

立法會
Legislative Council

LC Paper No. CB(2)1061/11-12
(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 Monday, 9 January 2012, at 10:45 am
in Conference Room 2B 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 Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Sing-chi
Hon IP Wai-ming, MH
Hon IP Kwok-him, GBS, JP
Dr Hon PAN Pey-chyou

Member absent : Hon Cyd HO Sau-lan

Public Officers attending : Item I
Mr Ernest IP
Assistant Commissioner for Labour
Labour Department

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

Clerk in attendance : Mrs Sharon TONG
Principal Council Secretary (2)

Staff in attendance : Ms Clara TAM
Assistant Legal Adviser 9

Ms Priscilla LAU
Council Secretary (2) 5

Miss Lulu YEUNG
Clerical Assistant (2) 1

Action

I. Meeting with the Administration

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

2. The Bills Committee completed the clause-by-clause examination of the Protection of Wages on Insolvency (Amendment) Bill 2011.
3. The Administration was requested to -
 - (a) provide its draft Committee Stage amendments ("CSA") to amend clause 5 of the Bill; and
 - (b) provide examples to illustrate the calculation of pay for untaken annual leave under the Administration's revised proposal.

Action

4. Mr LEE Cheuk-yan indicated that he might consider proposing CSAs to the Bill.
5. The Administration informed the Bills Committee that the Protection of Wages on Insolvency Fund ("PWIF") Board would review the coverage of PWIF in respect of pay for untaken annual leave, pay for untaken statutory holidays and the payment ceiling of \$10,500 one year after the implementation of the Bill, if passed.
6. The Administration noted Ms LI Fung-ying's suggestion of including in the review the other items covered by PWIF, and reporting the outcome of the review to the Panel on Manpower.
7. As no member raised objection to the revised proposal or indicated other amendments at the meeting, the Administration said it would proposed CSAs on the revised proposal at the next meeting.

II. Date of next meeting

8. The Bills Committee agreed that the next meeting would be scheduled when the draft CSAs proposed by the Administration were available.

(Post meeting note: With the concurrence of the Chairman, the next meeting has been scheduled for Thursday, 23 February 2012 at 4:30 pm.)

9. The meeting ended at 12:00 noon.

Council Business Division 2
Legislative Council Secretariat
14 February 2012

**Proceedings of meeting of the
Bills Committee on Protection of Wages on Insolvency (Amendment) Bill 2011
held on Monday, 9 January 2012, at 10:45 am
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action Required
<i>Agenda Item I - Meeting with the Administration</i>			
000000 - 000326	Chairman	Opening remarks	
000327 - 000927	Admin	Briefing by the Administration on its response to issues raised by deputations at the meeting on 29 November 2011 (LC Paper No. CB(2)727/11-12(02))	
000928 - 001748	Admin	Briefing by the Administration on its response to issues raised by members at the meeting on 29 November 2011 (LC Paper No. CB(2)727/11-12(01))	
001749 - 002356	Chairman Mr LEE Cheuk-yan Admin	<p>Mr LEE Cheuk-yan considered that, given the payment ceiling of \$10,500, the limits on the period in respect of pay for untaken annual leave and untaken statutory holidays should be removed. He indicated that he might consider proposing CSAs to the Bill</p> <p>The Administration responded that further extension would include payment arising from breaches of Employment Ordinance ("EO") and called for members' support to the revised proposal endorsed by the Protection of Wages on Insolvency Fund ("PWIF") Board and Labour Advisory Board ("LAB") to extend pay for untaken annual leave from not exceeding an employee's full statutory entitlement for the last leave year to the last two leave years ("revised proposal")</p>	
002357 - 002704	Mr Andrew LEUNG Admin	<p>Mr Andrew LEUNG expressed support for the revised proposal</p> <p>The Administration's response to the enquiry raised by Mr Andrew LEUNG about the enforcement and</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
		<p>prosecution actions against wage offences especially company directors committing the offences and offences of non-grant of statutory holidays/annual leaves under the EO, and legislative amendments in recent years to increase the penalty of wage offences for deterrence</p>	
002705 - 004011	<p>Mr LEUNG Yiu-chung Chairman Admin Mr LEE Cheuk-yan</p>	<p>Mr LEUNG Yiu-chung asked about the timetable for extending the scope of PWIF to cover the pay for all untaken annual leave and untaken statutory holidays entitled by employees of insolvent employers</p> <p>Mr LEE Cheuk-yan reiterated that the ceiling on the numbers of days or period for pay for untaken annual leave and untaken statutory holidays should be abolished. He also held the view that if the limitation imposed on untaken statutory holidays would be relaxed, the future review on the scope of PWIF should also consider covering the pay for those taken statutory holidays for which wages were not paid to employees</p> <p>The Administration's response that all the items of PWIF had been reviewed in the light of practical experience and increased progressively. The PWIF Board had undertaken to review the coverage of PWIF in respect of pay for untaken annual leave, pay for untaken statutory holidays and the payment ceiling of \$10,500 one year after the implementation of the Bill, if passed</p>	
004012 - 004206	<p>Ms LI Fung-ying Admin</p>	<p>Ms LI Fung-ying welcomed the revised proposal. She suggested that the Administration should include in the review one year after the implementation of the Bill, if passed, other items covered by PWIF. Outcome of the review should be reported to the Panel on Manpower</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
		The Administration noted the suggestion	
<i>Clause-by-clause examination of the Bill</i>			
004207 - 004555	Chairman Admin	Long title	
004556 - 004620	Admin	<p>Part 1: Preliminary</p> <p><u>Clause 1 - Short title and commencement</u></p> <p>Members raised no query</p>	
004621 - 005024	Admin	<p>Part 2: Amendments to Protection of Wages on Insolvency Ordinance</p> <p><u>Clause 2 - Protection of Wages on Insolvency Ordinance amended</u></p> <p><u>Clause 3 - Section 2 amended (Interpretation)</u></p> <p><u>Clause 4 - Section 15 amended (Entitlement to apply for ex gratia payment)</u></p> <p>Members raised no query on clause 2 to clause 4</p>	
005025 - 010325	Admin Ms LI Fung-ying Chairman Mr Jeffrey LAM	<p><u>Clause 5 - Section 16 amended (Payment)</u></p> <p>Ms LI Fung-ying pointed out that the proposed section 16(2)(h) was subject to the revised proposal, in which the pay for untaken annual leave was payable on account of the last two leave years (ranging from 14 to 28 days' pay depending on the employee's length of employment)</p> <p>The Administration indicated that if the revised proposal was supported by members with no amendment to the revised proposal, it would prepare the Committee Stage amendments on the revised proposal</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
		<p>The Chairman pointed out that no member raised objection to the revised proposal and no member raised other amendments at the meeting and requested the Administration to provide its draft Committee Stage amendments based on the revised proposal</p>	<p>Admin to provide its draft Committee Stage amendments</p>
<p>010326 - 010509</p>	<p>Admin</p>	<p><u>Clause 6 - Section 23 amended (Proof by certificate)</u></p> <p><u>Clause 7 - Section 24 amended (Subrogation)</u></p> <p>Members raised no query on clause 6 and clause 7</p>	
<p>010510 - 011008</p>	<p>Admin</p>	<p>Part 3: Consequential and Related Amendments</p> <p><i>Division 1: Enactments Amended</i></p> <p><u>Clause 8 - Enactments amended</u></p> <p><i>Division 2: Amendments to Bankruptcy Ordinance (Cap. 6)</i></p> <p><u>Clause 9 - Section 38 amended (Priority of debts)</u></p> <p><i>Division 3: Amendments to Companies Ordinance (Cap. 32)</i></p> <p><u>Clause 10 - Section 178 amended (Definition of inability to pay debts)</u></p> <p><u>Clause 11 - Section 265 amended (Preferential payments)</u></p> <p>Members raised no query on clause 8 to clause 11</p> <p>Completion of clause-by-clause examination of the Bill</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
011009 - 011312	Chairman Admin	Date of next meeting The Chairman requested the Administration to provide examples to illustrate the calculation of pay for untaken annual leave under the revised proposal in a format similar to the Annex to the Administration's response to issues raised at the Bills Committee meeting held on 25 October 2011 (LC Paper No. CB(2)387/11-12(01))	Admin to provide the relevant information

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