

Mr Anthony Wong,
Clerk to the Bills Committee,
Legislative Council,
Legislative Council Building,
8 Jackson Road,
Central,
Hong Kong

7th February 2002

Your Ref CB1/BC/12/00

Dear Mr Wong,

Re: Bills Committee on Companies (Corporate Rescue) Bill

Thank you for your letter of 12th December 2001. I would be most grateful if you would put this response before the Bills Committee.

In short, I warmly welcome the idea that employees should be protected but subject to a cap (corresponding to the amounts presently claimable under the PWIO under each particular head of claim). This is a major advance on the original legislative proposal and makes corporate rescue by way of provisional supervision much more of a realistic option.

Employees' representatives may feel that a cap will mean that an employee will get less than under the earlier proposals, but the response to such an argument is that the earlier proposals – if put into operation – would have effectively killed provisional supervision as a viable rescue mechanism in virtually all cases.

Also, it should not be overlooked that many attempts at corporate rescue will not eventually succeed (this has been the experience in Australia and the UK, as well as other countries). Accordingly, employees will, in such a case, get a 'double dip'; an employee will receive the equivalent of the PWIO amounts from the provisional supervisor and if, let us say two months later the provisional supervision fails, the employee will also be able to claim from the PWIF. This advantage to employees should not be overlooked.

I would also point out that a cap is perfectly in accordance with accepted practice in other countries, indeed it is difficult to find a foreign jurisdiction where a cap (of one form or another) is not present; I would suggest that this shows that any other system is simply unworkable.

Thank you again for keeping me informed on the progress of the Bill.

Yours sincerely,

Philip Smart