As most of you will be aware, Hong Kong is going through the process of updating the Companies Ordinance ("CO"). In particular, during the next two years the Standing Committee on Company Law Reform will be undertaking a thorough review of the winding up provisions of the CO. This review is a long overdue, given that the majority of the provisions in the CO are based on the 1948 UK Companies Act.

This review offers the opportunity, not only to resolve some of the unfortunate anomalies which exist in the current legislation, in particular those regarding the associated persons provisions for the purposes of unfair preference actions, but to consider some fundamental changes to the way in which insolvency and corporate recovery work is undertaken in Hong Kong.

The purpose of this article is to raise the question - should there be licensing for Insolvency Practitioners ("IPs") in Hong Kong? My informal soundings suggest that many industry professionals in Hong Kong would be supportive of the introduction of a licensing regime. However there are undoubtedly certain groups who would hold equally strongly views against the introduction of such provisions.

Many industry professionals are from countries where licensing regimes exist such as Australia, United Kingdom and more recently, The British Virgin Islands. Even Singapore, Hong Kong's largest threat to its claim to be South East Asia's financial centre, has a licensing regime. More pertinently, even the PRC has a form of licensing/qualification requirement under its new bankruptcy law.

In response to the question - should there be licensing of IPs in Hong Kong, I would say unequivocally yes. Insolvency and corporate recovery work in Hong Kong has increased in complexity over the years, particularly in relation to the failure of listed companies, and due to the fact that almost every insolvency of any material size is somehow China related. The introduction of new legislation is only likely to increase the technical challenges for IPs. In the circumstances, our profession needs to act to ensure that its members are properly equipped to deal with the future challenges it will face.

When licensing was introduced into the UK in the 1986 Insolvency Act, one of the principal reasons was to root out from the profession those elements who were manipulating the legislation to the detriment of creditors. In particular, certain practitioners were abusing the "Centrebind" procedure (the approximate UK equivalent of s.228A) by allowing the shareholders to place the company into liquidation, selling off the assets back to be shareholders/directors, usually at a bargain basement price, and then not convening meetings of creditors.

The overall effect of the introduction of licensing has been to "clean up" the profession and thus enhance its status, improve the quality of work undertaken by practitioners and provide all the stakeholders with more confidence in the system. At the time the legislation was introduced, there were concerns that the effect of licensing would be to result in insolvency and corporate recovery work being undertaken only by a small number of large firms. In fact, it appears that one side-effect of licensing has been to promote the formation of smaller independent firms whose focus is insolvency and corporate recovery work.

It would be wrong to suggest that licensing should be introduced into Hong Kong because of abuses in the system. However, there is undoubtedly evidence that the s.228A procedure is now being routinely used by some firms. Undoubtedly there are certain circumstances where the s.228A procedure is appropriate, but surely not as many as evidenced by the recent number of s.228A notices in the Gazette. I recently interviewed the directors of a company which had virtually no assets and where liquidation was certainly the appropriate course of action. However, there were no reasons whatsoever for the s.228A procedure to be invoked. These directors then sought advice elsewhere and, lo and behold, a few days later in the Government Gazette, a notice appeared placing the company into liquidation using the s.228A procedure.

The s.228A procedure can be an extremely useful tool for IPs, particularly when there is no corporate rescue procedure supported by a moratorium. However, routine use of s.228A, when not merited, is likely to result in further calls for it to be removed from the statute book. It's been tried before and it could easily be tried again!!

In addition, there have been a number of cases in the past few years where, for a variety of reasons, it has been necessary for the Court to remove liquidators. Most of these removals have been based on the grounds that the liquidators have not carried out their obligations in a diligent manner.

The introduction of updated insolvency legislation, designed to deal with the commercial and legal environment of the 21st century, will also undoubtedly place greater pressure on IPs to improve their technical competency. It is to be hoped that among other improments, the new legislation will provide IPs with the tools necessary to unwind antecedent transactions, but in doing so will place added burdens on IPs in terms of their skills to uncover, investigate and pursue such transactions.

The argument frequently raised against licensing in Hong Kong is that the market is too small to support a proper licensing and regulatory regime. I am certainly not suggesting that Hong Kong adopts the UK model with a separate regulator(s) and the equivalent of the Joint Insolvency Monitoring Unit. However, in recent years, the Official Receiver's Office has contracted out more and more of its day-to-day administration of liquidations and bankruptcies, to the extent that it is now almost a *de facto* regulator. There seems no reason why, subject to the essential caveat that it is properly funded, the Official Receiver's Office should not take over the role of overseeing a licensing regime.

The recent formation of the Restructuring and Insolvency Faculty of the Hong Kong Institute of Certified Public Accountants ("HKICPA") is a recognition among professionals in the industry that the profession is likely to grow in the near future. With that growth will come an increased need to ensure that IPs are properly capable of fulfilling their duties by creating a structured program for training IPs and for improving standards.

In recent years, the HKICPA in conjunction with Hong Kong University has developed a course leading to the Diploma in Insolvency. It has been suggested that the successful completion of the Diploma could be one of the benchmarks for being granted an insolvency license.

I don't necessarily believe that any licensing regime which might be introduced should cover Members' Voluntary Liquidations. Numerically, these form the vast majority of liquidations in Hong Kong, but there is little reason to suggest that they should only be capable of being undertaken by licensed IPs.

One of the aims of this article is to stimulate discussion of this question in the period leading up to the consultation exercise on the proposed updates to the CO. Whilst the licensing of IPs in Hong Kong may still be some way off, now would appear to be an appropriate time at least to give it serious consideration.

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