

PLAYING THE DEVIL WITH A BIBLE IN HAND

Without disparaging the good work of many of the international accounting firms and merchant bankers, operating out of the Hongkong Special Administrative Region (HKSAR) of the People's Republic of China (PRC), it does appear that their present modus operandi, in many cases, compromises their sworn duty of impartiality and objectivity.

Case in point is when a group of creditor banks find themselves, holding onto the short end of the stick, with the manufacturer or trading company creditor, which owes them more than \$HK500 million, unable to service debt, let alone repay any part of the capital.

Very often, creditor banks will band together and force the creditor to appoint a type of Interim Advisor, often a well-respected merchant bank or one of the Big Five international accounting firms.

The Interim Advisor, his appointment, being often a precursor to pressing the creditor to agree to a Scheme of Arrangement under The Companies Ordinance, Chapter 32 of the Laws of the HKSAR, if all else fails, is paid by the creditor, who finds himself in a force majeure situation, in any event.

At the same time, the Interim Advisor must assist the creditor bank(s) in order to obtain as much money as possible from the creditor, by hook or by crook, because, human nature, being what it is, the Interim Advisor must know on which side of the bread he may locate the jam.

In the case where the creditor is hopelessly insolvent, creditor banks, finding their backs against the wall, will sometimes opt for a debt-equity swap.

This is preferable to losing everything, since, in the case of a debt-equity swap, it is possible that the creditor could turn the situation round, as was the case in Wah Kwong Shipping Company Ltd, many years ago, when Chase Manhattan Bank was stuck with the Chao Family Management of this publicly listed company.

The trouble with a debt-equity swap arrangement is that the creditor bank(s) do not want to be in the same position that brought them to the bargaining table, saddled with a dud management, the same management that got them into hot water in the first instance.

So creditor bank(s) seek the services of the Interim Advisor in order to assist to run the insolvent company in the hope that the new management can turn the company into a profit-maker, allowing the creditor bank(s) to bail out at the earliest possibility.

In the case of a creditor, which is a publicly listed company, a debt-equity swap may well mean that the creditor bank(s) can save their bacon from burning in the fires of the creditor – provided that the Interim Advisor can do the deed, and provided that the number of shares, issued to the creditor bank(s), in settlement of their claims against the creditor, are sufficient to allow the creditor bank(s) to unload the scrip on the stock market, solving their little problem.

But the problem that the Interim Advisor must answer is: To whom does he owe a duty of fidelity, primarily: To the creditor bank(s); or, the minority shareholders of the creditor, in the case of a publicly listed entity?

What may be to the advantage of the creditor bank(s) may not necessarily be to the advantage of the minority shareholders.

In fact, what is in the interests of the creditor bank(s) is rarely in the interests of the minority shareholders.

But the Interim Advisor, no doubt, will look to the creditor bank(s), first, forsaking any consideration with regard to minority shareholders of a publicly listed entity because, at the end of the day, the creditor bank(s) are in the driving seat, holding all the trump cards, while the creditor is at the mercy of the creditor bank(s) whims.

In the case of Wah Kwong Shipping, some years ago, minority shareholders ended up with next to nothing, while the Chao Family, Frank and George, especially, retained control of the publicly listed company, along with 50 percent of the Issued and Fully Paid-Up Share Capital, after a capital restructuring saw creditor banks take scrip for cash.

The creditor banks, in that case, did very well not to lose a bundle, as did the Chao Family, but the minority shareholders of the company did miserably.

The alternative, in that case, would possibly have been that minority shareholders would have received very little, with the creditor banks, getting even less.

There appears to be little in the way of direction in respect of the proper and ethical modus operandi for Interim Advisors to follow and so they muddle away, trying to reshape bust companies for and on behalf of creditor banks – at the expense of minority shareholders and other, less high-profile creditors.

'There are no whole truths; all truths are half-truths. It is trying to treat them as whole trusts that plays the devil.' Alfred North Whitehead, 1861 - 1947.

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