

Court will not grant a regulating order based solely on the impact of COVID-19

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In Hong Kong, the Official Receiver, a provisional liquidator, liquidator or any creditor may apply for a regulating order any time after the presentation of a winding-up petition. Because the court has the power to dispense with various winding-up procedures on making a regulating order (for example, the calling of the first meeting of creditors and contributories), this has sometimes been viewed as a way to facilitate a more streamlined liquidation process.

The court has recently emphasised that its power to make such an order is aimed at addressing the problem of insolvencies with a large number of creditors and contributories where it would be impractical to hold a first meeting. However, the impact of the pandemic is not in itself a legitimate justification for such application.

In the recent case of *Re Hsin Chong Construction Co Ltd*¹, the provisional liquidators applied for a regulating order on the basis that COVID-19 makes it difficult to convene meetings. The application was also supported by the Official Receiver and a number of the major creditors of the company, but two major creditors opposed the application on the grounds that the creditors should meet and determine which insolvency practitioners be appointed as liquidators, as they had reservations about the way in which the provisional liquidators had carried out their duties.

In rejecting the application, the court made it clear that a regulating order should only be made where it appears to the court that by reason of the large number of creditors or contributories, or for any other reason, the interest of the creditors so requires. The court did not think that the pandemic was a legitimate reason for seeking such an order, as there was no reason as to why a remote meeting could not be conducted. The fact that two sophisticated creditors wished to have a meeting and canvass properly the options when it came to the appointment of liquidators was highly relevant, as creditors should not be deprived of that opportunity unless there was good reason to do so. The parties' costs of the application were ordered to be paid out of the assets of the company.

This case indirectly sends a message to the Official Receiver that it should reconsider its support for regulating order applications if it is based solely on COVID-19. The fundamental principle remains that the court must be satisfied it is right in the circumstances to make a regulating order and appoint liquidators forthwith, as the creditors' right to nominate a liquidator of their choice should not be easily overridden.² This case also serves as a reminder that an application for a regulating order, when made without legitimate justification, would be a waste of the parties' time and the company's costs.

1. [2021] HKCFI 559

2. *Re Legend International Resorts Ltd (No 3)* [2006] 3 HKLRD 289

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