

**By hand**

3 December 2015

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Legislative Council  
Legislative Council Complex  
1 Legislative Council Road  
Central  
Hong Kong

Attention: Hugo Chiu, Bills Committee

Dear Sir

I refer to the Administration's response to the issues I raised at the Bills Committee hearing at the Legislative Council on 30 November 2015. Although I do not have a transcript of the comments made by the representatives of the Administration I believe that I have correctly understood the content of their response.

**Licensing of Insolvency Practitioners**

The response of the Administration appeared to be that introducing a licensing regime for insolvency practitioners would be too difficult and too time consuming within the time frame necessary for the Bill to be passed. I recall that the technical committee of the Restructuring and Insolvency Faculty of the HKICPA, of which I am the convener, initially suggested to the administration as far back as 2013 that it would be appropriate for a form of licensing for insolvency practitioners to be introduced.

It seems strange that the Administration's rationale for not considering licensing now, is that it claims not have the time to go through the necessary consultation process, something which it could easily have done as part of the consultation process that it has just completed, had it so wished. If the Administration has no intention of introducing a licensing regime, it should at least have the courtesy to articulate the reasons for its objections, rather than seeking to explain the issue away in such a disingenuous manner.

**Cross-border insolvency**

The response of the Administration misses one of the points made and studiously ignores the second. The response was that because none of Hong Kong's top 10 trading partners have introduced the UNCITRAL Model Law there was no need to introduce it in Hong Kong. However, anyone at all familiar with the current cross border insolvency law position, would understand that there is no correlation whatsoever between the volume of trade conducted by Hong Kong with other jurisdictions and the requirement for insolvency practitioners from foreign jurisdictions to gain access to the Hong Kong courts and vice versa. The suggestion that the volume of trade is the key factor in deciding whether to implement the Model Law, or some alternative, is a red herring. Moreover, the Administration has put forward no explanation as to why the two should be linked.

Many substantial companies in Hong Kong, including many listed on the Hong Kong Stock Exchange are incorporated in jurisdictions such as the BVI, the Cayman Islands, Bermuda and the Bahamas, with whom Hong Kong does relatively little trade. However, when those companies become subject to insolvency proceedings, as they often do, the insolvency office holder from that jurisdiction should be able to get unfettered access to the Hong Kong courts to protect the interests of all the stakeholders.

In addition, there are many thousands of smaller companies which have operations in Hong Kong and/or in China which are registered in jurisdictions such as the BVI and the Cayman Islands. Even companies whose ultimate controllers are in other jurisdictions in Europe, Australasia and the United States operate through companies incorporated in these offshore jurisdictions. When these companies become insolvent, their insolvency office holders are often seeking to recover assets either in Hong Kong, or through Hong Kong into China. The Administration's failure to consider the implementation of the Model Law will continue to make it more difficult for those insolvency officeholders to protect the interests of all the stakeholders.

I also note that the administration did not respond to the suggestion that a clause be introduced into the new Bill, similar to s.426 of the Insolvency Act in the UK giving insolvency officeholders from other jurisdiction easier and more cost effective access to the Hong Kong courts.

The implementation of the Model Law would in no way impact on the sovereignty of Hong Kong's courts. Rather the Model Law is simply a protocol, implemented in different ways in different jurisdictions, designed to facilitate access to our courts in a carefully controlled way, commensurate with protecting the interests of all stakeholders, be they shareholders, creditors or employees.

I trust that the process of scrutinising the Administration's proposals will ensure that these issues are properly aired in the interests of bringing Hong Kong's corporate insolvency regime into the 20<sup>th</sup> century.

Yours faithfully



Stephen Briscoe