



Supporting organisation

Supporting organisation

Seminars on “Business Rescue and Essential Contracts in South Africa, the United Kingdom & Germany: Guidance for the Corporate Rescue Bill?” and “Strategies to Curb the Abuse of Insolvency Proceedings in South Africa: Possible Lessons for Hong Kong?”

12 April 2019 (Friday)

- Date : Friday, 12 April 2019
- Topic : Session 1 – Business Rescue and Essential Contracts in South Africa, the United Kingdom & Germany: Guidance for the Corporate Rescue Bill?
Session 2 – Strategies to Curb the Abuse of Insolvency Proceedings in South Africa: Possible Lessons for Hong Kong?
- Time : Session 1 – 10.00 am – 12.00 noon (Registration at 9.45 am)
Session 2 – 2.00 pm – 4.00 pm (Registration at 1.45 pm)
- Presenter : **Professor Kathleen van der Linde**, Professor of Corporate Law, University of Johannesburg, South Africa
- Panellists : **Mr Terry Kan ACIS ACS**, Partner of Specialist Advisory Services, Shinewing Specialist Advisory Services Limited
Dr Davy Wu, Senior Lecturer, Department of Accountancy and Law, Hong Kong Baptist University
- Level : Intermediate
- Language : English
- Venue : Admiralty Conference Centre, 1804A, Tower 1, Admiralty Centre, 18 Harcourt Road, Admiralty, Hong Kong
- Fee : **For members of the HKICS, HKICPA or Law Society of Hong Kong**
HK\$450 for the full-day seminar or HK\$250 per session
For non-members
HK\$810 for the full-day seminar or HK\$450 per session
- Accreditations : HKICS (4 ECPD points; 2 ECPD points per session)
HKICPA (4 CPD points; 2 CPD points per session)
The Law Society of Hong Kong (TBC)

In association with:



Sponsors:



About the Courses

Session 1 – Business Rescue and Essential Contracts in South Africa, the United Kingdom & Germany: Guidance for the Corporate Rescue Bill?

Business rescue is premised upon the continuance of a business either by the insolvent company itself or by a purchaser acquiring it as a going concern. While the prospects of rescuing a company might be increased if it were able to free itself from onerous contracts, the continuance of other contracts might be essential for the survival of the business. Modern corporate rescue systems typically allow a degree of interference with the existing entitlements of individual contract parties, balanced by appropriate protection mechanisms for those who continue to supply during the reorganization. The South African Companies Act empowers the business rescue practitioner to suspend, or to apply to the court to cancel, any obligation of a company that would otherwise have become due during the proceedings under an uncompleted contract.

When rescues fail because companies in business rescue are evicted from business premises, dispossessed of trading equipment, deprived of credit facilities or prevented from continuing with franchise, distribution and licensing agreements, the question arises whether the procedure achieves a proper balance between individual and collective interests. Business rescue practitioners in South Africa have discovered that the apparently radical statutory power to suspend the insolvent company's obligations is of limited benefit as it does not ensure continued performance by the other party. Moreover, suspension does not provide any relief in respect of pre-existing breach or default. Consequently, the other party might still cancel the contract on the basis that material unsuspending obligations have been breached, either before or after the commencement of the proceedings. The general stay on legal proceedings and enforcement action constitutes at most a procedural hurdle when judicial intervention is necessary to give effect to cancellation, such as in the case of eviction or repossession. The statutory measures do not adequately facilitate business continuance, and the situation is exacerbated by uncertainty regarding the status and ranking of the claims of those parties who are prepared to continue supplying goods and services.

This seminar contrasts the South African legal position with the approach in the UK, which provides a solution in respect of specific essential contracts, and in Germany, which supplements its targeting of specific contracts with a general approach adjusting the principle of reciprocity for the post-commencement period of divisible contracts. The purpose is to suggest an approach that balances the classic principle that contracts should be observed with the policy considerations of corporate rescue.

Session 2 – Strategies to Curb the Abuse of Insolvency Proceedings in South Africa: Possible Lessons for Hong Kong?

South Africa is said to have a creditor friendly insolvency system. This finds expression to varying degrees in the requirements for access to the different bankruptcy proceedings for individual and corporate debtors. Sequestration proceedings for individuals can be commenced only if it has been established that sequestration of the debtor's estate will be to the advantage of creditors. Advantage to creditors is not a prerequisite of any of the procedures available to corporate debtors, namely business rescue proceedings, voluntary liquidation and compulsory liquidation. Nevertheless, the interests of creditors may be considered by a court in an application for compulsory business rescue or liquidation.

Although consumer debt relief measures exist for individuals, they are generally limited to the rescheduling of debts. Through business rescue, corporate debtors can implement a plan as approved by creditors. However, a general forced discharge of debts is possible only through sequestration or liquidation proceedings. Debtors might thus use insolvency procedures to escape from their debts or to defeat or delay enforcement steps by their creditors. Although this is perceived as an abuse of proceedings, such practices are not uncommon. In fact, some advisers and operators see it as a business opportunity to assist desperate (and not so desperate) debtors in overcoming their financial troubles through suspect insolvency proceedings. There are advertisements in the press and easily accessible websites with live chat functions, free call-back services and free first consultations. Consumers are invited to rid themselves of debt, escape creditor harassment, avoid repossession of assets and get reprieve from the enforcement of judgments against them.

This seminar explains how various procedures for individuals and companies are being exploited in South Africa. It then analyses the various strategies employed by the courts to address this problem. These include increased scrutiny of the merits of applications, the development of rules of practice, criticism of regulators, punitive costs orders, monitoring of patterns, limiting professional fees, prohibitory interdicts, and reporting of practitioners to disciplinary bodies. The role of industry players who devise and implement these schemes is increasingly becoming the focus. In this regard, proper regulation of the market must form part of the solution. In addition, the requirement of advantage to creditors might have to be reconsidered and alternative debt relief measures designed.

About the Presenter

Professor Kathleen van der Linde, Professor of Corporate Law, University of Johannesburg, South Africa

Professor Kathleen van der Linde is a Professor of Corporate Law at University of Johannesburg. She teaches Business Enterprises Law to undergraduate students and Corporate Finance Law and Securities and Financial Markets Law to LLM students. She supervises LLM dissertations in Corporate Law and Tax Law and is the promoter of doctoral students at UJ. She is responsible for the Diploma in Corporate Law at UJ, and is a co-presenter of the Certificate in Advanced Company Law and Securities Law of the Centre for Business Law at UNISA. Professor van der Linde regularly presents workshops and in-house training sessions on the new Companies Act. Her primary research interests are in corporate finance law and corporate insolvency law. She is part of the editorial team of the TSAR.

Professor van der Linde has been selected as the INSOL Scholar for a period of two years. INSOL is the acronym for the International Association of Restructuring, Insolvency & Bankruptcy Professionals, a world-wide federation of national associations of lawyers and accountants specialising in turnaround and insolvency.

She conducted research on the reorganisation of share capital in company restructuring plans, including through debt to equity conversions.

About the Panellists

Mr Terry Kan ACIS ACS, Partner of Specialist Advisory Services, Shinewing Specialist Advisory Services Limited

Mr Terry Kan ACIS ACS is a Partner of SHINEWING with over 20 years of experience in restructuring, investigations and insolvency. His key focuses are corporate rescue, scheme of arrangement, sale of distressed business/assets, shareholders' dispute resolutions, cross-border investigations, exit strategies, formal corporate and personal insolvency matters, and the Deposit Protection Scheme. More recent experience of Terry such as Provisional Liquidator / Liquidator of California Fitness gyms, Provisional Liquidator of a GEM listed entity involving in alleged fraudulent scheme, and a Reserve Take Over through dual onshore and offshore Scheme of Arrangements. He also advised C-suite on massive debt restructuring and founders of the Oasis Airlines.

Terry is a co-author of "The Hong Kong Corporate Insolvency Manual (4th Ed)" published in 2018, and currently the Chairman of HKICPA Restructuring & Insolvency Faculty. He speaks regularly at different professional bodies and has contributed to "The World Bank Survey – Doing Business – Resolving Insolvency", and commented on consultation papers as such "Delisting and Other Rule Amendments", "Review of Corporate Rescue Procedure Legislative Proposals" and "Improvement of Corporate Insolvency Law Legislative Proposals". He also contributed articles such as "Hong Kong's Corporate Rescue Marathon" published by HKICS and Insol International Journal. Terry previously worked in one of the Big-4 accounting firms (both Hong Kong and London offices), and the Regulator, Official Receiver's Office. He is an Associate of the HKICS and a qualified accountant.

Dr Davy Wu, Senior Lecturer, Department of Accountancy and Law, Hong Kong Baptist University

Dr Davy Wu is a Senior Lecturer in Law and the Programme Director of Master of Science in Corporate Governance and Compliance at the Hong Kong Baptist University. He is serving Goal Rise Logistics (China) Holdings Limited and Wan Leader International Limited as an independent non-executive director.

Dr Wu is a co-author of the Guide to Corporate Governance for Subvented Organisations and also Volume 29 of Halsbury's Laws of Hong Kong, the focus of which is the Securities and Futures Ordinance. He was appointed by the Financial Services and Treasury Bureau of the Hong Kong Government to the advisory groups on the Rewrite of the Companies Ordinance and Modernisation of Corporate Insolvency Law. He is a joint director of Professional Diploma in Insolvency for the Hong Kong Institute of Certified Public Accountants. He is also a member of the Assessment Review Panel of Hong Kong Institute of Chartered Secretaries.

The Hong Kong Institute of Chartered Secretaries
Enhanced Continuing Professional Development (ECPD) Training
Seminar Enrolment Form



Seminar Title: Joint Seminars on "Business Rescue and Essential Contracts in South Africa, the United Kingdom & Germany: Guidance for the Corporate Rescue Bill? (Session 1)" and "Strategies to Curb the Abuse of Insolvency Proceedings in South Africa: Possible Lessons for Hong Kong? (Session 2)"

Seminar Date: 12 April 2019 **Time:** 10.00 am – 12.00 noon and/or 2.00 pm – 4.00 pm

Full Name (Mr/Ms/Mrs): _____ **Membership No.:** _____

Mobile No.: _____ *(SMS notification in case of urgent notice)*

For Non-member ONLY

Company Name: _____ **Job Title:** _____

Correspondence Address: _____

Email Address: _____

I agree to subscribe to HKICS e-Update

	Session 1 (10.00 am – 12.00 nn)	Session 2 (2.00 pm – 4.00 pm)	Full Day (10.00 am – 12.00 nn and 2.00 pm – 4.00 pm)
HKICS / HKICPA/ Law Society Members* (Please circle*)	<input type="checkbox"/> HK\$250	<input type="checkbox"/> HK\$250	<input type="checkbox"/> HK\$450
Non-member	<input type="checkbox"/> HK\$450	<input type="checkbox"/> HK\$450	<input type="checkbox"/> HK\$810

CPD points required from The Law Society of Hong Kong

Total HK\$ _____

Proper form completion and full payment made required prior to HKICS acceptance and arrangement of requested matters

Payment Method (Please tick as appropriate)

- By EPS/ UnionPay - in person
- By cheque - in person/by post (Payable to 'HKICS'. Post-dated cheque will NOT be accepted)
Bank : _____ **Cheque No. :** _____
(Specify at back '[Description]' and '[Membership/Student No.]')
- By Credit Card - in person/by post (I, as the cardholder, authorise HKICS to debit the payment from my credit card)
Please fill in the below information if by post.
 - Chartered Secretaries American Express VISA MasterCard**Name of Cardholder (in Block letters) :** _____
Credit Card No. : _____ **Card Expiry date:** _____ MM _____ YY
Cardholder's signature: _____ **Date:** _____

(As with credit card)

If the cardholder and the applicant are not the same person, please explain basis for third party payments (e.g. employer payment). Applicant to bear consequences for unauthorised third party payments: _____
To facilitate payment, credit cards should not expire in less than one month.

Statement on Collection of Personal Data

- (i) Your supply of personal data to HKICS is on a voluntary basis.
- (ii) The information provided by you to HKICS will be used for administration and management; membership admission, registration maintenance and administration; enforcement of members' compliance of the provisions of the Charter and Byelaws of ICSA and the Articles of Association of HKICS for the time being in force and related matters; communications; assessment of qualifications and experience; examinations; continuing professional development; surveys, analysis, research and development; promotion of the profession, ICSA and HKICS; and marketing and provision of services and benefits and organising activities to members, graduates and students.
- (iii) The information provided by you herein may be made available to the related companies or associates, group sister associations, agents, contractors, business associates or service providers of the HKICS or other professional bodies or government bodies or regulators, as may be necessary for any of the above purposes.
- (iv) Apart from the purposes stated above, your personal information will not be transferred to any other parties, unless such parties are authorised by law and request the information.
- (v) Under the Personal Data (Privacy) Ordinance, you have a right to request access to and correction of your personal data. Such requests may be made in writing to our Data Protection Officer at 3/F, Hong Kong Diamond Exchange Building, 8 Duddell Street, Central, Hong Kong or by email to us at privacyofficer@hkics.org.hk.

Terms & Conditions

- (i) All applications are on a first-come, first-served basis. Enrolment will only be processed upon receipt of full payment. Priority of enrolment will be given to HKICS Fellow, Associate and Graduate. **Seat guarantee will only be given to HKICS Fellows and/or Practitioner's Endorsement (PE) holders if registered 10 clear working days with payment prior to the date of the event.**
- (ii) Post-dated cheque is not accepted.
- (iii) **NO REFUND/CANCELLATION/ALTERNATION will be entertained after the application is processed.**
- (iv) The Institute reserves the right to change the listed presenter(s), date, time and venue if necessary. Any change of date, time and venue will be notified by email/sms. Please visit www.hkics.org.hk for latest seminar information.
- (v) When attending seminar, attendees should make sure that their attendance at the entire seminar is noted by signing in **and** signing out of the seminar. No ECPD hour will be awarded without signing in/out record.
- (vi) There may be photography, filming and sound recording at the Institute events. By participating in this Institute event, you consent to be photographed, filmed or sound recorded, and consent to your images and sounds (which may include your identifiable images and sounds) being used by the Institute in the future promotional materials. If you do not agree that your identifiable images and sounds which may have taken at this event be used, please contact Institute so that necessary arrangements may be made.
- (vii) **ECPD hours will be deducted for late arrival or early departure of the seminar.** According to the **CPD Policy** (Appendix 2, clause 1.8), 0.5 ECPD hour will be deducted for late arrival or early departure of over 10 minutes to 30 minutes. 1 ECPD hour will be deducted for late arrival or early departure of over 30 minutes to 60 minutes. NO ECPD hour will be awarded for late arrival or early departure of over 60 minutes.

I hereby declare that I have read and fully understand the above.

Signature: _____ **Date:** _____

For Office Use Only

Invoice #: _____ **Date:** _____