出判决，而 Doyle 法官在处理于“外国友好司法管辖区”的平行诉讼时就礼让考虑方面提出了一些有益观察，如下所述：

- *“开曼法官在决定开曼群岛大法院诉讼程序中的事宜时，若香港等外国友好司法管辖区有关联诉讼，开曼法官会明智地首先考虑礼让问题。”*
- *“当然，这全然是香港法院的事，但本人希望香港法院能给予共同正式清盘人认可及协助。”*
- *“... 至少在本法院看来，倘本法院委任的共同正式清盘人亦于香港获委任为清盘人，这可能会更有成效及效率，而且显然会节省时间及避免重复。至少在我看来，这似乎符合所有债权人的最佳利益，但最终，彼等将投票决定其认为合适的立场，并受香港法院的任何干预所规范。”*

此外，判决包括对成立地在涉及国际集团的破产及 / 或重组程序中之重要及必要作用的详细分析。Doyle 法官在这方面提出以下观点：

- *“外国法院对根据另一司法管辖区的法律注册成立的公司颁布清盘令是非常严重的一步...通常最佳和最适当的推进方法是让公司成立地的法院处理清盘令的申请，并将其视为具有主要司法管辖权的法院。”*
- *“本人亦考虑到由香港法院颁布的清盘令对香港境外的附属公司影响有限，而由公司成立地的法院颁布的命令根据妥为确立的国际私法原则应在国际间更具效力。”*
- *“在本案中，希望香港法院亦会致力避免不必*

limited effect on subsidiaries outside Hong Kong and that an order made by a court in the place of incorporation of the Company should be more effective internationally in accordance with well-established principles of private international law.”

- *“In the present case, it is to be hoped that the Hong Kong Court would also strive to avoid unnecessary conflict and ensure that the Hong Kong winding up is conducted as ancillary to the principal liquidation of the Company which is incorporated in the Cayman Islands.”*

Comment

It is generally accepted that matters concerning the constitution and management of the affairs of a company are best and most effectively determined by the law of the place of its incorporation. This judgment underscores that fundamental principle and emphasises the need for co-operation and consultation between jurisdictions to avoid conflicting outcomes.

The Conyers team has been engaged on many of the most significant restructuring assignments in the Cayman Islands. Conyers continues to act for and work alongside Osman Mohammed Arab, Lai Wing Lun (both of RSM Hong Kong) and Owen Walker of R&H Restructuring (Cayman) Ltd in their capacity as JOLs of the Company.

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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要的冲突，并确保香港清盘乃作为在开曼群岛注册成立的公司主要清盘的辅助而进行。”

评论

一般认为，有关公司成立及管理事务的事宜，由公司成立地的法律决定是最佳及最具成效的做法。此判决着重这一基本原则，并强调司法管辖区之间合作及协商的必要，以避免产生相互冲突的结果。

康德明团队获委聘参与开曼群岛许多最重要的重组工作。康德明继续担任代表律师，与香港罗申美会计师事务所的马德民（Osman Mohammed Arab）与黎颖麟以及 R&H Restructuring (Cayman) Ltd 的 Owen Walker（以彼等作为公司之共同正式清盘人的身份）并肩工作。

本文不应被视作法律建议或法律意见，其内容并非详尽无遗，仅可作为概览及一般参考资料。感谢您的垂阅。

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