

Regulatory Framework for Opening, Operating and Closing a Business

Disclaimer: Any information rendered in this document is for general references only and should not be considered as legal advice. Users are strongly advised to seek independent legal advice if they are in doubt of their legal position.

Business Insolvency

No.	Regulatory Framework	Link
Legal and Procedural Standards		
<i>Pre-Commencement and Commencement of Insolvency Proceedings</i>		
1.	<p>The following mechanisms are available, under the Legal Framework, to a debtor company in financial distress:</p> <ul style="list-style-type: none"> • Mechanisms directly addressing the obligations of the management of a debtor company during the period approaching insolvency to avoid bankruptcy, or minimize its extent where insolvency is unavoidable • Mechanisms or procedures to implement, with no impediments or obstacles, a contractual based Out-of-Court Workout (OCW) to restructure the company's debt with some or all its creditors, outside of the court system and/or outside formal judicial Insolvency Proceedings 	<ul style="list-style-type: none"> ➤ Sections 373, 379, 394, 405 and 429, Cap. 622 Companies Ordinance ➤ Moulin Global Eyecare Holdings Ltd v Olivia Lee Sin Mei (2014) 17 Hong Kong Court of Final Appeal Reports 466

No.	Regulatory Framework	Link
2.	The procedures of commencement of in-court liquidation proceedings are available under the Legal Framework to an insolvent debtor company and to an individual creditor of an insolvent debtor company	➤ Sections 177(1)(d) and 179(1), Cap. 32 Companies (Winding Up and Miscellaneous Provisions) Ordinance
3.	<p>The following bases for commencement of formal Insolvency Proceedings are allowed under the Legal Framework:</p> <ul style="list-style-type: none"> • Debtor is generally unable to pay its debts as they mature • The value of the debtor’s liabilities exceeds the value of its assets • A company is considered to be unable to pay its debt if execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part 	<ul style="list-style-type: none"> ➤ Section 178(1)(a), Cap. 32 Companies (Winding Up and Miscellaneous Provisions) Ordinance ➤ Section 178(1)(c), Cap. 32 Companies (Winding Up and Miscellaneous Provisions) Ordinance ➤ Section 178(1)(b), Cap. 32 Companies (Winding Up and Miscellaneous Provisions) Ordinance

No.	Regulatory Framework	Link
<i>Liquidation and Reorganization Proceedings</i>		
4.	Upon commencement of proceedings, each creditor shall receive a notification to submit his/her claim, specifying the basis and amount of the claim	➤ Rules 80, 82, 93, 106 and 109, Cap. 32H Companies (Winding-up) Rules
<i>Insolvency Administrator's Expertise</i>		
5.	<p>The minimum qualification requirements for an Insolvency Administrator to be assigned to a procedure</p> <p>Implemented in practice:</p> <ul style="list-style-type: none"> • Minimum number of years of practical experience • Holding a license • Being a registered member of an association • Passing a qualification exam • Completion of specialized training <p>Both established in legal framework and implemented in practice:</p> <ul style="list-style-type: none"> • No criminal record or record of financial wrongdoing 	➤ Panel schemes (for Panel A scheme and for Panel T scheme, see the latest tender documents)

No.	Regulatory Framework	Link
6.	Cases in which an Insolvency Administrator may be disqualified from the case	➤ Sections 168G(2), 262C, 262D, 262B(2) and 262B(3), Cap. 32 Companies (Winding Up and Miscellaneous Provisions) Ordinance
7.	Mechanism for the selection and appointment of an Insolvency Administrator	➤ Section 194(1)(b), Cap. 32 Companies (Winding Up and Miscellaneous Provisions) Ordinance ➤ Rules 45(2) and 106, Cap. 32H Companies (Winding-up) Rules
8.	Mechanism for the removal of the Insolvency Administrator that reflects the manner in which the appointment took place and provides the right to be heard	➤ Section 196(1), Cap. 32 Companies (Winding Up and Miscellaneous Provisions) Ordinance
Assets and Stakeholders		
<i>Management of Debtor's Assets</i>		
9.	The Legal Framework provides for an automatic Stay of Proceedings and specifies the exact time of effect of the Stay of Proceedings (including the day it takes effect and the day it lapses)	➤ Sections 183, 186 and 193, Cap. 32 Companies (Winding Up and Miscellaneous Provisions) Ordinance
10.	The Legal Framework provides for exceptions to a Stay of Proceedings on actions, claims or proceedings which: <ul style="list-style-type: none"> • Include exceptions based on public policy interests such as the restraint of environmental damage or other activities detrimental to public health and safety • Include any actions to prevent abuse, such as the use of insolvency proceedings as a shield for illegal activities 	➤ Section 186, Cap. 32 Companies (Winding Up and Miscellaneous Provisions) Ordinance

No.	Regulatory Framework	Link
11.	<p>Secured creditors may obtain relief to a Stay of Proceedings on actions, claims or proceedings. The relief to a Stay of Proceedings includes:</p> <ul style="list-style-type: none"> • A relief where the value of the encumbered asset is diminishing as a result of the commencement of insolvency proceedings • A relief where the encumbered asset is not needed for the Reorganization or sale of the business as a going concern in Liquidation 	<ul style="list-style-type: none"> ➤ Paragraph 10, The International Commercial Bank of China Co Ltd (Hong Kong Branch) v Kelvin Edward Flynn (Unreported, Companies Winding-up Proceedings 622/2004, 27 January 2005) ➤ Re King's Dyeing & Weaving Factory Ltd (No. 2) [1986] HKC 621, 623
12.	<p>Following the commencement of Insolvency Proceedings the Legal Framework explicitly allows for burdensome contracts (where both parties have not fully performed their obligations) be terminated where the cost of performance of such contracts is higher than the benefits to be received</p>	<ul style="list-style-type: none"> ➤ Section 286(1), Cap. 32 Companies (Winding Up and Miscellaneous Provisions) Ordinance
13.	<p>The Legal Framework explicitly allows for burdensome assets to be relinquished or discharged when the cost of maintaining such assets is higher than the benefits to be received</p>	<ul style="list-style-type: none"> ➤ Section 286(1), Cap. 32 Companies (Winding Up and Miscellaneous Provisions) Ordinance

No.	Regulatory Framework	Link
14.	<p>The Legal Framework explicitly provides for voiding (or invalidating/terminating) the following transactions concluded before the commencement of Insolvency Proceedings:</p> <ul style="list-style-type: none"> • Preferential transactions or contracts, which resulted in a creditor obtaining more than its pro-rata share of the debtor’s assets, which occurred when the debtor was already insolvent or resulted in the debtor becoming insolvent • Undervalued transactions, which were made at a price below market value or as a gift and which occurred when the debtor was already insolvent or resulted in the debtor becoming insolvent 	<ul style="list-style-type: none"> ➤ Sections 266 to 266D, Cap. 32 Companies (Winding Up and Miscellaneous Provisions) Ordinance ➤ Sections 265D, 265E, 266B, 266C and 266D, Cap. 32 Companies (Winding Up and Miscellaneous Provisions) Ordinance
Creditor Participation		
15.	Creditors committee or other creditor representation in Insolvency Proceedings	<ul style="list-style-type: none"> ➤ Section 206(1), 206(5), Cap. 32 Companies (Winding Up and Miscellaneous Provisions) Ordinance ➤ Paragraph 12, In Re Hung Fung Holdings Ltd [2001] 3 Hong Kong Law Reports & Digest 692
16.	Creditors, either individually or through the creditors’ committee or another form of creditor representation, have the right to request up-to-date information on the debtor’s business and financial affairs	<ul style="list-style-type: none"> ➤ Rules 159(2) and 161, Cap. 32H Companies (Winding-up) Rules ➤ Sections 201 and 219, Cap. 32 Companies (Winding Up and Miscellaneous Provisions) Ordinance

No.	Regulatory Framework	Link
Restrictions for Domestic Firms		
17.	The Ranking of Claims during an insolvency procedure	<ul style="list-style-type: none"> ➤ Section 265(1), Cap. 32 Companies (Winding Up and Miscellaneous Provisions) Ordinance ➤ Rule 179, Cap. 32H Companies (Winding-up) Rules
18.	Secured creditors are given absolute priority with respect to the assets over which they hold security over all other creditors	<ul style="list-style-type: none"> ➤ Section 12(2), Cap. 6 Bankruptcy Ordinance, as applied to under Section 263, Cap. 32 Companies (Winding Up and Miscellaneous Provisions) Ordinance ➤ For floating charge (Section 265(3B)) and for preferential debts (Section 265(1)), Cap. 32 Companies (Winding Up and Miscellaneous Provisions) Ordinance
19.	<p>Labor claims are given priority over the following:</p> <ul style="list-style-type: none"> • Secured Creditors • Unsecured Creditors 	<ul style="list-style-type: none"> ➤ Section 265(3B), Cap. 32 Companies (Winding Up and Miscellaneous Provisions) Ordinance ➤ The list in sections 265(1)(b) to (cj), Cap. 32 Companies (Winding Up and Miscellaneous Provisions) Ordinance

No.	Regulatory Framework	Link
20.	Environmental claims are given priority over the secured creditors and unsecured creditors	<ul style="list-style-type: none"> ➤ Section 265(1)(d), Cap. 32 Companies (Winding Up and Miscellaneous Provisions) Ordinance ➤ Cap. 358 Water Pollution Control Ordinance ➤ Cap. 466 Dumping at Sea Ordinance
21.	The Legal Framework, either in insolvency law or labor law, contains a special regime to deal with the protection of workers and employees' claims in insolvency	<ul style="list-style-type: none"> ➤ Sections 265(1)(b), (c), (ca), (caa), (cb), (cc), (cd), (ce), (cf), (cg), (ch), (ci) and (cj), Cap. 32 Companies (Winding Up and Miscellaneous Provisions) Ordinance ➤ Cap. 380 Protection of Wages on Insolvency Ordinance
Specialized Proceedings		
<i>Micro and Small Enterprises</i>		
22.	The Legal Framework provides for specialized proceedings for the Liquidation of non-viable Micro- and Small Enterprises, and Reorganization of viable Micro- and Small Enterprises	<ul style="list-style-type: none"> ➤ Section 227F, Cap. 32 Companies (Winding Up and Miscellaneous Provisions) Ordinance
23.	Eligible debtors are allowed to apply for commencement of an insolvency proceeding at an early stage of financial distress without the need to prove insolvency	<ul style="list-style-type: none"> ➤ Section 177(1)(a), the Cap. 32 Companies (Winding Up and Miscellaneous Provisions) Ordinance
<i>Cross-Border Insolvency</i>		
24.	Rules for cross-border insolvencies, with a clear process for obtaining recognition of foreign proceedings	<ul style="list-style-type: none"> ➤ Paragraph 17, See Re Guangdong Overseas Construction Corporation [2023] Hong Kong Court of Final Instance 1340

No.	Regulatory Framework	Link
25.	A specific process for obtaining recognition of foreign Insolvency Proceedings	<ul style="list-style-type: none"> <li data-bbox="1216 300 2139 367">➤ In Re Agritrade Resources Ltd [2020] 4 Hong Kong Law Reports & Digest 616 <li data-bbox="1216 399 2139 678">➤ In May 2021, the Supreme People's Court of People's Republic of China (PRC) entered into a record of meeting with the Hong Kong SAR where HK insolvency proceedings and restructuring scheme will be recognized in courts of specified Mainland cities whereas Mainland proceedings under the PRC Enterprise Bankruptcy Law may seek recognition from Hong Kong court under the common law route.

Public Services that Facilitate Trade

[Including services provided by government bureaux and departments, and other public organisations]

Disclaimer: There are other digital public services that aim to facilitate business and compliance in Hong Kong. Please refer to the webpages of individual bureaux / departments / public organisations for details.

Business Insolvency

No.	Public Service	Link
Digitalization And Online Services		
<i>E-Courts</i>		
1.	Virtual hearings can be held at the relevant court	➤ “Remote Hearings for Civil Business in Civil Courts” at the Judiciary website
<i>Interoperability of Services (e-services) for Insolvency Proceedings and Public Availability of Information</i>		
2.	On the publication of judgments and information on Insolvency Proceedings, the data and information of judgments concerning Insolvency Proceedings rendered at the competent court is available to the general public	➤ Legal Reference System – Judgment Quick Search
3.	A Judge of the Court of First Instance is appointed the Judge in charge of the Companies & Bankruptcy List of the High Court which is fully operational in practice (requiring that all bankruptcy matters be assigned to them)	➤ Practice Direction 3.1 Bankruptcy and Winding-up Proceedings

No.	Public Service	Link
4.	In Hong Kong, all bankruptcy matters are assigned to the existing commercial courts/bankruptcy courts/bankruptcy judges	➤ Practice Direction 3.1 Bankruptcy and Winding-up Proceedings