



**INSOL**  
INTERNATIONAL

# Collection of Practical Issues Important to Smaller Practitioners – Hong Kong

August 2022

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## Acknowledgment

INSOL International is pleased to present a country study on Hong Kong under its Technical Papers Series focusing on "A Collection of Practical Issues Important to Smaller Practitioners". The paper was written by Mr Mat Ng, Managing Director, Grant Thornton Hong Kong, assisted by his colleagues, Mr Nigel Trayers (Director) and Mr Denny Tse (Associate Director), also of Grant Thornton Hong Kong.

This publication is an update to the original version of the paper which was published in March 2012. Since that time, a number of important changes have occurred in the legal, policy and practical insolvency landscape in Hong Kong.

This fully revised and up to date publication is therefore very timely and will be of great value to our members across the world, particularly in understanding the latest developments on cross-border cooperation and recognition and in navigating the complex issues that arise in the course of an insolvency matter in Hong Kong, which remains an important offshore insolvency and restructuring hub in the Asia-Pacific.

INSOL International sincerely thanks the authors for their time, effort and expertise in writing this paper.

August 2022

## **Collection of Practical Issues Important to Smaller Practitioners**

By Mat Ng (Managing Director), Nigel Trayers (Director) and Denny Tse (Associate Director) of Grant Thornton Hong Kong\*

### **1. How to find information about IPs in Hong Kong**

#### **1.1 How are practitioners organised?**

Corporate and personal insolvency cases in Hong Kong are dealt with by the Official Receiver's Office (ORO) and private practitioners who are solicitors, accountants, company secretaries and persons who have insolvency experience.

At present, there is no single professional organisation / authority in Hong Kong that oversees insolvency practitioners (IPs). Rather, IPs are mainly supervised and controlled by the courts, the ORO, the Law Society of Hong Kong (LSHK) and the Hong Kong Institute of Certified Public Accountants (HKICPA).

The HKICPA has set up the Restructuring and Insolvency Faculty (RIF), which provides memberships, specialist qualifications and designations for its members. Membership is also open to other professionals who have an interest in the insolvency field. All members of the RIF are members of INSOL International.

IPs are able to be nominated on the ORO's scheme for appointments in court winding-up cases where the ORO is of the opinion that the property of the wound-up company is likely to exceed in value HK \$200,000 (otherwise known as the Panel A Scheme). For court winding-up cases and self-petition bankruptcy cases where assets are unlikely to exceed HK \$200,000, IPs may also be appointed as provisional liquidators or provisional trustees in the Official Receiver's place by way of a tender (Tender Schemes). The appointment of IPs to the schemes is subject to meeting the ORO's criteria, which is discussed later in this paper.

#### **1.2 What are the associations to contact and what do these associations do?**

##### **1.2.1 The ORO**

- Supervises the conduct and administration of insolvency cases by IPs.
- Maintains an Administrative Panel of IPs for court winding-up (Panel A) for the purpose of nominating panel members (who are members of the HKICPA) to handle certain non-summary court winding-up cases.
- Organises various tenders to allocate summary court winding-up cases and self-petitioning bankruptcy cases to private IPs.

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\* The views expressed in this article are the views of the authors and not of INSOL International, London.

### **1.2.2 RIF of the HKICPA**

- Promotes best practice in the insolvency field, with the aim of helping to raise industry standards.
- Provides facilities, services and support (e.g. continuing professional education, technical information and publications) to assist RIF members in carrying out their work in the insolvency field.
- Acts as the HKICPA's voice for professional and public interest in the insolvency field, and maintains and strengthens the reputation and standing of the HKICPA and the insolvency sector.
- RIF is a member of INSOL International and, in turn, all members of the RIF are members of INSOL International.

### **1.3 Where do you go to get the information either when you are looking for someone, or looking for a solution?**

Interested parties usually obtain such information from the INSOL Directory, as well as their own solicitors, accountants and bankers.

### **1.4 Are there lists of (qualified / certified) IPs available? How can these lists be accessed?**

Currently, there is no licensing requirement in Hong Kong for IPs, with the result that no list of IPs is available. However, interested parties may consult the INSOL Directory to have access to its Hong Kong members, who are also all RIF members.

Creditors may ask for a list of Panel A members from the ORO.

## **2. Cross-border issues important to smaller practitioners**

### **2.1 Information about available insolvency laws that apply to cross-border cases**

The Companies (Winding Up and Miscellaneous Provisions) Ordinance (chapter 32, Laws of Hong Kong) (CWUMPO) is silent as to whether a Hong Kong winding-up has extra-territorial jurisdiction and there is no statutory provision that governs the recognition of foreign insolvencies. Hong Kong relies on a common law approach that follows English law developments.

Large multi-national and / or stock exchange listed corporates in Hong Kong are frequently incorporated in the Cayman Islands, Bermuda, or the British Virgin Islands. While there is no statutory regime that provides for the recognition of Hong Kong liquidators abroad (and vice versa), where appropriate it is fairly typical for a Hong Kong liquidator to seek recognition of their appointment in an offshore jurisdiction (and vice versa) by way of an application made to the relevant court either in Hong Kong or in the offshore jurisdiction.

On 14 May 2021, the People's Republic of China (PRC) and the Hong Kong Government executed a Record of Meeting concerning the mutual recognition of, and giving of assistance to, insolvency proceedings between the courts of the PRC and Hong Kong. With immediate effect from that date, a liquidator or a provisional liquidator in insolvency proceedings in Hong Kong may apply to the relevant Intermediate People's Court at an initial pilot area in the PRC for recognition of compulsory winding up, creditors' voluntary winding up and corporate debt restructuring brought by a liquidator in Hong Kong. Similarly, an administrator in PRC bankruptcy proceedings may apply to the Hong Kong court for recognition of bankruptcy liquidation, reorganising and compromise proceedings under the Enterprise Bankruptcy Law of the PRC, recognition of his / her office as an administrator, and grant of assistance for discharge of his / her duties as an administrator. The initial pilot areas are Shanghai, Xiamen, and Shenzhen, given their close trade ties to Hong Kong and being popular choices for investments from Hong Kong.

## **2.2 How to enforce claims abroad / how to do it / whom to get advice from?**

Hong Kong liquidators may commence insolvencies abroad and go to the place where the assets of a Hong Kong wound-up company are located to protect and seek the return of overseas assets.

Usually legal advice will be sought from a solicitor who has experience in the jurisdiction in which the claims are being made.

## **2.3 What are the key criteria to consider when tracing and recovering assets in a foreign jurisdiction?**

Criteria to be considered:

- Existence of the right to claim and recognition of the claim in a foreign jurisdiction.
- Existence and condition of the assets available for recovery.
- Whether there are any other secured creditors who have higher priority.
- Costs and the amount of recovery.

## **2.4 What rights and / or powers does a foreign insolvency officer have to act directly (i.e. without any enforcement proceeding) in a third country? (target country)**

The effect of the insolvency orders in other jurisdictions will depend upon the extent to which the courts in those jurisdictions are prepared to recognise Hong Kong orders. Hong Kong has not adopted the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross-Border Insolvency.

## **2.5 Are there state aid supported proceedings available that foreign IPs can use?**

The issue of whether Hong Kong Courts will recognise a foreign liquidation granted under the law of the place of the company's incorporation has been dealt with by a number of cases that were heard before the Hong Kong courts, some of which are briefly discussed below. Due to the absence of a statutory regime in Hong Kong dealing with

recognition of foreign IPs, this area of the law in Hong Kong has evolved around case law and this continues to develop. As such, IPs should consult with their solicitors as to the latest update and position.

### 2.5.1 Court winding-up

In the matter of *Joint Official Liquidators of A Company v. B*,<sup>1</sup> Justice Harris in the Hong Kong High Court explained that “in the case of liquidators appointed in jurisdictions with similar insolvency regimes to Hong Kong, the assistance may extend to granting orders that give the foreign liquidators substantially similar powers”, and this was based upon “modified universalism” being the common law power to recognise and assist a foreign insolvency process.

In the matter of *Kam Leung Sui Kwan v. Kam Kwan Lai*,<sup>2</sup> the Court of Final Appeal (CFA) explained three “core” requirements in determining whether to exercise its discretion to wind-up a foreign incorporated company in Hong Kong, namely: (1) a sufficient connection to Hong Kong (but not necessarily requiring the presence of assets in Hong Kong); (2) a reasonable possibility that the winding-up order will benefit the applicant parties; and (3) the court is able to exercise its jurisdiction over one or more persons in the distribution of the company’s assets.

The second “core” requirement was further considered in the matter of *China Huiyuan Juice Group Limited*.<sup>3</sup> Given a significant number of cases heard before the Hong Kong High Court involve offshore incorporated companies that are listed on the Hong Kong Stock Exchange, Justice Harris considered that the listing status of a wound-up company would not have any residual value. Therefore, the applicants would need to provide additional evidence on whether a winding-up order will benefit creditors. Justice Harris’ comments were re-iterated in his later decision in *Grand Peace Group Holdings Limited*,<sup>4</sup> where the Court indicated that in order to satisfy the second “core” requirement, “the petitioner must be able to point to a discernible and real benefit”.

The *China Huiyuan* decision was considered by the High Court in the recent decision of *Up Energy Development Group Limited*<sup>5</sup> handed down on 6 May 2022 (*Up Energy*).

In *Up Energy*, Justice Linda Chan of the High Court considered that “in the case of a non-Hong Kong company whose primary listing has been on [the Hong Kong Stock Exchange], it would not be difficult for the petitioner to satisfy the three core requirements ... [as] such listed company invariably have: (1) maintained a principal place of business in Hong Kong and have given an undertaking to comply with the Listing Rules; (2) maintained sufficient management presence in Hong Kong ...”, as well as complying with the obligations of the Companies Ordinance (chapter 622, Laws of Hong Kong) and Securities and Futures Ordinance (chapter 571, Laws of Hong Kong). Justice Linda Chan also commented that the second “core” requirement was not a high threshold to discharge, and that the petitioner was only required to demonstrate a real possibility of benefit.

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<sup>1</sup> [2014] 4 HKLRD 374.

<sup>2</sup> [2015] 18 HKCFAR 501.

<sup>3</sup> [2020] HKCFI 2940.

<sup>4</sup> [2021] HKCFI 2361.

<sup>5</sup> [2022] HKCFI 1329.

In the recent judgment of the CFA in *Shandong Chenming Paper Holdings Limited v. Arjowiggins HKK 2 Limited*<sup>6</sup> handed down on 14 June 2022, the CFA considered the issue of whether the “leverage” created by the prospect of a winding-up (as opposed to the making of a winding-up order) was a legitimate form of “benefit” under the second “core” requirement. The CFA commented that “there is no necessity ... for the benefit to flow directly from the making of a winding-up order...”, and that “the benefit need not be monetary or tangible in nature...”. This case confirms that the threshold for the second “core” requirement is a low one.

In another recent decision, *Global Brands Group Holding Limited*<sup>7</sup> (*Global Brands*), handed down on 23 June 2022 shortly after *Up Energy*, Justice Harris considered an application for recognition and assistance by the company’s provisional liquidators appointed in Bermuda. Therein, Justice Harris confirmed the criteria to determine when Hong Kong courts may recognise foreign insolvency proceedings, namely: (1) that the foreign insolvency proceedings are collective insolvency proceedings; and (2) that the foreign insolvency proceedings are opened in the company’s country of incorporation. Justice Harris also commented that the approach to assess whether a foreign liquidation should be recognised is to determine (at the time of making the application for recognition) if the foreign liquidation is taking place in the jurisdiction of the company’s centre of main interests (COMI).

The *Global Brands* judgment did outline some exceptions whereby the court would provide what is referred to as “managerial assistance” (e.g. obtaining books & records of the company and recovering assets owned by the company) if the application comes from a foreign officeholder from the place of incorporation, but that is not the COMI.

### **2.5.2 “Soft-touch” provisional liquidators for restructuring purposes**

A number of cases in recent years have arisen in circumstances where offshore incorporated companies listed on the Hong Kong Stock Exchange were subject to a creditors’ petition for winding-up in Hong Kong. After the petition for winding-up was issued in Hong Kong, the company had a “friendly creditor” present a petition in its place of incorporation (such as Bermuda or the Cayman Islands). The company would then seek an order appointing provisional liquidators on a soft touch basis for restructuring purposes.

One of these cases was *Lamtex Holdings Limited*<sup>8</sup> (*Lamtex*), the judgment for which was handed down by Justice Harris in March 2021. In this case, the Bermuda incorporated company was issued with a winding-up petition in August 2020, and some two months later the company presented a petition in Bermuda seeking a winding-up order and an order to appoint provisional liquidators for restructuring purposes on a “soft-touch” basis. Justice Harris noted that the company had not provided sufficient information in relation to its restructuring, and so it seemed that the company’s own petition for winding-up in Bermuda was “an attempt to engineer a de facto moratorium, which could not be obtained under Hong Kong law”, with the result that, “viewed from a Hong Kong perspective, this is a questionable use of soft-touch provisional liquidation.”

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<sup>6</sup> [2022] HKCFA 11.

<sup>7</sup> [2022] HKCFI 1789.

<sup>8</sup> [2021] HKCFI 622.

In May 2021, Justice Harris handed down his decision in the matter of *China Bozza Development Holdings*<sup>9</sup> (*China Bozza*), where the circumstances of an application to the Court for recognition and assistance was similar to *Lamtex*. In *China Bozza*, the Cayman Islands company was subject to a creditors' petition for winding-up in Hong Kong in May 2020 on the grounds of insolvency. Thereafter, in November 2020, the company presented a petition in the Cayman Islands and applied for the appointment of soft-touch provisional liquidators to facilitate its restructuring. Justice Harris noted that the company was attempting "to obtain a de facto moratorium of enforcement action by creditors in Hong Kong". At the time of its application to the Cayman Islands Court, the company did not have any restructuring plan, but wished to appoint soft-touch provisional liquidators who would then make efforts to formulate such a plan.

In *China Bozza*, Justice Harris concluded that "the fact that provisional liquidators have been appointed in the place of incorporation does not mean that the Hong Kong Court will automatically adjourn a petition issued in Hong Kong."

In this matter, the court granted an order for recognition of the provisional liquidators, but noted that "granting an order providing active assistance is a different matter."

In the June 2022 decision of *Global Brands* discussed above, Justice Harris stated:

"Although it is not an issue that I need to decide in the present case and is one which requires detailed consideration, my preliminary view is that in future the Hong Kong Court should generally decline to recognise soft-touch provisional liquidators appointed by offshore jurisdictions on the kind of terms I have summarised."

At the time of writing this paper, the court's decision in *Global Brands* represents the most recent position in this area of insolvency law. Given the ongoing evolution in this area of the law, IPs should obtain legal advice on whether they will be able to obtain recognition and assistance from the Hong Kong Court.

### 2.5.3 Solvent winding-up

It should be noted that the Hong Kong Court's assistance to foreign IPs is only available to foreign insolvent liquidations. In the recent decision of *Seahawk China Dynamic Fund*<sup>10</sup> handed down on 4 July 2022, Justice Harris confirmed that modified universalism is not applicable to solvent liquidations, as a solvent liquidation is not a collective insolvency proceeding but rather a private arrangement. Therefore, in a solvent foreign liquidation, Justice Harris is of the view that recognition and assistance is not available.

In his decision, Justice Harris addressed the question of "what relief, if any, a foreign liquidator of a solvent company should seek and be able to obtain if a party in Hong Kong, for example a bank, refuses to accept that the foreign liquidator is the agent of the company ... and requires its rights to, for example, access a bank account". Adopting his views in his earlier decision of *Bay Capital Asia Fund LP v DBS*,<sup>11</sup> Justice Harris said that foreign IPs are able to exercise the "conventional powers of a company's agent such as

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<sup>9</sup> [2021] HKCFI 1235.

<sup>10</sup> [2022] HKCFI 1994.

<sup>11</sup> [2016] HKEC 2377.

taking control of its books and records” and “if banks feel comfortable opening and operating bank accounts for companies incorporated in offshore jurisdictions they should not require foreign liquidators to come to court to obtain orders.”

#### **2.5.4 Voluntary winding-up**

As to whether the Hong Kong Court’s assistance will be granted to foreign IPs in a voluntary insolvent liquidation, this issue was considered in the matter of *Supreme Tycoon Limited*.<sup>12</sup> In this case, Justice Harris said that “the mere fact of a foreign liquidation being a voluntary liquidation is no bar to the Hong Kong Court recognising and assisting that liquidation under the principle of modified universalism”.

#### **2.5.5 Schemes of arrangements**

In the matter of *China Singyes Solar Technologies Holdings Limited*,<sup>13</sup> which was applied in the recent decision of *Rare Earth Magnesium Technology Group*,<sup>14</sup> the court indicated that the following are well-established principles that it would consider in determining whether to sanction a scheme in Hong Kong:

- “(1) whether the scheme is for a permissible purpose;
- (2) whether creditors who were called on to vote as a single class had sufficiently similar legal rights such that they could consult together with a view to their common interest at a single meeting;
- (3) whether the meeting was duly convened in accordance with the court’s directions;
- (4) whether creditors have been given sufficient information about the scheme to enable them to make an informed decision on whether or not to support it;
- (5) whether the necessary statutory majorities have been obtained;
- (6) whether the court is satisfied in the exercise of its discretion that an intelligent and honest man acting in accordance with his interests as a member of the class within which he voted might reasonably approve the scheme; and
- (7) in an international case, whether there is sufficient connection between the scheme and Hong Kong, and whether the scheme is effective in other relevant jurisdictions.”

### **3. Marketing of smaller practices**

#### **3.1 What are the marketing strategies that are used by practitioners?**

On the technical side, regular seminars on current issues in insolvency are usually a very good marketing tool to promote the firm’s competence and capabilities. Further, a well-designed website can go a long way in enhancing the firm’s professional image.

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<sup>12</sup> [2018] HKCFI 277.

<sup>13</sup> [2020] HKCFI 467.

<sup>14</sup> [2022] HKCFI 1686.

On the social side, cocktail receptions to mark special events such as anniversaries, welcoming of new senior staff and office relocation / expansion allow potential clients and business associates to get to know the firm and its staff in a more relaxed and casual environment.

Organising functions for a smaller but targeted group (such as select staff of the firm meeting up with a few decision makers of the target firm) is also a very effective way of getting the message across.

However, practitioners should be aware of the restrictions imposed by the law and ethical requirements of relevant professional bodies when conducting marketing initiatives.

### **3.1.1 The law**

The CWUMPO contains the statutory provisions that govern the winding-up of companies in Hong Kong. The CO contains the statutory provisions that govern all companies in Hong Kong.

In relation to the legal requirements of an IP during the appointment, pursuant to section 262D of the CWUMPO, prior to being appointed as a liquidator, a liquidator is required to provide a disclosure statement to stakeholders to confirm that she / he is not disqualified from acting as a liquidator of a company, and that there were no prior relationships with the company.

Pursuant to section 278A of the CWUMPO, any person who gives to any shareholder or creditor of a company valuable consideration with a view to secure his / her own appointment or to prevent the appointment of other persons as the company's liquidator, shall be liable to a fine. A similar provision in relation to the appointment of a trustee under bankruptcy administrations is stated in section 79B of the Bankruptcy Ordinance<sup>15</sup> (BO).

A liquidator should not use any solicitation to obtain proxies or to procure his appointment as liquidator pursuant to rule 136 of the Companies (Winding-up) Rules (chapter 32H, Laws of Hong Kong) (CWUR). Likewise, a trustee should not solicit to obtain proxies or to procure his appointment pursuant to rule 99S of the Bankruptcy Rules.<sup>16</sup>

### **3.1.2 Professional body and ethics**

Both the LSHK and the HKICPA have their own rules regarding the marketing of professional services. For example, section 115 of the Code of Ethics for Professional Accountants issued by the HKICPA (COE) sets out that a member of the HKIPCA should not:

- make exaggerated claims for services offered, qualifications possessed or experience gained; or
- make disparaging references to unsubstantiated comparisons to the work of another.

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<sup>15</sup> Chapter 6, Laws of Hong Kong.

<sup>16</sup> Chapter 6A, Laws of Hong Kong.

The COE is intended to assist an insolvency practitioner to meet the standards of conduct and ethics expected of him / her when undertaking or preparing to undertake liquidation and insolvency appointments. In particular:

- section 500.65 states that due to the special nature of insolvency appointments, the payment or offer of any commission for, or the furnishing of any valuable consideration towards, the introduction of such appointments, is inappropriate;
- section 500.67 requires members of the HKICPA to satisfy themselves that any advertising or other form of marketing pursuant to which the appointment may have been obtained:
  - is or has been fair and not misleading;
  - avoids unsubstantiated or disparaging statements; and
  - complies with relevant codes of practice and guidance in relation to advertising;
- section 500.68 states that advertisements and other forms of marketing should be clearly identified as such and conform to the basic principles of legality, decency, clarity, honesty and truthfulness; and
- section 500.70 states that an insolvency practitioner (if he / she is a member of the HKICPA) shall never promote or seek to promote his services, or the services of another insolvency practitioner, in such a way, or to such an extent, that amounts to harassment.

### **3.2 How do IPs raise and manage the cost of marketing?**

The cost of marketing is part of the general overheads of the firm. Careful consideration must be made to ensure an appropriate balance is maintained between the cost and benefit of each marketing event.

### **3.3 What are the effective marketing tools?**

The marketing tools mentioned above are all effective tools provided that they are properly considered and used.

## **4. Financing options for small businesses**

### **4.1 Are there viable financial options for smaller businesses from conventional financing sources?**

A line of credit from financial institutions is usually available.

## **5. How do practitioners get remunerated?**

### **5.1 What are the available models to determine fees - percentage based or time based?**

#### **5.1.1 Court winding-up**

Section 196(2) of the CWUMPO states that the amount of liquidator's remuneration can be determined:

- where there is a Committee of Inspection, by agreement between the liquidator and the Committee of Inspection; or
- where there is no Committee of Inspection, or if the liquidator and the Committee of Inspection fail to agree, by the court.

Rule 146(2) of the CWUR states that if the remuneration of a liquidator is determined by the Committee of Inspection, it may be in the nature of a commission or percentage. If there is no Committee of Inspection, the remuneration of the liquidator shall, unless otherwise provided for under the CWUMPO or ordered by the court, be fixed by the scale of fees and percentages pursuant to Companies (Fees and Percentages) Order (chapter 32C, Laws of Hong Kong).

In practice, most of the IPs, if not all, charge fees on a time cost basis.

In the case of *Re Goldlory Restaurant Ltd*,<sup>17</sup> the Court confirmed that for summary winding-up cases, the percentage basis is not a default basis and there is no need to show special circumstances to adopt the time cost basis. The Court concluded that the time cost basis should be adopted as the basis of remuneration in summary winding-up cases.

#### **5.1.2 Voluntary winding-up**

For members' voluntary liquidations, a liquidator usually charges a fixed fee for a standard winding-up case, and charges time cost for more complicated cases. The fees will be approved by the shareholders in the company's general meeting pursuant to section 235 of the CWUMPO.

For creditors' voluntary liquidations, a liquidator usually charges time costs and the amount of the fees would be approved by the Committee of Inspection or creditors pursuant to section 244 of the CWUMPO.

#### **5.1.3 Bankruptcy**

For non-summary bankruptcy cases, a trustee's remuneration will be determined either by the creditors or by the creditors' committee pursuant to section 85 of the BO.

For summary bankruptcy cases, the trustee's remuneration will be fixed by the scale of fees and percentages as set out in the Bankruptcy (Fees and Percentages) Order

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<sup>17</sup> [2006] 3 HKLRD 331.

(chapter 6C, Laws of Hong Kong) pursuant to section 85A of the BO.

#### **5.1.4 Other assignments**

IPs normally charge time costs for other assignments such as provisional liquidations, receiverships, scheme administrations and special manager appointments.

## **6. Litigation and funding litigation**

### **6.1 Funding causes of actions - who are the best funders?**

In Hong Kong, the funding of litigation by third parties who have no direct connection to the proceedings is not allowed (due to the doctrines in common law relating to maintenance and champerty). One of the exceptions to the prohibition against maintenance and champerty is the so called "insolvency exception", whereby a liquidator can assign a cause of action under section 199(3) and schedule 25 (part 3) of the CWUMPO. Creditors are usually the best funders for litigation as they have an interest in the litigation, thereby removing the maintenance and champerty issue.

Section 265(5B) of the CWUMPO allows funding creditors to get a benefit from the assets recovered as a result of the funding provided. However, the application to court for this benefit can only be made after the assets have been recovered. This creates substantial uncertainty for the funding creditors.

It was previously common practice for liquidators to make an application to the court to sanction entry into a litigation funding arrangement. In the May 2020 decision of *Re Patrick Cowley and Lui Yee Man, Joint and Several Liquidators of the Company*,<sup>18</sup> the Court clarified that liquidators do not require sanction before they enter into a litigation funding arrangement.

### **6.2 Are there alternatives to litigation, for example arbitration or mediation?**

Arbitration and mediation are frequently used in Hong Kong, since the Civil Justice Reform (CJR) that came into force in 2009.

As a part of the CJR, Practice Direction 31 requires parties in most civil proceedings to first consider mediation.

In addition, the Arbitration Ordinance (chapter 609, Laws of Hong Kong) (AO) provides that the provisions of the UNCITRAL Model Law on International Commercial Arbitration that are expressly stated in the AO as having effect have the force of law in Hong Kong, subject to the modifications and supplements as expressly provided for in the AO. The objective of the AO is to make the law of arbitration more user-friendly and to bring the arbitration regime in Hong Kong in line with widely accepted international arbitration practices.

The AO covers areas such as procedural rules, interim measures, preliminary orders to be made and enforcement of awards. One particular feature to note is the confidentiality

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<sup>18</sup> [2020] HKCFI 922.

of proceedings. The AO provides that the proceedings will not be heard in open court unless the court orders otherwise. Also, no party may disclose any information in relation to the proceedings and awards without the other parties' consent or under exceptional circumstances.

### **6.3 Enforcement of judgments - local and foreign**

There are various options available to judgment creditors when it comes to enforcing a local judgment in Hong Kong. The judgment creditor may apply for execution of the debtor's assets with assistance from the bailiff. Alternatively, the judgment creditor may petition for the debtor's bankruptcy or liquidation after the expiration of the duly served statutory demand.

Foreign judgments (i.e. judgments awarded by a court other than a court in Hong Kong), under common law, have no direct effect in Hong Kong so one option is to commence parallel proceedings in Hong Kong, and if judgment is awarded, then the judgment creditor can enforce the judgment in the usual manner.

Another option is that the judgment creditor may register the foreign judgment with the Hong Kong Court and seek to enforce the foreign judgment accordingly. The Foreign Judgments (Reciprocal Enforcement) Ordinance<sup>19</sup> provides a system of registration. However, this ordinance excludes judgments obtained from Mainland China and Macao Courts.

Regarding judgments obtained from Mainland China, pursuant to the Mainland Judgments (Reciprocal Enforcement) Ordinance,<sup>20</sup> enforcement is by way of registration of money judgments. A registered Mainland judgment has the same force as a judgment originally given by the court of first instance and entered on the date of registration.

As mentioned earlier, since 14 May 2021, a PRC bankruptcy administrator in one of the initial pilot areas in the PRC (Shanghai, Xiamen, and Shenzhen) may make an application to the Hong Kong Court for recognition of his / her office in order to discharge his / her duties as an administrator in Hong Kong.

## **7. Licensing and regulation of IPs**

### **7.1 How are IPs regulated?**

Private IPs are regulated by the professional body in which they have membership.

For example, the HKICPA has published various insolvency guidance notes such as:

- A Liquidator's Investigation into the Affairs of an Insolvent Company;
- Preparation of Insolvency Office - Holders' Receipts and Payments Accounts; and
- Disqualification of Directors - Statutory Reports.

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<sup>19</sup> Chapter 319, Laws of Hong Kong.

<sup>20</sup> Chapter 597, Laws of Hong Kong.

According to section 500 of the COE (Professional Ethics in Liquidation and Insolvency), there are specific ethical requirements for members of the HKICPA when practising in insolvency. A member of the HKICPA should not accept appointments as liquidator of an insolvent company if there is or has been a material professional relationship with that company.

The ORO and the Court also supervise and control the performance of IPs. Examples of these controls include:

- section 204 of the CWUMPO provides for control of the Official Receiver over liquidators in the following terms:
  - the ORO shall take cognisance of the conduct of the liquidator and if a liquidator does not faithfully perform his / her duties and duly observe all the requirements imposed on him / her by statute, rules or otherwise with respect to the performance of his / her duties, or if any complaint is made to the ORO by any creditor or contributory, the ORO shall inquire into the matter, and take such action as may be expedient;
  - the ORO may at any time require any liquidator to answer any inquiry in relation to any winding-up which he / she is engaged, and may apply to the court to examine him / her or any other person on oath concerning the winding-up; and
  - the ORO may also direct an investigation to be made to the books and vouchers of the liquidator;
  - under section 276 of the CWUMPO, the ORO can examine into the conduct of the liquidator and compel him / her to repay or restore money or property with interest, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainers, misfeasance or breach of trust as the court thinks just;
- in addition to supervision and control through effective protection against misconduct or errors on the part of the liquidator, the ORO has strict supervision of the liquidator's account in court liquidations;
- section 203 of the CWUMPO requires a liquidator to send to the ORO an account of his / her receipts and payments twice a year. The ORO may, at any time, cause the account to be audited;
- the ORO also controls the funds / cash recovered by the private practitioner when acting as a liquidator in a court liquidation by operating a Companies Liquidation Account (CLA). The CLA is a bank account kept by the ORO pursuant to section 293 of the CWUMPO;
- section 202 of the CWUMPO specifically requires that all liquidators in court liquidations pay the money received by them into the CLA;
- the liquidator appointed in a court liquidation may be removed by the court upon cause shown pursuant to section 196 of the CWUMPO;

- the court also has a general power to determine issues arising from the conduct of a liquidation pursuant to section 255 of the CWUMPO; and
- where an IP is admitted to the ORO's Panel A and / or Tender Schemes, the ORO may remove the IP from their scheme if the quality of work or performance is considered by the ORO to be unsatisfactory.

## **7.2 Who can become an IP or which professionals regularly work as IPs?**

No formal qualifications are required to enable a person to become an IP. In Hong Kong, most of the insolvency jobs are carried out by accountants, with assistance from solicitors who are experienced in insolvency. However, under section 228A of the CWUMPO, only a solicitor or a certified public accountant (being a member of the HKICPA) can be appointed as a provisional liquidator.

The ORO (being a government department), still carries out certain court winding-up and bankruptcy work.

For out of court appointments such as receiverships or voluntary liquidations, creditors can appoint anyone they deem appropriate, except for the appointment of a provisional liquidator under section 228A as mentioned above.

The Hong Kong Government, in its proposed Companies (Corporate Rescue) Bill, has suggested that only a solicitor holding a practising certificate or a certified public accountant (i.e. member of the HKICPA) should be appointed as a provisional supervisor.

For court appointments, an affidavit of fitness from a solicitor is required to confirm the fact that the nominated liquidator / provisional liquidator is a fit and proper person for the appointment.

The ORO sets out various admission requirements for its administrative panel of insolvency practitioners for court winding-up (Panel A) and various tender schemes.

The admission requirements for the panel / schemes are summarised below.

### **7.2.1 Panel A**

The Panel A scheme is jointly administered by the ORO and the HKICPA for non-summary court winding-up cases where assets are likely to exceed HK \$200,000.

Member firms of Panel A should have at least four members of the HKICPA, three of which must be an IP and two of which must be an "Appointment Taker". The specific requirements to become an IP and Appointment Taker are:

- *Appointment Taker - Panel A*
  - member of the HKICPA;
  - one of the Appointment Takers must be a partner, a director or the sole

proprietor of the firm and the other Appointment Taker must be a principal of the firm or hold a position above that at the firm; and

- all Appointment Takers must be Insolvency Practitioners. At least one Appointment Taker must be contactable at any time and Appointment Takers must be available in Hong Kong when required by the court, the ORO or creditors; and
- *Insolvency Practitioner - Panel A*
  - member of the HKICPA;
  - minimum chargeable hours of relevant insolvency work (excluding members voluntary liquidations (MVL)) of 600 in the last three years or 750 in the last five years, with a minimum of 100 hours in any one year. A pass in the HKICPA Professional Diploma in Insolvency Programme is equivalent to 50 hours of insolvency work;
  - involvement at senior and responsible positions in 10 unconnected non-summary insolvency cases (excluding MVL and bankruptcies) in the last five years;
  - experience in managing insolvency cases and either holding the position of partner of the firm, or occupying a position of manager or above and reporting directly to the partner of the firm; and
  - at the time of writing this paper, the ORO is presently reviewing admission requirements and the operation of Panel A. New admission requirements may be announced in the near future.

### **7.2.2 Tender schemes**

#### *Summary court winding-up cases*

- For court winding-up cases where assets are unlikely to exceed HK \$200,000, these are considered to be “summary court winding-up” cases. Pursuant to section 194(1A) of the CWUMPO, the ORO may appoint a provisional liquidator in its place. The ORO’s specific requirements for this tender are:
  - member of the HKICPA, a practising solicitor, or a member of the Hong Kong Institute of Chartered Secretaries;
  - at least three years of post-qualification experience in the relevant profession;
  - have a minimum of 300 chargeable hours of experience over the last three years, of which at least 150 hours must be related to insolvency work of at least four unconnected cases. Notably:
    - i. the remaining hours of experience may be on solvent liquidations but the hours will be reduced by 50%; and

- ii. a pass in the HKICPA Diploma in Insolvency Program is equivalent to 50 hours of insolvency work; and
- one of the ATs must be a partner or partner equivalent.

#### *Bankruptcy appointment tender*

- For debtors' petition cases, where the value of the property of the bankrupt is unlikely to exceed HK \$200,000, pursuant to section 12(1A) of the BO, the ORO may appoint a provisional trustee in its place. The ORO's specific requirements for this tender are the same as summary court winding-up cases as mentioned above.

#### *Tender for appointment to complete preliminary examination in bankruptcy cases*

- For bankruptcy cases, the ORO appoints external firms to assist in conducting the initial interview with the bankrupt and examination of the bankrupt's affairs. The ORO's specific requirements for this tender are the same as summary court winding-up cases as mentioned above, with less hours required for their experience requirements. Notably, the requirements are:
  - member of the HKICPA, a practising solicitor, or a member of the Hong Kong Institute of Chartered Secretaries;
  - at least three years of post-qualification experience in the relevant profession; and
  - a minimum of 200 professional hours of insolvency experience over the last three years. A pass in the HKICPA Diploma in Insolvency Program is equivalent to 50 hours of insolvency work.

### **7.2.3 HKICPA specialist accreditations**

The HKICPA introduced two specialist accreditations: the specialist qualification (SQ) and the specialist designation (SD) in insolvency. The SQ is awarded to members of the HKICPA and other professionals who have passed the HKICPA's Diploma in insolvency course. The SD is awarded to the members who meet the following requirements:

- a member of the HKICPA;
- has obtained the insolvency specialist qualification (not required for a transitional arrangement);
- has the minimum practical experience of:
  - eight years of insolvency experience (10 years for a transitional arrangement);
  - 2,500 qualifying hours over the last five years (5,000 hours over the last 10 years for a transitional arrangement), noting that:
    - i. Out of the total qualifying hours, at least 500 hours must have been obtained in Hong Kong (2,000 hours for a transitional arrangement); and

- ii. Out of the total qualifying hours, at least 600 hours must have been higher experience in insolvency administration covering at least five assignments (1,200 hours with 10 assignments for a transitional arrangement); and
- must meet a defined level of competence in both technical and generic areas.

Insolvency practitioners who carry the letters “SD” after their name are subject to the HKICPA’s regulations, which require them to observe, maintain and apply professional standards.

### **7.3 What kind of work is carried out by IPs?**

- Liquidations:
  - solvent liquidation under a members’ voluntary liquidation (although many non-IP accountants also carry out this type of work);
  - creditors’ voluntary liquidation – where the company is insolvent and the company is being wound up voluntarily; and
  - compulsory liquidation (court winding-up) – where the company is being petitioned for winding-up before the court;
- Receiverships:
  - privately appointed pursuant to the terms of the relevant debenture; or
  - court appointed;
- Restructuring of companies:
  - formal under a scheme of arrangement; and
  - informal;
- Administration;
- Bankruptcy; and
- Individual voluntary arrangement.

### **7.4 Who appoints an IP?**

- The court for:
  - court winding-up;
  - court appointed receiverships;
  - schemes of arrangement; and

- court administrations;
- Creditors or contributories for:
  - voluntary liquidations;
  - restructuring; and
  - bankruptcies;
- Secured creditors for privately appointed receiverships; and
- The Board of Directors for appointment of provisional liquidators in a creditors' voluntary liquidation under section 228A of the CWUMPO.

### **7.5 Is an IP who gets a court appointed role allowed to do advisory work as well?**

This depends on the nature of appointments and the ethical requirements of the professional body that the IP belongs to.

As far as the members of HKICPA are concerned, pursuant to section 500 of the COE, they should not accept appointments if there is or has been a material professional relationship with that company. In this regard, it is likely that the IP in a court-appointed role would not be allowed to do advisory work for the same company.

## **8. Compliance issues**

### **8.1 Tax requirements relevant to smaller practices**

Persons, including corporations, partnerships, trustees and bodies of persons carrying on any trade, profession or business in Hong Kong are chargeable to tax on all profits (excluding profits arising from the sale of capital assets) arising in or derived from Hong Kong in connection with trade, profession or business pursuant to the Inland Revenue Ordinance. There is therefore no distinction made between larger and smaller practices.

The current profits tax rate is 16.5% for corporations and 15% for unincorporated business based on their net assessable profits.

### **8.2 Money laundering and financial crimes**

International standards of anti-money laundering and counter-financing of terrorism are set by the Financial Action Task Force (FATF). As a member of the FATF, Hong Kong implements recommendations promulgated by this inter-government body to combat money laundering and terrorist financing.

In Hong Kong, legislation dealing with money laundering and terrorist financing includes the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO), the Drug Trafficking (Recovery of Proceeds) Ordinance (DTROP), the Organised and Serious Crimes Ordinance (OSCO), the United Nations (Anti-Terrorism Measures) Ordinance (UNATMO), the United Nations Sanctions Ordinance, and the Weapons of Mass

Destruction (Control of Provision of Services) Ordinance.<sup>21</sup>

The AMLO, which came into effect on 1 April 2012, imposes on financial institutions requirements regarding customer due diligence and record-keeping whereas the DTROP, OSCO and UNATMO require reporting of suspicious transactions regarding money laundering or terrorist financing. The AMLO also covers designated non-financial businesses and professions, including accountants.

The HKICPA will enquire of any member or member practice if there is evidence to support that the member or member practice may have breached, or caused a trust or company service provider licensee to breach, any anti-money laundering and counter-terrorist financing requirements, and consider any appropriate regulatory action.

### **8.3 The right to access information**

The books and papers of an insolvent company are the property of that company. The court may, at any time after the making of a winding up order and as it thinks just, issue an order for inspection of the company's books and papers by creditors and contributories pursuant to section 219 of the CWUMPO.

Documents and working papers which an IP produces in the course of his / her work belong to the IP. However, government authorities such as the ORO and the court may require the IP to produce their working papers under related Ordinances and authorities.

### **8.4 Corporate governance**

The current statutory requirements for corporate governance in Hong Kong include the CWUMPO and Securities (Insider Dealing) Ordinance (chapter 395, Laws of Hong Kong).

In Hong Kong, IPs may be appointed as provisional liquidators of a listed company (which is not yet wound-up) pursuant to section 193 of the CWUMPO in order to facilitate its restructuring. The IPs will be responsible for the supervision and regulation of that company, including proper and timely disclosure of statutory reports and financial statements to the stakeholders.

Pursuant to the Securities (Insider Dealing) Ordinance, the use of price-sensitive information in security-trading is supervised. Common examples of price-sensitive information include the signing of important contracts, a fund-raising exercise, and statements regarding the company's prospective earnings and dividends.

### **8.5 Regulatory authorities**

Regulatory authorities of IPs include the court, the ORO, and relevant professional bodies including the HKICPA and the LSHK.

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<sup>21</sup> Chapters 615, 405, 455, 575, 537, and 526, respectively, Laws of Hong Kong.

## **8.6 Disciplinary matters and the complaints systems in operation**

Any complaints against IPs can be made to the ORO, the court and relevant professional bodies.

The ORO will normally investigate the complaints received and take action based on the results of the investigation. The ORO may also refer the investigation results to the relevant professional bodies for disciplinary action and / or make an appropriate application to the court for a disqualification order or a removal order against the wrongdoer. The court may order for removal of a liquidator upon the application of the ORO or creditors pursuant to section 196 of the CWUMPO.

The HKICPA is responsible for regulating the conduct of its members when they act as IPs and it deals with complaints concerning the ethical and professional conduct of its members and member practices. However, the HKICPA has no authority to deal with complaints against a person, firm, or body corporate which is not a member or a registered student of the HKICPA.

Complaints must be in writing and be supported by adequate evidence indicating that a member or member practice has not followed the professional standards issued by the HKICPA or has committed other improper acts. The HKICPA will then carry out an initial assessment of the adequacy of the supporting evidence. Where the Council of the HKICPA concludes that a complaint is sufficiently serious to warrant the exercise of its discretion to refer the matter to the disciplinary panels, a disciplinary committee will be convened to hear the complaint. If the disciplinary committee finds the complaint proven, it will make an order which may include temporary or permanent removal of membership, reprimand or penalty.

Other professional bodies have their own disciplinary and complaint system in operation.

As mentioned earlier, going forward, the FRC / AFRC will have greater oversight over the HKICPA, including the setting of professional and ethical standards of HKICPA members.

## **9. Best practices**

### **9.1 Client money rules**

#### **9.1.1 Court winding-up**

Pursuant to the ORO's Circular No 1/2020 titled "Special and Ordinary Bank Account", a liquidator may open an ordinary bank account in the name of the wound-up company and retain a sum of not more than HK \$30,000 in that account. The authorised amount to be kept in the account can be increased with approval of the ORO on an exceptional basis if fully justified.

Apart from the above, the liquidator should pay forthwith to the ORO any dividends unclaimed for six months and any moneys representing unclaimed or undistributed assets or dividends shall forthwith be paid into the CLA.<sup>22</sup>

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<sup>22</sup> Section 285 of the CWUMPO and rule 183 of the CWUR.

A liquidator is prohibited from depositing any monies received as liquidator, into his / her private banking account.<sup>23</sup>

### **9.1.2 Voluntary liquidations**

If a bank account is required for a company in a voluntary liquidation, a liquidator must open a separate account under the name of the wound-up company.

The requirement under section 285 of the CWUMPO and rule 183 of the CWUR (as mentioned above) is also applicable to voluntary liquidations.

### **9.1.3 Bankruptcy**

No trustee in a bankruptcy or nominee under a voluntary arrangement shall pay any sums received as trustee into his / her private banking account or use them otherwise than in the administration of the estate.<sup>24</sup> Breach of this obligation may result in removal from office without remuneration and making good on all losses and expenses which the creditors may suffer.<sup>25</sup>

A trustee should open an account in the name of the bankrupt's estate and deposit all monies received to the said account without delay.<sup>26</sup> If the trustee retains cash exceeding HK \$2,000 for more than 10 days, he / she shall pay interest of 20% per annum on the amount retained, shall have no claim to remuneration, may be removed from his office and shall be liable to pay any expenses occasioned by reason of his default.<sup>27</sup>

### **9.1.4 Other administrations**

Client money should be deposited into an administration bank account which is separated from the company's own trading account. Crossed cheques from clients are preferred and cash and money orders should not be accepted.

Any payments made from the client trust accounts should be properly authorised. Issued cheques should be crossed and signed by at least two authorised persons.

Bank reconciliations should be done regularly.

Apart from the above, if the IP is also a member of the HKICPA, he / she should observe and comply with the requirements set out in section 1000, "Clients' Monies" of the COE. Section 1000.1 requires the member to account for all clients' monies received by him / her. Such monies should be kept separate from all other monies and be applied only for the purposes of the client. Proper records should also be maintained.

## **9.2 IT security**

Application and access to the company's IT system should be restricted to authorised

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<sup>23</sup> Section 202(3) of the CWUMPO.

<sup>24</sup> Section 90 of BO.

<sup>25</sup> Section 91(3) of BO.

<sup>26</sup> Section 91(1) of BO.

<sup>27</sup> Section 91(2) of BO.

staff. Any addition of user or application, or modification of user's rights, should also be properly authorised.

The internal system and data should be backed up on a timely basis.

Computers obtained from clients or wound-up companies should not be linked up directly with the firm's network. Rather, they should either be checked thoroughly for any potential virus or set up as a stand-alone computer if investigations into the contents of these computers are needed.

### **9.3 Licensing requirements**

Currently, there are no formal licensing requirements for IPs. The only exception is section 228A of the CWUMPO which states that only a solicitor or a certified public accountant can be appointed as a provisional liquidator for such purpose.

As noted above, the Hong Kong Government, in its proposed Companies (Corporate Rescue) Bill, also suggested that only a solicitor holding a practising certificate or a certified public accountant (i.e. a member of the HKICPA) should be appointed as a provisional supervisor.

In addition, the RIF of the HKICPA has two specialist accreditations: the SQ and SD. A list of SD holders can be found on the HKICPA's website.

### **9.4 Insider dealing**

Appropriate internal control systems should be set up to ensure compliance with all relevant laws and rules, such as the Securities and Futures Ordinance.<sup>28</sup>

A member of the HKICPA (and his / her associates) is prohibited from acquiring, directly or indirectly, any of the assets of the company or debtors that are under his administration, except in circumstances that clearly would not impair objectivity.<sup>29</sup>

### **9.5 Local employment law requirements**

The Employment Ordinance<sup>30</sup> is the main piece of legislation governing conditions for employment in Hong Kong. It provides comprehensive employment protection and a range of benefits for employees in Hong Kong, including wage protection, rest days, holidays with pay, paid annual leave, sickness allowance, maternity protection, severance payment, long service payment, employment protection and termination of the employment contract.

The Employees' Compensation Ordinance<sup>31</sup> (ECO) establishes a no-fault, non-contributory employee compensation system for work injuries. An employer in Hong Kong is liable to pay compensation in respect of injuries sustained by his / her employees as a result of an accident arising out of, and in the course of, employment, or

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<sup>28</sup> Chapter 571, Laws of Hong Kong.

<sup>29</sup> Section 500.55 of the COE.

<sup>30</sup> Chapter 57, Laws of Hong Kong.

<sup>31</sup> Chapter 282, Laws of Hong Kong.

in respect of occupational diseases specified in the ECO suffered by the employees. In general, the ECO applies to employees who are employed under a contract of service or apprenticeship. Employees who are injured while working outside Hong Kong are also covered if they are employed in Hong Kong by local employers.

The Occupational Safety and Health Ordinance<sup>32</sup> provides for the safety and health protection to employees in workplaces both industrial and non-industrial. It is basically an enabling ordinance setting out requirements in general terms. Under this Ordinance, the employer should:

- provide and maintain plant and work systems in the workplace that do not endanger safety or health;
- make arrangements that ensure safety and health in connection with the use, handling, storage or transport of plant or substances;
- provide all necessary information, instruction, training, and supervision for ensuring safety and health;
- provide and maintain safe access to, and egress from, the workplace; and
- provide and maintain a safe and healthy work environment.

Under the Mandatory Provident Fund Schemes Ordinance,<sup>33</sup> an employer must comply with all MPF-related legal obligations under the law. These include enrolling all qualifying employees in MPF schemes and making MPF contributions for them.

## 9.6 Codes of Ethics

Each professional body has its own Code of Ethics. In the case of the HKICPA, members should comply with the requirements set out in section 500 of the COE (Professional Ethics in Liquidation and Insolvency).

Section 500 of the COE sets out the five fundamental principles to which IPs should adhere and the threats to compliance with the fundamental principles and the more common types of threats that IPs may face in their work, together with examples of specific situations that may occur.

The five fundamental principles are:

- integrity - to be straightforward and honest in all professional and business relationships;
- objectivity - to not allow bias, conflict of interest or undue influence of others to override professional or business judgments;
- professional competence and due care - to maintain professional knowledge and skill

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<sup>32</sup> Chapter 509, Laws of Hong Kong.

<sup>33</sup> Chapter 485, Laws of Hong Kong.

at the level required to ensure that a client or employer receives competent professional services based on current developments in practice, legislation and techniques, and act diligently and in accordance with applicable technical and professional standards;

- confidentiality – to respect the confidentiality of information acquired as a result of professional and business relationships and, therefore, not disclose any such information to third parties without proper and specific authority, unless there is a legal or professional right or duty to disclose, nor use the information for the personal advantage of the IP or third parties; and
- professional behaviour – to comply with relevant laws and regulations and avoid any action that discredits the profession.

## **9.7 Time recording of IPs**

In most of the insolvency assignments, IPs will be remunerated on a time-cost basis. Their fees are calculated based upon the actual time spent by their professional staff with the appropriate level of skill and experience on the assignment. An IP's remuneration is subject to the approval of either the court or creditors, as appropriate.

IPs may record their time spent manually or using computer software. Time sheets of professional staff should be reviewed and approved by senior management so that only related time costs will be charged to the client. It is important to maintain a contemporaneous time record as it will be reviewed by the court or creditors in due course.

The Registrar of the High Court of Hong Kong has issued "Procedural Guides for Taxation of Bills in Liquidation" that apply to provisional liquidator / liquidator's bills and bills of their agents (including solicitors).

The Procedural Guide regarding a provisional liquidator / liquidator's bills requires details of charges, including "a list of the items of work done divided into different categories with the time spent (chargeable / non-chargeable) by the fee earners concerned in each item, their hourly charge out rates and the amount charged".

Similarly, for agent's bills (including the bill of solicitors of the provisional liquidator / liquidator), the Procedural Guide requires details of charges, including "a list of the items of work done in chronological order with the time spent by the fee earners concerned in each item, their hourly charge-out rates and the amount charged" when available.

Clearly, without a good time recording system in place, it would be very difficult to comply with these Guides as required by the court.

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