Seahawk China Dynamic Fund: winding up on just and equitable grounds

Insights - 07/09/2022

In a recent decision, [1] the Grand Court of the Cayman Islands grappled with the question of whether the need for an investigation into the affairs of the company is a stand-alone ground for winding up. While the Court did not determine the question conclusively, it did provide an indication of how it may rule if the issue were to be placed squarely before the Court again.

In the Matter of Seahawk China Dynamic Fund

Mr Lau Chun Shun (the **Petitioner**) invested in Seahawk China Dynamic Fund (**Seahawk China**) which was set up by Mr Hao Liang (**Mr Liang**) in 2017. Seahawk China was solvent and had been successful in generating substantial profits since its inception. Seahawk China was managed pursuant to an investment management agreement (**IMA**) with an investment management company owned by the Petitioner (the **Manager**). However, Mr Liang directed the management of Seahawk China and received the substantial majority of fees that would otherwise normally be payable to the Manager.

The Petitioner's application to wind up Seahawk China

The Petitioner alleged that Mr Liang had deliberately and dishonestly (i) stripped almost US$20 million for his own benefit from Seahawk China; (ii) siphoned Fund monies to other funds controlled by Mr Liang; and (iii) improperly issued a new class of shares to himself, removed the Petitioner from the board of directors, and failed to give formal notice of meetings and actions taken (together, the **Complaints**).

The Petitioner alleged that Seahawk China was operated as a quasi-partnership, and that the relationship of mutual trust and confidence had irretrievably broken down on account of the

Complaints. In addition, the Petitioner claimed that (i) that there had been a breach of a legitimate expectation by his removal as a director; (ii) he had lost confidence in Mr Liang managing Seahawk China due to a serious lack of probity on Mr Liang's part on account of the alleged dishonesty; (iii) he had been oppressed; and (iv) that the Complaints necessitated an investigation into Seahawk China's affairs.

The Petitioner therefore applied for Seahawk China to be wound up on a just and equitable basis.

When will a winding up order be made on a just and equitable basis?

In a helpful summary of the grounds upon which a winding up order may be made on a just and equitable basis, Doyle J confirmed that such relief was available if it can be established by a contributory that:

a. there has been a justifiable loss of confidence in management

b. there has been a lack of probity in the conduct of the affairs of the company

c. where the company can be considered a quasi-partnership, there has been an *irretrievable breakdown in trust and confidence between the participating members*

The existence of these grounds has been confirmed in various authorities including more recently in *Tianrui (International) Holding Company Limited v China Shanshui Cement Group Limited* [2019 (1) CILR 481] and *Aquapoint LP* (unreported, 10 June 2022).

A further ground was relied upon by the Petitioner which, prior to this case, had been accepted to be a free-standing basis upon which a company could be wound up, namely the need for an investigation into the affairs of the company. However, in opposition, the minority shareholders asserted that no such independent ground existed.

In describing the position of the minority shareholders as 'courageous' and 'bold', Doyle J noted that a number of authorities in Cayman had unequivocally accepted the need for an investigation as a self-standing ground for making a winding up order. [2] However, and notwithstanding his preliminary view that the earlier decisions recognising such a ground were not plainly wrong, Doyle J declined to determine the issue as, in the circumstances of the case, it was unnecessary to do so. This was due to the fact that, based upon on the evidence before it, the Court found that the relationship between the Petitioner and Mr Liang was a pure investor-manager relationship (as their dealings were not based upon a personal relationship and that there was no agreement or understanding that the Petitioner would significantly participate in Seahawk China's management), and the Petitioner had failed to make out his case regarding the impropriety surrounding Mr Liang's conduct with respect to the Complaints.

The Court found the Petitioner's credibility to be in issue, particularly as compared to that of Mr Liang, and considered the Petitioner to be an unimpressive witness motivated by personal grievances. The Court ultimately found that there was not such lack of probity and/or justifiable lack of confidence in Mr Liang's management of Seahawk China, or any oppression of the Petitioner, which was sufficient to justify winding up the Fund. Accordingly, and although the Court accepted that the Complaints gave rise to governance and regulatory issues, it held that they did not justify the draconian step of winding up; a view which was supported by the fact that the Petitioner was the only investor who sought to do so.

Importantly, the Court also found that even if the Petitioner had made out his case against Mr Liang, it would not have ordered that the Company be wound up as it was satisfied that the Petitioner's ability to redeem his shares at full value was an alternative remedy that the Petitioner had been unreasonable not to pursue.

Conclusion

As noted above, this decision provides a helpful summary of a number of important issues when dealing with a shareholder's ability to wind up a company on the just and equitable basis, including the correct approach to assessing the reliability and credibility of witnesses, the need for a petitioner to act reasonably in pursuing any alternative remedies which may be available and the overall approach which the Court will take when dealing with an application to wind up a solvent, profitable company. The decision demonstrates that the threshold which must be met to make a winding up order against such a company is high and that the Court will not make such a draconian order simply at the behest of a disgruntled investor, particularly in circumstances where a reasonable alternative remedy is available.

What is likely to be of great interest going forward is how the Court will react when forced to grapple with the issue of whether the need for an independent investigation is sufficient to take the serious step of making a winding up order. While the issue appears to have been left open, the weight of the authorities to date, together with the preliminary indication given by Doyle J that those authorities are not plainly wrong, may mean that a company (or other interested party) who seeks to deny the existence of this ground may face an uphill struggle.

---

[1] *In the Matter of Seahawk China Dynamic Fund*, unreported, 9 August 2022 (DDJ) (the **Judgment**)

[2] Judgment at [80] referring to *GFN Corporation Limited* [2009 CILR 135], *Parmalat* [2006 CILR 171], *Paradigm Holdings* [2004-05 CILR 542, *Madera Technology Fund (CI), Ltd* (unreported, 3 November 2021), and *Washington Special Opportunity Fund, Inc* (unreported, 1 March 2016).

About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

Disclaimer

This client briefing has been prepared for clients and professional associates of Ogier. The information and expressions of opinion which it contains are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

Regulatory information can be found under Legal Notice

Meet the Author

Christopher Levers

Partner

Cayman Islands

E: christopher.levers@ogier.com

T: +1 345 815 1747

Key Contacts

Farrah Sbaiti

Managing Associate

Cayman Islands

E: farrah.sbaiti@ogier.com

T: +1 345 815 1781

Oliver Payne □□□

Partner □□□

Hong Kong

E: oliver.payne@ogier.com

T: +852 3656 6044

Jeremy Snead

Partner

London

Cayman Islands

British Virgin Islands

E: jeremy.snead@ogier.com

T: +44 20 3835 9470

Related Services

Dispute Resolution

Legal

Related Sectors

Restructuring and Insolvency