

**Annual Report of**  
**The Protection of Wages on**  
**Insolvency Fund Board**

2007-08

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## CHAIRMAN'S FOREWORD

I am much honoured to present this Annual Report of the Protection of Wages on Insolvency Fund Board covering the financial year from 1 April 2007 to 31 March 2008.

For the year of 2007-08, the Board continued to dedicate full efforts to its statutory mission of administering the Protection of Wages on Insolvency Fund to assist employees in distress arising from the insolvency of their employers. Concomitant with the robust economic environment and vigorous enforcement actions taken by the Labour Department (LD) to combat wage default, the total number of applications for ex gratia payment received by the Fund was able to record a significant drop of 38% in the year, falling from 7 265 applications in 2006-07 to 4 506 applications in 2007-08. The figure was an all-time low since 1990-91. Encouragingly, the construction industry and the catering trade, which accounted for the largest share of applications, also attained decreases of 39% and 44% respectively. During the year, a total of 4 177 applications were approved with ex gratia payment from the Fund, leading to an aggregate payout of \$79.4 million. Thanks to the hard work of the Wage Security Division of the LD, the time taken in processing applications and making ex gratia payment was further shortened to 2.7 weeks on average.

At the level of safeguarding the Fund against any possible abuse, I note with appreciation that the inter-departmental Task Force, with representatives of the LD, the Commercial Crime Bureau (CCB) of the Hong Kong Police Force, the Official Receiver's Office (ORO) and the Legal Aid Department (LAD), sustained its best endeavours to investigate suspected cases of abuse of the Fund. These concerted actions of various government departments should be particularly important in demonstrating to the community that any attempt to defraud the Fund would never be tolerated.

I am also pleased to report that the financial position of the Fund grew much stronger in 2007-08, with a surplus of \$456.5 million registered for the period. This was also the fourth consecutive year that the Fund had recorded a surplus since the 2004-05 financial year. Indeed, the accumulative surplus of the Fund hit a record level of \$1,228.6 million by the end of March 2008. During the year, the Board together with the LD reviewed the rate of business registration certificate levy and worked out unanimously a recommendation to reduce the annual rate from \$600 to \$450. This new levy rate has taken effect on 14 March 2008. It is beyond doubt that the Board would uphold prudent management so that the Fund can maintain sufficient reserve and cash flow to meet its claims payment.

In closing, I would like to take this opportunity to extend my heartfelt thanks to all members of the Board for their unfaltering commitment and support in the administration of the Fund. On behalf of the Board, I would also express great gratitude to those who have been in collaboration and partnership with us over the past year. Special thanks must go to the LD, the LAD, the ORO, the CCB of the Hong Kong Police Force and the Inland Revenue Department for their indispensable assistance rendered to the operation of the Fund. Looking ahead, we would ensure that the Fund would continue to play its vital role of providing a safety net for needy workers in insolvency cases and contributing to Hong Kong's industrial harmony and social stability.

Clement CHEN Cheng-jen, BBS, JP

Chairman

Protection of Wages on Insolvency Fund Board

September 2008

# MEMBERSHIP LIST OF THE PROTECTION OF WAGES ON INSOLVENCY FUND BOARD 2007-08

## Chairman

Mr. Clement CHEN Cheng-jen, BBS, JP

## Members

### Representing employees

Ms. LAM Shuk-yee, BBS

Mr. CHEUNG Pak-chi, MH

Mr. CHAN Wai-lun, MH

### Representing employers

Mr. MA Ho-fai, SBS, JP

Mr. Paul YIN Tek-shing, BBS, JP

Mr. Patrick CHAN Kwok-wai

### Representing government departments

Assistant Commissioner of the Labour Department  
responsible for wage security matters

Assistant Official Receiver

Assistant Principal Legal Aid Counsel of the Legal Aid Department  
responsible for insolvency matters

## Secretary

Senior Labour Officer, Wage Security Division of the Labour Department

## Group Photo of the Protection of Wages on Insolvency Fund Board 2007-08



Rear row from left:

**Mr. Alan WONG Kwok-lun, JP**  
Assistant Commissioner,  
Labour Department

**Mr. Chris CHONG Yan-tung**  
Assistant Principal Legal Aid Counsel,  
Legal Aid Department

**Mr. Patrick CHAN Kwok-wai**  
Representing employers

**Mr. CHAN Wai-lun, MH**  
Representing employees

**Ms. May LEE Mei-yee**  
Assistant Official Receiver,  
Official Receiver's Office

**Miss Mabel LI Po-yi**  
Secretary

Front row from left:

**Mr. Paul YIN Tek-shing, BBS, JP**  
Representing employers

**Mr. MA Ho-fai, SBS, JP**  
Representing employers

**Mr. Clement CHEN Cheng-jen, BBS, JP**  
Chairman

**Ms. LAM Shuk-yee, BBS**  
Representing employees

**Mr. CHEUNG Pak-chi, MH**  
Representing employees

## **INTRODUCTION**

The Protection of Wages on Insolvency Ordinance (the Ordinance), which came into effect on 19 April 1985, provides for the establishment of a board to administer the Protection of Wages on Insolvency Fund (the Fund). The Ordinance also empowers the Commissioner for Labour to make ex gratia payment from the Fund to employees whose employers have become insolvent.

This report covers the activities of the Protection of Wages on Insolvency Fund Board (the Board) and the operation of the Fund for the financial year ended 31 March 2008.

## **PROTECTION OF WAGES ON INSOLVENCY FUND BOARD**

The Ordinance provides that the Board should consist of a chairman and not more than 10 members appointed by the Chief Executive. Of the members, there shall be an equal number of persons representing employers and employees and not more than four public officers.

The Board has the following statutory functions:

- (a) to administer the Fund;
- (b) to make recommendations to the Chief Executive with respect to the rate of levy; and
- (c) to review applications upon request from applicants aggrieved by any decision of the Commissioner for Labour in connection with the application for ex gratia payment from the Fund.

## **PROTECTION OF WAGES ON INSOLVENCY FUND**

The Fund is mainly financed by a levy on each business registration certificate. The levy is collected by the Inland Revenue Department when the business registration fee is paid. With effect from 14 March 2008, the annual rate of levy has been reduced from \$600 to \$450.

Under the Ordinance, employees who are owed wages, wages in lieu of notice and severance payment by their insolvent employers may apply for ex gratia payment from the Fund. The application should be made in an approved form and supported by a statutory declaration. The application has to be made within a period of six months from the applicant's last day of service.

## Maximum amount of ex gratia payment payable by the Fund

Ex gratia payment from the Fund covers:

- (a) wages of an employee for services rendered to his employer during the four months prior to the last day of service but not exceeding \$36,000 (“wages” include remuneration and earnings and items deemed to be wages under section 43 of the Employment Ordinance, namely, holiday pay, annual leave pay, end of year payment, maternity leave pay and sickness allowance);
- (b) wages in lieu of notice up to one month’s wages or \$22,500, whichever is the lesser; and
- (c) severance payment up to \$50,000 plus 50% of any entitlement, under the Employment Ordinance, in excess of \$50,000.

## Prerequisites for making ex gratia payment from the Fund

Section 16(1) of the Ordinance requires the presentation of a winding-up or bankruptcy petition as a pre-condition for payment from the Fund. Under section 18(1) of the Ordinance, the Commissioner for Labour may exercise discretion to make payment without the presentation of a petition in circumstances where:

- (a) the size of employment is less than 20 employees;
- (b) sufficient evidence exists to support the presentation of a petition in that case on the ground –
  - (i) if the employer is a company, that he is unable to pay his debts; or
  - (ii) if the employer is a person other than a company, that he is liable to have a bankruptcy petition presented against him; and
- (c) it is unreasonable or uneconomic to present a petition in that case.

The Commissioner for Labour is also empowered under section 16(1)(a)(ii) of the Ordinance to make ex gratia payment from the Fund to employees who, because of a restriction imposed by the Bankruptcy Ordinance, cannot present a bankruptcy petition against their employer as the aggregate amount of outstanding payment is below \$10,000.

The Commissioner for Labour is empowered by the Ordinance to investigate applicants’ claims before making payment from the Fund. For the purpose of verifying applications, the Labour Department may require employers and applicants to submit wage and employment records and conduct interviews with them.

## Subrogation rights of the Fund

Where ex gratia payment has been made to an applicant in respect of wages, wages in lieu of notice and severance payment, his rights and remedies under the Companies Ordinance or the Bankruptcy Ordinance would, to the extent of the amount of payment, be transferred to the Board. The Board, in exercising these subrogated rights, may file a proof of debt with the Official Receiver or the private liquidator for the purpose of recovering in the course of winding-up or bankruptcy proceedings any payment made to the applicant.

## Application of the Fund's reserve

A property was purchased in 1990 to provide office accommodation for the Board. In addition, all cash has been placed in banks approved by the Board as term deposits.

# ANNUAL REVIEW OF APPLICATIONS RECEIVED AND PROCESSED

The applications received and processed in this financial year, together with the relevant analyses, are summarised as follows:

## Applications received

During the year 2007-08, 4 506 applications involving claims for ex gratia payment of \$184.8 million were received from employees. A total of 905 suspected insolvency cases were recorded. Detailed breakdown of the applications is at **Appendix I**.

Of the 905 suspected insolvency cases, 869 involved less than 20 employees per case, 32 involved 20 to 49 employees per case, and the remaining 4 involved 50 to 99 employees per case.

During the year, the construction industry recorded the largest number of applications, with 1 198 applications involving a total claim of \$26.9 million. This was followed by the catering trade with 983 applications and a total claim of \$16.4 million, and the import/export trade with 599 applications and a total claim of \$36.2 million. These three trades accounted for 61.7% of all applications and 43.0% of the total amount claimed.

Out of the 4 506 applicants, 3 953 applied for ex gratia payment on arrears of wages, 2 529 applied for payment on wages in lieu of notice, and 1 236 applied for payment on severance payment. Breakdowns of these applications are at **Appendices II, III and IV**.

## Applications processed

A total of 4 177 applications were approved during the year, resulting in payment amounting to \$79.4 million. Out of these, a total payment of \$16.5 million was made to 984 applicants under section 16(1)(a)(ii) and section 18(1) of the Ordinance.

An analysis of ex gratia payment approved is at **Appendix V**. As indicated at **Appendix VI**, the claimed amount was met in full in respect of 73.8% of applicants on arrears of wages, 98.0% of applicants on wages in lieu of notice, and 58.3% of applicants on severance payment.

The Commissioner for Labour rejected 110 applications involving claims totalling \$7.0 million, mostly for reasons such as claims with insufficient evidence, claims outside the 6-month qualifying period and the applicants' status as registered company directors. At the same time, 805 applications involving claims amounting to \$31.7 million were withdrawn, mainly as a result of direct settlement between employees and their employers or liquidators.

**Appendices VII** and **VIII** set out the comparative figures on the Fund's performance in the last five to ten years.

## MEETINGS OF THE PROTECTION OF WAGES ON INSOLVENCY FUND BOARD

The Board met three times during the year to discuss matters relating to the administration of the Fund. These included examination of the Fund's performance and financial statements, projection of income and expenditure, and deliberation of a recommendation to reduce the annual rate of levy from \$600 to \$450. In addition, the Board reviewed three appeals against the decisions of the Commissioner for Labour under section 17 of the Ordinance.

## FINANCIAL POSITION OF THE PROTECTION OF WAGES ON INSOLVENCY FUND

During the year, the Fund received levy income of \$513.0 million and paid out a total of \$79.4 million in ex gratia payment. The Fund registered a surplus of \$456.5 million, as compared with a surplus of \$362.0 million in the previous financial year. As at 31 March 2008, the Fund's accumulated surplus stood at \$1,228.6 million.

A copy of the independent auditors' report and the audited financial statements for the year ended 31 March 2008 is at **Appendix IX**.

## ACTIVITIES HIGHLIGHT

### Publicity and promotion for the Fund

During the year, the Labour Department continued with various activities to publicise the Fund and the provisions of the Ordinance. Among other things, six exhibitions were staged in different districts covering a number of themes, including an introduction about the Fund and employees' applications for ex gratia payment.

Both the Board and the Labour Department attach great importance to protecting the Fund against any possible abuse. In March 2008, the television programme "Police Magazine" produced by the Hong Kong Police Force also highlighted the offences in fraudulent cases concerning applications to the Fund.



The Fund and the Ordinance were publicised in the exhibitions organised by the Labour Department.



A shot of the drama broadcasted in the television programme “Police Magazine” covered offences involved in fraudulent Fund cases.

## Achievements of the inter-departmental Task Force

The inter-departmental Task Force set up in November 2002 continued to play an active role in guarding against abuse of the Fund. The Labour Department, the Commercial Crime Bureau of the Hong Kong Police Force, the Official Receiver’s Office and the Legal Aid Department acted in concert to proactively pursue and investigate possible abuse of the Fund by employers and employees.

Since the inception of the Task Force and up to March 2008, the Labour Department recorded 267 convicted summonses under the Employment Ordinance and the Protection of Wages on Insolvency Ordinance against persons who were involved in fraudulent cases concerning applications to the Fund. As for those cases investigated by the Police, an employer, a manager and an employee were convicted and sentenced to imprisonment terms of 6 to 12 months. On the other hand, the Official Receiver’s Office applied to the court for disqualifying company responsible persons involved in fraudulent Fund cases from being directors, and taking part in the promotion, formation or management of a company. As a result, altogether 23 persons were so disqualified, with the disqualification period ranging from 2.5 to 5 years.

# 破產欠薪保障基金委員會

Protection of Wages on Insolvency Fund Board .....

## Appendices

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**Operating results of  
the Protection of Wages on Insolvency Fund in 2007-08**

**I. Breakdown of applications by result**

(1) No. of cases received					905
(2) No. of applications					2 637
(i) b/f last period					4 506
received this period					61
reconsidered this period					7 204
(ii) processed					5 092
<i>approved</i>					4 177
<i>refused</i>					110
<i>withdrawn</i>					805
outstanding					2 084
put aside*					28
					7 204
(3) Amount of ex gratia payment (in HK\$'000) applied for	<b>Arrears of wages</b>	<b>Wages in lieu of notice</b>	<b>Severance payment</b>		<b>HK\$'000</b>
(i) b/f last period					110,330
received this period	90,379	+	24,946	+	69,483 = 184,808
reconsidered this period	2,372	+	818	+	2,261 = 5,451
					300,589
(ii) approved	47,261	+	16,309	+	15,796 = 79,366
screened					78,131
refused					6,972
withdrawn					31,711
outstanding } put aside* }					104,409
					300,589
(4) No. of applications seeking review by the Fund Board					3

**II. Presentation of petition in relation to applications approved**

(1) No. of applications where a winding-up petition has been made					2 696
(2) No. of applications where a bankruptcy petition has been made					497
(3) No. of applications dealt with under S.18(1) of the Protection of Wages on Insolvency Ordinance					957
(4) No. of applications dealt with under S.16(1)(a)(ii) of the Protection of Wages on Insolvency Ordinance					27
					4 177

**III. Breakdown of cases by employment size**

(1) Less than 20 employees					869
(2) 20 ~ 49 employees					32
(3) 50 ~ 99 employees					4
(4) 100 or more employees					-
					905

\* Cases pending private settlement or withdrawal.

## IV. Breakdown of applications by industry

Hong Kong Standard Industrial Classification	Industry in which applicants worked	No. of applicants		Amount claimed (including wages, wages in lieu of notice and severance payment)
<i>Division 3</i>	<i>Manufacturing</i>			
Sub-group				
311-312	Food	66	(3)	\$2,958,328.97
320-322	Wearing apparel (excluding footwear)	173	(14)	\$11,417,116.91
323	Leather and leather products (excluding footwear and wearing apparel)	1	(1)	\$3,632.70
324	Footwear (excluding rubber, plastic and wooden footwear)	9	(3)	\$715,585.39
325-329	Textiles	10	(5)	\$643,158.38
331	Wood and cork products (excluding furniture)	5	(1)	\$545,104.28
332	Furniture and fixtures (excluding primarily of metal)	6	(3)	\$470,775.79
341	Paper and paper products	1	(1)	\$217,208.05
342	Printing, publishing and allied industries	113	(18)	\$8,705,533.01
351-352	Chemicals and chemical products	2	(0)*	\$448,132.77
356	Plastic products	26	(4)	\$3,826,575.33
371-372	Basic metal	4	(2)	\$3,294,026.05
380-381	Fabricated metal products (excluding machinery and equipment)	8	(3)	\$1,056,964.14
384	Electronic parts and components	6	(4)	\$669,603.30
386-387	Machinery, equipment, apparatus, parts and components, not elsewhere classified	28	(4)	\$4,754,575.12
389	Professional & scientific, measuring & controlling equipment, not elsewhere classified, and photographic & optical goods	4	(1)	\$235,189.72
390-391	Manufacturing industries, not elsewhere classified	45	(6)	\$6,087,835.30
<i>Division 4</i>	<i>Electricity, Gas and Water</i>	5	(2)	\$142,868.49
<i>Division 5</i>	<i>Construction</i>	1 198	(247)	\$26,942,351.72
<i>Division 6</i>	<i>Wholesale, Retail and Import/Export Trades, Restaurants and Hotels</i>			
Sub-group				
611-612	Wholesale	65	(17)	\$3,432,721.33
621	Retail	142	(40)	\$4,289,637.35
631-632	Import/Export	599	(162)	\$36,217,898.25
641	Restaurants	983	(116)	\$16,367,215.19

Note: Figure in brackets denotes the number of suspected insolvency cases received in this year.

\* All the applicants were of late applications of a case in the preceding year.

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Protection of Wages on Insolvency Fund Board .....

Hong Kong Standard Industrial Classification	Industry in which applicants worked	No. of applicants		Amount claimed (including wages, wages in lieu of notice and severance payment)
<i>Division 7</i>	<i>Transport, Storage and Communications</i>			
Sub-group				
711	Land passenger transport	5	(2)	\$77,575.10
712	Land freight transport	224	(57)	\$15,699,353.81
713	Supporting services to land transport	15	(7)	\$224,096.07
714	Ocean and coastal water transport	2	(1)	\$88,920.13
715	Inland water transport	2	(1)	\$27,958.90
716	Supporting services to water transport	5	(1)	\$392,330.91
717	Air transport	11	(1)	\$1,056,921.99
718	Services incidental to transport	144	(15)	\$7,123,379.92
721	Storage	3	(1)	\$56,989.23
732	Telecommunications	12	(4)	\$1,334,174.94
<i>Division 8</i>	<i>Financing, Insurance, Real Estate and Business Services</i>			
Sub-group				
812	Finance and investment companies	34	(7)	\$1,698,368.47
813	Stock, commodity and bullion brokers, exchanges and services	8	(1)	\$814,509.20
819	Financial institutions, not elsewhere classified	8	(1)	\$1,063,559.58
821	Insurance	1	(1)	\$7,000.00
831	Real estate	7	(2)	\$427,782.42
833	Business services (excluding rental of machinery and equipment)	236	(58)	\$12,079,961.16
<i>Division 9</i>	<i>Community, Social and Personal Services</i>			
Sub-group				
910	Public administration	1	(1)	\$22,982.90
921	Sanitary and similar services	8	(4)	\$52,224.00
931	Education services	44	(8)	\$1,260,747.68
933	Medical, dental, other health and veterinary services	14	(6)	\$425,009.38
940-941	Motion pictures and other entertainment services	17	(3)	\$421,589.07
949	Miscellaneous amusement & recreational services	69	(6)	\$4,044,373.97
951	Repair services	6	(3)	\$58,444.83
952	Laundry, dry cleaning and garment services	3	(1)	\$31,862.33
959	Miscellaneous personal services	128	(56)	\$2,875,696.19
	<b>Total :</b>	<b>4 506</b>	<b>( 905)</b>	<b>\$184,807,849.72</b>

Note: Figure in brackets denotes the number of suspected insolvency cases received in this year.

### Breakdown of applications for ex gratia payment on arrears of wages received in 2007-08

#### A. By amount

(including overtime pay and “deemed wages” under S.43 of the Employment Ordinance)

Amount	No. of applicants	Percentage
No entitlement/Not claimed	553	12.27
\$8,000* or less	1 472	32.67
\$8,001 ~ \$18,000	1 201	26.65
\$18,001 ~ \$24,000	315	6.99
\$24,001 ~ \$27,000	124	2.75
\$27,001 ~ \$30,000	85	1.89
\$30,001 ~ \$33,000	78	1.73
\$33,001 ~ \$36,000 <sup>#</sup>	62	1.38
\$36,001 ~ \$39,000	65	1.44
More than \$39,000	551	12.23
<b>Total :</b>	4 506	100.00

#### B. By period of outstanding wages

(excluding overtime pay and “deemed wages” under S.43 of the Employment Ordinance)

Period	No. of applicants	Percentage
No entitlement/Not claimed	789	17.51
Half month or less	573	12.72
More than 1/2 month to 1 month	1 058	23.48
More than 1 month to 2 months	1 086	24.10
More than 2 months to 3 months	451	10.01
More than 3 months to 4 months	194	4.31
More than 4 months	355	7.88
<b>Total :</b>	4 506	100.00

\* Preferential limit under the Companies Ordinance and the Bankruptcy Ordinance, i.e. wages not exceeding \$8,000 should be paid in priority to other debts in the distribution of the remaining assets of the employer during the winding-up/bankruptcy proceedings.

<sup>#</sup> Maximum amount of ex gratia payment on arrears of wages under the Protection of Wages on Insolvency Ordinance.

**Breakdown of applications for  
ex gratia payment on wages in lieu of notice received in 2007-08**

**A. By amount**

<b>Amount</b>	<b>No. of applicants</b>	<b>Percentage</b>
No entitlement/Not claimed	1 977	43.87
\$2,000* or less	478	10.61
\$2,001 ~ \$6,000	656	14.56
\$6,001 ~ \$10,000	573	12.72
\$10,001 ~ \$15,000	391	8.68
\$15,001 ~ \$22,500 <sup>#</sup>	277	6.15
\$22,501 ~ \$25,000	39	0.87
More than \$25,000	115	2.55
<b>Total :</b>	<u>4 506</u>	<u>100.00</u>

**B. By notice period**

<b>Notice period</b>	<b>No. of applicants</b>	<b>Percentage</b>
No entitlement/Not claimed	1 977	43.87
1 day ~ 7 days	873	19.37
8 days ~ 14 days	57	1.26
15 days	28	0.62
16 days ~ less than 1 month	125	2.77
1 month <sup>*#</sup>	1 418	31.47
More than 1 month	28	0.62
<b>Total :</b>	<u>4 506</u>	<u>100.00</u>

\* Preferential limit under the Companies Ordinance and the Bankruptcy Ordinance, i.e. wages in lieu of notice not exceeding one month's wages or \$2,000, whichever is the lesser, should be paid in priority to other debts in the distribution of the remaining assets of the employer during the winding-up/bankruptcy proceedings.

<sup>#</sup> Maximum amount of ex gratia payment on wages in lieu of notice under the Protection of Wages on Insolvency Ordinance, i.e. not exceeding \$22,500 or one month's wages, whichever is the lesser.

### Breakdown of applications for ex gratia payment on severance payment<sup>#</sup> received in 2007-08

#### A. By amount

Amount	No. of applicants	Percentage
No entitlement/Not claimed	3 270	72.57
\$8,000* or less	135	3.00
\$8,001 ~ \$36,000	494	10.96
\$36,001 ~ \$50,000	135	3.00
\$50,001 ~ \$80,000	200	4.44
\$80,001 ~ \$110,000	94	2.09
\$110,001 ~ \$140,000	59	1.31
\$140,001 ~ \$170,000	43	0.95
\$170,001 ~ \$200,000	32	0.71
\$200,001 ~ \$250,000	24	0.53
\$250,001 ~ \$300,000	9	0.20
\$300,001 ~ \$350,000	5	0.11
\$350,001 ~ \$370,000	1	0.02
\$370,001 ~ \$390,000	5	0.11
More than \$390,000	0	0.00
<b>Total :</b>	<u>4 506</u>	<u>100.00</u>

#### B. By length of service

Length of service	No. of applicants	Percentage
Not claimed or less than 2 years' service	3 278	72.75
2 ~ 4.99 years	496	11.01
5 ~ 5.99 years	91	2.02
6 ~ 6.99 years	94	2.09
7 ~ 7.99 years	73	1.62
8 ~ 8.99 years	47	1.04
9 ~ 9.99 years	42	0.93
10 ~ 14.99 years	238	5.28
15 ~ 19.99 years	102	2.26
20 ~ 24.99 years	30	0.67
25 ~ 29.99 years	11	0.24
30 ~ 34.99 years	3	0.07
35 ~ 38.99 years	0	0.00
39 ~ 40.99 years	1	0.02
41 ~ 42.99 years	0	0.00
43 years' service and over	0	0.00
<b>Total :</b>	<u>4 506</u>	<u>100.00</u>

<sup>#</sup> The maximum amount of payment out of the Protection of Wages on Insolvency Fund is \$220,000.

<sup>\*</sup> Preferential limit under the Companies Ordinance and the Bankruptcy Ordinance, i.e. severance payment not exceeding \$8,000 should be paid in priority to other debts in the distribution of the remaining assets of the employer during the winding-up/bankruptcy proceedings.

**Analysis of  
ex gratia payment approved in 2007-08**

**A. Analysis of payment approved for arrears of wages**

(including overtime pay and “deemed wages” under S.43 of the Employment Ordinance)

Amount	No. of applicants	Percentage
Not claimed/Not approved	466	11.16
\$4,000 or less	750	17.96
\$4,001 ~ \$8,000	896	21.45
\$8,001 ~ \$10,000	331	7.92
\$10,001 ~ \$12,000	324	7.76
\$12,001 ~ \$14,000	206	4.93
\$14,001 ~ \$16,000	155	3.71
\$16,001 ~ \$18,000	131	3.14
\$18,001 ~ \$28,000	442	10.58
\$28,001 ~ \$36,000 <sup>#</sup>	476	11.40
<b>Total :</b>	<b>4 177</b>	<b>100.00</b>

**B. Analysis of payment approved for wages in lieu of notice**

Amount	No. of applicants	Percentage
Not claimed/Not approved	1 721	41.20
\$2,000 or less	651	15.59
\$2,001 ~ \$3,000	277	6.63
\$3,001 ~ \$4,000	231	5.53
\$4,001 ~ \$5,000	85	2.03
\$5,001 ~ \$6,000	205	4.91
\$6,001 ~ \$10,000	449	10.75
\$10,001 ~ \$22,500 <sup>†</sup>	558	13.36
<b>Total :</b>	<b>4 177</b>	<b>100.00</b>

**C. Analysis of payment approved for severance payment**

Amount	No. of applicants	Percentage
Not claimed/Not approved	3 302	79.05
\$8,000 or less	354	8.47
\$8,001 ~ \$22,000	281	6.73
\$22,001 ~ \$36,000	133	3.18
\$36,001 ~ \$50,000	38	0.91
\$50,001 ~ \$80,000	46	1.10
\$80,001 ~ \$110,000	17	0.41
\$110,001 ~ \$140,000	4	0.10
\$140,001 ~ \$170,000	1	0.02
\$170,001 ~ \$200,000	1	0.02
\$200,001 ~ \$210,000	0	0.00
\$210,001 ~ \$220,000 <sup>*</sup>	0	0.00
<b>Total :</b>	<b>4 177</b>	<b>100.00</b>

<sup>#</sup> The maximum amount of ex gratia payment out of the Protection of Wages on Insolvency Fund (the Fund) on arrears of wages.

<sup>†</sup> The maximum amount of ex gratia payment out of the Fund on wages in lieu of notice.

<sup>\*</sup> The maximum amount of ex gratia payment out of the Fund on severance payment.

## Analysis of approved ex gratia payment as percentage of applicants' claimed amount in 2007-08

### A. Arrears of wages at maximum payment of \$36,000

Approved payment as percentage of applicants' claimed amount	Percentage of applicants
100%	73.81
90% or above	76.86
80% or above	80.23
70% or above	83.31
60% or above	86.56
50% or above	90.33
40% or above	93.33
30% or above	96.03
20% or above	97.69
10% or above	99.53
5% or above	99.93

### B. Wages in lieu of notice at maximum payment of \$22,500

Approved payment as percentage of applicants' claimed amount	Percentage of applicants
100%	97.97
90% or above	98.68
80% or above	99.14
70% or above	99.47
60% or above	99.66
50% or above	99.74
40% or above	99.77
30% or above	99.85
20% or above	99.92
10% or above	100.00

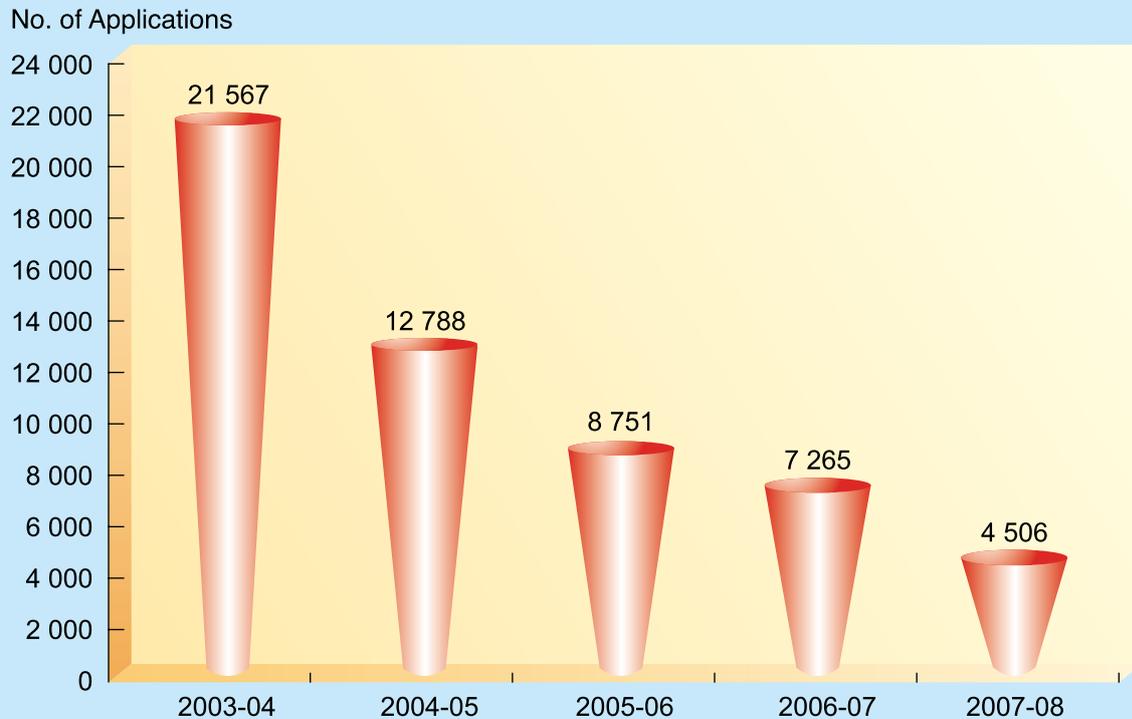
### C. Severance payment at maximum payment of \$50,000 + 50% of excess entitlement

Approved payment as percentage of applicants' claimed amount	Percentage of applicants
100%	58.28
90% or above	60.52
80% or above	63.70
70% or above	66.60
60% or above	69.97
50% or above	73.15

**Comparative figures on the performance of the Protection of Wages on Insolvency Fund from 2003-04 to 2007-08**

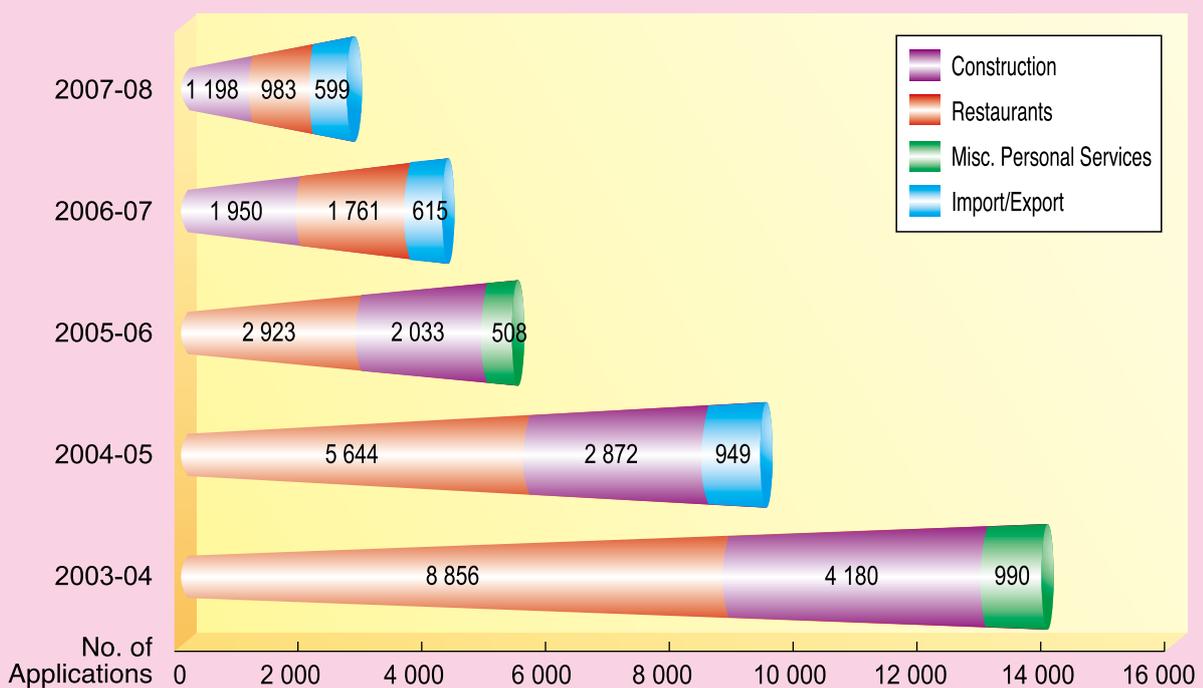
**Figure 1**

*Number of applications received by the Fund from 2003-04 to 2007-08*

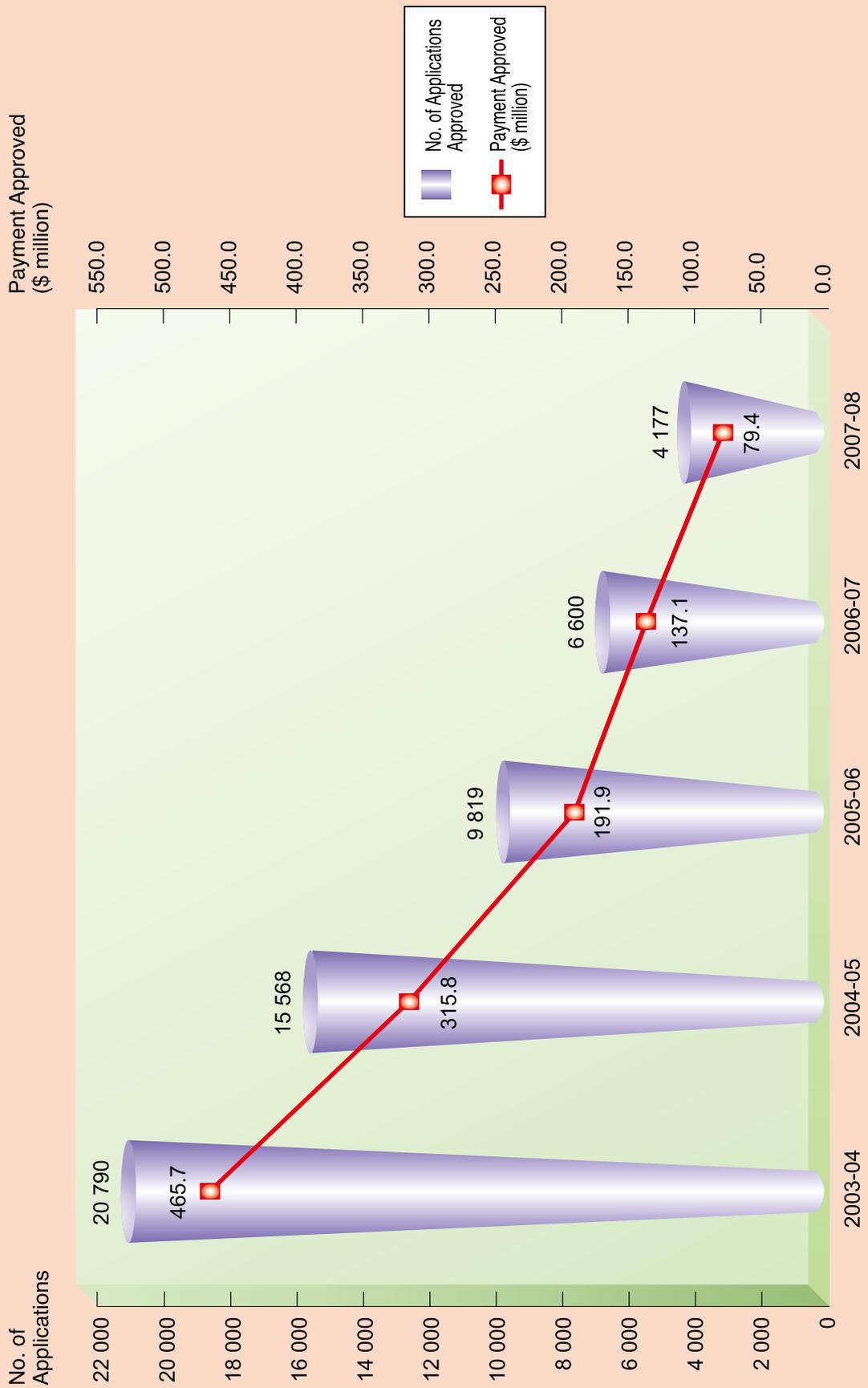


**Figure 2**

*First three industries with the largest number of applications received from 2003-04 to 2007-08*



**Figure 3**  
 Number of applications and amount of ex gratia payment approved from 2003-04 to 2007-08



**Figure 4**

Total income and expenditure of the Fund from 2003-04 to 2007-08

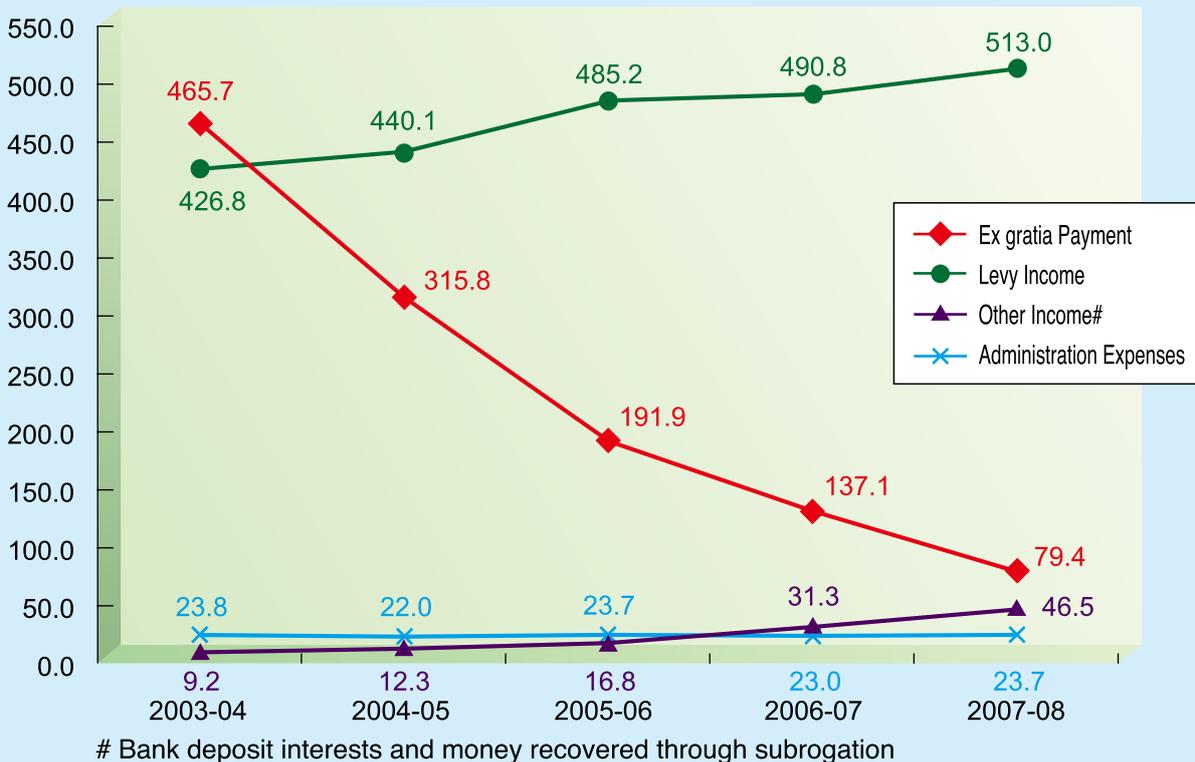
\$ million



**Figure 5**

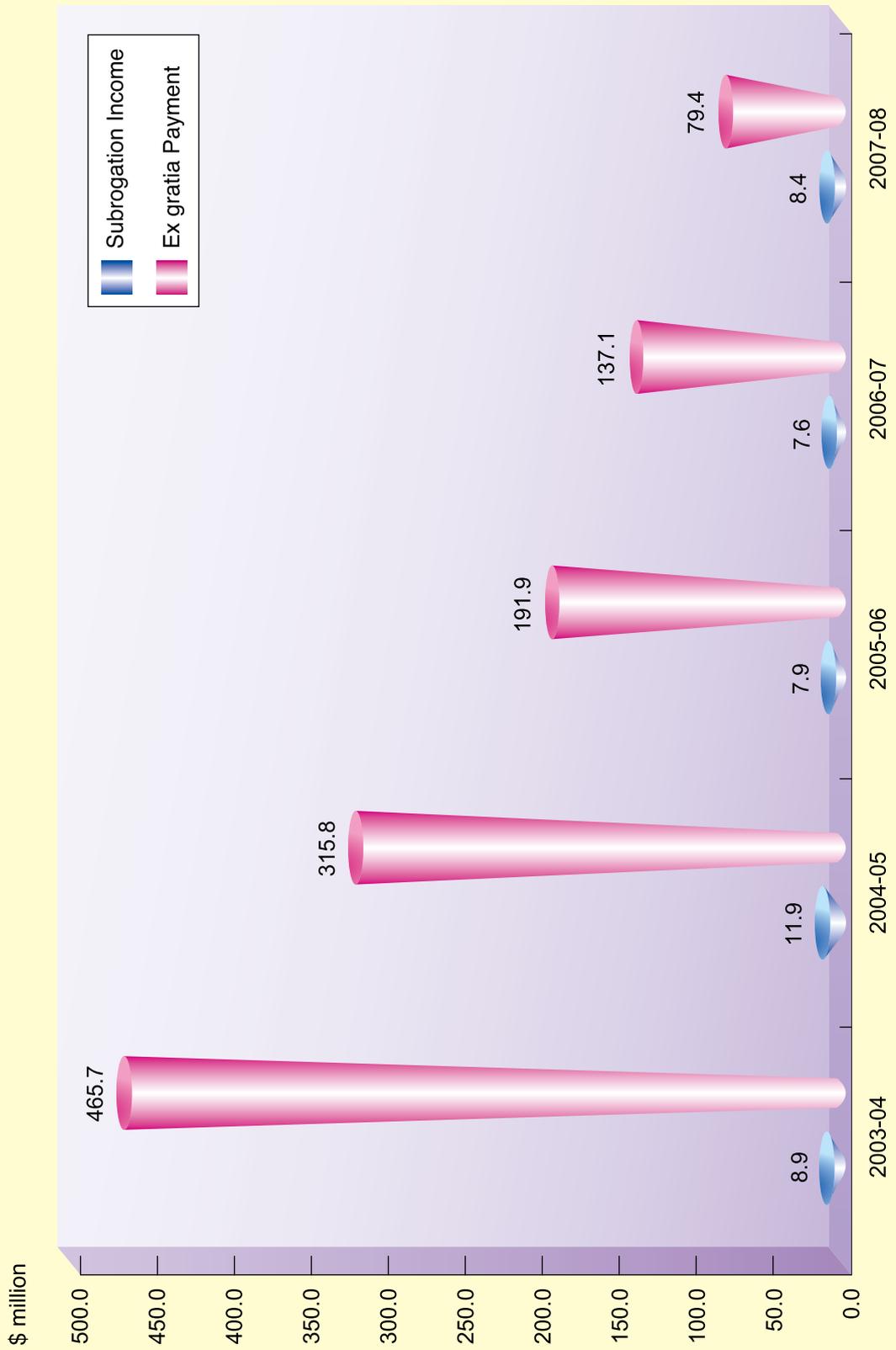
Breakdown of income and expenditure of the Fund from 2003-04 to 2007-08

\$ million

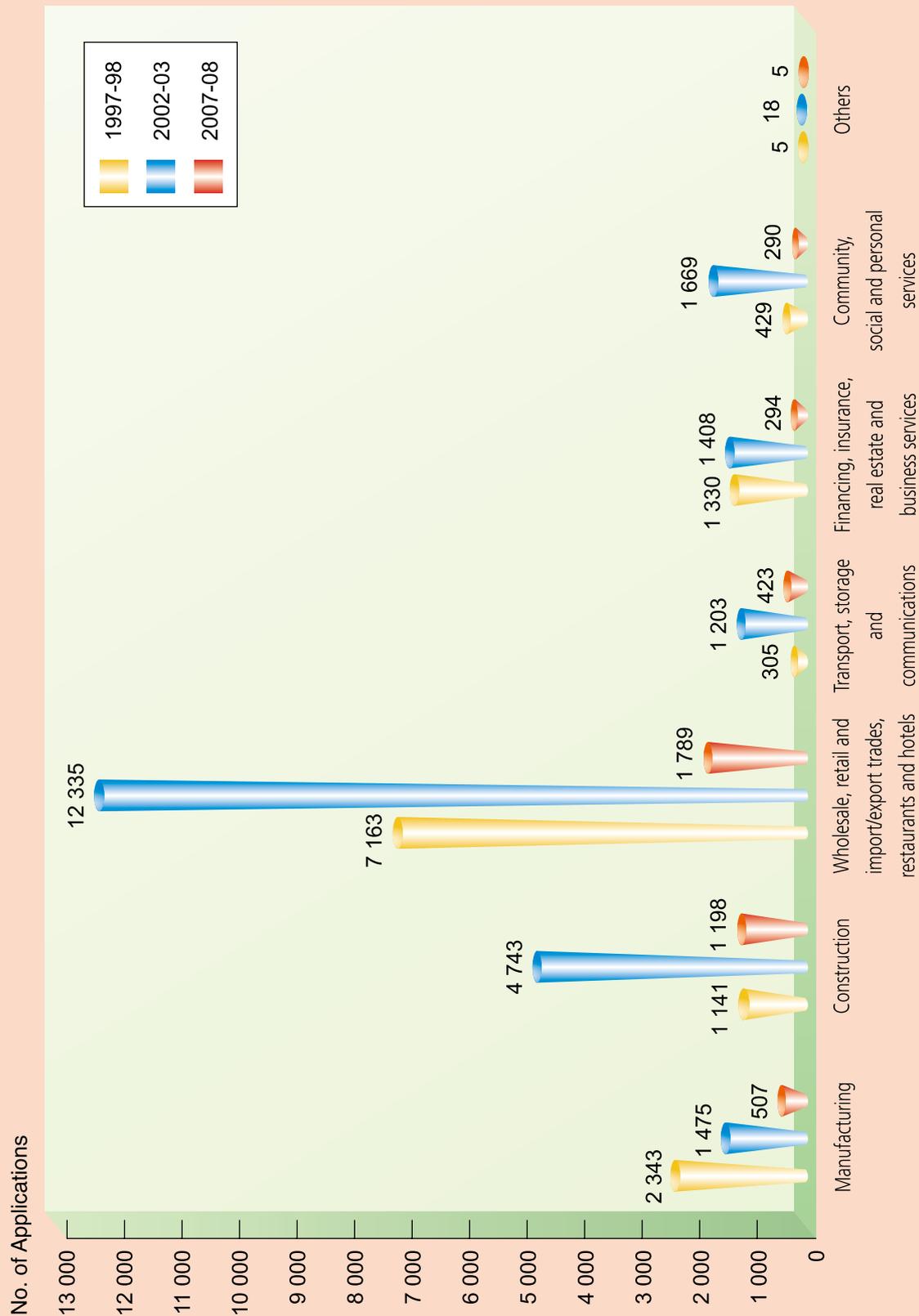


**Figure 6**

*Subrogation income and ex gratia payment of the Fund from 2003-04 to 2007-08*



**Analysis of applications received by economic sector in 1997-98, 2002-03 and 2007-08**



..... **2007-08**

Appendix IX

**Independent Auditors' Report and Audited Financial Statements  
for the year ended 31 March 2008**

Independent Auditors' Report and Audited Financial  
Statements

PROTECTION OF WAGES ON INSOLVENCY FUND

31 March 2008

Ernst & Young

 **ERNST & YOUNG**  
安 永

# 破產欠薪保障基金委員會

Protection of Wages on Insolvency Fund Board .....

PROTECTION OF WAGES ON INSOLVENCY FUND

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Statement of assets and liabilities	4
Statement of changes in fund and reserves	5
Cash flow statement	6
Notes to financial statements	7 - 12



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傳真: +852 2868 4432

## INDEPENDENT AUDITORS' REPORT

To the members of Protection of Wages on Insolvency Fund Board  
(Established under the Protection of Wages on Insolvency Ordinance)

We have audited the financial statements of the Protection of Wages on Insolvency Fund (the "Fund") set out on pages 3 to 12 which comprise the statement of assets and liabilities as at 31 March 2008, and the statement of income and expenditure, the statement of changes in fund and reserves and the cash flow statement for the year then ended, and a summary of significant accounting policies and other explanatory notes.

### **Protection of Wages on Insolvency Fund Board's responsibility for the financial statements**

Protection of Wages on Insolvency Fund Board (the "Board") is responsible for the preparation and the true and fair presentation of these financial statements in accordance with Hong Kong Financial Reporting Standards issued by the Hong Kong Institute of Certified Public Accountants and the Protection of Wages on Insolvency Ordinance. This responsibility includes designing, implementing and maintaining internal control relevant to the preparation and the true and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

### **Auditors' responsibility**

Our responsibility is to express an opinion on these financial statements based on our audit. Our report is made solely to you, as a body, in accordance with the Protection of Wages on Insolvency Ordinance, and for no other purpose. We do not assume responsibility towards or accept liability to any other person for the contents of this report.

We conducted our audit in accordance with Hong Kong Standards on Auditing issued by the Hong Kong Institute of Certified Public Accountants. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance as to whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditors consider internal control relevant to the entity's preparation and true and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the Board, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.



INDEPENDENT AUDITORS' REPORT (continued)

To the members of Protection of Wages on Insolvency Fund Board  
(Established under the Protection of Wages on Insolvency Ordinance)

**Opinion**

In our opinion, the financial statements give a true and fair view of the state of affairs of the Fund as at 31 March 2008 and of its surplus and cash flows for the year then ended in accordance with Hong Kong Financial Reporting Standards and have been properly prepared in accordance with the Protection of Wages on Insolvency Ordinance.

A handwritten signature in black ink, appearing to be 'John' followed by a stylized flourish.

**Ernst & Young**  
Certified Public Accountants  
Hong Kong  
8 September 2008

# 破產欠薪保障基金委員會

Protection of Wages on Insolvency Fund Board .....

## PROTECTION OF WAGES ON INSOLVENCY FUND

### STATEMENT OF INCOME AND EXPENDITURE

Year ended 31 March 2008

	Notes	2008 HK\$	2007 HK\$
INCOME	3	<u>559,469,136</u>	<u>522,074,531</u>
EXPENDITURE			
Claims	4	79,365,956	137,121,326
Supervision fee	7	17,089,046	16,428,846
Auditors' remuneration		61,900	59,093
Rates and building management charges		311,332	330,007
Insurance		6,313	6,536
Printing and stationery		45,935	38,978
Depreciation		5,494,935	5,494,935
Miscellaneous expenses		<u>641,274</u>	<u>605,005</u>
TOTAL EXPENDITURE		<u>103,016,691</u>	<u>160,084,726</u>
Surplus for the year		<u>456,452,445</u>	<u>361,989,805</u>

## PROTECTION OF WAGES ON INSOLVENCY FUND

## STATEMENT OF ASSETS AND LIABILITIES

31 March 2008

	Notes	2008 HK\$	2007 HK\$
<b>NON-CURRENT ASSET</b>			
Property	8	<u>10,989,872</u>	<u>16,484,807</u>
Total non-current asset		<u>10,989,872</u>	<u>16,484,807</u>
<b>CURRENT ASSETS</b>			
Levy receivable		40,400,850	52,017,400
Interest receivable		3,471,033	3,824,487
Sundry deposits		38,800	38,800
Sundry debtors		102,316	87,028
Equity security	9	-	145,520
Cash at banks	10	<u>1,195,226,742</u>	<u>723,223,087</u>
Total current assets		<u>1,239,239,741</u>	<u>779,336,322</u>
<b>CURRENT LIABILITIES</b>			
Approved claims payable		4,796,958	7,440,251
Accrued operation expenses		65,470	66,138
Accrued supervision fee	7	<u>16,800,000</u>	<u>16,200,000</u>
Total current liabilities		<u>21,662,428</u>	<u>23,706,389</u>
<b>NET CURRENT ASSETS</b>			
		<u>1,217,577,313</u>	<u>755,629,933</u>
Net assets		<u>1,228,567,185</u>	<u>772,114,740</u>
<b>FINANCED BY</b>			
Accumulated surplus		1,212,028,398	755,575,953
General reserve	11	<u>16,538,787</u>	<u>16,538,787</u>
Total accumulated surplus and reserves		<u>1,228,567,185</u>	<u>772,114,740</u>



Chairman



Board Member

# 破產欠薪保障基金委員會

Protection of Wages on Insolvency Fund Board .....

## PROTECTION OF WAGES ON INSOLVENCY FUND

### STATEMENT OF CHANGES IN FUND AND RESERVES

Year ended 31 March 2008

	Accumulated surplus HK\$	General reserve HK\$	Total HK\$
At 1 April 2006	393,586,148	16,538,787	410,124,935
Surplus for the year	<u>361,989,805</u>	<u>-</u>	<u>361,989,805</u>
At 31 March 2007 and at 1 April 2007	755,575,953	16,538,787	772,114,740
Surplus for the year	<u>456,452,445</u>	<u>-</u>	<u>456,452,445</u>
At 31 March 2008	<u>1,212,028,398</u>	<u>16,538,787</u>	<u>1,228,567,185</u>

## PROTECTION OF WAGES ON INSOLVENCY FUND

## CASH FLOW STATEMENT

Year ended 31 March 2008

	Notes	2008 HK\$	2007 HK\$
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>			
Surplus for the year		456,452,445	361,989,805
Adjustments for:			
Interest income	3	( 38,065,565)	( 23,630,633)
Depreciation	8	5,494,935	5,494,935
Gain on disposal of equity security	9	( 12,963)	-
Fair value gain on equity security		-	( 122,400)
		<u>423,868,852</u>	<u>343,731,707</u>
(Increase)/ decrease in levy receivable		11,616,550	( 3,144,700)
Increase in sundry deposits		-	( 6,200)
Increase in sundry debtors		( 15,288)	( 84,654)
Decrease in approved claims payable		( 2,643,293)	( 782,301)
Increase/(decrease) in accrued operation expenses		( 668)	8,148
Increase/(decrease) in accrued supervision fee		600,000	( 700,000)
Acquisition of equity security by subrogation		-	( 23,120)
Proceeds from disposal of equity security		<u>158,483</u>	<u>-</u>
Cash generated from operating activities		<u>433,584,636</u>	<u>338,998,880</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>			
Interest received		38,419,019	21,414,189
Decrease/(increase) in fixed deposits with maturity over three months		<u>6,021,293</u>	<u>( 308,523,590)</u>
Net cash inflow/(outflow) from investing activities		<u>44,440,312</u>	<u>(287,109,401)</u>
<b>NET INCREASE IN CASH AND CASH EQUIVALENTS</b>		<b>478,024,948</b>	<b>51,889,479</b>
Cash and cash equivalents at beginning of year		<u>148,934,019</u>	<u>97,044,540</u>
<b>CASH AND CASH EQUIVALENTS AT END OF YEAR</b>		<b><u>626,958,967</u></b>	<b><u>148,934,019</u></b>
<b>ANALYSIS OF BALANCES OF CASH AND CASH EQUIVALENTS</b>			
Cash at banks	10	1,195,226,742	723,223,087
Time deposits with original maturity over three months		<u>(568,267,775)</u>	<u>( 574,289,068)</u>
Cash at banks with maturity of three months or less		<u>626,958,967</u>	<u>148,934,019</u>

## PROTECTION OF WAGES ON INSOLVENCY FUND

### NOTES TO FINANCIAL STATEMENTS

31 March 2008

#### 1. GENERAL INFORMATION

The Protection of Wages on Insolvency Fund was established by the Government of the Hong Kong Special Administrative Region under the Protection of Wages on Insolvency Ordinance of Hong Kong in 1985 for the purpose of providing ex-gratia payment to employees whose employers have become insolvent.

The Fund consists principally of moneys received from the Commissioner of the Inland Revenue Department being an annual levy collected on each business registration certificate issued.

#### 2.1 BASIS OF PREPARATION

These financial statements have been prepared in accordance with Hong Kong Financial Reporting Standards ("HKFRSs") (which include all Hong Kong Financial Reporting Standards, Hong Kong Accounting Standards and Interpretations) issued by the Hong Kong Institute of Certified Public Accountants, accounting principles generally accepted in Hong Kong and the Protection of Wages on Insolvency Ordinance. They have been prepared under the historical cost convention and are presented in Hong Kong dollars.

#### 2.2 IMPACT OF NEW AND REVISED HONG KONG FINANCIAL REPORTING STANDARD

The Fund has adopted the following new and revised HKFRS for the first time for the current year's financial statements. Except for giving rise to additional disclosures, the adoption of this new and revised standard has had no material effect on these financial statements.

HKFRS 7 *Financial Instruments: Disclosures*

#### 2.3 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

##### Property and depreciation

The Fund's property is stated at cost less accumulated depreciation and any impairment losses. The cost of the property comprises its purchase price and any directly attributable costs of bringing the asset to its working condition and location for its intended use. Expenditure incurred after the property has been put into operation, such as repairs and maintenance, is normally charged to the statement of income and expenditure in the period in which it is incurred.

Depreciation is calculated on the straight-line basis to write off the cost of the Fund's property over its estimated useful life. The principal annual rate used for this purpose is 20%.

##### Operating leases

Rentals payable under the operating leases are charged to the statement of income and expenditure on the straight-line basis over the lease terms.

## PROTECTION OF WAGES ON INSOLVENCY FUND

## NOTES TO FINANCIAL STATEMENTS

31 March 2008

## 2.3 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

Revenue recognition

Revenue is recognised on the following bases:

- (a) levy income, on an accrual basis for the cash receipts received by the Inland Revenue Department;
- (b) interest income, accrued on a time proportion basis, by reference to the principal outstanding and at the interest rate applicable; and
- (c) money recovered by subrogation, when the amounts are received.

Recognition of claims

Claims are accounted for on an accrual basis upon approval of the Commissioner for Labour.

## 3. INCOME

	2008 HK\$	2007 HK\$
Levy	512,988,200	490,821,550
Money recovered by subrogation	8,415,371	7,622,348
Bank interest income	38,065,565	23,630,633
	<u>559,469,136</u>	<u>522,074,531</u>

In accordance with the provisions of Sections 7 and 21 of the Business Registration Ordinance and Section 6 in Part III of the Protection of Wages on Insolvency Ordinance, a levy is imposed at the rate of HK\$600 and HK\$1,800, respectively on one-year and three-year business registration certificates issued on or after 16 May 2002. The levy is reduced to the rate of HK\$450 and HK\$1,350, respectively on one-year and three-year business registration certificates issued on or after 14 March 2008 according to the Business Registration Ordinance (Amendment: Levy Reduction) Order 2008.

PROTECTION OF WAGES ON INSOLVENCY FUND

NOTES TO FINANCIAL STATEMENTS

31 March 2008

4. CLAIMS

In accordance with the provisions of Sections 16(1), (2) and (3) and Section 18 (1) in Part V of the Protection of Wages on Insolvency Ordinance, the Commissioner for Labour may make ex-gratia payments to applicants out of the Fund of the following amounts:

(a) Wages

Not exceeding HK\$36,000, being wages for services rendered not more than 4 months prior to an applicant's last day of service; and/or

(b) Wages in lieu of notice

Not exceeding the equivalent of one month's wages of the applicant or HK\$22,500, whichever is the lesser, which became due not more than six months prior to the date of application; and/or

(c) Severance payment

Not exceeding the aggregate of HK\$50,000 and half of that part of the applicant's entitlement in excess of HK\$50,000 being severance payment, the liability for payment of which arose not more than six months prior to the date of application.

5. REMUNERATION OF BOARD MEMBERS

No Board members received any fees or other emoluments in respect of their services rendered to the Fund during the year (2007: Nil).

6. TAX

The Fund is exempt from Hong Kong taxation.

7. SUPERVISION FEE

In accordance with the provisions of Section 14 in Part IV of the Protection of Wages on Insolvency Ordinance, the Financial Secretary may determine a supervision fee, which shall be charged against the income of the Fund, at any time determined by him. An agreement has been reached between the Board and the Government of the Hong Kong Special Administrative Region that the fee will be two-thirds of the Government's cost of administration in respect of the Fund. The Board however reserves its right of re-negotiation.

## PROTECTION OF WAGES ON INSOLVENCY FUND

## NOTES TO FINANCIAL STATEMENTS

31 March 2008

## 8. PROPERTY

	Building HK\$
<b>31 March 2008</b>	
At 1 April 2007, net of accumulated depreciation	16,484,807
Depreciation provided during the year	<u>( 5,494,935)</u>
At 31 March 2008, net carrying amount	<u>10,989,872</u>
<b>31 March 2007</b>	
At 1 April 2006, net of accumulated depreciation	21,979,742
Depreciation provided during the year	<u>( 5,494,935)</u>
At 31 March 2007, net carrying amount	<u>16,484,807</u>

The property represents the Fund's office premises situated in Hong Kong, which is held under a long term lease.

## 9. EQUITY SECURITY

	2008 HK\$	2007 HK\$
Listed equity security, at fair value	<u>-</u>	<u>145,520</u>

The Fund acquired the listed equity security by subrogation and its fair value was based on the quoted market price. During the year, the Fund disposed the listed equity security and recognised a gain on disposal amounting to HK\$12,963 (2007: Nil) directly in the statement of income and expenditure.

# 破產欠薪保障基金委員會

Protection of Wages on Insolvency Fund Board .....

## PROTECTION OF WAGES ON INSOLVENCY FUND

### NOTES TO FINANCIAL STATEMENTS

31 March 2008

#### 10. CASH AT BANKS

	2008 HK\$	2007 HK\$
Bank balances	189,451	134,019
Time deposits	<u>1,195,037,291</u>	<u>723,089,068</u>
	<u>1,195,226,742</u>	<u>723,223,087</u>

#### 11. GENERAL RESERVE

The levy collected and interest received prior to the establishment of the Protection of Wages on Insolvency Fund Board have been set aside in the general reserve account.

#### 12. OPERATING LEASE COMMITMENTS

The Fund leases storerooms under operating lease arrangements with leases negotiated for terms of two years at fixed monthly rentals.

At 31 March 2008, the Fund had total future minimum lease payments under non-cancellable operating leases falling due as follows:

	2008 HK\$	2007 HK\$
Within one year	98,787	202,800
In the second to fifth years, inclusive	<u>-</u>	<u>98,787</u>
	<u>98,787</u>	<u>301,587</u>

#### 13. CONTINGENT LIABILITIES

At 31 March 2008, contingent liabilities not provided for in the financial statements are as follows:

	2008 HK\$	2007 HK\$
Claims received but not yet approved	<u>104,408,968</u>	<u>110,330,058</u>

A provision has not been recognised in respect of such possible payments, as its existence will be confirmed only upon approval by the Commissioner for Labour.

## PROTECTION OF WAGES ON INSOLVENCY FUND

## NOTES TO FINANCIAL STATEMENTS

31 March 2008

## 14. FINANCIAL INSTRUMENTS

The Fund's principal financial instruments and their carrying amounts by category as at 31 March 2008 are as follows:

Financial assets

	2008 HK\$	Loans and receivables 2007 HK\$
Levy receivable	40,400,850	52,017,400
Interest receivable	3,471,033	3,824,487
Cash at banks	<u>1,195,226,742</u>	<u>723,223,087</u>
	<u>1,239,098,625</u>	<u>779,064,974</u>

Financial liabilities

	2008 HK\$	Financial liabilities at amortised cost 2007 HK\$
Approved claims payable	4,796,958	7,440,251
Accrued supervision fee	<u>16,800,000</u>	<u>16,200,000</u>
	<u>21,596,958</u>	<u>23,640,251</u>

The Fund's financial instruments arise directly from its operations and the main risk arising from them is credit risk. As the Fund's exposure to risk is kept to a minimum, the Fund has not used any hedging instruments.

## 15. APPROVAL OF THE FINANCIAL STATEMENTS

The financial statements were approved and authorised for issue by the Board on 8 September 2008.

# 破產欠薪保障基金委員會

Protection of Wages on Insolvency Fund Board .....