

## Case Comment

### TRANSNATIONAL INSOLVENCY: CROSS-BORDER CO-OPERATION BETWEEN THE UNITED STATES AND HONG KONG<sup>1</sup>

#### *In re Axona International Credit & Commerce Limited*

In July 1992 the Hong Kong liquidators of Axona International Credit and Commerce Limited ('Axona') (a Hong Kong company with assets in the United States) were finally able to pay the first interim dividend to Axona's creditors. This payment was made more than nine years after Axona was ordered to be wound up by the Hong Kong High Court and after lengthy adversarial proceedings in both Hong Kong and the United States. While no doubt frustrating for creditors, this liquidation has given rise to an important U.S. decision on the recognition of foreign bankruptcies<sup>2</sup> in general, and of Hong Kong liquidations in particular.

When a company with assets abroad encounters financial difficulties, a worldwide scramble among the company's creditors will usually result, often followed, in turn, by the commencement of a liquidation in each country in which such assets are located. The issue then arises of whether the courts administering these liquidations will uphold the actions of the fast-moving local creditors or rather will co-operate with the other liquidations in the interests of all unsecured creditors worldwide. This is the very issue that the U.S. Bankruptcy Court for the Southern District of New York addressed in *In re Axona International Credit & Commerce Ltd* ('Axona'),<sup>3</sup> the liquidation case involving the U.S. assets of Axona, which was simultaneously being wound up in Hong Kong. In this case, the U.S. bankruptcy court granted assistance to the Hong Kong winding-up proceeding and ordered the turnover of assets to the Hong Kong liquidators to be administered in the Hong Kong proceeding. As the first reported case involving the recognition by a U.S. court of a Hong Kong insolvency proceeding, *Axona* is an important precedent for co-operation in future cross-border insolvencies involving Hong Kong and the United States.

<sup>1</sup> For a more extensive discussion of the recognition of foreign insolvencies by U.S. courts, see my article 'Recognition of Foreign Bankruptcies: An Analysis and Critique of the Inconsistent Approaches of United States Courts,' 66 American Bankruptcy LJ 135 (1992).

<sup>2</sup> In this article, I use the term 'bankruptcy' as it is used in U.S. law as including the insolvencies of both companies and individuals.

<sup>3</sup> 88 BR 597 (Bankr SDNY 1988), aff'd, 115 BR 442 (SDNY 1990), appeal dismissed, 924 F2d 31 (2d Cir 1991).

Axona carried on business in Hong Kong as a registered deposit-taking company. It did not engage in banking business in the United States, but did have several million U.S. dollars on deposit in several banks located there. In November 1982 Axona was unable to pay its debts as they became due, and the fight over Axona's assets began when four of Axona's creditors (all four of which were U.S. banks) tried to benefit themselves at the expense of Axona's other creditors. Three of the banks obtained *ex parte* attachments on Axona's funds on deposit in the United States, which under U.S. law gave them priority over other creditors.<sup>4</sup> Another creditor, Chemical Bank, executed other self-help actions, including the transfer of a cash collateral account from its Hong Kong branch to its New York main office.

On February 2, 1983 one of Axona's creditors filed a petition for the compulsory winding-up of Axona under Hong Kong law. Two days later the Hong Kong High Court appointed joint provisional liquidators. The Hong Kong provisional liquidators wanted to protect Axona's assets in the United States from the actions of U.S. creditors and had two main alternatives available to them: (1) to commence an involuntary liquidation (Chapter 7) case against Axona under section 303(b)(4) of the U.S. *Bankruptcy Code*;<sup>5</sup> or (2) to commence an ancillary case under section 304 of the U.S. *Bankruptcy Code*.<sup>6</sup>

<sup>4</sup> Under s 9-301(3) of the *Uniform Commercial Code*, '[a] "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like ....' UCC s 9-301(3) (1992). Under s 9-301(1)(b) a lien creditor has priority over an unperfected security interest. *ibid*, s 9-301(1)(b).

<sup>5</sup> *Bankruptcy Reform Act* of 1978, Pub L No 95-598, 92 Stat 2549 (codified as amended in 11 USCA (West 1992), in scattered sections of 28 USCA (West 1992), and in scattered sections of other titles).

Section 303(b)(4) of the U.S. *Bankruptcy Code* enables a "foreign representative" of the estate in a foreign proceeding' to commence an involuntary liquidation (Chapter 7) or reorganization (Chapter 11) case against a debtor. 11 USCA s 303(b)(4) (West 1992). The Hong Kong winding-up proceeding was a 'foreign proceeding' under s 101(23) of the U.S. *Bankruptcy Code* and the provisional liquidators were 'foreign representatives' under s 101(24). *ibid*, s 101(23) and (24). Although Axona did not engage in banking business in the United States, it was eligible for relief under the U.S. *Bankruptcy Code* since it had property in the United States. *ibid*, s 109(a).

<sup>6</sup> Section 304 provides as follows:

- (a) A case ancillary to a foreign proceeding is commenced by the filing with the bankruptcy court of a petition under this section by a foreign representative.
- (b) Subject to the provisions of subsection (c) of this section, if a party in interest does not timely controvert the petition, or after trial, the court may —
  - (1) enjoin the commencement or continuation of —
    - (A) any action against —
      - (i) a debtor with respect to property involved in such foreign proceeding; or
      - (ii) such property; or
    - (B) the enforcement of any judgment against the debtor with respect to such property, or any act or the commencement or continuation of any judicial proceeding to create or enforce a lien against the property of such estate;

By filing a Chapter 7 petition under section 303(b)(4), a foreign representative commences a full-scale liquidation. The filing of the petition operates as an automatic stay against a broad variety of creditor actions,<sup>7</sup> and once the court enters an order for relief, a trustee is appointed<sup>8</sup> to marshal and distribute the assets of the estate.<sup>9</sup> In contrast, by filing a petition under section 304, a foreign representative does not commence a full-scale liquidation — a trustee is not appointed and the automatic stay is inapplicable. Rather, a section 304 case is more limited in scope, and the foreign representative may request the bankruptcy court, for example, to prevent local creditors from dismembering the debtor's assets in the United States, to assist the foreign proceeding, and to order the turnover of the debtor's U.S. assets to the foreign representative to be administered in the foreign proceeding.

Acting upon the advice of their U.S. counsel, the Hong Kong provisional liquidators decided to pursue the section 303(b)(4) option. In counsel's opinion, the advantages of commencing a full case under section 303(b)(4) rather than the more limited section 304 case were as follows. First, in a section 303 case the trustee would be able to use the U.S. *Bankruptcy Code's* avoiding powers to set aside as preferences those attachments made by creditors within ninety days of the filing of the petition.<sup>10</sup> In contrast, U.S. avoiding powers would not be available under section 304. (This view is supported by the developing case law — in a section 304 case the avoiding powers to be exercised are the avoiding

- (2) order turnover of the property of such estate, or the proceeds of such property, to such foreign representative; or
- (3) order other appropriate relief.
- (c) In determining whether to grant relief under subsection (b) of this section, the court shall be guided by what will best assure an economical and expeditious administration of such estate, consistent with —
  - (1) just treatment of all holders of claims against or interests in such estate;
  - (2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;
  - (3) prevention of preferential or fraudulent dispositions of property of such estate;
  - (4) distribution of proceeds of such estate substantially in accordance with the order prescribed by this title;
  - (5) comity; and
  - (6) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

<sup>11</sup> USCA s 304 (West 1992).

<sup>7</sup> *ibid*, s 362(a).

<sup>8</sup> See *ibid*, ss 701 and 702.

<sup>9</sup> *ibid*, ss 541 and 704.

<sup>10</sup> See *ibid*, s 547. Of course, the other criteria in s 547(b) would first have to be satisfied.

powers of the foreign insolvency.<sup>11</sup>) Secondly, in a section 303 case, the automatic stay would be applicable.<sup>12</sup> On February 8, 1983, the Hong Kong court authorised the provisional liquidators to commence an involuntary Chapter 7 liquidation against Axona under section 303(b)(4). On March 4, 1983, the Hong Kong court ordered the winding-up of Axona and appointed the provisional liquidators as permanent liquidators.

The attaching U.S. creditors responded by commencing litigation in both the United States and Hong Kong challenging the commencement of the section 303 case by the Hong Kong liquidators. In the U.S. proceeding, the bankruptcy court overruled the attaching creditors' objections and allowed the section 303 case to continue by entering an order for relief.<sup>13</sup> A trustee was appointed in the U.S. case, and he commenced adversarial proceedings against the attaching creditors seeking to recover as preferential transfers the payments made to the banks on account of their pre-petition attachments.

In the proceedings commenced in Hong Kong, the attaching U.S. creditors sought (1) declaratory relief that they were entitled to retain the benefit of their attachments on the ground that the New York law was irrelevant; and (2) a ruling by the court that the Hong Kong liquidators should withdraw the U.S. section 303 proceedings. Hunter J dismissed these applications in *American Express International Banking Corp v Johnson*<sup>14</sup> and upheld the earlier decision by the Hong Kong High Court to permit the Hong Kong liquidators to commence a full insolvency case under U.S. law. He noted that having no defence to the preference actions commenced in the United States, the attaching creditors launched their 'massive counter-attack' in Hong Kong seeking a ruling that they were

<sup>11</sup> See, eg, *In re Metzeler*, 78 BR 674, 677 (Bankr SDNY 1987) (holding that 'a foreign representative may assert, under section 304, only those avoiding powers vested in him by the law applicable to the foreign estate'); *In re A Tarricone, Inc*, 80 BR 21, 23-24 (Bankr SDNY 1987). For a contrasting view holding that U.S. avoidance powers are applicable in a s 304 case, see two early s 304 cases, *In re Comstat Consulting Services Ltd*, 10 BR 134, 135 (Bankr SD Fla 1981), and *In re Egeria Societa per Azioni di Navigazione*, 26 BR 494, 497 (Bankr ED Va 1983), rev'd on other grounds sub nom *Ciel y Cia SA v Nereide Societa di Navigazione per Azioni*, 28 BR 378 (ED Va 1983), appeal dismissed sub nom *Ciel y Cia SA v Commissioner of Egeria Societa di Navigazione per Azioni*, 723 F 2d 900 (4th Cir 1983).

<sup>12</sup> See 11 USCA s 362(a) (West 1992). *American Express International Banking Corp v Johnson* [1984] HKLR 372, 377. Counsel also stressed that greater powers of investigation would be available under s 303 and that only one action would have to be taken under s 303. *ibid*. Lastly, U.S. counsel also alerted the Hong Kong liquidators to the likely disadvantages of pursuing a s 303 action, namely: (1) the loss of the Hong Kong liquidators' control over the U.S. estate; (2) additional administrative costs; and (3) uncertainty as to how the U.S. court would act. *ibid*.

<sup>13</sup> *Axona*, n 3 above, 88 BR 597, 601.

<sup>14</sup> [1984] HKLR 372, 389.

entitled to retain the benefit of their attachments under Hong Kong law, which unlike U.S. law, considered 'difficult questions of intention.'<sup>15</sup>

In his decision, Hunter J rejected the attaching creditors' assertions that the Hong Kong liquidators had committed misfeasance or had breached their duties as officers of the court. Rather, he found that the liquidators had acted correctly in seeking advice of counsel and judicial approval regarding the commencement of actions in the United States.<sup>16</sup> Secondly, and perhaps most importantly, he found that Hong Kong law governs attachments within Hong Kong, but not attachments abroad.<sup>17</sup> In his view, matters of attachments and preferences should be addressed by the courts of the *lex situs*, which in this case was the law of the United States.<sup>18</sup> Therefore, it was appropriate for the Hong Kong liquidators to have commenced a full insolvency case in the United States under section 303(b)(4) of the U.S. *Bankruptcy Code* to gain the benefits of U.S. preference law. Lastly, in strong language Hunter J denied the attaching creditors' allegations that the Hong Kong liquidators and the Hong Kong court were guilty of forum shopping. In so doing, he asserted that by grabbing assets in New York the attaching creditors themselves were responsible for the resulting legal proceedings in New York.<sup>19</sup>

In the liquidation in the United States, the U.S. trustee eventually entered into a settlement with the attaching creditors. The U.S. trustee also commenced an adversary proceeding to recover as a preference the transfers gained by Chemical Bank from the self-help actions it took in November 1982. The U.S. trustee and Chemical Bank also entered into a settlement agreement, but this agreement reserved Chemical Bank's right to contest the jurisdiction of the U.S. bankruptcy court to administer Axona's Chapter 7 case. These settlement agreements enabled the U.S. trustee to collect more than US\$7 million from the attaching creditors and Chemical Bank.<sup>20</sup> (The Hong Kong liquidators, in turn, had collected more than US\$5 million in the Hong Kong proceeding.)

After amassing these substantial funds, the Hong Kong liquidators and the U.S. trustee (the 'Joint Applicants') applied under U.S. *Bankruptcy*

<sup>15</sup> *ibid*, 378. It is more difficult to avoid a fraudulent preference under Hong Kong law than it is to avoid a preference under U.S. law, because under Hong Kong law the liquidator must prove that the debtor had a dominant intention to prefer the creditor. See s 266, *Companies Ordinance*, cap 32, LHK 1992 ed; s 49, *Bankruptcy Ordinance*, cap 6, LHK 1992 ed.

<sup>16</sup> *American Express Int'l Banking Corp*, n 12 above, at 379–80.

<sup>17</sup> *ibid*, 381–85. See s 269, *Companies Ordinance*, cap 32, LHK 1992 ed.

<sup>18</sup> *ibid*, 381–82. See also *ibid*, 383–85.

<sup>19</sup> *ibid*, 389.

<sup>20</sup> *Axona*, n 3 above, 88 BR 597, 601–02.

*Code* section 305(b)<sup>21</sup> to the U.S. bankruptcy court for the court to suspend the U.S. liquidation case and to transfer the U.S. assets to the Hong Kong liquidators to be distributed in the Hong Kong proceeding. Chemical Bank alone opposed the Joint Applicants' request and raised a number of statutory, jurisdictional and constitutional challenges.

Under section 305(a)(2) of the U.S. *Bankruptcy Code*, a bankruptcy court may suspend a bankruptcy case if there is a foreign proceeding pending and the factors specified in section 304(c) of the U.S. *Bankruptcy Code* warrant such suspension.<sup>22</sup> Section 304(c) requires that in cases involving corporate debtors, the court shall be guided by what will best assure an economical and expeditious administration of the estate consistent with the following factors: just treatment of all creditors; protection of U.S. creditors against prejudice and inconvenience in the processing of their claims abroad; prevention of preferential or fraudulent dispositions of the property of the estate; distribution of proceeds of the estate substantially in accordance with the order prescribed by the U.S. *Bankruptcy Code*; and comity.<sup>23</sup>

Chemical Bank's opposition to the suspension of the U.S. case and the turnover of U.S. assets to Hong Kong was premised on its belief that its self-help manoeuvres on the eve of Axona's liquidation should not be subject to U.S. preference law. Rather, Chemical Bank argued that its manoeuvres should be subject to Hong Kong law and that under Hong Kong law its manoeuvres would not be avoidable.<sup>24</sup> The U.S. court rejected this view and found 'that Chemical [Bank] must be presumed to have been on notice that it would or could be subject to United States law applicable to its

<sup>21</sup> Section 305 provides as follows:

- (a) The court, after notice and a hearing, may dismiss a case under this title [title 11], or may suspend all proceedings in a case under this title, at any time if —
  - (1) the interests of creditors and the debtor would be better served by such dismissal or suspension; or
  - (2) (A) there is pending a foreign proceeding; and
  - (B) the factors specified in section 304(c) of this title warrant such dismissal or suspension.
- (b) A foreign representative may seek dismissal or suspension under subsection (a)(2) of this section.
- (c) An order under subsection (a) of this section dismissing a case or suspending all proceedings in a case, or a decision not so to dismiss or suspend, is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of title 28 or by the Supreme Court of the United States under section 1254 of title 28.

11 USCA s 305 (West 1992).

<sup>22</sup> See *ibid.*

<sup>23</sup> See n 6 above.

<sup>24</sup> *Axona*, n 3 above, 88 BR 597, 603–04. The Joint Applicants disagreed with Chemical Bank's interpretation of Hong Kong law. See *ibid.*, 604, n 12.

conduct even when it is acting in the international context.<sup>25</sup> Among the factors relied on by the court were the following: Chemical Bank was a New York bank doing business in New York; it did business with Axona largely through a New York account; and it 'undeniably involved its New York office in the November 1982 restructuring.'<sup>26</sup>

Chemical Bank's statutory challenge to the relief requested by the Joint Applicants was based on its belief that 'suspension in accordance with section 305(a) should not be granted once the [U.S. Bankruptcy] Code's avoiding powers have been invoked.'<sup>27</sup> The U.S. court rejected this assertion by relying on the plain language of the statute.<sup>28</sup> Chemical Bank also argued that comity did not support suspension of the U.S. case and turnover of the U.S. assets to be administered under Hong Kong law.<sup>29</sup> The U.S. court rejected Chemical Bank's narrow interpretation of comity in favour of the broader pro-recognition comity approach espoused in earlier U.S. transnational insolvency cases such as *In re Culmer*:<sup>30</sup> 'Comity is to be accorded a decision of a foreign court as long as that court is of competent jurisdiction and as long as the laws and public policy of the forum state are not violated.'<sup>31</sup> The court also noted that previous U.S. courts had granted comity to sister common law jurisdictions whose insolvency law is based on English company law and then observed that 'Hong Kong, like the Bahamas, Cayman Islands, and Canada, is a sister common law jurisdiction whose winding-up law is derived from the [English] Companies Act.'<sup>32</sup> The court then claimed that the Hong Kong *Companies Ordinance* 'is strikingly similar to the [U.S. Bankruptcy] Code and provides a comprehensive procedure for the orderly and equitable distribution of assets to all creditors.'<sup>33</sup> The court therefore determined that comity should be granted to the Hong Kong proceedings.

<sup>25</sup> *Axona*, n 3 above, 88 BR 597, 617.

<sup>26</sup> *ibid.*

<sup>27</sup> *ibid.*, 607.

<sup>28</sup> *ibid.*, 607–08. The U.S. court also rejected Chemical Bank's contention that the Hong Kong liquidators should have been required to commence a s 304 case rather than a s 303(b)(4) case. *ibid.*, 603–04, 606–07.

<sup>29</sup> *ibid.*, 608, 612. The U.S. court noted the inconsistency in Chemical Bank's position: on the one hand, the bank argued that Hong Kong law should govern its 1982 restructuring, but on the other hand, the bank argued that 'it would be *unfairly* treated if the case were suspended and Hong Kong law utilized to govern the disposition of Axona's estate.' *ibid.*, 612.

<sup>30</sup> 25 BR 621 (Bankr SDNY 1982).

<sup>31</sup> *Axona*, n 3 above, 88 BR 597, 609 (quoting *Culmer*, n 30 above, at 629).

<sup>32</sup> *Axona*, n 3 above, 88 BR 597, 610. The *Axona* court was referring to three earlier transnational bankruptcy cases in which U.S. courts had granted comity to sister common law jurisdictions — *Culmer*, n 30 above (the Bahamas); *In re Gee*, 53 BR 891 (Bankr SDNY 1985) (the Cayman Islands); *Clarkson Co v Shaheen*, 544 F 2d 624 (2d Cir 1976) (Canada).

<sup>33</sup> *Axona*, n 3 above, 88 BR 597, 610.

Often relying on an affidavit submitted by a Hong Kong solicitor acting for the Hong Kong liquidators, the court also noted that Hong Kong law satisfied the other section 304(c) factors: Hong Kong law provides for the just treatment of all creditors; U.S. creditors would be protected against prejudice and inconvenience in the processing of their claims in Hong Kong; preferential transfers had been avoided; and distribution under Hong Kong law would be substantially in accordance with the order and priorities under U.S. law.<sup>34</sup> The U.S. court therefore granted the relief requested by the Joint Applicants, namely, suspending the case and proceedings and ordering that the U.S. assets be turned over to the Hong Kong liquidators for distribution under Hong Kong law.<sup>35</sup>

Chemical Bank appealed. In May 1990 the U.S. District Court for the Southern District of New York upheld the bankruptcy court's decision.<sup>36</sup> Chemical Bank appealed again and in January 1991 the Second Circuit Court of Appeals dismissed Chemical Bank's appeal.<sup>37</sup> Other problems continued to arise and it was not until July 1992 that the first interim distribution to creditors was finally made by the Hong Kong liquidators. (This distribution was made in Hong Kong dollars based on the rate of exchange prevailing on March 4, 1983, the date the Hong Kong court ordered Axona to be wound-up.) There will be a further distribution of dividends to creditors after the conclusion of other outstanding litigation involving the recovery of moneys owed to Axona.

Given the current statutory alternatives available to a foreign representative in the U.S. *Bankruptcy Code*, the U.S. bankruptcy court in *Axona* was correct in upholding the right of the Hong Kong liquidators to commence a Chapter 7 case under section 303(b)(4). However, Chemical Bank's arguments do highlight the need for the development of further guidelines to prevent foreign representatives from 'section shopping' between section 303(b)(4) and section 304. In my view, for cases in which a foreign representative wishes to commence a U.S. bankruptcy case to avoid transfers in the United States, the general rule should be as follows: if the foreign jurisdiction's avoidance powers have extra-territorial effect

<sup>34</sup> *ibid*, 612-13.

<sup>35</sup> *ibid*, 618. The court conditioned the turnover order on several factors, including the following: (1) the prepayment of administrative expenses and certain priority claims from the U.S. estate; (2) the retention of funds sufficient for completing the administration of the U.S. estate; and (3) the giving of notice by the Hong Kong liquidators to all creditors who had filed a proof of claim in the U.S. bankruptcy case but had not filed a proof of debt in the Hong Kong winding-up proceeding, of their right to file a proof of debt in the Hong Kong proceeding and of the procedures for doing so. *ibid*, 618-19.

<sup>36</sup> *Axona*, 115 BR 442 (SDNY 1990).

<sup>37</sup> *Axona*, 924 F 2d 31 (2d Cir 1991).



(and are therefore applicable abroad), then the foreign representative should be required to commence a section 304 case and the avoidance law of the foreign jurisdiction should be applied by the U.S. court; if they do not, then section 304 relief should be unavailable to the foreign representative and he should be required to commence a full case under section 303(b)(4) in which the avoidance powers set forth in the U.S. *Bankruptcy Code* are applicable.<sup>38</sup> As mentioned earlier, in the Hong Kong litigation involving Axona, Hunter J stated that the Hong Kong code is a domestic code, that the attachments in question were beyond the reach of the Hong Kong courts, and that the *lex situs* was the law of the United States.<sup>39</sup> Since Hong Kong avoidance powers do not have extra-territorial effect, it was therefore appropriate under the guidelines set forth above for the Hong Kong liquidators to have commenced a section 303(b)(4) case to gain the benefit of U.S. avoidance powers in setting aside the attachments by Axona's creditors in the United States.

Since the plenary U.S. bankruptcy case was correctly commenced, it was proper for the U.S. bankruptcy court to allow the Chapter 7 trustee to avoid all preferences with a U.S. connection, such as Chemical Bank's manoeuvres. (Chemical Bank would have had a much stronger case if it had not involved its New York main office in its machinations, because under those circumstances there would not have been a U.S. connection.) Given that the aims of the Chapter 7 case had been achieved, the *Axona* court should be applauded for furthering cross-border co-operation by adopting a pro-recognition comity approach that stressed the similarities of Hong Kong law and U.S. law and by ordering the relief requested by the Joint Applicants. The relief ordered by the U.S. court clearly furthered the economical and expeditious administration of Axona's estate.

*Axona* has great importance under U.S. law. It is the first case under the U.S. *Bankruptcy Code* in which a U.S. court has granted a section 305(b) request for the suspension of a U.S. bankruptcy case and the turnover of assets to a foreign proceeding for administration under foreign law. By following a pro-recognition comity approach and granting the requested relief, the *Axona* court demonstrated the benefits to unsecured creditors worldwide that can result from cross-border co-operation between foreign

<sup>38</sup> The foreign representative's compliance with these guidelines should be one of the threshold requirements to be satisfied for relief to be ordered. Of course, for a U.S. court to order relief, the foreign representative would have to comply with the other threshold requirements as well. See Booth, n 1 above, at 151–60 and 229. For further discussion of my section shopping guidelines and of possible exceptions to my general rule noted above, see *ibid*, 229.

<sup>39</sup> See nn 17–18 and accompanying text above.

representatives and foreign courts and their U.S. counterparts when plenary cases have been commenced abroad and in the United States.

However, the precedential value of this case must be of little solace to Axona's creditors who waited for more than nine years to receive the first interim dividend and are still awaiting a further dividend. Indeed, Hong Kong creditors and liquidators in future cases must anticipate that although U.S. case law now supports the granting of recognition and assistance to Hong Kong liquidations, administrative difficulties and litigious actions by U.S. creditors may nevertheless continue to cause lengthy delays in the making of distributions.

CHARLES D BOOTH<sup>†</sup>

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<sup>†</sup> Lecturer, Faculty of Law, University of Hong Kong.