Introduction

In a recent case *Rennie Produce (Aust) Pty Ltd* [2016] HKEC 2012, Harris J confirmed the willingness of the Hong Kong courts to grant orders recognising foreign liquidators’ appointment and powers and issued a standard form of order for production containing substantive terms appended to judgments (the “*Standard Form of Order*”) to be made by the Court of First Instance.

Background

An application for recognition and assistance was made by the Joint and Several Official Liquidators (the “*Liquidators*”) of Rennie Produce (Aust) Pty Ltd which was in liquidation in Australia. Such application was made pursuant to a letter of request issued by the Federal Court of Australia. A separate application was made for production of documents by two banks in Hong Kong.

The Law

At common law, liquidation of a foreign company has no automatic consequences in relation to the property of such company in a local jurisdiction. The common law maintains that the court has power to recognise foreign liquidators and assist the courts of the place of incorporation of an insolvent company operating a similar insolvency regime in ensuring that the affairs of the company are properly investigated.

As a result, an application for recognition and assistance needs to be made by a foreign liquidator to vest him with the title to the local property. The Hong Kong Companies Court may, pursuant to a letter of request from a common law jurisdiction with a similar substantive insolvency law, make an order of a type which is available to a liquidator or provisional liquidator under the insolvency regime in Hong Kong.

The Court’s Ruling

In view of the increasing trend of applications for recognition and assistance in the course of winding-up of overseas companies in recent years, Harris J recognised the Liquidators and granted orders for the production of documents by the two banks concerned.

For the benefits of the insolvency practitioners, Harris J illustrated the Standard Form of Order being the type of order the court would be willing to make pursuant to a letter of
request for assistance by way of production by the court of a jurisdiction whose own insolvency regime contains provisions substantially similar to section 221 of the Hong Kong Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32). Harris J ensured flexibilities to refine the provisions and make amendments should the practitioners consider appropriate.

**The Standard Form of Order**

In this case, the banks had to produce copies of the following documents to the Liquidators’ solicitors by a specified date:

1. Documents identifying the account holders, contact details, contact persons, addresses and signatories, of a specified account, including copies of the signatures of each of the signatories to that account.

2. Documents identifying any accounts held by a specified entity in the name of or to the benefit of specified persons or entities, including documents identifying the account numbers, account names, account holders, contact details, contact persons, addresses and signatories of each such account including copies of the signatures of each of the signatories to those accounts.

3. Statements or other documents recording or evidencing the movement of funds into and out of the specified accounts and any other accounts held in the name of or to the benefit of any of the specified persons, for a specified period.

The banks were also ordered to keep the above documents sought in safe custody until copies of the documents are produced to the Liquidators' solicitors.

**The Implications**

Many banks and auditors may be reluctant to disclose a foreign liquidator any information and documents relating to their clients without a Hong Kong court order. In this case, the court acknowledged the rising number of applications for recognition and assistance and for production of documents in Hong Kong by foreign liquidators and expressed willingness to grant such orders. The newly introduced Standard Form of Order shall serve as a starting point of which insolvency practitioners acting for foreign liquidators proceed to make a similar application, thereby saving time and costs of creditors of a foreign company in making such applications.
Important: The law and procedure on this subject are very specialised and complicated. This article is just a very general outline for reference and cannot be relied upon as legal advice in any individual case. If any advice or assistance is needed, please contact our solicitors.