

## **LEGISLATIVE COUNCIL BRIEF**

### **Resolution of the Legislative Council under Section 16(3) of the Protection of Wages on Insolvency Ordinance, Cap 380**

#### **INTRODUCTION**

The Protection of Wages on Insolvency Ordinance (PWIO) was ~~first~~ enacted in 1985. It enables employees who are owed arrears of wages, wages in lieu of notice or severance payment by their insolvent employers to apply for ex-gratia payments from the Protection of Wages on Insolvency Fund (the Fund), subject to the maximum limits set out in the PWIO.

#### **THE PROPOSAL**

2. It is proposed to increase the limit of ex-gratia payment of severance payment made by the Fund from \$36,000 plus 50% of excess entitlement to \$50,000 plus 50% of excess entitlement.

#### **BACKGROUND AND ARGUMENT**

3. At present, the maximum coverage of the Fund is -

- (a) arrears of wages (AW) of an employee for services rendered during the four months prior to the last day of service up to \$36,000;

- (b) wages in lieu of notice (WILON) of up to one month's wages or \$22,500, whichever is the less; and
- (c) severance payment (SP) up to \$36,000, plus 50% of that part of the employee's entitlement to SP under the Employment Ordinance (Cap. 57) in excess of \$36,000.

4. The payment limits under the PWIO were last revised in February 1996. In our recent review on the coverage of the Fund, we found that in 1997/98, over 93% and over 97% of the applicants were able to recover their full entitlements of AW and WILON respectively. However, in 1997/98, only over 74% of the applicants could get their entitled SP in full. As the vast majority of applicants have been able to recover their full entitlements to AW and WILON, the Administration considers that the existing levels of protection for these two items are adequate and there is no need to revise their payment limits. Nevertheless, we consider that there is a need to provide better financial relief to employees who are owed SP by their insolvent employers. This is particularly important as under the present economic climate, these employees may need more time to secure a new job. A higher sum of ex-gratia payment of SP will enable them to tide over a longer period of unemployment without having to resort to the Comprehensive Social Security Assistance.

5. Having considered the financial position of the Fund, we propose that the limit of SP be increased from \$36,000 plus 50% of any excess entitlement, to \$50,000 plus 50% of the same excess entitlement. We estimate that under our proposal, about 84% of applicants will be able to get their SP entitlement in full. Those who cannot recover the full SP will also be able to receive a higher percentage of their entitled SP.

## **THE LEGISLATIVE COUNCIL RESOLUTION**

6. Section 16(3) of the PWIO provides for amendment to the payment limits to be effected by resolution of the Legislative Council. The Resolution under section 16(3) of the PWIO is at Annex.

## **LEGISLATIVE TIMETABLE**

7. The legislative timetable is as follows -

<u>Moving of Resolution</u>	<u>3 February 1999</u>
<u>Publication in the Gazette</u>	<u>5 February 1999</u>

## **EFFECTIVE DATE**

8. It is proposed that the new payment limit of severance payment should be brought into effect on 5 February 1999.

## **FINANCIAL AND STAFFING IMPLICATIONS**

9. The Fund is self-financing with income coming mainly from an annual levy of \$250 on each business registration certificate. Under the proposed coverage, we estimate that the annual additional payment will be about \$19 million. Although the Fund has recorded an operating deficit of over \$100 million for the period April to December 1998, the financial position of the Fund is still healthy with a balance of \$747.5 million as at 31 December 1998, which should be able to cope with the additional pay-outs.

10. There ~~is~~are no ~~financial~~—~~or~~—staffing implications for ~~the~~ Government arising from the proposal.

## **ECONOMIC IMPLICATIONS**

11. As the additional payment involved represents only a small fraction of the Fund balance, the proposal will not result in an increase in the levy rate. Thus there will be no additional cost burden on employers.

## **PUBLIC CONSULTATION**

12. Both the Protection of Wages on Insolvency Fund Board and the Labour Advisory Board have endorsed the proposal. The Legislative Council Panel on Manpower has also given their support to the proposal.

## ~~**THE LEGISLATIVE COUNCIL RESOLUTION**~~

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## ~~**LEGISLATIVE TIMETABLE**~~

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~~————— Moving of Resolution ——— 3 February 1999~~

~~————— Publication in the Gazette — 5 February 1999~~

## ~~**EFFECTIVE DATE**~~

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**PUBLICITY**

13. A press release will be issued on 3 February 1999.

Education and Manpower Bureau

File Ref.: EMB CR 7/3051/82 XVII

February 1999

PROTECTION OF WAGES ON INSOLVENCY ORDINANCE

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**RESOLUTION**

(Under section 16(3) of the Protection of Wages on  
Insolvency Ordinance (Cap. 380))

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RESOLVED that -

- (1) with effect from 5 February 1999 (“the effective date”), section 16(2) (f) (i) of the Protection of Wages on Insolvency Ordinance be amended, by repealing “\$36,000” where it twice appears and substituting “\$50,000”;
- (2) the Ordinance as amended by this Resolution shall not apply in respect of a severance payment the liability for payment of which arose before the effective date; and
- (3) the Ordinance as in force immediately before the effective date shall apply to a severance payment the liability for payment of which arose before that date as if this Resolution had not been made and passed.

PROTECTION OF WAGES ON INSOLVENCY ORDINANCE

**RESOLUTION OF THE LEGISLATIVE COUNCIL**

Resolution made and passed by the Legislative Council under section 16(3) of the Protection of Wages on Insolvency Ordinance (Cap. 380) on 1999.

RESOLVED that -

- (1) with effect from 5 February 1999 (“the effective date”), section 16(2) (f) (i) of the Protection of Wages on Insolvency Ordinance be amended, by repealing “\$36,000” where it twice appears and substituting “\$50,000”;
- (2) the Ordinance as amended by this Resolution shall not apply in respect of a severance payment the liability for payment of which arose before the effective date; and
- (3) the Ordinance as in force immediately before the effective date shall apply to a severance payment the liability for payment of which arose before that date as if this Resolution had not been made and passed.

Clerk to the Legislative Council

1999