

**立法會**  
**Legislative Council**

LC Paper No. CB(2)666/11-12  
(These minutes have been seen  
by the Administration)

Ref : CB2/BC/10/10

**Bills Committee on  
Protection of Wages on Insolvency (Amendment) Bill 2011**

**Minutes of meeting  
held on Tuesday, 25 October 2011, at 2:30 pm  
in Conference Room 3 of the Legislative Council Complex**

**Members present** : Hon WONG Ting-kwong, BBS, JP (Chairman)  
Hon LEUNG Yiu-chung  
Dr Hon Philip WONG Yu-hong, GBS  
Hon LI Fung-ying, SBS, JP  
Hon Tommy CHEUNG Yu-yan, SBS, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon Jeffrey LAM Kin-fung, GBS, JP  
Hon Andrew LEUNG Kwan-yuen, GBS, JP  
Hon Cyd HO Sau-lan  
Hon WONG Sing-chi  
Hon IP Wai-ming, MH  
Hon IP Kwok-him, GBS, JP  
Dr Hon PAN Pey-chyou

**Member absent** : Hon LEE Cheuk-yan

**Public Officers attending** : Item II

Mr Ernest IP  
Assistant Commissioner for Labour  
Labour Department

Miss Betty CHEUNG  
Senior Assistant Law Draftsman  
Department of Justice

Mr Allen LAI  
Senior Government Counsel  
Department of Justice

Miss Bonny WONG  
Senior Labour Officer  
Labour Department

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

**Staff in attendance** : Ms Clara TAM  
Assistant Legal Adviser 9

Mr Ian CHOW  
Council Secretary (2) 1

Ms Priscilla LAU  
Council Secretary (2) 5

Ms Kiwi NG  
Legislative Assistant (2) 1

Miss Lulu YEUNG  
Clerical Assistant (2) 1

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Action

**I. Election of Chairman**

Mr WONG Ting-kwong was elected Chairman of the Bills Committee.

**II. Meeting with the Administration**

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).

Action

3. The Administration was requested to -
  - (a) consider extending the limit of period on untaken annual leave in the Bill to cover the pay for all annual leave accumulated and not yet taken by an employee while maintaining the ceiling amount of \$10,500;
  - (b) provide information on the amount that might be incurred for the untaken annual leave and untaken statutory holidays for which the claimed amount exceeded \$10,500 by the 15% applicants of the Protection of Wages on Insolvency Fund ("PWIF") in the study on the cases received by PWIF in the third quarter of 2009; and
  - (c) explain the time limit for an employee of insolvent employer to submit an application for payment in respect of pay for untaken annual leave and untaken statutory holidays in the proposed section 16(2)(g)(iv) and 16(2)(h)(iii) in clause 5.

**III. Date of next meeting**

4. Members agreed to hold the next meeting on 29 November 2011 at 2:30 pm to receive the views of deputations on the Bill.
5. The meeting ended at 4:15 pm.

Council Business Division 2  
Legislative Council Secretariat  
21 December 2011

**Proceedings of meeting of the  
Bills Committee on Protection of Wages on Insolvency (Amendment) Bill 2011  
held on Tuesday, 25 October 2011, at 2:30 pm  
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action Required
<i>Agenda Item I – Election of Chairman</i>			
000000 - 000331	Hon LEUNG Yiu-chung Hon Andrew LEUNG Hon Tommy CHEUNG Dr Hon Philip WONG Hon Jeffrey LAM Hon WONG Ting-kwong	Election of Chairman	
<i>Agenda Item II – Meeting with the Administration</i>			
000332 - 000542	Chairman	Opening remarks	
000543 - 002821	Admin	Briefing by the Administration on the Protection of Wages on Insolvency (Amendment) Bill 2011 ("the Bill")	
002822 - 003614	Chairman Hon LEUNG Yiu-chung Admin	Views of Hon LEUNG Yiu-chung -  (a) the proposed extension of the scope of the Protection of Wages on Insolvency Fund ("PWIF") to cover pay for untaken annual leave and untaken statutory holidays, which was subject to certain limitations, was still inadequate to protect employees;  (b) with the restrictions on the number of days for untaken annual leave and the payment ceiling of \$10,500 to cover the pay for untaken annual leave and untaken statutory holidays, some employees might not be able to receive from PWIF the full amount payable to them by the employer for untaken annual leave and untaken statutory holidays and it was not fair to them; and  (c) given the accumulated surplus in PWIF, the ceiling amount and	

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		<p>limitations imposed on annual leave should be relaxed</p> <p>Hon LEUNG Yiu-chung's enquiry about the amount that might be involved in the claims for untaken annual leave and untaken statutory holidays by the applicants of PWIF</p> <p>Response of the Administration -</p> <p>(a) the proposed extension of coverage included pay under section 41D of EO for annual leave accumulated and not yet taken by an employee upon termination of employment, not exceeding the employee's full statutory entitlement for the last leave year, ranging from seven to 14 days' pay depending on an employee's length of service;</p> <p>(b) among the cases received by the PWIF Board in the studies conducted in third quarter of 2007 and third quarter of 2009, about 30% of the applicants with claims for pay for untaken statutory holidays and untaken annual leave; and</p> <p>(c) in the third quarter of 2009, 85% of the applicants claimed for untaken annual leave and untaken statutory leave pay of an amount not exceeding \$10,500; the remaining 15% applicants claimed more than \$10,500 which included prolonged arrears of annual leave not granted in accordance with EO or annual leave more than EO entitlement</p>	
003615 - 004456	Chairman Admin Hon LEUNG Yiu-chung Hon IP Wai-ming Hon LI Fung-ying	<p>Request for clarification on entitlement to untaken annual leave under the Bill</p> <p>Response of the Administration -</p> <p>(a) the pay for untaken annual leave from PWIF should be payable under</p>	

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		<p>section 41D of EO on account of an employee's employment in his last leave year if at least 3 months but not less than 12 months ; and the complete leave year immediately preceding the last leave year if the employee's employment was terminated otherwise than on the expiration of the last leave year;</p> <p>(b) the amount of PWIF payment for untaken annual leave pay was subject to the employee's full statutory entitlement for the last leave year; and</p> <p>(c) the total amount of the pay for both untaken annual leave and untaken statutory holidays from PWIF should not exceed \$10,500</p>	
004457 - 004637	Hon LEUNG Yiu-chung Admin Chairman	<p>Hon LEUNG Yiu-chung's enquiry about whether the proposed extension cover the pay for all annual leave accumulated and not yet taken by an employee, but subject to a payment ceiling of \$10,500</p> <p>Response of the Administration -</p> <p>(a) under EO, the accumulated annual leave would not be more than 28 days for the last two leave years upon termination. The statutory annual leave was seven to 14 days depending on the length of service. An employee was entitled to annual leave with pay after having been employed under a continuous contract for 12 months, and should take the entitled annual leave with pay within the following leave year; and</p> <p>(b) the pay for annual leave accumulated and not yet taken by an employee was subject to the limit of his last year of employment with a maximum of seven to 14 days' annual leave pay as per the</p>	

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		employee's length of service and the payment ceiling of \$10,500	
004638 - 004722	Hon LEUNG Yiu-chung Admin Chairman	Hon LEUNG Yiu-chung requested the Administration to provide information in relation to the amount that might be incurred for the untaken annual leave and untaken statutory holidays for which the claimed amount exceeded \$10,500 by the 15% applicants of PWIF in the study on the cases received in the third quarter of 2009	Admin to provide relevant information
004723 - 005257	Hon IP Wai-ming Chairman Admin	<p>Hon IP Wai-ming's enquiry about the justification for imposing limitations on the number of days for untaken annual leave for which PWIF payment might be made under the Bill</p> <p>Response of the Administration -</p> <p>(a) PWIF was set up to provide timely relief in the form of ex gratia payment to employees who were owed wages and other entitlements upon termination by their insolvent employers; and</p> <p>(b) PWIF was not intended to provide payment to cover all wages and other entitlements owed by the employers upon business closures</p> <p>Hon IP Wai-ming recalled that in the motion carried by the Panel on Manpower at its meeting on 18 June 2009, there was a payment ceiling of \$10,500, but no limitations on the number of days for untaken annual leave and the statutory holidays</p> <p>Chairman's enquiry about whether employees could claim their insolvent employers for the amount in arrears not covered by the ex gratia payment of PWIF; and whether the PWIF Board had the right to recover from the insolvent employers the amount of the ex gratia payment made by PWIF</p>	

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		<p>Response of the Administration</p> <p>(a) in case of bankruptcy or winding up, the right and remedies for the amount of ex gratia payment provided under PWIF would be transferred to the PWIF Board; and</p> <p>(b) as regards the remaining amount in arrears not covered by the ex gratia payment, employees could still claim their insolvent employers</p>	
005258 - 005443	Hon IP Wai-ming Admin	<p>Hon IP Wai-ming expressed dissatisfaction with the limitation on the number of days for untaken annual leave for the last leave year (ranging from seven to 14 days) which was deviated from the rationale of the motion carried by the Panel on Manpower</p> <p>The Administration responded that the proposals in the Bill were in line with those passed by the Panel on Manpower at its meeting in 2010, which included the limitations on the number of days. The PWIF Board had undertaken to review the coverage one year after implementation of the Bill</p>	
005444 - 005859	Hon LI Fung-ying Chairman Admin	<p>Views of Hon LI Fung-ying -</p> <p>(a) the Bill failed to protect the interest of low-income workers who were deserved to have the pay for all untaken annual leave and untaken statutory holidays. Given the payment ceiling of \$10,500, it was unreasonable to impose further limitations on the number of days for annual leave in respect of which PWIF payment might be made; and</p> <p>(b) the low-income workers would not be able to claim the ceiling amount of \$10,500, even if the scope of coverage was extended to the pay for all untaken annual leave and untaken statutory holidays</p>	



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		<p>The Administration responded that employees had taken annual leave before termination in many cases.</p>	
<p>005900 - 010753</p>	<p>Hon Audrey EU Chairman Admin</p>	<p>Hon Audrey EU's enquiry -</p> <p>(a) whether the proposed PWIF payment for untaken annual leave covered the pro rata annual leave pay of an employee if employment ceased before the expiration of a leave year; and</p> <p>(b) whether the limitation on untaken annual leave could be relaxed</p> <p>Response of the Administration -</p> <p>(a) under the proposed section 16(2)(h)(i), the PWIF payment for untaken annual leave was payable under section 41D of EO on account of employment in the leave year in which the contract of employment terminated or was terminated and, if the termination occurred otherwise than on the expiration of that leave year, the immediately preceding leave year;</p> <p>(i) if the employment was terminated at the end of the employee's last leave year, then the untaken annual leave pay due to him for that leave year only would be relevant to section 16(2)(h)(i);</p> <p>(ii) if an employee, after having served for one year or more, and had served for three but less than 12 months, then the pro rata annual leave pay for the partially served last leave year as well as the untaken annual leave pay in immediately preceding leave year would be relevant to section 16(2)(h)(i);</p>	

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		<p>(b) a limitation is that the pay from the PWIF should not exceed the employee's full statutory entitlement under EO for the last leave year (ranging from seven to 14 days' pay depending on the length of the employee's service); and</p> <p>(c) therefore, if the untaken annual leave pay due to the employee that is relevant to section 16(2)(h)(i) exceeded the employee's full statutory annual leave entitlement under EO for the last leave year: the excess would not be payable from PWIF</p>	
010754 - 011221	Hon LEUNG Yiu-chung Chairman Admin	<p>Views of Hon LEUNG Yiu-chung -</p> <p>(a) under EO, untaken annual leave could be carried forward to the following leave year. For an employee who had been employed for three years, he might accumulate 15 days of annual leave in his third year of employment when the employer was insolvent. In this scenario, the low-income workers whose daily income was less than \$700 would not be able to claim the ceiling amount of \$10,500; and</p> <p>(b) suggested extending the scope of PWIF to cover the pay for all untaken annual leave while maintaining the ceiling amount of \$10,500, whichever was the lesser</p> <p>Motion passed by the Panel on Manpower at its meeting on 18 June 2009</p>	Admin to consider the suggestion
011222 - 011736	Hon Andrew LEUNG Admin Chairman	<p>Views of Hon Andrew LEUNG -</p> <p>(a) since PWIF was financed by a levy on business registration certificate paid by employers, it was necessary to adopt a prudent approach in</p>	

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		<p>managing PWIF. The one-year limit on annual leave was appropriate. Otherwise, it would be unfair to law-abiding employers; and</p> <p>(b) he supported the proposals in the Bill, which represented the consensus reached between employers and employees in the PWIF Board and the Labour Advisory Board ("LAB"). Employees would benefit from early enactment of the Bill. Any further relaxation could be considered in the future review on the coverage of PWIF</p> <p>The Administration advised that the Panel on Manpower had been consulted on the proposals in the Bill at its meeting on 26 April 2010. Any further revision would require the endorsement of the PWIF Board and the LAB.</p>	
011737 - 013059	<p>Hon LI Fung-ying            Hon IP Wai-ming            Hon LEUNG Yiu-chung            Chairman            Admin            Hon Andrew LEUNG</p>	<p>Views on the proposals in the Bill at the meeting of the Panel on Manpower on 26 April 2010</p> <p>Views of Hon LI Fung-ying -</p> <p>(a) the proposals in the Bill failed to protect the interest of employees. Consideration should be given to strengthening the protection to them, in particular the pay for the untaken annual leave; and</p> <p>(b) the Administration should clarify the time limit for an employee to submit an application for payment in respect of pay for untaken statutory holidays and untaken annual leave in the proposed section 16(2)(g)(iv) and 16(2)(h)(iii) in clause 5 respectively</p>	

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		<p>Response of the Administration -</p> <p>(a) the time limit for an application for payment in respect of pay for untaken annual leave should be read in conjunction with section 41D of EO, which required an employer to provide, as soon as practicable and in any case not later than seven days, payment in lieu of any annual leave not yet taken by his employee after the termination of employment;</p> <p>(b) the application for payment should be made within six months after the applicant's pay for untaken annual leave became due; and</p> <p>(c) the time limit for an application for untaken annual leave would run from the time that the pay was due upon the termination of employment contract under section 41D of EO,</p> <p>Hon Andrew LEUNG suggested that the legal adviser to the Bills Committee and the Administration should liaise on the drafting aspects of the Bill</p> <p>The Chairman requested the Administration to provide a paper explaining the time limit for an employee of insolvent employer to submit an application for payment in respect of pay for untaken annual leave</p>	<p>Admin to provide a response</p>
013100 - 013507	Hon Andrew LEUNG Hon Jeffrey LAM	<p>Expression of the view that the present proposals in the Bill should be maintained so that employee protection could be enhanced without delay. Further expansion could be considered in the review after the Bill had been implemented for one year</p>	

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013508 - 013751	Hon LEUNG Yiu-chung Chairman	<p>Expression of views of Hon LEUNG Yiu-chung that -</p> <p>(a) even though employees of insolvent employers could benefit from the proposal in the Bill, better protection should be provided under PWIF; and</p> <p>(b) as the limitations on untaken annual leave made the Bill too complicated, he requested the Administration to consider simplifying the relevant clauses in the Bill</p>	
013752 - 014209	Hon IP Kwok-him Chairman	<p>Views on the PWIF Board and LAB on the proposals in the Bill.</p> <p>Views of Ip Kwok-him that</p> <p>(a) the Bill was a consensus reached by the tripartite mechanism and should be respected; and</p> <p>(b) discussion might focus on any room for improvement within the agreed proposals under the Bill</p>	
014210 - 014505	Hon IP Wai-ming Admin	<p>Views of Hon IP Wai-ming -</p> <p>(a) given the consensus on the payment ceiling of \$10,500, the PWIF arrangement of pay for untaken annual leave should follow EO; and</p> <p>(b) the limitations on untaken annual leave as proposed by the Administration was too complicated and might arouse misunderstanding and potential dispute</p> <p>Response of the Administration -</p> <p>(a) under the proposals in the Bill, the payment from PWIF in respect of untaken annual leave was derived from a calculation of the annual leave accumulated and not yet taken</p>	

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		<p>by an employee, to the extent that it would not exceed the employee's statutory annual leave entitlement for the last leave year or \$10,500 (whichever is the lesser) ; and</p> <p>(b) the PWIF Board supported the proposal that the untaken annual leave should be confined to the full statutory annual leave for the last leave year under EO</p>	
014506 - 014630	Chairman Hon IP Wai-ming	Invitation of public views on the Bill  Date of next meeting	

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