

To wind up or to restructure? How to deal with failing Mainland companies listed in Hong Kong

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China Huiyuan Juice Group Ltd (the “**Company**”) is a company incorporated in the Cayman Islands and listed on the Hong Kong exchange. Almost 100% of the group’s revenue is generated by its Mainland subsidiaries, from the manufacture and sale of fruit and vegetable concentrate, purée and juice beverages in the Mainland.

The Company defaulted under a convertible bond for the principal amount of HK\$1 billion and a winding-up petition was brought before the Hong Kong Court for its liquidation. The Company did not dispute the debt but sought an adjournment of the winding-up proceedings until the end of 2020 in order to carry out a significant debt restructuring exercise on the Mainland. In seeking the adjournment, the Company presented in its evidence an outline of a plan to restructure its Mainland operations and debt, which will be managed in the Mainland with a focus on Mainland creditors. No details have yet been provided as to what the process would mean in terms of a return to offshore creditors.

Trading of its shares has been suspended and the Company is facing a potential delisting. Restructuring, according to the Company, is the only way to bring the group’s business back on track and would benefit the Company’s creditors in the long run, rather than it being wound up.

In this recent decision¹, Mr Justice Harris, the current Companies Judge, discusses the complex corporate structures of companies listed in Hong Kong with Mainland businesses (which are common nowadays), and the challenges such structures create when enforcement steps must be taken by creditors and shareholders when things go wrong.

Applications to wind up Hong Kong companies which are incorporated outside Hong Kong are increasingly common, and the test for whether or not the Hong Kong Court should exercise its direction to wind up foreign companies is now trite:

1. there must be sufficient connection with Hong Kong, but this does not necessarily have to mean the presence of assets within the jurisdiction;
2. there must be a reasonable possibility that the winding-up order would benefit those applying for it; and
3. the court must be able to exercise jurisdiction over one or more persons in the distribution of the company’s assets.

The first and third requirements usually do not present any hurdles if a company is listed in Hong Kong and there are other creditors in Hong Kong.

The second requirement, however, has not yet been satisfied by the petitioner. The court observed that, if a winding-up order is to be made, there would be practical difficulties the liquidators may face, including whether the liquidators are able to realise any value from the listed vehicle, and whether they are able to obtain proper control of the Company’s Mainland subsidiaries and gain access to assets in the Mainland. Accordingly it is difficult to see how a winding-up order would benefit the petitioner.

“Soft-touch” liquidation is currently not available in the Hong Kong legal framework, although Harris J has paved the

way to grant recognition orders for “soft-touch” provisional liquidators of offshore companies for the purpose of corporate restructuring: see our article here.

In this case, the court was not satisfied that the Company had provided a coherent plan with a “quantified anticipated return to creditors” which would have justified the adjournment being sought. However, the court has allowed parties time to adduce further evidence and, in particular, by the Company on the progress of its proposed restructuring in detail, before making a decision.

This decision demonstrates the court’s awareness of the commercial realities of today’s businesses with the focus on creditors’ rights at the centre of the discussion. Even though the petitioner was not successful in obtaining a winding-up order and having liquidators appointed, it is clear that the court has tried to balance the position of the Company’s onshore creditors against that of its offshore creditors. When the court makes a final decision on the petition in due course, that decision is likely to have a significant impact on the way forward for Mainland companies listed in Hong Kong encountering financial difficulties.

1. Re China Huiyuan Juice Group Ltd [2020] HKCFI 2940↔

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