

## Cross border insolvency in Hong Kong – second recognition of PRC winding up



### *Shenzhen Everich Supply Chain Co, Ltd (in Liquidation in the Mainland of the People's Republic of China) [2020] HKCFI 965 (date of judgment: 4 June 2020)*

For the second time the Hong Kong Court has recognised a PRC winding-up proceeding and granted assistance to the administrator of a PRC company appointed by a PRC Court. The Hong Kong Court also granted the administrator an express right to take control of the company's subsidiaries in Hong Kong.

#### Background

Shenzhen Everich Supply Chain Co, Ltd ("**SESC**") is incorporated in the PRC.

The Shenzhen Intermediate People's Court of Guangdong Province ("**Shenzhen Court**") ordered that SESC be wound up, on the grounds of insolvency, in December 2019 and an administrator ("**Administrator**") was appointed.

SESC's subsidiaries in Hong Kong are Shing Tat (HK) Limited and Luen Fu International Development Limited. The two subsidiaries have a total of RMB12.5 million in various bank accounts in Hong Kong as well as significant external trade receivables totalling approximately RMB4.1 billion. The sole director of both companies has been arrested in the PRC and nobody is able to manage and collect the receivables.

The Shenzhen Court issued a letter of request to the Hong Kong Court to ask for recognition and assistance to the Administrator such that, among other things, the Administrator can take control of and exercise all rights that SESC may have in relation to its subsidiaries.

#### Principles of recognition of foreign insolvency proceedings in Hong Kong

Harris J reconfirmed the principles for recognition and assistance he set out in *Re CEFC Shanghai International Group Ltd*<sup>1</sup> ("**Re CEFC**"). In summary:

- The following must be satisfied before recognition and assistance will be granted by a Hong Kong Court:
  - the foreign insolvency proceedings are collective insolvency proceedings; and
  - the foreign insolvency proceedings are opened in the company's country of incorporation.
- Provided the above criteria are satisfied, the Court may recognise insolvency proceedings opened in a civil law jurisdiction (*Re Takamatsu*<sup>2</sup>).
- Upon the foreign insolvency proceedings being recognised, the Court will grant assistance to the foreign officeholders by applying Hong Kong insolvency law.
- The Companies Court does not, however, grant a foreign liquidator, whose appointment it has recognised, all the powers available to a liquidator appointed by it pursuant to the Companies (Winding Up and Miscellaneous Provisions) Ordinance, Cap. 32. The power of assistance is not available to enable foreign officeholders to do something which they could not do under the law by which they were appointed.

<sup>1</sup> [2020] 1 HKLRD 676. [Click here](#) to see our previous article about this case.

<sup>2</sup> [2019] HKCFI 802; [2019] 5 HKC 505. [Click here](#) to see our previous article about this case.

- 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.

### Applying the principles to the facts of SESC

Harris J accepted that the winding-up in the PRC is a collective insolvency proceeding in SESC's place of incorporation and that the Administrator has been appointed by the Shenzhen Court to wind up SESC.

Harris J therefore recognised the PRC winding up proceeding and granted the assistance sought by the Administrator, including an express right to take control of SESC's subsidiaries in Hong Kong.

### Form of letter of request and order

Harris J stated that the order that he made in *Re CEFC* was appended to the decision so that practitioners and PRC judges could see the powers of assistance in standard cases that the Hong Kong Court is willing to order so as to encourage letters of request to be framed in a way which reflect the form of order that the Hong Kong Court commonly grants.

Harris J noted that the letter of request in the present case does not track the order in *Re CEFC* although in substance it seeks the same powers. Harris J commented that it would be helpful if the letter of request could be framed in a way that follows the form of the order in *Re CEFC* as this would make it easier and quicker to check the papers and grant the application.

### Takeaway points

This is another welcome decision on cross border insolvency recognition and assistance between the PRC and Hong Kong. It shows the Hong Kong Court's readiness to promote cross border insolvency assistance with the PRC.

We expect to see more cases where insolvency practitioners from the PRC seek recognition and assistance from the Hong Kong Court.

Given the PRC foreign recognition regime is based on the concept of reciprocity, hopefully this case together with *Re CEFC* will open the door for the PRC Courts to recognise Hong Kong appointed liquidators in the PRC.

## Get in touch



**Eloise Matsui**  
Partner  
T: +852 2533 2704  
Email: [Eloise](mailto:Eloise)



**Alexander Tang**  
Partner  
T: +852 2533 2881  
Email: [Alexander](mailto:Alexander)



**Jeannie Liu**  
Solicitor  
T: +852 2533 2859  
Email: [Jeannie](mailto:Jeannie)