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Panel on Manpower

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 18 June 2009**

Protection of Wages on Insolvency Fund

Purpose

This paper provides background information on 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 PWIF. 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 the Labour Advisory Board (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 meeting of the Panel 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 PWIF 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 18 December 2008, the latest financial position of PWIF is as follows -

- (a) in the face of the prevailing severe external economic environment, PWIF recorded an increase in the number of applications during the first eight months of the 2008-2009 financial year. Between April and November 2008, 4 461 applications were received by PWIF, representing a rise of 42% over the figure of 3 134 applications during the same period in 2007-2008. Nevertheless, the number of cases was still at a relatively low level in comparison with those in recent years;
- (b) concomitant with the rising trend of applications, the expenditure of PWIF increased by 18% to \$86.4 million in the period of April to November 2008. On the income side of PWIF, although the levy rate had been reduced by 25% from \$600 to \$450, more BRCs were issued from April to November 2008 than in the same period of last year, and the income recorded a smaller drop of 17%, amounting to \$318.7 million. As the income of PWIF was still able to exceed its expenditure by a surplus of \$232.3 million for the first eight months of 2008-09, its reserve peaked at \$1,460.8 million by the end of November 2008; and
- (c) a comparison of the financial position of PWIF for April to November 2007 and April to November 2008 is as follows -

	2007-2008 (April to November 2007) (\$m)	2008-2009 (April to November 2008) (\$m)	Change %
Income	384.3	318.7	-17%
Expenditure	73.5	86.4	+18%
Surplus	310.8	232.3	-25%
Reserve (Accumulated Fund)	1,082.9	1,460.8	+35%

11. Some members asked about the preventive measures to deter abuses of PWIF and whether a mechanism was in place to trigger off reviews of the levy rate to ensure that PWIF had sufficient reserve.

12. The Administration advised that front-line officers of LD had stepped up inspection and investigation to prevent abuses of PWIF. Apart from hiring experienced retired police officers to assist in the investigation, LD also collected intelligence from trade unions. As a result of these measures, some unscrupulous employers were convicted with imprisonment terms imposed.

13. The Administration also advised that the financial position of PWIF was subject to the amount of its levy income and ex gratia payment. LD, together with the PWIF Board, would monitor the financial position of PWIF closely to ensure there was sufficient reserve. An objective mechanism was put in place to decide whether it was necessary to review the rate of levy. Accordingly, where the accumulated fund fell below \$800 million by 20% or more for four consecutive quarters, the PWIF Board would consider whether to review the rate of levy to recommend a levy increase.

14. Some members were concerned about whether LD could meet the performance pledge for granting ex gratia payment to employees, in view of the increasing number of applications. They also asked whether LD would work with liquidators to shorten the liquidation process. They expressed concern that liquidators sometimes took a long time to calculate the amount of wages in arrears and severance payment and as a result, the ex gratia payment to employees had been unduly delayed.

15. The Administration informed members that the performance pledge of LD was to effect ex gratia payment to successful applicants within 10 weeks upon receipt of all relevant information and documents required for processing the applications. LD was currently able to effect payment in 2.5 weeks on average after receipt of all relevant information. LD had all along maintained close liaison with liquidators. There had been further improvement in major liquidation cases recently where the preparation work made beforehand had facilitated the distribution of application forms for PWIF to the affected employees in the first instance upon a company declaring its closure. Some applications involving complications, however, might take longer time to process. LD had maintained effective liaison with employers, employees and liquidators to resolve disputes in insolvent cases and would study each case and ascertain whether an employer-employee relationship could be established to prevent abuse of PWIF.

16. Some members pointed out that in March 2008, the levy was reduced from \$600 to \$450 because of the improved financial position of PWIF. At that time, the Administration had undertaken to consider expanding the scope of ex gratia payment. They asked whether the Administration would honour its undertaking in view of the financial turmoil.

17. The Administration responded that the PWIF Board had given support to the proposal to expand the scope of ex gratia payment to cover accumulated

annual leave pay subject to the ceiling of \$10,500 and the limit of one service year of seven to 14 annual leave days. The Administration planned to present the proposal to LAB for consideration in the coming year.

Related information

18. At the Council meeting on 19 November 2008, Hon Paul CHAN raised a question on PWIF. The Administration's reply to the written question raised by Hon Paul CHAN is in the **Appendix**.

Relevant papers

19. 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));
- (b) Administration's paper on the latest financial position of PWIF (LC Paper No. CB(2)480/08-09(07));
- (c) minutes of meeting of the Panel on Manpower on 15 November 2007 (LC Paper No. CB(2)629/07-08); and
- (d) minutes of meeting of the Panel on Manpower on 18 December 2008 (LC paper No. CB(2)865/08-09).

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

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.

Annex

**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%