

Restructuring & Insolvency

Appointment of Solicitor by a Liquidator: Can the Court Retroactively Grant Authorisation?

In *Re: Kirkham International Pte Ltd* [2023] SGHC 19, the Singapore High Court considered the issue of whether it has the power to retrospectively authorise the appointment of a solicitor by a liquidator. Here, the Applicant liquidator sought to appoint solicitors to assist him in his duties, and asked the Court for such appointment to take effect retrospectively because he had not sought the Court's authorisation when initially appointing the solicitors.

The requirement for a liquidator to obtain the authorisation of the Court or the Committee of Inspection ("**COI**") before appointing a solicitor is provided for by section 144(1)(f) of the Insolvency, Restructuring and Dissolution Act 2018 ("**IRDA**"). In this decision, the Court set out the main factors to be taken into account in deciding whether to authorise the appointment of a solicitor, further providing that the threshold for authorisation is not a high one. Applying these principles to the present case, the Court was of the view that the Applicant's appointment of solicitors should be authorised.

The Court held that it has no power to *retrospectively* authorise the appointment of a solicitor, finding that the Applicant should have obtained authorisation from the Court or the COI before he appointed solicitors. For the purposes of section 144(1) of the IRDA, the Applicant's appointment of solicitors was therefore only be deemed to have been authorised from the date of the resulting order in the present application.

However, this did not mean that the Applicant's initial appointment of solicitors was invalid. A liquidator can still appoint a solicitor without the authorisation of the Court or the COI. The absence of such authority does not render the action incompetent; rather, it goes towards the question of whether the liquidator is entitled to costs out of the estate or whether he should personally bear the costs.

On the question of costs, the Court found that the Applicant had good reasons for not having obtained authorisation before the initial appointment of the solicitors and had acted in good faith in the discharge of his duties as liquidator. The Court thus did not order that the Applicant bear the costs of the legal fees incurred before the Court's authorisation, instead ordering the costs to be paid from the assets of the company.

Contacts



Sim Kwan Kiat
Head, Restructuring & Insolvency

T +65 6232 0436

kwan.kiat.sim@rajahtann.com



Chua Beng Chye
Deputy Head, Restructuring & Insolvency

T +65 6232 0419

beng.chye.chua@rajahtann.com



Sheila Ng
Deputy Head, Restructuring & Insolvency

T +65 6232 0590

sheila.ng@rajahtann.com

Please feel free to also contact Knowledge Management at eOASIS@rajahtann.com

Regional Contacts

R&T SOK & HENG | *Cambodia*

R&T Sok & Heng Law Office

T +855 23 963 112 / 113

F +855 23 963 116

kh.rajahtannasia.com

RAJAH & TANN | *Myanmar*

Rajah & Tann Myanmar Company Limited

T +95 1 9345 343 / +95 1 9345 346

F +95 1 9345 348

mm.rajahtannasia.com

RAJAH & TANN 立杰上海

SHANGHAI REPRESENTATIVE OFFICE | *China*

Rajah & Tann Singapore LLP

Shanghai Representative Office

T +86 21 6120 8818

F +86 21 6120 8820

cn.rajahtannasia.com

GATMAYTAN YAP PATACSIL

GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)

T +632 8894 0377 to 79 / +632 8894 4931 to 32

F +632 8552 1977 to 78

www.cagatlaw.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*

Assegaf Hamzah & Partners

Jakarta Office

T +62 21 2555 7800

F +62 21 2555 7899

Surabaya Office

T +62 31 5116 4550

F +62 31 5116 4560

www.ahp.co.id

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP

T +65 6535 3600

sg.rajahtannasia.com

RAJAH & TANN | *Thailand*

R&T Asia (Thailand) Limited

T +66 2 656 1991

F +66 2 656 0833

th.rajahtannasia.com

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Co., Ltd.

T +856 21 454 239

F +856 21 285 261

la.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

Rajah & Tann LCT Lawyers

Ho Chi Minh City Office

T +84 28 3821 2382 / +84 28 3821 2673

F +84 28 3520 8206

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong

T +60 3 2273 1919

F +60 3 2273 8310

www.christopherleeong.com

Hanoi Office

T +84 24 3267 6127

F +84 24 3267 6128

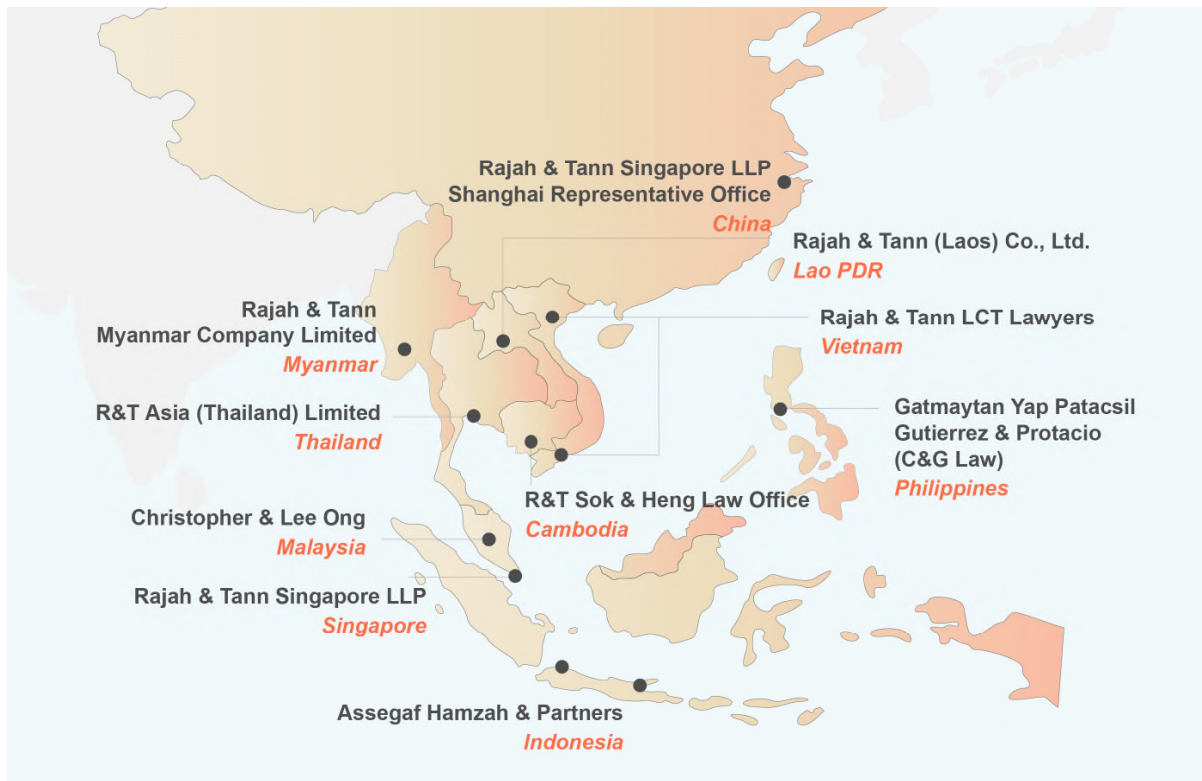
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