

**立法會**  
**Legislative Council**

LC Paper No. CB(4)1014/20-21(06)

Ref : CB4/PL/AJLS

**Panel on Administration of Justice and Legal Services**

**Meeting on 31 May 2021**

**Background brief on latest development on the framework for cooperation  
with the Mainland on corporate insolvency matters**

**Purpose**

This paper provides background information on the development on the framework for cooperation between the Hong Kong Special Administrative Region ("HKSAR") and the Mainland on corporate insolvency matters, and summarizes the major views and concerns expressed by members of the Panel on Administration of Justice and Legal Services ("the Panel") on the matter in previous discussions.

**Background**

2. According to the Administration, in light of the increasingly close economic ties between Hong Kong and the Mainland, the lack of a cooperation mechanism for recognition of and assistance in corporate insolvency matters is uncondusive to the promotion of an orderly and efficient insolvency regime and the facilitation of the rescue of financially troubled businesses. The need for such a cooperation mechanism had been highlighted in the consultation exercise relating to the *Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region* (《關於內地與香港特別行政區法院相互認可和執行民商事案件判決的安排》) which was signed between Hong Kong and the Mainland in January 2019 but did not cover certain specific matters including insolvency and restructuring.

3. Hong Kong courts had also indicated in various cases that it would be highly desirable to introduce a formal mechanism for recognition of and assistance in insolvency matters between Hong Kong and the Mainland. For example, the Court of First Instance of the High Court of Hong Kong in *Re CW Advanced Technologies Ltd* had referred to "the urgent need to enact a statutory cross-border insolvency regime"<sup>1</sup>. Similar remarks were expressed in other cases including, for example, *Re Da Yu Financial Holdings Limited (in liquidation)*<sup>2</sup>.

4. According to the 2020 Policy Initiatives of the Department of Justice, it was actively discussing with the Supreme People's Court Of The People's Republic of China ("SPC") and seeking an early breakthrough with the Mainland with a view to furthering cooperation between the two places on mutual recognition of and assistance in corporate insolvency (including debt restructuring matters). This would offer better legal protection for the stakeholders of both places, enhance Hong Kong's competitiveness as an international commercial and investment centre and strengthen Hong Kong's position as a regional hub for insolvency and debt restructuring.

### **Discussions of the Panel**

5. At the Panel meeting on 22 June 2020, the Administration briefed members on a proposed framework for cooperation between Hong Kong and the Mainland on recognition of and assistance in corporate insolvency matters ("the proposed framework"), and invited members' views and comments on the following issues:

- (1) the need for a cooperation mechanism between Hong Kong and the Mainland on matters of corporate insolvency (including restructuring);
- (2) the key features of the suggested framework for recognition of Hong Kong insolvency proceedings in the Mainland (including the determination of centre of main interest, legal effect of recognition by the Mainland court, refusal grounds by mainland court and assistance for non-main proceedings);
- (3) the suggestion that the common law mechanism in Hong Kong continue to be employed for the purpose of recognition of and assistance to Mainland insolvency proceedings in Hong Kong; and
- (4) the procedural matters (requests made to Mainland court and Hong Kong court).

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<sup>1</sup> [2018] 3 HKLRD 552, at 563

<sup>2</sup> [2019] HKCFI 2531, at paras. 46 to 53

6. The Panel considered that, given the difference in the legal systems of the Mainland and HKSAR, stakeholders of one jurisdiction involved in cross-border insolvency cases were facing difficulties in executing liquidation orders made by the other jurisdiction and expressed support for the proposed framework. Some members suggested that, in discussing with the Mainland authorities over the proposed framework, the Administration should bear in mind Hong Kong's common law system and tradition which should be adequately reflected in the framework.

7. In response to members' request for further details regarding the timeframe and proposed framework, in particular on issues such as the reciprocal enforcement of judgments between the two jurisdictions, the Administration explained that as discussions with SPC was still ongoing, more details would be available in due course and further consultation with stakeholders would be conducted. Furthermore, apart from dealing with issues on corporate insolvency, the proposed framework would also seek to facilitate the restructuring of debts between the two places.

8. The Hong Kong Bar Association also indicated support in principle the creation of a mutual recognition framework, but reserved its position on whether this should involve a "light touch" arrangement relying only upon the common law or something more formal, and it would provide further comments during the consultation process.

### **Latest position**

9. At the Panel meeting on 31 May 2021, the Administration will update members about the latest development on the framework for cooperation with the Mainland on corporate insolvency matters.

### **Relevant papers**

10. A list of relevant papers is in **Appendix**.

Council Business Division 4  
Legislative Council Secretariat  
26 May 2021

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with the Mainland on corporate insolvency matters**

**List of relevant papers**

<b>Meeting</b>	<b>Date</b>	<b>Item</b>	<b>LC Paper No.</b>
Panel on Administration of Justice and Legal Services	22 June 2020 (Item IV)	<u>Administration's paper</u>	CB(4)715/19-20(04)
		<u>Minutes of meeting</u>	CB(4)884/19-20
	4 January 2021	<u>Administration's paper</u>	CB(4)314/20-21(03)

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