

# Professional Indemnity Scheme – RME Bulletin

Editor's note:

ESSAR Insurance Services Limited, Managers of the Professional Indemnity Scheme, in collaboration with Panel Solicitors Deacons, issue this quarterly bulletin to highlight risk management issues learned from their handling of claims.

## **Dealing with Disclosure Requests from Trustees/ Liquidators**

If your (former) client goes bankrupt/ in liquidation, the trustee in bankruptcy/ liquidator (“**Trustee**”) may come to you for your (former) client’s information, documents and case file. This article discusses what you, as the (former) solicitor, should do when met with such request from a Trustee.

### **The Law**

Upon due appointment, the Trustee steps into the shoes of the bankrupt/ company in liquidation.<sup>1</sup> Section 29 of the Bankruptcy Ordinance (Cap.6) (“**BO**”) allows the trustee to make an application to the court to *inter alia* compel production of documents “*relating to the bankrupt, his dealings or property*”. Section 286B of the Companies Winding-Up Ordinance (Cap.32) (“**CWUMPO**”) grants equivalent powers to the liquidator. These inquiries serve the public interest by ensuring accountability and maximising creditor returns.<sup>2</sup>

### **The Test**

The test is whether the requested information or documents (“**Requested Information**”) “*relate to the bankrupt or company’s dealings or property*”. The standard of proof is reasonable suspicion, i.e. the Trustee has reasonable grounds to suspect that the Requested Information are related to the bankrupt or company’s dealings or property.<sup>3</sup> The Trustee must also satisfy the court that the Requested Information is reasonably required for him to carry out his functions and that the respondent is able to provide such Requested Information. The Court of Appeal in *Re Allied Weli Development Ltd*<sup>4</sup> added that orders sought must not be unreasonable, unnecessary or oppressive.

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<sup>1</sup> See *Chen Yung Ngai Kenneth & Anor v Hugill & Ip (A Firm) & Anor* [2023] HKCFI 151 at §29

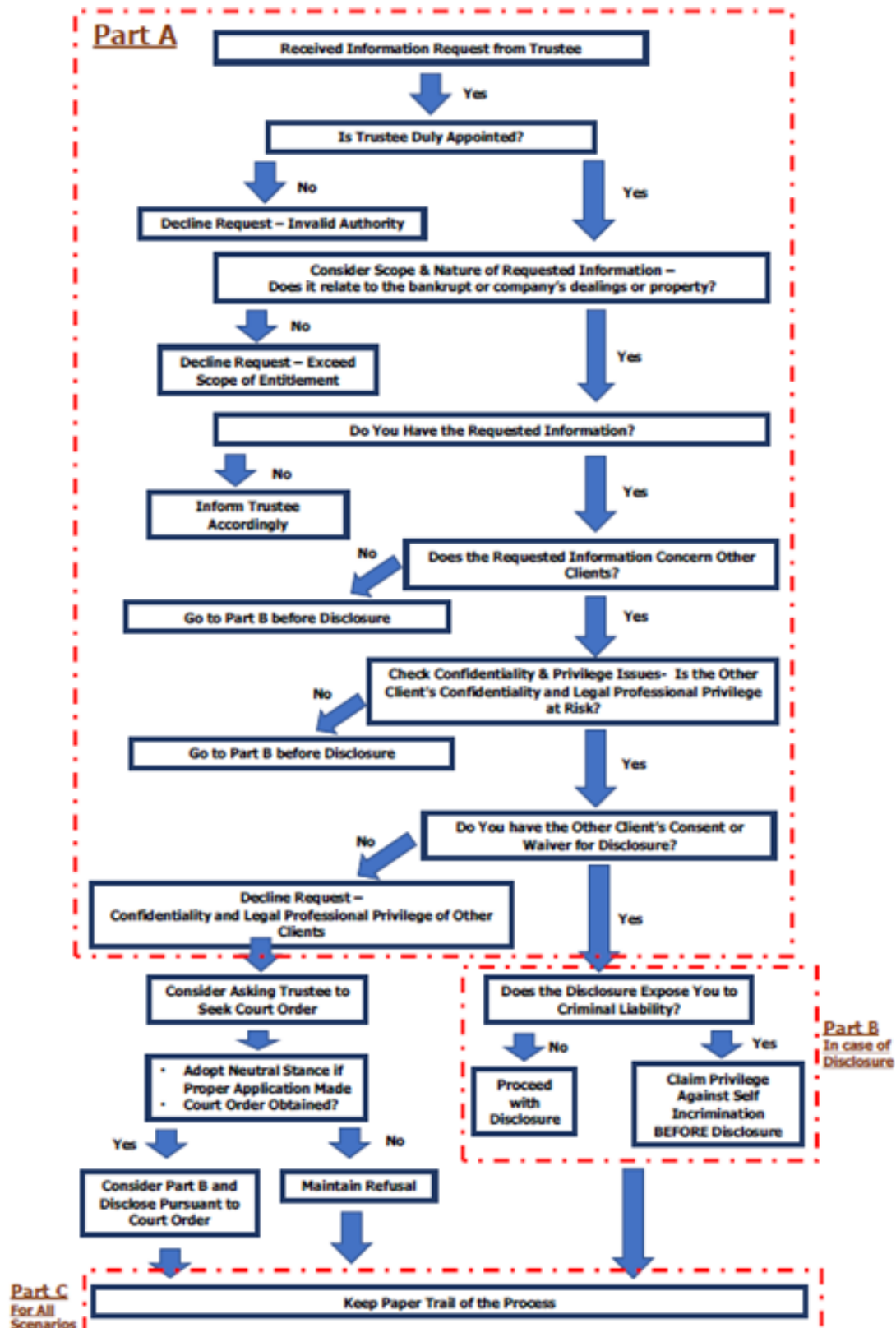
<sup>2</sup> See 86A(1)(b) BO; *Joint & Several Liquidators of Kong Wah Holdings Ltd v Grande Holdings Ltd* (2006) 9 HKCFAR 766 at §23

<sup>3</sup> See *Chen v Hugill & Ip* at §§8 & 31

<sup>4</sup> See *Re Allied Weli Development Ltd* [2022] HKCA 664 at §§22-26

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## Decision Tree for Handling Information Requests from Trustee



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### Practical Dos and Don'ts

#### ✓ DO

- Ascertain and verify Trustee's appointment
- Determine precise scope of requested information
- Raise issues and seek consent/waiver when needed
- Assert privilege against self-incrimination before disclosure

#### ✗ DON'T

- Blindly comply with Trustee's information request
- Volunteer unreasonable, unnecessary or oppressive information
- Disclose without considering other clients' rights
- Waive client privilege unilaterally