

CONTENTS

<i>Foreword to the Fourth Edition</i>	v
<i>Foreword to the Third Edition</i>	vii
<i>Foreword to the Second Edition</i>	ix
<i>Foreword to the First Edition</i>	xi
<i>Preface to the Fourth Edition</i>	xiii
<i>Preface to the Third Edition</i>	xvii
<i>Preface to the Second Edition</i>	xxi
<i>Preface to the First Edition</i>	xxiii
<i>About the Authors</i>	xxv
<i>Table of Abbreviations</i>	xxxiii
<i>Table of Cases</i>	xxxv
<i>Table of Legislation</i>	liii
Chapter 1: Introduction	1
1.1 What is Insolvency?	1
1.2 The Role of the Insolvency Practitioner	1
1.3 The Insolvency Regime in Hong Kong	8
1.4 Types of Winding Up	10
1.5 Dissolution	10
1.6 Other Introductory Points	14
Chapter 2: Members' Voluntary Liquidation	17
2.1 Introduction	17
2.2 Main Features	17
2.3 Procedure	20
2.4 Company Becomes Insolvent Post-Resolution.....	24
2.5 Effect of a Members' Voluntary Liquidation on Directors.....	25
2.6 The Liquidator: Vacancy in Office, Resignation & Removal	25
2.7 Duties of the Liquidator	27
2.8 Section 237 Arrangements (Reconstructions)	28
Chapter 3: Creditors' Voluntary Liquidation	31
3.1 Introduction	31
3.2 General.....	32
3.3 Meeting of Members (Shareholders).....	32

3.4	Convening a Meeting of Creditors (Section 241).....	34
3.5	Conduct of the Section 241 Creditors' Meeting.....	35
3.6	Business of Creditors' Meeting	39
3.7	The Committee of Inspection	42
3.8	Special Procedure for Voluntary Liquidation under Section 228A	47
Chapter 4: Compulsory Liquidation.....		53
4.1	Introduction	53
4.2	Section 177(1): The Grounds.....	54
4.3	Who May Present a Winding-Up Petition?	64
4.4	The Petition.....	69
4.5	Before the Hearing of the Petition.....	71
4.6	The Hearing	78
4.7	Post-Hearing	84
4.8	Liquidator's (and Special Manager's) Appointment.....	88
4.9	First Meetings (Section 194)	93
4.10	Summary Cases (Section 227F)	93
4.11	Regulating Orders (Section 227A)	95
4.12	Staying the Winding Up	96
4.13	Interaction between Compulsory Liquidation, Voluntary Liquidation and Receivership.....	99
4.14	Conversion of Compulsory Liquidation to CVL	104
Chapter 5: Appointment of Liquidators: Ethical Considerations, Disqualification and Disclosure Statements		107
5.1	Liquidators: Ethical Considerations	107
5.2	Restrictions on Appointment of Provisional Liquidator or Liquidator, Disqualification and Disclosure Statements	118
Chapter 6: Liquidators' Powers and Removal of Liquidators.....		125
6.1	Powers and Duties of the Liquidator in Winding Up by Court (s 199).....	125
6.2	Powers of Official Receiver Holding Office as Provisional Liquidator by Virtue of s 194(1)(a) (s 199A)	129
6.3	Powers of Provisional Liquidator Holding Office by virtue of s 194(1)(aa) or (1A) (s 199B).....	129
6.4	Powers and Duties of the Liquidator Nominated by the Company (s 243A).....	130
6.5	Powers and Duties of the Liquidator in Voluntary Winding Up (s 251)	131

6.6	Liquidators' Other Powers.....	132
6.7	Removal of Liquidators	135
6.8	Removal of Provisional Liquidator.....	142
6.9	Disciplinary Actions Followed by the Removal of IP	143
6.10	Summary.....	143
Chapter 7: Liquidators' Investigations and Litigation Funding		145
7.1	Introduction	145
7.2	Insolvency Guidance Notes	145
7.3	Liquidator's Investigations – Some Practical Guidance	149
7.4	Private Examination.....	161
7.5	Public Examination.....	172
7.6	Misfeasance Proceedings (Section 276).....	173
7.7	Litigation Funding by Third Parties	176
7.8	Summary.....	185
Chapter 8: Voidable Transactions and Fraudulent and Insolvent Trading		187
8.1	Introduction	187
8.2	Unfair Preferences (Section 266)	187
8.3	Transactions at an Undervalue (Section 265D)	200
8.4	Extortionate Credit Transactions (Section 264B).....	203
8.5	Floating Charges (Sections 267 and 267A).....	204
8.6	Summary and Comparison Table.....	206
8.7	Fraudulent Conveyances.....	207
8.8	Fraudulent Trading: Introduction.....	209
8.9	Fraudulent Trading: Analysis.....	210
8.10	Insolvent Trading	213
8.11	Comparison of Fraudulent and Insolvent Trading	216
8.12	Limitation Periods	218
Chapter 9: The Asset Protection Regime		225
9.1	Introduction	225
9.2	Actions or Proceedings against the Company	227
9.3	Executions and Attachments.....	231
9.4	Distress	234
9.5	Post-Commencement Dispositions: Section 182.....	236
9.6	Retention of Title	244
9.7	The Anti-Deprivation Principle	245

9.8	Liens – The <i>Oasis v HAECO</i> Case	247
9.9	Comparison of Compulsory Winding Up and CVL Provisions.....	251
Chapter 10: Proofs of Debt and Priority		253
10.1	Introduction	253
10.2	Debts for Which A Creditor May Prove	255
10.3	Debts that Are Not Provable in a Hong Kong Insolvency	257
10.4	Claiming for Interest.....	257
10.5	Proving for Voting and Dividend Purposes.....	260
10.6	Special Cases	260
10.7	Notice to Creditors to Prove	269
10.8	Rejection of Proofs of Debt.....	270
10.9	Expunging Proofs of Debt	270
10.10	Order of Payment.....	271
10.11	Summary of Proofs and Dividends.....	286
Chapter 11: Charges and Receivership		287
11.1	Introduction and Terminology	287
11.2	The Distinction Between Fixed and Floating Charges	290
11.3	Priority of Charges.....	292
11.4	Receivership: Outline	295
11.5	Duties and Powers of Receivers	297
11.6	Accounts	298
11.7	Contracts.....	299
11.8	Transfer of Businesses (Protection of Creditors) Ordinance (Cap 49)	299
11.9	Distribution of Company's Assets	300
11.10	Checklist	300
Chapter 12: Corporate Rescue and Restructuring.....		303
12.1	Introduction	303
12.2	Workouts and the HKAB/HKMA Guidelines	308
12.3	Schemes of Arrangement.....	310
12.4	Recent Developments: Provisional Liquidation and Corporate Rescue	320
12.5	Provisional Supervision	328
Chapter 13: Directors' Disqualification.....		337
13.1	Introduction	337

13.2	Terms of a Disqualification Order under Part IVA	337
13.3	Grounds for a Disqualification Order	338
13.4	Procedure Regarding the ‘Unfitness’ Ground.....	343
13.5	Directors’ Offences.....	346
13.6	Summary on Disqualification Provisions	346
Chapter 14: Liquidators’ Remuneration.....		349
14.1	Introduction	349
14.2	Past Controversies: Maxwell and Peregrine	352
14.3	Lehman Brothers – Not Quite So Controversial.....	354
14.4	Current Position.....	360
Chapter 15: PRC Bankruptcy Law.....		365
15.1	Introduction	365
15.2	Problems with the Old Law	370
15.3	Scope of the EBL.....	371
15.4	Petitioning for Bankruptcy	375
15.5	The Independent Administrator.....	380
15.6	Remuneration of the Administrator	383
15.7	Creditors’ Committee	384
15.8	Priority in Distribution.....	385
15.9	Avoidance Provisions	387
15.10	Reorganisation and Conciliation.....	388
15.11	Cross-Border Insolvency	392
15.12	Summary.....	396
Chapter 16: Cross-Border Insolvency.....		397
16.1	Introduction	397
16.2	Approaches for Resolving Cross-Border Insolvency Issues	398
16.3	Recognition of Foreign Insolvencies	400
16.4	Options Available to Foreign Representatives for Gathering Information and Protecting Assets of Foreign Debtors in Hong Kong	402
16.5	Options Available to Hong Kong Liquidators for Protecting Assets of Hong Kong Corporate Debtors Abroad	437
16.6	Corporate Group Insolvencies	439
16.7	Need for Legislative Reform.....	440

Appendix 1: Members' Voluntary Liquidation Checklist	445
Appendix 2: Checklist for Creditors' Voluntary Liquidation under Section 228A and Section 241	459
Appendix 3: Specimen Powers of a Provisional Liquidator Appointed pursuant to s 193	497
Appendix 4: Section 500 of HKICPA's Code of Ethics for Professional Accountants.....	507
Appendix 5: Insolvency Checklist Compulsory Liquidation	535
Appendix 6: Insolvency Guidance Notes	567
Appendix 6A: Statement 1.600 Insolvency Guidance Note (1) – Scope	569
Appendix 6B: Statement 1.601 Insolvency Guidance Note (2) – A Liquidator's Investigation into the Affairs of an Insolvent Company	573
Appendix 6C: Statement 1.602 Insolvency Guidance Note (3) – Preparation of Insolvency Office-Holders' Receipts and Payments Accounts	579
Appendix 6D: Statement 1.603 Insolvency Guidance Note (4) – Disqualification of Directors – Statutory Reports.....	589
Appendix 7: Official Receiver's Office – Panel A Rules: Rules for Admission of Firms and Persons for Taking-up Appointment of Liquidators or Special Managers in Non-Summary Court Winding-up Cases	597
Appendix 8: Tender for taking up of Appointment as Provisional Liquidators under Section 194(1A) of the Companies (Winding up and Miscellaneous Provisions) Ordinance (Cap 32): Annex I – Experience Requirements.....	625
Appendix 9: HKICPA Professional Diploma in Insolvency	629
Appendix 10: The BVI and Cayman Islands Insolvency Regime Summary	635
<i>Index.....</i>	643