

LEGISLATIVE COUNCIL BRIEF

Protection of Wages on Insolvency Ordinance
(Chapter 380)

PROTECTION OF WAGES ON INSOLVENCY (AMENDMENT) BILL 2011

INTRODUCTION

At the meeting of the Executive Council on 21 June 2011, the Council ADVISED and the Chief Executive ORDERED that the Protection of Wages on Insolvency (Amendment) Bill 2011 at Annex should be introduced into the Legislative Council (LegCo) to amend the Protection of Wages on Insolvency Ordinance (Chapter 380) (PWIO) to provide for the following ex gratia payment from the Protection of Wages on Insolvency Fund (the Fund) to an employee -

- (a) pay for annual leave under the Employment Ordinance (Chapter 57) (EO) not yet taken by an employee, not exceeding the employee's full statutory entitlement for the last leave year (ranging from seven to 14 days' pay depending on the employee's length of employment); and
- (b) pay for statutory holidays under the EO not yet taken by an employee within four months before his last day of service.

Neither the amount of pay for untaken annual leave nor the amount of pay for untaken statutory holidays, nor the total amount of the two, may exceed \$10,500.

JUSTIFICATIONS

2. The Fund is mainly financed by an annual levy (currently of \$450) on each business registration certificate. It is administered by the Protection of Wages on Insolvency Fund Board (the Fund Board) which consists of employer and employee representatives as well as public officers. The Labour Department (LD) is responsible for processing applications and the operation of the Fund.

3. When the Fund was set up in 1985, its ex gratia payment only covered arrears of wages of the last four months subject to a payment ceiling of \$8,000. With gradual improvement over the years, the maximum payment that an employee can now receive from the Fund is \$278,500, including four months' wages up to \$36,000, one month's wages in lieu of notice up to \$22,500, and severance payment up to \$50,000 plus 50% of the remainder of the entitlement¹.

4. There have been requests from the labour sector to expand the scope of the Fund to cover pay for untaken annual leave and untaken statutory holidays under the EO. The Fund Board and the Government considered the proposal in 2010.

Pay for annual leave and statutory holidays

5. Under Part VIIIA of the EO, an employee is entitled to annual leave with pay after having been employed by the same employer under a continuous contract² for 12 months and shall be granted the annual leave within the following leave year³. The number of days of annual leave to which an employee is entitled under the EO ranges from seven to 14 depending on the length of the employee's service⁴. If an employee has been employed for a leave year and his employment contract is terminated, irrespective of the reasons of termination, he should be entitled to payment in lieu of any annual leave not yet taken. An employee with at least three but less than 12 months' employment in a leave year would be entitled to pro rata annual leave pay, if his employment contract is terminated other than for the reason of summary dismissal due to his serious misconduct.

6. Part VIII of the EO also provides that an employee is entitled to 12 statutory holidays in a year. If the employer requires the employee

¹ On the basis of the maximum amount of severance payment under the EO at \$390,000, the cap of ex gratia payment payable from the Fund for severance payment is \$220,000.

² Under Schedule 1 to the EO, an employee employed under a continuous contract is defined as one who has been employed under a contract of employment by the same employer for four weeks or more and has worked for 18 hours or more in each week.

³ A leave year means, subject to certain exception in specified contexts in the EO, any period of 12 months commencing on the day on which his employment commenced or an anniversary of that day.

⁴ Section 41AA of the EO

to work on a statutory holiday, the employer shall arrange an alternative holiday within 60 days before or after the statutory holiday. If both parties agree, any day within 30 days before or after the statutory or alternative holiday may be taken by the employee as a substituted holiday⁵, which means a statutory holiday should be taken within 90 days from it at the latest. An employee who has been employed under a continuous contract for not less than three months before a statutory holiday is entitled to be paid for the statutory holiday⁶.

7. Upon business cessation, if insolvent employers are unable to pay wages and termination payments, very often the employees are also owed pay for untaken annual leave upon termination as mentioned in paragraph 5. Some employers may also fail to grant timely statutory holidays in accordance with the EO. Currently, the Fund covers pay for statutory holidays taken during the period of the last four months, but not pay for statutory holidays that are untaken. The Fund Board supported the expansion of the scope of the Fund to cover pay for untaken annual leave and untaken statutory holidays, so as to strengthen the protection of affected employees on major entitlements in addition to the existing payment items under the Fund.

Guiding principles for the proposal

8. In taking forward the proposal of expanding the scope of the Fund to cover pay for untaken annual leave and untaken statutory holidays under the EO, the LD and the Fund Board have observed the following guiding principles -

- (a) The Fund should adopt a gradual and progressive approach in improving its coverage;
- (b) Similar to other items currently covered by the Fund, a payment ceiling should be set on the new items to ensure the Fund's sustainability;
- (c) The Fund should discourage employees from tolerating non-payment of statutory benefits by their employers on a prolonged basis. A cap is therefore set on the periods for which the new items may be covered to avoid employers shifting their liability to the Fund; and
- (d) Approval of the claims must be based on verifiable documents or information. Any prolonged claim period may render it difficult

⁵ Section 39 of the EO

⁶ Section 40 of the EO

to conduct verification owing to the lack of employment records. Reference is therefore made to the EO requirements on employers to keep employment records for 12 months.

9. The expansion was first considered in 2008 to cover only pay for untaken annual leave. In setting the payment ceiling at paragraph 8(b), the Fund Board came to the consensus of a ceiling of \$10,500. The ceiling was set having regard to the maximum of \$22,500 payable under the Fund for one month's wages in lieu of notice, and the maximum annual leave entitlement of 14 days in a year (i.e. \$22,500 x 14 /30). The same payment ceiling⁷ was later agreed to be used for extending the Fund to cover pay for untaken statutory holidays.

10. Observing the above guiding principles and considering the relevant legal requirements at paragraphs 5 to 6, the Fund Board agreed that the scope of the Fund should be expanded to cover pay for untaken annual leave and untaken statutory holidays under the Bill.

11. Subsequent to the decision of the Fund Board and the consultation on its proposal, in his 2010-11 Policy Address, the Chief Executive announced that the Government would amend the law to expand the scope of the Fund to cover pay for untaken annual leave and untaken statutory holidays under the EO.

THE BILL

12. The Bill (at Annex) contains amendments to the PWIO to provide for payment from the Fund in respect of untaken annual leave and untaken statutory holidays, subject to certain limitations. It also makes consequential and related amendments to the Bankruptcy Ordinance (Chapter 6) (BO) and Companies Ordinance (Chapter 32) (CO).

13. The main provisions of the Bill are as follows -

(a) **Clause 3** amends section 2 of PWIO -

(i) to revise the definition of “applicant”;

(ii) to add definitions of “pay for untaken annual leave” and

⁷ In the meeting of LegCo Panel on Manpower in June 2008, when considering the proposal of covering pay for untaken annual leave, some Panel Members requested to extend to cover all untaken annual leave and untaken statutory holidays while maintaining the payment ceiling of \$10,500.

“pay for untaken statutory holidays”.

- (b) **Clause 4** amends section 15 of PWIO to expand the scope of the entitlements in respect of an application to cover pay for untaken annual leave and untaken statutory holidays. The amendment does not apply to a contract of employment terminated before the date of commencement of the Bill.
- (c) **Clause 5** amends section 16(2) of the PWIO by adding new paragraphs (g), (h) and (i) to specify the conditions that must be met before such payment may be made, including -
 - (i) As far as pay for untaken statutory holidays is concerned -
 - (A) the statutory holidays concerned must fall within the four-month period immediately before the applicant’s last day of service;
 - (B) the applicant must have been employed under a continuous contract for a period of three months immediately before the statutory holidays;
 - (C) the amount of pay for untaken statutory holidays must not exceed the amount calculated at the daily rate of holiday pay specified in the EO; and
 - (D) the application for the payment must be made within six months after the applicant’s last day of service;
 - (ii) As far as pay for untaken annual leave is concerned -
 - (A) it must be payable under section 41D of the EO, being payable on account of employment in the leave year in which the contract of employment terminates or is terminated and, if the termination occurs otherwise than on the expiration of that leave year, the immediately preceding leave year;
 - (B) the amount must not exceed the pay for the full number of days of annual leave to which an applicant would have been entitled in respect of his last leave year under the EO had his employment continued; and
 - (C) the application for payment must be made within six months after the applicant’s pay for untaken annual leave became due;
 - (iii) Neither the amount of pay for untaken annual leave nor the

amount of pay for untaken statutory holidays, nor the total amount of the two, may exceed \$10,500.

The Legislative Council may by resolution amend the amount referred to in the above subparagraph (iii).

- (d) **Clauses 9 and 11** amend section 38 of the BO and section 265 of the CO which provide for payment of employees' accrued holiday remuneration (among other matters) in priority to other debts in the event of bankruptcy or winding up. The two sections are specifically amended to refer to pay for untaken annual leave and untaken statutory holidays as categories of accrued holiday remuneration.
- (e) The existing section 178 of the CO provides that claims in respect of unpaid wages and certain other employee entitlements by two or more creditors of a company may be aggregated for the purpose of issuing a statutory demand for payment and for establishing the company's inability to pay its debts. **Clause 10** expands section 178 to cover pay for untaken statutory holidays and untaken annual leave, and the latter two expressions and wages are to have the same meaning as in section 265 of the CO.

14. Further details on individual clauses of the Bill are set out in its Explanatory Memorandum.

LEGISLATIVE TIMETABLE

15. The legislative timetable will be -

Publication in the Gazette	30 June 2011
First Reading and commencement of Second Reading debate	13 July 2011
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

IMPLICATIONS OF THE PROPOSAL

16. The Bill is in conformity with the Basic Law, including the provisions concerning human rights. The Bill does not affect the current binding effect of the PWIO, BO and CO. The proposal has no productivity, environmental or sustainability implications. On economic implications, the proposal will not entail an increase in the current levy rate on business registration certificate of \$450 per annum. There should not be any additional cost burden on businesses. There

should also be minimum staffing implications or financial implications for the Government. Additional workload, if any, will be absorbed within the existing resources.

17. In assessing the possible impact of the proposal, it is estimated that an additional annual expenditure of about \$73.2 million⁸ may be incurred for the Fund. Given the surplus accumulated in recent years to \$2,307 million at the end of April 2011, the Fund will be able to absorb the additional payouts as a result of the proposed expansion. Notwithstanding this, the LD and the Fund Board will continue to monitor the financial position of the Fund to ensure its financial sustainability.

PUBLIC CONSULTATION

18. The Fund Board was consulted at its meeting of February 2010 and agreed to the proposal to cover untaken annual leave and untaken statutory holidays. The Labour Advisory Board (LAB) and the LegCo Panel on Manpower (Manpower Panel) were consulted and endorsed the proposal at their meetings held in March 2010 and April 2010 respectively.

PUBLICITY

19. A press release will be issued on 30 June 2011 when the Bill is published in the Gazette. A spokesman from the LD will be available to handle press enquiries.

BACKGROUND

20. The Fund was set up in 1985 to provide timely relief in the form of ex gratia payment to employees of insolvent employers. Over the years, the LD and the Fund Board have adopted a prudent approach to managing the Fund and expanded the scope of the Fund in a gradual and progressive manner. The strategy has been successful in maintaining the financial viability of the Fund for sustaining employee protection in the event of insolvencies.

21. To further expand the coverage, at its meeting of April 2008,

⁸ The assessment is made by assuming 30% (with reference to the survey on cases received by the Fund in the third quarter of 2009) of the high time applications in 2002 at 23 023 would involve pay for all untaken annual leave and/or untaken statutory holidays at the payment ceiling of \$10,500. The estimated projection of the additional payout from the Fund would be around \$73.2 million in a year.

the Fund Board agreed to the proposal to extend the scope of the Fund to cover annual leave pay under the EO for annual leave accumulated and not yet taken by an employee, not exceeding the employee's full statutory entitlement in the last leave year (ranging from seven to 14 days' pay depending on an employee's length of employment) and the payment ceiling of \$10,500. The proposal was endorsed by the LAB at its meeting of May 2009.

22. The proposal was submitted to the Manpower Panel in June 2009. Some Members considered that the proposal was inadequate and requested the Administration to further expand the scope of the Fund to cover pay for all untaken annual leave and untaken statutory holidays while maintaining the payment ceiling of \$10,500.

23. The Fund Board was consulted again on the revised proposal of the Manpower Panel and, at its meeting of February 2010, agreed to the present proposal to expand the scope of the Fund to cover pay for untaken annual leave and untaken statutory holidays subject to the limitations as described in paragraph 1. The LAB and the Manpower Panel were consulted and endorsed the proposal at their meetings held in March 2010 and April 2010 respectively. At the Manpower Panel meeting held in January 2011, some LegCo Members asked the Administration to consider further expanding the proposed scope of pay for untaken annual leave and untaken statutory holidays, including raising the payment ceiling. At its meeting held in February 2011, the Fund Board noted the Members' views and came to the consensus that the present proposal should be maintained for early introduction into LegCo so as to enhance employee protection without delay and that any further expansion should be considered in the context of the review of the implementation of the proposal. At its meeting held in May 2011, the LAB shared the Fund Board's view.

ENQUIRIES

24. Enquiries on this brief should be addressed to Mr Ernest IP, Assistant Commissioner for Labour (Employees' Rights and Benefits), on 2852 4083 or Miss Bonny WONG, Senior Labour Officer (Wage Security) of LD, on 2923 5282.

Labour and Welfare Bureau
June 2011

Protection of Wages on Insolvency (Amendment) Bill 2011

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A BILL To

Amend the Protection of Wages on Insolvency Ordinance to provide for payment, not exceeding a specified amount, in respect of untaken statutory holidays falling within a specified period and in respect of untaken annual leave not exceeding the employee's full annual leave entitlement under the Employment Ordinance for a specified period, and to make consequential and related amendments to the Bankruptcy Ordinance and the Companies Ordinance.

Enacted by the Legislative Council.

Part 1 Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Protection of Wages on Insolvency (Amendment) Ordinance 2011.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Labour and Welfare by notice published in the Gazette.

Part 2

Amendments to Protection of Wages on Insolvency Ordinance

2. Protection of Wages on Insolvency Ordinance amended

The Protection of Wages on Insolvency Ordinance (Cap. 380) is amended as set out in sections 3 to 7.

3. Section 2 amended (Interpretation)

- (1) Section 2, definition of *applicant*—

Repeal

“(ca) or (cc)” (wherever appearing)

Substitute

“(ca), (cc) or (cd)”.

- (2) Section 2—

Add in alphabetical order

“pay for untaken annual leave (未放年假薪酬)” means any pay for untaken annual leave in respect of which an applicant—

- (a) would, on the winding up of a company, be entitled to priority under section 265(1)(cd) of the Companies Ordinance (Cap. 32); or
- (b) would, on a bankruptcy, be entitled to priority under section 38(1)(cd) of the Bankruptcy Ordinance (Cap. 6);

pay for untaken statutory holidays (未放法定假日薪酬)” means any pay for untaken statutory holidays in respect of which an applicant—

- (a) would, on the winding up of a company, be entitled to priority under section 265(1)(cd) of the Companies Ordinance (Cap. 32); or
- (b) would, on a bankruptcy, be entitled to priority under section 38(1)(cd) of the Bankruptcy Ordinance (Cap. 6);”.

4. Section 15 amended (Entitlement to apply for ex gratia payment)

- (1) Section 15(1)(b)—

Repeal

“or”.

- (2) Section 15(1)(c)—

Repeal

“due,”

Substitute

“due;”.

- (3) After section 15(1)(c)—

Add

“(d) pay for untaken statutory holidays is due and unpaid; or

(e) pay for untaken annual leave is due and unpaid;”.

- (4) Section 15(1)—

Repeal

“notice or the severance payment,”

Substitute

“notice, the severance payment, the pay for untaken statutory holidays or the pay for untaken annual leave;”.

- (5) After section 15(5)—

Add

- “(6) An applicant may not apply for payment from the Fund in respect of any pay for untaken statutory holidays or pay for untaken annual leave that arises out of a contract of employment terminated before the date of commencement of the Protection of Wages on Insolvency (Amendment) Ordinance 2011 (of 2011).”.

5. Section 16 amended (Payment)

- (1) Section 16(1)—

Repeal

“notice or severance payment,” (wherever appearing)

Substitute

“notice, severance payment, pay for untaken statutory holidays or pay for untaken annual leave;”.

- (2) Section 16(2)(e)(ii)—

Repeal

“or”.

- (3) Section 16(2)(f)(ii)—

Repeal the full stop

Substitute a semicolon.

- (4) After section 16(2)(f)—

Add

- “(g) in respect of pay for untaken statutory holidays unless—

- (i) the statutory holidays concerned fell within the 4-month period immediately before the applicant’s last day of service (whether or not any of those holidays was, by virtue of section 39(2), (2A), (3) or (4) of the Employment Ordinance (Cap. 57), to be taken after the applicant’s last day of service as

- an alternative holiday, a substituted holiday or a holiday under section 39(4) of that Ordinance);
- (ii) the statutory holidays concerned are those in respect of which holiday pay would have been payable to the applicant under section 40 of the Employment Ordinance (Cap. 57) had the applicant taken the holidays;
 - (iii) subject to paragraph (i), the payment is of an amount not exceeding the lesser of the following—
 - (A) the amount of the pay for untaken statutory holidays, as calculated at the daily rate of holiday pay specified in section 41 of the Employment Ordinance (Cap. 57);
 - (B) \$10,500; and
 - (iv) an application for the payment is made within 6 months after the applicant's last day of service;
- (h) in respect of pay for untaken annual leave unless—
- (i) the pay for untaken annual leave is payable under section 41D of the Employment Ordinance (Cap. 57), being payable on account of the applicant's employment in –
 - (A) his or her last leave year; and
 - (B) if the applicant's contract of employment terminates, or is terminated, otherwise than on the expiration of that last leave year, the leave year immediately preceding that last leave year;
 - (ii) subject to paragraph (i), the payment is of an amount not exceeding the lesser of the following—
 - (A) the amount of the annual leave pay for the full number of days of annual leave to which the applicant would have been entitled in respect of the applicant's last leave year, as

- calculated in accordance with section 41AA of the Employment Ordinance (Cap. 57), had the applicant's employment continued until the applicant became entitled to be allowed the annual leave and had that pay been calculated in accordance with section 41C of that Ordinance;
- (B) \$10,500; and
 - (iii) an application for the payment is made within 6 months after the pay for untaken annual leave became due; or
 - (i) of an amount exceeding in total \$10,500 in respect of both pay for untaken statutory holidays and pay for untaken annual leave.”.
- (5) After section 16(3)—
- Add**
- “(3A) The Legislative Council may by resolution amend the amount specified in subsection (2)(g)(iii)(B), (h)(ii)(B) or (i).”.
- (6) Section 16—
- Repeal subsection (4)**
- Substitute**
- “(4) For the purposes of this section—
- last day of service* (服務的最後一天) means the last day on which an applicant renders services to the employer to whom the applicant's application relates;
- last leave year* (最後假期年) means the leave year in which the applicant's contract of employment terminates, or is terminated;
- leave year* (假期年) has the same meaning as in Part VIIIA of the Employment Ordinance (Cap. 57).”.

6. Section 23 amended (Proof by certificate)

Section 23(1)(b)—

Repeal

“notice or severance payment,”

Substitute

“notice, severance payment, pay for untaken statutory holidays or pay for untaken annual leave.”.

7. Section 24 amended (Subrogation)

Section 24(3)—

Repeal

“notice.”

Substitute

“notice, pay for untaken statutory holidays and pay for untaken annual leave.”.

Part 3**Consequential and Related Amendments****Division 1****Enactments Amended****8. Enactments amended**

The enactments specified in Divisions 2 and 3 are amended as set out in those Divisions.

Division 2**Amendments to Bankruptcy Ordinance (Cap. 6)****9. Section 38 amended (Priority of debts)**

- (1) Section 38(10), definition of *accrued holiday remuneration*—

Repeal the semicolon**Substitute**

“, and, without limitation, includes any pay for untaken statutory holidays and pay for untaken annual leave;”.

- (2) Section 38(10)—

Add in alphabetical order

“*pay for untaken annual leave* (未放年假薪酬), in relation to any person, means any sum which, by virtue either of the person’s contract of employment or of any enactment (including any order made or direction given under any Ordinance), is payable—

- (a) in respect of annual leave to which the person has become entitled to be allowed but which the person has not taken; or
- (b) on account of the remuneration in respect of annual leave that would have become payable to the person if the person's employment had continued until the person became entitled to be allowed the annual leave,

and, without limitation, includes any sum payable under section 41D of the Employment Ordinance (Cap. 57);

pay for untaken statutory holidays (未放法定假日薪酬) means any sum payable under the Employment Ordinance (Cap. 57) or a contract of employment in respect of a statutory holiday (within the meaning of that Ordinance) that has not been taken as a holiday (within the meaning of that Ordinance);”.

Division 3

Amendments to Companies Ordinance (Cap. 32)

10. Section 178 amended (Definition of inability to pay debts)

- (1) Section 178(2)—

Repeal

“notice or severance payments,”

Substitute

“notice, severance payments, pay for untaken statutory holidays or pay for untaken annual leave,”.

- (2) After section 178(4)—

Add

“(5) In subsection (2)—

pay for untaken annual leave (未放年假薪酬), *pay for untaken statutory holidays* (未放法定假日薪酬) and *wages* (工資) have the same meaning as in section 265.”.

11. Section 265 amended (Preferential payments)

- (1) Section 265(6), definition of *accrued holiday remuneration*—

Repeal the semicolon

Substitute

“, and, without limitation, includes any pay for untaken statutory holidays and pay for untaken annual leave;”.

- (2) Section 265(6)—

Add in alphabetical order

“*pay for untaken annual leave* (未放年假薪酬), in relation to any person, means any sum which, by virtue either of the person's contract of employment or of any enactment (including any order made or direction given under any Ordinance), is payable—

- (a) in respect of annual leave to which the person has become entitled to be allowed but which the person has not taken; or
- (b) on account of the remuneration in respect of annual leave that would have become payable to the person if the person's employment had continued until the person became entitled to be allowed the annual leave,

and, without limitation, includes any sum payable under section 41D of the Employment Ordinance (Cap. 57);

pay for untaken statutory holidays (未放法定假日薪酬) means any sum payable under the Employment Ordinance (Cap. 57) or a contract of employment in respect of a statutory holiday (within the meaning of that

Ordinance) that has not been taken as a holiday (within the meaning of that Ordinance);”.

Explanatory Memorandum

The object of this Bill is to amend the Protection of Wages on Insolvency Ordinance (Cap. 380) (*PWIO*) to provide for payment from the Protection of Wages on Insolvency Fund (*Fund*) in respect of untaken statutory holidays and untaken annual leave, subject to certain limitations, and to make consequential and related amendments to the Bankruptcy Ordinance (Cap. 6) and the Companies Ordinance (Cap. 32).

2. Clause 4 expands the scope of entitlements in respect of which an application may be made for payment under the PWIO to cover pay for untaken statutory holidays and pay for untaken annual leave. The amendment does not apply to a contract of employment terminated before the date of commencement of the Bill.
3. Clause 5 specifies the conditions that must be met before such payment may be made—
 - (a) as far as the pay for untaken statutory holidays is concerned—
 - (i) the statutory holidays concerned must fall within the 4-month period immediately before the applicant’s last day of service;
 - (ii) the applicant must have been employed under a continuous contract for a period of 3 months immediately before the statutory holidays;
 - (iii) the amount of pay for untaken statutory holidays must not exceed the amount calculated at the daily rate of holiday pay specified in the Employment Ordinance (Cap. 57); and
 - (iv) the application for the payment must be made within 6 months after the applicant’s last day of service;
 - (b) as far as the pay for untaken annual leave is concerned—

- (i) the pay for untaken annual leave must be payable under section 41D of the Employment Ordinance (Cap. 57), being payable on account of employment in the leave year in which the contract of employment terminates or is terminated and, if the termination occurs otherwise than on the expiration of that leave year, the immediately preceding leave year;
 - (ii) the amount must not exceed the annual leave pay for the full number of days of annual leave to which the applicant would have been entitled in respect of the applicant's last leave year under the Employment Ordinance had the applicant's employment continued; and
 - (iii) an application for the payment must be made within 6 months after the pay for untaken annual leave became due; and
- (c) neither the amount of pay for untaken statutory holidays, nor the amount of pay for untaken annual leave, nor the total amount of the two may exceed \$10,500

(proposed new section 16(2)(g), (h) and (i) of the PWIO).

The Legislative Council may by resolution amend the ceilings to the amounts referred to in the above subparagraph (c) (proposed new section 16(3A) of the PWIO).

4. Clause 6 expands existing section 23 of the PWIO to provide for the production of a certificate by the Commissioner for Labour as proof—
 - (a) of the amount of pay for untaken statutory holidays or pay for untaken annual leave owed by an employer to a person specified in the certificate; and
 - (b) of payment from the Fund to the person.
5. Clause 7 expands existing section 24 of the PWIO to provide for the transfer to and vesting in the Protection of Wages on Insolvency

Fund Board of an applicant's rights and remedies with respect to pay for untaken statutory holidays and pay for untaken annual leave, to the extent of the amount paid from the Fund.

6. The existing section 38 of the Bankruptcy Ordinance (Cap. 6) and existing section 265 of the Companies Ordinance (Cap. 32) provide for payment of employees' accrued holiday remuneration (among other matters) in priority to other debts in the event of bankruptcy or winding up. Those sections 38 and 265 are amended to specifically refer to pay for untaken statutory holidays and pay for untaken annual leave as categories of accrued holiday remuneration (clauses 9 and 11).
7. The existing section 178 of the Companies Ordinance (Cap. 32) provides that claims, in respect of unpaid wages and certain other employee entitlements, by 2 or more creditors of a company may be aggregated for the purpose of issuing a statutory demand for payment and for establishing the company's inability to pay its debts. That section 178 is expanded to cover pay for untaken statutory holidays and pay for untaken annual leave, and the latter 2 expressions and also wages are to have the same meaning as in section 265 of the Companies Ordinance (Cap. 32) (clause 10).