

立法會
Legislative Council

LC Paper No. CB(2)2381/08-09

(These minutes have been seen
by the Administration)

Ref : CB2/PL/MP

Panel on Manpower

**Minutes of meeting
held on Thursday, 18 June 2009, at 2:30 pm
in Conference Room A of the Legislative Council Building**

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| Members present | : Hon LI Fung-ying, BBS, JP (Chairman)
Hon WONG Kwok-kin, BBS (Deputy Chairman)
Hon LEE Cheuk-yan
Hon LEUNG Yiu-chung
Hon Andrew CHENG Kar-foo
Hon WONG Kwok-hing, MH
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Dr Hon LAM Tai-fai, BBS, JP
Hon CHAN Kin-por, JP
Hon WONG Sing-chi
Hon IP Wai-ming, MH
Hon IP Kwok-him, GBS, JP
Dr Hon PAN Pey-chyou |
| Members absent | : Hon Frederick FUNG Kin-kee, SBS, JP
Dr Hon LEUNG Ka-lau |
| Public Officers attending | : <u>Item II</u>
Mr CHEUNG Kin-chung, Matthew, GBS, JP
Secretary for Labour and Welfare

Mr TANG Kwok-wai, Paul, JP
Permanent Secretary for Labour and Welfare |

Ms CHAN Ching-yuen, Karyn
Principal Assistant Secretary for Labour and Welfare
(Manpower)

Mr AN Ka-lim, Leo
Controller, Student Financial Assistance Agency (Acting)

Item III

Mr CHEUNG Kin-chung, Matthew, GBS, JP
Secretary for Labour and Welfare

Mr TANG Kwok-wai, Paul, JP
Permanent Secretary for Labour and Welfare

Mrs TSE LING Kit-ching, Cherry, JP
Commissioner for Labour

Mr NG Kwok-keung, Byron, JP
Assistant Commissioner (Labour Relations)
Labour Department

Mr LEUNG Mak-kwan, Stephen
Senior Labour Officer (Wage Security)
Labour Department

Clerk in attendance : Mr Raymond LAM
Chief Council Secretary (2) 1

Staff in attendance : Ms Clara TAM
Assistant Legal Adviser 9

Mrs Eleanor CHOW
Senior Council Secretary (2) 4

Miss Kiwi NG
Legislative Assistant (2) 1

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I. Date of next meeting and items for discussion
(LC Paper Nos. CB(2)1859/08-09(01) & (02))

Meeting in July 2009

Members agreed that the following items proposed by the Administration would be discussed at the next regular meeting to be held on 16 July 2009 at 2:30 pm -

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- (a) Hong Kong's occupational safety performance in 2008;
- (b) Qualifications Framework: Implementation progress; and
- (c) Points to note when granting no-pay leave.

(Post-meeting note: The Administration considered that item (c) above involved discussion of specific labour relations incidents and requested that the item should be deferred unless there were significant policy implications involved. The Chairman agreed to the deferral.)

2. Mr LEE Cheuk-yan suggested that the provision of rest break for employees should also be discussed under item (a) above. Secretary for Labour and Welfare (SLW) responded that occupational safety performance and rest break were two different issues. He suggested that the latter should be discussed when there was a need to do so.

3. Mr WONG Kwok-hing enquired whether the Administration would brief the Panel on the statutory minimum wage bill and the bill to amend the Employment Ordinance (EO) to implement the enforcement of Labour Tribunal awards at the next meeting. SLW responded that the two bills would be introduced into LegCo at the Council meeting on 8 July 2009. Mr LEE Cheuk-yan informed members that the House Committee would hold an additional meeting on 10 July 2009 at which members could consider the need to set up bills committees to study the two bills.

List of outstanding items for discussion

4. Mr LEE Cheuk-yan enquired whether the Transport Support Scheme (TSS) could be discussed within the current legislative session and, if not, whether TSS recipients who had exhausted their 12 months' entitlement of allowances would continue to receive the subsidy until the completion of the review. SLW responded that the review of TSS would commence in July 2009 when the Administration would get hold of the full set of statistics for the first year of operation of the relaxed scheme for analysis before deciding the way forward. As TSS was a pilot scheme operated on a time-limited basis, TSS recipients who had exhausted their 12 months' entitlement of allowances would cease to receive the subsidy. The Administration was aware of members' support for the continuation of TSS. It would report on the outcome of the review to the Panel once ready in the next legislative session.

5. Mr WONG Kwok-hing recalled that at the last meeting, he had raised concern about the long standing items on the list of outstanding items for discussion. He enquired about the progress of the matter. The Chairman said that as the current legislative session was drawing to a close, she and the

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Deputy Chairman planned to review the list with the Administration during the summer recess.

II. Proposed injection of further funding into the Continuing Education Fund
(LC Paper Nos. CB(2)1859/08-09(03) & (04))

6. SLW informed members that in the midst of the prevailing economic downturn, the Financial Secretary (FS) had announced the proposed injection of \$1.2 billion into the Continuing Education Fund (CEF) as one of the relief measures. He briefed members on the proposal and the further improvement measures to strengthen the operation of CEF as set out in the Administration's paper.

Proposed injection of funding

7. Mr LEE Cheuk-yan said that he supported the proposal to inject further funding into CEF. He, however, expressed disappointment that employers did not provide incentives to their employees to attend CEF courses. Mr LEE Cheuk-yan and Dr LAM Tai-fai enquired about the present financial position of CEF.

8. SLW responded that CEF was set up in 2002 with a one-off funding of \$5 billion approved by the Finance Committee. As at the end of May 2009, about 471 000 applications had been approved and some \$2.299 billion had been disbursed. Another \$2.411 billion had been committed for future disbursement, leaving a balance of \$290 million in CEF. Given that each eligible applicant was entitled to a maximum reimbursement amount of \$10,000 within a four-year period for a maximum of four claims from the date of opening of his account, the proposed injection of \$1.2 billion should be able to benefit an additional 120 000 learners in the next two to three years.

9. Mr Alan LEONG considered the additional funding of \$1.2 billion inadequate, given that the average disbursement in the past seven years was about \$700 million per year. SLW responded that the injection of additional funding to CEF was one of the relief measures introduced by FS in times of economic adversity. FS had made clear that the proposed injection was a special one-off arrangement. The injection, together with the uncommitted balance in CEF, would provide subsidies to about 150 000 persons in the coming two to three years.

10. Dr PAN Pey-chyou, Mr IP Wai-ming and Mr LEUNG Yiu-chung said that while they supported the proposed injection of funding into CEF, the Administration should consider operating CEF on a long-term basis. Dr PAN added that CEF encouraged lifelong learning which in turn would upgrade the skills of the labour force, enhance their employability, increase their income

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which in turn would generate more revenue for the Government and boost the economy of Hong Kong. Mr IP supplemented that given that CEF sought to encourage lifelong learning, it should be operated on a permanent basis. In addition, CEF learners should be allowed to apply for assistance under CEF more than once in a life time. Mr LEUNG held the view that the Administration should inject additional funding into CEF irrespective of the economic situation in Hong Kong.

11. SLW noted members' support for CEF. He said that FS had already indicated that CEF should not be considered as a standing fund in the long run. The Administration was aware that in the face of the financial tsunami, some people might wish to take up continuing education or training that might stand them in good stead in the job market when the economy improved, and others might be able to find time to pursue studies for personal interests or fulfilment. The proposed injection of \$1.2 billion into CEF was a special one-off arrangement. SLW further said that the provision of \$5 billion for launching CEF was approved by the Finance Committee in 2002 as a non-recurrent commitment. The proposals to operate CEF on a permanent basis and to allow CEF learners to apply for assistance under CEF more than once in a life time would have significant policy and financial implications. CEF was expected to benefit a total of over 600 000 residents after the proposed injection. The Administration had no intention to change its policy at this stage.

12. Permanent Secretary for Labour and Welfare (PSLW) supplemented that CEF was not the only avenue for lifelong learning. The Employees Retraining Board (ERB), which operated on a long-term basis, also provided diversified training and retraining services for the local labour force.

13. Mr LEUNG Yiu-chung said that the future of ERB was uncertain, given that no funds would be injected into the Employees Retraining Fund following the suspension of the Employees Retraining Levy (the Levy) which was payable by employers of imported workers. SLW responded that the Levy was suspended for a period of five years up to 31 July 2013 and collection of the Levy would be re-instated in August 2013. With effect from December 2007, ERB had already relaxed the eligibility criteria for its Employees Retraining Scheme to cover people aged 15 or above and with education at sub-degree level or below. Following the recent strategic review on the future role and functions of ERB, it would also implement further measures to expand the scope of its training and retraining services in response to the changing market environment.

CEF courses

14. Members noted that the Office of the Continuing Education Fund (OCEF) was responsible for vetting applications of CEF learners while the Hong Kong Council for Accreditation of Academic and Vocational Qualifications (HKCAAVQ) was responsible for processing applications of

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courses to be registered under CEF. Courses might be registered as reimbursable courses under CEF after assessment by HKCAAVQ and approval by the Labour and Welfare Bureau (LWB).

15. Dr LAM Tai-fai enquired whether the scope of CEF would be extended to cover courses such as sports, culture and art, apart from the courses offered under the eight specified domains of business services, financial services, logistics, tourism, creative industry, design, language and interpersonal and intrapersonal skills for the workplace. He also enquired about the number of ethnic minorities who had received training under CEF.

Adm 16. SLW responded that the Administration did not collect and keep statistics on the number of CEF learners who were ethnic minorities. It would explore the feasibility of collecting such statistics in future. According to OCEF, which started to collect statistics on the education level of new CEF applicants from November 2005, between November 2005 and May 2009, around 34% of CEF applicants were degree-holders, 54% were non-degree holders and 12% did not specify their education level. The figures reflected a good mix of CEF applicants across the academic spectrum.

17. Principal Assistant Secretary for Labour and Welfare (Manpower) (PASLW) supplemented that following the review of CEF in 2007 and upon the implementation of the Qualifications Framework (QF) in May 2008, all new courses were required to undergo formal accreditation by HKCAAVQ and be uploaded onto the Qualifications Register before they could be registered under CEF. Courses designed in accordance with the Specifications of Competency Standards (SCS) developed by the respective Industry Training Advisory Committees under QF but falling outside the eight specified domains could also be registered under CEF.

18. Mr Alan LEONG enquired whether all the SCS courses could be registered under CEF. He also enquired about the number of SCS courses in the Qualifications Register that had been registered under CEF. PASLW explained that SCS courses which were uploaded onto the Qualifications Register would be eligible for registration under CEF and course providers could apply for such registration if they so wished. Since the implementation of QF in May 2008, applications for registration of 15 SCS courses under CEF had been received so far.

19. The Chairman enquired about the types of CEF courses that were most popular among learners and information on the age groups and occupations of learners. PASLW informed members that the most popular courses were mainly under the domains of business services, financial services and language. On the age groups, about 57% of the successful applicants were aged between 18 and 29, 27% aged between 30 and 39, 13% aged between 40 and 49, and 3% aged between 50 and 65. As CEF learners had not been requested to

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provide information on their occupations upon application, the Administration was unable to furnish such information.

20. Noting that the Administration would seek funding approval from the Finance Committee, the Chairman requested the Administration to provide a detailed breakdown of the popular CEF courses to facilitate members' consideration.

(*Post-meeting note:* The Administration's response was issued to members vide LC Paper CB(2)2050/08-09 on 29 June 2009.)

Monitoring of CEF courses

21. Mr LEE Cheuk-yan, Dr LAM Tai-fai and Mr WONG Kwok-hing enquired about the mechanism for monitoring the operation of CEF to prevent abuses, such as overcharging of course fees by course providers. Mr WONG Kwok-hing said that he had received complaints about course providers increasing certain course fees by three to four folds after their courses were registered under CEF.

22. SLW said that he was not in a position to comment on individual cases. He pointed out that the increase of course fees could be due to a number of factors, such as employing more qualified teachers or extending the duration of courses. It was important to take into account the objective factors when handling complaints about overcharging. The Administration also saw the need to further enhance the protection of learners' interests and ensure the proper use of public money. In this regard, it had proposed four improvement measures to enhance the monitoring and administration of CEF courses, as set out in the Administration's paper.

23. PASLW supplemented that among the 7 400 reimbursable courses currently registered under CEF, the course fees of over 70% were \$10,000 or below. To facilitate applicants to select courses that best suited their interests and needs, details of individual CEF courses including the course fees were published on the website of OCEF and were frequently updated for public information. PASLW further said that OCEF and HKCAAVQ would step up their inspection efforts by conducting more surprise visits and class inspections to verify the attendance records of learners, assessment results and their claims for reimbursement, and to ensure that course providers had fully complied with the conditions of approval of CEF. To enhance the effectiveness of inspections, a risk-based approach was adopted. A written warning would be issued to the course provider in case of any non-compliance. If the breach was serious or repetitive in nature, the Administration would consider de-registering the concerned courses from the list of CEF reimbursable courses. In case of any suspected criminal activities, such as fraud, deception or bribery, the Administration would immediately refer the case to the relevant law enforcement agencies for follow-up. As at the end of May 2009, a total of 51

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courses involving 11 course providers had been de-registered from the list of CEF reimbursable courses since the launch of CEF.

24. Mr Alan LEONG enquired about the measure to prevent CEF learners from enrolling in courses offered by course providers which had been involved in running previous de-registration courses. PASLW said that the Administration would issue press release after each de-registration. In addition, the list of the de-registered courses would be published on the OCEF website for public information. The Administration would also pay attention to the name of the responsible person of a company in vetting new applications for course registration under CEF to ensure that the course was not run by a person involved in previous de-registration cases.

25. Mr WONG Sing-chi enquired about the mechanism for monitoring the operation of course providers which were not registered schools. He expressed concern that when some of these course providers discontinued their business, course participants who had already paid their course fees in full could suffer substantial financial loss. He said that the Administration had the responsibility to ensure that quality teachers and safe venue were provided to learners. He enquired whether the Administration would consider requiring course providers to register as schools in order to tighten monitoring.

26. PASLW responded that in vetting applications, HKCAAVQ would require course providers to provide information on the qualification of teachers, course contents, and venue etc. The Administration saw the need for more stringent control over CEF course providers to better protect CEF learners' interests. At present, all new course providers registering their courses under CEF for the first time in or after February 2008 were required to collect fees for CEF courses by equal monthly instalments. The Administration proposed that this requirement be extended to cover all course providers, irrespective of their first registration date under CEF.

27. PASLW further said that given the universal and non-discriminatory nature of CEF which allowed people from all walks of life to apply, the courses offered under CEF were diversified. In this connection, the Administration would not confine CEF course providers to registered schools because many courses were not academic in nature. As part of the monitoring mechanism, LWB held regular meetings with OCEF and HKCAAVQ and maintained close liaison with the Education Bureau (EDB). If there was non-compliance by a course provider, LWB would take appropriate actions and, where the course provider was a registered school, would inform EDB for taking appropriate actions.

28. Mr WONG Kwok-hing enquired how the Administration would prevent course providers from using unethical tactics to sell their courses. PASLW responded that hiring of agents to recruit learners was a common practice in the market. The Administration would remind course providers not to overstep the

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line when carrying out promotional activities. In the past, some courses had been de-registered because of the course providers' improper administration of courses and malpractices in carrying out promotional activities.

29. The Chairman concluded that members supported the Administration's proposal to inject \$1.2 billion into CEF.

III. Proposal to expand the scope of the Protection of Wages on Insolvency Fund to cover untaken annual leave pay under the Employment Ordinance

(LC Paper Nos. CB(2)1859/08-09(05) & (06))

30. SLW briefed members on the proposal to expand the scope of the Protection of Wages on Insolvency Fund (PWIF) to cover untaken annual leave pay under EO as set out in the Administration's paper. He said that the PWIF Board proposed the extension of PWIF to cover annual leave pay under EO for annual leave accumulated and not yet taken by employees of insolvent cases, subject to a limit of one leave year with a maximum of seven to 14 days' annual leave pay as per an employee's length of employment and a payment ceiling of \$10,500 (the proposal).

31. Mr CHAN Kin-por expressed support for the proposal. He noted that the Labour Advisory Board (LAB) also endorsed the proposal and urged the Administration to implement the proposal as soon as practicable so as to benefit employees earlier.

32. Mr IP Wai-ming enquired about the definition of "one leave year". He noted that under EO, an employee was entitled to annual leave with pay after having been employed under a continuous contract for every 12 months. The employee was entitled to seven days' paid annual leave in his first and second years of employment respectively. Citing the example that an employee who was entitled to seven days' annual leave had worked for a company for 18 months before it became insolvent, Mr IP enquired whether the employee was entitled, under the proposal, to a total of 10.5 days' untaken annual leave pay upon his departure. He said that he would not accept the proposal if the employee would only be entitled to seven days' untaken annual leave pay in the case quoted. Mr IP requested the Administration to consider extending the scope of PWIF to cover contribution to the Mandatory Provident Fund (MPF) on the part of the insolvent employer who had defaulted payment.

33. C for L responded that at present, arrears of wages of the last four months payable by PWIF already included the part of wages which had been deducted for employee's contribution but had not been paid to the MPF account. She said that the PWIF Board was cautious of any proposals to extend the scope of PWIF in the wake of the financial tsunami. In this connection, it considered that the proposal had struck a balance between protecting the

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interests of employees on the one hand and ensuring prudent use of PWIF on the other.

34. Assistant Commissioner for Labour (Labour Relations) (AC) supplemented that the paid leave entitlement for "one leave year" referred to the 12 months immediately preceding the departure of the employee from the insolvent company. In other words, the employee would be entitled to seven days' untaken annual leave pay in the case quoted by Mr IP.

35. Mr LEE Cheuk-yan said that many workers, apart from not taking their annual leave in the first year, did not take their statutory holidays in the first year. When their companies became insolvent, their full amount of pay for holidays, including statutory holidays and annual leave in the first and second year, could be forfeited. Having regard to the above and the fact that PWIF had an accumulated surplus of \$1.583 billion as at May 2009, the PWIF Board should consider allowing employees to receive payment at the ceiling of \$10,500 to cover the full amount of pay for statutory holidays and annual leave in arrears.

36. SLW responded that the arrears of wages up to a maximum of \$36,000 of the last four months payable by PWIF already included the statutory holidays and annual leave pay owed to an employee for his leave taken in the period.

37. C for L said that members of the PWIF Board had reached a consensus on the proposal on the basis that the untaken annual leave pay would cover one leave year only. The proposal of Mr LEE Cheuk-yan would impact on the cash flow of PWIF. C for L further said that LD had studied the employees' claims on annual leave pay with reference to cases received by PWIF in the third quarter of 2007. Among the applicants with claims on annual leave pay, 86% of them claimed sums not exceeding \$10,500, 73% of them claimed not more than 14 days' annual leave pay, and 61% of them claimed annual leave pay of not more than one leave year. On the basis of these findings, the proposal could meet the annual leave pay claims for the majority of the applicants of PWIF.

38. AC supplemented that law-abiding employers rarely withheld the entitlements of employees to take statutory holidays in a calendar year. He said that amongst all the claims for ex-gratia payment from PWIF, claims for annual leave pay ranked fourth in terms of applications. Given that the issue was controversial, there had been a lengthy discussion among the PWIF Board before a consensus was reached. Since the proposal of Mr LEE Cheuk-yan departed from the consensus reached in the PWIF Board, it would be necessary to consult the PWIF Board again, if the suggestion of Mr LEE was to be adopted.

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39. Mr WONG Kwok-hing said that while the proposal was progressive, further improvements should be made to protect the interests of employees. He said that employees had already suffered financial loss from untaken annual leave pay before the proposal was introduced. He enquired about the legislative timetable for introducing a bill to implement the proposal and whether it would have retrospective effect to enable employees to claim back their unpaid leave in the past.

40. SLW said that subject to the support of the Panel for the proposal, LWB and the Labour Department would work closely with the Department of Justice to proceed with the drafting of the relevant bill. The bill would not have retrospective effect and would be introduced in the first half of the next legislative session. C for L supplemented that if the proposal was to be revised, the Administration would have to consult the PWIF Board and LAB again, and the legislative timetable would be deferred by at least six months.

41. Mr LEUNG Yiu-chung expressed concern that LegCo was frequently the last party to be consulted, leaving the public with the impression that LegCo was not co-operative and frequently stalled the implementation of a proposal. He said that LegCo was not a rubber stamp. The Administration was putting LegCo in a difficult position by not consulting it in the first place. He considered the proposal complicated and suggested that it should be simplified to allow employees to claim the payment ceiling of \$10,500 for untaken annual leave pay across the board to save administrative costs.

42. SLW responded that the intention of the Administration was to introduce the legislative proposal as soon as practicable so that employees could benefit from it. However, if members considered that the proposal should be further improved, it would be necessary to consult the PWIF Board and LAB which would inevitably affect the legislative timetable. C for L supplemented that PWIF was not public money. As it was mainly financed by a levy paid by employers, the PWIF Board had to be consulted on any proposal that would affect its financial position and operation. She believed that through co-ordinated efforts, a mutually acceptable proposal could be formulated.

43. Mr LEUNG Kwok-hung queried whether proposals not supported by LAB would not be implemented. He pointed out that LegCo had the mandate of the people and its power over labour matters should not be checked by LAB.

44. The Deputy Chairman said that LAB provided a forum for employers, employees and the Government to resolve labour issues. It had discharged its functions effectively in the past. In addition, LAB members who represented employees were elected by some 300 labour organizations. Mr IP Kwok-him concurred with the Deputy Chairman and added that LAB and LegCo played a different role on labour matters. He respected the views of LAB and recognized its contribution towards Hong Kong.

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45. The Chairman expressed concern that the proposal would not protect the interests of low-income workers. She pointed that the proposal had imposed two restrictions, namely the limit of one leave year with a maximum of seven to 14 days' annual leave pay as per an employee's length of employment, and a payment ceiling of \$10,500 for annual leave pay. As workers were only allowed to take annual leave in arrears, a worker who had been employed for more than one year was bound to suffer financial loss under the proposal as he would not be able to claim the untaken annual leave in the first and second year in full. For low-income workers, it was unlikely that they could claim the maximum ceiling of \$10,500 for annual leave pay. In addition, a worker who was eligible to claim 14 days' paid annual leave would only be paid \$10,500, instead of \$11,250 which was half of the maximum of \$22,500 for one month's wages in lieu of notice payable by PWIF. In view of these, the Chairman questioned about the fairness of the proposal to employees. She noted that some members of LAB had expressed similar concerns and urged the Administration to persuade the PWIF Board to relax the proposal and not to impose the limit on the number of days of untaken annual leave while maintaining the payment ceiling for annual leave pay at \$10,500.

46. The Deputy Chairman, Mr IP Kwok-him and Mr IP Wai-ming expressed support for the Chairman's proposal. The Deputy Chairman added that with the increasing reserve of PWIF, the PWIF Board should aim at relaxing its policy progressively to enable employees to claim in full their untaken annual leave pay in the long run.

47. SLW noted members' views. He said that LAB had been established for many years and had discharged its functions effectively. If there was a consensus among members, the Administration would consult the PWIF Board and LAB on members' proposal. C for L informed members that members of the PWIF Board had been conscientious in working out a proposal to extend the scope of ex gratia payment from PWIF and its Chairman, in particular, had been actively persuading the employer members and employer associations to support the proposal. She urged members to recognize the fact that the PWIF Board stood by its decision which had been reached before the economic downturn triggered by the financial tsunami and the outbreak of swine influenza, notwithstanding that some quarters in the business community had mooted the idea of shelving the proposal in the light of the current economic environment. Having regard to members' views, she would request the PWIF Secretariat to assess the financial implications of members' proposal for the consideration of the PWIF Board.

48. Mr LEUNG Yiu-chung moved the following motion -

"本委員會要求勞工及福利局局長修訂破產欠薪保障基金
保障範圍至包括所欠假期(法定假日及年假)的全數，但
維持上限為\$10,500。"

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(Translation)

"That this Panel calls on the Secretary for Labour and Welfare to amend the scope of the Protection of Wages on Insolvency Fund to cover the full amount of pay for holidays (statutory holidays and annual leave) in arrears but maintain the ceiling at \$10,500."

49. The Chairman put the motion to vote. Nine members voted in favour of the motion, and no member voted against it. The Chairman declared that the motion was carried.

50. Mr LEE Cheuk-yan said that members' proposal would not impact too much on the reserve of PWIF which had recorded an all time high of \$1.583 billion. He urged the Administration to expedite the matter by consulting the PWIF Board and LAB during the summer recess with a view to reverting to the Panel in October 2009. At the same time, the Administration should proceed to draft the bill with the aim to introducing it into LegCo in November 2009. SLW responded that the Administration would try its best to do so.

51. The meeting ended at 4:30 pm.

Council Business Division 2
Legislative Council Secretariat
18 August 2009