



Hong Kong Court Backs Mainland Liquidation in Shanghai: First Ruling after the Cooperation Mechanism

Introduction

The High Court of the Hong Kong Special Administrative Region recently issued a judgment (HCMP 298/2025) recognizing and assisting the liquidation proceedings of 上海昇奕科城实业有限公司 (the "**Company**"), a company incorporated in Shanghai and in liquidation in the Mainland China.

This is the first decision of the Hong Kong Court, upon request for assistance by the Shanghai No. 3 Intermediate People's Court (the "**Shanghai Court**"), a court in the pilot areas under the Cooperation Mechanism (defined below), recognising the liquidation of a Shanghai company and appointment of its administrator, and giving assistance to the administrator after the mutual recognition of and assistance to insolvency proceedings between the Courts of the Mainland China and Hong Kong has come into effect in 2021 (the "**Cooperation Mechanism**").

Background

The Company was placed into liquidation by the Shanghai Court on 30 September 2024 due to its inability to repay debts exceeding RMB 1.9 billion owed to a creditor, and Shanghai K-Insight Law Firm (上海市金石律師事務所) was appointed by the Shanghai Court as the administrator (the "**Administrator**") of the Company to oversee the liquidation.

The Company held significant assets in Hong Kong, including:- (1) 100% direct shareholding in a Hong Kong subsidiary (which holds a bank account in Hong Kong with a balance of at least USD 60 million (the "**Bank Account**")); (2) 21.84% direct shareholding in another Hong Kong subsidiary ((1) and (2) collectively as the "**Shares**"); and (3) indirect shareholding in a Hong Kong subsidiary.

The Administrator encountered resistance when attempting to take control of the Hong Kong assets of the Company, including:- (1) challenge to the power of the Administrator; (2) challenge to the appointment of the Administrator based on conflict of interests and incompetency by the Company's shareholders in the Shanghai Court; (3) disputed appointment of directors by the Company (acting via the Administrator) at the Hong Kong subsidiary level by its former management; and (4) unauthorised transfer attempts from the Bank Account.

The Court's Decision

The Hong Kong Court of First Instance, presided over by the Honourable Madam Justice Linda Chan, granted an order for recognition of liquidation of the Company and appointment of the Administrator, and gave assistance to the Administrator based on the following key findings:

1. Criteria for Recognition are met:

- **Collective Insolvency Proceedings:** The liquidation of the Company in the Mainland qualifies as collective insolvency proceedings under Hong Kong common law principles.



- **Centre of Main Interest (COMI):** The Company's COMI was in the Mainland, where it was incorporated and conducted primary business operations.
- **Necessity and Public Policy:** The order was necessary to secure assets and investigate the Company's affairs, aligning with Hong Kong's insolvency framework and public policy.

2. Acceptance of findings of the Shanghai Court

The Hong Kong Court accepted the findings made by the Shanghai Court right before the recognition application was heard in Hong Kong rejecting all the grounds challenging the appointment of the Administrator, including the lack of competency and existence of conflict of interests.

3. Scope of Assistance

The Hong Kong Court granted assistance to the Administrator to, inter alia :-

- locate, protect, secure and take into their possession and control of the Company's Hong Kong assets, including the Shares;
- investigate the Company's affairs and request documents concerning the Company from third parties;
- take steps to prevent disposal of the Company's assets including the Shares; and
- bring legal proceedings on behalf of and for the benefit of the Company for order for disclosure, production of documents, examination of third parties and/or ancillary relief such as freezing orders, search and seizure orders.

Significance of the Judgment

- **Mainland and Hong Kong Insolvency Cooperation:** This case exemplifies Hong Kong's role in facilitating cross-border insolvency resolutions, particularly under the Cooperation Mechanism between Mainland China and Hong Kong courts.
- **Protection of Creditors' Interests:** The decision ensures the willingness and readiness of the Hong Kong Court to extend assistance to Mainland insolvency office-holders to take control of assets of the liquidated Mainland company in Hong Kong so as to protect the interests of the creditors.
- **Clarity for Stakeholders:** The decision also provides clarity for third parties (e.g., banks, Hong Kong subsidiaries) on complying with requests from recognised Mainland office-holders, avoiding jurisdictional conflicts and multiple proceedings.

Conclusion

The Hong Kong Court's recognition of the Shanghai liquidation proceedings under the Cooperation Mechanism marks a significant milestone in Shanghai and Hong Kong insolvency cooperation. By affirming the authority of the Shanghai-appointed Administrator, the judgment ensures that the Company's Hong Kong assets are to be safeguarded and dealt with for the benefit of the creditors.

This decision not only aligns with common law insolvency principles for recognition and assistance to foreign insolvency proceedings, but also strengthens the Cooperation Mechanism between Mainland China and Hong Kong.

For further details, please refer to the full judgment [2025] HKCFI 1744 (28 April 2025):
https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=168245&currpage=T



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