



**By email (rej@doj.gov.hk) & by post**

24 September 2018

Our Ref.: C/RIF, M118286

Miss Deneb Cheung  
Deputy Principal Government Counsel  
China Law Unit, Legal Policy Division  
Department of Justice  
5/F, East Wing, Justice Place  
18 Lower Albert Road  
Central, Hong Kong SAR

Dear Miss Cheung,

**[Consultation Paper on the Proposed Arrangement between Hong Kong and the Mainland on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters \("Consultation Paper"\)](#)**

Thank you for referring the above Consultation Paper to the Hong Kong Institute of CPAs ("the Institute").

The Institute's Restructuring and Insolvency Faculty Executive Committee ("RIFEC") has considered the proposals and, in general, is in agreement that corporate insolvency and restructuring, as well as personal bankruptcy, are issues that warrant special consideration separate from the Proposed Arrangement put forward in the Consultation Paper.

As the Department of Justice ("DoJ") explains, in paragraph 20(A)(1) of the Consultation Paper, there is no statutory regime empowering Hong Kong courts to recognise and provide assistance to Mainland liquidators and insolvency proceedings, and vice versa. Members of RIFEC, who are insolvency practitioners, echo the statement made in paragraph 20(A)(2): "This is far from satisfactory and is not conducive to a fair and efficient administration of corporate insolvencies when cross-boundary elements are increasingly common between Hong Kong and the Mainland." The recovery of assets in the Mainland is often a difficult process and, despite efforts made by the Institute over a number of years to facilitate recognition of Hong Kong court-appointed liquidators in the Mainland, the process is still very much ad hoc.

It is noted that Hong Kong has recently slipped down the rankings in the World Bank's "Ease-of-doing-business" report, as it has yet to introduce a statutory corporate rescue procedure. The challenges of cross-boundary insolvency administration add to the perception that that Hong Kong does not have a complete set of tools for the protection of creditors and the restructuring of companies in financial distress. It would also appear that this situation is beginning to affect Hong Kong's competitiveness and, potentially, its attractiveness to investors.



While RIFEC agrees with the proposal to deal with cross-boundary corporate insolvency and restructuring, as well as personal bankruptcy, separately, for the reasons indicated above, we believe that this issue needs to be addressed as a matter of urgency. We are pleased to note, therefore, that the DOJ, together with other relevant government bureaux and departments, is considering the proposal of entering into a separate bilateral arrangement with the Mainland for mutual recognition of and assistance in cross-boundary corporate insolvency matters. We also support DoJ's plan, indicated in paragraph 20(A)(3), to conduct a stand-alone consultation exercise on cross-boundary insolvency. However, we would request that the timeline be made clear and, in particular, when the separate consultation is expected to be conducted.

RIFEC members would ask to be active participants in the development of proposals for cross-boundary insolvency and to provide views and advice on the practical considerations that may be relevant to the consultation exercise. We would be happy to meet DoJ to discuss this further.

We look forward to hearing back from you regarding the above. In the meanwhile, if you have any questions or require additional information, please feel free to contact me on 2287 7084 or at [peter@hkicpa.org.hk](mailto:peter@hkicpa.org.hk)

Yours sincerely,

Peter Tisman  
Director, Advocacy and Practice Development

PMT/NCL/pk

Hong Kong Institute of  
**Certified Public Accountants**  
香港會計師公會