

Hong Kong Companies Judge grants recognition order for “soft-touch” provisional liquidators of offshore company appointed for corporate restructuring

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“As is well known, other than schemes of arrangement, Hong Kong has no legislation that provides for corporate debt restructuring or rehabilitation. This unsatisfactory state of affairs has been the subject of much invariably adverse comment for two decades now. It is brought into unforgiving focus by the economic problems that Covid-19 is causing. It makes it all the more important that the courts of Hong Kong and the Special Administrative Region’s practitioners rise to the challenges we now face to find, within the flexibility of the common law, mechanisms to address the financial problems companies face.”¹

Mr Justice Harris, the current Companies Court Judge, made these comments when he handed down another landmark decision² to demonstrate his robust and pragmatic approach to handling requests by foreign liquidators for recognition in Hong Kong of their appointment by an overseas court.

Hong Kong already has an established procedure for foreign liquidators to apply to the Companies Court for a standard recognition order in respect of their appointment by a foreign Court. In straight-forward cases, applications may be made *ex parte* on paper and the Companies Court has prescribed a set of standard form orders it is willing to grant. In *Re China Oil Gangran Energy Group Holdings Ltd*,³ the Hong Kong Court was asked to grant a recognition order in respect of “soft-touch” liquidators appointed by the Cayman Court for the purpose of corporate restructuring, rather than liquidation.

China Oil Gangran Energy Group is a company incorporated in the Cayman Islands and listed on the Growth Enterprise Market of the Hong Kong Stock Exchange. The company itself applied to the Cayman Court for the appointment of “soft-touch” provisional liquidators with a view to undergo a restructuring exercise. In a “soft-touch” provisional liquidation, directors typically retain day-to-day control of the company but the provisional liquidators are kept apprised of the actions taken by the directors in the ordinary course of business.

Currently under Hong Kong law, following a decision in 2006 by the Court of Appeal in *Re Legend International Resorts Ltd*,⁴ the concept of “soft-touch” provisional liquidation is not permitted. Recognising that this is no longer conducive to the global economy we now live in and the increased number of cross-border insolvency cases that take place across multiple jurisdictions, Mr Justice Harris urged for an amendment of the current companies law to bring Hong Kong more in line with other similar jurisdictions. Drawing on case law precedent in the United States and Jersey, his Lordship was prepared to grant the recognition order in respect of a foreign “soft-touch” provisional liquidation. He also gave guidance to practitioners by providing a standard form order in his written Reasons for Decision which should simplify the process for applications going forward.

This is certainly a welcome decision for companies, liquidators, and legal practitioners alike in Hong Kong and continues to represent the open and transparent judicial system that Hong Kong is well known for.

The written Reasons for Decision can be accessed via this link.

1. Per Mr Justice Harris, *Re China Oil Gangran Energy Group Holdings Ltd* [2020] HKCFI 825, paragraph 9.↩

2. Shortly after a recent decision of Deputy High Court Judge William Wong SC at the Court of First Instance in March 2020 in *Joint Provisional Liquidators of Moody Technology Holdings Ltd* [2020] HKCFI 416.↩
3. [2020] HKCFI 825.↩
4. [2006] 2 HKLRD 192.↩

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