

**Bills Committee on
Companies (Corporate Rescue) Bill**

**Proposals in respect of the
Trust Account Arrangement**

We propose to seek the views of all the relevant parties, including the Labour Advisory Board, Protection of Wages on Insolvency Fund (PWIF) Board, employers groups, labour unions, professional bodies and the Hong Kong Association of Banks on the following proposals –

- (a) We keep the trust account requirement, but there should be a cap on the sum payable to each employee under the trust account. We propose that the cap be the maximum overall amount payable by the PWIF. At present, this is \$258 500.
- (b) The law would require the company to confirm in the notice of appointment of the provisional supervisor that –
 - (i) it has no outstanding liabilities in respect of its former and existing employees; or
 - (ii) it has set aside sufficient money in the trust account to settle the statutory liabilities owed to its former employees and any wages owed to its existing employees under the Employment Ordinance, up to a cap of \$258 500 for every such employee.
- (c) Once appointed, the provisional supervisor will pay each employee from the trust account the outstanding liabilities up to the cap as soon as practicable after he assumes office and except in circumstances where there are good and sufficient reasons, before the relevant meetings of creditors. In practice, it means the first meeting of creditors at which the provisional supervisor presents a voluntary arrangement proposal or reports that there is no chance for a voluntary arrangement proposal for the company in question.

- (d) The employee will be regarded as an ordinary creditor in respect of any amount above the cap that is owed by the company (outstanding amount). If this happens, he will be entitled to participate in and vote at the relevant meetings of creditors.
- (e) A voluntary arrangement proposal must contain a term requiring the company to pay its employees the outstanding amount (those mentioned in (d) above) in full and within 12 months of the approval of the proposal.
- (f) Where a corporate rescue procedure fails and the company has to be liquidated, the employees may petition to wind up the company (if no other party has already done so) so that they may apply to the PWIF for payment of the outstanding amount (see (d) above). Such payment will be determined in accordance with the provisions of the Protection of Wages on Insolvency Ordinance (PWIO).
- (g) Employees are still entitled to preferential payments under section 265 of the Companies Ordinance in respect of any item not covered by the PWIO if they can meet the requirement.
- (h) The employees may still be able to claim the company in the capacity as ordinary creditors in respect of any amount owed by the company that is more than the total amount of payments under the PWIO and Companies Ordinance.

Financial Services Bureau
30 November 2001

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