

For meeting
on 20.1.2012

Legislative Council Panel on Manpower

Review of the Levels of Compensation under the Employees' Compensation Ordinance, the Pneumoconiosis and Mesothelioma (Compensation) Ordinance and the Occupational Deafness (Compensation) Ordinance

Purpose

This paper seeks Members' views on a proposal to increase the amount of a total of 10 compensation items under the Employees' Compensation Ordinance (Cap. 282) (ECO), the Pneumoconiosis and Mesothelioma (Compensation) Ordinance¹ (Cap. 360) (PMCO) and the Occupational Deafness (Compensation) Ordinance (Cap. 469) (ODCO) in line with the findings of a review on the levels of compensation under the three ordinances.

Background

Levels of compensation under ECO and PMCO

2. ECO provides for the payment of statutory compensation to employees and family members of the deceased employees for occupational diseases, injuries or deaths caused by accidents arising out of and in the course of employment. PMCO provides for the payment of compensation to persons and their family members in respect of incapacity or death resulting from pneumoconiosis and/or mesothelioma.

3. It is an established practice to review the levels of compensation provided for under ECO and PMCO every two years. Broadly speaking, adjustments are made in the light of the wage movement and price movement in the intervening years. Some compensation items, e.g. the minimum monthly earnings for calculating compensation, are adjusted according to the changes in the amount of the actual cost involved or other relevant factors.

¹ This ordinance, previously known as the Pneumoconiosis (Compensation) Ordinance (PCO), has been re-titled as the Pneumoconiosis and Mesothelioma (Compensation) Ordinance to reflect the extension in scope to cover cancerous mesothelioma starting from 18 April 2008.

4. Prior to 1998, the levels of compensation under ECO and PMCO had been adjusted upwards in line with the positive changes of the relevant indicators in the review periods during which Hong Kong experienced rapid economic growth. Since 1998, Hong Kong underwent a prolonged period of deflation alongside downward adjustment of wages. Revision was last made to the amount of five items² under ECO in August 2010 according to the review findings of a 2.34% increase in the wage movement over the 10 years from 1999 to 2008. Save for these five ECO items and with also the following exception of the maximum amounts of reimbursement for funeral and medical expenses under ECO and PMCO, the levels of compensation under the two ordinances have been frozen since 1 August 1998:

- (a) With the enactment of the Employees' Compensation (Amendment) (No. 2) Ordinance 2000 to improve the settlement of fatal employees' compensation cases, the maximum amount of funeral expenses under ECO had been raised from \$16,000 to \$35,000 with effect from 1 August 2000. To maintain the parity of the same compensation item under the two ordinances, the maximum amount of funeral expenses under PMCO had also been raised to \$35,000 from 1 January 2001; and
- (b) The daily maximum levels of medical expenses under the two ordinances were increased to \$200 for cases requiring either hospitalisation or out-patient treatment, and \$280 for cases involving both hospitalisation and out-patient treatment on the same day with effect from 4 April 2003 to take into account the revised fee structure in the public health care system.

5. In the four review exercises covering 1999 to 2006, both the wage and price indices either recorded negative changes in the review periods or their increases had yet to offset the cumulated rates of decrease since 1998. Other expenses relevant to the compensation items had either decreased or remained static. If the levels of compensation under ECO and PMCO were adjusted in accordance with such changes, the amount of various items had to be reduced subsequent to each of the four reviews. When the findings of these reviews were discussed at the Labour Advisory Board (LAB), members, on compassionate ground, concurred that the amount of various compensation

² The five relevant compensation items under ECO are: (i) the ceiling of monthly earnings for calculating compensation for death and permanent total incapacity; (ii) the minimum compensation for death; (iii) the minimum compensation for permanent total incapacity; (iv) the compensation for attention; and (v) the minimum amount of surcharge on late payment of compensation.

items under the two ordinances should be maintained at their existing levels, in order not to affect the interests of the injured employees and pneumoconiotics. On the other hand, members advised that the levels of compensation should not be revised upwards until the cumulated rates of decrease in wage or price movements had been offset by future increases.

6. In the last review for 2007-2008, the wage and price indices continued with an upward trend. Offsetting the cumulative negative changes since 1998, the wage index showed a 2.34% growth while the price index still showed a 6.88% decrease over the 10 years up to 2008. Adopting a compassionate and flexible approach, LAB endorsed a proposal in January 2010 to raise the amount of the five relevant items under ECO by 2.34% and to freeze the levels of compensation under ECO and PMCO, which according to the review findings would have to be revised downwards. In line with past practice, LAB agreed that the cumulative negative price movement since 1998 should be taken into account in future reviews. The new levels of compensation in respect of the five items under ECO have taken effect from 1 August 2010.

Levels of compensation under ODCO

7. ODCO provides compensation to persons who suffer from noise-induced deafness due to employment in specified noisy occupations. The amount of compensation payable to a claimant depends on his/her monthly earnings, age at the time of application and the percentage of permanent incapacity. When ODCO was first introduced in 1995, its levels of compensation, which relate to the minimum and maximum sums for calculating the amount of compensation for permanent incapacity, were pegged at the same levels as ECO.

8. Same as for the maximum level of compensation for permanent total incapacity under ECO, the maximum sum for calculating the compensation for permanent incapacity under ODCO is also derived from a ceiling of monthly earnings. The ceiling of monthly earnings currently adopted under ODCO is \$21,000 while the minimum sum for calculating the compensation for permanent incapacity is set at \$341,000. The present levels of compensation have been in force since 2003. The amounts of compensation were then revised based on the cumulative increase in nominal wage index (NWI) from 1994 to 2001. The revision has brought the levels of compensation under ODCO generally on par with the corresponding prevailing rates under ECO except for a mild difference³ arising mainly from the different review

³ According to Schedule 5 of ODCO, the amount of compensation payable to a claimant is calculated by multiplying the percentage of permanent incapacity or additional incapacity suffered by the claimant by a sum specified under the Schedule. In the review of 2003, the maximum and minimum sums for calculating the amount of compensation were set at \$2,016,000 and \$341,000

timeframes adopted by the two ordinances.

9. To ensure consistency in compensation levels between ECO and ODCO, it is intended that the maximum and minimum sums for calculating the amount of compensation for permanent incapacity under ODCO be aligned with the maximum and minimum levels of compensation for permanent total incapacity under ECO, and be reviewed every two years together with those under ECO so as to maintain their values in line with the wage movement during the intervening period.

10. Following the established mechanism, we have reviewed the changes in wage and price indices and other relevant factors for 2009 and 2010. Findings of the review are set out in the ensuing paragraphs.

Review findings

Compensation items to be adjusted according to wage movement

11. The level of compensation for the following five items under ECO are normally adjusted according to the wage movement as reflected by NWI:-

- (a) ceiling of the monthly earnings for calculating compensation for death and permanent total incapacity;
- (b) minimum level of compensation for death;.
- (c) minimum level of compensation for permanent total incapacity;
- (d) compensation for employees requiring attention; and
- (e) minimum amount of surcharge on late payment of compensation.

12. NWI decreased by 1% in 2009 but increased by 2.5% in 2010 according to the Census and Statistics Department (C&SD). The wage movement for 2009-2010 is therefore +1.48%.

Compensation items to be adjusted according to price changes

13. The following six items under ECO and PMCO are normally adjusted by reference to price changes as reflected by the Consumer Price Index (CPI) (A):-

- (a) maximum amount of the cost for the supplying and fitting of prostheses and surgical appliances under ECO;

respectively, as against \$2,016,000 and \$344,000 respectively under ECO at that point of time.

- (b) maximum amount of the cost for the repair and renewal of prostheses and surgical appliances under ECO;
- (c) maximum amount of funeral expenses under both ECO and PMCO;
- (d) compensation for pain, suffering and loss of amenities under PMCO;
- (e) compensation for bereavement⁴ under PMCO; and
- (f) minimum amount⁵ of compensation for death under PMCO.

14. CPI(A) increased by 0.4% in 2009 and further by another 2.7% in 2010 according to C&SD. The price movement for 2009-2010 is therefore +3.11%. Nevertheless, this is still not able to completely set off the cumulative negative change of 6.88% since the last adjustment of compensation levels between 1998 and 2008. Taking into account the price movements in the years since 1998, the cumulative change in CPI(A) up to 2010 should be -3.99%.

15. The maximum amount of funeral expenses is normally adjusted by reference to the movement of CPI(A). From time to time, the Labour Department received petitions urging that this compensation item be increased. It has been pointed out that the maximum amount of \$35,000 was insufficient to cover the reasonable funeral expenses for a deceased person.

16. In setting the present maximum level for funeral expenses in 2000, information was collected on the costs for cremation from the major funeral parlours, the Immigration Department⁶ and the Food and Environmental Hygiene Department⁷. Taking into account the expenses incurred by people who opt for urns in the private sector, an amount of \$10,000 was added on top of the estimated cremation costs to come up with the \$35,000 maximum level of funeral expenses.

17. According to information collected in March 2011, funeral expenses ranged from \$26,250 to \$52,735, with \$39,493 in the middle. Prices of private urns vary widely and have increased in recent years. Allowing a 50% increase

⁴ Where a person who was suffering from pneumoconiosis and/or mesothelioma dies and a relevant certificate has not been issued by the Pneumoconiosis Compensation Fund Board at the time of his death, compensation for bereavement shall be payable to his surviving family members.

⁵ Under PMCO, the minimum amount of compensation for death is pegged to the amount of compensation for bereavement. Hence, the revision of the amount of compensation for bereavement will automatically adjust the minimum amount of compensation for death.

⁶ Charge for application of death certificate.

⁷ Cremation charge.

in the provision for the use of private urns from \$10,000 in 2000 to \$15,000 in 2011, the maximum amount of funeral expenses would go up to some \$55,000.

Compensation item to be adjusted according to the benefits provided under the Comprehensive Social Security Assistance Scheme (CSSA)

18. Section 11(5) of ECO provides that where an employee earns less than a specified amount per month, his monthly earnings shall be deemed to be that amount for the purpose of calculating compensation. The current specified amount is \$3,490, which is set by reference to the standard rate and other payments (i.e. rental allowance, water charges allowance and Long Term Supplement) for a single and able-bodied adult under CSSA at the time of the last adjustment in 1998.

19. In the light of the negative change in the Social Security Assistance Index of Prices which the Government referred to in deciding the payment level under CSSA, the payment for the same items of benefits under CSSA was revised downwards from \$3,490 to \$3,009 on 1 June 2003. Since then, the relevant payment has increased a few times up to \$3,252 on 1 April 2009. If the relevant CSSA payment rate in the present review exercise is adopted, the minimum monthly earnings under ECO should be adjusted correspondingly to \$3,252, which is 6.82% lower than the existing level of \$3,490.

Compensation item to be adjusted according to the monthly wages and food provision for a foreign domestic helper

20. Section 11 of PMCO provides for the payment of compensation for care and attention to a person suffering from pneumoconiosis and/or mesothelioma if he is unable to perform the essential actions of life without the care and attention of other person. This compensation is currently payable in the form of a monthly payment at a rate of \$4,160. The amount is set by reference to the minimum allowable monthly wage (\$3,860) and food provision (\$300) for a foreign domestic helper at the time of the last adjustment in 1998. It should be noted that a person receiving this payment is not obliged to employ a foreign domestic helper.

21. The minimum allowable wage for a foreign domestic helper was revised six times (two downward and four upward adjustments) from 1998 to 2010 while the monthly rate of food allowance has been adjusted upwards twice. During the two-year period from 2009 to 2010, the monthly cost for hiring a foreign domestic helper would be \$4,330 (i.e. \$3,580 wages + \$750 food allowance). This amount exceeds the present level of \$4,160 by 4.09%.

Compensation items to be adjusted according to the costs of medical treatment at public hospital or clinic

22. Under both ECO and PMCO, a claimant who has received medical treatment as a result of a work injury or in connection with pneumoconiosis and/or mesothelioma may claim reimbursement of the actual amount of medical expenses incurred, subject to a daily maximum. The maximum amounts were set to cover the costs for consultation, injection and dressing, physiotherapy and hospitalisation on any one day in a public hospital or clinic.

23. The daily maximum rates for medical expenses under ECO and PMCO were last revised on 4 April 2003 to align with the revision of the fee structure of public health care services in 2003. During the review period, the charges in public hospitals and clinics for these treatments remained at the same level.

Observations

24. In 2009-2010, the wage and price movements as reflected by NWI and CPI(A) showed respective increases of 1.48% and 3.11% (see paragraphs 12 and 14 above). Taking into account the cumulative decrease in price level since the last adjustment of compensation levels in 1998, CPI(A) still showed a negative growth of 3.99% over the 12-year period from 1999 to 2010. On the other hand, NWI had already registered a net growth of 2.34% after offsetting the cumulative decrease since 1998 during the last review for 2007-2008 and recorded a further growth of 1.48% in the current review period of 2009-2010. It is also observed in paragraph 21 that the monthly cost for hiring a foreign domestic helper has increased by 4.09% while other expenses relevant to the compensation items as described in paragraphs 19 and 23 have either decreased by 6.82% or remained static.

25. If the review findings are to be strictly applied to adjust the compensation levels, the amount of five items should be increased by 1.48% while that of four items should be reduced by 3.99% or 6.82% under ECO. The upward adjustment in respect of two out of the five ECO items would impact on the two corresponding items under ODCO. As the compensation levels under ODCO have not been revised since 2003, if such are to be adjusted to align with those of ECO which had already been raised by 2.34% in 2010, the amount of the two ODCO items would be increased by 3.9% and 4.75% respectively. As for PMCO, the amount of one compensation item would be increased by 4.09% whereas the compensation level for four items would be reduced by 3.99%.

26. The compensation levels to be increased according to the review findings are in respect of cases mainly involving death or permanent incapacity. The increase could provide better financial relief to the affected employees or their family members. However, if the amounts of compensation under ECO and PMCO are adjusted downwards by 3.99% or 6.82%, it would adversely affect the interests of employees earning relatively low income and persons with pneumoconiosis or mesothelioma and thereby causing hardship to them.

27. As mentioned in paragraph 16 above, the current ceiling of \$35,000 for funeral expenses, set in 2000, was comparable to the costs for cremation prevailing then plus a provision for \$10,000 to cater for the higher price of urns in the private sector. With reference to the latest cost information collected from the major funeral parlours and in light of the rising prices of private urns, an upward adjustment to \$55,000 could not only take account of inflation but also provide better financial relief to the family members of the deceased.

Proposal

28. In view of the review findings in paragraphs 11 to 23 and the observations in paragraphs 24 to 27, it is proposed, as detailed in Appendices 1-3, that:

- (a) the amounts of compensation under ECO and PMCO be kept unchanged at their existing levels in respect of those items which, according to the review findings, would have to be revised downwards⁸;
- (b) the level of compensation for five items under ECO, two items under ODCO and one item under PMCO be adjusted upwards in accordance with the review findings; and
- (c) the maximum amount of funeral expenses reimbursable under ECO and PMCO be adjusted upwards from \$35,000 to \$55,000 with reference to the latest cost information collected on funeral services.

⁸ The cumulative negative price movement since the last adjustment in 1998 should be taken into account in future reviews, i.e. the relevant levels of compensation under ECO and PMCO would not be revised upwards until the cumulative rate of decrease in price movement is offset by future increase.

Economic Implication

29. We have consulted the Hong Kong Federation of Insurers (HKFI) about the impact of the increases in the levels of compensation under ECO on the employees' compensation (EC) insurance premium in line with the review findings. According to the actuarial studies engaged by HKFI, the combined impact of a 1.48% increase in the compensation level for the five relevant items and an upward adjustment of the maximum amount of funeral expenses to \$55,000 under ECO would result in an increase of insurance claims costs by between 0.051% and 0.343% which may in turn translate into an increase of a similar range in the EC insurance premium⁹.

30. As for the proposed increases in the amount of the relevant items under ODCO and PMCO, both the Occupational Deafness Compensation Board and Pneumoconiosis Compensation Fund Board expressed that the revision would not have significant financial implications for their Funds.

Consultation with LAB

31. The review and the proposals were discussed at the meetings of the LAB Committee on Employees' Compensation and LAB held on 25 November 2011 and 20 December 2011 respectively. Members unanimously supported the proposals as set out in paragraph 28.

Way Forward

32. The levels of compensation under the three ordinances may be revised by resolutions of the Legislative Council. We intend to submit a proposal to the Legislative Council to effect the proposed changes starting from 1 April 2012.

Conclusion

33. Members are invited to note the content of this paper.

Labour and Welfare Bureau
Labour Department
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⁹ Taking an enterprise with over 100 employees, which is paying insurance premium at \$100,000 a year as an example, if the insurer would adjust the premium upwards by 0.343% given the increase in insurance claims costs, the additional premium to be paid by the employer would be \$343 per year (i.e. \$100,000 x 0.343%).

**Proposed changes in levels of compensation under ECO
(rounded up to the nearest \$10)**

Items under ECO	Existing Level (\$)	Proposed Level (\$)
1. Ceiling of monthly earnings	21,500	21,820
2. Minimum compensation for death	310,000	314,590
3. Minimum compensation for permanent total incapacity	352,000	357,210
4. Compensation for attention	422,000	428,250
5. Minimum amount of surcharge		
➤ initial surcharge	500	510
➤ further surcharge	1,000	1,010
6. Funeral expenses	35,000	55,000

**Proposed changes in levels of compensation under ODCO
(rounded up to the nearest \$10)**

Items under ODCO	Existing Level (\$)	Proposed Level (\$)
1. Maximum sum for calculating the amount of compensation for permanent incapacity		
- Age under 40 (multiplying factor: 96)	2,016,000	2,094,720 (21,820 x 96)
- Age 40 to under 56 (multiplying factor: 72)	1,512,000	1,571,040 (21,820 x 72)
- Age 56 and above (multiplying factor: 48)	1,008,000	1,047,360 (21,820 x 48)
2. Minimum sum for calculating the amount of compensation for permanent incapacity	341,000	357,210

Notes:

- Under ODCO, the amount of compensation payable to a claimant is determined in accordance with his/her monthly earnings, age at the time of application and the percentage of permanent incapacity: (monthly earnings x multiplying factor) x percentage of permanent incapacity
- As the current exercise would increase the ceiling of monthly earnings under ECO to \$21,820, the maximum sum for calculating the amount of compensation under ODCO will also be correspondingly adjusted upward.

**Proposed changes in levels of compensation under PMCO
(rounded up to the nearest \$10)**

Items under PMCO		Existing Level (\$)	Proposed Level (\$)
1.	Funeral expenses	35,000	55,000
2.	Compensation for care and attention	4,160	4,330