

A new era of mutual recognition of insolvency proceedings between Hong Kong and Mainland China

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Under the constitutional principle of 'one country, two systems' after the reunification in July 1997, the Special Administrative Region of Hong Kong retained its common law legal system. This system is quite different from the socialist legal system in Mainland China. Given that neither Mainland China nor Hong Kong have adopted the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross-border Insolvency, this has created a legal void for mutual recognition of insolvency proceedings between the two jurisdictions.

This article discusses:

- the extent to which the Hong Kong Court will recognise Mainland insolvency proceedings;
- the historical development of recognition of Hong Kong insolvency proceedings in Mainland China; and
- the latest developments with mutual recognition of insolvency proceedings under the 'Record of Meeting on Mutual Recognition of and Assistance to Bankruptcy (Insolvency) Proceedings between the Courts of the Mainland and of the Hong Kong Special Administrative Region', signed on 14 May 2021.

The Greater Bay Area (GBA) initiative is an ambitious scheme to link the nine cities in Guangdong's Pearl River Delta, Hong Kong and Macau into an integrated economy and world-class business hub. Leveraging each city's individual strengths, the project will oversee improved transport infrastructure, the creation of an international innovation and technology centre, and the development of a globally competitive modern industrial system, while promoting the free flow of people, goods, capital and information within the region.¹

As major trading partners, trade between Hong Kong and Mainland China is strong. Hong Kong has always been one of Mainland China's largest sources of foreign direct investment; similarly, Hong Kong has been a major recipient of direct investment from Mainland China. For example, Mainland China's share of Hong Kong's global trade was at 50.8 per cent (US\$544.8bn) in 2019 and Hong Kong was Mainland China's second largest export market accounting for 11.2 per cent (US\$278.3bn) of its total exports in 2019.²

Mainland companies also maintain a strong physical presence in Hong Kong. As of June 2020, Mainland companies had established 1,986 regional headquarters/ regional offices/ or local offices in Hong Kong.³

However, unlike other famous Bay Areas, such as the Tokyo Bay Area and the San Francisco Bay Area, each of which has a unitary legal and political system, the GBA has a unique socio-economic and legal profile including three different legal systems, currencies and customs.

To further complicate matters in an insolvency context, neither Hong Kong nor Mainland China have adopted the United Nations Commission on International Trade Law Model Law on Cross-border Insolvency (the 'UNCITRAL Model Law'), and there were historically no formal protocols or arrangements to facilitate the smooth and consistent handling of liquidations of companies with business and assets traversing the territorial borders within the GBA.

There is no statutory provision in Hong Kong mandating the recognition of the appointment of a company's insolvency office holder (eg, trustee in bankruptcy, liquidator, provisional liquidator or administrator) appointed in insolvency proceedings outside Hong Kong, or providing judicial assistance to them. Rather, the High Court of Hong Kong ('Hong Kong Court') has developed a set of common law principles to assist in this area of cross-border insolvency.

A series of judgments from the Hong Kong Court (discussed below) in recent years confirms that it can and will recognise collective insolvency proceedings commenced in a company's place of incorporation outside Hong Kong.

The Hong Kong Court has even developed a standard practice on applications for recognition and assistance, including a 'standard-form recognition order'.⁴ This empowers the insolvency office holder to, among other things:

- take possession and control of the company's property in Hong Kong;
- investigate its affairs in Hong Kong;
- bring proceedings in Hong Kong; and
- provides for a stay of the commencement or continuation of proceedings against the company or its assets in Hong Kong except with the leave of the Hong Kong Court.

The Hong Kong Court has adopted the legal concept of 'modified universalism' in relation to corporate insolvency (which broadly underpins the UNCITRAL Model Law) to 'recognise and assist' foreign insolvency office holders. This essentially means that the Hong Kong Court will, so far as is consistent with justice and public policy, cooperate with the courts in the country of the principal liquidation to ensure that all the company's assets are distributed to its creditors through a single system of distribution. It is important to note that the Hong Kong Court does *not* currently require mutual reciprocity with relevant foreign 'lead' jurisdictions.

Likewise, the Mainland Court will explore the possibility of utilising the built-in provisions of its Enterprise Bankruptcy Law (EBL), which came into force in Mainland China on 1 June 2007.

Recognising the practical problems that arise from what is essentially a legal 'void' or lack of legal mechanism for mutual recognition of insolvency proceedings and assistance to enable insolvency office holders to exercise their powers, on 14 May 2021, the Supreme People's Court (SPC) and the Secretary of Justice of Hong Kong signed a formal record which signifies a consensus on the mutual recognition of, and assistance with, insolvency proceedings between the two jurisdictions (see below).

There can be no doubt that a practical and positive attitude towards cooperation between the courts in Mainland China, Hong Kong and Macao will significantly promote the effective handling of any cross-border insolvency of companies with business and assets within the GBA.

Recognition of Mainland insolvency proceedings by the Hong Kong Court

On 18 December 2019, the Hong Kong Court heard the first ever application by Mainland Administrators for recognition of their appointment and judicial assistance in Hong Kong under common law – *Re CEFC Shanghai International Group Limited (Mainland liquidation)*.⁵

CEFC Shanghai International Group Limited (CEFC), a Mainland-incorporated investment holding company, was placed into liquidation by the Shanghai No.3 Intermediate People's Court (the 'Shanghai Court'). The Shanghai Court appointed three law firms in Mainland China as administrators. The CEFC administrators performed a similar role to court-appointed liquidators in Hong Kong.

CEFC's assets in Hong Kong included a significant claim (HK\$7.2bn) against its Hong Kong subsidiary (the 'CEFC HK subsidiary'). The CEFC administrators discovered that a creditor of CEFC had obtained a default judgment in Hong Kong against CEFC, and successfully obtained a garnishee order *nisi* against the CEFC HK subsidiary. Given the pending 'show cause' hearing for a garnishee order to be made absolute, the CEFC administrators urgently applied to the Hong Kong Court for recognition and assistance in order to stay the garnishee proceedings to maintain fairness between all CEFC's creditors. The Shanghai Court also issued a letter of request to support the application by the CEFC administrators.

The Hong Kong Court re-affirmed that, before it would recognise foreign court-appointed administrators or liquidators and provide necessary judicial assistance, the following criteria must be satisfied: (1) The foreign insolvency proceedings are collective insolvency proceedings; and (2) the foreign insolvency proceedings have been opened in the company's country of incorporation. The criteria remain the same whether the recognition request comes from a common law jurisdiction (eg, the Cayman Islands) or a civil law jurisdiction (eg, Mainland China).

With respect to the 'collective insolvency proceedings', the Hong Kong Court stated that 'the Company's Mainland liquidation is undoubtedly a collective insolvency proceeding. This is demonstrated by the fact that the liquidation proceeding encompasses all of the debtor's assets (Article 30 of the [EBL]).'

The Hong Kong Court also stated that recognising foreign insolvency proceedings and providing assistance did not mean that the Court would grant a foreign liquidator/administrator all the powers that are available to liquidators in Hong Kong under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (CWUMPO).

The common law power of assistance is subject to three limitations:

- the power of assistance is not available to enable the foreign office holder to do something which they could not do under the insolvency law of their ‘home’ jurisdiction;
- the power of assistance is available only when it is necessary for the performance of the foreign office holders’ functions; and
- an order granting assistance must be consistent with the substantive law and public policy of the assisting court (ie, the Hong Kong Court).

The Hong Kong Court also made the following observations on key similarities between insolvency regimes in Mainland China and Hong Kong:

- Article 25 of the EBL sets out the powers and duties of administrators that correspond to the powers and duties of liquidators in Hong Kong;
- Article 19 of the EBL imposes a stay of proceedings, which is similar to the Hong Kong liquidation stay; and
- Article 113 of the EBL requires *pari passu* distribution of the debtor’s assets, which is consistent with the Hong Kong insolvency regime.

The Hong Kong Court concluded that the powers sought by the CEFC Administrators were consistent with the Mainland’s insolvency law and the standard-form recognition order. The Hong Kong Court agreed to recognise the CEFC Administrators and granted them the conventional powers set out in the standard-form recognition order (conventional powers).

There is no requirement under common law principles that recognition and assistance require demonstration of reciprocity. However, the Hong Kong Court emphasised that any future development of recognising administrators appointed by the Mainland Court will depend on the extent to which the Mainland Courts promote a unitary approach to cross-border insolvency (to avoid having separate liquidations in multiple jurisdictions).

Within three months after the judgment in *Re CEFC Shanghai International Group Limited*, there was another application for recognition of an insolvency appointment from a Mainland administrator to the Hong Kong Court – *Re Shenzhen Everich Supply Chain Co Ltd (in liquidation in the Mainland)*.⁶

Shenzhen Everich Supply Chain Co, Ltd (Shenzhen Everich) is a Mainland-incorporated company, which had been placed into liquidation by the Bankruptcy Court in Shenzhen (the ‘Shenzhen Bankruptcy Court’). The administrator of Shenzhen Everich was required to take control and manage the affairs of two Hong Kong subsidiaries as part of the liquidation of Shenzhen Everich. These subsidiaries held substantial assets in Hong Kong (cash in bank accounts and substantial external trade receivables).

In addition to the Conventional Powers, the Everich administrator asked the Hong Kong Court for the express power ‘to take control of and exercise all rights that the Company may have in relation to any of its subsidiaries, joint ventures, associated companies or other entities in which the Company has an interest (whether directly or indirectly)’. The Everich administrator intended to use this express power primarily to gain control of the company’s subsidiaries in Hong Kong which held very significant external trade receivables.

The Hong Kong Court applied the principles in *Re CEFC Shanghai International Group Limited*, ordering that the Everich administrator should be recognised. It also granted the Everich administrator the conventional powers and the express power to take control of the subsidiaries in Hong Kong.

The Hong Kong Court took the opportunity to reiterate that future applications and letters of request issued by the Mainland Court should be drafted in a way which reflects the form of order approved in *Re CEFC Shanghai International Group Limited*.

Position in Hong Kong

It now seems settled that the Hong Kong Court accepts that insolvency proceedings in Mainland China are ‘collective insolvency proceedings’. As such, for companies incorporated in Mainland China, insolvency proceedings in Mainland China satisfy the two essential criteria to enable insolvency office holders to obtain recognition and assistance from the Hong Kong Court, that is: (1) the foreign insolvency proceedings are collective insolvency proceedings; and (2) the foreign insolvency proceedings were opened in the company’s country of incorporation.

With respect to the express power granted to the Everich administrator, it is arguable that such power was not strictly necessary since the conventional powers would allow the Everich administrator to ‘take into possession and control all assets in Hong Kong of the company under liquidation’ (which would include any subsidiaries of Shenzhen Everich in Hong Kong).

In any event, the willingness of the Hong Kong Court to be flexible when considering requests from Mainland insolvency office holders for express powers, other than the conventional powers, is a positive development. The Hong Kong Court will usually always expect a foreign insolvency office holder to support a request with credible evidence on the relevant legal regime to substantiate the requests.

Historic recognition of Hong Kong insolvency proceedings in Mainland China

In *Re CEFC Shanghai International Group Limited*, the Hong Kong Court noted that Article 5 of the EBL appears to be the closest statutory provision that will potentially empower the Mainland Court to recognise foreign insolvency proceedings.⁷

Article 5 of the EBL⁸ states:

‘Once the procedure for bankruptcy is initiated according to this Law, it shall come into effect in respect of the debtor’s property outside of the territory of the People’s Republic of China.

Where a *legally effective judgment or ruling made on a bankruptcy case by a court of another country* involves a debtor’s property within the territory of the People’s Republic of China and the said court applies with or requests the people’s court to recognise and enforce it, the people’s court shall, *according to the relevant international treaties that China has concluded or acceded to or on the basis of the principle of reciprocity*, conduct examination thereof and, when believing that the said judgment or ruling does not violate the basic principles of the laws of the People’s Republic of China, does not jeopardise the sovereignty and security of the State or public interests, does not undermine the legitimate rights and interests of the creditors within the territory of the People’s Republic of China, *decide to recognise and enforce the judgment or ruling.*’ (emphasis added)

Importantly, the ‘*principle of reciprocity*’ is a relevant factor for the Mainland Court to recognise a ‘*judgment or ruling made on a bankruptcy case by a court of another country*’.

In September 2011, a Hong Kong liquidator applied to the Mainland Court to recognise a winding-up order issued by the Hong Kong Court. Both the Beijing Intermediate People’s Court and the Beijing Higher People’s Court had conditionally approved the application. However, due to complex legal issues and lack of precedents for such recognition, the Higher People’s Court requested the SPC to confirm *inter alia* what Mainland law would be applicable to recognise the winding-up order issued by the Hong Kong Court.⁹

In its official reply, the SPC indicated that there was no legal basis for the Mainland courts to recognise the particular winding-up order issued by the Hong Kong Court and, more generally, that a winding up order did *not* constitute a foreign judgment for the purpose of Article 5 of the EBL.¹⁰

Subsequently, in September 2020, three judges of the Shenzhen Bankruptcy Court (which is part of the Shenzhen Intermediate People’s Court) wrote an article¹¹ indicating that the Mainland courts may have changed course and that future recognition of Hong Kong liquidators can be anticipated. Referring

to earlier judgments of the Hong Kong Court, they concluded the article by stating:

‘The Hong Kong Courts in the Nianfu case, and previously in the Guangxin case and the Huaxin case, have shown an open attitude towards recognition and assistance to Mainland insolvency proceedings. This provides a basis for the Mainland courts to hear applications for recognition and assistance from Hong Kong liquidators in the future on the principle of reciprocity. The exploration and accumulation of mutual recognition and assistance by the courts of the two places will inevitably promote future promulgation of cross-border judicial cooperation arrangements for insolvency matters across the border.’

It is relevant to note also that the Shenzhen Bankruptcy Court was established fairly recently (in 2019) with a mandate from the SPC to rule on ‘cross-border’ cases and ‘other cases that fall within its jurisdiction’.¹² The Shenzhen Bankruptcy Court states that it will provide ‘powerful judicial services and guarantees for Greater Bay Area development’.¹³

The comments from the judges of the Shenzhen Bankruptcy Court provide both insight and optimism for how the Bankruptcy Court may handle future cross-border insolvency cases from Hong Kong.

Potential ‘test case’ for reciprocity in Mainland China

On 23 October 2020, the Hong Kong Court ruled on the first ever application by a petitioner for the appointment of provisional liquidators (over a Hong Kong-incorporated company) with the express purpose of seeking recognition of their appointment in Mainland China. The provisional liquidators asked for this power to enable them to seek to recover substantial receivables owed to the company by its debtors in Mainland China – *Re Ando Credit Limited*.¹⁴

The Hong Kong Court referred to the Proposed Framework for Co-operation with the Mainland in Corporate Insolvency Matters issued by the Department of Justice on 22 June 2020,¹⁵ which states:

‘It is anticipated that in the near future a protocol will be entered into between Hong Kong and the [SPC] which will provide for such mutual recognition. Any application made by the provisional liquidators of [Ando Credit Limited] is likely to move in tandem with the finalisation and implementation of that protocol.’

The Proposed Framework specifically referred to the SPC’s decision in 2011 that Article 5 of the EBL ‘does not appear to apply to the recognition of a winding up order given by a Hong Kong court’.

The Hong Kong Court also referred to the article (an English translation of the article is appended to the written decision) and granted the application to appoint provisional liquidators.

That the Hong Kong Court agreed to appoint the provisional liquidators with the express purpose of seeking recognition in Mainland China may suggest that the Hong Kong Court is optimistic that the Hong Kong provisional liquidators will ultimately be recognised by the Mainland Court.

The decision in *Re Ando Credit Limit* also suggests that there may have been some positive developments 'behind the scenes' with the negotiation of the protocol for mutual recognition between Hong Kong and Mainland China.

Formal mutual recognition of insolvency proceedings between Mainland China and Hong Kong

On 14 May 2021, the SPC and the Hong Kong SAR Government signed the Record of Meeting on Mutual Recognition of and Assistance to Bankruptcy (Insolvency) Proceedings between the Courts of the Mainland and of the Hong Kong Special Administrative Region (the 'Record'), representing a consensus between the two jurisdictions on the mutual recognition and assistance of insolvency proceedings.

The SPC and the Hong Kong SAR Government have each issued an opinion and practical guide to give further guidance on the matter.

The main features of 'The Supreme People's Court's Opinion on Taking Forward a Pilot Measure in relation to the Recognition of and Assistance to Insolvency Proceedings in the Hong Kong Special Administrative Region' (the 'SPC Opinion') are as follows:

- Shanghai Municipality, Xiamen Municipality and Shenzhen Municipality are designated as 'pilot' areas given their close trade ties to Hong Kong, and the Intermediate People's Courts of these areas may recognise and assist Hong Kong insolvency proceedings;
- Hong Kong insolvency proceedings include compulsory winding-up proceedings and creditors' voluntary winding-up proceedings commenced in accordance with CWUMPO and scheme of arrangement promoted by a liquidator or provisional liquidator and sanctioned by the Hong Kong Court in accordance with Section 673 of the Companies Ordinance (Cap. 622);
- the recognition applies to both provisional liquidators and liquidators in the Hong Kong Insolvency Proceedings;
- the SPC Opinion will only apply to Hong Kong insolvency proceedings where the centre of main

interests (COMI) of the insolvent company is in Hong Kong continuously for at least six months. COMI will generally be determined by the place of incorporation of the insolvent company. However, the People's Court will also take account of other factors, such as the place of principal office, the principal place of business and the place of principal assets of the insolvent company;

- the insolvent company must have a place of business or a representative office in one of the pilot areas;
- after the People's Court recognises the Hong Kong insolvency proceedings, payment of debts made by the insolvent company to individual creditors shall be invalid;
- after the People's Court recognises the Hong Kong insolvency proceedings, any civil action or arbitration involving the insolvent company that has started but has not yet been concluded shall be suspended. However, such action or arbitration can proceed after the Hong Kong Administrator takes over the insolvent company's property; and
- after the People's Court recognises the Hong Kong insolvency proceedings, it may, upon application from the Hong Kong administrator, decide to allow them to perform the following duties in Mainland China:
 - taking over the property, seals, account books, documents and other data of the insolvent company;
 - investigating the financial position of the insolvent company and preparing a report on such position;
 - deciding on the matters of the insolvent company's internal management;
 - deciding on day-to-day expenses and other necessary expenditures;
 - before the holding of the first creditors' meeting, deciding whether to continue or suspend the business of the insolvent company;
 - managing and disposing of the insolvent company's property;
 - participating in legal actions, arbitrations or any other legal proceedings on behalf of the insolvent company;
 - accepting declaration of claims by creditors in Mainland China and examining them; and
 - performing other duties that the People's Court considers that they may be so allowed.
- the performance of the above duties by a Hong Kong administrator which involves waiver of property rights, creation of security on property, loan, transfer of property out of Mainland China and other acts for disposing of the property that has a major impact on the creditors' interest require separate approval by the People's Court.

Subsequently, on 20 July 2021, Justice Harris handed down his decision in *Re Samson Paper Company Limited*

(in *Creditors' Voluntary Liquidation*),¹⁶ approving the first application for a letter of request to be issued by the Hong Kong Court for judicial assistance to facilitate the liquidators to be recognised by the Shenzhen Bankruptcy Court under the Record.

Justice Harris confirmed that the Hong Kong Court has an inherent jurisdiction under common law to issue a letter of request in order to permit Hong Kong liquidators to seek recognition and assistance in another jurisdiction for judicial assistance.

In determining whether it should issue a letter of request, the Hong Kong Court would consider whether Hong Kong is the most appropriate or convenient forum for determining the issue in question. In the present case, the Hong Kong Court agreed that it would be appropriate to issue a letter of request, for the following reasons:

- the liquidators had shown that the company had substantial assets in Mainland China, principally located in Shenzhen;
- the liquidators had a duty to collect company's assets;
- the liquidators have an express statutory power to commence legal proceedings (in Hong Kong and elsewhere) to recover assets; and
- the assistance from the Shenzhen Bankruptcy Court related to conventional asset collection action.

In his decision, Justice Harris also noted from the SPC Opinion that two documents from the Hong Kong Court are necessary for the Shenzhen Bankruptcy Court to consider whether to recognise Hong Kong liquidators, namely: (1) a letter of request for judicial assistance; and (2) a judgment determining that a letter of request should be issued.

Accordingly, Justice Harris specifically stated in the decision that:

'it is desirable that the Liquidators' appointment should be recognised and assisted in Shenzhen ... the criteria for issuing a letter of request are satisfied in the present case ... this is a proper case for a letter of request to be issued by the Hong Kong Court to the Shenzhen Court requesting that the Shenzhen Court make an order recognising the Liquidators and providing assistance to them.'

On 6 September 2021, the Shenzhen Intermediate People's Court announced that it had received the request of the liquidators to be recognised and assisted in Mainland China on 30 August 2021.¹⁷ This is the first request that the Mainland judiciary has received pursuant to the Record. So far as we are aware, there has not yet been any formal ruling on the request from the Shenzhen Bankruptcy Court.

UNCITRAL Model Law and the Record

As stated above, neither Hong Kong nor Mainland China have adopted the UNCITRAL Model Law, although the Hong Kong Court has adopted the legal concept of 'modified universalism' in relation to corporate insolvency to 'recognise and assist' foreign insolvency office holders. Therefore, the record represents a special recognition protocol between the two jurisdictions under the 'one country, two systems' principle, and is unlikely to be replicated between Mainland China and other jurisdictions.

Having said that, in formulating the Record, the Department of Justice in Hong Kong has made references to and has been influenced by the mechanisms for dealing with cross-border insolvency in the UNCITRAL Model Law.

It was initially suggested that in the Proposed Framework that, like the UNCITRAL Model Law, insolvency proceedings commenced in Hong Kong may be recognised by the Mainland Court either as 'main' or 'non-main' proceedings, with the determining factor being the COMI of the company in question:

'25(1). Where a debtor company's 'Centre of Main Interests' (COMI) is in Hong Kong, insolvency proceedings commenced in Hong Kong may be recognised by a Mainland court as main proceedings upon which a variety of assistance may, in principle, be granted by the Mainland court to 'insolvency office-holders' appointed in such proceedings.

28. The definition of COMI is suggested to be formulated along the lines as provided under Article 16 of the UNCITRAL Model Law... interpreted in light of the comments set out in [paragraphs 145 to 147 of] the Guide to Enactment and Interpretation of the Model Law. The COMI of a company incorporated in Hong Kong would be presumed to be in Hong Kong.

33. ...if the Mainland court is satisfied that the debtor's COMI is not in Hong Kong, it may, at its discretion, grant such assistance as necessary to protect the assets of the debtor in the Mainland or the interests of the creditors. It is further contemplated that suitable reference would be made to Article 21 of the Model Law...'

The above suggestion ultimately did not find its way fully into the current mutual recognition regime, as it is clearly stated in the SPC Opinion that the People's Court would only recognise or assist Hong Kong insolvency proceedings if the COMI of the company in question is situated in Hong Kong¹⁸ – that is, that only 'main' proceedings would be recognised. It remains to be seen whether the Mainland Court will broaden the scope of recognition to include 'non-main' proceedings as Hong Kong and Mainland China take steps in the future to 'persistently improve the mechanism' and 'progressively expand the scope of the pilot areas' as contemplated under Article 5 of the Record.

Conclusion

The milestone case of *Re CEFC Shanghai International Group Limited* was the first formal recognition by the Hong Kong Court of a Mainland insolvency proceeding. It represents a significant leap forward as regards judicial cooperation between Hong Kong and Mainland China.

The subsequent case of *Re Shenzhen Everich Supply Chain Co Ltd* also shows that the Hong Kong Court continues to be flexible and adaptable to accommodate the practical needs of Mainland administrators to perform their duties for the benefit of creditors.

On 14 May 2021, the SPC and the Secretary of Justice of Hong Kong entered into a ‘cooperation mechanism’ in the form of the Record, which provides a procedure for mutual recognition of insolvency process and liquidators between Hong Kong and (for now) Shenzhen, Shanghai and Xiamen.

Subsequently, on 20 July 2021, the Hong Kong Court in *Re Samson Paper Company Limited (in creditor’s voluntary liquidation)* allowed the first application for a letter of request to be issued to the Mainland judiciary for formal recognition.

On 6 September 2021, the Shenzhen Intermediate People’s Court announced that it has received the request of the Liquidators of Samson Paper Company Limited to be recognised and assisted in Mainland China on 30 August 2021. Assuming that the Shenzhen Bankruptcy Court acts upon the letter of request, it will be the first occasion on which a court in Mainland China has formally recognised and assisted a liquidator appointed by the Hong Kong High Court – a milestone development in cross-border corporate insolvency cooperation between Hong Kong and Mainland China.

The recognition of Hong Kong insolvency office holders in Mainland China would undoubtedly reinforce Hong Kong’s position as a major financial and debt restructuring centre. Judicial co-operation between the Hong Kong courts and the Mainland courts would facilitate Hong Kong in maintaining its status as one of the world’s leading financial centres and a true ‘gateway’ to Mainland China for many years to come.

Notes

- 1 ‘Greater Bay Area Overview’ (Constitutional and Mainland Affairs Bureau), see www.bayarea.gov.hk/en/about/overview.html, accessed 8 October 2021.
- 2 ‘Greater Bay Area – Hong Kong’ (Constitutional and Mainland Affairs Bureau), see www.bayarea.gov.hk/en/about/hongkong.html, accessed 8 October 2021.
- 3 *Ibid.*
- 4 The standard form recognition order is set out in *Re Joint and Several Liquidators of Pacific Andes Enterprises (BVI) Ltd* [2017] HKCU 245 and further revised in *Re Joint Provisional Liquidators of Hsin Chong Group Holdings Ltd* [2019] HKCFI 805.
- 5 *Re CEFC Shanghai International Group Limited* [2020] HKCFI 167.
- 6 *Re Shenzhen Everich Supply Chain Co Ltd* [2020] HKCFI 965.
- 7 *Supra* 5.
- 8 Enterprise Bankruptcy Law of the People’s Republic of China, see http://english.www.gov.cn/services/doingbusiness/202102/24/content_WS6035f009c6d0719374af97ad.html, last accessed 17 October 2021.
- 9 ‘Reply of the Supreme People’s Court to the request for instructions for the application from Norstar Automobile Industrial Holdings Ltd to recognise a court order of the Hong Kong Special Administrative Region’ (isheng.net) <http://ms.isheng.net/index.php?doc-view-27746>, accessed 8 October 2021.
- 10 *Ibid.*
- 11 ‘Practical exploration of cross-border bankruptcy between the Mainland and Hong Kong’ (The People’s Judicature, 11 September 2020), see <https://wemp.app/posts/c4ee81da-dfc9-45e3-b440-fcf9d88d47c1>, last accessed 17 October 2021.
- 12 ‘Shenzhen’s new bankruptcy court could track assets transferred to Hong Kong’ (South China Morning Post, 17 January 2019).
- 13 *Ibid.*
- 14 *Re Ando Credit Ltd* [2020] HKCFI 2775.
- 15 ‘Legislative Council Panel on Administration of Justice and Legal Services – Proposed Framework for Co-operation with the Mainland in Corporate Insolvency Matters’ (Department of Justice, June 2020).
- 16 [2021] HKCFI 2151
- 17 See <https://finance.sina.com.cn/tech/2021-09-07/doc-iktzscyx2726232.shtml>, accessed 8 October 2021.
- 18 Article 18 of the SPC Opinion.

About the authors

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Pui Yip Leung was admitted as a solicitor in Hong Kong in 2017. Prior to joining the firm, he completed his traineeship with a leading PRC law firm in Hong Kong where he was engaged in a wide spectrum of practice areas including dispute resolution, corporate finance and private wealth management. He has advised local and international clients on matters relating to corporate insolvency, breach of directors' duties, shareholders' disputes, breach of debt instruments, sale of goods disputes, employment disputes and enforcement of judgments and arbitral awards in Hong Kong. He also has experience in PRC cross-border disputes and international arbitrations.

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