

For information on
24 August 2021

Legislative Council Panel on Manpower

Review of the coverage of ex gratia payment items under the Protection of Wages on Insolvency Fund

Introduction

This paper briefs Members on the progress of the review of the coverage of ex gratia payment items under the Protection of Wages on Insolvency Fund (the Fund).

Background

2. The Fund, established under the Protection of Wages on Insolvency Ordinance (Cap. 380) (PWIO), provides timely relief by granting ex gratia payment to employees in the event of the closure of business of their insolvent employers. The Fund is administered by the Protection of Wages on Insolvency Fund Board (the Fund Board) which consists of representatives of employer and employee as well as public officers. The Labour Department (LD) is responsible for processing the applications and the operation of the Fund. The Fund is mainly financed by an annual levy on business registration certificate (BRC) and the current annual levy is at \$250 per BRC.

3. Major statistics and financial position of the Fund over the past few years are tabulated at **Annex**.

Existing Coverage

4. When the Fund was set up in 1985, its ex gratia payment only covered arrears of wages of the last four months subject to the payment ceiling of \$8,000. The Fund Board and LD would examine the coverage of the Fund with due consideration of the economic development and needs of society. To date, the Fund has increased the ceilings of ex gratia payments and expanded the coverage of the Fund for eight times. The latest one is the passage of the Protection of Wages on Insolvency (Amendment) Ordinance 2012 (Amendment Ordinance) by extending the Fund to include pay for untaken annual leave and

pay for untaken statutory holidays¹. At present, the maximum amount of ex gratia payment that an employee can receive from the Fund is \$289,000², comprising:

- wages for not more than four months (up to \$36,000);
- one-month wages in lieu of notice (up to \$22,500);
- severance payment (SP) up to \$50,000 plus 50% of any excess entitlement³; and
- pay for untaken annual leave not exceeding the last two leave years and/or pay for untaken statutory holidays within the last four months of service (up to a maximum of \$10,500).

Review Progress in Recent Years

5. Subsequent to the extension of the coverage of the Fund in 2012, the Fund Board kick-started a review of the coverage of the Fund in the second half of 2013 again and further agreed to review the BRC levy rate as well in the following year. However, a case of judicial review concerning the method of calculation of ex gratia payment on SP had yet to complete at that time and the Court's ruling might have an impact on the Fund. The Fund Board considered it necessary to await the ruling of the case so as to ascertain its impact on the amount of ex gratia payment on SP payable by the Fund and its financial position.

6. The Court of Final Appeal handed down judgement on the case in May 2016. Having considered the impact of the ruling on the financial position of the Fund, the Fund Board resumed the review in December 2017. Subsequently, as the Government proposed to abolish the "offsetting" of SP/long service payment with employers' mandatory contributions under the Mandatory Provident Fund (MPF) System (the abolition arrangements) and such proposal would have far-reaching impact on the amount of ex gratia payment on SP payable by the Fund and its financial position, the Fund Board at its meeting of December 2017 and subsequent meetings came to a view that further discussion

¹ The Amendment Ordinance has come into operation on 29 June 2012.

² The benefits accrued from the contributions paid to the Mandatory Provident Fund by the employer have not yet been reduced.

³ As the Employment Ordinance caps SP at \$390,000, an employee may receive up to \$220,000 for SP from the Fund.

of the review should resume when there was concrete progress on the abolition arrangements in order to have a more informed assessment of the relevant impact on the projected expenses of the Fund if the ceilings of ex gratia payment items were raised.

Latest Position of the Review

7. The Fund Board was briefed on the latest development of the abolition arrangements at its meeting on 7 July 2021. Having considered that the details of the proposed arrangements have nearly been thrashed out, the Fund Board decided to resume the review of the coverage of ex gratia payment items under the Fund and the BRC levy rate at the meeting, and would continue the deliberation on the review at its next meeting to be held in the fourth quarter of 2021.

8. Upon completion of the review by the Fund Board, we will consult the Labour Advisory Board on the outcome of the review and the proposals by early next year. We will report to the Legislative Council (LegCo) Panel on Manpower within the first half of next year with a view to introducing the proposed amendments to PWIO into LegCo within 2022.

9. Members are invited to note the information in this paper.

Labour and Welfare Bureau
Labour Department
August 2021

Table A: Major Statistics of the Fund

	2017	2018	2019	2020	2021 (January to June)
Levy on business registration certificate	\$381 million (↑2%)	\$387 million (↑2%)	\$393 million (↑2%)	\$393 million (0%)	\$208 million (↑5%)
Number of applications received*	2 333 (↓30%)	2 276 (↓2%)	3 171 (↑39%)	3 020 (↓5%)	1 762 (↑22%)
Number of applications approved*	2 640 (↑9%)	1 689 (↓36%)	2 524 (↑49%)	2 428 (↓4%)	1 603 (↑36%)
Amount of ex gratia payment made by the Fund	\$79.6 million (↓1%)	\$51.0 million (↓36%)	\$83.1 million (↑63%)	\$78.5 million (↓6%)	\$53.5 million (↑36%)

(↑↓% : Comparison with figures of the same period last year)

* Applications are reckoned on a per-employee basis. Hence, the number of applications is the same as the number of employees involved.

Table B: Financial position of the Fund (according to financial year)

	2017-18 (\$million)	2018-19 (\$million)	2019-20 (\$million)	2020-21 (\$million)	2021 (April to June) (\$million)
Income	480.7	509.9	546.5	506.0	126.2
Expenditure	46.6	96.7	131.9	60.5	38.6
Surplus	434.1	413.2	414.6	445.5	87.6
Accumulated Surplus	5,024.7	5,437.9	5,852.5	6,298.0	6,385.6