

立法會
Legislative Council

LC Paper No. CB(2) 2208/01-02
(These minutes have been seen
by the Administration)

Ref : CB2/BC/8/01

Bills Committee on
Employees Compensation Assistance (Amendment) Bill 2002

Minutes of the seventh meeting
held on Wednesday, 29 May 2002 at 8:30 am
in Conference Room A of the Legislative Council Building

- Members present** : Hon Audrey EU Yuet-mee, SC, JP (Chairman)
Hon Kenneth TING Woo-shou, JP
Hon James TIEN Pei-chun, GBS, JP
Hon LEE Cheuk-yan
Hon CHAN Kwok-keung
Hon LEUNG Yiu-chung
Hon Andrew CHENG Kar-foo
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon LI Fung-ying, JP
Hon LEUNG Fu-wah, MH, JP
- Members absent** : Hon Albert HO Chun-yan
Hon Eric LI Ka-cheung, JP
Hon Bernard CHAN
- Public Officers attending** : Mrs Jenny CHAN
Assistant Commissioner for Labour (Rights and Benefits)
- Mr LAI Ka-tong
Senior Labour Officer (Compensation)
- Mr Geoffrey A FOX
Senior Assistant Law Draftsman

Mr Lawrence PENG
Senior Government Counsel

Clerk in attendance : Mrs Sharon TONG
Chief Assistant Secretary (2) 1

Staff in attendance : Miss Kitty CHENG
Assistant Legal Adviser 5

Ms Dora WAI
Senior Assistant Secretary (2) 4

I. Meeting with the Administration

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. After taking into account the views expressed by The Hong Kong Construction Association Ltd in its submission dated 22 May 2002, the Administration undertook to move a Committee Stage amendment (CSA) to the Bill to make it clear that the amendments to sections 17 and 18 of the Employees Compensation Assistance Ordinance would be applicable to all applications by principal contractors under these two sections irrespective of whether a notice of insurer insolvency was issued by the Employees Compensation Assistance Fund Board (the Fund Board) before or after the commencement of the Bill.

3. Members expressed concern that the proposed arrangements for relief payment might pose administrative difficulties to the Fund Board and enquired whether the Fund Board had been consulted on the proposals on relief payment. The Administration responded that the Fund Board was aware of the proposals on relief payment as it had been provided with a copy of the Bill. The Fund Board had raised no objection to the proposals contained in the Bill.

4. Some members considered that the Hong Kong Bar Association and The Law Society of Hong Kong should be consulted on the interpretation of the relief payment provisions. However, the Administration said that owing to time constraint, it was not prepared to consult the two legal professional bodies. Instead, it would consider ways to make clear the policy intent of relief payment.

5. Regarding the proposed level of surcharge to be imposed on uninsured employers, the Administration stated that the majority of members of the Labour Advisory Board (LAB) considered the proposed level of surcharge at three times the

levy payable to the Fund Board appropriate. The Administration respected the view of LAB and had no intention to further increase the level of surcharge at this stage. However, as a general practice, the Administration would review any provisions in the light of operational experience. The Administration would consider the proposal of incorporating the multiplying factor of "three times" in a schedule to the principal Ordinance, so that any adjustment of the surcharge would be made in the form of subsidiary legislation, instead of in the form of a bill.

6. In response to an enquiry from the Chairman, the Administration explained that under the proposed section 18A, an employer would be entitled to make an application for payment from the Fund under section 17 or 18 not later than 180 days after -

- (a) the date on which the Court had made a judgment or the Commissioner for Labour had issued the certificate of assessment in respect of the employment-related injury; and
- (b) the date on which the Fund Board had issued a notice of insurer insolvency in accordance with section 20,

whichever was the later.

7. The Chairman asked the Administration to review the drafting of the proposed section 18A to improve its clarity.

II. Date of next meeting

8. The Bills Committee noted that the next meeting would be held on Monday, 3 June 2002 at 8:30 am.

9. There being no other business, the meeting ended at 10:35 am.

**Proceedings of the seventh meeting of the
Bills Committee on
Employees Compensation Assistance (Amendment) Bill 2002
held on Wednesday, 29 May 2002 at 8:30 am
in Conference Room A of the Legislative Council Building**

Time	Speaker	Subject(s)	Action required
000000 - 000116	Chairman	Admin's written response to the further submission from The Hong Kong Construction Association Ltd dated 22.5.2002 (LC Paper No. CB(2)2095/01-02(01))	
000116 - 000209	Admin	Briefed members on the above paper and undertook to move a CSA to the Bill after taking into account the views of The Hong Kong Construction Association Ltd	✓ Admin to move a CSA
000209 - 000325	Chairman	Information on statutory distribution of the estate of an intestate (LC Paper No. CB(2)2067/01-02(01))	
000325 - 000446	ALA5	Briefed members on the above information	
000446 - 000615	Chairman	Admin's paper on application of relief payment provisions in the two cases referred to in paragraph (c) of the letter dated 17.5.2002 from Legal Service Division to Admin (LC Paper No. CB(2)2095/01-02(02))	
000615 - 001149	Admin	Briefed members on the above paper	
001149 - 001204	Chairman	Age limit on children of deceased employees in respect of eligibility for relief payment	
001204 - 001237	Admin	- ditto -	
001237 - 001305	Chairman/ Admin	- ditto -	
001305 - 001322	Mr Kenneth TING	- ditto -	
001322 - 001505	Admin	- ditto -	
001505 - 001519	Chairman	- ditto -	
001519 - 001530	Admin	- ditto -	
001530 - 001549	Chairman/ Admin	- ditto -	
001549 - 001626	Mr LEE Cheuk-yan	Exclusion of pre-trial and post-trial loss of accumulation of wealth in calculating the amount of relief payment	
001626 - 001722	Admin	- ditto -	
001722 - 001728	Chairman	Inclusion of funeral expenses in calculating the amount of relief payment	
001728 - 001737	Admin	- ditto -	
001737 - 001915	Chairman/ Admin	- ditto -	
001915 - 002021	Mr LEE Cheuk-yan	Rights of an eligible person in respect of the estate of the deceased employee in the case where damages were awarded to the estate	

Time	Speaker	Subject(s)	Action required
002021 - 002145	Admin	- ditto -	
002145 - 002155	Mr LEE Cheuk-yan/ Admin	- ditto -	
002155 - 002216	Mr LEE Cheuk-yan	- ditto -	
002216 - 002416	Admin	- ditto -	
002416 - 002540	Chairman	Manner of apportionment of relief payment among eligible persons in the case where the court judgment had not stated how the relief payment should be apportioned	
002540 - 002716	Admin	- ditto -	
002716 - 002746	Chairman	- ditto -	
002746 - 002954	Admin	- ditto -	
002954 - 003002	Chairman	- ditto -	
003002 - 003052	Admin	- ditto -	
003052 - 003148	Chairman/ Admin	- ditto -	
003148 - 003248	Chairman	(a) Need to consult the Fund Board on the proposed arrangements for relief payment; and (b) Need to consult Hong Kong Bar Association and The Law Society of Hong Kong on the interpretation of the relief payment provisions	
003248 - 003451	Admin	- ditto -	
003451 - 003505	Chairman	- ditto -	
003505 - 003543	Admin	- ditto -	
003543 - 003614	Chairman	- ditto -	
003614 - 003731	Admin	- ditto -	
003731 - 003736	Chairman/ Admin	- ditto -	
003736 - 003833	Mr Andrew CHENG	- ditto -	
003833 - 003913	Chairman	- ditto -	
003913 - 004020	Admin	- ditto -	
004020 - 004101	Mr Andrew CHENG	Information on the amount of statutory compensation received by each eligible person	
004101 - 004225	Admin	- ditto -	

Time	Speaker	Subject(s)	Action required
004225 - 004411	Mr James TIEN	(a) Need to consult the Fund Board on the proposed arrangements for relief payment; and (b) Need to consult Hong Kong Bar Association and The Law Society of Hong Kong on the interpretation of the relief payment provisions	
004411 - 004543	Chairman	- ditto -	
004543 - 004638	Mr James TIEN	- ditto -	
004638 - 004727	Chairman	- ditto -	
004727 - 004934	Admin	- ditto -	
004934 - 005216	Mr LEE Cheuk-yan	(a) Deliberations of LAB on the rights of an eligible person in respect of the estate of the deceased employee; and (b) Meaning of section 35 of the principal Ordinance as amended by clause 22 of the Bill concerning survival of rights	
005216 - 005338	Admin	- ditto -	
005338 - 005406	Mr LEE Cheuk-yan	Rights of an eligible person in respect of the estate of the deceased employee	
005406 - 005453	Admin	- ditto -	
005453 - 005522	Mr LEE Cheuk-yan	- ditto -	
005522 - 005831	Admin	Meaning of section 35 of the principal Ordinance as amended by clause 22 of the Bill concerning survival of rights	
005831 - 005946	Mr LEE Cheuk-yan	- ditto -	
005946 - 010023	Admin	- ditto -	
010023 - 010034	Mr LEE Cheuk-yan	Rationale for not including loss of accumulation of wealth in calculating the relief payment	
010034 - 010054	Admin	- ditto -	
010054 - 010316	Chairman	- ditto -	
010316 - 010438	Mr LEE Cheuk-yan/ Chairman	- ditto -	
010438 - 010543	Admin	- ditto -	
010543 - 010605	Mr LEE Cheuk-yan	Exclusion of pre-trial and post-trial loss of accumulation of wealth in calculating the amount of relief payment	
010605 - 010733	Admin	- ditto -	
010733 - 010812	Chairman	- ditto -	
010812 - 010827	Admin	- ditto -	
010827 - 010928	Mr LEE Cheuk-yan	Eligibility for relief payment of an estate administrator who was also an eligible person	
010928 - 011135	Admin	- ditto -	

Time	Speaker	Subject(s)	Action required
011135 - 011152	Mr LEE Cheuk-yan	- ditto -	
011152 - 011217	Admin	- ditto -	
011217 - 011359	Chairman	- ditto -	
011359 - 011501	Admin	- ditto -	
011501 - 011526	Chairman	- ditto -	
011526 - 011634	Admin	Admin to consider ways to make clear the policy intent of relief payment	✓ Admin to consider
011634 - 011714	Admin/ Chairman	Ditto	
011714 - 011743	Chairman	Reasons for awarding compensation to the elder sister only in the second case referred to in Admin's paper at LC Paper No. CB(2)2095/01-02(02))	
011743 - 011756	Admin/ Chairman	- ditto -	
011756 - 011833	Admin	- ditto -	
011833 - 011919	Chairman	Paragraph (c) of letter dated 17.5.2002 from Legal Service Division to Admin (LC Paper No. CB(2)2017/01-02(03))	
011919 - 011957	Admin	- ditto -	
011957 - 012033	Chairman	Admin's paper on definition of eligible persons (LC Paper No. CB(2)2095/01-02(03))	
012033 - 012223	Admin	Briefed members on the above paper	
012223 - 012258	Chairman	Proposal of increasing the level of surcharge to be imposed on uninsured employers	
012258 - 012326	Mr Kenneth TING	- ditto -	
012326 - 012418	Chairman	- ditto -	
012418 - 012501	Mr James TIEN	Amount of surcharge to be imposed on uninsured employers	
012501 - 012714	Admin	- ditto -	
012714 - 012729	Mr James TIEN	- ditto -	
012729 - 012755	Admin	- ditto -	
012755 - 012948	Mr Andrew CHENG	Adequacy of the proposed level of surcharge in deterring non-compliance with the statutory insurance requirement	
012948 - 013113	Admin	Proposal of incorporating the multiplying factor of "three times" in a schedule to the principal Ordinance and reviewing the level of surcharge in two years	
013113 - 013142	Mr Andrew CHENG	- ditto -	

Time	Speaker	Subject(s)	Action required
013142 - 013241	Admin	Views of LAB on the proposed level of surcharge	
013241 - 013354	Mr Andrew CHENG	Adequacy of the proposed level of surcharge in deterring non-compliance with the statutory insurance requirement	
013354 - 013400	Chairman	- ditto -	
013400 - 013424	Mr Andrew CHENG	- ditto -	
013424 - 013435	Admin	- ditto -	
013435 - 013444	Chairman	Proposal of incorporating the multiplying factor of "three times" in a schedule to the principal Ordinance and reviewing the level of surcharge in two years	
013444 - 013510	Admin	Admin to consider the proposal of incorporating the multiplying factor of "three times" in a schedule to the principal Ordinance	✓ Admin to consider
013510 - 013624	Mr James TIEN	Amount of surcharge to be imposed on uninsured employers	
013624 - 013748	Admin	- ditto -	
013748 - 013846	Admin/ Mr James TIEN	- ditto -	
013846 - 014012	Admin	- ditto -	
014012 - 014047	Mr James TIEN	- ditto -	
014047 - 014058	Chairman	Level of surcharge to be imposed in the case where the employers did not take out insurance cover for all their employees	
014058 - 014117	Admin/ Chairman	- ditto -	
014117 - 014241	Admin	- ditto -	
014241 - 014301	Mr CHAN Kwok-keung	Imposition of surcharge with retrospective effect	
014301 - 014350	Admin	- ditto -	
014350 - 014426	Mr CHAN Kwok-keung	- ditto -	
014426 - 014501	Admin	- ditto -	
014501 - 014523	Mr CHAN Kwok-keung	- ditto -	
014523 - 014539	Chairman	- ditto -	
014539 - 014650	Admin	- ditto -	
014650 - 014720	Chairman	- ditto -	
014720 - 014806	Admin	- ditto -	
014806 - 014819	Chairman	- ditto -	

Time	Speaker	Subject(s)	Action required
014819 - 014829	Mr CHAN Kwok-keung	- ditto -	
014829 - 014929	Mr James TIEN	- ditto -	
014929 - 015005	Chairman/ Mr James TIEN/ Mr CHAN Kwok-keung	- ditto -	
015005 - 015035	Admin	Inspection against non-compliance with the statutory insurance requirement	
015035 - 015039	Chairman	- ditto -	
015039 - 015048	Mr CHAN Kwok-keung	- ditto -	
015048 - 015114	Mr LEUNG Fu-wah	Views on the proposed level of surcharge	
015114 - 015303	Chairman	Review of the drafting of the proposed section 18A to improve its clarity	
015303 - 015520	Admin	- ditto -	
015520 - 015537	Chairman	- ditto -	
015537 - 015646	Admin	- ditto -	
015646 - 015659	Chairman	- ditto -	
015659 - 015741	Admin	- ditto -	✓ Admin to review the drafting
015741 - 015759	Chairman	Date of next meeting	
015759 - 015829	Mr James TIEN	CSA to be moved by the Bills Committee	
015829 - 015842	Chairman	- ditto -	
015842 - 015903	Mr James TIEN/ Chairman	- ditto -	
015903 - 015931	Chairman	Date of next meeting	

Note : The audio records of the above proceedings are kept at the LegCo Library

Council Business Division 2
Legislative Council Secretariat
6 June 2002