

Motion on
“Alleviating the difficulties of small and medium enterprises
in taking out insurance”
moved by Hon Tommy CHEUNG
at the Council meeting of 14 December 2011

Progress Report

Introduction

Hong Kong has an open insurance market and currently there are about 50 insurers underwriting employees’ compensation (“EC”) and motor insurance businesses. We fully understand the implication of premium increase of EC and commercial vehicles insurance on employers of small and medium enterprises (“SMEs”). The premium rates of these insurance businesses are determined based on risk assessment (mainly the accident rate and quantum of claims etc). We believe that through close collaboration between the insurance industry and other stakeholders (including policyholders) to combat insurance fraud and reduce industrial and traffic accidents, there will be room to lower insurance premiums if insurance claims could be reduced. This note updates Members on our efforts with reference to the Legislative Council motion carried on 14 December 2011 – “Alleviating the difficulties of small and medium enterprises in taking out insurance” as moved by Hon Tommy Cheung and further amended by Hon Chan Kin-por and Hon Wong Kwok-hing. The wording of the amended motion is at [Annex](#).

Enhancement to Employees' Compensation Insurance Residual Scheme

2. Employees' Compensation Insurance Residual Scheme ("the Scheme") aims to operate as the market of last resort for employers who are unable to procure EC insurance from the open insurance market. To help ensure that the Scheme is properly structured and operated with maximum transparency, the Advisory Committee of the Scheme, comprising employers, employees, government departments and professionals from the legal, accounting and insurance fields, has been set up to advise on the various issues in relation to the establishment and operations of the Scheme. The Scheme was launched on 1 May 2007 and details of the Scheme's objective, structure, premium benchmark rates, eligibility criteria and application procedures are all available at the Scheme's website. The Employees' Compensation Insurance Residual Scheme Board has also produced information leaflets for distribution to the public and related organisations to promulgate the Scheme and details of its operation.

3. Based on the operational experience of the insurance industry and taking into account the views of stakeholders, including the Labour Department, the Scheme identified 19 High Risk Groups ("HRGs") that might experience difficulties in obtaining EC insurance cover and the premium benchmark rates for these HRGs were determined by an independent actuary. The Scheme will consider classifying a particular risk group as HRG if it receives several applications from that risk group

within the same year. The actuary will collect the relevant data of that particular risk group and work out the premium benchmark rate accordingly. The Scheme will publish in its website the latest benchmark premium rates for the HRGs for reference by the public.

4. Since its set up on 1 May 2007 and up to 15 January 2012, the Scheme has received a total of 184 applications. Out of these applications, 38 were offered EC insurance cover by the Scheme, another 44 were under processing and most of the others (98) were given insurance cover by other EC insurers eventually, and the remaining four applications were withdrawn. The Advisory Committee of the Scheme has been liaising closely with representatives of different trades and industry associations to understand their difficulties, explain the operation of the Scheme and offer assistance as far as possible. In addition, the Office of the Commissioner of Insurance (“OCI”), together with the Scheme and the Hong Kong Federation of Insurers (“HKFI”) also met with the representative bodies of the cleaning, recycling and logistics industries in December 2011 to understand their difficulties and offer assistance through the Advisory Committee of the Scheme. In view of the difficulties faced by these employers, and as the Scheme has since April 2011 received seven, 28 and five enquiries from employers of the cleaning, recycling and logistics industries respectively, it has decided to classify these three trades as HRGs, and commissioned the actuary to produce premium benchmark rates for these trades within the first quarter of 2012. As some employers of the cleaning industry expressed that their EC insurance policies would soon expire in early January 2012, to

enhance support to SMEs, the Scheme produced in late December 2011 a preliminary premium benchmark rate and based on which issued 3-month EC insurance policies to those employers in need.

Combating Illegal Activities such as Champerty and Conspiracy to Make Fraudulent Insurance Claims

5. To effectively combat insurance frauds and champerty, the Commercial Crime Bureau (“CCB”) of the Police has set up two focus groups, namely Insurance Fraud Focus Group and Maintenance and Champerty Focus Group, for steering the prevention of and combat against fraud cases involving insurance and champerty. All crime reports made by members of the public or by any person, including suspected cases of fraudulent insurance claims, will be followed up by the Police as appropriate.

6. Regarding insurance frauds, in response to the request of the transport sector and the insurance industry, the CCB is tasked to co-ordinate and follow up on crime reports on traffic accident related insurance frauds referred by the HKFI.

Combating Attempts to Make Fraudulent Insurance Claims through Obtaining Prolonged Sick Leave Certificates by Exaggerating Clinical Conditions and Degrees of Injuries

7. Sick leave certificate is an important document issued by

registered medical practitioners. Hospital Authority (“HA”) advised that its doctors have been conducting medical assessments and issuing leave certificates in warranted cases based on their professional judgment and clinical conditions of individual patients. HA, based on the Code of Professional Conduct for the Guidance of Registered Medical Practitioners issued by the Medical Council of Hong Kong, has also provided general guidance to its doctors to require them to assess whether a patient is unfit for work on account of his sickness based on the patient’s medical records and the prevailing condition. In assessing the conditions of individual patients, HA advised that its doctors will continue to uphold their professionalism and independence, and issue sick leave certificates to patients according to patients’ actual conditions.

8. As for patients requiring long-term recovery, they will be managed by clinical teams of HA, with consultation by senior doctors in the team. When formulating the treatment plan for and assessing the recovery status of patients, HA doctors will take into account of a number of factors, including the nature, types and severity of sickness, and the clinical conditions of individual patients.

Initiating Prosecution Against Civil Contempt of Court to Deter Misstatement with the Intent of Making Fraudulent Insurance Claims

9. If there is a complaint about providing false information to defraud insurance payment, the matter should be referred to the Police for

investigation and collation of evidence. If there is sufficient evidence to support the complaint, the Department of Justice will prosecute the offender for appropriate offences, such as fraud under section 16A of the Theft Ordinance, Cap. 210 or obtaining property by deception under section 17 of the Theft Ordinance, Cap. 210. The maximum penalty for fraud and obtaining property by deception is 14 years and 10 years imprisonment respectively.

10. If any person makes a false statement in any judicial proceedings, he or she may be guilty of the offence of perjury under section 31 of the Crimes Ordinance, Cap. 200 and shall be liable on conviction to imprisonment for seven years. Besides, according to Order 41A Rule 9 and Order 52 of the Rules of the High Court, Cap. 4A (or the equivalent provisions in the Rules of District Court, Cap 336H), the making of a false statement which is verified by a “statement of truth”, a breach of a court order or acts amounting to failure to give proper discovery of documents or true and frank disclosure may constitute civil contempt of court. Those aggrieved in any legal proceedings may apply to the court to ask the court to impose penalty on any person who commits civil contempt of court.

11. In legal proceedings where there is suspicion of persons making false statements, the judge may not make an order or a referral of the case for many reasons. One reason may be that the judge may not be able to make a definite finding of making false statements in legal proceedings on the balance of probabilities. Under these circumstances, the

aggrieved person may make a complaint to the Police. The relevant law enforcement department will conduct further investigation. If necessary, the Department of Justice will provide advice to the relevant investigation. If there is sufficient evidence to support the complaint, the Department of Justice will prosecute the offender for appropriate offences.

Increase Transparency of the Insurance Market and Enhance Monitoring of the Insurance Industry

12. Hong Kong is a founding member of the International Association of Insurance Supervisors (“IAIS”). We are committed to implementing supervisory guidelines issued by IAIS and enhancing our supervisory regime on the insurance industry.

13. OCI publishes in its website the regulatory framework of insurers and insurance intermediaries (including the legal requirements) as well as guidance notes and circulars issued by OCI to enable the public to understand the supervision of the insurance industry.

14. To enhance the transparency of the Hong Kong insurance market, OCI publishes annually the statistics of the insurance industry. These statistics include individual insurers’ underwriting results, the premium income, claims paid and claims reserves for each class of business so as to allow the public to understand the operational performance of individual insurers.

15. According to OCI's requirement, insurers have to put in place procedures to deal with complaints expeditiously and effectively and comply with the guidelines on complaints handling issued by the HKFI as well as appoint a designated staff to handle complaints so as to better protect their policyholders. OCI understands that in order to facilitate the public to procure EC and motor vehicle third party liability insurance, HKFI has uploaded in its website the information of those insurers that underwrite these lines of business including their names, contact information (such as address, telephone and fax numbers) together with their hyperlinks. In addition, HKFI has also uploaded the specimen insurance policies of the common types of insurance including private motor car, commercial vehicle and EC to allow the public to have a better understanding of the policy terms. Furthermore, to enhance the public's understanding on insurance, HKFI also from time to time publishes pamphlets and leaflets such as "Buying Medical Insurance Policy", "Buying Travel Insurance Policy", and "What to Do after a Car Accident Occurs?" to highlight relevant points to note for the public and policyholders' attention.

16. Regarding the supervision of insurers, OCI conducts regular on-site inspections to insurers to review their business operations, especially the latest development of their EC insurance business; and examine and evaluate their underwriting procedures, claims management, risk management and internal control measures. The objective is to ensure that insurers have adequate financial strength and claims reserves to meet insurance claims; and put in place proper measures to assess the

underwriting risks of insuring employers, which may include obtaining audited financial reports, employees' payroll records and employees' mandatory provident funds statements so as to avert the risk of having to increase the overall premium rates due to under-declaration of the number and wages of employees by individual unethical employers.

Way Forward

17. We hope that through the collaboration of relevant policy bureaus / departments, industry sectors and other stakeholders to combat illegal activities such as insurance fraud and champerty, and to reduce industrial and traffic accidents. There will be room to lower premium rates if insurance claims and payouts could be reduced.

Financial Services and Treasury Bureau

February 2012

(Translation)

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**Motion as amended by Hon CHAN Kin-por and Hon WONG
Kwok-hing**

That, as recently, many retail consumption and business services industries in Hong Kong, when taking out employees' compensation insurance and motor vehicle third party risk insurance as required by the law, often encountered significant premium increases or even refusal of underwriting insurance policy by insurance companies for various reasons, causing the employers of many small and medium enterprises great anxiety and significant increases in costs, this Council urges the Government to proactively discuss with the insurance sector to make efforts to reduce the costs and difficulties of various industries in taking out the relevant insurance, so as to avoid affecting their business operation and effective protection for employees; the relevant measures should include:

- (a) to enhance the Employees' Compensation Insurance Residual Scheme by, in addition to the existing list of 19 high-risk occupations, including those occupations such as retail consumption and business services, which are of lower-risk but have practical difficulties in taking out employees' compensation insurance, and to set relevant premium benchmark rates to serve as market reference indicators, so as to provide support as the last resort to enterprises in need of insurance coverage;
- (b) to require the police to rigorously combat illegal acts such as

champerty and conspiracy to make fraudulent insurance claims, etc., and to establish a reporting channel for the public and insurance companies to report cases of suspected fraudulent insurance claims;

- (c) to request the Hospital Authority to combat attempts to make fraudulent insurance claims through obtaining prolonged sick leave certificates by exaggerating clinical conditions and degrees of injuries;
- (d) to request the Department of Justice to initiate prosecution against civil contempt of court, so as to deter misstatement with the intent of making fraudulent insurance claims;
- (e) to increase the transparency of matters such as pricing, operation, risk assessment and complaint handling, etc. of the insurer sector, and strengthen the efforts of the Government, various industries, the media and the public in monitoring insurance companies, so as to prevent law-abiding employers from bearing unnecessary burden; and
- (f) when enhancing the Employees' Compensation Insurance Residual Scheme, to include recycling industry as well.