

PwC leads successful restructuring and resumption of trading of Z-Obee



In the absence of a formal corporate rescue regime, is HK lagging behind other jurisdictions? Perhaps not: The Z-Obee case proves that HK listed companies can be successfully restructured despite the challenges.

The elephant in the room

In 2006, the Hong Kong Court of Appeal issued a decision in *Re Legend Int'l Resorts Ltd* ("Legend"), which held that the statutory power to appoint provisional liquidators pursuant to s.193 of the Companies Ordinance for the sole purpose of restructuring was not permissible.

Given this decision and in the absence of a formal corporate rescue regime, and with many other jurisdictions providing effective restructuring tools, most recently Singapore's recently enacted legislation in May 2017, Hong Kong was at risk of lagging behind as a place to do effective restructurings.



In order to stay competitive as a restructuring hub in Asia and to prevent seepage of potential new restructuring opportunities, Hong Kong required an innovative approach using solutions currently on hand.

Z Obee – The first of its kind

Z-Obee Holdings Limited ("Z-Obee") was incorporated in Bermuda and listed on the Main Board of Hong Kong Stock Exchange. In 2014, a winding-up petition was presented in Hong Kong with a summons filed for the appointment of provisional liquidators at the same time. The Companies Court appointed PwC partners Christopher So, Ted Osborn and Victor Jong as provisional liquidators (the "HK PLs") for the purpose of protecting and preserving the assets of Z-Obee. This also provided a moratorium against further enforcement actions against the company. The PL Order did not provide a platform to enable the HK PLs to explore the possibility of restructuring the company to resume the trading of its shares on the Hong Kong Stock Exchange.

Having effectively discharged their duties in securing the Company's assets and thereby fulfilling the purpose of the provisional liquidation order, the HK PLs wanted to continue to pursue their efforts to generate value for the creditors via a restructuring of the company that would result in the relisting of its shares via a re-capitalisation by a new investor. **Cognisant of the limitations of doing this in Hong Kong per Legend, the HK PLs sought and found a jurisdiction that would enable a restructuring: the Court in Bermuda, its place of incorporation.**

What was involved in the restructuring process?

At the date of the appointment of the HK PLs, the Company had its primary listing on the Main Board of Hong Kong Stock Exchange, a secondary listing on the Main Board of Singapore Stock Exchange and a listing of Taiwan Depository Receipts on the Taiwan Stock Exchange. **Management of the regulatory issues associated with all three stock exchanges was a critically important part** of the restructuring.

As it was in conjunction with its asset preservation duties, the HK PLs were free to also pursue restructuring options. Following an extensive solicitation period and an assessment of potential investors and investment proposals, the HK PLs and their financial adviser **managed to identify a potential investor, and entered into a restructuring framework agreement.**

Using the courts

To effectuate the restructuring, the HK PLs **first sought an adjournment of the winding up petition in Hong Kong** which was granted by the Hon. Mr Justice Harris and thereafter **applied to be appointed as provisional liquidators in Bermuda for the express purpose of restructuring** Z-Obee, which is permissible in Bermuda.

Once appointed as joint provisional liquidators in Bermuda (the “Bermuda JPLs”) by Hon. Mr Justice Kawaley, the Bermuda JPLs subsequently **obtained recognition in Hong Kong by way of a letter of request**, a well-established procedure of the Hong Kong Courts. The Bermuda JPLs were now free to pursue the restructuring of Z-Obee for the benefit of its stakeholders.

Recognition of a foreign proceeding

Z-Obee represents a first of its kind. By using recognition and cross border judicial assistance as envisaged in the Judicial Insolvency Network (“JIN”), the **effectiveness of parallel proceedings has been secured and enhanced.** This is of course reliant on the co-ordination and co-operation amongst the Courts whose supervision is involved and a team of legal professionals (Mayer Brown JSM and Harneys on this case) to assist in the navigation and management of the complicated legal process.

A single class Scheme of Arrangement was launched in parallel in Bermuda and HK and at the Scheme Meetings in October 2017, unsecured creditors in attendance **unanimously voted in favour of the scheme.** As a result, **a significant sum was made available from the investor** as scheme proceeds for distribution to scheme creditors (after defraying relevant disbursements).

The Bermuda JPLs announced **completion of the Company’s restructuring on 27 November 2017**, following completion of all condition precedents and applied to the Bermuda Court for their release. The winding-up petition was dismissed by the Bermuda Court on 28 November 2017.



Dealing with the Stock Exchange...

The HK PLs and subsequently the Bermuda JPLs (altogether “PLs”) prepared their resumption proposals with financial advisers and made five rounds of submissions in total to Hong Kong Stock Exchange to demonstrate the viability of the reactivated business, including two submissions and hearings to the Listing (Review) Committee. On 30 June 2017, **the Listing Committee allowed the Company to proceed with its resumption proposal.**



Successful resumption of trading – The upside...

Trading of the company’s shares resumed on the HK Stock Exchange on 30 November 2017. **The Scheme proceeds represented the most significant source of repayment for scheme creditors.** The resumption of the listing enabled shareholders to monetise their investment, albeit on a diluted basis.

The distressed listed entity was rescued resulting **in significantly enhanced pay-outs for scheme creditors and a liquid platform for shareholders.**



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