

Article

Hong Kong Court Renders Assistance to Cayman Islands Liquidators of a Solvent Investment Fund

On 24 June 2022, the Honourable Mr Justice Harris (of the High Court of Hong Kong Special Administrative Region) granted assistance to Cayman Islands appointed Joint Provisional Liquidators (the “JPLs”) of Seahawk China Dynamic Fund, a solvent company incorporated in the Cayman Islands (the “Company”). Harris J ruled that the JPLs have the power to act as agents of the Company in Hong Kong. Reasons were delivered on 4 July 2022.

The Hong Kong ruling is expressly based on common law conflict of laws principles, as opposed to cross-border insolvency principles. In granting assistance to the JPLs, Harris J reiterated the following uncontroversial proposition from Re Grand Peace Group that:

“[A]s a matter of Hong Kong law generally matters concerning the constitution and management of the affairs of a foreign company are determined by the laws of the place of its incorporation.”

Importantly, Harris J confirms that the question of whether or not a foreign liquidator is entitled to represent a particular company (i.e. in a similar way to its board of directors) and act as its agent in another jurisdiction is a matter of the law of the place of incorporation. The Judge also clarified that deciding the question of the Centre of Main Interests (“COMI”) of the relevant company is irrelevant if a liquidator of a solvent company is seeking an order confirming that s/he has particular powers by virtue of an appointment in the company's place of incorporation.

A link to the Hong Kong ruling is [here](#).

Appointment in the Cayman Islands

The JPLs (Eleanor Fisher, Anita So, and Tsui Chi Chui of EY) were appointed by the Grand Court of the Cayman Islands on 10 February 2022 in order to protect and preserve the value of the Company's assets pending the determination of contested winding up proceedings in the Cayman Islands (the “**Cayman Proceedings**”). The Cayman Proceedings concern a petition presented by the majority shareholder of the Company (which is a solvent, open-ended fund) that the Company be wound up on the alleged basis that it is just and equitable to do so. There are also related substantive proceedings in Hong Kong largely concerning the same underlying disputed matters (the “**Hong Kong Proceedings**”).

On 21 February 2022, the Grand Court of the Cayman Islands issued a Letter of Request to the Hong Kong High Court, requesting that the JPLs' appointment be recognised in Hong Kong to the fullest extent permitted by Hong Kong law.

Assistance in Hong Kong

The Hong Kong Court granted the JPLs' application and ordered that the JPLs shall have the same powers to act in the name of, and on behalf of, the Company in Hong Kong as granted by the Cayman Court, save that the JPLs will not have the power to bring legal proceedings or make applications on behalf of the Company (including any applications for ancillary relief such as freezing orders or search orders).

The Hong Kong order grants the JPLs the power to secure and take possession of all of the Company's assets within the jurisdiction of the Hong Kong Court and to take all necessary steps to prevent any disposal of the Company's assets within Hong Kong. The JPLs were also granted the power to participate in the Hong Kong Proceedings in the name of the Company.

In his judgment dated 4 July 2022, Harris J sent a clear message to “*banks and other sophisticated organisations*” in Hong Kong that it should be clear to them that foreign officeholders, such as the JPLs, are able to exercise conventional powers of a company's agent in Hong Kong, such as taking control of its books and records, particularly if such powers are expressly provided for in the order of appointment.

It was noted that banks generally act in accordance with a Cayman Islands company's board resolution without the Hong Kong court's approval and feel comfortable operating bank accounts for companies incorporated in offshore jurisdictions. Accordingly, Harris J highlighted that the same banks should not then require foreign liquidators to come to court to obtain orders confirming that the liquidators have the same powers and may be exposed to adverse costs orders if they insist upon a court order.

Comment

The ruling provides welcome guidance to officeholders and stakeholders in solvent cross-border scenarios involving foreign-domiciled companies seeking recognition or assistance in Hong Kong. A key issue in each case will be whether insolvency principles are engaged by the application.

The ruling in *Seahawk* refers to and reaffirms long-established principles related to the importance of the place of incorporation. As Lord Sumption explained in *Singularis*: “[E]ven without a winding up, the court could, on ordinary principles of private international law, have recognised as a matter of comity the vesting of the company's assets in an agent or office-holder appointed or recognised under the law of its incorporation.” It is plain from the ruling that the way the application is framed and the underlying rationale for the appointment of the officeholder will have a significant bearing on the outcome of the application for recognition or assistance from a like-minded common law jurisdiction abroad.

The Conyers authors act for the JPLs in the Cayman Proceedings. Look Chan Ho (Des Voeux Chambers) appeared for the JPLs in the Hong Kong recognition application, instructed by White & Case Hong Kong.

Conyers has been instructed by the company or liquidators in the majority of the recent leading cases concerning cross-border recognition and comity between Hong Kong and the Cayman Islands, including for example in *GTI Holdings*, *Silver Base*, *Seahawk China Dynamic Fund*, *China Wood* and *Sun Cheong*. Accordingly, Conyers has unparalleled expertise in navigating and advising on complex cross-border restructuring, insolvency and asset preservation assignments involving Cayman Islands companies.

Authors: Jonathon Milne, Partner | Norman Hau, Partner, | Alecia Johns, Counsel

Media Contact:

media@conyers.com

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