

Issues relating to Employees' Compensation (EC) Insurance

- (a) *Provide information for comparison of work place safety in Hong Kong and other countries, such as Japan, by providing information on death and work injuries in the past few years.*

_____ The information provided by the Labour Department is at Annex A.

- (b) *Relay to the Judicial Administrator (JA) the concerns of members and business sectors on the escalating trend of damages for compensation awarded by the Court for employee claims and for other personal injury litigations, which was believed to be one of the factors attributing to the recent increase in EC insurance premium.*

We wrote and conveyed to JA on 30 June 2003 members' concerns on the escalating trend of damages for compensation awarded by the Court for employee claims and for other personal injury litigations.

- (c) *To facilitate members' understanding of the cause for the escalating trend of compensation, the Administration was requested to provide information on the principles adopted by the Court in assessing damages and determining the final award.*

In assessing compensation for permanent incapacity or compensation for death in EC cases, the Court is not concerned with whether the employers are to be blamed for the accident. The Court shall apply the formulae in the Employees' Compensation Ordinance (Cap. 282). The relevant factors are the age of the injured employee, his/her monthly earnings, and in non-fatal cases, the percentage of permanent loss of earning capacity. This is a no fault system.

If an employer is at fault in an employment-related accident, his injured employee might also claim damages against the employer under common law. In assessing the damages in the common law claims, the principle is to award a sum of money which will put the party who has been injured in the same position as he would have been in if he had not sustained the wrong. The Court will take into account, among others, hospital expenses, pain and suffering and loss of amenities ("PSLA"), loss of pre-trial earnings, prospect of resumed employment and loss of future earnings. In cases of very serious injuries, the Court will also assess the future needs of the plaintiff, such as medical and special accommodation needs.

In legal actions, and in particular in common law claims, it is the responsibility of the lawyers to cite authorities which may be relevant for the case in question, both on matters of principles and also as references for quantum in comparable factual situations.

The award of damages is determined upon the merits of individual cases. The decision in each case is a judicial decision.

- (d) *To explore whether guidelines could be worked out to ensure reasonable levels of compensation would be awarded by the Court.*

We had conveyed to JA members' comment on whether guidelines could be worked out to ensure reasonable levels of compensation would be awarded by the Court.

As mentioned in the response in (c) above, the Court will determine the final award depending on the evidence of the particular case.

There are existing guidelines on the awards of PSLA. Such guidelines are laid down by the Court of Appeal in the context of a decided case and are subject to change upon a new ruling of the Court of Appeal. Ranges of compensation are laid down for the ascending categories of serious injuries, substantial injuries, gross disabilities and disaster. The Court will take into account inflationary as well as deflationary elements in the economy in arriving at the final awards.

There is an avenue of appeal for any party who is aggrieved with the amount of compensation awarded.

- (e) *Provide breakdown by business sectors, in particular, the catering industry, information on the number of EC claim cases, amount of compensation awarded and the level of insurance premium in the past few years.*

Under the Employees' Compensation Ordinance, an employer is required to notify the Commissioner for Labour of any accident which arose out of and in the course of employment in a prescribed form, irrespective of whether the accident gives rise to any liability to pay compensation. The Ordinance also includes provisions so that certain accidents which happen to an employee while travelling to or from his place of work are deemed to have arisen out of and in the course of employment for the purposes of the Ordinance. Such accidents are not included in the industrial accident statistics provided under (a) above since they do not happen at the workplace.

The number of accidents reported by the catering industry decreased from 13 025 in 2000 to 10 477 in 2002. However, the industry still accounted for the highest number of reported cases among all sectors in 2000 and 2001 and was the second highest in 2002. The number of accidents reported under the Ordinance by economic activities in the years 2000 to 2002 is given in Annex B. The amount of compensation payable, also classified by economic activities, is provided in Annex C. This amount includes some court awards for statutory compensation and damages which are known to the Labour Department, i.e. it does *not* provide a

complete picture.

The Judiciary does not keep statistics on the award for damages in common law claims (whether EC-related or not).

_____ The table at Annex D sets out the total gross EC insurance premium since 1996. At present, the figures are not categorized by individual economic activities/occupational types. As explained in paragraph 11 of the consolidated response of the Administration issued on 19 May 2003 to Panel members, we attach great importance to the transparency of the EC insurance market. Starting with the financial year ended 31 December 2002, the Office of the Commissioner of Insurance will publish the underwriting statistics of EC insurers in respect of ten occupational types that are in line with the types of economic activities used by Labour Department in classifying EC cases. It is expected that the relevant statistics for the financial year ended 31 December 2002 would be published in September/October this year.

**Financial Services and the Treasury Bureau
Economic Development and Labour Bureau
Labour Department
Judiciary Administrator
Office of the Commissioner of Insurance**

7 August 2003

Occupational Safety and Health Performance of Hong Kong (1998 to 2002)

The Government is committed to improving safety and health at work. Through the joint and coordinated efforts made by all parties concerned, including the Government, employers, employees, contractors and safety professionals, Hong Kong's safety performance at work has continued to show improvement in the past five years.

2. The number of industrial accidents for all sectors in 2002 stood at 22 453, a drop of 47.8% compared with 43 034 in 1998. The construction industry recorded the most remarkable improvement. The number of industrial accidents in the industry decreased from 19 588 in 1998 to 6 239 in 2002, a drop of 68.1%, while the accident rate per 1 000 workers also declined from 247.9 in 1998 to 85.2 in 2002, a drop of 65.6%.

3. Despite the improvements in safety performance in Hong Kong, we will continue to work closely with all stakeholders to protect the safety and health of employees at work. We will continue to adopt a four-pronged strategy, embracing legislation, enforcement, promotion and education in ensuring occupational safety and health in the workplace.

4. Statistics on industrial accidents for all sectors, as well as industrial accidents in the construction industry, in the years 1998 to 2002, are given in the Appendix.

Safety Performance of Other Countries

5. It is not possible to make any meaningful comparison of our accident statistics with those of other countries as the components that form the basis of the statistics differ between countries. There are differences in respect of the legal requirements for accident reporting, the economic sectors covered and the definition of workforce, etc.

6. Some illustrations are given as follows:-

- (a) in Singapore, the definition of construction workers excludes workers living at worksites and workers who commute daily from abroad to work there. It follows that imported workers engaging in construction work will not be taken into account. However, in Hong Kong, construction workers refer to “all manual workers at construction sites” and imported workers are included in our calculation;
- (b) in Japan, the accident figures in the construction industry cover only those construction works for which the contract sum exceeds 120 million yen and the approximate premia under the Workmen’s Accident Compensation Insurance are in excess of one million yen, whereas our accident figures cover all construction works including minor repair, maintenance, renovation and village-type building works;
- (c) in Australia, accident statistics do not cover cases resulting in temporary disabilities of less than one week (five working days) whereas in Hong Kong, we cover cases with over 3-day sick leave; and
- (d) the United Kingdom has admitted that under-reporting of accident cases exists, but in Hong Kong there is a remote possibility for under-reporting since workers’ insurance is mandatory.

7. The International Labour Organization (“ILO”) has published a Yearbook of Labour Statistics which contains, among others, statistics on occupational injuries of different countries. However, due to the examples quoted above, direct comparison among countries is not meaningful. Indeed, the ILO has advised that care should be taken when using the data provided in the Yearbook, particularly when making international comparisons as the sources, methods of data collection, coverage and classifications used differ between countries.

Industrial Accidents (for all sectors)

	1998	1999	2000	2001	2002	Cumulative Difference
No. of Fatal Cases	68	52 (-23.5%)	43 (-17.3%)	34 (-20.9%)	25 (-26.5%)	-63.2%
No. of Non-fatal Industrial Accidents	42 966	35 934 (-16.4%)	33 609 (-6.5%)	28 484 (-15.2%)	22 428 (-21.3%)	-47.8%
Total	43 034	35 986 (-16.4%)	33 652 (-6.5%)	28 518 (-15.3%)	22 453 (-21.3%)	-47.8%
Accident Rate per 1 000 workers	64.7	55.1 (-14.8%)	51.7 (-6.2%)	44.6 (-13.7%)	37.4 (-16.1%)	-42.2%

Industrial Accidents in the Construction Industry

	1998	1999	2000	2001	2002	Cumulative Difference
No. of Fatal Cases	56	47 (-16.1%)	29 (-38.3%)	28 (-3.4%)	24 (-14.3%)	-57.1%
No. of Non-fatal Industrial Accidents	19 532	14 031 (-28.2%)	11 896 (-15.2%)	9 178 (-22.8%)	6 215 (-32.3%)	-68.2%
Total	19 588	14 078 (-28.1%)	11 925 (-15.3%)	9 206 (-22.8%)	6 239 (-32.2%)	-68.1%
Accident Rate per 1 000 workers	247.9	198.4 (-20.0%)	149.8 (-24.5%)	114.6 (-23.5%)	85.2 (-25.7%)	-65.6%

Labour Department

3 July 2003

**Number of Cases Reported under the
Employees' Compensation Ordinance
by Economic Activities**
**根據《僱員補償條例》呈報的個案數目
(按經濟活動分類)**

Economic Activity 經濟活動	2000	2001	2002
Catering 飲食業	13 025	12 325	10 477
Construction 建造業	12 168	9 747	6 548
Community, social and personal services 社區、社會及個人服務業	11 232	11 765	11 554
Manufacturing 製造業	7 063	6 197	5 102
Transport, storage & communication 運輸、倉庫及通訊業	5 728	5 255	4 665
Wholesale, retail, import/export trades and hotels 批發、零售、進出口貿易及酒店業	4 791	4 842	4 420
Financing, insurance, real estate and business services 金融、保險、地產及商用服務業	4 407	4 548	4 378
Agriculture, forestry and fishing 農業、林務業及漁業	96	124	186
Electricity, gas and water 電力、燃氣及水務業	70	73	44
Mining and quarrying 採礦及採石業	9	9	9

Note 註:

The above figures cover cases for which the economic activity has been classified. They include fatal cases and non-fatal cases with sick leave exceeding 3 days and/or with permanent incapacity as reported under the Employees' Compensation Ordinance.

上述數字涵蓋那些已按經濟活動分類的個案。個案包括根據《僱員補償條例》呈報的死亡個案及病假超過三天及/或涉及永久喪失工作能力的非死亡個案。

**Amount of Compensation Payable
for Cases Settled in the Year by Economic Activities
在有關年度獲解決的個案所須支付的補償金額
(按經濟活動分類)**

Economic Activity 經濟活動	2000 (\$)	2001 (\$)	2002 (\$)
Catering 飲食業	87,758,325	87,495,048	87,940,778
Construction 建造業	812,633,725	755,000,249	642,294,240
Community, social and personal services 社區、社會及個人服務業	198,574,510	240,737,829	252,253,716
Manufacturing 製造業	177,364,312	164,248,584	160,539,299
Transport, storage & communication 運輸、倉庫及通訊業	174,521,333	195,183,311	188,752,448
Wholesale, retail , import/export trades and hotels 批發、零售、進出口貿易及酒店業	63,125,835	71,095,674	71,914,960
Financing, insurance, real estate and business services 金融、保險、地產及商用服務業	80,114,722	90,428,894	94,227,635
Agriculture, forestry and fishing 農業、林務業及漁業	2,045,850	2,209,635	3,191,489
Electricity, gas and water 電力、燃氣及水務業	2,261,841	5,527,364	2,474,290
Mining and quarrying 採礦及採石業	1,547,590	1,335,024	1,204,241

Notes 註:

1. The above figures refer to cases with the economic activity known and settled in the year concerned, irrespective of the year in which the cases were reported to the Labour Department.

以上數字是指那些已按經濟活動分類及在有關年度獲得解決的個案，不論個案向勞工處呈報的年份。

2. The following items of statutory compensation are included in the compensation amount:

有關補償金額包括以下的法定補償項目：

- (a) Periodical Payments (payments for work injury sick leave);

按期付款（工傷病假的款項）；

- (b) Compensation for Permanent Loss of Earning Capacity; and

永久喪失賺取收入能力的補償；及

- (c) Compensation for Death

死亡補償

3. The compensation amount include some court awards for statutory compensation and damages which are known to the Labour Department

補償金額包括勞工處根據一些法院判令而得悉的法定補償及損害賠償金額。

EC Insurance Direct Business Market

	Total gross premium (\$ <i>billion</i>)	Underwriting performance (\$ <i>million</i>)	No. of policies in force	Average premium per policy (\$)
1996	2.31	(130.7)	220 477	10,473
1997	2.54	(283.8)	246 977	10,276
1998	2.08	(730.2)	238 148	8,736
1999	2.13	(1,370.0)	233 947	9,102
2000	2.46	(1,091.4)	226 141	10,897
2001	2.70	(1,039.0)	225 048	12,012
2002	4.28	(161.6)	254 303	16,830

Note: Figures in the above tables cover direct business only, i.e. reinsurance inward business accepted by direct insurers and reinsurers is not included.