DMSA Deutsche MarktScreening Agentur GmbH

PRESS RELEASE

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CHINA EVERGRANDE GROUP
International bondholder and DMSA file an allegation of criminal conduct against real estate giant

For months, China Evergrande Group has been teetering on the brink of insolvency. On several occasions, China's second-largest real estate developer, which has accumulated more than $300 billion in debt, has defaulted on interest payments on U.S. dollar bonds. Now an international creditor, in cooperation with DMSA Deutsche MarktScreening Agentur GmbH, has filed an allegation of criminal conduct against the Evergrande holding company for committing insolvency fraud.

Things are getting tighter for Evergande: A bondholder, Liechtenstein-based Financial Market Partners Capital (FMPC) Consulting AG, filed an allegation of criminal conduct on Friday, February 18, 2022 for insolvency fraud against the Cayman Islands-registered Evergrande holding company. FMPC Consulting AG was supported and advised - in addition to internationally active insolvency lawyers - by DMSA Deutsche MarktScreening Agentur GmbH.

Background: Evergrande has defaulted on interest payments on so-called offshore bonds amounting to more than one hundred million US dollars on several occasions since mid-November. These are held by international investors, including FMPC Consulting AG. (Note to editors: More about FMPC Consulting AG and its investment in Evergrande bonds can be found at the end of this press release.) On December 3, Evergrande officially admitted to international investors for the first time in an ad hoc announcement to the Hong Kong Stock Exchange - the holding company's home exchange - that there was "no guarantee that the Group will have sufficient funds to continue to meet its financial obligations."

If a company domiciled in the Cayman Islands is insolvent or of doubtful solvency, its directors have a fiduciary duty under the laws and regulations applicable there to act in the interests of its creditors. They then also have to consider whether it is in the interest of their creditors to initiate reorganization or insolvency proceedings. As the management of Evergrande Holding has so far failed to initiate insolvency proceedings, there is a strong suspicion that the directors of Evergrande have caused substantial pecuniary loss to the company's creditors through deception and breaches of their duty of care. Such conduct is punishable, inter alia, under sections 248 et seq. of the Cayman Islands Criminal Code.

DMSA Managing Director Michael Ewy explains, "With the allegation of criminal conduct, we are trying to save what can be saved for FMPC Consulting AG and other international creditors." At the latest with the official announcement of the default of the interest payment on December 6, 2021, the Evergrande directors had been obliged to file for voluntary or provisional insolvency at the court of the company's headquarters in the Cayman Islands. "To date, this has not happened despite multiple requests from us. As a consequence, we have now filed an allegation of criminal conduct with the Cayman Islands Public Prosecutor's Office for committing insolvency fraud." Thus, he said, it is now also the responsibility of the local authorities to investigate the case and hold the directors personally liable, as well as to have the insolvency determined by the authorities.

The reasoning behind it: "Evergrande has defaulted, but has still not been officially declared completely insolvent," explains Dr. Marco Metzler, Chairman of the Board of Directors of FMPC Consulting AG. "As more and more distress sales are taking place and overdue bond interest is repeatedly not paid to foreign investors, we had to act in our own interest but also in the interest of all international creditors. If the local authorities do not officially declare insolvency, we intend to file a bankruptcy petition against Evergrande ourselves. This will happen as soon as we have an official, enforceable debt instrument against Evergrande in our hands. Until then, it may take a few more weeks."

As FMPC Consulting AG sees itself as the trustee of all international Evergrande creditors and in order to reduce the cost risk for each claimant, the company is offering other international creditors to join its proceedings, which took another step forward yesterday with the filing of the criminal claim in the Cayman Islands.

Incidentally, Metzler and Ewy are not alone in their view: China Evergrande Group was already officially downgraded to "partially insolvent" by international rating agencies at the beginning of December. Thus, the rating agency Fitch has assigned Evergrande a status of "Restricted Default" (RD). Similarly, rating agency Standard & Poor's downgraded the real estate developer to "Selective Default" (SD). All 23 of Evergrande Group's international bonds are affected by this selective default. The only rating worse for both agencies is "Default" (D) - complete default. This rating will be assigned at the latest when the Evergrande Group has been officially declared insolvent by a court.

This is exactly what FMPC Consulting AG and DMSA now want to achieve with their allegation of criminal conduct in order to prevent further asset transfers to the detriment of international creditors. The company has already sold shares and assets several times in a distress sale, knowing full well that it was making losses. Worse still, in recent months there have been multiple illegal transfers of assets, causing significant damage to the company's international creditors, as this illegal action is likely to have severely impacted their chances of recovering their assets.

For example, in November 2021, Evergrande sold its stake in the streaming service provider HengTen Network Group for the equivalent of 273.5 million US dollars. This "gave" Evergrande a loss of the equivalent of 1.09 billion US dollars. Incidentally, the stake was sold at a 24 percent discount to the closing price at the time of the acquisition. As a result, HenTen's share price plummeted by 24 percent.

In addition, Chinese authorities ordered Evergrande founder and chief executive Hui Ka Yan to sell some of his private assets - including high-end art, calligraphy and three properties - to compensate Chinese Evergrande bondholders. It is feared that this has led to unequal treatment of Evergrande creditors, as it is unclear whether creditors were given preferential treatment.

"In this respect, it would have been best for Evergrande's international creditors if the group itself had taken action earlier and filed an insolvency petition with a provisional restructuring plan in accordance with the bankruptcy laws of the Cayman Islands," explains DMSA CEO Michael Ewy. In his view, the management of Evergrande Holding has been guilty of delaying insolvency for some time now.

This is documented, for example, by the multiple definitive defaults on interest payments and the Group's official statement of December 3 on its dire financial situation. In Dr. Metzler's view, both the group's statement and the multiple final defaults on interest payments represent events of default for all 23 of the Evergrande conglomerate's outstanding international bonds with a face value of $23.7 billion. "Almost all of it will be lost," Dr. Metzler fears.

This is not changed by the fact that Evergrande said in late December that work had resumed on 92 percent of its projects, of which there are hundreds in China. That's because other data show that apartment sales have plummeted 99 percent compared to December 2020. In fact, there are indications that the government and regional authorities have been pushing hard to continue work on stalled projects. The reason: regional authorities in particular could themselves come under financial pressure if the projects prove unprofitable.

And where do we go from here? Dr. Metzler and Ewy see the Luckin Coffee insolvency proceedings as a blueprint here. "The case of the former Starbucks challenger from China could well prove to be groundbreaking for the China Evergrande Group," Ewy expects. Like Luckin Coffee, China Evergrande Group's holding company is registered in the Cayman Islands, he said. This gives it access to the restructuring procedure provided for there by law. This involves appointing provisional liquidators to work with the current management team to reach a settlement with creditors. During the provisional liquidation, the company can benefit from litigation being suspended to allow time to work out a settlement. This can be implemented if at least half of the creditors representing at least three quarters of the liabilities agree.

As with Luckin Coffee, Evergrande's shares are listed in Hong Kong, and bonds in both cases were also issued in U.S. dollars. "While this does not make the process any easier, as Cayman Islands provisional liquidators must be recognized in both Hong Kong and the US. But this route has already been successfully taken in the case of Luckin Coffee," Ewy knows, and continues, "For example, Luckin Coffee's provisional liquidators have indicated that a restructuring agreement is in place with bondholders. "This shows that it is possible for Cayman Islands-based holding companies of Chinese groups to restructure their debts with the help of provisional liquidators.

"However, the Evergrande management has so far completely negated this," explains Metzler. "However, after successful acceptance of our planned insolvency application, such a procedure can be considered again with our consent. We are open to constructive solutions." If the group refuses this approach, an insolvency administrator will be appointed to wind up the Evergrande Group and then begin liquidating the assets for investors and creditors. "Then the prices of all Evergrande securities - both bonds and shares - will fall to almost zero," predicts Dr. Metzler. "However, any distressed sales that began with the filing date can then be reversed."

In Dr. Metzler's view, there is virtually no hope for Evergrande's turnaround. "The restructuring analysis I have from Fitch Ratings - one of the three largest rating agencies in the world, where I started my career as a financial analyst years ago - assumes that Evergrande would be liquidated with a restructuring rate of zero to ten percent." That means creditors would get back a maximum of one-tenth of their invested capital - to the extent that access to assets in China is possible at all.

"The fact that even state-owned companies - such as Minmetals International Trust - are now rushing to Evergrande's financial aid, that company founder and CEO Huy Ka Yan is having to use private assets to save Evergrande under pressure from the Chinese government, and that the government itself sent high-ranking state officials to the group's executive suite weeks ago, thus de facto controlling the conglomerate since then, shows that the real estate giant is on fire," Dr. Metzler interprets the situation.

What's more: Evergrande is not the only one struggling financially at the moment. A number of other Chinese developers - such as Kaisa Group, Fantasia Holdings, Modern Land China, and Guangzhou R&F - are also having great difficulty refinancing. Some have also already experienced payment defaults.

No wonder that Ewy and Dr. Metzler consider the insolvency of Evergrande and other Chinese property developers to be inevitable. In their wake, there would then likely be a host of other bankruptcies. "To avoid internal unrest, China would be forced to return to a hard communist line," concludes Dr. Metzler. This would ultimately imply that all of China's international debt of around 585 billion U.S. dollars would no longer be serviced and that equity investments by foreign investors of around 600 billion U.S. dollars would also have to be written off completely - with devastating consequences for the global banking system and the entire world economy.

About Financial Market Partners Capital (FMPC) Consulting AG:

Financial Market Partners Capital (FMPC) Consulting AG, is a private investment and advisory firm based in Ruggell, Liechtenstein. As a single family office, FMPC Consulting AG invests exclusively its own funds of its owner, the Metzler family.

About the Evergrande investment of FMPC Consulting AG:

FMPC Consulting AG holds 200 units of EVERRE 10 ½ Bonds, April 11, 2024 (ISIN: XS19 8204 0641) with a total par value of US$200,000. These were purchased on November 01, 2021 for 50,000 US dollars via the house bank of FMPC Consulting AG and have since been held in custody at SIX Switzerland via the house bank in Liechtenstein. Already on November 10, 2021 an interest payment for this bond was missed.

About DMSA Deutsche Markt Screening Agentur GmbH:

DMSA Deutsche MarktScreening Agentur GmbH is an independent data service that collects and evaluates market-relevant information on companies, products and services. The research house, which has the same owner as FMPC Consulting AG, the Metzler family, sees itself as an advocate for consumers, private customers and private investors. For them, DMSA bundles important and decision-relevant information and prepares it in an easily understandable way. DMSA works with FMPC Consulting AG as needed.

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