

**Major proposals for the introduction of
a statutory corporate rescue procedure and insolvent trading provisions**

(1) Statutory Corporate Rescue Procedure (CRP)

- (a) The statutory objective of the CRP will be specified as maximising the chance of existence of the company or as much as possible its business, and if this is not attainable, achieving a better return for the creditors of the company than in case of an immediate insolvent winding-up.
- (b) The CRP can be initiated by the company (either by resolution of its members or directors), or by the provisional liquidator or liquidator (as the case may be, if the company has already entered into winding-up process). Prior written consent of its major secured creditor is necessary.
- (c) The CRP will be commenced by the appointment of a provisional supervisor (PS). The PS will take temporary control of the company, consider options for rescuing the company and prepare proposals for a voluntary arrangement (VA) within a specified period for creditors' approval.
- (d) Certified public accountants and solicitors with practicing certificates will be qualified to be appointed as a PS.
- (e) There will be checks-and-balances against the powers of the PS, e.g. the court may, on application by relevant persons, make orders against a PS for misfeasance or breach of duty, etc.
- (f) There will be a phased payment schedule for outstanding employees' entitlements as at the commencement of the CRP owed by the company.
- (g) The CRP will provide for a moratorium under which civil proceedings and other legal process will be stayed during the CRP.
- (h) The creditors' meeting will vote on the specified alternative outcomes for the company i.e. whether (i) the proposed VA should be approved with or without modification; or (ii) the company should be wound up; or (iii) the provisional supervision should end, for the company to revert to the pre-CRP status.

- (i) If a resolution to approve the proposed VA is passed, the PS will normally become the supervisor to oversee the implementation of the VA.

(2) Insolvent trading provisions

- (j) After a company goes into liquidation, the liquidator of the company should be empowered to make an application to the court to seek a declaration that the director is civilly liable for insolvent trading and an order for the director to pay compensation to the company which traded while insolvent.
- (k) A director of the company may be held liable for insolvent trading if (i) the company incurs a debt; (ii) the company is insolvent at that time or becomes insolvent by incurring that debt; and (iii) the director concerned knew or ought to have known about the insolvency of the company.
- (l) It will be a statutory defence if (i) the director has taken all reasonable steps to prevent the company from incurring the debt, or (ii) the incurring of the debt is part and parcel of the steps to initiate the CRP process.