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Taking Charge

The BVI Courts appoint a receiver to take control of a PRC judgment debtor's assets

A recent decision in the British Virgin Islands ("BVI"), BVIHC (Com) 0032 of 2018, is notable as being the first case of which we are aware where the BVI Court has recognised and enforced judgments from the People's Republic of China ("PRC") Courts (and may assist future applicants seeking reciprocal relief from the PRC Courts for recognition of BVI Court orders). The case involved an application by a bank from the PRC for the appointment of post-judgment receivers by way of equitable execution over shares in a BVI company in order to enforce a multi-million dollar judgment debt.

Importantly, the order gives the court appointed receivers the ability to exercise shareholder voting rights and to take effective control of the BVI company by changing its board of directors ("Board"). This should enable the value of the shares to be maximised, and should therefore theoretically aid the enforcement of future judgments where assets are held in a BVI incorporated vehicle.

Factual Background

The application arose out of three judgments against the judgment debtor in the PRC, which were subsequently recognised in the BVI (the "PRC Judgments"). The judgment debtor is the sole shareholder of a BVI company (the "Underlying Company" and the "Shares"), which has valuable assets in the form of bank accounts, real property (the ownership of which was the subject of an ongoing legal dispute), and shares in a Hong Kong listed company. Following proceedings to domesticate the PRC Judgments, judgment was entered in the BVI, and a final charging order was made with respect to the Shares. The claimant then applied for receivers to be appointed.

While it may have been possible for a creditor to seek an order for sale to sell the Shares directly, and realise the value of the Underlying Company in doing so (including

by utilising a credit bid process), in all of the circumstances, the claimant elected to apply for the appointment of receivers, whose powers would include any and all shareholder rights of the judgment debtor in relation to the Shares. Practically speaking, this means that the receivers can exercise shareholder voting powers to reconstitute the Board of the Underlying Company, for the purpose of either (a) liaising with the new Board to liquidate its assets for maximum value, and, after payment to its creditors, distribution of the surplus to the receivers and ultimately repayment to the claimant; and/or (b) conducting a robust sales process with transparent financial information in relation to the Shares should a purchaser prefer to buy the Underlying Company (subject to the further sanction of the Court).

Practical Result

In his written reasons, Justice Jack confirmed that a receiver can be appointed over the shares in a BVI company and can then use those powers to realise value from the shares by appointing directors over the company and selling assets down the chain in order to satisfy the judgment debt. The Court determined that it would be expedient to appoint a receiver rather than order a sale of the Shares because a sale where the value of the underlying assets was unknown would result in a discounted recovery, prejudicing both the judgment creditor and judgment debtor.

Justice Jack considered the two means by which an equitable receiver may be appointed, namely (a) on an interim basis, to preserve assets; and (b) on a final basis, as a form of execution itself, and distinguished the two.

Referring to Justice Bannister's decision in *Dalemont Ltd Senatorov Claim No BVIHC (COM) 149 of 2011* (4th July 2013), he held that an equitable receiver can be appointed over the legal rights enjoyed by the judgment debtor including, relevantly, shareholder rights so that



upon appointment the receiver can then use their powers and exercise the voting rights to replace the existing directors with a new director in order to convert the assets of the company into money.

Conclusion

The case serves as useful confirmation of the BVI Court's jurisdiction to appoint a post judgment receiver where there is a "hindrance or difficulty" in pursuing other methods of enforcement. This is a particularly useful tool where the assets being enforced over are shares in a BVI company and the judgment creditor wishes to realise maximum value from the underlying assets.

Walkers acted for the successful applicant bank in these proceedings, with partner Iain Tucker leading the team in the BVI and appearing as advocate at the hearing together with senior counsel Cate Barbour and along with partner John Crook from Hong Kong.

Further information

For more information, please get in touch with your usual contact at Walkers or any of the individuals in your region listed below:

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