

Improvement of Corporate Insolvency Law 優化公司破產法例

LegCo Panel on Financial Affairs
立法會財經事務委員會

2013.5.3

Financial Services and the Treasury Bureau (Financial Services Branch)
財經事務及庫務局 (財經事務科)
Official Receiver's Office 破產管理署



Importance of Corporate Insolvency Law 公司破產法例的重要性

- ◆ Companies operate on credit, which enables them to trade, develop and expand
公司是以信貸方式營運以進行交易及拓展業務
- ◆ When companies fail, there is a need to provide a fair and orderly process for-
當公司倒閉時，需訂立公平有序的程序 -
 - Realising and collecting the assets of insolvent companies
收集無力償債公司的資產和將之變現
 - Distributing them among creditors
把資產分發予債權人方面

Background 背景

- ◆ The corporate insolvency and winding-up provisions in Hong Kong were first introduced in 1865
香港在1865年首次推行有關公司破產及清盤的條文
- ◆ Provisions in the existing Companies Ordinance are broadly based on the Companies Act 1929 and the Companies Act 1948 of the UK
現時《公司條例》中的有關條文，大體上是根據英國《1929年公司法》和《1948年公司法》制訂的
- ◆ Last major reform of corporate insolvency law in Hong Kong was in 1984
香港公司破產法例的對上一次重要改革在1984年

The Advisory Group 諮詢小組

- ◆ An Advisory Group (AG) was formed in January 2012 -
諮詢小組於2012年1月成立 -
 - to provide useful technical inputs and expert advice to the Government on the legislative proposals
為立法建議出謀劃策，向政府提供有用的技術性及專業意見
 - chaired by Official Receiver
破產管理署署長擔任主席

The Advisory Group 諮詢小組

- ◆ AG members included -
諮詢小組成員包括 -
 - Business and financial sectors
商界及金融界
 - Relevant professions (e.g. accountancy and legal)
相關專業（如會計界及法律界）
 - Private insolvency practitioners
私營機構破產從業員
 - Academic sector
學術界
 - Standing Committee on Company Law Reform members
公司法改革常務委員會成員

Legislative Proposals 立法建議

- ◆ 46 legislative proposals in consultation document
諮詢文件中有46項立法建議
 - Includes the 5 aspects of winding-up
涵蓋清盤程序的5個範疇
 - ✓ Commencement of winding-up
清盤的開始
 - ✓ Appointment, powers, vacation of office and release of provisional liquidators and liquidators
臨時清盤人和清盤人的委任、權力、離職及免除職務規定
 - ✓ Conduct of winding-up
清盤的進行
 - ✓ Voidable transactions
可使無效的交易
 - ✓ Investigation during winding-up, offences antecedent to or in the course of winding-up, and powers of the court
在清盤期間的調查、清盤前或清盤過程中的罪行，以及法院的權力

Legislative Proposals 立法建議

- ◆ 46 legislative proposals in consultation document
諮詢文件中有46項立法建議
 - Achieves the 3 objectives of the improvement exercise
達成優化工作的3個目標
 - ✓ Streamlining and rationalising winding-up process
精簡和理順清盤程序
 - ✓ Increasing protection of creditors
加強對債權人的保障
 - ✓ Enhancing integrity of winding-up process
使清盤程序更健全

Streamlining Winding-up Process 精簡清盤程序

- ◆ Streamlining and Rationalising the proceedings of the Committee of Inspection (COI)
精簡和理順審查委員會的程序
 - Enabling the COI to function through written resolutions sent by post or using other electronic means
審查委員會可透過以郵遞或其他電子方式送交的書面決議，行使其職能
 - Specifying the time for convening the first meeting and the notice for convening meeting
訂明舉行首次會議的時間；及發出會議通知的時間

Streamlining Winding-up Process 精簡清盤程序

- ◆ Streamlining the process for determining the bills of costs and charges of the agents employed by the liquidators
精簡釐定清盤人所聘用代理人的訟費和收費的程序
 - Allowing the liquidators to seek the agreement of the committee of inspection on those bills of costs and charges
容許清盤人與審查委員會就聘用代理人的費用達成協議

Streamlining Winding-up Process 精簡清盤程序

- ◆ Allowing communication by liquidators with creditors, contributories, members of committee of inspection and other interested parties by electronic means
容許清盤人以電子方式與債權人、分擔人、審查委員會委員及其他有關人士通訊

Increasing Protection of Creditors 加強對債權人的保障

- ◆ Introducing new provisions for “transaction at an undervalue”
引進“低於一般價值訂立的交易”的新條文
 - Court may restore the position to what it would have been if a company had not entered into a “transaction at an undervalue”
法院可回復到假若該公司不曾訂立“低於一般價值訂立的交易”的狀況
 - Cover transactions within 5 years before commencement of winding-up
涵蓋在開始清盤前5年內進行的交易

Increasing Protection of Creditors 加強對債權人的保障

- ◆ Introducing standalone provisions on “unfair preferences”
訂立“不公平的優惠”的獨立條文
 - Transactions putting a particular creditor in a better position than other creditors
使某債權人享有比其他債權人較佳的待遇的交易
 - Court may restore the position to what it would have been if a company had not entered into a transaction involving “unfair preferences”
法院可將狀況回復到假若公司不曾參與“不公平的優惠”的狀況
 - Overcoming the existing problems arising from applying the relevant provisions in the Bankruptcy Ordinance
解決《破產條例》的現有條文應用於公司清盤案所引致的問題

Increasing Protection of Creditors 加強對債權人的保障

- ◆ Modifying provisions on invalidation of floating charges
改進使浮動押記失效的條文
 - Floating charges may have the effect of converting unsecured creditors into secured creditors
浮動押記可能會產生效力，令某些無抵押債權人變為有抵押債權人
 - Existing provisions are intended to invalidate floating charges which do not provide new value to the company
現行條文的目的是使不為公司帶來新價值的浮動押記失效
 - Floating charges within 2 years prior to commencement of winding-up (instead of 1 year) and in favour of persons connected with the company shall be invalidated
凡在公司開始清盤之前的2年(而不是1年)內設定，而又是設定給予“與公司有關連的人”的浮動押記，均屬無效

Increasing Protection of Creditors 加強對債權人的保障

- ◆ Introducing additional safeguards to reduce the risk of abuse of the special procedure as set out in Section 228A of the Companies Ordinance
制訂額外保障措施，以減低《公司條例》第228A條所述特別程序遭濫用的風險
 - Under Section 228A procedure, the directors of a company (instead of the members) may initiate winding-up
根據第228A條程序，公司董事(而非成員)可以啟動清盤
 - Protection to members and creditors of company enhanced
對公司成員及債權人的保障有所增加

Enhancing Integrity of Winding-up Process 使清盤程序更健全

- ◆ Expanding the list of persons disqualified for appointment as a liquidator or provisional liquidator
把不符合資格出任清盤人或臨時清盤人的人士類別擴大
 - Covering persons connected with or having direct relationships with the company
包括與公司有關連或某些與公司有直接關係的人士

Enhancing Integrity of Winding-up Process 使清盤程序更健全

- ◆ Enhancing transparency by introducing a new statutory disclosure requirement for prospective liquidators
為準清盤人訂立新的法定披露要求，以加強透明度
 - Prospective liquidators required to make a statement of relevant relationships before their appointment
為準清盤人在接受委任前，必須作出相關關係的聲明

Enhancing Integrity of Winding-up Process 使清盤程序更健全

- ◆ Enforcing liabilities of liquidators notwithstanding their release by the court
強制獲法院免除職務的清盤人承擔法律責任
 - Introducing provisions that liquidators would not be absolved from liabilities arising from their misfeasance or breach of duty notwithstanding their release
即使清盤人已獲免除職務，規定清盤人必須承擔因其失當行為或失職行為而引致的法律責任

Public Consultation 公眾諮詢

- ◆ Consultation Period 諮詢期
2013.4.16 - 2013.7.15
- ◆ Public Forum 公眾諮詢研討會
2013.5.22 7pm 下午七時
- ◆ Letters sent to professional bodies and chambers of commerce offering to have separate seminars
去信專業團體及商會，提出可舉辦研討會

Public Consultation 公眾諮詢

- ◆ Consultation Document 諮詢文件
 - <http://www.fstb.gov.hk/fsb/ppr/consult/index.htm> (English)
 - <http://www.fstb.gov.hk/fsb/chinese/ppr/consult/index.htm> (中文)
- ◆ Target: Introduce the amendment bill into the Legislative Council in 2014/15
目標：在2014/15年度內向立法會提交修訂條例草案

Thank you

多謝