

**For discussion on
31 May 2021**

**Legislative Council
Panel on Administration of Justice and Legal Services**

**Latest Development on the Framework for
Cooperation with the Mainland on Corporate Insolvency Matters**

PURPOSE

This paper is to inform Members of the latest development on the cooperation framework between the Hong Kong Special Administrative Region (“**Hong Kong**”) and the Mainland on recognition of and assistance to corporate insolvency matters.¹

BACKGROUND

2. This Panel was consulted on the key features of a suggested cooperation framework for recognition of and assistance to corporate insolvency matters on 22 June 2020.² This Panel and the representative of the Hong Kong Bar Association who attended the relevant meeting upon invitation welcomed the strengthening of cooperation in this regard between the two places. The Law Society of Hong Kong wrote to the Department of Justice (“**DoJ**”) on 12 May 2021, indicating that its Insolvency Law Committee had considered the details of the suggested cooperation framework and would be looking forward to the implementation of the relevant cooperation mechanism.

3. The DoJ and the Supreme People’s Court (“**SPC**”) have been actively discussing the suggested cooperation framework in order to address the practical issues encountered by the stakeholders in enforcing court orders related to corporate insolvency. On 14 May 2021, the DoJ and the SPC signed the “*Record of Meeting of the Supreme People’s Court and the Government of the Hong Kong Special Administrative Region on Mutual Recognition of and Assistance to Bankruptcy (Insolvency) Proceedings between the Courts of the Mainland and of the Hong Kong Special Administrative Region*” (“**Record of Meeting**”) (see **Annex A**) in Shenzhen. The Record of Meeting is the ninth document signed on

¹ Personal bankruptcy is not, for the time being, included in the cooperation framework.

² Some specific matters are not covered by the “Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region” signed between Hong Kong and the Mainland in January 2019, including corporate insolvency and debt restructuring matters.

legal assistance in civil and commercial matters between the two places³ in accordance with Article 95 of the Basic Law of the Hong Kong Special Administrative Region.⁴

THE CONTENT AND THE IMPLEMENTATION OF THE RECORD OF MEETING

4. The Record of Meeting has established the following mechanism for cooperation in corporate insolvency and debt restructuring matters:

- (1) the Intermediate People's Courts in the pilot areas designated by the SPC may initiate cooperation with the High Court of Hong Kong on mutual recognition of and assistance to insolvency and debt restructuring proceedings;
- (2) a Hong Kong liquidator or provisional liquidator may apply to the relevant Intermediate People's Court at a pilot area in the Mainland for recognition of and assistance to insolvency and debt restructuring proceedings in Hong Kong;
- (3) a Mainland bankruptcy administrator may apply to the High Court of Hong Kong for recognition of and assistance to Mainland bankruptcy proceedings;
- (4) the procedures for and manner in which applications for recognition and assistance are to be made will be in accordance with the provisions of the requested place; and
- (5) the two sides may continue to communicate on matters on the implementation and to seek to progressively expand the scope of the pilot areas in due course.

5. For the purpose of implementing the Record of Meeting in Hong Kong, it is not necessary to enact new legislation or amend existing legislation as Mainland bankruptcy administrators may continue to seek recognition and assistance from the Hong Kong court under the existing common law regime.

³ The other eight documents were signed between 1999 and 2020 and one of them relates to the service of judicial documents in civil and commercial matters, another relates to the taking of evidence in civil and commercial cases, three relates to arbitration and the remaining three relates to the reciprocal recognition and enforcement of judgments in civil and commercial matters.

⁴ Article 95 of the Basic Law states that: "The Hong Kong Special Administrative Region may, through consultations and in accordance with law, maintain juridical relations with the judicial organs of other parts of the country, and they may render assistance to each other".

On the day of signing of the Record of Meeting, the DoJ issued a practical guide (see **Annex B**) setting out the key features of the existing procedures for an application to the Hong Kong court for recognition of and assistance to Mainland bankruptcy proceedings.

6. Regarding the implementation of the Record of Meeting in the Mainland, on the day of signing, the SPC promulgated the “*Supreme People’s Court’s Opinion on Taking Forward a Pilot Measure in relation to the Recognition of and Assistance to Insolvency Proceedings in the Hong Kong Special Administrative Region*” (see **Annex C**) to implement the Record of Meeting. The Opinion provides detailed guidance to the relevant Mainland courts, and has designated Shanghai, Xiamen and Shenzhen as the pilot areas.

SIGNIFICANCE AND IMPACT

7. Before the establishment of this new mechanism, all liquidators from jurisdictions outside the Mainland (including Hong Kong) would not be able to directly seek recognition of the relevant insolvency proceedings from the Mainland courts, and thus unable to perform their duties in the Mainland, including taking out preservation measures or locating the debtor’s documents or relevant assets in the Mainland.

8. Upon signing of the Record of Meeting, Hong Kong has become the only jurisdiction outside the Mainland to have established a cooperation mechanism for mutual recognition of and assistance to insolvency proceedings with the Mainland. This fully reflects the unique competitiveness of Hong Kong under “One Country, Two Systems”.

9. The new mechanism covers in detail that Hong Kong liquidators and provisional liquidators may apply to the Mainland courts in the pilot areas for recognition of insolvency and debt restructuring proceedings in Hong Kong, and also for assistance (such as taking over the debtor’s property, investigate into the financial position of the debtor, participating in legal actions and arbitrations on behalf of the debtor, etc) to perform their duties in the Mainland.⁵ Likewise, Mainland bankruptcy administrators may apply to the High Court of Hong Kong for recognition of “bankruptcy liquidation” (破產清算), “compromise” (和解) and “reorganisation” (重整) proceedings in the Mainland, and apply for the corresponding assistance in Hong Kong as mentioned above.

10. The new cooperation mechanism between the two places brings about an

⁵ See Article 14 of the “*Supreme People’s Court’s Opinion on Taking Forward a Pilot Measure in relation to the Recognition of and Assistance to Insolvency Proceedings in the Hong Kong Special Administrative Region*”.

important impact in three aspects. Firstly, it establishes a system for mutual recognition of insolvency proceedings and assistance to liquidators between the two places, avoiding the inability to fully recover the debtors' assets due to the lack of a mechanism, thereby enhancing the protection of the interests of debtors and creditors which is conducive to the orderly and fair treatment of the relevant stakeholders' interests. Secondly, it encourages stakeholders to make wider use of restructuring or reorganisation procedures and facilitates creditors to reach a consensus on the restructuring plan as soon as possible. Companies under financial distress may accordingly reduce the risk of liquidation through timely debt restructuring, which in turn strengthens the protection for employment and social livelihood. Thirdly, an orderly and efficient cross-boundary insolvency and debt restructuring cooperation mechanism between the two places gives additional assurance to creditors and investors, facilitates lending and investment, thus further enhancing the investment and business environment in the two places.

FOLLOW-UP INITIATIVES AND WAY FORWARD

11. On the day of signing of the Record of Meeting, Hong Kong and the Mainland organised a forum on legal and practical issues on cross-boundary insolvency cooperation, in which experts including judges, lawyers and liquidators from both places discussed the content and practical issues of the relevant cooperation mechanism. The forum attracted registration from over 500 participants among which, around half were from Hong Kong. The DoJ is exploring to organise another forum for the practitioners to further discuss the content and operational details of the cooperation mechanism. The DoJ will also continue to liaise with the practitioners on the implementation of the cooperation mechanism.

12. In addition, the DoJ will continue to communicate with the relevant Mainland organs on the related work, and to continuously improve the cooperation mechanism, and to progressively expand the scope of the pilot areas. The DoJ will also actively cooperate with the relevant Mainland organs, offer support in the organisation of seminars and capacity building activities to implement the mechanism, facilitate the stakeholders to deepen their understanding of the details of the implementation and promote professional exchanges in this aspect.

13. To conclude, the establishment of the new cooperation mechanism on corporate insolvency and debt restructuring matters between Hong Kong and the Mainland further enriches judicial assistance in civil and commercial matters between the two places, and is conducive to enhancing the competitiveness of Hong Kong as an international legal and dispute resolution centre in the Asia-Pacific region as well as a regional debt restructuring hub.

Department of Justice
May 2021

(Courtesy English translation)

**Record of Meeting of the Supreme People's Court and
the Government of the Hong Kong Special Administrative Region
on Mutual Recognition of and Assistance to
Bankruptcy (Insolvency) Proceedings
between the Courts of the Mainland and
of the Hong Kong Special Administrative Region**

To thoroughly implement Article 95 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, further improve the mechanism for judicial assistance between the Mainland and the Hong Kong Special Administrative Region, facilitate economic integration and development, optimise business environment underpinned by the rule of law, and having taken into account judicial practice, the Supreme People's Court and the Government of the Hong Kong Special Administrative Region, after consultation, have reached the following consensus in relation to mutual recognition of and assistance to bankruptcy (insolvency) proceedings between the courts of the Mainland and the Hong Kong Special Administrative Region:

1. Intermediate People's Courts in the pilot areas designated by the Supreme People's Court may initiate cooperation with the courts of the Hong Kong Special Administrative Region on mutual recognition of and assistance to bankruptcy proceedings.
2. A liquidator or a provisional liquidator in insolvency proceedings in the Hong Kong Special Administrative Region may apply to the relevant Intermediate People's Court at a pilot area in the Mainland for recognition of compulsory winding up, creditors' voluntary winding up and corporate debt restructuring proceedings brought by a liquidator or provisional liquidator as sanctioned by a court of the Hong Kong Special Administrative Region in accordance with the laws of the Hong Kong Special Administrative Region,

recognition of his office as a liquidator or a provisional liquidator, and grant of assistance for discharge of his duties as a liquidator or a provisional liquidator.

3. An administrator in Mainland bankruptcy proceedings may apply to the High Court of the Hong Kong Special Administrative Region for recognition of bankruptcy liquidation, reorganisation and compromise proceedings under the Enterprise Bankruptcy Law of the People's Republic of China, recognition of his office as an administrator, and grant of assistance for discharge of his duties as an administrator.

4. The procedures for and manner in which applications for recognition and assistance are to be made etc. will be in accordance with the provisions of the requested place.

5. The Supreme People's Court and the Government of the Hong Kong Special Administrative Region are respectively issuing a guiding opinion and a practical guide on mutual recognition of and assistance to bankruptcy proceedings. The two sides will continue to communicate on matters regarding the judicial implementation of mutual recognition of and assistance to bankruptcy proceedings, consult each other to resolve relevant issues, persistently improve the mechanism, and progressively expand the scope of the pilot areas.

This record of meeting is signed in duplicate in Shenzhen, this 14th day of May 2021.

最高人民法院

關於開展認可和協助香港特別行政區破產程序試點工作的意見

**The Supreme People's Court's
Opinion on Taking Forward a Pilot Measure in relation to the
Recognition of and Assistance to Insolvency Proceedings
in the Hong Kong Special Administrative Region**

(Courtesy English translation)

為貫徹落實《中華人民共和國香港特別行政區基本法》第九十五條的規定，進一步完善內地與香港特別行政區司法協助制度體系，促進經濟融合發展，優化法治化營商環境，最高人民法院與香港特別行政區政府結合司法實踐，就內地與香港特別行政區法院相互認可和協助破產程序工作進行會談協商，簽署《最高人民法院與香港特別行政區政府關於內地與香港特別行政區法院相互認可和協助破產程序的會談紀要》。按照紀要精神，最高人民法院依據《中華人民共和國民事訴訟法》《中華人民共和國企業破產法》等相關法律，制定本意見。

To thoroughly implement Article 95 of *the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China*, further improve the mechanism for judicial assistance between the Mainland and the Hong Kong Special Administrative Region, facilitate economic integration and

development, optimise business environment underpinned by the rule of law, and having taken into account judicial practice, the Supreme People's Court and the Government of the Hong Kong Special Administrative Region, after consultation, have signed the *Record of Meeting on Mutual Recognition of and Assistance to Bankruptcy (Insolvency) Proceedings between the Courts of the Mainland and of the Hong Kong Special Administrative Region*. In accordance with the spirit of the said Record of Meeting, and on the basis of the relevant laws including the *Civil Procedure Law of the People's Republic of China* and the *Enterprise Bankruptcy Law of the People's Republic of China*, the Supreme People's Court has formulated this Opinion.

一、最高人民法院指定上海市、福建省廈門市、廣東省深圳市人民法院開展認可和協助香港破產程序的試點工作。

1. The Supreme People's Court designates the people's courts in Shanghai Municipality, Xiamen Municipality in Fujian Province and Shenzhen Municipality in Guangdong Province to take forward pilot measures on recognition of and assistance to "Hong Kong Insolvency Proceedings".

二、本意見所稱“香港破產程序”，是指依據香港特別行政區《公司（清盤及雜項條文）條例》《公司條例》進行的集體清償程序，包括公司強制清盤、公司債權人自動清盤以及由清盤人或者臨時清盤人提出並經香港特別行政區高等法院依據香港特別行政區《公司條例》第 673 條批准的公司債務重組程序。

2. “Hong Kong Insolvency Proceedings” referred to in this Opinion means the collective insolvency proceedings commenced in accordance with the *Companies (Winding Up and Miscellaneous Provisions) Ordinance* and the *Companies Ordinance* of the Hong Kong Special Administrative Region, which includes compulsory winding up, creditors’ voluntary winding up and scheme of arrangement promoted by a liquidator or provisional liquidator and sanctioned by a court of the Hong Kong Special Administrative Region in accordance with section 673 of the *Companies Ordinance* of the Hong Kong Special Administrative Region.

三、本意見所稱“香港管理人”，包括香港破產程序中的清盤人和臨時清盤人。

3. “Hong Kong Administrators” referred to in this Opinion includes liquidators and provisional liquidators in Hong Kong Insolvency Proceedings.

四、本意見適用於香港特別行政區系債務人主要利益中心所在地的香港破產程序。

本意見所稱“主要利益中心”，一般是指債務人的註冊地。同時，人民法院應當綜合考慮債務人主要辦事機構所在地、主要營業地、主要財產所在地等因素認定。

在香港管理人申請認可和協助時，債務人主要利益中心應當已經在香港特別行政區連續存在 6 個月以上。

4. This Opinion applies to Hong Kong Insolvency Proceedings where the

Hong Kong Special Administrative Region is the centre of main interests of the debtor.

“Centre of main interests” referred to in this Opinion generally means the place of incorporation of the debtor. At the same time, the people’s court shall take into account other factors including the place of principal office, the principal place of business, the place of principal assets etc. of the debtor.

When a Hong Kong Administrator applies for recognition and assistance, the centre of main interests of the debtor shall have been in the Hong Kong Special Administrative Region continuously for at least 6 months.

五、債務人在內地的主要財產位於試點地區、在試點地區存在營業地或者在試點地區設有代表機構的，香港管理人可以依據本意見申請認可和協助香港破產程序。

依據本意見審理的跨境破產協助案件，由試點地區的中級人民法院管轄。

向兩個以上有管轄權的人民法院提出申請的，由最先立案的人民法院管轄。

5. If the debtor’s principal assets in the Mainland are in a pilot area, or it has a place of business or a representative office in a pilot area, the Hong Kong Administrator may apply for recognition of and assistance to the Hong Kong Insolvency Proceedings in accordance with this Opinion.

The intermediate people’s courts in the pilot areas shall have jurisdiction over cross-boundary insolvency assistance cases heard in accordance with this

Opinion.

If an application is made to two or more people's courts having jurisdiction, the people's court that accepts the case first shall exercise jurisdiction.

六、申請認可和協助香港破產程序的，香港管理人應當提交下列材料：

(一) 申請書；

(二) 香港特別行政區高等法院請求認可和協助的函；

(三) 啟動香港破產程序以及委任香港管理人的有關文件；

(四) 債務人主要利益中心位於香港特別行政區的證明材料，證明材料在內地以外形成的，還應當依據內地法律規定辦理證明手續；

(五) 申請予以認可和協助的裁判文書副本；

(六) 香港管理人身份證件的複印件，身份證件在內地以外形成的，還應當依據內地法律規定辦理證明手續；

(七) 債務人在內地的主要財產位於試點地區、在試點地區存在營業地或者在試點地區設有代表機構的相關證據。

向人民法院提交的文件沒有中文文本的，應當提交中文譯本。

6. The Hong Kong Administrator applying for recognition of and assistance to Hong Kong Insolvency Proceedings shall submit the following materials:

(1) an application;

(2) a letter of request for recognition and assistance issued by the High Court of the Hong Kong Special Administrative Region;

(3) the relevant documents on the commencement of the Hong Kong Insolvency Proceedings and in relation to the appointment of the Hong Kong Administrator;

(4) materials showing that the debtor's centre of main interests is in the Hong Kong Special Administrative Region, and if any of such materials was issued outside the Mainland, it shall be certified in accordance with the law of the Mainland;

(5) a copy of the judgment in respect of which the application for recognition and assistance is made;

(6) a copy of the identity document of the Hong Kong Administrator, and if such identity document was issued outside the Mainland, it shall be certified in accordance with the law of the Mainland;

(7) evidence showing that the debtor's principal assets in the Mainland are in a pilot area, or that it has a place of business or a representative office in a pilot area.

Where a document to be submitted to a people's court of the Mainland is not in the Chinese language, a Chinese translation shall be submitted.

七、申請書應當載明下列事項：

(一) 債務人的名稱、註冊地以及香港管理人所知悉的債務人主要負責人的姓名、職務、住所、身份證件信息、通訊方式等；

(二) 香港管理人的姓名、住所、身份證件信息、通訊方式等；

(三) 香港破產程序的進展情況和計劃；

(四) 申請認可和協助的事項和理由；

(五) 債務人在內地的已知財產、營業地、代表機構和債權人情況；

(六) 債務人在內地涉及的訴訟、仲裁以及有關債務人財產的保全措施、執行程序等情況；

(七) 其他國家或者地區針對債務人進行破產程序的相關情況；

(八) 其他應當載明的事項。

7. An application shall specify the following:

(1) The debtor's name and place of incorporation, and its principal responsible person's name, position, residential address, particulars of identity documents, means of contact, etc. as known by the Hong Kong Administrator;

(2) the Hong Kong Administrator's name, residential address, particulars of identity documents, means of contact, etc.;

(3) the progress and plan in relation to the Hong Kong Insolvency Proceedings;

(4) the details of the recognition and assistance applied for and its justifications;

(5) the details of the debtor's known assets, place of business, representative offices and creditors in the Mainland;

(6) the details of any civil action, arbitration and preservation measures in respect of the debtor's property and their execution in the Mainland;

(7) the details of insolvency proceedings against the debtor in other countries or regions;

(8) other matters that shall be specified.

八、人民法院應當自收到認可和協助申請之日起五日內通知已知債權

人等利害關係人，並予以公告。利害關係人有異議的，應當自收到通知或者發佈公告之日起七日內向人民法院書面提出。

人民法院認為有必要的，可以進行聽證。

8. The people's court shall, within five days from the date it receives the application for recognition and assistance, notify the interested parties including the known creditors and announce its receipt of such application. Where an interested party has objections to the application, the party shall put forward the objections in writing to the people's court within seven days from the date of receipt of the notification or the date of such announcement.

The people's court may conduct a hearing if it considers it necessary.

九、在人民法院收到認可和協助申請之後、作出裁定之前，香港管理人申請保全的，人民法院依據內地相關法律規定處理。

9. From the time of receipt of an application for recognition and assistance and until it is decided upon, the people's court shall deal with any application from a Hong Kong Administrator for preservation measures in accordance with the relevant provisions of Mainland law.

十、人民法院裁定認可香港破產程序的，應當依申請同時裁定認可香港管理人身份，並於五日內公告。

10. When a people's court decides to recognise the Hong Kong Insolvency Proceedings, it shall at the same time decide upon application to recognise the status of the Hong Kong Administrator, and announce its decision within five

days.

十一、人民法院認可香港破產程序後，債務人對個別債權人的清償無效。

11. After the people's court recognises the Hong Kong Insolvency Proceedings, payment of debts made by the debtor to individual creditors shall be invalid.

十二、人民法院認可香港破產程序後，已經開始而尚未終結的有關債務人的民事訴訟或者仲裁應當中止；在香港管理人接管債務人的財產後，該訴訟或者仲裁繼續進行。

12. After the people's court recognises the Hong Kong Insolvency Proceedings, any civil action or arbitration involving the debtor that has started but has not yet been concluded shall be suspended; however, such action or arbitration can proceed after the Hong Kong Administrator takes over the debtor's property.

十三、人民法院認可香港破產程序後，有關債務人財產的保全措施應當解除，執行程序應當中止。

13. After the people's court recognises the Hong Kong Insolvency Proceedings, the measures for preserving the property of the debtor shall be lifted and the procedure for execution shall be suspended.

十四、人民法院認可香港破產程序後，可以依申請裁定允許香港管理人在內地履行下列職責：

- (一) 接管債務人的財產、印章和帳簿、文書等資料；
- (二) 調查債務人財產狀況，製作財產狀況報告；
- (三) 決定債務人的內部管理事務；
- (四) 決定債務人的日常開支和其他必要開支；
- (五) 在第一次債權人會議召開之前，決定繼續或者停止債務人的營業；
- (六) 管理和處分債務人的財產；
- (七) 代表債務人參加訴訟、仲裁或者其他法律程序；
- (八) 接受內地債權人的債權申報並進行審核；
- (九) 人民法院認為可以允許香港管理人履行的其他職責。

香港管理人履行前款規定的職責時，如涉及放棄財產權益、設定財產擔保、借款、將財產轉移出內地以及實施其他對債權人利益有重大影響的財產處分行為，需經人民法院另行批准。

香港管理人履行職責，不得超出《中華人民共和國企業破產法》規定的範圍，也不得超出香港特別行政區法律規定的範圍。

14. After the people's court recognises the Hong Kong Insolvency Proceedings, it may, upon application, decide to allow the Hong Kong Administrator to perform the following duties in the Mainland:

- (1) taking over the property, seals, account books, documents and other data of the debtor;
- (2) investigating into the financial position of the debtor and preparing a report on such position;
- (3) deciding on the matters of the debtor's internal management;
- (4) deciding on day-to-day expenses and other necessary expenditures;
- (5) before the holding of the first creditors' meeting, deciding whether to continue or suspend the business of the debtor;
- (6) managing and disposing of the debtor's property;
- (7) participating in legal actions, arbitrations or any other legal proceedings on behalf of the debtor;
- (8) accepting declaration of claims by creditors in the Mainland and examining them;
- (9) performing other duties that the people's court considers that he may be so allowed.

If the Hong Kong Administrator performs any of the abovementioned duties that involves waiver of property rights, creation of security on property, loan, transfer of property out of the Mainland and other acts for disposing of the property that has a major impact on the creditors' interest, it requires separate approval by the people's court.

The Hong Kong Administrator shall not perform his duties beyond the scope provided by the *Enterprise Bankruptcy Law of the People's Republic of China* and by the law of the Hong Kong Special Administrative Region.

十五、人民法院認可香港破產程序後，可以依香港管理人或者債權人的申請指定內地管理人。

指定內地管理人後，本意見第十四條規定的職責由內地管理人行使，債務人在內地的事務和財產適用《中華人民共和國企業破產法》處理。

兩地管理人應當加強溝通與合作。

15. After the people's court recognises the Hong Kong Insolvency Proceedings, the people's court may, upon an application by the Hong Kong Administrator or a creditor, designate a Mainland administrator.

After the designation of a Mainland administrator, the duties provided in Article 14 of this Opinion shall be exercised by the Mainland administrator. The *Enterprise Bankruptcy Law of the People's Republic of China* shall apply to the affairs and property of the debtor in the Mainland.

The administrators in both jurisdictions shall strengthen their communication and cooperation.

十六、人民法院認可香港破產程序後，可以依申請裁定對破產財產變價、破產財產分配、債務重組安排、終止破產程序等事項提供協助。

人民法院應當自收到上述申請之日起五日內予以公告。利害關係人有異議的，應當自發佈公告之日起七日內向人民法院書面提出。

人民法院認為有必要的，可以進行聽證。

16. After the people's court recognises the Hong Kong Insolvency Proceedings, it may, upon application, grant assistance concerning the

realisation of bankruptcy property, distribution of bankruptcy property, debt restructuring arrangement, termination of bankruptcy proceedings etc.

The people's court shall make an announcement within five days from the date of receipt of such application. Where an interested party has objections to the application, the party shall put forward the objections in writing to the people's court within seven days from the date of such announcement.

The people's court may conduct a hearing if it considers it necessary.

十七、發現影響認可和協助香港破產程序情形的，人民法院可以變更、終止認可和協助。

發生前款情形的，管理人應當及時報告人民法院並提交相關材料。

17. The people's court may modify or terminate any recognition or assistance upon discovering any circumstances that may impact on the recognition of and assistance to the Hong Kong Insolvency Proceedings by the people's court.

The administrator shall promptly inform and submit the relevant materials to the people's court, when in such a circumstance.

十八、利害關係人提供證據證明有下列情形之一的，人民法院審查核實後，應當裁定不予認可或者協助香港破產程序：

（一）債務人主要利益中心不在香港特別行政區或者在香港特別行政區連續存在未滿 6 個月的；

（二）不符合《中華人民共和國企業破產法》第二條規定的；

（三）對內地債權人不公平對待的；

(四) 存在欺詐的；

(五) 人民法院認為應當不予認可或者協助的其他情形。

人民法院認為認可或者協助香港破產程序違反內地法律的基本原則或者違背公序良俗的，應當不予認可或者協助。

18. A people's court shall refuse to recognise or assist the Hong Kong Insolvency Proceedings, upon examination of the evidence adduced by an interested party to the satisfaction of the court of any of the following:

(1) the centre of main interests of the debtor is not situated in the Hong Kong Special Administrative Region or it has been situated in the Hong Kong Special Administrative Region for less than six months continuously;

(2) Article 2 of the *Enterprise Bankruptcy Law of the People's Republic of China* is not satisfied;

(3) Mainland creditors are unfairly treated;

(4) there is fraud;

(5) there is any other circumstance where the people's court considers that recognition or assistance shall not be rendered.

The people's court shall refuse to recognise or assist the Hong Kong Insolvency Proceedings if it considers that such recognition or assistance violates the basic principles of the law of the Mainland or offend public order or good morals.

十九、香港特別行政區和內地就同一債務人或者具有關聯關係的債務人分別進行破產程序的，兩地管理人應當加強溝通與合作。

19. When separate insolvency proceedings concerning the same debtor or

connected debtors respectively take place in the Hong Kong Special Administrative Region and the Mainland, the administrators in the two jurisdictions shall strengthen their communication and cooperation.

二十、人民法院認可和協助香港破產程序的，債務人在內地的破產財產清償其在內地依據內地法律規定應當優先清償的債務後，剩餘財產在相同類別債權人受到平等對待的前提下，按照香港破產程序分配和清償。

20. If a people's court recognises and assists the Hong Kong Insolvency Proceedings, the bankruptcy property of the debtor in the Mainland shall first satisfy preferential claims under the law of the Mainland. The remainder of the property is to be distributed in accordance with the Hong Kong Insolvency Proceedings provided that creditors in the same class are treated equally.

二十一、人民法院作出裁定後，管理人或者利害關係人可以自裁定送達之日起十日內向上一級人民法院申請覆議。覆議期間不停止執行。

21. After the people's court has made a decision, the administrator or an interested party may apply to a people's court at the next higher level for review within 10 days from the date of service of the decision. Execution shall not be discontinued during the period of review.

二十二、申請認可和協助香港破產程序的，應當依據內地有關訴訟收費的法律和規定交納費用。

22. A party who applies for the recognition of and assistance to any Hong

Kong Insolvency Proceedings shall pay the fees in accordance with the laws and regulations in the Mainland concerning costs.

二十三、試點法院在審理跨境破產協助案件過程中，應當及時向最高人民法院報告、請示重大事項。

23. In the course of the hearing of cases of cross-boundary insolvency assistance, the courts in the pilot areas shall promptly report to and seek guidance from the Supreme People's Court on major issues.

二十四、試點法院應當與香港特別行政區法院積極溝通和開展合作。

24. The courts in the pilot areas shall actively communicate and take forward cooperation with the courts in the Hong Kong Special Administrative Region.

內地破產管理人向香港特區法院申請認可和協助的程序

實用指南

Procedures for a Mainland Administrator’s Application to the Hong Kong SAR Court for Recognition and Assistance

Practical Guide

內地破產管理人（“管理人”）向香港特區高等法院原訟法庭（“原訟法庭”）申請認可和協助的程序，概述如下：

The procedures for an application by a Mainland bankruptcy administrator (“Administrator”) to the Court of First Instance of the High Court of the Hong Kong SAR (“Court of First Instance”) for recognition and assistance are outlined below:

1.	<p>向內地法院申請“請求書”</p> <p>1.1 管理人應先向指定該管理人的內地法院申請致原訟法庭的請求書。</p> <p>1.2 該請求書須列出將向原訟法庭申請的命令的內容。</p>	<p>Application to the Mainland court for a “letter of request”</p> <p>1.1 The Administrator should first obtain, from the Mainland court which appointed him or her, a letter of request addressed to the Court of First Instance.</p> <p>1.2 The letter of request should set out the terms of the order to be sought from the Court of First Instance.</p>
2.	<p>向香港特區法院提交申請</p> <p>管理人在獲得內地法院出具的請求書後，可藉附有宗教式誓章或非宗教式誓詞的證據以單方面原訴</p>	<p>Application to the Hong Kong SAR court</p> <p>Having obtained a letter of request issued by the Mainland court, the</p>

	傳票，向原訟法庭申請標準格式命令。 ¹	Administrator can then apply to the Court of First Instance by originating summons with affidavit/affirmation evidence, on an <i>ex parte</i> basis, for a standard-form order. ²
3.	<p>召開庭審的需要</p> <p>原訟法庭可以書面方式處理有關標準格式命令的申請。如果原訟法庭認為合適，可以指示召開庭審。</p>	<p>Need for a court hearing</p> <p>The Court of First Instance may deal with an application for a standard-form order on paper. The Court of First Instance may direct a court hearing to be held as appropriate.</p>

Note:

The relevant sample documents are attached below for reference.

¹ **如果**管理人除了申請標準格式命令外，也同時申請影響某一特定方的實質命令（例如要求某方交出文件的命令），該方則應被指明為答辯人，並獲送達該申請。

² **If** in addition to the standard-form order, the Administrator applies for substantive orders affecting a specific party (for example, orders for production of documents by a specific party), that party should be identified as a respondent and served with the application.

Sample Documents

(for reference only)

1. Letter of request issued by the Mainland court to the Court of First Instance of the High Court of the Hong Kong SAR (“Court of First Instance”)
2. Application to the Court of First Instance by way of *ex parte* originating summons
3. Affidavit / Affirmation evidence in support of the application
4. A standard-form order to be granted by the Court of First Instance

[] Intermediate People's Court

Case Number: []

In the matter of the Enterprise Bankruptcy Law of the People's Republic of China
And in the matter of [Company]

Letter of Request

Whereas

1. This Court has jurisdiction according to the laws regarding insolvent liquidation of companies in the People's Republic of China.
2. [Background to the Company and its insolvency proceedings.]
3. [The scope of Administrator's powers and duties in relation to the liquidation of the Company.]
4. [Reasons for application for recognition and assistance.]
5. This Court hereby requests the High Court of the Hong Kong Special Administrative Region to make the following orders and directions in order to assist the [liquidation] procedures and the Administrator ("Order"):

Suggested order and directions

1. []
2. []

This Court confirms and guarantees that, the above requests have not been restricted by the Enterprise Bankruptcy Law of the People's Republic of China and the relevant judicial interpretations.

[Name of the Judge]
[Seal of the Mainland Court]

[] 20[]

Dated the [●] day of [] 20[].

Registrar

This summons was taken out by [], Hong Kong, Solicitors for the Applicants.

Ex parte application

Applicants

[]

[]^{1st}: []/[]/20[]

HCMP /20[]

**IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
MISCELLANEOUS PROCEEDINGS NO. OF 20[]**

IN THE MATTER of [Company]

and

IN THE MATTER of the inherent
jurisdiction of the Court

BY

Applicants

[]

AFFIDAVIT / AFFIRMATION* OF [NAME]

I, [name], of [address], make oath and say / solemnly and sincerely affirm* as follows:-

1. I am []. I am duly authorised by the Applicants to make this affidavit / affirmation* for and on their behalf in support of the Originating Summons filed by the Applicants on [●] 20[] ("**Originating Summons**").

2. I hereby confirm and verify that the facts and matters deposed to in this affidavit / affirmation* are, unless otherwise stated, based on my personal knowledge and/or perusal of documents, the contents of which are true and correct to the best of my information, knowledge and belief.

3. There is now produced and shown to me a bundle of paginated copy documents marked as Exhibit "[]". References in square brackets in bold in this affidavit / affirmation* are to the pages of that exhibit.

A. Background of the Company

4. [].

B. Background to the Originating Summons

5. []

C. Reasons for recognition in Hong Kong and the relief sought

6. [].

D. Conclusion

7. [].

And I make oath and say / solemnly and sincerely affirm* that the contents of this affidavit / affirmation* are true.

This Affidavit / Affirmation* is filed on behalf of the Applicants.

[* please choose as appropriate]

Recognition Order by the Hong Kong SAR Court

1. The [insolvent liquidation] of [Company] and the appointment of [administrators] be recognised by this Court;

2. The [administrators] have and may exercise in the Hong Kong Special Administrative Region the following powers:
 - (a) to request and receive from third parties documents and information concerning the Company and its promotion, formation, business dealings, accounts, assets, liabilities or affairs including the cause of its insolvency;

 - (b) to locate, protect, secure and take into their possession and control all assets and property within the jurisdiction of this Court to which the Company is or appears to be entitled;

 - (c) to locate, protect, secure and take into their possession and control the books, papers, and records of the Company including the accountancy and statutory records within the jurisdiction of this Court and to investigate the assets and affairs of the Company and the circumstances which gave rise to its insolvency. The books, records and documents of the Company include:

- (i) emails exchanged and other correspondence between the Company and its auditors, and the Company and other third parties; and
 - (ii) documents and information provided by the Company to its auditors and provided by the auditors to the Company in relation to the audit work;

- (d) to take all necessary steps to prevent any disposal of the Company's assets and, in particular, to secure any credit balances in any bank accounts in the name or under the control of the Company within this jurisdiction;

- (e) to operate and open or close any bank accounts in the name and on behalf of the Company for the purpose of collecting the assets and paying the costs and expenses of the [administrators];

- (f) to retain and employ barristers, solicitors or attorneys, accountants and/or such other agents or professional persons as the [administrators] consider appropriate for the purpose of advising or assisting in the execution of their powers and duties under this Order; and

- (g) so far as may be necessary to supplement and to effect the powers set out herein, to bring legal proceedings and make all such applications to this Court, whether in their own names or in the name of the Company,

on behalf of and for the benefit of the Company, including any applications for:

- (i) orders for disclosure, the production of documents and/or examination of third parties to facilitate their investigations into the assets and affairs of the Company and the circumstances which gave rise to its insolvency; and/or
- (ii) ancillary relief such as freezing orders, search and seizure orders in any legal proceedings commenced;

3. Anything that is authorised or required to be done by the [administrators] may be done by all or any one or more of the persons appointed;
4. If the [administrators] wish to apply for a stay or other directions in respect of proceedings in the High Court of any sort as a consequence of the recognition of their appointment by this Order, such application shall be listed before [the judge in charge of the Companies List]³. The [administrators] shall write to the clerk to [the judge in charge of the Companies List]⁴ seeking case management directions for the determination of any application that [they] wish to make pursuant to this order;
5. The [administrators] do have liberty to apply; and

³ Currently, the Hon. Mr. Justice Harris is the judge in charge of the Companies List.

⁴ Same as the above.

6. The costs of this application be paid out of the assets of the Company as an expense of the liquidation.