

Cross border insolvency – First recognition of PRC reorganisation proceedings by the Hong Kong Court



[HNA Group Co., Limited \(in Reorganisation in the Mainland of the People's Republic China\) \[2021\] HKCFI 2897 \(Date of Decision: 16 September 2021\)](#)

Introduction

The PRC reorganisation proceedings of the Hainan-based conglomerate, HNA Group Co., Limited (the "**Company**"), has recently been recognised in Hong Kong. This is the first case in which the Hong Kong Court granted a recognition order to administrators of a PRC reorganisation proceedings.

In previous recognition cases concerning PRC companies such as *CEFC Shanghai International Group Limited* (see our previous article [here](#)) and *Shenzhen Everich Supply Chain Co, Ltd* (see our previous article [here](#)), the companies in question were in liquidation proceedings (and not reorganisation proceedings) in Mainland China. Further, the recognition was granted even though the recent cooperation mechanism on recognition and assistance in cross-border insolvency between Hong Kong and three pilot cities in Mainland China (i.e. Shenzhen, Shanghai and Xiamen) does not currently extend to Hainan.

Background

The Company is the holding company of a well-known and substantial business group based in Hainan. It is involved in various groups of businesses including aviation, and investments in hotel and golf courses etc. In the past few years, the Company has developed very serious financial problems. One of its creditors, the Bank of Hainan Company Limited, filed an application to the Hainan Province Higher People's Court to seek bankruptcy reorganisation of the Company on the grounds of insolvency.

On 10 February 2021, the Hainan Province Higher People's Court ordered that a reorganisation of the Company commence pursuant to the Enterprise Bankruptcy Law. A liquidation group was established which was formally appointed as the Company's administrator (the "**Administrator**"). The court also granted an order for self-management of various assets and business affairs of 64 members of the HNA group of which the Company is the holding company.

The Administrator applied to the Hainan Province Higher People's Court for a letter of request directed to the Hong Kong Court seeking recognition of the reorganisation of the Company and powers of assistance to three individual representatives of the Administrator in Hong Kong.

Under the recent cooperation mechanism for recognition and assistance of insolvency proceedings between Hong Kong and Mainland China, an administrator in Mainland bankruptcy proceedings in one of the three pilot cities (i.e. Shenzhen, Shanghai and Xiamen) (see our previous article [here](#)) may apply to the High Court of the Hong Kong Special Administrative Region for recognition of bankruptcy liquidation, reorganisation and compromise proceedings under the Enterprise Bankruptcy Law. Hainan is not one of the three pilot cities.

Issues for consideration to determine whether it is a proper case for making a recognition and assistance order

Harris J considered that the powers of assistance that have been sought are conventional, but there are two issues which need to be considered before he determines that it is a proper case to grant a recognition and assistance order.

Issue 1: Whether the foreign insolvency proceedings are opened in the Company's country of incorporation or where the Company's centre of main interests is.

Issue 2: Whether the reorganisation proceedings of the Company under Chapter 8 of the Enterprise Bankruptcy Law constitute a collective insolvency process.

In respect of issue 1, Harris J found this issue to be uncontroversial in this case as the Company is incorporated in Mainland China.

As for issue 2, Harris J considered that:

- (i) Chapter 8 of the Enterprise Bankruptcy Law provides for a mechanism which allows a debtor or creditor to apply to the PRC court for a formal reorganisation process intended to restructure debt and rehabilitate a company's business and avoid liquidation. If the PRC court approves the reorganisation plan but it cannot be successfully implemented, the PRC court would terminate the reorganisation procedure and declare the company bankrupt. There is no directly comparable procedure in Hong Kong. However, Harris J found that the Mainland reorganisation concerns all of the Company's creditors and could clearly properly characterised as a collective insolvency process which is capable of being recognised in Hong Kong.
- (ii) The fact that some of the Company's subsidiaries remain managed by their directors is not inconsistent with treating the Company's reorganisation as a collective insolvency procedure.
- (iii) Although the recent cooperation mechanism for recognition and assistance of insolvency proceedings between Hong Kong and the three pilot cities in Mainland China does not currently extend to Hainan, reciprocity is not a requirement of common law recognition and assistance in Hong Kong and so the fact that the Hainan Province Higher People's Court may not recognise Hong Kong insolvency proceedings is not of itself a bar to the Hong Kong court granting recognition.

Based on the above, Harris J found that the reorganisation proceedings of the Company are capable of being and should be recognised in Hong Kong, and granted the recognition and assistance order.

Significance of this case

This is another welcome decision on cross border recognition and assistance between Mainland China and Hong Kong.

It shows the readiness of the Hong Kong Court to promote cross border insolvency assistance with the Mainland and is a good example to show that common law recognition and assistance in Hong Kong does not require reciprocity.

It is hoped that this case will make it easier for the PRC Courts to recognise Hong Kong schemes of arrangement in the PRC under the mutual recognition and cooperation mechanism in the near future.

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