A+

DRIVING BUSINESS SUCCESS

Issue 8 Volume 16 August 2020

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ACCOUNTANT PLUS
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RESTORING ORDER

Special report: The lives and work of one of the most in-demand professionals – insolvency practitioners

CPA
Hong Kong Institute of
Certified Public Accountants
香港會計師公會

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"While it may seem like the end of the world as we know it, there are still opportunities for businesses."

Dear members,

The year continues to throw up new challenges. While August is typically a quiet month for both the Institute and Hong Kong, this year has been even more so due to all the COVID-19 pandemic restrictions, which were ramped up to suppress the third wave of the virus. In preparing for a few upcoming (virtual) speaking engagements, I've been considering how we can learn lessons from these challenges and overcome the adversity of the pandemic, and look forward to a brighter future.

Working from home – I've mentioned this topic in these messages before but it is worth repeating. The pandemic has shown us how we can work from home and, with technology and planning, contribute effectively to our organizations. While the office is not dead, the meetings, informal discussions and act of gathering really do help to create a stronger team. I hope your organizations are considering how you can implement more flexible working policies in the future. The world is changing, and as we welcome to the workforce the next generation, Gen Z – a digitally native, always-on, generation – we must consider how we can best support them at the start of their careers.

Engaging with colleagues – messaging apps, virtual meeting tools and even an old-fashioned phone call are all tools to help us engage with each other. Think about how you can engage your team, but try not to expect instantaneous replies. Work-life balance should still exist even though we can always be messaged.

Communicating with our clients – meeting our clients is an important way to maintain business relationships. But in the age of COVID-19, it has been more of a struggle. With businesses across Hong Kong struggling to stay afloat, consider letting your clients know you're there and thinking of them.

Responding to opportunities – while it may seem like the end of the world as we know it, there are still opportunities for businesses. Consider your service offering, the pain points your clients or employers have raised in discussions, and how you can help them. As CPAs we should consider how we can take what we see in the financial data and analyse it to develop solutions.

Staying healthy and positive – being healthy is a way we can help our bodies to fight off viruses and illnesses. Regular exercise and a healthy diet are vital, and with the Internet it is easy to access some simple workout tips and routines you can do from home and healthy recipes to cook. It is also important not to forget our mental health. There are professionals out there you can speak to if you encounter stresses and troubles.

The Financial Services Development Council has announced a new job creation scheme, with a quota of 1,500 full-time jobs, for the finance industry. The Financial Industry Recruitment Scheme for Tomorrow (FIRST) will support eligible employers in four regulated sectors, including CPA firms and corporate practices regulated by the Institute, through subsidies of HK$10,000 per month for 12 months for the wages of one to 25 new employees (eligibility based on existing employee numbers). Registrations for FIRST start soon.

I'm always pleased to see the Institute's members giving back. On 31 August, members of the Restructuring and Insolvency Faculty Executive Committee were invited by Caritas to discuss individuals' debt restructuring and bankruptcy-related issues in a webinar. There's another webinar on 24 September. Details are available on the website of Caritas Family Crisis Line and Education.

This month, my specialization of restructuring and insolvency is also featured in *A Plus*. I hope you read and enjoy the special report to better understand one of the profession's many specialisms. If you're interested in it as your specialty and are inspired by the stories shared, take the Insolvency Preparatory I course starting in September.

Finally, congratulations and best of luck to the Institute's longest-serving Council member, Ada Chung, who becomes the Privacy Commissioner for Personal Data in early September. As a Council member since 2007, Ada has devoted her time to our profession, and I would like to deeply thank her for her contributions.

Johnson Kong
President

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A+ DRIVING BUSINESS SUCCESS

About our name
A Plus stands for Accounting Plus. It represents a profession that is rich in career options, stays relevant amid rapid changes, and adds value to business. This magazine strives to present the global mindset and varied expertise of Institute members – Accountants Plus.

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NEWS

Institute news   Business news

Institute releases new guides on COVID-19-related issues

The Institute has published a quick guide advising auditors about the key issues and considerations impacting an audit of financial statements as a result of the COVID-19 pandemic. The guide also includes links to resources from global accounting bodies to help members navigate some of the challenges. For more details, read this month's *Thought Leadership* column on page 29.

With the pandemic particularly having a significant impact on small- and medium-sized entities, the Institute has also issued educational guidance highlighting key considerations when preparing financial statements under the Small and Medium-sized Entity Financial Reporting Framework and Financial Reporting Standard. It can be found on the Institute's website.

The Institute's Standard Setting Department welcomes comments and feedback on this guidance, which should be sent to *commentletters@hkicpa.org.hk.*

2020 Compliance Forum – A closer look at professional scepticism

The Compliance Forum is now available to watch online free-of-charge. The forum takes a closer look at applying professional scepticism in audits. It also explains the concept of professional scepticism and shows how it works in practice by taking viewers through some commonly encountered situations in the audit process. Register online via the Institute's website.

HKFRS live webinars in September

Next month, members can access live webinars on three Hong Kong Financial Reporting Standards (HKFRS). They cover tips for performing impairment tests and preparing the disclosures under Hong Kong Accounting Standard (HKAS) 36 *Impairment of Assets*, the revised definition of a business and optional concentration test in HKFRS 3 *Business Combinations*, and how to apply HKFRS 16 *Leases* and the practical expedient for COVID-19-related rent concessions. Course and enrolment details are available on the Institute's website.

Annual taxation conference 2020 e-Seminar now available

Missed the annual taxation conference 2020? The archived session is now available. Speakers, including the Inland Revenue Department's Deputy Commissioner (Technical), discuss the latest changes in the Hong Kong domestic tax legislation and new tax practices, decisions from court cases and the Board of Review, and other popular international tax topics. It also includes a lively panel discussion on a hypothetical merger and acquisition transaction. Read the highlights of this discussion in this month's *Second Opinions* on page 20.

Collaboration with Caritas on debt counselling services

Caritas is offering a series of webinars to the public to discuss individuals' debt restructuring and bankruptcy-related issues. The Institute's Restructuring and Insolvency Faculty Executive Committee has been invited to provide guest speakers for the webinars on 31 August and 24 September. Interested members can refer to the details on the Caritas Family Crisis Line and Education website: *debt.caritas.org.hk.*

Employee Assistant Programme for SMEs

With social distancing and quarantining being the new norms during the coronavirus pandemic, interacting with the world around us has changed. People might feel uneasy or even anxious. The Institute is mindful of the needs of our members and has arranged access to the Employee Assistant Programme run by The Hong Kong Council of Social Service, serving SMEs in Hong Kong. Through counselling services including interviews, talks and workshops and other professional support, the programme assists employees to relieve the negative impacts of work and personal difficulties and stresses. Join as a member of the Caring SME Alliance to enjoy a preferential by completing the application form available at *caringcompany.org.hk/en_sme_pro.php*

Volunteer via Time Bank app

Volunteering is a way to make a difference. With Time Bank, a recently launched app initiated by the Hong Kong Inheritage Foundation and supported by the Institute, your volunteer service hours are redeemable for other services or commercial products. It also serves as a matching platform between volunteers and beneficiaries. Join us to build a better society by downloading the app at App Store or Google Play.

Resolution by Agreement

Kong Kam Yu, CPA

Complaint: Failure or neglect to observe, maintain or otherwise apply the fundamental principle of professional behaviour in sections 100.5(e) and 150.1 of the Code of Ethics for Professional Accountants.

Kong was formerly an executive director, qualified accountant and company secretary of Golden Meditech Holdings Limited, a Hong Kong-listed company. As a director, Kong was responsible for ensuring the company's compliance with the Rules Governing the Listing of Securities (listing rules) of The Stock Exchange of Hong Kong Limited (stock exchange).

In 2018, Kong was sanctioned by the stock exchange for a breach of the listing rules and his director's undertakings. The breach arose as a result of Kong's failure to ensure that the company made timely disclosure and obtained shareholders' approval of a series of transactions and events which occurred in 2011 and 2014, involving the company's interest in a foreign listed company. Kong was reprimanded by the stock exchange and ordered to attend 24 hours of training on listing rules compliance and director's duties.

The Institute concluded that the public censure of Kong by the stock exchange for the above matter would negatively affect the public's view of the professional competence of a CPA.

Regulatory action: In lieu of further proceedings, the Council concluded the following action should resolve the complaint:

1. Kong acknowledges the facts of the case and his non-compliance with the relevant professional standards;
2. Kong be reprimanded; and
3. Kong pay an administrative penalty of HK$50,000 and the Institute's costs of HK$15,000.

Disciplinary finding

Wong Tam Yee, CPA

Complaint: Failure or neglect to observe, maintain or otherwise apply the fundamental principle of integrity under sections 100.5(a), 110.1 and 110.2(a) of the Code of Ethics for Professional Accountants, and the fundamental principle of professional behaviour under sections 100.5(e) and 150.1 of the Code of Ethics. The respondent was also guilty of professional misconduct.

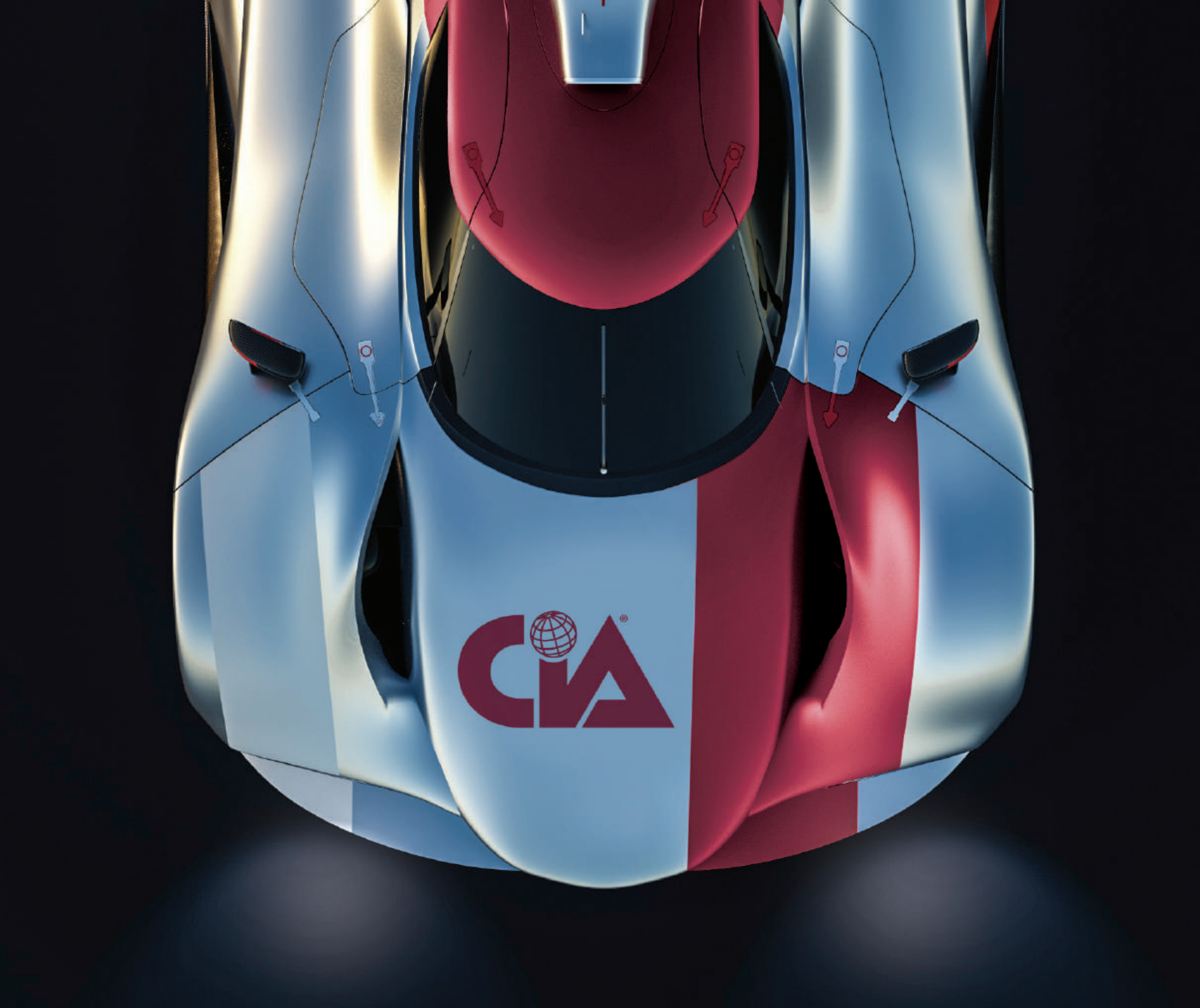
Wong was the sole director and shareholder of a foreign private company, which was holding shares of two Hong Kong listed companies with a market value of HK$146 million as at September 2013. The identity of the beneficial owners of the company and the shares was in dispute among Wong and certain other parties.

In September 2013, Wong caused the company to sell the shares to a number of individuals at a substantial discount to their market price. A cheque drawn by one of the buyers for HK$4 million was given to the company as part of the purchase consideration, but Wong never cashed it. In the sold notes for the shares submitted for stamp duty purposes, Wong falsely stated that the shares were sold for full market value and that the consideration had been received.

Subsequently, a purported beneficial owner of the company initiated legal proceedings against Wong and others (the buyers and transferees of the shares) in relation to the disposal of the shares. The court found that Wong had been in breach of his fiduciary duties as a director when he caused the company to sell the shares at a substantially discounted price without first attempting to sell them in the open market, and there was no security for payment other than the HK$4 million deposit. The court also found that Wong had in effect misappropriated the shares, and had made a false and misleading statement in the sold notes. As a result, the court ordered Wong and some of the others to pay substantial equitable compensation to the company.

Decisions and reasons: Wong was removed from the register of CPAs for two years with effect from 21 August 2020. In addition, Wong was ordered to pay costs of the disciplinary proceedings of HK$128,202. When making its decision, the Disciplinary Committee noted that integrity and honesty are the cornerstones of the accountancy profession, but Wong had breached those fundamental principles in the dereliction of his duties as a director of the company. The committee also noted that the court's findings and Wong's blatant disregard for his fiduciary duties to the company had damaged the reputation of the accounting profession.

Details of the Resolution by Agreement and disciplinary finding are available at the Institute's website.


CIA

What are **practice promotion pitfalls** and **section 42 offences**?

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In the three years ended 30 June 2020, the Institute has handled more than **45** cases concerning improper practice promotion and alleged offences under section 42 of the Professional Accountants Ordinance.

Practice promotion pitfalls

- offering to provide audit services without proper credentials
- sending unsolicited promotional materials
- including service fee information in promotional materials or websites

How does the Institute deal with the pitfalls?

- disapproval letter for minor cases
- Resolution by Agreement for moderate cases
- disciplinary proceedings for serious cases

Key figures *(three years ended 30 June 2020)*

19 disapproval letters issued

10 cases in which the Institute proactively identified improper conduct

Section 42 offences

- individuals or companies fraudulently holding themselves out as CPAs or CPA practices
- offering services that only practising CPAs can provide
- maximum penalties
  - HK$25,000 fine
  - 12-month imprisonment term

How does the Institute deal with the offences?

- report suspected offences to the police for investigation
- issue warning letters requesting removal of misleading promotional information
- monitor the progress of corrective actions
- assess conduct of members who might be associated with unlicensed CPA practices to identify improper conduct

Key figures *(three years ended 30 June 2020)*

15 cases reported by the Institute to the police

8 cases in which the Institute proactively identified section 42 offences

How can you help?

Members and registered students should:

- adhere to the ethical requirements concerning practice promotion activities in section 900 *Practice Promotion* in the Code of Ethics for Professional Accountants (previously section 450)
- refrain from conducting improper practice promotion activities directly or indirectly
- take immediate corrective actions upon being notified of possible breaches by the Institute

Members of the public are advised to:

- ensure service providers are licensed CPA practices before engaging them
- discontinue engagements with unlicensed CPA practices for regulated services (e.g. statutory audits under the Companies Ordinance)
- promptly report suspected section 42 offences to the police or the Institute

GLOBAL DIVIDENDS EXPERIENCE WORST DECLINE IN A DECADE

Global dividend payments plunged US$108 billion to US$382 billion in the three months to June, as companies failed to meet payouts in response to the coronavirus pandemic. Asset management group Janus Henderson, which tracks dividends globally, found that total shareholder payouts fell by 22 percent year-on-year, the worst decline since it launched its global dividend index in 2009. The group expects dividends to fall further by 19 percent this year in the best-case scenario. It previously forecasted falls of up to 35 percent. The worst affected country was the United Kingdom, which saw companies paying US$15.6 billion between April and June, down from US$34 billion during the same period last year.

WORKING FROM HOME TO CONTINUE EVEN AFTER CORONAVIRUS, SAYS PWC U.K.

PwC in the United Kingdom expects the majority of its 22,000 members of staff to alternate between working at the office and working from home, even after the coronavirus pandemic is over. Usage of its U.K. offices saw a steep decline during the crisis, according to PwC U.K. spokesman Richard Pain, who noted that just over a quarter of its employees showed up for work on average across its more than 20 offices. With upwards of 330,000 cases of COVID-19 reported in the U.K. so far, the firm hopes to have its offices operating at half capacity by the end of next month, with returning made voluntary. "A blend of office and home working is the future – but there's still very much a place for the office," said Kevin Ellis, Chairman and Senior Partner at PwC U.K.

41% OF HONG KONG'S WORKFORCE FEEL THEY COULD BE LAID OFF AT ANY TIME

A new survey conducted by Standard Chartered finds that many young and self-employed people feel their jobs are at risk amid a weakening economy caused by the COVID-19 pandemic. The study, which surveyed 1,000 people in Hong Kong, Taiwan and Mainland China, found that Hongkongers were most pessimistic about their prospects of the three markets and foresee changes to their unemployment over the next three to six months, including reduced pay and working hours. The city saw its unemployment rate soar to its highest level in more than 15 years, hitting 6.2 percent in June, while its economy contracted 9 percent in the second quarter of the year.

CATHAY PACIFIC REPORTS HK$9.9 BILLION LOSS

Cathay Pacific Airways confirmed a loss of HK$9.9 billion for the first six months of the year, citing the coronavirus pandemic and geopolitical conditions as factors that continue to hamper passenger demand. The loss, compared to a profit of HK$1.34 billion seen during the same period last year, has seen the embattled airline forcing staff to take pay cuts and resorting to cost savings plans. The flag carrier is undergoing a restructuring which will see job cuts and a further reduction in aircraft and available routes. Its management has described the losses as the biggest challenge in the carrier's 73-year history. "I don't think we are expecting the second half to be better than the first half at this point in time," said Cathay Pacific Chairman Patrick Healy at a press conference.

> "I don't think we are expecting the second half to be better than the first half at this point in time."

CREDIT SUISSE FACES PROBE

Credit Suisse Group AG is facing a criminal investigation amid allegations that it helped more than 2,600 clients hide untaxed earnings in Swiss accounts, according to prosecutors in Belgium. Investigators are looking for evidence of money laundering and whether the Swiss bank acted as an illegal financial intermediary, said Eric Van Duyse, a spokesman for Belgium's Federal Prosecutor's office, on 24 August. He confirmed that prosecutors obtained the bank details of Belgian clients with Credit Suisse accounts between 2003 and 2014. The probe comes as Swiss banks have come under more global tax evasion crackdowns over the past decade.

MTR CORPORATION ANNOUNCES HK$334 MILLION IN NET LOSSES AMID PANDEMIC

The MTR Corporation reported a net loss of HK$334 million in the first six months of the year, as the coronavirus pandemic has shut schools and forced citizens, including 170,000 civil servants, to work from home, leading passenger numbers to fall by 37.7 percent. The net losses, announced on 6 August, are a sharp decrease from a net profit of HK$5.5 billion seen during the same period in 2019. It is the rail operator's worst performance since it went public 20 years ago. MTR Chief Executive Officer Jacob Kam said the outlook for the rest of the year remains unfavourable. "The challenge of the COVID-19 pandemic has been unprecedented to the company and Hong Kong. A lot of companies and industries have suffered significantly... it is hard to forecast the outlook for the rest of this year, which depends on the development of the pandemic," he said.

CHINESE COMPANIES TO COMPLY WITH NEW RULES OR FACE DELISTING IN THE U.S.

Chinese companies must comply with new rules issued by a regulator in the United States or be forced to delist from U.S. exchanges by January 2022. In a report released on 6 August, the President's Working Group on Financial Markets recommended the Securities and Exchange Commission to order U.S. bourses to adopt new rules for foreign issuers, which includes a new requirement that they provide access to their audit working papers to sell new shares and continue listing in the U.S. In the report, Mainland China was the only country mentioned by name among non-cooperating jurisdictions. The new rules follow the delisting of Luckin Coffee, which was caught in a US$300 million accounting fraud case this year. The move also comes amid fresh U.S.-China tensions that could see more companies from Mainland China opting to list locally or in Hong Kong.

ANT GROUP ANNOUNCES PLANS FOR DUAL LISTING

Ant Group, Mainland China's largest digital payments provider and operator of Alipay, has filed applications to sell shares simultaneously in both Hong Kong and Shanghai. The listing is expected to be the largest fundraising in history and to surpass Saudi Aramco's US$29.4 billion listing last year, the current record holder. Ant plans to raise more than US$20 billion from the dual-listing, which could take place in October, valuing the group at over US$200 billion. The offering size could reach US$30 billion if market conditions allow, reported *Reuters*, citing people with knowledge of the matter. The prospectus said Jack Ma is Ant's "ultimate controller," holding a 50.52 percent stake in the company.

FINES FOR AML-RELATED FAILURES ON THE RISE GLOBALLY

Fines imposed by regulators for anti-money laundering (AML) failures for the first six months of the year topped the amount issued for the whole of 2019. A review of global authorities' enforcement actions by multinational financial consultancy firm Duff & Phelps found that fines reached a total of US$706 million for the year until June, compared with 2019's overall amount of US$444 million. The review found that the penalties issued this year were for the same procedural deficiencies that regulators have underlined since 2015, which include due diligence on new customers, management of AML measures, monitoring of suspicious activity and ensuring compliance with the rules.

80% OF CEOs HAVE SEEN THE DIGITAL TRANSFORMATION ACCELERATING DURING THE PANDEMIC

Companies around the world have moved their operations online and made recruiting and retaining employee their top priority since the COVID-19 pandemic struck, according to *The KPMG 2020 CEO Outlook* survey, released on 25 August. The survey found that 80 percent of chief executive officers had sped up their digital expansion plans, and adjusted to staff working remotely and dealing with customers online as a result of the pandemic. Sixty-nine percent of CEOs surveyed were planning to cut office space in the short term while 73 percent noted that the shift to working from home had increased the pool of job candidates, a move that could see teams more spread out globally and interacting online.

HKEX ANNOUNCES RECORD HK$5.23 BILLION PROFIT

The Hong Kong Exchanges and Clearing (HKEX) reported on 19 August that its profit rose by 1 percent to HK$5.23 billion or HK$4.15 per share in the first six months of the year. It is the highest increase the HKEX has seen since its establishment in 2000, and the third year in a row it has broken its record for earnings during the first six months. The figure comes after 64 companies raised a combined HK$92.8 billion in the city in the first half of the year, making Hong Kong the world's second most popular destination to list, according to the *South China Morning Post*. "With robust trading volumes, a strong IPO pipeline, and an expanding product portfolio, including the suite of newly launched MSCI index futures, I am confident that HKEX will continue to play a major role in connecting China and connecting the world," said HKEX Chief Executive Charles Li in a statement.

Restructuring and insolvency practitioners are in demand like never before. The economic downturn brought by the coronavirus pandemic has led to an uptick in financially-distressed companies seeking experts to turn things around – and to do it quickly. Jeremy Chan speaks to insolvency practitioners and finds out how they are dealing with more complex companies, and why rescuing them requires much more than just insolvency know-how, but a true strength of character

Illustrations by Gianfranco Bonadies

Around the world, the pandemic has pulled the shutters down on businesses – and for many, it's permanent. In Hong Kong, 3,600 bankruptcies were registered in the first five months of the year, up by 12.5 percent compared to the same period in 2019, according to the Official Receiver's Office (ORO) in June. Winding-up petitions went up by 25 percent with almost 150 companies forced into liquidation.

With all this happening, restructuring and insolvency professionals are experiencing a busy time. They are being called on to help troubled businesses navigate lawfully and quickly through the pandemic to hopefully more stable times ahead.

But even in times of no economic downturn, Hong Kong's vibrant business environment will inevitably see some companies fail. Insolvency practitioners thrive in this area with their specialized knowledge and ability to bring order to chaotic situations and advise anxious company owners on how to avoid the worst.

The nature of this already taxing job has become more complex with the increase of cases involving companies across multiple jurisdictions, a lack of a formal corporate rescue procedure in Hong Kong and, nowadays, more companies to restructure. Insolvency practitioners need to be highly skilled and knowledgeable in a range of technical areas and equipped with soft skills in order to help maintain Hong Kong's status as one of the most trusted business environments in the world. If a company gets into trouble, these professionals can be trusted to make ethical and fair decisions.

As the city's economy continues to be mired in uncertainty, this special report looks at the work processes of restructuring and insolvency specialists, how they are navigating new challenges, the expertise needed to rescue companies in increasingly difficult environments, and the role they play in upholding Hong Kong's status as a respected international finance and business hub.

RESCUE AND RECOVERY

Kenneth Yeo, Director and Head of Specialist Advisory at BDO, a Hong Kong Institute of CPAs member and Deputy Chairman of the Restructuring and Insolvency Faculty Executive Committee (RIFEC), says insolvency specialists are very much used to seeing and helping companies that have hit rock bottom. "By the time we are appointed, the company's usually on its last legs," he adds. With impatient creditors hoping to obtain as much money as possible from insolvent companies, practitioners must explore ways to recover assets. "We look at every possible asset that can be recovered – even ones that have already been transferred out. If assets have been transferred out, we need to speak with the recipients and try to assess whether we can recover such assets from the transferees on the grounds that there was an unfair preference."

Liquidations involve thorough investigations into a company and its owners. As Yeo notes, the process can be both lengthy and tricky when it comes to identifying assets that can be recovered. Listed companies might have already dissipated all of their assets

THE PROBLEM SOLVERS

or transferred them all out. In cases like these, insolvency practitioners would have to find an investor who is willing to inject capital, known as a white knight, into the company to prevent it from collapsing.

An investigation would first involve looking at the company's financial history. This can reveal a lot, according to Yeo. "We try to identify why the company failed in the first place and whether there were any assets transferred out during the last two years to related or unrelated parties," he says. "And if there were, we can take action against the directors and transferees and try to claw back the assets." Yeo and his team would also have to determine which transfers were legitimate, and which were not. "If it was a genuine arms-length sale, that makes things more complicated because it was done in good faith."

Dick Tang, Manager, Strategy and Transactions at EY, an Institute member and a member of the RIF, agrees that the process of recovering assets is further complicated if company owners deliberately conceal them. "Not all directors want to disclose everything," he says. If insolvency practitioners aren't able to encourage company owners to reveal valuable information, this would prompt further investigations into the background and transactions of the company. "In one case, we eventually found out that the director concealed a valuable overseas investment held by the company." Some members of management, Tang notes, will even go out of their way to mislead investigators. "There are cases of management showing us fake accounts," he adds.

Insolvency practitioners often work closely with legal professionals in investigations, which may involve courts in ongoing hearings and eventual prosecutions. Lawrence Chan, Partner at Wilkinson & Grist, an Institute member and a member of the RIFEC, explains how they work with accountants. "Accountants can help to highlight fraudulent or dubious transactions and then discuss them with the lawyers in deciding how to proceed," he says. "Lawyers can then determine the proper way to obtain more information or documents pertaining to those transactions and how to pursue the wrongdoer." Lawrence acts as a legal advisor in liquidations. He says that though insolvency practitioners are expected to have a basic understanding of legal terminology, lawyers can help liquidators interpret legislation in investigations if need be and also help to launch claims against company auditors for professional negligence.

Conversely, he says lawyers who have a basic knowledge in accounting are an advantage. "As an insolvency lawyer, a firm grasp of financial reporting helps us to understand a company's financial accounts from a legal perspective," he explains. "This helps us to determine the legal implications for management in how they have disclosed the company's financial affairs in their accounts, and also whether the company's auditors are in breach of auditing standards in giving the auditor's opinion."

Jessica Zhao, Senior Associate, Restructuring, at Grant Thornton and an Institute member, says legal advisors play an important part in the asset recovery process of a liquidation. "To maximize the benefit to the liquidation estate, it is important that a clear scope of work is agreed on between the lawyers and insolvency practitioners," she says. "There also needs to be clear communication between the parties about the merits and costs that come with pursuing any particular course of action."

A practitioner also needs to decide early on whether rescuing and restructuring an insolvent company is viable. "We're a bit like doctors trying to save patients – the question is how to save them, and whether it will cost an arm and a leg," says Kenny Tam, Founder of Kenny Tam & Co. CPA Limited, an Institute member and a member of the RIFEC. "In some cases, by keeping a company alive, they will experience more issues, especially with landlords. Company offices, shops and property all occupy space. If they are unable to pay rent, rescuing them isn't the best choice." Failure to rescue a distressed company could also incur costs that practitioners have to personally bear.

Lawrence adds that small- and medium-sized enterprises (SMEs) will also make up a large chunk of foreseeable bankruptcies, despite the loans announced by the Hong Kong government this year. Lawrence cautions: "The existing debts of SMEs could continue to accumulate over time," he says. "And once that grace period passes, we expect to see a surge in bankruptcies and liquidation cases." Indeed, half of SMEs do not expect to survive beyond the next six months, according to a survey conducted this month by the Hong Kong General Chamber of Commerce. There are over 340,000 SMEs in Hong Kong, accounting for 98 percent of the city's businesses, and 45 percent of the city's employment in the private sector, according to the Trade and Industry Department.

Galaxy Chan, Director, Restructuring and Disputes, at Duff & Phelps, an Institute member and an RIFEC member, also warns of more bankruptcies for sole proprietors. She is dealing with more cases involving businesses owned by sole proprietors who have been forced to shut down their restaurants or shops due to a lack of business brought on by the pandemic. "At the end of the day, they'll be sued by creditors who want to put them into bankruptcy. It's becoming more difficult for us to help these creditors – most of these bankrupts don't have any assets left in their estate," she says.

Galaxy's role also sees her

"In some cases, by keeping a company alive, they will experience more issues, especially with landlords."

managing family disputes. Often, it concerns the estate, or an individual's property, possessions, financial securities, cash, and other assets that an individual owns or has a controlling interest in. "I come across this the most when I deal with high-net-worth individuals who have passed away, have dementia or are mentally incapacitated," she adds.

"These disputes usually happen when a family patriarch passes away and a long list of relatives are all trying to claim a share of the person's estate." She notes how her experience working with difficult individuals as an insolvency practitioner comes into play especially when she has to facilitate family meetings. "Emotions are running high, which is something we must deal with," adds Galaxy. "These people have just lost a relative, and they're sad, but on the other hand, they are all fighting for a share of the estate. There are meetings where they shout and argue with each other, and it's my job to calm them down. It's not an easy task."

COMPLEX CASES

Galaxy has also been caught in a flurry of work, dealing with more bankruptcies than usual. She expected this. What she didn't expect was just how complex the cases would be, and how heavily she would be relied on as an insolvency practitioner to turn the situation around.

In an ongoing case, she is tasked with helping to liquidate a clothing and footwear company. Already, she has been helping to quell endless worries from suppliers. With the company's main retail stores based in France and its suppliers located in regions such as Mainland China, India and Bangladesh, it has been a case of dealing with one frustrated supplier after the other.

"With the lockdown in France earlier this year and an increase in its unemployment rate, people have been spending a lot less, which severely impacted the retail business there," explains Galaxy. "This forced the company into liquidation two or three months ago." With the suppliers left with little or no business, Galaxy has been bombarded with daily emails and calls from them. "It was really challenging the first two weeks. There were also lockdowns in China, India and Bangladesh, so employees there were really struggling," she says.

It's expected that the pandemic will lead to more companies going under for a foreseeable time. Galaxy, who has worked in insolvency for over 20 years, saw similar spikes in the months after the Asian Financial Crisis of 1997 and the Global Financial Crisis of 2007-2008. This pandemic is no different, she says. "We're still waiting for the worst to come and expect to see a lot more cases within the next six to 12 months."

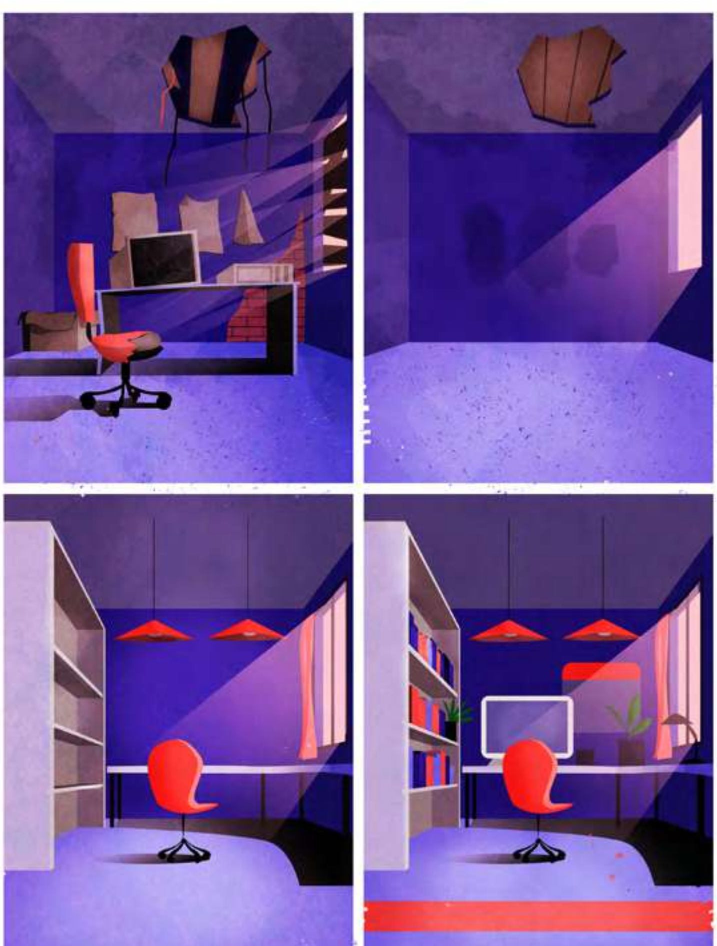
RENOVATE... OR LIQUIDATE

The economic downturn has also led to insolvency practitioners being called into troubled companies to try to rescue and restructure them. A restructuring often involves reorganizing the operational, financial, and organizational structures of a company facing financial pressures with the aim of improving its business. While a company restructuring changes a company's structure or operations to cut costs or sell viable assets to new owners to improve its operations, a debt restructuring sees a company consolidating its debts to make them easier to discharge by changing the payment terms.

For example, Hong Kong's flag carrier Cathay Pacific announced plans in July to restructure by, among other things, forcing its older pilots into early retirement in a bid to cut pilot costs. The airline saw losses of almost HK$10 billion in the first six months of the year, also brought on by COVID-19, which has crippled air travel worldwide.

By providing rapid assistance, practitioners are able to identify the nature and severity of a company's issues, develop solutions and find investors. They must work closely with members of management and creditors to ensure a smooth restructuring.

Zhao at Grant Thornton has been handling more restructuring cases than usual. "The social unrest of 2019 and the COVID-19 pandemic this year has severely affected the cash flow of many companies," she says, adding how most cases involved companies seeing sudden drops in their revenue over a short period of time.



When assigned a new restructuring case, Zhao says it is crucial for restructuring experts like herself to put on their detective hats and find out the cause of the company's problems, and most importantly, any underlying issues. This helps to formulate strategies and provide sound advice to company owners. "We need to investigate whether the company is facing issues related to its management, policies, investment failures, or whether their strategies are at fault," she explains. "For example, are they seeking to expand its operations when the economy is facing a downturn? They may not have done enough research prior to expanding." Other issues that can hamper a company's performance, Zhao adds, include whether the company's policies are effective enough or whether frontline staff is indeed performing well.

While most company owners are eager to help during the interview stage, restructuring and insolvency practitioners often have to deal with uncooperative members of management. "Not all of them choose to cooperate," she says. "They refuse to disclose the problems they are facing, or worse, provide us with limited information. This stops us from coming to real conclusions, and that stops us from providing them with the best possible advice." Company directors may feel wary or even intimidated with the idea of revealing sensitive information to people they haven't met before. Therefore, Zhao stresses the need to build rapport early on. "We remind the management that we are professionals and that we are there to help them. We try to build their confidence in us," she says. "We also tell them that refusing to cooperate makes both our and the company management's lives harder, as well as the lives of creditors, the banks and suppliers."

Lawrence at Wilkinson & Grist says insolvency practitioners can remind members of management that their decisions are strictly impersonal. "It's important for directors to know that the actions we take or propose are for the best interests of the company and its stakeholders," he explains. "Once they understand that other directors would be similarly advised in other cases, they would be more willing to cooperate."

Tang at EY agrees that joint action is vital during the initial stages of a restructuring. "During interviews with management, we get them to explain their business models, critical assets and their financial position," he says. "We request them to provide their latest financial accounts, which we analyse to determine what happened to the company." Restructuring experts then work closely with the management and the white knight to devise a restructuring plan, which needs to be agreed upon by all parties.

Therefore, he says, it is imperative for insolvency practitioners to remind directors that it is their duty to cooperate from the beginning. "Under the statutory framework, directors already have a duty to cooperate with liquidators or trustees, otherwise their misconduct can be reported to the ORO for further action."

Yeo at BDO agrees: "If the directors of insolvent companies have nothing to hide and the failure of the company was purely a commercial matter, they should be cooperating with the liquidators – but unfortunately that is more the exception than the norm."

He notes that the lack of a corporate rescue bill (see sidebar on the right) in Hong Kong still adds a degree of uncertainty to restructurings. "In any informal restructuring without the involvement of the court, any creditor can still file a winding-up petition or take legal action against the debtor and derail the entire restructuring," he says. With companies in debt, insolvency practitioners also often find themselves knee-deep in negotiations with creditors.

There are a few ways to deal with tricky creditor negotiations, says Yeo. "I first present the company's financial position to the key creditor or creditors who have taken action. I tell them: 'if the company were to be wound up, this is what we expect as a result of assets that won't be recovered in full or at all.' I inform them whether they'll get anything back at the end of the day." In cases where the creditor has already filed action, Yeo might resort to a debt restructuring and ask if the creditor is willing to accept equity in exchange for capital. "We'll also explain the prospects of the company to the creditor such as its future plans and whether or not we can expect a capital injection from a white knight."

Corporate rescue bill

Insolvency practitioners are waiting eagerly for the introduction of the long-awaited corporate rescue bill. The bill, which was first mooted in 1996 just before the Asian Financial Crisis of 1997, seeks to introduce a procedure like the United Kingdom's administration or the Chapter 11-procedure in the United States into the city's laws. The latest draft of the bill was released in July by the Hong Kong government, which contains detailed legislative provisions for a statutory corporate rescue regime and insolvent trading.

A key aspect of the bill includes a moratorium of up to six months, which could protect debt-stricken companies from winding-up or liquidation proceedings. Currently, businesses are at risk of receiving winding-up petitions from multiple creditors as soon as they face major financial difficulties, due to a lack of any statutory "breathing space."

Kenny Tam, Founder of Kenny Tam & Co. CPA Limited, welcomes the proposed moratorium. "The moratorium will provide time for liquidators and creditors to go through everything together," he says. "As insolvency practitioners, it's our objective to help companies continue. But right now, the lack of a moratorium means there isn't enough time for practitioners to help in restructuring proceedings. This might make it easier for practitioners to turn down cases due to a lack of time."

The bill also proposes the initiation of "provisional supervision," which aims to provide distressed companies with an opportunity to have their business or part of their business saved as opposed to going into liquidation. This will see insolvency practitioners appointed as provisional supervisors (PS) and a moratorium put in place. As Lawrence Chan, Partner at Wilkinson & Grist, notes, companies currently have to be put into provisional liquidation, which can further complicate their situation. "Putting a company into provisional liquidation attaches a stigma to the company, and that can lead creditors, shareholders and stakeholders to lose confidence," he says. "But with provisional supervision, the company, strictly speaking, hasn't been put in any form of liquidation yet. So without this stigma, the insolvency practitioner will be in a better position to restructure the company."

However, a few insolvency practitioners are concerned about increased personal liabilities that may come with taking on the role of a PS. As Kenneth Yeo, Director and Head of Specialist Advisory at BDO, explains, this may include shouldering liabilities such as a company's rent, employee wages and creditor claims incurred by the company after the appointment of a PS, which might discourage some practitioners from taking on new rescue cases.

"Generally, we are all supportive of the bill – which has been long overdue – but the draft bill imposes too many obligations on the insolvency practitioner," Yeo says. A PS would only have 16 days to negotiate with the company owners and creditors on how their liabilities could be waived or capped under any existing contracts that they take on. "Unlike a receivership appointment where the insolvency practitioner is indemnified by the client against all claims, the PS would only be indemnified by the assets of the group," adds Yeo.

Tam agrees. "The moment we commit to rescuing a company, everyone's counting on us and the clock starts ticking. Another passing day is a day's worth of liability incurred – so this adds more pressure on those stepping into the rescue," he says. "It's about saving a company as soon as we can, while also balancing the needs of its stakeholders. If we're forced to accept all these personal liabilities with the risk of not being fully compensated by a company's assets, it will make things more difficult."

The government is expected to hold more consultations before introducing the bill in the next legislative session. Yeo ultimately hopes amendments are made before its finalization. "The bill is still in its draft stage, so I am hoping changes to do with the PS's liabilities are made during the review."

A day in the life

The average day for an insolvency practitioner is anything but ordinary. It revolves around dealing with ongoing cases through frequent communications with both local and overseas teams, working with creditors, shareholders and banks, and attending court hearings.

For Jessica Zhao, Senior Associate, Restructuring, at Grant Thornton, each day presents more time to make further progress on an existing case. "I begin each day by replying to emails from different parties. I also carefully monitor the progress in terms of asset recovery," she says. Other days, she adds, involve tasks more analytical in nature. "I might need to investigate a company's historical transactions, look at financial records and then write a report based on my findings to formulate further actions and a working plan." Zhao also needs to tend to inquiries from creditors, stakeholders, the tax department and banks.

Kenneth Yeo, Director and Head of Specialist Advisory at BDO, says his day is also largely spent on dealing with stakeholders, creditors and lawyers in finding ways to recover assets. "If I'm working on a live case, I'd be busy working and speaking with my team to address as many issues as we can on a daily basis, particularly in the first month of appointment," Yeo says. In doing so, he may have to take cases to the court in order to proceed. "For example, if we can't agree with stakeholders on any key matters during the liquidation, such as how to pursue the realization of an asset, we will seek a direction from the court, subject to funding being available to make such a court application."

When Lawrence Chan, Partner at Wilkinson & Grist, isn't busy meeting clients or attending court hearings, he works closely with his team on ongoing cases. "Normally, I schedule five to six meetings with my team members throughout the day to discuss ongoing cases," he says. "This helps us to identify key factual and legal issues, discuss strategies, and the way forward." He says meetings are an ideal opportunity for his colleagues to share their views and findings, and to ascertain that each individual is on the same page. "It's important for our goals to be aligned before we proceed to doing substantive work."

TREADING INTERNATIONAL WATERS

Yeo at BDO says restructuring and insolvency practitioners are now dealing with more cases involving companies with interests located in multiple jurisdictions. "Getting assets from point A to point B in terms of realizations has become more complicated and costly over the years, due to the need to address cross-border issues with multi-jurisdictional groups," he says, adding that almost every case he is appointed to involves a company operating in more than one jurisdiction.

"Until 30 years ago, Mainland China wasn't really on the restructuring and insolvency map," says Yeo. "So if there was any insolvency work, it was always a domestic affair and there weren't many cross-border cases." He adds that listed and non-listed companies would prefer to have their holding company incorporated in jurisdictions with more favourable tax regimes such as Bermuda, the British Virgin Islands (BVI) and the Cayman Islands. Some, for example, would have their intermediate subsidiaries located separately from the holding company in another jurisdiction, and their operating entity in either Hong Kong or Mainland China.

Tam at Kenny Tam & Co. CPA Limited agrees: "We have to determine which court to head to first before taking on a case – will it be in Bermuda, BVI or Hong Kong?" Therefore, a firm understanding of the legal considerations across multiple jurisdictions is crucial in order to work effectively with offshore lawyers nowadays, for example, when it comes to helping with wind-ups or the realization of overseas assets. "If you want to take control of a company's operations and assets, for example, oftentimes they'll have subsidiaries in Mainland China, the United Kingdom or continental Europe. So we'll have to wind up the subsidiaries in those locations too, and this will require us to repatriate their assets back to Hong Kong. It's a very complicated process," Tam explains. "Every country has different rules when it comes to winding-up. This involves getting help from lawyers in those relevant jurisdictions for us to ensure the best realization of assets from the subsidiary."

Hong Kong does not have a statutory equivalent to the Chapter 15 procedures available in the United States. Chapter 15, which is based on the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross-Border Insolvency, provides an effective mechanism to deal with insolvency cases involving debtors, assets, claimants, and relevant parties in more than one country. As a result, Hong Kong courts rely on the common law. The powers of Hong Kong-based insolvency practitioners are also mutually recognized by different courts in common law jurisdictions, adds Lawrence at Wilkinson & Grist.

There is also no reciprocal arrangement for cross-boundary insolvency or restructuring matters between Mainland China and Hong Kong. This means that courts in Mainland China are not always willing to recognize Hong Kong insolvencies and vice versa. This, Lawrence says, means that powers of Hong Kong-based liquidators may not always be recognized. He often handles insolvency cases involving a company listed in Hong Kong that has many operating

"We have to determine which court to head to first before taking on a case – will it be in Bermuda, BVI or Hong Kong?"

subsidiaries in Mainland China. "When it comes to obtaining control over the assets of a subsidiary in China, this is a very difficult task. It's almost an art," he explains. "One has to go to Mainland China and discuss with relevant departments and authorities to see if they are able to recognize your role and powers. It's an extremely lengthy process." If powers are not recognized, practitioners would have to engage lawyers based in Mainland China to help with the case.

As a result, some liquidation cases in Mainland China can drag on for years, adds Galaxy at Duff & Phelps. "Insolvency laws in China are very different from the ones in Hong Kong," she adds. "We need to locate assets, launch an investigation and cooperate with the authorities there. It can take years and years to get the funds."

Foreign liquidators can have their powers more easily recognized in Hong Kong courts, provided that the liquidators are appointed in jurisdictions with similar insolvency regimes to Hong Kong. They would have to seek recognition and assistance from Hong Kong courts by obtaining a letter of request from the foreign company's place of incorporation and then apply on paper for a recognition order in Hong Kong. Foreign liquidators can apply for a winding-up order too if they plan to put a foreign company into liquidation in Hong Kong. They are able to apply for themselves to be appointed as provisional liquidators in Hong Kong while the petition is being determined.

Hong Kong courts also have the power to wind up foreign incorporated companies under section 327 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance. The company must have a sufficient connection with Hong Kong, and there must also be a reasonable possibility that the winding-up order will benefit those applying for it. In addition, the court must be able to exercise jurisdiction over one or more individuals in the distribution of the company's assets. Courts in Hong Kong will also recognize foreign insolvency proceedings if the foreign insolvency proceedings will benefit the general body of creditors and if the proceedings are opened in the company's country of incorporation.

With all this, knowledge in insolvency laws across multiple jurisdictions including Mainland China is essential nowadays, Galaxy adds. "We are a bridge between the creditors and authorities in Mainland China, so we need a good understanding of these laws," she says. "We need to continuously advise our creditors on our next steps and what our expected timeline is."

A BROAD SKILL SET

With the role of a restructuring and insolvency practitioner growing in complexity, specialists are expected to have a diverse set of skills to succeed in the role. "An insolvency practitioner needs to have a firm knowledge of insolvency laws," says Tang at EY. "We also need to understand other areas of law, such as employment laws, as that helps us to know when to adjudicate employee claims."

Legal knowledge is indeed essential, adds Galaxy at Duff & Phelps. With the need to read through lengthy legal documents and effectively work alongside lawyers, insolvency practitioners must set aside time to familiarize themselves with more than just the basics. "Since I started doing insolvency work, I've always had to read and interpret legal documents such as indentures and security agreements," she says. "In following case developments, we also have to be able to understand court judgments. Legal knowledge helps us to communicate with other insolvency practitioners and lawyers too." Lawrence at Wilkinson & Grist agrees: "When we review facts, we'll be able to determine what to do from both a legal and insolvency perspective, such as how to legally proceed with obtaining more information and recovering assets."

Insolvency practitioners need quick decision-making abilities as well as effective people skills. "It's important for us to be able to explain findings in a clear manner to our clients," stresses Tang. He adds that insolvency practitioners are relied on to allay concerns, and need to know how to manage the high expectations of creditors, shareholders and other stakeholders, who are also working under a lot of stress. "We have to be calm, patient and considerate at all times. Usually, these individuals just need someone to listen, so we let them speak, listen closely and constantly remind them that we are there to help them."

It's a profession that requires a high level of emotional intelligence, notes Galaxy. "An insolvency practitioner also has to be really thick-skinned," she says. "There can be a lot of shouting and bickering involving suppliers and employees to deal with. Meetings between creditors, employers and employees can also get quite heated." By keeping calm and collected, practitioners can be the ones to turn any situation around. "We're always dealing with contentious situations, so we still need to have a level of empathy for these stakeholders, employees and creditors."

Galaxy notes that it takes many years to become a seasoned insolvency practitioner and says newer practitioners must persevere and keep their chin up, especially during difficult times. "Be prepared to deal with some difficult people – don't get easily upset. New practitioners need to know that it takes time to build experience. It's a very lengthy career path," she says. "It might take around 10 or 12 years for an auditor for be considered quite senior, but in this profession, it takes much longer than that." Dealing with different situations every day, she adds, brings different scenarios. "I've been in this profession for over 20 years and I'm still learning things all the time."

Tam at Kenny Tam & Co. CPA

Limited agrees. He says the role, albeit demanding, can also be exciting and is well-suited for those who are drawn to helping others solve problems. "It's not the kind of job that sees one calmly sitting in an office the entire day," he says. "We have general schedules, but they are flexible in case anyone knocks on our door. We don't know what's coming next, but have to go and fight that fire, no matter what."

UPHOLDING CORE VALUES

With business survival contingent upon the work of insolvency practitioners, there is no denying that they have a crucial role to play in upholding Hong Kong's status as a respected international finance and business centre. They are relied on to conduct their duties in a fair and professional manner, and also to uphold the city's rule of law throughout. "We act as a form of corporate governance," says Tam. "Because we are often appointed by the court to handle liquidations, we have to uphold corporate laws. If we do happen to identify unscrupulous or irresponsible behaviour on the part of company directors, say, who aren't keeping their books and records properly, it is up to us to report them to the ORO." Therefore, Tam adds, it is in an insolvency practitioner's best interest to bring the relevant individuals to justice. "We're the ones looking at the company's books to determine the reasons they have gone under."

Tam hopes businesses, investors and the public can continue placing their trust in the work of restructuring and insolvency practitioners. "We are doing good for society. I hope businesses appreciate what we are doing, as we want people to trust in Hong Kong as a top financial centre and location for business when they come here."

Zhao at Grant Thornton says the role of insolvency practitioners should give international investors confidence, especially when they choose to invest in the city. "Of course, everybody wants their business to last for as long as possible, but when they face the possibility of needing to end it or they run into disputes, we insolvency practitioners are always there to assist in these situations."

This is because insolvency practitioners also serve as a pivotal communication channel between business owners and relevant individuals, adds Lawrence. "We must ensure that from the start of a business, to running it and even to closing it down, that all the processes and procedures are in place and conducted in a fair and orderly manner," he says. "This is important for business owners, stakeholders, creditors, suppliers and customers of a particular company. Once they receive assurance that, whatever the circumstances, their rights will be protected and they will be treated fairly and equally, they will have confidence in Hong Kong's business environment."

Getting connected

A career in restructuring and insolvency is a rewarding one, and CPAs who are interested in equipping themselves with a solid foundation in this specialization can enrol in the Institute's Professional Diploma in Insolvency programme.

The programme, which consists of 56 contact hours, is made up of two modules and covers key topics such as liquidation, personal insolvency, corporate rescue and restructuring, and cross-border insolvency. "It was many weeks of hard work, but the lecturers and facilitators were very helpful and keen to share their knowledge and insight into the profession," says Dick Tang, Manager, Strategy and Transactions at EY, who graduated from the course in 2019. "I apply a lot of what I learned in my day-to-day role, in restructuring, asset recovery and also how to prioritize the distribution of claims to creditors."

Jessica Zhao, Senior Associate, Restructuring, at Grant Thornton, who also graduated from the diploma course in 2019, commends the programme's facilitators and also says she learned a great deal from the guest speakers. "I really enjoyed hearing from insolvency practitioners who talked about their experiences and the difficulties they faced, and how they overcame them. It was very useful and interesting." For the most benefit, she encourages future students to actively participate in class discussions and to dedicate ample time to reading the course materials, such as the handout provided and the insolvency manuals.

Students who complete the Professional Diploma in Insolvency programme are awarded the specialist qualification SQ (Insolvency), which indicates they have a strong knowledge and understanding of Hong Kong's insolvency procedures, and also have the practical skills, as well as the legal and ethical knowledge required to carry out insolvency work.

The specialist designation SD (Insolvency) is a prestigious designation reserved for experts in the field who can demonstrate to the Institute that they have sufficient experience and technical knowledge to perform insolvency work, all while adhering to professional standards. It is an accreditation of an international standard for insolvency practitioners possessing a very high level of technical and interpersonal skills, judgement and expertise.

SECOND OPINIONS: WHAT ARE KEY TAX CONSIDERATIONS FOR AN M&A TRANSACTION?

At the Tax Faculty's 2020 Annual Taxation Conference, a panel discussed tax considerations on a hypothetical merger and aquisition (M&A) transaction.

The discussions were based on a hypothetical case where a Singapore holding company (HoldCo 1) intends to dispose of its equity interests in its wholly owned subsidiaries in various Association of Southeast Asian Nations (ASEAN) countries to a potential buyer from Mainland China. HoldCo 1 holds the equity interest in the ASEAN subsidiaries via a pure holding company incorporated in Singapore (HoldCo 2). While the potential buyer wishes to acquire the equity interests of the ASEAN subsidiaries directly, but HoldCo 1 only agrees to sell at HoldCo 2 level as the ASEAN countries where the subsidiaries reside do not impose tax on offshore indirect transfers.

HoldCo 1 also maintains a treasury company in Singapore as the group financier. This group financer obtains funding from the retaining earnings of the group on an interest free basis and external market at the market rate. The group financier on-lends the fund to the downstream ASEAN subsidiaries at 1.5 percent below the market rate.

This article summarizes some of the key tax considerations.

The Annual Taxation Conference is available as an e-Seminar on the Institute's website.

CECILIA LEE
PARTNER, TAX SERVICES, TRANSFER PRICING SERVICES, PWC

In the case, the group financier charges the group companies at 1.5 percent below the market rate, funded through retained earnings and from borrowing at the market rate. The provision of interest free financing from a holding company to group companies used to be common, but the practice is changing.

The Organization for Economic Cooperation and Development (OECD) issued guidelines in February on financing transactions. The guidelines are regarded as reaching common consensus among the transfer pricing (TP) community. They encourage groups to review financing transactions to check if they make sense to the relevant parties and when compared to normal commercial terms. They also talk about accurate delineation of the transaction. Is the substance of the transaction lending or equity in nature? Depending on the answer, different factors need to be considered.

Practitioners should also review the opportunity costs of the parties involved in transactions. Would the lender get better returns by deploying the funds for something else? Could the borrowers get funding at lower interest rates via other avenues? Consider the case is of a holding company lender blending the costs of funding from different sources together such that it is profitable even though it charges the group companies at a rate below the prevailing market rate. The question remains, has the arm's length principle been observed?

Choosing the correct benchmark is also important. "Market rates" are different between jurisdictions. Is LIBOR, HIBOR or the prime rate appropriate? Given that the countries of resident of the downstream borrowers do not have clear TP guidelines, it is important to know what they use as market rate.

It is good for groups to review their internal TP arrangements after life-changing events, e.g. after the completion of an M&A as in this example. Groups could also consider obtaining advance pricing arrangements (APA) with the relevant tax authorities to obtain certainties. From a Hong Kong perspective, the Inland Revenue Department (IRD) recently issued the revised Departmental Interpretation and Practice Notes (DIPN) 48. The IRD has streamlined the APA process and this is documented in the revised DIPN 48. Currently the IRD also accepts applications for unilateral APAs and profit attributions to permanent establishments in Hong Kong. Taxpayers wishing to have better certainty on their TP arrangements should consider lodging an APA application.

"It is good for groups to review their internal TP arrangements after life-changing events."

LORRAINE CHEUNG
PARTNER, CHINA TAX AND BUSINESS ADVISORY SERVICES, EY
AND AN INSTITUTE MEMBER

The subsidiaries in the hypothetical case are located in the jurisdictions where offshore indirect transfer (OIT) would not be taxed such that the vendor only agreed to dispose its interests in the subsidiaries by disposing the Singapore intermediate holding company.

In June, the Platform for Collaboration on Tax, co-founded by the International Monetary Fund, OECD, World Bank Group and the United Nations, released a toolkit on OIT taxation. The toolkit provides guidance on tax treatment and implementation issues for developing countries on OIT taxation.

While the tax community in general agrees that the toolkit provide guidance to the developing countries on OIT taxation, countries which choose to implement OIT taxation still need to work out the details of the taxation bases. Mainland China has been taxing OITs for more than 10 years. Despite this, application of the taxing rules is still subject to interpretation. For example, in an OIT transaction with Mainland properties located in multiple cities, the tax authorities may come up with different calculation bases on the taxable amount even if the same fact patterns are presented. In view of this, we have been seeking clarifications on various OIT taxation issues with the State Taxation of Administration during the Institute's annual meetings in the past few years. These clarifications are helpful but we are still experiencing inconsistencies in the actual applications.

"These clarifications are helpful but we are still experiencing inconsistencies in the actual applications."

The two models provided for OIT taxation in the toolkit could yield very different outcomes. In the Mainland China context, should we apply tax rate of 10 percent or 25 percent in calculating the tax payable amount? If model 1 in the toolkit is to be adopted in the Mainland in which tax will be levied on the local entity level, some Mainland tax bureaus may insist that the 25 percent rate should be applied in calculating the tax payable. Application of the 25 percent tax rate would likely scare investors away.

The devil is in the details. Application of the safe harbour rules in the Mainland China OIT taxation is still very restrictive. Even some genuine group restructuring transactions may not qualify for the safe harbour rules. Codifications of the OIT taxation rules in domestic tax law should provide clarity. Clarity leads to certainty. Ambiguity in the tax legislation could be a deal breaker for investors in making investment decisions, e.g. concluding the M&A deal in this hypothetical case.

ALICE LEUNG
PARTNER, CORPORATE TAX ADVISORY, KPMG CHINA
AND AN INSTITUTE MEMBER

Holding companies are a common feature of multinational, locally listed and domestic private groups. But there should be good reasons for having one.

With the introduction of the new international protocols, like maintenance of significant controller registers, common reporting standard and economic substance laws in the past few years, beneficial ownership information become more transparent and accessible by the authorities. Accordingly, the usage of holding companies incorporated in offshore jurisdictions is less popular nowadays.

"It is unlikely that the tax authorities would issue TRCs to applicants if they do not have sufficient commercial substance."

Having companies incorporated in jurisdictions with extensive tax treaty networks as holding companies might look appealing. Tax treaty protection is important when there are a lot of fund flow due to intragroup passive incomes in the international structures. However, if groups merely have conduit companies as their intermediate holding companies, they will unlikely get the tax treaty protection as the holding companies are required to get tax resident certificates (TRC) with their countries of tax resident before the other contracting states would let the taxpayers enjoy the tax treaty benefits.

Nonetheless, it is unlikely that the tax authorities would issue TRCs to applicants if they do not have sufficient commercial substance. In term of commercial substance, when we choose the countries of tax resident of the holding companies, we should also consider the availability of talents, legal and transportation infrastructures and if capital could be free flow in these candidate countries. Otherwise, it may not be easy for you to maintain the business substance in the countries of tax resident.

However, appropriate use of holding companies could ease the transfer of ownership in cases with cross-border holding structures. Cumbersome administrative procedures may be involved in transfer of ownership in certain jurisdictions. If we use special purpose entities (SPE) as pure holding companies of subsidiaries incorporated in these jurisdictions, we can simply transfer the shares of the SPE rather than shares of these subsidiaries during investment exit phase or group restructuring.

In all, there are both tax and non-tax considerations for using holding companies in group structures. One should consider the unique fact patterns of the case before concluding if usage of a holding company is warranted. If yes, holding company of which particular country of tax resident should be used.

Terry Kan has seen how good insolvency practitioners can make the difference between a company being rescued and restructured or going broke when things go wrong. The Partner at ShineWing and Chairman of the Institute's Restructuring and Insolvency Faculty Executive Committee, tells Nicky Burridge about the growing complexity of cases, and the vital skills aspiring practitioners need to work through the chaos

Photography by Calvin Sit

CHARTING A NEW COURSE

Being chased by the press is not a situation most accountants experience. But for Terry Kan, Partner at ShineWing and Chairman of the Institute's Restructuring and Insolvency Faculty (RIF) Executive Committee, it was a regular occurrence in 2016 when he was appointed provisional liquidator of gym chain California Fitness. "The case was in the newspaper almost every day. Every time we went to court, lots of reporters would follow us, trying to get first-hand information," he remembers.

Kan was on holiday with his family when he received the call about becoming provisional liquidator of the chain. "I said, 'You guys enjoy the holiday, I will be in Hong Kong and I'll see you on the mobile phone.'" But he has no regrets about cutting his trip short. "[In restructuring] you have a certain period of time, and if you miss it, the clock cannot be turned back and you cannot do things differently," he says.

California Fitness, which had 700 employees and 12 fitness centres in Hong Kong, as well as connections in Mainland China and Singapore, had debts of more than HK$300 million when Kan was appointed, much of which was owed to landlords. The restructuring was further complicated by the fact that thousands of its customers had left personal belongings in the group's fitness centres.

Kan's team eventually managed to reunite customers with their belongings and sell the business. "An investor in Hong Kong took over the business and dealt with liabilities on the commercial leases, and re-hired 200 of the former employees. It was a better outcome than having the company liquidated in a piece-meal manner," he says.

Preserving jobs

It was the ability to save companies and jobs that attracted Kan to insolvency. He first came across liquidation and restructuring when he was studying accounting in Australia, and it struck him as being an interesting and challenging aspect of the commercial world. "I thought if you were good enough to save a company from going into liquidation, you could preserve a lot of jobs, contracts and assets," he says.

After graduating, he joined Kwan Wong Tan & Fong in Hong Kong, which later merged with Deloitte, as a junior auditor, but when an opening came up at the Official Receiver's Office in Hong Kong, he jumped at it. "I was an insolvency officer, responsible for case management and daily administration of court compulsory liquidations and personal bankruptcy cases. I learned from scratch and picked up technical knowledge, and combined it with actual real-life issues that came through my desk," he says.

In 1997, during the Asian Financial Crisis, he decided to move back into the practising sector. He joined KPMG, spending 10 years with the firm, including an 18-month secondment in London, before moving to Grant Thornton and now ShineWing.

Kan has now been working in insolvency, restructuring and investigation for more than two decades. "I still enjoy it, and I am still learning. The economic environment is quite challenging these days and business transactions are more complex than they were in the past. It is a very fulfilling career."

He adds that a big part of what he does involves building relationships and reputation so that creditors and other stakeholders will see him as being a suitable person to handle the cases in which they are involved. He explains: "Insolvency appointments are all personal engagements. Although I have the strong backing of the firm, at the end of the day, I am the one who is responsible to the stakeholders and the court."

While Kan concedes that insolvency practitioners often have a negative image, as people may see them as trying to wind up companies that are failing, he points out that they are actually working to find solutions that will resolve disputes, safeguard the interests of creditors, preserve jobs and save companies. He adds that in their role as officer of the court, insolvency practitioners are also often the first people to carry out a statutory investigation and help to bring any wrongdoers to justice. "When everything falls apart, people count on an insolvency practitioner to pick up the pieces."

Growing complexity

Working as an insolvency practitioner is not without its challenges. Kan says insolvency cases are significantly more complex now than they were 20 years ago, due in part to an increase in companies with only intangible assets, as well as a rise in companies with cross-border assets. "You have to find out where these assets are, what the likely chance is of recovering them and what costs are involved."

He explains that, commonly, insolvency practitioners cannot act outside of their own jurisdiction, so they need to obtain assistance from other practitioners usually overseas, making it important to maintain good relationships with firms across the world. Even so, he stresses there is no easy way to complete the task of asset tracing.

Kan says some companies appear not to have any assets or money, either because these have been hidden or because key players have disposed of them in a bid to try to save the company, without necessarily realizing they may be acting unlawfully. "We always need to remind ourselves to think outside of the box, otherwise it can

"At the end of the day, I am the one who is responsible to the stakeholders and the court."

seem like a hopeless situation. We need to look for anything that could lead to the subsequent realization of assets, so we try to gather as much information as possible, then we use our professional experience and judgement to prioritize certain areas that we think will generate some cash and try to formulate a plan."

He remembers two years ago when he was trying to trace assets that were in the Bahamas. "I didn't even know exactly where the Bahamas was. I had to Google it! It took me two days to get there. I then worked for two days and it took me another two days to fly back to Hong Kong. But it opened my eyes and I was able to meet new people and understand more about how things worked," he says.

A lack of immediate financial resources to enable insolvency practitioners to carry out their work can also be a struggle. "The best way forward is for creditors to provide additional financial support so that insolvency practitioners can get on and try to recover larger pools of money and assets for them, but they are not always willing to do this." In some cases, a market solution has been developed by global investment and legal professionals which provides litigation funding, giving insolvency practitioners sufficient resources to start a recovery action, in exchange for a return on the money out of the eventual realizations.

In 2016, Terry Kan was appointed provisional liquidator of gym chain California Fitness, which had debts of more than HK$300 million.

No formal regime

A particular challenge for insolvency practitioners in Hong Kong is the jurisdiction's lack of a formal corporate rescue or restructuring framework. Instead, a typical way to start a restructuring process is to appoint a provisional liquidator, which leads to legal actions against a company being put on hold, providing breathing space to start negotiating with creditors. However, such a statutory arrangement requires court approval on a case-by-case basis.

The Hong Kong government has been looking to introduce a formal regime for the restructuring process, such as the United Kingdom's administration arrangement or the United States' Chapter 11 bankruptcy, for more than 20 years and it has previously prepared two draft bills, but these have never been passed by the legislature due to issues around how to balance the competing interests of different stakeholders. A third version of the corporate rescue procedure bill is now planned to go before the Legislative Council.

Kan says the current lack of a formal restructuring regime is an issue for Hong Kong and has contributed to its having a lower ranking in the World Bank Group's annual Doing Business study.

He explains that having a good and extensive insolvency regime is an important factor in attracting investors, as they want to have predictable and efficient mechanism to exit their investment if things go bad.

He adds that while the insolvency regime in the U.S. is

Kan is Chairman of the Institute's Restructuring and Insolvency Faculty Executive Committee as well as a board member of INSOL International.

debtor-friendly, the proposed Hong Kong regime, originally put forward by the Law Reform Commission in 1996, follows the U.K.'s approach and is more creditor-friendly. "Ideally, we should strike a balance between these two approaches. They are both good systems for different situations." He stresses that the new restructuring legislation must be workable from the point of view of lenders and corporates, as well as insolvency practitioners, otherwise they are unlikely to use it.

The new legislation comes as insolvencies in Hong Kong are already increasing as a result of the economic downturn. Kan says more than 20 listed companies are currently being sued by creditors, with a backlog of cases waiting to be heard after court hearings were suspended due to COVID-19. Going forward, he expects the total number of business failures to be more than double the level seen in the past two years.

Giving back

Kan is highly involved in the professional bodies associated with the insolvency sector. As well as the Chairman of the Institute's RIF Executive Committee, he is also a board member of INSOL International, the world's largest insolvency organization, which promotes best practice globally and fosters international collaboration.

His work with the RIF keeps him busy, with the faculty not only running monthly seminars and events, but also responding to government and industry consultations on behalf of the insolvency profession in Hong Kong. As well as contributing to the development of the corporate rescue procedure bill, it also commented on proposed rules under the Financial Institutions (Resolution) Ordinance, which provides mechanisms to rescue distressed financial institutions, and provisions on how long listed companies with shares suspended from trading should be given to resume trading under new delisting regime introduced by the Hong Kong Stock Exchange. "On top of this, we have been working on our own advice and guidance materials, including publishing a quick guide for businesses and individuals facing financial distress and updates on the Liquidation and Insolvency Guidance Notes, the Institute's best practice guidance for insolvency practitioners."

Kan also spends a lot of time giving presentations and training sessions to different professional bodies, and helping the Institute run the Professional Diploma in Insolvency, which he has been involved in for over 10 years. "I still enjoy doing it because it makes me pick up textbooks and read about new developments. It is an opportunity to help, but I always think anyone who is a trainer gains the most."

"You must be curious to know what happened to a company, why did it run into problems, what caused the issues?"

On top of all of these commitments, he also co-authored the fourth edition of the *Hong Kong Corporate Insolvency Manual*, which included a new chapter on ethical issues. This inclusion was driven by an amendment to the Companies (Winding Up and Miscellaneous Provisions) Ordinance in 2014, which introduced new conflict and disclosure requirements, as well as a desire to promote Section 500 *Professional Ethics in Liquidation and Insolvency* of the Institute's Code of Ethics for Professional Accountants. "As an officer of the court, we are expected to demonstrate the highest professional and moral standards. We exercise professional judgement on commercial issues on a daily basis, so we need to have a good ethical backing behind what we do," Kan says.

An inquisitive nature

Kan thinks having an inquisitive mind and an interest in the commercial world are important qualities for anyone who wants to work in insolvency. "You must be curious to know what happened to a company, why did it run into problems, what caused the issues?"

They should also have the ability to come up with creative solutions to help save companies. "We need people who can think outside of the box. Because of their training, accountants are used to following a set of procedures, but when it comes to restructuring and insolvency matters, you need to find a solution for a company that is workable."

He adds that people should be able to work in chaotic situations and have good people skills to help mediate disputes and win the trust and confidence of those involved in a restructuring.

Kan says anyone who is interested in finding out more about becoming an insolvency practitioner is welcome to join the faculty's activities, even if they are not a member. He notes that the Institute's Insolvency Preparatory I, which is due to start in September, offers a good foundation in the discipline, while, for those who want to study the area in more depth, the Institute also offers Insolvency Preparatory II and the Professional Diploma in Insolvency to take the studies further.

Kan's own inquisitive nature is reflected in his varied hobbies. "I like taking photographs and hiking with my family and dog. I have started riding a bike from Shatin to Tai Po. It is a really lovely area to exercise in. I also love reading all kinds of different books." He adds that he has recently begun watching videos on YouTube. "There are lots of things to watch. I try to keep myself young so that I have something to talk about with my two teenage boys."

The Restructuring and Insolvency Faculty (RIF), launched in 2008, was the first specialist faculty established by the Institute. The RIF holds regular lunchtime seminars and other networking events, among other activities. It is open to both Institute members and non-Institute members.

by Allan Lee

A rope skipping coach, marathon runner and Institute member, on one way to exercise while staying safe at home

How to exercise effectively at home

Sports activities and daily exercise are good for optimizing our physical fitness and overall health. However, the closure of sports centres, athletic fields, gyms and parks driven by the COVID-19 pandemic has created inconvenience in the pursuit of doing regular sports activities and exercise. The gathering ban and compulsory mask-wearing policies have further complicated matters. Running or hiking while wearing a mask isn't comfortable and could even affect our ability to breathe properly.

Exercising at home is a good alternative. There are many exercises we can do at home such as dumbbell exercises, lunges, planks, push-ups, squats, sit-ups and yoga, to name a few.

But have you ever thought of rope skipping at home? Rope skipping is a simple and effective cardio exercise that can strengthen your cardiopulmonary functions and help to maintain physical fitness while improving agility and stamina. All you need to invest in is a rope, suitable work-out clothes and shoes, and your regular time. A yoga mat can also protect your feet and help to dampen the sound for your downstairs neighbours.

Get started with the right skipping rope

Many people think that rope skipping at home would result in broken things owing to limited space. However, basic rope skipping actually does not need much space because the right length of rope would just be swung a few inches over your head and smoothly under your feet. To gauge how much space you will need, try lying on the floor with your legs and arms spread out – this is how much space you need for rope skipping. After you feel comfortable with the basic jump, you may want to try more elaborate rope skipping moves that would require a larger area, but the space depends on which techniques you would like to do.

After you have chosen a skipping rope, stand in the middle of the rope and hold the rope handles up to chest level. You will be able to see if the length of rope is right for you. A skipping rope that is too long will take too much effort to turn. Usually, the rope is longer than required for an individual rope skipping, so shorten it to the right length. All skipping ropes work indoors. I suggest choosing ropes with PVC cords if they are just for exercise.

Dress in sportswear and warm-up

Even at home, it is better to dress in comfortable sportswear to do rope skipping. Wearing a pair of suitable sports shoes with good shock absorption will help to protect your feet. Long leggings are preferred as being hit by the rope accidentally can be painful.

Before starting, it is important to do warm-up exercises for around 10 to 15 minutes to prepare the muscles. In addition, it can prevent muscle cramps and injuries caused by overexertion.

Warm-up exercises normally include stretching and joint mobility exercises. It is better to do them from head to neck, then shoulders, arms, wrists, hands, chest, waist, legs, then knees to feet. Be sure to drink enough water before doing the warm-up, as rope skipping is a vigorous sports activity.

Skip with proper posture

After the warming up, you can start skipping. The proper posture for basic rope skipping includes keeping your head up, looking forward, keeping a straight back, lowering your elbows close to your body, bending your elbows at an angle of 90 degrees, keeping your feet close together, swinging the rope using your wrists and skipping on the balls of your feet. Try to avoid landing on your heels. When you land, you can slightly bend your knees to absorb the impact.

How long to skip depends on your physical strength. I usually skip for around 30 minutes with short breaks of two to three minutes in between. Afterwards, it is important to return to your normal heart rate by doing cool-down exercises, which include some light stretching.

Rope skipping helps develop six elements of coordination – an attribute linked to athleticism. These are balance, reaction, rhythm, synchronization, fine-tuning and spacing.

To maintain good health and physical fitness while at home, consider getting a rope to start skipping. Enjoy your skipping-rope home work-out!

"Rope skipping is a simple and effective cardio exercise that can strengthen your cardiopulmonary functions and help to maintain physical fitness while improving agility and stamina."

THOUGHT LEADERSHIP

Key highlights from the Institute's quick guide for auditors on how to navigate current practical challenges in an audit engagement

Auditing and COVID-19

Auditors are responsible for acting in the public interest and must exercise professional scepticism, maintain objectivity, integrity and independence, and act professionally and ethically throughout an audit. Even during the COVID-19 pandemic, auditors must continue to display these professional behaviours and comply with all required auditing standards.

The current circumstances may necessitate different and enhanced considerations by auditors. For example, travel restrictions present practical challenges to an engagement. Auditors may also need to consider developing alternative procedures to gather sufficient appropriate audit evidence to support their audit opinion, or to modify the audit opinion. To assist, the Hong Kong Institute of CPAs has recently published *Auditing and COVID-19: A quick guide* as a summary of the key issues and considerations impacting audits of financial statements as a result of the pandemic. The guide is available on the Institute's website.

The guide generally follows the flow of the process of an audit, and includes links to resources from global accounting bodies. Note that this summary is not intended to cover all the practical and technical issues in an audit.

Risk identification and assessment procedures

COVID-19 has disrupted business operations and financial reporting processes. There is also an unprecedented level of uncertainty about the economy, future earnings and many other inputs that represent fundamental elements of financial reporting. There may be new or heightened risks of material misstatement compared with prior audits. Increased pressure on management may result in heightened fraud risks and pressure to override controls.

Auditors should discuss with management and those charged with governance (TCWG) how they have assessed the impact of COVID-19 and evaluate whether there are new or changed risks that could be material. If a new significant risk is identified, auditors should obtain an understanding of the relevant controls and control activities. If an auditor is unable to perform walkthroughs on internal controls or undertake tests of controls, they may need to consider if there are additional risks of material misstatement, and to change the audit response and increase substantive testing.

Design and perform audit procedures

Companies may obtain and/or operate controls over the production of financial information in new or different ways. The changing circumstances may impact the selection and application of the method or data used in developing accounting estimates, and obtaining reliable data may be more challenging. The uncertainty about the economic impact adds further complexity and challenges when auditing estimates. Uncertainty may also increase the challenge to obtain sufficient appropriate audit evidence. Experience of prior audits is not likely to be representative of the current and future environment.

If the auditor cannot obtain evidence in the way it was obtained before, consideration should be given to alternative procedures. Auditors should exercise professional scepticism about any digital evidence and may need to design additional procedures to test its reliability. Given the challenges in the current environment, auditors should document their judgements and how they respond to the difficulties and uncertainties encountered.

Evaluate going concern basis of accounting

As a consequence of the pandemic many entities face cash flow difficulties. The deteriorating economic conditions may also affect the reliability of income and cash flow forecasts by management. Finally, aligning the going concern evaluation for group and subsidiary reporting purposes may represent a challenge.

Auditors should evaluate whether an entity has access to sufficient liquidity and can remain solvent through the pandemic and beyond. Auditors should heighten professional judgement in assessing the adequacy of going concern disclosures, and determine if a modification in light of the going concern issues is necessary and make appropriate disclosure in the auditor's report.

Evaluate the impact and disclosure of events

The pandemic may impact how companies evaluate and disclose events after the reporting date, and require management's significant judgement to do so. Given the situation continues to evolve, management may need to continually review and update the subsequent event assessments up to the date when the financial statements are issued.

Auditors should work with management and TCWG to ensure subsequent events have been accurately identified and reflected in the financial statements. Auditors may need to design and perform enhanced or additional procedures when auditing subsequent events. Auditors should consider the impact of subsequent events on asset valuations and impairment assessments and management's disclosures of relevant risks.

Auditor reporting

The need for a modified opinion may arise because certain audit procedures cannot be performed (for example physical inventory testing) and no other alternative procedures can be undertaken. Management's key judgements in areas such as asset and liability valuations, going concern basis of accounting and significant accounting estimates may be difficult to support or not agreed by the auditor.

Auditors should determine if a modification is necessary and make appropriate disclosures in the auditor's report. Auditors may consider including an emphasis of matter paragraph to draw attention to certain disclosures in the financial statements. Where applicable, additional focus may be needed in determining the key audit matters reported in the auditor's report because of the changing circumstances and difficulties arising from the pandemic.

THE ART OF PLANNING

The West Kowloon Cultural District is described as one of the world's largest and most ambitious arts and cultural development programmes. Kitty Fung, Chief Financial Officer of the West Kowloon Cultural District Authority, tells Jemelyn Yadao how she is overseeing the delivery of finance, as well as innovation and technology, for such a complex project

Photography by Calvin Sit

As the pandemic continues to grip Hong Kong, many have flocked to the city's parks for fresh air and exercise, undeterred by face masks. This is at least the case for West Kowloon Art Park, a green oasis right in the heart of the city. "On one Sunday, our guard had counted around 9,000 people here in the park. People seem to like coming here during this time of COVID-19," say Kitty Fung, strolling through the park's grassy patches where a few people have set up small camping tents.

Fung is Chief Financial Officer of the West Kowloon Cultural District Authority, the statutory body in charge of developing the West Kowloon Cultural District. Stretching across 40 hectares of reclaimed land, the district is a lot more than green open space, she says.

She describes the area as being divided into three zones. "We have the green zone, which is the big Art Park; an art and cultural zone, which goes from the east with the Xiqu Centre to the west where the Hong Kong Palace Museum is still being built; then the commercial zone, which are the hotel, office and residential (HOR) projects," explains Fung, a Hong Kong Institute of CPAs member who joined the authority last September. "It is a very complex project. I've never before been involved in a project that comprises all these diverse elements."

While the project is diverse, its key focus is to cultivate local artistic talent and facilitate the development of Hong Kong's arts and cultural industries, says Fung. It aspires to be one of the largest art and cultural districts in the world. "As Hong Kong continues to be a successful international financial hub, one of our missions is to elevate the creative industry part of it. We look at places like London and New York, which are important international financial cities but also have a lot of richness and variety in its art and cultural developments. Once the whole district is constructed and all the facilities are in place, I believe Hong Kong will be even more vibrant."

While some facilities and venues are already operating, such as the Xiqu Centre, some are still under construction, including M+, a contemporary museum of visual culture, which will open around mid-2021; and the Hong Kong Palace Museum, which will exhibit and feature a rich selection of treasures from the Forbidden City in Beijing, and is scheduled to open in mid-2022.

With the district's landscape continuously morphing, Fung likens the authority to a start-up. "It's evolving and expanding. That's why the systems, processes, tools and structures need to be built and evolved. I have to lead the finance team to revamp the financial reporting and strengthen the financial planning and analysis capability to meet the emerging operational needs of the authority. The district used to be a construction site, but now we are in a hybrid stage where we're doing construction, planning for future HOR development, and moving onto operation mode at the same time. So even the chart of accounts need to be adjusted to suit the emerging needs," says Fung.

Master plan

Fung is currently dealing with a long-term financial plan aiming to find solutions for the structured cash flow mismatch confronting the authority. The issue, she says, is that while some art and cultural facilities have already been set up, these alone cannot generate enough income to cover its expenses. She points out that once the HOR developments are ready, the rentals will help to fund the expenses of these art and cultural activities. "Around the world, almost no art and cultural facilities are profit-making, that's why a funding model is desperately needed."

But before construction of these HOR developments can start, an "integrated basement," which will keep traffic, noise pollution and parking underground, must be built first. "Without the income flow from the HOR developments, the authority will start to face a cash flow mismatch situation very soon. As the CFO, I need to help do a lot of solid financial planning and find ways to ensure financial sustainability for the authority. When I joined, I started on a long-term financial planning exercise to set out the blueprint – where we get money, where we spend money and how we can do things in a financially sustainable manner," she says.

The long-term financial

Kitty Fung is using her skills as a CPA to formulate a 50-year financial plan for the West Kowloon Cultural District Authority and deal with a cash flow gap.

projection plan spans 50 years, making it an extremely time-consuming and overwhelming project. "You're talking about a very long-term capital project because the entire district needs time to progress, and once the basement is developed, then the HOR construction on top also needs time to be built." From a statutory perspective, looking so far ahead into the future is critical, says Fung. "The authority needs a solid long-term financial plan for them to see the big picture of their financial situation, and to discuss ways with various government bureaux and financiers on how to get the required funding to complete the project."

"The Financial Services and the Treasury Bureau monitors us in terms of our funding and financing, and in order to get funding we need to present our case to the Legislative Council or the Executive Council. That's why a concrete plan, which highlights the financial situation of the authority, is very crucial for the organization," she says.

Fung adds that she works with financial advisors to develop financial strategy and options, and perform scenario analysis and stress testing on the long-term financial projection, which is particularly important as Hong Kong's economy becomes increasingly volatile, and as the art and exhibition industry grapples with uncertainty brought by COVID-19. Indeed, on 6 August, the authority announced it was withdrawing its tender for a massive Art, Commerce and Exhibitions project next to the Hong Kong Palace Museum.

Fung has also been busy setting up workshops for the authority's Investment Committee members, to communicate with them on the financial projections. "Members comprise experts in the banking and investment industry. I've done four rounds of workshops and we all have worked very hard to explore different ideas on how to help the authority finance its needs."

Of course, economic situations over the course of 50 years can be dynamic and unpredictable, which makes crafting a long-term financial plan difficult. Fung takes on the task by utilizing her skills and training as a CPA. "My previous jobs required me to collate data to build massive databases and then draw analytical insights from that. So I do not just work with the finance team but also with the operation teams, the performing arts team, the project construction team, and the commercial team on the financial projection. I collate all their business assumptions and inputs to map out the investment and operating cash flow, and to work out the financing strategy and solutions." she says. "I find it exciting because I can utilize my skills as a CFO but put it in an arts and culture context."

"I find it exciting because I can utilize my skills as a CFO but put it in an arts and culture context."

Three roles

As the CFO, Fung says she is a coach, a catalyst and a steward. As a coach, she teaches and equips her team to evolve alongside with the business development. "When I came to the authority, the finance team was so used to the construction stage bookkeeping and reporting, so I had to bring in more planning and analytical elements to their role to meet the changing needs of the business, which is now a hybrid of construction and operations," she says. "I also need to get them ready for the future commercial need when we have more HOR developments."

Fung also oversees innovation and technology across the

Prior to her current role, Fung was chief financial officer of Vitasoy then executive director and group chief financial officer of Dah Chong Hong.

authority, looking at ways to use technology to drive revenue and enhance productivity. This is where her role as a catalyst comes in. “As a CFO, you have to be a catalyst that promotes positive and constructive changes to the business,” she says. For example, she is developing a mobility app for visitors to interact with the venues in the cultural district. “If you take a photo of a building, the app will list out what’s inside and what’s going on, such as the different dining outlets and the most current exhibitions. Nowadays, we need to embrace technology to enrich the customer experience, which will help generate business,” she says. “There are also some fundamental systems we need to build for the daily operations, such as the SmartBike booking system, the staff rostering system, the venue management system, and the online donation system, just to name a few. You have to create all these systems and tools from scratch, so as a catalyst, I make sure these things happen in the right way and at the right time.”

Lastly, Fung points out that as a steward, she serves the board, the supervisory committees, the government bureaux, the management team, the different operations and her own staff. She wants to leave a legacy for the next generation of staff members. “We have a lot of repetitive manual processes, for example ticket refunding, ticket cancellations, and revenue reconciliation. I’m working with the finance and IT teams as well as consultants to employ robotic process automation to streamline and automate manual tasks wherever possible.”

“As a CFO, you have to be a catalyst that promotes positive and constructive changes to the business.”

Path to leadership

Accounting was not something Fung enjoyed at university. She was more drawn to activities that are arts-related, such as drama and music. She studied economics and political science at the Chinese University of Hong Kong, which included a yearly course in accounting. “It was a required subject, so I had to do it. I was a bit sceptical about accounting at that time because when it came to a quiz or exam, if you couldn’t balance that balance sheet question, you wouldn’t score a high mark,” she laughs.

She later moved to the United States to do her masters in marketing and finance at Kelley School of Business at Indiana University. After graduating, she started her career as a financial associate at General Foods Corporation (now Kraft Heinz), where she met an important mentor. “His words changed the way I scoped my career. He told me, ‘Kitty, if you want to be good in finance you have to learn accounting because accounting is the grammar of finance. It is just like the manuscript in music. You cannot play the piano well if you can’t even read the manuscript,’” she recalls. “So I made myself go back to school again to study accounting seriously as a part time student, and then pursued my CPA qualification in America and joined the Institute when I returned to Hong Kong. That’s where I learned about auditing, taxation and company law.

“When I started my career, I was more on the financial planning and analysis side. I started with corporate finance and doing a lot of financial modelling. Later on, I gained practical experience on the controllership side. In 2010, I became a listed-company CFO and got more into corporate governance, listing rules, environmental, social and governance reporting and investor relations. So, I’ve been able to expand my exposure and strengths throughout my career,” she says.

Fung was CFO of Hong Kong beverage company Vitasoy from 2010 to 2016. “That was the first time I had to deal with stock analysts and researchers, and work with the media. Before that, it was about taking care of the finance function, and not being exposed to external stakeholders. I needed to promote the corporate value to investors and fund managers.”

She also spent a lot of time building the company’s corporate brand equity, which led to positive outcomes. “I remember the stock price was HK$4 when I joined and HK$16 when I left. The brand was already well-known as a beverage, but we wanted people to know Vitasoy as a good company that cultivates a healthy lifestyle.” She then moved to Dah Chong Hong, the motor and consumer products conglomerate, where she was executive director and group chief financial officer until she joined the authority. The experiences at both companies taught her what it really means to be a financial leader, she says. “At those two jobs, I found myself stepping away from being a bean counter and being more of a communicator because I needed to share the strategy and the business performance of a company to external stakeholders. I was able to really open up a lot of channels just because the job required it.”

Outside the office, Fung, a Christian, likes to serve her church on Sundays. She also volunteers for the Fullness Social Enterprises Society, a non-profit organization, in providing business training to social entrepreneurs. “They assist those people trying to establish business and become entrepreneurs of their own and help them with the application for seeking government funding. They also encourage ethical consumption with these social enterprises, which offer job opportunities for the underprivileged and handicapped,” she explains. “I really believe in contributing back to the place I call home.”

Some venues at the West Kowloon Cultural District are currently under construction, including M+, a contemporary museum of visual culture, which will open around mid-2021; and the Hong Kong Palace Museum, which will exhibit and feature a rich selection of treasures from the Forbidden City in Beijing , and is scheduled to open in mid-2022.

Group tax planning considerations

Henry Kwong on how his e-Series can help professionals equip themselves with the relevant knowledge in Hong Kong and international tax regulations

Henry Kwong is a Partner of Cheng & Cheng Taxation Services Limited. He started his career working in a Hong Kong corporate tax department in a Big Four firm for a number of years. Kwong has experience in Mainland China, Hong Kong and international taxation (both corporate and individual income tax) and transfer pricing.

The global tax landscape is constantly changing. Professional accountants in business (PAIB) should consider revising their group tax planning schemes in view of the following international and Hong Kong tax updates.

BVI ES Rules

With the implementation of the British Virgin Islands (BVI) Economic Substance Rules (ES Rules), BVI legal entities carrying out relevant activities now have to make a decision on either moving their management and operations to the BVI or reporting their tax in their tax resident jurisdictions.

While BVI pure equity holding entities (which only derive dividend income and/or capital gains) will generally find it easier to comply with BVI ES Rules, most entities carrying out other relevant activities should now have been reporting tax in their tax resident jurisdictions. In this regard, Hong Kong would likely be one of the most attractive jurisdictions given its low tax rate and convenience to set up substance.

Particular attention should be paid to BVI entities engaged in IP business as they could be subject to heavier penalties. In the past, multinational corporations would set up IP-holding entities in low or no tax jurisdictions including the BVI, which would charge royalties to global operating entities to lower the group overall effective tax rate. As these IP business are rarely created and developed in the BVI, it would now be difficult for these BVI entities to justify they would be BVI tax resident under BVI ES Rules.

For BVI entities incorporated before 2019, their first reporting on ES Rules would be the end of 2020. Multinational corporations should consider carrying out tax reform before completing their first reporting.

Transfer pricing documentation – master file and local file

For December year-end entities, the due dates to prepare their first transfer pricing master file and local file to the Hong Kong Inland Revenue Department (IRD) is 30 September if the following exemption does not apply. As some may be new to transfer pricing rules, it is important to allocate sufficient time to these activities.

Hong Kong entities have to prepare master file and local file if they fulfill two criteria. The first is based on the size of the business, with businesses that have two of the following meeting the criteria: total annual revenue > HK$400 million, total assets > HK$300 million, or average number of employees over 100. The second criteria is based on the number of related party transactions, where companies with one of the four would be classed as meeting the requirements, transfers of properties (excludes financial assets/intangibles) > HK$220 million, transactions in financial assets > HK$110 million, transfers of intangibles > HK$110 million, or any other transactions (e.g. royalty income/expenses, service income) > HK$44 million.

Hong Kong entities should now review whether they meet both of the above criteria while preparing their financial statements. Management should be mindful that Supplementary Form (S2) to Profits Tax Return has requested them to indicate whether they are required to prepare master file, local file as well as country-by-country return.

Management should also be mindful that the IRD is empowered to impose not only an administrative penalty, but also penalties on transfer pricing adjustments (up to the amount of tax underpaid) when the corporation fails to present proper transfer pricing documentation upon request.

HKICPA e-Series

The following e-Series in taxation, banking, corporate finance and legal & compliance from the Institute can help members can keep abreast of the latest updates anytime at their office or at home.

- Transfer Pricing Documentation and Common Reporting Standard;
- PRC Individual Income Tax Update and Hong Kong Certificate of Resident Status Application;
- Economic substance requirements in the British Virgin Islands and Cayman Islands
- Profits Tax Return Update (Including new Supplementary Forms)

While PAIBs would have lots of areas to focus on, the above seminars will allow them to quickly master the basic knowledge of the latest Hong Kong and international tax regulations which would have significant tax impact on multinational corporations.

IRD issues revised practice note explaining the tax treatment of financial instruments under HKFRS 9

A look at how HKFRS 9 will impact the accounting of fair value

Legislative background

Under Hong Kong Financial Reporting Standard (HKFRS) 9 *Financial Instruments* and its international equivalent International Financial Reporting Standard 9, more financial instruments for both assets and liabilities are required to be accounted for on a fair value basis.

As held by the Court of Final Appeal in November 2013 in the case of *Nice Cheer v. the Commissioner of Inland Revenue*, profits or losses which would be regarded as being unrealized or anticipated for tax purposes may be recognized under such an accounting approach and should be treated as non-taxable or non-deductible as the case may be.

The decision of *Nice Cheer* means that taxpayers would have to make tax adjustments to their accounting profits or losses recognized under HKFRS 9 to exclude unrealized profits or losses before they file their tax returns.

Despite this decision, many taxpayers have expressed a desire to file their tax returns on a fair value basis. In so doing, these taxpayers hope to avoid the time and effort of tracking transactions on a realization basis for tax reporting purposes.

In response to requests by such taxpayers, the Inland Revenue Department (IRD) has since the 2013/14 year of assessment accepted tax returns in which taxpayers have chosen to file on a fair value basis. To provide more clarity and certainty, a new law was enacted in February 2019 to codify this interim administrative measure into the Inland Revenue Ordinance (IRO).

Under the new law applicable for years of assessment with a basis period commencing on or after 1 January 2018, taxpayers have to make a generally irrevocable election for the general alignment of the tax treatment of financial instruments with their accounting treatment as reflected in the profit and loss account under HKFRS 9. For taxpayers who are temporarily exempted from applying HKFRS 9, e.g. insurers, the IRD has extended their acceptance of returns in which the assessable profits or losses are computed on a fair value basis.

Furthermore, in respect of trading profits or losses, the new provisions only apply where the financial instruments concerned are revenue in nature and sourced onshore.

In June 2020, the IRD issued revised Departmental Interpretation and Practice Note (DIPN) No. 42 to state how it will interpret and apply the new law in its assessing practice.

Most of the views and positions taken by the IRD on the new law as stated in the revised DIPN were explained in a previous article published in the December 2018 issue of *A Plus*. This article focuses on the notable clarifications in the DIPN.

Notable clarifications detailed in revised DIPN 42

ECL for debt instruments acquired for trading purposes and measured at amortized cost or FVTOCI need not be claimed under section 18K(3)

Within the general scheme of alignment under the new law, the taxability or deductibility of expected credit losses (ECL) is a notable exception.

For debt instruments measured at amortized cost or fair value through other comprehensive income (FVTOCI), all ECL impairment losses are charged to the profit and loss account. However, under the new law, not all ECL charged to the profit and loss account are tax deductible.

Deduction provisions for ECL

Section 18K(3) of the IRO specifies that an impairment loss in the form of ECL recognized under HKFRS 9 will only be deductible provided that (i) either (a) the loans were made in the ordinary course of a money-lending business in Hong Kong, or (b) in the case of trade receivables, the amounts were previously included as a trading receipt in Hong Kong; and (ii) the ECL are credit-impaired.

Conversely, where a tax deduction for credit-impaired ECL is allowed, any write-back of the ECL will be taxable in Hong Kong under section 18K(4).

The expression "credit-impaired" is not defined in the law but is defined in HKFRS 9, and this definition will apply to the interpretation of section 18K(3). In general, there are three stages of credit risk deterioration, and only ECL made at Stage 3 would be considered as credit-impaired.

Revised DIPN 42 does not address the issue of whether a taxpayer who acquires debt instruments for trading purposes would be regarded as lending money in the ordinary course of a money-lending business in Hong Kong and, therefore, can claim credit-impaired ECL in respect of such instruments as deductible under section 18K(3).

No separate ECL recognized for debt instruments that are FVTPL

Unlike debt instruments measured at amortized cost or FVTOCI, no separate ECL will be recognized for debt instruments that are measured at fair value through profit or loss (FVTPL).

As such, all components (including Stages 1 – 3 ECL where applicable) of the fair value changes of a debt instrument that is FVTPL, will simply be reflected through the profit and loss account as fair value changes of the instrument for a year.

The IRD takes the position that the taxability or deductibility of the fair value changes of a FVTPL debt instrument, and is acquired for trading purposes, is not subject to the provisions of sections 18K(3)-(4) governing the taxability or deductibility of ECL.

This position taken by the IRD, coupled with the alignment of the tax treatment of financial instruments with their accounting treatment under HKFRS 9 under the new law, means that all fair value changes (regardless of their constituent components) of a debt instrument that is FVTPL and is acquired for trading purposes, would be taxable or deductible as the case may be.

Equating the tax treatment for negative fair value changes of all financial assets held for trading purpose regardless of how they are measured under HKFRS 9

Revised DIPN 42 indicates that in certain circumstances the IRD is prepared to equate the tax treatment of financial assets that are measured at amortized cost or FVTOCI, and are acquired for trading purposes, with the tax treatment of financial assets that are FVTPL and are acquired for trading purposes.

As a result, if an assessor is satisfied that financial assets measured at amortized cost or FVTOCI are acquired for trading purposes, ECL for such assets need not be claimed under sections 18K(3).

Instead, for tax purposes, taxpayers can presumably make an adjustment in the tax computation as if the financial assets concerned were measured at FVTPL. In the event that such an "as-if" remeasurement would result in a negative fair value change of the asset, the hypothetical resulting debit to the profit and loss account could be claimed for a tax deduction.

Revised DIPN 42 does not however address the issue of where a tax deduction is claimed on such an "as-if" basis, what would be the tax treatment if the ECL or other impairment losses for such a financial asset are subsequently fully written back and there are subsequent fair value gains of the instrument which are not reflected in the profit and loss account under HKFRS 9.

Taxation of unrealized foreign exchange gains or losses

In *Nice Cheer*, Judge To took the view that year-end translation gains or losses for transactions denominated in foreign currencies, before the underlying items are settled, are nonetheless realized profits or losses.

However, since the profits or losses at issue in the case were year-end revaluation gains or losses in respect of securities held for trading purposes, but not year-end translation differences in foreign currencies, Judge To's view on the matter is not binding, only an obiter.

In this regard, revised DIPN 42 indicates that the IRD adheres to the view that year-end translation differences in foreign currencies are unrealized profits or losses, thus falling within the realization principles established in the *Nice Cheer* decision.

As such, as a matter of law, where such translation differences are not in respect of a financial instrument, the IRD cannot include any such translation gains for tax assessment. Conversely, taxpayers cannot claim any such translation losses for tax deduction.

Where such translation differences are in respect of a financial instrument, the IRD can still treat these as non-taxable or non-deductible if the taxpayer has not made an election under the new law.

However, a tax treatment following the realization basis will require taxpayers to undertake the burdensome task of tracking when the items denominated in foreign currencies are subsequently settled. Tax adjustments will then have to be made in the tax computation to account for the realized profits or losses for the relevant year of assessment.

In order to relieve taxpayers of such a burdensome task, and as a matter of tax administrative practice, revised DIPN 42 indicates that taxpayers who have not made an election under the new law, can nonetheless consistently treat any unrealized year-end translation gains or losses for tax assessment or deduction purposes.

Revocation of an election

The election to be assessed on the fair value basis will cease to have effect under the following circumstances:

(i) When the taxpayer ceases to prepare their financial statements under HKFRS 9; or

(ii) The Commissioner of Inland Revenue (CIR) approves an application in writing by the taxpayer to revoke the election. The CIR may approve such an application where he is satisfied that there are good commercial reasons for the revocation and that avoidance of tax is not the main purpose, or one of the main purposes, of the revocation. Such a revocation will apply from the year of assessment as specified by the CIR.

Whether there are good commercial reasons for revocation of an election is considered based on the facts and merits of a case. Nonetheless, revised DIPN 42 indicates that if a company's reason for the revocation of its election is to conform with the tax reporting policy of a new parent company pursuant to a business merger or restructuring, the CIR would generally accept this as being a good commercial reason for the revocation.

Under both (i) and (ii) above, section 18H(7) provides that all financial instruments held at the end of the year preceding the cessation year are deemed as being disposed of and reacquired on the first day of the cessation year on a fair value basis.

The application of the deeming provision in section 18H(7) will have a tax impact where the financial instruments held on revenue account at the end of the year preceding the cessation year are not measured at FVTPL.

For example, take the case of a debt instrument acquired at HK$10 million which is measured at FVTOCI at HK$12 million at the end of the year preceding the cessation year. As a result of the application of section 18H(7), HK$2 million (HK$12 million – HK$10 million) will be assessed in the year of cessation. This will be the case even though the instrument has not been sold, and under HKFRS 9 the HK$2 million fair value gain has been reflected in the other comprehensive income and not yet recycled through the profit and loss account.

Nevertheless, the application of section 18H(7) will also mean that the cost basis of the instrument for tax purposes will be uplifted to HK$12 million for the purposes of calculating the subsequent profits or losses on disposal of the instrument.

The above indicates that despite the clarifications made in revised DIPN 42, the tax treatment of financial instruments under HKFRS 9 can be very complicated in certain circumstances. Where necessary, taxpayers should seek professional tax advice.

*This article is contributed by **Tracy Ho**, Asia-Pacific Business Tax Services Leader, **Patrick Kwong**, Executive Director and **Kathy Kun**, Tax Senior Manager, Ernst & Young Tax Services Limited*

Hong Kong revises DIPN on APAs to help manage tax uncertainties

Key changes and aspects of the revised DIPN 48

With the enactment of the Inland Revenue (Amendment) (No. 6) Ordinance 2018 (BEPS and TP ordinance), the transfer pricing (TP) regime in Hong Kong has become more rigorous. Under the BEPS and TP ordinance, the Inland Revenue Department (IRD) is empowered to impose TP adjustments on either income or expense arising from non-arm's length transactions between associated persons that give rise to a potential Hong Kong tax advantage. Taxpayers may face a penalty up to the amount of tax undercharged.

Echoing the BEPS and TP ordinance, the Departmental Interpretation and Practice Notes (DIPN) No. 48 *Advance Pricing Arrangement* (APA) issued in 2012 has been revised (revised DIPN 48) to provide more guidance for taxpayers on the procedures and requirements to pursue APAs. The APA programme facilitates efficient management of controlled transactions and allows taxpayers to communicate with tax authority in a non-adversarial manner. It can also help to reduce unnecessary costs relating to tax audits and enhance certainty pertaining to controlled transactions.

Overall, the revised DIPN 48 ensures a more streamlined, transparent and efficient APA application process for taxpayers. Key changes include the following:

- Unilateral APAs are now accepted, in addition to bilateral and multilateral APAs, allowing taxpayers to enter into APAs with the IRD in relation to transactions with non-double taxation agreement (non-DTA) jurisdictions;
- The three-stage process will replace the former five-stage process, which will streamline the procedures and improve efficiency in concluding an APA. The level of documentation required at the early stage under the new procedures will be reduced, which represents more flexibility and may reduce the time taken to conclude an APA;
- The coverage of APAs has been extended to include the attribution of profits to a permanent establishment in Hong Kong, and the relevant thresholds for APA applications have also been provided; and
- The rollback of the TP methodology under bilateral and multilateral APAs is available, as such tax audit/TP inquiry of past years may be resolved with less penalty pressure.

Types and covered period of APA

An APA is an arrangement concluded between a taxpayer and one or more tax authority that determines, in advance, an appropriate set of criteria (e.g. method, comparables and appropriate adjustments thereto, critical assumptions as to future events etc.) for determination of the TP for controlled transactions. Depending on the number of jurisdictions involved and whether the jurisdiction(s) have signed a DTA with Hong Kong, taxpayers may consider a unilateral, bilateral or multilateral APA.

The revised DIPN states that "In general, an APA will have a prospective application with a specific duration of three to five years."

Thresholds of APA applications

APA applications are subject to the following thresholds based on the expected amount of each category of transactions. The applications relate to:

a) Sales or purchases of goods: HK$80 million per annum;
b) Service fees: HK$40 million per annum;
c) Royalties: HK$20 million per annum;
d) Business profits for an APA application relates to the attribution of profits to a permanent establishment in Hong Kong: HK$20 million per annum; or
e) An APA application relates to transactions not falling within the categories (a) to (d) listed above: HK$20 million per annum.

The above thresholds for sales or purchases of goods and other transactions are lower than the applicable thresholds for preparing Hong Kong TP documentation, suggesting that taxpayers who are not required to prepare TP documentation may qualify for an APA application. The revised DIPN 48 also expands the scope of APA applications to include the attribution of profits to a Hong Kong permanent establishment, the application threshold in relation to which is also specified, corresponding to the permanent establishment articles in the BEPS and TP ordinance. The IRD will review the application thresholds from time to time and may lower the corresponding thresholds based on the actual circumstances.

The three-stage APA application process

The APA application process has been revised from five to three stages, which aims to streamline the overall process. The new stage 1 "Early engagement" is the combination of the previous

Summary of the APA application process

Stage 1: Early engagement	• **The taxpayer submits a request for APA and a draft case plan** (including the process timeline) • **The IRD sets up an APA team** - The APA team will evaluate the request, provide feedback and determine whether to invite a formal application • **Preliminary discussions to develop a tailor made APA solution** - The solution includes the APA's scope, type, the preferred TP methodology, etc. • **The IRD invites the taxpayer to submit a formal application** • **The taxpayer submits a formal APA application** • **The IRD notifies tax authorities of relevant jurisdictions involved and sets out a timetable after relevant tax authorities agree to participate** (applicable to bilateral or multilateral APA) • **The taxpayer pays a deposit**
Stage 2: APA application	• **Analysis and evaluation** - The IRD's APA team will thoroughly examine the information submitted by the applicant according to the consensus reached in stage 1 - The APA team may conduct interviews • **Negotiation** - During the negotiation, the APA team will prepare the terms and discuss them with the applicant - The negotiation and exchange of information between the IRD and tax authorities of relevant jurisdictions are necessary in cases of bilateral or multilateral APA • **Agreement** - Upon agreement, the relevant parties enter into an APA
Stage 3: Monitoring and compliance	• **Submission of annual compliance reports** - The taxpayer submits annual compliance reports providing details demonstrating the outcome of the application of the arm's length methodology • **The taxpayer is required to keep the records and data**

stage 1 "Pre-filing" and stage 2 "Formal application,"which has reduced the information required to be submitted at an early stage. This minimizes the resources required for taxpayers before the IRD accepts the formal application. The new stage 2 "APA application" combines the previous stage 3 "Analysis and evaluation" and stage 4 "Negotiation and agreement", thereby improving the efficiency and effectiveness of the negotiation process.

The revised DIPN 48 provides a tentative timeframe for the early engagement stage which is six months and for the APA application stage which is 18 months. The timeframe for bilateral and multilateral APAs, however, depends on the progress of negotiations with the competent authority(ies) of the DTA jurisdiction(s). In new stage 1, the APA team and the applicant will agree on an initial case plan – including the timeline for the whole process. This allows both parties to plan sufficient resources for negotiation and cooperation, improving the efficiency of the subsequent stages. The APA application process is summarized in the table above.

"More likely" to qualify for an APA

The revised DIPN 48 states that the IRD will consider all the relevant facts and circumstances of each APA application. It also includes "more likely" or "less likely" circumstances when the IRD will consider entering into an APA. If one or more of the following indicators are present, the chance of entering into an APA with the IRD will improve accordingly:

- The TP methodology adopted under the proposed APA best achieves consistency with the Organization for Economic Cooperation and Development's TP guidelines;
- The controlled transactions covered by the proposed APA have already been entered into and are unlikely to change significantly in the period covered;
- A proposed arrangement is under

- serious contemplation and the proposed actual provisions are unlikely to change significantly in the period covered;
- The TP issues are complex and there is uncertainty as to how the TP rules apply;
- Without an APA, the probability of double taxation is high.

Rollback

When the signed APA provides a reasonable pricing basis for prior years' TP issues, the pricing methodology in the APA can be applied to prior years (i.e. rollback).

The Commissioner of Inland Revenue will consider requests for rollback in the case of bilateral and multilateral APAs. The commissioner will treat as a voluntary disclosure any amendment to prior years arising from rollback if certain conditions are satisfied and the relevant penalty may be reduced.

Renewal

If a person having an APA concluded wishes to request for a renewal of the APA, the request must be submitted at least six months before the expiration of the APA. The renewal process can be streamlined if there are no material changes to the role of the Hong Kong entity(ies) within the global value chain and the controlled transactions over the course of the period of the renewed APA, and when there are no proposed changes to the existing terms.

Fees

APA applicants bear the APA application fees, which include: a service charge based on actual hours spent by the IRD's APA team with a cap of HK$500,000; the payment or reimbursement of the fees paid by the commissioner to an independent expert; and other costs and expenses incurred. A deposit must be paid to the IRD prior to the formal application.

The takeaway

In the context of the current international tax environment, an APA has become an increasingly useful tool for multinational enterprises (MNEs) to gain tax certainty. In view of a more rigorous TP regime in Hong Kong and heightened transparency of tax information, there are increasing cases of tax controversy. The current environment drives a stronger need for MNEs to adopt a proactive tax strategy to manage tax uncertainties.

APAs can be particularly useful for taxpayers under the following situations:

- For taxpayers already facing potential risks arising from TP arrangements in Hong Kong or other tax jurisdictions – they could avoid or reduce double taxation by entering into an APA with tax authority(ies);
- For taxpayers who have already achieved settlement in a tax audit – since the IRD has already obtained thorough understanding of the facts and circumstances of the controlled transaction and the TP methodology should have been agreed, the APA process can be largely streamlined;
- For taxpayers who have TP risks in prior years – the rollback of an APA can be an alternative to resolve TP disputes, enabling taxpayers and tax authority(ies) to resolve TP issues in a non-adversarial manner;
- In respect of business restructuring that involves TP policy changes, tax certainty can be obtained through an APA;
- Controlled transactions that are complicated and involve relatively high TP risks.

The revised DIPN 48 reflects the IRD's commitment to develop the APA programme in Hong Kong in line with the broader international taxation developments. The previous five-stage process is replaced by a three-stage process, resulting in a new APA process that is more flexible, transparent and collaborative.

The revised DIPN 48 includes indicators of "more likely" or "less likely" cases to enter into an APA, providing clear guidelines for taxpayers to assess their applications. In addition, the revised DIPN 48 clarifies the expectation and considerations of the IRD on APA applications, which facilitates taxpayers to evaluate the feasibility of a potential APA before initiating applications. The involvement of the IRD to establish and agree on an initial case plan with taxpayers at the early stage, as well as setting out the expected timeframe for the early engagement stage and the APA application stage (i.e. six months and 18 months respectively) are conducive to both parties effectively managing the application process.

Substantial information disclosure requirements and technical discussions throughout the APA process may present challenges to potential applicants. It is therefore recommended to carefully plan ahead the adequate resources and seek professional advice when appropriate. This way, applicants can fully optimize the opportunity and improve efficiency and chance of success.

*This article is contributed by **Cecilia Lee**, Transfer Pricing Leader, **Wengee Poon**, Transfer Pricing Partner, and **Tiffany Wu**, Transfer Pricing Partner at PwC Hong Kong.*

TECHNICAL NEWS

The latest standards and technical developments

Members' handbook
Update no. 241:

- Removes various superseded standards in Volume I and Volume III; and
- Revises various auditing and assurance standards and a practice note in Volume III to conform to the International Auditing and Assurance Standards Board's (IAASB) *Conforming Amendments to the IAASB International Standards as a Result of the Revised IESBA Code* issued in April.

Update no. 242:
The Institute's Liquidation and Insolvency Guidance Notes (LIGNs, previously, Insolvency Guidance Notes) have been updated, primarily to take account of legislative and regulatory changes. They are:

- LIGN (1) – *Scope;*
- LIGN (2) – *A insolvency practitioner's investigation into the affairs of an insolvent company;*
- LIGN (3) – *Preparation of insolvency practitioners' receipts and payments accounts; and*
- LIGN (4) – *Disqualification of directors – statutory reports.*

Financial reporting

Invitation to comment
The Institute is seeking comments on the Exposure Draft *Proposed Amendments to Accounting Guideline 5 Merger Accounting for Common Control Combinations* by 16 October.

New recordings available for discussions on Exposure Draft *General Presentation and Disclosures*
Recordings of the following are now available:

- The International Accounting Standards Board (IASB) and the European Accounting Association virtual research seminar on 10 July, providing an overview of the exposure draft and relevant academic literature.
- The third in a series of live webinars from staff of the IASB in Putonghua on 29 July to cover the detailed proposals in the exposure draft for disaggregation, the analysis of operating expenses, and unusual income and expenses.

IASB's third webcast on Request for Information: *Comprehensive Review of the IFRS for SMEs Standard*
The IASB has published the third in a series of webcasts about Request for Information: *Comprehensive Review of the IFRS for SMEs Standard* (RFI). The RFI seeks views on whether and how to align the IFRS for SMEs Standard with the full International Financial Reporting Standards (IFRS). Members can submit comments on the RFI to the Institute by 11 September.

IASB two-part webcast on IFRS 17
The IASB's two-part webcast, providing an overview of the June 2020 amendments to IFRS 17 *Insurance Contracts* is now available. The two parts cover:

- Part 1 – amendments to the requirements other than transition; and
- Part 2 – amendments to the transition requirements.

Deferral of effective date of amendments to IAS 1
In response to the COVID-19 pandemic, the IASB has issued an amendment to defer by one year the effective date of *Classification of Liabilities as Current or Non-current*, which amends International Accounting Standard (IAS) 1 *Presentation of Financial Statements*. The deferral will provide companies with more time to implement any classification changes resulting from these amendments, which are now effective for annual reporting periods beginning on or after 1 January 2023. The Institute will issue equivalent amendments to Hong Kong Accounting Standard 1 in August.

IASB July 2020 podcast and update
The July podcast, focusing on the IASB discussions at its monthly meeting, and the July Update newsletter, highlighting the tentative decisions reached at that meeting, are now available.

Auditing and assurance

Institute submission
The Institute has submitted comments on the IAASB's Proposed Non-Authoritative Guidance, *Extended External Reporting Assurance.*

Institute's Auditing and Assurance Standards Committee Meeting Minutes
Minutes of the 383rd meeting is now available.

Revision to suggested Chinese translation of unmodified auditor's reports
The Institute has revised the suggested Chinese translation of unmodified auditor's reports to conform to Hong Kong Standard on Auditing 700 (Revised) *Forming an Opinion and Reporting on Financial Statements* revised in July.

AICPA releases non-authoritative guidance on auditing digital assets
The Association of International Certified Public Accountants (AICPA) has updated its free practice aid, *Accounting for and auditing of digital assets*, to provide non-authoritative guidance to auditors in assessing whether to accept or continue audit engagements that involve digital assets.

IAASB auditor reporting post-implementation review
The IAASB invites interested stakeholders to complete an online survey on their experiences and feedback on the Auditor Reporting Standards by 23 October.

IAASB audit considerations for the impact of COVID-19
The IAASB Chair provides an update to the IAASB's COVID-19 response.

IFAC webinar series on practical audit quality considerations
In this webinar, a panel of audit experts shared their perspectives and practical insights on auditor reporting in the

pandemic environment, and reflected generally on lessons learned over the last few months. A summary of key takeaways from the discussion is also available.

Ethics

Institute's Ethics Committee Meeting Minutes
Minutes of the 243rd meeting is now available.

Illustrative examples on referral fees
The Institute has published illustrative examples to illustrate the application of and key considerations for practising members in payment of commission/ referral fee under Section 900.13, Chapter C of the *Code of Ethics for Professional Accountants.*

The IESBA's July meeting
Audio recordings of the International Ethics Standards Board for Accountants' (IESBA) July virtual meeting are now available.

IFAC Exploring the IESBA Code 7 and 8
- The exchange of gifts and hospitality can be an important factor in building and strengthening business relationships, but can threaten a professional accountant's ability to be objective and act with integrity. This seventh instalment of *Exploring the IESBA Code* addresses inducements and how to deal with them for compliance with the code.
- The eighth instalment explains the actions that professional accountants in business are expected to take when they become aware of, or suspect a non-compliance with laws and regulations within their employing organizations.

Applying the code of ethics conceptual framework in COVID-19 circumstances
Staff of the Accounting Professional & Ethical Standards Board and the IESBA released a publication to provide guidance on the application of the conceptual framework in the *International Code of Ethics for Professional Accountants (including International Independence Standards)* to scenarios for professional accountants in practice and in business relating to taxation and valuation arising due to the pandemic.

Corporate finance

Invitation to comment
The Stock Exchange of Hong Kong is seeking comments on *Consultation Paper on Proposals to Introduce a Paperless Listing & Subscription Regime, Online Display of Documents and Reduction of the Types of Documents on Display* by 24 September.

Insolvency

Official Receiver's Office letter to trustees in bankruptcy cases regarding the government's Cash Payout Scheme
The Official Receiver's Office has issued a letter on 22 July advising on factors that should be considered by insolvency practitioners in determining whether or not to claim the HK$10,000 received by an undischarged bankrupt from the government's Cash Payout Scheme as after-acquired property.

Taxation

Announcements by the Inland Revenue Department
Members may wish to be aware of the following matters:
- Inland Revenue (Amendment) (Profits Tax Concessions for Insurance-related Businesses) Bill 2019 passed.
- Annual Report on Performance Pledge 2019-20.
- DIPN 47 (Revised).
- DIPN 48 (Revised).
- Block Extension Scheme for lodgement of 2019/20 tax returns [Extended due date for "D" Code returns].
- Legislative Council question on demand-side management measures for the property market.
- Stamp Duty statistics (June and July 2020).
- Latest arrangement of IRD public services.

Legislation and other initiatives

Announcements by the government
Members may wish to be aware of the following matters:
- Extension of restrictions under the Prevention and Control of Disease (Requirements and Directions) (Business and Premises) Regulation (Cap. 599F).
- Travel-related restrictions.
- Public service arrangements.
- Official Receiver's Office public service arrangements.
- Companies Registry public service arrangements.
- Passage of Limited Partnership Fund Bill.
- Current exemptions for general meetings – see Companies Registry frequently asked questions.
- Tightened testing and quarantine arrangement for sea and air crew.

AML notices
The updated list of terrorists and terrorist associates designated by the United Nations Security Council (UNSC) was gazetted on 17 July pursuant to the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575). See the related UNSC press release.

For the current lists of terrorists, terrorist associates and relevant persons/ entities under United Nations sanctions, members should refer regularly to the Institute's AML webpage. Other useful documents and guidance can also be found on the same page.

Please refer to the full versions of Technical News on the Institute's website: *www.hkicpa.org.hk*

Maria Lam, a management consultant and author of two books about handwriting.

PUTTING PEN TO PAPER

Writing is a great way to express one's innermost thoughts and ideas. Not only is it satisfying to pen the final words in a story, but it's the ultimate dream for many writers to have their work is recognized and publicly lauded. Three CPA writers tell Louise Tam about how they discovered their passion for writing and the unique subjects they write about

Photography by Anthony Tung

Maria Lam is not a fortune teller – but she can predict the future. That is because as a handwriting expert she can tell from an A4 sheet of a person's musings how they will interact in big groups, what sort of character they have – and even whether or not they are compatible with their romantic partner. She is now an author of several award-winning books on the topic.

By day, however, Lam is not an author – she is a management consultant. After qualifying as a Hong Kong Institute of CPAs member in 2000, she embarked on a career in finance, working as an accountant for Deloitte, and then chief financial officer for a clothing company and then a media services corporation. But while working as a CFO, she was asked by her manager to focus less on the finance and more on the people side of the business – to work out which combinations of employees would yield the more productive results.

"I later on found a course in handwriting analysis," she says. "I thought this is quite useful. I can't read people's mind, but I can predict their behaviour." She took the course and started promoting the technique to the corporate world in Hong Kong, suggesting it as an interview technique for new hires. As a member of The British Institute of Graphologists, Lam has being interviewed in the local media, and was invited to write a weekly column on handwriting in *Metro Daily*. Her writing career was born.

Lam says she'd had a flair for writing since she was a child. When she was in primary school, her grandfather had complimented her on her Chinese writing technique, and asked her to draft a letter for him to the local village representatives about a land issue. But it took her decades to realize writing was something she could do professionally.

Even now, Lam is not a full-time writer. She has launched her own handwriting consultancy, providing services to corporate clients around Hong Kong who want to identify talents and strengths in personalities, and also highlight weaknesses in order to solve interpersonal

> "My profession as an accountant helped me a lot in managing the time because I think of how many days I need to write and then divide up my time and try to meet the target."

issues in leadership, stakeholder relationships and teams. She also provides more traditional assistance in the form of corporate restructuring, project management and strategies to improve financial performance.

Fitting her writing in around all that can be a challenge – especially as Lam writes her newspaper columns and books by hand. "I need the connection from the pen to the paper," she says. "There is a reflex through the muscle that directly activates our brain functions. This is very useful and very good to our brain health."

But that technique doesn't make writing any faster. Lam tries to write a book each year before the Hong Kong Book Fair, and normally takes about three months to pen each title, working in the evening and sometimes until 3:00 a.m. before having to get up for her day job meetings. "So I think my profession as an accountant helped me a lot in managing the time because I think of how many days I need to write and then divide up my time and try to meet the target," she laughs.

Lam's first book, "你有多久沒寫字？原來筆跡能反映你的個性！" (*How long has it been since you last handwrote?*) was an immediate hit at the book fair in 2019, and was voted by the teachers and students in Hong Kong as one of the best books from that event last year. "There were 12,000 voters from 460 secondary schools in Hong Kong," she says. "They voted for their favourite book, and my book was rated in the top 10 in the Secondary Division." Lam says that was her proudest moment as a writer. The Hong Kong Book Fair scheduled for July this year was postponed to December, but she has still released another book called "原來筆跡藏着心底話！21堂成長必修的筆跡課" (*Twenty-one lessons for handwriting growth*).

So, what is next on Lam's plate as a writer? Well, she's thinking of getting personal.

"I do a lot of personal analysis," she says. "Some people come and ask me to do that for their love life. Often, men come to ask me questions and give me a few pieces of pen writing samples or writing from different ladies. They want to know how to approach all these ladies, because they know that they have different personalities." Lam believes she can help them find love, and just might put her tips onto paper.

Writing passionately

Harry Wong – aka Dr Happy – had a similar route into writing as

Harry Wong, certified Master Trainer of NLP and author of six books.

"We all have a lot of limiting beliefs, which limits our chance for success. So how can you overcome that?"

Lam. After qualifying nearly 30 years ago as an Institute member, he landed a job with PwC first in Canada and then in Hong Kong, where he returned to in 1997. After being put in charge of a programme designed to train anyone in the company on their interpersonal skills, he decided that his true passion was helping individuals develop themselves.

So, in 2004, Harry became Dr Happy, a bow-tied, smiling consultant who uses LEGO as one of his many training tools in helping people realize their potential through his unique "edutainment" style. Wong, as the doctor, became Asia's first – and China's only – American Board of Neuro-Linguistic Programming (ABNLP) certified Master Trainer of NLP, which involves analysing strategies people

Jayford Wong, a CPA working at DBS Bank, and author of books about love and relationships.

use to help them find ways to reach a personal goal.

That led him down the path of writing. In May 2005, he was invited to write a column for *CosmoGirl!* magazine. "Because of my NLP background, I wrote about things like love relationships, dealing with problems, how to think more positively," he says. "We all have a lot of limiting beliefs, which limits our chance for success. So how can you overcome that?" It became a weekly column for two-and-a-half-years, and kindled Wong's passion for writing, and soon turned into a book on love.

"My passion is about women and relationships… so I decided to apply NLP through writing in the context of relationships," says Wong, who co-authored a book on that topic in 2007 with the then editor-in-chief of *CosmoGirl!* Since then, he has written five more books, and about half of his back catalogue is about love. "Everything for me is NLP so I've written books about love and relationships, how to use NLP as a tool to help people to better understand themselves and others, and about the limiting beliefs that you may have about relationships."

But even after having authored six books, Wong says he is still a bit "scared" by the writing process. It's the end product he enjoys, he says, not the painful experience of having to commit words to the page.

"I think I'm always in conflict," he says. "On the one hand, I write thousands of words. But I'm still not 100 percent enjoying writing. But all those things are voluntary, right? Nobody forced you to write a book. But I still did it. I don't know what draws me."

But Wong does know he'll likely pick up the pen again.

Words of hope

Jayford Wong is in love with writing. He began writing while dating during his university years. Since then, he has been writing about love and relationships.

He says he wanted his books to help those experiencing a painful end to a relationship or unrequited love. "I've read a number of other books on this topic written by other Hong Kong authors and most of them usually give tips on dealing with the break-up," says Wong, who is part of the Business Finance team at DBS Bank, and an Institute member. "In my books, I emphasize the fact that there a lot of people who are experiencing the same emotions as they are. I want my readers to feel that aren't facing these issues and pains alone."

Wong, who grew up in Hong Kong, also published a book in 2018 titled "偽棟篤文青" (*Laugh with you*) on the everyday stresses endured by Hong Kong's youth. "A lot of young people in Hong Kong just like myself face a lot of pressure, beginning with public examinations when we are teenagers. And even after graduating from university, we enter a society that puts us under more pressure." Similar to his romantic novels, he hopes these articles help his readers feel less alone in their plight.

Wong took part in the Hong Kong Book Fair in 2019, which saw his 2019 book "揮霍了所有的任性都不願忘記" (*Just wanna see you once again*) on display at an exhibition booth. Initially, he was reluctant to take part in the exhibition, but was persuaded by his publisher. "The publisher encouraged me to even hold a book signing event, but I wasn't sure if anybody would even show up at the booth," Wong recalls. But as soon as he arrived at his booth that day, he saw a long line of fans – fans he never even knew he had.

"I was very surprised," he says. Caught in between signing autographs, posing for photos and speaking with his readers, Wong was taken aback by the unexpected yet pleasant reception. "There

"I try to establish a well-defined concept before writing. Having one takes care of the writing process."

was definitely a warmth in every interaction that day," he adds. "Many of them noted how much they enjoyed reading my books, especially the ones on love and relationships, and said how the points I wrote about were relatable."

When it comes to writing a book, the planning process is most important to Wong, who says it can take between two or three months of drafting before he starts writing. "I want each book to have a clear message for my readers," he says. "So I try to establish a well-defined concept before writing. Having one takes care of the writing process." The writing process requires around two weeks, he says.

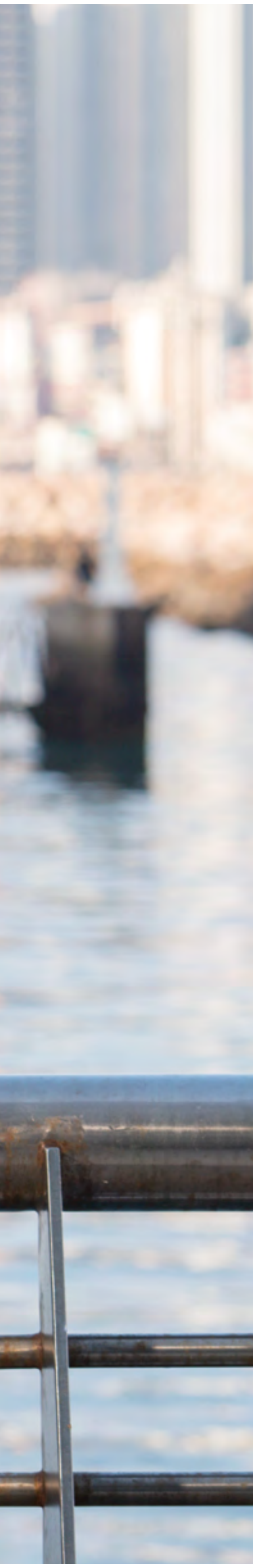
It wasn't easy getting his books published in Hong Kong, but for aspiring authors who wish to achieve the same, Wong advises them to focus on building a fanbase. This could be done through posting articles or blogs online and developing a small following. Once an audience has developed, it might catch the attention of a book publisher, he notes. "And if you've already got readers, they might even publish your book for free."

Wong published his latest book "你的愛，是我最懷念的痛" (*Our most unforgettable memories*) in July and says he is working on another relationship-themed book. After all, he adds, his mission is to continue helping his readers through his writing. "As a writer, I may not know what my readers are thinking or the situations they are facing or have faced," he says, "but I want to touch every reader's heart with my words. That's my goal."

The Hong Kong Book Fair, one of the world's largest, is set to be held from 16 to 22 December, its organizer said this month. Last year, the fair attracted close to a million visitors and over 680 exhibitors. The theme of this year's exhibition is "Inspirational and Motivational Reading" and will feature books and authors whose work encourage and empower readers to face challenges ahead.

FIESTA HO

Finance Manager of a U.S. technology company



As Finance Manager at a multinational technology company, Fiesta Ho finds innovative ways to improve processes while managing a team of hardworking individuals around the world. She tells *A Plus* what she enjoys the most about lending her skills in finance to the world of tech and why finance professionals must learn to help businesses innovate for the future

What is your current role and responsibilities? How is it going so far?

I am the Finance Manager of a major United States-based technology company. Over the past six years, I have been in charge of the statutory accounting, tax and treasury of the company's entities in Hong Kong and Macau. I also managed its financial planning and analysis (FP&A), which involves budgeting and forecasting, and managing the company's full profit and loss. I really enjoy working at the company as it has also shown me how digital transformation can change the workplace and much of the world. With many of us, including myself, working from home this year, I've had to rely on applications and apps to work with my team remotely and effectively. For example, I use Microsoft Teams to securely connect with my business partners; Azure, a cloud computing tool to build finance "data lakes"; Power BI dashboard to visually present financial analyses; and Power Apps to automate workflow. Many of these tools use artificial intelligence, which I believe will automate many traditional finance functions in the near future. Therefore, it's crucial for finance professionals to understand how to use these AI tools in our work to remain relevant.

What are the most rewarding and challenging aspects of your role, and why?

The most challenging aspect of my role is an ongoing task which involves outsourcing our transactional finance functions to overseas teams. For example, I had to arrange for data entry work to be outsourced. It takes time and effort to train these teams to take on new tasks, but by providing clear guidance and using checklists and matrices to measure their deliverables, they have improved, and are now able to consistently perform their tasks well. By outsourcing finance-related tasks, my team is able to focus more on working with our business partners and improving processes. We are also continuously looking to outsource other finance functions, so this is an ongoing effort. I'm responsible for managing these overseas teams, so I have to review their work and communicate with them to make sure everyone is able to complete their tasks. It's rewarding to see everything come together in the end.

Where do you see yourself in the next five to 10 years in your career? Which field do you plan on specializing in, and why?

I'd like to continue working as a financial professional in the IT industry. Technology continues to play such a key role in our daily lives, and it's important for finance professionals to recognize that our jobs are no longer limited to just working with numbers or writing reports. Knowledge in tech combined with finance can change the way things are done at a company. As for skills, I'd like to polish my skills in FP&A and compliance. Knowledge in FP&A is essential to ensuring business growth by providing insight, whereas knowledge in compliance can help with a company's operations, mitigate risks and to ensure control and governance. I look forward to also using my knowledge in finance to offer helpful insights and assist in business decision-making.

What has been the biggest challenge you have faced in your career so far and how did you overcome it?

The biggest challenge I've faced in my career is an ongoing task that involves helping to improve the processes at the company. I review the current processes and identify ways they could be sped up, automated or eliminated through the use of technology. These processes include standardizing finance reports and digitalizing paperwork for driving efficiency and simplification. For instance, we've encouraged all our business partners to settle payments using wire transfers instead of sending us cheques. The main hurdle is encouraging others to adopt change, as it can be hard for some to change the way they've done something for many years. By sharing best practices with counterparts in other countries, who in turn share their ideas with us, we are successfully adopting new processes. This helps to create a standardization of processes and also streamlines our end-to-end workflow.

How do you think the Qualification Programme (QP) has helped you in your career so far, or prepared you for your current role?

Going through the QP was definitely a fruitful journey. The QP helped me to build a strong foundation in technical knowledge in accounting, as everything is taught from a very practical perspective. I can say I still apply a great deal of skills and knowledge from all of the four modules in my role today. I remember the workshops were also very helpful. We'd first have discussions in small groups and then give presentations in front of the whole class. So not only did I gain skills in accounting, but also brushed up on my communication skills. I give several presentations at work, so that aspect of the course definitely helped. I also met and networked with a lot of finance professionals through the programme.

SPOTLIGHT ON TV SHOWS

Institute members recommend their favourite shows to watch during this time of social distancing

The World of the Married

"The Korean remake of the BBC drama series *Doctor Foster* is a modern day tale of infidelity and revenge. A wife, blinded by anger to the point of madness, seeks violent revenge for her husband's unfaithfulness. You feel like you are on a roller-coaster of emotions with Dr Ji's obsession with her son, her desperate need for revenge against her husband who had an affair and betrayal from close friends etc. Each episode is filled with just the right amount of suspense and conspiracy to keep you wondering what happens next and wanting to watch it every week. If you haven't watched any Korean drama before, give this a try and I'm sure you will be addicted like me!" says Chu. The show is available to watch on Viu.

- Michelle Chu,
Assurance Director, Moore


JTBC

Pick Me Up to Taiwan

"I recommend *Pick Me Up to Taiwan* (走佬去臺灣) on ViuTV. The show is about Taiwan, which is a popular travel destination among Hongkongers. Rather than a traditional travel show, this show is more like a reality show and the recommended places and activities are very local. The activities give the viewers a taste of the actual living experience of Taiwanese people and the perspective of Hong Kong people experiencing life in Taiwan," says Tong.

- David Tong, Senior Associate at Deloitte China

ViuTV

Dark

"*Dark* is a German sci-fi thriller drama series on Netflix. Set in the fictional German town of Winden where two children go missing, the drama revolves about four interconnected families haunted by their secrets as they search for the kids and slowly unravel a sinister time travel conspiracy. The show is a complicated puzzle, and just like all great puzzles, it's satisfying to put the pieces together," says Lo.

- Derek Lo, Senior Consultant at Deloitte China


Netflix

EYES & EARS

Institute members on what music they are currently listening to and what books are worth reading

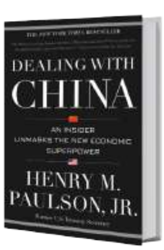

Herbert von Karajan

What I'm listening to

- Rocky Lok, Advisor at Hong Kong Harmonica Association

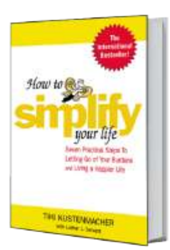
Recently I revisited Ludwig van Beethoven's *Symphony No. 5 in C Minor Opus 67*, played by the Berlin Philharmonic, conducted by Austrian Herbert von Karajan. The anchoring theme is one of the most recognizable and one of the first piece of classical music I learned when I was a teenager. Hong Kong is experiencing a challenging time. If Beethoven could write such ever-lasting great work while being deaf, Hong Kong can exhibit its strength in tackling challenges and overcome difficulties now as well as in the future!

What I'm reading



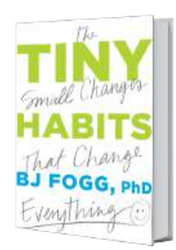
Henry Paulson, author of *Dealing with China: An Insider Unmasks the New Economic Superpower* was the chairman and chief executive officer of Goldman Sachs. He was also the secretary of the treasury of the United States from 2006 to 2009. He led the initial public offering of the first Chinese state enterprise China Telecom in 1997 and handled the crisis at Guangdong International Trust and Investment Corporation with Wang Qishan. In a time of high tension between the U.S. and China, this is an insightful and useful read.

- Simon Lee, Senior Lecturer at Chinese University of Hong Kong



How to Simplify Your Life – Seven Practical Steps to Letting Go of Your Burdens and Living a Happier Life is an easy-to-read book suggesting practical tips on how to de-clutter our lives. It covers various topics from simplifying your things and your finances to your relationships. I particularly enjoyed the sections on simplifying your time, which helped me to prioritize matters and tasks, and ultimately better manage my time. While I did not agree with all the ideas, I benefitted from flagging up some 30 ideas and changed my habits.

- Kenneth Lam, Associate Director, Advisory, at Grant Thornton



Whether it's reaching the next level in our careers, or improving our fitness, we all often act on what we think are epiphanies, and then go all in. That, argues BJ Fogg, head of the Behaviour Design Lab at Stanford University, is where most people already begin to fail. In his book *Tiny Habits: The Small Changes That Change Everything* he busts common myths around behavioural formation, and shows readers a research-grounded and sustainable framework to form new habits and untangle old ones.

- Recommended by *A Plus* editors

The lockdown accountant

Hong Kong's humorist on the cost of being an accountant during a pandemic

Nury Vittachi is a bestselling author, columnist, lecturer and TV host. He wrote three storybooks for the Institute, *May Moon and the Secrets of the CPAs, May Moon Rescues the World Economy* and *May Moon's Book of Choices*

Pandemics add tedious complexity to many activities in an accountant's life, particularly if you combine the profession with other jobs, such as arranging murders.

Such was the sad case of Amit Agarwal, a 42-year-old chartered accountant who decided to hire a hit man to help him. But then the virus halted many non-essential industries in his hometown of Kolkata in India – including the contract killing business. Hit men were doing Zoom meetings like everyone else, with no hope of completing assignments except possibly by boring people to death like everyone else using Zoom.

Agarwal went to Plan B, which was to use a snake charmer to supply a different sort of lethal weapon – a snake bite – but serpents don't do Zoom meetings. He found the right sort of snake charmer – but stricter lockdown rules were implemented, and his handler said he and his pet were no longer allowed to leave home.

Agarwal realized that he would have to take on the job himself, despite the lack of "transferable skills" between accounting and the grim task ahead of him.

The sad ending of the story is that he managed to kill two people and himself, with one victim escaping, according to *News18*, an Indian news outlet. Agarwal left a 67-page suicide note.

Most accountants, fortunately, have less dramatic activities in their work diaries, many of which CAN be accomplished remotely.

But let's think of those who can't. Auditors can have serious challenges with stocktaking, particularly if their clients are farmers, for example.

The Mudanjiang City Mega Farm in Heilongjiang, northeast China, for example, is said to have 100,000 cows – but how an accountant can count them through the webcam on his laptop, I have no idea. The shipyard company Meyer Werft has a warehouse in Lower Saxony, Germany that is so big that people store entire ocean liners in it. Try auditing THAT through a webcam. Of course, drones could be used to do the remote stocktake, but even those only last around 40 minutes on a full charge.

But on the other hand, big companies usually get big accounting firms, who have the money and staff to achieve almost anything.

The firms hit hardest by the pandemic are the small ones. Some are used to their clients handing them a box of receipts at the end of the year, because no part of their businesses are digitized in any way. If you're an accountant working for a small firm in Melbourne, you're not even allowed to drive to the client's house to pick up the box.

At the opposite extreme, the most hi-tech accountants already have everything available "in the cloud" – for them, there's literally no difference except they now access their data from their beds instead of their desks.

The problems spread when lockdowns become more serious. In parts of Australia, tax accountants who don't like being trapped away from clients have filed a joint plea to the government to be designated an "essential service."

This has caused much mirth among down-to-earth Aussies who express cynicism that tax planning is essential in the same way as, say, the firefighter who stops your home burning down.

Luckily, Hong Kong has never had an actual lockdown – but we never know how bad the next wave will be.

What if it's really bad? What if Earth ends up in an end-of-the-world scenario? Tax planners may be persuaded to elegantly withdraw their plea to be considered essential. Or maybe not. Tax planners are proud people.

A drastic pandemic will also change the value of things, creating lots of work for accountants. During a zombie apocalypse, a room full of gold bars would be worth less than a room full of bananas – or, in accountant-speak, they'd have to "write down inventories to net realizable value."

Of course, such scenarios might never happen. Yet huge changes are already taking place. The virus has done away with cash, for example. In Hong Kong, people are increasingly using digital money for everything, even tiny purchases, such as picking up a newspaper or a chocolate bar at a convenience store – no germs, no touching.

And, of course, that data goes straight into a computer somewhere which sorts it, files it and ultimately sends it to an accountant – who can do her stuff from the comfort of her bed while binge-watching *The Walking Dead*.

Oddly, humans love stories of dystopia – even while we live in one.

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