

LC Paper No. CB(2) 2586/98-99
Appendix II

Extract minutes of the meeting of LegCo Panel on Manpower
On 23 December 1999

* * * * *

IV. Proposed amendments to the Protection of Wages on Insolvency Ordinance (PWIO)

29. The Administration tabled at the meeting an information paper entitled "Proposed amendments to the Protection of Wages on Insolvency Ordinance(PWIO)" to outline the revision of payment limits and calculation of ex-gratia payment of severance payment(SP).

(Post-meeting note : The paper was circulated to absent members vide LC Paper No. CB(2) 941/98-99(01).)

30. At the request of the Chairman, SEM(Ag) highlighted the two legislative proposals to improve the protection of employees under PWIO as follows -

- (a) to increase the existing limit of SP to \$50,000 (from existing \$36,000) plus 50% of the excess entitlement; and
- (b) to amend PWIO to the effect that the amount of ex-gratia payment of SP would be calculated according to an employee's wage level before wage reduction provided that his employer had given such an undertaking in writing at the time of and before implementation of the wage reduction proposal and that the wage reduction took place within the 12 months immediately before the date of termination of employment. If an employee's wage level had been reduced for more than once during the past 12 months and before implementation of each wage reduction the employer had made such an undertaking in writing, the latest undertaking should prevail for the purpose of calculating the amount of ex-gratia payment of SP. The proposal would include a transitional arrangement to provide that where prior to the commencement of the amendment, an employer had given a verbal undertaking to pay SP on the basis of an employee's wage level before wage reduction, if the employer made such undertaking in writing within two months from the commencement of the amendment bill, the written undertaking should be valid for the purpose of the proposed amendment.

31. SEM(Ag) said that the proposals addressed the concern of some LegCo Members and the public that the present trend of wage reductions would have significant implications on the amount of an employee's SP should his employer become insolvent subsequently. The Protection of Wages on Insolvency Fund Board (Board) agreed to the proposals at its special meeting held on 8 December 1998. The Labour Advisory Board (LAB) also endorsed the proposals at its meeting held on 21 December 1998.

32. Mr CHAN Wing-chan was in support of increasing the existing limit of SP to \$50,000 plus 50% of the excess entitlement. Referring to cases where the wage level of an employee had been reduced for several times, he asked how an employee could be safeguarded so that the SP would be calculated on the basis of his original wage before the first wage reduction. Assistant Commissioner for Labour (AC for L) said that there would not be many cases where an employer had reduced the wages of his employees for more than once within a period of 12 months. If this happened and given a written undertaking by the employer, the ex-gratia payment of SP would be calculated in accordance with the latest undertaking.

33. Responding to Miss CHAN Yuen-han's query about the rationale, AC for L explained that although the first written undertaking by the employer carried a legal effect, the subsequent written undertaking would supersede the first one, so on and so forth. The ex-gratia payment of SP would be calculated on the basis of the latest undertaking which also had legal effect. AC for L further said that an employer who had had a verbal agreement with his employee should prepare a written undertaking within two months after the proposal came into effect.

34. Miss CHAN Yuen-han anticipated that in case an employee initiated to ask his employer to prepare an undertaking in writing to the effect that the amount of ex-gratia payment of SP would be calculated according to the wage level before wage reduction, he would most probably be dismissed. As such, there would be more unemployment and labour disputes.

35. The Chairman said that the existing labour legislation recognised a verbal agreement between an employer and an employee. However, only a written undertaking would be recognised for calculation of ex-gratia payment of SP after the proposal came into effect. He commented that the proposal would set a bad precedent.

36. C for L said that some labour unions had suggested that an undertaking made by an employer in writing would help reduce labour disputes when wage reduction became a public agenda. The Chairman opined that it would not be necessary to introduce a legislative amendment in such a way that verbal agreement between an employer and an employee would not be recognised.

Furthermore, in actual circumstances, most employees in Hong Kong did not have employment terms in writing.

37. SEM(Ag) said that only employers who, before the implementation of wage reduction, had agreed or undertaken orally to pay SP on the basis of the pre-reduced wage level would be required to put such undertaking into writing.

38. AC for L said that the proposal would only apply to insolvent companies which had undertaken in writing to pay SP on the basis of the wage level before wage reduction. For employers who stayed in business and remained solvent, they were contractually bound to pay SP on the basis of the wage level before wage reduction if they had given such an undertaking. A written undertaking by an employer would help avoid future disputes between the employer and his employees. For insolvent cases, it would be difficult to locate the employer and verify with him whether he had agreed to calculate SP on the basis of the wage before wage reduction.

39. Mr Andrew CHENG considered that the proposal would not be effective in safeguarding employees' interests since employers were not required to calculate SP on the basis of wages before wage reduction. He referred to a report on corporate rescue issued by the Law Reform Commission in 1996 and queried whether the Administration and LAB had considered the recommendations of the report when formulating the proposal.

40. C for L said, in her capacity as the Chairman of LAB, that LAB had examined the proposal and in view of the importance of the matter, representatives of employees undertook to consult the labour unions. LAB would have an in-depth discussion on the matter at its next meeting.

41. AC for L added that in the "Guidelines on what to do if wage reductions and retrenchments are unavoidable", an employer was encouraged to openly discuss with his employees before wage reductions and retrenchments with a view to working out a solution mutually acceptable to both parties, including calculation of SP on the basis of wages before the wage reduction. For an employer who had already had a verbal agreement with his employees over the matter, the Administration did not anticipate that he would refuse to prepare the agreement in writing after the proposal came into effect. The proposal was made when a trend of wage reductions prevailed after financial turmoil. Once a written undertaking was made by an employer and in the event that he could not honour this agreement after he became insolvent, the amount of ex-gratia payment of SP would be calculated on the basis of the wage level before wage reduction under the amended PWIO. An employee would not have a financial loss if his employer had agreed to calculate SP using the aforesaid method on each occasion of wage reductions.

42. Mr LAU Chin-shek and Mr Andrew CHENG urged the Administration to amend the Employment Ordinance in order to safeguard the interests of employees in calculation of ex-gratia payment of SP. SEM(Ag) said that the proposed amendments to PWIO aimed to promote trust between employers and employees. Employers were encouraged to have commitment when discussing wage reductions or retrenchments with their employees. The Administration could not force an employer to do so if he did not agree.

43. Referring to the information paper, Mr LEUNG Yiu-chung noted that about 94% and 98% of the applicants could recover full entitlements for arrears of wages (AW) and wages in lieu of notice (WILON) respectively in 1997. Given a total accumulation of \$777 million in the Protection of Wage on Insolvency Fund, he asked for the rationale for not providing the remaining 6% and 2% of the applicants with full entitlements. He also asked for an estimate on the percentage of applicants who could get full entitlements after the limit of SP was increased to \$50, 000 plus 50% of excess entitlement.

44. In response, AC for L said that the purpose of the Fund was to pay to employees ex-gratia payments in respect of AW, WILON or SP owed to them by their insolvent employers. It was not intended to shoulder all the responsibilities of an employer who became insolvent. The Administration considered it satisfactory that 94% and 98% of the applicants could recover full entitlements for AW and WILON respectively in 1997. However, in 1997, about 75% of the applicants could get their full entitled SP. The Administration considered that there was a need to increase the limit of ex-gratia payment of SP to provide better financial relief to employees whose employers had become insolvent. The Administration estimated that after the limit of SP was raised as proposed, about 84% of the applicants would be able to recover their entitlement in full.

45. Responding to a further question from Mr LEUNG Yiu-chung, AC for L explained that there was an upper limit for claim of SP. Employees of the high income group usually could not obtain their entitlements in full. Taking into account the increasing number in claims, the Board therefore agreed to raise the existing limit of SP. The Board had also agreed to review the position in mid-1999. Mr LEE Cheuk-yan hoped that further improvement would be made after the review.

46. SEM(Ag) said that the Administration would most probably move a motion to raise the limit of ex-gratia payment in respect of SP in LegCo in January 1999, with an aim to implementing the proposal before the Lunar New Year.

* * * * *