

最高人民法院

关于开展认可和协助香港特别行政区破产程序试点工作的意见

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)

为贯彻落实《中华人民共和国香港特别行政区基本法》第九十五条的规定，进一步完善内地与香港特别行政区司法协助制度体系，促进经济融合发展，优化法治化营商环境，最高人民法院与香港特别行政区政府结合司法实践，就内地与香港特别行政区法院相互认可和协助破产程序工作进行会谈协商，签署《最高人民法院与香港特别行政区政府关于内地与香港特别行政区法院相互认可和协助破产程序的会谈纪要》。按照纪要精神，最高人民法院依据《中华人民共和国民事诉讼法》《中华人民共和国企业破产法》等相关法律，制定本意见。

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、福建省厦门市、广东省深圳市人民法院开展认可和协助香港破产程序的试点工作。

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、本意见所称“香港破产程序”，是指依据香港特别行政区《公司（清盘及杂项条文）条例》《公司条例》进行的集体清偿程序，包括公司强制清盘、公司债权人自动清盘以及由清盘人或者临时清盘人提出并经香港特别行政区高等法院依据香港特别行政区《公司条例》第 673 条批准的公司债务重组程序。

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、本意见所称“香港管理人”，包括香港破产程序中的清盘人和临时清盘人。

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

四、本意见适用于香港特别行政区系债务人主要利益中心所在地的香港破产程序。

本意见所称“主要利益中心”，一般是指债务人的注册地。同时，人民法院应当综合考虑债务人主要办事机构所在地、主要营业地、主要财产所在地等因素认定。

在香港管理人申请认可和协助时，债务人主要利益中心应当已经在香港特别行政区连续存在 6 个月以上。

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、债务人在内地的主要财产位于试点地区、在试点地区存在营业地或者在试点地区设有代表机构的，香港管理人可以依据本意见申请认可和协助香港破产程序。

依据本意见审理的跨境破产协助案件，由试点地区的中级人民法院管辖。

向两个以上有管辖权的人民法院提出申请的，由最先立案的人民法院管辖。

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、申请认可和协助香港破产程序的，香港管理人应当提交下列材料：

(一) 申请书；

(二) 香港特别行政区高等法院请求认可和协助的函；

(三) 启动香港破产程序以及委任香港管理人的有关文件；

(四) 债务人主要利益中心位于香港特别行政区的证明材料，证明材料在内地以外形成的，还应当依据内地法律规定办理证明手续；

(五) 申请予以认可和协助的裁判文书副本；

(六) 香港管理人身份证件的复印件，身份证件在内地以外形成的，还应当依据内地法律规定办理证明手续；

(七) 债务人在内地的主要财产位于试点地区、在试点地区存在营业地或者在试点地区设有代表机构的相关证据。

向人民法院提交的文件没有中文文本的，应当提交中文译本。

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、申请书应当载明下列事项：

(一) 债务人的名称、注册地以及香港管理人所知悉的债务人主要负责人的姓名、职务、住所、身份证件信息、通讯方式等；

(二) 香港管理人的姓名、住所、身份证件信息、通讯方式等；

(三) 香港破产程序的进展情况和计划；

(四) 申请认可和协助的事项和理由；

(五) 债务人在内地的已知财产、营业地、代表机构和债权人情况；

(六) 债务人在内地涉及的诉讼、仲裁以及有关债务人财产的保全措施、执行程序等情况；

(七) 其他国家或者地区针对债务人进行破产程序的相关情况；

(八) 其他应当载明的事项。

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、人民法院应当自收到认可和协助申请之日起五日内通知已知债权

人等利害关系人，并予以公告。利害关系人有异议的，应当自收到通知或者发布公告之日起七日内向人民法院书面提出。

人民法院认为有必要的，可以进行听证。

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、在人民法院收到认可和协助申请之后、作出裁定之前，香港管理人申请保全的，人民法院依据内地相关法律规定处理。

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、人民法院裁定认可香港破产程序的，应当依申请同时裁定认可香港管理人身份，并于五日内公告。

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、人民法院认可香港破产程序后，债务人对个别债权人的清偿无效。

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、人民法院认可香港破产程序后，已经开始而尚未终结的有关债务人的民事诉讼或者仲裁应当中止；在香港管理人接管债务人的财产后，该诉讼或者仲裁继续进行。

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、人民法院认可香港破产程序后，有关债务人财产的保全措施应当解除，执行程序应当中止。

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、人民法院认可香港破产程序后，可以依申请裁定允许香港管理人在内地履行下列职责：

- (一) 接管债务人的财产、印章和账簿、文书等资料；
- (二) 调查债务人财产状况，制作财产状况报告；
- (三) 决定债务人的内部管理事务；
- (四) 决定债务人的日常开支和其他必要开支；
- (五) 在第一次债权人会议召开之前，决定继续或者停止债务人的营业；
- (六) 管理和处分债务人的财产；
- (七) 代表债务人参加诉讼、仲裁或者其他法律程序；
- (八) 接受内地债权人的债权申报并进行审核；
- (九) 人民法院认为可以允许香港管理人履行的其他职责。

香港管理人履行前款规定的职责时，如涉及放弃财产权益、设定财产担保、借款、将财产转移出内地以及实施其他对债权人利益有重大影响的财产处分行为，需经人民法院另行批准。

香港管理人履行职责，不得超出《中华人民共和国企业破产法》规定的范围，也不得超出香港特别行政区法律规定的范围。

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、人民法院认可香港破产程序后，可以依香港管理人或者债权人的申请指定内地管理人。

指定内地管理人后，本意见第十四条规定的职责由内地管理人行使，

债务人在内地的事务和财产适用《中华人民共和国企业破产法》处理。

两地管理人应当加强沟通与合作。

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、人民法院认可香港破产程序后，可以依申请裁定对破产财产变价、破产财产分配、债务重组安排、终止破产程序等事项提供协助。

人民法院应当自收到上述申请之日起五日内予以公告。利害关系人有异议的，应当自发布公告之日起七日内向人民法院书面提出。

人民法院认为有必要的，可以进行听证。

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、发现影响认可和协助香港破产程序情形的，人民法院可以变更、终止认可和协助。

发生前款情形的，管理人应当及时报告人民法院并提交相关材料。

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、利害关系人提供证据证明有下列情形之一的，人民法院审查核实后，应当裁定不予认可或者协助香港破产程序：

（一）债务人主要利益中心不在香港特别行政区或者在香港特别行政区连续存在未满 6 个月的；

（二）不符合《中华人民共和国企业破产法》第二条规定的；

（三）对内地债权人不公平对待的；

（四）存在欺诈的；

（五）人民法院认为应当不予认可或者协助的其他情形。

人民法院认为认可或者协助香港破产程序违反内地法律的基本原则或

者违背公序良俗的，应当不予认可或者协助。

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、香港特别行政区和内地就同一债务人或者具有关联关系的债务人分别进行破产程序的，两地管理人应当加强沟通与合作。

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、人民法院认可和协助香港破产程序的，债务人在内地的破产财产清偿其在内地依据内地法律规定应当优先清偿的债务后，剩余财产在相同类别债权人受到平等对待的前提下，按照香港破产程序分配和清偿。

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、人民法院作出裁定后，管理人或者利害关系人可以自裁定送达之日起十日内向上一级人民法院申请复议。复议期间不停止执行。

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、申请认可和协助香港破产程序的，应当依据内地有关诉讼收费的法律和规定交纳费用。

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、试点法院在审理跨境破产协助案件过程中，应当及时向最高

人民法院报告、请示重大事项。

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、试点法院应当与香港特别行政区法院积极沟通和开展合作。

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