



Hong Kong General Chamber of Commerce
香港總商會 1861

香港總商會
香港金鐘道統一中心廿二樓
Hong Kong General Chamber of Commerce
22/F United Centre,
95 Queensway, Hong Kong
Tel (852) 2529 9229
Fax (852) 2527 9843
Email chamber@chamber.org.hk
www.chamber.org.hk

Helping Business since 1861

Your ref: IB&W/2/1/5/3C (2014) Pt.1
Our ref: SN/12a

19th September, 2014

Ms Polly Kwok
Division 4, Financial Services Branch
Financial Services and the Treasury Bureau
15/F, Queensway Government Offices
66 Queensway
Hong Kong

By post and fax: 2869 4195

Dear Ms Kwok,

Legislative Proposals on Improvement of Corporate Insolvency Law

Thank you for your Bureau's letter of 22 August 2014 asking for comments on a proposed upward adjustment of the current caps for the employee-related preferential payments under section 265 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance.

We understand from your letter that the fundamental purpose behind the proposal for revising the caps upwards is "*to help replenish the PWIF*" but are not completely satisfied that this justifies the proposal on the following grounds:

1. There is apparently no pressing need for the PWIF to be replenished in the manner proposed. The following information provided in the PWIF Board's Annual Report for 2012-2013 (the most recent one available on the Labour Department's website) suggests that the PWIF's financial position will continue to be strong and healthy in 2013-2014:

"During the year, the Fund received levy income of \$574.9 million and paid out a total of \$60.6 million in ex gratia payment. The Fund registered a surplus of \$536.5 million, as compared with a surplus of \$485.4 million in the previous financial year. As at 31 March 2013, the Fund's accumulated surplus stood at \$3,287.2 million."

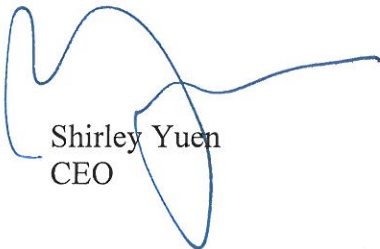
2. The reference to "*levy income*" is related to the fact that at present, the PWIF is mainly financed by an annual levy of HK\$250, an amount that we believe to be modest and reasonable, on each business registration certificate. The annual levy has proven itself to be a stable and ample source of income for the PWIF.

3. There is no compelling reason for the PWIF to place more reliance on recovery from insolvent estates to replenish itself. In essence, the PWIF functions like an insurer up to the statutory caps. The society has made a conscious decision to centralise in the PWIF the risk of employees being owed wages and other entitlements by their insolvent employers. The PWIF has its own source of funds (the levy income) which is not available to the employers' other creditors.
4. The existing model strikes an acceptable balance between the interests of creditors having claims of different natures. As noted in your letter, the current proposal "*will necessarily mean a reduction of the amount of realised assets available for distribution to other unsecured creditors*" but "*will not bring actual monetary benefit to these employees*". This being the case, and given all preferential payments are statutory exceptions to the cardinal principle of *pari passu* distribution in our insolvency law, the most compelling case should be required for any enlargement of the preferential status of the PWIF's claim. No such case has been made out.

Given the foregoing, we recommend that the preferential payments as presently defined in the legislation remain unchanged.

We hope you find the above to be of assistance.

Yours sincerely,



Shirley Yuen
CEO