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7 September 2001

The Hon Margaret NG
Chairman
Bills Committee on
Companies (Corporate Rescue) Bill
Legislative Council
Legislative Council Building
8 Jackson Road, Central
Hong Kong

Dear Margaret,

Companies (Corporate Rescue) Bill

On behalf of the Protection of Wages on Insolvency Fund Board, I would like to convey to you our comments on the Companies (Corporate Rescue) Bill which was gazetted in May 2001.

The Board supports in principle the spirit and concept of the proposed corporate rescue scheme, as it would give companies in financial difficulties an opportunity to turn round. We note that the scheme, if implemented successfully, would help preserve jobs.

The Board notes that a new civil remedy, termed insolvent trading, is to be introduced under the Bill such that the responsible persons of a company would be held liable for any debts which arose when a company traded while it

was insolvent. We consider that the proposed provisions, if enacted, would be to the benefit of our workforce and would have a positive impact on the financial position of the Protection of Wages on Insolvency Fund (PWIF) because:

- (a) Since the responsible persons could be held personally liable for the company's debts, they would be obliged to exercise prudent financial management to forestall insolvency in the first place. This might help preserve jobs for its serving staff.
- (b) The responsible persons would be deterred from incurring further debts when there is no reasonable prospect that the company could remain solvent. It would help preserve the assets of the company for clearing wage liabilities upon eventual winding-up and reduce the amount of ex-gratia payment to be made from the PWIF.
- (c) As the court may, upon application from the liquidator, order the responsible persons of a company to pay compensation for debts incurred while the company was insolvent, employees concerned would stand a better chance of recovering outstanding payment, if any, from the remaining assets of the company upon the conclusion of the winding-up proceedings. By exercising its subrogation rights, the Board would be able to recover a higher proportion of ex-gratia payment previously advanced to the employees through the proceedings.

The Board also welcomes the proposed provisions that a company should clear all the wage liabilities owed to its employees or set aside sufficient fund in a trust account for clearing wage liabilities which accrued before the commencement of corporate rescue procedures. You may wish to know that on 12 December 2000, the Board has related to the Secretary for Financial Services its objection to an earlier proposal under which employers and employees would be allowed to make agreements on deferred wage payment or trade-in of outstanding wages before the commencement of corporate rescue procedures. The Board considered that proposal, if implemented, would reduce the level of protection accorded to employees under existing labour legislation and would change the mandate of the PWIF. We are glad to note

that the Board's views have been taken into account as the earlier proposed flexibility arrangements have not been incorporated in the present Bill.

Yours sincerely,

(HO Sai-chu)

Chairman

Protection of Wages on Insolvency Fund Board

c.c. Secretary for Education and Manpower (Attn: Mr K K LAM)

Commissioner for Labour (Attn: Mrs CHOR CHAN Chui-yuk)