

立法會
Legislative Council

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**Paper for the House Committee Meeting
of the Legislative Council
on 21 January 2000**

**Legal Service Division Report on
Companies (Amendment) Bill 2000**

Objects of the Bill

To amend the Companies Ordinance (Cap. 32) ("the Ordinance")
in order to -

- (a) implement the recommendations of the Law Reform Commission of Hong Kong ("CRC") in its Report on Corporate Rescue and Insolvent Trading;
- (b) implement the recommendations of the Standing Committee on Company Law Reform ("SCCLR") regarding -
 - (i) the appointment of provisional liquidators under section 194(1)(a) and other consequential amendments;
 - (ii) the date of filing of annual returns by private companies;
 - (iii) resolutions by unanimous consent of members of a company without meeting; and
 - (iv) the removal of the directors' power to put by majority resolution a company into a creditors' voluntary winding up; and
- (c) effect miscellaneous amendments to various sections of the Ordinance for various purposes including, inter alia,

- (i) the reduction of the documents required to be filed by local and overseas companies and their directors;
- (ii) the repeal of spent transitional provisions in section 109; and
- (iii) the widening of the grounds on which the court may appoint a special manager of a company.

LegCo Brief Reference

- 2. C2/1/12C(99)IX issued by the Financial Services Bureau.

Date of First Reading

- 3. 19 January 2000.

Comments

4. A new Part IVB comprising 33 sections is added by the Bill to inaugurate the new regime of provisional supervision and voluntary arrangements. The central idea is to stay all proceedings (with some specified exceptions) against an insolvent company so as to enable an independent professional appointed as a provisional supervisor to prepare a proposal which could salvage the company or part of its undertaking, or achieve the more advantageous realization of its assets or satisfaction of its debts and liabilities. The period of stay ("moratorium") would initially be 30 days which could be extended upon application up to six months. The new regime would not apply to -

- (a) authorized institutions as defined in the Banking Ordinance (Cap. 155);
- (b) authorized insurers as defined in the Insurance Companies Ordinance (Cap. 41);
- (c) clearing houses, exchange companies or registered persons as defined in the Securities and Futures Commission Ordinance (Cap. 24);

- (d) licensed leveraged foreign exchange traders as defined in the Leveraged Foreign Exchange Trading Ordinance (Cap. 451); or
- (e) any class of company declared by the Secretary for Financial Services by notice in Gazette.

5. One of the pre-conditions for invoking the moratorium is that the company concerned has paid all amounts due to its employees and former employees under the Employment Ordinance (Cap. 57) before the commencement of the moratorium.

6. Complementary to the new regime of moratorium is the introduction of the concept of "insolvent trade". When a company is unable to pay its debts when they become due and owing and the directors or manager of that company knowing that the company cannot avoid insolvency continue to incur debts, each of them could, upon the application of the liquidator in the subsequent liquidation of the company, be declared by the court to be liable for insolvent trading, and be ordered to pay such compensation to the company as the court may think proper in all the circumstances of the case. The Administration believes that this provision could encourage directors and senior management of a corporation to act on insolvency earlier rather than later.

Public Consultation

7. According to the LegCo Brief, the Subcommittee on Insolvency of LRC carried out a public consultation on the concept of corporate rescue in 1995. The Financial Services Bureau conducted a consultation exercise on certain proposals of the LRC amongst 26 major business/professional and employer/employee bodies. The SCCLR supported the introduction of a statutory corporate rescue and has expressed its view on the draft provisions on corporate rescue and insolvent trading.

Consultation with the LegCo Panel

8. The Financial Services Bureau reported the consultation exercise and the results to the Financial Affairs Panel in February and June 1999. There has not been any separate consultation on the Bill.

Recommendation

9. The Legal Service Division is still scrutinizing the legal and drafting aspects of the Bill. Since the Bill makes significant changes to the existing regime of corporate rescue and the law governing personal liabilities of company directors and management and in view of the possible effect on the corporate business environment and the interests of all parties affected, Members may wish to set up a Bills Committee to study the Bill in detail.

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