

立法會
Legislative Council

LC Paper No. CB(2)880/09-10
(These minutes have been seen
by the Administration)

Ref : CB2/BC/5/08

**Bills Committee on
Occupational Deafness (Compensation) (Amendment) Bill 2009**

**Minutes of meeting
held on Monday, 11 January 2010, at 2:30 pm
in Conference Room B of the Legislative Council Building**

Members present : Dr Hon PAN Pey-chyou (Chairman)
Hon LEE Cheuk-yan
Hon LEUNG Yiu-chung
Hon LI Fung-ying, BBS, JP
Hon Alan LEONG Kah-kit, SC
Hon CHAN Kin-por, JP
Hon IP Kwok-him, GBS, JP

Members absent : Hon Abraham SHEK Lai-him, SBS, JP
Hon WONG Sing-chi
Hon IP Wai-ming, MH

Public Officers attending : Mrs Tonia LEUNG
Assistant Commissioner for Labour

Dr Raymond LEUNG Lai-man, JP
Occupational Health Consultant
Labour Department

Ms Melody LUK
Senior Labour Officer
Labour Department

Mr Alan CHONG Ka-ning
Senior Government Counsel
Department of Justice

Ms Mandy NG Wing-man
Government Counsel
Department of Justice

Clerk in attendance : Mr Raymond LAM
Chief Council Secretary (2) 1

Staff in attendance : Mr Timothy TSO
Assistant Legal Adviser 2

Miss Josephine SO
Senior Council Secretary (2) 1

I. Meeting with the Administration

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. The Bills Committee considered the Administration's response on the rationale for adjusting the overall rate and proportions of distribution of the Employees' Compensation Insurance Levy proposed in the Occupational Deafness (Compensation) (Amendment) Bill 2009 (the Bill), as set out in the Administration's paper (LC Paper No. CB(2)667/09-10(01)), and examined the draft Committee Stage amendments (CSAs) to be proposed by the Administration.

3. The Administration advised that it would revise the draft CSAs -

- (a) to substitute the word "the Court" in the proposed new sections 48(6)(c)(iii), (6A), (10)(b)(ii) and (11)(b) by "the District Court";
- (b) to delete "的結果" from the proposed new sections 48(4)(d) and 48(8)(d) in the Chinese text; and
- (c) to amend "《2009年修訂條例》" in the Chinese text of the proposed new section 48(13)(b) to "《2010年修訂條例》"

4. The Administration advised that it would consider revising the proposed new section 48(11) and the Chinese text of the proposed new sections 48(10)(b) and (11)(b).

II. Any other business

5. The Chairman concluded that the Bills Committee had completed the scrutiny of the Bill.

6. The Administration informed the Bills Committee that it intended to give notice for resumption of the Second Reading debate on the Bill at the Council meeting on 3 February 2010. Members noted that the deadline for giving notice of amendment to the Bill would be 25 January 2010. Members agreed that the Bills Committee

would make a report on its deliberations on the Bill to the House Committee on 22 January 2010.

7. The meeting ended at 4:27 pm.

Council Business Division 2
Legislative Council Secretariat
2 February 2010

**Proceedings of meeting of the
Bills Committee on
Occupational Deafness (Compensation) (Amendment) Bill 2009
on Monday, 11 January 2010, at 2:30 pm
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 000131	Chairman	Opening remarks	
000132 - 000905	Chairman Admin	Briefing on the Administration's response to issues raised at the Bills Committee meeting held on 30 November 2009 (LC Paper No. CB(2)667/09-10(01))	
000906 - 001058	Chairman Hon CHAN Kin-por	Hon CHAN Kin-por pointed out that apart from the 6.3% Levy (the Levy) payable under the Employees' Compensation Insurance Levies Ordinance (ECILO), an employer was also required to contribute a levy of 2% to the Employees Compensation Insurer Insolvency Bureau and 3% for the Government Terrorism Facility Charge. He held the view that a mechanism whereby the overall Levy rate could be adjusted downwards or upwards in light of the prevailing circumstances should be established. He further pointed out that the current proposed 5.8% was a revision after a first proposal on adjusting the overall Levy rate from 6.3% to 5.3%. He expressed support for the Administration's proposal to adjust the overall Levy rate from 6.3% to 5.8% and the proportions of distribution of the Levy collected to the Employees Compensation Assistance Fund Board (ECAFB), the Occupational Deafness Compensation Board (ODCB) and the Occupational Safety and Health Council (OSHC) as proposed in the Occupational Deafness (Compensation) (Amendment) Bill 2009 (the Bill) as the proposal was a consensus among different stakeholders	
001059 - 001908	Chairman Hon LEE Cheuk-yan Admin	Hon LEE Cheuk-yan considered that the Administration should increase the financial resources to OSHC so as to enhance the public awareness and vigilance about occupational safety and health. In his view, the overall Levy rate should be maintained at the current level of 6.3%, as	

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		this would ensure the generation of sufficient levy income for distribution to ODCB, OSHC and ECAFB, and hence improving their financial viability and ability to perform the statutory functions or improve their services. Hon LEE Cheuk-yan pointed out that as the Hong Kong Confederation of Trade Unions did not sit on the Labour Advisory Board, it had not been consulted on the current proposal in relation to the adjustment and distribution of the Levy Financial positions of ECAFB and OSHC; on reasons why ECAFB might face cash flow problem in a few years' time, the Administration advised that it would be difficult at present to give an accurate calculation of the income and expenditure of ECAFB in the years to come	
001909 - 002628	Chairman Hon LI Fung-ying Admin Hon CHAN Kin-por	Hon LI Fung-ying considered that the Administration should step up its enforcement actions against non-compliance with the provision of compulsory insurance against employer's liability under the Employees' Compensation Ordinance. She pointed out that it would be undesirable to further delay the passage of the Bill The Administration advised that the Labour Department (LD) had all along been taking a proactive approach in law enforcement, promotion and education. It would continue to keep up its efforts to ensure that employers would take out employees' compensation insurance policy for their employees The Administration further advised that it had all along been monitoring closely the financial positions of ECAFB, ODCB and OSHC. It would from time to time evaluate and review their respective financial situation and formulate improvement or adjustment measures where necessary	

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002629 - 010654	Chairman Admin Hon LEUNG Yiu-chung Hon LI Fung-ying Hon LEE Cheuk-yan	Examination of the draft Committee Stage amendments (CSAs) proposed by the Administration (LC Paper No. CB(2)704/09-10(01)) Draft CSAs to amend sections 2 and 5(1) of the Occupational Deafness (Compensation) Ordinance (Cap. 469) (ODCO) Draft CSAs to amend the proposed new section 14A(2)(a) relating to the aggregate length of employment in noisy occupation required for application for further compensation Draft CSAs to the new section 15(2) Draft CSAs to amend section 19 Draft CSAs to sections 20(1), 20(2) and 20(3) to make them easier to comprehend Draft CSAs to section 27B concerning direct payment of expenses or reimbursement of expenses in relation to hearing assistive devices Draft CSAs to section 27C concerning limits of direct payment of expenses and reimbursement of expenses in relation to hearing assistive devices Draft CSAs to section 48 to provide for transitional arrangements Draft CSAs to Schedules 5 and 7	
010655 - 011503	Chairman Hon LI Fung-ying Admin ALA2	Whether further amendment should be made to the draft CSAs relating to proposed new section 48(10) and (11) and section 5 of Schedule 5 to improve their readability and clarity Reasons for providing in detail the transitional arrangements and the arrangements relating to the payment of compensation respectively in section 48 and Schedule 5 to ODCO; the need to define clearly the statutory rights of claimants and the obligations of ODCB; the	

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		Administration's plan to enhance the public understanding of the improvement items to the Occupational Deafness Compensation Scheme (the ODC Scheme) through education and publicity	
011504 - 012646	Chairman Admin Hon LI Fung-ying Hon LEUNG Yiu-chung	The purpose of the proposed CSAs to add subsections (9), (10) and (11) to section 48 of ODCO The Administration stressed that ODCB had all along been exercising flexibility in vetting applications for compensation under ODCO	
012647 - 013410	Chairman ALA2 Admin	Drafting-related initiatives implemented by the Law Drafting Division leading to the use of "must" to impose an obligation in place of "shall" (LC Paper No. CB(2)512/09-10(04)); the Administration advised that this new style was now used in all new legislation, and it was also adopted when amending existing legislation. The Administration would look for opportunities in amending exercises to change "shall" to "must", especially in provisions in the proximity of those in which "must" was used, for the sake of tidiness	
013411 - 014318	Chairman ALA2 Admin Hon LEUNG Yiu-chung	Regarding the proposed use of "he or she" and "his or her" only in the English text of the new section 27B(1A), while corresponding renditions were not used in the Chinese text of the same section, the Administration advised that the Law Drafting Division had adopted a policy of gender-neutral drafting since the use of language with a gender-bias might be viewed as discriminatory. While gender-neutral drafting would be used in all new legislation, it would be used in a way that would not have an impact on the existing text when amending existing legislation. The Administration further advised that gender-neutrality had no significant implications for Chinese drafting. If the English text used a noun to achieve gender neutrality, the Chinese text could follow suit. However, the character "他" was more gender-neutral compared to "he".	

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		For example, "他們" was used for a group of people of both sexes. Therefore, if no interpretation problem was likely to arise in the particular context, "他們" and "他" might continue to be used as they were suitable and concise. In addressing a member's question about the use of "he" in the existing legislation of Hong Kong, the Administration pointed out that section 7(1) of the Interpretation and General Clauses Ordinance (Cap. 1) provided that words and expressions importing the masculine gender included the feminine and neuter genders Hon LEUNG Yiu-chung considered that corresponding rendition of "he/she", i.e. "他/她", should be used in the Chinese text of an ordinance	
014319 - 015320	Chairman ALA2 Admin Hon IP Kwok-him	The drafting of the English text of the proposed CSAs to section 27B(1) regarding the phrases "his or her ear that suffers"; the meaning and use of "suffers" in the Oxford Concise English Dictionary The drafting of the Chinese text of the proposed CSAs concerning the new section 48(5); the appropriateness of the use of passive voice in the phrase "而第(6)款所指明規定就該試驗或報告獲符合" Consistency between the Chinese and English texts of the proposed new section 48(10)(b) and (11)(b) The Administration advised that it would revise the draft CSAs, including - (a) to substitute the word "the Court" in the proposed new sections 48(6)(c)(iii), (6A), (10)(b)(ii) and (11)(b) by "the District Court"; (b) to delete "的結果" from the proposed new sections 48(4)(d) and 48(8)(d) in the Chinese text; and (c) to amend 《2009年修訂條例》 in the Chinese text of the proposed new	

Time marker	Speaker	Subject(s)	Action Required
		section 48(13)(b) to "《 2010 年修訂條例 》" The administration advised that it would consider revising the proposed new section 48(11) and the Chinese text of the proposed new section 48(10)(b) and (11)(b)	
015321 - 015624	Chairman Admin Hon LI Fung-ying Hon LEUNG Yiu-chung	The Chairman concluded that the Bills Committee had completed the scrutiny of the draft CSAs proposed by the Administration Date of reporting the deliberations of the Bills Committee to the House Committee; deadline for giving notice of amendment to the Bill	

Council Business Division 2
Legislative Council Secretariat
2 February 2010