Reply Form for the Consultation on Review of Corporate Rescue Procedure Legislative Proposals

1. The purpose of this reply form is to facilitate providing views and comments on the Consultation Paper entitled Review of Corporate Rescue Procedure Legislative Proposals ("Consultation Paper") published by the Financial Services and the Treasury Bureau ("FSTB") on 29 October 2009.

2. The Consultation Paper can be downloaded from the FSTB's website at http://www.fstb.gov.hk/fsb

3. If you have any views or comments on the Consultation Paper, you are welcome to complete this reply form and return it to us on or before **28 January 2010** by one of the following means:

By mail or hand delivery to:	Division 4, Financial Services Branch Financial Services and the Treasury Bureau 15/F, Queensway Government Offices 66 Queensway Hong Kong Re: **Consultation Paper on Review of Corporate Rescue Procedure Legislative Proposals**
By fax to:	(852) 2869 4195
By e-mail to:	corporate_rescue@fstb.gov.hk

4. Any questions about this reply form may be addressed to Miss Sandy CHAN of FSTB, who can be reached at (852) 2867 5844 (phone), (852) 2869 4195 (fax) or corporate_rescue@fstb.gov.hk (email).

5. Submissions will be received on the basis that we may freely reproduce and publish them, in whole or in part, in any form, and use, adapt or develop any proposal put forward without seeking permission or providing acknowledgment of the party making the proposal.

6. Please note that names of respondents, their affiliation(s) and comments may be posted on the FSTB's website or referred to in other documents we publish. If you do not wish your name and/or affiliation to be disclosed, please state so when making your submission. Any personal data submitted will only be used for purposes which are directly related to consultation purposes under this consultation paper. Such data may be transferred to other Government departments/agencies for the same purposes. For access to or correction of personal data contained in your submission, please contact Mr WONG Wing-hang, Assistant Secretary for Financial Services and the Treasury (Financial Services), who can be reached at (852) 2867 5465 (phone), (852) 2869 4195 (fax), or whwong@fstb.gov.hk (email).

PART A: GENERAL INFORMATION OF THE RESPONDENT

Name/Name of Organisation	: Hong Kong Securities Association
If organisation, name and title of Contact Person	: William Lee, Chairman / Sabrina Yu, Senior Executive
	(Please fill in if the respondent is a company or organization)
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.

PART B: DETAILED QUESTIONS FOR RESPONSE

You may provide your views or comments on all or any of the questions. If the provided space is insufficient, please attach additional pages.

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.

Yes.

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.

N.A.

Question 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 filed with the Registrar of Companies? If you prefer additional or alternative means of publishing the notice of appointment, please describe and explain.

Agree.

Question 4

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

45 days is appropriate.

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.

Agree.

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.

Agree.

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.

Agree.

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.

N.A.

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.

Alternative A. This alternative may help to improve employees protection by encourge the company and its creditors to swiftly settle compnay's obligations due to employees so as to reduce uncertainty of the povisional supervision.

Question 10

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

MPF scheme contributions are unlikely to sustantially increase uncertainty to the provision thus treatment of the employees entitlement should be the same as wages in arrears etc.

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?

Agree if such persons is approved by the creditors.

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.

OR should be given the power to appointment such other persons without the proposed qualifications as provisional supervisors on a case-by case basis.

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.

Agree.

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).

Agree with proposals.

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.

Agree the introduction of insolvent trading provisions.

Question 16

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

Agree.

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.

Need more clarity.

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.

Agree.

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?

If employees is not subject to moratorium it is not necessary to retain "headcount test".

- End -