

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



[*Zhaoheng Hydropower \(Hong Kong\) Limited \(In Liquidation\) \[2022\] HKCFI 248 \(date of decision: 20 January 2022\)*](#)

Introduction

The recent case of *Zhaoheng Hydropower (Hong Kong) Limited (In Liquidation)* is the second application made by liquidators in Hong Kong to seek recognition in Mainland China under the cooperation mechanism implemented between Hong Kong and Mainland China on recognition and assistance in cross border insolvency (the "**Cooperation Mechanism**"). For details of the Cooperation Mechanism, please see our previous article [here](#).

The first application for recognition made in *Samson Paper Company Limited (In Creditors' Voluntary Liquidation)*¹ (see our previous article [here](#)) was approved by the Shenzhen Intermediate People's Court in December 2021. It is the first case in which a Mainland court has formally recognised and assisted a liquidator appointed by the Hong Kong Court.

Zhaoheng Hydropower (Hong Kong) Limited (In Liquidation)

Background

Zhaoheng Hydropower (Hong Kong) Limited ("**Zhaoheng HK**") was incorporated in Hong Kong, and is part of a corporate group engaging in the business of the generation and supply of hydropower in the Mainland. The group's principal operating subsidiaries are in the Mainland. The ultimate parent and intermediate parent of the Zhaoheng HK were incorporated in the British Virgin Islands and the Cayman Islands respectively, with the intermediate parent being the sole shareholder of Zhaoheng HK. Zhaoheng HK is a shareholder of Shenzhen Zhaoheng Hydropower Co., Ltd ("**Zhaoheng SZ**"), a company incorporated in Shenzhen, which in turn is the immediate holding company of all the group's operating subsidiaries in the Mainland. In mid-2021, insolvency practitioners were appointed respectively over the ultimate parent by the BVI Court and over the intermediate parent by the Cayman Islands Court.

In May 2021, the Hong Kong Court ordered that Zhaoheng HK be wound up based on the petition presented by a creditor on the ground of insolvency. In July 2021, the liquidators (the "**Liquidators**") were unanimously resolved by the creditors to be appointed over Zhaoheng HK and an appointment order was made by the Hong Kong Court in October 2021.

The Liquidators require recognition and assistance in Mainland China in order to take possession of and deal with Zhaoheng HK's substantial assets in the Mainland, which are principally located in Shenzhen. The assets include:

¹ [2021] HKCFI 2151

- i. shareholding interest in Zhaoheng SZ, which in turns holds directly or indirectly, interests in about 50 companies incorporated in Mainland China;
- ii. a motor vehicle which appears to be located in Shenzhen;
- iii. shareholding interest in a company whose registered office is in Hunan Province;
- iv. funds credited to Zhaoheng HK's bank accounts held with the Shenzhen branches of various banks; and
- v. accounts receivable of over RMB400 million due from companies incorporated in Mainland China.

The Liquidators have received creditors' claims of over RMB400 million from Mainland China against Zhaoheng HK and discovered that the accounting records of Zhaoheng HK is being kept in Shenzhen.

Further, the Liquidators found that Zhaoheng HK and/or its subsidiaries is or was involved in legal proceedings with the vendors in connection with Zhaoheng HK's acquisition of a Mainland company in Hong Kong and in Mainland China. Meanwhile, the Liquidators have also been informed that the petitioning creditor together with the other banks had commenced a legal action at the Shenzhen Intermediate People's Court against Zhaoheng HK, its intermediate parent and one of its indirect subsidiary and that the shareholding interest held by the Zhaoheng HK in Zhaoheng SZ was frozen by the Shenzhen Intermediate People's Court.

Whether the Liquidators' appointment should be recognised and assisted

Harris J found that:

1. Zhaoheng HK's centre of main interests has been in Hong Kong since its incorporation (in Hong Kong) as it has always been run out of Hong Kong.
2. It is desirable and necessary for the Liquidators' appointment to be recognised by the Shenzhen Intermediate People's Court and for that court to provide assistance to carry out the Liquidators' function as described in Harris J's decision in *Samson Paper Company Limited (In Creditors' Voluntary Liquidation)*.
3. 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 the latter to make an order recognising the Liquidators and providing assistance to them.

Samson Paper Company Limited (In Creditors' Voluntary Liquidation)

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.

Upon receiving the letter of request from the Hong Kong Court, the Shenzhen Intermediate People's Court approved the application on 15 December 2021 (click [here](#) to see the Decision). Orders were made for the Hong Kong liquidation proceedings as well as the Hong Kong liquidators' appointment to be recognised in Mainland China and for the liquidators to exercise various powers in Mainland China, including to manage and dispose of the company's assets (subject to the Mainland Court's approval under certain circumstances).

Takeaway points

Upon the Shenzhen Intermediate People's Court approval of the application in December 2021, *Samson Paper Company Limited (In Creditors' Voluntary Liquidation)* became the first case in which a court in Mainland China has formally recognised and assisted a liquidator appointed by the Hong Kong Court.

Zhaoheng Hydropower (Hong Kong) Limited (In Liquidation) is another welcome decision on cross border insolvency recognition and assistance between the PRC and Hong Kong 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 Mainland China pursuant to the Cooperation Mechanism.

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