

立法會

Legislative Council

LC Paper No. LS22/03-04

**Paper for the House Committee Meeting
on 5 December 2003**

**Legal Service Division Report on
Employees Compensation Assistance
(Miscellaneous Amendments) Bill 2003**

I. SUMMARY

1. **Objects of the Bill**
 - (a) To confirm that the Employees Compensation Assistance Fund Board ("the Board") may, in addition to assisting employers in payment of compensation or damages, assist employers in payment of costs in relation to proceedings brought by their employees for employment-related injuries.
 - (b) To clarify that, after the provisions relating to insurer insolvency are excised from the Employees Compensation Assistance Ordinance (Cap. 365) ("ECAO") upon the operation of the Employees Compensation Insurer Insolvency Scheme, ECAO will continue to cover those claims for which the insurer has become insolvent before that date.
2. **Comments**
 - (a) With the view to removing any possible argument, Part 1 of the Bill seeks to make clear that the Board is empowered to pay the costs incurred by the employer applicant in making an application to the Board, in defending the relevant proceedings as well as the costs ordered by the court in those proceedings.
 - (b) Part 2 of the Bill clarifies the transitional arrangement for an application made by an employer or a principal contractor who has taken out an insurance policy for employees' compensation in that he may continue to apply to the Board for assistance, if the application relates to an insurer in respect of whom a notice of insolvency has been published before the commencement date.
3. **Public Consultation** The Labour Advisory Board and the Board were consulted and they supported the proposals.
4. **Consultation with LegCo Panel** The Panel on Manpower was briefed on the Administration's proposals in the Bill on 21 October 2003 and members did not raise any question on the proposals.
5. **Conclusion** The proposals in the Bill are basically technical in nature and do not appear to raise any new policy issue. The drafting of the Bill presents no difficulty and subject to any view of members, the Bill is ready for resumption of Second Reading debate.

II. REPORT

Objects of the Bill

Part 1 of the Bill seeks to amend the Employees Compensation Assistance Ordinance (Cap. 365) ("ECAO") to confirm that the Employees Compensation Assistance Fund Board ("the Board") may, in addition to assisting employers in payment of compensation or damages in case of insolvency of their insurer, assist employers in payment of costs in relation to proceedings brought by their employees for employment-related injuries.

2. Part 2 of the Bill seeks to clarify the policy intention that after the provisions relating to insurer insolvency are excised from ECAO upon the establishment of the Employees Compensation Insurer Insolvency Scheme ("ECIIS"), ECAO will continue to cover those claims for which the insurer has become insolvent before that date, irrespective of whether the employer's liability to pay compensation or damages is determined before, on or after that date.

LegCo Brief Reference

3. LAB HQ 711/261/1 issued by the Economic Development and Labour Bureau and dated 19 November 2003.

Date of First Reading

4. 3 December 2003.

Comments

Part 1 of the Bill

5. Both ECAO and the Employees Compensation Assistance (Amendment) Ordinance 2002 (16 of 2002) ("the 2002 Amendment Ordinance") contain provisions relating to employers who have taken out policies of insurance covering their liability in respect of compensation or damages for employment-related injuries.

6. The Employees Compensation Assistance Scheme ("the Scheme") is established under ECAO to provide assistance to injured employees and other eligible persons who are unable to recover compensation or damages from their employers after exhausting all legal and financially viable means of recovery. The Scheme also provides for the protection of employers against default of their insurers who become insolvent. The Scheme is administered by the Board which holds the Employees

Compensation Assistance Fund ("the Fund") upon trust. The Fund is financed by a levy on the premium of the employees' compensation insurance policies taken out by employers.

7. Sections 17 and 18 of ECAO provide that an employer may apply to the Board for the payment of compensation or damages for which he is liable if his insurer becomes insolvent. Section 23(7) of the ECAO provides that the Board may also assist the employer in respect of the costs incurred by him in making an application under section 17 or 18. The Board was subsequently advised by its legal advisers that the phrase "the costs incurred by the applicant in making the application" in section 23(7) might possibly give rise to a narrow interpretation to exclude costs incurred by the employer in court proceedings brought by the injured employees. Part 1 of the Bill seeks to clarify this possible ambiguity. Clause 3 of the Bill adds new sections 23A and 23B to ECAO to allow the Board, after determining an application under section 17 or 18 in favour of the applicant, to pay the costs incurred by the applicant in making the application, in defending the relevant proceedings as well as the costs ordered by the court in those proceedings.

Part 2 of the Bill

8. The 2002 Amendment Ordinance was passed in June 2002 to introduce a package of measures with a view to improving the financial stability and viability of the Fund. It provides for, amongst other things, the excision of the protection available to employers in the event of their insurer's insolvency when ECIIS takes over the function of providing such protection. According to the Administration, the target date of such excision is 1 April 2004 (para. 10 of the LegCo Brief).

9. Part 2 of the Bill seeks to amend the new section 46A(2) and section 46A(8) of ECAO (that is, section 30 of the 2002 Amendment Ordinance), both subsections are transitional provisions and have not yet commenced operation.

10. When section 46A(2) commences operation, sections 17 and 18 of ECAO and certain other provisions of ECAO will be repealed. Clause 4 of the Bill provides that despite the repeal of sections 17 and 18, an employer or a principal contractor who has taken out an insurance policy for employees' compensation, may apply under the repealed section 17 or 18 as if the section had not been repealed, if the application relates to an insurer in respect of whom a notice of insolvency has been published before the commencement date.

Public consultation

11. The Labour Advisory Board and the Board were consulted and they supported the proposals (para. 17 of the LegCo Brief).

Consultation with LegCo Panel

12. At its meeting on 21 October 2003, the Panel on Manpower was briefed on the Administration's proposals in the Bill and members did not raise any question on the proposals.

Conclusion

13. The proposals in the Bill are basically technical in nature and do not appear to raise any new policy issue. The drafting of the Bill presents no difficulty and subject to any view of members, the Bill is ready for resumption of Second Reading debate.

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