

LEGISLATIVE COUNCIL BRIEF

Business Registration Ordinance
(Cap. 310)

Business Registration Ordinance (Amendment of Schedule 2) Order 2013

INTRODUCTION

Under section 18(2) of the Business Registration Ordinance (Cap. 310) (BRO), the Financial Secretary may by order published in the Gazette amend Schedule 2. We propose the amendments as set out in the Business Registration Ordinance (Amendment of Schedule 2) Order 2013 at Annex 1 to revise the rates of Business Registration Certificate (BRC) levy which finances the Protection of Wages on Insolvency Fund (the Fund).

BACKGROUND AND JUSTIFICATIONS

2. The Fund provides to employees whose employers become insolvent ex gratia payment which covers wages, wages in lieu of notice, severance payment, pay for untaken annual leave and untaken statutory holidays. It is financed by a levy at the rate of \$450 per annum on each BRC or branch registration certificate issued under the BRO. The Protection of Wages on Insolvency Fund Board (Fund Board) 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.

3. Since the Fund's establishment in 1985, the levy rate per annum on BRC has been revised thrice, including: (a) an increase of the levy from \$100 to \$250 on 1 July 1991; (b) an upward adjustment of the levy from \$250 to \$600 on 16 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 on 14 March 2008 with the improvement of the accumulated surplus of the Fund.

Proposed amendment to the BRC levy rate

4. 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. With the speedy recovery of the local economy, claims payment by the Fund has since been declining, as shown in Table A below.

Table A: Claims payment between 2007-08 and 2012-13

2007-08 (\$m)	2008-09 (\$m)	2009-10 (\$m)	2010-11 (\$m)	2011-12 (\$m)	2012-13 (\$m)
79.4	129.5 (+63.1%)	153.7 (+18.7%)	90.6 (-41.1%)	67.9 (-25.1%)	60.6 (-10.8%)

(% – change over previous year)

5. The financial position of the Fund has also continued to improve. As at the end of 2012-13, the accumulated surplus of the Fund reached \$3,287.2 million. The financial position of the Fund between 2007-08 and 2012-13 is detailed in Table B below.

Table B: Financial position of the Fund between 2007-08 and 2012-13

	2007-08 (\$m)	2008-09 (\$m)	2009-10 (\$m)	2010-11 1 (\$m)	2011-12 (\$m)	2012-13 (\$m)
Income	559.5	471.3	467.1	537.7	573.8	618.1
Expenditure	103.0	153.7	177.6	108.1	88.4	81.6
Surplus	456.5	317.6	289.5	429.6	485.4	536.5
Reserve (Accumulated surplus)	1,228.6	1,546.1	1,835.7	2,265.3	2,750.7	3,287.2

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

- (a) Based on past experience, the cyclical ups and downs of the Hong Kong economy have 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) were 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 2. As Hong Kong is a small and highly externally-oriented economy, its economic outlook is particularly susceptible to the vicissitudes on the external front;

- (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. The Fund Board has all along adopted a prudent approach in managing the Fund to ensure a healthy level of accumulated reserve and cash flow 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 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.

7. Balancing the above factors, the Fund Board at its meeting held on 17 February 2012 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.

8. Projected on the basis of the proposed levy rate of \$250, the Fund will have a yearly surplus of about \$180 million in 2013-14 (Annex 3), 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.

THE ORDER

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

LEGISLATIVE TIMETABLE

10. The legislative timetable is as follows -

Publication in the Gazette	24 May 2013
Tabling at the Legislative Council	29 May 2013
Order to come into operation (effective date of the new levy rate)	19 July 2013

IMPLICATIONS OF THE PROPOSAL

11. The amendment is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the binding effect of the BRO. There are no financial or civil service implications for the Government. It is expected to slightly reduce the cost of businesses to the small and medium enterprises.

PUBLIC CONSULTATION

12. The Labour Advisory Board at its meeting on 22 October 2012 unanimously endorsed the above proposal of the Fund Board to revise the rate of BRC levy. The Legislative Council Panel on Manpower was consulted on 19 February 2013 and Panel Members in general supported or expressed no objection to the proposed reduction of levy rate. A few Panel Members suggested a review of the scope of the Fund in view of its sound financial position. The Administration has separately relayed their views to the Fund Board for consideration.

PUBLICITY

13. A press release will be issued on 24 May 2013 when the Order is published in the Gazette. A spokesman from the LD will be available to handle press enquiries.

ENQUIRIES

14. Enquiries on this brief may be addressed to Mr Ernest IP, Assistant Commissioner for Labour (Employees' Rights and Benefits) at 2852 4083 or Miss Bonny WONG, Senior Labour Officer (Wage Security) of LD at 2923 5282.

Labour and Welfare Bureau
Labour Department
May 2013

Business Registration Ordinance (Amendment of Schedule 2) Order 2013

(Made by the Financial Secretary under section 18(2) of the Business
Registration Ordinance (Cap. 310))

Financial Secretary

1. Commencement

This Order comes into operation on 19 July 2013.

2013

2. Business Registration Ordinance amended

The Business Registration Ordinance (Cap. 310) is amended as set out in section 3.

3. Schedule 2 amended

(1) Schedule 2, Table, item 3(a)—

Repeal

everything before the dash

Substitute

“(a) on or after 21 February 2011 and before 19 July 2013”.

(2) Schedule 2, Table, after item 3(a)—

Add

“(b) on or after 19 July 2013—

(i) where no election is made under section 6(5C) \$ 250

(ii) where an election is made under section 6(5C) \$ 750”.

Explanatory Note

This Order reduces the levy payable on or after 19 July 2013 in relation to the registration of a business and a branch of a business under the Business Registration Ordinance (Cap. 310).

**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)	2008-09 (Actual)	2009-10 (Actual)	2010-11 (Actual)	2011-12 (Actual)	2012-13 (Actual)	2013-14 (Forecast at levy rate of \$450)	2013-14 (Forecast at levy rate of \$250)
	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m
INCOME								
Levy on BRC	513.0	439.4	455.1	510.9	528.7	574.9	531.0 ⁽¹⁾	295.0 ⁽¹⁾
Subrogation Income	8.4	4.8	7.1	14.1	7.1	5.6	5.5 ⁽²⁾	5.5 ⁽²⁾
Interest on Deposits	38.1	27.1	4.9	12.7	38.0	37.6	38.3	37.0
	<u>559.5</u>	<u>471.3</u>	<u>467.1</u>	<u>537.7</u>	<u>573.8</u>	<u>618.1</u>	<u>574.8</u>	<u>337.5</u>
EXPENDITURE								
Claims Payment	79.4	129.5	153.7	90.6	67.9	60.6	133.6 ⁽²⁾	133.6 ⁽²⁾
Other Expenses	23.6	24.2	23.9	17.5	20.5	21.0	21.8 ⁽²⁾	21.8 ⁽²⁾
	<u>103.0</u>	<u>153.7</u>	<u>177.6</u>	<u>108.1</u>	<u>88.4</u>	<u>81.6</u>	<u>155.4</u>	<u>155.4</u>
Surplus of Income over Expenditure	456.5	317.6	289.5	429.6	485.4	536.5	419.4	182.1
Total Accumulated Fund as at end of Financial Year	<u><u>1,228.6</u></u>	<u><u>1,546.1</u></u>	<u><u>1,835.7</u></u>	<u><u>2,265.3</u></u>	<u><u>2,750.7</u></u>	<u><u>3,287.2</u></u>	<u><u>3,706.6</u></u>	<u><u>3,469.3</u></u>

Notes:

(1) Based on the estimation that a total of 1 180 000 BRCs would be issued in 2013-14, the projected levy income would be \$450 x 1 180 000 and \$250 x 1 180 000 respectively.

(2) Based on the Estimates of Income and Expenditure for 2013-14 of the Fund.