

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.