

Panel on Financial Affairs

(Extract)

**Minutes of meeting
held on Monday, 7 December 2009 at 9:00 am
in the Chamber of the Legislative Council Building**

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IV. Review of corporate rescue procedure legislative proposals

(LC Paper No. CB(1)191/09-10(01) —Information note on public consultation on the review of corporate rescue procedure legislative proposals (with copy of the consultation paper attached)

LC Paper No. CB(1)527/09-10 —Background brief on review of corporate rescue procedure legislative proposals prepared by the Legislative Council Secretariat)

Briefing by the Administration

62. The Deputy Secretary for Financial Services and the Treasury (Financial Services)³ (DS(FS)) briefed members on the legislative proposals for the corporate rescue procedure, by highlighting the salient points in the paper.

Discussion

63. Mrs Regina IP recalled that when the previous legislative proposals on the corporate rescue procedure were scrutinized by the Legislative Council (LegCo) back in 2000 and 2001, there were diverse views among stakeholders and the relevant bills had not been enacted eventually. Mrs IP pointed out that she was not convinced of the merits of the legislative proposals for the stakeholders, such as the business corporations, the employees and the creditors. Referring to the Administration's explanation that one of the reasons for not proposing to adopt the procedure under Chapter 11 of the United States Bankruptcy Code was the high cost with close court involvement, Mrs IP was

of the view that the proposal of provisional supervision was also costly. Given that the majority of enterprises in Hong Kong were small and medium-sized enterprises (SMEs), Mrs IP doubted the need of the corporate rescue procedure, as SMEs in financial difficulties might not have the resources to go through the procedure. Mr IP Wai-ming said that Members belonging to the Hong Kong Federation of Trade Unions shared a similar view.

64. DS(FS) appreciated that while SMEs in financial difficulty might be relatively less likely to benefit from the corporate rescue procedure, the legislative proposals for the procedure aimed to provide an option to bridge the gap of the existing statutory and non-statutory arrangements for companies to survive through financial difficulty. DS(FS) advised that the provisional supervision and the moratorium proposed under the corporate rescue procedure would improve the chances of survival of corporations, as more time would be allowed for the provisional supervisors to work out the voluntary arrangement proposal for approval of the creditors. He assured members that interest of employees would be protected under the corporate rescue procedure by ensuring that their entitlements and rights would not be worse off than in the case of winding up. Preliminary consultation with the business sector indicated that the corporate rescue procedure could help corporations to tide over difficulties during financial crisis.

65. Mr WONG Kwok-hing was concerned about measures to protect the interest of employees during the proposed corporate rescue procedure, as it was quite common for corporations in liquidation to owe to their employees considerable amount of arrears of wages, severance payments and other statutory entitlements. In this connection, Mr WONG recalled that the bills for the introduction of corporate rescue procedure in 2000 and 2001 had not been enacted mainly due to the lack of a consensus among stakeholders on the treatment of employees' outstanding entitlements, and enquired whether the concerns raised could be fully addressed in the consultation proposals.

66. DS(FS) advised that the Administration attached importance to the settlement of employee's entitlements in the corporate rescue procedure and reiterated that the proposals in the consultation paper aimed to ensure that the treatment of employees' entitlements would not be worse off than in the liquidation scenario. In formulating the consultation proposals, the Administration had taken into consideration views of Members and stakeholders on the difficulties of a financially troubled corporation to provide sufficient funds in a trust account for settlement of all outstanding wages and statutory entitlements of employees before commencing the corporate rescue procedure. The Administration was consulting the public on various options to settle the outstanding entitlements, including the proposal put forward in 2003

of capping the trust account amount to mirror that of the Protection of Wages on Insolvency Fund (PWIF).

67. Mr WONG Kwok-hing and Dr PAN Pey-chyou were concerned about the need and the ways of inviting views of stakeholders from the business, professional and labour sectors, such as the Labour Advisory Board, on the consultation proposals. In reply, DS(FS) advised that the Administration had briefed the Labour Advisory Board on the consultation proposals. The Administration would arrange consultation forum/focus group discussion to gauge views from stakeholders during the three-month consultation on the legislative proposals. The Chairman remarked that interested parties could give views to the Administration during the consultation period, and/or submit views to the Panel when the Administration briefed the Panel on the consultation feedback in 2010.

68. Mr IP Wai-ming requested the Administration to extend the consultation period to allow more time for the stakeholders to consolidate their views on the proposals. Mr IP stressed the importance of protecting the interest of the employees, but expressed concern about possible abuses of PWIF by unscrupulous employers during the corporate rescue procedure. He asked whether the Administration had sought the views of the community and PWIF on the propriety of using the fund for settlement of employees' wages owed by their employer companies undergoing the corporate rescue procedure.

69. DS(FS) responded that having regard to the majority views of the community and the time allowed for preparation and scrutiny of the legislative proposals, the Administration might consider extending the consultation period, where necessary. DS(FS) pointed out that among the three options for treatment of employees' outstanding entitlement, only option B would involve the use of funds in PWIF. The Administration would consult the PWIF Board on the arrangements if this turned out to be the preferred option in the public consultation. As a provisional supervisor, unconnected with the board of directors/management of the corporation concerned, would be appointed to work out the voluntary arrangement for corporate rescue, the possibility of abuse by employers or company directors would be minimized.

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