

For meeting
on 18.11.2014

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 briefs Members on the findings of a review conducted by the Government on the levels of compensation under the Employees' Compensation Ordinance (Cap. 282) (ECO), the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap. 360) (PMCO) and the Occupational Deafness (Compensation) Ordinance (Cap. 469) (ODCO), and proposes to increase the amounts of a total of 18 compensation items under the above three ordinances based on the review findings.

Background

Levels of compensation under ECO, PMCO and ODCO

2. ECO provides for the payment of statutory compensation to injured employees and family members of deceased employees for specified 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 deaths resulting from pneumoconiosis and/or mesothelioma. ODCO provides compensation to persons who suffer from noise-induced deafness by reason of employment in the specified noisy occupations.

3. According to the established mechanism, the levels of compensation under ECO, PMCO and ODCO are reviewed every two years. Adjustments (if required) are generally made in the light of the wage and price movements in the review period. Some compensation items, e.g. the minimum monthly earnings for calculating compensation, are adjusted having regard to other relevant factors. The current review covers the wage and price movements as well as

changes in other relevant factors during the period from 2012 to 2013.

4. In 2012, in view of the impact brought by the implementation of the Statutory Minimum Wage in May 2011, the Government made a special arrangement exceptionally to conduct a review taking into account the relevant three-year statistics from 2009 to 2011 for the protection of employees' rights and benefits. The Government had indicated clearly at that time that after the said review, it would revert to the established practice of reviewing the levels of compensation under the above three ordinances every two years.

Financing limits for hearing assistive devices (HAD) under ODCO

5. Since 2003, a scheme for the reimbursement of expenses in relation to HADs¹ was introduced under ODCO, with the reimbursable limit for first-time applications and the aggregate reimbursable limit set at \$9,000 and \$18,000 respectively. In 2010, as some persons suffering from occupational deafness (hereinafter referred to as "OD persons") had exhausted or were about to use up the HAD aggregate amount since the introduction of the scheme in 2003, the Government raised the first-time financing limit from \$9,000 to \$12,000 and the aggregate financing limit from \$18,000 to \$36,000, with the amendments coming into effect on 16 April 2010.

6. We have also reviewed whether the financing limits for HADs need to be revised, taking into account the experience of the Occupational Deafness Compensation Board (ODCB) in administering the HAD financing scheme.

Review Findings

Compensation items to be adjusted according to wage movement

7. According to the established mechanism, the amounts of the following seven compensation items under ECO and ODCO are adjusted according to the wage movement as reflected by the Nominal Wage Index (NWI):-

Five items under ECO

- (i) ceiling of the monthly earnings for calculating compensation for death and permanent total incapacity;

¹ Schedule 6 of ODCO provides that HADs include (1) hearing aid; (2) telephone amplifier specially designed for use by persons with hearing difficulty; (3) desktop telephone with flashing light or other visual device to indicate ringing; and (4) any device the use of which by a person suffering from noise-induced deafness is determined by ODCB, upon the advice of the Occupational Deafness Medical Committee, to be reasonably necessary in connection with such deafness.

- (ii) minimum level of compensation for death;
- (iii) minimum level of compensation for permanent total incapacity;
- (iv) compensation for employees requiring attention;
- (v) minimum amount of surcharge on late payment of compensation;

Two items under ODCO

- (vi) maximum sum for calculating the amount of compensation for permanent incapacity; and
- (vii) minimum sum for calculating the amount of compensation for permanent incapacity.

8. According to the Census and Statistics Department (C&SD), NWI increased by 5.6% and 4.7% in 2012 and 2013 respectively. The cumulative rate of wage movement for 2012-2013 was therefore +10.56%. Details of the calculation are at Note 1 of Annex I.

Compensation items to be adjusted according to price changes

9. According to the established mechanism, the amounts of the following seven compensation items under ECO and PMCO are adjusted by reference to price changes as reflected by the Consumer Price Index (CPI) (A):-

Three items under ECO

- (i) maximum amount of the cost of supplying and fitting a prosthesis or surgical appliance;
- (ii) maximum amount of the cost of the repair and renewal of a prosthesis or surgical appliance;
- (iii) maximum amount of funeral expenses;

Four items under PMCO

- (iv) maximum amount of funeral expenses;
- (v) monthly compensation for pain, suffering and loss of amenities (PSLA) (We suggest making special adjustment to this item. For details, please refer to paragraphs 15 to 17 below);
- (vi) compensation for bereavement²; and
- (vii) minimum amount³ of compensation for death.

² 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 (PCFB) at the time of his death, compensation for bereavement shall be payable to his surviving family members.

³ 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.

10. According to C&SD, CPI(A) increased by 3.6% and 5.1% in 2012 and 2013 respectively. Hence, the cumulative rate of price movement for the past two years was +8.88%. Details of the calculation are at Note 2 of Annex I.

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

11. Section 11(5) of ECO provides that where an employee earns less than a specified amount per month, his/her 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 the CSSA Scheme at the time of the review. The rate of the same benefit items under the CSSA Scheme was adjusted upward to \$3,685 in 2013.

12. If the relevant CSSA payment rate is adopted, the minimum monthly earnings under ECO should be adjusted upwards to \$3,690 (rounded to the nearest \$10), which is 5.73% higher than the existing level of \$3,490 (Note 3 of Annex I).

Compensation item to be adjusted according to the monthly wage and food allowance for a foreign domestic helper

13. 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/she 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 \$4,520. The amount is set by reference to the minimum allowable monthly wage and food allowance for a foreign domestic helper working in Hong Kong at the time of the review. It should be noted that a person receiving this payment is not obliged to employ a foreign domestic helper.

14. In 2013, the monthly cost for hiring a foreign domestic helper was adjusted upwards to \$4,930 (i.e. \$ 4,010 wages + \$920 food allowance). If this rate is adopted to raise the amount of compensation for care and attention under PMCO, the amount should be raised to \$4,930, exceeding the present level of \$4,520 by 9.07%.

Monthly compensation for PSLA

15. As mentioned in paragraph 9(v) above, the amount of monthly compensation for PSLA under PMCO is normally adjusted by reference to the movement of CPI(A). Nonetheless, the Labour Department has received feedback from time to time pointing out that the present level of \$3,220 is unreasonable, urging for an increase in the amount of this item.

16. First set in 1993, the amount of monthly compensation for PSLA was derived from dividing the average amount of lump-sum compensation for PSLA awarded by the court in past personal injuries claims by the estimated number of months that a pneumoconiotic would be paid compensation. The amount of monthly compensation has since then been regularly adjusted in accordance with inflation rate.

17. In the current review, the Government has made reference to the practice adopted in 1993 having regard to the actual circumstances. According to the information provided by the Legal Aid Department, the scale of PSLA awards was revised by the court in 2013, ranging from \$460,000 to \$1,150,000 with an average figure of \$805,000. On the other hand, it is observed from the fatal cases handled under PMCO in past years that the patient had received compensation for an average of 14 years and 5 months (i.e. 173 months) up to the time of his/her death. If we adopt the scale of PSLA awards set by the court in 2013 to pay out the sum of \$805,000 in 173 months, the monthly payment would be around \$4,650, an increase of 44.41% over the current rate of \$3,220. With a view to enhancing the protection for pneumoconiosis and mesothelioma sufferers, we suggest following the aforementioned practice and raising the monthly compensation for PSLA from \$3,220 to \$4,650.

Financing limits for HADs under ODCO

Financing limit for first-time applications

18. From the implementation of the revised HAD financing limits on 16 April 2010 up to 31 December 2013, ODCB recorded 43 HAD applications with a claimed amount exceeding \$12,000, of which 76.7% (or 33 applications) involved a claimed amount ranging from \$12,001 to \$15,000. We understand from ODCB that new models of hearing aids are now available in the market with more functions designed to suit the needs of individual persons, such as those with more sophisticated amplifying function for better sound reception and others equipped with a tinnitus masking function. According to ODCB, the prices of more sophisticated hearing aids are commonly in the range of \$14,000 to \$16,000. In view of this, we propose adjusting upwards the financing limit

for first-time HAD applications from \$12,000 to \$15,000 so as to allow OD persons to have a wider choice of HADs to cater for their individual needs.

Aggregate financing limit

19. From the launching of the HAD financing scheme in 2003 up to 31 December 2013, a total of 1 195 OD persons were approved financial assistance for HADs, of whom 11 persons (1%) had already exhausted the aggregate financing limit of \$36,000, whereas another 64 persons (5.4%) were approved an aggregate amount ranging from \$25,001 to \$35,999. Having regard to the experience of ODCB in administering the scheme, it is crudely projected that these 64 persons are likely to exhaust the aggregate financing limit in around one to two years.

20. With a view to enhancing the protection for OD persons under the HAD financing scheme and taking into account the estimated average annual HAD expenses of an OD person as well as the biennial review timeframe, we propose raising the aggregate financing limit from \$36,000 to \$52,000, an increase of 44.44%, such that those OD persons who are no longer entitled to any financial assistance under the scheme owing to the exhaustion of the aggregate financing limit can be benefited again, while those approaching the limit will also continue to be benefited.

21. In order to accord appropriate protection to OD persons under the HAD financing scheme, we also propose that both the first-time financing limit and the aggregate financing limit be reviewed every two years with reference to the experience of ODCB in administering the scheme, as part of the established biennial review of the levels of compensation under the three aforementioned ordinances.

Proposal

22. In view of the background and review findings set out in paragraphs 2 to 21, it is proposed that (details set out at Annex II) :

- (a) the levels of compensation for five items under ECO and two items under ODCO be adjusted upwards by 10.56% in accordance with the wage movement reflected by NWI in the period from 2012 to 2013 (paragraphs 7 to 8);
- (b) the levels of compensation for three items under ECO and three items under PMCO be adjusted upwards by 8.88% according to the price movement reflected by CPI(A) in the

period from 2012 to 2013 (paragraphs 9 to 10, except item 9(v));

- (c) the amount of minimum monthly earnings for the calculation of compensation under ECO be increased by 5.73% from \$3,490 to \$3,690, in accordance with the standard rate and other payments for a single and able-bodied adult under the CSSA Scheme in 2013 (paragraphs 11 to 12);
- (d) the amount of compensation for care and attention under PMCO be increased by 9.07% from \$4,520 to \$4,930 based on the minimum allowable monthly wage and food allowance for a foreign domestic helper in 2013 (paragraphs 13 to 14);
- (e) the amount of monthly compensation for PSLA under PMCO be increased by 44.41% from \$3,220 to \$4,650, with reference to the scale of PSLA awards set by the court in 2013 (paragraphs 15 to 17); and
- (f) the financing limit for first-time HAD applications be increased by 25% from \$12,000 to \$15,000, and the aggregate financing limit be increased by 44.44% from \$36,000 to \$52,000, with reference to the experience of ODCB in administering the HAD financing scheme (paragraphs 18 to 21).

Economic/Financial Implications

23. According to an actuarial study engaged by the Hong Kong Federation of Insurers, it is estimated that the combined impact of a 10.56% increase in the levels of compensation for five items under ECO, a 8.88% increase in the amounts of three items under ECO and an upward adjustment of the minimum monthly earnings for calculating compensation under ECO to \$3,690 may result in an increase of employees' compensation (EC) insurance premium by 0.555% to 1.664%⁴.

⁴ Taking a restaurant with 20 employees, which is paying EC insurance premium at \$18,000 a year as an example, if the insurer would adjust the premium upwards by 1.664% given the increase in insurance claims costs, the additional premium to be paid by the employer would be \$300 per year (i.e. \$18,000 x 1.664%). As for an enterprise with over 100 employees, which is paying EC insurance premium at \$120,000 a year, the extra premium payable would be \$1,997 per year (i.e. \$120,000 x 1.664%).

24. As for the proposed increases in the amounts of the relevant items under PMCO and ODCO (including the financing limits for HADs under ODCO), both PCFB and ODCB advised that the revision would not have significant financial implications for their Funds.

Consultation with the Labour Advisory Board

25. The review and the proposal were discussed at the meeting of the Labour Advisory Board held on 12 September 2014. All Members present supported the proposal as set out in paragraph 22 above.

Way Forward

26. The amounts of a total of 18 compensation items under the above three ordinances as mentioned in paragraph 22 above may be revised by resolutions of the Legislative Council (LegCo). We plan to submit an amendment proposal to the LegCo by early 2015, aiming to effect the proposed changes as soon as possible for the benefit of injured employees, sufferers of occupational diseases and family members of deceased employees.

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

Labour and Welfare Bureau
Labour Department
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Note 1

Change in wage rate as reflected by NWI for the period 1.1.2012 to 31.12.2013 is determined as follows:

Change in NWI for 2012	= +5.6% (i.e. 1.056)
Change in NWI for 2013	= +4.7% (i.e. 1.047)
Change in NWI for 2012-2013	= $[(1 \times 1.056 \times 1.047) - 1] \times 100 \%$
	= +10.56%

Note 2

Change in commodity prices in terms of CPI(A) for the period 1.1.2012 to 31.12.2013 is determined as follows:

Change in CPI(A) for 2012	= +3.6% (i.e. 1.036)
Change in CPI(A) for 2013	= +5.1% (i.e. 1.051)
Change in CPI(A) for 2012-2013	= $[(1 \times 1.036 \times 1.051) - 1] \times 100 \%$
	= +8.88%

Note 3

Levels of benefits under the CSSA Scheme

<i>Item</i>	<i>Monthly rate in 2013</i>
Standard rate for an able-bodied adult as a single person	\$2,070
Rental allowance for a single person	\$1,440
Water charges allowance for a single person	\$22.4
Annual Long Term Supplement for a single person	\$152.9
Total	\$3,685.3

Current minimum monthly rate for calculation of compensation under ECO
= \$3,490 per month

% change if adjusted according to the relevant benefit levels under the CSSA Scheme in 2013 (rounded to the nearest \$10)
= $(\$3,690 - \$3,490) \div \$3,490 \times 100\% =$ **+5.73%**

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

Items under ECO	Existing Level (\$)	Proposed Level (\$)	Changes (\$)
1. Ceiling of monthly earnings	23,580	26,070	+2,490 (+10.56%)
2. Minimum compensation for death	340,040	375,950	+35,910 (+10.56%)
3. Minimum compensation for permanent total incapacity	386,110	426,880	+40,770 (+10.56%)
4. Compensation for attention	462,890	511,770	+48,880 (+10.56%)
5. Minimum amount of surcharge			
➤ initial surcharge	550	610	+60
➤ further surcharge	1,100	1,220	+120 (+10.56%)
6. Funeral expenses	70,000	76,220	+6,220 (+8.88%)
7. Cost of supplying and fitting a prosthesis or surgical appliance	33,460	36,430	+2,970 (+8.88%)
8. Cost of the repair and renewal of a prosthesis or surgical appliance	101,390	110,390	+9,000 (+8.88%)
9. Minimum monthly earnings	3,490	3,690	+200 (+5.73%)

Note:

- Items 1 - 5 are adjusted according to the wage movement as represented by NWI.
- Items 6 - 8 are adjusted according to the inflation rate as represented by CPI(A).
- Item 9 is adjusted according to certain benefit items under the CSSA Scheme.

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

Items under PMCO	Existing Level (\$)	Proposed Level (\$)	Changes (\$)
1. Compensation for pain, suffering and loss of amenities (PSLA) (A monthly payment payable to all beneficiaries until they pass away)	3,220	4,650	+1,430 (+44.41%)
2. Compensation for bereavement (revision of this item will automatically adjust the minimum level of compensation for death)	101,390	110,390	+9,000 (+8.88%)
3. Minimum compensation for death (pegged to the amount of compensation for bereavement)	101,390	110,390	+9,000 (+8.88%)
4. Funeral expenses	70,000	76,220	+6,220 (+8.88%)
5. Compensation for care and attention (A monthly payment payable to beneficiaries requiring the care and attention of other person until they die)	4,520	4,930	+410 (+9.07%)

Note:

- Item 1 is adjusted according to the inflation rate as represented by CPI(A). In the current review, having regard to the actual circumstances and with reference to the practice adopted in 1993, it is proposed that the amount of PSLA be adjusted upwards by the amount derived from dividing the average amount of compensation for PSLA awarded by the court in personal injuries claims in 2013 by the estimated number of months of compensation received by pneumoconiosis and mesothelioma sufferers.
- Items 2 - 4 are adjusted according to the inflation rate as represented by CPI(A).
- Item 5 is adjusted according to the minimum allowable monthly wage and food allowance for a foreign domestic helper.

**Proposed changes in the levels of compensation under ODCO and
the financing limits for HADs
(Items 1- 2 rounded to the nearest \$10)**

Items under ODCO	Existing Level (\$)	Proposed Level (\$)	Changes (\$)
1. Maximum sum for calculating the amount of compensation for permanent incapacity			
- Age under 40 (multiplying factor: 96)	2,263,680	2,502,720 (26,070 x 96)	+239,040 (+10.56%)
- Age 40 to under 56 (multiplying factor: 72)	1,697,760	1,877,040 (26,070 x 72)	+179,280 (+10.56%)
- Age 56 or above (multiplying factor: 48)	1,131,840	1,251,360 (26,070 x 48)	+119,520 (+10.56%)
2. Minimum sum for calculating the amount of compensation for permanent incapacity	386,110	426,880	+40,770 (+10.56%)
3. Financing limit for first-time HAD applications	12,000	15,000	+3,000 (+25%)
4. Aggregate financing limit for HADs	36,000	52,000	+16,000 (+44.44%)

Note:

- Items 1 - 2 are adjusted according to the wage movement as represented by NWI.
- For item 1, it is proposed in the current review that the ceiling of monthly earnings for calculating compensation for permanent total incapacity under ECO be increased to \$26,070. With reference to the age of the claimant at the time of application, the maximum sum for calculating the amount of compensation for permanent incapacity under ODCO will also be correspondingly adjusted upwards. Under ODCO, the amount of compensation payable to a claimant is calculated based on his/her monthly earnings, age at the time of application and the percentage of permanent incapacity.
- The financing limit at item 3 is proposed to be adjusted according to the experience of ODCB in administering the HAD financing scheme and the information provided by ODCB.
- The financing limit at item 4 is proposed to be adjusted with reference to the estimated average annual HAD expenses of an OD person and the biennial review timeframe.