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**Panel on Manpower**

**Background brief prepared by the Legislative Council Secretariat  
for the meeting on 18 November 2014**

**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 provides background information and summarizes the discussions of the Panel on Manpower ("the Panel") on the Administration's last review of and revision to 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").

**Background**

2. ECO provides for the payment of 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. ODCO provides for the compensation and other benefits of persons who have been exposed to noise in their working environment and have suffered noise-induced deafness.

3. In accordance with the established mechanism, the Administration reviews the levels of compensation provided for under the above three Ordinances every two years. Broadly speaking, adjustments are made mainly in the light of the wage movement as reflected by the Nominal Wage Index ("NWI") and price movement as reflected by the Consumer Price Index (A) ("CPI(A)") in the intervening years.

4. Last revision to the levels of relevant compensation items under ECO, PMCO and ODCO was made in 2012.

## **Past discussions of the Panel**

### Adequacy of adjustment to the levels of compensation

5. At its meeting on 20 January 2012, the Panel was briefed on the proposal to increase the amount of a total of 10 compensation items under ECO, PMCO and ODCO in line with the findings of the biennial review covering 2009 and 2010 on the levels of compensation under the three Ordinances. Members considered that the proposed 1.48% increase in the compensation level for the relevant items was far from sufficient and the proposed adjustment of compensation levels failed to reflect accurately the latest price movement. It was necessary for the Administration to take into account the impact of statutory minimum wage ("SMW"), which was implemented in May 2011, on the wage and price movements in its review of the compensation levels under the three Ordinances.

6. On the concern about the proposed adjustments lagging behind inflation, the Administration explained that the level of compensation for the relevant items under ECO was normally adjusted according to the wage movement as reflected by NWI. According to the Census and Statistics Department, the net increase in wage movement for 2009-2010 was 1.48%, and all relevant data were available for analysis in mid-2011. Time was needed to consult the Hong Kong Federation of Insurers ("HKFI"), the Occupational Deafness Compensation Board ("ODCB") and the Pneumoconiosis Compensation Fund Board on the impact of the proposed increase in the levels of compensation under the three Ordinances. Afterwards, the review findings and proposals had to be discussed by the Labour Advisory Board ("LAB").

7. Members noted with concern that the amount of compensation for pain, suffering and loss of amenities under PMCO had remained unchanged for about 13 years, and the daily maximum rates for medical expenses under ECO and PMCO were last revised in April 2003. Some members considered that the maximum amounts of reimbursement for funeral expenses and the daily maximum medical expenses under ECO and PMCO should be raised from \$35,000 and \$200 to \$85,000 and \$500 respectively.

8. As regards the compensation for pain, suffering and loss amenities under PMCO, the Administration advised that the rate was normally adjusted by reference to price changes as reflected by CPI(A). Although the price

movement for 2009-2010 was +3.11%, this was still not short of the cumulative negative change of 6.88% since the last adjustment of compensation levels between 1998 and 2008. Hence, the Administration decided to freeze the level of compensation for this item.

9. Members were further advised that the maximum amount of funeral expenses reimbursable under ECO and PMCO was subject to review every two years by reference to the movement of CPI(A). The rate had been frozen for around 10 years because the increases in CPI(A) over the years had yet to offset the cumulated rates of decrease since the last adjustment in 2000. When setting the maximum level for funeral expenses in 2000, an amount of \$10,000 was added on top of the estimated cremation costs to come up with the \$35,000 maximum level for funeral expenses, taking into account the expenses incurred by people who opted for cinerary urns in the private sector.

10. The Administration further advised that under ECO and PMCO, a claimant who had received medical treatment as a result of a work injury or in connection with pneumoconiosis and/or mesothelioma might 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 hospitalization on any one day in a public hospital or clinic. The daily maximum rates for medical expenses under these two Ordinances were last revised on 4 April 2003 to align with the revision of the fee structure of public healthcare services in 2003. Since then, the charges in public hospitals and clinics for these treatments remained unchanged. The Administration considered appropriate to adopt the charges for public healthcare services as the basis of adjustment.

11. The Administration stressed that the findings of the review and the proposals of increasing the amount of 10 compensation items under the three Ordinances had been discussed and endorsed by LAB. Any changes to the proposals in response to members' concerns had to be re-submitted to LAB for consideration. Consultation with the relevant fund Boards would also be required.

#### Motions passed by the Panel and the Administration's response

12. The Panel passed two motions at the meeting on 20 January 2012 urging the Government to, among others, expeditiously make upward adjustment to the levels of compensation under various occupational compensation ordinances as well as the amounts for rendering compensation and support such as funeral and medical expenses, and raise the maximum amount of funeral expenses to \$85,000.

13. The Administration reverted to the Panel on 23 May 2012 and advised that in view of members' concerns, it had made a special arrangement to conduct a three-year review to take into account the wage and price movements in 2011 and the funeral expenses, and re-visited the changes in the relevant review indicators during the three years (i.e. from 2009 to 2011) for proposing amendments to the compensation levels. Upon completion of the special review exercise, the Administration briefed the Panel on its revised proposal of further increasing the compensation levels of 15 items under the three Ordinances. The Administration stressed that the three-year review was conducted to take into account the very special circumstances brought about by the implementation of SMW in recommending adjustments to the compensation levels. While there was a view that the review of the levels of compensation under the three Ordinances should be conducted annually so that more up-to-date rates of compensation could be determined having regard to the most latest inflation situation, the Administration considered that the long-established practice of conducting review every two years had been working well and would continue to adopt the biennial review cycle in its future review exercises.

#### Adjustment mechanism for the levels of compensation

14. There were divided views over the review mechanism for the levels of compensation. While some members held the view that there should not be any downward adjustments for compensation items under ECO and PMCO, some other members were supportive of the prevailing review mechanism which allowed both upward and downward adjustments of the compensation levels. The Administration explained that while the review mechanism allowed upward and downward adjustments, the Administration would take into account the nature of various compensation items in each review exercise. For instance, some items which involved the purchase of medical equipment or appliances would be adjusted according to price changes as reflected by CPI(A).

15. Some members expressed concern as to whether the Administration would review the lagged-behind adjustment mechanism for the compensation levels so that more up-to-date rates of compensation could be set in future. The Administration advised that under the existing review mechanism which was agreed by LAB, the amount of the compensation items under the three Ordinances were adjusted according to a basket of indicators, including NWI, CPI(A) and other relevant factors. The Administration had been adopting an objective, flexible and evidence-based approach in setting and reviewing the compensation levels of various items and would continue to do so.

#### Review of the employees' compensation system

16. As the existing employees' compensation system was implemented in

1953, the Administration was urged to conduct a comprehensive review of the scope of ECO, in particular, the list of compensable occupational diseases in the Second Schedule to ECO, and introduce improvements to keep pace with the development of the society.

17. Members were advised that the Administration reviewed the scope and levels of compensation under the three Ordinances from time to time and had updated the list of prescribed occupational diseases in the light of international standards. As the employees' compensation system had been based on a no-fault system whereby compensation was payable irrespective of the degree of fault of the parties concerned, in determining the scope and levels of compensation, it was necessary to strike a reasonable balance between the interests of the employers and the employees. Any amendments to the existing system would require consultation with the relevant stakeholders and consensus reached between employers and employees.

18. There was also a suggestion of establishing compensation for pain arising from occupational deafness, the Administration advised that ODCO provided one-off compensation and benefits for people who suffered from noise-induced deafness by reason of their employment. The Administration would continue to adopt an open attitude towards specific proposals to improve ODCO. The Panel passed a motion at the meeting on 20 January 2012 requesting the Government to provide an implementation timetable as well as the relevant details for the establishment of "Compensation for Pain arising from Occupational Deafness" at the next meeting. The Administration subsequently advised that the proposal of establishing monthly compensation for pain arising from occupational deafness differed greatly from the current mechanism of providing one-off compensation under ODCO and ECO, and would need to be considered carefully from all the relevant angles. The proposal had been forwarded to ODCB for a comprehensive and in-depth study. ODCB had set up a working group to study the proposal as well as the issues involved. The Administration undertook to revert to the Panel when there was new development.

#### Economic implication of the upward adjustment

19. A concern had been raised about the impact of the increases in the levels of compensation provided under ECO on the employees' compensation insurance ("ECI") premium. The Administration was urged to assess thoroughly the impact of such upward adjustment when conducting biennial reviews in future.

20. Members were advised that according to the actuarial studies engaged by HKFI, the combined impact of increase in the levels of compensation for the

relevant items under the revised proposals, which were drawn up having regard to the findings of the three-year special review, would result in an increase of insurance claims costs by between 0.34% and 2.114% which might in turn translate into an increase of a similar range in the ECI premium. According to the Administration, the insurance industry had launched the Employees' Compensation Insurance Residual Scheme starting from May 2007 with a view to alleviating the difficulties of enterprises, particularly those in high-risk industries, in taking out ECI. The Scheme operated as the market of last resort for employers who were unable to acquire ECI cover from the open insurance market.

### **Latest developments**

21. At its meeting on 12 September 2014, LAB reached consensus on the Administration's proposal of increasing the levels of compensation for a total of 18 items under the three Ordinances after taking into account the findings of the review for 2012-2013. The Administration will brief members on its proposal at the Panel meeting on 18 November 2014.

### **Relevant papers**

22. A list of the relevant papers on the Legislative Council website is in the **Appendix**.

Council Business Division 2  
Legislative Council Secretariat  
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**Relevant papers on  
Review of the levels of compensation under the Employees' Compensation  
Ordinance, the Pneumoconiosis and Mesothelioma (Compensation)  
Ordinance and the Occupational Deafness (Compensation) Ordinance**

<b>Committee</b>	<b>Date of meeting</b>	<b>Paper</b>
Panel on Manpower	23.2.2010 (Item III)	<u>Agenda</u> <u>Minutes</u>
	20.1.2012 (Item IV)	<u>Agenda</u> <u>Minutes</u>
	23.5.2012 (Item IV)	<u>Agenda</u> <u>Minutes</u>
		<u>LC Paper No.</u> <u>CB(2)2311/13-14(01)</u>