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Panel on Manpower

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 18 December 2008**

Financial position of the Protection of Wages on Insolvency Fund

Purpose

This paper provides background information on the financial condition of the Protection of Wages on Insolvency Fund (PWIF).

Protection of Wages on Insolvency Fund

2. PWIF was set up in 1985 to provide timely relief in the form of ex gratia payment to employees of insolvent employers. Employees who are owed wages, wages in lieu of notice and severance payment by their insolvent employers may apply for ex gratia payment from PWIF.

3. PWIF is mainly financed by a levy at the rate of \$450 per annum on each Business Registration Certificate (BRC) issued under the Business Registration Ordinance (Cap. 310). Other sources of income for PWIF include money recovered from the remaining assets of insolvent employers through subrogation as well as bank deposit returns. The Labour Department (LD) is responsible for processing the applications and the operation of PWIF. The Protection of Wages on Insolvency Fund Board (the PWIF Board), established under the Protection of Wages on Insolvency Ordinance (Cap. 380), has the statutory functions of administering PWIF and making recommendations to the Chief Executive with respect to the rate of levy.

Previous adjustments of the levy rate

4. When PWIF was set up in 1985, the levy rate was set at \$100. Since then, the levy rate has been revised three times. The first revision took place in July 1991 when the levy rate was raised from \$100 to \$250.

5. In May 2002, the levy rate was further increased from \$250 to \$600 as the upsurge in claims for ex gratia payment after the Asian financial crisis had led to rapid depletion of the Fund. The PWIF Board reviewed the levy rate in February 2003 and February 2004 and considered that it should remain unchanged.

6. At its meeting on 15 November 2007, the Panel on Manpower (the Panel) was consulted on the Administration's proposal to reduce the levy rate from \$600 to \$450. Members were informed that the PWIF Board had agreed unanimously that the levy rate should be reduced from the current level of \$600 per annum to \$450 per annum and the proposal was supported by LAB. The levy reduction was implemented on 14 March 2008.

Scope of ex gratia payment from PWIF

7. When discussing the proposed reduction of the levy rate at the Panel meeting on 15 November 2007, some members asked whether the Administration would conduct a review on the scope of ex gratia payment so that employees of insolvent employers would be able to claim ex gratia payment for items such as maternity leave pay. The Administration responded that PWIF was set up to provide timely relief in the form of ex gratia payment to employees of insolvent employers instead of providing full compensation. The suggestion to broaden the scope of ex gratia payment from the Fund would require discussions by the PWIF Board and labour-management consensus.

8. Some members expressed dissatisfaction about the Administration's response and pointed out that it was employees' right to receive wages and severance payment in full from employers. They considered the Employment Ordinance (Cap. 57) (EO) insufficient to give full protection to employees of insolvent employers. They also expressed regret that the Administration had attended to employers' request to reduce the levy rate but gave little attention to the request of the labour sector to provide more protection for employees.

9. The Administration responded that employers had to abide by EO which had stipulated clearly their statutory responsibilities. PWIF was financed by an annual levy on each BRC. PWIF was not set up to provide full compensation for employees of insolvent employers but to enable those who were owed wages, wages in lieu of notice and severance payment to apply for ex gratia payment from PWIF.

Financial position of the Protection of Wages on Insolvency Fund

10. According to information provided by the Administration for the Panel meeting on 15 November 2007, claims payment by PWIF had subsided significantly with the continued improvement in the local economy in recent years and LD's all-out efforts in combating wage default. The claims payment in recent years are as follows -

<u>Year</u>	<u>Claims payment (\$m)</u>
2003-2004	465.7
2004-2005	315.8
2005-2006	191.9
2006-2007	137.1

11. According to the 2007-2008 Annual Report of the PWIF Board, 4 506 applications involving claims for ex gratia payment of \$184.8 million were received from employees in 2007-2008. A total of 905 suspected insolvency cases were recorded, among which 869 involved less than 20 employees per case, 32 involved 20 to 49 employees per case, and the remaining four involved 50 to 99 employees per case. Among the 4 506 applicants, 3 953 applied for ex gratia payment on arrears of wages, 2 529 applied for payment on wages in lieu of notice, and 1 236 applied for payment on severance payment. PWIF's reserve rose from an accumulated deficit of \$18.4 million as at the end of March 2004 to an accumulated surplus of \$772.1 million as at the end of March 2007.

12. It is noted from the Administration's reply to a question raised by Hon Paul CHAN at the Council meeting on 19 November 2008 that the accumulated surplus of PWIF had reached \$1,437.3 million as at the end of October 2008. The financial position of PWIF was dependent upon the amount of levy income and ex gratia payment. Therefore, how much longer the accumulated surplus of PWIF could cope with the disbursement of ex gratia payment and whether any adjustment to the rate of the business registration certificate levy would be necessary in the next five years would depend on the state of Hong Kong's economy as well as the number of major insolvency cases in the years to come. LD, together with the PWIF Board, would continue to monitor the financial position and levy rate of PWIF closely. The question raised by Hon Paul CHAN and the Administration's reply are in the **Appendix**.

Relevant papers

13. For further details of the discussions, members may wish to refer to the following documents –

- (a) Administration's paper on its proposal to revise the rate of BRC levy for PWIF issued in November 2007 (LC Paper No. CB(2)310/07-08(04)); and
- (b) minutes of meeting of the Panel on Manpower on 15 November 2007 (LC Paper No. CB(2)629/07-08).

14. The above papers are also available on the website of the Legislative Council (<http://www.legco.gov.hk>).

Council Business Division 2
Legislative Council Secretariat
12 December 2008

Legislative Council Question No. 7
(Written Reply)

Asked by : Hon Paul CHAN

Date of Sitting : 19 November 2008

Replied by : Secretary for Labour and Welfare

Question:

The 2007-2008 Annual Report of the Protection of Wages on Insolvency Fund Board revealed that the number of applications for ex gratia payment received by the Protection of Wages on Insolvency Fund (“the Fund”) recorded a significant drop of 38% when compared with that of the previous year. However, given the uncertain economic outlook amid the financial tsunami, the Chief Secretary for Administration said on 18 October that he was not optimistic about the unemployment rate in Hong Kong. In this connection, will the Government inform this Council:

- (a) of the number of applications for ex gratia payment received by the Fund and the amount of payment involved for the period from April to October this year, together with a breakdown of such figures by the industry to which such applications belong, the amount and period of outstanding wages, and a comparison with the relevant figures in the same period of last year;
- (b) given that the Fund has an accumulated surplus of \$1,228.6 million as at the end of March this year and the current annual rate of business registration certificate levy is \$450, and judging from the experience in granting ex gratia payment in the past five years, when the accumulated surplus of the Fund is anticipated to be exhausted; and whether it has any plan to adjust the rate of business registration certificate levy for the coming five years; and
- (c) of the total number of suspected cases of misuse of the Fund and the amount of payment involved for the period from April to October this year, and the number of convicted cases as well as the penalties imposed?

Reply:

Mr President,

- (a) For the period from April to October 2008, the Protection of Wages on Insolvency Fund (the Fund) received a total of 3 258 applications involving claims for ex gratia payment of \$217.58 million. The breakdown of these applications by industry, amount claimed and period of outstanding wages and a comparison with the relevant figures in the same period of 2007 are set out in the Annex.
- (b) The accumulated surplus of the Fund amounted to \$1,437.3 million as at the end of October 2008. The financial position of the Fund is subject to the amount of levy income and ex gratia payment. Therefore, how much longer the accumulated surplus of the Fund can cope with the disbursement of ex gratia payment and whether any adjustment to the rate of the business registration certificate levy would be necessary in the next five years will depend on the state of Hong Kong's economy as well as the number of major insolvency cases in the years to come. The Labour Department (LD), together with the Protection of Wages on Insolvency Fund Board, will continue to monitor the financial position and levy rate of the Fund closely.
- (c) In the course of investigating insolvency cases which might involve abuses of the Fund, if there is sufficient evidence that wage offences committed by a company are attributable to the consent, connivance, or neglect of its responsible persons, LD will take out prosecution against such persons under the Employment Ordinance.

From April to October 2008, of the prosecution cases concluded, there were 84 convicted summonses against company responsible persons. The total sum of outstanding wages involved was around \$530,000. In one of the cases, the company responsible person was remanded in custody for 38 days before being sentenced to imprisonment for four months, suspended for three years. In another case, the responsible person was given a community service order. For the remaining cases, fines were imposed.

LD also refers cases involving Fund abuses to the Official Receiver's Office, recommending that applications be made to the court for disqualifying the concerned company responsible persons from being directors and taking part in promotion, formation or management of a

company. Altogether, 18 persons were so disqualified during April to October 2008, with the disqualification period ranging from one to five years.

**Applications for ex gratia payment received by the Protection of Wages on
Insolvency Fund****Breakdown by industry**

Industry	No. of applications		Change %
	April to October 2007	April to October 2008	
Manufacturing	229	412	+80%
Electricity, Gas and Water	1	2	+100%
Construction	784	394	-50%
Wholesale, Retail and Import/Export Trades, Restaurants and Hotels	1 026	924	-10%
Transport, Storage and Communications	252	784	+211%
Financing, Insurance, Real Estate and Business Services	148	624	+322%
Community, Social and Personal Services	187	118	-37%
Total	2 627	3 258	+24%

Breakdown by amount claimed

Arrears of wages claimed	No. of applications		Change %
	April to October 2007	April to October 2008	
No entitlement/Not claimed	296	419	+42%
\$8,000 or less	949	1 111	+17%
\$8,001–\$18,000	662	826	+25%
\$18,001–\$24,000	178	215	+21%
\$24,001–\$27,000	55	89	+62%
\$27,001–\$30,000	50	64	+28%
\$30,001–\$33,000	46	65	+41%
\$33,001–\$36,000	41	42	+2%
\$36,001–\$39,000	44	39	-11%
More than \$39,000	306	388	+27%
Total	2 627	3 258	+24%

Wages in lieu of notice claimed	No. of applications		Change %
	April to October 2007	April to October 2008	
No entitlement/Not claimed	1 200	716	-40%
\$2,000 or less	284	673	+137%
\$2,001–\$6,000	363	391	+8%
\$6,001–\$10,000	336	257	-24%
\$10,001–\$15,000	230	359	+56%
\$15,001–\$22,500	145	271	+87%
\$22,501–\$25,000	19	121	+537%
More than \$25,000	50	470	+840%
Total	2 627	3 258	+24%

Severance payment claimed	No. of applications		Change %
	April to October 2007	April to October 2008	
No entitlement/Not claimed	1 978	2 377	+20%
\$8,000 or less	89	71	-20%
\$8,001–\$36,000	283	337	+19%
\$36,001–\$50,000	52	87	+67%
\$50,001–\$80,000	90	135	+50%
\$80,001–\$110,000	50	74	+48%
\$110,001–\$140,000	28	55	+96%
\$140,001–\$170,000	20	43	+115%
\$170,001–\$200,000	17	26	+53%
\$200,001–\$250,000	9	25	+178%
\$250,001–\$300,000	7	14	+100%
\$300,001–\$350,000	1	6	+500%
\$350,001–\$370,000	0	2	-
\$370,001–\$390,000	3	4	+33%
More than \$390,000	0	2	-
Total	2 627	3 258	+24%

Breakdown by period of outstanding wages
(excluding overtime pay and “deemed wages” under section 43 of the
Employment Ordinance)

Period of outstanding wages	No. of applications		Change %
	April to October 2007	April to October 2008	
No entitlement/Not claimed	433	495	+14%
Half month or less	390	878	+125%
More than 1/2 month to 1 month	585	944	+61%
More than 1 month to 2 months	657	532	-19%
More than 2 months to 3 months	254	158	-38%
More than 3 months to 4 months	107	104	-3%
More than 4 months	201	147	-27%
Total	2 627	3 258	+24%