

## 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><b>向內地法院申請“請求書”</b></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><b>Application to the Mainland court for a “letter of request”</b></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><b>向香港特區法院提交申請</b></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傳票，向原訟法庭申請標準格式命</p>	<p><b>Application to the Hong Kong SAR court</b></p> <p>Having obtained a letter of request issued by the Mainland court, the Administrator can then apply to the Court of First Instance by originating summons with affidavit/affirmation</p>

	令。 <sup>1</sup>	evidence, on an <i>ex parte</i> basis, for a standard-form order. <sup>2</sup>
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><b>Need for a court hearing</b></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.

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<sup>1</sup> **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。

<sup>2</sup> **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

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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.



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 and Bankruptcy List]<sup>3</sup>. The [administrators] shall write to the clerk to [the judge in charge of the Companies and Bankruptcy List]<sup>4</sup> 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
- 6. The costs of this application be paid out of the assets of the Company as an expense of the liquidation.

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<sup>3</sup> Currently, the Hon Madam Justice Linda Chan is the judge in charge of the Companies and Bankruptcy List.

<sup>4</sup> Same as the above.