

立法會

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Panel on Manpower

**Background brief prepared by the
Legislative Council Secretariat for the meeting on 21 March 2017**

Employees' compensation system

Purpose

This paper gives an account of the major concerns and views expressed by Members at various committees of the Legislative Council ("LegCo") on issues relating to the employees' compensation system.

Background

2. According to the Administration, Hong Kong's employees' compensation system is mainly based on the Employees' Compensation Ordinance (Cap. 282) ("ECO") which adopts the system that individual employers are responsible for their own employees. Specifically, employers are required to provide compensation to their employees who sustain injuries in accidents arising out of and in the course of employment, provided that it can be substantiated that the sufferings are related to the work accidents and have caused temporary and/or permanent loss of earning capacity to the employees. All employers are required to take out employees' compensation insurance ("ECI") policies (commonly known as "labour insurance") with an authorized insurance company to cover their liabilities under ECO and compensation awarded by the court under common law. The existing system also encourages employers to adopt proactive measures to prevent work accidents and reduce risks at work, as the premium rates are determined largely based on the rate of accident and the amount of claim.

Members' past deliberations

Unreported cases of occupational injuries and industrial accidents

3. Some Members noted with concern that there was an increasing number of complaint cases from injured employees that their employers had not

reported work injuries and industrial accidents to the Labour Department ("LD") as required under the law, so as to evade the statutory responsibility of making employees' compensation to the injured employees concerned. On the other hand, some employers, in particular those of the construction industry, had been declined insurance cover or charged with very high premium rates for taking out ECI by insurance companies because of the high-risk work nature and records of making claims for employees' compensation. Hence, these employers had on occasions not reported to LD on work injury cases so as to keep the premium rate at an affordable level. To address the problem, some Members enquired whether the Administration would consider requiring the principal contractor to take out ECI and report to LD on all industrial accidents which took place on its construction sites.

4. The Administration explained that employers were obliged to take out ECI to cover their liabilities under the law and to report work injuries to LD. According to section 15 of ECO, an employer must notify the Commissioner for Labour ("C for L") of any accident within a specified period irrespective of whether the accident had led to any liability to pay compensation. Employers were required to furnish LD with information relating to the accidents. The notice period for fatal cases was seven days while that for non-fatal cases was 14 days. Any employer who, without reasonable excuse, failed to give notice of an accident or make any false or misleading statement or furnish any false or misleading information to LD committed an offence and was liable to a maximum fine of \$50,000. In addition, LD had published leaflets reminding employees to notify their employers immediately after work injuries and the important points to note. Meanwhile, if any injured employees noticed or suspected that their employers had not reported their work injuries to LD, they could contact the Employees' Compensation Division of LD to check whether their employers had done so. According to the Administration, employers in general had submitted the notification of accidents at workplaces to LD unless there were severe disputes on whether the work injuries fell within the ambit of ECO. If there was sufficient evidence supporting a contravention of section 15 of ECO and the employee was willing to serve as a prosecution witness, LD would take out prosecution against the law-defying employer.

5. The Administration further advised that having regard to the allegation of some contractors seeking to deter reporting of accidents by sub-contractors through high administration charges, it had brought the matter to the attention of the Construction Industry Council ("CIC"). It was understood that CIC had issued guidelines to construction contractors on the principle of cost recovery if administration fees were to be charged.

6. With regard to the concerns about difficulties encountered by some employers in taking out ECI, Members were advised that the insurance industry had since 2007 launched the Employees' Compensation Insurance Residual Scheme ("ECIRS") for employers of selected high-risk industries to offer them

the necessary insurance cover. This apart, with the support of the insurance industry, LD launched a safety accreditation scheme for the repair, maintenance, alteration and addition sector in June 2012. Under the scheme, accredited contractors could enjoy premium discount up to 40% when procuring ECI from ECIRS. The scheme received positive response from the industry.

Disputes in work injury compensation claims

7. Members were advised that many cases of late reporting of work injuries involved disputes over the liability for compensation, including disputes on the existence of employment relationship and whether the injury arose out of and in the course of employment. In the event that the injured employees could not recover the employees' compensation from their employers, the compensation claims would have to be determined by the court. Members were concerned that while the injured employees concerned could approach the Legal Aid Department ("LAD") for further assistance, the former would need to undergo a time-consuming legal proceedings and face considerable financial pressure because of having no employees' compensation or income to support their livelihood during the litigation period. Some Members took the view that the Administration should address the problem squarely and consider setting up a central employees' compensation fund to replace the current arrangement of having employers to take out ECI for providing employees' compensation. There was also a view that LD should be empowered in handling disputes between employers and employees over work injury compensation claims.

8. According to the Administration, the employers concerned usually required some time for investigation, clarification, and consultation with their lawyers or insurers before making a work injury report to LD. Nonetheless, most employers would make reports after seeking clarification from LD, and pay employees' compensation in accordance with the legal requirements. The Administration stressed that in case a work injury was in dispute, irrespective of whether the doubt was raised by the employer or the employee, LD would examine the case in detail, explain the relevant provisions of ECO to both parties and collect detailed information related to the accident. Upon collation of all the relevant information, LD would inform both parties about its views on the likelihood and relevance of the case being a work injury. If the dispute was resolved, LD would arrange the employee to attend medical clearance or medical assessment. If not, the employee was entitled to seek adjudication from the court and LD would assist him to apply for legal aid from LAD. The time taken by LD to handle a doubtful work injury case hinged on the facts of the case and the progress of receiving the necessary information.

9. The Administration further advised that LD had since May 2016 enhanced its support service for handling disputes in work injury cases through dedicated follow up, early intervention, proactive contact with employers and employees, and arrangement of face-to-face meetings. The enhanced mode of

service facilitated communication between employers and employees, clarification of issues under disputes and timely resolution of their differences. This helped safeguard the employees' rights and benefits. If the employer refused or delayed the payment of compensation under ECO without reasonable grounds, LD would urge or warn the employer to pay compensation to the employee as soon as possible. LD would also conduct investigation and take out prosecution against the offending employer when there was sufficient evidence.

Improving work injury protection for employees in high-risk industries

10. Noting from the election manifesto of the Chief Executive ("CE") that a special taskforce comprising employees, employers and representative of C for L would be set up to undertake a study on improving protection for workers in high-risk occupations in relation to insurance, compensation for work injuries, therapy and rehabilitation, Members enquired about the work progress of the taskforce.

11. Members were advised that an inter-departmental working group comprised members from relevant bureaux/departments had been formed to undertake the relevant study. Subsequently, the Task Force on Improving Work Injury Protection for Employees in High-risk Industries ("TFWIP") coordinated by LD was set up in February 2016 to explore the proposals put forward by the inter-departmental working group. Three working groups on ECI, case processing and therapy/rehabilitation respectively had been set up under TFWIP to further the discussions, conduct consultations and implement the agreed measures in phases once ready.

Relevant papers

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

Appendix

Relevant papers on employees' compensation system

Committee	Date of meeting	Paper
Legislative Council	7.2.2007	<u>Official Record of Proceedings (Question 11)</u>
Legislative Council	8.12.2010	<u>Official Record of Proceedings (Question 1)</u>
Legislative Council	2.5.2012	<u>Official Record of Proceedings (Question 1)</u>
Panel on Manpower	18.12.2012 (Item IV)	<u>Agenda</u> <u>Minutes</u>
Panel on Manpower	25.1.2013 (Item V)	<u>Agenda</u> <u>Minutes</u>
Panel on Manpower	16.4.2013 (Item V)	<u>Agenda</u> <u>Minutes</u>
Panel on Manpower	28.5.2013 (Item III)	<u>Agenda</u> <u>Minutes</u>
Panel on Manpower	19.11.2013 (Item V)	<u>Agenda</u> <u>Minutes</u>
Panel on Manpower	27.1.2014 (Item IV)	<u>Agenda</u> <u>Minutes</u>
Finance Committee	3.4.2014 (Sixth meeting) (Labour)	<u>Agenda</u> <u>Minutes</u>
Panel on Manpower	15.4.2014 (Item IV)	<u>Agenda</u> <u>Minutes</u>

Committee	Date of meeting	Paper
Panel on Manpower	16.6.2015 (Item IV)	<u>Agenda</u> <u>Minutes</u> <u>LC Paper No. CB(2)105/15-16(01)</u>
Panel on Manpower	23.1.2017 (Item III)	<u>Agenda</u>
Legislative Council	22.2.2017	<u>Official Record of Proceedings</u> <u>(Question 21)</u>

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