



## Misfeasance as an alternative to fraudulent trading

### About the topic

Fraudulent trading is difficult to prove. So are there alternatives? Arguably, the only feasible alternative is a claim for breach of duty under the "misfeasance section" of the old Companies Ordinance. At the seminar, Andrew Kinnison of Howse Williams Bowers will discuss the following:

- The courts have consistently refused to entertain civil liability for fraudulent trading claims, absent proof of dishonesty. They insist on a strict standard of proof. In England, the Insolvency Act 1986 therefore introduced a separate "wrongful trading" provision (with a lower standard of proof). In Hong Kong, back in 1996, the Law Reform Commission of Hong Kong also recommended introducing a separate "insolvent trading" provision (also with a lower standard of proof) - but that has still not happened.
- Hence the argument that claims might more easily be pursued "against delinquent officers" for any "breach of duty" - under that which is commonly, but perhaps mistakenly, referred to as "the misfeasance section" (Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32), section 276).
- If and when "insolvent trading" is introduced in Hong Kong, claims for "breach of duty" might still be pursued as an additional and alternative claim. These have proved useful weapons in England, where claims for breach of duty have succeeded, when claims for "wrongful trading" have not.

### About the programme

<b>Date &amp; Time</b>	16 July 2014, Wednesday
<b>Venue</b>	HKICPA training centre 27 <sup>th</sup> Floor, Wu Chung House 213 Queen's Road East, Wanchai
<b>Fee</b>	HK\$230 per person for RIF members HK\$330 per person for Non-RIF members <i>Not a RIF member? Click <a href="#">HERE</a> to join.</i>
<b>CPD credit</b>	1 hour (subject to actual attendance)
<b>Law Society CPD credit</b>	Being applied for
<b>Language</b>	English
<b>Competency</b>	Insolvency*
<b>Rating</b>	Intermediate/Advanced level*
<b>Application deadline</b>	<b>11 July 2014</b>

### Rundown

<b>12:30 pm</b>	Registration (Sandwiches & drinks provided)
<b>1:00 pm</b>	Introduction
<b>1:05 pm</b>	Speaker's presentation
<b>1:50 pm</b>	Q&A / Discussion
<b>2:00 pm</b>	Closing remarks

### Chairperson

**Mr. Mat Ng**  
Deputy chair, RIF Executive Committee &  
Convenor, RIF Member Services  
Sub-committee  
Director, JLA Asia

\* Please refer [here](#) for descriptions of the various ratings and competencies.



## About the speaker

**Mr. Andrew Kinnison**  
**Partner**  
**Howse Williams Bowers**

Andrew specialises in commercial litigation and insolvency including ADR, banking, professional negligence and property litigation. He advises banks, financial institutions, directors and shareholders of companies in financial difficulties and other office holders on formal insolvency procedures, including liquidations, provisional liquidations, receiverships and administrations. He also advises on bankruptcy issues and personal insolvencies.

Andrew qualified as a barrister in 1988. He was admitted as a solicitor in Hong Kong in 1993. He was also admitted as a solicitor in England & Wales in 1993, and is now a Solicitor Advocate (All Higher Courts) in that jurisdiction. He was previously a partner with Holman Fenwick & Willan in Hong Kong and a partner with Greene & Greene in the United Kingdom.

Andrew holds a distinction in the Diploma in Insolvency, awarded by the Hong Kong Institute of Certified Public Accountants.

## Registration

### **By post or fax:**

Complete the attached reply slip and return it to the Institute on or before 11 July 2014, together with full payment. Cheque should be made payable to "Hong Kong Institute of Certified Public Accountants" or "HKICPA". Fax registration will be accepted for payment by any VISA/Master card or the BOC HKICPA UnionPay card.

**You may consider your registration to be successful unless you receive notification from us to the contrary.**



## RIF seminar – Misfeasance as an alternative to fraudulent trading

Finance & Operations Department  
Hong Kong Institute of CPAs  
37th Floor, Wu Chung House  
213 Queen's Road East  
Wanchai, Hong Kong

Fax no: 2893 9853

**16 July 2014**

(Reply on or before 11 July 2014)

**FOR OFFICE USE**

Seq. no.: .....

Handled by: .....

Please allow 4 days to process your application. You can check your enrolment status it at "[My CPA](#)". Unsuccessful enrolment will be notified before the commencement of the event with full refund.

**Please type or print:-**

Name: (\*Mr./ Mrs. /Ms.) \_\_\_\_\_ Institute membership no.: \_\_\_\_\_

Company name: \_\_\_\_\_

Position held: \_\_\_\_\_ Email: \_\_\_\_\_

Telephone no.: \_\_\_\_\_ Fax no.: \_\_\_\_\_

**You may use a separate sheet to list out the name, position and Institute membership no. (if applicable) of additional participant(s) from the same firm/company as the above applicant.**

**Please "✓" as appropriate**

**Admission Fee:**  RIF member: HK\$230 per person x \_\_\_\_\_ person(s) = HKD \_\_\_\_\_  
 Non-RIF member: HK\$330 per person x \_\_\_\_\_ person(s) = HKD \_\_\_\_\_

**Payment by:**  Cheque (no. \_\_\_\_\_) payable to "Hong Kong Institute of Certified Public Accountants" or "HKICPA"  
 VISA / Master card  BOC HKICPA UnionPay card

Card Number:																			Card Expiry Date (MM/YY):								
Cardholder's Name (block letters):														Cardholder's Signature:										Date:			

I would like to have an official receipt. (Remarks: Official receipt will be sent to your email address provided above.)

**Notes:**

- Enrolments are accepted on a first-come-first-served basis. Telephone reservations will not be accepted.
- Full payment must be made before applications will be processed. Application by fax will ONLY be accepted when payment is made by credit card. Cash is strictly NOT accepted.
- The closing date for enrolment is **11 July 2014**.
- You may consider your registration to be successful unless you receive notification from us to the contrary.
- Unless the event is cancelled due to unforeseen circumstances, no refunds will be made after applications have been processed.
- Bad weather arrangement: The seminar will be cancelled if typhoon signal no. 8 or above / black rainstorm warning is hoisted, as announced by the Hong Kong Observatory, at or after 6:30 a.m. on the date of the event. In the event of cancellation due to bad weather, the admission fee will be refunded.

Your personal data collected from the enrolment process and administration of courses will be used for the purpose of the administration of the course on which you are enrolled. Such data collected may be accessible by the Institute's officers, persons or committees processing the application and related matters. In addition, the Institute may use the collected data for statistical research and analysis and, if applicable, for validation of CPD hours. The Institute intends to use the personal data of your name, email address and correspondence address to inform you, where relevant, of CPD activities, members' benefits, goods, services, facilities and events organized or provided by the Institute or other organizations. Members and registered students may opt out of receiving such materials at any time by logging in via the following link <https://www.hkicpa.org.hk/en/members-area/comm-preference/>. Non-members may opt out of receiving such materials at any time by sending an email to the Institute at [privacyofficer@hkicpa.org.hk](mailto:privacyofficer@hkicpa.org.hk) or a letter to the Institute's privacy officer. For more information about the privacy policy of the Institute, please go to <http://www.hkicpa.org.hk/en/service-tools/privacy-policy/>. Please note that if you do opt out, you will no longer receive information about RIF news and events.

**Payment & Enrolment Status Enquiry:** 2287 7381  
e-mail: [finance@hkicpa.org.hk](mailto:finance@hkicpa.org.hk)

**Event Information Enquiry:** 2287 7009 / 2287 7089  
e-mail: [may@hkicpa.org.hk](mailto:may@hkicpa.org.hk)

For payment by cheque, please fill-in your postal address for refund in case the event is full or cancelled.

Name :		Name :	
Address :		Address :	