

22 April 2002

Ref: BW/PB/mn:179:02:IA2a

REVISED
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The Hon Audrey EU Yuet-mee
Chairman of Bills Committee
on Employees Compensation Assistance (Amendment) Bill 2002
Legislative Council
3/F Citibank Tower
3 Garden Road
Hong Kong

Dear

Employees Compensation Assistance (Amendment) Bill 2002

Thank you for providing us with the opportunity for commenting the proposed amendments. We would like to highlight the following issues as prepared by the our Working Group on Construction Insurance. Broadly, the HKCA supports the proposed Amendment Bill on the basis that it provides necessary and essential funding for the compensation of many of our members and their employees who have suffered serious losses as a result of the recent HIH Insurance collapse. Our representatives would be prepared to attend the Bills Committee meeting on 23 April 2002 to discuss these matters should the Chairman agree.

1. The proposed change at Section 17 & 18 entitling the principal contractor to apply the fund to itself and to third parties as if it were the employer is supported.
2. The proposed change under the new Section 20B to exclude the payment of interest and costs will remove a key element of compensation which the fund is intended to address. The only advantage seems to be to those who manage the fund.
3. The proposed new Section 20C and Schedule 4, which will control payments to the injured party, is supported.
4. The proposed new Section 25A, which protects the Board's interests, is supported as being sensible.
5. The proposed surcharge, under the new Section 36A to be levied on those who fail to take out insurance, is supported.
6. We have no objection to the proposed increase in the levy from 5.3% to 6.3% on projects tendered after passing the Bill, given the need to see that the fund is for the benefit of employees.

7. Our main objection to the proposed changes involves the proposals dealing with insolvency of insurers, which, as it now stands, produces a high degree of uncertainty and a potential gap in the cover, leaving employers exposed to liability until the fund does pay. We are surprised by this approach, given that this is the first time we have faced the insolvency problem and it results in changes to the legislation because the scheme is under-funded. The proposed change will result in yet further fragmentation of the ineffective legislation by introduction a separate new fund to cover the insolvency issue.
8. Rather than introducing further separate legislation, we believe the opportunity should be taken to consolidate the various pieces of relevant legislation.
9. What is needed is for HK Government to produce a consistent coordinated response to the high accident rates in construction by having legislation that:
 - Properly protects the worker and employer
 - Rewards effective safety, risk and claims management
 - Does not rely solely on the insurance market to provide a remedy, and
 - Encourages individuals to be responsible for their own safety in the workplace.
9. We believe that none of the proposed changes will assist the construction industry to alleviate the excessive premium, which is now being required by the insurance industry, and they will not get payment to the injured worker any quicker. Many of the HIIH claims remain unpaid some 12 months after HIIH's demise.
10. Finally, we wish to draw to your attention to the work being done by the Provisional Construction Industry Coordination Board Working Group on Employees' Compensation Insurance, who are very active in seeking solutions to this complex matter.

We hope and believe that our comments and suggestions are helpful to your deliberations.

Yours sincerely

Billy Wong
President