

Press release

LCQ5: Corporate rescue procedure

Wednesday, May 13, 2009

Following is a question by the Hon Paul Chan and a reply by the Secretary for Financial Services and the Treasury, Professor K C Chan, in the Legislative Council today (May 13):

Question:

Since the financial tsunami struck Hong Kong, more and more enterprises are expected to encounter difficulties in their operation. Yet, many of such enterprises are delivering quality products and services, their management are people with competence and integrity, and their modes of business are commercially viable, but they have fallen into financial difficulty only because the economic environment has deteriorated too rapidly. To give enterprises in financial difficulty a chance to turn around, quite a number of countries such as the United States, the United Kingdom, Australia and some Asian countries have currently put in place statutory procedures whereby such enterprises are allowed to undergo debt restructuring during the "moratorium", so as to protect them from being wound up immediately, thereby preserving the "rice bowls" of many employees. Although the Second Legislative Council had started the scrutiny of the Companies (Corporate Rescue) Bill, the scrutiny work was subsequently held in abeyance on the request of the Government. The Government has announced earlier that it would start afresh the relevant legislative exercise. In this connection, will the Government inform this Council:

(a) of the legislative timetable; whether it can manage to introduce the bill concerned into this Council within the first half of the 2009-2010 legislative session; if not, of the reasons for that;

(b) whether it has reviewed the reasons for the failure to enact a law on corporate rescue procedure during the Second Legislative Council; whether it has assessed the greatest barrier to the relevant legislative exercise this time, and how the Government plans to overcome such barriers; and

(c) as it takes time to legislate, whether the Government has considered, apart from continuing to implement the Small and Medium Enterprises Loan Guarantee Scheme, immediately adopting other methods and measures to help enterprises in financial difficulty and their staff to tide over the difficult times?

Reply:

President,

(1) The Government is actively revisiting the proposal of introducing a corporate rescue procedure for companies in financial troubles to provide a statutory "grace period" for companies facing short-term financial difficulties but are viable in the longer term, so that they can restructure their business or debts, or seek capital injection to turn themselves around.

The corporate rescue procedure is a very complicated subject involving interests of different stakeholders, including company shareholders, management, employees, creditors and professionals engaging in corporate restructuring. Our objective is to ensure that the proposed statutory procedure can strike a reasonable balance between the interests of various stakeholders.

We are reviewing the Companies (Corporate Rescue) Bill presented to the Legislative Council (LegCo) in 2001. Taking into account the views of the community and the latest overseas developments, we may need to revise some of the proposals contained therein so as to make the proposed procedure more practicable. After we complete our internal study, we plan to conduct a public consultation on the principle and conceptual framework of the proposed statutory procedure in the fourth quarter of this year. Subject to the outcome of the public consultation, and depending on whether a consensus can be reached, I expect that the Bill will be submitted to the LegCo for scrutiny in the second half of next year at the earliest.

(2) As I understand it, when the Second LegCo scrutinised the Companies (Corporate Rescue) Bill, one of the more controversial issues was the issue of arrears of employees' wages and other entitlements. The Bill proposed that a company should be required to settle all amounts owed to its employees or to set up a trust account for the purpose of paying all the entitlements owed to its employees prior to the start of the corporate rescue procedure. However, many business and professional bodies as well as some Members were concerned that the trust fund arrangements would make it more difficult for companies to initiate the corporate rescue procedure.

In view of the above, the Government considered in 2003 capping the amount payable under the trust account to each employee to what would have been payable to that employee by the Protection of Wages on Insolvency Fund had the company instead been wound up at the time of initiating the corporate rescue procedure. The company must undertake in its voluntary arrangement proposal to repay in full any amounts not covered by the cap within 12 months. In September 2003, we issued a paper to seek views from relevant parties. While the majority of the respondents either supported or had no comment on the proposal, some still considered it a significant impediment to the corporate rescue and that it would affect the interests of other creditors.

Other controversial issues included the personal liability of directors and senior management in case a company traded while insolvent, whether the corporate rescue procedure would be abused and whether the remuneration of provisional supervisors would be prohibitive, etc.

At that time, we considered that the proposal of capping the sum payable under the trust account had already paid due regard to the interests of employees and companies. However, we expected that a significant amount of work remained to be done, and it was highly unlikely that the scrutiny of the Bill could be completed within the Second LegCo term. Therefore, we did not propose that the Bills Committee be reactivated and informed the Bills Committee in June 2004 accordingly.

As mentioned above, we are reviewing the proposals in the Companies (Corporate Rescue) Bill to study if any amendments need to be made. We will publish a consultation paper later this year to solicit public views on this subject. We will report the progress to the LegCo Panel on Financial Affairs in due course.

(3) The Government is very concerned about the difficulties faced by small and medium enterprises (SMEs) amid the global financial crisis. To actively support Hong Kong enterprises, the Trade and Industry Department (TID) introduced various enhancement measures to the "SME Funding Schemes" last March and November. TID further introduced a "Special Loan Guarantee Scheme" last December, providing up to \$100 billion loan guarantee.

At the same time, the "Support and Consultation Centre for SMEs" (SUCCESS) of TID provides SMEs with free business information and practical consultation services, including offering advice to deal with business operation problems, so as to help SMEs equip themselves amid the adversity and enhance their competitive edge. We appreciate that SMEs face many difficulties amid the financial crisis and will need practical knowledge and skills to tide over the adversity. To this end, SUCCESS will organise more seminars to help SMEs explore business strategies and skills for survival.

On the other hand, while the lending policies of banks are in principle their commercial decisions, the Hong Kong Monetary Authority (HKMA) has adopted a series of measures to help alleviate the difficulties facing enterprises amid the global financial crisis. This included issuing a circular to all banks in October 2008, urging them to continue to support their SME customers, be accommodative and flexible to the funding needs of SMEs, and refrain from hasty and indiscriminate withdrawal or reduction of credit lines. In addition, the HKMA issued a circular in November 2008 to remind banks of the need to follow the "Hong Kong Approach to Corporate Difficulties" in handling situations where a corporate customer, who has borrowed from more than one institution, runs into financial troubles. Banks should adopt a supportive attitude and they should not hastily withdraw facilities, put the enterprise into receivership, or issue writs demanding repayment.

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