The first recognition of Japanese insolvency proceedings in Hong Kong

Introduction

Nowadays it is common for bankrupts or companies in liquidation to have businesses and assets in multiple jurisdictions and therefore the courts in those jurisdictions are often asked to render assistance for the insolvency proceedings. In *Re Kaoru Takamatsu* [2019] HKCFI 802, the Hong Kong Court recognized for the first time a Japanese insolvency proceeding and rendered assistance to a trustee in bankruptcy appointed by the Japanese Court.

Facts

On 1 March 2018, the District Court of Tokyo (the “Tokyo Court”) ordered a Japanese incorporated company, Japan Life Co, Ltd (the “Company”) to be wound up on the ground of insolvency and Takamatsu Kaoru to be the trustee in bankruptcy (“Mr Takamatsu”). Mr Takamatsu sought recognition and assistance from the Hong Kong Court so as to deal with the Company’s affairs in Hong Kong and gain access to the Company’s bank account records held by the Hong Kong branches of two banks. In support of the application, Mr Takamatsu presented a letter of request seeking an order for recognition and assistance, which is in similar form of the letter of request issued by the Hong Kong Court, and an affirmation of a practicing lawyer in Japan explaining the elements of the Japanese bankruptcy regime.

The law

The law on recognition of foreign insolvency proceedings is well-settled in Hong Kong. An order for recognition will be granted if the foreign insolvency proceeding is collective (*Re Joint Provisional Liquidators of China Lumena New Materials Corp* [2018] HKCFI 276) and commenced in the company’s country of incorporation (*Re Joint Liquidators of Supreme Tycoon Ltd* [2018] HKCFI 277). Upon recognizing the foreign insolvency proceeding, the Hong Kong Court will grant assistance to the foreign officeholders if the foreign liquidators are appointed in jurisdictions with similar insolvency regimes to Hong Kong, according to *Re Joint Liquidators of Supreme Tycoon Ltd* [2018] HKCFI 277.

The ruling of the Court of First Instance

First, Mr Justice Harris accepted the evidence from the practising lawyer in Japan that the Company is in a collective insolvency proceeding in its place of incorporation, and granted the order of recognition of the Japanese insolvency proceeding.
Secondly, Harris J considered that the insolvency regime in Japan (which has a civil law system) is similar to that in Hong Kong (which has a common law system). For instance, Article 78(1) of the Japan’s Bankruptcy Act (Act No 75 of 2 June 2004) (the “Act”) provides the bankruptcy trustee with a right to administer and dispose of property that belongs to the bankruptcy estate, which is similar to the position of a trustee in bankruptcy in the case of personal bankruptcy in Hong Kong.

Another example is Article 83(1) of the Act, which grants the bankruptcy trustee a right to inspect books, documents and other objects relating to the bankrupt’s estate, including objects held by third parties.

As such, Harris J found that the status and powers of a trustee in bankruptcy appointed in Japan is similar, although not identical, to those of a liquidator appointed in Hong Kong. The Court therefore conferred on Mr Takamatsu the powers in the standard-form order for foreign liquidators, including the right to administer the company’s assets in Hong Kong and the powers to seek documents and information relating to the Company. The standard-form has been set out in Re Joint and Several Liquidators of Pacific Andes Enterprises (BVI) Ltd HCMP 3560/2016.

At last, Harris J emphasized that the right granted to Mr Takamatsu to apply for disclosure orders and ancillary relief is only a right to apply. He is still required to show that a similar right to apply is available in Japan when he makes an application to the Hong Kong Court.

Takeaways

This decision highlights the Hong Kong Court’s willingness to facilitate a universal and co-ordinated cross-border insolvency proceeding and grant recognition and assistance to foreign liquidators in the jurisdictions that have a similar insolvency regime to Hong Kong, even if they are from a civil law country. It is expected that if a similar application comes from Mainland China, recognition will likely be granted.