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Recent Case Update: Re *Rare Earth Magnesium Technology Group [2020] HKCFI 2260* (in provisional liquidation in Bermuda)

We recently acted for the joint provisional liquidators of Rare Earth Magnesium Technology Group (“the Company”) appointed by the Supreme Court of Bermuda in a conventional application for the recognition of the Bermuda soft-touch provisional liquidation of the Company.

The Company was incorporated in Bermuda and is listed on the Hong Kong Stock Exchange with operating subsidiaries in Mainland China.

It is well-settled that the Hong Kong Companies Court will recognise foreign insolvency office-holders subject to certain criteria being met. The application for recognition and assistance supported by a letter of request has become common in Hong Kong and is more often disposed of by way of written submissions with an order drafted in a form consistent with the Hong Kong courts’ standard form of order for recognition and assistance.

In the present application, there are aspects which are slightly different from that of the standard order (reflecting the relevant paragraphs in the Letter of Request) which are specifically highlighted below:-

- Certain powers of the provisional liquidators can be exercised only with the consent of the Company (paragraphs 2(k), 2(m) and 2(n) of the Hong Kong Recognition Order).
- The power granted to the provisional liquidators to receive advance materials and to be consulted in certain transactions (paragraph 2(q) of the Hong Kong Recognition Order) – this is new and is not in the Standard Order.

Whilst there exists the Standard Order adopted by the Hong Kong Companies Court and although the powers sought by the Provisional Liquidators in Hong Kong should be consistent with the Standard Order, there might be ‘cry out’ for slightly different terms to suit and facilitate restructuring exercises on a case by case basis.

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Reform in the area of cross-border insolvency is ongoing in the Hong Kong legislature and will likely only become more urgent as a result of the COVID-19 pandemic. Our recent article on our website **“Insolvencies in Hong Kong in a post-Covid-19 World”** explores this further.

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