

Regulatory Framework for Opening, Operating and Closing a Business

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

Business Insolvency

No.	Regulatory Framework	Link
<i>Pre-Commencement and Commencement Standards in Liquidation and Reorganization</i>		
1.	<p>Establishing the following:</p> <ul style="list-style-type: none"> • Mechanisms directly addressing the obligations of the management of a debtor company during the period approaching insolvency to avoid bankruptcy, and/or minimize its extent where insolvency is unavoidable • Mechanisms or procedures to implement, with no impediments or obstacles, a contractual based Out-of-Court Workout (OCW) to restructure the company's debt with some or all its creditors, outside of the court system and/or outside formal judicial insolvency proceedings 	<ul style="list-style-type: none"> ➤ Section 275, Cap. 32 Companies (Winding Up and Miscellaneous Provisions) Ordinance ➤ Sections 373, 379, 394, 405 and 429, Cap. 622 Companies Ordinance ➤ Moulin Global Eyecare Holdings Ltd v Olivia Lee Sin Mei (2014) 17 Hong Kong Court of Final Appeal Reports 466
2.	A debtor company can file for in-court liquidation proceedings	➤ Sections 177(1)(d) and 179(1), Cap. 32 Companies (Winding Up and Miscellaneous Provisions) Ordinance
3.	An individual creditor can file for in-court liquidation proceedings	➤ Section 179(1), Cap. 32 Companies (Winding Up and Miscellaneous Provisions) Ordinance

No.	Regulatory Framework	Link
4.	The liquidity test is a basis for commencement of insolvency proceedings	➤ Sections 177(1)(d), 178(1)(a) and 178(1)(c), Cap. 32 Companies (Winding Up and Miscellaneous Provisions) Ordinance
<i>Post-commencement Standards in Liquidation and Reorganization</i>		
5.	Establishing that, upon commencement of insolvency proceedings, each creditor shall receive a timely notification to submit his/her claim, specifying the basis and amount of the claim	➤ Rules 80, 82, 106 and 109, Cap. 32H Companies (Winding-up) Rules
<i>Selection and Dismissal of the Insolvency Administrator</i>		
6.	Setting out the qualification requirements for the appointment of an insolvency administrator	➤ Panel A Rules ➤ Panel T Rules ➤ Sections 194(1)(a), 194(1A) and 194(1)(b), Cap. 32 Companies (Winding Up and Miscellaneous Provisions) Ordinance
7.	Setting out cases in which insolvency administrator may be disqualified from the case	➤ Sections 168G(2), 262B(2), 262B(3), 262C and 262D, Cap. 32 Companies (Winding Up and Miscellaneous Provisions) Ordinance
<i>Management of Debtor's Assets</i>		
8.	Providing for an automatic stay of proceedings and specifying the exact time of effect of the stay of proceedings (including the day it takes effect and the day it lapses)	➤ Sections 183 and 186, Cap. 32 Companies (Winding Up and Miscellaneous Provisions) Ordinance

No.	Regulatory Framework	Link
9.	<p>Providing for exceptions to a stay of proceedings which include the following:</p> <ul style="list-style-type: none"> • Actions to protect public policy interests such as the restraint of environmental damage or other activities detrimental to public health and safety • Any actions to prevent abuse, such as the use of insolvency proceedings as a shield for illegal activities 	<p>➤ The International Commercial Bank of China Co. Ltd. (Hong Kong Branch) v Kelvin Edward Flynn (Unreported, Companies Winding-up Proceedings 622/2004, 27 January 2005)</p> <p>➤ Re King's Dyeing & Weaving Factory Ltd (No. 2) [1986] HKC 621, 623</p>
10.	<p>Providing for the following possibilities that:</p> <ul style="list-style-type: none"> • Secured creditors may obtain relief to a stay of proceedings where the value of the encumbered asset diminishes as a result of the commencement of insolvency proceedings • Secured creditors may obtain relief to a stay of proceedings where the encumbered asset is not needed for the reorganization or sale of the business as a going concern in liquidation 	
11.	<p>Explicitly allowing for burdensome assets to be relinquished or discharged when the cost of maintaining such assets is higher than the benefits to be received</p>	<p>➤ Section 286(1), Cap. 32 Companies (Winding Up and Miscellaneous Provisions) Ordinance</p>

No.	Regulatory Framework	Link
12.	Explicitly providing for voiding (or invalidating/terminating) preferential transactions, which resulted in a creditor obtaining more than its pro-rata share of the debtor's assets, which occurred when the debtor was already insolvent or resulted in the debtor becoming insolvent	➤ Sections 266, 266A, 266B, 266C and 266D, Cap. 32 Companies (Winding Up and Miscellaneous Provisions) Ordinance
13.	Explicitly providing for voiding (or invalidating/terminating) of undervalued transactions, which were made at a price below market value or as a gift and which occurred when the debtor was already insolvent or resulted in the debtor becoming insolvent	➤ Sections 265D, 265E, 266B, 266C and 266D, Cap. 32 Companies (Winding Up and Miscellaneous Provisions) Ordinance
<i>Creditor's Rights in Liquidation and Reorganization</i>		
14.	Requiring a creditors' committee or other representation in insolvency proceedings	➤ Sections 206(1) and 206(5), Cap. 32 Companies (Winding Up and Miscellaneous Provisions) Ordinance ➤ Re Hung Fung Holdings Ltd [2001] 3 HKLRD 692
15.	Providing creditors, either individually or through the creditors' committee or another form of creditor representation, the right to request up-to-date information on the debtor's business and financial affairs	➤ Sections 201 and 219, Cap. 32 Companies (Winding Up and Miscellaneous Provisions) Ordinance ➤ Rules 159(2) and 161, Cap. 32H Companies (Winding-up) Rules
16.	Giving secured creditors absolute priority with respect to the assets over which they hold security over all other creditors	➤ Section 12(2), Cap. 6 Bankruptcy Ordinance , as applied to insolvent companies under Section 263, Cap. 32 Companies (Winding Up and Miscellaneous Provisions) Ordinance ➤ Section 265(3B), Cap. 32 Companies (Winding Up and Miscellaneous Provisions) Ordinance

No.	Regulatory Framework	Link
17.	Giving labor claims priority or preference over ordinary unsecured creditors	➤ Sections 265(1) and 265(3B), Cap. 32 Companies (Winding Up and Miscellaneous Provisions) Ordinance
18.	Giving environmental claims priority or preference over ordinary unsecured creditors	➤ Section 265(1)(d), Cap. 32 Companies (Winding Up and Miscellaneous Provisions) Ordinance ➤ Cap. 358 Water Pollution Control Ordinance ➤ Cap. 466 Dumping at Sea Ordinance
19.	Special regime to deal with the protection of workers and employees' claims in insolvency	➤ Sections 265(1)(b), 265(1)(c), 265(1)(ca), 265(1)(caa), 265(1)(cb), 265(1)(cc), 265(1)(cd), 265(1)(ce), 265(1)(cf), 265(1)(cg), 265(1)(ch), 265(1)(ci) and 265(1)(cj), Cap. 32 Companies (Winding Up and Miscellaneous Provisions) Ordinance ➤ Cap. 380 Protection of Wages on Insolvency Ordinance
<i>Specialized Insolvency Proceedings for Micro and Small Enterprises (MSEs)</i>		
20.	Providing for specialized (simplified) insolvency proceedings for MSEs	➤ Section 227F, Cap. 32 Companies (Winding Up and Miscellaneous Provisions) Ordinance
<i>Cross-Border Insolvency</i>		
21.	Establishing rules for cross-border insolvency	➤ Re Guangdong Overseas Construction Corporation [2023] HKCFI 1340

No.	Regulatory Framework	Link
22.	Setting forth a specific process for obtaining recognition of foreign insolvency proceedings	<ul style="list-style-type: none"> ➤ Re Agritrade Resources Ltd [2020] 4 HKLRD 616 ➤ Record of Meeting of the Supreme People's Court and the Government of the Hong Kong Special Administrative Region on Mutual Recognition of and Assistance to Bankruptcy (Insolvency) Proceedings between the Courts of the Mainland and of the Hong Kong Special Administrative Region
23.	Providing for cooperation between courts and insolvency administrators in cross-border insolvency proceedings	<ul style="list-style-type: none"> ➤ Re Kong Wah Holdings Ltd & Another [2004] 3 HKC 596

Public Services that Facilitate Trade

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

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

Business Insolvency

No.	Public Services	Link
<i>Insolvency Administrator's Expertise in Practice</i>		
1.	Qualification requirements for the appointment of an insolvency administrator observed in practice	➤ Panel A Rules