

LCQ19: Protection of Wages on Insolvency Fund

Following is a question by Reverend Canon the Hon Peter Douglas Koon and a written reply by the Secretary for Labour and Welfare, Mr Chris Sun, in the Legislative Council today (June 4):

Question:

Regarding the Protection of Wages on Insolvency Fund (PWIF), will the Government inform this Council:

(1) of the number of approved applications under the PWIF and their percentage in the total number of bankruptcy cases over the past five years;

(2) of the total amount of ex gratia payment released under the PWIF, the accumulated surplus of PWIF and the average amount approved per application in each of the past five years;

(3) given that the PWIF implemented enhancement measures in June 2022, which included engagement of private law firms to assist applicants in filing winding-up/bankruptcy petitions against the employers, and setting up of an in-house legal team to make recommendations direct to the Labour Department (LD) in respect of applications under section 18 of the Protection of Wages on Insolvency Ordinance (Cap. 380), of the respective number of (a) cases referred to law firms for follow-up actions (broken down into (i) cases with assistance rendered to applicants in filing winding-up/bankruptcy petitions against employers and (ii) cases not requiring the filing of winding-up/bankruptcy petitions against employers), and (b) cases received by the in-house legal team (broken down into (i) cases with recommendations made to the LD in accordance with Cap. 380 and (ii) cases not requiring the making of recommendations), since the implementation of the said enhancement measures;

(4) given that the Government has established an interdepartmental task force to strengthen co-operation in combating illegal activities relating to PWIF abuse, in respect of fraud and other illegal acts involving the PWIF in the past five years, of (i) the number of employers, company directors, responsible individuals and employees prosecuted by the government departments concerned, and (ii) the number of successful applications made by the government departments concerned to the court for disqualifying responsible individuals of companies from being directors and taking part in the formation or management of a company;

(5) whether it will consider increasing the penalties for PWIF abuse by legislative amendments so as enhance deterrence; if so, of the details; if not, the reasons for that;

(6) given that the Government indicated in the paper submitted to the Panel on Manpower of this Council on March 25 last year that it would review the

coverage of ex gratia payment in respect of severance payment under PWIF to explore the room for further increasing the payment ceiling in order to enhance its fully covered rate, of the progress made in this regard, and whether the Government will consider extending the coverage of the PWIF to include mandatory contributions to the Mandatory Provident Fund defaulted by employers; whether it will consider establishing a mechanism to review the PWIF regularly; if so, of the details; if not, the reasons for that; and

(7) given that starting from April 1 last year, the Government waives the business registration levy of \$150 payable to the PWIF for two years, whether the Government will consider, on the premise of not affecting the PWIF's operation, further reducing and/or waiving such levy in the light of the slowdown in economic growth; if so, of the details; if not, the reasons for that?

Reply:

President,

Established under the Protection of Wages on Insolvency Ordinance (PWIO), the Protection of Wages on Insolvency Fund (PWIF) aims to provide timely financial relief in the form of ex gratia payment to employees in the event of business closure of their insolvent employers. The affected employees may apply for ex gratia payment from the PWIF in respect of arrears in wages, pay for untaken annual leave, pay for untaken statutory holidays, wages in lieu of notice and/or severance payments (SP) owed by their employers.

In response to the Member's question, the reply is provided below:

(1) From 2020 to 2024, the number of approved applications under the PWIF in each year is at Annex 1. The Labour Department (LD) does not keep the total number of winding-up/bankruptcy cases.

(2) From 2020 to 2024, the total amount of ex gratia payment released under the PWIF, the average amount of ex gratia payment released per application approved and the accumulated surplus in each year are at Annex 2.

(3) Since November 2022, the PWIF has launched enhancement measures including appointing law firms to provide free legal service to applicants to assist them in filing winding-up or bankruptcy petitions against their employers for cases under section 16 of the PWIO, so as to save them from applying for legal aid at the Legal Aid Department (LAD) and undergoing the means test to expedite the processing of applications. In addition, the PWIF has set up an internal legal team to provide the LD with recommendations on applications involving section 18 of the PWIO in place of recommendations from the LAD.

As at April 2025, the PWIF had referred 569 cases to the appointed law firms for follow-up, while the in-house legal team had received 1 116 cases. The breakdown of the number of cases referred to the law firms for follow-up by cases with assistance rendered to applicants in filing winding-up/bankruptcy petitions against their employers and cases not requiring the

filing of winding-up/bankruptcy petitions against employers, and the breakdown of the number of cases received by the in-house legal team by cases with recommendations made to the LD under section 18 of the PWIO and cases not requiring the making of recommendations are at Annex 3.

(4) and (5) The Government takes a serious view on suspected abuse of PWIF by employers, and has set up an inter-departmental Task Force comprising representatives from the LD, the Commercial Crime Bureau of the Hong Kong Police Force (the Police) and the Official Receiver's Office (ORO) to strengthen proactive investigation of suspicious cases.

The LD rigorously verifies and closely monitors every application to the PWIF, and pays attention to whether the company responsible persons are involved in any other unlawful acts while operating the business and managing the finance of the company. If it is found that the company responsible persons are suspected of illegal transfer of assets, theft of company money, evasion of liabilities by deception, failure to keep proper accounting records, etc, the LD will refer such cases to the Police and/or the ORO for follow-up. When there is sufficient evidence, the law enforcement agencies will take out prosecution in accordance with the legislation such as the Theft Ordinance and the Crimes Ordinance. Upon conviction, the maximum penalty is imprisonment for 14 years (for example, in the case of fraud). Besides, as stipulated under the PWIO, any person who, in providing information in respect of a PWIF application, makes any statement which he knows to be false, or recklessly makes a false statement, or produces any false documents or records with the intent to deceive, may be prosecuted. Upon conviction, the maximum penalty is a fine of \$50,000 and imprisonment for three months.

From 2020 to 2024, the LD referred five cases involving suspected abuse of the PWIF to the Police. No substantiated case of abusing the PWIF was detected during the period. Upon referrals from the LD, the ORO during the same period disqualified through the court a total of 15 company directors and/or responsible persons from assuming a director of a company and from taking part in the promotion, formation or management of a company.

(6) The Protection of Wages on Insolvency Fund Board (PWIF Board) and the LD review the coverage of the PWIF from time to time taking into account the socio-economic development and needs, with a view to improving the protection for employees affected by business closure of their insolvent employers in a reasonably practicable manner.

Upon the passage of a resolution of the Legislative Council under the PWIO on March 20, 2025, the maximum amount of ex gratia payment on SP under the PWIF was increased from \$100,000 plus 50 per cent of excess entitlement to \$200,000 plus 50 per cent of excess entitlement to further improve the protection for employees. The new maximum amount came into effect on March 21, 2025, upon gazettal of the resolution.

The PWIF releases payment in the form of ex gratia payment to employees who are owed wages and major sums payable upon termination of employment contracts in accordance with the Employment Ordinance. On the other hand, the

Mandatory Provident Fund Schemes Ordinance aims to assist employees in accumulating the Mandatory Provident Fund (MPF) to enhance retirement protection. As the policy objectives of the PWIF and the MPF are different, the Government has no plan to expand the scope of the PWIF to cover the defaulted MPF mandatory contributions of employers.

(7) The PWIF is mainly financed by a levy per annum on business registration. From June 17, 2022, the levy is reduced from \$250 to \$150 a year. In the 2024-25 Budget, the Financial Secretary announced to increase the business registration fee by \$200 to \$2,200 with effect from April 1, 2024. To relieve the relevant impact on enterprises, the Government waived the levy of \$150 payable to the PWIF with effect from the same date for two years until March 31, 2026. The PWIF will resume the collection of the levy from April 1, 2026.

Considering the implementation of the abolition of MPF offsetting arrangement will result in additional expenditure for the ex gratia payment on SP, the PWIF Board will continue to closely monitor the financial position of the PWIF to ensure that the PWIF maintains a stable income and a reasonable accumulated surplus to meet the additional expenditure arising from economic downturns and to sustain its continuous operation. The Government has no plan to adjust the levy at this stage.