

LCQ9: Protection of Wages on Insolvency Fund

Following is a question by the Hon Wong Kwok-kin and a written reply by the Secretary for Labour and Welfare, Dr Law Chi-kwong, in the Legislative Council today (April 21):

Question:

With the coronavirus disease 2019 epidemic having dealt a heavy blow to Hong Kong's economy, and the Government no longer providing employers with wage subsidies through the Employment Support Scheme since December last year, the unemployment rate has continued to rise in recent months. Some representatives of trade unions have anticipated that there will be a sharp increase in the number of applications for ex gratia payments made to the Protection of Wages on Insolvency Fund (the Fund) by those employees who have been owed (i) wages, (ii) pay for untaken annual leave and statutory holidays, (iii) wages in lieu of notice and (iv) severance payments. In this connection, will the Government inform this Council:

- (1) of the respective monthly numbers of applications for ex gratia payments (i) received, (ii) being processed and (iii) approved, as well as the balance of the Fund at the end of each month, in the past three years;
- (2) of (i) the average and (ii) the longest durations between the time when employees submitted applications for ex gratia payments to the Labour Department (LD) and the time when payments were disbursed to them, in each of the past three years; whether the special work arrangements implemented by the Government last year due to the epidemic lengthened the time needed for processing such applications;
- (3) in respect of the applications for each of the aforesaid four types of ex gratia payments, of the average amount of payment applied for in such applications, and the number of such applications in which the amount of payment applied for was the relevant ceiling, in each of the past three years;
- (4) whether it will consider publishing on the LD's website, on a monthly or quarterly basis, the updated monthly information on the Fund (including the aforesaid statistics);
- (5) given that the Protection of Wages on Insolvency Fund Board is conducting a review on the scope of protection of the Fund, of the progress and outcome of the review; as the ceilings for the aforesaid four types of ex gratia payments have not been adjusted for years, whether the Government will propose to the Board that the ceilings be raised, e.g. raising the ceiling for ex gratia payment for wages in arrears from the existing \$36,000 to \$76,000, which is equivalent to four months' wages for an employee with the median monthly employment earning (i.e. \$19,000) in the second quarter of

last year; and

(6) whether the LD will adopt measures to expedite the processing of applications for ex gratia payments, or extend the time limit for making such applications?

Reply:

President,

My reply to the Member's question is as follows:

(1) From 2018 to 2020, the number of applications received by the Protection of Wages on Insolvency Fund (the Fund) in each month is set out at Annex 1. During the same period, the number of applications processed, the number of applications with ex gratia payment approved, and the accumulated surplus of the Fund are set out at Annex 2.

(2) Upon receipt of applications to the Fund from employees, the Labour Department (LD) will kick off the procedures of handling such applications immediately, which include liaising with employers, provisional liquidators/liquidators, trustees of Mandatory Provident Fund (MPF) schemes, the Legal Aid Department, and, where necessary, requesting the applicants to provide further information, etc., for the purpose of collecting the necessary information and documents for verifying the applications and making ex gratia payment. Ex gratia payment could only be granted to qualified applicants after the LD has received all the relevant information and documents required for processing the applications. Yet whether the information and documents are adequate is often beyond the control of the LD (for example, it takes a longer time for individual employers or liquidators to compile the employment records of employees, individual employees are unable to promptly furnish information to support their applications, etc.). As such, the LD does not keep information on the durations between the time when the LD receives an application from an employee and the time when the Fund effects ex gratia payment to the employee concerned. Instead, the LD keeps information on the time required to effect payment upon receipt of all information and documents required for processing the applications. From 2018 to 2020, the average time and the longest time required to effect payment upon receipt of all information and documents required for processing the applications by the LD are set out at Annex 3. The average time and the longest time required to effect payment in 2020 were similar to those of the previous two years.

(3) From 2018 to 2020, the average claim amounts per application and the number of applications reaching the upper limits of the ex gratia payment with a breakdown by payment items of the Fund are set out at Annex 4.

(4) The Protection of Wages on Insolvency Fund Board (the Board) compiles its annual report in each financial year showing the details of the operation of the Fund and its key statistics, including the number of applications received and approved as well as the financial position of the Fund, etc. In addition, the number of applications received and processed by the Fund and

the amount of ex gratia payment granted each year are set out in the LD's annual report. The annual reports of the Board and LD are uploaded to the LD's website to facilitate public access. These annual statistics and information can reflect the Fund's operation in a complete and holistic manner.

(5) Based on the information and data gathered, the Board conducts a review of the scope of coverage of all the payment items under the Fund. The Board has to conduct careful deliberation for holistic consideration, including the legislative proposal to be made by the Government to abolish the arrangement for "offsetting" severance payment/long service payment with the MPF contributions which may bring substantial impact on the operation and financial position of the Fund. When the Board completes the review, the Government will consult the Labour Advisory Board and report to the Panel on Manpower of the Legislative Council on the outcome of the review.

(6) Upon receipt of the applications to the Fund, the LD will examine the information and documents of every application carefully and conduct verification prudently. It is targeted to issue ex gratia payment to qualified applicants within 10 weeks upon receipt of all relevant information and documents required for processing the applications. The LD reviews the procedures of verification of applications from time to time with a view to issuing ex gratia payment as soon as practicable.

Employees who are owed wages or other statutory entitlements by their employers should file their claims as soon as possible. At present, an employee should apply to the Fund within six months upon the termination of employment contract. Extending the time limit for submission of application may render it difficult to verify the application when employment records and other information are incomplete.