New specialist accreditations for

Insolvency Professionals

CPA

Hong Kong Institute of
Certified Public Accountants
香港會計師公會

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practitioners can,
literally,
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Introducing the SQ and SD in Insolvency

The Hong Kong Institute of CPAs' first specialist qualification and specialist designation

On top of the letters **CPA**, some of Hong Kong's certified public accountants can now carry another couple of special characters after their name.

That's because the Hong Kong Institute of Certified Public Accountants has introduced two important specialist accreditations: the specialist qualification and specialist designation in insolvency.

In order to say they hold the specialist qualification in insolvency – and be entitled to put the letters **SQ** after their name – CPAs and other professionals have to pass the Institute's diploma in insolvency. The programme, taught by Hong Kong's leading insolvency experts, is designed to help insolvency practitioners consolidate and refine their skills.

The specialist designation, meanwhile, is meant for CPAs who have many years of experience in insolvency practice and is awarded by the Institute. Insolvency practitioners who carry the letters **SD** after their name are subject to the Institute's regulations, which require them to observe, maintain and apply professional standards. This ensures this prestigious title is only held by the very top experts in the field. When you enlist the services of an insolvency practitioner with the prestigious title, you can expect top-notch expertise.

As Hong Kong's business environment becomes increasingly sophisticated, so too do the roles of CPAs. They are increasingly asked not only to analyze the numbers, but to manage whole sections of companies, providing leadership and expertise to make businesses succeed, or – in the case of insolvency – rescuing or resolving the situation when things go wrong. Such complex challenges require specialized skills and mindsets.

Hong Kong's insolvency practitioners are world-class experts who ensure lawfulness and order if a company gets into trouble. What they do is absolutely essential to maintaining Hong Kong's position as one of the world's most trusted and respected business environments.

Today, Hong Kong's accounting profession – as well as its financial market as a whole – is working ever closer with those of other countries. When multinational companies with operations in Hong Kong go into insolvency, the city's insolvency practitioners are called into action to work with their international peers.

Meantime, China is growing at record pace and Hong Kong continues to be one of the mainland's most important partners. Almost half of China's inward investment comes from Hong Kong and most of the city's trade comes from the mainland. What's more, China is converging with international accounting standards and the Hong Kong accounting profession is an important intermediary in the process. As the world's fastest developing market booms, there will inevitably be some companies going bust along the way. When this happens, Hong Kong's insolvency practitioners are frequently called upon for their China expertise.

The new qualification and designation in insolvency from the Hong Kong Institute of CPAs keep Hong Kong's insolvency practitioners standing at the forefront of the accounting world, and help users of insolvency services identify the sound choices for their appointments.

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Diploma in Insolvency

A specialist programme taught by Hong Kong's leading insolvency experts

In business, sometimes things go wrong. And the aftermath is never pleasant. Workers lose jobs and pensions, people lose investments and creditors get dragged down.

Good insolvency practitioners can, literally, be heroes. They can make the difference between a company being rescued and restructured or going broke. They can make the difference between creditors getting at least something back, instead of getting nothing. And they can make the difference between employees getting paid their wages, rather than leaving with empty pockets.

The diploma in insolvency is designed to equip accountants with the technical and personal skills needed to make that difference.

The programme covers the three main areas of insolvency – corporate insolvency, corporate rescue and restructuring, and personal insolvency. It is taught by Hong Kong's top insolvency experts through a mix of lectures, workshops, tutorials and self-teaching. Participants are assessed through examinations and presentations.

On completion, course participants will be eligible to say they hold the specialist qualification (SQ) in insolvency. They will have a comprehensive knowledge and understanding of Hong Kong's insolvency procedures, as well as cross-border and transnational issues, especially those related to mainland China. They will also possess the practical skills, legal awareness and the strong sense of ethics needed to carry out insolvency work.

Most importantly, they will develop vital personal skills, such as leadership, teamwork and judgment. Insolvency cases are often large operations, with insolvency practitioners leading multidisciplinary teams. They are expected to keep a cool and level head and to make lawful and fair decisions in situations that are chaotic and emotionally charged.

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Specialist Designation in Insolvency

An accreditation for Hong Kong's top insolvency experts

The specialist designation (SD) in insolvency is an accreditation reserved for the very top experts in the field. Only CPAs who can demonstrate to an Institute committee that they have sufficient experience, as well as industry-leading technical and practical skills, are awarded this prestigious designation.

To be eligible, an insolvency practitioner must have competency at mastery level in at least one of the three main areas of insolvency practice – corporate insolvency, corporate rescue and restructuring, or personal insolvency – at advanced level in a second, and at basic level in a third. At a minimum, a practitioner needs eight years experience to be eligible for the specialist designation.

To maintain their designation, every year they must carry out at least 200 hours of insolvency practice, including 50 hours of higher experience (work which involves managing or supervising a case as or on behalf of the appointment taker of an engagement).

By seeking the designation, insolvency practitioners aim to join the top ranks of their field. And by choosing a CPA who holds the designation, users of insolvency services can be assured they have made a sound appointment decision.

Those who carry the designation are Hong Kong's best insolvency practitioners and among the world's finest. As well as vast experience and expertise, they have ethics, interpersonal skills and judgment that are second to none.

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Workshop leader **Patrick Cowley** *on corporate insolvency*

The liquidation of the Lehman Brothers Hong Kong businesses represents the sort of challenge and opportunity that probably only comes along once in a career, says Patrick Cowley, an insolvency practitioner at KPMG appointed as one of the liquidators of Lehman's assets in Hong Kong and a workshop leader for the diploma.

"It has asked questions of us all as professionals, and we have all grown from the experience," says Cowley, on the challenge of tackling the biggest insolvency case in international history. In Hong Kong alone, Lehman Brothers Holdings Inc. had eight companies with combined assets and liabilities of US$58 billion.

"With several hundred individual investments worth billions of U.S. dollars to turn into cash for our creditors, we have been involved in asset disposals, settlement discussions and full-on restructurings – and we have been doing it all around the Asia Pacific region," explains Cowley.

In just over a year since the KPMG team was officially appointed by the High Court as liquidators, the firm has realized US$1.5 billion from the sale of Lehman assets.

But the case is far from straightforward and far from resolved. Lehman had an intricate web of intercompany transactions, including derivatives, repos and reverse repos, and to untangle this has required a team with a multitude of special skills.

"Lehman has been a truly multidisciplinary case, with KPMG professionals from financial services audit, information technology advisory, legal, tax and corporate finance being brought in to support the core insolvency team," says Cowley.

Nevertheless, the buck still stops with his team, because they are the ones answerable to a court of law, says Cowley.

"This case simply could not have been handled by a general practitioner, and the court would not have accepted the nomination of anyone without the evident knowledge, expertise and resources. Every decision is made within the context of liquidation and the particular powers, duties and obligations we have as liquidators, to the court and to the creditors."

The Institute's diploma equips accountants with the very particular skills needed to work on insolvency cases, says Cowley.

"Insolvency is a technical profession, and we regularly take on assignments that impose very particular duties and obligations on us, in respect to how we deal with the assets, and how we interact with the court and various stakeholders," he explains.

"When combined with a significant amount of full-time experience built up over several years, the diploma provides participants with the knowledge they need to undertake these assignments with professionalism, integrity and efficiency."

Workshop leader **Terry Kan** *on* *personal insolvency*

Personal bankruptcy cases are frequently not as straightforward as a single person going bust, says Terry Kan, an insolvency specialist, who leads a diploma workshop on the topic.

"It is quite often that a personal bankruptcy case emerges from the collapse of a corporation where the managing director or owner had guaranteed the liabilities because the company was in difficulties," Kan explains. "These cases happened a lot when Hong Kong was hit hard by the financial crisis in 1997 as well as the financial tsunami we just went through."

Insolvency practitioners have to put on their detective hats to uncover all the assets held by a person who has gone bankrupt, says Kan, especially when there's been foul play.

"A typical situation is they [the business owners] will transfer their assets to their spouse or their relatives. I've been involved in many court cases where this has happened," he explains.

"There are provisions in the Bankruptcy Ordinance that allow the trustee in bankruptcy to claw back all those assets. But it's not an easy task, and it typically involves a lot of investigatory work to gather as much information as possible before we can start the litigation process to recover the assets. Sometimes the assets are not even located in this part of the world."

Finding the facts is not easy. Since business owners get to keep anything that's not recovered, in the hope that the insolvency practitioner working on the case will miss something, people who go bankrupt aren't always very talkative. Most aren't hardened fraudsters, but rather people who are uncooperative because they are daunted by the prospect of losing everything.

"They have a duty to report all their assets and liabilities. Under the law, they are supposed to disclose everything to us," says Kan. "But many people who go bankrupt simply don't intend to tell you anything. It's up to us to try to discover what assets they have. For example, they may have assets and properties overseas."

Insolvency practitioners need to keep their wits about them and work quickly, to ensure that all assets are recovered.

"We may be facing sophisticated business people with extensive experience in business operations and commercial knowledge," explains Kan. "Time is of the essence, in particular at the commencement of bankruptcy, to secure control over assets in jeopardy or at risk of being sold."

This is one of the tricks of the trade that course participants can learn from the experience of battle-hardened insolvency practitioners as part of the diploma, says Kan, and such knowledge is invaluable.

"In addition to learning relevant insolvency knowledge and recent case law development, students benefit from face-to-face interaction with experienced practitioners throughout the course."

Workshop leader **Alan Tang** *on* *mainland China recoveries*

When joint ventures in mainland China with both domestic and Hong Kong investors go into liquidation, it is up to insolvency practitioners with China expertise, like Alan Tang, to ensure that Hong Kong stakeholders get their fair share.

"One of the first things that a Hong Kong liquidator has to do is decide its powers. It's part of our duty to secure assets," says Tang, who is a workshop leader on the diploma.

Sometimes, even getting inside a building so they can be heard can be a challenge.

"Depending on the relationship between the management of the company on the Hong Kong side and the guys in China, what happens immediately after our appointment as a liquidator can vary considerably. In some cases the Chinese management of the company will simply and flatly deny that I have a reason to be involved in the operation. In some cases they will not even let me into the building," explains Tang.

"But in other situations – and what in my experience has been more the case – they are happy to sit down with me and go through the issues and listen to the concerns of the Hong Kong shareholders."

Understanding China's new bankruptcy law is important. But even more imperative is real life knowledge of the terrain, says Tang, hence why much of the diploma is taught by workshop leaders relating insolvency theory backed by real life cases they've solved.

"What we do on the course is make reference to the issues, for example the cross-border issues and the legislative provisions in both Hong Kong and the PRC, especially now they have introduced their new bankruptcy law," he explains.

"Then, we relate these issues with our experience on real life cases. That's the part participants find most interesting and useful."

Course director **Stephen Briscoe** *on*
corporate rescue and restructuring

When insolvency practitioners are called into a troubled company, the first thing they do is try to restructure and rescue it, explains Stephen Briscoe, an insolvency practitioner at Briscoe & Wong who has over 35 years of experience in the field. If its liabilities and assets can be separated, a company can be sold to new owners in some shape or form. Jobs can be saved, and the proceeds from the sale mean that creditors can get back much more than they would if the company went into liquidation.

Briscoe, who is a course director and lecturer on the diploma, recalls a particularly compelling case that he worked on, involving a construction company, where a rescue and restructuring was the best way out of a sticky situation.

"If you're a construction company in Hong Kong and you want to work for the government, you need a licence to do work. There are different levels of licence that relate to the value of the contracts for which you can tender. You get these licences by applying to the government and demonstrating you have the skills and resources to do certain contracts. Obviously that's quite a valuable source of work in Hong Kong," explains Briscoe. "If a company goes into liquidation, those licences are effectively terminated."

He continues: "I had a case a number of years ago where we were dealing with a construction company in financial difficulty, but it had two government construction licences. Had the company gone into liquidation, those licences would have been lost. If the company had gone into liquidation at that point, there was no return whatsoever for its creditors."

"The company was placed into provisional liquidation, and then the company entered into a scheme of arrangement with its creditors. A scheme of arrangement is a formal court approved process, whereby the creditors agree to accept 'x' cents on the dollar for being prepared to write off the balance of their claims."

"The purchasers that agreed to buy the company agreed to make money available to pay a dividend to the creditors, and the company was kept alive. The important thing is the government construction licenses remained alive too, so the company under its new management was able to continue to tender for government contracts." In liquidation, creditors would have been left empty handed.

Getting to the finish is always a challenge. Insolvency practitioners have to follow the letter of the law and at the same time they often face intense commercial pressures. Strong ethics are something that participants of the diploma are taught to develop, says Briscoe.

"On the course, they learn how the commercial pressures they face fit in with the insolvency legislation. On a day-to-day basis, insolvency practitioners are faced with commercial pressures. Can we do this deal? Or should we do that deal? How long have we got to do this deal? Is the company running out of cash? How can we fund completion of these orders? There are all these commercial pressures. At the same time, you have to make decisions based not just on commercial logic, but decisions that are based on the limitations that are placed on a liquidator by the Companies Ordinance."

About the accreditations

Both members and non-members of the Hong Kong Institute of Certified Public Accountants are eligible for the diploma in insolvency. On successful completion, they hold the specialist qualification in insolvency and can carry the title **SQ** (**Insolvency**).

Only members of the Hong Kong Institute of CPAs can qualify for the specialist designation in insolvency – and carry the title **SD** (**Insolvency**) – because they will be subject to the Institute's regulations. This designation is awarded by an Institute committee to insolvency practitioners who can demonstrate they have sufficient experience and expertise.

All teaching and self-teaching hours for the diploma in insolvency can qualify as verifiable CPD hours for members.

The Official Receiver's Office has recognized the diploma and regards passing the programme as being the equivalent of 50 hours of insolvency work for certain purposes.

The diploma is included in the list of reimbursable courses for the government's Continuing Education Fund purposes. Participants are entitled to a reimbursement of the tuition fee up to HK$10,000.

For more information on the specialist qualification and specialist designation in insolvency, visit *www.hkicpa.org.hk*

Or contact us at:

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