

**Bills Committee on
Employees Compensation Assistance (Amendment) Bill 2002**

LC Paper No. CB(2)1824/01-02(01)

**The Administration's Response –
Imposition of Surcharge on Uninsured Employers**

Introduction

This paper provides information requested by members of the Bills Committee at the meeting held on 23 April 2002 on the following aspects –

- (a) the basis for fixing the surcharge imposed on uninsured employers at 3 times the levy payable for the benefit of the Employees Compensation Assistance Fund Board (the Board) on the premium paid on the employees' compensation insurance policy; and
- (b) the possibility of increasing the level of surcharge.

(A) Basis for fixing the surcharge at 3 times the levy payable to the Board

Background

2. At the meeting of the LegCo Panel on Manpower held on 27 April 2000, Members suggested that uninsured employers should be required to pay a financial charge to the Board to compensate for the foregone levy income and the potential liability. Having taken into account the views of the Panel on Manpower, we propose in clause 23 of the Amendment Bill a surcharge on uninsured employers. This surcharge will be payable for the benefit of the Board.

The Proposal

3. It is proposed that employers who are convicted of failing to comply with the compulsory insurance requirement under the Employees' Compensation Ordinance (ECO) should be required to pay a surcharge to the Board. The surcharge should be set at three times the levy payable to the Board when such offending employers subsequently take out an employees' compensation (EC) insurance. For employers who no longer employ any

employee, the surcharge should be a fixed sum of \$5,000. For employers who fail to provide sufficient information within the specified period of time to the Board for determining the amount of surcharge, the surcharge should be \$10,000. It should be noted such employers would include those with or without outstanding employees' compensation liabilities.

4. The surcharge aims at compensating the Board for the foregone levy and the potential liability which it may have to assume, as well as increasing the cost of non-compliance with the compulsory insurance provisions and hence strengthen the deterrent effect.

Principle in determining the level of surcharge

5. Our legal advice is that we should adhere to the principle of "proportionality" in determining the level of surcharge to be imposed on uninsured employers. We are advised that the level of surcharge should be set according to the circumstances of the offending employer, such as his size of employment.

6. One of the policy intents of imposing the surcharge on uninsured employers is to require them to make up the foregone levy that the Board should have been entitled to receive if the employer had taken out the insurance. However, as the offending employer has not taken out any insurance policy at the time of offence, it is impossible to assess the amount of forgone levy objectively. Having taken into account the principle of "proportionality", we propose to set the level of surcharge with reference to the levy payable by the offending employer to the Board when he takes out an EC insurance after the offence has been detected. As such, the level of surcharge should, to a certain extent, correlate with the forgone levy that the offending employer might have been required to pay for the benefit of the Board.

7. We consider that the proposed level of surcharge, which is set at 3 times the levy payable to the Board, is reasonable and appropriate. With the enactment of the Amendment Bill, the levy rate will be increased to 3.1% for the Board for the next five years. Therefore, the proposed level of surcharge will be roughly equivalent to 10% of the premium on the EC insurance. We believe that this should achieve the policy intent of compensating the Board for

the foregone levy as well as adding to the costs for non-compliance with the compulsory insurance provisions.

(B) Possibility of increasing the level of surcharge

8. As mentioned in paragraph 7, we are of the view that the proposed level of surcharge should be able to achieve our policy intent. There is no plan to increase the level of surcharge at this stage. However, we would keep the position under review and would consider revising the level where circumstances warrant.