



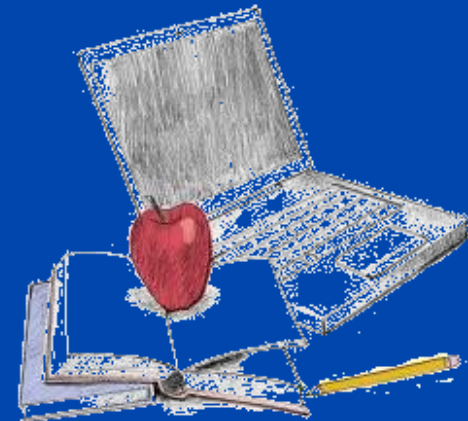
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Out-of-Court Restructuring – the Hong Kong experience

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Overview

- Reorganisation (operational) vs Restructuring (legal and financial)
- Very few cases of OOCR
- Basically involves change of major shareholders, with injection of assets / business by new shareholders and little or no bank "hair-cut"
- Effectively "back-door" listing
- Not encouraged by SFC and SEHK since 2004
- No statutory framework

Scheme of Arrangement

- Pre-1986 Insolvency Act UK provisions
- Sections 166 and 166A of Companies Ordinance
- No moratorium
- Often used in insolvency restructurings
- Part of "back-door" listing in many HK cases during Asian Financial Crisis
- Substantial "hair-cut" for all

Via Court-appointed Provisional Liquidators / Court-appointed Receivers

- Basically to gain moratorium
- Evolution of case law on power and authority of PLs in insolvency restructuring situations:-
 - Re: Keview Technology (BVI) Limited [2002] 2 HKLRD 290;
 - Re: Luen Cheong Tai International Holdings Ltd [2003] 2 HKLRD 719;
 - Re: Legend International Resorts Ltd [2006] 2 HKLRD 192

Via Court-appointed Provisional Liquidators / Court-appointed Receivers (con't)

- Asset protection + restructuring or just restructuring
- Operate through a Scheme of Arrangement to achieve "back-door" listing
- Very popular during Asian Financial Crisis

Provisional Supervision

- Essentially S166 Scheme with moratorium
- Report on Corporate Rescue and Insolvent Trading 1996
- Companies (Amendment) Bill 2000
- Companies (Corporate Rescue) Bill 2001
- Two windows of opportunity (1997/8 & 2002/3) lost
- Current talks of reviving legislation process

Reorganisation in the PRC

- Introduced by New Enterprise Bankruptcy Law in 2006 (wef 1 June 2007)
- Both pre- and post- "admission" / registration of bankruptcy proceedings
- Office of Administrator
- Approval by creditors and by court with supervision by Creditors Committee
- Used principally in A-share (ST cases) insolvency restructurings, resulting in "back-door" listing as well