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Employers' Federation of Hong Kong
Comments on the Proposed Changes to Employees Compensation Assistance Scheme, April 2002

The Employers' Federation (EF) would like to comment on the proposed ECAS changes. Firstly we make some general comments about the ECAS system. Secondly we comment on the general thrust of the proposed changes and finally we voice some serious concerns about insurance company insolvencies and the impact on ECAS.

1. General Comments

The EF continues to have strong reservations about the theory of ECAS. It is simply not fair that good employers, via a surcharge must pay the freight when poor employers fail to follow the law. Also, the lack of significant penalties against these lawbreakers disturbs us. The highest fine paid by an evader to date is a paltry HK$12,000. The Labor Department is stepping up its enforcement efforts but, with fines like that, they are facing an uphill battle.

The EF also feels that it was incorrect for the Government to include under ECAS claims that pre-date the legislation. These claims have cost in excess of HK$127 million. The Government should forgive HK$127 million of its loan to ECAS to recognize this.

2. The New Legislation

Generally we applaud the direction of the proposed changes and would recommend that the legislation adopt them in principle. In particular the willingness to loan money to ECAS is good (although a grant would have been better). We support strongly giving ECAS the means to dispute claims. We reluctantly accept the 1% increase in the levy and agree with directing an increased share to ECAS.

3. Insurance Companies Insolvencies

The EF is deeply concerned about the approach taken regarding insurance company insolvencies. It is absurd that our members should have to pay the price for the Government's laissez-faire approach to the legislation of insurance companies selling EC.

EC is fundamentally different to other lines of insurance such as fire insurance or life insurance. Specifically, EC is compulsory. Uninsured employees would receive benefits as if they were insured. The cost of the claims for these uninsured employees would be paid through a levy on all employers. These differences require a different regulatory regime for insurers selling EC. The government has failed to address the necessity of such a regime in this legislation. This failure contrasts markedly with the approach taken for MPF providers.

The EF recommends that the Insurance Authority take immediate steps to minimise the risk of future insolvencies of insurers offering EC. It is beyond our scope to make specific recommendations but the following steps would help:

(i) Issue special licenses to insurers selling EC after careful inspection.
(ii) Increase minimum solvency margins significantly for insurers selling EC.
(iii) Enforce increased reserves for EC business.
(iv) Restrict commission rates on EC business to a maximum of 10%.

We understand that these proposals are not consistent with the way that insurance is currently regulated in Hong Kong. We believe a compulsory product such as EC should be regulated differently than products for which the normal "caveat emptor" rules apply.

Without this shift in insurance legislation the Government's proposals on ECAS are doomed to failure. They plan to switch the cost of insurance company insolvencies onto a special new fund. However, if we assume that this will be via a levy of X% on EC premiums, this will directly result in an X% increase to Employers because the insurance companies will be forced to pass it on. This therefore is only window dressing.

The key step is to take strong action to significantly minimise the risk of further insolvencies among insurance companies selling EC. Without this action ECAS will soon stumble into another crisis.