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RIFEC election 2021 and composition for 2022

The election for seats on the Restructuring and Insolvency Faculty Executive Committee (RIFEC), for the term starting from 1 January 2022, has taken place. This year, in all, six seats were available:

- Four seats for Institute members (“M” Category)
- Two seats for non-members of the Institute (“NM” Category)

A total of four nominations had been received in the “M” Category, and two nominations had been received in the “NM” Category by the close of the nomination period. As the number of nominations was equal to the number of available seats in both categories, the candidates were deemed to have been elected and will each serve a term of two years, commencing 1 January 2022. They are:

“M” Category	“NM” Category
Annie CHAN Wai Hing	Shaun FOLPP
Jet CHU Fai	Alexander TANG Hing Lam
Rosalie LUI Yee Man	
Kenny TAM King Ching	

We offer congratulations to all the candidates.

The following elected RIFEC members have a further year to serve in their term of office:

“M” Category	“NM” Category
Daniel CHOW Wai Shing	Ludwig NG Siu Wing
Glen HO Kwok Leung	Sunny HATHIRAMANI
Anita SO Kit Yee	
Denny TSE Cheuk Kai	

The remaining membership of RIFEC will be subject to appointment by the Institute’s Council or co-option by RIFEC in 2022.

First application under the mutual recognition and assistance in insolvency proceedings between Hong Kong and the Mainland

As previously advised, 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 record of meeting concerning mutual recognition of, and assistance to, insolvency proceedings between the courts of the Mainland and the HKSAR (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)* (Samson Paper).

The Honourable Mr. Justice Harris subsequently made an order that a letter of request, in simplified Chinese, in the form appended to the order, be issued to Shenzhen Intermediate People's Court (SIPC) seeking its assistance in aid of Samson Paper's liquidation and its liquidators.

We understand that the liquidators have successfully obtained an order dated 15 December 2021 from SIPC to recognize their role as the liquidators of Samson Paper. This is the first order granted by SIPC to IPs from Hong Kong under the Cooperation Mechanism.

ORO's consultation on security requirements for appointment of liquidators and trustees in bankruptcy

In the December 2020 meeting between the RIFEC and the Official Receiver's Office (ORO), the minutes of which were subsequently circulated, RIFEC indicated that IPs were uncertain about the amount of a bond that they would be required to take out in any particular case as there did not seem to be a standardized approach adopted by case officers. The OR acknowledged the concern and explained that the department was looking into the matter. On 7 September 2021, the Official Receiver (OR) issued a [letter](#) to the Institute, inviting the views of insolvency practitioners (IPs) on proposals for the security requirements for appointment of liquidators or trustees in bankruptcy. RIFEC submitted a response on 7 October 2021, requesting the OR to consider relaxing the security requirements and making certain other suggestions; for example, where IPs' firms' Professional Indemnity Insurance (PII) covers insolvency appointments, RIFEC proposed raising the threshold for relying on PII above the current HK\$200,000 (i.e. for summary cases only).

Other suggestions included:

- Defining more clearly what is included within the ORO's assessment of "Estimated Realizable Assets" (ERA)
- Adopting a conservative view in assessing ERA, initially, and, if necessary, requiring an IP to top up a bond where the IP appears likely to be able to realize more problematic assets.
- Making it clear that the OR will exercise any discretion to vary the percentage of ERA used as reference for fixing the amount of a bond, only in exceptional (and broadly defined) circumstances.
- Issuing guidance for case officers and IPs on the application of the security requirements to promote transparency and consistency

The issue was discussed again in the recent liaison meeting between RIFEC and ORO (see below for further information). Key points of the discussion will be included in the notes of the meeting, which will be circulated to RIF members in due course.

Liaison meeting between the ORO and the RIFEC in 2021

RIFEC held a further liaison meeting with the ORO again on 10 December 2021 to discuss various administrative matters of common interest, including:

- Latest developments in the security requirements for the appointment of liquidators or trustees in bankruptcy
- Issues relating to the “Panel A” scheme, including review of the rules and fee rates
- Criteria for allocating cases to the Panels “A” and “T” schemes
- Applications for regulating orders by the ORO
- Mutual recognition of and assistance to insolvency proceedings between Hong Kong and the Mainland
- New public inspection regime for the Companies Register
- Progress of the draft Companies (Corporate Rescue) Bill
- Opening of bank accounts by IPs
- ORO’s Departmental Information Technology Plan (DITP)
- Update on the D-Form questionnaires
- Review of Pilot Scheme (i.e. OR’s power under Rule 198 of the Companies (Winding-up) Rules)

The notes of the meeting are under preparation and will be circulated to RIF members in due course.

As part of the ORO’s overall DITP, the department has revamped the [ORO website](#). We understand that the ORO welcomes feedback on the changes.

Information of Unrealized Assets to be provided by Trustee to Official Receiver before applying to Court for Release

The ORO issued a [letter](#) to the Institute for the attention of members who are IPs and acting as trustees-in-bankruptcy for their necessary action. The letter advises that, as the trustee of last resort, the OR may, ultimately, need to handle any unrealized assets in a bankruptcy estate and, therefore, with immediate effect, when trustees apply to the court for their release, they are asked to provide to the OR full information of any unrealized assets together with the reasons why such assets cannot be realized.

Further details are contained in the letter and any questions on it may be addressed to Mr. Michael Cheung, Chief Insolvency Officer of the ORO, at 2867 2515.

ORO’s Notice for Petitioners in Bankruptcy Proceedings

The ORO has published a [notice](#) on its website on 10 December 2021, advising that it is the duty of petitioners (including petitioning creditors in creditor’s petition cases and debtors in self petition cases) and their legal representatives to ensure that bankruptcy petitions presented by them to court are prosecuted efficiently and expeditiously. The duty includes (but is not limited to):

- Attending the petition hearing and adjourned hearings (if any) at the appointed date and time;
- Communicating proactively with the court on matters regarding the petition;
- Responding timely to the requisitions that may be raised by the court from time to time;
- Proceeding with the petition efficiently; and
- Applying for adjournment only where circumstances fully justify.

The ORO mentions that any petitions presented that are not in compliance with the relevant requirements, or that amount to an abuse of process (e.g. the bankruptcy proceedings being invoked in an improper manner, or for an improper purpose, such as using it as a means for debt collection or negotiation with creditors) is liable to be dismissed by the court with costs ordered against the petitioner.

Anti-money laundering news

The Top Challenges in Anti-Money Laundering and Sanctions Compliance in 2021 and Beyond

Norton Rose Fulbright have released the [2021 Global anti-money laundering and sanctions compliance survey](#). Nearly 400 respondents from 77 jurisdictions participated in the survey and the results highlight the ongoing challenges financial institutions around the globe are experiencing as regulatory expectations continue to evolve.

Financial Action Task Force Public Statement on Pandora Papers

The Financial Task Force (FATF) issued a [Public Statement](#) on 21 October 2021 in which the global anti-money laundering body calls upon governments to do more to improve the transparency of beneficial ownership. It is also proposing to strengthen the FATF Recommendations in this area.



Professional development events

Despite the restriction due to the pandemic, the RIF has continued to hold a series of popular webinars on a range of topics. The recent event held on 25 November 2021, *Gatecoin – Liquidation of a cryptocurrency*, was well received.

Next RIF event

The Proposed New Cayman Islands Restructuring Officer Regime and Potential Recognition in the Hong Kong Courts

The next RIF lunch webinar is planned to be held on 24 January 2022, at which Mr. Ian Mann, Asia managing partner of Harneys, will provide an update and share his views on the proposed new Cayman Islands restructuring regime. The event will be chaired by RIFEC member and senior partner at ONC lawyers, Ludwig Ng, who will add his observations from a Hong Kong perspective. We will notify the RIF members when the event is open for subscription.

Do you have a good idea for an event or a speaker? Please email rif@hkcipa.org.hk



News and articles

- [Evergrande share trading halt pushes HKEX suspensions to record \\$61bn](#) by California New Times
- [Hong Kong Court of First Instance refused to issue a letter of request to the judicial authority of mainland China for the purpose of cross-examination](#) by Herbert Smith Freehills
- [Winding up a BVI company: Even if the Court has powers over directors resident in Hong Kong, the 2nd core requirement may still not be satisfied](#) by ONC Lawyers
- 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

- INSOL expands its Asia Advisory Council to reflect its deep commitment and clear focus in the Asia-Pacific region. Please refer to the [news](#) for details.
- Please refer to [INSOL's website](#) for the latest news, as well as information about coming events and new publications
- INSOL International is embarking on *INSOL Reimagined* a new phase of strategic planning, with a focus on setting ambitions for 2025 and through to 2030. Further information is contained in the President's Welcome in [INSOL World](#), 4th Quarter, 2021.

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*](#)
- [ORO's website](#)

Contact us

Technical assistance on this transmission: Contact the IT support team at 2287 7800 or itsupport@hkcipa.org.hk

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