



香港僱主聯合會
Employers'
Federation
of Hong Kong

27 August 2001

Ref.: G2001 - 157

Clerk to Bills Committee on
Companies (Corporate Rescue) Bill
Legislative Council Secretariat
3rd Floor, Citibank Tower
3 Garden Road
Central, Hong Kong

Dear Sirs / Madam,

Companies (Corporate Rescue) Bill

The Employers' Federation of Hong Kong supports the concept of corporate rescue, which aims at providing businesses with temporary financial difficulties a chance to turn around and survive in whole or in part. As such, all parties concerned including shareholders, ordinary creditors, secured creditors, employees and society as a whole will benefit. We are concerned, however, that the small and medium enterprises may not be able to enjoy this provision because of the relatively high financial burden incurred for the appointment of a provisional supervisor as required for the rescue process.

Among the stakeholders mentioned, the Federation is particularly interested in the welfare of the employees involved and in the role of the Protection of Wages on Insolvency Fund Board in the matter and wish to stress that the following two principles should be upheld continuously and consistently through out the corporate rescue process.

Preferential Treatment on Payments for Employees

When a company is facing financial difficulty particularly if it is on the verge of insolvency, employees are in general the most disadvantaged third party. Not only will their payment for services completed and their termination entitlement be outstanding but their jobs, which usually are the main source of income for the livelihood of their families, are in jeopardy. As a result, employees deserve better protection than other parties. Preferential treatment for employees' outstanding wages and statutory entitlements is widely recognized among overseas countries such as Australia, New Zealand and United Kingdom under these circumstances.

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As stated in the Employment Ordinance, non-payment of wages and other statutory termination payments is a criminal offence. A responsible employer should not, in any case, purposely avoid this obligation. The suggestion of handling outstanding wages of employees as stated in the Bill thus secures the welfare of employees concerned without imposing additional obligations on the provisional supervisor.

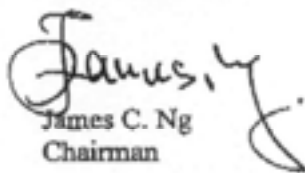
Role of the Protection of Wages on Insolvency Fund (PWIF)

Currently, when companies are wound up, employees have a high chance of getting their wages and termination benefits paid within a reasonable time from the PWIF. The Fund also has a high chance of recovering partly or the entire preferential portion of the payment through subrogation. The aim of the Fund is to provide ex-gratia payment and to offer an immediate relief to the affected employees. To use the Fund for any other purposes other than the aforesaid will be a further exploitation of good employers.

In a nutshell, the Employers' Federation has no objection to the proposal of introducing corporate rescue provision to Hong Kong as this will give a chance of survival to viable businesses with financial difficulties. We however must stress that the welfare of the employees concerned should be secured with preference and that the PWIF be operated within its current framework and objectives.

Please telephone Mrs. Jackie Ma, our Executive Director on 2528 0712 if you would like to discuss further on this matter.

Yours sincerely,


James C. Ng
Chairman

*c.c. Mr Norman Yuen JP, Chairman of Employees' Relations & Legislation Issues Committee
Dr Kim Mak, Labour Advisory Board Representative*