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28 January 2010

Division 4, Financial Services Branch
Financial Services and the Treasury Bureau
15/F., Queensway Government Offices
66 Queensway, Hong Kong

Dear Sirs,

Review of Corporate Rescue Procedure Legislative Proposals

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.

Among the stakeholders, the Federation is particularly concerned about the welfare of the employees involved. When a company is facing financial difficulty, especially 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. The Federation is thus of the view that employees deserve better protection than other parties.

As stated in the Federation's submissions made in 2001 and 2003 respectively, we fully support in principle the proposal to require the company to settle all arrears of wages and statutory entitlements of its employees before commencement of the corporate rescue process. This will secure the welfare of the employees concerned without imposing additional obligations on the provisional supervisor. However, there are doubts in the society whether it is possible for a company in financial difficulty to comply with this requirement.

With regard to the two alternative options in settling employees' outstanding entitlements stipulated in the recent consultation document, the Federation has the following views:

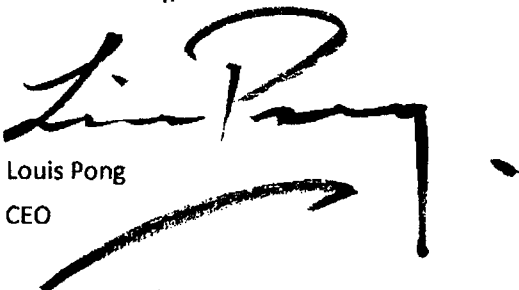
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Alternative A exempts any current or former employee who is owed arrears of wages or whose statutory entitlements under the Employment Ordinance have become due and payable for redundancy or other reasons from the moratorium and thus preserves his right to petition to the court to wind up the company even after the commencement of provisional supervision. This proposal violates the key principle of provisional supervision, which aims to give the company at risk an opportunity to turn around by discharging it from the possibility of liquidation within a definite period of time. Under Alternative A, it is unclear what the company can do to minimise the exposure to insolvency.

Alternative B, though accords priority to employees' debts in a rescue plan i.e. payment of the "employee protected debts" within 45-day moratorium, requires the modification of the ambit of the Protection of Wages on Insolvency Fund (PWIF) to cover creditors' voluntary winding-up cases arising from unsuccessful corporate rescue procedures. The Fund, run by the levy contributed by good employers, is to provide ex-gratia payment to employees affected in insolvency cases. It should be prudently managed to avert misuse of the mechanism. Changing the ambit as proposed in Alternative B, we are afraid, might open the floodgate for possible abuse

A responsible employer should not avoid his obligation of settling outstanding wages and other statutory termination payments in case of insolvency. To strike a balance between the principles of securing the welfare of the employees affected and facilitating corporate rescue procedures, we are of the view that alternative could be further explored along the proposal made in 2003 i.e. trust account with cap to be set aside.

Yours sincerely,



Louis Pong
CEO