



FTI CONSULTING
IN THE CARIBBEAN

RECOVERING VALUE
IN THE PRC

CRITICAL THINKING AT THE CRITICAL TIME™



Introduction

Over the last two decades, offshore companies have played a key role in bringing foreign investment into the People's Republic of China (PRC). International investors have structured billions of dollars of investment through offshore holding companies or special purpose vehicles, with the British Virgin Islands (BVI) and Cayman Islands often being the domiciles of choice. Since 2009, changes in PRC regulatory policy on foreign direct investment have also led to BVI and Cayman registered entities being used in Variable Interest Entity (VIE) structures, which allow PRC companies to receive foreign investment in restricted or prohibited sectors and are a means by which PRC entities can list on international stock exchanges.

Today, BVI and Cayman Islands registered entities are common features of PRC and Hong Kong corporate structures:

- There are over 460,000 active BVI companies and 80,000 Cayman companies in existence;
- It is estimated that over 50% of these have operations in Asia, especially the PRC; and
- Around 60% of Hong Kong listed companies are incorporated in the Cayman Islands.

Even though there are many challenges to dealing with distressed investments in the PRC, whether held through VIE structures, Hong Kong listed structures or otherwise, recovering value is by no means impossible. Our experience shows that optimal recoveries are usually made by studiously avoiding a formal insolvency process over an operating entity in the PRC, but rather by gaining control over it, through an appointment over the offshore BVI or Cayman holding company.

Insolvency and Enforcement Remedies

Insolvency and enforcement remedies will depend upon the contractual rights of the investors. If they hold the requisite security, they will have the ability to appoint a receiver over the shares or assets of the BVI/Cayman holding company. Otherwise, they may need to present a winding-up petition (as well as an application to appoint a provisional liquidator in urgent cases or where there is a threat of asset dissipation).

The appointment of a receiver or liquidator in BVI or the Cayman Islands will not, by itself, provide a solution, but is a crucial first step. The Caribbean office holder will then need to take steps to attain control of the underlying operating subsidiaries in the PRC and possibly elsewhere. This may include intermediate companies registered in Hong Kong or Singapore or Wholly Owned Foreign Entities (WOFEs) registered in the PRC.

The recovery strategy will vary based on the circumstances of each case, but the outcome will be determined by the skill, expertise, resources and practical experience of the office holder and team involved.

A typical scenario will involve the Caribbean receiver or liquidator immediately taking steps to:

- Get custody of books and records (paper & electronic) from directors and service providers in the Caribbean and PRC.
- Examine records to establish corporate structure and underlying subsidiaries/operating companies and get control of shares.
- Take possession of chops for PRC entities and, if required, pass shareholder resolutions to change directors/legal representatives.
- Formulate realisation strategies for valuable operating subsidiaries, preferably without PRC insolvency process.
- Work with management and stakeholders to implement strategies.

To carry out these tasks effectively, the Caribbean office holder must collaborate closely with a team of experienced restructuring professionals in the PRC — and often elsewhere — drawing on the skills and expertise of a multi-disciplinary team of specialists with proven experience dealing with forensic accounting, investigations, computer forensics, corporate finance and interim/operational management roles in the PRC.

About FTI Consulting

With over 4,200 employees in 26 countries worldwide, FTI Consulting has the **global resources, regional coverage** and **local expertise** to provide comprehensive solutions and achieve results from the most challenging situations.



What Makes Us Different?

FTI Consulting is a market leader with an outstanding reputation and proven track record in making recoveries for foreign investors in the PRC. Our proven track record is driven by our ability to draw on the extensive range of skills, expertise, relevant experience and resources available within our offices worldwide. These characteristics are demonstrated time and again when we deal with problem situations in the PRC.

Local knowledge, expertise and resources

Full service offices in PRC and wider Asia region complement our Caribbean professionals by providing, local knowledge, expertise and resources to deal with matters on-the-ground.

Multi-disciplined team of specialists

Our Caribbean team has direct access to specialists vital to investigations and asset recovery efforts:

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|-------------------------|----------------------------|----------------------|
| ■ Forensic accountants | ■ Restructuring/Turnaround | ■ Banking experts |
| ■ Skilled investigators | ■ Arbitration experts | ■ Valuation experts |
| ■ Computer forensics | ■ Transaction advisory | ■ Interim management |

Unified and experienced team

Our professionals in the Caribbean have vast experience managing complex and contentious insolvency matters involving the PRC and have deep experience working with our teams across PRC and wider Asia region.

Unrivalled industry expertise

FTI Consulting's industry experts support our Caribbean practitioners and provide invaluable insight and specific sector expertise in relation to strategic, operational and financial issues faced by the valuable operating entities.

Independent

We do not offer audit services so our engagements are rarely affected by conflicts and we do not shy away from situations involving high profile or well-connected adverse parties. Our conflicts review process is straightforward with confidential worldwide checks completed within hours.

Flexible and innovative

We can offer flexibility in terms of fee arrangements in circumstances where liquid assets are not readily available to support a possibly long asset recovery process.

Results Driven Approach

The business environment in Asia provides many challenges, particularly in asset recovery and enforcement scenarios. However, close and active communication between our professionals in the Caribbean and Asia, together with close consultation with stakeholders, allows us to anticipate issues and rapidly implement practical and effective solutions to overcome them. This unified team approach offers the maximum opportunity to secure a result in what are often long, complex and contentious cases.

Issue	FTI Consulting Solution
Lack of industry expertise	The PRC is an emerging market with formidable industrial diversity. As one of the largest specialist business advisory firms in the world, our Caribbean practitioners can call upon an exceptional pool of talent and expertise in the PRC and throughout Asia, with unrivalled sector specific expertise across a wide range of industries.
Scale and geography	Our offices throughout Asia give our Caribbean professionals the scope to deal with any insolvency and enforcement proceeding in the PRC, irrespective of the scale, complexity or geographical spread of operations.
Acquiring control of subsidiaries	We are not afraid to be robust and aggressive. Our practitioners remove obstructive legal representatives and directors and take immediate control of key companies. We are one of the few firms with individuals prepared to act as the Legal Representative in the PRC.
Prevalence of fraud	Fraud and improper corporate behaviour is common in Asia. Our Forensics & Litigation Consulting and Technology practices, give our office holders the most sophisticated tools, capability and expertise to rapidly investigate fraud and implement swift recovery action.
Disputes	Our Caribbean professionals have considerable experience dealing with litigation and other commercial disputes in the PRC. By assembling the best multi-disciplinary team of insolvency, forensics, technology and valuation specialists, we enjoy an excellent record of success.
Asset disposals	When dealing with operating businesses in the PRC, accelerated disposals or M&A transactions outside an insolvency process are often key to maximising value. Our transaction advisory professionals have the technical, practical and regional experience to support our Caribbean office holders to complete timely transactions.
Financial distress	Post enforcement, operating subsidiaries are likely to suffer acute financial pressure. Our restructuring professionals have skills that surpass the basic financial re-engineering tools employed by many interim managers, allowing us to deliver results that not only stabilise, but create enterprise value.
Cross-border inefficiency	As one firm with wholly owned offices worldwide, we offer a truly seamless, cost effective and efficient service across a range of jurisdictions, including the option of experienced joint office holders in the Caribbean, PRC and elsewhere (if appropriate).
Competing stakeholder interests	Our long established relationships with local and international banking institutions, international funds, bond holder groups, state agencies and regulators help us to understand and reconcile divergent expectations and objectives of multiple stakeholders.
Legal and regulatory issues	By virtue of our long established presence in the PRC and wider Asia region, we are familiar with the legal and regulatory issues which often arise in insolvency and enforcement situations and have developed effective solutions to manage and overcome them.

Relevant Experience

Our track record in the PRC speaks for itself – we are instructed frequently by many of the world’s largest banks, sophisticated bondholder groups, private equity and hedge funds, high net worth individuals and international corporates, to extract value from distressed PRC investments. We have been involved in some of the most complex and high profile matters in the region, many of which have involved offshore investment structures domiciled in the Caribbean. FTI Consulting’s multi-disciplinary expertise, global reach, local knowledge, united team and tenacity is best exemplified by the specific case studies which follow. These engagements prove how our involvement significantly enhanced stakeholder recoveries from distressed PRC investments.

Pioneer Iron & Steel Group (PISG)

<p>Situation PISG was a BVI registered company which traded in iron ore. The sole shareholder was a high profile and well-connected businesswoman from the PRC who resided in Hong Kong. An international mining company had entered a judgment against PISG for over US\$40 million and it was also facing an imminent and similarly substantial arbitral award in favour of another international supplier. In an apparent effort to avoid the arbitration award, the shareholder and directors placed PISG into voluntary liquidation in the BVI, owing some US\$516 million.</p>	
<p>FTI Consulting’s Role</p> <ul style="list-style-type: none"> • Immediately replaced the directors and legal representative and took control of a large number of subsidiaries and the Group’s books and records. • Petitioned the Hong Kong Court to wind-up PISG in Hong Kong to obtain the investigatory powers of a Hong Kong liquidator. • Conducted extensive and sustained investigation and asset tracing exercise for over two years in several jurisdictions. • Robustly defended legal challenges issued by the well-funded shareholder and related party creditors to remove the liquidators from office and separate proceedings issued by the shareholder against the liquidators personally in the PRC. • Self-funded significant costs of investigation and legal challenges in the absence of any available assets and later obtained litigation funding. • Worked tirelessly on the pursuit of assets, despite the mounting fee exposure and continual challenges from the shareholder and related party creditors. 	<p>Outcome</p> <ul style="list-style-type: none"> • Our rigorous investigations and asset tracing exercises identified significant assets transferred to the shareholder and other family members. • Creditors were appraised of our findings and had the confidence to provide significant funding to assist with legal challenges in BVI and Hong Kong • Through our close relationships with commercial litigation funders, we negotiated a facility to launch substantive actions in Hong Kong to recover assets with a value of over RMB4 billion (US\$650 million). • The negotiations with the shareholder continued and eventually our perseverance was rewarded with an acceptable settlement proposal from the shareholder. • A global settlement was agreed and subsequently approved by the creditors. • All proceedings against the shareholder and the liquidators were withdrawn. • The return to creditors is expected to be in the range of 34 to 40 cents in the dollar.

DBG Holdings (DBG)

<p>Situation DBG provided electronics manufacturing services including end-to-end printed circuit board assembly subcontracting and value-added assembly services to PRC and multinational companies. DBG had two wholly owned subsidiaries in Huizhou, PRC, where its manufacturing facilities were located. A legal dispute amongst shareholders led to DBG’s secured lender needing to take action to protect its interests.</p>	
<p>FTI Consulting’s Role</p> <ul style="list-style-type: none"> • Appointed as Receivers to over 80% of the issued share capital of DBG provided by a secured lender. • Reviewed the Group’s existing cash flow position and working capital requirements, including a review of key outstanding debtors. Undertook various other control steps particularly to control cash and prepare projections 	<p>Outcome</p> <ul style="list-style-type: none"> • Managed a sale program in respect of the shares we were appointed over. The shares were successfully sold, enabling full recovery to our appointor. • In the interim, successfully managed the factory by replacing members of the board of directors of DBG.

Trident Microsystems

<p>Situation</p> <p>The Trident Group's U.S. based holding company filed for Chapter 11 due to its declining financial position and excess debt. The Company had global operations, including Asia (principally in Hong Kong and PRC), which were controlled by an intermediate holding company incorporated in the Cayman Islands. The Group had certain viable assets which could be sold and other underperforming assets that needed to be closed or wound down over time after any residual value was extracted.</p>	
<p>FTI Consulting's Role</p> <ul style="list-style-type: none"> Acting as the court appointed Chief Restructuring Officer (CRO) in the United States, we worked with the Company to stabilise its liquidity position, meanwhile steps were taken to sell the viable businesses. Supporting in the role of the CRO, we also managed the sale and wind down of the Group's global businesses. In Asia, this included our team taking positions as directors and legal representatives of entities in Hong Kong, the PRC, Korea, Singapore, Taiwan and India. The Cayman intermediate holding company filed for Chapter 11 in the U.S. and had provisional liquidators appointed in the Cayman Islands to enable restructuring and asset sales to occur pursuant to judicial cooperation across both jurisdictions. 	<p>Outcome</p> <ul style="list-style-type: none"> The Company entered a 'stalking horse' sale process which resulted in a competitive sale process and separate sales of two main parts of the business. We worked with the Company through the sale and completion process and, in Asia, took over the management of remaining businesses to sell, wind or shut down as appropriate across the various jurisdictions involved. The matter has required the coordinated use of FTI personnel in the United States, Europe and Asia in conjunction with the rare but progressive and flexible use of Court based restructuring proceedings in the United States and Cayman Islands.

Moulin Global Eyecare (Moulin)

<p>Situation</p> <p>We were appointed as Provisional Liquidators of Moulin, a company involved in the design, manufacture, distribution and sale of optical products worldwide. Moulin had operations in the PRC, United States, Italy, Germany and the Netherlands and factories located in the Czech Republic and Germany.</p>	
<p>FTI Consulting's Role</p> <ul style="list-style-type: none"> FTI Consulting was initially appointed to assist Moulin with refinancing and obtaining capital. On review, Moulin's financial records contained substantial accounting irregularities and we were subsequently appointed as Provisional Liquidators. As Board Members and lead negotiators, we navigated the difficult sale of Eye Care Centres of America (ECCA), a 378 store retail operation in the U.S., jointly owned by a number of private equity funds entitled to guaranteed minimum returns. As Provisional Liquidators we needed to stabilise the Group's Chinese business, take Board positions and deal with the profitable ECCA business, whilst understanding the substantial financial irregularities that occurred in relation to Moulin's financial accounts. Our team conducted a comprehensive forensic investigation of thousands of accounting entries and transactions to trace funds, investigate counterparties, recover and interrogate data, and reconstruct and restate accounts. 	<p>Outcome</p> <ul style="list-style-type: none"> A M&A transaction on the "cash bleeding" Shanghai retail operation was achieved, saving 3,000 jobs and realising US\$80 million, which was significantly above market value, together with a sale of the operating factory. ECCA was purchased by Moulin for US\$490 million and sold by us for US\$602 million. Obtained authority from the Hong Kong Court to undertake a "sooner rather than later" dividend to creditors rather than seek to untangle a complex web of intercompany transactions, a move which was unprecedented. Our investigations even found a secret hidden room with hundreds of alternative records in relation to Moulin's financial performance. Issued proceedings against auditors in relation to the accounting irregularities which substantially enhanced returns to creditors.

Peace Mark Holdings (PMH)

<p>Situation</p> <p>PMH was listed on the Hong Kong Stock Exchange and through its subsidiaries (jointly “the Group”), was engaged in the manufacturing, distribution and retail sale of high quality brand-name watches and luxury timepieces. Employing over 10,000 people worldwide, the Group operated the largest luxury watch retail network in Asia, together with manufacturing plants in the PRC and Switzerland. The trading of the shares of PMH was suspended in August 2008 following irregular market price and volume movements. The Group’s lenders consequently withdrew substantial short term facilities and froze the Group’s existing cash balances.</p>	
<p>FTI Consulting’s Role</p> <ul style="list-style-type: none"> • We were initially appointed as financial advisors to assist and restore confidence to PMH’s lenders to the extent warranted, but we quickly identified that there were substantial financial irregularities and that over half of PMH’s revenue and all of its profit in its last reporting period were falsely stated. • We were subsequently appointed as Provisional Liquidators, took control of the Group, including acting as legal representative in the PRC, and were responsible for the management of the Group’s day to day business operations. • Formulated a complex simulated liquidation model of over 200 entities to distribute the proceeds from the sale of the PRC retail operations to the Group’s creditors. • Conducted extensive forensic investigation into PMH’s accounting irregularities, including funds tracing, recovery of data and reconstruction of accounts. 	<p>Outcome</p> <ul style="list-style-type: none"> • Managed a group of over 300 companies comprising around 30 PRC based joint ventures, most of which were under severe financial distress prior to being sold. • Negotiated the debt restructure agreement and sale of the luxury and mid-market timepiece retail and distribution operations in the PRC incorporating over 207 subsidiaries within one month of the appointment. • Undertook and negotiated a M&A transaction resulting in the voluntary conditional cash offer for all of the issued and paid up capital of Sincere Watch Limited, a subsidiary of PMH. • Implemented the creditor distribution model by way of a Court sanctioned Scheme of Arrangement in Hong Kong and Caribbean jurisdictions. • Litigation was commenced against the auditors resulting in a settlement and against the directors, which is ongoing.

Contacts

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