

立法會
Legislative Council

LC Paper No. CB(2)1384/20-21(08)

Ref : CB2/PL/MP

Panel on Manpower

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 24 August 2021**

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

Purpose

This paper provides background information and summarizes discussions on issues relating to review of coverage of ex gratia payment items under the Protection of Wages on Insolvency Fund ("PWIF") since the Fifth Legislative Council ("LegCo").

Background

2. PWIF was established under the Protection of Wages on Insolvency Ordinance (Cap. 380) ("PWIO") in 1985 to provide timely relief in the form of ex gratia payment to employees of insolvent employers. PWIF is mainly financed by a levy at the rate of \$250 per annum on each Business Registration Certificate 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. It is administered by the PWIF Board which consists of employer and employee representatives as well as public officers. The Labour Department ("LD") is responsible for processing applications and the operation of PWIF.

3. 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 wages

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").

4. Following the coming into operation of the Protection of Wages on Insolvency (Amendment) Ordinance 2012 ("Amendment Ordinance"), the scope of PWIF is expanded to cover pay for untaken annual leave ("AL") and pay for untaken statutory holidays ("SHs"), subject to a payment ceiling of \$10,500, so as to improve the protection of employees who are affected by their insolvent employers. During the scrutiny of the above legislative proposal, members were advised that the PWIF Board agreed to review the coverage of PWIF in respect of the pay for untaken AL, pay for untaken SHs and the payment ceiling of \$10,500 one year after the implementation of the Amendment Ordinance. The Administration also undertook to convey to the PWIF Board members' suggestion of including in the review the other items covered by PWIF and report the outcome of the review to the Panel on Manpower ("the Panel") at an appropriate time.

5. According to the Administration, the PWIF Board has kick-started a review of PWIF in the second half of 2013 and, having regard to members' views, has undertaken to cover all the payment items under PWIF in its review. It will consult the Labour Advisory Board ("LAB") and the Panel as soon as possible when the result of the review is known.

Members' deliberations

Payment items under PWIF

6. Some members were of the view that the current scope of PWIF was not adequate to protect the interests of employees. These members considered it unreasonable for those employees affected by the insolvency of their employers not being able to receive the full or higher amount of wages in arrear and outstanding payment of other statutory entitlements as provided for under EO, i.e. wages in lieu of notice, SP, and pay for untaken SHs and untaken AL. Moreover, the ex gratia payment from PWIF did not cover the outstanding employers' contribution to the Mandatory Provident Funds (MPF) for their employees, which was part of employees' remuneration for their service rendered to their employers. These members called on the Administration to review the scope of PWIF, so as to accord the employees concerned with better coverage or the full statutory entitlements.

7. 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 from 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 arrears and outstanding payment of statutory entitlement under EO through other established channels. The Administration took the view that making ex gratia payment from PWIF in respect of wages in arrears owed to an applicant by his insolvent employer and recovery of outstanding wages owed to an employee from his employer were separate issues.

8. Some members shared the view of the Administration that PWIF was a safety net for employees affected by business closures. As such, recovery of outstanding wages owed to employees from their employer should not be fully met by PWIF. These members considered that the Fund should adopt a prudent approach and strictly adhere to its objective in managing the Fund to ensure a comfortable level of accumulated reserve to effectively cope with justifiable needs of ex gratia payment from PWIF.

Payment ceiling of the ex gratia payment items under PWIF

9. Some members expressed grave concern that it had been over 20 years since the ceiling of wages in lieu of notice was increased to \$22,500 in 1995 and urged the Administration to consider conducting a review of the payment ceilings of the ex gratia payment items under PWIF. There was a suggestion that the ceiling for ex gratia payment for wages in arrears should be increased from the existing \$36,000 to \$76,000, which was equivalent to four months' wages for an employee with the median monthly employment earning (i.e. \$19,000) in the second quarter of 2020.

10. The Administration advised that the PWIF Board reviewed from time to time the scope of protection of PWIF having regard to the changes in the socio-economic circumstances and needs as well as the financial position of PWIF in order to progressively improve the protection accorded to employees. With the improvements made over the years, the majority of applicants for PWIF could receive all or a large part of the amount that they applied for. Notwithstanding this, the PWIF Board would take into account members' views regarding the item on wages in lieu of notice in its review.

Review of the scope of PWIF

11. Noting that the PWIF Board kick-started a review of PWIF in the second half of 2013, members were gravely concerned about the progress of the review.

The Administration advised that based on the information and data gathered, the PWIF Board was conducting a review of the scope of coverage of all the payment items under PWIF. The PWIF Board had to conduct careful deliberation for holistic consideration, including the legislative proposal to be made by the Government to abolish the arrangement for "offsetting" the SP/long service payment with the MPF contributions which might bring substantial impact on the operation and financial position of PWIF. When the PWIF Board completed the review, the Government would consult LAB and report to the Panel on the outcome of the review.

Relevant papers

12. A list of the relevant papers on the LegCo website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
18 August 2021

Appendix

Relevant papers on the review of coverage of ex gratia payment under the Protection of Wages on Insolvency Fund

Committee	Date of meeting	Paper
Panel on Manpower	27.1.2014 (Item IV)	Agenda Minutes
Finance Committee	9.4.2020 (Eighth meeting - Labour)	Minutes
Legislative Council	20.1.2016	[Question 1] Asked by Hon KWOK Wai-keung Protection of Wages on Insolvency Fund
	22.4.2020	[Question 1] Asked by Hon POON Siu-ping Protection of Wages on Insolvency Fund
	21.4.2021	[Question 9] Asked by Hon WONG Kwok-kin Protection of Wages on Insolvency Fund
Bills Committee on Protection of Wages on Insolvency (Amendment) Bill 2011	---	Report

Committee	Date of meeting	Paper
Subcommittee on Business Registration Ordinance (Amendment of Schedule 2) Order 2013	---	Report

Council Business Division 2
Legislative Council Secretariat
18 August 2021