Several high-profile corporate restructuring cases have hit headlines recently. George W. Russell finds out about the various reasons for reorganizations as Institute members brace for an expected upsurge in related work.

Michael Chugani, the veteran political commentator and former head of English news at Hong Kong television station ATV World, watched in dismay as the broadcaster buckled under mounting financial problems.

ATV had been looking shaky since the middle of 2013, when its employee shuttle bus company sued the network for non-payment of bills. “I felt sorry and quite down about ATV having its problems,” says Chugani, who worked there for 20 years. His long-running current affairs programme, Newsline, was suspended in February due to budget cuts.

Last year, the broadcaster’s financial situation worsened amid an escalating feud between its two largest shareholders, Wong Ching and Tsai Eng-meng. Soon, salaries were not being paid and there was talk of winding up the company. “Morale was quite low,” Chugani recalls.

A light at the end of the tunnel emerged last month after Wong and Tsai went to court, when a judge appointed two Hong Kong Institute of CPAs members from Deloitte China, Southern Region Managing Partner Derek Lai and Restructuring Services Principal Darach Haughey, as joint managers tasked with selling some of the company’s shares and finding a “white knight” to save the troubled station.

Deloitte, Chugani mused, had been given a near-impossible mission: the broadcaster faced a severe cash shortfall and liquidation appeared to be the most likely scenario. “I thought ATV was counting its days,” says Chugani ruefully. “When Deloitte came in it aroused curiosity, but not a lot of hope.”

It appears, as of press time, that ATV has a grim future as the government decided not to renew its broadcast licence. Yet, despite the disappointment, Deloitte’s Lai is expecting a boom in corporate reorganizations in Hong Kong and beyond. “Given the slowdown in certain economies, the number of corporate restructuring cases arising because of financial stress is expected to increase,” he says.

ATV is not the only high-profile Hong Kong-connected company in financial straits. English Football League Championship club Birmingham City was put into receivership last month following the conviction of owner Carson Yeung for money laundering.

David Yen, Restructuring Partner at EY and an Institute member who has been appointed Executive Director of Birmingham International Holdings, which owns the football club, says it is one of many restructuring engagements the firm has taken on recently. “We have been appointed provisional liquidator for a Cayman Islands entity and we’re quite busy with other companies in the pipeline.”
Headline grabbers

There are myriad reasons for what appears to be a recent slew of restructuring projects. “The major causes include market slowdowns, business performance issues leading to liquidity issues and potential or actual defaults,” says Oliver Stratton, Managing Director and Co-Head of the Asian Practice at Alvarez & Marsal, a global management advisory firm. “In many cases we are brought in by private equity investors to turn around operational performance.”

Both the ATV and Birmingham City problems were caused by mismanagement or infighting, a scenario that affects many troubled companies, notes Ian Robinson, Managing Director of Robinson Management, a Hong Kong consulting firm, and an Institute member. “Usually the cause is bad management,” he says. “They, in effect, don’t understand how to run a business.”

But even healthy, well-run companies can benefit from a major reorganization, a field that dominates the time of restructuring experts and attracts less attention. “Much of our work is working with various stakeholders to drive optimal outcomes,” says Stratton.

Cheung Kong Group, the highly profitable business empire of the Asia-Pacific region’s richest man, Li Ka-shing, made a splash with its recent reorganization. Cheung Kong Holdings will buy out Hutchison Whampoa and spin off its property assets into a new holding company, called CK Hutchison Holdings, which will then buy out minority owners of Hutchison.

The deal will create a more streamlined corporate structure that is designed to boost share value and allow investors to choose between a Hong Kong property business and a global conglomerate. “Companies that are healthy and profit-making are trying to maximize value to shareholders and their reorganizations don’t involve debt restructuring,” points out Yen at EY.

In the case of troubled companies, speed is also crucial. “Timing is everything,” says Robinson, who was a central figure in one of the most famous restructuring cases of the modern era – that of the Carrian Group. (See Carrian: a landmark restructuring case on page 24.)

While Carrian was an infamous blot on the corporate landscape for many reasons, some Hong Kong companies, say professionals, have their own inherent issues. “There is often a risk – especially in family-controlled companies – that senior management will take an overly optimistic view of market circumstances and try at all costs to avoid a restructuring, only to find it is unavoidable,” says Bertie Mehigan, a Partner at the Ashurst law firm in Hong Kong who specializes in restructuring.

Cautious optimism

Hong Kong remains an important centre for restructuring in Greater China and the Asia-Pacific region. (see Easing China economy creates conditions for restructuring on page 23.) “It is a jurisdiction where stakeholders are comfortable with the transparency and fairness of the court system, giving Hong Kong a competitive edge over China and Southeast Asian countries,” he adds. “It will always be a key location,” says Christopher So, Partner, Business Recovery Services, at PwC in Hong Kong and an Institute member.

Furthermore, the Asia-Pacific sector has become a magnet for foreign direct investment, outstripping other major economic regions. “Inbound annual foreign direct investment has increased 65 percent in the past five years, compared with a 31 percent rise in the U.S. and a drop of 32 percent in the European Union,” says So. “The odds are that more problematic [restructuring] situations will crop up here.”

Hong Kong also boasts some of the best restructuring professionals in the business. “Hong Kong has a long established community of restructuring professionals, financial and legal, so is well positioned, both geo-
“Stakeholders still choose to retain Hong Kong professionals to lead the restructuring efforts.”

Easing China economy creates conditions for restructuring

China is likely to emerge as a major destination for restructuring work due to increasing stress caused by the accumulation of debt from parties outside the Mainland, according to Bruno Arboit, Managing Partner of Zolfo Cooper and a Hong Kong Institute of CPAs member.

“This leads us to believe that there is a good prospect for an increase in demand for restructuring work, but its actual extent will often depend upon the degree of support those distressed companies receive from the local authorities,” he says.

A number of high-profile projects are already in the works, such as that of property developer Kaisa Group Holdings. Shenzhen-based Kaisa – which in January missed a bond coupon payment and announced it would hire a financial adviser – is expected to provide an example of how international creditors will be treated.

The company is seeking concessions from the lenders, such as HSBC, of its US$2.5 billion in offshore debt. Bertie Mehigan, a Partner at the Ashurst law firm in Hong Kong, says the company has indicated that offshore creditors would be likely to collect no more than 2.4 cents in the dollar.

However, local creditors would retain their existing collateral. The principal would not be forgiven but interest payments would be reduced to about 70 percent of the prevailing People’s Bank of China base rate and the tenor of the loan extended by between three and six years.

“Kaisa will help clarify the extent of the offshore bondholders’ negotiating power in these scenarios,” says David Bennett, Managing Director of Restructuring in China for Grant Thornton, given the complicating factors of different treatment for different groups of creditors.

“Tensions can sometimes be acute between local onshore creditors and offshore creditors,” says Mehigan. “Issues of structural subordination and different creditor motives and perspectives may make it challenging for Kaisa to develop a plan that satisfies all constituencies.”

Other Mainland companies facing restructuring include Rongsheng, a shipbuilding group hit by massive losses and Qingdao Port International, which faces losses of up to US$1 billion in connection with metals-financing fraud. “Going forward, there is a general expectation that there will be some further debt defaults and as such, investors are on high alert for further cases,” says Bennett.

Christopher So, Partner, Business Recovery Services, at PwC and an Institute member who advises on multi-jurisdictional debt restructurings, does not expect there will be a flood of restructurings taking place any time soon. “But,” he adds, “business failures and company restructurings will be allowed to occur under government supervision.”

Restructuring will also be boosted by the on-going reform of China’s state-owned enterprises. “I think in the next one or two years we will see that some SOEs might go down,” forecasts David Yen, Restructuring Partner at EY and an Institute member. “The [government] cannot bail them out forever.”

graphically and strategically, to capture [restructuring] opportunities,” says So.

From an accounting perspective, Robinson of Robinson Management, for example, holds the Institute’s Specialist Designation in Insolvency, an accreditation achieved by some of the territory’s finest restructuring practitioners and held by 65 Institute members in Hong Kong.

Such Institute members, Robinson notes, hold the key to successful transformations of companies by seeing beyond audit or accounting points of view. “Our members can be the catalyst for their clients to effect change by looking at those areas that would lead to change,” he says. “You come up with other ways of doing business.”

There has been an increase in the number of cases where Hong Kong restructuring experts work on cases about companies that have little or no presence in Hong Kong. “Stakeholders, nevertheless, still choose to retain Hong Kong professionals to lead the restructuring efforts,” says Stratton at Alvarez & Marsal. “This includes companies based in India, Vietnam and Indonesia.”

Meanwhile, restructuring advisers are boosting their headcounts in the region. In January, Alvarez & Marsal launched a transaction advisory group serving the

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Restructuring

Carrian: a landmark restructuring case

In the 1980s, as an auditor with Arthur Young & Co. (now EY), Ian Robinson wound up the infamous Carrian Group, a short-lived Hong Kong conglomerate that collapsed leaving debts in excess of US$1 billion and unveiling the murder of an auditor, the suicide of a legal adviser and the accidental death of a judge.

The messy tale, which involved mysterious bankers and Malaysian politicians, is the subject of Hong Kong Institute of CPAs member Ian Robinson’s recent book, The Joker's Downfall: A True Story of Murder, Mystery and Mayhem, which traces the rise and fall of George Tan, a charismatic yet shadowy Singaporean civil engineer who moved to Hong Kong with ambitions to join the upper echelons of business.

Using the one-time pest control company Carrian as his principal vehicle, the self-confident Tan was able to convince bankers, accountants and lawyers that he was a shrewd operator. Many lives and reputations were ruined when Tan’s empire was revealed as a house of cards that collapsed in a tangled web of fraudulent deals.

Too many of what Robinson calls “hidden factors” made a rescue of Carrian impossible. “One of the major factors was that Bumiputra Malaysia Finance, a subsidiary of Bank Bumiputra Malaysia, lent Carrian more than US$1 billion unsecured. Who in their right mind would do that?”

Quite why BMF was allowed to lend so much to Carrian, its only client, has never been satisfactorily explained. Those who might have known either died or have remained silent on the matter. Such a lack of data has been a source of frustration to any restructuring expert.

When Robinson was appointed as a receiver of Carrian Group, he had recently arrived in Hong Kong from Australia, where he had been a member of a small community of forensic accountants. Hong Kong was hit by a series of corporate collapses from 1982, and Robinson’s experience meant he shouldered much of the responsibility. “There wasn’t any scheme under the Companies Ordinance to enable a rescue in a manner to which I used in Australia,” he recalls.

One successful restructuring was that of the Emperor Group, a profitable jewellery retailing business that had expanded heavily into property when the market collapsed. “I cut out loss-making operations and got rid of old stock. The third thing was giving an incentive to the people running the shops. Cost cutting can help but sometimes you need to spend money.”

Robinson says it is vital to apply forensic accounting principles during a restructuring, a factor that particularly applied in the Carrian case. “The first task is to acquire all the company’s data, which means take possession of the computers, systems and other retrieval platforms,” he says.

In the pre-Internet 1980s, Robinson discovered that most of the important paper files were missing, but he unearthed much data using an old forensic auditors’ trick. “Emails are key now but in the old days it was the secretaries’ shorthand books,” he says with a chuckle. “No one had thought about those at Carrian.”

While the books revealed much about the company’s meetings that Tan and other Carrian principals had sought to suppress, the case was never satisfactorily concluded. Tan, the “joker” of Robinson’s title, served three years in jail and now lives in Hong Kong in relative seclusion.

Asia-Pacific region. “It is critical to have local onshore restructuring resources wherever the business is operating and also to use local advisers who understand how to get things done in the local environment,” says Stratton.

Legal minefield

The importance of Hong Kong as a restructuring centre is despite, not because of, its insolvency legislation, covered by the Companies (Winding Up and Miscellaneous Provisions) Ordinance, which remains imperfect in the opinion of turnaround specialists. “What we want here is the situation in the United States,” says Robinson, “with Chapter 11 [of the U.S. Bankruptcy Code] under which you can get a moratorium on your debts.”

The Hong Kong government has no plans to introduce an equivalent of that chapter in the U.S. Bankruptcy Code, under which a company’s existing management remains in control, despite evidence that the provisions have saved many large companies. “Look at airlines that have undergone Chapter 11 – they’re performing very well,” says Tony Tyler, Chief Executive Officer of the International Air Transport Association and a former CEO of Cathay Pacific Airways, citing American and Delta as examples.

Instead, the government is conducting a consultation over provisional supervision, under which management is transferred to a CPA or solicitor, who ensures the interests of the creditors are properly protected. Provisional supervision is designed to provide a distressed company with viable options for turning itself around rather than face liquidation.
The administration hopes that the draft of the provisional supervision provisions will be presented to Legislative Council this year.

Until then, Yen at EY describes the lack of a provisional supervision as “a major hurdle for Hong Kong.”

As a result, the city’s highly regarded position as a restructuring centre is not assured. “It is only one of a number of jurisdictions that must be considered,” warns David Bennett, Managing Director of Restructuring in China for Grant Thornton.

“Much of the funding being invested into Asia Pacific is typically structured through offshore financial centres,” Bennett points out, citing jurisdictions such as the Cayman Islands, British Virgin Islands, Bermuda, Jersey, Guernsey and Mauritius. “Funds invested from the offshore financial centres then flow through Hong Kong holding companies. As such, restructurings need to consider these jurisdictions.”

Such offshore centres have become particularly important to China-invested companies that use special purpose vehicles as holding companies. LDK Solar Co., a manufacturer of photovoltaic products based in Mahong, Jiangsu province, recently underwent a restructuring involving schemes of arrangement approved by the Hong Kong and Cayman Islands courts, with recognition in the U.S. for plans of reorganization for subsidiaries.

“The LDK restructuring is believed to be the first judicially approved, multi-jurisdictional debt restructuring for a Mainland-based entity,” says Bruno Arboit, Managing Partner of Zolfo Cooper in Hong Kong and an Institute member who worked on the project.

Restructuring professionals might not have helped ATV, but there are plenty of projects ahead for them to act as saviours. A