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2025

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RESEARCH ARTICLE **OPEN ACCESS**

Recognition and Assistance in Cross-Border Insolvency: An Analysis of *The Joint Liquidators of Bull's-Eye Limited (In Liquidation) v Changjiang Securities Brokerage (HK) Ltd and Others* [2024] HKCFI 3000 [Case Comment]

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Received: 13 January 2025 | **Accepted:** 17 March 2025

ABSTRACT

This paper examines the recent decision of the Hong Kong Court of First Instance in *The Joint Liquidators of Bull's-Eye Limited (in Liquidation) v Changjiang Securities Brokerage (HK) Ltd and Others* [2024] HKCFI 3000, which highlights Hong Kong's evolving approach to recognition and assistance in cross-border insolvency. The case involved the recognition of insolvency proceedings initiated in the British Virgin Islands, despite the company's likely centre of main interests (COMI) being in Hong Kong. The Court's application of the managerial assistance exception, coupled with its comprehensive handling of regulatory constraints, demonstrates its pragmatic approach to facilitating international insolvency cooperation while respecting local regulatory frameworks. By balancing these considerations, the judgement reinforces Hong Kong's status as a leading jurisdiction for cross-border insolvency. The paper analyses the factual and legal context of the case, explores its implications for insolvency practice and considers its potential influence on corporate structuring and insolvency planning in an increasingly interconnected global economy.

1 | Introduction

The recent decision of the Hong Kong Court of First Instance in *The Joint Liquidators of Bull's-Eye Limited (in Liquidation) v Changjiang Securities Brokerage (HK) Limited, BOCOM International Securities Limited, and GF Securities (Hong Kong) Brokerage Limited (The Joint Liquidators of Bull's-Eye Limited (in Liquidation) v Changjiang Securities Brokerage (HK) Ltd and Others)* sheds light on the evolving jurisprudence in cross-border insolvency, particularly in recognition and assistance.¹ This case, presided over by Deputy High Court Judge Le Pichon ('DHCI'), exemplifies Hong Kong's pragmatic approach to supporting foreign insolvency officeholders, even when insolvency proceedings are initiated in the company's place of incorporation, rather than its centre of main interests ('COMI'). As global business structures become increasingly complex, with

corporate entities spanning multiple jurisdictions, this judgement reflects the need for flexible legal responses to facilitate efficient insolvency administration. The case also highlights the Hong Kong judiciary's willingness to balance international co-operation with the preservation of local regulatory frameworks, reinforcing the city's position as a leading jurisdiction for cross-border insolvency matters. This paper examines the facts, legal principles and implications of the Court's decision, exploring its significance in shaping the future of cross-border insolvency practice.

2 | Factual Background and Context

The Joint Liquidators of Bull's-Eye Limited (in Liquidation) v Changjiang Securities Brokerage (HK) Ltd and Others presents a

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complex web of corporate relationships and financial obligations spanning multiple jurisdictions. Bull's-Eye Limited ('BEL'), a company incorporated in the British Virgin Islands ('BVI'), held a significant 29.77% stake in Hua Han Health Industry Holdings Limited ('HH'), a Cayman Islands company previously listed on the Main Board of the Hong Kong Stock Exchange.² The intricate connection between these entities was further underscored by the fact that Zhang Peter Yue and Deng Jie, the sole directors and shareholders of BEL, were also the founders of HH.³ This intertwining of corporate structures and management laid the groundwork for the subsequent legal proceedings and liquidation processes that would unfold across multiple jurisdictions.

The financial difficulties that beset HH and its group of subsidiaries ultimately led to its compulsory liquidation, setting in motion a series of legal actions that would directly impact BEL. On 15 August 2022, BEL was found liable for a substantial sum exceeding HK\$713 million, payable to Intended Features Limited (in Liquidation) ('IFL'), Queenherb Enterprises Limited ('QEL'), and HH collectively.⁴ This judgement was rooted in the misappropriation of funds by Zhang and Deng from these entities, which were subsequently received by BEL with full knowledge of their illicit origin. The magnitude of this liability underscored the severity of the financial misconduct and set the stage for the subsequent liquidation proceedings against BEL.

On 15 January 2024, the Eastern Caribbean Supreme Court in the BVI took decisive action by appointing Chan Ho Yin (also known as Michael Chan) of Kroll (HK) Ltd. and Elaine Hanrahan as the Joint Liquidators ('JLs') of BEL.⁵ This appointment was a critical step in addressing the company's insolvency and managing its affairs in the interest of creditors. The JLs, recognising the global nature of BEL's assets and the complexities involved in realising them, sought recognition and assistance from the Hong Kong Court of First Instance. Their primary objective was to gain control over BEL's assets held in various Hong Kong securities firms, including but not limited to Changjiang Securities Brokerage (HK) Ltd, BOCOM International Securities Ltd and GF Securities (Hong Kong) Brokerage Ltd.⁶

The task facing the JLs was further complicated by pre-existing regulatory restraints on several of BEL's accounts. The Securities and Futures Commission ('SFC') had issued Restrictive Notices on 30 January 2019, effectively prohibiting the disposal of BEL's assets in accounts with Haitong International Securities Limited and Changjiang Securities Brokerage (HK) Limited.⁷ Additionally, the Hong Kong Police had issued Letters of No Consent concerning BEL's accounts with China Merchants Securities (HK) Co., Limited, ABCI Securities Company Limited, Guotai Junan Securities (Hong Kong) Limited and Zhongtai International Securities Limited.⁸ These regulatory actions, while intended to preserve assets and protect interests, presented significant obstacles to the JLs in their efforts to take control of and realise BEL's assets.

In light of these challenges, the JLs turned to the Hong Kong Court of First Instance seeking a recognition order. Their application was grounded in the argument that the BVI liquidation proceedings and their appointment as JLs should be formally acknowledged in Hong Kong. This recognition was crucial to facilitate the orderly realisation of BEL's assets, ensuring that the interests of creditors

could be properly addressed across jurisdictions. The Hong Kong Court, after careful consideration of the complex circumstances surrounding BEL's liquidation and the international nature of its assets, ultimately granted the recognition and assistance sought by the JLs.⁹ This decision marked a significant step in enabling the JLs to fulfil their duties effectively, navigating the complicated landscape of cross-border insolvency and asset recovery.

3 | Legal Principles and the COMI Doctrine

The decision in *The Joint Liquidators of Bull's-Eye Limited* illustrates the Hong Kong Court's adherence to the principles established in *Re Global Brands Group Holdings Ltd.*¹⁰ According to *Provisional Liquidator of Global Brands Group Holding Ltd (In Liquidation) v Computershare Hong Kong Trustees Limited and the Hongkong and Shanghai Banking Corporation Limited ('Re Global Brands')* and *Re Guangdong Overseas Construction Corporation*, the Court will generally recognise foreign insolvency proceedings if they are commenced in the company's COMI.

In particular, DHCJ Le Pichon held that:

The Hong Kong Court will recognise foreign insolvency proceedings if (1) the foreign insolvency proceedings are collective insolvency proceedings; and (2) the foreign insolvency proceedings are opened in the jurisdiction in which the company's centre of main interests (COMI) was located [...]¹¹

However, exceptions exist for cases where the proceedings are initiated in the company's place of incorporation, provided that recognition is sought either for managerial assistance or as a matter of practicality.¹² The court held that:

Where (2) above does not apply but the foreign insolvency proceeding is taking place in the place of incorporation, the Hong Kong Court may grant recognition and assistance if either (1) it is limited to recognition of a liquidator's authority to represent a company and orders that are incidental to that authority which might be described as "managerial assistance"; or (2) a liquidator requires recognition and limited and carefully prescribed assistance as a matter of practicality [...]¹³

In this case, BEL's likely COMI was Hong Kong, given the location of its substantial assets and business operations.¹⁴ Nonetheless, the Court found that the managerial assistance carveout applied, enabling the JLs to exercise their authority to manage and realise BEL's assets in Hong Kong.¹⁵ This pragmatic approach underscores the Court's willingness to facilitate cross-border insolvency administration, even in the absence of a COMI connection.

DHCJ Le Pichon's judgement emphasised the practical necessities of insolvency administration. The Court recognised that without a

recognition order, the JLs would be unable to take effective control of BEL's assets to the detriment of its creditors.¹⁶ The managerial assistance carveout was deemed sufficient to justify the recognition, allowing the liquidators to fulfil their statutory duties under BVI law. The Court also addressed the regulatory constraints posed by the SFC's Restrictive Notices and the Police's Letters of No Consent. The decision showed that these measures did not preclude the granting of recognition, as the liquidators' role was distinct from regulatory enforcement. The recognition order was tailored to ensure compliance with local regulatory requirements while enabling the liquidators to carry out their mandate. This decision aligns with the Court's established practice post-*Re Global Brands*, reaffirming that recognition can still be granted even when insolvency proceedings originate from the company's place of incorporation rather than its COMI. Notably, DHJ Le Pichon highlighted the Court's fundamental willingness to assist foreign officeholders when the carveouts apply.

4 | Implications and Significance

The decision in *The Joint Liquidators of Bull's-Eye Limited (in Liquidation) v Changjiang Securities Brokerage (HK) Ltd and Others* carries substantial implications for cross-border insolvency practice and reinforces Hong Kong's position as a jurisdiction amenable to international cooperation in insolvency matters. This judgement significantly expands the scope of recognition and assistance available to foreign insolvency practitioners, particularly those appointed in jurisdictions that may not align with the company's COMI. By applying the managerial assistance carveout to a case where the company's COMI was likely Hong Kong, the Court has demonstrated a flexible and pragmatic approach to cross-border insolvency recognition. This flexibility is crucial in an increasingly globalised business environment, where corporate structures often span multiple jurisdictions and asset locations may not correspond neatly with places of incorporation or primary business operations. This case also demonstrates the Court's capacity to grant recognition and assistance orders even in the face of significant regulatory challenges, such as those imposed by the SFC and the Hong Kong Police, thereby enhancing its reputation as a reliable forum for cross-border insolvency matters.

The Court's willingness to grant recognition despite the presence of regulatory constraints imposed by local authorities is particularly noteworthy. This approach strikes a delicate balance between respecting domestic regulatory frameworks and facilitating international insolvency cooperation. It suggests that Hong Kong courts are prepared to navigate complex regulatory landscapes to ensure that foreign insolvency officeholders can effectively discharge their duties, even when faced with asset freezes or other restrictive measures. Such a stance may encourage foreign liquidators to seek assistance from Hong Kong courts in cases involving assets subject to regulatory scrutiny, potentially leading to more efficient and coordinated insolvency proceedings across jurisdictions.

Furthermore, the decision underscores the evolving nature of cross-border insolvency law and practice in Hong Kong. By building upon the principles established in *Re Global Brands*, the Court has further refined the criteria for recognition and assistance, providing greater clarity and predictability for insolvency practitioners and stakeholders. This development is likely to enhance

Hong Kong's attractiveness as a forum for resolving complex cross-border insolvency disputes, reinforcing its status as a leading international financial centre. The judgement also reflects a growing judicial recognition of the interconnectedness of global financial markets and the need for cooperative approaches to insolvency proceedings that transcend national boundaries.

The case may have far-reaching consequences for corporate structuring and insolvency planning. Companies and their advisors may need to reassess their strategies for managing cross-border insolvencies, taking into account the increased likelihood of obtaining recognition and assistance in Hong Kong, even when the COMI is elsewhere. This could influence decisions about where to incorporate entities, locate assets and initiate insolvency proceedings. Additionally, the Court's approach may encourage more proactive engagement between foreign insolvency officeholders and local regulatory authorities, fostering a more collaborative approach to resolving cross-border insolvency issues.

5 | Conclusion

The decision in *The Joint Liquidators of Bull's-Eye Limited (in Liquidation) v Changjiang Securities Brokerage (HK) Ltd and Others* represents an important development in the jurisprudence of cross-border insolvency in Hong Kong. By applying the managerial assistance carveout and granting recognition to the BVI-appointed JLs, the Hong Kong Court of First Instance reaffirmed its commitment to fostering international cooperation in insolvency matters. This case underscores the Court's pragmatic approach, balancing the need for efficient insolvency administration with the preservation of local regulatory interests.

Through this judgement, the Hong Kong judiciary has provided greater clarity on the application of recognition and assistance principles, particularly in scenarios where the company's COMI is distinct from its place of incorporation. The decision not only strengthens Hong Kong's reputation as a jurisdiction that supports cross-border insolvency but also signals its adaptability to the complexities of global business structures. As cross-border insolvency cases continue to evolve, this judgement sets an important precedent, offering foreign insolvency practitioners assurance that Hong Kong courts will support efforts to realise assets and protect creditor interests, even amidst regulatory challenges. In a globalised economy, where corporate insolvencies often span multiple jurisdictions, the Court's decision highlights the importance of judicial cooperation and flexible legal frameworks. It serves as a reminder that effective insolvency administration depends on a collaborative approach, one that respects both international insolvency principles and local regulatory regimes. This case thus provides valuable guidance for insolvency practitioners, regulators and stakeholders navigating the increasingly interconnected world of cross-border insolvency.

Endnotes

¹ *The Joint Liquidators of Bull's-Eye Limited (in Liquidation) v Changjiang Securities Brokerage (HK) Limited, BOCOM International*

Securities Limited, and GF Securities (Hong Kong) Brokerage Limited
[2024] HKCFI 3000.

² Ibid., paragraphs 5–6.

³ Ibid., paragraph 5.

⁴ Ibid., paragraph 10.

⁵ Ibid., paragraph 3.

⁶ Ibid., paragraph 12.

⁷ Ibid., paragraph 13.

⁸ Ibid., paragraph 14.

⁹ Ibid., paragraph 30.

¹⁰ Ibid., paragraphs 22–23. See also *Provisional Liquidator of Global Brands Group Holding Ltd (In Liquidation) v Computershare Hong Kong Trustees Limited and the Hongkong and Shanghai Banking Corporation Limited* [2022] 3 HKLRD 316, paragraphs 16–17, 32, 34–38; *Re Guangdong Overseas Construction Corporation* [2023] 3 HKLRD 62, paragraph 17.

¹¹ Ibid., paragraph 22.

¹² Ibid., paragraph 23.

¹³ Idem. See also *Provisional Liquidator of Global Brands Group Holding Ltd (In Liquidation) v Computershare Hong Kong Trustees Limited and the Hongkong and Shanghai Banking Corporation Limited* [2022] 3 HKLRD 316, paragraph 50.

¹⁴ Ibid., paragraph 31.

¹⁵ Ibid., paragraphs 24 and 31.

¹⁶ Ibid., paragraph 31.