

Cayman law case update: adjourning winding up petitions – In the Matter of Shinsun Holdings (Group) Co. Ltd

Insights - 28/04/2023

In a recent judgment, Justice Doyle considered the principles applicable in agreeing to adjourn the hearing of a winding up petition. He granted only a short adjournment to allow opposing experts time to prepare a joint memorandum to assist the Court in determining issues related to the standing of the petitioner and issues in relation to its debt. The debtor's application for a longer adjournment was dismissed.

On 16 September 2022 Shenwan Hongyuan Strategic (HK) Limited (**Petitioner**) petitioned for the winding up of Shinsun Holdings (Group) Co. Ltd (**Debtor**) on the basis of a contingent interest in notes issued by the Debtor in the aggregate principal amount of US\$200M (**Debt**). The Debtor claimed that restructuring discussions were in advanced stages but does not appear to have issued a petition for the appointment of a Restructuring Officer.

On 19 October 2022 it was ordered by consent that the parties may adduce expert evidence to determine issues in relation to the standing of the Petitioner and the nature of the Debt.

The Debtor's expert set out the issues as agreed but the Petitioner's expert failed to do so in a manner that matched the points at issue.

The Debtor sought a three-month adjournment of the hearing of the petition while the Petitioner argued that the Court could hear the petition on the basis of the evidence before it. The Debtor accepted that it was cashflow insolvent but sought to argue that a restructuring was still under consideration.

Justice Doyle considered that the evidence indicated that more creditors were in favour of a winding up order than were against, that the Debtor had had plenty of time to explore a restructuring proposal, had not demonstrated a serious commitment to bringing forward credible restructuring proposals for the benefit of all creditors in the near future and that there

was no real prospect of the debt being paid within a reasonable period of time.

He also considered the relevant authorities (*ACL Asean Tower Holdco* and his own decision of *Re MV Cayman Ltd*). These confirm, *inter alia*, the following principles when considering the adjournment of a winding up petition

1. if a creditor with standing to make an application wants to have a company wound up and the Court is satisfied that the company is unable to pay its debts, a winding up will follow, unless there are some special reasons why it should not
2. in practice, the Court will only adjourn if there is credible evidence that there is a reasonable prospect that the petition debt will be paid within a reasonable time
3. the Court will be more inclined to give a short adjournment than a long one
4. the Court will be cautious and wary (Justice Kawaley had used the term "leery") in respect of any last-minute adjournment applications
5. the Court will consider the views of creditors as a whole and give greater regard to those who are independent of the company
6. however, the decision whether to grant an adjournment is a discretionary case management decision and the Court will bear in mind a variety of conflicting interests in arriving at a fair, realistic and practical decision

Following his views on the available evidence, Justice Doyle held that the longer adjournment sought by the Debtor was not justified but considered that a short adjournment to allow the experts to prepare a joint report was permissible.

In practice, there are a few ways in which a party may obtain the adjournment of a winding up petition, but these require evidence that demonstrate to the petitioner and the Court that genuine steps are being taken to effect payment. Historically, we have included evidence of the debt sum being preserved, the use of escrow accounts or the appointment of experts or experienced professionals to act in relation to the debts sought*. Now the restructuring officer regime is available to provide a moratorium if there is a genuine prospect of restructuring ([see our article on the Cayman restructuring office regime](#)). It is in the creditor's own interest to get paid without invoking the collective liquidation process but ultimately the earlier steps are taken the more credible these will likely appear to be, either to the creditor or to the Court.

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