Recognition of and assistance to foreign liquidators – the latest developments in an area of law in the spotlight

In a topical decision handed down last week, Harris J reiterated that the availability of 'assistance' in terms of powers that may be granted by the Hong Kong Court to 'recognised' foreign liquidators in Hong Kong would depend on whether they were appointed in insolvency proceedings commenced in a company's place of incorporation or its distinct centre of main interests[1] ("**COMI**"). The decision will be of interest to both insolvency practitioners as well as creditors of foreign-incorporated companies with connections to Hong Kong when considering where winding-up proceedings should be brought.

Background

Ourgame International Holdings Limited ("**Company**") was incorporated in the Cayman Islands with its COMI in Hong Kong (being listed on the HKEx). The Company was wound up by the Cayman Court in March 2026. Thereafter, the joint official liquidators of the Company ("**JOLs**") applied to the Hong Kong High Court for: (i) recognition of their appointment and (ii) assistance.

Unsettled law

Where a foreign insolvency office-holder is recognised, the question of whether they are entitled to 'assistance' has been a matter of debate in the Hong Kong Court. Earlier this year, Linda Chan J set out an open-textured formulation of the test in *Re USUM Investment Group Limited*[2], which suggests that assistance can be granted to foreign insolvency office-holders regardless of whether they had been appointed in a company's place of incorporation or its distinct COMI[3]. On that basis, the JOLs had sought assistance in the form of specific powers in furtherance of their functions in Hong Kong as the Company's liquidators appointed by the Cayman Court, mirroring those set out in the Letter of Request issued by the Cayman Court.

In the present decision, Harris J did not follow the *Re USUM* criteria that have been applied in successive applications made to the Hong Kong High Court by foreign liquidators for recognition and assistance[4]. Referring

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[1] Commonly defined as the place where a debtor company conducts the administration of its interests on a regular basis and which is ascertainable by third parties.

[2] [2026] HKCFI 1320.

[3] Provided the following conditions are also satisfied: (i) the power which the officeholder invites the court to exercise or confer is of a nature which the court has recognised at common law or which is proper for the court to exercise having regard to the proper exercise of the judicial function; (ii) the order sought is one which can be made under the law by which they were appointed; (iii) the assistance is necessary for the administration of the foreign winding-up or the performance of the office-holder's functions; and (iv) the order sought is consistent with the substantive law and policy of the Hong Kong court.

[4] See *Re Regan Global All Weather Strategy Fund SPC* [2026] HKCFI 1533, *Re NEP Holdings (Malaysia) Berhad* [2026] HKCFI 1863, *Re Tai Ping Shan Ltd (in official liquidation)* [2026] HKCFI 4079, and lately in *The Joint Liquidators of Bank of Asia (BVI) Ltd v Axiom Financial Group Ltd* [2026] HKCFI 4694, which was handed down two days before *Re Ourgame International Holdings Limited (in official liquidation in the Cayman Islands)*.

to his prior decision in *Re Global Brands Group Holdings Ltd*[5], Harris J explained that whereas a foreign liquidator appointed in a company's COMI may be recognised ***and given powers of assistance*** as a matter of common law, a foreign liquidator appointed in a company's place of incorporation that is distinct from its COMI may only be recognised under principles of private international law[6]. The second category of foreign liquidators recognised would only be entitled to more limited "*agentic powers*" to reflect their role as agents authorised by the foreign court to act on behalf of a company. Moreover, Harris J held "*it would be wrong to give powers, which a Hong Kong liquidator has pursuant to the [Companies (Winding Up and Miscellaneous Provisions) Ordinance, Cap. 32], to a foreign liquidator, whose office and powers are recognised on the private international law grounds rather than as common law recognition and assistance of a foreign insolvency process*".

According to this ruling, the JOLs fell within the second category of foreign liquidators recognised and Harris J declined to confer powers which "*would be available to them under the laws of Hong Kong as if they had been appointed liquidators of the Company under the laws of Hong Kong*", including to "*make applications to the Hong Kong Court… for… and/or examination of any relevant persons to facilitate the JOLs' investigations into the assets and affairs of the Company and the circumstances which gave rise to its insolvency, in furtherance of the liquidation of the Company*". The JOLs were nevertheless granted agentic powers to obtain the Company's information and documents generally, as well as to protect the Company's assets in Hong Kong.

The way forward

We expect there will be further case law on the issue of assistance (and powers granted) to foreign insolvency office-holders in light of the apparently divergent criteria laid down in recent decisions of the Hong Kong High Court. For now, foreign insolvency office-holders who intend to seek recognition and assistance in Hong Kong need to consider carefully how the original jurisdiction of their appointment – be it the relevant company's place of incorporation or its distinct COMI – could impact the specific powers they wish to seek in Hong Kong. Further, in the present decision, Harris J observed that if foreign liquidators take the view that they need the full suite of powers available to a liquidator under Hong Kong law, it may be an option to apply to wind up the company in Hong Kong provided the relevant criteria are met.

The Slaughter and May team (together with John C K Chan of Temple Chambers) acted for the JOLs in their successful application for recognition and express powers to act on behalf of the Company in Hong Kong. If you would like to discuss any of the issues in this note, please get in touch with one of our team members.

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[5] [2022] 5 HKC 485.

[6] Also known as 'conflict of laws' principles.

Contacts

Ralph Sellar
Partner
T: + 852 2901 7204
E: ralph.sellar@SlaughterandMay.com

Timothy Shaw
Senior Associate
T: + 852 2901 7243
E: timothy.shaw@SlaughterandMay.com

Grace Jia
Associate
T: + 852 2901 7348
E: grace.jia@SlaughterandMay.com

London
T +44 (0)20 7600 1200
F +44 (0)20 7090 5000

Brussels
T +32 (0)2 737 94 00
F +32 (0)2 737 94 01

Hong Kong
T +852 2521 0551
F +852 2845 2125

Beijing
T +86 10 5965 0600
F +86 10 5965 0650