In re Holt Fund SPC: Grand Court issues guidance as to novel restructuring officer issues

February 2025

Introduction

Collas Crill Cayman recently acted for the outgoing Joint Restructuring Officers (**JROs**) appointed over certain portfolios of Holt Fund SPC (**Fund**), whose appointment generated important clarification from the Grand Court of the Cayman Islands (**Grand Court**) in relation to the Cayman Islands restructuring officer regime.

The appointment of the JROs over the Fund in December 2023 was the first occasion on which the Grand Court was asked to consider the applicability of the restructuring officer regime to segregated portfolio companies. See here.

In its most recent judgment regarding the Fund,[1] the Grand Court has now provided further useful guidance regarding the regime, particularly questions as to the discharge of appointed officers and their remuneration.

Background

The JROs were initially appointed over the Fund in late 2023 with the hopes that they would be able to address a number of issues resulting from investments in the depressed US real-estate market. However, it became apparent during the course of the JROs' appointment that the restructuring proposal as proposed by the Fund's managers was not viable.[2] In addition, the Fund's liquidity issues meant that the costs of the restructuring proceedings themselves were an impediment to a successful restructuring.[3]

On this basis, it was agreed between the JROs, the Fund and its investment manager that the JROs should be discharged, in favour of the Fund taking forward a proposal to restructure with the relevant stakeholders directly.[4]

Given the novelty of the application, and the opposition to the JROs' discharge by a single stakeholder, the Grand Court's judgment addresses a number of issues which will be of importance to restructuring officers going forward.

Remuneration

Basis of power to order payment of JROs' remuneration

There were, before this judgment, no publicly available judgments setting out the principles relevant to restructuring officers' remuneration.

The statutory jurisdiction for the remuneration of restructuring officers arises in section 91D of the Companies Act (**Act**), which provides that a restructuring officer's remuneration shall *"be fixed by the Court from time to time in accordance with section 109"*.

Section 109 of the Act thereafter provides in relevant part as follows:

- where a company is wound up, *"the expenses properly incurred in any petition for a restructuring officer and during the term of the restructuring officer … including the remuneration of the restructuring officer, are payable out of the company's assets in priority to all other claims";*[5] and

- *"there shall be paid to a restructuring officer… such remuneration, by way of percentage or otherwise, that the Court may direct…"*[6]

Against this foundation, the Grand Court concluded that it is entirely permissible for an order to be made for the payment of the JROs' fees out of the assets of the insolvent portfolios, notwithstanding that insolvency. This is because any subsequent winding up will confer on the JROs a priority for their properly incurred fees and expenses by virtue of the express wording of section 109(2).

Accordingly, the Court is entitled to proceed *"without anxiety"*[7] regarding any priority that may be conferred on restructuring officers by virtue of such appointment.

Justice Kawaley also succinctly noted that, if this analysis were not correct, the regime would be "*entirely unworkable*": it is a requirement for the presentation of a restructuring officer petition that the relevant company is or is likely to be come unable to pay its debts, but *"restructuring officers are entitled to be paid for attempting to avoid the need for recourse to winding up proceedings even where a company is actually insolvent. Full stop."*[8]

Assessment of quantum

The Grand Court also usefully confirmed that, in assessing the quantum of the fees charged by restructuring officers, the Court should apply principles *"broadly similar to the approach adopted by the Court in applications made by provisional or official liquidators"*.[9]

This will no doubt bring a sense of relief to officeholders: the position as to liquidators' remuneration is a well-trodden path, with various judgments setting out and confirming the relevant principles in respect of both contested and uncontested remuneration applications.

Discharge

Having approved the JROs' fees, the Grand Court turned to consider the question of their discharge. The statutory footing for the discharge of restructuring officers is clear: *"at any time after [their] appointment… a restructuring officer… may apply by way of summons to the Court for the variation of or discharge of the order appointing the restructuring officer."*[10]

The Act goes on to specify that the Grand Court is empowered, on the hearing of such an application, to make any order it considers fit (except an order placing the company into official liquidation), including to discharge the order appointing the restructuring officer.[11]

The Grand Court in *Holt* added colour to this broad discretion, noting that a "*helpful starting point*" is the purpose for which the JROs were appointed, as this will potentially inform whether that appointment maybe brought to an end.[12]

On this basis, Justice Kawaley reached the conclusion that *"it must be a potentially valid ground for discharging restructuring officers without replacing them that a "consensual restructuring" is no longer viable."*[13]

On this basis, the Grand Court granted the order discharging the JROs, which has the effect of bringing the moratorium incumbent on the appointment of restructuring officers to an end.[14]

Conclusion

The Grand Court was careful to stress that the unopposed nature of this particular application naturally limited the judicial consideration given to the issues. Nonetheless, the dearth of authorities regarding the restructuring officer regime and the relative novelty of the regime itself (especially as to questions of fees and discharge) means that this judgment is an important step in putting meat on the bones of the regime.

Ultimately, the sensible, pragmatic approach adopted to both issues of funding and discharge is likely to continue to find favour as the regime continues to develop.

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[1] *In Re Holt Fund SPC* (Unreported, Kawaley J, 11 February 2025).

[2] *In Re Holt Fund SPC* (Unreported, Kawaley J, 11 February 2025) at paragraph 8.

[3] *In Re Holt Fund SPC* (Unreported, Kawaley J, 11 February 2025) at paragraph 10.

[4] *In Re Holt Fund SPC* (Unreported, Kawaley J, 11 February 2025) at paragraph 11.

[5] Section 109(2), Companies Act.

[6] Section 109(3), Companies Act.

[7] *In Re Holt Fund SPC* (Unreported, Kawaley J, 11 February 2025) at paragraph 20.

[8] *In Re Holt Fund SPC* (Unreported, Kawaley J, 11 February 2025) at paragraph 21.

[9] *In Re Holt Fund SPC* (Unreported, Kawaley J, 11 February 2025) at paragraph 26(c).

[10] Section 91E(1)(b), Companies Act.

[11] Section 91E(3), Companies Act.

[12] *In Re Holt Fund SPC* (Unreported, Kawaley J, 11 February 2025) at paragraph 40.

[13] *In Re Holt Fund SPC* (Unreported, Kawaley J, 11 February 2025) at paragraph 42.

[14] *In Re Holt Fund SPC* (Unreported, Kawaley J, 11 February 2025) at paragraph 47.

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