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**Subcommittee on Business Registration Ordinance
(Amendment of Schedule 2) Order 2013**

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper provides background information on the discussions by the Panel on Manpower ("the Panel") on the rate of Business Registration Certificate ("BRC") levy for the Protection of Wages on Insolvency Fund ("PWIF").

Background

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 ("SP") by their insolvent employers may apply for ex-gratia payment from PWIF. The maximum amount that an employee can receive from PWIF is \$289,000, comprising four months' wages up to \$36,000, one month's wage in lieu of notice up to \$22,500, and SP up to \$50,000 plus 50% of the remainder of the entitlement under the Employment Ordinance (Cap. 57) ("EO"), and a maximum of \$10,500 in respect of pay for untaken annual leave and untaken statutory holidays.

3. Currently, PWIF is mainly financed by an annual levy at the rate of \$450 on each BRC issued under the Business Registration Ordinance (Cap. 310) ("BRO"). 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 BRC levy.

4. When PWIF was set up in 1985, the BRC levy rate was set at \$100 per annum. Since then, the levy rate has been revised three times. The first revision took place in July 1991 when the annual levy rate was raised from \$100 to \$250. In May 2002, the levy was further increased from \$250 to \$600 per annum as the upsurge in claims for ex-gratia payment after the Asian financial crisis had led to rapid depletion of PWIF. In March 2008, the levy was reduced from \$600 to the current rate of \$450 per annum.

5. According to the Administration, the PWIF Board together with LD had reviewed the rate of BRC levy, and agreed at its meeting on 17 February 2012 to reduce the levy rate from the current \$450 per annum to \$250 per annum. The proposed levy reduction was unanimously endorsed by the Labour Advisory Board ("LAB") at its meeting on 22 October 2012.

The Business Registration Ordinance (Amendment of Schedule 2) Order 2013

6. The Business Registration Ordinance (Amendment of Schedule 2) Order 2013 amends item 3 in the Table in Schedule 2 to BRO to revise the levy rates payable in relation to the registration of a business and a branch of a business under BRO. The levy will be reduced from \$1,350 to \$750 if an election is made for a three-year certificate, and from \$450 to \$250 if there is no such election.

Deliberations of the Panel

Review of the levy rate

7. Concern was raised as to whether a mechanism was in place for triggering reviews of the levy rate. Members were advised that LD, together with the PWIF Board, would monitor closely the financial position of PWIF to ensure that there was sufficient reserve. Apart from the amount of reserve, the number of applications and the amount of claims payment to be made would also be taken into account when assessing the financial position of PWIF. In April 2008, the PWIF Board, in discharging its statutory function of making recommendations on the rate of BRC levy, agreed on an objective mechanism for triggering its future reviews of the levy rate. In accordance with the mechanism, where the accumulated surplus fell below \$800 million by 20% or more for four consecutive quarters or where it exceeded \$1,200 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 or reduction.

8. In its reply to a written question on PWIF raised at the Council meeting of 8 February 2012, the Administration explained that when making use of the review mechanism, the PWIF Board would at the same time consider all the relevant factors that would impinge on PWIF and, make adjustment proposal under the mechanism on the levy rate at an appropriate time. To maintain flexibility to meet economic changes and the needs of PWIF, no upper or lower limit in respect of the levy rate was set.

Previous adjustment of BRC levy rates

9. When the Panel was briefed in 2002 on the Administration's proposal to increase the BRC levy from \$250 to \$600 per annum to address the financial problem of PWIF, some members expressed concern about the level of the BRC levy and whether the levy would be reduced if the reserve of PWIF had reached a reasonable level. In order to increase the reserve of PWIF to meet claims payment, there was a suggestion that the Government should consider injecting \$100 million into PWIF.

10. Members were advised that LAB was consulted on the revision proposal and agreed that a review of the BRC levy rate should be conducted in the following year. According to the Administration, the levy rate might be adjusted downwards if the financial position of PWIF so permitted. On the suggestion of making an injection of \$100 million to PWIF by the Government, the Administration pointed out that levy income was not Government revenue. The BRC levy collected would go to PWIF for the purpose of making ex-gratia payment to employees who were unable to receive outstanding wages and other statutory entitlements from their insolvent employers. It was inappropriate in principle for the Government to inject public money into PWIF as the responsibility for providing financial assistance to employees of insolvency cases should be borne by employers rather than taxpayers in general. It was thus considered that the best way to maintain the financial viability of PWIF was to increase the BRC levy.

11. Members were subsequently advised that the PWIF Board had reviewed the levy rate in February 2003 and February 2004 and considered that it should remain unchanged.

12. At its meeting on 15 November 2007, the Panel was consulted on the Administration's proposal to reduce the annual rate of BRC levy 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 LAB. Some members,

however, considered that in view of the improvement in the local economy, the Administration should consider adjusting the levy rate downwards to the level in 2002, i.e. \$250 per annum, as the Administration had previously agreed that the levy rate would be adjusted downwards if the Fund's financial position so permitted. The levy reduction as supported by LAB was implemented on 14 March 2008.

Proposed amendment to the BRC levy rate

13. At its meeting on 19 February 2013, the Panel was briefed on the Administration's proposal to revise the rate of BRC for PWIF from the current \$450 per annum to \$250 per annum. Members were advised that with the continual improvement of the financial position of PWIF, the PWIF Board, together with LD, had reviewed the rate of BRC levy. The PWIF Board proposed to reduce the levy rate after taking into account the relevant factors, including the uncertain local economic prospects, PWIF as a safety net for employees affected by business closures and the impact of the Protection of Wages on Insolvency (Amendment) Ordinance 2012¹.

14. Some members expressed the view that in the light of the improved and stable financial position of PWIF, consideration should be given to expanding the scope of PWIF so as to raise the maximum payout from PWIF to better safeguard employees' right under EO. Some members also called on the Administration to review and expand the coverage of PWIF with a view to providing employees affected by the insolvency of their employers with ex-gratia payment for all untaken annual leave and untaken statutory holidays as well as full amount of SP.

15. The Administration explained that PWIF was set up to provide timely financial relief to employees affected by the insolvency of their employers, instead of seeking to recover all the outstanding wages and entitlements in arrears for insolvent employers in accordance with the employment contracts. The scope of coverage and the maximum amount of the ex-gratia payment for the outstanding wages and other statutory entitlements were clearly specified under PWIO, whereas employees could seek to recover all the wages in arrear and outstanding payment of statutory entitlement under EO through other established channels. In 2011-2012, 75% and 99% of the applicants were paid ex-gratia payment from PWIF to fully cover their respective claims of outstanding wages and wages in lieu of notice respectively.

¹ The Protection of Wages on Insolvency (Amendment) Ordinance 2012 seeks to, among others, expand the scope of the ex-gratia payment under PWIF to cover untaken statutory holidays and untaken annual leave subject to certain limitations.

16. As regards the claims payment for SP from PWIF, the Administration advised that employees of insolvent employers could receive ex-gratia payment from PWIF for SP of \$50,000 plus 50% of the remainder of the entitlement, where the SP entitlement should be calculated in accordance with the provisions in EO. Within the prescribed limit of ex-gratia payment from the Fund, the claims for SP made by an employee affected owing to the insolvency of his employer would first be met by the employee's accrued benefits derived from employer's contribution under the Mandatory Provident Fund schemes, and the ex-gratia payment made from PWIF in respect of SP would cover the remainder of entitlement of the employee. According to the Administration, about 40% of the applications could get ex-gratia payment made from PWIF to fully cover their SP claims in 2011-2012. The Administration stressed that the protection of employees' entitlement for claims payment from PWIF would remain unchanged after the proposed reduction of the BRC levy rate.

17. On the review of the scope of PWIF, the Administration pointed out that the PWIF Board had the statutory functions of administering the Fund and making recommendations to the Chief Executive with respect to the rate of levy. Therefore, the Administration was not in a position to commit the Board for conducting a review of the scope of PWIF. The Administration advised that the PWIF Board was aware of members' concerns raised at the relevant Bills Committee on the Protection of Wages on Insolvency (Amendment) Ordinance 2012 (i.e. abolition of the ceiling on the number of days for calculating the amounts of pay for untaken statutory holidays) and had undertaken to review the coverage of PWIF one year after the implementation of the Amendment Bill which only took effect on 29 June 2012.

Relevant papers

18. A list of the relevant papers on the Legislative Council website is in the **Appendix**.

**Relevant papers on the adjustment to the rate of
Business Registration Certificate levy for
the Protection of Wages on Insolvency Fund**

Committee	Date of meeting	Paper
Panel on Manpower	28.2.2002 (Item V)	<u>Agenda</u> <u>Minutes</u>
	21.3.2002 (Item VI)	<u>Agenda</u> <u>Minutes</u>
	15.11.2007 (Item IV)	<u>Agenda</u> <u>Minutes</u>
	20.1.2011 (Item III)	<u>Agenda</u> <u>Minutes</u>
Legislative Council	8.2.2012	[Question 20] Asked by: Hon Paul CHAN <u>Review on the adjustment mechanism of the levy rate of Business Registration Certificate</u>
Panel on Manpower	19.2.2013 (Item III)	<u>Agenda</u> <u>Minutes</u>