

First PRC Government Investment Arm Wound Up by Hong Kong Court

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Background

On 4 October 2004, the Hong Kong High Court made Winding-up Orders against Zhuhai Municipal Government's "window company" Zhu Kuan Group Company Limited ("ZK Group") and its Hong Kong subsidiary Zhu Kuan (Hong Kong) Company Limited ("ZK HK") in a petition initiated by Standard Chartered Bank after they defaulted on almost HK\$8 billion in loans to 34 financial creditors. It was the first time the Hong Kong courts put a core investment arm of the Mainland China government registered outside Hong Kong into liquidation and exercised its jurisdiction over such corporations.

The Jurisdictional Issue

Subsequent to the winding up petition being filed, an application was taken out by ZK Group to strike out the petition on the ground that the court has no jurisdiction to wind it up and/or there is a more appropriate forum (namely Macau) in which it can be wound up. Despite the fact that ZK Group was incorporated in Macau and was not registered as a foreign company under Part XI of the Companies Ordinance, the Hong Kong courts decided that they had jurisdiction to hear the dispute and wind up the foreign unregistered company on the basis that the following core requirements were satisfied :-

- (1) The company had a sufficient connection with Hong Kong;
- (2) There had been a reasonable possibility that the winding-up order would benefit those applying for it; and
- (3) The court was able to exercise jurisdiction over one or more persons interested in the distribution of the company's assets.

Following the approach laid down in previous cases, the Court reiterated in this case that the jurisdiction to wind up a foreign company was a flexible one, which did not require the presence of assets within the jurisdiction. In light of the following facts, the Court held that there was a sufficiently close connection with Hong Kong as :-

- (a) a number of assets were located within Hong Kong, consisting of :-
 - ZK Group's direct and indirect interests in a number of (at least 16, and possibly over 30) Hong Kong companies;
 - accounts receivable in the form of a debt of over HK\$560 million owed to ZK Group by ZK HK and a debt of over HK\$3 million owed to it by another Hong Kong company; and
 - a bank account in Hong Kong;
- (b) ZK Group carried on business in Hong Kong in the following ways :-
 - its loan account with Standard Chartered Bank had since July 1999 been handled by the bank's Hong Kong office;
 - it had borrowed substantial amounts of money from 34 banks, 12 of which are located in Hong Kong;
 - the loan documentation in relation to three of the loans (with an aggregate value of HK\$1.35 billion) and one corporate guarantee were executed in Hong Kong and governed by Hong Kong law;
 - it had since late 2001 been negotiating in Hong Kong with creditors in respect of various restructuring proposals; and
 - it had since 2001 retained Hong Kong firms as its advisors in relation to such restructuring proposals.
- (c) 3 of ZK Group's directors were also directors of ZK HK and had an address in Hong Kong as their residential address; and
- (d) ZK Group might have previously maintained its books and records in Hong Kong.

The Court further examined the available evidence and held that there would be a reasonable possibility of benefit to Standard Chartered Bank or other creditors in Hong Kong if a winding up order were to be made against ZK Group. As ZK Group did not dispute the Court's ability to exercise jurisdiction over one or more persons interested in the distribution of its assets, the Court concluded that it had jurisdiction to make a winding-up order in this case.

Turning to ZK Group's fall back position, the court also ruled that the powers of the provisional liquidators of ZK Group should not be confined to ascertaining and taking possession of assets, books and records of ZK Group in Hong Kong.

Conclusion

This case is a significant watershed for Hong Kong courts being able to bring Mainland government's investment arm or related companies, albeit unregistered in Hong Kong, within its jurisdiction in respect of compulsory winding-up. Financial and commercial sectors in Hong Kong should be pleased to see that liquidation proceedings against such insolvent "window companies" is now available, provided sufficient connection can be showed eg sufficient investment and fund-raising activities in Hong Kong and the other core requirements are satisfied.