

10 October 2001

Mr S. C. Tsang  
Clerk to Bills Committee on  
Companies (Corporate Rescue) Bill  
Legislative Council Secretariat  
3/F, Citibank Tower  
3 Garden Road  
Central Hong Kong

Dear Mr Tsang,

### **Companies (Corporate Rescue) Bill**

Thank you for your letter of 13 July 2001 inviting our views on the above Bill.

As stated in our earlier submission to the Legco's Bill Committee on the Companies (Amendment) Bill 2000 in April 2000, the Federation is in full support of the establishment of a statutory corporate rescue procedure. We agree that creating such a system would benefit our economy by way of enabling basically sound companies that get into short-term financial difficulty to turn around and continue business as a going concern. This, we believe, would be advantageous not only to the shareholders and creditors concerned, but also to the companies' employees, who would otherwise have lost their jobs if the companies were forced to go into liquidation.

In our previous submission, we expressed strong reservation about the proposed amendments to make directors and senior management of a company personally liable for all debts incurred whilst a company is insolvent. We are disappointed that despite our call for the removal of these insolvent trading provisions, the Government has still included them in the present Bill. Now, let us reiterate the reasons for our disapproval of these provisions.

Firstly, the existing Companies Ordinance has already provided for "fraudulent trading" to impose personal liability on people for debts if they deliberately seek to defraud creditors through an insolvent company. We believe this provision should be sufficient to protect creditors against fraud and it is unnecessary to impose additional liabilities on company directors and managers.

Secondly, the very reason for people forming companies to do business is to limit their liability. The threat of personal liability for debts is so strong a deterrent that it might kill the entrepreneurial spirit of Hong Kong people. Moreover, in real business situations, it is not uncommon for a company to be “slipping into insolvency” if a *bona fide* business deal turns bad. Such insolvent trading is a fact of life and does not imply any wrongdoing on the part of directors and managers of a company. There is no grounds for holding them personally liable for the debts so incurred.

We hope the Bill Committee will consider our views carefully and take out the section on insolvent trading from the Bill.

Yours sincerely,

Victor Lo  
Chairman

c.c. The Hon. Kenneth Ting