

## **LEGISLATIVE COUNCIL BRIEF**

### **Employees Compensation Assistance Ordinance (Chapter 365)**

#### **EMPLOYEES COMPENSATION ASSISTANCE (NOTICE OF INSOLVENCY OF INSURER) REGULATION**

#### **INTRODUCTION**

At the meeting of the Executive Council on 24 April 2001, the Council **ADVISED** and the Chief Executive **ORDERED** that the Employees Compensation Assistance (Notice of Insolvency of Insurer) Regulation (the Regulation), at the Annex, should be made under the Employees Compensation Assistance Ordinance.

#### **BACKGROUND AND ARGUMENTS**

2. The Employees Compensation Assistance Ordinance (the Ordinance) established the Employees Compensation Assistance Scheme (the Scheme) in 1991 to provide payment from the Employees Compensation Assistance Fund (the Fund) to injured employees who, after exhausting legal and financially viable means of recovery, are unable to receive their entitlements of compensation or damages from their employer or their employer's insurer. The Scheme also provides for the protection of employers against default of their insurers who become insolvent.

#### **Insurer insolvency**

3. Under paragraph (a)(iii) of Schedule 2 to the Ordinance, an insurer shall be regarded as insolvent, for the purpose of the Ordinance, if the insurer has publicly declared that it cannot by reason of its liabilities continue its business and the Authority has advised the Employees Compensation Assistance Fund Board (the Board) that it is satisfied that the insurer is unable or unlikely to pay in full claims in respect of liabilities under policies of insurance as they fall due.

4. On 2 April 2001, the Authority appointed Managers to take full control of the affairs and property of three Hong Kong insurers, namely HIH Insurance (Asia) Limited, HIH Casualty and General Insurance (Asia) Limited and FAI First Pacific Insurance Company Limited, pursuant to section 35(2)(b) of the Insurance Companies Ordinance on the grounds that these insurers appeared to be technically insolvent.

5. On 9 April 2001, the three insurers were placed into provisional liquidation by order of the High Court. Following the High Court Order, the Authority advised the Board on 10 April 2001 that, for the purpose of paragraph (a)(iii) of Schedule 2 to the Ordinance, it was satisfied that the three insurers were unable or unlikely to pay in

full claims in respect of liabilities under policies of insurance as they fall due. On the basis of these developments, the Board, having consulted its legal adviser, has concluded that the three insurers should be regarded as insolvent within the meaning of the Ordinance. This is the first occasion of insurer insolvency involving the Scheme since its inception in 1991.

### **Liability of the Scheme in the event of insurer insolvency**

6. Under the Ordinance, the Scheme provides a safety net for employers who have taken out insurance policies to cover such liability from an insurer which has subsequently become insolvent. Such an employer may -

- (a) under section 17 of the Ordinance, apply for payment from the Fund where he has paid the compensation or damages for which he is liable to pay an employee injured at work, and the insolvent insurer has failed to indemnify him in respect of such payment of compensation or damages; or
- (b) under section 18 of the Ordinance, apply for payment from the Fund to the person entitled to receive the compensation or damages for which he is liable.

7. Nevertheless, section 19(1)(b) of the Ordinance provides that no application may be made under sections 17 or 18 if, at the date of the work-related accident, a notice of insolvency in respect of the insurer concerned was in effect and had been in effect for not less than one month.

8. In accordance with section 19(1)(b) of the Ordinance, there is a need for the Board to publish, by notice in the Gazette, the name of the three insolvent insurers as early as possible. Section 20 of the Ordinance requires that the notice shall be made in the prescribed form. The Department of Justice has advised that it is necessary for a form to be prescribed by the Chief Executive in Council under section 41(1)(b) of the Ordinance for the purpose of the said section 20 before the Board can give a notice thereunder. Since such form has not yet been prescribed, the Chief Executive in Council has prescribed the form by making the Regulation.

### **THE REGULATION**

9. The Regulation prescribes the form of the notice of insolvency of insurer for the purpose of section 20 of the Ordinance.

### **LEGISLATIVE TIMETABLE**

10. The legislative timetable will be -

Publication in the Gazette

27 April 2001

Tabling at the Legislative Council 2 May 2001

### **BASIC LAW IMPLICATIONS**

11. The Department of Justice has advised that the Regulation is consistent with the Basic Law.

### **HUMAN RIGHTS IMPLICATIONS**

12. The Department of Justice has advised that the Regulation has no human rights implications.

### **BINDING EFFECT OF THE LEGISLATION**

13. The Regulation will not affect the current binding effect of the Ordinance.

### **FINANCIAL AND STAFFING IMPLICATIONS**

14. The Regulation will have no financial and staffing implications for the Government.

### **ECONOMIC IMPLICATIONS**

15. The proposal serves to facilitate implementation of the provision already laid down in the Ordinance. As such, it will have no economic implications.

### **PUBLIC CONSULTATION**

16. The Board has been informed of the proposal.

### **PUBLICITY**

17. A press release will be issued. A spokesman will be available to handle media enquiries.

Education and Manpower Bureau  
April 2001

Subject Officer: Mr K K Lam  
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**EMPLOYEES COMPENSATION ASSISTANCE (NOTICE OF  
INSOLVENCY OF INSURER) REGULATION**

(Made by the Chief Executive in Council under section 41 of the  
Employees Compensation Assistance Ordinance (Cap. 365))

**1. Notice of insolvency of insurer**

The notice referred to in section 20 of the Ordinance shall be in the form as set out in the Schedule.

SCHEDULE

[s. 1]

NOTICE

EMPLOYEES COMPENSATION ASSISTANCE ORDINANCE  
(CAP. 365)

Notice of Insolvency of Insurer

Notice is given pursuant to section 20 of the Employees Compensation Assistance Ordinance (Cap. 365) that the following insurer has become insolvent within the meaning of Schedule 2 to the Ordinance -

[name of the insurer and known place or places of business of the insurer]

This notice remains in effect until cancelled by the Employees Compensation Assistance Fund Board.

Dated this ..... day of .....

.....  
Chairman, Employees Compensation  
Assistance Fund Board

Clerk to the Executive Council

COUNCIL CHAMBER

2001

**Explanatory Note**

For the purpose of section 20 of the Employees Compensation Assistance Ordinance (Cap. 365), this Regulation makes provisions relating to the form of the notice of insolvency of insurer.