



消費者委員會 CONSUMER COUNCIL

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本函檔號 OUR REF.

5 February 2010

Secretary for Financial Services and the Treasury
Financial Services and the Treasury Bureau
15th Floor, Queensway Government Offices
66 Queensway, Hong Kong

Attn: Mr. Wong Wing-hang

Dear Mr. Wong,

**Consultation on
“Review of Corporate Rescue Procedure Legislative Proposals”**

The Council is pleased to have the opportunity to submit its views on the Review of Corporate Rescue Procedure Legislative Proposals.

We reiterate our support in principle to the introduction of corporate rescue procedures as previously stated in our letters to the Bills Committee respectively dated 14 April 2000 and 7 September 2001.

The proposed corporate rescue procedures would hopefully afford a better chance for rescuing a company which may otherwise be wound up; thereby give protection to consumers who have pre-paid for services or goods to be supplied by the company when it is insolvent or becomes insolvent subsequent to the purchase.

The pre-paid consumers would have a better chance of retaining their interests as a result of the survival of the company should the rescue procedure achieves a successful outcome.

However, the Council notes that adjustment is proposed to be made to the insolvent trading provisions of the 2001 Bill (“the 2001 provisions”) to the effect that, i) senior management will be excluded from being liable under insolvent trading and ii) the standard in establishing liability will be raised by dropping “reasonable grounds for suspecting that the company was insolvent or there was no reasonable prospect that the company could avoid becoming insolvent” as one of the alternative grounds for fixing liability on the responsible person for insolvent trading.

P.2/The Council...

The Council is much concerned that the proposed adjustment may run the risk of weakening the deterrent effect on irresponsible trade practices, such as soliciting prepayments from consumers during insolvency, and reducing the incentive of proper business practice; that would otherwise be better achieved by the 2001 provisions. Moreover, the proposed adjustment may lower the incentive of the corporate intended by the 2001 provisions to initiate provisional supervision earlier, rather than resorting to insolvent trading before liquidation.

It is more likely that the 2001 provisions will be more conducive to proper conduct of business and achieving the legislative objective; and thereby afford more protection to consumers. In this premise, the 2001 provisions should be retained.

The Council understands that a company during provisional supervision should be allowed to continue with its normal business by maintaining the necessary credit facilities. However, unwary consumers who have made prepaid consumption (in the form of prepaid coupons or otherwise) during moratorium may suffer losses if the corporate rescue fails. As unsecured creditors, they will be placed at the end of the repayment priority list for winding-up of the corporates. Therefore, as the Council previously submitted, it is important to alert consumers about the fact, nature and effect of a provisional supervision so that they can make informed decision.

The Council notes that the Administration proposes in the Review that a notice of appointment of provisional supervisor will be required to be published in the local newspapers and the Gazette in a prescribed timely manner. For listed companies, it is further stated, there are additional requirements, under the listing rules to make public price sensitive information.

It would be preferable from the prospective of consumer protection to have the notice include statement giving adequate information to consumers about the nature and effect of the provisional supervision so as enable them to make informed decision.

Last but not least, the Council would like to emphasize that the establishment of a trust account holding prepayment by consumer and prohibition of issuance of prepaid coupons during provisional supervision, as it previously proposed, should be effective to protect pre-paid consumers in corporate insolvency. It is submitted that consideration should be given to putting in place these measures through legislation or otherwise.

Yours sincerely,



Connie LAU
Chief Executive
Consumer Council