



Court's Recognition of Hong Kong Liquidation Could Have Broad Implications for Foreign Bankruptcy Cases

Client Advisories

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On March 5, 2018, the United States Bankruptcy Court for the District of New Jersey granted recognition under Chapter 15 of the U.S. Bankruptcy Code to the appointed liquidators (the "Liquidators") in a Hong Kong voluntary liquidation proceeding of an international toy manufacturer. Stephen Packman, Esq. and Douglas Leney, Esq. of Archer served as counsel to the Liquidators during the proceedings in the United States. Daniel Glosband, Esq. of Goodwin Proctor served as co-counsel to the Liquidators, and Kingsley Ong of Eversheds LLP served as local Hong Kong counsel to the Liquidators. The case is believed to be the first case considering contested recognition of a Hong Kong voluntary liquidation.

In March 2016, the shareholders of Manley Toys Limited ("Manley"), a Hong Kong-based toy company passed a resolution to put the company into voluntary liquidation, and appointed Hong Kong liquidators. The Liquidators then sought recognition of the Hong Kong proceedings in the Bankruptcy Court under Chapter 15 in order to administer Manley's assets in the United States.

Certain parties, Aviva Sports Inc. ("Aviva") and Toys "R" Us, Inc. ("TRU"), objected to recognition of the Hong Kong proceedings, alleging, among other arguments, that the Hong Kong voluntary liquidation was not a collective proceeding, that it was not judicial or administrative in nature, that Hong Kong was not Manley's "center of main interests" ("COMI"), and that recognition would be "manifestly contrary to the public policy" of the United States. The Bankruptcy Court conducted a trial on the issues spanning several months, involving fact and expert witnesses presented by both sides.

In a published opinion filed on February 13, 2018, the Bankruptcy Court rejected the objecting parties' arguments, finding that the Hong Kong voluntary liquidation was in fact collective in nature, was judicial or administrative in character, was a "foreign proceeding" within the meaning of the Bankruptcy Code being conducted in Manley's COMI, and was being conducted under a foreign law related to insolvency or the adjustment of debts, with a purpose of orderly reorganization or liquidation. Judge Jerrold N. Poslusny, Jr. found that, while Manley and/or certain of its insiders may have engaged in prior conduct in the United States

which the objecting parties' alleged was in bad faith, such conduct did not render recognition "manifestly contrary to the public policy" of the United States: "Although [Manley] violated many court orders, there was no evidence that [Manley] was forbidden from entering liquidation ... [j]ust as foreign courts should recognize the bankruptcy of a bad company based in the United States ... United States courts should recognize foreign proceedings of bad companies when a foreign representative can establish the requirements for recognition." The Bankruptcy Court granted the Liquidators broad relief, including discovery powers, a stay of execution or other actions against Manley or its assets in the United States, and entrustment to the Liquidators of the realization and administration of Manley's assets and affairs in the United States.

This important decision, which supports the Hong Kong voluntary liquidation regime, should be of particular interest among insolvency practitioners in both the United States and Hong Kong. The decision also has broader implications for insolvency practitioners worldwide, as the voluntary liquidation regime is a common feature of many jurisdictions, and Chapter 15 of the Bankruptcy Code follows closely the UNCITRAL Model Law on Cross-Border Insolvency, which allows foreign representatives to seek assistance and recognition of foreign insolvency proceedings.

The decision represents the latest success for Archer's Chapter 15 and global insolvency practice, which includes, among other matters, serving as counsel to the foreign representative and obtaining recognition in the first Chapter 15 case involving a debtor from mainland China, as well as successfully defeating an eight-figure tax claim by the IRS arising from transfer pricing between a Chapter 15 debtor parent and its Chapter 11 debtor subsidiary company.

Archer's Bankruptcy, Restructuring, and Insolvency Litigation Group provides sophisticated counsel to domestic and foreign clients in all types of insolvency and litigation matters. The group has more than a dozen attorneys with offices in Philadelphia, New Jersey, New York, and Delaware. For more information on the issues discussed in this alert, contact [Stephen Packman, Esq.](#) or [Douglas Leney, Esq.](#), or any other member of Archer's [Bankruptcy Group](#) in Philadelphia, PA at (215) 963-3300; Haddonfield, NJ at (856) 795-2121; Princeton, NJ at (609) 580-3700; Hackensack, NJ at (201) 342-6000; or Wilmington, DE at (302) 777-4350.

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Attachments

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