

For information on
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Legislative Council Panel on Manpower

An overview of the latest position of redundancy, business cessation and the Protection of Wages on Insolvency Fund

Purpose

This paper briefs Members on the latest position of redundancy and business cessation and on the measures adopted by the Labour Department (LD) in preventing abuse of the Protection of Wages on Insolvency Fund (PWIF) and in processing applications for ex gratia payment and the effects.

Latest position of redundancy and business cessation

2. During late 2008 to early 2009, Hong Kong experienced a difficult time in the wake of the global financial tsunami. After that, the economy rapidly regained momentum and recovered continuously. In 2010, the GDP of Hong Kong recorded a persistent growth. There was notable improvement in the situation of redundancy and business cessation. In the first eleven months of 2010, the number of company winding up orders and receiving/bankruptcy orders dropped respectively by 22% and 43%¹ as compared with the same period in 2009.

3. In 2009, as a result of the financial tsunami, the number of labour disputes² and claims³ handled by LD increased to 24 448, up 18% over 2008 (20 743), and there was an upsurge of 30% in labour disputes involving business closures, insolvencies and redundancies as compared to 2008 (from 54 to 70). In 2010, LD handled a total of 20 502 labour disputes and claims, down 16% as compared to 2009, whereas the number of labour disputes recorded a more significant drop of 52% (from 143 to 68). The number of labour disputes involving business closures, insolvencies and redundancies recorded an even greater drop of 59% (from 70 to 29) over 2009.

¹ Extracted from the website of Official Receiver's Office in early January 2011.

² A labour dispute is a case involving more than 20 employees.

³ A claim is a case involving 20 or fewer employees.

4. LD stays alert to the trend of redundancy and business cessation and proactively monitors sectors and enterprises which are more susceptible to economic changes so as to provide timely service, thereby minimizing cases where employees are owed their wages and other entitlements. In the event that the employer has become insolvent, the Labour Relations Division will provide all possible assistance to the affected employees, including making referrals to the Legal Aid Department (LAD) for filing winding-up or bankruptcy petitions against their employers and helping them apply for ex gratia payment from PWIF.

5. The number of applications for PWIF accorded with the falling trend of labour disputes and claims in the period. In 2009, under the impact of financial tsunami resulting in the increase in business cessation, the number of PWIF applications received increased by 13% over 2008 (from 6 448 to 7 260). The amount of ex gratia payment made from PWIF in 2009 increased sharply by 81% over 2008 to \$174.2 million. With gradual improvements of the economy, 2010 saw a drop in PWIF applications received. The number of applications stood at 4 453, down 39% over 2009. For the same period, the payment from PWIF dropped by 43% to \$99.3 million. As at the end of 2010, the accumulated surplus of PWIF was \$2,152.7 million.

Measures adopted in prevention of abuse and processing of applications for PWIF and the effects

6. The PWIF is set up to provide timely relief in the form of ex gratia payment to employees in the event of insolvent employers. LD makes proactive efforts in preventing abuse of PWIF with a view to ensuring that ex gratia payment is only paid to employees where their employers are genuinely insolvent. At the same time, we spare no effort in streamlining the procedures in processing applications for ex gratia payment from PWIF. The ensuing paragraphs set out the measures adopted by LD and the outcomes.

Proactive efforts in preventing abuse of PWIF

7. The Administration takes a serious view on any act of employers, company directors or responsible persons involving illegal transfer of the company assets and defraud of creditors before closure of the company or evading wage and other liabilities under the Employment Ordinance (EO). In this connection, LD has taken a series of measures to forestall abuse of PWIF.

8. The Government has set up an inter-departmental Task Force comprising representatives from the Commercial Crime Bureau of the Police Force (the Police), the Official Receiver's Office (ORO), LAD and LD to strengthen co-operation among the departments concerned and to follow up proactively crimes committed by company responsible persons, such as fraud, theft and conspiracy. Regarding cases involving PWIF abuses referred by LD with convictions secured by the Police in 2009 and 2010, the concerned company responsible person, director, contractors and relevant employees were sentenced to imprisonment of four to eight months or community service orders of 160 to 200 hours upon conviction, acting as severe deterrent. Besides, in the PWIF abuse cases referred by this department, ORO had recommended to the court for disqualifying concerned company responsible persons from being directors, and taking part in promotion, formation or management of a company. From 2008 to 2010, 62 persons involved in such cases were disqualified, for periods ranging from one to five years.

9. In parallel, LD has been adopting a multi-pronged strategy, underpinned by measures of intelligence gathering and stringent enforcement action to clamp down on employers evading their wage liabilities at source and to prevent and alleviate cases of non-payment of wages from happening and proliferating into applications for PWIF. LD has hired former police officers as contract investigation officers to reinforce our capacity in intelligence gathering and evidence collection. Labour Inspectors of LD conduct inspections to establishments of various industries to uncover suspected wage offences. To encourage employees to promptly report wage defaults so that speedy action can be taken, LD has also widely publicized its complaint hotline (2815 2200). To strengthen the effective combat of wage offences, if an employer company's wage offence is committed with the consent, connivance or neglect of its director or responsible person, we will also prosecute the culpable director or responsible person. Under our stringent enforcement, there were 1 314 convicted summonses for wage offences in 2009, up 37% as compared with 958 convicted summonses in 2008. Of these, 347 convictions were against company directors and responsible persons, an increase of 74% as compared with 199 in 2008. In 2010, there were 1 481 convicted summonses on wage offences, up 13 % as compared to 2009. Of these, the number of convictions against company directors and responsible persons was 476, up 37% over 2009.

10. In addition, the Employment (Amendment) Ordinance 2010 (Amendment Ordinance), which aims to create a new offence against employers' wilful defaults on payment of awards made by the Labour Tribunal (LT) or Minor Employment Claims Adjudication Board (MECAB), has come into operation since 29 October 2010. Under the Amendment Ordinance, an employer who wilfully and without reasonable excuse fails to pay any sum

awarded by LT or MECAB comprising wages and entitlements underpinned by criminal sanctions under the EO commits an offence. If the default by a limited company is committed with the consent, connivance or neglect of the company director or responsible person, such person is also liable to prosecution. We believe that the implementation of the Amendment Ordinance will effectively combat wilful defaults on payment of LT or MECAB awards, thereby further minimizing the chances of abuse by some unscrupulous employers shifting their liabilities to PWIF.

Dedicated efforts in streamlining the procedures in processing applications

11. LD is responsible for processing the PWIF applications, involving verification of employees' information such as employment relationship, entitlement to the benefits claimed to be defaulted and the amount payable. We have all along spared no effort in simplifying and streamlining the procedures of verifying applications for PWIF with a view to preventing abuses of PWIF on the one hand and processing the applications more efficiently on the other. The improvement measures include: (a) dispensing with the requirement for PWIF applicants to attend interviews at the Wage Security Division of LD under normal circumstances, thus saving their time; (b) devising a set of guidance notes and document list to facilitate applicants to submit necessary information and documents; and (c) obviating the need for referral to LAD for specific categories of insolvency cases, viz cases where winding up/bankruptcy petitions have already been issued, winding up/bankruptcy orders have been made and the employer concerned employed less than 20 employees and is under voluntary liquidation. In 2008 to 2010, the arrangement benefited 1 316 PWIF applicants of such cases in having their applications expedited. Further, LD also endeavours to strengthen co-operation with LAD. Since 2009, we have established linkage to the on-line computer system of LAD for following up more closely the progress of presenting bankruptcy/winding up petitions of individual cases, whereby relevant information can be provided more readily to applicants in their enquiries.

12. With continuous procedural improvement in case processing, the time required by LD in verifying the applications for PWIF and making payments to the applicants has been shortened. Upon receiving all necessary information and documents for processing the applications, we are dedicated to issuing payments to qualified applicants as soon as possible. The time required has shortened from an average of 7.4 weeks in 2002 to 3.2 weeks in 2006. In 2010, the figure has been further reduced to 2.5 weeks.

Coverage of PWIF

13. As PWIF is the final safety net for employees affected by business cessation, there is a genuine need to act prudently. LD and the PWIF Board have all along adopted a prudent approach in managing PWIF and improved its coverage in a progressive manner. In the past, amidst the financial turmoil bringing soaring applications, PWIF recorded a recurrent deficit for seven consecutive years from 1997-98 to 2003-04. In 2002, PWIF received an all-time high number of applications of 23 023. During just a few years, the accumulated surplus of PWIF was depleted drastically. In November 2002, PWIF had to obtain a stand-by loan of \$695 million⁴ from the government. As such, it is vital to ensure the sustainability of PWIF.

14. With gradual improvements of PWIF's coverage over the years, the maximum amount of ex gratia payment an employee can now receive from PWIF has increased from \$8,000 wages at its establishment to \$278,500, comprising wages, wages in lieu of notice and severance payment⁵. To further strengthen the protection to employees, the Administration has proposed to extend the scope of PWIF to cover two types of leave/holiday pay (subject to a ceiling of \$10,500), viz, (a) annual leave pay under the EO for annual leave accumulated and not yet taken by an employee, subject to the statutory limit of his last year of employment; and (b) holiday pay under the EO for statutory holidays not yet taken by an employee within four months prior to his last day of service. During February to April 2010, the Administration consulted the PWIF Board, Labour Advisory Board and Legislative Council (LegCo) Panel on Manpower on the proposed extension and has gained their support. We are progressing in full swing on the legislative amendment of the Protection of Wages on Insolvency Ordinance and plan to introduce a bill to this effect into LegCo in 2011.

⁴ In November 2002, Finance Committee of the LegCo approved the LD's proposal for a standby loan of \$695 million to PWIF. In March 2004, the PWIF Board for the first time drew down \$22 million from the standby loan. All debts including interests (a total of \$22.63 million) were cleared in April 2005.

⁵ Including wages of last four months' employment 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 entitlement.

Way Forward

15. We will continue to monitor the trend of business cessation and redundancy, prevent wage defaults and sanction culpable employers through timely conciliation and rigorous enforcement actions. We will also provide prompt assistance to the affected employees, strengthen inter-departmental co-operation and seek to improve the operation of PWIF continuously.

Labour and Welfare Bureau
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