

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



*Ozner Water International Holding Limited (In Liquidation) [2022] HKCFI 363 (date of decision: 27 January 2022)*

*Hong Kong Fresh Water International Group Limited (In Liquidation) [2022] HKCFI 924 (date of decision: 6 April 2022)*

### Introduction

Hong Kong Fresh Water International Group Limited (In Liquidation) ("**HK Fresh Water**") is a subsidiary of a corporate group headed by Ozner Water International Holding Limited (In Liquidation) ("**Ozner Water**"). The cases concern the applications of the Liquidators of the two entities for recognition and assistance in Mainland China.

The case of Ozner Water is the third application made by liquidators in Hong Kong for issue of a letter of request by the Hong Kong Court to the Shenzhen Intermediate People's Court 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](#). It is also the first application under the Cooperation Mechanism where the entity is not incorporated in Hong Kong but offshore in the Cayman Islands (see our previous articles [here](#) and [here](#) on the previous two applications.)

The case of HK Fresh Water is the first application under the Cooperation Mechanism in which liquidators apply for a letter of request to be issued to the Shanghai Court.

### Ozner Water International Holding Limited (In Liquidation)

#### Background

Ozner Water is an investment holding company incorporated in the Cayman Islands, with its principal operating subsidiaries located in Mainland China (together the "**Group**"). The Group mainly engaged in the business of water purification services, air sanitisation services, and supply chain services. Ozner Water is a registered non-Hong Kong company with its principal place of business in Hong Kong. Its shares have also been listed on the Main Board of the Stock Exchange of Hong Kong, though trading has been suspended since March 2021.

In March 2021, the Hong Kong Court made a winding up order against Ozner Water based on the petition presented by a bank creditor. In April 2021, the Liquidators were appointed over Ozner Water by the Hong Kong Court upon the Official Receiver's application.

The Liquidators need to obtain recognition and assistance under the Cooperation Mechanism in order to take possession of and deal with Ozner Water's substantial assets located in Shenzhen:

- i. a judgment debt in the sum of HK\$20 million plus interest owed by a financial services company incorporated in Shenzhen arising from a judgment granted by the People's Court of Qianhai Cooperation Zone, Shenzhen in 2020; and
- ii. debt claims exceeding HK\$142 million due from the same financial services company incorporated in Shenzhen.

### *Whether the Liquidators' appointment should be recognised and assisted*

Harris J found 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 under the Cooperation Mechanism for the following reasons:

1. The assets the Liquidators seek to control are located in the Mainland and hence the Mainland Court is the most appropriate forum for the determination of the Liquidators' powers over the Mainland assets.
2. Ozner Water is in insolvent compulsory liquidation, with its principal assets being in Shenzhen.
3. As Ozner Water is not incorporated in Hong Kong, it is necessary for the Hong Kong and Mainland Courts to be satisfied that its centre of main interests ("**COMI**") is located in Hong Kong. Ozner Water's COMI has been in Hong Kong since its incorporation as it has always been run out of Hong Kong.
4. The assistance that the Liquidators need in the Mainland concerns classic asset collection efforts and the Liquidators have under Hong Kong law statutory power to commence proceedings outside Hong Kong to perform their functions.

### **Hong Kong Fresh Water International Group Limited (In Liquidation)**

#### *Background*

HK Fresh Water was incorporated in Hong Kong and is part of the Group headed by Ozner Water. HK Fresh Water serves as an intermediate holding company within the Group and its main assets in the Mainland are its shareholding in four wholly-owned subsidiaries incorporated in Shanghai (together "**Shanghai Subsidiaries**"). HK Fresh Water also has a key subsidiary in the Shaanxi province.

In March 2021, the Hong Kong Court granted a winding up order against HK Fresh Water based on a petition presented by the same bank creditor which obtained a winding up order against Ozner Water. In July 2021, the Liquidators were appointed over HK Fresh Water by the Hong Kong Court.

The Liquidators need to obtain recognition and assistance in the Mainland in order to take possession of and deal with the Company's substantial assets in the Mainland, in particular the Shanghai Subsidiaries. Such need has become pressing because the Liquidators' investigations show that the management of the Shanghai Subsidiaries have apparently diverted the Shanghai Subsidiaries' business and continued to use the association with Ozner Water as a listed entity, while ignoring the Liquidators' request for information.

### *Whether the Liquidators' appointment should be recognised and assisted*

Based on the above, Harris J held that it is desirable that the Liquidators' appointment over HK Fresh Water is recognised and assisted in Shanghai and granted a letter of request to the Liquidators. In terms of HK Fresh Water's COMI, Harris J found that its affairs have been managed since at least March 2021 in Hong

Kong by the Liquidators and this alone is enough to satisfy the COMI test as the Cooperation Mechanism requires the COMI to have been in Hong Kong for six months prior to the application being made.

## Takeaway points

Following the two previous applications in *Samson Paper Company Limited (In Creditors' Voluntary Liquidation)* and *Zhaoheng Hydropower (Hong Kong) Limited (In Liquidation)*, *Ozner Water International Holding Limited (In Liquidation)* is the third application made by liquidators in Hong Kong for a letter of request to be issued to the Shenzhen Intermediate People's Court requesting the latter to make an order recognising the liquidators and providing assistance to them. Unlike the companies in question in the two previous applications, Ozner Water is incorporated offshore and not in Hong Kong.

In *Hong Kong Fresh Water International Group Limited (In Liquidation)*, the first application was made by liquidators in Hong Kong pursuant to the Cooperation Mechanism for a letter of request to be issued to the Shanghai Court, which is in one of three pilot cities (namely Shanghai, Shenzhen and Xiamen), for recognition and assistance. The previous three applications were all made by liquidators in Hong Kong for a letter of request to be directed to the Shenzhen Intermediate People's Court.

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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