

**Coverage of the Protection of Wages on Insolvency Fund
in relation to MPF Contributions**

Background

At the meeting held on 7 January 2002, Members were briefed on the Government's proposal to amend the Mandatory Provident Fund (MPF) legislation in order to further enhance the efficiency and effectiveness of the MPF System. During the discussion, a Member suggested that the Administration should consider whether the existing legislation concerning the Protection of Wages on Insolvency Fund (PWIF) should be amended to provide protection for employees in respect of their MPF contributions. This note set out the Administration's views.

The Existing Legislation

2. Under the existing Protection of Wages on Insolvency Ordinance (PWIO), PWIF provides prompt relief in the form of ex-gratia payment to employees who are owed wages, wages in lieu of notice and severance payment (SP) in the event of insolvency of employers.

3. MPF contributions comprise two components: employee contributions and employer contributions. Employee contributions are contributions made to a MPF scheme from an employee's relevant income. Hence, in general, if an employer has deducted from the employee's wages for purpose of making the employee's contributions, but has failed to make such contributions to the scheme, then this amount will become "wages unpaid" and as such will be covered by the

PWIF¹. At present, the PWIF covers, inter alia, wages of an employee for services rendered during the four-month period prior to the last day of service up to a maximum of \$36,000.

4. Employer contributions, on the other hand, are contributions made by the employers to the MPF Scheme from the employer's **own** funds, and are not wages. Hence, the PWIF does not cover employer contribution in default.

Review of the Scope of PWIF

5. Before introducing the Provident Fund Schemes Legislation (Amendment) Bill in 1997, the Labour Advisory Board was consulted on consequential amendments to the PWIO to eliminate the inconsistencies between the nature of retirement benefits construed under the PWIO and the Mandatory Provident Fund Schemes Ordinance. The Board noted that the coverage of the PWIF would remain unchanged with the implementation of the MPF Scheme. The relevant Bills Committee also noted the consequential amendments and did not raise any objection.

6. The Administration does not consider that there is a need to change the scope of PWIF in relation to MPF contributions, because –

- (a) the PWIF already provides coverage to employee contributions in default (deducted from wages) in insolvency cases;
- (b) employer contributions in default should not be covered by the PWIF because they are not “wages unpaid”; and

¹ Since the PWIO does not cover income other than wages (e.g. bonus of a gratuitous nature), hence, in some cases, part of the employee contributions in default may fall outside the coverage of the PWIF.

- (c) an employee is entitled to ex-gratia SP from the PWIF. SP is payable under the Employment Ordinance to employees being dismissed by reason of redundancy after having been employed for not less than two years, which could be reduced by accrued benefits attributable to employer contributions being held in the MPF scheme. In cases where employer contributions in respect of certain wage periods are in default, the Labour Department, when calculating ex-gratia SP from the PWIF, would only offset SP by the value of accrued benefits attributable to employer contributions that have actually been made under the MPF scheme. The ex-gratia payment is subject to a limit of \$50, 000 plus 50% of remaining SP entitlement.

Financial Services Bureau / Labour Department

12 March 2002