

**立法會**  
**Legislative Council**

LC Paper No. CB(2)978/11-12  
(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, 29 November 2011, at 2:30 pm  
in Conference Room 1 of the Legislative Council Complex**

- Members present** : Hon WONG Ting-kwong, BBS, JP (Chairman)  
Hon LEE Cheuk-yan  
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 Cyd HO Sau-lan  
Hon IP Wai-ming, MH  
Hon IP Kwok-him, GBS, JP  
Dr Hon PAN Pey-chyou
- Member attending** : Hon CHIM Pui-chung
- Members absent** : Hon Andrew LEUNG Kwan-yuen, GBS, JP  
Hon WONG Sing-chi

**Public Officers** : Item I  
**attending**

Mr Ernest IP  
Assistant Commissioner for Labour

Miss Bonny WONG  
Senior Labour Officer  
Labour Department

Miss Betty CHEUNG  
Senior Assistant Law Draftsman  
Department of Justice

Mr Allen LAI  
Senior Government Counsel  
Department of Justice

**Attendance** : Item I  
**by invitation**

Hong Kong Confederation of Trade Unions

Mr POON Man-hon  
Policy Researcher

The Hong Kong Federation of Trade Unions

Mr LEUNG Kwok-wai

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

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

Ms Priscilla LAU  
Council Secretary (2) 5

Ms Kiwi NG  
Legislative Assistant (2) 1

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Action

**I. Meeting with deputations and the Administration**

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

Meeting with deputations

2. The Bills Committee received oral representations from the following organizations on the Protection of Wages on Insolvency (Amendment) Bill 2011 -

- (a) Hong Kong Confederation of Trade Unions; and
- (b) The Hong Kong Federation of Trade Unions.

3. The Bills Committee noted that the following organizations had also provided written submissions on the Bill -

- (a) The Chinese General Chamber of Commerce;
- (b) The Chinese Manufacturers' Association of Hong Kong;
- (c) The Employers' Federation of Hong Kong;
- (d) The Federation of Hong Kong Industries; and
- (e) Labour Rights Committee of The Federation of Hong Kong & Kowloon Labour Unions.

Meeting with the Administration

4. The Bills Committee passed the following motion moved by Mr LEE Cheuk-yan and seconded by Mr LEUNG Yiu-chung -

"《2011年破產欠薪保障(修訂)條例草案》委員會要求政府當局修訂草案，撤銷法案內就未放年假薪酬及未放法定假期薪酬的日數上限，並就此立即諮詢破產欠薪基金委員會及勞工顧問委員會，及在本委員會下次會議前報告結果。"

Action

(Translation)

"That the Bills Committee on Protection of Wages on Insolvency (Amendment) Bill 2011 requests the Administration to amend the Bill so as to abolish the ceilings on the numbers of days for calculating the amounts of pay for untaken annual leave and the pay for untaken statutory holidays, and immediately consult the Protection of Wages on Insolvency Fund Board and the Labour Advisory Board in this regard, and report the outcome to this Committee before its next meeting."

5. The Administration was requested to -
  - (a) consult the Protection of Wages on Insolvency Fund Board and the Labour Advisory Board immediately in relation to the motion passed by the Bills Committee and report the outcome to the Bills Committee before its next meeting; and
  - (b) provide information on the assessment of the estimated additional annual expenditure of about \$73.2 million that might be incurred by the Protection of Wages on Insolvency Fund under the amendment proposal in the Bill.

Clause-by-clause examination of the Bill

6. The Bills Committee commenced the clause-by-clause examination of the Bill. Members requested Assistant Legal Adviser 9 to advise at the next meeting whether amendments could be moved by Members to the long title of the Bill.

**II. Date of next meeting**

7. The Bills Committee agreed that the Clerk would schedule the next meeting in consultation with the Chairman.

*(Post meeting note: With the concurrence of the Chairman, the next meeting was scheduled for Monday, 9 January 2012 at 10:45 am.)*

Action

8. The meeting ended at 4:30 pm.

Council Business Division 2  
Legislative Council Secretariat  
7 February 2012

**Proceedings of meeting of the  
Bills Committee on Protection of Wages on Insolvency (Amendment) Bill 2011  
held on Tuesday, 29 November 2011, at 2:30 pm  
in Conference Room 1 of the Legislative Council Complex**

| Time marker     | Speaker(s)   | Subject(s)   | Action Required |
|-----------------|--|--|-----------------|
| 000000 - 000351 | Chairman   | Opening remarks  |                 |
| 000352 - 000847 | Chairman<br>Representative of Hong Kong Confederation of Trade Unions  | Presentation of views (LC Paper No. CB(2)382/11-12(01))  |                 |
| 000848 - 001049 | Chairman<br>Representative of The Hong Kong Federation of Trade Unions | Presentation of views (LC Paper No. CB(2)410/11-12(01))  |                 |
| 001050 - 002017 | Chairman<br>Hon LEE Cheuk-yan<br>Admin                                 | <p>Hon LEE Cheuk-yan enquired about</p> <ul style="list-style-type: none"> <li>(a) financial position of the Protection of Wages on Insolvency Fund ("PWIF");</li> <li>(b) the amount that might be involved if the ceilings on the number of days for calculating the amounts of pay for untaken annual leave and the pay for untaken statutory holidays were abolished; and</li> <li>(c) the feasibility of bundling the employer association's request for a reduction, from \$450 to \$250, in the annual levy on business registration certificate which financed PWIF with the expansion of protection</li> </ul> <p>Response of the Administration -</p> <ul style="list-style-type: none"> <li>(a) the financial position of PWIF was not a major consideration for the proposals in the Bill. It was estimated that the existing proposals in the Bill could incur an additional annual expenditure of about \$73.2 million in ex gratia payment made from PWIF;</li> </ul> |                 |

| Time marker     | Speaker(s)                               | Subject(s)   | Action Required |
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|                 |  | <p>(b) the annual income of PWIF was \$442 million and \$499 million in 2009 and 2010 respectively; and PWIF paid out a total of \$174 million in 2009 and \$99.3 million in 2010; and</p> <p>(c) the reduction of annual levy on business registration certificate and the proposals in the Bill should be dealt separately</p>   |                 |
| 002018 - 002656 | Chairman<br>Hon Tommy CHEUNG<br>Admin    | <p>Hon Tommy CHEUNG considered that despite the accumulated surplus in PWIF, it was not appropriate to only look at figures in recent two years. A prudent approach in managing PWIF should be adopted, taking into account a recurrent deficit of PWIF during the economic downturn in the past and the impact of the implementation of statutory minimum wages which might have not been fully reflected</p> <p>Response of the Administration -</p> <p>(a) PWIF recorded a recurrent deficit for seven consecutive years from 1997-1998 to 2003-2004. In 2002, a stand-by loan of \$695 million was provided by the Government to PWIF; and</p> <p>(b) as the income and payment of PWIF fluctuated according to the economic environment, the PWIF Board was cautious in the operation of PWIF</p> |                 |
| 002657 - 003925 | Chairman<br>Hon LEUNG Yiu-chung<br>Admin | Referring to the submission of the Chinese General Chamber of Commerce (LC Paper No. CB(2)378/11-12(01)), Hon LEUNG Yiu-chung sought information on the difficulty in verifying all untaken annual leave and whether the disputes between employees and employers in respect of the pay for untaken annual leave was handled by the Labour Tribunal  |                 |

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|                 |  | <p>The Chairman enquired about the statutory requirements in keeping employees' records</p> <p>Response of the Administration -</p> <p>(a) according to section 49A of the Employment Ordinance ("EO"), employers were required at all times to keep a record setting out wages and employment history of each employee covering the period of his employment during the preceding 12 months. When an employer became insolvent, it would be difficult to verify claims of annual leave accumulated by an employee for prolonged period;</p> <p>(b) if disputes between employees and employers could not be settled through conciliation, they might seek adjudication of the Labour Tribunal but not all cases involved adjudication; and</p> <p>(c) PWIF aimed to provide timely relief to employees of insolvent employers. The proposed extension of the scope of PWIF should not give incentive to tolerance of employer's non-grant of annual leave and statutory holidays, thus shifting the employers' liability to PWIF</p> |                 |
| 003926 - 005931 | Chairman<br>Hon IP Wai-ming<br>Hon LI Fung-ying<br>Admin | <p>Hon IP Wai-ming considered that, given the payment ceiling of \$10,500, the limitations on the number of days for untaken annual leave should be relaxed to cover employees' annual leave entitlement upon termination for the last leave year and the leave year immediately preceding the last leave year under EO</p> <p>Hon LI Fung-ying expressed similar views</p>   |                 |

| Time marker     | Speaker(s)   | Subject(s)   | Action Required                 |
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|                 |  | <p>Briefing by the Administration on its response to issues raised by Members at the meeting on 25 October 2011 (paragraphs 4 to 7 of LC Paper No. CB(2)387/11-12(01))</p> <p>The proposed one year limit had considered the progressive approach of expansion of scope and the large percentage of applicants that could be fully covered. PWIF Board had undertaken to review the coverage of PWIF one year after the implementation of the Bill, if passed</p>  |                                 |
| 005932 - 011155 | Chairman<br>Hon LEE Cheuk-yan<br>Admin<br>ALA9   | <p>Hon LEE Cheuk-yan requested clarification on the entitlement to untaken statutory holidays in the proposed new section 16(2)(g)(ii) in clause 5(4) of the Bill</p> <p>Response of the Administration -</p> <p>(a) the statutory holidays concerned should fall within the four-month period immediately before the employee's last day of service and not yet taken by the employee;</p> <p>(b) the employee should have been employed under a continuous contract for a period of three months immediately before the statutory holidays, in accordance with section 40 of EO</p> <p>Views of ALA9 on the proposed new section 16(2)(g)(ii) in clause 5(4)</p> |                                 |
| 011156 - 013509 | Chairman<br>Hon LEE Cheuk-yan<br>Hon LI Fung-ying<br>Hon Cyd HO<br>Hon Audrey EU<br>Hon IP Wai-ming<br>Admin | <p>Motion moved by Hon LEE Cheuk-yan and seconded by Hon LEUNG Yiu-chung; the Chairman declared that six members voted for the motion, no member voted against or abstained from voting and declared that the motion was passed</p> <p>The Administration was requested to consult the PWIF Board and the Labour</p>   | Admin to consult the PWIF Board |

| Time marker                                     | Speaker(s)  | Subject(s)   | Action Required                            |
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|   |   | Advisory Board immediately on the abolishment of ceilings on the numbers of days for calculating the amounts of pay for untaken annual leave and the pay for untaken statutory holidays  | and the Labour Advisory Board              |
| 013510 - 013647                                 | Hon Audrey EU<br>Chairman   | Views of Hon Audrey EU on the proposed new section 16(2)(g)(ii) in clause 5(4) that there was no ambiguity or discrepancies between the Chinese and English texts  |  |
| 013648 - 014539                                 | Chairman<br>Admin   | Briefing by the Administration on its response to issues raised by Members at the meeting on 25 October 2011 (Paragraphs 8 to 12 of LC Paper No. CB(2)387/11-12(01))   |  |
| <i>Clause-by-clause examination of the Bill</i> |   |  |  |
| 014540 - 015906                                 | Admin<br>Chairman<br>Hon LEE Cheuk-yan<br>Hon Cyd HO<br>Hon Audrey EU<br>ALA9 | <p>Long title of the Bill</p> <p>Noting that the untaken annual leave and untaken statutory holidays were restricted to a specified amount and a specific period in the long title of the Bill, members sought the views of ALA9 as to whether amendment to the long title could be made by Members, having regard to the motion passed by the Bills Committee</p> <p>ALA9 advised that according to the Rules of Procedure, the long title may be amended only if the bill has been so altered as to necessitate such amendment. Also, amendment proposed to the bill by Members should neither fall outside the scope of the bill nor have any charging effect on the general revenue. ALA9 would respond to the issue raised and advise whether there were any relevant precedent cases in the next meeting</p> <p>Hon Cyd Ho requested the Administration to provide information on the assessment of the estimated additional annual expenditure of about</p> | Admin to provide the requested information |

| <b>Time marker</b> | <b>Speaker(s)</b>             | <b>Subject(s)</b>   | <b>Action Required</b> |
|--------------------|-------------------------------|---|------------------------|
|                    |                               | \$73.2 million that might be incurred by the Protection of Wage on Insolvency Fund under the amendment proposal in the Bill |                        |
| 015907 -<br>015955 | Chairman<br>Hon LEE Cheuk-yan | Date of next meeting  |                        |

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