

What's new in cross-border insolvency?



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Recognition of PRC Reorganisation Proceedings by Hong Kong Court

Recently, in the case of **Re HNA Group Co., Limited** (in Reorganisation in the Mainland of the People's Republic China) [2021] HKCFI 2897, the High Court of Hong Kong ruled to recognise the reorganisation process of an insolvent company and granted powers of assistance to the Administrator.

The granting of recognition is a landmark ruling for Hong Kong. This article analyses the details of the case, including the parties in the case, the issues the Court needed to determine, what the court held, and its potential benefits to the Hong Kong-PRC relationship.

Parties in the case

The company in question is the holding company of a well-known and extensive business group based in Hainan. It had been in existence for over twenty years with business interests in sectors such as aviation, hotels and golf courses and others.

However, the company developed severe financial crises which resulted in them seeking bankruptcy reorganisation on the grounds of insolvency. As the name implies, a reorganisation process is a tool that helps to restructure a company's debts and rehabilitate its business to avoid liquidation. The process typically allows a debtor or a creditor to apply to the court for recognition of a formal reorganisation process according to Articles 22(i) and 24(i) of the Enterprise Bankruptcy Law and Articles 18 and 19 of the Provisions of the Supreme People's Court.

What were the issues the court needed to determine?

The Hong Kong Court needed to determine a number of key issues:

- Recognising the reorganisation of HNA Group Co., Limited in mainland China; and
- Recognising the three individuals as able to represent the Administrator appointed and providing them with powers of assistance.

Before deciding whether the matter was eligible for a recognition and assistance order, the Court had to firstly consider some factors, namely:

1. The legitimacy of the insolvency process as the Hong Kong court will only recognise a collective insolvency process in accordance with Hong Kong legal principles.
2. Whether the reorganisation was in the company's country of incorporation or where it has its main interests. Fortunately, the company in question was incorporated in the mainland China. Thus, this issue did not cause controversy.
3. There exists a cooperation agreement signed by the Secretary for Justice and the Supreme People's Court which provides a procedure for recognition and assistance of insolvency proceedings. The issue here was that the arrangement was between Hong Kong and three Intermediate People's Court in China, namely, Shenzhen, Shanghai and Xiamen. Hainan was not included in the agreement.

What was the decision of the court?

Since the second issue above was not a controversial point, the focus was on the first and third issues.

On the first issue, the Court found that it was clear that the reorganisation concerned all of the company's creditors and its character qualified as a collective insolvency procedure. For this reason, the Judge concluded that the company is capable of being recognised for reorganisation in Hong Kong.

On the third issue, the Court stated that for the first application by a Mainland administrator for formal recognition in Hong Kong, reciprocity is not a requirement of common law recognition and assistance in Hong Kong. This means that even though the Hainan Province Higher People's Court did not recognise Hong Kong insolvency proceedings and liquidators, this did not prevent the Hong Kong Court from granting recognition at the request of the Hainan Court.

Following these determinations, the judge made an order in the terms sought. The Court approved the reorganisation of HNA Group Co., Limited, and the appointment of the HNA Group Liquidation Group of the Company.

The Court also granted the representatives the power they needed to carry out their duties, which included:

- i. Requesting and receiving documents and information concerning the company from third parties. This information includes its promotion, formation, business dealings, accounts, assets, liabilities, or affairs, including the cause of its current insolvency.
- ii. Locating, securing, and protecting all the assets the company is or appears to be entitled to within the court's jurisdiction. Their responsibilities grant them the power to take these assets into their possession and control.
- iii. Locating, securing, and protecting the books, papers, and company records. This includes the accountancy and statutory books within the jurisdiction of the court. They must also investigate the company's assets and affairs and the cause of the company's insolvency.



- iv. Ensuring that the company does not lose its assets and securing any credit balance in any of its accounts.
- v. Operating (opening or closing) any bank accounts in the company's name to gather the assets and pay for all costs and expenses associated with the Administrator.
- vi. Retaining any professional service they may require to execute their powers and duties, such as legal, financial, etc.
- vii. Bringing all legal proceedings to the court, including applications, whether in their own name or the company's name.

Conclusion

This ruling has proven the Hong Kong Court's willingness to grant formal recognition for reorganisation processes in Hong Kong. It is another significant development in cross-border insolvency.

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