

## Client Alert

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## Hong Kong court extends recognition and assistance to foreign liquidators appointed in creditors' voluntary liquidation

### Recent developments

The Hong Kong court in *Re The Joint Liquidators of Supreme Tycoon Limited (in liquidation in the British Virgin Islands)* (08/02/2018, HCMP833/2017), [2018] HKCFI 277 ("**Re Supreme Tycoon**") has, for the first time, granted recognition and assistance to foreign liquidators appointed in a creditors' voluntary winding-up.

In our previous alert of [Hong Kong Court Paves a Clear Path for the Recognition and Assistance of Foreign Liquidators](#), we discussed the Hong Kong court's willingness to accede to letters of request issued by foreign courts for the recognition and assistance of foreign liquidators in compulsory liquidations.

The landmark decision of ***Re Supreme Tycoon*** confirms the Hong Kong court's continued willingness to assist foreign liquidators and extends its approach to creditors' voluntary liquidations, provided the insolvency regime of the foreign jurisdiction is similar to that of Hong Kong. Our alert discusses the implications for insolvency practitioners and the court's rationale for its approach.

### Implications for insolvency practitioners

There was previously no authority in Hong Kong as to whether a foreign insolvent liquidation commenced by a shareholders' resolution is eligible for recognition and assistance in Hong Kong.

The implication of this latest decision is that, similar to Singapore in *Re Gulf Pacific Shipping Ltd (in creditors' voluntary liquidation) and others* [2016] SGHC 287<sup>1</sup>, foreign liquidators in voluntary liquidation scenarios may now obtain recognition and assistance to carry out their investigations in Hong Kong. The court will not draw a distinction between voluntary and compulsory processes.

The Hong Kong court's key rationale for extending recognition and assistance to foreign liquidators appointed in voluntary liquidations was that:

- i) 'the common law power of assistance exists for the purpose of surmounting the practical problems posed for a worldwide winding-up of the company's affairs by the territorial limits of the powers of each country's court'; and,
- ii) the difference between court supervision in a compulsory and voluntary winding up was 'one of degree, not of kind'.

<sup>1</sup> A case where Singapore recognised and granted assistance to Hong Kong liquidators.



On the facts of *Re Supreme Tycoon*, it was noteworthy that:

- i) the Company's liquidation was an insolvent liquidation and fully supervised by the Supreme Court of the British Virgin Islands ("**BVI Supreme Court**");
- ii) the liquidators of the Company were officers of the BVI Supreme Court; and,
- iii) the powers and duties of the liquidators in the voluntary liquidation were the same as liquidators appointed in the BVI Supreme Court.

This decision marks a distinct departure from the *dicta* of Lord Sumption in the Privy Council case of *Singularis Holdings Ltd v PricewaterhouseCoopers* [2015] AC 1675) ("**Singularis**") that the common law power of assistance:

*'is only available to assist the officers of a foreign court of insolvency jurisdiction or equivalent public officers. It would not, for example, be available to assist a voluntary winding up, which is essentially a private arrangement and although subject to the directions of the court is not conducted by or on behalf of an officer of the court'*<sup>2</sup>

## Members' voluntary liquidation excluded from recognition

Although *Re Supreme Tycoon* has dramatically widened the scope of recognition and assistance to liquidators in a creditors' voluntary liquidation, this would not extend to solvent liquidations including a members' voluntary liquidation. As pointed out by Justice Harris, a foreign solvent liquidation is not a collective insolvency proceeding, and is more akin to the private arrangement referred to by the Privy Council in *Singularis*.

## Conclusion

This latest development is welcome news for foreign liquidators seeking to obtain information and locate assets in Hong Kong.

Underpinning Justice Harris' decision is the rationale that both compulsory and voluntary insolvency proceedings concern the collective enforcement of debts for the benefit of the general body of creditors. In those circumstances, recognition and assistance should be given to foreign liquidators to assist office-holders with their duties and functions, which will ultimately enhance the efficiency and effectiveness of cross-border insolvencies.

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<sup>2</sup> *Singularis*, Lord Sumption, at [29]

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