A new framework will be introduced for the cooperation between the courts of Hong Kong and Mainland China on cross-border corporate insolvency.

The Secretary for Justice, Ms Teresa Cheng SC, and Vice-president of the Supreme People’s Court (SPC), Mr Yang Wanming, signed a Record of Meeting in Shenzhen on 14 May 2021 to signify the consensus on the mutual recognition of and assistance to insolvency proceedings between the two places.

Pilot measure on mutual recognition and assistance

Under the new mechanism, the SPC may designate “pilot areas” in which the Intermediate People’s Court may cooperate with the Hong Kong courts. The SPC has issued a set of opinions on taking forward the pilot measure, in which Shanghai, Xiamen and Shenzhen have been designated as pilot cities. As highlighted in the Record of Meeting, the number of pilot areas is expected to be progressively expanded.

The key effects of the new mechanism are twofold.

First, a liquidator or provisional liquidator in corporate insolvency proceedings in Hong Kong may apply to the relevant Intermediate People’s Court in a pilot area in the Mainland for recognition of compulsory winding-up, creditors’ voluntary winding-up and corporate debt restructuring proceedings brought by him as sanctioned by a Hong Kong court according to Hong Kong law; recognition of his office as a liquidator or provisional liquidator; and grant of assistance for discharge of his duties as a liquidator or provisional liquidator.

Second, an administrator in Mainland bankruptcy proceedings may apply to the High Court of Hong Kong for recognition of bankruptcy liquidation, reorganisation and compromise proceedings under the Enterprise Bankruptcy Law of the PRC; recognition of his office as an administrator; and grant of assistance for discharge of his duties as an administrator.

The Hong Kong government has issued a Practical Guide, which outlines the procedures for an application by a Mainland bankruptcy administrator to the High Court for recognition and assistance, together with sample application documents for reference.

The SPC’s opinion covers various key areas, including the procedures for an application by a Hong Kong liquidator or provisional liquidator, guidance to the People’s Court on handling the application, as well as substantive matters in relation to the application. It specifically directs the People’s Courts in the pilot areas to actively communicate and take forward cooperation with the Hong Kong courts.
Significance of the new framework

Since the handover in 1997, Hong Kong has strengthened its cooperation with the Mainland on administrative, economic and judicial matters. In accordance with Article 95 of the Basic Law, the Hong Kong government has concluded various arrangements with Mainland judicial organs. These cover service of judicial documents in civil and commercial matters; mutual enforcement of arbitral awards; mutual recognition and enforcement of judgments in civil and commercial matters; and court-ordered interim measures in aid of arbitral proceedings, among others. Please refer to our earlier articles:

- Recognition and enforcement of Mainland judgments in Hong Kong;
- Hong Kong and Mainland China sign supplemental arrangement concerning mutual enforcement of arbitral awards; and
- Implementation of the Interim Measure Arrangement between Hong Kong and Mainland China.

With ever-closer ties between Hong Kong and the Mainland, cross-border investments have gone from strength to strength. Hong Kong is a major platform for PRC companies to raise capital by initial public offering or in private equity markets. Inevitably, cross-border insolvency has also become prevalent, especially during the challenging times of COVID-19. A typical case will be a PRC-incorporated company listed in Hong Kong, with business activities across jurisdictions and, therefore, creditors at home and abroad. Debt restructuring, reorganisation, or the liquidation process and recovery of assets will necessarily involve numerous jurisdictions. However, differences in the insolvency regimes between Hong Kong and the Mainland have hindered the mutual recognition of and assistance to insolvency proceedings and liquidation.

We anticipate that the new framework will be of significant practical value. It will benefit not only the liquidator but also companies in financial trouble and their stakeholders. The Record of Meeting expressly covers reorganisation and bankruptcy compromise proceedings in the Mainland, and debt restructurings sanctioned by the court in Hong Kong. This will facilitate and encourage the use of debt restructuring for rescuing companies, in order for them to reach consensus among various stakeholders, raise necessary funds and revive their businesses. With regard to mutual recognition of and assistance to liquidation, this will promote an orderly and efficient insolvency regime involving both Hong Kong and the Mainland.

As the Record of Meeting stated, Hong Kong and the Mainland will continue to communicate on matters relating to the judicial implementation of the mutual recognition of and assistance to bankruptcy proceedings; consult each other to resolve relevant issues; continually improve the mechanism; and progressively expand the pilot areas. With these developments, we expect that the cooperation between the two sides will continue to strengthen.

Meanwhile, the long-awaited corporate rescue statutory regime is set to be introduced to the Legislative Council (Legco). In late 2020, the government announced in a paper submitted to the Legco that it would present the Companies (Corporate Rescue) Bill in 2021. The Bill will introduce a statutory corporate rescue procedure and insolvent trading provisions in Hong Kong. It will be a great leap forward if the government’s legislative effort bears fruit, which may in turn pave the way to recognition and assistance of Hong Kong corporate rescues in the wider China region. In the spirit of cooperation between Hong Kong and the Mainland, further legal developments will be eagerly anticipated.

Your Key Contacts