

立法會
Legislative Council

Ref : CB2/BC/10/01

**Bills Committee on
Occupational Deafness (Compensation) (Amendment) Bill 2002**

Background paper prepared by the Legislative Council Secretariat

Purpose

This paper gives a summary of the issues and concerns raised by members of the Panel on Manpower on the Administration's proposals to review the Occupational Deafness Compensation Scheme.

The Administration's proposals

2. At its meetings on 15 November 2001 and 20 December 2001, the Panel on Manpower was consulted on the Administration's proposal to reduce the levy rate for the Occupational Deafness Compensation Board by 1.1 percentage point between 2002-03 and 2006-07 and by 0.5 percentage point thereafter, so as to enable the levy rate of the Employees Compensation Assistance Scheme to be increased correspondingly. The re-apportionment of levy rate seeks to restore the long-term financial viability of the Employees Compensation Assistance Scheme.

3. The Occupational Deafness Compensation Scheme is set up under the Occupational Deafness (Compensation) Ordinance to provide compensation to employees who suffer noise-induced deafness by reason of their employment in noisy occupations. The Scheme is administered by the Occupational Deafness Compensation Board and is financed by a levy on the employees' compensation insurance premium paid by employers. Having examined the financial position of the Board and its estimated income and expenditure, the Administration considers that the Board should have sufficient financial resources to support all the proposed improvements set out in paragraph 4 below even if its levy rate is reduced.

4. Apart from the proposed re-apportionment of levy rate, the Administration has also put forward a package of improvements to the Occupational Deafness Compensation Scheme which include the following -

- (a) to raise the minimum and maximum levels of compensation in accordance with the rate of nominal wage increase;
- (b) to revise upwards the percentage of permanent incapacity whilst maintaining the maximum level at 60%;
- (c) to provide reimbursement of expenses incurred in purchasing, repairing and replacing hearing assistive devices;
- (d) to add four new specified noisy occupations;
- (e) to empower the Occupational Deafness Compensation Board to conduct or finance rehabilitation programmes; and
- (f) to disregard no-pay leave in determining a claimant's earnings.

The same package of improvements is included in the Occupational Deafness (Compensation) (Amendment) Bill 2002.

Issues and concerns raised by members

5. While members have not taken a position on the Administration's proposals, they have raised various issues and concerns as follows -

- (a) the life-time maximum of \$15,000 for the purchase, repair and replacement of hearing assistive device should be increased to \$25,000. The limit of \$6,000 for the initial purchase of hearing assistive device should also be increased to between \$10,000 and \$12,000;
- (b) 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 50dB, should be relaxed;
- (c) the Administration should continue to examine whether the Brewin Trust Fund could provide assistance to those who suffer from hearing loss in one ear and are not covered under the Occupational Deafness Compensation Scheme;
- (d) the scope of the Occupational Deafness Compensation Scheme should be extended to cover workers of all industries, including non-specified occupations;
- (e) compensation for pain and suffering should be awarded as in the Pneumoconiosis (Compensation) Ordinance;

- (f) the Administration should give assurance to workers suffering from employment-related noise-induced hearing loss that their rights and benefits will not be affected following the reduction of the levy rate for the Occupational Deafness Compensation Board;
- (g) the levy rate for the Occupational Deafness Compensation Board should be reduced if the number of claims declines in future; and
- (h) the Government should, in view of the present sound financial position of the Occupational Deafness Compensation Fund, reimburse the affected workers for the amount of compensation which has been underpaid in the past five years when the level of compensation for these workers has been reduced due to financial constraint of the Fund.

Submissions received

6. The following organisations have made submissions to the Panel on Manpower expressing their views on the Administration's proposal of re-apportionment of levy rate -

- (a) Alliance of Self Help Groups for the Occupational Injuries and Diseases;
- (b) The Hong Kong Occupational Deafness Association; and
- (c) Association for the Rights of Industrial Accident Victims.

7. All the three organisations oppose the proposal of re-apportionment of levy rate as they are worried that the reduction in the share of levy for the Occupational Deafness Compensation Board may adversely affect the level of compensation for workers who suffer from noise-induced deafness by reason of their employment. These organisations in general consider that the scope and level of compensation for these workers should be enhanced in view of the sound financial position of the Board. Members may wish to refer to the three submissions (LC Paper Nos. CB(2)336/01-02(05), CB(2)336/01-02(06) and CB(2)411/01-02(02)) in **Appendices I, II and III** respectively for details of their views.

Relevant papers

8. Members may also wish to refer to the extracts from the minutes of the meetings of the Panel on 15 November 2001 and 20 December 2001 in **Appendices IV and V** respectively for details of the discussions.

9. The Administration's papers entitled "Review of the Occupational Deafness Compensation Scheme and Rescue package for the Employees Compensation Assistance Scheme" provided for the Panel meetings on 15 November 2001 and 20 December 2001 (LC Paper Nos. CB(2)336/01-02(04) and CB(2)688/01-02(06)) are in **Appendices VI and VII**.

Council Business Division 2
Legislative Council Secretariat
20 December 2002

香港職業傷病聯盟

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立法會 CB(2)336/01-02(05) 號文件
LC Paper No. CB(2)336/01-02(05)

教育統籌局
羅范淑芬女士

敬啟者：

反對政府建議調用職業性補償基金以挽救僱員補償援助基金破產危機

近日得聞政府擬減少職業性補償基金的徵款率，以調撥及借用予僱員補償援助基金，作解救因個別保險公司倒閉所引致的危機。作為一個由職業傷病互助團體組成的聯盟，我們一致強烈反對有關建議。

香港職業傷病聯盟以保障所有職業傷病工人權益為宗旨。一直以來，職業性失聰補償均訂立各項苛刻的條件，致不少患上職業性失聰的工人未獲補償；而政府更曾於第一次(1997 年)完成檢討有關條例時，多次表示因改善條例會引致更多申索個案，並預期若全面修訂有關條例，基金因而會面對赤字，故當時香港政府一再阻止全面修訂有關條例，引致失聰工人未能獲取公平及合理的補償。

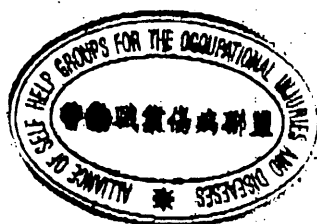
直至現在，政府預期中的赤字沒有出現，反而有關基金在如此狹窄的補償範圍時出現予盈餘。但政府卻未考慮將有關盈餘用回補償職業性失聰工友身上，相反卻提出要調借徵款率以解救政視於僱員補償援助基金上的失職，此舉對於職業性失聰工人有欠公允。

另一方面，對於因有保險公司倒閉而引致僱員補償援助基金面臨危機，此舉全然因為政府對保險公司的監管不足，並沒有要求在港經營的保險公司有足夠的資產以便於減少有關公司破產時所出現的負債問題。故此，政府承擔有關工傷工人因公司倒閉而未能索取的補償金額，是責無旁貸！我們認為政府需為其過失而負上責任，一方面重新檢討現時的僱員補償制度及對保險公司的監管，另一方面亦需於其儲備中撥款解決有關危機。

組成機構：香港肺積塵互助會 香港衛聰聯會 護手社 自強協會 香港工人健康中心

最後，我們再次重申要求政府將有關職業性失聰補償基金的盈餘用作擴大保障職業性失聰工人的範圍；而政府則需為僱員補償援助基金的危機自行承擔其監管不足的責任，並重新檢討僱員補償條例及僱員補償援助基金條例的運作模式。

若有任何疑問，請致電 2386 1666 與鄧小姐或 2725 3996 與許小姐聯絡。



香港職業傷病聯盟
副主席
鄭良興

鄭良興



香港衛聰聯會

The Hong Kong Occupational Deafness Association

Appendix II

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由：香港衛聰聯會(職業性失聰病患者互助組織)
致：立法會人力事務委員會
事：促進政府接納職業性失聰病患者的意見

調低徵款填爛賬 助長無良激民憤

強烈反對削減職業性失聰補償基金

徵款比率來填補保險公司破產爛賬

立法會CB(2)336/01-02(06)號文件
LC Paper No. CB(2)336/01-02(06)

背景資料

現時僱員補償援助計劃、職業性失聰補償計劃及職業安全健康局的資金均來自僱員補償保險費的徵款，僱員補償保險費的徵款共為 5.3%，當中包括分配予職業性失聰補償管理局的 2.3% 予職業安全健康局的 2% 及予僱員補償援助基金管理局的 1%。

二零零一年九月二十六日勞工顧問委員會正式通過把職業性失聰補償基金的長期徵款由現時的 2.3% 調低至 1.8%，並扣減的 0.5% 徵款率轉撥往僱員補償援助計劃，以及未來五年內每年將額外的 0.6% 徵款率由職業性失聰補償計劃分配到僱員補償援助計劃，以協助僱員補償援助計劃應付 HIH 集團旗下兩間本地保險公司無力償還三億五千萬的負債。

本會立場

我們香港衛聰聯會對於勞工處建議把僱員補償保險費的徵款由職業性失聰補償計劃借調 6% 徵款率予僱員補償援助計劃，以及永久削減 5% 徵款率撥調予僱員補償援助計劃方案，萬二分不贊成，更為政府的草率魯莽而憤怒和不滿。

私人保險公司的破產原因，主要是保險業界的監管出現問題及管理不善所導致，私人保險公司每年都向僱主徵收保險費，卻沒有評估僱主究竟有否為僱員提供合附職安健法例的工作環境，倘若政府順從勞工處官員的建議，削減職業性失聰補償基金來支援僱員補償援助基金，這只會間接助長一些「無良僱主」繼續忽視僱員職安健的問題，一些無良僱主以為交了錢買保險就可以不需理會僱員職安健的問題，當僱員遇上了工傷和職業病，保險公司就替無良僱主付出賠償金額，但是繼後保險公司又不曾加強對該無良僱主的監察及重新評估工作危險因素，在一個有問題的工作環境下僱員的職安健根本沒有應得的保障，最後就只有眼白白見到愈來愈多之僱員患上工傷及職業病，更眼白白見到一間又一間的保險公司宣告破產，HIH 集團旗下兩間本地保險公司的破產是因為私人保險公司的「營商政策」失當，他們只求有生意，卻沒有管理生意，所以保險公司破產也是咎由自取，政府撥款來替保險業填補爛賬，絕對是不智的政策，那只會更加助長保險公司去放縱無良僱主漠視工人安全，亦只會令更多僱員患上職業病及工傷意外！

作為一個精明的政府，本來根本就不應為 HIH 集團旗下的兩間保險公司填補爛

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香港衛聰聯會

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補償的僱員有一個較合理的百分比水平，可以過往因政府省錢而犧牲的二千二百名申索人卻從來沒有獲得一個合理公正的補償水平，這絕對是政府欺壓職業性失聰病患者的「劣政」！

時至現今二零零一年我們終於可以引證勞工處當年錯誤高估財政上的壓力，促使嚴苛的職業性失聰補償條例可以成功「阻止」真正的職業性失聰病患者來申出申索，更令到職業性失聰補償管理局於短短兩二年間有二億多元的儲備餘款。

為過往因政策苛刻而被欺壓的職業性失聰工友提供永久喪失工作能力百分比的「差額」回補

政府在一九九六年成立法例檢討工作小組檢討職業性失聰補償計劃，並且呈交立法會法案委員會議讀，在一九九七年十月二十四日、十月四日及十二月九日的三次《1997年職業性失聰(補償)(修訂)(第2號)條例草案》委員會會議中，勞工處助理處長在會議中回覆梁智鴻議員提問時，指出修改《1997年職業性失聰(補償)(修訂)條例》(1997年第99號)(“《修訂條例》”)的用意是調低用以計算補償而按不同程度的聽力損失所轉化的永久喪失工作能力程度，並因應失聰標準的調低而增加永久喪失工作能力百分比的數目，旨在確保管理局會有足夠的資源，以推行各項改善措施。

九月二十六日勞顧會通過把永久喪失工作能力百分比提升至1%至5%左右，雖然仍然是不太合理，現時政府及勞資代表終於認同過往給予僱員所釐訂出來的百分比是不合理及過低，而肯把永久喪失工作能力百分比提升是好事，不過卻沒有建議為過往六年只是獲得「低於應有而合理永久喪失工作能力百分比水平」的病患者，提供百分比的「差額」回補。

由於當年勞工處錯誤預計未來的財政開支，而刻意通過一個徵款比率苛刻的法案，令申索人平均少了二至四萬元的補償金額，因此我們香港衛聰聯會希望政府可以為早已於一九九五年至二零零二年期間成功獲取到職業性失聰補償的2014名病患者，提供喪失工作能力百分比的「差額」回補，根據我們香港衛聰聯會的計算，管理局就計算為2014名病患者提供喪失工作能力百分比的「差額」回補，亦只是四千二百萬元左右，對於有二億八百五十萬元儲備的管理局，絕對不會造成任何財政上的壓力。

當年勞工處助理處長解釋說工作小組在提出改善建議時，並無考慮該等建議的財政影響，對於勞工處用財政緊拙為理由，而未能實行一九九六年職業性失聰補償法例檢討工作小組的建議，可是議會最後亦通過倘若日後基金有所增長及盈餘，一定會按照當初工作小組的建議順著次序逐一完成，重新修訂職業性失聰補償條例來令更多職業性失聰病患者受惠，雖然新建議的職業性失聰補償條例方案是增加了一些當年工作小組建議的條文，但是仍然有不少是忽略：

1. 反對政府要分十年來支付一萬五千元予工友配置助聽器的建議方案

政府在一九九五年及一九九七年的職業性失聰補償條例檢討工作小組會議，承諾會在管理局有足夠盈餘時，會為職業性失聰病患者提供免費的復康醫療服務及免費的聽覺輔助器材，以改善我們聽力損失造成的障礙。



香港衛聰聯會

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賬，現時勞工處的官員竟提出把職業性失聰補償計劃的徵款，撥調予僱員補償基金去填補負債，這建議是完全「漠視」現時職業性失聰補償基金存在的問題，因此撥調徵款的政策建議絕對是一個無知政府的「無良政策」。

職業性失聰補償計劃由一九九五年實行至今，一直以來也有很多漏洞，教育統籌局及勞工處多年來不斷以「憂心中索職業性失聰補償的人數太多，以及基金財政短缺」為理由，訂立出一些非常嚴苛及漠視民意的無理條文，譬如：一定要規定從事高噪音行業的僱員必需在離職後十二個月之內提出申索，否則過了追溯期就算僱員真是因工作而患上職業性失聰，也絕對沒有資格提出申索，根據普通法僱員因工作而受傷也有兩年的追溯期，為何職業性失聰這職業病就只有一年的追溯期，政府刻意把申請資格訂立得如此苛刻和不合理，旨在令一群真正的職業性失聰病患者因為沒有工作證明、過了追溯限期、離職超過十二個月等等不合理的原因，而喪失提出申索資格，那麼職業性失聰基金就不用支付金錢予僱員，所以近年來職業性失聰申索人數急跌，絕對是職業性失聰補償計劃條文訂定得過於嚴厲和苛刻所導致！就以我們香港衛聰聯會、打石、打鐵工會和紡織工會，也合共有三百多名會員工友是因為上述不合理的條文而至今仍然未能獲得應有的補償金。

職業性失聰補償管理局於法例成立初年，評估錯誤申請人數，故意把法例訂立得更嚴苛，來阻嚇年老的職業性失聰病患者提出應有的申索，六年來申請人數不斷下降，截至二零零一年八月申索人數亦只是二千人左右，而且更為職業性失聰補償屯積了二億八百五十萬元的儲備，這二億多元的儲蓄及近年職業性失聰申索人有下降的趨勢，造就了一個契機予勞工處建議把職業性失聰補償計劃的徵款削減及撥調予僱員補償援助基金的方案，一切也只是勞工處官員在弄手段來欺瞞勞資代表及立法會議員的小把戲，用意是以欺瞞他們在僱員補償援助基金政策上的失當，對於職業性失聰工友要為政府和私人保險公司的失誤而作出犧牲，我們一群職業性失聰痛患者是強烈不滿及憤怒。

意見反映

現時職業性失聰補償管理局經過六年的徵款，黑積到二億八百五十萬元的餘額，這全是政府過往少給了我們病患者的結果，根據管理局的年報資料顯示，倘若僱員因從事高噪音工作而被證實患上職業性失聰，兩隻耳朵都是四十分貝聽覺神經受損，也只會獲得\$4080，只是四千元就買去一個僱員的寶貴聽力，可想而知過往職業性失聰補償條例是如何不人道及苛刻無理！

就以我們香港衛聰聯會的工友來說，他們因為上了年紀，在永久喪失工作能力百分比上也通常只有3%至15%，最後所得的補償金亦只是一萬二千元至七萬二千元，七萬二千元已是一個嚴重失聰程度的工友所獲得的補償，苛刻的法例為了省錢而特意壓低僱員的永久喪失工作能力百分比，這是勞工界一直抨擊的事，因此調高永久喪失工作能力百分比是勢在必行的事！

調高永久喪失工作能力百分比至較合理水平，只是把僱員身心所受的痛苦給予一點點安慰，及彌補了僱員生活和工作上的一點兒支援而已，不過日後索取職業性失聰

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當年勞工處的副署長蕭威林先生是表示為予節省管理局的行政開支，同意為職業性失聰病患者提供一萬五千元的助聽器補償金，那是一次過的一筆過的補償金，檢討法例的工作小組及勞工處官員也曾經表示工友對復康及輔助聽力方面的要求是合理的。可是，在呈交勞顧會討論的「職業性失聰補償計劃諮詢文件」中，我們卻發現政府雖然將會落實該聽覺輔助器材的補償金，可是卻以實報實銷分十年來補償予申索人，實際上申索人只有獲得六千元購買助聽器，每年只有九百元的維修費用保養該助聽器，以一個嚴重失聰的申索人來說，他們是需要購買兩部耳背式助聽器，才可以對他們的聽力有一定的幫忙，兩部耳背式助聽器加上耳模及驗耳費用最少也要一萬二千元，餘下的三千元根本就不夠我們用來購買助聽器專用的電芯，更何況一部助聽器又怎有可能用上十年不壞，而且維修費最少也要一千至一千五百元，因此每年的九百元補助金根本只可以用來購買電芯。

我們香港聾聰聯會的意見是政府應該守承諾，一次過一筆款項補償一萬五千元予我們購買一部性能較佳的助聽器及應付日後的電芯費用，而非以實報實銷來呈報，因為這實在為申索人造成很多不便，同時我們更強烈要求管理局應該五年再給予一次補助金，一部助聽器根本不可能用上十年時間，所以我們一群工友是強烈希望政府可以一次過給予我們一萬五千元，而非分十年來支付。

同時，如果我們有工友過往是已自行購買助聽器，他們是絕對有權利取回單據去向職業性失聰補償局取回之前所付的款項，管理局也應該儘量減少任何的行政措施，而且更需要在最多十四天內發還我們預付來購置助聽器的款項。

2. 抗議政府未將永久喪失工作能力百分比上限由 60%提高至 100%

一九九六年法例檢討工作小組梁智鴻議員曾經建議把職業引致的完全失聰轉化為永久喪失工作能力的百分比，由 60%調高至 100%，當期時教育統籌局首席助理局長指出該項建議會對管理局造成嚴重的財政影響，因此把該建議否決，所以現時永久喪失工作能力百分比最上限仍然是維持一個不合理的百分 60%。為何政府能以 100%永久喪失工作能力的百分比，為罹患其他職業病(例如中鉛毒)的人士釐定最高補償款額，這亦是符合《僱員補償條例》中為罹患職業病的人士提供補償所訂的標準。基於上述的理由，從事指定的高噪音工作而導致完全失聰的人士，也理應按照 100% 永久喪失工作能力的百分比獲得補償。

二零零零年的法例工作小組指出職業性失聰是長年累月不知不覺間形成，而噪音引致失聰的人士是有較大機會可以繼續工作，未必完成喪失謀生能力，因此建議維持 60%的永久喪失工作能力百分比，政府的解說是根本漠視失聰人士的失聰苦況，以一個八九十分貝聽覺受損的職業性失聰人士來說，就算他們是配戴助聽器也未能與人達致一個有效的溝通，在求職及謀生上職業性失聰人士同樣是有非常大的困難，他們也有大多數的人是失業或被迫轉職從事薪酬較低的工作，因此以失聰人士較大機會可以繼續工作為理由，而將他們應有的 100%的永久喪失工作能力百分比降至 60%的永久喪失工作能力百分比，那絕對是不道理。



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3. 抗議政府未修改或未刪除職業性失聰條例內一些歧視年老的條文

按現時《職業性失聰（補償）（修訂）條例》規定成功申請到職業性失聰補償的人士是可以獲一筆一次過的補償，補償款額是按申請人申請時的年齡、每月入息及永久喪失工作能力百分比來計算，四十歲以下獲九十六個月入息，四十歲至五十六歲以下獲七十二個月入息，五十六歲以上獲四十八個月入息。

政府只為年青僱員失聰後喪失工作的能力而作出補償，而不顧為一群『沒有無工作價值』的老工人十多年來飽受失聰的催殘而作出補償，可說是非常不合理及不文明的政策。政府當初本著年青工人年輕時已失聰，未來日子要面對失聰問題是較年老工友更加多，因而力主提出以『喪失工作能力』來計算職業性失聰補償金額的方案，並且給予較高額的喪失工作能力補償予年青工人，當年勞工處的建議方案早已為年老工人的強烈反對，因為在一筆過補償制度下，年青工人已較年老工人多獲百分之五十至一百的補償金，這樣不公平的補償制度是對年老工人的歧視。

此外，我們更盼望管理局落實一視同仁最少有七十二個月薪金補償後，可以為過往只獲取四十八個月薪金補償的年老病患者提供差額補償金，為免令職業性失聰補償基金造成財政壓力，我們建議政府可以採取分期付款方法，並按照申索人的永久喪失工作能力百分比來分發補差額補償金，建議補償金介乎於每月六百至二千五百元，相信上述的建議是不會為職業性失聰補償基金造成任何財政壓力，所以為了還我們一個公道，政府理應落實執行上述的建議。

4. 抗議新修訂法例中沒有為單耳失聰和過了追溯期的申索人提供放寬

一直以來職業性失聰補償計劃都規限著申索人一定要雙耳都達到最少四十分貝的聽覺受損程度，才可以獲取到補償，可是事實上我們接觸的工友個案中，有部份是因為工作性質的需要，而令致他們只為一隻耳朵做了聽覺保護，另一隻耳朵仍是沒有戴耳塞，以便可以聽取到上司或同事的指示，因而令這些工友左右耳的聽覺受損程度出現「差異」，大多數是一隻耳朵是三十三至三十七分貝的聽覺損失，另一隻耳朵是四十八至五十二分貝左右的聽覺損失。根據一些聽力專家的證實，雖然大多數職業性失聰病患者左右耳聽覺受損程度是都很相若，但是在一些特殊情況影響下，也有一些職業性失聰病患者是左右耳的聽覺受損程度出現「差異」，不過該等差異是不會超過十五至二十分貝。既然聽力專家也可以證明從事高噪音行業僱員是有可能左右耳的聽覺受損程度出現「差異」，那麼我們香港衛聰聯會就認為單耳聽覺受損也理應與工入病患者一樣可以獲取到職業性失聰的補償。

政府是絕對不能以他們還有一隻耳朵聽力較佳，而沒有影響他們與人溝通為理由，而不予以任何補償，但凡是因為受工作環境噪音影響而引致聽覺受損的僱員，就應該有資格去提出申索補償，雙耳聽覺受損的僱員患上職業性失聰是會有補償，同樣單耳聽覺受損的僱員，被證實是患上職業性失聰，也理應給予應有的補償。更何況現在職業性失聰補償局有二億八百萬的餘額，該等單耳的職業性失聰病患者亦只是區區六七十人，政府過往以財政緊拙而把他們拒於申請資格的門外，既然職業性失聰補償管理局現時是有足夠的儲備，理應再次放寬提出申索的資格，讓一些於一九九八年七月一日之後仍然從事高噪音行業，而聽覺受損程度只是單耳附合最少四十分貝損失的僱員，再次獲取資格去申索應有的補償，以每



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一個申索者可獲得一萬五千元的補償來計算，七十個申索人也只是一百萬左右，一百萬就可以為這些同樣屬於真正的職業性失聰病患者帶來一些「安慰」，為何政府一定要這麼忍心來拒絕這七十多人的申索。

此外，與其他四十八種的職業病一樣，例如中鉛毒，在性質而言亦是日積月累的結果，申索人的病況亦是在長時間不知不覺間形成，罹患其他職業病的申索人，其補償款額是根據由有關的醫療專家對每宗個案進行的臨床評估結果而釐定，並無規定申索人須在有關行業服務達10年才可獲得補償，因此一九九六年《職業性失聰(補償)條例》的工作小組一位成員建議，所有職業性失聰的申索人，不論其服務年資和所從事的行業，只要其提出的申請得到有關醫療專家的專業評估證明，便應獲得補償，這一建議至今仍未受到政府的接納，有關醫療專家的評估和判斷結果竟然及不上十年的工作證明年期證明。

既然醫療專家的專業評估證明及公會證明是可以協助到一群沒有工作證明及人事證明（因為是長期從散工）的職業性失聰病患去獲得提出申索的資格，因此我們香港衛聰聯會促請政府可以給予我們一條路行，讓我們有資格提出申索。

總結

香港特別行政區這一次在 HIH 集團的兩間保險公司破產的事件上，竟然於一個仍然有很多工作尚待改善的職業性失聰補償基金中，調動 1.1% 的徵款比率，即是每年約三千萬左右的款項，去填補 HIH 集團的兩間保險公司破產爛賬，我們香港衛聰聯會恐怕日後再有更多的保險公司破產，又會再一次令僱員補償援助基金受到財政問題，到期時職業性失聰補償基金是否又要再受到迫害？

現時職業性失聰補償基金根本就是一個「不完善」的社會政策條文，該法例仍然是沒有真正為從事高噪音行業僱員提供「事後補救」的政策，因為政府一直以來利用財政缺乏來為病患者提供應有而合理的補償，所以直以現時為至仍然有不少真正的職業性失聰病患者，包括只是單耳超過四十分貝及過了追溯期的職業性失聰病患者，提供到任何合理補償，也沒有訂立到一些真正改善職業性失聰苦況的條文，給予過往沒有取得「合理」補償的職業性失聰病患者提供「差額」追溯，令到一群職業性失聰病患者能夠討回一個公道。

倘若政府為了 HIH 集團的兩間保險公司破產，而要令一個根本早已千瘡百孔、大有問題的職業性失聰補償基金去作出犧牲，來挽救僱員補償基金，那又是特別行政區政府官員另一政策上的重大失誤，為何香港政府要為「私人保險公司」填補債項，兩間保險公司破產是因為保險業內的監管出現問題，理應是由保險業自行解決。我們香港衛聰聯會建議政府除了要檢討政策失當的僱員補償基金，以及要求勞工處要加強巡查，並且對漠視僱員工業安全與健康僱主的徵罰增加，以收阻嚇的作用。最後，更強烈促請特區政府重新考慮職業性失聰病患者的苦況，取消該遞減職業性失聰補償基金徵款比率來填補保險爛賬的方案。

香港衛聰聯會及一群職業性失聰工友心聲
二零零一年十一月九日

Appendix III

立法會CB(2)411/01-02(02)號文件
LC Paper No. CB(2)411/01-02(02)



工業傷亡權益會

Association for the Rights of Industrial Accident Victims

致立法會人力事務委員會各委員：

抗議政府刻扣失聰補償 補貼僱員補償援助基金

政府最近打算將失聰補償基金的僱主徵款調低，補貼往僱員補償援助基金的徵款部份，以解決僱員補償援助基金經常出現的財政困難。政府提出此等建議，理由是現時失聰基金財政狀況良好，儲備充足，因此可以將部份徵款撥為僱員補償援助基金。同時，政府亦建議在援助基金的補償機制中，以「特惠款項」取締案件中的普通法損害賠償。另外，在僱員死亡案件中，此一「特惠款項」只會向死者的配偶及 21 歲以下的子女發放，其他受供養的家屬則不受惠。

工業傷亡權益會與及街坊工友服務處對政府是次建議表示感到極度憤怒！我們認為此等無稽方案只是「治標不治本」，根本不能徹底解決僱員補償援助基金屢次面臨財政問題的困局。現時職業性失聰補償的限制嚴謹，只有部份行業的工友被列入例須補償的個案。工權會相信，現在失聰基金「水浸」，就應該將基金的保障範圍擴大至其他未受保障的行業，並開展有關職業病的復康工作，而不是去補貼因管理失當而造成財政困難的僱員補償援助基金。試問，一旦失聰基金都不能補貼僱員補償援助基金的困局，那是否就向其他的補償基金入手？

而且，採取「特惠款項」取代普通法索償的方案，無疑就是變相刻扣工友和家屬們應得的賠償。我們相信，此種提案妄顧當初成立補償援助基金去保障工友和家屬的原意。試想工友和家屬已因僱主違法而不能受到應有的保障，但到最後仍要被強迫扣減，簡直是雪上加霜！我們反對任何扣減工友和家屬補償的建議！

我們認為，僱員補償援助基金經常出現財政困難，主要是因為當局的監管不足，縱容僱主妄顧法紀，不購買勞工保險。另外，基金管理局本身沒有抗辯權，無法合理調節補償援助金額，亦是造成僱員補償援助基金陷入如斯困境的原因。

就解決僱員補償援助基金，我們提出以下的建議：

- (一) 應賦予基金管理局在訴訟過程中擁有抗辯權；
- (二) 加強監管及檢控違例僱主，並將刑罰提高；
- (三) 針對沒有購買勞工保險的僱主，向他們徵收輔加費。

我們在此強調，政府是次的提議，只是「斬腳指，避沙虫」——以失聰補償基金填補僱員補償援助基金管理不善及政府監管不足的漏洞，根本沒有正視問題及負上責任。如此做法好比讓兩班受害工友互相殘殺，製造矛盾分化，絕對是愚蠢之極！

如有任何查詢，請電 2366-5965 / 7229-5215，聯絡陳錦康。

工業傷亡權益會

街坊工友服務處

謹啓

二〇〇一年十一月十五日

**Extract from Minutes of meeting of
Panel on Manpower held on 15 November 2001**

X X X X X X X X

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

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considered it reasonable to re-allocate the share of levy income among the ECAF Board 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

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the HIH Group was due to the Government's ineffective monitoring, therefore it would be more reasonable for the Government to shoulder at least one-third of the total employees' compensation claims accruing from the insolvency of the HIH 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

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income would increase upon the increase of levy rate by 1%.

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

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evened out over a long period of time.

27. Mr Bernard CHAN asked whether \$350 million would be sufficient to meet the claims for payment arising from the insolvency of the HHH 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 HHH 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

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cover all industries so that all workers who had been exposed to noise in their working 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

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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.

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

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**Extract from Minutes of meeting of
Panel on Manpower held on 20 December 2001**

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V. Progress of the review of the Occupational Deafness Compensation Scheme and rescue package for the Employees Compensation Assistance Scheme
(LC Paper No. CB(2)688/01-02(06))

51. Deputy Secretary for Education and Manpower (DSEM) briefed members on the progress of the review of the Occupational Deafness Compensation Scheme (the ODC Scheme) and the rescue package for the Employees Compensation Assistance Scheme (the ECA Scheme) as set out in the Administration's paper. He informed members of the Administration's plan to introduce the legislative amendments for the ECA Scheme into LegCo on 27 February 2002 and, after the said amendments had been introduced, to seek the Finance Committee's approval to extend a loan to the Employees Compensation Assistance Fund Board in March 2002.

52. Mr Frederick FUNG asked whether the requirement of 10 years of employment in aggregate in any noisy occupation under the ODC Scheme could be reduced to five or seven years. Assistant Commissioner for Labour (Rights and Benefits) (AC for L(RB)) pointed out that the 10-year requirement was in line with international standards. She added that under normal circumstances, obvious symptoms of sensorineural hearing loss caused by prolonged exposure to noisy working environment would only appear after 10 years. Nevertheless, the Administration relaxed the 10-year requirement to five-year for some particularly noisy occupations in 1998.

53. Mr Frederick FUNG asked why the five-year requirement was not extended to apply to all noisy occupations. AC for L(RB) pointed out that sensorineural hearing loss might be caused by a number of factors which included exposure to excessive noise at work, old age or disease. As it was not practicable to ascertain the single cause leading to the sensorineural hearing loss, an employee would be presumed to be suffering from occupational deafness and therefore entitled to compensation under the ODC Scheme if he had worked in the specified noisy occupation(s) for a required number of years. The 10-year employment requirement was a widely accepted standard. Only in some highly noisy occupations that it was known that the employees might suffer from occupational deafness in a shorter period. As such, it was considered appropriate to lower the 10-year requirement to five-year for such highly noisy occupations only.

54. Ms LI Fung-ying welcomed the Administration's proposal to extend the eligibility for ex-gratia payment, payable in lieu of common law damages under the ECA Scheme, to parents of a deceased worker. In view of the urgent need to restore the long-term viability of the ECA Scheme, she expressed support for the package of measures proposed by the Administration.

55. Mr LEE Cheuk-yan urged the Administration to give assurance to workers suffering from employment-related noise-induced hearing loss that their rights and benefits would not be affected following the reduction of the levy rate for the Occupational Deafness Compensation Board. In addition, the Administration should continue to examine the following proposals –

- (a) whether the Brewin Trust Fund could provide assistance to those who suffered from hearing loss in one ear and were not covered under the ODC Scheme;
- (b) whether the life-time maximum of \$15,000 for the purchase, repair and replacement of hearing assistive device could be increased to \$25,000;
- (c) whether the scope of the ODC Scheme could be extended to cover workers of all industries, including non-specified occupations; and
- (d) whether compensation for pain and suffering would be awarded as in the Pneumoconiosis (Compensation) Ordinance.

56. DSEM said that the financial position of the Occupational Deafness Compensation Board was sound and therefore the proposed reduction in its share of levy income should not have implications on the operation of the Fund. In fact, the Administration had recommended a package of proposals to improve the ODC Scheme. Any other proposed improvements should be considered in accordance with the established principles for the operation of the Fund. He added that the Administration was actively examining the suggestions put forward by members at the meeting on 15 November 2001 with a view to incorporating possible adjustments in its legislative amendments for introduction into LegCo. He agreed to consider the views of Mr LEE.

57. Mr Albert CHAN asked about the difference between Hong Kong, after the implementation of the Administration's proposed improvements to the ODC Scheme, and other developed countries in respect of the level of compensation for workers suffering from employment-related noise-induced hearing loss.

58. AC for L(RB) said that the statutory minimum level of deafness in Singapore was 50 dB in both ears whereas the minimum level in Hong Kong was only 40 dB in both ears. The required length of employment in noisy occupation in Singapore was 10 years across the board which was also more stringent than Hong Kong. While compensation would be awarded to claimants on the basis of loss of earning capacity in Hong Kong and Singapore, the method for calculating the compensation varied.

59. The Deputy Chairman said that members generally expressed support for the proposed package of measures to restore the long-term viability of the ECA Scheme.

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**Information Paper for the
Legislative Council Panel on Manpower
Meeting on 15 November 2001**

**Review of the Occupational Deafness Compensation
Scheme and Rescue package for the
Employees Compensation Assistance Scheme**

Purpose

This paper informs Members of the Administration's proposals to modify the Occupational Deafness Compensation Scheme as well as the package of measures to restore the long-term viability of the Employees Compensation Assistance Scheme.

I. The Occupational Deafness Compensation Scheme (ODCS)

Background

2. The Occupational Deafness Compensation Scheme (ODCS) was set up in 1995 under the Occupational Deafness (Compensation) Ordinance (ODCO) to provide compensation to employees who suffered noise-induced deafness by reason of their employment in noisy occupations. At present, it is administered by the Occupational Deafness Compensation Board (ODCB) and is currently financed by a levy of 2.3% on the employees' compensation (EC) insurance premium paid by employers¹.

3. The ODCS was last reviewed in 1996. Most of the recommendations arising from the review were implemented by the Occupational Deafness (Compensation)(Amendment) Ordinance 1998. During the legislative process, the Government undertook to review the ODCS two years after the enactment of the Amendment Ordinance.

Review of ODCS

¹ The current total levy on employees' compensation insurance premium is 5.3%. This includes 2.3% for ODCB, 2% for the Occupational Safety and Health Council and 1% for the Employees Compensation Assistance Fund Board.

4. Against the above background, the Commissioner for Labour appointed a Working Group in December 2000 to conduct a further review of ODCS and to identify areas for further improvement, bearing in mind the three outstanding recommendations arising from the review in 1996². The Working Group comprised an audiologist, medical professionals as well as representatives of employers, employees, ODCB, Education and Manpower Bureau (EMB) and the Labour Department (LD).

5. In conducting the review, the Working Group invited submission from employers' and employees' associations, professional bodies and associations representing patients' interests. It also took into consideration the occupational deafness systems in other countries, international standards on hearing impairment due to noise exposure, results of noise surveys, known characteristics of occupational deafness, and the necessity to maintain a reasonable balance between better protection for employees and the need to guard against abuse.

6. The Working Group completed the review in July 2001 and put forward a number of recommendations to improve the ODCS. They included, among other things, revision of the levels of compensation; provision of financial assistance for hearing assistive device; periodic reassessment; and additional specified noisy occupations.

The Proposal

7. The Administration had consulted various parties on the findings of the Working Group's Review, including the Labour Advisory Board (LAB) as well as the ODCB. Taking into account the views expressed by various parties during the consultation, the Administration has formulated a package of proposals to improve the ODCS, details of which are set out in paragraphs below.

(a) To raise the minimum and maximum levels of compensation in accordance with the rate of nominal wage increase

8. Under the ODCO, the amount of compensation payable is subject to minimum and maximum levels, and the existing minimum and maximum levels have been used since 1995. To preserve the value of compensation so that it

² These items included reviewing regularly the maximum and minimum levels of compensation, adjusting upwards the percentage of permanent incapacity and providing hearing assistive device.

would not be eroded by changes in wage movement, it is proposed to raise the maximum level from existing \$1.44 million to \$2.016 million and the minimum level from \$248,000 to \$349,000. The proposed magnitude of increase is in line with the change in the nominal wage indices in the past years and the anticipated changes in the indices before the implementation of the new levels. Details of the calculation are shown in **Annex 1**.

(b) To revise upwards the percentage of permanent incapacity whilst maintaining the maximum level at 60%

9. For the purpose of calculating compensation, the degree of hearing loss suffered by a claimant will be translated into the degree of permanent loss of earning capacity in accordance with Schedule 4 of the ODCO (see **Annex 2**). In the review conducted in 1996, it was recommended to replace the Schedule by a new scale which was set with reference to the practices in Singapore and the UK, taking into account the long history of their systems. However, due to financial constraint of the ODCB, the new scale was not implemented in 1998. It is proposed that the new scale should now be adopted to replace the existing Schedule 4. The amended Schedule 4 is at **Annex 3**. Under the new scale, the percentage of permanent incapacity will be raised in the majority of cases. However, the current maximum level of loss of earning capacity of 60% would be maintained as this level is broadly comparable to that in countries such as Singapore, Australia and USA.

(c) To provide reimbursement of expenses incurred in purchasing, repairing and replacing hearing assistive device

10. Considering that deafness at a certain level would hamper a claimant's ability to communicate with other persons and would thus affect his earning capacity, it is proposed to provide hearing assistive devices to claimants who are successful in obtaining compensation for permanent loss of earning capacity under the ODCO. We recommend that this new item should be paid by way of reimbursement and subject to a life-time maximum of \$15,000 per applicant.

(d) To add four new specified noisy occupations

11. At present, there are 25 specified noisy occupations in Schedule 3 of ODCO. To be eligible for compensation under the ODCO, claimants have to prove that they have worked for a minimum period in any specified noisy occupations. Having made reference to the results of the noise surveys conducted by the LD in respect of 43 work processes/jobs as well as a noise survey report of Singapore on

disc jockeys, it is recommended to expand the list of specified noisy occupations to include:

- slaughterhouse employees working near the point of electrocution of pigs;
- mahjong parlour workers employed wholly or mainly to play mahjong;
- bartenders and waiters working near the dancing area in discos; and
- disc jockeys working in discos.

(e) To empower the Board to conduct or finance rehabilitation programmes

12. It is noted that while occupational deafness is incurable, rehabilitation services might help deafness sufferers to overcome the obstacles caused by the disability at work and in life. We therefore propose to empower the ODCB to conduct or finance rehabilitation programmes for the occupational deafness sufferers.

(f) To disregard no-pay leave in determining claimant's earnings

13. In determining a claimant's earnings, it is recommended to disregard no-pay sick leave taken during the last 12 months of employment. This would better reflect the average earnings of claimants and also fall in line with the current practice in regard to maternity leave and sick leave.

Consultation

14. The ODCB and the Labour Advisory Board have been consulted and both boards agree with the improvement items proposed by the Administration.

Legislative Timetable

15. We aim to introduce the proposed Amendment Bill into the Legislative Council within the 2001-02 legislative session.

Economic Implications

16. The proposed improvements to the Occupational Deafness Compensation Scheme will lead to higher expenditure by the Board in making compensation payment to the eligible claimants. However, having examined the financial position of the ODCB and its estimated income and expenditure, it is considered that the Board should have sufficient financial resources to support all the proposed improvements even if its levy rate is reduced from 2.3% to 1.8% (see financial projection at **Annex 4**).

Financial and Staffing Implication

17. With the reduction in the levy rate for the ODCB and assuming that other factors are held constant, Government payments to the ODCS would also be reduced correspondingly³. The proposal should not have any staffing implications on the Government.

II. The Employees Compensation Assistance Scheme (ECAS)

Background

18. The ECAS was set up on 1 July 1991 under the Employees Compensation Assistance Ordinance (ECAO) to provide payment to injured employees who are unable to receive their entitlement from the employers or insurers after exhausting legal and financially viable means of recovery. The scheme also provides for the protection of employers against default of their insurers who become insolvent.

19. The ECAS is administered by the Employees Compensation Assistance Fund Board (ECAFB) and financed by a levy on the premium of employers' compensation (EC) insurance which employers are required to take out under the Employees Compensation Ordinance (ECO). At present, a total of 5.3% levy is collected by the Employees Compensation Insurance Levies Management Board through insurers for distribution to three statutory bodies, namely the ECAFB (1%),

³ Under section 7 of the ODCO, the Government as an employer shall make annual payments to ODCB. The calculation formula is based on the proportion of net resources received by the Employees' Compensation Insurance Levies Management Board and apportioned to the ODCB, number of employees in the Civil Service and the number of employees in the non-civil service sector.

the Occupational Safety and Health Council (2%) and the Occupational Deafness Compensation Board (2.3%). The levy rate for the ECAS has remained at 1% since its inception in 1991.

20. In recent years, a rising number of large claims have emerged and the amount of common law damages awarded by the Court has been escalating. Coupled with a decline in the levy income in recent years, the Employees Compensation Assistance Fund (ECAFB) has incurred annual operating deficits since 1996/97. A table showing the income and expenditure account of the ECAFB is at **Annex 5**.

21. With a view to restoring the long-term financial viability of the ECAS as a safety net for employees injured at work, the Education and Manpower Bureau formulated a package of measures including the following:

- (a) an ex gratia payment, payable in lieu of common law damages, to the injured employee, and in case of the injured employee having passed away before full entitlement is paid, to the spouse and children under the age of 21. Other dependants of the deceased employee will not be eligible to ex gratia payment by the ECAFB;
- (b) payment by ECAFB of interest on statutory compensation at half of the “judgment rate”;
- (c) empowering the ECAFB to take a more active role in legal proceedings relating to potential claims to the ECAFB;
- (d) a surcharge on employers who have been convicted of failure to take out EC insurance;
- (e) an increase in the levy rate for the ECAFB by 1% net; and
- (f) a bridging loan of \$60m provided by the Government, to be drawn down by 31 July 2001, to provide relief to ECAFB before changes to ECAS can be introduced.

22. Members were consulted on the package of measures on 19 April 2001 and 17 May 2001 and a copy of the Panel Paper is attached for reference (see **Annex 6**).

Insolvency of the HHH Group

23. On 9 April 2001, 3 local subsidiaries of HHH Group of insurance companies went into provisional liquidation because of the insolvency of the Australian parent company. Two of them were active players in the EC insurance market in Hong Kong. Under the ECAO, ECAFB would have to indemnify employers against the default of insurers who become insolvent.

24. It is estimated that the total employee compensation claims accruing from the insolvency of the HHH Group would amount to over \$350 million, the bulk of which would fall due within the first few years. Under section 265 of the Companies Ordinance, ECAFB is one of the preferential creditors. While it is likely that some recovery can be obtained from the estate of the insurers, the magnitude and timing of the actual recovery cannot be accurately ascertained at this stage. At the LegCo Panel on Manpower meeting on 17 May 2001, Members noted that the levy rate might have to be further increased to enable ECAFB to meet the claims for payment arising from the unexpected insolvencies.

25. The ECAFB drew down the bridging loan of \$60m at the end of July 2001. As at 31 October 2001, the ECAFB held a balance of \$31.79m. Claims arising from the HHH insolvencies have depleted ECAFB's reserves quickly in the last few months. At the rate it is going, and in the absence of further assistance, the Fund will probably be depleted in early 2002. Section 26 of ECAO provides for a queuing mechanism in the event of the ECAF becoming exhausted whereby eligible applicants may only receive their entitlement from the Board when it has sufficient funds to pay, in accordance with the order of priority stated in the same section. In view of the magnitude of claims arising from the HHH of insolvencies, it would be unrealistic to expect the Fund to be able to continue to function effectively without an increase in revenue.

The Proposal

26. Having carefully considered various options, the Government now proposes a package of measures which would require the support of employers and employees and assistance from the Government. In order to restore the ECAF's long-term financial viability, the Government proposes that the revenue of the Fund should be increased by

- (a) an increase in the overall EC insurance levy from 5.3% to 6.3% on premium;

- (b) within the overall levy of 6.3%, to raise the levy rate for the ECAFB from 1% to 3.1% (including (a) above) for five years from 2002/03 to 2006/07. From 2007/08 onwards, the levy rate for ECAFB should be set at 2.5%; and
- (c) within the overall levy of 6.3%, to reduce the levy rate for ODCB from 2.3% to 1.2% from 2002/03 to 2006/07. From 2007/08 onwards, the levy rate should be set at 1.8%.

27. The proposals in para. 26(b) and (c) above amount to an adjustment of the levy rates for ECAFB and ODCB. As the same employers pay levy to the ECAFB and ODCB, and the ODCB's financial position is such that it can absorb a reduction in levy without jeopardizing its financial viability, it would be reasonable to adjust the levy rates for the two funds so that the overall burden on employers need not be further increased.

28. At the same time, the scope of the ECAF would also need to be reviewed to reduce the extent of volatility in its expenditure. Accordingly, the Government proposes to adopt the package of reform measures as spelt out in paragraphs 21(a)-(d) above, which include ex-gratia payment in lieu of common law damages, interest at half of the "judgment rate", ECAFB to take a more active role in legal proceedings, and a surcharge on employers convicted of failing to take out EC insurance.

29. However, as the impact of HIH insolvencies on ECAFB's financial position will be immediate, the ECAF would need assistance to tide over the financial commitments arising from the claims. The Government proposes to extend a loan of \$280m to ECAFB, which subsumes the bridging loan of \$60m already drawn down, at no-gain-no-loss rate of interest. The Government is also prepared to allow repayment of the loan plus interest to commence from 2008/09 over a ten-year period.

30. In summary, we propose:

- (a) a package of reform measures for ECAS, (para.21);
- (b) a net increase in the levy on EC insurance premium by 1%, ie from 5.3% to 6.3% (para.26(a));
- (c) within the levy of 6.3%, to apportion 3.1% to ECAFB for five years

from 2002/03 to 2006/07, but to reduce the levy rate for ECAFB to 2.5% as from 2007/08 onwards (para. 26(b));

- (d) to reduce the levy rate for ODCB from 2.3% to 1.2% from 2002/03 to 2006/07 but to increase the levy rate for ODCB to 1.8% from 2007/08 onwards (para. 26(c)); and
- (e) a Government loan of \$280m at no-gain-no-loss rate of interest (para.29).

In devising the package, care has been exercised to enable additional improvements to the benefits provided under the ODCS to be made and that both ECAFB and ODCB will remain viable in the long term. **Annex 7** shows the financial impact on ODCB and **Annex 8** illustrates the financial projection for ECAFB if the proposal is put into place.

Employees Compensation Insurance Insolvency Scheme

31. While the above financial arrangements are essential to alleviate the current funding problem of the ECAS, by its very nature, insurer insolvency would inevitably create sudden and substantial strain on its resources. It is considered appropriate that in the longer term, protection against insurer insolvency should be excluded from the scope of the ECAS and dealt with separately. It is therefore proposed that a separate compensation fund be set up to cater for future insolvencies of insurers writing employees' compensation business. Such an arrangement is in line with practices overseas. The Financial Services Bureau and the Office of the Commissioner of Insurance are consulting the insurance industry, including the Insurance Advisory Committee, in taking the matter forward. Subject to the setting up of the said fund, the ECAO will be amended to limit the ECAS' responsibilities to meeting claims only when injured employees, after exhausting legal and financially viable means of recovery, are unable to receive their entitlement from employers.

Consultation

32. The ODCB and the LAB were consulted on the financial arrangements, including the adjustment of levy rates for the ODCB and the ECAFB, which are aimed at enabling the ECAFB to meet the liabilities arising from the insolvency of the HIH Group of insurers. Both boards supported the proposed arrangement and

the adjustment of the levy rates for the ODCB and the ECAFB.

Legislative Time Table

33. We hope to introduce the legislative amendments for the above measures into Legislative Council within the 2001-02 legislative sessions. We will also seek the Finance Committee's approval of the proposal to extend a loan to the ECAFB after the legislative amendments are introduced.

Education and Manpower Bureau
November 2001

**Adjustment of the maximum and minimum levels of compensation
in accordance with the rate of increase in Nominal Wage Index**

- (1) The rate of increase in Nominal Wage Index (NWI) for the period from 1.1.1994 to 31.12.2002¹ is determined as follows -

The rate of increase in NWI for 1994 = +9.4%

The rate of increase in NWI for 1995 = +7.0%

The rate of increase in NWI for 1996 = +6.4%

The rate of increase in NWI for 1997 = +7.1%

The rate of increase in NWI for 1998 = +2.2%

The rate of increase in NWI for 1999 = -0.8%

The rate of increase in NWI for 2000 = +1.1%

The estimated rate of increase in NWI
for 2001 = +1.5%

The estimated rate of increase in NWI
for 2002 = +1.5%

The rate of increase in Nominal Wage Index for the period from 1.1.1994 to 31.12.2002

= $[(1.094 \times 1.070 \times 1.064 \times 1.071 \times 1.022 \times 0.992 \times 1.011 \times 1.015 \times 1.015) - 1] \times 100\%$

= + **40.68%**

- (2) Adjustment of the minimum level of compensation in accordance with the rate of increase in Nominal Wage Index

= \$248,000 x 140.86%

= \$349,333

= \$349,000 (rounded off to the nearest thousand dollars)

¹ The Occupational Deafness (Compensation) Bill was first introduced into the LegCo in 1994 and so the current maximum and minimum levels of compensation were actually set with reference to the 1994 wage level. It is anticipated that if the proposal to adjust the maximum and minimum levels of compensation is adopted, it will be implemented in the 2002-03 financial year the earliest. Therefore, the nominal wage increase from 1994 to 2002 is taken as a yardstick in the adjustment of the levels of compensation.

- (3) Adjustment of the wage threshold in accordance with the rate of increase in Nominal Wage Index

$$=\$15,000 \times 140.86\%$$

$$=\$21,129$$

$$=\$21,000 \text{ (rounded off to the nearest thousand dollars)}$$

- (4) Adjustment of the maximum and minimum levels of compensation in accordance with the rate of increase in Nominal Wage Index

Age	Compensation amount	Maximum and minimum levels of compensation*
Under 40	96 x monthly earnings* x percentage of permanent incapacity	96 months' earnings but subject to a minimum amount of \$349,000 and a maximum amount of \$2,016,000 (i.e. the monthly earning is not more than \$21,000)
40 to under 56	72 x monthly earnings* x percentage of permanent incapacity	72 months' earnings but subject to a minimum amount of \$349,000 and a maximum amount of \$1,512,000 (i.e. the monthly earning is not more than \$21,000)
56 or above	48 x monthly earnings* x percentage of permanent incapacity	48 months' earnings but subject to a minimum amount of \$349,000 and a maximum amount of \$1,008,000 (i.e. the monthly earning is not more than \$21,000)

Existing Schedule of Permanent Incapacity

<div> <div> Average hearing Loss (dB) at 1,2, 3kHz frequencies as determined by the Board </div> <div> Percentage of permanent incapacity </div> </div> <div> Average hearing loss (dB) at 1,2,3 kHz frequencies as determined by the Board </div>		FOR BETTER EAR										
		40 to below 45dB	45 to below 50dB	50 to below 55dB	55 to below 60dB	60 to below 65dB	65 to below 70dB	70 to below 75dB	75 to below 80dB	80 to below 85dB	85 to below 90dB	90 dB or above
FOR WORSEAR	40 to below 45dB	%	%	%	%	%	%	%	%	%	%	%
	45 to below 50dB	1										
	50 to below 55dB	1	3									
	55 to below 60dB	2	3	5								
	60 to below 65dB	3	4	6	10							
	65 to below 70dB	4	5	7	11	15						
	70 to below 75dB	5	6	8	12	16	20					
	75 to below 80dB	6	7	9	13	17	21	25				
	80 to below 85dB	7	8	10	14	18	22	26	30			
	85 to below 90dB	9	10	12	16	20	24	28	32	40		
	90 dB or above	11	12	14	18	22	26	30	34	42	50	
	90 dB or above	13	14	16	20	24	28	32	36	44	52	60

Proposed Schedule of Permanent Incapacity

<div style="display: flex; align-items: center; justify-content: center;"> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">Percentage of Permanent Incapacity</div> <div style="text-align: center;"> Average hearing Loss (dB) at 1,2, 3kHz frequencies as determined by the Board </div> </div>		FOR BETTER EAR										
		40 to below 45dB	45 to below 50dB	50 to below 55dB	55 to below 60dB	60 to below 65dB	65 to below 70dB	70 to below 75dB	75 to below 80dB	80 to below 85dB	85 to below 90dB	90 dB or above
FOR WORSE EAR	Average Hearing loss (dB) at 1,2,3 kHz frequencies as determined by the Board	%	%	%	%	%	%	%	%	%	%	%
	40 to below 45dB	1										
	45 to below 50dB	1	3									
	50 to below 55dB	2	3	5								
	55 to below 60dB	3	4	6	10							
	60 to below 65dB	4	5	7	11	15						
	65 to below 70dB	5	6	8	12	16	20					
	70 to below 75dB	6	7	9	13	17	21	25				
	75 to below 80dB	7	8	10	14	18	22	26	30			
	80 to below 85dB	9	10	12	16	20	24	28	32	40		
	85 to below 90dB	11	12	14	18	22	26	30	34	42	50	
	90 dB or above	13	14	16	20	24	28	32	36	44	52	60

Financial impact of lowering the levy rate to 1.8% on the ODCB

Cash flow \$M			Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15	Year 16
Financial year (up to 31 March)		2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
Levy Rate		2.30%	2.30%	1.80%	1.80%	1.80%	1.80%	1.80%	1.80%	1.80%	1.80%	1.80%	1.80%	1.80%	1.80%	1.80%	1.80%	1.80%
Income																		
	Levy	57.975	62.100	57.564	52.566	54.668	56.855	59.129	61.495	63.954	66.512	69.173	71.940	74.817	77.810	80.923	84.159	87.526
	Government Payments	3.552	3.726	3.454	3.154	3.280	3.411	3.548	3.690	3.837	3.991	4.150	4.316	4.489	4.669	4.855	5.050	5.252
	Interest income	13.393	5.045	5.662	5.557	5.513	5.525	5.578	5.850	6.126	6.406	6.688	6.972	7.258	7.545	7.873	8.243	8.620
	Total	74.920	70.871	66.679	61.277	63.461	65.792	68.255	71.034	73.918	76.909	80.011	83.229	86.565	90.024	93.651	97.452	101.397
Expenditure																		
	Compensation for deafness	13.405	14.760	27.518	28.619	29.764	30.954	32.193	33.480	34.820	36.212	37.661	39.167	40.734	42.363	44.058	45.820	47.653
	Hearing assistive devices (backlog cases)			12.084	1.813	1.813	1.813	1.813	1.813	1.813	1.813	1.813	1.813	1.813				
	Hearing assistive devices (fresh cases)			1.134	1.356	1.594	1.850	2.123	2.414	2.726	3.059	3.414	3.793	4.196	4.364	4.539	4.720	4.909
	Exp for hearing assessment	0.304	0.301	0.327	0.340	0.353	0.367	0.382	0.397	0.413	0.430	0.447	0.465	0.483	0.503	0.523	0.544	0.565
	Sub-total	13.709	15.061	41.063	32.128	33.524	34.984	36.510	38.105	39.772	41.514	43.335	45.238	47.226	47.230	49.120	51.084	53.128
	Promotion and Publicity	2.746	3.400	6.800	6.800	4.165	4.457	4.769	5.102	5.460	5.842	6.251	6.688	7.156	7.657	8.193	8.767	9.381
	Rehabilitation			1.000	1.070	1.145	1.225	1.311	1.403	1.501	1.606	1.718	1.838	1.967	2.105	2.252	2.410	2.579
	Sub-total	2.746	3.400	7.800	7.870	5.310	5.682	6.079	6.505	6.960	7.448	7.969	8.527	9.124	9.762	10.446	11.177	11.959
	Staff cost	5.766	6.053	6.881	7.225	7.586	7.965	8.363	8.782	9.221	9.682	10.166	10.674	11.208	11.768	11.459	12.032	12.633
	Admin cost	2.362	2.532	3.153	3.279	3.411	3.547	3.689	3.836	3.990	4.150	4.315	4.488	4.668	4.854	4.151	4.317	4.489
	Sub-total	8.128	8.585	10.034	10.504	10.997	11.512	12.052	12.618	13.211	13.831	14.481	15.162	15.875	16.623	15.609	16.348	17.123
	Total	24.583	27.046	58.897	50.502	49.831	52.178	54.642	57.228	59.943	62.793	65.785	68.927	72.225	73.615	75.174	78.609	82.209
Income less Expenditure		50.337	43.825	7.783	10.775	13.631	13.614	13.613	13.806	13.975	14.116	14.226	14.302	14.340	16.409	18.477	18.843	19.188
Accumulated funds c/f		189.257	233.082	240.865	251.640	265.271	278.885	292.498	306.304	320.279	334.395	348.622	362.924	377.263	393.672	412.149	430.992	450.179
Outstanding Govt Loan		63.000	50.000	37.000	24.000	11.000												
No. of applications		275	300	315	315	315	315	315	315	315	315	315	315	315	315	315	315	315
Average amount of compensation		0.082	0.082	0.146	0.151	0.157	0.164	0.170	0.177	0.184	0.192	0.199	0.207	0.216	0.224	0.233	0.242	0.252

**Employees Compensation Assistance Fund Board
Income and expenditure account**

	91/92 (1.7.91 - 31.3.92)	92/93	93/94	94/95	95/96	96/97	97/98	98/99	99/2000	00/01	01/02 (as at 31.8.2001)
No. of assisted cases	27	12	12	20	18 {1}* ¹	19 {1}* ¹	23 {1}* ¹	28	35	28	43@
Total income	\$16.7m	\$15.7m	\$21.8m	\$33.8m	\$31.7m	\$23.9m	\$28.5m	\$22.4m	\$21.5m	\$26.0m	\$8.35m
<i>levy income</i>	\$16.5m	\$15m	\$20.6m	\$31.3m	\$27.8m	\$20.9m	\$23.7m	\$20m	\$19.8m	\$25.2m	\$8.15m
<i>interest and other income</i>	\$0.2m	\$0.7m	\$1.2m	\$2.5m	\$3.9m	\$3m	\$4.8m	\$2.4m	\$1.7m	\$0.8m	\$0.2m
Total Expenditure#	\$2.6m	\$4.5m	\$23.8m	\$10.8m	\$11.2m	\$35.4m	\$49.7m	\$29.1m	\$40.5m	\$31m	\$15.49m
<i>claims</i>											
- statutory	\$1.39m	\$0.48m	\$1.57m	\$0.86m	4.68m	\$2.08m	\$0.96m	\$7.93m	\$6m	\$4.47m	\$3.13m@
- common law	\$0.78m	\$2.15m	\$3.88m	\$6m	\$15.4m (\$13.9m)* ¹	\$25.6m (\$16.4m)* ¹	\$33.8m {15.3m}* ¹	\$10.03m	\$18.9m	\$13.24m	\$5.68m
<i>interest</i>	\$0.71m	\$0.97m	\$1.65m	\$2.06m	\$1.82m	\$2.36m	\$3.58m	\$4.32m	\$5.4m	\$3.29m	\$1.96m
<i>legal cost</i>	\$0.49m	\$0.69m	\$1.57m	\$1.5m	\$2.51m	\$4.12m	\$9.72m	\$4.23m	\$7.6m	\$7.07m	\$2.51m
<i>operating expense</i>	\$0.16m	\$0.4m	\$0.23m	\$0.43m	\$0.74m	\$1.2m	\$2.4m	\$2.55m	\$2.6m	\$2.9m	\$2.21m
Surplus/Deficit	\$14.1m	\$11.2m	-\$2m	\$23m	\$20.5m	-\$11.5m	-\$21.2m	-\$6.7m	-\$19m	\$-5m	-\$7.14m
Retained surplus	\$14.1m	\$25.3m	\$23.3m	\$46.3m	\$66.8m	\$55.3m	\$34.1m	\$27.4m	\$8.4m	\$3.4m	-\$3.74m
Bridging Loan											\$60m
Repayment of Loan											(\$10m)
Accumulated Funds											\$46.4m

Note:

The total expenditure does not necessarily represent the sum of statutory award, common law damages, interest and legal cost in the ensuing columns as the amount paid in a specific year may cover the balance of unpaid items of cases assisted in the previous year(s).

* Figures in { } denote the number of/amount paid for major common law cases with settlement exceeding HK\$10m.

@ The pay-outs for employee' compensation in respect of these 39 cases is \$1.44 million.

**Information Paper for the
Legislative Council Panel on Manpower
Meeting on 19 April 2001**

Review of the Employees Compensation Assistance Scheme

PURPOSE

This paper informs Members of the Administration's proposals to modify the Employees Compensation Assistance Scheme (ECAS) and the necessary amendments to the Employees Compensation Assistance Ordinance (ECAO), Cap 365.

BACKGROUND

The ECAS

2. The ECAS was set up on 1 July 1991 under the ECAO to provide payment to injured employees who are unable to receive their entitlements from the employers or insurers after exhausting legal and financially viable means of recovery. The Scheme also provides for the protection of employers against default of their insurers who become insolvent.

3. The ECAS is administered by the Employees Compensation Assistance Fund Board (ECAFB) which holds the Employees Compensation Assistance Fund (ECAF) upon trust and considers applications from persons applying for payment from the Fund.

4. The ECAS is financed by a levy on the premium of employees' compensation insurance which employers are required to take out under the Employees' Compensation Ordinance (ECO). At present, a total of 5.3% levy is collected by the Employees' Compensation Insurance Levies Management Board through insurers for distribution to three statutory bodies, namely the ECAFB (1%), the Occupational Safety and Health Council (2%) and the Occupational Deafness Compensation Board (2.3%). The levy rate for the ECAS has remained at 1% since its inception in 1991.

Consultancy Review

5. In recent years, a rising number of large claims have emerged and the amount of common law damages awarded by the Court has been escalating. Coupled with a decline in the levy income in recent years¹, the ECAF has incurred annual operating deficits since 1996/97. A table showing the income and expenditure account of the ECAF is at Annex A.

6. With a view to restoring the long term financial viability of the ECAS as a safety net for employees injured at work, Education and Manpower Bureau commissioned a consultancy review of the Scheme in February 1999, studying its scope and extent of coverage, the financing arrangements as well as the operational procedures of the ECAFB.

7. The review was completed in December 1999. The Consultant concluded that the financial predicament of the ECAS was due to the significant imbalance between income and expenditure. To restore the long term financial viability of the Scheme, there is a need to increase the financial resources for the Fund and limit the scope of protection of the ECAS. The Consultant has looked at three strategic options for modifying the ECAS -

- (a) retaining the existing coverage of the ECAS;
- (b) capping the payment to each applicant at \$4 million; and
- (c) removing payment of common law damages.

8. The Consultant also proposed other changes to the ECAS including -

- (a) removal or reduction of payment of interest;
- (b) removal of entitlement to legal costs; and
- (c) strengthening the role of the ECAFB to empower the Board to take a more active role in the legal proceedings.

In view of the imbalance of the Board's income and expenditure, the Consultant considered that the levy rate has to be increased from 1% to a level ranging from 2.9% to 4.4%, depending on which of the above strategic options would be adopted.

¹ The decline in levy income is attributable to a number of factors such as the completion of major infrastructure projects, keen competition in insurance industry and the recent economic downturn.

Consultation on the findings of the Consultancy Review

9. The Administration has consulted various parties on the findings of the Consultancy Review, including the ECAFB and the Labour Advisory Board (LAB). The previous LegCo Panel on Manpower was also consulted on 27.4.2000. Members of the Panel had differing views on a proposal to impose a \$4 million cap on the amount of payment to each applicant under the ECAS. Members also considered that measures should be taken to deter employers from non-compliance with the compulsory insurance requirement under the ECO so as to reduce the caseload for the ECAS. They urged the Administration to step up enforcement, increase the penalty for failing to take out insurance and require employers who fail to comply with the requirement of taking out insurance to pay levy direct into the Board.

PROPOSED PACKAGE OF MEASURES

10. Taking into account the views expressed by various parties during the consultation, the Administration has formulated a package of measures, which are summarised in paragraphs 11 to 29.

(a) Scope of Assistance under the ECAS

(i) Statutory Compensation under the ECO

11. The scope of assistance under the ECAS needs to be redefined in order that the Fund could be financially viable in the long run. To uphold the ECAS as a safety net, it is proposed that the revised Scheme should maintain the full protection of entitlements in respect of statutory compensation under the ECO. This will include the list of the compensation items that an injured employee or family members of a deceased employee may be eligible to claim from the employers (Annex B).

(ii) Ex-gratia payment

12. To reduce the financial volatility brought about by the escalating amount of common law awards and provide reasonable protection to injured employees, it is proposed that an ex-gratia payment shall be payable under the ECAS in lieu of common law damages.

13. The proposed ex-gratia payment shall be payable, where common law

damages have been awarded in the case concerned. Its amount shall not exceed the aggregate sum of damages as awarded by the Court. Where the amount does not exceed \$1.5 million, the ex-gratia payment shall be made in a lump sum. If it exceeds \$1.5 million, an initial payment of \$1.5 million shall be paid and then followed by monthly payments calculated at the rate of \$10,000 or the wage of the worker at the time of the accident, whichever is the higher.

14. The ex gratia payment payable shall be paid to the injured employee in a non-fatal case. For a fatal case or in case the injured employee has passed away before his/her entitlement of ex gratia payment is fully paid, the ex gratia payment (including the initial payment and the subsequent monthly payments) shall be paid to his/her spouse and children under the age of 21. A child of the deceased employee will cease to be entitled to the monthly payment when he/she reaches the age of 21. Other dependants of the deceased employee will not be eligible to ex gratia payment by the ECAFB.

15. The proposal would reduce the financial volatility brought about by the huge common law claims and restore the financial viability of the Fund in the long run. Under the proposal, injured employees and their families would also be provided with long term financial support.

(b) Reduction of Interest Payment

16. At present, the ECAFB pays ‘pre-judgement interest’ on the payment accrued from the date of accident to the date of court judgement and ‘post-judgement interest’ accrued from the date of judgement to the date of payment by the Board. The court normally awards the two components at 50% and 100% of the “judgement rate”² respectively. The “judgement rate” was 12.5% per annum as at March 2001.

17. The “judgement rate” is set above the market rate and is aimed at speeding up the clearance of judgement debts and damages. In respect of cases assisted by the ECAS, there is no reason for the Board to delay payment deliberately. It would not therefore be appropriate to apply full judgement rate to cases assisted by the ECAS. Moreover, there is no time limit for making an application for payment from the

2 The “judgement rate” refers to the interest rate determined in accordance with section 49(1)(b) of the High Court Ordinance (Cap 4) which provides that,

“Judgement debts shall carry simple interest, ..., at such rate as may be determined from time to time by the Chief Justice by order.”

ECAF and the favourable judgement rate has become a disincentive for an applicant to make prompt application to the ECAFB.

18. To plug the loophole, it is proposed that the ECAO should be amended such that the ECAFB should only pay an interest on statutory compensation at one-half of the “judgement rate”. It is considered that the new rate would still be good enough to preserve the value of the outstanding payment.

19. After an application is received, the ECAFB will vet the documents and make enquiries, where necessary. The ECAFB will also seek legal advice on each application before a determination is made. These processes take time, during which accrual of interest is considered unreasonable. Based on operational experience, 80% of applications are determined by the ECAFB within four to six months after the ECAFB has received the application. It is therefore proposed that no interest should be payable for a period of 180 days from the date on which the applicant makes an application for payment from the ECAFB.

(c) Legal costs

20. Following the proposal to provide ex gratia payment in lieu of common law damages, the ECAFB will no longer be liable for common law damages and hence it will not pay legal costs in respect of common law claims. The Administration has considered the Consultant's suggestion to abolish the payment of legal costs in respect of claims for statutory compensation. In order not to erode employees' benefits, particularly for cases involving relatively small compensation, we propose that the ECAFB should continue making payments of legal costs in respect of claims for statutory compensation.

(d) Role of the ECAFB in legal proceedings

21. At present, the ECAO does not explicitly empower the ECAFB to defend claims in legal proceedings. This places the Board in a disadvantageous position because defaulting employers are usually absent in the legal proceedings leaving the claims undefended. To better protect its interests, the ECAFB should be empowered to take a more active role in legal proceedings relating to potential claims to the ECAF.

22. It is proposed that where a proceeding has been initiated to claim statutory

compensation or common law damages for a work-related accident, the ECAFB may at any time apply to the Court for joining in the proceedings as a party and defend the claims. In addition, the ECAFB should be empowered to negotiate with the applicants for settlement of claims. In taking part in the proceedings in respect of claims under the ECO, the ECAFB should also have the right to agree costs with the parties involved prior to taxation.

(e) Procedures for filing claims

23. To enable the ECAFB to determine in every potential claim whether it should apply to the Court for joining in the proceedings, there is a need to specify a period within which a person who may be entitled to apply for payment from the Fund should be required to notify the ECAFB. It is proposed that such person should serve a notice of proceedings to the ECAFB within 30 days (or within such period as extended by the ECAFB) from the date on which a writ is filed with the Court in respect of the claim for compensation under the ECO or damages under common law. The person shall not seek to obtain judgement from the Court or to reach settlement with the other party within 45 days after the date of notification. This will facilitate the ECAFB to determine whether it should apply to the Court to join in the legal proceedings. The ECAFB shall not be liable to make any payment to a person who, without reasonable excuse, fails to serve the notice of proceedings as required.

24. Separately, to encourage early settlement of claims, thereby reducing the ECAFB's liability to make interest payments, an applicant should be required to file an application for payment in respect of compensation under the ECO to the Board within six months from the date on which the quantum of compensation has been assessed by the Court or determined by the Commissioner for Labour. The six-month period should be sufficient to enable applicants to execute the Court order by initiating bankruptcy or winding-up proceedings against the defaulting employer before applying to the Board for payment.

(f) Surcharge on employers

25. In failing to take out employees' compensation insurance, an employer evades the payment of levy to the Board and creates potential claims to the ECAS. During the consultation with the previous LegCo Panel on Manpower, it was suggested that such employers should be required to make up for the forgone levy they would have had contributed to the ECAFB had they taken out an insurance cover.

26. After exploring various options, the Administration proposes that uninsured employers shall be liable to pay a surcharge to the Board. To reflect the risk that the Board might have been exposed in relation to individual uninsured employers and the potential administrative costs in recovering the payment, it is proposed that the surcharge should be calculated with reference to the insurance premium subsequently paid by the employer in taking out an insurance policy after the offence was detected. A three-level scale is proposed as follows:

Amount of Premium	Amount of Surcharge
Below \$1,000	\$1,000
\$1,000 - Below \$4,000	\$4,000
\$4,000 or Above	\$8,000

27. A convicted employer who fails without reasonable excuse to provide information (e.g. insurance policy or notification of close of business) upon the request of the ECAFB for the purpose of surcharge evaluation would be required to pay a surcharge at \$8,000 to the ECAFB irrespective of the amount of premium the employer concerned has paid.

(g) Levy increase

28. The existing levy income for the ECAFB could not meet its expenditure. Since 1996/97, the annual levy income of the ECAFB has stabilised at \$20 million a year. After the above measures are implemented, it is estimated that the expenditure will average around \$43 million in the first four years and stabilise at around \$40 million from the fifth year onwards. Despite its slight increase as a result of the recent economic recovery, the levy income of the ECAFB at the current rate of 1% on insurance premium will still be insufficient to finance its shortfall.

29. To address the imbalance between income and expenditure of the ECAFB, it is proposed that the levy rate for the ECAS should be increased by 1% net. Including interest and investment income, the ECAFB would have an annual income of about \$45 million, sufficient to repay the loan and to restore to its longer term viability.

COMPLIANCE WITH THE COMPULSORY INSURANCE PROVISIONS

Enforcement

30. In the longer term, improving compliance with the compulsory insurance requirement would contain the number of potential claims to the ECAS. The Labour Department (LD) has all along attached high priority to the enforcement of compulsory insurance under the ECO. In 2000, the Department conducted 83,990 inspections on compulsory insurance representing an increase of 7% over that of 1999. LD will continue with its vigorous inspections in 2001 and its inspection strategy will be adjusted in line with its enforcement experience. Inspections to employers in the service sectors, new establishments and employers involved in interior renovation works in commercial premises, shopping malls and new residential estates will also be stepped up.

31. LD operates a complaint hotline for employees who suspect that their employers have not complied with the insurance requirements to provide information for investigations. The Department will continue to publicise the hotline.

32. Apart from routine inspections and complaint investigations, LD also mounts special campaigns. For example, a territory-wide campaign was conducted in March 2001 and 6,280 establishments were covered in two weeks. As a result of that campaign, prosecutions against 141 employers for failure to take out insurance cover for their employees or produce insurance policies for inspection will be commenced. These inspections will convey to employers a clear message of the Administration's determination to ensure compliance with the compulsory insurance provisions.

Increasing the level of fines

33. With the coming into effect of the Employees' Compensation (Amendment) (No. 2) Ordinance on 1 August 2000, the maximum penalty for failure to take out employees' compensation insurance has been increased from \$25,000 to \$100,000. This will strengthen the deterrent effect against non-compliance with the compulsory insurance provisions.

Publicity and education

34. Since March 2001, LD has launched another series of major promotional activities to remind employers of the need to take out employees' compensation

insurance. Apart from broadcasting special announcements on the radio and TV, the Department has placed advertisements on public buses. The poster boxes at MTR stations, departmental homepage on the Internet and newsletters will also carry similar messages. Talks, seminars and exhibitions will be organised for employers and employees in 2001.

35. Special posters and leaflets on compulsory insurance and the complaint hotline are printed and distributed with the assistance of the Immigration Department, Home Affairs Department, Business Registration Office, major employers' associations, associations of small and medium sized enterprises etc. LD will make full use of the sum of \$1.1 million which is allocated to the Department in 2001-02 to launch publicity programmes on the ECO, including the provisions on compulsory insurance.

CONSULTATION

36. The LAB has endorsed the proposed package of measures. The ECAFB has also endorsed the proposals to strengthen the role of the Board in legal proceedings, revise the procedures for claims, adjust the rate of interest and impose a surcharge on convicted employers.

FINANCIAL AND STAFFING IMPLICATIONS

37. Since some lead time is needed for the enactment of legislative amendments and for the levy increase to take effect, the Finance Committee has approved a bridging loan of \$60 million at the Government's no-gain-no-loss interest rate to the ECAFB to be drawn down by 31 July 2001. Apart from that, the above proposals to revise the Scheme would not have any financial or staffing implications on the Government.

ECONOMIC IMPLICATIONS

38. Based on the employees' compensation insurance levy collected in 2000-01, it is estimated that the proposed 1% net increase in levy rate would generate an additional levy income of about \$22 million per year for the ECAFB.

LEGISLATIVE TIMETABLE

39. We hope to introduce the legislative amendments for the above measures into the Legislative Council within the 2000-01 legislative session. The amendments, if enacted, will come into immediate effect.

INSURER INSOLVENCY

40. Following the review and the extensive consultation carried out by the Administration, Members will be aware that the Insurance Authority recently appointed Managers to take control of the affairs and property of three local insurers and the Managers have concluded that the insurers were insolvent within the meaning of the Insurance Companies Ordinance. The Managers have accordingly presented winding up petitions to the Court. Under the ECAO, the ECAS is liable to make payment to employers who have taken out insurance policies from the insolvent insurers in respect of compensation or damages for injured employees covered by the insurance policies.

41. We are aware that two of the three insurers were active in the employees' compensation insurance business. While it is not possible at this stage to ascertain accurately the size of the ECAS claims that may arise from insolvency of these insurers, according to Labour Department's records, there are about 1000 outstanding claims relevant to the three insolvent insurers. It is therefore very likely that the levy rate for the ECAS will have to be further increased in order that the ECAFB may discharge such liabilities.

42. Despite this latest development, which may impact on the proposed levy rate, we would still wish to invite Members to express their views on the principles underlying the package as described in paragraphs 11 to 29 of this paper.

Education and Manpower Bureau
April 2001

Employees Compensation Assistance Fund Board
Income and expenditure account

	91/92 (1.7.91 - 31.3.92)	92/93	93/94	94/95	95/96	96/97	97/98	98/99	99/2000	2000/2001 (as at 31.3.2001)
No. of assisted cases	27	12	12	20	18 {1}*	19 {1}*	23 {1}*	28	35	26
Total income	\$16.7m	\$15.7m	\$21.8m	\$33.8m	\$31.7m	\$23.9m	\$28.5m	\$22.4m	\$21.5m	\$26.0m
<i>levy income</i>	\$16.5m	\$15m	\$20.6m	\$31.3m	\$27.8m	\$20.9m	\$23.7m	\$20m	\$19.8m	\$25.2m
<i>interest and other income</i>	\$0.2m	\$0.7m	\$1.2m	\$2.5m	\$3.9m	\$3m	\$4.8m	\$2.4m	\$1.7m	\$0.8m
Total Expenditure#	\$2.6m	\$4.5m	\$23.8m	\$10.8m	\$11.2m	\$35.4m	\$49.7m	\$29.1m	\$40.6m	\$28.9m
<i>claims</i>										
- statutory	\$1.39m	\$0.48m	\$1.57m	\$0.86m	4.68m	\$2.08m	\$0.96m	\$7.93m	\$5.8m	\$4.47m
- common law	\$0.78 m	\$2.15m	\$3.88m	\$6m	\$15.4m { \$13.9m }*	\$25.6m { \$16.4m }*	\$33.8m { 15.3m }*	\$10.03m	\$18.9m	\$12.28m
<i>interest</i>	\$0.71m	\$0.97m	\$1.65m	\$2.06m	\$1.82m	\$2.36m	\$3.58m	\$4.32m	\$5.4m	\$3.29m
<i>legal cost</i>	\$0.49m	\$0.69m	\$1.57m	\$1.5m	\$2.51m	\$4.12m	\$9.72m	\$4.23m	\$7.7m	\$6.49m
<i>operating expense</i>	\$0.16m	\$0.4m	\$0.23m	\$0.43m	\$0.74m	\$1.2m	\$2.4m	\$2.55m	\$2.8m	\$2.34m
Surplus/Deficit	\$14.1m	\$11.2m	-\$2m	\$23m	\$20.5m	-\$11.5m	-\$21.2m	-\$6.7m	-\$19.1m	-\$2.9m
Retained surplus	\$14.1m	\$25.3m	\$23.3m	\$46.3m	\$66.8m	\$55.3m	\$34.1m	\$27.4m	\$8.3m	\$5.4m

Note:

The total expenditure does not necessarily represent the sum of statutory award, common law damages, interest and legal cost in the ensuing columns as the amount paid in a specific year may cover the balance of unpaid items of cases assisted in the previous year(s).

* Figures in { } denote the number of/amount paid for major common law cases with settlement exceeding HK\$10m.

Annex B**A List of Compensation Items
under the Employees' Compensation Ordinance**

Non-fatal Cases	Fatal Cases
<p>Periodical payments</p> <p>Payable during the period of temporary incapacity (sick leave arising from the work injury) at the rate of four-fifths of the monthly earnings of the injured employee.</p>	<p>Compensation for death</p> <p>Payable in fatal accidents to the family members of a deceased employee. The compensation is calculated with reference to the age and monthly earnings of the deceased employee. The maximum amount payable is \$1.764 million.</p>
<p>Compensation for permanent incapacity</p> <p>Payable when an injured employee suffers loss of earning capacity as a result of the work injury. This compensation will be paid in a lump sum, calculated with reference to the age, monthly earnings and the degree of loss of earning capacity of the injured employee. The maximum amount payable is \$2.016 million.</p>	<p>Funeral and Medical Attendance expenses</p> <p>Payable in fatal accidents to any person who has incurred expenses for the funeral of and medical attendance on the deceased employee, subject to a maximum of \$35,000.</p>
<p>Medical expenses</p> <p>Payable for the expenses incurred by the injured employee in seeking medical treatment, subject to a maximum of \$175 a day.</p>	
<p>Compensation for care and attention</p> <p>Payable when an injured employee who suffers permanent incapacity needs the attention of another person to perform the essential actions of life. The amount of such compensation is subject to a maximum of \$412,000.</p>	
<p>Prosthesis or surgical appliance costs Include the initial costs of the supplying and fitting of a prosthesis or surgical appliance, subject to a maximum of \$33,000 and the probable cost of repair and renewal of the prosthesis or surgical appliances, subject to a maximum of \$100,000.</p>	

Financial impact of further lowering the levy rate to 1.2% for a limited period on the ODCB

Cash flow \$M			Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15	Year 16
Financial year (up to 31 March)		2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
Levy Rate		2.30%	2.30%	1.20%	1.20%	1.20%	1.20%	1.20%	1.80%	1.80%	1.80%	1.80%	1.80%	1.80%	1.80%	1.80%	1.80%	1.80%
Income																		
	Levy	57.975	62.100	49.140	35.044	36.446	37.903	39.420	51.245	63.954	66.512	69.173	71.940	74.817	77.810	80.923	84.159	87.526
	Government Payments	3.552	3.726	2.948	2.103	2.187	2.274	2.365	3.075	3.837	3.991	4.150	4.316	4.489	4.669	4.855	5.050	5.252
	Interest income	13.393	5.045	5.662	5.379	4.959	4.574	4.206	4.033	4.055	4.293	4.534	4.775	5.017	5.259	5.541	5.864	6.194
	Total	74.920	70.871	57.750	42.525	43.592	44.752	45.991	58.353	71.847	74.797	77.857	81.031	84.324	87.738	91.319	95.073	98.971
Expenditure																		
	Compensation for deafness	13.405	14.760	27.518	28.619	29.764	30.954	32.193	33.480	34.820	36.212	37.661	39.167	40.734	42.363	44.058	45.820	47.653
	Hearing assistive devices (backlog cases)			12.084	1.813	1.813	1.813	1.813	1.813	1.813	1.813	1.813	1.813	1.813				
	Hearing assistive devices (fresh cases)			1.134	1.356	1.594	1.850	2.123	2.414	2.726	3.059	3.414	3.793	4.196	4.364	4.539	4.720	4.909
	Exp for hearing assessment	0.304	0.301	0.327	0.340	0.353	0.367	0.382	0.397	0.413	0.430	0.447	0.465	0.483	0.503	0.523	0.544	0.565
	Sub-total	13.709	15.061	41.063	32.128	33.524	34.984	36.510	38.105	39.772	41.514	43.335	45.238	47.226	47.230	49.120	51.084	53.128
	Promotion and Publicity	2.746	3.400	6.800	6.800	4.165	4.457	4.769	5.102	5.460	5.842	6.251	6.688	7.156	7.657	8.193	8.767	9.381
	Rehabilitation			1.000	1.070	1.145	1.225	1.311	1.403	1.501	1.606	1.718	1.838	1.967	2.105	2.252	2.410	2.579
	Sub-total	2.746	3.400	7.800	7.870	5.310	5.682	6.079	6.505	6.960	7.448	7.969	8.527	9.124	9.762	10.446	11.177	11.959
	Staff cost	5.766	6.053	6.881	7.225	7.586	7.965	8.363	8.782	9.221	9.682	10.166	10.674	11.208	11.768	11.459	12.032	12.633
	Admin cost	2.362	2.532	3.153	3.279	3.411	3.547	3.689	3.836	3.990	4.150	4.315	4.488	4.668	4.854	4.151	4.317	4.489
	Sub-total	8.128	8.585	10.034	10.504	10.997	11.512	12.052	12.618	13.211	13.831	14.481	15.162	15.875	16.623	15.609	16.348	17.123
	Total	24.583	27.046	58.897	50.502	49.831	52.178	54.642	57.228	59.943	62.793	65.785	68.927	72.225	73.615	75.174	78.609	82.209
Income less Expenditure		50.337	43.825	(1.147)	(7.976)	(6.239)	(7.426)	(8.651)	1.125	11.904	12.004	12.072	12.105	12.098	14.123	16.145	16.464	16.762
Accumulated funds c/f		189.257	233.082	231.935	223.959	217.720	210.294	201.643	202.768	214.672	226.676	238.748	250.853	262.951	277.074	293.218	309.682	326.444
Outstanding Govt Loan		63.000	50.000	37.000	24.000	11.000												
No. of applications		275	300	315	315	315	315	315	315	315	315	315	315	315	315	315	315	315
Average amount of compensation		0.082	0.082	0.146	0.151	0.157	0.164	0.170	0.177	0.184	0.192	0.199	0.207	0.216	0.224	0.233	0.242	0.252

(2) 1% levy will generate income of \$27 million. There is a half-year delay in collection levy when the levy rate is revised.

(3) Investment income at 3% per annum (based on average cash balance)

(4) Loans from Government are repayable by equal annual instalment

(7) $\frac{1}{2} \leq \frac{1}{2} \leq \frac{1}{2}$

Cash flow (\$M)		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15	Year 16	Year 17	Year 18
Year Starting from 1 April		2001/02	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
Levy Rate Income	(1)	1.0%	3.1%	3.1%	3.1%	3.1%	3.1%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
Levy	(2)	27.000	55.350	83.700	83.700	83.700	83.700	75.600	67.500	67.500	67.500	67.500	67.500	67.500	67.500	67.500	67.500	67.500	67.500
Recoveries		0.080	0.080	0.087	0.080	0.080	0.076	0.076	0.076	0.076	0.076	35.116	0.076	0.076	0.076	0.076	0.076	0.076	0.076
Surcharge		0.000	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500
Investment Income	(3)	0.294	0.402	0.380	0.329	0.905	2.255	3.554	3.931	3.482	3.018	3.075	3.133	2.659	2.171	1.668	1.149	0.615	0.779
Total		27.374	57.332	85.667	85.610	86.185	87.531	80.730	73.007	72.558	72.095	107.191	72.209	71.735	71.247	70.744	70.225	69.691	69.856
Expenditure																			
Payouts (stat. Comp.)		40.000	19.880	19.880	12.868	12.868	10.880	10.880	10.880	10.880	10.880	10.880	10.880	10.880	10.880	10.880	10.880	10.880	10.880
Payouts (ex gratia payment)		0.000	20.100	23.700	27.300	27.300	27.300	27.300	27.300	27.300	27.300	27.300	27.300	27.300	27.300	27.300	27.300	27.300	27.300
HII cases		210.240	46.720	46.720	46.720	46.720	46.720	46.720	46.720	46.720	46.720	46.720	46.720	46.720	46.720	46.720	46.720	46.720	46.720
Administrative Expenses		6.925	3.654	3.808	3.662	2.727	2.642	2.642	2.642	2.642	2.642	2.642	2.642	2.642	2.642	2.642	2.642	2.642	2.642
Total		257.165	90.354	94.108	90.550	42.895	40.822	40.822	40.822	40.822	40.822	40.822	40.822	40.822	40.822	40.822	40.822	40.822	40.822
Net cashflow		(229.791)	(33.022)	(8.441)	(4.940)	43.290	46.709	39.908	32.186	31.736	31.273	66.369	31.387	30.914	30.425	29.922	29.404	28.870	29.034
Further loans from Government (4)		240.000	30.000	10.000	0.000	0.000	0.000	0.000	(46.944)	(46.944)	(46.944)	(46.944)	(46.944)	(46.944)	(46.944)	(46.944)	(46.944)	(46.944)	0.000
		10.209	(3.022)	1.559	(4.940)	43.290	46.709	39.908	(14.758)	(15.208)	(15.671)	19.425	(15.557)	(16.030)	(16.519)	(17.022)	(17.540)	(18.074)	29.034
Accumulated funds c/f	4.700	14.909	11.888	13.447	8.507	51.796	98.505	138.414	123.655	108.448	92.777	112.202	96.645	80.615	64.096	47.074	29.534	11.460	40.494
Loan repayment analysis																			
Principal - Balance		240.000	281.400	304.767	319.243	334.407	350.291	366.930	366.930	337.415	306.499	274.113	240.190	204.655	167.432	128.441	87.598	44.815	
Repayment		0.000	0.000	0.000	0.000	0.000	0.000	0.000	(29.515)	(30.917)	(32.385)	(33.924)	(35.535)	(37.223)	(38.991)	(40.843)	(42.783)	(44.815)	
Interest - Capitalised		11.400	13.367	14.476	15.164	15.884	16.639												
Paid									(17.429)	(16.027)	(14.559)	(13.020)	(11.409)	(9.721)	(7.953)	(6.101)	(4.161)	(2.129)	
Instalment -									(46.944)	(46.944)	(46.944)	(46.944)	(46.944)	(46.944)	(46.944)	(46.944)	(46.944)	(46.944)	

**Information Paper for the
Legislative Council Panel on Manpower Meeting
on 20 December 2001**

**Review of the Occupational Deafness Compensation
Scheme and Rescue Package for the
Employees Compensation Assistance Scheme**

Purpose

This paper informs Members of the Administration's proposed package of measures to restore the long term viability of the Employees Compensation Assistance Scheme.

Background

2. At the last Panel meeting on 15 November 2001, Members were consulted on the Administration's proposal to modify the Occupational Deafness Compensation Scheme (ODCS) and the rescue package for the Employees Compensation Assistance Scheme (ECAS). A copy of the Panel paper is at **Annex 1**. The Panel also noted the submissions by concerned groups.

ECAS

Proposed Rescue Package

3. To recapitulate, the Administration's proposed rescue package for ECAS which was presented to the Panel on 15 November 2001, includes:

- (a) a package of reform measures for ECAS;
- (b) a net increase in the levy on employees compensation insurance premium by 1% i.e. from 5.3% to 6.3%;
- (c) within the 6.3%, to apportion 3.1% to Employees Compensation Assistance Fund Board (ECAFB) for five years from 2002/03 to 2006/07, but to reduce the levy rate for ECAFB to 2.5% from 2007/08 onwards;

(d) to reduce the levy rate for Occupational Deafness Compensation Board (ODCB) from 2.3% to 1.2% from 2002/03 to 2006/07 but to increase the levy rate for ODCB to 1.8% from 2007/08 onwards; and

(e) a Government loan of \$280m at no-gain-no-loss rate of interest.

ODCS

4. At the last Panel meeting, the Administration undertook to consider the views of Members concerning compensation for workers suffering from noise-induced hearing by reason of their employment and explore ways to address the issues. We are actively examining the issues and intend to incorporate possible adjustments in our legislative amendment proposals to the Legislative Council.

Ex-gratia payment

5. To reduce the financial volatility brought about by the escalating amount of common law damages and provide reasonable protection to injured employees, it has been proposed that an ex-gratia payment shall be payable in lieu of common law damages as a measure to reform ECAS.

6. The proposed ex-gratia payment shall be payable, where common law damages have been awarded in the case concerned. Its amount shall not exceed the aggregate sum of damages as awarded by the court. Where the amount does not exceed \$1.5m, the ex-gratia payment shall be made in a lump sum. If it exceeds \$1.5m, an initial payment of \$1.5m shall be paid and then followed by monthly payments calculated at the rate of \$10,000 or the wage of the worker at time of accident, whichever is the higher.

7. It has been our proposal that for a fatal case, the ex-gratia payment shall only be paid to the deceased employee's spouse and children under the age of 21. Other dependants of the deceased person will not be eligible for the ex-gratia payment.

8. Members suggested at the meeting that the proposed beneficiaries were too restrictive, and should be broadened. We have once sought advice from the Department of Justice on the eligibility of family members, other than the spouse and children, to receive ex-gratia payment in fatal work accidents. We have been advised that as a matter of legal principle the ex-

gratia payment should be payable to all those family members of the deceased employees who have been awarded damages by the Court in respect of work accidents concerned.

9. In accordance with the legal advice, the Administration now proposes that for fatal cases, all beneficiaries named in the court award for damages be eligible for ex-gratia payment. It is estimated that the additional amount payable should not be more than \$500,000 per year. It should not therefore give rise to any increase in the rate of the employees' compensation levy on top of the 1% agreed by the Labour Advisory Board, to restore ECAS' long-term viability.

Way Forward

10. As at 31 October 2001, the ECAFB held a balance of \$31.79m. Claims arising from the HIH insolvencies have depleted ECAFB's reserves quickly in the last few months. At the rate it is going, and in the absence of further assistance, the fund will probably be depleted in early 2002. Section 26 of the Employees Compensation Assistance Ordinance provides for a queuing mechanism in the event of the ECAF becoming exhausted whereby eligible applicants may only receive their entitlement from ECAFB when it has sufficient fund to pay, in order of priority stated in the same section.

11. In view of the urgency of the situation, we plan to introduce the legislative amendments for ECAS into the Legislative Council on 27 February 2002. We also plan to seek the Finance Committee's approval of the proposal to extend a loan to the Employees Compensation Assistance Fund Board in March 2002, after the legislative amendments have been introduced.

Education and Manpower Bureau
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