

Bills Committee on Employees Compensation Assistance (Amendment) Bill 2002

The Proposed Arrangement for Interest Payment

Introduction

This paper provides information on the proposed arrangement for interest payment as requested by Members of the Bills Committee at the meeting held on 5 June 2002.

Revising the interest rate

2. At present, the Employees Compensation Assistance Fund Board (the Board) is liable to pay interest on the assistance that an injured employee is entitled to receive. For the period after the Court passes down the judgement, the interest will be set at the interest rate of judgement debts (“judgement rate”) as determined by the Court from time to time. As for the period before the Court judgement, the interest rate would be as ordered by the Court, which normally would not exceed half of the judgement rate.

3. The “judgement rate” now stands at 8.14% per annum. Such a favourable rate, which is far above the market rate, has become a disincentive for an applicant to make prompt application to the Board.

4. To strike a balance between the interests of the Board and the applicants, it is proposed that the Board should pay interest on statutory compensation at half of the “judgement rate” or the rate as ordered by the Court, whichever is the lower. The proposed rate should still be good enough to preserve the value of the outstanding payment.

Non-payment of interest for failing to observe the procedures in notifying/applying for assistance

5. In order to strengthen the role of the Board and to better manage the applications for assistance, we have proposed to require persons who intend to file an application for assistance under the Scheme to notify the Board when they initiate proceedings against their employers. When these persons have obtained an award from the Court, they should submit an application for assistance from the Board within a period of time.

6. With a view to encouraging applicants to observe the notification/application procedures outlined in paragraph 5, it has been proposed that the Board should not be liable to pay interests under the following circumstances:

(A) Late notification of proceedings to the Board

The existing provisions of the Ordinance do not require an applicant to notify the Board of any proceedings being taken against the employer at the Court. As a result, the claims may only come to the notice of the Board at a very late stage and the Board is unable to take part in the proceedings effectively even if it considers necessary.

In view of the above, it is proposed under the new section 25B(1) to require a person to serve a notice of proceedings on the Board not later than 30 days from the date on which a writ is filed with the Court in respect of a claim for statutory compensation or common law damages. The Board may extend this 30-day period if it satisfies that there are good reasons to explain the failure of the person to comply with the requirement. The requirement is to enable the Board to have sufficient time to consider whether it should apply to the Court to join in the proceedings to protect the interests of the Fund.

In order to discourage applicants from delaying the notification of the proceedings on the Board, it is proposed that the Board shall not be liable for the payment of interest in respect of the period from the expiration of the 30-day period and the date on which an extension is granted.

(B) Late application for assistance

At present, the Ordinance does not stipulate any time frame within which an applicant should submit an application to the Board for assistance. However, the Board is liable to pay interests on the awarded sum for the period from the judgement date to the payment date. The absence of a time limitation for making application and the favourable “judgement rate” have become an incentive to some applicants to delay submitting the applications. This would lead to unnecessarily high interest payments by the Board.

In order to discourage late applications, it has been proposed that for an injured employee, an application for assistance should be made within 180 days after the date on which an employer is liable for the payment of the compensation, Otherwise, no interest shall be payable

on the amount in respect of the period from the expiration of the 180 days to the date on which an application is made.

For applications due to insurer insolvency, employers should make an application under section 17 or 18 within 180 days after the date on which he is entitled to make such application. An employer who fails to make an application under section 17 within the time limit shall not be entitled to any payment. In respect of applications under section 18 for payment to the person entitled to receive the compensation, it is proposed under section 18A(3) that if the employer concerned makes a late application, the Board shall not pay any interest in respect of the period from the expiration of the 180 days to the date on which an application is made.

Non-payment of interest when the Board is processing an application for assistance

7. After receiving an application for payment, the Board has to scrutinise the documents submitted, make enquiries and, where necessary, seek legal advice before a determination is made. It is considered unreasonable if interest is accrued during the processing time. It is therefore proposed under section 22(3)(c) that no interest should be payable for a period of 180 days from the date on which an application for payment is made to the Board.

An illustrative case

8. A time line illustrating the periods during which an applicant would not be entitled to interests is provided at the Appendix.

Appendix

**Time line to illustrate the periods during which
an applicant would not be paid interests**

