

# Mainland Chinese Court Grants First Recognition Order under New Arrangement in Support of Hong Kong Bankruptcy (Insolvency) Proceedings

31 January 2022

## Summary.

- On 14 May 2021, the government of the Hong Kong Special Administrative Region and the Supreme People's Court of China announced an arrangement concerning the mutual recognition of insolvency proceedings between the courts of the Mainland and Hong Kong (the "Arrangement")  
<https://www.debevoise.com/insights/publications/2021/05/hong-kong-and-mainland-china-enter-arrangement>.
- *Re Samson Paper Co Ltd*<sup>1</sup> is the first application made under the Arrangement in either Hong Kong or the Mainland, in which the liquidators of Samson Paper Company Limited ("Samson HK"), a Hong Kong company, successfully obtained an order of the Shenzhen Intermediate People's Court (the "Shenzhen Court") recognising their appointment as liquidators of Samson HK and allowing them to perform their duties in the Mainland.
- The order of the Shenzhen Court was made in response to a letter of request issued by the Court of First Instance of Hong Kong (the "Hong Kong Court") seeking recognition and assistance in the Mainland.

**Background.** Samson HK was incorporated in Hong Kong and engaged in paper production and was part of a corporate group headed by Samson Paper Holdings Limited ("Samson Bermuda"), a Bermuda-incorporated company listed on the Stock Exchange of Hong Kong.

On 24 July 2020, provisional liquidators were appointed over Samson Bermuda, and their appointment was recognised by the Hong Kong Court on 13 August 2020.

The next day, Samson HK's shareholders resolved to wind up Samson HK on grounds of insolvency, and the same liquidators were appointed. Samson HK has substantial assets

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<sup>1</sup> [2021] HKCFI 2151 and (2021) 粵 03 认港破 1 号.

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in the Mainland, which are principally located in Shenzhen, including a wholly owned subsidiary in Shenzhen.

On 8 July 2021, Samson HK's liquidators made an application to the Hong Kong Court in accordance with the Arrangement for a letter of request to be issued to the Shenzhen Court seeking assistance and recognition of Samson HK's liquidation process, with a view to carrying out their duties and taking possession of Samson HK's assets in the Mainland (the "HK Court Application").<sup>2</sup> The Hong Kong Court approved the application and issued a letter of request for judicial assistance from the Shenzhen Court.

On 30 August 2021, Samson HK's liquidators applied to the Shenzhen Court for recognition of the Hong Kong liquidation process.<sup>3</sup> Specifically, they sought an order of the Shenzhen Court to recognise their status as Samson HK's liquidators and to allow them to:

- take control over Samson HK's assets, seals, books, documents and other materials;
- make decisions regarding Samson HK's internal management affairs;
- make decisions regarding Samson HK's daily expenses and other necessary expenses; and
- manage and dispose of Samson HK's assets.

(together, the "Specific Powers").

**Hong Kong Court.** In allowing the HK Court Application, the Honourable Justice Harris considered the following key factors.

- **The debtor's "centre of main interests".**<sup>4</sup>

J Harris was satisfied on the evidence that Samson HK's centre of main interests was in Hong Kong because Samson HK was incorporated in Hong Kong and had

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<sup>2</sup> [2021] HKCFI 2151.

<sup>3</sup> (2021) 粵 03 认港破 1 号.

<sup>4</sup> The Supreme People's Court has issued an opinion providing details of the implementation of the Arrangement in relation to the recognition of insolvency proceedings in Hong Kong ("SPC Opinion") which stipulates, inter alia, that the SPC Opinion applies to Hong Kong Insolvency Proceedings where Hong Kong is the centre of main interests of the debtor. "Centre of main interests" generally means the place of incorporation of the debtor, but other factors such as the place of principal office, the principal place of business and the place of principal assets of the debtor will also be taken into account.

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always been run out of Hong Kong since incorporation. The present case therefore fell within the scope of the Arrangement.

- **Applicable jurisdictional principles for issuing a letter of request to a foreign court.**

The facts of the present case met the criteria for issuing a letter of request on the grounds that:

- assistance from the Shenzhen Court is needed for Samson HK's liquidators to carry out their duty in collecting Samson HK's assets in Shenzhen; and
- Samson HK's liquidators have express statutory power under Hong Kong law to commence proceedings to recover the assets, including proceedings outside of Hong Kong.

**Shenzhen Court.** In its judgment dated 15 December 2021 which was announced on 25 January 2022, the Shenzhen Court ordered the recognition of Samson HK's liquidators.

- **Jurisdiction of the Shenzhen Court.**

The Shenzhen Court held that it had jurisdiction to deal with the application because Samson HK has a principal asset in the Mainland: its shareholding in a wholly owned subsidiary incorporated in Shenzhen. It further accepted Hong Kong as Samson HK's "*centre of main interests*", being the place of incorporation and where Samson HK had conducted business for more than 40 years, thereby satisfying the requirement under the Arrangement.

- **Applicable considerations in granting the Specific Powers.**

In reaching its decision, the Shenzhen Court considered that the Specific Powers:

- were already authorized by Samson HK's creditors;
- were in compliance with the relevant laws in Hong Kong, the Mainland Enterprise Bankruptcy Law and also the Arrangement; and
- did not violate any laws or basic principles of the laws in the Mainland nor contravene any public order or morals.

**Significance.** Prior to the implementation of the Arrangement, the Hong Kong Court had granted orders of recognition and assistance to liquidators from the Mainland in

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two cases: *Re CEFC Shanghai International Group Ltd*<sup>5</sup> and *Re Shenzhen Everich Supply Chain Co Ltd*.<sup>6</sup>

On the other hand, *Re Samson Paper Co Ltd* is the first case (whether before or after the implementation of the Arrangement) where a Mainland Court has formally recognised and provided assistance to liquidators appointed in Hong Kong. The Shenzhen Court's judgment in this case is therefore invaluable in setting out the criteria and practical know-how for Hong Kong liquidators in seeking assistance and recognition from Mainland Courts under the Arrangement.

This recent development is a further step to strengthen the reciprocal and cooperative relationship on judicial matters between the Mainland courts and Hong Kong courts. Indeed, a second application under the Arrangement was made to the Hong Kong Court by the liquidators of another Hong Kong incorporated company in *Re Zhaoheng Hydropower (Hong Kong) Ltd*,<sup>7</sup> in which J Harris recently handed down his decision approving the issuance of a letter of request to the Shenzhen Court for an order to recognise the appointment of the liquidators and provide the necessary assistance to them.

With the Arrangement in place and the recent success by the liquidators in *Re Samson Paper Co Ltd*, it is expected that more applications for recognition and assistance under the Arrangement will be made to the courts in the Mainland to enable liquidators of insolvent Hong Kong holding companies to take control of the companies' assets located in the Mainland.

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Please do not hesitate to contact us with any questions.

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<sup>5</sup> [2020] 1 HKLRD 676.

<sup>6</sup> [2020] HKCFI 965.

<sup>7</sup> [2022] HKCFI 248.

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