

Hong Kong Court approves first application by Mainland administrators for recognition in Hong Kong

January 17, 2020

On 13 January 2020, the Hong Kong Court of First Instance made an order recognising Mainland insolvency proceedings in respect of CEFC Shanghai International Group Limited (the “**Company**”) ¹, making it the first case of cross-border insolvency cooperation between the two jurisdictions.

The Company is a Mainland-incorporated investment holding company which was put into insolvent liquidation by the Shanghai Intermediate People’s Court, and has substantial assets in Hong Kong, including a claim of around HK\$7.2 billion against its Hong Kong subsidiary. After administrators (who have a similar role to liquidators in Hong Kong) were appointed by the Shanghai Court, they discovered that a creditor of the Company had obtained a garnishee order nisi over the Company’s receivables from the Hong Kong subsidiary for enforcement of a default judgment of some €29 million against the Company. In order to prevent the creditor from obtaining a garnishee order absolute, the administrators made an urgent application to the Hong Kong Court for recognition of their appointment and judicial assistance at common law.

In examining the administrators’ application, the Hong Kong Court laid down the following principles for granting recognition of foreign insolvency proceedings and assistance at common law:

1. As a pre-requisite for recognition, the foreign insolvency proceedings must be collective insolvency proceedings, and commenced in the company’s country of incorporation.
2. Upon the foreign insolvency proceedings being recognised, the Court will offer assistance to the foreign liquidators by applying Hong Kong insolvency law. It is important to note, however, that the Court would **not** grant a foreign liquidator, whose appointment it has recognised, all the powers available to a liquidator appointed by the Court pursuant to Hong Kong insolvency law. In this regard, the Court made it clear that the common law power of assistance is subject to the following parameters:
 - a. the power of assistance sought should not enable foreign liquidators to do something which they could not do under the law by which they were appointed;
 - b. the power of assistance is available only when it is necessary for the performance of the foreign liquidators’ functions; and
 - c. an order granting assistance must be consistent with the substantive law and public policy of the assisting court.

Applying the above principles, the Hong Kong Court was satisfied that the application met the relevant criteria and justified making of an order of recognition and assistance. In particular, the Court found that the Company’s liquidation under the PRC Enterprise Bankruptcy Law is a collective insolvency proceeding encompassing all of the debtor’s assets, and that the powers sought by the administrators are consistent with Mainland insolvency law and the standard recognition order granted by the Hong Kong Court. In this respect, the Court identified that there were considerable overlaps between the respective insolvency laws in the two jurisdictions, including the powers and duties of the liquidators/administrators, the imposition of a liquidation stay, and requirement of pari passu distribution of the

debtor's assets.

As the application was prompted by a garnishee order absolute having been applied for, the Court explored the impact the order for recognition and assistance has on the garnishee proceedings. In considering that it would generally be desirable that all of the debtor's assets are taken into the control of and administered by the foreign liquidators, the Court held that:

1. If a creditor commences garnishee proceedings in Hong Kong after the commencement of the foreign insolvency proceedings, the garnishee proceedings should be terminated, regardless of whether the creditor had obtained a garnishee order nisi before or after the grant of the order to recognise the foreign insolvency proceedings.
2. Even if a creditor has obtained a garnishee order nisi in Hong Kong before the commencement of the foreign insolvency proceedings, the Court retains a discretion to decline to make a garnishee order absolute.

Given Mainland businesses increasingly allocate assets overseas, we can expect that there will be more applications for recognition and assistance from Mainland administrators in future. Following this decision, future applicants may simply follow the relevant principles and template recognition order set out in the judgment, and make applications in writing, which the Hong Kong Court routinely accepts for applications from other common law jurisdictions. However, should a future applicant seek an order giving greater assistance at common law, the Court indicated that it will decide the application on a case by case basis and that the outcome is likely to be influenced by the extent to which the Court is satisfied that the Mainland system promotes a unitary approach to transnational insolvencies.

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1. Re the joint and several liquidators of CEFC Shanghai International Group Limited (In liquidation in the Mainland of the People's Republic of China) - [2020] HKCFI 167 ↩

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