

For meeting  
on 20 December 2016

## **Legislative Council Panel on Manpower**

### **Adjustment 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 Labour Department's proposal to increase the amounts of a total of 18 compensation items under the Employees' Compensation Ordinance (Chapter 282 of the Laws of Hong Kong) (ECO), the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Chapter 360 of the Laws of Hong Kong) (PMCO) and the Occupational Deafness (Compensation) Ordinance (Chapter 469 of the Laws of Hong Kong) (ODCO).

#### **Background**

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 for the payment of compensation to persons who suffer from noise-induced deafness (hereinafter referred to as "OD persons") by reason of employment in the noisy occupations specified under the Ordinance.

3. According to the established mechanism, the levels of compensation under ECO, PMCO and ODCO are adjusted every two years where appropriate. Broadly speaking, for most of the compensation items, adjustments (if required) to the amounts are normally made in the light of the wage movement as reflected by the Nominal Wage Index (NWI) or the price movement as reflected by the Consumer Price Index (CPI)(A) in the relevant period. The amounts of some compensation items (e.g. compensation for care and attention under PMCO and minimum monthly earnings under ECO, etc.) are adjusted having regard to other relevant factors.

## **Proposed adjustments**

4. Based on the relevant information for 2014 and 2015, we propose to adjust the amounts of a total of 18 compensation items under ECO, PMCO and ODCO, comprising 16 items with adjustments proposed in accordance with the established indicators / factors and two items proposed to be adjusted with the adoption of CPI(A) as the adjustment indicator starting from the current exercise.

### ***Compensation items to be adjusted according to wage movement***

5. According to the established mechanism, the amounts of the following seven compensation items under ECO and ODCO are to be adjusted having regard to the wage movement as reflected by NWI:-

#### *Five items under ECO*

- (i) ceiling of the monthly earnings for calculating compensation for death and permanent total incapacity;
- (ii) minimum amount of compensation for death;
- (iii) minimum amount of compensation for permanent total incapacity;
- (iv) compensation for employees requiring attention by another person;
- (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.

6. According to the information from the Census and Statistics Department (C&SD), NWI increased by 4.2% and 4.4% in 2014 and 2015 respectively. The cumulative rate of wage movement for 2014-2015 was therefore +8.78%. Details of the calculation are at Note 1 of Annex I.

***Compensation items to be adjusted according to price movement***

7. According to the established mechanism, the amounts of the following seven compensation items under ECO and PMCO are to be adjusted with reference to the price movement as reflected by 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) compensation for pain, suffering and loss of amenities which is a monthly payment payable to all patients until they pass away;
- (vi) compensation for bereavement; and
- (vii) minimum amount<sup>1</sup> of compensation for death.

8. Moreover, under ODCO, any person who has at any time been entitled to compensation for permanent incapacity may apply to the Occupational Deafness Compensation Board (ODCB) for the direct payment or reimbursement of expenses reasonably incurred in the acquisition, fitting, repair or maintenance of hearing assistive devices (HADs)<sup>2</sup>. A total of two compensation items, namely the financing limit for first-time applications for HADs and the aggregate financing limit, were raised by 25% and 44.44% respectively with effect from 5 March 2015. In the last exercise, the Government proposed to examine the financing limits biennially thereafter with a view to enhancing the protection accorded by the HAD financing scheme for OD persons.

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<sup>1</sup> 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.

<sup>2</sup> 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.

9. Starting from the current exercise, with reference to the established mechanism of adjusting the maximum amounts of the costs of supplying, fitting, repairing and renewing a prosthesis or surgical appliance under ECO, we propose to adopt CPI(A), a price movement index as an indicator to, where appropriate, adjust the above two compensation items.

10. According to C&SD, CPI(A) increased by 5.6% and 4.0% in 2014 and 2015 respectively. Hence, the cumulative rate of price movement for the past two years was +9.82%. 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 \$3,690, 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 in the relevant period. The rate of the same benefit items under the CSSA Scheme was adjusted upwards to \$4,085 in 2015.

12. If the relevant CSSA payment rate is adopted, the minimum monthly earnings under ECO should be adjusted upwards to \$4,090 (rounded to the nearest \$10), which is an increase of \$400 or 10.84% over the existing level of \$3,690 (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 another person. This compensation is currently payable in the form of a monthly payment at a rate of \$4,930. The amount is set by reference to the minimum allowable monthly wage and food allowance for a foreign domestic helper working in Hong Kong in the relevant period.

14. In 2015, the monthly cost for hiring a foreign domestic helper was adjusted upwards to \$5,205 (i.e. minimum allowable monthly wage at \$ 4,210 and food allowance at \$995 per month). If this rate is adopted to raise the amount of compensation for care and attention under PMCO, the amount should be increased to \$5,210 (rounded to the nearest \$10), exceeding the present level of \$4,930 by \$280 or 5.68%.

## **Proposal in brief**

15. In sum, in view of the background and relevant information set out in paragraphs 2 to 14 above, 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 increased by 8.78% in accordance with the wage movement reflected by NWI in the period from 2014 to 2015 (paragraphs 5 to 6);
- (b) the levels of compensation for three items under ECO, four items under PMCO and two items under ODCO be increased by 9.82% according to the price movement reflected by CPI(A) in the period from 2014 to 2015 (paragraphs 7 to 10);
- (c) the amount of minimum monthly earnings for the calculation of compensation under ECO be increased by 10.84% in accordance with the standard rate and other payments for a single and able-bodied adult under the CSSA Scheme in 2015 (paragraphs 11 to 12); and
- (d) the amount of compensation for care and attention under PMCO be increased by 5.68% based on the minimum allowable monthly wage and food allowance for a foreign domestic helper in 2015 (paragraphs 13 to 14).

## **Economic/Financial Implications**

16. For the current adjustment exercise covering 2014 and 2015, we propose to increase the amounts of a total of nine compensation items under ECO, including an 8.78% increase in the amounts of five items, a 9.82% increase in the amounts of three items and an upward adjustment of the minimum monthly earnings for calculating compensation by \$400. The Hong Kong Federation of Insurers (HKFI) advised that, on advice of its legal advisor, HKFI would not be able to provide an estimate of the impact of the proposed adjustments to the levels of compensation under ECO on the employees' compensation (EC) insurance premium level in light of the requirements of the Competition Ordinance (Chapter 619 of the Laws of Hong Kong)<sup>3</sup>.

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<sup>3</sup> The Competition Ordinance commenced full operation on 14 December 2015.

17. By way of background, in the last adjustment exercise covering 2012 and 2013, we also proposed increasing the amounts of the above nine compensation items under ECO, of which the magnitude of increases of most of the items is comparable to that of the current exercise, including increasing the amounts of five items by 10.56%, increasing the amounts of three items by 8.88% and adjusting upwards the minimum monthly earnings for calculating compensation by \$200. According to the actuarial study engaged by HKFI in 2014, it was estimated that the combined impact of the increases of the amounts of nine compensation items under ECO in the last exercise might result in an increase of EC insurance premium by 0.555% to 1.664%<sup>4</sup>.

18. As for the proposed increases in the amounts of the relevant items under PMCO and ODCO, both the Pneumoconiosis Compensation Fund Board and ODCB advised that the revisions would not have significant financial implications for their Funds.

### **Consultation with the Labour Advisory Board (LAB)**

19. The adjustment proposal was discussed at the LAB meeting held on 29 November 2016. All Members present unanimously supported the proposal as set out in paragraph 15 and requested the Labour Department to submit the proposal to the Legislative Council (LegCo) for scrutiny as early as possible so that the relevant amendments could be passed for early implementation, with a view to providing better protection for injured employees, sufferers of occupational diseases and family members of employees or persons who died of work injuries or occupational diseases.

### **Way Forward**

20. The amounts of a total of 18 compensation items under the above three Ordinances as mentioned in paragraph 15 above may be revised by resolutions of LegCo. We plan to submit an amendment proposal to LegCo by the first quarter of 2017, and subject to its passage, we will implement the revisions as soon as possible.

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<sup>4</sup> Taking an enterprise which is paying an annual EC insurance premium at \$100,000 as an example, the extra EC insurance premium payable per year might lie between \$555 to \$1,664. Nonetheless, the changes in the EC insurance premium payable by individual enterprises would be subject to various factors, including the industries, occupations of their employees and the EC claims history of the enterprises, etc.

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

Labour and Welfare Bureau  
Labour Department  
December 2016

**Annex I**

**Note 1**

*Change in wage rate as reflected by NWI for the period 1.1.2014 to 31.12.2015 is determined as follows:*

Change in NWI for 2014	= +4.2% (i.e. 1.042)
Change in NWI for 2015	= +4.4% (i.e. 1.044)
<b>Change in NWI for 2014-2015</b>	= $[(1 \times 1.042 \times 1.044) - 1] \times 100 \%$
	= <b>+8.78%</b>

**Note 2**

*Change in commodity prices in terms of CPI(A) for the period 1.1.2014 to 31.12.2015 is determined as follows:*

Change in CPI(A) for 2014	= +5.6% (i.e. 1.056)
Change in CPI(A) for 2015	= +4.0% (i.e. 1.04)
<b>Change in CPI(A) for 2014-2015</b>	= $[(1 \times 1.056 \times 1.04) - 1] \times 100 \%$
	= <b>+9.82%</b>

**Note 3**

*Levels of benefits under the CSSA Scheme*

<i>Item</i>	<i>Monthly rate in 2015</i>
Standard rate for an able-bodied adult as a single person	\$2,255
Rental allowance for a single person	\$1,640
Water charges allowance for a single person	\$23.3
Annual Long Term Supplement for a single person	\$166.7
<b>Total</b>	<b>\$4,085</b>

Current minimum monthly rate for calculation of compensation under ECO  
= \$3,690 per month

% change if adjusted according to the relevant benefit levels under the CSSA Scheme in 2015 (rounded to the nearest \$10)  
=  $(\$4,090 - \$3,690) \div \$3,690 \times 100\% =$  **+10.84%**



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

	<b>Items under ECO</b>	<b>Existing Level</b> <b>(\$)</b>	<b>Proposed Level</b> <b>(\$)</b>	<b>Changes</b> <b>(\$)</b>
1.	Ceiling of the monthly earnings (for calculating compensation for death and permanent total incapacity)	26,070	<b>28,360</b>	<b>+2,290</b> (+8.78%)
2.	Minimum amount of compensation for death	375,950	<b>408,960</b>	<b>+33,010</b> (+8.78%)
3.	Minimum amount of compensation for permanent total incapacity	426,880	<b>464,360</b>	<b>+37,480</b> (+8.78%)
4.	Compensation for employees requiring attention by another person	511,770	<b>556,700</b>	<b>+44,930</b> (+8.78%)
5.	Minimum amount of surcharge on late payment of compensation	610	<b>660</b>	<b>+50</b>
	➤ initial surcharge	1,220	<b>1,330</b>	<b>+110</b>
	➤ further surcharge			(+8.78%)
6.	Maximum amount of funeral expenses <sup>5</sup>	76,220	<b>83,700</b>	<b>+7,480</b> (+9.82%)
7.	Maximum amount of the cost of supplying and fitting a prosthesis or surgical appliance	36,430	<b>40,010</b>	<b>+3,580</b> (+9.82%)
8.	Maximum amount of the cost of the repair and renewal of a prosthesis or surgical appliance	110,390	<b>121,230</b>	<b>+10,840</b> (+9.82%)
9.	Minimum monthly earnings (for calculating periodical payments during work injury sick leave)	3,690	<b>4,090</b>	<b>+400</b> (+10.84%)

Note:

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

<sup>5</sup> The maximum amount of funeral expenses was increased by 100% from \$35,000 to \$70,000 in the adjustment which took effect in July 2012; it was further increased to the present level of \$76,220 in the subsequent adjustment which commenced in March 2015. According to the information on charges for funeral services recently collected by the Labour Department, the proposed further increase of the maximum amount of funeral expenses by \$7,480 to \$83,700 in the current exercise should be able to cover reasonable funeral and related expenses for a deceased person. The impact of inflation and the actual circumstances have been taken into account in proposing the level.

**Annex II-2**

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

	<b>Items under PMCO</b>	<b>Existing Level (\$)</b>	<b>Proposed Level (\$)</b>	<b>Changes (\$)</b>
1.	Compensation for pain, suffering and loss of amenities (A monthly payment payable to all patients until they pass away)	4,650	<b>5,110</b>	<b>+460</b> (+9.82%)
2.	Compensation for bereavement	110,390	<b>121,230</b>	<b>+10,840</b> (+9.82%)
3.	Minimum compensation for death (pegged to the amount of compensation for bereavement)	110,390	<b>121,230</b>	<b>+10,840</b> (+9.82%)
4.	Maximum amount of funeral expenses <sup>6</sup>	76,220	<b>83,700</b>	<b>+7,480</b> (+9.82%)
5.	Compensation for care and attention (A monthly payment payable to patients requiring the care and attention of another person)	4,930	<b>5,210</b>	<b>+280</b> (+5.68%)

Note:

- Item 1 to item 4 are adjusted according to the price movement as represented by CPI(A).
- Item 5 is adjusted according to the minimum allowable monthly wage and food allowance for a foreign domestic helper.

<sup>6</sup> The maximum amount of funeral expenses was increased by 100% from \$35,000 to \$70,000 in the adjustment which took effect in July 2012; it was further increased to the present level of \$76,220 in the subsequent adjustment which commenced in March 2015. According to the information on charges for funeral services recently collected by the Labour Department, the proposed further increase of the maximum amount of funeral expenses by \$7,480 to \$83,700 in the current exercise should be able to cover reasonable funeral and related expenses for a deceased person. The impact of inflation and the actual circumstances have been taken into account in proposing the level.

**Annex II-3**

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

<b>Items under ODCO</b>	<b>Existing Level (\$)</b>	<b>Proposed Level (\$)</b>	<b>Changes (\$)</b>
1. Maximum sum for calculating the amount of compensation for permanent incapacity			
- Age under 40 (multiplying factor: 96)	2,502,720	<b>2,722,560</b> (28,360 x 96)	<b>+219,840</b> (+8.78%)
- Age 40 to under 56 (multiplying factor: 72)	1,877,040	<b>2,041,920</b> (28,360 x 72)	<b>+164,880</b> (+8.78%)
- Age 56 and above (multiplying factor: 48)	1,251,360	<b>1,361,280</b> (28,360 x 48)	<b>+109,920</b> (+8.78%)
2. Minimum sum for calculating the amount of compensation for permanent incapacity	426,880	<b>464,360</b>	<b>+37,480</b> (+8.78%)
3. Financing limit for first-time HAD applications <sup>7</sup>	15,000	<b>16,470</b>	<b>+1,470</b> (+9.82%)
4. Aggregate financing limit for HADs <sup>8</sup>	52,000	<b>57,110</b>	<b>+5,110</b> (+9.82%)

Note:

- Item 1 and item 2 are adjusted according to the wage movement as represented by NWI.
- Item 3 and item 4 are proposed to be adjusted according to the price movement as represented by CPI(A).

<sup>7</sup> The first-time financing limit for the acquisition, fitting, repair or maintenance of HADs has recently been increased by 25% to the present level of \$15,000 with effect from March 2015.

<sup>8</sup> The aggregate financing limit for the acquisition, fitting, repair or maintenance of HADs has recently been increased by 44.44% to the present level of \$52,000 with effect from March 2015.