Extract of the "Report of the Law Reform Commission of Hong Kong on Corporate Rescue and Insolvent Trading"

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1.7 We are convinced that provisional supervision would be better than the existing procedures for the following reasons:

- First, provisional supervision would provide a solid basis on which to calculate the costs and time involved in putting a proposal to creditors. Section 166 is an open-ended procedure, which provides no assistance in planning the time it would take and the cost of putting a proposal to creditors.

- Second, provisional supervision would provide a flexible framework which would allow the provisional supervisor to take on his task in relative peace in that he would be guaranteed court protection from the outset. Section 166 provides no court protection.

- Third, provisional supervision would limit the costs of court appearances as the provisional supervisor would only have to approach the court, apart from exceptional matters, after 30 days, and after that only when an extension of provisional supervision is sought or the company is deemed to be wound up as a creditors' voluntary winding up. Under section 166, the number of court applications and hearings have no limit.

- Fourth, provisional supervision sets out the role of the provisional supervisor, gives the provisional supervisor the power of management together with rights duties and liabilities, prevents rogue creditors from threatening proceedings as a form of leverage, permits super priority borrowing, allows creditors to vote on the proposal when formulated and provides a smooth transition into a company voluntary arrangement or winding-up as the case may be. Section 166 provides none of these things which, we consider, is a discouragement to companies ever starting the process in the first place.

- Fifth, provisional supervision would provide certainty. Even disaffected creditors could be sure that after usually not more than six months, they would have their say on a proposal. They would know this from the outset. Section 166 provides no certainty. A member of the sub-committee on insolvency spoke of his experience when, as a receiver of a company some years ago, he carried out a voluntary arrangement under section 166. He estimated that he could have completed the scheme in one month rather than the five months it took, he would have had one creditor's meeting instead of the three it needed, on top of which there were many other procedures and pressures that had to be dealt with which could have been limited if provisional supervision had been available. Finally, the company concerned was in receivership for two years before the proposal for a company voluntary arrangement was put to creditors; a period of uncertainly that could have been avoided under provisional supervision.

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