

Your Ref: CB1/BC/12/00

BY FAX & BY POST

September 4, 2001

Clerk to Bills Committee on Companies (Corporate Rescue) Bill
(Attn: Mr. S C Tsang)
Legislative Council Secretariat
3rd Floor, Citibank Tower
3 Garden Road
Central
Hong Kong

Dear Sir/Madam,

Comments on the Companies (Corporate Rescue) Bill

We are in principle supportive of the corporate rescue concept, which is not uncommon in common law jurisdictions. The proposed rescue procedure leading to a voluntary arrangement would help the company concerned avoid being liquidated, or survive in whole or in part as a going concern, or satisfy its debts in whole or in part through a more advantageous realisation of the company's assets or a better return for creditors and members than would result from a winding up. We would like to raise the following points for your consideration:

1. The provisional supervisor has been given extensive powers. But there is no mechanism in place that would monitor the work of the provisional supervisor to ensure that he/she will not abuse the powers given. We suggest that the Official Receiver should have a role to play in appropriate circumstances.
2. Since the provisional supervisor can delegate in writing to any person any of his/her duties and powers imposed or conferred on him/her under the Ordinance, there should be a section on the qualifications of the delegate.
3. During the moratorium, there will be a stay of all proceedings against the company. However, it seems that this does not apply to proceedings under section 168A of the Companies Ordinance, which may be commenced or allowed to continue. Since the court may, with a view to bringing to an end the matters complained of under the section, make an order, there is not much the provisional supervisor could do, pending the making of the order.

Page 2

Clerk to Bills Committee on Companies (Corporate Rescue) Bill

(Attn: Mr. S C Tsang)

September 4, 2001

4. The proposed law provides that a proposal approved by a meeting of creditors may not affect the right of a secured creditor of the company except with his/her consent. That effectively requires a unanimous consent, a situation that may not be easily obtainable.

In general, although the bill is drafted in plain English and Chinese, there are still too many sections that are 'subject to' too many other sections in the Companies Ordinance as well as other ordinances. It seems that even a trained lawyer may have difficulties in understanding the relevant legal concepts under certain sections.

If a company can achieve a voluntary arrangement under supervision, there are good prospects that it can return to profitability. This is in the best interest of the unsecured creditors as well as shareholders who generally have the lowest priority when it comes to the distribution of assets of a company that has gone into liquidation.

Yours sincerely,



T. S. Chan
Associate Vice President