

**Bills Committee
on Companies (Corporate Rescue) Bill**

**The Administration's Comments on the
Issues and Concerns raised by the
Assistant Legal Advisor in LC Paper No. LS168/00-01**

The Assistant Legal Adviser of the LegCo Secretariat has raised a number of issues and concerns about the Companies (Corporate Rescue) Bill, which are set out in LC Paper No. LS168/00-01. The Administration has the following comments on the issues and concerns.

Human Rights Considerations

2. The policy intent is that clause 32(3) of the Bill only applies to civil proceedings instituted under the provisions of the Bill. We will consider the need for refining the wording of the clause to better reflect our policy intent.

Clause 11(3) and Schedule 5

3. Under clause 11(3)(d), eligible financial contracts set out in Schedule 5 of the Bill are exempted from the moratorium introduced during a provisional supervision. Clause 11(5) intends to ensure that in the case of eligible financial contracts, if after the normal settlement, the company in provisional supervision is found to be in debt to other parties, those other parties could claim the “net termination values” as ordinary creditors of the company in the voluntary arrangement or any subsequent winding-up, notwithstanding that eligible financial contracts are not affected by the moratorium.

Employers' contribution under Mandatory Provident Fund Schemes Ordinance

4. We have submitted a new proposal on the trust account requirement to the Bills Committee. In theory, outstanding employers' contributions under the Mandatory Provident Fund Schemes Ordinance should also be covered. The details would be worked out at a later stage.

Company liable to third party for directors' unauthorised acts

5. If a person dealing with the director has notice of the company being put into provisional supervision but carries on to deal with him without making further enquiry on the director's authority, he cannot be regarded as acting in good faith. In fact, under Clause 14(3), good faith is not the only requirement. "Good consideration" and "changed his position or acted in his detriment based on that dealing" are also necessary. The purpose of making the company bound by the dealing between the director and the person is to strengthen the protection of such person's interests.

"As soon as reasonably practicable"

6. The purpose of using the expression "as soon as reasonably practicable" in the provisions relating to the giving of notices and the vacation of office is to give the provisional supervisor the necessary flexibility in discharging his duties, taking into account the circumstances of the case. As the provisional supervisor must be a qualified professional, it is unlikely that he would intentionally and unnecessarily cause any delay. Hence, we are not in favour of setting a minimum time for the provisions in question.

Deemed commencement of voluntary winding-up

7. We are reviewing the wording of Clause 22(5)(c) with a view to addressing the Assistant Legal Adviser's concerns.

Financial Services Bureau

30 November 2001

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