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Pilot arrangements for mutual recognition and assistance in insolvency proceedings between Hong Kong and the Mainland

On 14 May, the secretary for justice of the Hong Kong Special Administrative Region (HKSAR) Government and vice-president of the Supreme People's Court (SPC), in Shenzhen, signed the [record of meeting](#) concerning mutual recognition of, and assistance to, insolvency proceedings between the courts of the Mainland and the HKSAR ("Cooperation Mechanism"). The key features of the Cooperation Mechanism include:

- Pilot areas initially apply to courts in Shanghai, Xiamen and Shenzhen, given their close trade ties with Hong Kong and as popular choices for investments from Hong Kong
- An [opinion](#) and a [practical guide](#) were issued respectively by the SPC and the HKSAR Government in respect of their relevant work on the matter.

Please refer to the [press release](#) for details.

First application made to the HKSAR Court under the Cooperation Mechanism

The first application in either Hong Kong or the Mainland has been submitted by insolvency practitioners (IPs) who are RIFEC or RIF members, in accordance with the Cooperation Mechanism, to the High Court of the HKSAR, in [HCMP 963/2021 by Lai Kar Yan \(Derek\) and Ho Kwok Leung Glen as Joint and Several Liquidators of Samson Paper Company Limited \(in Creditors' Voluntary Liquidation\)](#).

In order for an application for recognition to be granted by the Mainland court, it is necessary, under the Cooperation Mechanism, inter alia, for the HKSAR court to provide two documents:

- (i) a letter of request; and
- (ii) a judgment determining that a letter of request should be issued.

The liquidators, in this case, are required to take possession of and deal with the liquidated company's substantial assets in the Mainland, which are principally located in Shenzhen. Hence, they made the application to request the HKSAR court to issue a letter of request to Shenzhen Intermediate People's Court (SIPC) for obtaining recognition and assistance in the Mainland.

On 20 July, the Honourable Mr. Justice Harris decided that this case is a proper case for a letter of request to be issued by the HKSAR court to SIPC requesting it to make an order recognising the liquidators and providing assistance to them. Accordingly, Harris J made an order that a letter of request, in simplified Chinese, in the form appended to the order, be issued to SIPC seeking its assistance in aid of the liquidated company's liquidation and its liquidators.

We will keep RIF members updated of further developments in this case.

ORO's letter regarding implications of the HKSAR Government's Consumption Voucher Scheme

The ORO issued a [letter](#) on 2 July, aimed at 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 it would be appropriate to lay claim to the HK\$5,000 electronic vouchers received by an undischarged bankrupt from the HKSAR government's Consumption Voucher 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, which 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 the pandemic.

New Inspection Regime for the Companies Register

The subsidiary legislation under the Companies Ordinance to introduce the new inspection regime for the Companies Register was tabled before the Legislative Council (LegCo) on 23 June for negative vetting. Under the new inspection regime, directors' correspondence addresses will be made available for public inspection in place of their usual residential addresses (URAs), and only partial identity card numbers (IDNs) of directors, company secretaries and other relevant persons will be made available in place of full IDNs. URAs and full IDNs will only be made available to "specified persons" as defined in the legislation, which includes:

- (i) A liquidator, which means a person who is a provisional liquidator or liquidator within the meaning of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);
- (ii) A trustee in bankruptcy, which means a person who is under the Bankruptcy Ordinance (Cap. 6) -
 - (a) a provisional trustee or trustee of the property of a bankrupt; or
 - (b) an interim trustee of the property of a debtor or of any part of the property;
- (iii) A public officer or public body;
- (iv) A solicitor or foreign lawyer;
- (v) A certified public accountant (practising);
- (vi) A financial institution or Designated Non-Financial Businesses and Professions, as defined in section 1 of Part 2 of Schedule 1 to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615).

Once the new regime has been fully implemented, specified persons will need to make an application to view the withheld information and, generally, the purposes for which they can access the information will be limited by the relevant persons' particular functions. The new provisions will be implemented in three

phases. Phase 1 of new inspection regime will come into effect on 23 August 2021. From that date companies may replace the URAs of directors with their correspondence addresses, and replace the full IDNs of directors and company secretaries with their partial IDNs on their own registers for public inspection. Phases 2 and 3 will commence on 24 October 2022 and 27 December 2023, respectively. (For further information see the [LegCo Brief](#) and the [report of the LegCo Subcommittee](#).)

ORO tender notice

The ORO has issued a [tender notice](#) to invite interested IPs to submit tenders for providing services to complete Preliminary Examination in Bankruptcy Cases. The contractual period will be two years ending on 31 December 2023. The deadline for tender submission is 7 September 12:00 noon. More details are available at: <https://www.oro.gov.hk/eng/tender/tender.htm#1>.

Proposed annual meeting between the ORO and the RIFEC in 2021

RIFEC expects to hold the next liaison meeting with the ORO again later this year to discuss administrative matters of common interest. If RIF members have any issues or questions of a general nature that they would like the RIFEC to raise at the meeting, these may be submitted by email to rif@hkicpa.org.hk by **17 September**.



Professional development events

Despite the uncertainties created by pandemic, the RIF has continued to hold a series of popular webinars on a range of topics. Recent events discussing the role of IPs in upholding ethical governance and practices and regulatory investigations by the Securities and Futures Commission, held on 5 and 11 August, respectively, were well received.

Next RIF event

HKEX's Delisting Framework

Join the coming [lunch webinar](#) on 27 August, at which Mr. Joseph Choi, vice president, Listed Issuer Regulation, Hong Kong Exchanges and Clearing Limited (HKEX), will explain the current delisting framework, the latest guidance on long suspension and delisting of listed companies and the resumption conditions. He will also talk about some of the challenges faced by issuers and IPs, and provide practical advice for issuers seeking a resumption of trading.

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

News and articles

- [Business expectations for third quarter of 2021](#) from the Census and Statistics Department
- [A real possibility of benefit – New Mainland – Hong Kong mutual insolvency recognition arrangement considered](#) by Herbert Smith Freehills
- [When is a regulating order justified?](#) by ONC Lawyers
- [Understanding how Blockchain's immutability actually makes it more AML compliant than cash](#) by ONC Lawyers
- [Using Arbitration to Stop a Winding Up](#) by Kobre & Kim



- Regular, international, insolvency news is available on the [Global Insolvency](#) website, provided by the American Bankruptcy Institute. Sign up for daily alerts.

(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 RIF Member Services Sub-committee welcomes RIF members and their firms to share their views on current insolvency and restructuring topics and issues. Contributions and suggestions can be sent by email to rif@hkcipa.org.hk



INSOL International updates

- [Scott Atkins](#) has been appointed [INSOL president](#), succeeding Julie Hertzberg
- Tiffany Wong, RIFEC member, will be joining the INSOL Executive Committee as Treasurer
- Please refer to [INSOL's website](#) for the latest news, as well as information about coming events and new publications

About town

- Borrelli Walsh announced in June 2021 that, internationally, the firm would unify under the “Kroll” name.

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@hkcipa.org.hk

Quick links:

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

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