

In October 2015, the Grand Court of the Cayman Islands appointed Patrick Cowley, Galaxy Chan and Alex Lawson, partners from KPMG's China and Cayman firms, as Joint Inspectors over Greens Holdings Limited (HKEx: 1318), to report on the affairs of the company and, after focusing on a number of specific issues identified by the Court, to express their opinion as to whether the Company is or is likely to become insolvent. This is understood to be only the third time that this particular tool has been employed by the Cayman Court.

In the Greens context, the Inspectorship appointment arose out of a dispute between two main factions of major shareholders and directors, whose differences had arisen from a proposed change in Greens' strategy and business focus that would potentially have seen the Company cease its manufacturing operations in China, where it had previously conducted the majority of its operations. In an already highly competitive operating environment, where the Company had incurred significant losses in 2-3 previous years, the dispute meaningfully hampered management's ability to trade their way back to profitability. Onshore debt levels had escalated, and several members of Greens' senior management team in China had been detained by the authorities, further impeding the Company's ability to address its issues. The inability of these two factions to work together, and the Company's apparent unwillingness to convene an EGM requisitioned by one set of shareholders so as to reconstitute the Company's board of directors, or even to agree on the financial position, provided the Cayman Court with the opportunity to have the Company's financial and operational position determined independently, before moving to appoint the provisional liquidators.

The Inspectors completed their review in 3 weeks, filed their report with the Court and, having concluded that Greens was indeed insolvent, were subsequently appointed as Joint Provisional Liquidators with a mandate to investigate the feasibility of a recapitalisation or restructuring plan for the company and its operations in China, Singapore, India, the US and the UK. That provisional liquidation appointment is ongoing.

While these appointments have been used very rarely, it is evident that inspectorship appointments could find utility in the broader China investment context. An investor deprived of information, and perhaps suspecting that all is not as it might appear in the investee business, might seek this relief as a means of ascertaining the financial and operating position, as part of a broader options assessment strategy. The only limitation to be aware in this regard is that this relief is specifically available to shareholders, as opposed to creditors. That said, inspectorship has many of the benefits of a provisional liquidator appointment, providing an opportunity to conduct an independent and detailed examination of the company's situation, coupled with an express obligation on the company's officers to cooperate and potentially be examined under oath, but without creating the immediate negative sentiment of a winding up petition and formal insolvency appointment. As with similar forms of relief, the applicant will need to be willing to meet the costs of the inspectorship.

Definitely worth thinking about.

Contact us

If you would like further information on any of the matters discussed above, please contact:



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