

立法會
Legislative Council

LC Paper No. CB(1)1671/02-03

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Legislative Council
Panel on Financial Affairs

Minutes of special meeting held on
Saturday, 22 March 2003 at 10:00 am
in the Chamber of the Legislative Council Building

- Members present** : Hon Ambrose LAU Hon-chuen, GBS, JP (Chairman)
Hon Henry WU King-cheong, BBS, JP (Deputy Chairman)
Hon James TIEN Pei-chun, GBS, JP
Hon Eric LI Ka-cheung, JP
Dr Hon David LI Kwok-po, GBS, JP
Hon Bernard CHAN, JP
Hon SIN Chung-kai
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon MA Fung-kwok, JP
- Non-Panel members attending** : Hon Mrs Selina CHOW LIANG Shuk-yee, GBS, JP
Hon Miriam LAU Kin-yee, JP
- Members absent** : Hon Kenneth TING Woo-shou, JP
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon NG Leung-sing, JP
Hon James TO Kun-sun
Hon CHAN Kam-lam, JP
Dr Hon Philip WONG Yu-hong
Hon Emily LAU Wai-hing, JP

- Public officers attending** : Mr Benjamin TANG
Commissioner of Insurance
- Mr Alan LO
Principal Assistant Secretary for Financial Services
and the Treasury (Financial Services)
- Mr M SCOTT
Senior Assistant Solicitor General
Department of Justice
- Mrs Jenny CHAN
Assistant Commissioner for Labour
(Employees' Right & Benefits)
- Mr K T LAI
Senior Labour Officer
- Mr CHEUNG Jin-pang
Principal Transport Officer (Ferry and Paratransit)
Transport Department
- Attendance by invitation** : The Hong Kong Federation of Insurers
- Mr K P CHENG
Chairman
- Mr Jackie CHUN
Deputy Chairman
General Insurance Council
- Mr K P CHAN
Chairman, Task Force on the Review of the ECAS
General Insurance Council
- New Century Forum
- Prof Joseph LAI
Board Member
- Commercial Diving Association of Hong Kong
- Mr CHOW Kam-tong
Vice-Chairman

Hong Kong General Building Contractors Association Limited

Mr TO Hoi-kwok
Council Member

Mr Eric KAN Ping-lam
Member

Hong Kong Construction Industry Employees General Union

Mr CHENG Kwok-tseung
Secretary

Motor Transport Workers General Union

Mr LI Wing-sang
Chairman

Harbour Transportation Workers General Union

Mr CHAN Ming-leung
Vice-Chairman

The Hong Kong Federation of Electrical and Mechanical Contractors Limited

Mr James CHIU
President

Mr Paul CHONG
Hon Secretary

Hong Kong Construction Association

Mr Patrick CHAN
Secretary General

Mr James GRAHAM
Member

Federation of Hong Kong Transport Worker Organizations

Mr CHAN Sam-choi
Representative

Clerk in attendance : Ms Anita SIT
Chief Assistant Secretary (1)6

Staff in attendance : Mr Joey LO
Assistant Secretary (1)1

Miss Christy YAU
Legislative Assistant 7

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I. Difficulties encountered by some sectors in obtaining insurance coverage

Written submissions from the following organizations which were not available to attend the special meeting

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| LC Paper No. CB(1)1098/02-03(09) | - Submission from the Law Society of Hong Kong |
| LC Paper No. CB(1)1208/02-03 | - Submission from the Federation of Hong Kong Electrical and Mechanical Industries Trade Unions |
| LC Paper No. CB(1)1098/02-03(01) | - Submission from Mr WONG Chun-wai, member of the Tai Po District Council |

Other relevant papers

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| LC Paper No. CB(1)1112/02-03(01) | - Paper provided by the Administration |
| LC Paper No. CB(1)1152/02-03(02) | - Extract of minutes of meetings of the Development and Housing Committee of the Sha Tin District Council held on 18 December 2001 and 26 February 2002 provided by the Sha Tin District Council |

Views expressed by deputations

New Century Forum

LC Paper No. CB(1)1098/02-03(02)

At the invitation of the Chairman to speak, Mr Joseph LAI of the New Century Forum said that a survey of mortgaged property owners who had taken out fire insurance revealed that most insurers had determined the premium on the basis of the mortgage loan amount when in fact the redevelopment cost could also be based on. In many cases, determining the premium on the basis of the redevelopment cost would result in a substantially reduced premium. Mr LAI then briefed members on the

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salient points of the survey's findings. On recommendations, the New Century Forum proposed that the Code of Banking Practice and relevant Ordinances be revised to ensure that insurers charged banks' mortgage customers reasonable premiums. Customers should ask for more information from banks and negotiate with their banks earlier before their insurance policies expired. They should request to use the outstanding loan amount as the basis for calculating premiums.

Commercial Diving Association of Hong Kong
LC Paper No. CB(1)1098/02-03(03)

2. Mr CHOW Kam-tong of the Commercial Diving Association of Hong Kong complained about the substantial increase in premiums for employees' compensation (EC) insurance or even refusal of insurance coverage, as the industry was regarded by insurance companies as a high risk one.

Hong Kong General Building Contractors Association Limited
LC Paper No. CB(1)1098/02-03(04)

3. Mr TO Hoi-kwok of the Hong Kong General Building Contractors Association Limited said that the construction industry, regarded as a high risk industry by insurance companies, was faced with substantial increase in premiums or even refusal of insurance coverage. He proposed that the Government Terrorism Facility Charge (GTFC) be abolished and suggested that insurance companies should offer partial rebate of premiums for construction projects with no major compensation claims. He also proposed that construction workers be required to take out insurance coverage for themselves.

Hong Kong Construction Industry Employees General Union
LC Paper No. CB(1)1098/02-03(05)

4. Mr CHENG Kwok-tseung of the Hong Kong Construction Industry Employees General Union complained that with the implementation of the Mandatory Provident Fund Schemes Ordinance (Cap. 485), which had added burden on contractors' operating costs, some contractors had requested their employees to change to self-employed status whilst continuing to be bona fide employees in order to cut down on cost.

Motor Transport Workers General Union

5. Mr LI Wing-sang of the Motor Transport Workers General Union complained that many drivers had been pressured by their employers to change to self-employed status without any EC coverage.

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Harbour Transport Workers General Union

LC Paper No. CB(1)1098/02-03(06)

6. Mr CHAN Ming-leung of the Harbour Transport Workers General Union spoke on the soaring EC premium and the refusal of insurance coverage by insurance companies.

The Hong Kong Federation of Electrical and Mechanical Contractors Limited

LC Paper No. CB(1)1098/02-03(07)

7. Mr Paul CHONG and Mr James CHIU of the Hong Kong Federation of Electrical and Mechanical Contractors Limited complained about the high premium, difficulty to obtain coverage, abrupt termination of insurance policies and even collapse of insurers. They proposed an industry-wide insurance system funded by levies.

Hong Kong Construction Association

LC Paper No. CB(1)1098/02-03(08)

8. Mr James GRAHAM and Mr Patrick CHAN spoke on the lack of transparent mechanisms for determining premiums, insurance companies giving very short notice of termination of policies and the escalating and excessive compensation awards for bodily injuries ordered by the courts. They suggested capping the compensation awards to a reasonable level.

Federation of Hong Kong Transport Worker Organizations

LC Paper No. CB(1)1152/02-03(01)

9. Mr CHAN Sam-choi of the Federation of Hong Kong Transport Workers Organizations urged the Administration to take measures to maintain premiums at reasonable levels and make it a mandatory requirement on insurance companies to underwrite a specified amount of EC and motor vehicle third party insurance, and to consider setting up a central employees compensation fund.

Views expressed by insurance industry association

10. At the invitation of the Chairman, Mr K P CHENG of the Hong Kong Federation of Insurers responded by pointing out that the underwriting profit of \$1.1 billion generated in 2002 by the Hong Kong general insurance industry did not come from motor vehicle insurance or EC insurance but from the property damage line of business. He stressed that not all companies managed to make a profit. Only about 80 out of 154 companies managed to breakeven or make a profit. The accumulated loss of the industry over the past 12 years in EC insurance had almost reached \$6 billion. The present levels of premiums were only aimed at covering the costs involved. Given the very difficult operating environment for the general

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insurance industry, it was not possible to continue the past subsidy for EC insurance through gains from other lines of insurance business.

11. On the subject of market domination, Mr CHENG explained that it was not a deliberate act of market domination by the insurance companies. Rather, it was the statutory requirements on the financial positions of insurance companies which had restrained some insurance companies from undertaking additional amount of business, given the heavy loss they had suffered. Moreover, as the current levels of premium offered had already been pared down to the bone, insurance companies could no longer compete with one another in terms of price. The lack of reinsurance cover was another restraining factor. Some companies simply did not possess the necessary expertise or information to assess the risk and determine the premium levels.

12. On the proposal for employees to take out insurance coverage for themselves, Mr CHENG reminded that the statutory EC insurance would not be brought down even if an employee elect to take out an insurance coverage for himself. On the proposed partial refund of premiums for building contractors with no major claims, Mr CHENG cautioned that the cost of refund might be taken into account by insurers in determining the premium level, and thus this arrangement would not in itself result in an overall reduction of premiums for the industry. Nevertheless, the practice already existed between individual insurance companies and major customers. On the subject of fire insurance, Mr CHENG confirmed that it was a common practice to use the mortgage loan amount instead of the redevelopment cost for determining the premium. This was mainly because the arrangement involved less administrative costs. He said that banks had the responsibility to duly inform their customers of the option of using the redevelopment cost as the basis for determining the premiums.

13. Mr CHENG emphasized that the fundamental remedy lay in improving the business environment of the insurance industry. This would be achieved by promoting industrial and road safety, thus minimizing losses due to excessive claims/compensation. He opined that there should be an objective mechanism for determining the level of compensation for bodily injuries or the extent of loss of working ability so as to save the costs incurred by the parties involved in protracted dispute, often involving costly legal fees, over the subject.

Discussion with members and the Administration

14. Mr Bernard CHAN said that the fact that Europe's largest insurance company-Allianz had posted a net loss of 1.2 billion Euros (about HK\$9.92 billion) reflected the global nature of the difficult operating environment of the insurance industry and the repercussions on premiums etc. He said premiums would continue to increase if the problem of soaring compensations was not addressed. He suggested that a joint meeting with the Panel on Manpower be held to further discuss the issues relating to EC insurance with a view to formulating an overall strategy to tackle the problem.

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15. Ms Miriam LAU expressed great dissatisfaction toward the Administration's response and opined that the Administration had failed to understand the breadth, depth and urgency of the problem. She opined that the Administration should take urgent measures to tackle the problem which affected a wide spectrum of the society, across many different industries and affected the livelihood of a great many. It should no longer refrain from tackling the problem under the pretext of a free market economy. Ms LAU asked if the Commissioner of Insurance (C of I) could perform an intermediary's role to help the various sectors in obtaining the insurance coverage they desperately required. She also asked if C of I or other representatives of the Administration would take the issue to the upper echelon of the Administration for consideration.

16. In response, C of I said that he had been in consultation with various sectors to hear their views on the subject over the past year. He stressed that it was not within his purview to interfere with the business operation of insurers. It was also against the free market principle for the Administration to impose legislation requiring insurance companies to provide certain lines of business. He remarked that the only exception was the need for the \$10 billion facility as approved by Finance Committee on 11 January 2002 in respect of the reinsurance coverage for terrorist activities on treaty arrangements. He indicated that he would issue a letter to insurers shortly to convey to them the views expressed at the Panel meetings held on 15 and 22 March 2003 and encourage them to provide EC and motor vehicle insurance coverage. He would if necessary, ask for explanation from insurers who refused to provide the type of coverage which they were authorized to provide, while he would encourage policyholders to negotiate the renewal of their policies with their insurers as early as possible. C of I remarked that when premiums were revised to a certain level, the market would automatically adjust with new entrants entering the market driving down the premiums. On the suggestion of C of I assuming the role of an intermediary, C of I expressed reservation and pointed out the possible conflict of interests between his role as a market regulator and the suggested role of an intermediary. Nevertheless, he was already providing assistance through other means, such as providing lists of insurance brokers to operators facing difficulty in securing insurance coverage.

17. Mrs Jenny CHAN, Assistant Commissioner for Labour (Employees' Right & Benefits) (AC for L) supplemented that the Labour Department (LD) had undertaken a series of measures which aimed at addressing the concerns raised by different parties on EC insurance. She informed that LD had launched a new Voluntary Rehabilitation Programme (VRP) on 1 March 2003 for work injuries in the construction industry. The VRP is to provide timely rehabilitation services to injured workers for better and speedier recovery. She stressed that the statutory entitlements of injured employees taking part in the programme would not be affected. Their statutory entitlements to compensation would continue to be determined in accordance with the Employees' Compensation Ordinance. So far eight insurers had agreed to participate in the VRP.

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18. AC for L also informed members that in order to arrest the escalating trend of insurance premium, the Provisional Construction Industry Co-ordination Board (PCICB) had collaborated with the HKFI on a rebate scheme launched in December 2002 whereby a predetermined amount of the total premium would be rebated to contractors upon meeting a number of indicators on safety measures and claims experience.

19. In order to help employers who had difficulties in obtaining EC insurance, AC for L pointed out that LD had distributed a list EC insurance brokers to employers who sought the department's assistance. The insurance brokers should be able to provide professional assistance to employers in securing suitable EC insurance. LD had also, through different channels, reminded employers of the need to take early action to renew the EC insurance policy before its expiry.

20. On the issue of 'self-employed persons', AC for L informed that LD had reached an understanding with the insurance industry that insurers would take account of all circumstances of the case, rather than just the status of a worker under the Mandatory Provident Fund Scheme, when determining whether an injured worker is an employee or a self-employed person for the purposes of the ECO. This understanding had already been incorporated into the Code of Best Practice for Employees' Compensation Insurers in March 2003. LD had also issued a letter to insurers underwriting EC insurance policies to promulgate the factors commonly adopted by the Court in determining the employment status of workers. This would help to clarify the status of injured workers, thereby reducing unnecessary disputes.

21. As to whether the issue would be brought to the attention of the upper echelon for consideration, Mr Alan LO, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services) reiterated that the Administration should refrain from interfering into the free market. He assured members that the Administration was mindful of the difficulties faced by some sectors in obtaining the relevant insurance coverage, and would continue to work with the parties concerned with a view to tackling the difficulties as far as possible. He agreed to bring the issue to the attention of the relevant policy bureaux.

22. Mrs Selina CHOW echoed Ms Miriam LAU's view that there was an urgent need to address the difficulties encountered by various sectors in obtaining insurance coverage, in particular the mandatory types of insurance coverage. She appreciated that some related issues fell outside the purview of C of I, and opined that the problem would be more effectively dealt with by the relevant Policy Secretaries, namely the Secretary for Financial Services and the Treasury and the Secretary for Economic Development and Labour, and the Secretary for the Environment, Transport and Works in collaboration with one another. She noted that the statutory minimum insurance coverage for bodily injury per event under the (Motor Vehicle Insurance (Third Party Risks) Ordinance (Cap 272) now stood at \$100 million, and remarked that consideration should be given to revising the statutory coverage level so as to bring

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down the operating costs of transport operators. On behalf of Mr James TIEN, she sought the industry's clarification on whether the proceeds from the insurance companies' business in Hong Kong had been used to subsidize for the losses incurred in their overseas business.

23. In reply, Mr K P CHENG clarified that proceeds from the insurance companies' business in Hong Kong would not be used to subsidize for the losses incurred in their overseas business. On the contrary, losses increased by the EC and motor vehicle third party risks lines of business had all along been subsidized by proceeds from other lines of business, investment income generated by insurance companies and shared out under the reinsurance arrangement. On the issue of statutory insurance coverage levels, he agreed with Mrs Selina CHOW that consideration should be given to revising the statutory coverage levels for EC insurance and motor vehicle third party risks insurance so as to bring down the relevant premiums.

24. Ms Miriam LAU drew members' attention to the Law Society of Hong Kong's written submission in which the Law Society expressed concerns on the escalating trend of damages awarded by the court both for employees claims and for other personal injury litigations. The Law Society had also pointed out that under the existing Employees Compensation Ordinance, families were able to claim compensation without the need first to prove dependency upon the deceased workman. This had led to an increase in court awards well above the level previously experienced.

25. Mr SIN Chung-kai opined that consideration could be given to a public consultation on whether an upper limit on the amount of damages awarded by the court should be imposed and whether the statutory insurance coverage levels should be revised.

26. On the suggestion to impose an upper limit on the award of damages by the courts, the Senior Assistant Solicitor, Department of Justice cautioned that such a move was a controversial one which should not be considered unless with very strong justifications. In terms of legal implications, the victims were entitled to full compensation under the common law legal system. The right of a party to claim common law damages against another party for negligence had been an integral part of Hong Kong's legal system. To impose any upper limit on the award of damages would have serious implications on Hong Kong's legal system.

27. Members agreed that some of the issues raised involved important policy issues and straddled across the purview of two or more Policy Bureaux. It would be appropriate to bring the issues to the attention of the relevant Policy Secretaries such that the issues/problems could be tackled through collaborative efforts among the Policy Bureaux concerned. As a first step, members agreed that the issue of EC insurance be discussed at a Joint Panel meeting of the Panel on Financial Affairs and Panel on Manpower and that the Secretary for Financial Services and the Treasury and

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the Secretary for Economic Development and Labour be invited to attend the meeting, with a view to formulating an overall strategy to deal with the problems. The Secretary for Environment, Transport and Works would also be requested to examine the issues relating to motor vehicle insurance and liaise with the above Bureaux for a co-ordinated solution.

II. Any other business

28. Mr Henry WU proposed and members agreed that the "Report by the Expert Group to Review the Operation of the Securities and Futures Market Regulatory Structure" published on 21 March 2003 should be discussed at a future Panel meeting, and that members of the Expert Group would be invited to brief the Panel on the Report, and interested parties would also be invited to give views on the Report.

29. There being no other business, the meeting ended at 12:00 noon.

Council Business Division 1
Legislative Council Secretariat
14 May 2003