

Your Ref: C2/1/73/1

Our Ref: Lv281/09

(via fax 28694195 and via post)

28 December 2009

Mr John C. Y. Leung
Secretary for Financial Services and the Treasury
15th Fl., Queensway Government Offices
88 Queensway
Hong Kong

Dear Mr Leung

Consultation on "Review of Corporate Rescue Procedure Legislative Proposals"

Thank you for your letter dated 29 October 2009.

We enclose our response to the Questions in the subject proposal for your consideration.

Yours sincerely



James Wong
Chairman

c.c. Governing Committee Members

JW/iw/sw

Comments from The Hong Kong Federation of Insurers on Review of Corporate Rescue Procedure Legislative Proposals

	Questions	Response
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 alternative.	Agree with the changes to simplify the procedures in the interest of time and costs.
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 changed and reasons.	Suggest considering "secured creditors" as one of the parties who can initiate the procedure. Depending on the nature of borrowings involved, a secured lender could have a good understanding on the company business and financial performance due to the analysis they would have made in relation to the company. Besides, they could be key stakeholders of the whole scheme.
3.	Do you agree that the notice of appointment of provisional supervisor should be published in the local newspapers on the same day as the date on which the last document is field with the Registrar of Companies? If you prefer additional or alternative means of publishing the notice of appointment, please describe and explain.	Agree and consider the means proposed adequate.
4.	Do you support an initial moratorium period of 45 days? If not, please suggest alternatives and explain.	Agree and consider a mid-way taking reference from other countries. Presumably it refers to calendar day.
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.	Agree and consider reasonable in this initial stage.

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.	Agree to involve court in view of further extension.
7.	If you 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.	Agree.
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.	Suggest considering other items like criminal prosecution.
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.	We prefer Alternative A.
10.	Independent of which of the above options is adopted, what are your views on the treatment of outstanding employers' MPF scheme contributions?	Suggest following the moratorium but with priority in pay-out in the rescue plan.
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?	Agree.
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 Official Receiver (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 person.	Preferably not, as those qualifications can, to a certain extent, provide comfort and assurance as to their professionalism and conduct.
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	Agree.

	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.	
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).	Agree.
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.	Agree.
16.	Do you agree with the proposed revised formulation of "insolvent trading"? If not, please suggest alternatives.	Agree to exclude the senior management from being liable under insolvent trading and the suggestions in modifying the standard.
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.	Agree but more detailed definition needed for clarity sake and to avoid disputes.
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.	Agree.
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 meeting of creditors?	Prefer to remove the "headcount test".