

Friday, June 23, 1995

CORPORATE RESCUE PROCEDURE PROPOSED

The Insolvency Sub-committee of the Law Reform Commission today (Friday) published a consultation paper containing proposals for the introduction of a comprehensive corporate rescue procedure in Hong Kong.

The Chairman of the Sub-committee on Insolvency, Professor Edward Tyler, said that the need for a corporate rescue procedure was widely accepted in the business community. Corporate rescue procedures, such as the Administration procedure in the United Kingdom and Chapter 11 in the United States, are in place in many other jurisdictions.

The proposed corporate rescue procedure, known as provisional supervision, would provide most companies in financial difficulties with court protection and time to put a proposal for a voluntary arrangement to creditors.

This would be achieved by the court providing the protection of a stay on all proceedings against the company, including winding up proceedings, while a proposal for a voluntary arrangement was being prepared. Court protection could last for up to six months, after which creditors could vote to extend the stay without court protection if a voluntary arrangement had not been finalised or the company had not gone into liquidation following a recommendation of the provisional supervisor.

A proposal for a voluntary arrangement would be put together by a solicitor or accountant, known as a provisional supervisor, who would usually be appointed by the company. The provisional supervisor would have to ascertain a company's trading position as soon as possible and put a proposal to creditors, if appropriate, in as short a time as possible. The initial stay period would be one month, after which the court could extend the stay for a further five months.

During the provisional supervision period, the provisional supervisor would control the company in place of the directors, but he could delegate powers of management back to directors where appropriate.

A company's main secured creditors would have the power to elect whether to participate in provisional supervision. If these major secured creditors elected not to participate, preferring perhaps to liquidate the company or appoint a receiver over its assets, it would probably cause provisional supervision to end. It is anticipated that, in most cases, major secured creditors would have agreed to participate prior to a company going into provisional supervision.

Ultimately, the creditors would vote on any proposal. It would require a majority in number and in excess of two thirds in value of creditors for a proposal to be accepted. This requirement should protect the different interests of smaller creditors, who would comprise the majority in number, and

major creditors, who would have the greatest value of debt

Once a proposal was accepted, a supervisor, probably the provisional supervisor, would oversee the implementation of the voluntary arrangement

It is also proposed that directors and senior management of a company could be held personally liable to compensate a liquidated company for losses incurred by a company if it traded while insolvent.

The consultation period will end on August 31, 1995. Written submissions can be sent to the Law Reform Commission Secretariat before that date.

Copies of the consultation paper are available on request from the Law Reform Commission Secretariat, 20th Floor, Harcourt House, 39 Gloucester Road, Wanchai, Hong Kong.