

Detailed proposals on the introduction of a statutory Corporate Rescue Procedure and Insolvent Trading Provisions

設立法定企業拯救程序 及在無力償債情況下營商的條文的 詳細建議

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

Corporate Insolvency Law Improvement Exercise 優化公司破產法例工作

- Majority support for the legislative proposals set out in the consultation document
大多數回應者支持諮詢文件所載的立法建議
- Refinements made to some proposals
對幾個立法建議作出微調

Corporate Insolvency Law Improvement Exercise 優化公司破產法例工作

Timetable for next steps 下一步工作時間表

- Preparation of amendment bill
擬備條例草案
- Introduction of the bill into LegCo in 2015
2015年把條例草案提交立法會

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Statutory Corporate Rescue Procedure (“CRP”) 法定企業拯救程序

Existing options for a company in Hong Kong in financial difficulties-
在香港，陷入財政困難的公司有以下選擇 -

- arrange an informal workout with the creditors
與債權人達成非法定償債安排
- “arrangement or compromise” under the Companies Ordinance
根據《公司條例》下的「債務償還安排或妥協」
- winding-up of the company
將公司清盤

But these options have their drawbacks.
但是，這些選擇都有其不足之處。

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The need for introducing a statutory CRP

需要設立法定的企業拯救程序

Purpose 宗旨

Provide an additional option for companies in financial difficulties
為面臨財務困難的公司提供多一個選擇

Objective 目的

Maximise the chance of existence of the company or as much as possible its business, and if this is not attainable, achieving a better return for the creditors (including employees and service providers) of the company than in case of an immediate winding-up
盡量增加公司繼續經營的機會或盡可能挽救其業務，不然也力求為公司的債權人(包括僱員及服務提供者)取得較即時清盤為佳的回報

•May benefit the company, its creditors and service providers, and the labour sector etc.
對公司、公司的債權人及服務提供者、以及整體勞工市場等有好處

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Key considerations in designing CRP

設計企業拯救程序的主要考慮原則

1. Moratorium on legal actions and proceedings against the company when the company is under provisional supervision
當公司進行臨時監管期間，設有不得進行訴訟及其他法律程序的暫止期
2. A defined timeframe for specified actions to facilitate speedy determination by creditors on the way forward for the company
設定時限，訂明須採取的步驟，讓債權人可盡快決定有關公司的未來路向
3. Predominantly out-of-court arrangements to save time and costs
盡量減省需要涉及法院的程序，以節省時間及金錢

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Key considerations in designing CRP

設計企業拯救程序的主要考慮原則

4. Employees of the company should be no worse off than in the case of an immediate insolvent winding-up
僱員獲得的保障不應遜於他們在公司因無力償債而立即進行清盤的情況下所得的保障
5. An independent third party, namely the provisional supervisor (“PS”), to take temporary control of the company and prepare proposals for a “voluntary arrangement”
公司將交由有一個獨立的第三方，即臨時監管人，暫時接管，並由他制訂「自願償債安排」

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The Proposals on CRP - the procedure (1)

企業拯救程序建議 - 程序（一）

Pre-requisite 先決條件

- Insolvency or likely insolvency of the company
公司已無力償債或相當可能無力償債
- Prior written consent of the major secured creditor
事先獲得公司的主要有抵押債權人的書面同意

Initiation 啟動程序

- By resolution of the members or directors of the company
透過董事或成員會議的決議案

(Special arrangement in case the company has already entered into winding-up process)

- (如公司已開始進行清盤程序的特別安排)
- by the provisional liquidator / liquidator
由臨時清盤人 / 清盤人啟動

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The Proposals on CRP - the procedure (2)

企業拯救程序建議 - 程序 (二)

- The PS to call a creditors' meeting to be held within 45 business days, and make recommendation on three specified alternative outcomes-
 - a) to implement a voluntary arrangement
 - b) to wind up the company; or
 - c) to end the provisional supervision, for the company to revert to its pre-CRP status

臨時監管人於45個工作天內召開債權人會議，並就下列三個特定方案作出建議 -

- a) 執行「自願償債安排」
- b) 讓公司清盤；或
- c) 結束臨時監管，讓公司回復啟動程序前的狀態

The Proposals on CRP - the procedure (3)

企業拯救程序建議 - 程序 (三)

- Usually lasts for up to 45 business days
一般為期不多於45個工作天
- Period can be extended for six months by approval of the creditors
經債權人批准，時限可延長六個月
- Period can also be extended by court order, without a limit on the length of the extended period
經法院批准，時限也可延長。該延長時限不設限制。

The Proposals on CRP - protection of creditors' interests (1)

企業拯救程序建議 - 保障債權人的權益 (一)

1. Prior written consent of the company's major secured creditor on the commencement of CRP and the appointment of PS is required.
公司啟動企業拯救程序及委任臨時監管人前，必須先獲得公司的主要有抵押債權人的書面同意。
2. The creditors may appoint a committee of creditors to monitor the work of the PS.
債權人可以成立債權人委員會，監察臨時監管人的工作。
3. The PS may be replaced by a decision at the first creditors' meeting to be held within 10 business days from the commencement of CRP.
第一次債權人會議會在企業拯救程序啟動後10個工作天內舉行，該會議有權撤換臨時監管人。

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The Proposals on CRP - protection of creditors' interests (2)

企業拯救程序建議 - 保障債權人的權益 (二)

4. Creditors to decide on the way forward for the company i.e. whether to implement any one of the specified alternative outcomes.
由債權人決定公司的未來路向，即決定是否執行其中一個特定方案。
5. PS must apply to the court and obtain the court's approval before he could dispose of a security of secured creditor.
臨時監管人必須先向法院申請並獲得批准，才能處理有抵押債權人的抵押品。
6. Creditors may apply to the court for an order against a PS for his misfeasance, or his act in respect of the company which would be prejudicial to the creditors' interest.
如果臨時監管人的行為失當或他對公司的作為損害了債權人的權益，債權人可向法院申請並要求法院作出命令。

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The Proposals on CRP - protection of employees' interests (1) 企業拯救程序建議 - 保障僱員的權益 (一)

- Protection to creditors applies to employees who are creditors of the company
保障債權人權益的措施，同樣適用於作為債權人的僱員
- A phased payment schedule for outstanding pre-commencement employees' entitlements-
僱員將獲分階段支付他們在程序啟動前應得的款項，時間表根據下述安排 -

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The Proposals on CRP - protection of employees' interests (2) 企業拯救程序建議 - 保障僱員的權益 (二)

- 1st phased payment - Arrears of wages before the commencement of the CRP should be paid up to the PWIF-cap within 30 days after commencement of the CRP
第一階段 - 公司必須在企業拯救程序開始後30日內，支付僱員在企業拯救程序開始前的欠薪，數額以破欠基金為上限。
- 2nd phased payment - Any outstanding wages in lieu of notice of termination, severance payments, pay for untaken annual leave etc. should be paid up to the relevant PWIF-caps within 45 days after the approval of the voluntary arrangement
第二階段 - 公司必須在自願償債安排方案獲批准後的45日內，支付代通知金、遣散費及未放有薪假期，數額以破欠基金為上限。
- 3rd phased payment - Any remaining pre-commencement entitlements, including the outstanding MPF employers' contributions, should be paid in full within one year after the voluntary arrangement has come into effect.
第三階段 - 公司必須在自願償債安排方案生效後的一年內，清付僱員其餘在程序啟動前應得的款項，包括僱主需作的強積金供款。

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The Proposals on CRP - the PS (1)

企業拯救程序建議 - 臨時監管人 (一)

- Assumes control of the company's business and properties temporarily, and acts as an agent of the company in exercising his functions. The functions and powers of company officers would be suspended during the provisional supervision
暫時接管公司的業務及財產，並會以公司代理人的身分行使權力。公司原有管理層的職能及權力會被暫時中止
- Must be a certified public accountant or a solicitor with practicing certificate in Hong Kong
須為一名香港註冊會計師或香港執業律師

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The Proposals on CRP - the PS (2)

企業拯救程序建議 - 臨時監管人 (二)

- To maintain the confidence of others dealing with the company, PS subject to personal liability in respect of-
以維持與財困公司營商的人士的信心，臨時監管人須就以下承擔個人法律責任 -
 - a) pre-appointment contracts positively adopted by him within a specified period from commencement of CRP; and
在其獲委任前訂立並在程序開始後特定期限內獲其接納的合約；以及
 - b) new contracts entered into by him.
其訂立的新合約。

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The Proposals on Insolvent Trading Provisions 在無力償債情況下營商的條文建議

Objectives 目的

- Encourage directors of companies in financial difficulty to act on insolvency earlier rather than later
鼓勵公司董事盡早為公司無力償債的情況採取適當的行動
- Protect the interests of creditors dealing with a company which is getting into financial difficulty
保障與財困公司營商的債權人的利益

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Insolvent Trading Provisions - Constituents of liability 在無力償債情況下營商的條文 - 構成因素

- a) An incurrence of a debt by the company
公司招致了債項
 - b) The person concerned is a director of the company at the time the company incurs the debt
公司招致該債項時，有關人士正擔任該公司的董事
 - c) The company is insolvent at that time or becomes insolvent by incurring that debt
公司當時無力償債，或因招致該債項而導致無力償債
 - d) The director concerned failed to prevent the company from incurring the debt; and
有關董事未能防止公司招致該債項；以及
 - e) The director concerned knew or ought to have known that the company was insolvent at that time or would become insolvent by incurring that debt
有關董事知悉或應當已知悉，公司當時無力償債，或因招致該債項而導致無力償債
- Only when a company goes into liquidation, the liquidator of a company may make an application to the court
只有在公司清盤時，公司的清盤人可向法院提出申請

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Insolvent Trading Provisions - Statutory Defence 在無力償債情況下營商的條文 - 法定合理辯解

- The director has taken all reasonable steps to prevent the company from incurring the debt, or
有關董事已採取一切合理步驟去防止公司招致有關債項；或
- The incurring of the debt is part and parcel of the steps to initiate the CRP process
公司所招致的有關債項是啟動企業拯救程序必要的開支
- ? The incurring of the debt is for an “arrangement or compromise” or an informal workout
債項是啟動「債務償還安排或妥協」或非法定償債安排必要的開支

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Timetable for next steps 下一步工作時間表

- Continued engagement with stakeholders
繼續與持份者就有關細節保持溝通
- Target completion of the draft amendment bill within the current term of the Legislative Council
目標在今屆立法會會期內完成草擬條例草案

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Thank you
多謝

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