

## SHINEWING

Headquartered in Beijing and with branch offices in Hong Kong, Singapore, Australia, Japan, Shanghai, Shenzhen, Chengdu, Xi'an, Tianjin, Qingdao, Changsha, Changchun, Yinchuan, Kunming, Jinan, Dalian, Guangzhou and Fuzhou, SHINEWING is positioned to provide CPA and advisory services throughout the Asia Pacific Region.

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## In this issue ...

**The “breadcrumbs” of Internet browsing**

Much is left behind on a computer when you browse through the Internet. What do these traces and fragments mean to a computer forensics examiner and what information can be obtained from there? We will highlight in detail in our article.

**Hot topic for M&A activities - the Oil Industry in China**

The continuous economic growth in China boosts its demand for coal, oil and other energy. Investing in oil industry, in particular through acquisition of overseas companies, become one of the hottest M&A activities for Chinese companies. This article will discuss this trend and relevant research on the topic.

**Personal Bankruptcy = 4 Years? 8 Years? Or Unlimited time frame?!**

What is “automatic discharge”? Under certain circumstances, the maximum period a person being put under bankruptcy administration can be up to 8 years or more. This article will tell you more about this.

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## The “breadcrumbs” of Internet browsing

By Matthew Chu, Senior Manager and Kenneth Lam, Assistant Manager

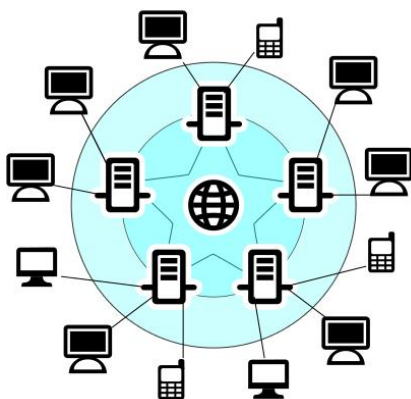
### Introduction

When you browse through the Internet for news, information or just stay connected with your friends via social networking sites, traces or fragments of such browsing activities are “left behind” on the computer. These traces or fragments (or generally referred as **Internet artifacts** or **artifacts**), can be in the form of “cookies”, “browsing histories”, “bookmarks”, “caches” or “temporary downloaded files”, etc. They leave a unique profile specific to an individual user which can assist a computer forensics examiner to understand what “happened” during a particular time when the computer was being used.

For illustration purposes, this article focuses on the discussion of web browsers developed by Microsoft (Internet Explorer), Mozilla (Firefox), Google (Chrome) and Apple (Safari).

### Internet artifacts

A computer forensics examiner can build a profile of an individual from the artifacts left behind on his/her computer. The artifacts that can be retrieved can reveal websites that were previously visited by the individual at particular time when the specific webpage was loaded onto his/her computer. This can provide a lead to specific actions taken by the individual e.g. using a web browser to perform a search or simply gain access to a webmail service account to read his/her emails.



The examination of Internet artifacts can also suggest whether an individual frequently or never visits a particular website. If the website is bookmarked, it strongly suggests that the website is important to the individual and provides evidence that the individual has knowledge of or interest in the contents of the website. The evidence is further strengthened with the use of cookies which can assist computer forensics examiners to understand the individual’s preference for a specific website where details may possibly include specific buttons being pressed and webpages being read in the past.

In addition, while browsing the Internet, it is inevitable that some contents such as pictures, video and audio files, etc. are downloaded automatically onto the individual’s computer. These files are known as *caches*, or generally referred to as

*temporary Internet files*. They can assist the web browsers to load and to display the website’s contents quicker and to improve the performance as it does not need to download the whole contents again, except for the new updates being downloaded, since the user’s last visit. These caches or temporary Internet files are also artifacts that can be made available on the computer. By examining these files, the contents of the webpages (including webmail messages or attachments) previously viewed by an individual can also be identified.

### A suspect or a victim

A lot of people save their login names and passwords within their web browsers for easy access to websites that require user login e.g. webmail or social network accounts. Given that these login names and passwords are saved, the relevant details could be captured and retrieved as artifacts. If these credentials are available, care must be taken to safe guard your computer, as having access to these accounts is similar to opening the front door of your flat and inviting unknown parties to visit your home, whether or not an ulterior motive exists to do any wrongdoings.



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Hence, by examining the available artifacts, you may be a victim of a crime where someone may misuse your saved login name(s) and password(s) to their advantages and access your computer with intent to commit a crime.

### Instant Messaging Artifacts

Other than Internet artifacts, the increasing trend of using instant messengers (e.g. MSN, Skype, QQ etc) gives computer forensics examiners additional sources to retrieve evidence between an individual and his/her contacts and accomplices. The messaging artifacts that can be retrieved include details of the individual's contacts e.g. user name, email address and past conversation (or dialogue) which may reveal intentional wrongdoings.

Instant messaging is mostly used as an informal way of communication with peers and / or business partners. Messages sent over instant messengers are often seen as less formal and incautiously checked by superiors. It is possible to retrieve relevant chat history to reveal potential evidence that may not exist in email correspondences.

### Gathering clues

While computer forensics examiners usually gather information in bits and pieces, there are times that these random pieces of jigsaws can help enforce the reliability of other evidence collected. Imagine there are allegations from a whistle blower to senior management that an employee was intentionally leaking confidential information to a direct competitor.



Upon an investigation on the suspect's computer, it is discovered that there were chat messages between the suspect and the competitor which contained traces of certain files with sensitive names were transferred via an Instant messenger. Such evidence provides supplementary value to much concrete evidence which can assist in an investigation.

In the case of the Milkshake Murder in November 2003, Nancy Kissel was charged for the murder of her wealthy husband who worked as an investment banker for Merrill Lynch & Co. The defendant was alleged to have incapacitated her husband by serving him a strawberry milkshake mixed full of sedatives before bludgeoning him to death. The defendant first denied that she had committed the murder, but evidence retrieved from the defendant's computer showed that she had searched on the Internet for heart-attack inducing drugs and sleeping pills. The prosecutor noted such behaviour from the Internet browser and uncovered the defendant's intention, and therefore successfully convicted her together with other substantial evidence.

### Summary

Examination of computers can provide relevant evidence and information that can be used to convict an individual for wrongdoing or prove his/her innocent. Through stringent examination processes of available artifacts, it is possible to understand an individual's behaviour, motives and sometimes reasons behind his/her actions.



## More M&A activity to see in the Oil Industry in China

By Peggie Wong, Director and Yan Chiu, Vice President

### The scene

CNOOC's recent move into Canada with a US\$15.1 billion deal to acquire Nexen, the China's largest overseas acquisition so far, has gained lots of attention in the market and sparks many debates. This mega acquisition, together with Sinopec's US\$1.5 billion acquisition of a 49 percent stake in Calgary-based Talisman Energy Inc's U.K. unit, has further demonstrated Chinese oil producers' aggressive move in seeking to add oil and gas reserves to meet growing demand in the world's largest energy-consuming country.

### Growing economy, surging energy demand...

Today, China is the world's second largest consumer of oil, reaching 461.8 million tonnes of oil consumption in 2011, or 11.4% of 2011 global consumption. Due to the robust economic growth and enormous population in China, China's oil consumption has been growing at an average rate of 7% per annum over the past decade. Such growth contributed approximately 71% to the global oil demand growth in 2011. Economists expect that China would remain a dominant driver of the growth in oil consumption in the next 10 years.

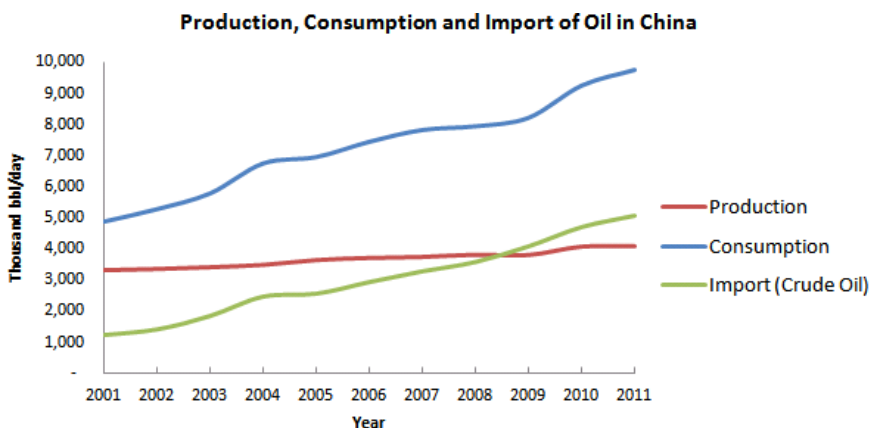
To fuel the anticipated surging demand, China has experienced increasing reliance on energy import in the last decade. According to the Institute of Economics and Technology, the research arm of China National Petroleum Corporation, it is forecasted that the net imports of crude oil will reach 266 million

tonnes in 2012, a 5.9% increase over the 2011 import, which accounted for more than 50% of total oil demand in 2011.

As economy continues to grow, it is believed that growth in oil demand in China will continue to outstrip supply in the coming years. It is a key challenge for China to meet the oil imbalances and avoid the potential shortage.

efforts in recent years in exploration of new geographic areas, e.g. South China Sea, Xinjiang, and promoting the development of unconventional resources, e.g. shale gas and coal bed methane (CBM).

Sitting on the largest shale gas resources in the world, as estimated by the U.S. Energy Information Administration (EIA), the Chinese government has been encouraging



Source: BP Statistical Review of World Energy 2001-2011

### How to resolve the imbalances?

To insulate the country from potential oil shortages, the Chinese government has taken various measures in the past years and more reforms are expected to roll out.

### Intensifying exploration of various resources potential

Currently, coal and oil together account for approximately 90% of the total fuel consumption in China. To expand its energy resource bases and diversify the country's energy mix, the Chinese government has increased its

national oil companies (NOCs) to form partnerships with foreign oil and gas companies, including BP, Chevron and Royal Dutch Shell, on various onshore shale gas exploration projects. In September this year, the Chinese government has launched the second bid round for exploration licenses of 20 shale gas blocks. Both Chinese private companies and Sino foreign joint ventures that are majority-controlled by Chinese firms are invited to participate in the bidding.

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NOCs have also invested multi-billion dollars in overseas unconventional resources, mainly in the U.S., in recent years. These enable NOCs to gain access to advanced technology and know-how in exploitation of CBM and shale resources.

### Encouraging overseas merger and acquisition (M&A) activities

Chinese oil companies have stepped up its acquisition drive since 2008. Overseas M&A deals completed by Chinese oil companies reached US\$30 billion and US\$20 billion in 2010 and 2011 (note) respectively, compared with only a fraction of that number a few years ago. Meanwhile, over 70% of overseas acquisitions in 2011 by Chinese oil companies were related to unconventional resources, such as shale gas.

While these transactions were driven by growing domestic energy needs, Chinese oil companies have taken the advantage of the cheaper asset price and less competition during the economic downturn since the financial crisis in 2008.

### Increasing role of Independent oil companies

*China's oil industry is dominated by three NOCs, namely, PetroChina, Sinopec and CNOOC. To enhance oil recoveries, NOCs started to cooperate with independent upstream oil companies in 1990s, through the form of production sharing contracts (PSCs) under which the NOCs and independent oil companies jointly develop certain oilfields. Upstream cooperation in onshore China is becoming increasingly active since then.*

*Independent oil companies who are able to apply advanced technologies and streamline operating costs, and who have strong relationships with PetroChina and Sinopec, are well positioned to leverage on the trend of rising foreign participation in onshore China. Acquiring experienced independent oil companies that have established good relationship with NOCs, possess the exploration rights and PSCs of certain oilfields will be a quick access to the growing oil industry in China.*

Most of these transactions have offered the Chinese oil companies with a more diversified portfolio of assets and advanced technologies. This can be exemplified by the

recent 49% acquisition of Talisman's UK business by Sinopec. With this transaction, Sinopec gained a foothold to access deepwater technologies in the North Sea and potential access to future Arctic drilling opportunities, e.g. Norway.

### Securing long term supply

The Chinese government has taken a number of steps to ensure the stability of long term oil and gas supplies from various countries. China has signed long term supply agreements and built strategic pipelines with Russia, Kazakhstan and Myanmar for import of oil and gas. The pipeline from Myanmar to China enhances the stability of supply.

Besides, the Chinese government seeks to secure oil supply from countries in Latin America, through offering financing facilities to them. From 2005 to 2011, Chinese state-owned banks, mainly the China Development Bank, had offered about US\$75 billion dollars of loan financing to Latin American countries which include certain oil sale agreements or equipment purchase as part of the financing terms.

Selected major M&A of overseas companies by Chinese oil companies (2009 – Jul 2012)

Year	Buyer	Target	Country	Shareholding	Deal Value
				%	(USD billion)
2012	CNOOC	Nexen	Mainly Canada, US and UK	100	15.1
2012	Sinopec	Talisman Energy's UK business	UK	49	1.5
2012	CNPC	Athabasca Oil Sands' Mackay River project	Canada	40	0.7
2011	Sinopec	Petrogal Brazil	Brazil	30	4.8
2011	Sinopec	Daylight Energy	Canada	100	2.1
2011	CNOOC	Opti Canada	Canada	100	2.1
2010	Sinopec	Repsol Brazil	Brazil	40	7.1
2010	CNPC	Royal Dutch Shell's Syria business	Syria	35	Not disclosed
2010	Sinopec	Syncrude Canada	Canada	9	4.7
2009	CNPC	Athabasca Oil Sands' Mackay River & Dover projects	Canada	60	1.7
2009	Sinopec	Addax Petroleum	Switzerland	100	7.2

Source: SWSAS research

### Outlook : more exploration + M&A = more supply

Going forward, it is expected that Chinese oil companies will continue their opportunistic M&A campaign to boost up its reserves and improve reserve longevity, as domestic conventional oil depletes. Recent acquisitions in the oil sector also illustrate a growing trend for Chinese oil companies to seek acquisition targets in politically stable countries, e.g. Canada, US and UK. It is believed that, however, such takeovers will continue to spark political concerns among some developed countries.

On the development of unconventional resources, the Chinese government has given high priority in developing shale gas and CBM. Currently, shale gas is still in

its infancy stage in China without any meaningful output yet. The recent launch of the second bid round for shale gas exploration licenses is expected to expedite the development of shale gas in China. On the other hand, CBM is expected to grow much faster in the coming years after about ten years of development and testing in China. Nonetheless, CBM exploration and production may still be hindered by the availability and development of suitable infrastructure, e.g. pipeline network, linking it to markets in many places in China.

All in all, it will take years for CBM and shale gas resources to be developed on a larger scale, and contribute substantially to China's energy consumption or supply. China will continue to intensify domestic explorations and diversify its sources of oil import in the coming years.

*Note: "Oil and Gas Industry Development in 2010" dated 20 January 2011 and "Oil and Gas Industry Development in 2011" dated 9 February 2012 by CNPC Economics and Technology Research Institute*



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Corporate Finance

## Personal Bankruptcy = 4 Years? 8 Years? Or unlimited time frame?!

By Clara Sun, Manager

### Introduction

Prior to 1 April 1998, there was no order to automatic discharge a bankrupt according to the Bankruptcy Ordinance (Cap.6) (the "BO"). A person would remain a bankrupt for the rest of his/her life once a bankruptcy order is made unless and until an order for discharge is taken out by the Trustee with grounds. With provisions (Section 30 – 30B) of the BO came into effect on 1 April 1998, bankrupts would generally be able to "turn over a new page" after 4 years. But how

true is this 4 years bankruptcy period and any specific circumstances that may extend this 4 year-period? This article will give you some guidelines of what is meant by "Automatic Discharge" of bankruptcy.

### Statutory period of bankruptcy

A bankrupt shall be *discharged from bankruptcy by the expiration of the relevant period*, which would vary depends on whether a bankrupt is a "First-time Bankrupt" (i.e. a person who has not previously been adjudged bankrupt) or "Repeated

Bankrupt" (i.e. a person who has been previously adjudged bankrupt) (S.30A, BO).

"Relevant Period" for a First-time Bankrupt is 4 years, whereas, for a Repeated Bankrupt is 5 years, counting from the date of making the bankruptcy order (S.30A(1), (2a) & (2b), BO).

However, there are certain circumstances that would "stop" the Relevant Period from running (S.30A(10), BO):

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- Where a bankrupt has left Hong Kong and not returned *before* his/her bankruptcy order was made, the Relevant Period *shall not start to run* until he/she returns to Hong Kong and *notifies* the Trustees of his/her return;
- Where a bankrupt has left Hong Kong *after* his/her bankruptcy order was made but
  - without notifying the Trustees of his/her itinerary and contact details (*note*); or
  - fail to return to Hong Kong on a date or within a period specified by the Trustees,
- Discharge would prejudice the administration of the estate;
- Bankrupt failed to co-operate with the trustees;
- Conduct of bankrupt has been unsatisfactory (e.g. excessive gambling);
- Bankrupt failed to return to Hong Kong following a request from the Official Receiver or the trustees;
- Bankrupt continued trading after personal insolvency status;
- Committed bankruptcy offences (S.129, S131 to 136, BO); and
- Bankrupt failed to prepare an annual report of his earnings and acquisitions for the trustees.

then the Relevant Period shall cease to run during the period of his/her absence from Hong Kong and will resume again when he/she *returns* to HK and *notifies* the trustee of his/her return.

### Objection to automatic discharge

The discharge of bankruptcy, which is commonly known as “automatic” discharge, in fact will happen automatically after 4 years without going through any technical or court procedures. However, it is not free from challenge.

The trustees or any creditors of a bankrupt may, before the end of the four-year bankruptcy period, apply to the Court to object to the automatic discharge of a bankrupt based on the following grounds (S.30A(4)):

- Possible significant contributions to the estate within 5 years from the commencement of the bankruptcy;

If the Court is satisfied with the application for objection, the Court may order the Relevant Period ceased to run as follows:

- for “First-time Bankrupt” – not exceeding 4 years; and
- for “Repeated Bankrupt” – not exceeding 3 years.

There are many successful cases that the bankruptcy period has been extended on the combination of different grounds set out above, which means that the total bankruptcy period would be extended from 4 years to a maximum of 8 years. During the extended period of bankruptcy, the trustees in bankruptcy may further pursue asset realization, investigation or take further actions, for example, to seek prohibition order against evasive bankrupts.

### Conclusion

The notion of “automatic discharge” aims to allow a bankrupt to have a chance of rehabilitation and turn over a new page while balancing the interests of his/her creditors. However, it is not intended to allow irresponsible bankrupts to ignore the rights and interests of creditors and escape from their statutory duties in bankruptcy.

**N.B.** What if a bankrupt left Hong Kong before his/her bankruptcy order was made and never comes back to Hong Kong and/or never notifies the Trustees of his/her return, would the bankruptcy order go on endlessly? Hypothetically, yes. However, in practice there are many practical “tools” which may avoid a never ending fruitless bankruptcy. Please see the next issue of e.Bulletin which we will further discuss the application of prohibition order against delinquent bankrupt.

*Note: This provision was declared unconstitutional by the Court of Final Appeal on 20 July 2006 (Official Receiver & Trustee in Bankruptcy of Chan Wing Hing & Anor v Chan Wing Hing & Anor & Secretary for Justice (2006) 9 HKCFAR 545, FACV Nos. 7 and 8 of 2006)*

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Recovery and Reorganisation



## Market News – Updates on the regulations relevant to the corporate finance activities

### Policies to encourage outbound investments

In June 2012, additional guidelines were issued by the State Administration of Foreign Exchange (SAFE) and various Chinese government departments to foster offshore investments by mainland private enterprises. Favorable measures include tax relief, credit support and simplification of approval procedures for foreign exchange remittances. Furthermore, the National Development and Reform Commission (NDRC) announced in August 2012 that applications will be waived for overseas resource development projects worth less than US\$30 million, or less than US\$10 million for non-resource development projects.

### VAT pilot program expanded to 10 cities and provinces

Following the launch of the VAT pilot program in Shanghai, the State Council announced in July 2012 that such program will be implemented in 10 more cities and provinces, including Beijing, Tianjin, Jiangsu, Zhejiang, Anhui, Fujian, Hubei, Guangdong, Xiamen and Shenzhen. The dates for implementation for Beijing and Guangdong province will be on 1 Sept and 1 Nov respectively. Businesses that paid business tax previously will now pay VAT, either at a rate of 6% (for modern services industry) or 11% (for transportation industry). Small-scale taxpayers with annual sales less than RMB 5 million will pay VAT at a rate of 3%.

### Comments by the SFC on listing applications

The July issue of the SFC newsletter “Dual Filing Update” highlighted certain major deficiencies noted in its review of listing application materials, which includes: failure to substantiate assertions of critical importance with objective analyses; listing application materials apparently incomplete and not ready for regulators’ review; failure to provide meaningful disclosures on risks, historical financial performances and future plans. SFC comments that such deficiencies have caused unnecessary delays in the vetting process, and resulted in eventual suspension of the applications in some cases.



## Our People – New SAS Partner

**Terry Kan**, our new SAS Partner who has 20 years of practical experience in specialist advisory services with key focus in restructuring, scheme of arrangement, distressed sale of business or key assets, litigation support, insolvency-related matters and Deposits Protection Scheme. He has hands-on experience in both listed companies and SMEs, which cover extensive industries in food catering, construction, diamond and jewellery trading, garment manufacturing, IT consulting, property investment, securities trading, banking and regulatory sectors.

Recently, Terry has come across many shareholders’ dispute cases involving indoor shareholders / management conflicts which evolve quickly to become deadlocks or law suits that accountants and other professionals have played an active roles in resolving these problems.

Prior to joining SHINEWING, Terry worked in a number of international accounting firms both in Hong Kong and London. He speaks regularly at different professional bodies such as HKICPA, CPAA and HKICS, and conducts trainings for Government and commercial organisations.

Terry is a Fellow of the HKICPA, Associate of the Hong Kong Institute of Chartered Secretary and the Institute of Chartered Secretary, UK. He is also one of the first few awardees being awarded with the qualification of Specialist Designation (SD) in Insolvency by the HKICPA in 2011 and a registered Insolvency Practitioner and Appointment Taker under Panel A Scheme of the Official Receiver’s Office and HKICPA.





## Upcoming events

### Forensic and Investigation series (2nd Series) SAS Insight Workshops

With users becoming much more advanced in the use of technology, companies and organisations must seek knowledge on what information is available that can assist in an investigation and how to preserve such evidence that it is admissible and can be submitted to a court of law, if required.

Our insight workshops are for those who are interested in gaining a better understanding of what digital documents and files are and their relevance when they become available as evidence in legal proceedings.

Topics of the workshops are as follows:

- **Digital investigations and beyond**
- **Building up your digital evidence – e-discovery**
- **Hands-on with Intella...**

Details of the workshops and registration arrangements will be announced under separate emails.



## News

- Our Partner, Alan Tang is a co-author of a technical paper **“Confronting Practical Challenges and Pursuing Creative Solutions”** with Dr. Yin Zhengyou, senior partner W&H Law Firm, which was issued in July 2012 under the 24<sup>th</sup> technical paper of the INSOL Technical Papers Series. The paper refers to the comments and conclusions drawn in respect of key issues that were discussed in the 4th China Bankruptcy Forum in Beijing last year.
- Our Partners, Alan Tang and Terry Kan, were named in the **IP’s Voice of Restructuring and Insolvency Faculty (August 2012), issued by the HKICPA** for Alan’s participation in the PRC bankruptcy judges training programme jointly organised by the World Bank, the International Law Development Organisation and the Supreme People’s Court in June 2012; and Terry’s article on the new statement on Professional Ethics in Liquidation and Insolvency.
- The first series of **SAS workshops, focused on forensic accounting and computer forensics investigation**, was completed on 8 August 2012. The workshops attracted some 100 attendants who come from lawyer firms, private equity / investment companies, private and listed corporations; and discussed how to identify red flags from operations and books & records of the companies, as well as how financial investigations are carried out.

*Feedback from readers is essential to our success. We welcome and value your comments or suggestions. Feel free to contact us for any questions as well.*