MAZARS

Your Ref. C2/1/73/1
Our Ref. MM/AC/EL

30 December 2009

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

Attn.: Miss Sandy Chan

Dear Sirs

Consultation on "Review of Corporate Rescue Procedure Legislative Proposals"

We are writing in response to your letter dated 29 October 2009 in relation to the above consultation paper. We set out our views as follows:-

INITIATION OF PROVISIONAL SUPERVISION

Question 1

We think that a government department should oversee and control all companies under Provisional Supervision. If the Companies Registry ("CR") has such a role and responsibility, we agree that filing the notice of appointment and documents with CR is sufficient.

Question 2

We agree with the proposal and have no further comments.

Question 3

The notice of appointment of provisional supervisor should be filed with the relevant government department as mentioned in our view to Question 1. We agree that the notice shall be published in the local newspapers as soon as possible. However, it may be difficult to arrange for it to be published on the same day of filing. In order to avoid delay in filing, we think that publication of notice within three working days from the commencement of the provisional supervision can be considered.

MORATORIUM

Questions 4 – 7

We agree with the proposal and have no further comments.

Question 8

We have no comment.

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EMPLOYEES' OUTSTANDING ENTITLEMENTS

Question 9

We are in favor of Alternative B.

The fundamental reason to consider the corporate rescue bill is to provide a means to rescue corporations avoiding immediate liquidation. Using Alternative A will grant the employees substantial power over other creditors to claim their outstanding debts. Besides, there is a greater tendency for the employees to file a winding-up petition to the court during the moratorium, which will create an obstacle to the voluntary arrangement proposal ("VAP").

We do not agree with the 2003 Proposal that payment of the Protection of Wages on Insolvency Fund ("PWIF") cap shall be paid by the provisional supervisor before the meeting of creditors to consider the VAP. In addition, it will be costly to maintain a dedicated trust account.

Alternative B appears to be a fair solution which ensures that employees would be treated no worse off than if the company had gone into insolvent liquidation and also provide a breathing space for the company to restructure its finances to meet payments. Simultaneously, the Protection of Wages on Insolvency Ordinance should also cover creditors' voluntary liquidation cases. We agree that the moratorium period cannot be extended unless the company can settle all outstanding "employees' protected debts" within 14 days of the granting of moratorium extension. We also agree that any voluntary arrangement proposal would have to contain the provision that the remaining employees' debts must be settled within 12 months from the start of voluntary arrangement.

Question 10

We are of the view that outstanding employers' MPF scheme contributions should be treated the same as other employees' entitlements.

PROVISIONAL SUPERVISOR

Question 11

We are of the view that solicitors holding practicing certificates issued under the Legal Practitioners Ordinance (Cap 159) and certified public accountants registered in accordance with the Professional Accountants Ordinance (Cap 50) may not be able to take up appointment as provisional supervisors unless they have relevant post-qualification experience in insolvency administration say at senior management level for at least 5 years. This is to ensure the quality and standard of the appointment takers.

Question 12

We think that other persons without the above qualifications but with substantial experience in insolvency administration may also be appointed as provisional supervisors. However, such appointment should be substantiated, evaluated and approved by the Official Receiver and/or the court. A panel of appointment takers should be approved and regulated by the Official Receiver and the court.

Questions 13 - 14

We agree with the proposal and have no further comments.

INSOLVENT TRADING

Questions 15 – 16

We agree with the proposal and have no further comments.

SECURED CREDITORS

Questions 17 – 18

We agree with the proposal and have no further comments.

VOTING AT MEETINGS OF CREDITORS

Question 19

In relation to the "headcount test" in the voting at creditors' meeting, we suggest that voting in value would be more appropriate as it would not disadvantage the creditors with high value claims. The voting right of creditors should be in proportion to the respective value of their claims. The headcount can easily be manipulated. In addition, it will complicate the voting procedure and potentially create distortion and unnecessary disputes.

Yours faithfully

M L Man
Executive Chairman