

The Hong Kong Construction Association Ltd

A member of International Federation Of Asian And Western Pacific Contractors. Associations

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By fax & by post
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The Hon Audrey EU Yuet-mee
Chairman of Bills Committee
on Employees Compensation Assistance (Amendment) Bill 2002
Legislative Council
3/F Citibank Tower
3 Garden Road
Hong Kong

Dear

Employees Compensation Assistance (Amendment) Bill 2002

We refer to the proposed amendments to the Employees Compensation Assistance Ordinance (Cap 365) (the "**Ordinance**") as set out in the Employees Compensation Assistance (Amendment) Bill 2002 (the "**Bill**").

As you are aware, the proposed Bill entitles a principal contractor to apply for payment from the Fund to itself and to third parties as if it were the employer, providing the principal contractor has taken out a policy of insurance in accordance with Section 40(1B) of the Employees' Compensation Ordinance (Cap 282) ("the ECO"). However, the Bill does not have retrospective effect, and it changes the relevant law only from the time of the enactment's commencement. Under Section 40(1) of the ECO, subject to subsections (IB) and (IC), no employer shall employ any employee in any employment unless there is in force in relation to such employee a policy of insurance issued by an insurer for an amount not less than the applicable amount specified in the Fourth Schedule in respect of the liability of the employer. It is further provided under Section 40(1B) of the ECO that a principal contractor who has undertaken to perform any construction work may in compliance with subsection (1), take out a policy of insurance issued by an insurer in respect of the liability of the principal contractor and the liability of his sub-contractor. Under Section 40(1E)(d), where a principal contractor has taken out a policy of insurance under subsection (IB), the principal contractor and a sub-contractor insured under the policy shall be regarded as having complied with subsection (1).

The Employees Compensation Assistance Scheme was set up to provide payment to injured employees who are unable to receive their entitlements for employment-related injuries from the employers or insurers. Moreover, protection of employers against default of their insurers who become insolvent. However, on 9 April 2001, three local subsidiaries of the HIH Group of insurance companies went into provisional liquidation because of the insolvency of its Australian parent company.

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Although a principal contractor may have fulfilled its duty in taking out a policy of insurance (in respect of its own liability and the liability of its subcontractor), it is not protected due to the insolvency of HHH's three local subsidiaries. Accordingly, we are of the view that it would be inequitable if the Bill did not have retrospective effect, so as to entitle a principal contractor to have recourse to the Fund.

We would be grateful if you could consider this at the next sitting of Leg Co.

Yours sincerely

Patrick Chan
Secretary General