

公报文章

Cayman Islands Restructuring: No Place Like Home

开曼群岛重组：没有地方比得上家

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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

康德明律师事务所受银基集团有限公司（Silver Base Group Holdings Limited）（下称“银基”）的委托，在开曼群岛大法院成功申请任命“低度干预”临时清盘人进行重组。

于 2021 年 12 月 8 日作出的一项重要判决中，Doyle 法官强调了相关公司的注册地法律在重组和/或破产情况下的重要性。

判决链接在[此处](#)。

背景

银基是一家主要从事酒产品经销业务的大型集团在开曼群岛注册成立的控股公司。银基集团侧重销售世界上最畅销的优质白酒（或烧酒）。集团绝大部分收入来自中华人民共和国（下称“中国”）。银基集团自 1997 年开始运营，其盈利能力受到了全球新冠疫情的严重影响。

香港及中国内地的多位债权人向银基提出了偿债要求。在开曼群岛提交申请时，清盘程序已在香港进行。因此，大法院对礼让问题和提名的开曼群岛公职人员的认可范围表示了担忧。

这些担忧的部分解决办法是修改临时清盘人的委任令，以便香港法院有余地决定现有程序，尽管开曼群岛有委任令和相关暂停令。大法院向香港法院传达了一个信息，即至少从开曼群岛的角度来看，一个明智及适当的做法是，香港法院认可开曼群岛临时清盘人，并给予协助，以推动银基重整债务。

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.

注册地

众所周知，公司注册地的法律主要管辖与公司存在有关的所有问题。在分析那些在外国司法管辖区拥有大量业务和/或在其证券交易所上市的开曼群岛公司的地位时，这是一个需要考虑的必要原则。

在公司注册地以外的司法管辖区委任的清盘人，采取有效措施以获得认可和实现价值最大化在某些地方（例如中国）可能会面临更大的困难。

开曼群岛尚未通过《贸易法委员会跨境破产示范法》，这意味着，在处理开曼群岛注册的国际公司的事宜以及决定潜在救援程序的适当途径时，主要利益的中心不一定是分析的重要组成部分。

如 Doyle J 观察，开曼群岛并不是一个“信箱”司法管辖区，而“*显然是一个实质上的司法管辖区，它合法地促进世界贸易并发展普通法，为世界各地的司法管辖区带来巨大的经济利益*”，在鼓励人们尊重法治方面发挥着至关重要的作用。

点评

在银基判决下达的同一天，开曼群岛立法机构通过了《2021 年公司（修订）法案》，旨在为破产执行人在处理陷入困境的实体时引荐一种更灵活、更有效的程序。

因此，在开曼群岛即将实施一项定制的重组制度前，银基判决是一个有用的提醒，提醒人们在计划行使这种性质的集体补救措施时，分析适当诉讼地的出发点。

在银基判决中（与即将到来的创新和修改相一致），Doyle J 还指出，在处理类似的涉及与多个司法管辖区有联系的公司案件时，可就开曼群岛与外国法院之间的通信达成一份详细的协议。

请联系我们在香港和开曼群岛的专业律师，讨论该领域的法律现状以及重组框架即将发生的变化。

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.

银基诉讼案的康德明团队由侯洛文和 Jonathon Milne 带队，Róisín Liddy-Murphy 和容彦宜提供了协助。

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.

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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