

# EXTRACT

## 立法會

### *Legislative Council*

LC Paper No. CB(2) 1950/00-01  
(These minutes have been seen  
by the Administration)

Ref : CB2/PL/MP/1

#### **LegCo Panel on Manpower**

**Minutes of meeting  
held on Thursday, 17 May 2001 at 2:30 pm  
in the Chamber of the Legislative Council Building**

- Members present** :
- Hon LAU Chin-shek, JP (Chairman)
  - Hon CHAN Kwok-keung (Deputy Chairman)
  - Hon Kenneth TING Woo-shou, JP
  - Hon James TIEN Pei-chun, JP
  - Hon Cyd HO Sau-lan
  - Hon LEE Cheuk-yan
  - Dr Hon LUI Ming-wah, JP
  - Hon CHAN Yuen-han
  - Hon YEUNG Yiu-chung
  - Hon Ambrose LAU Hon-chuen, JP
  - Hon Andrew CHENG Kar-foo
  - Hon SZETO Wah
  - Hon Abraham SHEK Lai-him, JP
  - Hon LI Fung-ying, JP
  - Hon Tommy CHEUNG Yu-yan, JP
  - Hon LEUNG Fu-wah, MH, JP
  - Hon Frederick FUNG Kin-kee
- Members attending** :
- Hon Bernard CHAN
  - Hon Audrey EU Yuet-mee, SC, JP
- Members absent** :
- Hon LEUNG Yiu-chung
  - Hon Michael MAK Kwok-fung

**Public Officers :** Item III  
**attending**

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

Ms Winnie SO  
Principal Assistant Secretary for Education and Manpower (5)

Mr S P FU  
Chief Industrial Training Officer  
Vocational Training Council

Item IV

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

Miss Erica NG  
Principal Assistant Secretary for Education and Manpower (4)

Mrs Jennie CHOR, JP  
Assistant Commissioner for Labour (Labour Relations)

Item V

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

Mr LAM Kam-kwong  
Principal Assistant Secretary for Education and Manpower (7)

Mr H Y MOK  
Assistant Commissioner of Insurance

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

Mr LAI Ka-tong  
Senior Labour Officer  
Labour Department

**Clerk in** : Mr Raymond LAM  
**attendance** Senior Assistant Secretary (2)5

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

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Action

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**V. Proposed amendments to the Employees Compensation Assistance Ordinance**

(LC Paper No. CB(2)1279/00-01(06))

27. DSEM briefed members on the proposed measures to restore the financial viability of the Employees Compensation Assistance Scheme (the ECA Scheme) and the necessary amendments to the Employees Compensation Assistance Ordinance (ECAO) as detailed in the Administration's paper.

28. The Chairman asked about the rights and obligations of insurance companies under the ECA Scheme. He also asked whether insurance companies would take out re-insurance policies so that their liabilities would be discharged by other insurance companies if they had become insolvent. He queried why insurers would be able to benefit from the ECA Scheme when they had become insolvent.

29. Principal Assistant Secretary for Education and Manpower (7) said that sections 17 and 18 of ECAO provided that employers might apply to the Employees Compensation Assistance Fund Board (the Board) for making compensation payments from the Employees Compensation Assistance Fund (the ECA Fund) to their employees if their insurers had become insolvent. DSEM added that the ECA Scheme aimed at providing protection to employers rather than insurance companies. Assistant Commissioner of Insurance said that the operation of insurance companies was governed by the Office of the Commissioner of Insurance under the Insurance Companies Ordinance. He said that all insurance companies were required to take out appropriate re-insurance protection. However, like other businesses, the risks that might cause insolvency of insurance companies would still exist. He pointed out that the nature of the ECA Fund was similar to that of the Motor Insurers' Bureau Fund (the MIB Fund). The income of the MIB Fund was derived from a levy imposed on the premiums for third party risks insurance policies taken out by motor vehicle owners. The MIB Fund also aimed at protecting the insured against default of their insolvent insurers.

30. Comparing to the large amount of common law damages awarded by the court, the Chairman pointed out that there might be an even more serious impact on the ECA Scheme in case of insolvency of insurance companies as the amount of claims that might arise from these companies might be huge. He asked the Administration to study this matter in detail so that a fine balance could be struck between protection to

employers and employees and financial stability of the ECA Scheme.

31. Mr LEE Cheuk-yan noted that the Administration proposed that an ex-gratia payment would be payable in lieu of common law damages. In a fatal case, if the amount of an ex-gratia payment exceeded \$1.5 million, an initial payment of \$1.5 million would be paid and then followed by monthly payments made to the deceased employee's spouse and children under the age of 21. Mr LEE said that he did not oppose the proposed arrangement provided that the total amount of compensation entitlement would not be reduced. He considered that the Government should bear the shortfall in the ECA Fund. He questioned whether parents, if they were dependants of a deceased employee, would be paid the ex-gratia payment; and whether the amount of monthly payments made to a spouse and children would be adjusted when the children reached the age of 21.

32. Assistant Commissioner for Labour (Rights and Benefits) (AC for L(RB)) said that the Labour Advisory Board (LAB) considered that the award of an ex-gratia payment was of a compassionate nature. Such payment would be paid to the spouse of a deceased employee because under normal circumstances, the spouse would be responsible for maintaining the living for the family. Children under the age of 21 would be paid the ex-gratia payment if the spouse of the deceased employee died. However, the parents' entitlement to an ex-gratia payment was not discussed by LAB. She stressed that it was not an intentional exclusion to reduce the amount of payment. She added that the ECA Fund would pay the full amount of statutory compensation. If a deceased employee had no spouse and children, his parents would be awarded a maximum of 95% of the statutory compensation in accordance with the Employees' Compensation Ordinance (ECO). She welcomed the views of members on the arrangements for making the ex-gratia payment.

33. Mr LEE Cheuk-yan suggested that the amount of the initial payment should be increased and a time limit should be set in order to ensure that the spouse and children would be able to receive the full amount of compensation. AC for L(RB) said that LAB had discussed this issue in detail. She pointed out that the decline in levy income and the increase in the compensation amount in recent years had led to a significant imbalance between the income and expenditure of the ECA Scheme. If the amount of initial payment had to be increased and the monthly payments for all ex-gratia payments continued until the full amount of compensation was exhausted, the levy rate might need to be further increased from 1% to 4.4%. In order to strike a balance between the affordability of employers and maintaining the safety net for employees, LAB considered the current proposal feasible. In LAB's view, the ECA Fund should not be exhausted by individual large claims and should aim at helping as many people as possible.

34. Mr LEE Cheuk-yan commented that the purpose of the monthly payment arrangement seemed to reduce the amount of compensation to be paid to spouses and children of deceased employees. While agreeing that the ECA Fund should not be exhausted by individual large claims, the Chairman opined that as the Government

had a responsibility to oversee the ECA Scheme, the Government should shoulder the shortfall in the ECA Fund instead of relying on increasing the levy rates.

35. Mr Kenneth TING asked whether the fines against non-compliance with the compulsory insurance requirements had been increased and whether such fines collected were paid to the ECA Fund. AC for L(RB) responded that the maximum fine for failure to take out employees' compensation insurance was increased from \$25,000 to \$100,000 in August 2000. Such fines were not paid to the ECA Fund as they were regarded as general revenue of the Government. She said that the Labour Department (LD) had all along attached importance to the enforcement of compulsory insurance requirements under ECO. In March 2001, LD conducted a territory-wide campaign and some 6 000 establishments were covered. LD would step up efforts in enforcement and its inspection strategy would be adjusted in the light of experience. Messages to promote compliance with the compulsory insurance requirements would be broadcast on radio and TV, and advertisements would be placed on public buses and poster boxes at MTR stations. She added that more than 80 000 inspections had been conducted last year in which 1 042 employers had been successfully prosecuted against non-compliance with the compulsory insurance requirements. Under the present proposals, employers who were found non-compliant with the compulsory insurance requirements would be required to pay a surcharge to the Board.

36. Mr Kenneth TING considered that as employers were required to pay a levy to finance the ECA Fund, it was not fair that the fines collected were not paid to the ECA Fund.

37. Mr LEE Cheuk-yan suggested that the proposed amounts of surcharge at \$1,000, \$4,000 and \$8,000 imposed on uninsured employers should be increased. AC for L(RB) said that after deducting the operating expenses, the surcharge income, at currently proposed levels, was estimated to be \$1.5 million per annum. The Administration welcomed members' suggestions on the appropriate amounts of surcharge.

38. Mr SZETO Wah opined that the Administration should step up enforcement action against employers' non-compliance with the statutory insurance requirements. The amount of fines should be increased to a level which would be able to meet the payments under the ECA Scheme. He also asked about the amount of fines collected. AC for L(RB) replied that fines received from employers for non-compliance with the statutory insurance requirements in 1998, 1999 and 2000 were 2.66 million, 2.33 million and 2.64 million respectively.

39. Referring to Annex A of the Administration's paper, Mr James TIEN pointed out that in 2000-01 only some \$16 million were compensation payments made to injured employees out of the total expenditure of nearly \$29 million incurred by the Board. The legal costs and operating expenses accounted for some \$6 million and \$2 million respectively. He opined that the ECA Fund should only be used for making compensation payments to employees injured at work and the legal and operating

costs of the Board should not be met by the ECA Fund. In addition, all fines collected should be paid to the ECA Fund. He also suggested that the \$60 million to be provided to the Board should be a capital injection by the Government instead of a bridging loan so that the levy rate would not have to be increased in the coming few years. Mr Tommy CHEUNG and Dr LUI Ming-wah shared the view of Mr TIEN.

40. DSEM said that ECO provided that the legal liability to pay compensation to employees for employment-related injuries rested with employers and that the financial predicament of the ECA Scheme could be rectified through adjustment of levy rates. He clarified that the legal costs shown in Annex A of the paper were incurred by claimants rather than by the Board. He added that the Administration might consider granting a further loan to the Board if the situation so warranted.

Clerk

41. The Chairman suggested and members agreed that the Panel should write to the Administration conveying the views expressed by members on the financial arrangements in respect of the ECA Fund.

42. Mr Bernard CHAN said that the consultancy report released by The Hong Kong Federation of Insurers several months ago revealed that the problem of the employees' compensation insurance business was caused by the increase in the amount of compensation awarded by the court and the decline in premiums. The Administration concluded that the problem was solely attributed to the inefficient operation of insurance companies. However, the Administration considered that the financial volatility of the ECA Fund was brought about by the escalating amount of common law damages and suggested a package of remedial measures. He queried why an ex-gratia payment in lieu of common law damages was not proposed in respect of the employees' compensation system. He also queried why the Administration adopted double standards in dealing with the issues.

43. DSEM said that an increase in the levy rate was necessary in order to address the financial volatility of the ECA Fund. The insurance industry could also consider increasing the premium for employees' compensation insurance. As regards the ex-gratia payment, he explained that the ECA Fund provided a safety net. Its role was different from that of insurers who should be liable to make full compensation payments to the insured.

44. Responding to Ms Audrey EU, AC for L(RB) clarified that the legal costs of some \$6 million as stated in Annex A of the paper referred to the legal costs incurred by claimants. Legal cost of the Board was included in its operating expenses.

45. Ms Audrey EU pointed out that in accordance with section 16 of ECAO, legal cost had to be incurred because a claimant was required to obtain a judgment from the court before he could apply to the Board for compensation. She asked whether the Board had employed its own counsel to assist in negotiations so as to encourage early settlement of claims to save time and legal costs on both sides. She also sought clarification on the meaning of "legal costs in respect of claims for statutory

compensation” as stated in paragraph 20 of the paper.

46. AC for L(RB) explained that under ECAO, an employee could apply to the Board for compensation payment provided that his employer was liable but unable to make the payment to him. Section 16 of ECAO provided a number of means to prove that the employer concerned was liable for compensation payment. For example, a Certificate of Compensation Assessment for Fatal Case issued under ECO would prove the employer's liability. Under the same section of ECAO, an employee was required to take such proceedings to recover compensation payment from his employer. Under the circumstance, an employee might have to initiate winding-up proceedings against his defaulting employer. If the employer concerned was found to have no asset or no insurance cover, the Board would not require the employee to obtain an order from the court. She further said that the Board did not employ its own counsel as legal advisor as negotiation was not needed in every case. Legal advice from private counsel would be sought on a need basis.

47. AC for L(RB) further said that on some occasions, the Board was not aware of the claims until the cases had reached a very late stage. This placed the Board in a passive and disadvantageous position. Therefore, the Administration proposed that a time limit should be set for filing claims and that the Board should be empowered to take a more active role in legal proceedings with a view to encouraging early settlement of claims and reducing the legal costs. Following the proposal to provide ex-gratia payment in lieu of common law damages, the Board would only pay the legal costs of employees' compensation under ECO. It would no longer be responsible for the legal costs in respect of common law claims.

48. Mr YEUNG Yiu-chung noted that there were 1 042 cases of successful prosecutions out of 83 990 inspections on compulsory insurance conducted last year. This year, 6 280 establishments were inspected in two weeks and 141 prosecutions were initiated. He said that according to this rate, the number of cases of non-compliance found in this year would be much higher than that in last year. He asked whether the Administration would continue its enforcement action as that in March 2001 and whether the number of cases of non-compliance would be expected to continue to be so high for the rest of the year.

49. AC for L(RB) responded that the 6 280 inspections were conducted under a special territory-wide campaign launched in March 2001 with a view to conveying to employers a strong and clear message about the compulsory insurance requirements. It would not be possible for LD to conduct such an extensive inspection every two weeks. She said that the non-compliance rate in the past was around 1.2% to 1.3%. The increase in the number of cases in this year was due to the change in LD's inspection strategy. Based on experience, LD focused its inspections in the service sector and the import and export sector where non-compliance was more commonly found.

50. Miss CHAN Yuen-han pointed out that after the implementation of the MPF

Scheme, many employees in the construction industry had changed to self-employed persons. According to LD, these persons should still be considered as employees provided that the employer-employee relationship still existed. She expressed concern as to whether employers would take out insurance policies for such "employees" and asked how the Administration would handle this problem.

51. AC for L(RB) said that LD had held a meeting with representatives of employers' associations in the construction industry, labour unions and the insurance industry to discuss the issue and would continue with those discussions. The Administration was fully aware of the situation and would try to work out solutions to address the issue with the parties concerned.

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Legislative Council Secretariat  
28 June 2001