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**Paper for the House Committee Meeting
of the Legislative Council
on 1 March 2002**

**Legal Service Division Report on
Employees Compensation Assistance (Amendment) Bill 2002**

Object of the Bill

The Bill seeks to amend the Employees Compensation Assistance Ordinance ("the Ordinance") with a view to improving the financial stability and viability of the Employees Compensation Assistance Fund ("the Fund").

LegCo Brief Reference

2. EMB CR 4/4/3231/77.

Date of First Reading

3. 27 February 2002.

Comments

4. The Employees Compensation Assistance Scheme ("the Scheme") was set up under the Ordinance in July 1991 to provide payment to employees injured in the course of employment who are unable to receive compensation after exhausting all other legal means of recovery. The Scheme is administered by the Employees Compensation Assistance Fund Board ("the Board") which holds the Fund on trust. The Fund is financed by a levy on the premium of employees' compensation insurance.

5. In recent years, the amount of employees' compensation has substantially increased. On the other hand, there has been a decline in the levy income due to the completion of major infrastructure projects and keen competition in

the insurance industry. The Fund has incurred an annual operating deficit since 1996-97. The situation was worsened by the provisional liquidation of the HIH Group of insurance companies in April 2001 which was triggered off by the insolvency of their parent company in Australia. As a result, the financial stability of the Fund has suffered. According to the Administration, the Fund will probably be depleted before mid-2002.

6. The Administration has formulated a rescue package for the Scheme which includes the proposed amendments in the Bill. The Bill comprises amendments covering a broad range of issues. It seeks to change the basis of the payment from the Fund from damages to "relief payment" as determined in new section 20B. The definition section seeks to include "cohabitee" as eligible person in relation to the relief payment made under new section 20A. The relief payment does not include interests and legal costs on any employees' compensation and/or damages which the relevant employer is liable to pay. Under new section 20C, a relief payment in excess of a specified amount will be paid by monthly instalments. Where there are 2 or more eligible persons entitled to receive a relief payment in respect of a deceased employee, new section 20F provides for apportionment of such relief payment.

7. The Bill also seeks to give power to the Board to apply to the court in certain circumstances to join as a party to proceedings which may affect the Fund (new section 25A). A person who commences proceedings in respect of a claim for compensation or damages is required to serve a notice of such proceedings on the Board. A person who fails to serve such notice shall not be entitled to any payment under the Ordinance (new section 25B).

8. For employers who have failed to take out an insurance policy as required under the Employees' Compensation Ordinance (Cap. 282), new section 36A imposes a surcharge on them. The surcharge shall be 3 times the levy payable to the Board under the Employees' Compensation Insurance Levies Ordinance (Cap. 411) on the premium paid on the insurance policy obtained to reinstate such insurance.

9. The Bill also seeks to amend the Employees' Compensation Insurance Levies Ordinance (Cap. 411) and the Employees' Compensation Insurance Levy (Rate of Levy) Order (Cap. 411 sub. leg.) to increase the rate of levy on the premium of employees' compensation insurance from 5.3% to 6.3% (from 1 July 2002) and to adjust the distribution of such levy income amongst the Board, the Occupational Safety and Health Council and the Occupational Deafness Compensation Board.

Consultation

10. The Panel on Manpower, the Board, the Labour Advisory Board and the Occupational Deafness Compensation Board have been consulted on the financial arrangements of the rescue package. For details of the consultation, Members may

refer to paragraphs 26, 36 and 37 of the LegCo Brief. The rescue package for the Fund was discussed at the meetings of the Panel on Manpower on 17 May 2001, 15 November 2001 and 20 December 2001. Members of the Panel generally expressed support for the proposed package of measures to restore the long-term viability of the Scheme at the meeting on 20 December 2001.

Conclusion

11. The Legal Service Division is still scrutinizing the legal and drafting aspects of the Bill. In view of the significance of the proposed amendments and the broad interests affected, Members may wish to form a Bills Committee to study the Bill in detail.

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