

For discussion on
27 May 2008

Legislative Council Panel on Manpower

A Proposal to Adjust the Rate and Proportions of Distribution of the Employees' Compensation Insurance Levy and Improve the Compensation for Persons with Occupational Deafness

Purpose

This paper seeks Members' views on a package of proposals to:

- (a) adjust the rate and proportions of distribution of the Employees' Compensation Insurance (ECI) Levy payable under the Employees' Compensation Insurance Levies Ordinance (Cap. 411) (ECILO); and
- (b) improve the compensation for persons with occupational deafness¹ under the Occupational Deafness (Compensation) Ordinance (Cap. 469) (ODCO).

Background

The Employees' Compensation Insurance Levy

2. The Employees' Compensation Insurance Levies Management Board (ECILMB), established under the ECILO, collects from insurers a levy imposed on the premium of every employees' compensation insurance policy taken out by employers. On receiving the levy remittance from insurers and after deducting the necessary operating expenses and other sums payable by the ECILMB (e.g. administration charges), the ECILMB shall distribute its net resources to the following three statutory bodies:

- (a) Employees Compensation Assistance Fund Board (ECAFB);
- (b) Occupational Deafness Compensation Board (ODCB); and
- (c) Occupational Safety and Health Council (OSHC).

¹ Occupational deafness persons are those who have been exposed to noise in their working environment and suffer noise-induced deafness. Noise-induced deafness is sensorineural hearing loss amounting to not less than 40dB in each ear.

3. The current rate of the ECI Levy prescribed under the ECILO is 6.3% on the premium paid in respect of employees' compensation insurance policies. According to the ECILO, the ECILMB shall distribute its net resources to the three statutory bodies concerned in accordance with the following proportions:

Statutory body	Proportion of the net resources of the ECILMB to be distributed	
	For the relevant period starting on 1 July 2002 and up to 30 September 2007	For the relevant period starting on 1 October 2007 and thereafter
ECAFB	31/63	25/63
ODCB	12/63	18/63
OSHC	20/63	20/63

4. The proportions of distribution at paragraph 3 above are promulgated by the Employees Compensation Assistance (Amendment) Ordinance 2002 which provides for the adjustment of the proportions of distribution for the ODCB and ECAFB to 1.8% and 2.5% respectively with effect from the relevant period starting on 1 October 2007.

Financial Position of the Statutory Bodies

ECAFB

5. The ECAFB is responsible for operating the Employees Compensation Assistance Scheme (ECAS) that provides payment to injured employees who are unable to receive their entitlements for employment-related injuries from their employers or insurers. As at 31 December 2007, the ECAFB had a reserved fund of \$258 million, together with an outstanding government loan of the same amount.

6. The ECAFB has been operating at a deficit since 1996/97. The insolvency of two major local insurers operating employees' compensation insurance business in 2001 further aggravated its financial hardship. To help the ECAFB tide over its financial difficulties, the Government provided two loan facilities totalling \$280 million to the ECAFB in 2000 and 2002. Under the loan agreement, the ECAFB has to repay the loans by 10 annual instalments of around \$37 million each from 2006/07 to 2015/16.

7. The expenditure of the ECAFB inclusive of loan repayments is expected to be around \$115 million in 2008/09. On the basis that all liabilities arising from the insolvency of the two local insurers would be cleared in 2008/09, the annual expenditure of the ECAFB would return to around \$90 million from 2009/10 onwards. As the rate of distribution for the ECAFB has been restored to 2.5% with effect from 1 October 2007, the total annual income (inclusive of other incomes) of the ECAFB would likely be in the region of \$70-\$75 million². The ECAFB is expected to continue to operate at a deficit, with an annual shortfall of about \$19 million. By projection, the ECAFB would likely face cashflow problems in 2013/14 and thereafter.

ODCB

8. The ODCB provides compensation and reimbursement of expenses incurred in purchasing, repairing and replacing hearing assistive devices to those persons with occupational deafness due to employment in specified noisy occupations. In the past three years, the annual expenditure of the ODCB was about \$19 million, and its annual income ranged from \$47-\$55 million. There was hence an annual surplus of \$28-\$36 million. As at 31 December 2007, the ODCB had an accumulated fund of \$462.2 million.

9. The ODCB has been in operation for over 10 years. The number of applications for compensation and the amount of compensation paid on an annual basis have more or less stabilised. With the restructuring of the economy of Hong Kong, noisy occupations in the manufacturing sector have been dwindling. Together with the strengthening of noise control measures in noisy occupations and stepping up of publicity efforts on hearing conservation, it is envisaged that the number of persons with occupational deafness would broadly remain at the present level. At the current levy rate of 1.8%, the ODCB will continue to operate with a sizable surplus, and the accumulated fund of the ODCB will continue to grow.

OSHC

10. The OSHC promotes safety and health at work and fosters a safe and healthy working environment in Hong Kong. The financial position of the OSHC has all along been sound. Its accumulated surplus as at 31 December 2007 was around \$86 million. Its annual expenditure is dependent on its planned level of promotional and educational activities. During the past three years, the OSHC has been able to effectively perform its functions at the current levy rate of 2%.

² This is based on the average levy income from 1991 to 2006 during which one percentage point in the ECI Levy generates a levy income of \$25.2 million.

11. In the light of the financial positions of the ECAFB and ODCB and the adjustments in the proportions of the ECI Levy to take effect from the last quarter of 2007, the Labour Department (LD) put up a proposal for consultation in November 2006. Under the proposal, the proportions of allocation of the ECI Levy for the ECAFB and ODCB would be revised respectively to 3.1% and 0.2%. The proposed adjustments would allow both the ECAFB and ODCB to maintain their financial viability, while at the same time provide a scope for downward revision of the overall rate of the ECI Levy from 6.3% to 5.3%.

12. LD consulted the ECAFB, ODCB and ECILMB in November 2006. While all three statutory boards supported the proposal in general, some employee representatives expressed reservations on the extent of the proposed adjustments and the degree of proposed reduction in the overall rate of the ECI Levy.

13. Organisations with an interest in occupational deafness compensation also registered their disagreement with the extent of the proposed reduction in the proportion of allocation of the ECI Levy to the ODCB. They instead proposed to improve the Occupational Deafness Compensation (ODC) Scheme to the benefit of persons with occupational deafness. Some of the items they proposed and considered to warrant higher priority are as follows:

- (a) to compensate monaural hearing loss;
- (b) to increase the maximum amount of reimbursement of expenses for hearing assistive device; and
- (c) to provide compensation to persons having already received compensation under the ODCO but have continued to work in a noisy occupation and thereby sustain further sensorineural hearing loss.

Revised proposal

14. LD attaches great importance to the financial viability of the statutory boards, and their ability to perform their statutory functions without any interruptions. LD also understands the expectation of employers that the overall ECI Levy rate should be reduced if the financial positions of the statutory boards permit. Members may wish to note that the rate of the ECI Levy underwent four reviews in the past, and all of them resulted in an upward adjustment of the overall levy rate.

15. Against these considerations and taking into account the concerns of employees' representatives and organisations with an interest in occupational deafness compensation on the use of the funds of the ODCB, a revised proposal has been put forth as follows:

- (a) **the proportion of allocation of the ECI Levy to the ECAFB should be adjusted to 3.1% :** Together with other sources of income, the ECAFB would be able to operate on a balanced budget and meet its annual expenditure of some \$90 million;
- (b) **three benefit items under the ODC Scheme should be improved :** This would address the concerns of trade unions and organisations with an interest in occupational deafness compensation. The proposed improvement items are set out at Annex. If implemented, they would lead to additional annual expenditures of \$13 million on the part of the ODCB;
- (c) **the proportion of allocation of the ECI Levy to the ODCB should be adjusted to 0.7% :** The annual levy and interest incomes of the ODCB, together with its accumulated fund, should allow the ODCB to continue to perform its statutory functions effectively and implement the proposed improvement items while maintaining a healthy financial position; and
- (d) **the overall ECI Levy rate should be adjusted downwards by 0.5 percentage point to 5.8% :** If the above proposals are implemented, there is scope for reducing the overall levy rate by 0.5 percentage point. The overall rate of the ECI Levy would be 5.8% (i.e. 3.1% for the ECAFB, 0.7% for the ODCB, and 2% for the OSHC).

16. The proposed reduction in the overall rate of the ECI Levy has been made in the light of the income and expenditure patterns of the three statutory bodies concerned, taking into account the proposed improvements to the ODC Scheme. The existing coverage and benefit levels of the ECAS will be maintained. The level of levy allocation for the OSHC will remain unchanged. There will also be no change to the functions of the ECILMB and the mechanism for the collection and distribution of the ECI Levy.

17. The proposed reduction in the overall ECI Levy rate, if accepted, would establish a practice where the overall levy rate can be adjusted downwards or upwards in the light of the circumstances. As always, LD will keep in view the financial situation of the statutory boards and formulate improvement or adjustment measures as necessary.

Consultation

18. The ECAFB was consulted in November 2006 and supported the proposal to adjust the proportion of allocation of the ECI Levy to the ECAFB to 3.1%. The Labour Advisory Board Committee on Employees' Compensation was consulted in July 2007 and endorsed the revised package of proposals in general. The ODCB was consulted in December 2007 and supported the revised package of proposals to adjust the proportion of allocation of the ECI Levy to the ODCB to 0.7% and improve the compensation for persons with occupational deafness. The ECILMB was consulted in February 2008 and endorsed the revised package of proposals. The Labour Advisory Board was consulted at its meeting held on 16 April 2008 and endorsed the package of proposals set out in paragraph 15.

Advice sought

19. Members are requested to consider the proposals set out in paragraph 15 above. Subject to Members' advice, we plan to introduce an amendment bill into LegCo to give effect to the proposal in the next legislative session.

Labour and Welfare Bureau
Labour Department
May 2008

Proposals to improve the Occupational Deafness Compensation (ODC) Scheme

I. Compensation for monaural hearing loss

There are views that monaural hearing loss should be compensated under the ODC Scheme. Trade unions pointed out that because of the working environment and working conditions of some occupations, the workers engaged in these occupations could only apply hearing protective devices to one of their ears, leaving their other ears unprotected and exposed to high level of noise at work. This had resulted in cases of monaural hearing loss.

2. There are workers who have worked in noisy occupations for many years and have sensorineural hearing loss, with only one of their ears meeting the statutory compensable level. It is also noted that in some countries monaural hearing loss has been made a compensable occupational disease. Therefore, it is proposed that employees who suffer from monaural hearing loss, i.e. with one ear having hearing loss of less than 40dB while the other having sensorineural hearing loss of 40dB or above, would be entitled to compensation under the Occupational Deafness (Compensation) Ordinance (ODCO).

3. Since the establishment of the ODC Scheme, the applications by some 500 workers have been rejected because only one of their ears was assessed to have sensorineural hearing loss of 40dB or above. In terms of the degree of sensorineural hearing loss and period of employment in aggregate in any noisy occupation in Hong Kong, these workers should satisfy the thresholds under the current proposal. However, some of them have already left employment for quite some time. They would be unable to fulfil the requirement of having a period of continuous employment in any noisy occupation in Hong Kong within the 12 months before the date of application if they are required to make applications afresh. There is concern that these workers should be covered by the proposal. In view of the unique circumstances of these workers, it is recommended that they should be netted in through a transitional arrangement. The level of compensation would be determined with reference to the last hearing test results adopted by the Occupational Deafness Compensation Board (ODCB) in determining their monaural hearing loss, without the need for them to undertake hearing loss assessment afresh.

II. Increasing the maximum reimbursable amount for the expenses incurred in purchasing, repairing and replacing hearing assistive device (HAD)

4. There are views that the existing maximum reimbursable amount of \$18,000 for the expenses in connection with HAD could only cover the related expenses incurred by a person with occupational deafness for four to five years.

5. The benefit on reimbursement of expenses in connection with HAD under the ODCO was introduced in 2003. After a period of some five years, cases have emerged where persons with occupational deafness have exhausted the reimbursable amount. Hence, there is a need to review the current level of compensation in order to address the concern of persons with occupational deafness in respect of their need for HAD.

6. It is proposed that the ceiling of reimbursement of expenses incurred in the acquisition, fitting, repair or maintenance of HAD should be increased from the current level of \$18,000 to \$36,000.

III. Providing compensation for claimants whose hearing deteriorates as a result of continued employment in noisy occupations

7. There are views that employees who have received compensation from the ODCB should be provided with compensation if they have sustained additional hearing loss as a result of continued employment in noisy occupations. It is considered that though employees are aware of the need to take preventive measures to protect their hearing, they might still be exposed to noise at work for reasons beyond their control.

8. It is proposed that for persons who have already received compensation under the ODCO and have continued to be engaged in any specified noisy occupations for five years in aggregate thereafter, they should be entitled to compensation in respect of additional hearing loss sustained.