



CCIF

CORPORATE ADVISORY SERVICES LIMITED

資援企業顧問有限公司

By Post and Fax (2869 4195)

Our ref: CAS/JW/0146

Division 4, Financial Services Branch
Financial Services and the Treasury Bureau
15/F, Queensway Government Offices
66 Queensway
Hong Kong

26 January 2010

Dear Sir,

Consultation on “Review of Corporate Rescue Procedure Legislative Proposals”

We refer to your letter dated 29th October 2009 and hereby attached our comments on your list of questions.

Should you have any queries, please do not hesitate to contact the undersigned at

Yours Faithfully



ff Jim Wardell
Chairman
CCIF Corporate Advisory Services Limited

PART A: GENERAL INFORMATION OF THE RESPONDENT

Name/Name of Organisation	:	<u>CCIF CORPORATE ADVISORY SERVICES LIMITED</u>
If organisation, name and title of Contact Person	:	JIM WARDELL, CHAIRMAN
		<i>(Please fill in if the respondent is a company or organization)</i>
Phone Number	:	_____
E-mail Address	:	_____

If you do not wish to disclose your affiliation or name to the public, please check the box here:

- Our organisation does not wish to disclose our name.
- I do not wish to disclose my name.

Question 1. Do you agree with the proposed procedural changes relating to initiation of provisional supervision in paragraphs 2.4 to 2.6 above? If not, please provide reasons and suggest alternatives.

Reply: We agree that in simplifying the procedure, there is no need to file the notice of appointment of Provisional Supervisor ("PSr") and the other documents with the Official Receivers Office ("OR"). However we suggest that they should be filed with the High Court at the same time as a more efficient way of notifying the creditors and other interested parties.

Question 2. Do you see any need for other changes to the initiation of provisional supervision, including who may initiate the procedure? If so, please elaborate on the suggested changes and reasons.

Reply: We do not see any need for other changes to the initiation of Provisional Supervision ("PS") under the current environment.

Question 3 Do you agree that the notice of appointment of provisional supervisor should be published in the local newspaper on the same day as the date on which the last document is filed with the Registrar of Companies? If you prefer additional or alternative means of publishing the notice of appointment, please describe and explain.

Reply: We believe it is correct that the appointment of PSr should be published in the local newspaper as soon as practicable. However for practical reasons (for instance, booking advertising space in advance in newspaper), this should be done on the next day or the next business day after the date on which the last document is filed with the Company Registry and the Court.

Question 4 Do you support an initial moratorium period of 45 days? If not, please suggest alternatives and explain.

Reply: Yes, we support an initial moratorium period of 45 days.

Question 5 Do you support the proposal to allow for extension of the moratorium up to a maximum period of six months from the commencement of provisional supervision, subject to approval by the creditors at a meeting of creditors? If not, please explain and suggest alternatives.

Reply: Yes, we support the proposal to allow for extension of the moratorium up to a maximum period of six months from the commencement of PS subject to the approval of creditors. However there should also be a provision for any aggrieved parties to apply to the Court for redress on justifiable grounds. The onus is on the aggrieved parties to show grounds.

Question 6 Do you agree with the proposal to allow for extension of the moratorium beyond six months only upon court approval? If not, please explain.

Reply: Yes, we agree with the proposal to allow for extension of the moratorium if approved by the Court.

Question 7 If your answer to Q6 is yes, do you agree that any court extension should not exceed a maximum of 12 months from the commencement of provisional supervision? If not, please explain and suggest alternatives.

Reply: We do not agree that the maximum period of extension should be 12 months. This is because the PS of large corporations such as a listed group can be complicated and time consuming. Having said that, any extension beyond twelve months from the commencement of PS should be subject to the approval by both the creditors and the Court.

Question 8 Does the list of contracts and agreements which should be exempted from the moratorium, as set out at Appendix, need to be revised? If so, please suggest and explain.

Reply: We think the list (of contracts and agreements which should be exempted from the moratorium) is fine and does not need to be revised.

Question 9 Which of the above three options (namely, the 2003 Proposal, Alternative A or Alternative B) would you prefer? Please explain. If you have any suggestion to refine any of the above three options, please describe and explain. If you prefer another alternative, please describe and explain.

Reply: We would prefer the following alternative: In reality if the company went into liquidation the Protection of Wages on Insolvency Fund ("PWIF") would deal with the outstanding wages, holiday pay, notice in lieu pay and severance pay. The PWIF should step in on day one and undertake to cover all arrears of wages, holiday pay etc. for all employees whether their employment is continuing or not.

Question 10 Independent of which of the above options is adopted, what are your views on the treatment of outstanding employers' MPF scheme contributions⁴¹?

Reply: We are of the view that the treatment of outstanding employers' MPF scheme contributions should be dealt with in accordance with the provisions in the MPF legislation.

Question 11 Do you agree with the proposal that solicitors holding a practising certificate issued under the Legal Practitioners Ordinance (Cap 159) and certified public accountants registered in accordance with the Professional Accountants Ordinance (Cap 50) may take up appointment as provisional supervisors?

Reply: The OR has the Panel A scheme for contracting out large and complicated liquidation cases to suitable insolvency practitioners and their companies/firms.
The Panel could be expanded to include PSr. Thus the government will ensure that only suitably qualified persons take up the appointments and the qualified persons have the necessary resources to do the job.

Question 12 Do you think that other persons without the above qualifications could also be appointed as provisional supervisors on a case-by-case basis? If so, should such an appointment be made by the OR or the Court? Please elaborate, in particular on the appeal channel in case of aggrieved applicants and on the associated investigatory and disciplinary regime in case of complaints against appointed persons.

Reply: The OR can expand the Panel A to allow for this.

Question 13 Do you agree with giving creditors the choice to replace the provisional supervisor appointed by the company or its directors or the provisional liquidators or liquidators of the company and approve the remuneration of the provisional supervisor at the first meeting of creditors to be held within 10 working days from the commencement of provisional supervision? If not, please elaborate on the reasons and suggest alternatives.

Reply: We agree with the proposal.

Question 14 Do you support imposing personal liability on provisional supervisors as proposed in paragraphs 5.14 to 5.17 above? If not, please suggest alternatives which would effectively address the issues set out under paragraphs 5.16(a) to (c).

Reply: While in general we do not support imposing liability on PSr, we do agree that some measures should be imposed on PSr to discourage persons with insufficient experience from taking appointments.

Question 15 Do you support the introduction of insolvent trading provisions? In case you do not, please explain and suggest alternatives to (a) encourage timely initiation of provisional supervision; and (b) deter irresponsible depletion of the company's assets.

Reply: We support the introduction of insolvent trading provisions.

Question 16 Do you agree with the proposed revised formulation of "insolvent trading"? If not, please suggest alternatives.

Reply: We agree with the proposed revised formulation of "insolvent trading" .

Question 17 Do you agree with the way that "major secured creditors" was defined in the 2001 Bill? If you think any changes are needed, please elaborate and explain.

Reply: We agree the way that "major secured creditors" was defined in the 2001 Bill.

Question 18 Do you support the proposal to largely follow the 2001 Bill approach with respect to protection of "major secured creditors" and other secured creditors' rights? If you think any changes are needed, please elaborate and explain.

Reply: We support the proposal to largely follow the 2001 Bill approach with respect to the protection of "major secured creditors" and other secured creditors' rights subject to an extension of the following:

- 5 working days for the major secured creditors to decide to participate PS.
- 15 working days for the first meeting of creditors to be held after the commencement of PS.

Question 19 What are your views on retaining or removing the "headcount test" in the voting at meetings of creditors (i.e. requirement (a) stated in paragraphs 8.1 and 8.2 above) for resolutions to be passed at meetings of creditors?

Reply: While acknowledging that the "headcount test" has its potential problems it is the best under the circumstances to ensure that all creditors views be considered and counted. We therefore support the retainment of the "headcount test" .