Introduction
In the case of *Re Opti-Medix Ltd (in liquidation) and another matter* [2016] SGHC, the Singaporean Court has handed down the first written judgment which recognizes foreign liquidators from jurisdictions other than the place of incorporation of the company.

Background
Medical Trend Limited and Opti-Medix Limited were incorporated in the British Virgin Islands while their main businesses are conducted in Japan with sale proceeds transferred to their Singapore bank accounts. In late 2015, bankruptcy orders were granted by the Tokyo District Court, and the Applicant was appointed as the Bankruptcy Trustee of the two companies. The Applicant sought to exercise his powers under the Japanese bankruptcy orders to ascertain, administer, and dispose of the companies’ assets and hence he applied for the recognition of the Singapore Court of his appointment as the Bankruptcy Trustee. The primary issue is whether liquidation in a jurisdiction other than that of the place of incorporation should be recognized.

Court’s Ruling
To begin with, the fact that a company is in liquidation in a particular country does not by itself give rise to a basis to recognize that liquidation in Singapore. Something more has to be shown. The Court acknowledges that there has been a general trend towards recognition that universal cooperation between jurisdictions is a necessary part of the contemporary world in the context of cross-border insolvency. In line with such a Universalist approach, there is a greater readiness to go beyond traditional bases for recognizing foreign insolvency proceedings. The place of incorporation of a company may be an accident of many factors, and may be far removed from the actual place of business.

Identifying the Center of Main Interest
The Court considers that the approach of identifying the center of main interest (the “COMI Test”) should be taken as a matter of practicality. Given the current legislative regime is silent on the recognition of foreign insolvency proceedings, common law may develop a broader test. The center of main interest will be a strong connecting factor to consider because it is the place where the bulk of the business is carried out (e.g. where most dealings occur, most money is paid in and out, and most decisions are made etc.).
Further, the judge notes that on the adoption of the COMI Test, there needs not necessarily be a presumption in favour of the registered office as there is under the Model Law or the EU Insolvency Regulation. However, such a presumption will be a default rule in the absence of evidence to the contrary.

Outcome of the Case

In the case, Japan was essentially the sole place where actual business was carried on. This provided a basis for recognition of the Applicant’s appointment as Bankruptcy Trustee of the two companies, notwithstanding that Japan was not their place of incorporation. The presumption in favour of the registered office was rebutted by the clear facts in this case.

Further, interests of Singapore creditors were protected by the undertaking given by the Applicant to pay all preferential debts and other debts in Singapore before remitting any funds out of Singapore. There is also no competing jurisdiction interested in winding-up the two companies. Where the interests of the forum are not adversely affected by a foreign order, the Court should lean towards recognition. Therefore, the application was allowed.

Conclusion

The case is important as it shows the liberal approach of the Singaporean Court in recognizing foreign liquidation in a jurisdiction other than that of the place of incorporation. While the judgment is not binding on Hong Kong courts, it is a good support for future litigants to argue for the same in Hong Kong.