

Legislative Council Secretariat
Chairman of Bills Committee, Mr. Wong Ting-kwong

30th November 2015

Dear Sir,

Our union would like to submit the following opinions on Companies (Winding –up and Miscellaneous Provisions) (amendment) Bill 2015:

1. Employees are the most valuable asset of company. That is why many countries and places put the employees to preferential payments. However, the rights they get is not in line with their status. According to the Employment Ordinance, Cap. 57, section 24, wages shall be paid as soon as is practicable but in any case not later than 7 days of the completion of contract. Therefore we assume that in winding-up, employees are entitled to get all the wages after the completion of the contract without cap, to fulfil the spirit of the Employment Ordinance.
2. The existing payment of wage is up to 8,000 dollars, severance payment 8,000, Payment in lieu of notice 2,000. These figures cannot reflect the real condition. We suggest to amend the the Companies Ordinance, Cap 32, section 265, Companies (Winding-up and Mis. Provisions) Ordinance, number 1(c), and 1A, Change to:
Payments to employees 1. Wages claimed by employee, but not less than 3 months, 2. All accrued annual leaves, 3. All accrued long service payments or severance payments, 4. All payments in lieu of notice.
3. In other countries, for example Australia in September 2001 had adopted the payment without cap, just after the collapse of Ansett Airline Company.
4. UK's Employment Rights Act 1996, section 184 provided that payments are: 1. Wages up to 2 months. Annual leave up to 6 weeks, and other payments without cap. UK has a similar Wages on Insolvency as Hong Kong. It is called Redundancy Payments Office. The payment from this Office is exactly the same in the Employment Rights Act, whereas in Hong kong the maximum from the Insolvency fund is around 200,000, a long distance from the 18,000 by the Companies Ordinance. What is the same is that the Payments Offices has the employees rights and remedies once payment is made.
5. Singapore's Companies Act, section 328 provides that the cap of the payment is SD7,500, but not include payment to Provident Fund and other compensation

and leave. New Zealand's preferential payment's cap is ND15,000.

6. The International Labour Organization had ratified the International Labour Convention No.173, namely Protection of Workers' Claims (Employers's Insolvency),1992, requiring countries to meet the needs of employee's claims, at least 3 months of wages together with others. There are 21 countries ratifying this Convention, including Australia, Swiss, Finland, Russia, Spain. We request to consider this convention in the amendments.
7. There are about 700 voluntary winding-up cases by directors and 100 cases by creditors. We suggest to amend the Cap. 32, section 265to transfer these 1000 cases to be under the Cap. 380 Insolvency Ordinance, section 18, to allow the Commission for Labour to exercise the rights in section 18. The reason is it is unreasonable and uneconomical to ask the employee to petition the insolvency of the company while it is under voluntarily winding-up.



Lee Kwok Keung, Chairman
Lee Tak Ming, GS