

## CAYMAN ISLANDS

### GRAND COURT

***In the Matter of the Companies Law (2013 Revision) and in the Matter of Rightway China Real Estate Limited and in the Matter of the Companies Law (2013 Revision) and in the Matter of Dash Limited, Cause Nos. FSD 130 and 131 of 2013, per Henderson J (3 February 2014)***

WINDING UP - STANDING TO WIND UP A COMPANY IF FINANCE DOCUMENTS CONTAIN AN EXCLUSIVE JURISDICTION CLAUSE FOR A JURISDICTION OTHER THAN THE CAYMAN ISLANDS

The Petitioners are a group of lenders in a syndicated loan arrangement. The loan had been in default for some time and the Petitioners sought a winding up of the debtors, Rightway China Real Estate Limited and Dash Limited.

The fundamental question which the Court had to decide was whether the Petitioners had standing under the finance documents to seek a winding up of the borrowers and its guarantor when the majority of the lenders by value are opposed to that course and in circumstances where the creditors had agreed that a foreign court (Hong Kong) has exclusive jurisdiction to decide questions of law arising from the finance documents according to the Law of Hong Kong.

The Judge was of the view that there was a good arguable case for the proposition that a debtor company could only be wound up at the instance of the creditors acting jointly through the Security agent. If that proposition can be established, the petition must be dismissed pursuant to Section 95(2) of the *Companies Law (2013 Revision)*.

The Judge further held that the Hong Kong Court should decide questions of law arising from the finance documents according to the law of Hong Kong and adjourned the petition generally with liberty to restore after the Hong Kong court has ruled upon the right of the individual creditors to pursue the winding up.

Conyers Dill & Pearman (Cayman) Limited appeared for Home Fortune Enterprises Limited.

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