

Client Alert

September 2016

Hong Kong Court Paves a Clear Path for the Recognition and Assistance of Foreign Liquidators

Recent developments

The recent decision of the Hong Kong court in *Re Rennie Produce (Aust) Pty Ltd (In Liquidation in Australia)* (HCMP 1640/2016, 26 August 2016), together with the prior decision in *Re Joint Official Liquidators of Centaur Litigation SPC (In Liquidation)* (HCMP 3389/2015, 3391/2015 and 3393/2015, 10 March 2016) have confirmed the court's willingness to accede to letters of request issued by foreign courts for the recognition and assistance of foreign liquidators.

Implications for insolvency practitioners

The Hong Kong court has dealt with an increasing number of applications concerning the recognition and assistance of foreign liquidators over the past two years.

Hong Kong is particularly susceptible to these types of applications as there are many foreign-incorporated companies that have businesses and assets in Hong Kong. If these companies are wound up in their place of incorporation, the liquidator will need to be recognised in other jurisdictions in order to take control of the business and assets of the company located overseas.

In *Re Rennie Produce* and *Re Centaur Litigation*, the court has paved a clear path for future applications by foreign liquidators for recognition and assistance in Hong Kong, and has even set out the terms of the orders that will normally be granted in such applications. This will eliminate the need to apply for ancillary winding-up orders in Hong Kong in some cases.

What the cases say

The decision in *Re Rennie Produce*, which was handed down around half a year after *Re Centaur Litigation*, has confirmed the practice concerning orders for recognition and assistance and provided clarity in respect of orders for document production.

Both applications were made *ex parte* upon a letter of request issued by a foreign court, being the Federal Court of Australia and the Grand Court of the Cayman Islands, respectively.

Orders for recognition and assistance

As stated in *Re Centaur Litigation*, the Hong Kong court has power under the common law to recognise foreign liquidators and provide assistance to them in carrying out their functions. In that case, an order was made:

- recognising the liquidators appointed by the foreign court; and
- granting the liquidators powers that are available to them as a matter of foreign law, provided the same powers are available to liquidators

www.bakermckenzie.com

Beijing


Suite 3401, China World Office 2
China World Trade Centre
1 Jianguomenwai Dajie
Beijing 100004, PRC
Tel: +86 10 6535 3800
Fax: +86 10 6505 2309

Hong Kong

14th Floor, Hutchison House
10 Harcourt Road
Central, Hong Kong
Tel: +852 2846 1888
Fax: +852 2845 0476

Shanghai

Unit 1601, Jin Mao Tower
88 Century Avenue, Pudong
Shanghai 200121, PRC
Tel: +86 21 6105 8558
Fax: +86 21 5047 0020



Should you wish to obtain further information or want to discuss any issues raised in this alert with us, please contact:

Cynthia Tang
+852 2846 1708
cynthia.tang@bakermckenzie.com

Gary Seib
+852 2846 2112
gary.seib@bakermckenzie.com

Kwun Yee Cheung
+852 2846 1683
kwun.yee.cheung@bakermckenzie.com

Jenny Kung
+852 2846 1577
jenny.kung@bakermckenzie.com

under Hong Kong law, as if they had been appointed liquidators of the company under Hong Kong law, including the ability to take possession of the assets and books and records of the company, and to bring legal proceedings.

In *Re Rennie Produce*, the court made an order in the same terms as that of *Re Centaur Litigation*, and indicated its intention that such an order will become the standard order that will be made by the court in these types of applications. The precise terms of the order can be found in the decision in *Re Centaur Litigation*.

Orders for document production

The liquidators in *Re Rennie Produce* also made an application for the production of documents by two banks in Hong Kong. Previously, in *The Joint Official Liquidators of A Co* [2014] 4 HKLRD 374, the court was of the view that in the context of information requests, a person in Hong Kong who receives a request or instruction from a foreign liquidator should, once he is satisfied that the liquidator was properly appointed in the place of incorporation, comply with the request or instruction if he would have complied with the request or instruction had it been given by the board of directors of that company. No Hong Kong court order should be necessary.

Notwithstanding the court's sentiment in *The Joint Official Liquidators of A Co*, often the reality is that many banks and auditors are not comfortable with handing over information and documents relating to their clients to a foreign liquidator in the absence of a Hong Kong court order recognising the liquidator's appointment and powers. *Re Rennie Produce* brings greater clarity given that orders for document production will now likely be made by the Hong Kong court upon a letter of request by the foreign court provided the foreign insolvency regime contains provisions substantially similar to the private examination provision in Hong Kong (s. 221 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)).

Thus, in *Re Rennie Produce*, the court made orders for document production by two banks in Hong Kong covering:

- documents identifying the account holders, contact details, contact persons, addresses and signatories of specified accounts;
- documents identifying any accounts held by an entity in the name of or to the benefit of specified persons; and
- statements or documents recording or evidencing the movement of funds into or out of specified accounts.

The precise terms of the order can be found in the decision in *Re Rennie Produce*.

Conclusion

Instead of having to apply for an ancillary winding-up order in Hong Kong, foreign liquidators now have a clear avenue for obtaining orders for recognition and assistance, including document production orders, pursuant to a letter of request provided that the insolvency regime of the foreign jurisdiction is similar to that of Hong Kong. This will no doubt result in significant savings of time and costs and be of benefit to the creditors of the foreign entity.

On the other hand, it is likely that those receiving requests for information and documents from foreign liquidators, such as banks and auditors, will be confronted with court orders for production instead of requests for voluntary production. A recipient should obtain legal advice on the scope of the document production order.

This publication has been prepared for clients and professional associates of Baker & McKenzie. Whilst every effort has been made to ensure accuracy, this publication is not an exhaustive analysis of the area of law discussed. Baker & McKenzie cannot accept responsibility for any loss incurred by any person acting or refraining from action as a result of the material in this publication. If you require any advice concerning individual problems or other expert assistance, we recommend that you consult a competent professional adviser.

Unsubscribe
To unsubscribe from our mailing list or to change your communication preferences, please contact hklaw@bakermckenzie.com.

© 2016 Baker & McKenzie. All rights reserved. Baker & McKenzie International is a Swiss Verein with member law firms around the world. In accordance with the common terminology used in professional service organizations, reference to a "partner" means a person who is a partner, or equivalent, in such a law firm. Similarly, reference to an "office" means an office of any such law firm.

This may qualify as "Attorney Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.