

Dear RIF members,

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RIFEC election 2020

The Restructuring and Insolvency Faculty (RIF) election for seats on the RIF Executive Committee (RIFEC), for the term starting from 1 January 2021, is in progress. This year, in all, eight seats were available:

- Four seats for Institute members ("M" Category)
- Four seats for non-members of the Institute ("NM" Category)(including vacancies from two seats that remained unfilled at last year's election, which were subsequently filled by one-year co-option or appointment)

A total of six nominations had been received in the "M" Category, and three nominations had been received in the "NM" Category by the close of the nomination period.

For the "M" category, as the number of nominations exceeded the number of available seats, a ballot is underway. Ballot forms and the candidates' particulars have been sent to RIF members by post. All RIF members are eligible to vote in this category.

For the "NM" Category, as the number of nominations was fewer than the number of available seats, the three RIF members nominated in this category are deemed to have been elected, and no ballot is needed.

Please be reminded that **the deadline for voting is 3 December**. We encourage you to cast your vote in the election. For further details, please refer to our [e-circular](#) sent to RIF members on 17 November.

FSTB consultation on Companies (Corporate Rescue) Bill

The Financial Services and the Treasury Bureau (FSTB) consulted the RIFEC on the [draft Companies \(Corporate Rescue\) Bill](#) (CR Bill) to introduce a statutory corporate rescue procedure and insolvent trading provisions in Hong Kong. RIFEC, joined by the Institute's president, held a virtual meeting with FSTB and Official Receiver's Office (ORO), in July 2020, to discuss preliminary views on the corporate rescue legislative proposals. The views and concerns of the insolvency profession on the CR Bill were reflected by RIFEC representatives in the meeting. The main concerns raised on the CR Bill included:

- The need to obtain positive consent from major secured creditors (MSCs) in order to proceed.
- The provisional supervisor will need to work under extreme time pressure with limited information to make decisions. He/ she may face personal liability on contracts taken up after his/ her appointment.
- The complex procedures on phased payments for outstanding liabilities to employees.
- The numerous criminal sanctions for breaches of compliance.

Feedback was invited from RIF members and subsequently a [detailed written submission](#) was issued to FSTB in September 2020.

More recently, FSTB issued a paper on the legislative proposals to the Panel on Financial Affairs of the Legislative Council (LegCo). The proposed approach on the consent of MSCs has been modified to a deemed consent, unless the MSCs object within a certain period. Other provisions appear to remain basically the same. The bilingual papers can be accessed under Agenda no. VI on the LegCo webpages indicated below:

English version: <https://www.legco.gov.hk/yr20-21/english/panels/fa/agenda/fa20201102.htm>

Chinese version: <https://www.legco.gov.hk/yr20-21/chinese/panels/fa/agenda/fa20201102.htm>

FSTB aims to introduce the CR Bill into LegCo in early 2021. We will keep RIF members updated of developments.

Proposed meeting between the ORO and the RIFEC in 2020

RIFEC will hold its next technical/ liaison meeting with the ORO again on 15 December to discuss a number of administrative matters of common interest. If RIF members have any issues or questions of a general nature that they would like raised at the meeting, these may be submitted by email to rif@hkicpa.org.hk by **7 December 2020**.

ORO Circular No.2/2020 - questionnaire to be filed by liquidators with Form D1

The Official Receiver (OR) considers that the filed Forms D1 often do not contain sufficient information and supporting documents to decide whether to conduct further investigations, which makes it necessary to engage in further correspondence with provisional liquidators/ liquidators (PLs/Ls) to obtain more details of the relevant cases. This can result in delays in investigations and a shortening of the period to make decisions about prosecutions. This matter was raised by the OR in the meeting with the RIFEC last year.

The OR has now issued [ORO Circular No.2/2020](#) (Circular 2/2020) on 12 November, setting out a revised arrangement on submission of Form D1 and Form D2 by PLs/Ls to the OR, which includes submitting a questionnaire when filing a Form D1, to facilitate the provision of information by PLs/Ls.

After receiving feedback from the RIF, the ORO revised the questionnaire from the version attached to our e-circular to RIF members, dated 20 July 2020. The revised version contains an additional option in the response boxes where no relevant information is available, and "Remark 1" of the opening remarks was amended to read: "Please answer all the questions according to your available information and documents".

As advised by the OR, the questionnaire is not intended to cover an exhaustive list of matters and PLs/Ls should still refer to the relevant provisions of Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) and Companies (Reports on Conduct of Directors) Regulation (Cap. 32J), as well as [ORO Circular No.6/2017](#), in discharging their duties.

The effective date of Circular No.2/2020 is 1 December 2020.

ORO's letter regarding implications of the HKSAR Government's Cash Payout Scheme

The ORO issued a [letter](#), aimed at insolvency practitioners (IPs) and appointment takers, as the joint and several provisional trustees/ trustees under the Bankruptcy Ordinance (Cap. 6), advising on factors that should be considered in determining whether or not to claim the HK\$10,000 received by an undischarged bankrupt from the Hong Kong SAR Government's Cash Payout Scheme as after-acquired property. The letter reminds office-holders that they are required to consider the circumstances of each case and should not apply an across-the-board decision to all cases.

IPs are also reminded to take note of section 43A(2) of Cap. 6 and the [ORO's letter of 14 April 2020](#). This encourages office-holders to exercise their professional judgement and use flexibility in assessing the domestic needs of bankrupts and their families, and to apply sensible discretion when considering whether to lay claim to after-acquired property during this difficult time.

Revised Liquidation and Insolvency Guidance Notes

RIFEC has updated and refined the Insolvency Guidance Notes, now called "Liquidation and Insolvency Guidance Notes" (LIGNs). The broad scope remains essentially the same and covers the following:

LIGN (1) – Scope

LIGN (2) – An insolvency practitioner's investigation into the affairs of an insolvent company

LIGN (3) – Preparation of insolvency practitioner's receipts and payments accounts

LIGN (4) – Disqualification of directors – statutory reports

The LIGNs took effect as from 1 August 2020. Please see [Volume I of the Institute Members' Handbook](#), Statements 1.600-1.603 for further details.

IPs should read the updated LIGNs, alongside the existing Section 500 of the Code of Ethics for Professional Accountants, i.e., the statement of [Professional Ethics in Liquidation and Insolvency](#). Together they seek to encourage the maintenance of high standards of practice within the insolvency sector.

To give members a better understanding of the LIGNs, a panel comprising of experienced IPs and a representative from the ORO, held an interactive webinar on 9 July, highlighting the changes to the LIGNs and discussing the key practical issues from the perspective of IPs and the ORO.

Click [here](#) for details of the audio archived session and subscribe online. This is free of charge for RIF members.

Opinions of the Shenzhen Intermediate People's Court on streamlining bankruptcy handling mechanisms and promoting efficient trial of bankruptcy cases

The Shenzhen Intermediate People's Court (Shenzhen Court) issued its [opinions on streamlining bankruptcy handling mechanisms and promoting efficient trial of bankruptcy cases](#) (Opinions) on 25 September 2020. In particular, Article 34 of the Opinions mentioned that foreign administrators could submit applications to the Shenzhen Court for cross-border recognition for preserving assets in Shenzhen, the People's Republic of China.



Professional development and networking events

In view of the ongoing COVID-19 pandemic, RIF continued to hold a series of well-received events, by way of webinars/ e-seminars, on a range of topics. The topics include:

- Asset tracing – from an insolvency perspective
- Recent developments on cross-border insolvency assistance, schemes of arrangement and interaction between arbitration and insolvency

- Securitisation as a solution for restructuring and liquidation
- Overview of the revised Liquidation and Insolvency Guidance Notes (**free event for RIF members**)
- Mediation and its uses as an alternative dispute resolution tool in insolvency
- Challenges on resumption of listing
- Valuation from the perspective of restructuring and insolvency
- Liquidators' personal liability for costs, litigation funding and related case law developments
- Restructuring of companies in financial distress: global and Asian perspectives

Click [here](#) for details of the audio archived session of some of the webinars and subscribe online

Coming RIF events

Shareholder actions under section 238 of Cayman Companies Law

Join the coming [joint ForensIG-RIF e-learning webinar](#) on 8 December, at which popular speaker, Mr. Ian Mann of Harneys, will provide an overview on the topic - *Shareholder actions under section 238 of Cayman Companies Law*.

Tackling hurdles to the voluntary liquidation of wholly foreign owned enterprises in the Mainland

Join the coming [lunch webinar](#) on 11 December, at which speaker, Ms. Yvonne Lam of Tricor, will share her expertise and experience on the topic - *Tackling hurdles to the voluntary liquidation of wholly foreign owned enterprises in the Mainland*.

Have an idea for an event or a speaker? Please email rif@hkicpa.org.hk



News and articles

- Institute's "A Plus" magazine:
 - August 2020 Issue
 - **Special Report: The Problem Solvers** – introducing the work, challenges and opportunities of the restructuring and insolvency profession
 - **Charting a New Course** – Profile of Terry Kan, RIFEC Chairman
 - September 2020 Issue
 - **Rethinking the Restart Process** – Discussion of the CR Bill by the Institute President and RIFEC members
 - **A Balancing Act** – Profile of Phyllis Mckenna, Official Receiver
- **Keep well and prosper – Shanghai court validates Hong Kong decision affirming U.S. bondholder claims** by Hogan Lovells
- **Call for consistency – Hong Kong Court delivers double message to insolvency practitioners** by Hogan Lovells
- **A closer look – distressed investment opportunities for foreign investors in China** by Hogan Lovells
- **English Court of Appeal considers application of "SAAMCO" principle in context of auditor's negligence case** by Herbert Smith Freehills

- **Malaysia: High Court finds that arbitral tribunal has jurisdiction to determine insolvency set-off** by Herbert Smith Freehills
- **Statutory but not mandatory – a reminder of the first principles** by Herbert Smith Freehills
- **Hong Kong companies court reaffirming the future of Mainland-Hong Kong cross-border insolvencies** by Kennedys
- **Lesson learned: What shall creditors do if they wish to object to the bankrupt's automatic discharge from bankruptcy** by Kennedys
- **Cross border insolvency – The Court of Appeal's judgment on the three core requirements** by Stephenson Harwood
- **Guide to super priority rescue financing in Singapore (2nd edition)** by DHC Capital
- Regular, international, insolvency news is available on the **Global Insolvency** website, provided by the American Bankruptcy Institute. Sign up for daily alerts.
- **Business expectations for fourth quarter of 2020** by Census and Statistics Department of the Hong Kong SAR Government
- **Statistics on compulsory winding-up and bankruptcy statistics** by the ORO

(N.B. Inclusion of the above articles should not be taken as implying endorsement by the Institute of any views contained in the articles, or of any businesses or products that may be advertised in, or alongside, them)



Members share their experience

The RIFEC invites RIF members and their firms to share their views on current insolvency and restructuring topics and issues.



INSOL International updates

- INSOL has held a series of webinars and e-conferences over the past few months. This year, the one-day conference, which INSOL has run in Hong Kong for the past two years, was turned into a virtual event, over three one-hour sessions, held on 12, 14 and 16 October, which was free to RIF members. Several RIFEC and subcommittee members were speakers. Please refer to <https://www.insol.org/virtual-seminars> for details.
- Photographs and videos, information about coming events and new publications can be found on [INSOL's website](#).

About town

Do you have news or personnel updates that may be of interest to RIF members, or have you just set up a new firm in the insolvency field? Please email rif@hkicpa.org.hk

Quick links:

- [The Institute's website](#)
- [RIF webpage](#)
- [Past issues of *The IP's Voice*](#)
- [INSOL International](#)

Contact us

Technical assistance on this transmission: Contact the IT support team at 22877800 or itsupport@hki CPA.org.hk

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