

Call for consistency – Hong Kong Court delivers double message to insolvency practitioners

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In a pair of recent contrasting judgments, *Re Agritrade Resources Ltd* [2020] HKCFI 1967 and *Re Rare Earth Magnesium Technology Group Holdings Ltd* [2020] HKCFI 2260, the Hong Kong Court has once again confirmed its pragmatic approach towards applications by foreign liquidators and provisional liquidators for recognition and assistance in Hong Kong. The judgments emphasize the importance of adhering to the standard forms of order adopted by the Hong Kong courts in respect of such applications, and the need for any departure from the standard form to be fully justified.

Re Agritrade

Agritrade Resources Limited (Agritrade), a Bermuda-incorporated company listed in Hong Kong, has been in soft-touch provisional liquidation in Bermuda since provisional liquidators were appointed on 4 June 2020. On 26 June 2020 the provisional liquidators sought an order for recognition of their appointment and certain powers by way of judicial assistance from the Hong Kong Court.

The Honorable Mr. Justice Harris held that Agritrade's application did not comply with the established procedure of the Hong Kong courts, according to which the Companies Court has developed "an informal procedure and draft forms of order for recognition and assistance that in straightforward cases it is prepared to issue on a written application by foreign liquidators and provisional liquidators" (also see Hogan Lovells client alert, "[A soft touch – Hong Kong Court recognises foreign appointed provisional liquidators for company restructuring](#)").

Harris J. noted the form of order sought by the provisional liquidators was materially different to the Hong Kong standard form. His Lordship had previously indicated his willingness (via a letter from his clerk to the provisional liquidators' solicitors) to make an order in the standard form but the provisional liquidators' solicitors responded to His Lordship's clerk reiterating their request for an order in the form sought in the originating summons. The provisional liquidators sought to argue that the departure was justified in order to have the Hong Kong order mirror the Bermuda provisional liquidation order to prevent confusion.

Harris J. disagreed strongly with that line of argument, pointing out the established procedure and standard forms were meant to provide "for quick, cost effective, and so far as possible, uncontroversial recognition and assistance," and that "it is important that the procedures and standard orders that have been developed are used." In fact, Harris J. suggested that the letters of request should have been drafted to be consistent with the Hong Kong procedure and order, and queried whether the Bermudan court had been informed of the Hong Kong standard order.

Harris J. was not persuaded that any material difficulty would have been created if the order for recognition and assistance were made in the form developed in Hong Kong. On the contrary, His Lordship said, it would have better facilitated the restructuring than the draft order presented. The order that the Hong Kong Court was ultimately prepared to grant, understandably in the standard form, was appended to the judgment (and is [available here](#)).

Re Rare Earth

Following shortly from *Re Agritrade* was *Re Rare Earth*, with remarkably similar facts.

Rare Earth Magnesium Technology Group Holdings Limited (Rare Earth) is also a Bermuda-incorporated company listed in Hong Kong. Its provisional liquidators, appointed in Bermuda, sought an order for recognition of their appointment and assistance from the Hong Kong Court.

Harris J., in granting Rare Earth's application, noted with approval that the application was supported by a letter of request that was consistent with the Hong Kong court's standard form of order for recognition and assistance. As with the order in *Re Agritrade*, it was considered appropriate that the standard form of order be amended to reflect the fact that the Bermuda provisional liquidators had been appointed on a "soft-touch" basis and therefore the company's board of directors maintained control in a number of respects. The form of order made by the court was also appended to the judgment (and is [available here](#)).

Both judgments demonstrate the Hong Kong Court's pragmatic approach towards applications for recognition and assistance in Hong Kong, and the clear preference for maintaining consistency and the following of established procedure and standard forms unless circumstances warrant otherwise.

As aptly stated by Harris J. in *Re Agritrade*, "... it is clearly preferable if consistency is maintained and changes are the result of careful consideration not the consequence of a failure to appreciate the reason why the court is trying to achieve a uniform practice."

Foreign-appointed liquidators and provisional liquidators should bear in mind the Hong Kong Court's approach and the standard forms of order, in particular when seeking a letter of request from the foreign court to support an application for recognition and assistance in Hong Kong

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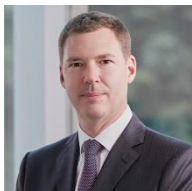


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