

For information on
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Legislative Council Panel on Manpower
Latest financial position of
the Protection of Wages on Insolvency Fund

Purpose

This paper briefs Members on the latest financial position of the Protection of Wages on Insolvency Fund (the Fund) which provides ex gratia payment to employees of insolvent employers.

Background

2. The Fund has been in operation under the Protection of Wages on Insolvency Ordinance, Cap. 380, since 1985. Employees who are owed wages, wages in lieu of notice and severance payment by their insolvent employers may apply for ex gratia payment from the Fund.¹ At present, the maximum payment that an employee can receive from the Fund is \$278,500, comprising \$36,000 for arrears of wages, \$22,500 for wages in lieu of notice, and severance payment up to \$50,000 plus 50% of the remainder of the entitlement.

3. The Fund 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 include money recovered from the remaining assets of insolvent employers through subrogation as well as bank deposit returns.

4. The Labour Department (LD) is responsible for processing employees' applications for ex gratia payment and the operation of the Fund. The Protection of Wages on Insolvency Fund Board (the Fund Board), established under the Protection of Wages on Insolvency Ordinance, performs the statutory functions of administering the Fund and making recommendations to the Chief Executive with respect to the rate of levy.

¹ The Fund only covered arrears of wages with a payment ceiling of \$8,000 when it was set up in 1985.

Improved reserve of the Fund in recent years

5. The Fund registered annual surpluses during the first 12 years of its operation. Nevertheless, with the influx of employees' applications after the Asian financial crisis, the Fund suffered from continual deficits since 1997-98, and the rate of BRC levy had to be raised from \$250 to \$600 in May 2002 in order to meet the need for ex gratia payment.

6. From 2004-05 onwards, however, the Fund has been able to regain surpluses as the number of applications subsided significantly in consequence of the booming economy in general and LD's all-out efforts in combating wage defaults. The Fund's reserve rose from an accumulated deficit of \$18.4 million as at the end of 2003-04 to an accumulated surplus of \$1,228.6 million by the end of 2007-08. As for the annual surplus of the Fund, the sum also multiplied from \$114.6 million in 2004-05 to \$456.5 million in 2007-08. With the improved financial position of the Fund as indicated in Annex (Table A), the rate of levy has been reduced to \$450 with effect from March 2008.²

Financial position of the Fund in April to November 2008

7. In the face of the prevailing severe external economic environment, the Fund recorded an increase in the number of applications during the first eight months of the current 2008-09 financial year. Between April and November 2008, 4 461 applications were received by the Fund, representing a rise of 42% over the figure of 3 134 applications in the same period of 2007-08. Nevertheless, the case level of the Fund for the time being was still in a relatively low position when compared to that of the recent years, as shown in Annex (Table B).

8. Concomitant with the rising trend of applications, the expenditure of the Fund increased by 18% to \$86.4 million in the period of April to November 2008. On the income side of the Fund, 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 the Fund 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.

² After the Labour Advisory Board and the Fund Board had endorsed the proposed levy rate of \$450, the Administration briefed the Legislative Council (LegCo) Panel on Manpower in November 2007, and gazetted and tabled at LegCo in January 2008 the Business Registration Ordinance (Amendment: Levy Reduction) Order 2008. The new levy rate came into effect on 14 March 2008.

9. A comparison of the financial position of the Fund for April to November 2007 and April to November 2008 is set out in Annex (Table C).

Continual monitoring by LD and Fund Board

10. The financial position of the Fund is subject to the amount of its levy income and ex gratia payment. Therefore, it will continue to be linked to 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 Fund Board, will monitor the financial position of the Fund closely in order that the Fund would maintain sufficient reserve and cash flow for the rainy days, including the possible need to cope with any sudden outbreak of large insolvency cases.

11. Furthermore, the Fund Board, in discharging its statutory function of making recommendations for the rate of levy of the Fund, unanimously agreed on an objective mechanism for triggering its future reviews of the levy rate at the meeting held on 30 April 2008. The objective mechanism of the Fund Board is as follows:

- (a) where the accumulated fund falls below \$800 million by 20% or more for four consecutive quarters, the Fund Board would consider whether to review the rate of levy to recommend a levy increase; and
- (b) where the accumulated fund exceeds \$1,200 million by 20% or more for four consecutive quarters, the Fund Board would consider whether to review the rate of levy to recommend a levy reduction.

It is also the consensual view of the Fund Board that when making use of the objective mechanism, it would at the same time consider all the relevant factors that would impinge on the Fund so as to decide whether it is necessary to review the rate of levy. Moreover, when the Fund has to deal with emergencies, the Fund Board would deliberate on whether to commence a levy review as appropriate.

Labour and Welfare Bureau
Labour Department
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Table A: Financial position of the Fund

	1997-98 (\$m)	1998-99 (\$m)	1999-00 (\$m)	2000-01 (\$m)	2001-02 (\$m)
Income	261.8	254.3	268.6	236.1	201.1
Expenditure	286.5	439.6	473.2	366.2	339.2
Surplus/(Deficit)	(24.7)	(185.3)	(204.6)	(130.1)	(138.1)
Reserve (Accumulated Fund)	853.0	667.7	463.1	333.0	194.9

	2002-03 (\$m)	2003-04 (\$m)	2004-05 (\$m)	2005-06 (\$m)	2006-07 (\$m)	2007-08 (\$m)
Income	416.6	436.0	452.4	502.0	522.1	559.5
Expenditure	576.4	489.5	337.8	215.6	160.1	103.0
Surplus/(Deficit)	(159.8)	(53.5)	114.6	286.4	362.0	456.5
Reserve (Accumulated Fund)	35.1	(18.4)	96.3	410.1	772.1	1,228.6

Table B: No. of applications received by the Fund

	2004-05	2005-06	2006-07	2007-08	2008-09 (April to November 2008)
Applications received	12 788	8 751 (-32%)	7 265 (-17%)	4 506 (-38%)	4 461 (+42%)

(% – change over corresponding period of previous year.)

Table C: Latest financial position of the Fund

	2007-08 (April to November 2007) (\$m)	2008-09 (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%