

For discussion on
19 February 2013

Legislative Council Panel on Manpower

Proposal to revise the rate of Business Registration Certificate levy for the Protection of Wages on Insolvency Fund

Purpose

This paper seeks Members' views on a proposal to revise the rate of Business Registration Certificate (BRC) levy for the Protection of Wages on Insolvency Fund (the Fund).

Background

2. The Fund was set up in 1985 to provide timely relief to employees affected by the insolvency of their employers. Currently, the Fund can make ex gratia payment to an employee up to \$289,000, comprising \$36,000 for wages, \$22,500 for wages in lieu of notice, severance payment of \$50,000 plus 50% of the remainder of the entitlement and \$10,500 in respect of pay for untaken annual leave and untaken statutory holidays¹.

3. The Fund is financed by a levy at the rate of \$450 per annum on each BRC issued under the Business Registration Ordinance. The Protection of Wages on Insolvency Fund Board (Fund Board), established under the Protection of Wages on Insolvency Ordinance, has the statutory functions of administering the Fund and making recommendations to the Chief Executive with respect to the rate of levy. The Labour Department (LD) is responsible for processing applications for the Fund.

¹ The Protection of Wages on Insolvency (Amendment) Ordinance 2012 was passed in April 2012, expanding the scope of the Fund to cover pay for untaken annual leave and untaken statutory holidays and it took effect on 29 June 2012 (please see paragraph 7(c) below).

Previous adjustments of BRC levy rate

4. When the Fund was set up in 1985, the levy was \$100. Since the Fund's establishment, the levy rate has been revised thrice, including: (a) an increase of the levy from \$100 to \$250 in July 1991; (ii) an upward adjustment of the levy from \$250 to \$600 in May 2002 following a rapid depletion of the Fund caused by an upsurge in claims for ex gratia payment after the Asian financial crisis; and (c) a reduction of the levy from \$600 to the current level of \$450 in March 2008 with the improvement of the accumulated surplus of the Fund.

Financial position of the Fund

5. During 2008 and 2009, the local economy was affected by the financial tsunami. The claims payment by the Fund increased consecutively in two years in 2008-09 and 2009-10. Nevertheless, with the speedy recovery of the local economy, claims payment by the Fund has since been declining, as can be seen in Table A below.

Table A: Claims payment between 2007-08 and 2011-12

2007-08 (\$m)	2008-09 (\$m)	2009-10 (\$m)	2010-11 (\$m)	2011-12 (\$m)
79.4	129.5 (+63.1%)	153.7 (+18.7%)	90.6 (-41.1%)	67.9 (-25.1%)

(% – change over previous year)

6. The financial position of the Fund has also continued to improve. As at the end of 2012, the accumulated surplus of the Fund reached \$3,157.6 million. The financial position of the Fund between 2007-08 and 2011-12 is detailed in Table B.

Table B: Financial position of the Fund between 2007-08 and 2011-12

	2007-08 (\$m)	2008-09 (\$m)	2009-10 (\$m)	2010-11 (\$m)	2011-12 (\$m)
Income	559.5	471.3	467.1	537.7	573.8
Expenditure	103.0	153.7	177.6	108.1	88.4
Surplus	456.5	317.6	289.5	429.6	485.4

	2007-08 (\$m)	2008-09 (\$m)	2009-10 (\$m)	2010-11 (\$m)	2011-12 (\$m)
Reserve (Accumulated surplus)	1,228.6	1,546.1	1,835.7	2,265.3	2,750.7

Review

7. The Fund Board in conjunction with LD has reviewed the level of the BRC levy. Apart from the financial position of the Fund, the Fund Board has considered the following relevant factors during the review:

- (a) Based on past experience, economic changes have a significant impact on the number of applications received by the Fund and its payout. Taking 2002 as an illustration, the number of applications (23 023 applications) and the amount of claims payment (\$514 million) are both about eight-fold of the respective figures for 2012 (2 976 applications and \$64 million). The number of applications and the amount of claims payment since 2002 are at Annex 1. As the Hong Kong economy is affected by external environment, the future local economy faces uncertainties;
- (b) As a safety net for employees affected by business closures, the Fund plays a pivotal role in maintaining harmonious labour relations and social stability. As such, the Fund Board has all along adopted a prudent approach in managing the Fund to ensure a comfortable level of accumulated reserve to effectively cope with needs in the event of economic downturn and sudden outbreak of major cases; and
- (c) The Protection of Wages on Insolvency (Amendment) Ordinance 2012 (Amendment Ordinance), which was passed in April 2012 and took effect on 29 June 2012, has expanded the scope of the Fund to cover pay for untaken annual leave and untaken statutory holidays. This would bring about additional payout from the Fund for claims. The Fund Board and LD will closely monitor the impact on the Fund's expenditure after its implementation.

Proposal

8. Taking into account the above factors, at the meeting on 17 February 2012, the Fund Board agreed unanimously that the levy rate should be reduced from the current level of \$450 to \$250 per annum, returning to the

level prior to May 2002.

9. Projected on the basis of the proposed levy rate of \$250, the Fund can still have a yearly surplus of about \$160 million in 2012-13 (Annex 2), and as such the Fund should be able to maintain sufficient reserve and cash flow to cater for the possible needs arising from economic downturn and any sudden outbreak of major insolvency cases, as well as the additional ex gratia payments arising from the Amendment Ordinance.

Consultation with the Labour Advisory Board

10. The Labour Advisory Board unanimously endorsed at its meeting on 22 October 2012 the above proposal of the Fund Board to revise the rate of BRC levy as set out in paragraph 8 above.

Advice sought

11. Members are invited to offer views on the proposal to reduce the BRC levy rate from \$450 per annum to \$250 per annum.

Labour and Welfare Bureau
Labour Department
February 2013

Annex 1**Number of Applications and Claims Payment
for the period of 2002 to 2012**

	2002	2003	2004	2005	2006	2007
Applications received (i.e. number of employees)	23 023 (↑28%)	22 350 (↓3%)	13 631 (↓39%)	9 967 (↓27%)	7 532 (↓24%)	4 836 (↓36%)
Total ex gratia payment made	\$514m (↑52%)	\$468m (↓9%)	\$381m (↓19%)	\$205m (↓46%)	\$143m (↓30%)	\$95.0m (↓34%)

	2008	2009	2010	2011	2012
Applications received (i.e. number of employees)	6 448 (↑33%)	7 260 (↑13%)	4 453 (↓39%)	3 729 (↓16%)	2 976 (↓20%)
Total ex gratia payment made	\$96.3m (↑1%)	\$174m (↑81%)	\$99.3m (↓43%)	\$74.4m (↓25%)	\$64.0m (↓14%)

(% – change over previous year)

Protection of Wages on Insolvency Fund
Analysis of Income and Expenditure

	2007-08 (Actual) \$m	2008-09 (Actual) \$m	2009-10 (Actual) \$m	2010-11 (Actual) \$m	2011-12 (Actual) \$m	2012-13 (Forecast at levy rate of \$450) \$m	2012-13 (Forecast at levy rate of \$250) \$m
INCOME							
Levy on BRC	513.0	439.4	455.1	510.9	528.7	477.5 ⁽¹⁾	265.3 ⁽¹⁾
Subrogation Income	8.4	4.8	7.1	14.1	7.1	6.6 ⁽²⁾	6.6 ⁽²⁾
Interest on Deposits	38.1	27.1	4.9	12.7	38.0	43.8	42.2
	<u>559.5</u>	<u>471.3</u>	<u>467.1</u>	<u>537.7</u>	<u>573.8</u>	<u>527.9</u>	<u>314.1</u>
EXPENDITURE							
Claims Payment	79.4	129.5	153.7	90.6	67.9	131.3 ⁽³⁾	131.3 ⁽³⁾
Other Expenses	23.6	24.2	23.9	17.5	20.5	20.7 ⁽²⁾	20.7 ⁽²⁾
	<u>103.0</u>	<u>153.7</u>	<u>177.6</u>	<u>108.1</u>	<u>88.4</u>	<u>152.0</u>	<u>152.0</u>
Surplus of Income over Expenditure	456.5	317.6	289.5	429.6	485.4	375.9	162.1
Total Accumulated Fund as at end of Financial Year	<u>1,228.6</u>	<u>1,546.1</u>	<u>1,835.7</u>	<u>2,265.3</u>	<u>2,750.7</u>	<u>3,126.6</u>	<u>2,912.8</u>

Notes:

(1) Based on the estimation that a total of 1 061 000 BRCs would be issued in 2012-13, the projected levy income would be \$450 x 1 061 000 and \$250 x 1 061 000 respectively.

(2) Based on the Estimates of Income and Expenditure for 2012-13 of the Fund.

(3) Projected according to the Estimates of Income and Expenditure for 2012-12 of the Fund.