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7 November 2002

The Hon Lau Chin-shek, JP
Chairman
LegCo Panel on Manpower
Legislative Council

Protection of Wages on Insolvency Fund

At the LegCo Manpower Panel meeting on 31 October 2002, during the discussion on the Administration's proposal to extend a bridging loan of \$695 million to the Protection of Wages on Insolvency Fund (PWIF) I undertook to provide a written response on the prosecution and other enforcement action taken against company directors and directors of insolvent companies.

Over the last five years, the Official Receiver's Office (ORO) has taken out 1 346 summonses and secured 949 convictions under various sections of the Companies Ordinance and Bankruptcy Ordinance.

In addition, the Commercial Crime Bureau (CCB) of the Police has also prosecuted 45 company directors for deception, theft and fraud on their own companies since 2001. Another 98 cases are currently under investigation.

While the ORO has been successful in taking out prosecution in respect of a number of offences under these two Ordinances, no prosecution has been taken against directors for breaches of sections 273 and 275 of the Companies Ordinance due to lack of sufficient evidence.

It must be stressed that creditors, including employees who are owed wages, must file a complaint or provide information with either the

Police, ORO or the concerned liquidator where they have evidence of misappropriation of a company's assets. It is of vital importance to a successful prosecution that cogent evidence of wrong-doing is made available so that the authorities can take appropriate action.

On the disqualification of directors, since the present provisions were put in place in 1994, the Court has made more than 260 disqualification orders following applications by the ORO. While the average length of disqualification is 3.2 years, the period for one of the disqualification orders was as long as eight years.

Let me assure you that the Administration takes a serious view on any possible abuse of the Fund. As explained clearly in the LegCo Manpower Panel paper (No. CB(2) 161/02-03(03)), the Labour Department (LD) has put in place very stringent mechanisms for vetting all applications to the Fund. In addition, LD, ORO, CCB and insolvency practitioners in the private sector will step up efforts in preventing and combating any abuse of the Fund and theft by directors.

The ORO will continue to take prosecution action under the Companies Ordinance if evidence is available and will refer such cases of fraud and theft to the CCB as appropriate. The ORO will also continue to take disqualification proceedings against unfit directors where there is adequate evidence. Similarly, the LD will step up prosecution against wage offences and enhance public education and publicity efforts to urge employees to report on non-payment of wages as early as possible to protect their own rights.

(Matthew Cheung Kin-chung)
for Secretary for Economic Development and Labour