

An Analysis of Consumer Insolvency Trends in Hong Kong in the Aftermath of the 1997 Asian Financial Crisis and the 2007-2008 Global Financial Crisis

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I. INTRODUCTION

Great changes have occurred in Hong Kong personal bankruptcy¹ law and consumer lending over the last 30

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1 In Hong Kong, the insolvency law of individuals is separate from that of companies. The former is called bankruptcy law and is contained in the *Bankruptcy Ordinance* (cap 6), Laws of Hong Kong (LHK) [*BO*]. Throughout this article, references to the *BO* prior to 1 April 1998, the date on which the Hong Kong *Bankruptcy (Amendment) Ordinance 1996*, Ord No 76 of 1996 [*BAO 1996*], as incorporated into the *BO*, came into operation, will be to the Old *BO*. References to the law after 1 April 1998, will be to the *BO*. References to "new" provisions are references to changes made by the *BAO 1996* to the *BO*. Further amendments to the *BO* were made by the Hong Kong *Bankruptcy (Amendment) Ordinance 2005*, Ord No 18 of 2005, and the Hong Kong *Bankruptcy (Amendment) Ordinance 2016*, Ord No 1 of 2016. The latter is called liquidation (or winding-up) law and was previously contained in the *Companies Ordinance* (cap 32), LHK [Old *CO*]. However, on 3 March 2014 there was a substantial change in the naming convention of the Hong Kong company law legislation. On that date the then existing

years.² Prior to the onset of the Asian Financial Crisis (“AFC”) in 1997, the personal insolvency regime in place in Hong Kong was a harsh regime, not dissimilar to that in England in the time of Charles Dickens.³ The Hong Kong *Bankruptcy Ordinance* (cap 6) in effect at that time (Old *BO*),⁴ was penal in nature. There were few incentives for debtors to file for bankruptcy, and, once adjudicated bankrupt, debtors rarely emerged from bankruptcy with a discharge. Creditors’ petitions were triggered by “acts of bankruptcy”,⁵ a concept with origins in early English statutes from the Middle Ages.⁶ Once a case was commenced, the process was cumbersome and required a two-step procedure to make a debtor bankrupt, involving both a “receiving order” and an “adjudication order”. The theory behind the two-step procedure was to provide the debtor with a period during which he or she could either pay his or her creditors in full or enter into a scheme of arrangement or

Old *CO* was split into two. The legislation as it relates to operating companies continues to be known as the *Companies Ordinance* [*CO*], but it is now Chapter 622 of the Hong Kong legislative framework. The residual legislation that relates primarily to the winding up of companies was renamed as the *Companies (Winding-up and Miscellaneous Provisions) Ordinance* [*C(WUMP)O*], but remains as Chapter 32. For the sake of simplicity, the section numbers in *C(WUMP)O* remain the same as they were in the Old *CO*. Charles D Booth, Stephen Briscoe and ELG Tyler, *Hong Kong Corporate Insolvency Manual*, 3rd ed (Hong Kong: HKICPA with LexisNexis, 2015) [“Booth *et al*”], Chapter 1.2 at 4.

- 2 I have been studying personal insolvency law and trends in Hong Kong since my first research trip to the then British colony of Hong Kong in the summer of 1987. My interest increased when I moved to Hong Kong in the summer of 1989 and continued over the next 16 and a half years as I taught a variety of insolvency courses in the Faculty of Law at the University of Hong Kong. Since moving back to Hawai’i in January 2006, I continue to follow the HK developments from afar and during my frequent visits to Hong Kong.
- 3 The Old *BO*, *supra* note 1, in effect in Hong Kong at that time was enacted in 1931 (originally No 10 of 1931) and was based on the *Bankruptcy Act, 1914* (UK), 4 & 5 Geo 5, c 59.
- 4 Old *BO*, *supra* note 1.
- 5 *Ibid*, s 3(1).
- 6 See *Act Against Such As Do Make Bankrupt*, 34 & 35 Hen VIII, c 4 (1542); 13 Eliz, c 7 (1571).

composition with them. In practice, it rarely occurred, and in the vast majority of cases, the receiving order was followed by the making of an adjudication order. Overall, the commencement of a bankruptcy case would shame and punish the debtor, but would rarely lead to a significant level of repayment of creditors' claims.⁷

Under this harsh, inefficient bankruptcy regime, there were relatively few bankruptcy cases in Hong Kong, numbering in the low hundreds per year. However, the onslaught of the AFC, in combination with the enactment of the Hong Kong *Bankruptcy (Amendment) Ordinance 1996 (BAO 1996)*,⁸ effective 1 April 1998, led to an explosion of personal bankruptcy cases in Hong Kong,⁹ rising to an all-time peak of 26,092 cases in 2002.¹⁰ From 2003 through 2009, there was

7 For further discussion of this old bankruptcy law and procedure, see Charles D Booth, "Hong Kong Insolvency Law Reform: Preparing for the Next Millennium", (2001) 126 *Journal of Business Law* 134-146 (March Issue) ["Booth, Hong Kong Insolvency Law Reform"].

8 *BAO 1996*, *supra* note 1.

9 As the number of bankruptcy cases skyrocketed, I took a close look at the filing data, which led to a number of presentations and publications. I delivered presentations at the Recent Developments in Consumer Bankruptcy Panel Session at the Joint Meetings of the Law & Society Association and Research Committee on the Sociology of Law in Budapest, Hungary, on 6 July 2001, and at the Academics Meeting, INSOL International 6th World Congress, London, England, on 18 July 2001. These presentations led to the publication of Charles D Booth, "Consumer Bankruptcy in Hong Kong: Record Levels of Filings is Likely to Continue" (Aug 2002), *Hong Kong Lawyer* 72, which I expanded and updated in Charles D Booth, "Current Trends in Consumer Insolvency in Hong Kong", in Johanna Niemi-Kiesilainen, Ian Ramsay and William C Whitford, eds, *Consumer Bankruptcy in Global Perspective* (Oxford: Hart Publishing, 2003). This book chapter, in turn, was republished in a modified version as Charles D Booth, "Introduction to Personal Insolvency in Hong Kong", in Charles D Booth, Philip Smart & Stephen Briscoe, *Hong Kong Personal Insolvency Manual* (Hong Kong: Hong Kong Society of Accountants, 2003) Chapter 1.

10 This figure and further data is drawn from the Hong Kong Official Receiver's Office website, online: <<http://www.oro.gov.hk/eng/stat/stat.htm>>.

only one year in which the number of cases did not reach 10,000.¹¹ In 2009, with Hong Kong feeling the effects of the Global Financial Crisis (“GFC”), the number of bankruptcy cases increased to 15,784, which was the third highest annual level ever and the highest number of cases since 2003.¹² From 2010-2016, the number of cases settled down to a steady rate of roughly 8,000 to 10,000 cases per year.¹³ The remainder of this article analyzes the trends in Hong Kong consumer insolvency law in the aftermath of the AFC and GFC.

Part II of this article provides the data regarding the number of bankruptcy cases in Hong Kong from 1994 to 2016 and the types of petitioners from April 2010 to March 2015. It also identifies factors responsible for the dramatic increase in the number of cases. Part III summarizes important changes made to Hong Kong bankruptcy law by the *BAO 1996*, which makes self-petitions more attractive to debtors. Part IV then provides the data for the voluntary arrangement (“VA”) procedure, a collective debt discharge/repayment procedure, which has not proved as popular as bankruptcy as a debt relief mechanism. Part V discusses the causes of consumer bankruptcy in Hong Kong, and Part VI considers the role of credit card debt. Part VII concludes by predicting future levels of bankruptcy and VA cases, and offers some recommendations for improving the HK bankruptcy process.

II. HONG KONG BANKRUPTCY STATISTICS

1. General Statistics

The following data, drawn from the Official Receiver’s Office website, sets out four types of data for bankruptcy petitions in Hong Kong from 1994 to 2016: the number of

11 9,933 cases in 2005.

12 In 2010, in the aftermath of the GFC, I updated my earlier work noted in *supra* note 9, in Charles D Booth, “Introduction to Personal Insolvency in Hong Kong”, *supra* note 1.

13 See Table 1, below.

bankruptcy petitions, the number of petitions filed by debtors, the percentage of overall petitions filed by debtors, and the number of receiving/bankruptcy orders made.¹⁴

Table 1
Data on Bankruptcy Cases:
1994–2016

Year	Number of Bankruptcy Petitions	Number of Petitions Filed by Debtors	% of Overall Petitions Filed by Debtors	Number of Receiving/ Bankruptcy Orders Made*
1994	420	3	0.71%	306
1995	643	10	1.56%	455
1996	780	23	2.95%	543
1997	829	39	4.70%	639
1998 (Jan–Mar)**	262	19	7.25%	165
1998 (Apr–Dec)**	1,100	473	43.00%	728
Total 1998	1,362	492	36.12%	893
1999	3,876	2,721	70.20%	3,071
2000	5,487	3,810	69.44%	4,606
2001	13,186	11,089	84.10%	9,151
2002	26,922	25,138	93.37%	25,328
2003	22,092	20,368	92.20%	24,922
2004	12,489	10,807	86.53%	13,593
2005	9,933	8,255	83.11%	9,810
2006	10,685	9,647	90.29%	10,324
2007	10,918	10,174	93.19%	11,063
2008	11,620	10,754	92.55%	10,779
2009	15,784	14,907	94.44%	16,157
2010	9,102	8,353	91.77%	9,163

¹⁴ This data is drawn from the Hong Kong Official Receiver’s Office website, *supra* note 10.

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Year	Number of Bankruptcy Petitions	Number of Petitions Filed by Debtors	% of Overall Petitions Filed by Debtors	Number of Receiving/ Bankruptcy Orders Made*
2011	8,077	7,440	92.11%	7,981
2012	8,685	8,118	93.47%	8,178
2013	9,449	8,919	94.39%	9,371
2014	10,027	9,550	95.24%	9,674
2015	9,875	9,343	94.61%	9,750
2016	9,051	8,543,	94.39%	8,919
Total	211,292	188,503	89.21%	204,676

* The data refer to receiving orders prior to 1 April 1998, and to bankruptcy orders on or after that date.

** The *BAO 1996* came into operation on 1 April 1998.

It is clear from Table 1 that 1 April 1998 was an important date in the development of Hong Kong bankruptcy law. As of that date, two important trends started to emerge:

- (1) A dramatic increase in the number of bankruptcy cases — Prior to 1 April 1998, the annual level of bankruptcy cases in Hong Kong was in the hundreds. As of 1 April 1998, the number of bankruptcy cases immediately began to increase and 1998 was the first year that the number of cases topped 1,000. Every year since then, bankruptcy cases have numbered in the thousands — and, on two occasions, even in the tens of thousands¹⁵ — and the steady-state range is 8,000 to 10,000 cases per year.
- (2) A switch from creditor petitions to debtor petitions — Prior to 1 April 1998, the bankruptcy process was normally a creditor-driven process. As of 1 April 1998, there was an immediate increase in the number of debtors filing for bankruptcy, and in 1999, for the first time, the majority of bankruptcy cases in a calendar year were filed by debtors. The norm in Hong Kong

¹⁵ 2002 and 2003.

for the last decade has been for at least 90 percent of cases to be commenced by debtors.

So what is the relevance of 1 April 1998? That is the day on which the *BAO 1996* came into operation. With Hong Kong in the midst of a downturn caused by the AFC, the *BAO 1996* was particularly timely. This legislation made sweeping changes to Hong Kong bankruptcy law, the first in over a century. It modernized the bankruptcy law and moved it away from notions of debtor misconduct. It also made bankruptcy more accessible to consumers who had made poor financial decisions and were eager for a true “fresh start”.

Prior to 1 April 1998, there was little incentive for a debtor to file a bankruptcy petition. It was more sensible to wait and see if one’s creditors would eventually petition. The statistics set out in Table 1 show that this situation is no longer the case. More and more debtors in Hong Kong have come to view bankruptcy law as a viable option for addressing their financial problems. A huge cultural shift has occurred in Hong Kong — from bankruptcy being a procedure that creditors used against recalcitrant debtors to a mechanism that debtors choose as a solution to their financial problems. It appears that this shift has become a permanent feature of the Hong Kong financial landscape.

2. Types of Petitioners

Table 2 includes data supplied by the Official Receiver’s Office for the types of petitioners during the post-GFC period running from April 2010 through March 2015:

Table 2
Types of Petitioners:
April 2010–March 2015

Types of Petitioners	Total	Percentage
Debtors	42,476	93.58%
Banks or Financial Institutions	1,449	3.19%
Director of Legal Aid	120	0.26%
Trade Creditors	0	0.0%
Landlords	0	0.0%
Others	1,350	2.97%
Total Petitions	45,395	100.00%

As noted above, the current norm in Hong Kong is for debtors, rather than creditors, to commence bankruptcy cases. In a relatively short period of time, bankruptcy has become a remedy pursued by debtors, rather than a collection tool of creditors. Once debtors are willing to — or even interested in — filing self-petitions, creditors lose much of their leverage in threatening to commence a case. This lack of leverage, in conjunction with low distribution rates to creditors in bankruptcy, makes petitioning less attractive to creditors.

It is worthwhile to examine the 6.42 percent of the overall petitions filed by creditors for the period running from April 2010 to March 2015. Unfortunately, the available data cannot account for 46.25 percent of these petitions. But of the remaining 53.75 percent of the creditor petitions, the great majority (92.35 percent) are filed by banks or financial institutions. These institutions have a broad clientele throughout Hong Kong, and by being more aggressive in collecting their debts, they are also sending a signal to their other debtors that there are serious ramifications for not repaying credit card bills and personal loans. In contrast, it is truly remarkable that not one trade creditor or landlord filed a bankruptcy petition against a non-paying debtor during this five-year period.

III. SIGNIFICANT CHANGES MADE BY THE *BAO 1996* THAT MAKE BANKRUPTCY MORE ATTRACTIVE TO DEBTORS¹⁶

By the late 1980s, it had become clear that many aspects of the old bankruptcy law had become obsolete and were inadequate to address many of the problems that debtors were confronting in Hong Kong's growing consumer credit economy. The bankruptcy law reform effort that ensued was part of an overall review of Hong Kong insolvency law that began in September 1990 when the Law Reform Commission of Hong Kong ("LRC") appointed a Sub-committee on Insolvency to conduct a review of bankruptcy and liquidation law and practice in Hong Kong.¹⁷ It was this review process that led to the Hong Kong *Bankruptcy (Amendment) Bill 1996*¹⁸ and then to the *BAO 1996*.

There were four significant changes made by the *BAO 1996* to Hong Kong bankruptcy law that led to the dramatic increase in the number of petitions filed by debtors and a decrease by creditors.

16 For a more detailed discussion of the changes made by the *BAO 1996*, *supra* note 1, see Charles D Booth, "Leaping forward to 1997: Bankruptcy Law Reform in Hong Kong" (1997) 6 *International Insolvency Review* 183. See also Charles D Booth, "Hong Kong Insolvency Law Reform", *supra* note 7.

17 The Law Reform Commission of Hong Kong ("LRC") Sub-committee on Insolvency ("Sub-committee on Insolvency") commenced work on 12 November 1990. The Sub-committee on Insolvency issued its *Consultative Document on Bankruptcy* in August 1993 (Hong Kong, Government Printer) and the LRC's *Report on Bankruptcy* followed in May 1995 (Hong Kong, Government Printer). The LRC's recommendations adopted most of the proposals of the Sub-committee, and were incorporated into the *Bankruptcy (Amendment) Bill 1996*, *Legal Supplement No 3 to the Hong Kong Government Gazette*, 1 March 1996, and then into the *BAO 1996*.

18 *Ibid.*

1. Automatic Discharge

Under the old Hong Kong bankruptcy regime, the threat of filing a bankruptcy petition was a weapon to be used by creditors against uncooperative debtors. This threat of bankruptcy had some bite to it, because although discharge was theoretically possible, it was very difficult to achieve in practice; once a debtor became bankrupt, the norm was to remain a bankrupt for the rest of his or her life.¹⁹ Under the revised law, the greatest incentive for debtors to file for bankruptcy is the ability to benefit from the automatic discharge and achieve a fresh start — to escape from one's financial problems and become free of onerous debt obligations. Under the new section 30A of the *BO*, an automatic discharge became available to bankrupts. In the absence of objections by either the trustee or the bankrupt's creditors, a first-time bankrupt will be discharged from bankruptcy four years from the date of the bankruptcy order; and repeat bankrupts will be discharged in five years. Where valid objections are raised, these periods may be extended for up to eight years.

2. Exempted Property

Under the old regime, the limited exemption of the property of the estate that a bankrupt was able to retain further contributed to the punitive nature of the procedure, although the trustee, in practice, usually ignored the limitation.²⁰ The old section 43 of the Old *BO* enabled a bankrupt to retain only the following:

The tools (if any) of his trade and the necessary wearing apparel and bedding of himself and his family dependent on and residing with him, to

19 LRC, *Report on Bankruptcy*, *supra* note 17, at 156, para 17.1. In many years it was not unusual for only one percent of bankrupts to obtain a discharge. For example, during the 10-year period from 1983 to 1992. *Ibid* at 161, para 17.8.

20 *Ibid* at 121, para 13.5.

a value, inclusive of tools and apparel and bedding, not exceeding \$3,000 HKD in the whole.

Since 1 April 1998, bankrupts have benefited from the liberalized exemption provisions in the revised section 43 of the *BO*. The \$3,000 HKD cap in the old section 43 had become unworkable and was abolished. The new section 43(2) does not include a dollar limit on exempted property. Rather, it provides that bankrupts may retain:

- (i) such tools, books, vehicles, and other items of equipment as are necessary to the bankrupt for use personally by him [or her] in his [or her] employment, business or vocation;
- (ii) such clothing, bedding, furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of the bankrupt and his family.

To prevent abuses, the trustee is permitted by the new section 43B²¹ of the *BO* to claim items of excess value from the bankrupt. Another change to the law is in the new section 43A, which provides that property that the bankrupt acquires post-petition does not vest in the trustee unless the trustee serves a notice in writing to claim the property. Lastly, the new section 43E authorizes the court, on the application of the trustee, to make an “income payments order” pursuant to which the bankrupt must pay to his or her estate a portion of his income for the period for which the order is in effect. However, in practice, income payment orders are quite rare. The Official Receiver’s Office has confirmed that there were only 49 income payment orders made for the period running from April 2004 to March 2015.

3. Family Home

A further benefit for bankrupts is included in the new section 43F of the *BO*, which may enable a bankrupt to continue occupying the family home for a period of six months from the

²¹ See *ibid* at 130, para 13.51. Previously, all post-petition property vested in the trustee, which proved administratively cumbersome and was difficult to enforce.

making of the bankruptcy order. The debtor may apply to the court for a further six-month extension, but the new section 43F(2) provides that “the court shall assume, unless the circumstances of the case are exceptional, that the interests of the bankrupt’s creditors outweigh all other considerations”. The notion of family home refers to premises in which the bankrupt normally resides and which comprise part of his or her estate. Section 43F does not apply to premises that are rented, rather than owned, by the bankrupt. In addition, section 43F does not restrict the rights of a mortgagee to obtain possession.²²

4. Abolition of Acts of Bankruptcy

Most of the acts of bankruptcy contained in the old bankruptcy law were premised on wrongful actions by the debtor, such as making a fraudulent conveyance of one’s property,²³ or with intent to defeat or delay creditors removing one’s property from the jurisdiction or beginning “to keep house”,²⁴ which is a colourful way of saying that the debtor refused to see or deal with his or her creditors. However, the most frequently relied upon act was that the debtor failed to comply with a bankruptcy notice.²⁵ At the heart of the concept of acts of bankruptcy was the notion that honest businesspersons repay their debts and that filing for bankruptcy was justifiable when it was clear that payment would not be forthcoming.

The *BAO 1996* abolished the notion of acts of bankruptcy. Although the abolition is not directly relevant to self-petitions by debtors, it is still significant because it demonstrates that the reformed law has moved away from the notion that a bankruptcy petition is usually triggered by a debtor’s

²² *BO*, *supra* note 1, s 43(5).

²³ Old *BO*, *supra* note 1, s 3(1)(b).

²⁴ *Ibid*, s 3(1)(d).

²⁵ *Ibid*, s 3(1)(g). See also the LRC Sub-committee on Insolvency, *Consultative Document on Bankruptcy*, *supra* note 17, at 10, para 2.13.

wrongful acts in favour of the notion that a petition should usually be based on the debtor's problematic financial situation. The balance has quite clearly shifted in favour of assisting or rehabilitating, rather than punishing the debtor.²⁶

IV. VOLUNTARY ARRANGEMENTS

Under the old pre-*BAO 1996* bankruptcy procedure, after the making of a receiving order, the debtor was provided with a period during which the debtor could either pay his or her creditors in full or enter into a scheme of arrangement or composition with them. A debtor's creditors were to decide at their first meeting whether to accept a proposal for a composition or a scheme of arrangement. In theory, this decision was intended to give the creditors the option of avoiding a liquidation of the debtor's assets. In practice, however, by the time the bankruptcy petition was filed, it was usually too late for a debtor to negotiate a settlement with creditors, so such proposals were rarely accepted. Thus, in the vast majority of cases, the receiving order was followed by the making of an adjudication order.

One of the important reforms included in the *BAO 1996* was the adoption of a VA procedure that could be commenced at an earlier stage of a debtor's difficulties with an increased likelihood of leading to the payment of a higher percentage of creditors' claims. The VA procedure is based on the individual voluntary arrangement ("IVA") procedure contained in Part VIII of the United Kingdom ("UK") *Insolvency Act 1986*.²⁷ The UK uses the term IVA to distinguish the procedure for individuals from the corporate procedure, which is called a company voluntary arrangement ("CVA"). Since Hong Kong

²⁶ This is not to say, however, that punitive provisions are no longer contained in the *BO*. Many such provisions are listed as bankruptcy offences in Part VIII (ss 129 to 142) and other provisions remain in other pieces of Hong Kong legislation, for example, *Legal Practitioners Ordinance* (Cap 159), s 6(7); *Partnership Ordinance* (Cap 35), s 35; *CO*, *supra* note 1, s 480.

²⁷ *Insolvency Act 1986* (UK), c 45.

does not have a CVA procedure, the *BO* refers to the arrangement procedure for individuals as the VA procedure. However, among practitioners in Hong Kong, and even within the Official Receiver's Office, the terms IVA and VA are used interchangeably.

The VA procedure is available to both bankrupts and non-bankrupts. The VA procedure is included in the new sections 20-20L of the *BO*. The new section 20A permits a debtor, or where the debtor is an undischarged bankrupt, the debtor, the trustee or the Official Receiver, to apply for an interim order. Pursuant to the new section 20(2), the making of an interim order provides the debtor with a moratorium. During the period in which the order is in effect, a bankruptcy petition may not be presented or proceeded with against the debtor and no other proceedings, execution, legal process, or distress may be commenced or continued against the debtor except with the leave of court.

The theory underlying the VA procedure is that both the debtor and creditors will benefit from having the debtor seek relief at an earlier stage of financial difficulties. Further benefits for the debtor are the ability (1) to avoid the stigma attached to the commencement of a bankruptcy case, and (2) to protect more of his or her property. The debtor's creditors, in turn, will benefit from a higher level of distribution from the debtor's payments out of future cash flow or earnings than would be possible if the debtor's assets were liquidated.

Table 3, below, from the Official Receiver's Office, sets out the data on approved VA cases in Hong Kong from 1998 to 2016.²⁸

²⁸ Details may be found online: the Official Receiver's Office <<http://www.oro.gov.hk/eng/stat/stat.htm>>, *supra* note 10.

Table 3
Number of Approved VA Cases:
1998-2016

Year	With Official Receiver as Nominee*	With Outside Nominees**	Total
1998 (Apr-Dec)***	1	0	1
1999	3	3	6
2000	1	0	1
2001	3	1	4
2002	26	494	520
2003	1	2,661	2,662
2004	0	2,323	2,323
2005	0	1,066	1,066
2006	1	1,523	1,524
2007	0	1,949	1,949
2008	0	2,020	2,020
2009	0	3,046	3,046
2010	0	1,389	1,389
2011	0	822	822
2012	0	799	799
2013	0	810	810
2014	0	782	782
2015	0	684	684
2016	0	589	589
Total	36	20,961	20,997

* Prior to 2 September 2002, the Official Receiver was also willing to serve as the nominee under a VA. In cases commenced on or after 2 September 2002, the Official Receiver only serves in the role of a facilitator. However, the policy change was not retroactive and the Official Receiver continued to serve as nominee in two cases commenced prior to 2 September 2002 — one case approved in 2003 and another in 2006.

** The number of approved VA cases with outside nominees is based on figures reported by the outside nominees.

*** The *BAO 1996* came into operation on 1 April 1998.

Despite the potential advantages of a VA over bankruptcy, the number of VA in Hong Kong has remained quite low in

comparison to the number of bankruptcy filings. Table 4 sets out the ratio of approved VA cases to bankruptcy petitions from 1 April 1998 to 2016.

Table 4
Ratio of Approved VA Cases to Filed Bankruptcy Petitions:
April 1998-2016

Year	Number of Approved VA Cases	Number of Bankruptcy Petitions	Ratio of Approved VA to Bankruptcy Petitions
1998 (Apr–Dec)	1	1,100	1 : 1,100
1999	6	3,876	1 : 646
2000	1	5,487	1 : 5,487
2001	4	13,186	1 : 3,296.50
2002	520	26,922	1 : 51.77
2003	2,662	22,092	1 : 8.30
2004	2,323	12,489	1 : 5.38
2005	1,066	9,933	1 : 9.32
2006	1,524	10,685	1 : 7.01
2007	1,949	10,918	1 : 5.60
2008	2,020	11,620	1 : 5.75
2009	3,046	15,784	1 : 5.18
2010	1,389	9,102	1 : 6.55
2011	822	8,077	1 : 9.83
2012	799	8,685	1 : 10.87
2013	810	9,449	1 : 11.67
2014	782	10,027	1 : 12.82
2015	684	9,875	1 : 14.44
2016	589	9,051	1:15.37
Overall	20,997	208,358	1 : 9.92

As can be seen from Table 4, it was not until 2002 that the number of VA reached a critical mass. A high in the number of VA cases was reached in 2003 and in the ratio of VA to bankruptcies in 2004. The number of VA and the ratio of VA

cases to bankruptcy cases increased in the aftermath of the GFC, reaching new highs in 2009, but since then the numbers and ratios have again decreased.

The attitudes of both debtors and creditors have contributed to the low level use of VA procedures. Debtors did not resort to the VA procedure in significant numbers until 2002, and even with the increase in numbers since then, the great majority of debtors have opted, and continue to opt, for bankruptcy instead. Perhaps the advantages of the new bankruptcy procedure discussed in Part III, above, have proved much more attractive to debtors than the benefits offered by VA. The attitudes of creditors have also contributed to the low levels. In the early years, when debtors tried to resort to the VA procedure, their creditors, especially the financial institutions, were not supportive. Even though it appears that that the banks and finance companies have adopted a more flexible approach since 2002, VA have still not taken hold as a popular solution to financial difficulties.

Some of the factors frequently mentioned in Hong Kong as contributing to the low number of VA include the following:

- (i) The morality argument — banks and credit card companies distrust individuals who do not repay their debts and desire to punish such individuals by forcing them to resort to bankruptcy;
- (ii) the large number of creditors in many of these cases makes it difficult for an agreement to be reached; and
- (iii) VA procedures are best suited to cases involving individuals in higher income brackets, which excludes the majority of bankrupts (and certainly all those who are unemployed).²⁹

²⁹ See Arthur Andersen, *Review of the Role of the Official Receiver's Office Consultation Paper* (Hong Kong: Financial Services Bureau, June 2002) at 17, para 3.6.

Both the long-term and short-term trends are pointing in the direction of fewer VA cases in Hong Kong.

V. CAUSES OF CONSUMER BANKRUPTCY

The Hong Kong Official Receiver's Office is the best source for data that can be interpreted and analyzed to ascertain the causes of consumer bankruptcy in Hong Kong. For many years, the Official Receiver's Office issued an *Annual Report* that contained a variety of relevant information, including the types of bankruptcy petitions, the nature of the major creditor's claim, and causes of failure in consumer bankruptcies. Below, I rely on the data contained in the *2000-2001 Official Receiver's Office Annual Departmental Report*³⁰ and the *2001-2002 Official Receiver's Office Annual Departmental Report*.³¹ Although the Official Receiver's Office stopped issuing these *Reports* years ago, they have kindly supplied me with data for the periods running from April 2007–March 2009 and April 2010–March 2015, so some comparisons can be made among the three periods. They have also supplied me with samplings of other data for bankrupts, including ages, monthly income, types of residence, and liability levels to enable me to make further comparisons.

30 Official Receiver's Office, *2000-2001 Official Receiver's Office Annual Departmental Report* (Hong Kong, Official Receiver's Office, 2001) ("2000-2001 ORO Annual Report"). Please note that the data included in these *Reports* is based on a reporting year running from 1 April to 31 March, in contrast to the data on the Official Receiver's Office website, which is based on actual calendar years.

31 Official Receiver's Office, *2001-2002 Official Receiver's Office Annual Departmental Report* (Hong Kong, Official Receiver's Office, 2001) ("2001-2002 ORO Annual Report").

Table 5
Types of Bankruptcy Petitions:
2000–2002, 2007–2009, and 2010–2015*

Types of Bankruptcy Cases	Number and % of Cases (2000–2002)**	Number and % of Cases (2007–2009)***	Number and % of Cases (2010-2015)***
Consumer	15,432 (92.45%)	15,885 (65.36%)	28,255 (62.24%)
Trading	872 (5.23%)	953 (3.92%)	3,322 (7.32%)
Unknown	388 (2.32%)	7,467 (30.72%)	13,818 (30.44%)
Total	16,692 (100.00%)	24,305 (100.00%)	45,395 (100.00%)

* The data for these years is for reporting years running annually from 1 April to 31 March.

** The data was drawn from the 2000-2001 and 2001-2002 ORO Annual Reports.

*** The data was supplied by the Official Receiver’s Office.

From Table 5, it is striking how large a percentage of bankruptcy cases is related to consumer debt. It is unfortunate that the data collecting procedure changed for the later two periods. It therefore becomes difficult to draw general comparisons as to the overall numbers of consumer cases because there are so many cases in the “Unknown” category for 2007-2009 and 2010-2015. The reason why this table is included, nevertheless, is because the data supplied by the Official Receiver’s Office for the 2007-2009 and 2010-2015 periods for Tables 6 and 7 below, use the numbers from the “Consumer” category in Table 5 above.

Table 6
Nature of Major Creditor’s Claim in Consumer Bankruptcies:
2000–2002, 2007–2009, and 2010–2015

Nature of Major Creditor’s Claim	Number and % of Cases (2000–2002)**	Number and % of Cases (2007–2009)***	Number and % of Cases (2010-2015)***
Consumer Credit	13,045 (84.53%)	9,741 (61.32%)	9,056 (32.05%)
Guaranteed Debt	1,424 (9.23%)	313 (1.97%)	560 (1.90%)

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Nature of Major Creditor's Claim	Number and % of Cases (2000–2002)**	Number and % of Cases (2007–2009)***	Number and % of Cases (2010–2015)***
Others (including personal loans, for 2000–2002 only, rent arrears, etc)	963 (6.24%)	1,210 (7.62%)	5,102 (18.06%)
Personal Loan	****	4,621 (29.09%)	13,537 (47.91%)
Total	15,432 (100.00%)	15,885 (100.00%)	28,255 (100.00%)

* The data for these years is for reporting years running annually from 1 April to 31 March.

** The data was drawn from the 2000-2001 *ORO Annual Report*, Annex 7, and the 2001-2002 *ORO Annual Report*, Annex 10.

*** The data was supplied by the Official Receiver's Office.

**** The Official Receiver's Office did not report data for this category for 2000 to 2002.

The data in Table 6 reflects the changing nature of the consumer lending market in Hong Kong. Back in 2000–2002, the Official Receiver's Office did not even report separately for the personal lending category. During those years, consumers more likely relied to a greater extent on the credit lines on their consumer credit cards. As the consumer lending market has developed over the years and personal loans have become more popular, it can be seen that in the 2010–2015 period, for the first time, personal loans became the largest source of creditors' claims in consumer bankruptcies.

Table 7
Causes of Failure in Consumer Bankruptcies:
2000–2002, 2007–2009, and 2010–2015*

Causes of Failure for Consumers	Number and % of Cases (2000–2002) **/****	Number and % of Cases (2007–2009) *** /****	Number and % of Cases (2010–2015) ***/****
Lack of gainful employment	6,415 (41.57%)	8,311 (52.32%)	10,193 (36.08%)
Excessive use of credit facilities	2,048 (13.27%)	2,539 (15.98%)	4,260 (15.08%)

Causes of Failure for Consumers	Number and % of Cases (2000–2002) **/***	Number and % of Cases (2007–2009) ***/****	Number and % of Cases (2010–2015) ***/****
Overspending	1,688 (10.94%)	2,521 (15.87%)	8,069 (28.56%)
Loss in investment	1,717 (11.13%)	371 (2.34%)	365 (1.29%)
Personal guarantee liabilities	1,088 (7.05%)	307 (1.93%)	549 (1.94%)
Gambling	912 (5.91%)	585 (3.68%)	1,334 (4.72%)
Speculation in shares, etc	239 (1.55%)	47 (.030%)	62 (0.22%)
Others/ Unknown*****	1,325 (8.59%)	1,204 (7.58%)	3,423 (12.11%)
Total	15,432 (100.00)	15,885 (100.00%)	28,255 (100.00%)

* The data for these years are for reporting years running annually from 1 April to 31 March.

** The data was drawn from the 2001-2002 ORO Annual Report, Annex 6, and from the 2001-2002 ORO Annual Report.

*** The causes of failure were not identified in all cases. The percentages are determined on the basis of the total number of consumer bankruptcies in the relevant periods.

**** The data for 2007-2009 and for 2010-2015 were provided by the Official Receiver’s Office.

***** The number of cases set out in the 2001-2002 ORO Annual Report, Annex 6, under the respective categories “Others” and “Unknown” combined the bankruptcies of both trading individuals and consumers. For purposes of the analysis for that year, the numbers under the “Others/Unknown” category are derived from the difference between the number of cases with identified causes and the total number of consumer bankruptcies in the respective year. The data for the “Others/Unknown” category for 2007-2009 and 2010-2015 was supplied by the Official Receiver’s Office.

From Table 7, it can be seen that the “lack of gainful employment” was by far the most significant cause of consumer bankruptcies in all three periods. The lack of gainful employment factor is also influenced by the overall unemployment rate. The unemployment rate in Hong Kong during part of the 2000–2002 period was one of the highest in Asia and exceeded seven percent (seasonally adjusted) for much of 2002.³² The unemployment rate for 2007–2009 (seasonally adjusted) ranged from 3.2 to 5.4

32 See the HK Census and Statistics Department website, online:

percent.³³ A portion of the cases triggered by the personal guarantee liabilities were possibly also job-related, because many of these cases likely included calls made on company directors or officers who guaranteed corporate debt that their company was unable to pay back. Thus, up to 48.62 percent of the bankruptcy cases in 2000–2002, 54.25 percent of the cases in 2007–2009, and 38.02 percent in 2010–2015 might have been triggered by the loss of employment or contingent claims resulting from corporate failure.

Although the loss of employment was again the most frequent cause of consumer bankruptcies during the 2010–2015 period, for the first time, the combination of the debtor’s excessive use of credit facilities and overspending caused more bankruptcies. It should be noted that the unemployment rate was quite low for most of the 2010–2015 period. The unemployment rate (seasonally adjusted) ranged from 3.2 to 4.6 percent.³⁴ It is likely that the stronger economic backdrop was responsible for the decrease in the percentage of bankruptcy cases caused by the lack of gainful employment.

It can also be seen from Table 7 that the combined percentage of bankruptcy cases caused by the debtor’s excessive use of credit facilities and overspending has been steadily rising, from 24.21 percent in 2000–2002, to 31.85 percent in 2007–2009, to 43.64 percent in 2010–2015. This trend is significant and data for the 2010–2015 period are consistent with the results of two recent consumer debt surveys in Hong Kong that are discussed in Part VI, below. Further data profiling of bankrupts in Hong Kong, compiled by the Official Receiver’s Office for 2001–2002, 2009 and 2010–2015, includes additional information regarding the ages, monthly incomes, types of residences, and levels of debtor liabilities. Strictly speaking, since the data might have been drawn from both consumers and non-consumers, some of the

< <http://www.censtatd.gov.hk/hkstat/sub/sp200.jsp?subjectID=200&tableID=006&ID=0&productType=8> > .

33 *Ibid.*

34 *Ibid.*

conclusions regarding consumers and consumer debt may be slightly skewed. Except as otherwise noted, the data for 2001–2002 were compiled from a sample of 200 bankruptcy cases in which bankruptcy orders were issued for a seven-month period running from 26 November 2001 to 24 June 2002. The Official Receiver’s Office claimed that this sampling offered a realistic view of the bankruptcy caseloads in Hong Kong at that time. The data for 2009 was drawn from a broader sample of 9,911 cases. For the 2010-2015 data, the Official Receiver’s reported on the basis of percentages, but did not provide the size of the sample.

Table 8
Ages of Bankrupts:
November 2001–June 2002, 2009, and April 2010–March 2015

	Age < = 30	Age 31-40	Age 41-50	Age > = 51	Total
2001–2002 Total	49	71	64	16	200
%	24.50%	35.50%	32.00%	8.00%	100%
2009 Total	1,754	2,587	3,158	2,412	9,911
%	17.70%	26.10%	31.86%	24.34%	100%
Apr 2010-Mar 2015 %*	17.69%	24.66%	28.39%	29.26%	100%

* The Official Receiver’s Office did not provide the number of bankrupts in each age group for this time period.

Over the last 15 years, the average age of bankrupts has been rising. The percentages of bankrupts under 30 years old, between 31–40 years old, and 41–50 years old have all been falling, and only the percentage of bankrupts aged 51 or over has been increasing. The increase in the percentage of bankrupts aged 51 or older is the largest percentage change of any of the age categories — and the level in 2010-2015 was almost identical to the percentage of bankrupts between 41–50 years old. In 2001–2002, 60 percent of bankrupts were younger than 41 years old. In 2010–15, the percentage of bankrupts younger than 41 years old was only 42.35 percent.

Table 9
Monthly Income of Bankrupts:
November 2001–June 2002 and 2009

Monthly Income (in HKDs)	2001–2002		2009	
	Total	%	Total	%
0	73	36.50%	4,093	41.30%
Above \$0 - \$10,000	65	32.50%	3,757	37.91%
Above \$10,000 - \$20,000	53	26.50%	1,900	19.17%
Above \$20,000 - \$25,000	5	2.50%	87	0.87%
Above \$25,000	4	2.00%	74	0.75%
Total	200	100%	9,911	100%

During these two periods, most bankrupts in Hong Kong were unemployed or had low monthly income levels. The percentage of unemployed bankrupts earning only up to \$10,000 HKD per month increased. Meanwhile, the percentages of bankrupts in all earning bands above \$10,000 HKD per month decreased, with the most significant drop occurring in the percentage of bankrupts earning \$10,000 HKD to \$20,000 HKD per month.

Table 10
Types of Residence of Bankrupts:
Nov 2001–June 2002, 2009 and Apr 2010–Mar 2015

	Public Housing	Rented Private Apartment	Mortgaged/ Charged Self-Owned Property	Total
2001–2002 Total	86	98	16	200
%	43%	49%	8%	100%
2009 Total	5,356	4,278	277	9,911
%	54.04%	43.17%	2.79%	100%
Apr 2010–Mar 2015 %*	57.01%	41.27%	1.72%	100%

* The Official Receiver's Office did not provide the number of bankrupts in each category for this time period.

There have been some interesting changes in the types of residences of bankrupts. There has been a steady increase in the percentage of bankrupts living in public housing. This increase correlates with the decrease in both the percentage of debtors living in rented private flats and in self-owned property that is mortgaged or charged. Few bankrupts currently own their residence.

Table 11
Liability Levels of Bankrupts:
Nov 2001-June 2002, 2009 and Apr 2010-Mar 2015*

Liabilities (in HKD)	2001-2002		2009		Apr 2010- Mar 2015*
	No of Bankrupts	%	No of Bankrupts	%	%
\$200,000 or below	39	19.50%	3,574	36.06%	32.20%
Above \$200,000 - \$400,000	85	42.50%	3,907	39.42%	39.95%
Above \$400,000 - \$600,000	38	19.00%	1,146	11.56%	13.64%
Above \$600,000 - \$800,000	16	8.00%	456	4.60%	5.16%
Above \$800,000 - \$1,000,000	6	3.00%	197	1.99%	2.39%
Above \$1,000,000 - \$2,000,000	9	4.50%	314	3.17%	3.71%
Above \$2,000,000 - \$6,000,000	7	3.50%	188	1.90%	1.98%
Above \$6,000,000	0	0.00%	129	1.30%	0.97%
Total	200	100%	9,911	100%	100%

* The Official Receiver's Office did not provide the number of bankrupts in each category for this time period.

From 2001-2002 to 2009, there was a dramatic increase in the percentage of bankrupts at the lowest end of the liability levels (\$200,000 HKD or below). There was also a small increase at the top level (above \$6,000,000 HKD). Between those same time periods, the percentage of bankrupts in all the other bands

fell. From 2009 to 2010–2015, the opposite occurred: the percentage of bankrupts in the lowest and highest bands fell, and the percentage of bankrupts in all the other bands rose. The overall changes track the initial changes: there has been a significant increase from 2001–2002 to 2010–2015 in the percentage of bankrupts in the lowest bands (\$200,000 HKD or below) and a small increase in the top band (liabilities above \$6,000,000 HKD). In each period, more than 60 percent of bankrupts have had liabilities of \$400,000 HKD or less.

In summary, it can be seen from the data in Tables 6-11 that has been provided by the Official Receiver's Office that since 2001, the bankruptcy demographics are changing and that bankrupts in Hong Kong are getting older and poorer:

- there has been a greying of bankrupts in Hong Kong. The average age of bankrupts is rising;
- the average monthly income of bankrupts has been falling (at least through 2009, the latest year for which data is available) and the percentage of bankrupts with less than \$200,000 HKD of liabilities has increased; and
- there has been a steady increase in the percentage of bankrupts living in public housing and a steady decrease in the percentage of bankrupts renting private apartments or owning their own flats.

The data suggests that the typical Hong Kong bankrupt has either lost his job or has very little income and lives under severe financial burdens. Bankruptcy has become more of a lower class, rather than middle class, phenomenon. Even though the liability levels of these debtors are at the lower end of the liability ranges, these debtors do not have sufficient income to repay their debts. For such individuals, the ability to file a bankruptcy petition and emerge with a fresh start four years later proves especially attractive.

VI. THE ROLE OF CREDIT CARD DEBT AND PERSONAL LOANS IN CONSUMER BANKRUPTCY

It can be seen from the data in Part V that unmanageable levels of credit card debt and personal loans in Hong Kong contribute to many Hong Kong consumer bankruptcies. In many cases, debtors literally spend their way into bankruptcy by using credit cards or other forms of personal debt that they are later unable to repay, having failed to budget sufficient amounts to cover high interest rates on loans and other credit charges. In other cases, debtors are getting by — albeit sometimes just barely — but then are forced into bankruptcy when a catastrophic event occurs, such as a job loss, medical emergency, or divorce.

Over the last quarter century, credit card debt in Hong Kong has been climbing. Statistics show that advances on credit cards rose from \$7 billion HKD in 1992³⁵ to approximately \$59.7 billion HKD at the end of the third quarter of 2002.³⁶ Total receivables continued to rise to \$70.9 billion HKD at the end of the first quarter of 2009 before declining slightly to \$70.5 billion HKD at the end of the third quarter of 2009.³⁷ As at the end of the fourth quarter of 2015, total credit card receivables stood at \$125,611 billion HKD, declining to \$116,672 billion HKD at the end of the first quarter of 2016.³⁸

35 See Jake van der Kamp column, *South China Morning Post (Business Post 2)* (6 March 2002) at 1.

36 See Hong Kong Monetary Authority (HKMA), “Credit Card Lending Survey Results for Third Quarter 2002” (21 November 2002), online: HKMA <<http://www.hkma.gov.hk/eng/key-information/press-releases/2002/20021121-3.shtml>>.

37 See HKMA, “Credit Card Lending Survey Results for Third Quarter 2009” (19 November 2009), online: HKMA <<http://www.hkma.gov.hk/eng/key-information/press-releases/2009/20091119-3.shtml>>.

38 See HKMA, “Credit Card Lending Survey Results for First Quarter 2016: Annex” (13 May 2016), online: HKMA <<http://www.hkma.gov.hk/media/eng/doc/key-information/press-release/2016/20160512e5a1.pdf>>.

It was reported in 2002 that Hong Kong had the highest default rate in the world on outstanding credit card debt, at a year-to-date annualized rate of 12.75 percent at the end of the third quarter of 2002. The average consumer in default in Hong Kong owed 55 months of his or her income.³⁹ To address the increasing rate of credit card charge-offs at that time, the Hong Kong Association of Banks (“HKAB”) proposed to the Hong Kong Monetary Authority (“HKMA”) and the government that banks be able to share “positive” consumer credit card information, such as how many credit cards a customer has, approved credit limits, and outstanding balances. New rules were implemented providing for a two-year transitional period during which banks could not reveal the credit information of existing clients unless they applied for new loans or credit restructuring. When this two-year period expired in June 2005, full sharing was permitted.⁴⁰

It had been argued that in the longer term, sharing positive information would decrease the number of consumer bankruptcy cases, and, there was, in fact, a significant drop in the number of bankruptcy filings from 26,922 (the all-time annual high) in 2002, to 22,092 in 2003, to 12,489 in 2004, and then to the current steady rate of 8,000-10,000 cases per year. Moreover, the charge-off rate of credit cards has improved, ranging from 3.92 to 4.17 percent during the first three quarters of 2009, and to even lower levels ranging from 1.82 to 1.91 percent during the last two quarters of 2015 and the first quarter of 2016.⁴¹

39 For details, refer to the HKMA, “Credit Card Lending Survey Results for Third Quarter 2002” (21 November 2002), online: HKMA < <http://www.hkma.gov.hk/eng/key-information/press-releases/2002/20021121-3.shtml>>; and to “The New Spendthrifts”, *The Economist* (20 April 2002), online: < <http://www.economist.com/node/1089716?zid=300&ah=e7b9370e170850b88ef129fa625b13c4>>.

40 See Banking Development Department, “Benefits of sharing positive consumer credit data”, HKMA Quarterly Bulletin (March 2006), online: HKMA < <http://www.hkma.gov.hk/media/eng/publication-and-research/quarterly-bulletin/qb200603/fa1.pdf>>.

41 See HKMA, “Credit Card Lending Survey Results for First Quarter

There are many explanations for the decrease in both the overall number of bankruptcy case filings and in the year-to-date annualized charge-off ratios, but it is clear that the sharing of positive consumer credit card information has played a role in improving these results. Banks are able to use the additional available information to decrease their risk and to cut back on lending to customers who have too many credit cards or large outstanding credit cards debt. Consumers also benefit: consumers with a better credit record benefit from lower interest rates and weaker consumers are prevented from getting into a state of excessive overindebtedness.⁴²

2016” (13 May 2016), online: HKMA <<http://www.hkma.gov.hk/media/eng/doc/key-information/press-release/2016/20160512e5a1.pdf>>.

42 See TransUnion white paper, “Full-File Reporting: How Positive Consumer Credit Data Can Improve Banking Efficiencies and Fuel Economic Growth”, online: Transunion <[http://www. Transunion.com/docs/business/serviceSolutions/Full_File_Re\[por\]ting.pdf](http://www.Transunion.com/docs/business/serviceSolutions/Full_File_Re[por]ting.pdf)>. The White Paper concluded that the use of positive data sharing from August 2003 through 2005 led to the following benefits, at 7:

- Credit card receivables increased by nearly 10 percent from \$54 billion HKD to \$59 billion HKD;
- rollover amounts (borrowed amounts that cardholders have not fully repaid) decreased by 17 percent from \$29 billion HKD to \$24 billion HKD;
- the rollover ratio (the percentage of rollover amounts to the total amount of credit card receivables) decreased from 54 percent to 41 percent;
- individual unsecured credit (excluding credit card lending) loans increased by 38 percent from \$29 billion HKD in December 2003 to \$40 billion HKD in December 2005; and
- financial service providers were able to offer loans to consumers at lower interest rates. For further information on the sharing of positive data and to access a copy of the HKMA’s discussion paper on the sharing of positive consumer credit card data, see online: HKMA <<http://www.hkma.gov.hk/eng/publications-and-research/reference-materials/viewpoint/20020425.shtml>>. The Office of the Privacy Commissioner for Personal Data (“PCO”) also issued a consultation paper in relation to the sharing of positive

Despite the benefits provided by positive credit sharing and the decreasing charge-off ratios on credit cards in Hong Kong, two recent surveys in Hong Kong suggest that changing patterns of personal credit use and shifts in the demographics might be raising some red flags that could lead to higher default rates in the future.

In the first study, in March 2014, TransUnion commissioned Zogby Analytics to conduct an online survey of 500 Hong Kong adults, at least 18 years old, about credit and non-mortgage personal loan debt and Hong Kong “credit health patterns”. Over half of the respondents (52 percent) had current loans that they were repaying; 30 percent owed more than \$10,000 HKD; 18 percent owed between \$10,000–60,000 HKD and 14 percent owed more than \$100,000 HKD. Forty percent had repaid an average of more than \$5,000 HKD per month in credit card debt over the previous six months and 17 percent had repaid over \$10,000 HKD per month. Thirty-six percent of the respondents said that they actively used only two credit cards, and 23 percent used three to four cards. Twenty-three percent also claimed that they had incurred between \$5,000-10,000 HKD per month in credit card debt. Twelve percent of the respondents said that their credit card and personal loan payments accounted for 40 percent of their monthly income and 15 percent said that the payments were 20 to 40 percent. Surprisingly, one-third of the respondents admitted that “they don’t always keep track of what they owe on a regular basis, and fail to pay their personal loans and credit card debt on time”.⁴³

credit data on 28 August 2002 and a report was released on 23 January 2003. For further information and to access a copy of the PCO’s paper and report, see online: PCO <https://www.pcpd.org.hk/english/enforcement/consultations/files/final_eng.pdf>.

43 See “TransUnion: Over half of Hong Kongers in debt to personal loans” (19 May 2014), online: TransUnion <<http://newsroom.transunion.com/transunion-over-half-of-hong-kongers-in-debt-to-personal-loans>> (“TransUnion”).

The second study was commissioned by Prime Credit in 2015 and was conducted by the public opinion program at the University of Hong Kong (“HKU”). Their survey involved interviewing 497 Hongkongers who were born after 1980. The results showed that those Hongkongers who were between 18 and 35 years old and who had at least one credit card spent an average of 36 percent of their monthly income on credit card purchases — \$8,270 HKD — and took 19 months to pay back their loans. When asked what was their most important life goal, half of the survey respondents ranked buying property as the most important, and 40 percent thought that this goal was achievable within ten years. Nevertheless, almost 80 percent of the interviewees “admitted that in the face of credit card debts, they continued high-expenditure activities such as travelling overseas, buying the latest phone models, and dining at expensive restaurants”. Dr Robert Chung Ting-yiu, the Director of the HKU public opinion program, pointed out that “credit card debt among those born post-1990 was more serious than those born in the 1980s” and that although the post-90s group earned less on average, they spent a higher percentage of their monthly salary on credit card purchases than the older group.⁴⁴

VII. CONCLUSION

The Hong Kong consumer lending and bankruptcy landscape is vastly different from the one back in the 1990s prior to the enactment of the *BAO 1996*. Consumer credit is much more accessible and bankruptcy has now become a more common phenomenon and more generally accepted in society. Hong Kong has discovered, as have other jurisdictions, that easing access to consumer credit leads to an increase in the

⁴⁴ See C Chan, “Crazy For Credit Cards: Hongkongers Aged 18-35 Spend Over 46 Per Cent Of Monthly Income On Credit Purchases”, *South China Morning Post* (13 October 2015), online: *South China Morning Post* <<http://www.scmp.com/news/hong-kong/economy/article/1866897/spending-theres-no-tomorrow-hongkongers-aged-18-35-use-36>>.

number of individuals unable to repay their debts and to increased rates of consumer bankruptcy. Even with the sharing of positive credit data and with responsible bank lending, Hong Kong continues to have a significant level of annual bankruptcy filings.

Although current bankruptcy levels are far below the peak reached in 2002 after the AFC, changing demographics among Hong Kong borrowers and spending patterns and credit management behaviours of younger debtors now raise issues of concern. If the two surveys noted in Part VI, above, are accurate, there might well be a spike in bankruptcy filings in the coming years. My sense is that these surveys have identified an important trend. I expect that Hong Kong will see an increase in bankruptcy levels in coming years, perhaps to levels of 13,000-15,000 cases per year. The increase will be related to higher levels of default among younger debtors and will bring to a halt the ongoing trend of the greying of Hong Kong debtors.

As for VA cases, with the new insolvency law regime now having been in place for close to 20 years, it is clear that the VA procedure is not showing traction and has not proved successful. It is becoming increasingly likely that over the next decade VA levels will most likely not return to 2007–2009 levels, and I would suggest that the norm will settle into a range where VA cases are occurring at a rate of 5–10 percent of the number of bankruptcy cases.

In Hong Kong, as in many other jurisdictions, it is becoming more difficult for consumers to navigate the marketplace of financial products and to become savvy in choosing among different credit products. An educated citizen needs to know the benefits of repaying debts on time, the dangers of excessive debt, the long-term consequences of borrowing at 3 percent rather than 20 percent, and the long-term benefits of starting to save money at a young age. The first step is for consumers to take control of their finances: as TransUnion recommended in 2014, consumers need to create monthly spending plans and stick to

them; pay their bills on time and use credit responsibly; check their credit reports frequently; and know their credit scores.⁴⁵

It is clearly important that consumers in Hong Kong take more responsibility for their individual financial health. However, for this responsibility to prove meaningful, Hong Kong consumers need access to more education and training about consumer credit issues. As far back as 2003, the Hong Kong Consumer Council announced an initiative to increase education for consumers about credit.⁴⁶ The Hong Kong Consumer Council now has a “Consumer Corner” on its website⁴⁷ and a Consumer Education Programme for credit cards.⁴⁸ These are important developments, but more needs to be done — by the Hong Kong government, by credit card companies, and by the Hong Kong educational system. Financial literacy needs to be a goal of Hong Kong secondary and tertiary education.⁴⁹

It is now twenty years since the enactment of the *BAO 1996*. This twenty-year anniversary offers an excellent opportunity to conduct a review of the implementation of these significant changes to Hong Kong bankruptcy law, and to assess their success in dealing with the effects of both the AFC and the more recent GFC. It is also the right time to consider whether changes to the current regime would better prepare Hong Kong for possible crises in the upcoming decades.

⁴⁵ TransUnion, *supra* note 43.

⁴⁶ See Media Release, “Consumer Council Press Release” (6 January 2003), online: Hong Kong Consumer Council <<http://www.consumer.org.hk/20030106/030106e.htm>>.

⁴⁷ See HKMA, “Consumer Corner” (8 June 2017), online: HKMA <<http://www.hkma.gov.hk/eng/key-functions/banking-stability/consumer-corner/>>.

⁴⁸ See HKMA, “Consumer Education Programme — Credit Cards” (13 May 2016), online: HKMA <<http://www.hkma.gov.hk/eng/key-functions/banking-stability/consumer-corner/strengthening-financial-consumer-protection/consumer-education-programme/credit-cards.shtml>>.

⁴⁹ In 2003, I suggested that consumer credit classes be offered at HK secondary and tertiary institutions. Booth, “Introduction to Personal Insolvency in Hong Kong”, *supra* note 1 at 21.

In my view, the government should appoint a working party to conduct such a review. The remit of the working party could include the following:

- To review the overall success of the reforms made by the *BAO 1996* and to consider whether further changes would be beneficial;
- to consider whether the current four-year period leading to discharge should be shortened and/or whether a fast-track procedure should be implemented for certain consumer cases;⁵⁰
- to consider whether to implement a non-judicial, less-contentious, administrative bankruptcy procedure that could be used in the majority of consumer cases;⁵¹
- to consider whether the VA procedure should be replaced or supplemented by other workout mechanisms;
- to consider whether a data collection unit should be created within the Official Receiver's Office to consider bankruptcy and personal finance issues from both societal and economic perspectives and to review the types of data that the Office collects; and

50 In 2003, I recommended that thought be given to the recommendation proposed by Arthur Andersen in 2002 in its *Review of the Role of the Official Receiver's Office Consultation Paper*, *supra* note 29, to create a fast-track discharge procedure for selected consumer cases that is linked to "increased penalties for false declaration of assets" at para 3.18 at 20; and para 3.34 at 25; and a tougher penalty regime for reckless or deliberate abuse of credit after a fast-track discharge, para 3.19 at 20. Booth, "Introduction to Personal Insolvency in Hong Kong", *supra* note 1 at 21.

51 In 2003, I also recommended that thought be given to the recommendation proposed by Arthur Andersen in 2002 in its *Review of the Role of the Official Receiver's Office Consultation Paper*, *supra* note 29, to consider creating a non-judicial bankruptcy procedure (paras 3.21-3.25, at 21-22). Booth, "Introduction to Personal Insolvency in Hong Kong", *supra* note 1 at 21.

- to consider whether the Official Receiver's Office should make more of its data available to the general public and whether the Office should recommence publication of its *Annual Reports*.

Financial pressures on debtors in Hong Kong are very likely to increase over the coming years, and the creation of such a working party would assist Hong Kong in ensuring that the best personal insolvency procedures are in place to cater to the needs of its residents.

