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17 September 2020

Mr Billy Au  
Principal Assistant Secretary (Financial Services)  
Financial Services Branch  
Financial Services and the Treasury Bureau  
15/F, Queensway Government Offices  
66 Queensway  
Hong Kong

*(By Email and Post)*

Dear Mr Au

**HKGCC Response to Companies (Corporate Rescue) Bill Proposals**

Thank you for your e-mail of 21 August, attaching a copy of the draft Bill as it currently stands.

We note that the points which we made in our submission to you of 7 August 2020 are not fully reflected in the draft Bill. These include, for example, the following recommendations:

- Greater clarity should be given on what constitutes “substantially the whole of the company’s property” in the definition of “major secured creditor”.
- The threshold for passing votes at creditors’ meetings should be specified. The draft Bill currently only appears to address the voting threshold for the final meeting (in clause 148), but not for earlier meetings, including the first meeting.
- Further suitability criteria should be set for qualification as a provisional supervisor (PS), over and above qualification as a solicitor or certified public accountant. Persons who satisfy these criteria need not necessarily be solicitors or accountants.
- An additional specific power should be given to the PS, namely the power to apply to the court to set aside onerous contracts entered into between the company and an associated person within a certain period of time prior to commencement of the provisional supervision (for example, six months).
- A list of indicative factors should be provided for assessing “good faith” in the defence to the insolvent trading provisions (clause 277F(1)(a)). Otherwise, it is difficult to see the additional requirements a director has to meet to rely on this defence, apart from those specified in clause 277F(1)(b).

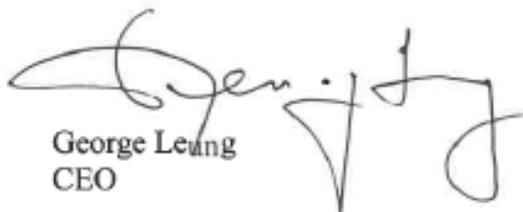
During the course of comparing the points made in our submission of 7 August 2020 to the text of the draft Bill that you sent to us, we noticed a number of drafting points that you may wish to consider, regarding the appointment of a PS:

- Clause 15(2)(a)(ii) provides that a directors' resolution to appoint a PS must state that, in the opinion of the directors voting in favour, "provisional supervision is reasonably likely to achieve *the objects* set out in section 2" (emphasis added). However, the objects in clause 2 are expressed as alternatives to each other: if it is not reasonably practicable to achieve object (a) (essentially, saving the business, or as much as possible of it) then the alternative object (b) is "to achieve a better return for the company's creditors as a whole than would result from an immediate winding-up of the company". You may therefore wish to consider amending the text extracted from clause 15(2)(a)(ii) above to read "...to achieve *one of* the objects set out in section 2. The same point arises in respect of a members' resolution to appoint a PS, under clause 15(3)(a)(ii).
- Clause 16(a) provides that, for the appointment of a PS to take effect, the person to be appointed must have consented in writing to the appointment before the directors' or members' resolution (as the case may be) is passed. It is not clear who is to request this consent and what process is to be followed in obtaining it. You may wish to consider whether this should be clarified.

We have not conducted a comprehensive clause-by-clause review of the Bill, and may have further comments as the legislative drafting process proceeds. The points above are therefore by no means exhaustive. It will no doubt be important to obtain detailed input on the draft from those will be more closely involved in provisional supervision proceedings, in particular banks, and the accountancy and legal professions.

We note from your e-mail that the draft Bill may be subject to further amendment before it is presented to LegCo, and that you will carefully consider all views received from stakeholders, including HKGCC. Accordingly, we trust that you will take into account the points we have made, including those listed above and in our submission of 7 August 2020, in finalising the draft Bill before it is presented to LegCo.

Yours sincerely



George Leung  
CEO