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China Fishery Bankruptcy Saga Continues between Peru, Hong Kong and U.S.: Shareholder Conflict of Interest, Chapter 11 Filing and Appointment of Independent Trustee

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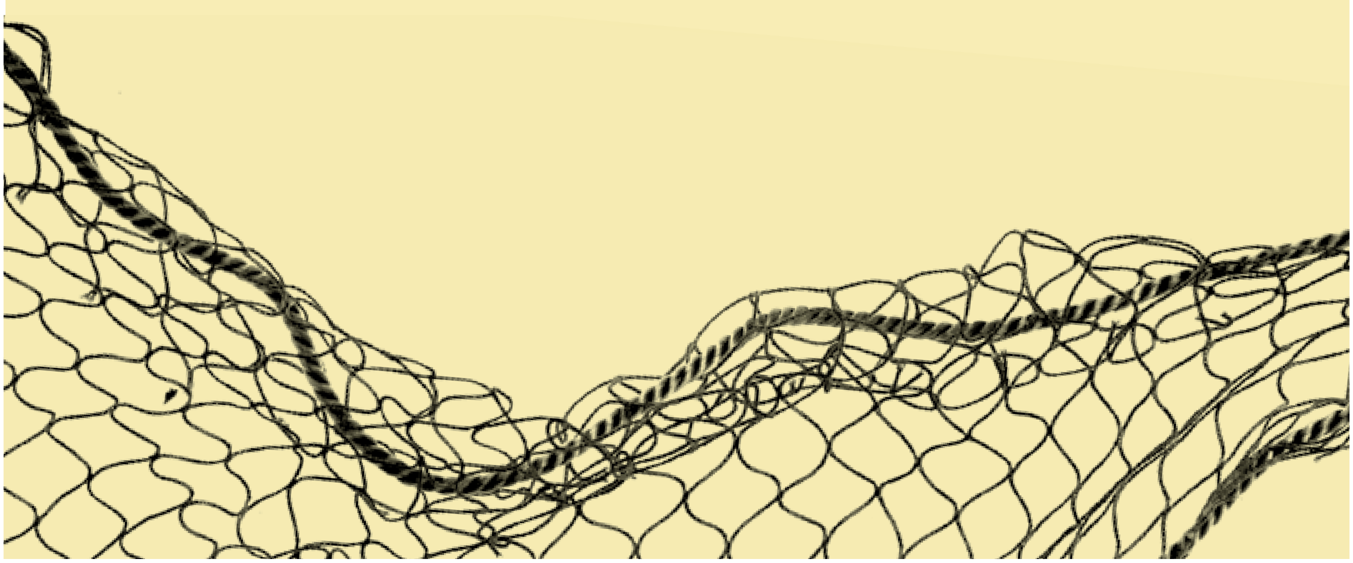
A tense summer and fall for creditors of China Fishery Group Limited ("CFG")—the Hong Kong-based global fishing company with significant operations in Peru—has culminated in the appointment by the Bankruptcy Court for the Southern District of New York of an independent Chapter 11 trustee to oversee the group's sale or reorganization. The appointment of the trustee—a rare occurrence in U.S. bankruptcy courts—was made at the request of a subset of CFG's lenders (the "Club Lenders") and over the objection of members of the Ng family—the controlling shareholders of CFG who had previously been managing CFG through its global insolvency proceedings.

CFG, a wholly-owned subsidiary of the Pacific Andes Group, the 12th largest seafood and fishing company in the world, filed for Chapter 11 protection on June 30, 2016 and has simultaneous insolvency proceedings pending in Peru, Singapore and the British Virgin Islands. This bankruptcy filing surprised many of CFG's lenders, who had previously entered into deeds of undertaking with CFG through which the parties had provisionally agreed to take certain steps to effectuate a sale of CFG's most valuable asset—its equity interest in certain valuable fishing companies in Peru—outside of an insolvency process.

The crux of the disagreement between CFG's lenders and the Ng family is over the timing of a potential sale of the Peruvian fishing business. When previously contemplating a sale, CFG had received bids for the Peruvian fishing businesses in amounts up to approximately $1.5 billion. The Club Lenders—collectively owed more than $700 million—pushed for a sale of the assets while the Ng family, asserting that the Peruvian fishing businesses were worth far more than the bids indicated, wanted to wait to sell the company. Although estimates varied, the Club Lender parties believe that any sale of the Peruvian businesses for an amount less than $2 billion (and potentially significantly more, depending on certain intercompany liabilities) would leave the Ng



family's equity position out of the money. The filing of the Chapter 11 cases and the Peruvian insolvency proceedings delayed the potential sale of the Peruvian businesses, to the consternation of the Club Lenders.

In arguing for the appointment of an independent Chapter 11 trustee, the Club Lenders alleged that the Ng family was conflicted by their equity interest in the company and were refusing to sell the business so as to maintain control of the company, to the detriment of creditors. In agreeing to appoint the trustee, Judge Garrity of the Southern District of New York agreed that the Ng family, as both managers and controlling equity holders, were "plainly disincentivized" from selling the Peruvian business so long as equity would be out of the money. However, Judge Garrity also noted that the trustee would not necessarily be required to work towards a sale of the Peruvian business, but would rather be tasked with independently assessing the "highest and best use of [the] assets." On November 14, 2016, William A. Brandt, Jr. of Development Specialists, Inc. was appointed as the Chapter 11 trustee.

Only time will tell whether Mr. Brandt determines that a sale of the Peruvian business will constitute the "highest and best use of the assets." Either way, the Ng family does not appear willing to let go of the business easily and we expect this is not the final chapter in the global insolvency of China Fishery Group.