

Case Bulletin: 2020/02

For the First Time, HK Court Recognizes and Assists Mainland Liquidation Proceedings

The Hong Kong Court of First Instance routinely grants orders of recognition and assistance to liquidators of companies incorporated in other jurisdictions appointed by the court of those jurisdictions. The Court has granted a considerable number of recognition and assistance orders, commonly in recent years to facilitate debt restructuring of Hong Kong listed companies incorporated in an off-shore jurisdiction.

For the first time, in *The Joint and Several Liquidators of CEFC Shanghai International Group Limited (上海华信国际集团有限公司)* [2020] HKCFI 167, the Court has granted an order to the administrators of a company in liquidation in the Mainland for recognition of their appointment and judicial assistance.

I. Background

1. CEFC Shanghai International Group Limited (“CEFC”) was a Mainland incorporated investment holding company. On 15 November 2019, the Shanghai No. 3 Intermediate People’s Court (“Shanghai Court”) ordered CEFC to go into insolvent liquidation. On 24 November 2019, the Shanghai Court appointed three Mainland law firms as the administrators (“Administrators”).
2. CEFC has substantial assets in Hong Kong, including a claim against its Hong Kong subsidiary, Shanghai Huaxin Group (Hong Kong) Limited (“Huaxin”) amounting to some HK\$7.2 billion. Huaxin is in liquidation in Hong Kong.

3. The Administrators discovered that on 24 August 2018, an investment fund obtained a default judgment against CEFC in Hong Kong for some €29 million (“Default Judgment”) and it sought to enforce the Default Judgment by way of a garnishee order.
4. In order to prevent the enforcement of the Default Judgment, the Administrators made an urgent application for recognition and assistance, supported by the Shanghai Court’s letter of request, and successfully adjourned the garnishee proceedings.

II. Key Points

1. The Court may grant recognition and assistance, if the foreign insolvency proceedings are collective in nature, in the sense that it is “*a process of collective enforcement of debts for the benefit of the general body of creditors*”.¹
2. Upon the foreign insolvency proceedings being recognized, the Court will grant assistance to the foreign officeholders by applying Hong Kong insolvency law. However, the power of assistance is not available to enable foreign officeholders to do something which they could not do even under the law by which they were appointed.
3. The Court has provided a standard-form recognition order to guide applicants. The applications are now normally made in writing. In the case of liquidators appointed in jurisdictions with similar insolvency regimes to Hong Kong, the assistance may extend to granting orders that give the foreign liquidators substantially similar powers to, for example, investigate the affairs of a company by examination and orders for the production of documents as a Hong Kong liquidator would have.²
4. Normally, if a debtor is in liquidation in Hong Kong, there will be a stay on proceedings including garnishee proceedings, and the same principle applies

¹ *Re Lines Bros Ltd* [1983] Ch 1, 20.

² *Re Joint Liquidators of Supreme Tycoon Ltd* [2018] HKCFI 277 § 12.

to the recognition of foreign proceedings in Hong Kong. The standard-from recognition order also include a stay on proceedings against the debtor in Hong Kong.

5. The Court decided not to follow a century old House of Lords authority *Galbraith v Grimshaw* [1910] AC 508, which had held that an English garnishee order *nisi* made before a Scottish bankruptcy order should be allowed to stand. The old case was concerned with legislation with no equivalent provision in Hong Kong, and the judge found that its analysis is inconsistent with modern cross-border insolvency law and practice.

III. Findings

The judge found that CEFC's Mainland liquidation is undoubtedly a collective insolvency proceeding demonstrated by the fact that the liquidation proceeding encompasses all of the debtor's assets, consistent with Article 30 of the Enterprise Bankruptcy Law ("EBL"). Furthermore, the Administrators made the recognition application, supported by the Shanghai Court's letter of request, to maintain the principle of collectively and the principle of *pari passu* distribution. Therefore, recognizing CEFC's Mainland liquidation is consistent with the Court's existing practice. The judge particularly noted that Articles 19, 25 and 113 of the EBL show the correspondence between Mainland insolvency law and Hong Kong insolvency law. A recognition and assistance order was made in the conventional terms, and a copy of the terms was annexed to the judgment.

There was no PRC law opinion in this case. In passing, the judge noted that he was not aware of any statutory provision or decision of the Supreme People's Court that explains with any certainty whether or not the Mainland system favours and promotes there being one bankruptcy in a transnational context and how in practice such cases would be approached. It appeared to him that Article 5 of the EBL envisages that there will be recognition of foreign liquidators as one would expect to be the case given the transnational business conducted by any Mainland businesses, however, he was not aware that any Mainland court has formally recognized a foreign insolvency proceeding in the way, which the Court in the present application explicitly does.

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