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Landmark order recognizes Hong Kong insolvency proceedings in Singapore

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The Singapore High Court has recently granted recognition to Hong Kong liquidation proceedings and liquidators for the first time under Singapore's enactment of the United Nations Commission on International Trade Law Model Law on Cross Border Insolvency (the model law). The model law, which was adopted by Singapore in May 2017 and first applied in the case of *Re: Zetta Jet Pte Ltd*[1], is the leading international initiative on the recognition of foreign insolvency and restructuring proceedings, and provides a clear framework for jurisdictions to recognize and assist foreign jurisdictions.

The application concerned the embattled Hong Kong energy company, Shanghai Huaxin Group (Hong Kong) Ltd. (Shanghai Huaxin), which entered into provisional liquidation in July 2018 and had a winding-up order made against it by the Hong Kong High Court in September 2018.[2] To facilitate the conduct of the Hong Kong proceedings, the liquidators applied to the Singapore High Court for recognition pursuant to Articles 2(f) and 17(2)(a) of the Tenth Schedule of the Companies Act (Cap.50)[3].

Following a hearing in the Singapore High Court on 14 July 2020, the Honorable Justice Kannan Ramesh handed down an order (the order) (available here) which recognized the Hong Kong liquidation proceedings as a foreign main proceeding pursuant to the model law.

In line with Article 20 of the model law, the effect of such recognition was, amongst other things, to stay the commencement or continuation of individual proceedings and/or execution action against Shanghai Huaxin and its assets in Singapore. The Hong Kong liquidators were also recognized as the foreign representatives of Shanghai Huaxin and pursuant to Article 21 of the model law, were granted broad powers to administer, realize, and distribute Shanghai Huaxin's Singapore assets.

While the judgment from this hearing has not yet been handed down, once available, we expect it to provide additional guidance for foreign liquidators in the future looking to rely on the model law for recognition and assistance.

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1 *Re: Zetta Jet Pte Ltd and others* [2018] SGHC 16

2 *Re Shanghai Huaxin Group (Hong Kong) Ltd* [2018] HKCFI 2082

3 Since repealed with effect from 30 July 2020 and re-enacted in the Insolvency, Restructuring, and Dissolution Act 2018, Third Schedule

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The decision follows a series of cases in Hong Kong, where the courts have granted recognition to mainland liquidators so they can perform their functions. In *Joint and Several Liquidators of CEFC Shanghai International Group Ltd* [2020] HKCFI 167, the Honorable Mr. Justice Harris declined to follow English precedent dating back more than a century by granting a stay on creditor proceedings in Hong Kong, reasoning that it was in line with modern thinking and practice in cross-border insolvency that a debtor's assets should be distributed as part of a single proceeding.[4]

That was followed by *Moody Technology Holdings Ltd* [2020] 2 HKLRD 187, which concerned a Bermuda-domiciled company listed on the Hong Kong Stock Exchange. Liquidators were appointed by the Supreme Court of Bermuda and an application was then made to the Hong Kong courts to have their appointment formally recognized. Mr. Justice Harris saw fit to dispel any confusion that may have been brought about by the judgment in *Re Legend International Resorts Ltd* [2006] 2 HKLRD 192, and provided a comprehensive explanation for the ongoing recognition of "soft touch" provisional liquidators.[5]

In *Re Liquidator of Shenzhen Everich Supply Chain Co, Ltd* [2020] HKCFI 965, Mr. Justice Harris pursued the theme by again granting recognition and assistance to a mainland-appointed liquidator, extending the scope of the order made previously in *Clean Energy Finance Corporation Shanghai*.[6]

Question of standing – Singapore and Hong Kong

In the case of *Re PT MNC Investama TBK* [2020] SGHC 149 the Singapore High Court also recently provided clarity on the factors to be considered when determining whether a foreign company has standing to apply to be restructured or wound up in Singapore.

In order to establish standing, a company must show a "substantial connection" to Singapore. The Insolvency, Restructuring, and Dissolution Act 2018[7] (the Insolvency Act) sets out a list of factors that are generally considered by the court in making this determination. As is the case under the model law, one of the key ways standing is generally established is if Singapore is the center of main interests of the foreign company. However, a substantial connection with Singapore can also be established by showing the company is carrying on business in Singapore, has substantial assets in Singapore, and/or has submitted to the jurisdiction of the Singapore High Court.

None of the prescribed factors in the Companies Act applied to the company in question in *Re PT MNC Investama TBK* [2020] SGHC 149; its business activities, control, and administration were in Indonesia, the secured notes that it had issued in Singapore were governed by New York law (notes), and there had been no submission to Singapore law. However, a substantial connection with Singapore was established on the basis that the notes were being traded on the Singapore stock exchange. The judge observed that the list of factors set out in the Companies Act to demonstrate a substantial connection is not exhaustive and comprises activities that involve some level of permanence. Activities that are merely transient in nature are excluded.

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4 See Hogan Lovells alert – *A welcome red packet – Hong Kong Court recognizes Mainland Chinese administrators for the first time*

5 See Hogan Lovells alert – *A soft touch – Hong Kong Court recognizes foreign appointed provisional liquidators for company restructuring*

6 See Hogan Lovells alert – *Round 2 – Hong Kong Court grants recognition of Mainland insolvency proceedings for the second time*

7 Section 246 (*Winding up of unregistered companies*), formerly contained in the Singapore Companies Act (Cap. 50)

The Singapore High Court concluded that having securities traded on the Singapore stock exchange, was akin to having a business activity that is not merely transient. In addition, the fact that the company was subject to Singapore listing laws and regulations was also deemed to be a strong indicator of a substantial connection to Singapore. On this basis, the company was granted standing in Singapore to seek a moratorium in Singapore for the purposes of proposing a scheme of arrangement to its creditors under the Companies Act.

The question of the factors to be considered when determining whether a foreign company may be wound up in Hong Kong has recently been revisited by the Hong Kong courts in *Champ Prestige International Ltd v. China City Construction (international) Co Ltd* [2020] HKCFI 355. A fuller publication on this will follow shortly.

These cases provide welcome guidance on the key issues around recognition under the Singapore's enactment of the model law and the standing of foreign companies in connection with Singapore restructuring and insolvency proceedings, and demonstrate the continued focus of both Singapore and Hong Kong on developing a robust cross-border restructuring framework.

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