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**Panel on Manpower**

**Background brief prepared by the Legislative Council Secretariat  
for the meeting on 20 December 2016**

**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 provides background information on the Administration's review of 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") (hereinafter referred to as "the three Ordinances"), and highlights the major views of the Panel on Manpower ("the Panel") on the subject.

**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 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 the three Ordinances are reviewed every two years. Adjustments are

generally made in the light of the wage and price movements as well as other relevant factors in the review period. The last review was conducted in 2014.

## **Deliberations of the Panel**

### Adjustment mechanism for levels of compensation

4. Some members considered that instead of making adjustment to the levels of compensation items with reference to the price and wage movements, the Administration should take into account the actual needs of the eligible claimants in proposing adjustments so as to ensure adequate compensation and protection for employees.

5. The Administration advised that based on the 2014 review findings, upwards adjustment was proposed to the compensation items with reference to the established indicators including the Nominal Wage Index ("NWI"), the Consumer Price Index (A) ("CPI(A)"), benefits provided under the Comprehensive Social Security Assistance ("CSSA") Scheme and the monthly wage and food allowance for a foreign domestic helper as appropriate. Besides, the Administration suggested making special adjustment to three compensation items, i.e. the amount of monthly compensation for pain, suffering and loss of amenities ("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; the financing limit for first-time hearing assistive devices ("HAD") applications under ODCO be increased by 25% from \$12,000 to \$15,000; and the aggregate financing limit for HADs be increased by 44.44% from \$36,000 to \$52,000, with reference to the experience of the Occupational Deafness Compensation Board ("ODCB") in administering the HAD financing scheme.

6. Some members expressed grave concern that in the light of the biennial review of the levels of compensation under the three Ordinances, the adjustment lagged behind the actual economic situation. They called on the Administration to consider reviewing the levels of compensation on an annual basis so as to ensure that the payments of statutory compensation and other benefits to eligible claimants could catch up with the inflation.

7. The Administration explained that the existing review mechanism for the levels of compensation under the three Ordinances was agreed by the Labour Advisory Board ("LAB"). The review exercise involved some necessary procedures, notably, collation of latest statistics in relation to the wage and price movements in the review period, including NWI, CPI(A), benefits provided

under the CSSA Scheme and other relevant factors, as well as consultation with the relevant stakeholders, including the Hong Kong Federation of Insurers, ODCB and the Pneumoconiosis Compensation Fund Board on the impact of the proposed adjustments to the levels of compensation. Then, the review findings and proposal had to be discussed by LAB prior to submission to the Panel for deliberation. After having secured support from various stakeholders, the Administration would introduce the relevant amendment proposal into the Legislative Council ("LegCo") for approval. The Administration therefore considered the biennial review cycle appropriate.

### Adequacy of levels of compensation

#### *Medical expenses under ECO and PMCO*

8. Some members expressed concern that the daily rate of maximum medical expenses reimbursable under ECO and PMCO, which was \$200, had remained unchanged for a long period of time. The Administration explained 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, i.e. \$200 for receiving outpatient treatment or inpatient treatment on any one day and \$280 for receiving both outpatient treatment and inpatient treatment on the same day. The maximum amounts were set to cover the costs for consultation, medicine, injection and dressing, physiotherapy and hospitalization on any one day in a public hospital or clinic.

9. The Administration further advised that 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 healthcare services in 2003. Since then, the charges in public hospitals and clinics for these treatments had been remained at the same level, and hence a freeze in the daily limits for reimbursement. The Administration considered it appropriate to adopt the charges for public healthcare services as the basis of adjustment.

#### *Compensation for pain arising from occupational deafness*

10. Members noted that under ODCO, an employee was entitled to lump sum compensation according to the degree of his permanent incapacity resulting from noise-induced deafness by reason of employment in specified noisy occupations. To enhance protection for persons suffering from occupational deafness ("OD persons"), some members were strongly of the view that the Administration should make reference to the provision of monthly

compensation for PSLA under PMCO and grant periodic compensation for pain and suffering to OD persons in the light of the sound financial position of the Occupational Deafness Compensation Fund. Some members also expressed concern that the affliction by tinnitus of some OD persons might have certain impact on their daily activities and quality of life. These members called on the Administration to consider introducing measures to alleviate OD persons' affliction by tinnitus.

11. The Administration advised that in March 2012, ODCB set up a study group comprising a specialist in Otorhinolaryngology, an audiologist as well as representatives of employers, employees, ODCB and the Labour Department ("LD") to conduct a comprehensive and detailed study on the proposal of establishing "Compensation for Pain arising from Occupational Deafness". After having reviewed the Occupational Deafness Compensation Scheme and the related employees' compensation system of Hong Kong and made reference to the practices and experience of other places in providing relevant compensation for OD persons, ODCB had reached a consensus that there were insufficient justifications for establishing "Compensation for Pain arising from Occupational Deafness". Notwithstanding this, the Administration and ODCB would keep the subject matter under review. The Administration further advised that a dedicated research committee under ODCB was conducting study on measures to alleviate OD persons' affliction by tinnitus, including acquisition and use of HADs and tinnitus maskers and other follow-up measures. At the request of members, the Administration had provided supplementary information to the Panel in July 2016 reporting the progress of launching measures by the research committee of ODCB to alleviate OD persons' affliction by tinnitus. Members were advised that ODCB had made vigorous efforts in launching tinnitus alleviation measures on various fronts, including aural rehabilitation, social rehabilitation and counselling services.

#### *Financing limits for HADs under ODCO*

12. Noting the Administration's proposal to increase the ceiling of the reimbursable amount for expenses of HADs for first-time application from \$12,000 to \$15,000, some members pointed out that the prices of more sophisticated hearing aids were in the range of \$14,000 to \$16,000. These members considered that the upper limit should be raised to \$16,000 so as to enable OD persons to have a wider choice of HADs.

13. The Administration explained that according to ODCB's record between 2010 and 2013, most first-time applications for HADs involved a claimed amount ranging from \$12,001 to \$15,000. It was thus considered that the proposed financing limit of \$15,000 for first-time applications for HADs should

be able to cater for the needs of the majority of OD persons. The Administration assured members that it would closely monitor the situation and propose upward adjustment as appropriate. The Administration further advised that in order to accord appropriate protection to OD persons under the HAD financing scheme, the reimbursable limits for acquiring HADs had been included as part of the established biennial review of the levels of compensation under the three Ordinances from 2014.

#### *Coverage of rehabilitation services*

14. Some members considered that employees' compensation should cover expenses on rehabilitation services. They suggested that the Administration should study the viability of such arrangement by drawing reference to the experience of neighbouring areas, such as the Mainland and Taiwan. According to the Administration, LD, in collaboration with the insurance industry, launched the Voluntary Rehabilitation Programme in 2003 to provide injured employees with an additional channel to receive free and timely medical and rehabilitation services in the private sector. In addition, an internal working group comprising representatives of the relevant bureaux/departments and organizations had been formed to carry out a study on improving protection for employees in high-risk industries in relation to insurance, compensation for work injuries, therapy and rehabilitation.

#### Review of employees' compensation system

15. As the existing employees' compensation system was implemented in 1953, some members urged the Administration 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.

16. 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, the Administration considered it 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.

**Relevant papers**

17. A list of the relevant papers on the LegCo website is in the **Appendix**.

Council Business Division 2  
Legislative Council Secretariat  
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## Appendix

**Relevant papers on the review of the levels of compensation under  
the Employees' Compensation Ordinance, the Pneumoconiosis and  
Mesothelioma (Compensation) Ordinance and the Occupational Deafness  
(Compensation) Ordinance**

Committee	Date of meeting	Paper
Panel on Manpower	23.2.2010 (Item III)	<a href="#"><u>Agenda</u></a> <a href="#"><u>Minutes</u></a>
	20.1.2012 (Item IV)	<a href="#"><u>Agenda</u></a> <a href="#"><u>Minutes</u></a>
	23.5.2012 (Item IV)	<a href="#"><u>Agenda</u></a> <a href="#"><u>Minutes</u></a>
	--	<a href="#"><u>LC Paper No.</u></a> <a href="#"><u>CB(2)2311/13-14(01)</u></a>
	18.11.2014 (Item V)	<a href="#"><u>Agenda</u></a> <a href="#"><u>Minutes</u></a>
	--	<a href="#"><u>LC Paper No.</u></a> <a href="#"><u>CB(2)1944/15-16(01)</u></a>