



September 14, 2001

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

Dear Sir,

Consultation on Companies (Corporate Rescue) Bill

With reference to your letter of July 13 inviting comments from the Association on the Companies (Corporate Rescue) Bill, we are pleased to attach herewith a summary of our opinions on the issue for your consideration. We would highly appreciate if you could keep us informed of any amendment or revision on the Bill in future.

Yours Sincerely,

Francis Lau

Executive Director



### **Comment on the Companies (Corporate Rescue) Bill**

1. With the prevalence of financial hardship for most enterprises and the increasing trend of insolvency, the bill can offer an opportunity for companies to arrange special deals with their creditors, and carry out necessary corporate restructuring to turn the company around. It may provide a more favourable solution to both the debtors and the creditors, and to an extent, part of the workforce of the company concerned can be retained and their employment ensured.
2. According to the proposal given by the Legal Reform Commission, only the company itself or the provisional liquidator can apply for the moratorium. As to the application by the company, it further specifies that before the commencement of winding up, the directors of the company by means of a resolution passed by the majority of them for the purpose; or the members of the company by means of an ordinary resolution passed at a meeting of the company convened for the purpose may appoint a qualified person to be the provisional supervisor of the company during the moratorium.

In this regard, the bill has excluded the possibility for the many small shareholders of listed company nor the creditors to apply for the moratorium or participate in the appointment of the provisional supervisor. Allowance should be made to the formation of a creditor committee or an equity security holders' committee to alert the company concerned for the risk of insolvent trading and mismanagement, and to have the right to file for moratorium if necessary.

3. In addition to the proposed duties and powers of the provisional supervisor, he/she should also be given the power and resources to investigate for fraud, dishonesty, incompetence, misconduct or irregularity in the management of the affairs of the debtors and present a statement of such investigation to the creditors' meeting and the court for relevant action.
4. Given that the provisional supervisor has the power to exclude any class or classes of creditors from the moratorium, in which case the moratorium would cease to apply to them, there is an opportunity that the supervisor will make compromised arrangements with certain secured creditors, providing a level of protection to them at the expense of all other parties. Such power of the supervisor should be limited and any decision or arrangement made with the excluded creditors should first have to be approved by the court.

In addition, while major secured creditors can be exempted from the moratorium, minor creditors should also be given the right to appoint a representative to discuss with the provisional supervisor collectively with regard to their claims and loan arrangements.



5. Taking the decision to file for the corporate rescue proceedings, the company will have to undergo moratorium during which a provisional supervisor will be authorized to analyze and manage the company. As stated in the proposed Bill, remuneration to the provisional supervisor would be agreed between him and whoever initiated the procedure and caused him to act. We opine that the administrative costs involved in the appointment of the provisional supervisor and the remuneration paid to him should be kept at a reasonable level and be endorsed by the Court before the official appointment.