

## Cross border insolvency - first application by Hong Kong liquidators to seek recognition and assistance in Mainland China



*Samson Paper Company Limited (In Creditors' Voluntary Liquidation) [2021] HKCFI 2151 (date of decision: 20 July 2021)*

*China All Access (Holdings) Limited [2021] HKCFI 1842 (date of decision: 21 June 2021)*

### Introduction

In May 2021, a landmark cooperation mechanism was implemented between Hong Kong and Mainland China on recognition and assistance in cross border insolvency. The cooperation mechanism has been applied in two recent reported cases. In particular, *Samson Paper Company Limited (In Creditors' Voluntary Liquidation)* is the first case in which liquidators appointed by the Hong Kong Court have sought recognition in Mainland China under the cooperation mechanism.

### The New Cooperation Mechanism

On 14 May 2021, the Supreme People's Court and the Secretary for Justice of Hong Kong signed the "Record of Meeting of the Supreme People's Court and the Government of the Hong Kong Special Administrative Region 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 "**Cooperation Mechanism**"), which provides a procedure for mutual recognition of insolvency processes and office holders.

Pursuant to "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**"), a Hong Kong liquidator or provisional liquidator may apply to the Mainland Courts of three pilot cities (namely Shanghai, Shenzhen and Xiamen) for recognition and assistance. Likewise, Mainland bankruptcy administrators may apply to the High Court of Hong Kong to seek recognition and assistance.

For details, please see our previous article on the Cooperation Mechanism [here](#).

### Samson Paper Company Limited (In Creditors' Voluntary Liquidation)

#### Background

Samson Paper Company Limited ("**Samson HK**") is incorporated in Hong Kong and is part of a corporate group headed by Samson Paper Holdings Limited ("**Samson Holdings**"), which is incorporated in Bermuda and listed on the Stock Exchange of Hong Kong. Provisional liquidators were appointed by the Supreme Court of Bermuda over Samson Holdings on 24 July 2020 on a soft-touch basis, which appointment was recognised in Hong Kong on 13 August 2020. On 14 August 2020, Samson HK was resolved to be wound up

by its shareholder and appointed the same provisional liquidators of Samson Holdings as liquidators (the "**Liquidators**"). Their appointment was confirmed at a meeting of creditors on 25 August 2020. The Liquidators have formed the view that they need to obtain recognition and assistance in order to deal with Samson HK's substantial assets in Mainland China, which are principally located in Shenzhen. The assets fall into three categories:

- i. wholly-owned subsidiaries including a wholly-owned subsidiary in Shenzhen, which in turns holds two wholly-owned branches in Nanning and Xiamen; and a wholly-owned subsidiary in Shanghai;
- ii. receivables in the aggregate sum of approximately HK\$422 million due from affiliated companies incorporated in the Mainland; and
- iii. an apartment in Beijing.

## Whether the Liquidators' appointment should be recognised and assisted in Samson HK's centre of main interests

Harris J decided that the SPC Opinion applies to Samson HK because its centre of main interests has been in Hong Kong since its incorporation as it has always been run out of Hong Kong.

Harris J found it desirable for the Liquidators' appointment to be recognised and assistance to be provided by the Shenzhen Court in order that the Liquidators can collect the assets within the jurisdiction of the Shenzhen Court.

## Issuing a letter of request

It is well-settled that the Hong Kong Court has an inherent jurisdiction to grant a letter of request in order to permit Hong Kong liquidators to seek recognition and assistance in another jurisdiction. The Liquidators have a duty to collect Samson HK's assets including those located in the Mainland. In order to carry out this function, the Liquidators have an express statutory power in Hong Kong to commence legal proceedings to recover assets and this includes commencing proceedings outside Hong Kong.

Harris J considered that this is a proper case for a letter of request to be issued by the Hong Kong Court to the Shenzhen Intermediate People's Court requesting that the Shenzhen Court make an order recognising the Liquidators and providing assistance to them.

## China All Access (Holdings) Limited

### Background

The issue before the Hong Kong Court was whether an immediate winding up order should be made against China All Access (Holdings) Limited ("**CAA**"), a company incorporated in the Cayman Islands, or a further adjournment should be granted.

CAA argued that a winding up order should not be made on the grounds that the second requirement of the three core requirements could not be satisfied. The reason contended was that CAA's assets are located in the Mainland and Malaysia, with the majority of its assets located in Shenzhen. As the operating subsidiaries are separated from CAA by intermediate subsidiaries incorporated in the British Virgin Islands, it was argued that the liquidators would have difficulties in taking control of the operating subsidiaries in the Mainland. That argument was based on Harris J's decision in *Re China Huiyuan Juice Group Limited* [2020] HKCFI 2940.

For detailed discussion on the three core requirements and the decision in *Re China Huiyuan Juice Group Limited*, please see our previous article [here](#).

## The Cooperation Mechanism and the second core requirement

Harris J explained that a central component of the Cooperation Mechanism is whether in the six-month period before an application for recognition is made, the centre of main interests of the relevant company has been located in Hong Kong. If so, regardless of the company's place of incorporation, the Mainland Court may recognise the liquidators appointed by the Hong Kong Court and grant them assistance to carry out their function within that court's jurisdiction.

Harris J found that CAA has its centre of main interests in Hong Kong and it is reasonably likely that the liquidators appointed over CAA can be recognised in Shenzhen. If similar action can be taken to appoint liquidators in Hong Kong over BVI incorporated subsidiaries whose centre of main interests is in Hong Kong, they can likewise be recognised in Shenzhen. Liquidators appointed over the BVI subsidiaries can then take steps to take control of the Mainland subsidiaries, of which the BVI subsidiaries are the immediate holding companies.

Harris J held that on the balance of probabilities the petitioner is able to demonstrate that there is a real possibility of the winding up order benefiting it and that the second core requirement is satisfied.

## Takeaway points

*Samson Paper Company Limited (In Creditors' Voluntary Liquidation)* is the first case in which the Hong Kong Court has issued a letter of request to the Mainland Court in accordance with the Cooperation Mechanism. Once the Shenzhen Intermediate People's Court approves the application, this will be the first case in which a court in the Mainland has formally recognised and assisted a liquidator appointed by the Hong Kong Court.

The Cooperation Mechanism may assist a petitioner in satisfying the second core requirement for winding up foreign companies if the debtor company has assets in one of the three Mainland cities under the Cooperation Mechanism.

We expect to see a growing number of cases in which Hong Kong insolvency practitioners would seek recognition and assistance in the Mainland pursuant to the Cooperation Mechanism.

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