

Our ref: 51/WKC/257
26 September 2001

Bills Committee on Companies (Corporate Rescue) Bill
Legislative Council Secretariat
3/F Citibank Tower
3 Garden Road
Central
Hong Kong

Dear Sirs

Companies (Corporate Rescue) Bill 2001

Thank you for the opportunity to comment on the above Bill.

We have consistently supported the introduction of a corporate rescue regime in Hong Kong. Our position has been expounded, as you may recall, in a “Position Paper on Corporate Rescue” in September 1998, and later in our reply to the “Consultation Paper on Corporate Rescue and the Protection of Wages on Insolvency Fund”.

Last time when the bill was presented to LegCo, the main obstacle has been the treatment of employees laid off as a result of provisional supervision. We are disappointed that no satisfactory solution is offered in the current bill.

In our last submission we have indicated our support for the Law Reform Commission proposal to use the Protection of Wages on Insolvency Fund (PWIF) to meet the outstanding claims of those laid off by a company undergoing provisional supervision. We stand by this position. As we explained, we believe it more reasonable, in dealing with employees affected by provisional supervision, to assume that they should be compensated in a manner as if the company was insolvent. However, the current proposal, by insisting on settlement of arrears of wages, will enable the employees to get much more than if a company goes into liquidation, thus further reducing the ability of the firm to retain enough cash for restructuring.

It is apparent to us, from the LegCo brief provided, that the Bills Committee – or at least some members of the Committee – appreciated this. It was appropriate therefore for the government to consider forms of flexibility if the proposal (to require troubled firms to set aside funds for wages before being rescued) were to go ahead. We are disappointed, however, that the Administration has decided not to pursue the forms of flexibility (outlined in Para 17-20 of Annex C of the Legislative Council brief), thus neglecting the views of the Bills Committee and of the Law Reform Commission.

In sum, concerning compensation, we believe the original Law Reform Commission proposal is sound, and if it has to be rejected, then at the least the forms of flexibility should be introduced. We would emphasise again that the aim of a corporate rescue bill must primarily be to rescue companies, not to make rescue of “salvable” companies more difficult.

I hope you will find the above views useful.

Yours sincerely

Dr WK Chan
Secretary General
HK Coalition of Service Industries