

**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 HIH Group

23. On 9 April 2001, 3 local subsidiaries of HIH 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 HIH 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 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 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 HIH 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 ODSC 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

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

$$= \mathbf{+40.68\%}$$

- (2) Adjustment of the minimum level of compensation in accordance with the rate of increase in Nominal Wage Index
- $$= \$248,000 \times 140.86\%$$
- $$= \$349,333$$
- $$= \$349,000 \text{ (rounded off to the nearest thousand dollars)}$$

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

Percentage of permanent incapacity		Average hearing Loss (dB) at 1,2, 3kHz frequencies as determined by the Board	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 90 dB	90 dB or above		
FOR WORSE EAR	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		

Proposed Schedule of Permanent Incapacity

Average hearing Loss (dB) at 1,2, 3kHz frequencies as determined by the Board		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 90 dB	90 dB or above
FOR WORSE EAR	40 to below 45dB	%	%	%	%	%	%	%	%	%	%	%
	45 to below 50dB	1	5									
	50 to below 55dB	2	6	10								
	55 to below 60dB	3	7	11	15							
	60 to below 65dB	4	8	12	16	20						
	65 to below 70dB	5	9	13	17	21	25					
	70 to below 75dB	6	10	14	18	22	26	30				
	75 to below 80dB	7	11	15	19	23	27	31	35			
	80 to below 85dB	8	13	17	21	25	29	33	37	43		
	85 to below 90dB	9	14	18	22	26	30	34	38	45	51	
	90 dB or above	11	16	20	24	28	32	36	40	46	53	60

**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 (ECAAF) 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.

Consultation on the findings of the Consultancy Review

9. The Administration has consulted various parties on the findings of the

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.

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

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."

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

Annex A

**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.

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</p> <p>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 IM		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	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														
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

Financial Projection for Government Loan to the Employees Compensation Assistance Board

Annex B

- (1) Levy remains unchanged in 2001/02. It will increase to 3.1% from 2002-03 to 2006-07 and decrease to 2.5% from 2007-08.
 (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 balances)
 (4) Loans from Government are repayable by equal annual instalments over 10 years. Interest before loan repayment is capitalised.

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 (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%	
Income																			
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	0.379	0.905	2.255	3.554	3.931	3.482	3.018	3.075	3.133	2.639	2.171	1.668	1.149	0.615	0.719	
Total	27.374	57.332	85.667	85.610	86.185	87.531	80.730	73.007	72.538	72.095	107.191	72.209	71.735	71.247	70.744	70.225	69.691	69.836	
Expenditure																			
Payouts (incl. 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	
MH cases	210.240	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)	(15.206)	(15.671)	19.425	(15.557)	(16.090)	(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	123.635	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	314.407	350.291	366.930	366.930	337.415	306.499	274.113	240.190	204.655	167.432	128.441	87.598	44.815		
Principal - Repayment	0.000	0.000	0.000	0.000	0.000	0.000	0.000	(39.515)	(30.917)	(22.185)	(13.924)	(35.555)	(37.223)	(38.991)	(40.843)	(42.783)	(44.815)		
Interest - Capitalised	11.400	13.367	14.476	15.164	15.884	16.639													
Interest - Paid							(17.429)	(16.927)	(14.559)	(13.920)	(11.409)	(9.721)	(7.953)	(6.101)	(4.161)	(2.129)			
Instalment -							(46.944)												

TOTAL P. 31