

立法會
Legislative Council

LC Paper No. CB(2)1948/08-09(04)

Ref : CB2/BC/5/08

**Bills Committee on Occupational Deafness (Compensation)
(Amendment) Bill 2009**

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper provides background information on the Administration's proposal to adjust the rate and proportion of distribution of the Employees' Compensation Insurance Levy (the Levy) payable under the Employees' Compensation Insurance Levies Ordinance (Cap. 411) (ECILO) and improve the compensation for persons with occupational deafness under the Occupational Deafness (Compensation) Ordinance (Cap. 469) (ODCO).

Background

2. ECILO was enacted in 1990. The overall Levy rate was set at 2% of the insurance premium when it was first introduced. Since then, the Levy rate has undergone four reviews, all resulting in an upward adjustment.

3. ODCO was enacted in 1995. Under ODCO, an employee is entitled to receive a one-off compensation for permanent incapacity in the form of a lump sum payment if he can satisfy the occupational requirements specified in ODCO and suffers from sensorineural hearing loss of at least 40 dB in both ears. An eligible claimant is entitled to reimbursement of expenses reasonably incurred in the acquisition, fitting, repair or maintenance of a hearing assistive device (HAD) used by him in connection with his noise-induced deafness. The amount of expenses that may be reimbursed to an applicant for the first time shall not exceed \$9,000 and the aggregate amount shall not exceed \$18,000.

4. In the light of the financial position of the Employees Compensation Assistance Fund Board (ECAFB) and the Occupational Deafness Compensation Board (ODCB), the Labour Department (LD) put up a proposal for consultation in November 2006. Under the proposal, the rates of the Levy for distribution to ECAFB and ODCB was revised to 3.1% and 0.2% respectively, providing a scope for downward revision of the overall Levy rate by one percentage point from 6.3% to 5.3%.

5. LD consulted ECAFB, ODCB and the Employees' Compensation Insurance Levies Management Board (ECILMB) on the proposal in November 2006. While all these statutory bodies supported the proposal in general, employee representatives expressed reservations about the extent of the proposed adjustments and the degree of proposed reduction in the overall Levy rate.

6. Organizations with an interest in occupational deafness compensation, in particular, registered their disagreement with the extent of the proposed reduction in the proportion of distribution of the Levy to ODCB. They suggested a list of proposed items to improve the ODC Scheme to further benefit persons with occupational deafness. Taking into account the concerns of employee representatives and organizations with an interest in occupational deafness compensation on the use of the funds of ODCB, LD proposed a revised package which contained both improvements to the ODC Scheme and adjustment of the rate and proportions of distribution of the Levy.

Discussions by the Panel on Manpower

7. The Administration briefed the Panel on Manpower on its proposal to adjust the rate and proportion of distribution of the Levy payable under ECILO and improve the compensation for persons with occupational deafness under ODCO at its meeting on 27 May 2008.

8. Members asked about the details of the transitional arrangement which would enable workers who had monaural hearing loss but had already left employment to claim compensation retrospectively from the ODC Scheme. They also asked about the number of such workers and when compensation would be granted to them under the revised Scheme.

9. The Administration explained that since the establishment of the ODC Scheme, applications from some 500 workers had been rejected. This was because the current ODC Scheme required hearing loss of 40 dB or above in both ears while these workers only had one of their ears assessed to have sensorineural hearing loss. Under the proposed scheme, workers with monaural hearing loss would be eligible to claim compensation. Considering that some of these 500 workers with monaural hearing loss who had left employment for some time would not be able to fulfill the requirement of having a period of continuous employment in any noisy occupation in Hong Kong within the 12 months prior to the submission of a fresh application, the Administration proposed to net in these workers through a transitional arrangement. Compensation would be granted to these workers if the records of ODCB revealed that their applications were refused because they suffered from occupational deafness of 40 dB or above in only one of their ears.

10. Some members asked whether the Administration would exercise flexibility in approving workers' claim for compensation as long as they could provide medical certification of their occupational deafness.

11. The Administration responded that the establishment of a causal relationship between a disease and an occupation was crucial in considering whether an applicant was eligible for compensation under the ODC Scheme.

12. Some members considered that as there might be some workers with monaural hearing loss who had not submitted application to ODCB, the Board should exercise flexibility in granting compensation, if the workers could provide proof that they had worked in the specified noisy occupations in the past.

13. The Administration responded that ODCB would consider the application of persons with monaural hearing loss who had not made claim in the past if they could provide proof to verify that they had been employed under a continuous contract in the specified noisy occupations in the past 12 months preceding their applications.

14. Some members asked whether the Administration would consider expanding the reimbursable items under the ODC Scheme. They also asked whether the Administration would consider removing the cap of the reimbursable amount for the expenses incurred in purchasing and repair of HAD, so as to provide life-long guarantee for persons with occupational deafness who would have permanent need for HAD.

15. The Administration responded that proposals to further improve the ODC Scheme which was funded by levy collected from employers would require the consent of both employers and employees. It was necessary to strike a balance between the scope and amount of compensation under the ODC Scheme.

16. The Administration added that to avoid early exhaustion of the reimbursable amount by persons with occupational deafness, it proposed that the maximum reimbursable amount be increased from \$18,000 to \$36,000. According to statistics, 80% of the claimants' reimbursed expenses were below \$10,000 or below, whereas about 1% of the persons claiming expenses in connection with HAD had exhausted the current maximum reimbursable amount since the introduction of the benefit under ODCO in 2003. Hence, there was no evidence to suggest that the revised amount was inadequate. The Administration would keep in view the situation and conduct a review in future if necessary.

Relevant papers

17. Members are invited to access the website of the Legislative Council (<http://www.legco.gov.hk>) for details of the relevant papers and minutes of meeting.

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19 June 2009