COLLAS CRILL

Re: New Horizon Health Limited [2025] CIGC (FSD) 84

AUGUST 2025

Court: Grand Court (Cayman Islands)
Subject: Winding-up, whether to appoint provisional liquidators or a restructuring officer, relevance of powers to be exercised by office holder to the appropriate appointment, sanction of engagement of attorneys
Judge: Asif J

Summary

The Court provided further clarification of the circumstances in which provisional liquidators (PLs) may still be appointed despite the introduction of the restructuring officer (RO) regime.

The petitioner, a Hong Kong-listed company, faced a number of unresolved accounting issues which had resulted in the removal of one director and suspended trading and risked potential de-listing.

The company presented a winding up petition, on the just and equitable basis, and applied for the appointment of PLs, who would be able to continue the ongoing investigations into the management of the company and also attempt to achieve a rescue or restructuring, so as to allow the company to continue or its business to continue in operation. There was no restructuring plan.

The Court sanctioned the appointment of PLs, but declined to sanction the engagement of counsel, solicitors or attorneys.

This decision underscores that the RO regime has not displaced the PL jurisdiction, particularly where wrongdoing is suspected and operational stabilisation is required.

Reasons for decision

The Court held that the powers of a RO would not be sufficiently broad for the company's needs in the circumstances and that the additional powers of a PL make the appointment preferable. It concluded that there was good reason to appoint PLs and that it was "appropriate to do so" within the jurisdiction in s 104(3) of the Companies Act where the application is made by the company.

The Court also considered concerns raised in prior Hong Kong proceedings about two of the three proposed liquidators but found no professional sanctions and approved their appointment, noting that any future

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challenge could be brought separately. Asif J also referred to two judgments where the Court preferred to appoint PLs: *Kingkey* (unreported, 12/04/24) and *Oakwise* (unreported, 16/12/24)

Following *Re UCF Fund* [2011] 1 CILR 305, the Court declined to approve the appointment of attorneys.Such approval would be premature before the proposed attorneys had been identified and their terms of engagement finalised, so that the Court could then perform its proper function of ensuring those attorneys were suitable and not conflicted, and that their terms of engagement were reasonably acceptable.

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