

# Hong Kong and Mainland China Enter Arrangement on Mutual Recognition of and Assistance to Insolvency Proceedings

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On May 14, 2021, the Hong Kong Special Administrative Region (the “HKSAR”) and the Mainland of China (the “Mainland”) announced an arrangement concerning mutual recognition of and assistance to insolvency proceedings between the courts of the Mainland and the HKSAR (the “Arrangement”).<sup>1</sup> The Arrangement is expected to facilitate cross border enforcement of one jurisdiction’s insolvency proceedings in the other.

According to the announcement by the government of the HKSAR, liquidators from Hong Kong may apply to Mainland courts for recognition of insolvency proceedings in Hong Kong. Likewise, bankruptcy administrators from the Mainland may apply to the High Court in Hong Kong for recognition of bankruptcy proceedings in the Mainland. The framework facilitates the rescue of financially troubled businesses and provides better protection of the assets of the debtor company as well as the interests of the creditors and is hence conducive to the promotion of an orderly and efficient insolvency regime. The new co-operative framework expressly covers bankruptcy compromise and reorganisation in the Mainland as well as debt restructuring in Hong Kong, thereby encouraging the use of restructuring of debts to revive businesses with a view to reaching consensus among creditors from both places and abroad.

Under the Arrangement, the Supreme People’s Court of China (the “SPC”) will designate a number of pilot areas (the “Pilot Areas”) to work with the HKSAR’s courts in implementing a pilot program regarding mutual recognition of and assistance to insolvency proceedings (the “Pilot Program”). Moreover, according to the announcement, the SPC and the HKSAR would publish separate official opinion and practical guideline for further clarification of the Arrangement.<sup>2</sup>

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<sup>1</sup> See “HKSAR and Mainland sign record of meeting concerning mutual recognition of and assistance to insolvency proceedings,” May 14, 2021, <https://www.info.gov.hk/gia/general/202105/14/P2021051400219.htm>.

<sup>2</sup> The SPC has already issued its official opinion on May 11, 2021, which will be analyzed on the following pages. The HKSAR government also published its practical guide, which can be found at: [https://www.doj.gov.hk/en/mainland\\_and\\_macao/pdf/RRECCJ\\_practical\\_guide\\_en.pdf](https://www.doj.gov.hk/en/mainland_and_macao/pdf/RRECCJ_practical_guide_en.pdf).

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Already on May 11, 2021, the SPC issued an opinion (the “Opinion”)<sup>3</sup> 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 “HK Insolvency Proceedings”).<sup>4</sup> In the Opinion, the SPC designates Shanghai, Xiamen, and Shenzhen as the Pilot Areas. Additionally, the Opinion provides the scope of the Pilot Program, the model documents and procedure for the application for the recognition of and assistance to HK Insolvency Proceedings in the Mainland, and the methods of assistance the courts in the Mainland may provide.

The Pilot Program will apply to HK Insolvency Proceedings in which the HKSAR is the “center of main interests”<sup>5</sup> of the debtor, where the debtor’s principle assets in the Mainland are located in the Pilot Areas, or when it has a place of business or a representative office in the Pilot Areas. A debtor’s “center of main interests” generally means the place of incorporation of the debtor. The people’s court will also take into account other factors when determining whether the HKSAR is the debtor’s center of main interests, including: the place of the debtor’s principal office; the debtor’s principal place of business, and the location of the debtor’s principal assets.

To apply for the recognition of and assistance to HK Insolvency Proceedings, a Hong Kong administrator<sup>6</sup> must submit the model documents prescribed by the Opinion to the Intermediate People’s Court with jurisdiction in the Pilot Areas, which include an application form, a letter of request for recognition and assistance issued by the High Court of the HKSAR and the relevant documents relating to the commencement of a HK Insolvency Proceedings and the appointment of the Hong Kong administrator.<sup>7</sup>

Once the competent Intermediate People’s Court grants recognition of and assistance to HK Insolvency Proceedings, the Hong Kong administrator may thereafter perform its duties within the scope provided by the Enterprise Bankruptcy Law of the People’s Republic of China as well as the HKSAR law when its request to do so is approved by the Mainland’s courts. This means the Hong Kong administrator will be empowered to: seize property, corporate seals, account books, documents and other data of the debtor; decide on the matters relating the debtor’s internal management; manage and dispose of the debtor’s property; and participate in legal actions, arbitrations or any other legal

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<sup>3</sup> Official Chinese version available at: <https://www.chinacourt.org/law/detail/2021/05/id/150262.shtml>  
Official bilingual version available at:

[https://www.doj.gov.hk/en/mainland\\_and\\_macao/pdf/RRECCJ\\_opinion\\_en\\_tc.pdf](https://www.doj.gov.hk/en/mainland_and_macao/pdf/RRECCJ_opinion_en_tc.pdf).

<sup>4</sup> HK Insolvency Proceedings include collective insolvency proceedings commenced in accordance with Hong Kong’s Companies (Winding Up and Miscellaneous Provisions) Ordinance and Companies Ordinance. Article.4 of the Opinion.

<sup>6</sup> A Hong Kong administrator includes the liquidator and provisional liquidator in HK Insolvency Proceedings. See *Id.*, Article.3.

<sup>7</sup> *Id.*, Article.6.

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proceedings on behalf of the debtor.<sup>8</sup> The Hong Kong administrator may also apply for the designation of a Mainland administrator by a Mainland court to perform such duties.

A Hong Kong administrator may also apply for preservation measures to the same court after an application for the recognition of and assistance to HK Insolvency Proceedings is made and before such recognition and assistance is granted.

Where the competent Intermediate People's Court recognises and assists HK Insolvency Proceedings, the property of the debtor in the Mainland will first satisfy preferential claims under the law of the Mainland.<sup>9</sup> The remainder of the property will be distributed in accordance with the corresponding HK Insolvency Proceedings.

**Comment.** The announcement is significant in enhancing and promoting Hong Kong's status as a centre for finance and business. In particular, many companies with debt securities listed on the Hong Kong Stock Exchange have assets and business operations in the Mainland. When listed companies fail, it will now be more straightforward for liquidators appointed by the Hong Kong courts to be recognised in the Mainland and gather in the assets. This development will undoubtedly be welcomed by investors.

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Please do not hesitate to contact us with any questions.

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<sup>8</sup> *Id.*, Article.14.

<sup>9</sup> Such preferential claims include but are not limited to: expenses and fees related to the insolvency proceedings; employees' salaries, benefits, and social insurances owed by the debtor and taxes. See Articles 41, 42, 43, and 113 of the Enterprise Bankruptcy Law of the People's Republic of China; unofficial translation available at: <http://app.westlawchina.com/maf/china/app/document?&src=nr&docguid=i0adf589b0000011e6d8196a2d238a277&lang=en&crumb-action=append&crumb-label=%E6%96%87%E4%BB%B6>.

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