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14 April 2000

Clerk to Bills Committee
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Madam,

Companies (Amendment) Bill 2000

We refer to your letter dated 7th March 2000.

We would pledge our support in principle to the introduction of provisional supervision as it will be in consumers' interest for corporations to remain in business where it is profitable to do so. We also support the imposition of civil liabilities on directors and senior management of corporations responsible for insolvent trading. We consider it is conducive to proper conduct of businesses.

We are concerned with the vulnerable position of consumers with outstanding prepaid coupons purchased from corporations in financial crisis. Corporations might issue coupons to raise funds to ease financial crisis but eventually cannot avoid liquidation in which case the coupon holders become unsecured creditors ranking lowest in priority of repayment. We would therefore propose that some statutory safeguards be provided for consumers who purchase prepaid coupons from or make other prepayments to corporations. For instance, prepayments can be made strictly clients' money and the relevant money paid during provisional supervision may be put into a trust account to be refundable to consumers if the corporate rescue fails. In this connection, we note the priority proposed to be given to funds provided as operating capital during moratorium set out in section 168ZP of the Bill.

We also note from sections 168ZA, 168ZB and 168ZC of the Bill that provisional supervision initially involves filing of documents with the High Court Registry and publishing of requisite notices, and extension of moratorium is possible upon application to the court under section 168ZE. The consumers at large may not understand that the provisional supervisor is just formulating an arrangement to rescue the corporation during the moratorium. On the contrary, some probably will mistaken the court involvement as official approval of a successful rescue scheme and so may not take as much caution as they would otherwise do in their purchase of further coupons issued by corporations during moratorium. In order to avoid this false sense of security, we propose that issue of coupons during moratorium be prohibited. We would also urge that efforts be made to explain to consumers the implications of provisional supervision and moratorium so that consumers will make an informed decision in dealing with the corporations concerned. We suggest that adequate warning may be given in the specified forms mentioned in sections 168ZB and 168ZC.

We have no specific comment on the sections on insolvent trading since consumer interest in this area is indirect.

We would be happy to attend the meeting of the Bills Committee to present or elaborate on our views if necessary.

Yours faithfully

(Li Kai-ming)
Acting Chief Executive
Consumer Council

KM/RW/rl

c.c. Financial Services Bureau