

EXTRACT

立法會

Legislative Council

LC Paper No. CB(2)689/01-02

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by the Administration)

Ref : CB2/PL/MP/1

LegCo Panel on Manpower

Minutes of meeting

**held on Thursday, 15 November 2001 at 2:30 pm
in the Chamber of the Legislative Council Building**

Members present : Hon CHAN Kwok-keung (Deputy Chairman)
Hon James TIEN Pei-chun, GBS, JP
Hon Cyd HO Sau-lan
Hon LEE Cheuk-yan
Dr Hon LUI Ming-wah, JP
Hon CHAN Yuen-han, JP
Hon LEUNG Yiu-chung
Hon YEUNG Yiu-chung, BBS
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon Andrew CHENG Kar-foo
Hon SZETO Wah
Hon LI Fung-ying, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Albert CHAN Wai-yip
Hon LEUNG Fu-wah, MH, JP

Members attending : Hon Bernard CHAN
Hon WONG Sing-chi

Members absent Hon LAU Chin-shek, JP (Chairman)
Hon Kenneth TING Woo-shou, JP
Hon Michael MAK Kwok-fung
Hon Frederick FUNG Kin-kee

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Public Officers : Item III
attending

Mr Philip K F CHOK, JP
Deputy Secretary for Education and Manpower

Mr LAM Kam-kwong
Principal Assistant Secretary for Education and Manpower

Mr Benjamin TANG, JP
Commissioner of Insurance

Mrs Jenny CHAN
Assistant Commissioner for Labour (Rights and Benefits)

Mr LAI Ka-tong
Senior Labour Officer

Item IV

Mr LAM Kam-kwong
Principal Assistant Secretary for Education and Manpower

Mrs Jenny CHAN
Assistant Commissioner for Labour (Rights and Benefits)

Mr LAI Ka-tong
Senior Labour Officer

Item V

Mrs DO PANG Wai-yee
Principal Assistant Secretary for Education and Manpower

Mrs Pamela TAN, JP
Commissioner for Labour

Mr T S CHOW, JP
Assistant Commissioner for Labour (Employment Services)

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

Staff in : Ms Dora WAI
attendance Senior Assistant Secretary (2) 4

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III. Review of the Occupational Deafness Compensation Scheme and Rescue package for the Employees Compensation Assistance Scheme
(LC Paper Nos. CB(2)336/01-02(04), (05) and (06))

8. Members noted the submissions from The Hong Kong Federation of Insurers and the Association for the Rights of Industrial Accident Victims tabled at the meeting.

(Post-meeting note: The submissions from The Hong Kong Federation of Insurers and the Association for the Rights of Industrial Accident Victims were circulated to members vide LC Paper Nos. CB(2)411/01-02(01) and (02) on 19 November 2001.)

9. Deputy Secretary for Education and Manpower (DSEM) briefed members on the Administration's proposals to modify the Occupational Deafness Compensation Scheme (the ODC Scheme) and the package of measures to restore the long-term viability of the Employees Compensation Assistance Scheme (the ECA Scheme).

10. Mr James TIEN said that the Liberal Party was not supportive of the Administration's proposals. He opined that matters under the ODC Scheme and the ECA Scheme should be dealt with separately as they were two separate schemes. In his view, the financial predicament of the ECA Scheme, which was triggered by the insolvency of the HIH Group of insurers, was mainly due to the ineffective monitoring over insurance companies by the Government. Therefore, the Administration should shoulder the responsibility and inject funds into the ECA Scheme to restore its financial viability, instead of imposing an increase in the overall employees' compensation insurance levy payable by employers. He opposed the proposed increase in the levy rate by 1%, i.e. from 5.3% to 6.3%. Regarding the ODC Scheme, he considered that the levy rate for the Occupational Deafness Compensation Board (the ODC Board) should be reduced if the number of claims declined. He also expressed disagreement with the proposal to set up a separate compensation fund to cater for insolvencies of insurers undertaking employees' compensation business, as the fund might be idle should there be no insolvent cases in future.

11. DSEM pointed out that the package of proposals for the improvement of the ODC Scheme was formulated on the basis of the recommendations made by a working group tasked to review the ODC Scheme (the Working Group). He said that the 5.3% levy collected from employers was distributed to the Employees Compensation Assistance Fund Board (the ECAF Board), the Occupational Safety and Health Council and the ODC Board. As the levy income indeed came from same employers, the Administration considered it reasonable to re-allocate the share of levy income among the ECAF Board

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and the ODC Board in order to avoid unnecessary further increase in the levy rate. He assured members that the financial position of the ODC Board was sound and therefore the proposed reduction in its share of levy income should not have implications on the operation of the Occupational Deafness Compensation Fund (the ODC Fund). He added that the ODC Board had an annual income of some \$70 million while its annual expenditure was only around \$27 million. Although its annual expenditure would rise to some \$58 million if the improvement proposals were implemented, its income could still adequately meet its annual expenditure. Besides recurrent income, the ODC Board also had an accumulated reserve of some \$230 million at present.

12. DSEM further said that if the ECAF Board were not provided with additional funds, the Employees Compensation Assistance Fund (the ECA Fund) would be depleted in early 2002 as the ECAF Board only had a balance of some \$31 million at present, whereas the estimated amount of claims accruing from the insolvency of the HIH Group would be \$350 million. He pointed out that under the Employees' Compensation Ordinance (ECO), employers were required to make compensation payment to employees within 21 days after the Certificate of Compensation Assessment was issued by LD. Employers could then apply for payment from the ECAF Board of the amount of compensation paid to employees. In the event of the ECA Fund becoming exhausted, eligible applicants might only receive their entitlement from the ECAF Board when the Board had sufficient funds to pay, in accordance with the order of priority as provided in section 26 of the Employees Compensation Assistance Ordinance (ECAO). Given the magnitude of claims arising from the insolvency of the HIH Group, it would be unrealistic to expect that the ECA Fund would be able to continue to function effectively in the absence of additional funds. After examining all possible ways to address the issue, the Administration considered that an adjustment of levy rates for the ECAF Board and the ODC Board within the overall employees' compensation insurance levy would be the most desirable way to help the ECAF Board tide over the immediate funding problem and restore its long-term financial viability. He added that the stakeholders had been consulted and the proposed arrangements were supported by the ECAF Board and the ODC Board.

13. Commissioner of Insurance (C of I) pointed out that the three local subsidiaries of the HIH Group had been operating well in Hong Kong before their parent company in Australia became insolvent. The Office of the Commissioner of Insurance (OCI) had been maintaining contact with the relevant authorities in Australia in respect of the insolvency of the HIH Group. He was not in a position to disclose further details at this stage as the cases were now pending in court. He added that as more than half of the insurance companies in Hong Kong were foreign companies, OCI was examining measures to be put in place to minimise the possibility of occurrence of similar incidents in future. However, in order not to deter foreign investments in Hong Kong, it would not be appropriate to impose too many restrictions over the operation of insurance business.

14. Mr James TIEN considered it unfair that the financial burden created by the insolvency of the HIH Group in Australia had to be borne by employers and employees in Hong Kong. He maintained the view that the insolvency of the three local subsidiaries of the HIH Group was due to the Government's ineffective monitoring, therefore it would be

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more reasonable for the Government to shoulder at least one-third of the total employees' compensation claims accruing from the insolvency of the HHH Group.

15. DSEM pointed out that the provision of employees' compensation had always been the responsibility of employers. This established principle was endorsed by LegCo and the Labour Advisory Board (LAB) when ECAO was first passed by LegCo in 1991. Nevertheless, the Administration would provide assistance by extending a loan of \$280 million to help the ECAF Board out of its predicament. Repayment of the loan could commence from 2008-09 over a ten-year period.

16. Mr SZETO Wah noted that under the ODC Scheme, a life-time maximum of \$15,000 would be provided to each applicant for the purchase, repair and replacement of hearing assistive device. He said that according to applicants, they would first be provided with \$6,000 for the purchase of the device with the remaining sum provided thereafter on a yearly basis. The applicants considered that the amount of \$6,000 should be increased to \$10,000 to \$12,000 as the prices of prevailing models of hearing assistive devices were far higher than \$6,000. They also considered that the life-time assistance of \$15,000 was insufficient as the average life of a hearing assistive device was around 10 years.

17. Assistant Commissioner for Labour (Rights and Benefits) (AC for L(RB)) clarified that other than a limit of \$6,000 for the initial purchase, there was no restriction on how the balance of \$15,000 should be used every year. If necessary, a claimant could exhaust the maximum amount in two years. She said that according to audiologists and specialists in the field of ear, nose and throat, hearing assistive devices within \$6,000 were available in the market. Professional advice should be sought when selecting an appropriate hearing assistive device.

18. Mr Bernard CHAN said that The Hong Kong Federation of Insurers disagreed with the package of proposals recommended by the Administration, with reasons set out in its submission. He pointed out that the setting up of a separate compensation scheme would result in duplication of resources and the extra cost incurred would eventually be borne by employers.

19. DSEM said that as insurer insolvency would inevitably create sudden and substantial strain on the ECA Scheme, the Administration considered it appropriate that in the longer term, protection against insurer insolvency should be excluded from the scope of the ECA Scheme. Therefore, the Administration proposed that a separate compensation scheme should be set up to deal with insolvencies of insurers undertaking employees' compensation insurance business.

20. Mr Bernard CHAN considered that even with the increase of 1% in levy rate, the levy income might still be insufficient to restore the financial viability of the ECA Scheme. He said that the level of employees' compensation insurance premium had dropped persistently in the past few years and therefore the levy income should also have dropped correspondingly. Mr LEUNG Fu-wah asked whether the actual amount of levy income would increase upon the increase of levy rate by 1%.

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21. Senior Labour Officer (SLO) responded that 1% of the levy imposed on employees' compensation insurance premium amounted to \$19.8 million in 1999-2000, \$25.2 million in 2000-01 and \$16.4 million in the first two quarters of 2001-02. The amount of 1% of the levy imposed on employees' compensation insurance premium for the whole 2001-02 was estimated to be some \$27 to \$28 million. In projecting this figure, the Administration had taken into account the fact that the figure in the first two quarters of a year would usually account for a higher percentage. The above figures demonstrated that the actual amount of levy income would increase upon the increase of levy rate.

22. Mr LEUNG Fu-wah asked why the Administration proposed to increase the levy rate for the ODC Board from 1.2% to 1.8% from 2007-08. SLO replied that this was proposed with reference to an assessment made on the financial viability of the ODC Board on a long-term basis, which suggested that the levy rate for the ODC Board should be increased to 1.8% from 2007-08 in order to maintain its financial stability. With its significant amount of reserve, the ODC Board would be financially viable at the levy rate of 1.2% in the five years before 2007-08.

23. In reply to Mr LEUNG Fu-wah's enquiry concerning the no-gain-no-loss rate of interest for the loan of \$280 million extended to the ECAF Board by the Government, Principal Assistant Secretary for Education and Manpower (PAS(EM)) said that this was an interest rate applicable to loans extended by the Government to publicly-funded organisations. The interest rate was calculated on the basis that the Government would not receive any profit nor suffer any loss when extending a loan.

24. Mr Bernard CHAN suggested that the Administration should consider requiring an employer to provide his insurer with information on the number of his employees so that the insurer would be able to assess the risk more accurately before fixing the premium. He suggested that the Administration should make reference to the established mechanism in the Mandatory Provident Fund (MPF) System for this purpose. Mr LEUNG Fu-wah and Mr LEE Cheuk-yan shared the view of Mr CHAN.

25. AC for L(RB) said that the Administration had examined the issue in detail and considered it not necessary to compulsorily require an employer to inform his insurer of the number of his employees because the terms under an insurance policy had already enabled an insurer to obtain such information from the insured. SLO supplemented that LD had exchanged views with the insurance industry over this matter. According to his knowledge, the implementation of the MPF System had facilitated insurers in acquiring more up-to-date information from their clients. The insurance industry was drawing up internal guidelines for insurers to follow in obtaining such information from employers.

26. Mr LEUNG Fu-wah asked whether the Administration had taken into account the decline in interest income in various fund boards following the declines in interest rate recently. SLO said that the financial estimates of various fund boards were compiled on a long-term basis, usually with interest income projected at 2% to 3% per annum. This projection was considered to be a prudent level as the fluctuation of interest rate could be evened out over a long period of time.

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27. Mr Bernard CHAN asked whether \$350 million would be sufficient to meet the claims for payment arising from the insolvency of the HIH Group. SLO replied that \$350 million was an estimation based on the figures provided by the provisional liquidators of the three local subsidiaries of the HIH Group. He supplemented that the known claims to date amounted to \$290 million, but having considered that there might be some claimants who had yet to file their claims, an additional 20% was reserved in order to bring the estimation to a prudent level.

28. Mr LEUNG Yiu-chung pointed out that the level of compensation for workers suffering from noise-induced deafness by reason of their employment in the past five years had been reduced due to the financial constraint of the ODC Board. As the financial position of the ODC Board was sound, he urged the Administration to reimburse the affected workers for the amount of compensation which had been underpaid in the past five years. Mr Andrew CHENG expressed support for Mr LEUNG's proposal.

29. AC for L(RB) said that the ODC Board was required to pay compensation to claimants in accordance with the provisions in the Occupational Deafness (Compensation) Ordinance. In view of the legal principle involved, it was considered inappropriate that claims should be allowed to be made with retrospective effect should there be any amendments to the Ordinance. This principle was supported by the Working Group which had employer and employee representatives and the Committee on Employees' Compensation under LAB.

30. Mr LEUNG Yiu-chung pointed out that there were some 60 to 70 cases where the workers' hearing disability in two ears was different, e.g. one ear at around 35 dB and the other at around 55 dB. He suggested that this group of workers should also be entitled to compensation under the ODC Scheme. Mr SZETO Wah and Mr Andrew CHENG shared the view of Mr LEUNG.

31. AC for L(RB) said that the Working Group and LAB had discussed this matter in detail. She pointed out that the statutory minimum level of 40 dB was set with reference to well-established international standards, and there was at present no trend that this level should be adjusted. She explained that for the purpose of calculating compensation, the degree of hearing loss would be translated into the degree of permanent loss of earning capacity. Professional advice was that the earning capacity of a worker would not be affected if he did not suffer serious hearing loss in one ear, and that the degree of noise-induced hearing loss should be generally similar in both ears whereas the degree of health-induced hearing loss might be very different in two ears. It should be noted that the ODC Scheme aimed at compensating employment-related noise-induced deafness and not health-related hearing loss and such professional advice should be considered. Nevertheless, the Administration was examining whether assistance could be provided to those who suffered hearing loss in one ear and were not covered under the ODC Scheme from other sources, e.g. Brewin Trust Fund.

32. Mr LEUNG Yiu-chung suggested that the ODC Scheme should be extended to cover all industries so that all workers who had been exposed to noise in their working

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environment and had suffered from noise-induced deafness would be compensated. AC for L(RB) said that the Administration had made reference to the results of the noise surveys conducted by LD in respect of 43 work processes/jobs before the four new specified noisy occupations were recommended. She explained that as sensorineural hearing loss would only be developed over a long period of time, it was therefore difficult to ascertain whether the hearing loss of a worker was caused by his present job. She added that the Administration had no intention to extend the scope of the ODC Scheme to cover workers of all industries, including non-specified occupations.

33. Ms LI Fung-ying pointed out that professional advice revealed that the degree of noise-induced hearing loss in two ears could be different, and that the overloading of the better ear might lead to its deterioration. She asked the Administration to take these factors into account and seriously consider relaxing the eligibility criteria for claiming compensation against marginal hearing loss in one ear, e.g. those with one ear slightly below 40dB and the other ear over 50 dB. Miss CHAN Yuen-han shared Ms LI's view.

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34. DSEM undertook to consider the views expressed by members concerning compensation for workers suffering from noise-induced hearing loss by reason of their employment, and explore ways to address the issues. Members agreed that the matter should be followed up by the Panel at a future meeting.

35. Ms LI Fung-ying considered it unreasonable that the ex gratia payment, payable in lieu of common law damages, under the ECA Scheme would only be paid to the spouse and children under the age of 21 of a deceased worker. She suggested that parents, who would usually be the dependants if the deceased worker was not married, should also be entitled to such payment. Mr LEUNG Fu-wah shared her view.

36. DSEM said that as LAB considered that the award of ex gratia payment was of an ex-gratia nature, it should only be paid to the immediate family members of a deceased worker, i.e. spouse and children under the age of 21. If a deceased worker was not married, his parents would be awarded a large proportion of the statutory compensation under ECO. PAS(EM) supplemented that when the proposal was discussed by LAB, both employer and employee representatives agreed that the ex gratia payment should only be paid to the immediate family members of a deceased worker.

37. Mr LEUNG Fu-wah said that according to his understanding, when the proposal of ex gratia payment was discussed by LAB, the focus was put on the capping of the ex gratia payment at \$4 million for each applicant and the appropriate amount of monthly payments. LAB had not discussed in detail parents' eligibility for the ex gratia payment.

38. Ms LI Fung-ying disagreed that the ex gratia payment should be of compassionate nature. She said that she would reserve her position on the Administration's proposed reform measures for the ECA Scheme if the Administration was not prepared to clarify or amend parents' eligibility for the ex gratia payment under the ECA Scheme. She suggested that to facilitate consideration by members, the Administration should provide members with information on the deliberations of LAB if the issue had been considered

by LAB.

39. Mr LEE Cheuk-yan asked whether the accumulated reserve of \$1.1 billion under the Insolvency Fund Scheme as mentioned in the submission from The Hong Kong Federation of Insurers could be used to pay the claims arising from the insolvency of the HIH Group. If the answer was in the negative, he suggested that the Administration should immediately set up a compensation fund to provide for protection against insurer insolvency as referred to in the Administration's paper. He also suggested that the said fund be administered by OCI, and that a bridging loan be extended to the fund to enable it to meet the claims arising from the HIH Group insolvencies. Mr Andrew CHENG supported Mr LEE's suggestion and asked about the timetable for the establishment of such a compensation fund.

40. C of I replied that the Insolvency Fund of the Motor Insurers' Bureau of Hong Kong was operated by the insurance industry and therefore the Administration had no control over the use of the Fund. He said that it was the Administration's plan to set up a separate compensation fund to cater for future insolvencies of insurers writing employees' compensation business. However, there were some issues that needed to be resolved before the matter could be taken forward.

41. DSEM supplemented that the Administration had to further consult the insurance industry concerning the proposed establishment of a compensation fund. He reiterated that the objective of the compensation fund was to provide protection against insurer insolvency in future. However, the need to restore the financial viability of the ECAF Board was immediate as the responsibility to meet the claims arising from the insolvency of the HIH Group rested with the ECAF Board under the existing legislation.

42. Dr LUI Ming-wah expressed agreement with the proposed adjustment of levy rates for the ODC Board and the ECAF Board. However, he opined that as the Administration had failed to perform its monitoring role to ensure the efficient operation of the ECA Fund, the Administration should bear the shortfall in the ECA Fund instead of relying on employers.

43. Miss CHAN Yuen-han said that the Administration should re-consider the establishment of a centralised employees' compensation insurance system.

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Adm 44. In concluding the discussion, the Deputy Chairman asked the Administration to consider the views of members on its proposals.

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Council Business Division 2
Legislative Council Secretariat
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