

## Insolvency & Restructuring

### Recognition order in respect of the foreign liquidator's request for transfer of assets in Hong Kong

#### Background

While it is common for foreign liquidators to make request to Hong Kong banks for the production of account documents and transfer of assets of the relevant foreign company, banks in Hong Kong are often reluctant to cooperate before the relevant court authorisation is obtained. In a recent decision *Joint Provisional Liquidators of China Lumena New Materials Corp* [2018] HKEC 230 (the "**China Lumena Case**"), Harris J clarified the procedural requirements in relation to the transfer of company's assets in Hong Kong.

#### Case facts

In the *China Lumena Case*, the Grand Court of Cayman Islands ordered provisional liquidation and appointed provisional liquidators (the "**Provisional Liquidators**") for China Lumena New Materials Corp. (the "**Company**"). The Provisional Liquidators alleged that they came across difficulties when they sought to take control of the Company's credit balance in several bank accounts in Hong Kong. In gist, the relevant banks refused to comply with the request of transfer before they are provided with a court order authorising the same. As a result, the Provisional Liquidators applied to the Cayman Court to issue a letter of request to the Hong Kong Court of First Instance (the "**Court**") for recognition of the Provisional Liquidators' appointment which, if granted, would allow them to deal with the Company's assets in Hong Kong.

#### Procedural requirements for production of documents and assets transfer

In an earlier judgment in *Bay Capital Asia Fund LP v DBS Bank (Hong Kong) Ltd* [2016] HKEC 2377, Harris J clarified that in a situation where a bank in Hong Kong receives a request from foreign liquidators for production of documents, they should provide the same to the liquidator once it is satisfied that the liquidator has been properly appointed by the court of the place where the company was incorporated and no prior recognition order from the Court is necessary. The Provisional Liquidators in the *China Lumena Case* sought to advance the argument that if they could request the banks to provide bank account documents without a prior Hong Kong court order on the basis that the director's of the Company would have been entitled to such documents, the Provisional Liquidators should also be allowed to request Hong Kong banks for assets transfer on the same basis.

Such argument was rejected by Harris J who is of the view that a balance has to be drawn between the foreign insolvency officeholders' need for convenience and the need for the court supervision which creditors may expect. It follows that there should be a distinction between the procedural requirements of the production of documents in relation to the companies and the transfer of the companies' assets. In the later scenario, the Provisional Liquidators shall obtain a recognition order from the Court in advance.

## Conclusion

The China Lumena Case further clarifies the procedural requirements with which foreign insolvency officeholders shall comply for the purpose of dealing with the foreign company's assets in Hong Kong. In the China Lumena Case, the Court reminded the practitioners that such requirement would not impose a significant burden on foreign insolvency officeholders since the Court has already developed a standard practice on applications for recognition orders.

For enquiries, please contact our Litigation & Dispute Resolution Department:

E: [insolvency@onc.hk](mailto:insolvency@onc.hk)  
W: [www.onc.hk](http://www.onc.hk)

T: (852) 2810 1212  
F: (852) 2804 6311

19th Floor, Three Exchange Square, 8 Connaught Place, Central, Hong Kong

**Important:** The law and procedure on this subject are very specialised and complicated. This article is just a very general outline for reference and cannot be relied upon as legal advice in any individual case. If any advice or assistance is needed, please contact our solicitors.

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