IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

Cause No.: FSD 270 of 2017 (IMJ)

IN THE MATTER OF CHANGGANG DUNXIN ENTERPRISE COMPANY LIMITED

AND IN THE MATTER OF AN APPLICATION FOR RECOGNITION OF JOINT PROVISIONAL LIQUIDATORS APPOINTED BY THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATION REGION

IN CHAMBERS

Appearances: **Mr. Peter Hayden and Mr Jonathan Moffatt of Mourant Ozannes on behalf of the Applicants**

Before: **The Hon. Justice Ingrid Mangatal**

Heard: **11 January 2018**

Draft Judgment Circulated: **5 February 2018**

Judgment Delivered: 8 February 2018

Judgment released For Publication: **1 March 2018**

HEADNOTE

Company Law - Application for recognition and assistance at common law by foreign provisional liquidators - Hong Kong provisional liquidators of a Cayman company seeking an order from the Cayman Court permitting them to act in the name and on behalf of the Company for the purpose of making an application to the Cayman Court for the winding up of the Company and to seek the Hong Kong provisional liquidators appointment as joint provisional liquidators of the Company in the Cayman Islands

JUDGMENT

Introduction

1. This is the hearing of an application brought by way of ex parte originating summons (the "**Summons**"). The Summons is filed on behalf of Kennic Lai Hang LUI and LAU WU Kwai King Lauren of KLC Corporate Advisory & Recovery Limited, Hong Kong, who were appointed as joint and several provisional liquidators (the "**HK JPLs**") of Changgang Dunxin Enterprise Company Limited (the "**Company**") by an order of Harris J, sitting in the Hong Kong Special Administrative Region, (the "**HK Court**") dated 5 June 2017 (the "**HK JPL Order**").

2. The Summons, seeks the following relief (as modified in the draft order provided):

> "*1. That the HK JPL Order and that the HK JPLs be recognised by the court, including recognition of the power and authority of the HK JPLs to act in the name and on behalf of the Company in the Cayman Islands for the purpose of making an application to the court for the winding up of the Company and to seek the HK JPLs' appointment as joint provisional liquidators of the Company in the Cayman Islands.*
>
> *2. That there be liberty to apply generally.*
>
> *3. That the second affirmation of LAU WU Kwai King Lauren with its exhibits filed in support of this summons be sealed and not made available for inspection by any person other than by order of the court pursuant to O. 63, r. 3 of the Grand Court Rules.*
>
> *4. Such further or other orders as the court considers necessary.*
>
> *5. That costs be provided for.*"

3. Paragraph 3 of the Summons was considered on a paper application and granted in advance of the hearing. The HK JPLs seek to further extend that sealing order.

Background

4. The HK JPLs seek recognition of their powers as foreign liquidators by this Court for the limited purpose of applying in the name and on behalf of the Company to wind it up in the Cayman Islands while concurrently applying to be appointed as joint provisional liquidators in the Cayman Islands (the "**Proposed Cayman JPLs**"). If the Proposed Cayman JPLs are appointed, they will seek to have that order recognised by the HK Court. It is envisaged that if the Proposed Cayman JPLs are recognised in Hong Kong, the HK JPLs in Hong Kong will be discharged and the proposed Cayman JPLs will pursue parallel restructuring proceedings in both the Cayman Islands and Hong Kong, subject to the supervision of the respective courts.

5. The HK JPLs say that they are proceeding in this manner as they have been advised that the powers that may be granted to joint provisional liquidators of a Cayman Islands company in its home jurisdiction are broader than those which can be conferred on joint provisional liquidators of a foreign company in Hong Kong. In particular, the HK JPLs have been advised by their Hong Kong legal counsel, Messrs. Mayer Brown JSM, that the appointment of joint provisional liquidators solely to restructure a company is impermissible by virtue of a 2006 decision of the Hong Kong Court of Appeal.

6. Mr. Hayden, who appears for the HK JPLs, indicates that the application is brought ex parte on the basis that should any of the Company's stakeholders have any objection to the proposed course of action, they will have an opportunity to be heard. To ensure that the Company's stakeholders are given notice and (if they so wish) an opportunity to challenge the orders currently being sought, the Court may give directions for the orders and documentation filed with the Court (save for Lau Two and its exhibit), to be sent to them with liberty to apply.

The Hong Kong Provisional Liquidation and Restructuring

7. The Company is a Cayman Islands investment holding vehicle which was incorporated in the Cayman Islands on 27 August 2012 as an exempted limited company. It was registered in Hong Kong as a non-Hong Kong company under part XI of the former

Companies Ordinance on 6 December 2012. At all material times its principal place of business was situated in Hong Kong and the Company's principal activities, and those of its subsidiaries, consist of manufacturing, production and sale of upstream paperboard products in the People's Republic of China ("**PRC**"). Its shares were listed on the Hong Kong Stock Exchange (the "**SEHK**") on 26 June 2014; however trading of its shares was suspended on 20 January 2016.

8. A creditor of the Company, Wang Tao, issued a petition to wind up the Company on 31 May 2017 in the HK Court on the grounds that it was unable to pay its debts as they fall due (further to a statutory demand which had gone unsatisfied) or, in the alternative, on just and equitable grounds. The petitioning creditor sought the appointment of the HK JPLs by an application of the same date.

9. The Order appointing the HK JPLs gave them very broad powers including, amongst others, the power to preserve the Company's assets and manage its affairs for the purposes of preserving its assets and the power to do all things and enter into such commitments as the HK JPLs considered fit.

10. The HK JPLs have confirmed that the Company is hopelessly insolvent on a cash flow basis, and since their appointment have been considering various restructuring proposals and appointed Yu Ming Investment Management Limited as financial advisors to the Company to assist in the investor negotiations (the "**Financial Advisors**"). Having received a number of restructuring proposals from potential investors, the HK JPLs were advised by the Financial Advisors that the proposed restructuring was the most viable restructuring option available to the Company. This restructuring proposed follows the practice which has developed in Hong Kong effectively to "*monetize*" the Company's listing.

11. The Applicants seek the appointment of the HK JPLs, as JPLs in the Cayman Islands, as it is submitted that their appointment is required due to a lacuna in the laws of Hong Kong, as a result of the lack of any restructuring powers vesting in provisional liquidators appointed over companies (both foreign and domestic). By seeking their appointment, the HK JPLs seek to navigate this lacuna. It is a route they say which has been followed

in Bermuda in respect of at least one Bermuda Company which undertook business in Hong Kong, with both the Bermudian and Hong Kong courts making similar orders to those now sought. Reference was made to the decision of Kawaley CJ in ***Re Z Obee Holdings Ltd*** [2017] SC (Bda) 16 Com (21 February 2017).

12. Counsel points out that the HK Court has also sanctioned the HK JPLs' intended course of action to petition to wind up the Company in the Cayman Islands and obtain their appointments as provisional liquidators by this Court.

13. Mr. Hayden readily conceded that this is an unusual application and that it would have been preferable if these proceedings had started in the Cayman Islands rather than Hong Kong.

14. Counsel also submitted this is a developing area of law but that, however, the Court's jurisdiction to make orders such as those sought on this application has recently been confirmed in the decision of Segal J, ***In the matter of China Agrotech Holdings Limited – FSD 157 of 2017 (NSJ),*** unreported judgment of 19 September 2017. He submits that the Applicants do not ask the Court in this application to go beyond what was ordered in ***China Agrotech***. In fact, he explains that what is being asked for here carries greater safeguards for the Company's stakeholders than was the position in ***China Agrotech***, because if the orders sought are made, the winding up and restructuring proceedings will both be subject to the supervision of this Court.

15. There are a number of matters of note set out in the affirmations of Ms. Lau. In her Third Affirmation, she indicates that Mr. Wang Tao, the creditor who petitioned to wind up the Company, supports this application and the HK JPLs' plan to petition to wind the Company up in the Cayman Islands (and to apply to be appointed as provisional liquidators in those proceedings). He has also confirmed that he does not intend to bring insolvency proceedings against the Company in the Cayman Islands and that he supports, in principle, a restructuring of the Company which will seek to secure the Company's solvency and which will include a proposal for the resumption of trading of the Company's shares on the SEHK. Ms. Lau also indicates that a further two bond holders, who are creditors of the Company, have confirmed their support in similar terms. The

support from these three bond holders represents approximately 25% of the total debt in value.

16. The HK JPLs indicate that they have reached out to another creditor which supports the petition to wind up in Hong Kong regarding its support for the actions to be taken in this jurisdiction, but they have not yet had a reply.

17. Ms. Lau informs that the HK JPLs have not contacted all of the Company's creditors individually regarding the steps to be taken in the Cayman Islands and the restructuring itself at this early stage because they are not yet able to present the Company's remaining creditors with a detailed and sanctioned restructuring plan and the proposed schemes of arrangement for their approval. It is relevant to note however, that whilst the precise commercial terms of the Framework Agreement are confidential, their general terms were announced to the market on the SEHK by the Company acting through the HK JPLs by an announcement dated 4 October 2017. No objection to the proposed restructuring following its announcement has been received from any of the Company's creditors or its members.

18. Ms. Lau also notes that a further creditor of the Company, (an executive director and chief executive officer of the Company), who presented a separate petition to wind up the Company, on the basis of unpaid salary (which has since been dismissed by consent) has made no objection to the proposed restructuring. Thus, the HK JPLs have inferred that he will not take any steps in the Cayman Islands.

19. In her First Affirmation, Ms. Lau indicates that she is not aware of any creditor (or member) who intends to commence liquidation proceedings in the Cayman Islands in respect of the Company or who intends to procure the appointment of provisional liquidators in this jurisdiction.

20. She also indicates that it is doubtful that the Company, acting through its Board, will seek to commence liquidation proceedings in the Cayman Islands. That is because there is a dispute between various members of the Board, including as to the validity of appointments. This dispute has spilled over into the public arena, with competing

announcements made to the SEHK. In her Third Affirmation, Ms. Lau confirms that the Board is unable to speak with one voice and that this has meant that the usual level of engagement with the Board on a proposed restructuring of this type has not been possible. In any event, no objection has been received by the HK JPLs to the proposed restructuring from the Board following the Company's announcement to the market. However, importantly, Ms. Lau notes that despite the difficulties at Board level the Company was, at least, able to instruct Counsel to appear at the application to appoint joint provisional liquidators, but appears to have taken a neutral stance in light of the Company's insolvency.

21. Whilst as a matter of Hong Kong law the appointment of provisional liquidators in Hong Kong may well have displaced the function of the Board, as a matter of Cayman law the appointment of provisional liquidators in Hong Kong has no effect and the Board has not as a matter of Cayman law been displaced.

22. On this point I have noted that what the HK JPLs seek is recognition to act on behalf of the Company. The HK JPL Order was made in respect of a petition filed on behalf of a creditor of the Company, and not a petition filed by the Company's directors. Therefore, in these circumstances, this Court has no need to ascertain whether a special resolution had been passed by the Company's shareholders, or need to examine the Company's articles to see whether they allow for the directors to have the authority to present a winding up petition on behalf of the Company without the sanction of a resolution passed at a general meeting. Thus, no policy considerations arise in respect of the decision to initiate the proceedings in Hong Kong, as opposed to the Cayman Islands, and whether it was a means of avoiding the provisions of Cayman Law, specifically section 94 of the ***Companies Law (2016 Revision)***. We are here, as discussed at the hearing, in unusual, but without more, quite different territory. Mr. Hayden indicates his understanding that the petition was presented in Hong Kong by Mr. Tao, who is a Hong Kong creditor, and dealt with the Company in Hong Kong, hence the commencement of proceedings in Hong Kong.

23. It is also to be noted that in the instant case, unlike in the ***China Agrotech*** decision, there is no Letter of Request from the HK Court addressed to this Court. However, in my judgment there is no necessity for a Letter of Request in the circumstances of this case. This is particularly so since the HK JPLs are essentially seeking to be recognized for the specific purposes of bringing the proceedings here, which will be under the control of this Court and this jurisdiction, which is the place of incorporation of the Company.

The Authorities

24. Mr. Hayden has very helpfully cited a number of cases that discuss the law in this rather complicated area of the law. This includes the well-known decisions in ***Rubin v Eurofinance SA*** [2012] UKSC 46, and ***Singularis Holdings Limited v Pricewaterhouse Coopers*** [2014] UKSC 36. Reference has also been made to the instructive decision of Kawaley CJ in ***In the Matter of Dickson Group Holdings Ltd.*** [2008] SC (Bda) 37 Com (9 May 2008).

25. I have found paragraphs 14-16 (inclusive) of the judgment of Kawaley J in the ***Dickson Group*** case particularly helpful. Those passages read as follows:

> *"14. In Lawrence Collins (ed.), 'Dicey and Morris on the Conflict of Laws', 12th edition, Rule 160 provides as follows: "The authority of a liquidator appointed under the law of the place of incorporation is recognized in England." The learned authors caution against regarding this statement as representing the global position:*
>
> > *"Rule 160....merely states the position which has been established to date. First, and generally, in determining whether there is any other jurisdiction which is more appropriate for the winding up and it is possible that a more appropriate jurisdiction might be in the country other than the place of incorporation. This does not suggest that in the admittedly different context of recognition, that such recognition should only be accorded to an appointment under the law of the place of incorporation. More particularly, it has been suggested that an appointment made in a country other than the place of incorporation may be recognised in England if it is recognised*

under the law of incorporation of the company. More speculatively it may also be possible that an appointment made under the law of the country where the company carries on business will, in appropriate circumstances, be similarly recognised.

Recognition of a liquidator's authority may be sought by reference to an appointment made in the exercise of a foreign jurisdiction similar to that conferred on the English courts in regard to companies incorporated outside the United Kingdom...This treatment of the argument based on comity is defensible because where there is a liquidation in the country of incorporation and the English courts exercise their own jurisdiction to make an order, they seem concerned to ensure that the liquidator should not go beyond dealing with the company's English affairs without special direction. Such concern is not shown where there is no likelihood of a liquidation in the country of incorporation."

15. *The tentative nature of the foregoing views is perhaps understandable in the context of a text which does not focus on the insolvency terrain. Writers specifically addressing insolvency may be expected to be more instructive to present concerns. Nevertheless in Phillip R. Wood, 'Principles of International Insolvency Law' 2nd edition, writing after Britain adopted the UNCITRAL Model Law on Cross-Border Insolvency, the learned author reflects (for the benefit of other common law countries) on what used to be the position under English common law in equally tentative terms:*

"A liquidation at the place of incorporation would always be recognized in England...But, it was possible that a liquidation at the principal place of business abroad would be recognized in England in an appropriate case, eg where the company was a mere brass-plate at its place of incorporation, but England would probably not have recognized a foreign liquidation of an English-incorporated company....

The disadvantage of recognizing a liquidation only at the country of incorporation is that many companies are *incorporated in one jurisdiction, but carry on their principal business elsewhere. This is true of tax-haven countries, such as Cayman, or shipping jurisdictions such as Panama and Liberia. It would seem odd therefore to refuse recognition of liquidation where the main assets are located.*

16. A more positive statement of principle may be derived from Ian F Fletcher, 'Insolvency in Private International Law', where the learned author opines as follows:

> *"Where the foreign liquidation has been commenced in a country other than that in which the company's incorporation occurred, there is considerable uncertainty with regard to the prospects of such proceedings being recognized in England, and as to the principles on which such recognition might be based. The lack of explicit authority on this matter in reported cases is regretted. Clearly, the possible circumstances in which such foreign liquidations may take place can vary considerably, so that it is important that a flexible approach should be adopted. One situation in which the English position seems to be reasonably predictable is where the foreign liquidation concerns a company actually formed and registered in England. The primacy of the law of the country of incorporation is likely to form the basis of the English court's reaction to such a case...However, if no winding- up proceedings are taking place in England, despite the company having been formed here(as may be the case if there are no assets in this country, and perhaps no English creditors with interests to defend), it may be that the foreign proceedings can be considered to be the most appropriate way in which to wind up the company, although it is possible that the final process of effecting the dissolution might be reserved by English law to itself, using the power of the Registrar of companies to strike it off the register as a defunct company."*
>
> (My emphasis)

26. I have also found paragraphs 28, 30, 31, 33 and 34 of the decision enlightening. In deciding whether he was required to recognize the liquidators and if he was, whether he should in fact do so, Kawaley CJ discussed the matter eloquently as follows:

*"**Does the Scheme application require the Court to recognize the Hong Kong winding-up order and the order appointing the Joint Liquidators?***

28. Ms. Fraser's submission that no need to recognize the foreign winding-up order nor the appointment of the Joint Liquidators truly arises because the directors who remain in place as a matter of Bermuda law support the application is an elegant yet highly technical point. This sort of point, I believe, is sometimes referred to in the barrister's trade as "a Temple point". It would in my judgment be completely artificial to hold that this Court can grant leave to promote the Scheme without implicitly recognizing (a) the validity of the Hong Kong winding-up order; and (b) the validity of the Hong Kong order appointing the Joint Liquidators. This conclusion is inevitable for the following reasons.

....

30. Secondly, it is clear that this Court is being asked to permit the Joint Liquidators appointed in Hong Kong to promote the Scheme. There is no suggestion that the directors have any material control over the Company in liquidation in Hong Kong, or are intended to promote the Bermuda version of the Scheme. ....

31. So it is clearly legally and/or factually impossible to grant leave to convene the Scheme meeting intended to be chaired by a Joint Liquidator without implicitly recognizing the validity of his appointment. More substantively still, the Scheme is unequivocally being promoted by the Hong Kong Joint Liquidators.

....

33. In all the circumstances granting the application under section 99 of the Companies Act 1981 unarguably required this Court to implicitly

<u>recognize the Hong Kong winding-up order and the subsequent appointment of the Joint Liquidators</u>.

Should this Court recognize the Hong Kong winding-up and permanent liquidator appointment orders in the exercise of this Court's well-established common law discretion to cooperate with a foreign restructuring court?

34. When the commercial realities are looked at in isolation from the legal formalities, the Hong Kong Joint Liquidators in promoting the parallel schemes of arrangement in Hong Kong and Bermuda are in essence requesting this Court to assist the Hong Kong Court to restructure the Company. It is impossible on the facts to identify any cogent reasons why this assistance may properly be declined."

(My emphasis)

27. In <u>*Dicey, Morris & Collins*</u> (15th Edition, Sweet & Maxwell), Rule 179 is discussed as follows at paragraphs 30R-100 to 30-104 as follows:

"C. Effect of a Winding Up Order

Rule 179 - Subject to the Insolvency Regulation, the authority of a liquidator appointed under the law of the place of incorporation is recognised in England.

COMMENT

Rule 179 will only apply in cases which do not fall within the Insolvency regulation. Accordingly, it will, in the case of an insolvent company, be applicable where the centre of main interests of that company is located in a State which is not a Regulation State.

The effect of a foreign winding-up order in England has seldom been before the courts. Rule 179 is however justified because the law of the place of incorporation determines who is entitled to act on behalf of a *corporation. If under that law a liquidator is appointed to act then his authority should be recognised here.*

Rule 179 should not, however, be construed, in the light of existing authorities, as stating the only circumstances in which an English court will recognise the authority of a liquidator appointed under foreign law. It merely states the position which has been established to date. First, and generally, in determining whether to exercise its jurisdiction to wind up a foreign corporation, we have seen that the English court will consider whether there is any other jurisdiction which is more appropriate for the winding up and it is possible that a more appropriate jurisdiction might be in a country other than the place of incorporation. This does not suggest that in the admittedly different context of recognition, that such recognition should only be accorded to an appointment under the law of the place of incorporation of the company. More speculatively it may also be possible that an appointment made under the law of the country where the company carries on business will, in appropriate circumstances, be similarly recognised.

30-104 Recognition of a liquidator's authority may be sought by reference to an appointment made in the exercise of a foreign jurisdiction similar to that conferred on the English courts in regard to companies incorporated outside the United Kingdom. The protagonist of recognition in such a case could urge that "it would be contrary to principle and inconsistent with comity if the courts of this country were to refuse to recognise a jurisdiction which mutatis mutandis they claim for themselves." However, even if an appeal to comity has any force in this context (which is doubtful), it has been rejected in the context of company insolvency, though it is possible that the liquidator's authority would be recognized as extending to those affairs of the company which are local to the country where the appointment was made. Where there is no likelihood of a liquidation in the country of incorporation it may be possible that the *liquidator's authority would be recognised as extending to those affairs of the company which are local to the country where the appointment was made. Where there is no likelihood of a liquidation in the country of incorporation it may be possible that the liquidator's authority may be held to extend beyond those affairs. This treatment of the argument based on comity is defensible because where there is a liquidation in the country of incorporation and the English Courts exercise their own jurisdiction to make an order, they seem concerned to ensure that the liquidator should not go beyond dealing with the company's English affairs without special direction. Such concern is not shown where there is no likelihood of a liquidation in the country of incorporation."*

28. The question in the instant case is whether this Court should exercise its common law powers to recognize and assist the HK JPLs so as to allow them to proceed as intimated in the Summons. As Segal J ably discussed the issue in the ***China Agrotech*** case, and as he stated at paragraph 29(b) of the judgment:

> ***"The position under private international law rules where the foreign liquidator is not appointed in the place of incorporation***
>
> ……
>
> *(b) under Cayman law, having regard to the Company's constitution and the Companies Law, the corporate organs entitled to act on behalf of the Company are the Company's directors and shareholders. The Winding Up Order without more does not, as a matter of Cayman law, prevent these corporate organs from having the authority to act for and bind the Company. The Winding Up Order is not, as an order of a foreign court, of itself binding and enforceable in Cayman (see* ***Felixstowe Dock Co. v U.S.Lines Inc.*** *[1989] 1 Q.B. 360 AT 375)….."*

29. In considering whether to exercise its power and discretion to recognize the HK JPLs, as was the case in ***China Agrotech***, the Court is in substance dealing with a governance

question. I find extremely useful, the analysis provided by Segal J at paragraphs 30(a), (f) (iii) and (g) where he stated:

"*(a) it seems to me that the power to recognise and assist arises and applies even in a case where the foreign liquidator has been appointed in a place other than the country of incorporation. It is true that, as I have explained, the private international law rule which requires recognition of the power of a foreign liquidator appointed in the country of incorporation to act for the company does not apply. But, in light of the nature and scope of the power to recognise and assist, as I have explained it above, I see no reason for concluding that the power is wholly unavailable and cannot be used just because the foreign liquidator has been appointed in a place which is not the country of incorporation.*

....

(f) it seems to me that in the present case the conditions for the exercise of that power are in principle satisfied for the following reasons:

....

(iii) in the present case the Court is in substance dealing with a governance question, namely whether to permit the Liquidators to act on behalf of the Company in presenting an application under section 86(1) of the Companies Law and in consenting to the proposed scheme on behalf of the Company. The issue is who should be entitled to act and bring proceedings for a scheme on behalf of the Company (in the context of a corporate rescue or reorganization albeit not one that involves all creditors being paid in full). No issues arise involving competing claims by creditors which would result in different levels of recovery or returns depending on

whether the Liquidators were granted the relief they seek. It appears that currently the Company's board and its directors are unable or unwilling to act and (while the directors could I assume act, and support or authorize the making by the Company of an application under section 86(1), with the consent of the Liquidators they) have shown no sign that they will take any steps to support or oppose the Liquidators' plans or this application….."

…..

(g) ….<u>I note that the Company's centre of main interests, as that term is used in the EU Insolvency Regulation or the UNICITRAL Model Law, is probably in Hong Kong and that seems to me to be a consideration of considerable weight to be taken into account when deciding whether the foreign, non- place of incorporation, liquidation should be treated as competent and justifying assistance, although I do not consider it to be determinative</u>….."

(My emphasis)

30. In my judgment, it is appropriate to grant the HK JPLs recognition to act in the name and on behalf of the Company for the purpose of making an application to the Court for the winding up of the Company and to seek the HK JPLs' appointment as joint provisional liquidators of the Company in the Cayman Islands. As Mr. Hayden pointed out in oral submissions, in this case there is no competition between the place of incorporation and the foreign jurisdiction. Here we have foreign representatives who want to bring the focus of the provisional liquidation back to the place of incorporation. Not only do they have that aim, but they are proceeding with the support of the HK Court which is supervising them in Hong Kong. The centre of main interests of the Company seems to be in Hong Kong, and it is also in the interests of comity for the Cayman Court to recognize the HK JPLs who have been appointed by a Court in a jurisdiction with which the Company has substantial ties.

31. Although the Order made by Harris J does indicate that the Company was represented at the hearing in which the HK JPLs were appointed, I think Mr. Hayden was wise not to push forward too heavily on the alternative ground that recognition should be granted because of submission by the Company to the jurisdiction in Hong Kong. I also think that, as Counsel indicated, there is no sufficient basis upon which I can consider the effect of the registration of the Company in Hong Kong under Part XI of the former Companies Ordinance in Hong Kong as providing a foundation for recognition.

Notice

32. Whilst I am prepared to grant the relief requested by the HK JPLs, I am concerned that notice should be given to the directors, shareholders and creditors of the relief that has been sought in the Summons, and that they be given an opportunity to notify the HK JPLs and the Court of any objections, to make submissions and to apply to the Court to reopen the issue should they wish to do so. I am content to adopt the approach as to Notice set out in paragraphs 35-37 (inclusive) of ***China Agrotech*** as there is also some urgency in this case, given that the Company is currently in the process of being delisted on the SEHK. In a sense, in these circumstances, the recognition is really an interim recognition, which will cease to be interim in nature if there are no objections to the Order that I have made.

33. The HK JPLs have indicated that they will give notice by way of an announcement on the SEHK. That should be supplemented with notice to all members who appear on the Register. The Notice should also indicate that if anyone wishes to have a copy of the relevant paperwork they can obtain the same from the HK JPLs.

34. I will therefore make an order in the terms discussed in this Judgment, the precise terms of which Counsel is to submit for my approval and signature.

THE HON. JUSTICE MANGATAL
JUDGE OF THE GRAND COURT