



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

27 January 2010

Dear Sirs,

**Consultation Paper on Review of Corporate Rescue Procedure Legislative Proposals**

1. The above paper consults, not on the principle of the introduction of a corporate rescue procedure, but on various aspects of that procedure. We express no view on whether the introduction of a rescue procedure is or is not a good thing. Nor, if such a procedure is introduced, do we have strong views on the aspects of the procedure on which the paper consults. We do, however, wish to draw to your attention a particular concern which we as landlords have about the operation of the proposed moratorium.
2. The termination provisions in Hong Kong tenancy agreements normally permit the landlord to re-enter the premises if rent is in arrear or in various insolvency related events, including stopping or suspending payment of debts. On re-entry the tenancy is terminated. So a tenant's failure to pay rent or its stopping or suspending payment of debts entitles the landlord to repossess the premises and let them to another tenant.
3. The Corporate Rescue Bill provides for a moratorium period during which it is not possible to take legal proceedings against a company which is in the rescue procedure or to re-enter its property. The company's rights as a tenant are property for these purposes. So a Hong Kong landlord will not be able to exercise its normal right to re-enter premises let to a company in the rescue procedure which has not paid rent. Nor could the landlord sue the company for arrears of rent. We have no objection in principle to landlords not being able to sue for arrears of rent in these circumstances. We appreciate that landlords, in not being able to sue for arrears of rent, are in no different a position from any other creditor under the rescue proposals. However, we do think that during the moratorium landlords should have the same rights as other creditors and are concerned that, as the Bill is presently drafted, this may not be the case.

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4. As you know, the moratorium provisions do not apply to debts or liabilities incurred by a company after the moratorium has started – see Clause 11(3)(a) of the Bill. So, if a company orders goods after the moratorium has started and does not pay for them, the supplier can sue the company for non-payment. However, there is some doubt as to whether rent payable under a tenancy agreement entered into before the start of the moratorium period is a liability incurred after the moratorium has started. It could be argued that, as it is a liability incurred under the tenancy agreement, it was incurred when the tenancy was entered into. If this is right, the moratorium provisions would operate with particular harshness on landlords, in that as well as being unable to sue for arrears of rent payable before the moratorium starts, they would have to allow the tenant to stay in occupation without paying rent during the moratorium period. We do not believe that this is the intended result of the way in which the moratorium provisions are drafted.
5. In the light of what we say in 4, we request that the relevant wording in the Bill be clarified so that landlords can sue for payment of rent which falls due for payment during a moratorium and can exercise their rights of re-entry if that rent is in arrears. Although the detailed drafting of such clarification is a matter for the law draftsman, we would suggest that, if Clause 11(3)(a) were redrafted so as to read as follows, our concern would be addressed.

*“any debt or other liability of the company incurred on or after the relevant date (including any creditor in respect thereof), any such debt or other liability arising under an agreement for the lease or tenancy of any immovable property being deemed to have arisen after the relevant date if and to the extent that it arises in relation to the occupation of such immovable property after the relevant date”.*

Yours sincerely,  
For and on behalf of  
SWIRE PROPERTIES LTD



Guy Bradley  
Chief Operating Officer - Hong Kong