

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

**Administration's Response to Issues Raised by Deputations at the
Bills Committee Meeting Held on 29 November 2011**

Purpose

At the Bills Committee meeting on 29 November 2011, various organisations expressed views on the Protection of Wages on Insolvency (Amendment) Bill 2011 (the Bill) verbally and in writing. This paper sets out the Administration's response.

Coverage of pay for untaken annual leave and untaken statutory holidays

2. All organisations welcomed the extension of the scope of the Protection of Wages on Insolvency Fund (the Fund) by the Bill to cover pay for untaken annual leave and untaken statutory holidays. They all looked forward to the early passage of the Bill so as to benefit employees as soon as possible.

3. Regarding details of the proposal, organisations had offered different views. An organisation held the view that given the payment ceiling, the limit on the period in respect of pay for untaken annual leave of the last leave year should be extended to cover pay for untaken annual leave on a pro rata basis to tie in with the requirements under the Employment Ordinance (EO). There was also a suggestion to remove all limits on the period in respect of pay for untaken annual leave and untaken statutory holidays. Individual organisations suggested that adjustment of payment ceiling be considered in a future review. At the same time, there were organisations in support of the limits on the period in respect of pay for untaken annual leave and untaken statutory holidays under the Bill as it could encourage proper arrangement of holidays by employers and employees and avoid difficulties involved in verification. There were views that the Fund was set up not to pay in full for the employers any payment owed to their employees. Any extension of the scope of the Fund should not deviate from its purpose and should adhere to the principles of prudent management of the Fund and a gradual and

progressive approach.

4. We are pleased that all organisations supported the objective of the Bill. If the Bill is passed, the Fund can provide payment for two new items, viz pay for untaken annual leave and untaken statutory holidays, which will be an important step in enhancing employee protection. When putting forth the proposal, the Protection of Wages on Insolvency Fund Board (the Fund Board) had considered the important principles in extending the scope, including (a) imposing ceilings similar to other items currently covered by the Fund for a gradual and progressive expansion; and (b) setting limits on the period with reference to EO requirements on annual leave and statutory holidays to preclude employers from shifting their liability in defaulting statutory entitlements to the Fund.

5. Regarding the limit on the period in respect of pay for untaken annual leave, it should be clarified that the proposal under the Bill has covered pay for untaken annual leave payable upon termination of employment contract under section 41D of the EO, which includes: (a) the pro rata untaken annual leave pay for the last leave year in which the applicant has at least three but less than 12 months' service; and (b) pay for any untaken annual leave for the previous leave year if the applicant has been employed for a full year. If the pay for untaken annual leave does not exceed pay for the applicant's full annual leave entitlement of the last leave year under EO, the Fund would grant ex gratia payment to cover it in full if the amount is \$10,500 or below. For cases in excess, the Fund would pay the amount up to the cap on the number of days of annual leave.

6. With reference to the study on cases received by the Fund in the third quarter of 2009, the proposal under the Bill could provide considerable protection to employees. Among the applicants who submitted claims to recover pay for untaken annual leave/ untaken statutory holidays, 85% had claimed amount at \$10,500 or below and 75% could have their pay for untaken annual leave fully covered under the proposed maximum limit of full annual leave entitlement in the last leave year.

7. As regards the details on the background of consultation, coverage of pay for untaken annual leave and findings of the study in the third quarter of 2009 as mentioned in paragraphs 4 to 6, please refer to LC Paper No. CB(2)387 /11-12 (01).

8. The Fund aims to provide timely relief to employees affected by business cessation whilst the obligation to pay employees' benefits rests with employers. Regarding employers who fail to grant annual leave and statutory holidays as required by EO, the Labour Department (LD) has all along made proactive effort in conducting inspections and encouraging report by employees. Wherever there is sufficient evidence, we will take out prosecution.

Other views

9. Apart from the above, there was a view suggesting that the mechanism of the Fund Board and the Labour Advisory Board (LAB) had been operating effectively and should be upheld. There were also individual organisations proposing that the levy on Business Registration Certificates (BRC) should be reduced in tandem with the enhancement of employee protection.

10. The Administration will continue to attach importance to the views of the tripartite mechanism of the Fund Board and LAB. As for the adjustment to the rate of BRC levy, under the Protection of Wages on Insolvency Ordinance, the Fund Board is responsible for making recommendation to the Administration on the levy rate. The Fund Board and LD will closely monitor the financial position of the Fund, conduct a review of the BRC levy according to the objective mechanism having regard to various relevant factors and submit a proposal on the adjustment of the levy rate at an appropriate time.

Labour and Welfare Bureau
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