

Duties and responsibilities of directors and officers in insolvency situations

Scope of this paper

A perspective of directors' duties and responsibilities from Singapore in relation to companies incorporated in Singapore but with substantial assets/business and directors from China.

Introduction

The trade, economic and political relations between Singapore and China are very strong and continue to grow.

There have been in the last 4 to 5 years many Chinese corporations who have set out companies and operations in Singapore, and many of them have also come to Singapore and listed their companies on the Singapore Exchange.

Many of these companies have substantial assets and business in China. Their major shareholders are usually Chinese private individuals or the Chinese Government. These shareholders then appoint their nominees (who are invariably Chinese) to be on the Board of Directors of the Singapore incorporated entity.

Issues

The legal systems of China and Singapore are different. Although Singapore has a substantial Chinese population, and there are similarities in language and physical appearance, there are many aspects in which the two are different.

This leads to issues in respect of the approach and mindset toward directors' duties and responsibilities in insolvency situations.

In this paper, the key issues I would like to highlight are :

- a) When should disclosure of the insolvency situation of the company be made known to stakeholders or the public?
- b) To what extent should directors bear legal or moral responsibility for the insolvency situation the company is in?
- c) Who should be in charge of the company during the restructuring phase?

Case study on China Aviation Oil Corporation

In this case, when the huge losses were first reported by the CEO of the company to the shareholders based in Beijing, the reaction was to resolve the matter internally and not report or disclose.

Not only was there no prompt disclosure made, but various steps were taken by the company which in hindsight ought not to have been taken, including the sale of the shares by the majority shareholders to raise finance. This created legal issues, which resulted in criminal convictions in the Singapore courts against various directors and the CFO for breaches of the Securities and Futures Act in relation to these acts and omissions.

The shareholders and directors based in Beijing could not initially understand why there was so much pressure from the international and Singapore creditors in relation to the losses, and the delay in making disclosure of the losses. The approach taken was that these losses were caused by the conduct of certain persons in the company at the level of the traders, and therefore the Board of directors are absolved from any legal and moral responsibility.

Under Singapore law, the issue was to what extent had the directors failed in their legal and fiduciary duties to look after the affairs of the company, and to supervise these traders, and to what extent could this losses have been avoided by the directors.

On the final issue, the Chinese directors initially took the view that the CEO who had failed in his duties to properly regulate the affairs of the company, and which therefore contributed the losses, should continue to be in charge of the company in the restructuring. The philosophy in the early days was that the one in charge when the mess was done, must be the one who cleans up the mess.

However, subsequently the Board saw the wisdom of suspending the CEO and taking steps to appoint a fresh group of managers, which constituted a Special Task Force to take charge of the restructuring. This Special Task Force comprised individuals who were directly involved in the operations of the company at the material time the events which caused the losses occurred.

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