IP Licenses and Insolvency Guide - Hong Kong

1. What does the applicable law provide regarding the treatment of IP license agreements in insolvency proceedings in your jurisdiction?

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# 1 (a). What are the general principles of the treatment of IP license agreements in insolvency proceedings? Is there a difference depending on the type of proceeding (e.g., a court-appointed receivership, a bankruptcy, a restructuring, etc.)?

Under Hong Kong law, all the property to which the insolvent company is or appears to be entitled qualify as assets in the insolvency proceedings. "Property" includes obligations arising out of choses in action. IP license agreements are thus subject to insolvency proceedings and are dealt with as assets or liabilities of the insolvent company in accordance with general insolvency rules. This is irrespective of the type of insolvency procedures in question.

The insolvency procedures available to wind up a company in Hong Kong are: (i) members' voluntary liquidation, (ii) creditors' voluntary liquidation and (iii) compulsory liquidation. All these options involve the appointment of a liquidator. A receiver over assets of the company may be appointed pursuant to a debenture or contract or an application to the court. There is no formal corporate rescue process in Hong Kong's insolvency regime.

# 1 (b). What are the laws governing the treatment of IP license agreements in insolvency proceedings?

The principal legislation in Hong Kong relating to corporate insolvencies is the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (CWUMPO), which is supplemented by the Companies (Winding Up) Rules (Cap. 32H). Some provisions of the Bankruptcy Ordinance (Cap. 6) also apply to corporate insolvencies in Hong Kong. However, although the aforementioned legislation is of general application, it does not specifically provide for the treatment of IP license agreements in insolvency proceedings. Hence, in practice, the treatment of IP license agreements in insolvency proceedings largely depends on the contractual provisions and the common law.

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