

Construction Insolvency In the Matter of Evergrande [2024] HKCFI 363

By Ashley Pratt

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Following the Chinese property developer Evergrande's default on \$300 billion of debt in 2021, Linda Chan J in the Hong Kong High Court ordered on 29 January 2024 that the company be wound up. [2] Trading in the company has been suspended and Hui Ka Yan, the founder and chairman, is reported to have been arrested in China following an earlier investigation into the company.

Evergrande is a company registered in the Cayman Islands, based in Guangzhou, China, but floated on the Hong Kong Exchange (HKEX). The High Court of Hong Kong found that it could "*exercise its discretion*" over Evergrande given that: [i] it was a company listed in Hong Kong [ii] it had substantial assets within the jurisdiction, and [iii] many of the creditors had already submitted to the jurisdiction.

Evergrande was allowed 18 months prior to its winding up, to attempt to restructure its finances. At the hearing in January 2024 the judge found that Evergrande had failed to provide an adequate restructuring plan in time for the hearing and refused to further adjourn the winding up application. Linda Chan J stated:

"... The Company has not demonstrated that there is any useful purpose for the court to adjourn the petition- there is no restructuring proposal, let alone a viable proposal which has the support of the requisite majorities of the creditors..." [3]

Although Evergrande had substantial assets in Hong Kong it is located in Guangzhou. [4] As such it is thought that the litigation following its collapse will be complex. It is a Hong Kong listed company which is not one of the three "*Chinese cities that mutually recognise liquidation orders*" [5] and thus the ensuing litigation is likely to be tricky. Prior to its liquidation it was reported that there were already in excess of 1,300 disputes [6] arising out of Evergrande's defaults and it is likely, given the volume of claims, the complexity of disputes and the value of the debts that litigation will persist for many years.

The impacts of such a large-scale collapse are unknown but will clearly be significant. The collapse of Lehman Brothers in 2008 was for an estimated \$620 billion which shook the world economy.

Closer to home it was reported that by November of 2023 there were 4,370 construction firm insolvencies in England and Wales, which accounted for 16.8% of all insolvencies in the UK for the period [7], a 36.8 % increase since 2019.

EY has reported that UK construction firms are currently particularly vulnerable to "*...the nature of contract cycles and the challenges of cash flows management that contractors and subcontractors are subject to*". [8] It was reported that in the final quarter of 2024 almost 8,000 construction firms were on the brink of collapse. [9] Inland Homes were recently wound up with £300 million of debt, [10] and the Buckingham Group with a £108 million deficit [11]. Unfortunately, this trend is likely to continue.

The sheer scale of domestic and international construction insolvencies is likely to lead to complex disputes for the coming years. The cross-border nature of the litigation is sure to provide some fascinating jurisprudence given that the sums outstanding amount to the GDP of many small nations.

[1] Judgement can be accessed at: [here](#).

[2] *Ibid*

[3] *Ibid*

[4] <https://mobilesite.evergrande.com/en/contact.aspx>

[5] <https://www.gpb.org/news/2024/02/02/heres-what-know-about-the-collapse-of-chinas-evergrande-property-developer#:~:text=Although%20Evergrande%27s%20demise%20is%20unlikely,global%20growth%20down%20the%20road.>

[6] <https://asia.nikkei.com/Business/Markets/Property/China-Evergrande-faces-over-1-300-lawsuits-totaling-45bn>

[7] <https://bcis.co.uk/news/construction-insolvencies-latest-news/#:~:text=In%20the%20year%20to%20November,on%20the%203%2C218%20in%202019.>

[8] *Ibid*

[9] <https://www.constructionnews.co.uk/financial/administrations/mayday-for-almost-8000-construction-firms-23-01-2024/>

[10] <https://www.housingtoday.co.uk/news/inland-homes-administrators-rule-out-rescue-for-any-part-of-the-business/5126684.article>

[11] <https://www.constructionnews.co.uk/financial/administrations/buckingham-group-owed-108m-at-collapse-29-09-2023/>

London

81 Chancery Lane,
London
WC2A 1DD
Tel: +44 (0)20 7832 1111
DX: London/Chancery Lane 298
Fax: +44 (0)20 7353 3978

MANCHESTER

82 King Street,
Manchester
M2 4WQ
Tel: +44 (0)16 1870 0333
Fax: +44 (0)20 7353 3978

SINGAPORE

Maxwell Chambers,
28 Maxwell Road,
WC2A 1DD
04-03 & 04-04, Maxwell Chamber
Suites
Singapore 069120
Tel: +65 6320 9272

KUALA LUMPUR

#02-9, Bangunan Sulaiman
Jalan Sultan Hishamuddin,
50000 Kuala Lumpur,
Malaysia
Tel: +60 32 271 1085

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clerks@39essex.com • DX: 298 London/Chancery Lane • 39essex.com