GENTING HONG KONG LIMITED – WORSE THINGS HAPPEN AT SEA?

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Introduction

In January 2022, the Hong Kong headquartered and Hong Kong Stock Exchange listed cruise and resort operator holding company Genting Hong Kong Limited (雲頂香港有限公司) filed a winding up petition in Hong Kong, sending a signal that even the most successful, globally-recognised and sizeable cruise operator brands in the industry had not been spared the financial effects of the Covid-19 pandemic.

Having previously weathered challenges such as the 9/11 terrorist attacks, the 2002 SARS epidemic and the 2008 global financial crisis, the cruise industry was no stranger to adverse global events, but Covid restrictions all but erased demand for services once the pandemic began to spread. Existing contingency plans and strategies were rendered obsolete by this new challenge or had been scaled back following years of financial success.

Pre-Covid, Genting operated three major cruise brands – Star Cruises, Dream Cruises and Crystal Cruises - and enjoyed a considerable market share, with a company structure spanning the world map. Ever-changing Covid rules, closures and restrictions hampered initial attempts to adapt to what was at the time considered a temporary situation: in early 2020, Genting sought contractual relief on a bilateral basis with its lenders, requested covenant breach waivers and testing holidays, but did not at the time (unlike some its US counterparts) tap capital markets to address cash-flow issues.

As the pandemic continued without improvement for Genting's cash flow, attention turned to the investment project costs expended by Genting as part of its business growth strategies, which had been based on calculations that assumed pre-pandemic level fleet operations. Genting had guaranteed the construction of new vessels for its Dream Cruises luxury segment as part of plans to rejuvenate its aging Crystal Cruises brand, and anticipated revenue from these vessels factored heavily into post-pandemic liquidity projections for the company. Additional costs from the warm layup of a cruise ship added to growing financial woes.

Attempts to restructure and challenges

In Autumn 2020 Genting decided to undertake a consensual out of court holistic restructuring and recapitalisation to stabilise the business. The company began reducing its overheads and selling off various non-core assets, but an attempt to secure a bridge loan as an interim cash injection was not successful, with negotiations with creditors and export credit agencies extending into early 2021. Bridge loan negotiations were eventually discontinued when no agreement could be reached.

Genting's restructuring rested on four key pillars: 1) an amendment and extension of its material financial indebtedness, together with a reduction of average interest costs and suspension of financial covenant testing under all of its financing arrangements (except for a minimum liquidity covenant); 2) obtention of Covid aid via funding of almost EUR500 million from the German economic stabilisation fund (*Wirtschaftsstabilisierungsfonds* (WSF) with further loan funding directly from the German federal state of Mecklenburg-Western Pomerania (MV State), where Genting's German subsidiaries are located); 3) new financing to secure the delivery of a new vessel; and 4) a rights issuance by Dream Cruises.

Even from the outset, the complexities and peculiarities posed by such a restructuring were many, and related to, amongst others:

1. The worldwide spread of Genting: Challenges posed by Genting's global structure - with assets and creditors in multiple jurisdictions and the applicability of numerous legal frameworks, rules and stakeholders that spanned Hong Kong SAR, the PRC, Malaysia, the United States, Singapore and Germany;

2. Time pressure: the need for resolution on a tight timeline affected the optimisation of restructuring tools and measures and the quality of negotiations needed to reach a best-case scenario for Genting;

3. The ever-changing Covid rules and requirements: Financial models and forecasts often became obsolete shortly after their introduction, which led to material uncertainties with respect to planning;

4. Consensus challenges during negotiations: Reaching agreements among all lenders (required with an out of court restructuring) where the number of lenders in certain syndicates exceeded 50, with varying interests and requirements led to cumbersome negotiations.

5. Unexpected lender decisions by a club lender that raised complaints by other lenders: One of two club lenders (each having advanced 50% of the loan) which financed Genting's river-cruise vessels chose to wind down its ship financing business at a critical juncture. As a result, the lending bank introduced a requirement for all shipping loans to be repaid by the originally documented maturity date, a move opposed as special treatment by other lenders that were left at a disadvantage, having been asked to extend their loan maturity dates as part of the restructuring measures.

6. Uncertainties surrounding financial injections: Genting's controlling shareholder, Lim Kok Thay, initially refrained from providing financial support to Genting upon request by lending banks. Eventually, Lim Kok Thay and German stakeholders provided a US$148 million backstop facility for the purpose of curing any breach of the minimum liquidity covenant.

7. Jurisdiction-specific complications in Germany: Insolvency-related duties of directors of Genting's ship-building subsidiaries in Germany under German law created a risk that local directors would file for insolvency before a restructuring could be effected.

8. Specificities created by the involvement of the Germany export credit agency Euler Hermes: As an agency managing export credit guarantees and untied loan guarantees on behalf of the Federal Republic of Germany, Euler Hermes pointed to local law requirements prohibiting haircuts on Genting's existing debt, effectively barring Genting from introducing haircuts as part of the restructuring measure package. Furthermore, decision-making processes surrounding debt management under their purview was slow as a result of consultations required with a host of government ministries and stakeholders.

9. Cultural differences between the Asian and European lenders and governmental authorities across the jurisdictions: negotiations faced challenges as culturally-sensitive business practices and approaches created clashes that hampered progress.

Despite such headwinds, one of the largest out of court bank restructurings in Asia came to fruition in June 2021.

Short-lived relief

However, the breathing room offered by the restructuring was fleeting, and continuing Covid-restrictions hampered a business rebound to pre-Covid levels. By the Fall of 2021 Genting was desperate for additional liquidity and was negotiating the acquisition of its Dream Cruises brand by a special purpose acquisition company (SPAC) that would have increased Genting's valuation to approx. US$2.5 billion and allowed its German ship-building subsidiaries to complete the construction and delivery of its new luxury cruise liner. Stakeholders of the potential SPAC investor voted against the proposed transaction leaving Genting once again without needed funding.

The final straw seemed to come in December 2021 as Genting attempted to draw down payments it had been granted from the WSF in Germany. With Euler Hermes' refusal to confirm insurance coverage, a drawdown condition for payment remained unsatisfied: The WSF refused to release funding. A further attempt to negotiate replacement financing saw German authorities attaching additional conditions to the funds that included subordinating the lending banks' rights to those of the WSF and requiring Genting's controlling shareholder to provide additional funding and guarantee at least EUR600 million of the WSF facility. No resolution could be found.

Potential silver bullets had become nails in the coffin for the business.

Continued efforts, court proceedings in Germany and the domino effect

At the end of December 2021, Genting filed a motion for injunctive relief in Germany that would have ordered MV State to provide Genting with a loan of EUR88 million. The court initially granted the motion in full, but then reduced aid to zero, citing that funding from MV State would neither improve Genting's liquidity situation nor help avoid covenant breaches it was facing: While the reasoning offered by the court in its judgment was criticised, it was deemed too late to save Genting with government funding.

Insolvency-related directors' duties of Genting's German ship-building subsidiaries forced an insolvency filing with the German courts. This in turn triggered an event of default under the shipyard's facilities which triggered cross defaults on almost US$3 billion of Genting's debt. With little cash left in its coffers, Genting filed in Bermuda to wind up the company on 18 January 2022. Two weeks later, Dream Cruises followed its parent company and filed a wind-up petition.

Aftermath and outlook

While in the foreground ship arrests, enforcement procedures and disposal of remaining assets have been underway as the companies are being dismantled following the usual procedures, market sources have begun to indicate that in the background the former controlling shareholder of Genting, Lim Kok Thay and former Genting CEO Colin Au have been placing offers on the various assets up for grabs. It would not be the first time the market sees a successful re-purchase of assets of a failing entity for a substantial discount that are now free from debt and encumbrances. The re-birth and reconstitution of an all-too-familiar Asian cruise operator may not be far behind.