GRAND COURT OF THE CAYMAN ISLANDS DETERMINES THAT MISREPRESENTATION CLAIMS BY SUBSCRIBING INVESTORS ARE BOTH PERMISSIBLE AND RANK AS UNSECURED DEBTS

JULY 2023

In a decision of Mr Justice Doyle in *Re HQP Corporation Ltd (in official liquidation)*[1], handed down on 7 July 2023, the Grand Court of the Cayman Islands has confirmed that claims of investors whose subscriptions were induced by misrepresentation ("**Subscriber Misrepresentation Claims**") are (a) admissible to proof in liquidations and (b) if admitted, shall rank as unsecured debts.

Fairly recent judicial remarks in *Re SPhinX Group of Companies*[2] indicated the application in the Cayman Islands of the 143-year old decision of the House of Lords in *Houldsworth v City of Glasgow Bank*[3] (which prohibited Subscriber Misrepresentation Claims). Accordingly, practitioners and stakeholders could have been forgiven for assuming that, as a matter of Cayman Islands law, Subscriber Misrepresentation Claims were not permissible once a company had gone into liquidation. However, in a detailed decision, Mr Justice Doyle has determined that *Houldsworth* should not be followed, and that, in principle, Subscriber Misrepresentation Claims would rank *pari passu* with other unsecured debt claims.

The decision mirrors the reasoning of the High Court of Australia in *Sons of Gwalia Ltd v Margaretic & Anor*[4], and thus necessarily departs from the obiter remarks in the House of Lords decision in *Soden v British & Commonwealth Holdings plc*[5] on the question of priority, which hinges upon whether such claims are made in the claimant's character as a member. The decision also provides helpful guidance as to the circumstances in which the Grand Court might decline to follow an decision of the appellate Courts of the UK.

This decision is likely to be of significant impact in liquidation proceedings where equity investment was induced by misrepresentation (unless that misrepresentation was innocent). This decision will be positive news for any misled investors who can establish misrepresentation claims in relation to their subscriptions. The obvious corollary, however, is that unsecured creditors could face dilution of their claims by those of misled investors, and any investors relying on contractual provisions for priority amongst members, such as redemption creditors of investment funds, could find that this priority is commercially redundant. Officeholders of companies in liquidation which misled subscribing investors might need to reconsider the categories of stakeholders to whom proofs of debt should be provided and, potentially, solvency determinations.

This is unlikely to be the final judicial word on this topic in light of any appeal, as well as a pending decision in *Re Direct Lending Income Feeder Fund Ltd (in official liquidation)* ***[6]***, which will address similar issues.

[1] *Re HQP Corporation Ltd (in official liquidation)* (Unreported, Justice Doyle, 7 July 2023, Cause No: FSD 190 of 2021 (DDJ))

[2] *Re SPhinX Group of Companies [2010 (2) CILR1]*

[3] *(1880) 5 App Cas 317*

[4] *[2007] 3 LRC 462*

[5] [1998] AC 298

[6] *Re Direct Lending Income Feeder Fund, Ltd.* (Unreported, Justice Segal, 10 November 2022, Cause No: FSD 108 of 2019 (NSJ))

FOR MORE INFORMATION PLEASE CONTACT:

RUPERT STANNING
Consultant // Cayman
t:+1 345 9149640 // e:rupert.stanning@collascrill.com

MATTHEW DORS
Partner // Cayman
t:+1 345 914 9631 // e:matthew.dors@collascrill.com