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Panel on Manpower

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for the meeting on 7 January 2021**

Levels of compensation/payment under employees' compensation-related ordinances and extension of employees' compensation protection to employees commuting to or from work under "extreme conditions"

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") ("the three Ordinances"), and summarizes the major views of various committees of the Legislative Council ("LegCo") on the subject. This paper also gives a brief account of the concerns recently raised by members on the protection of employees commuting to or from work under adverse weather conditions.

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 2018.

Deliberations of Members

Adjustment mechanism for levels of compensation

4. Some members considered that instead of making adjustment to the levels of compensation items under the three Ordinances 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 apart from upward adjustments to the amounts of most compensation items with reference to the established indicators including the Nominal Wage Index ("NWI") and the Consumer Price Index (A) ("CPI(A)"), special adjustments were also proposed to the amounts of certain compensation items having regard to the actual needs of the eligible claimants. For instance, the aggregate financing limit for hearing assistive devices ("HADs") under ODCO had been increased by 38.33% from \$57,110 to \$79,000 in 2019. There was also an upward adjustment in the financing limit for first-time HAD applications by 15.36% from \$16,470 to \$19,000. In addition, with reference to the latest sum of damages for bereavement under the Fatal Accidents Ordinance (Cap. 22), the level of bereavement compensation under PMCO was adjusted to \$220,000, representing an increase of 81.47%. Being pegged to the level of compensation of bereavement, the minimum amount of compensation for death under section 5 of PMCO was also revised to \$220,000.

6. Some members expressed grave concern that in the light of the biennial review of the levels of compensation under the three Ordinances, the adjustments lagged behind the actual economic situation and caused considerable financial hardship to the eligible claimants. 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 Comprehensive Social Security Assistance Scheme and other relevant factors, as well as consultation with the relevant stakeholders, including the

Hong Kong Federation of Insurers, the Occupational Deafness Compensation Board ("ODCB") and the Pneumoconiosis Compensation Fund Board ("PCFB") on the impact of the proposed adjustments to the levels of compensation. Thereafter, the review findings and the proposal had to be discussed by LAB prior to submission to the Panel on Manpower for deliberation. After having secured support from various stakeholders, the Administration would introduce the relevant amendment proposal into LegCo for approval. The Administration therefore considered the biennial review cycle appropriate.

Adequacy of levels of compensation

Levels of compensation under ECO and PMCO

8. Some members noted with concern that the monthly earnings of construction workers of specific work types far exceeded the ceiling of monthly earnings (i.e. \$30,530) for the purpose of calculating compensation for death and permanent total incapacity under ECO. These members asked whether the Administration would consider adjusting the ceiling of compensation items further upwards for specific industries, such as the construction industry.

9. The Administration explained that since the statutory employees' compensation mechanism was based on a no-fault system whereby compensation was payable by employers to employees concerned irrespective of any fault of the parties and the industries concerned, it was necessary to strike a reasonable balance between the rights and benefits of employees and the affordability of employers. Adjustment to the ceiling of the monthly earnings for calculating compensation for death and permanent total incapacity under ECO had been made in the light of the wage movement as reflected by NWI. This apart, compensation claims could be made to the court for Common Law damages as well. The compensation so determined by the court would not be subject to the limit as stipulated under ECO.

10. Some members expressed concern that the daily rates of maximum medical expenses reimbursable under ECO and PMCO,¹ which were linked to public healthcare service fees and charges, were inadequate for meeting the medical expenses charged by the private healthcare sector. Some members considered that having regard to the sound financial position of PCFB and the fact that the number of the patients concerned was declining, the Administration should consider providing subsidy under the Pneumoconiosis Compensation

¹ The maximum daily rate of reimbursable medical expenses for in-patient or out-patient treatment under ECO and PMCO is \$300 and the maximum daily rate of reimbursable medical expenses for in-patient and out-patient treatment received on the same day is \$370.

Fund to occupational disease sufferers to allow them to seek timely medical treatment in the private healthcare sector and to procure necessary medical appliances. There was also a view that expensive drug such as immunotherapy for mesothelioma treatment should be covered under PMCO and the scope of Pneumoconiosis Compensation Fund should be expanded to include expenses on the above immunotherapy provided in the private healthcare system.

11. The Administration advised that the daily maximum rates for medical expenses under ECO and PMCO were set to cover the costs for consultation, medicine, injection and dressing, physiotherapy and hospitalization, etc. on any one day in a public hospital or clinic. In the absence of a standard fee structure in the private healthcare sector, the Administration considered it appropriate to adopt the charges for public healthcare services as the basis for medical expenses under ECO and PMCO. The Administration also advised that medical expenses payable under PMCO were subject to the maximum rates. However, patients concerned might seek assistance from other charity funds, such as the Brewin Trust under which mesothelioma sufferers could apply for reimbursement of medical expenses on self-financed drugs for mesothelioma treatment.

12. Some members expressed grave concern that breathing apparatus used by patients suffered from pneumoconiosis or mesothelioma was not a reimbursable item under the Second Schedule to PMCO.² In response to members' call for including breathing apparatus in the list of medical appliances, the Administration carried out a relevant study and expanded the list specified in Part II of the Second Schedule of PMCO in 2019 to include two items, namely non-invasive positive pressure ventilation device and sputum suction device.

Financing limit for HADs under ODCO

13. Some members were concerned about the time limit for making applications for HADs and the adequacy of the aggregate financing limit for meeting the recurrent expenses for HADs as well as the financial support for persons suffering from occupational deafness ("OD persons") after they had exhausted the aggregate amount for HADs. These members suggested that consideration should be given to replacing the aggregate financing limit by setting an annual financing limit.

14. The Administration 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

² The listed medical appliances are wheelchair, oxygen concentrator and its accessories, and oxygen cylinder and its accessories.

the levels of compensation under the three Ordinances from 2014 onwards. Notably, the aggregate financing limit for HADs would be adjusted every two years with reference to the price movement as reflected by CPI(A) where appropriate. Having consulted ODCB which administered the HAD financing scheme, the Administration considered that the aggregate financing limit would be able to cater for the needs of OD persons in respect of the acquisition, fitting, repair or maintenance of HADs.

Expenses on rehabilitation services

15. Some members considered that employees' compensation should cover expenses on rehabilitation services so as to facilitate injured employees' speedier recovery and early return to work. These members were concerned whether the Administration would consider expanding the scope of ECO and ODCO to cover expenses on occupational rehabilitation. According to the Administration, public hospitals at present provided a range of comprehensive services, including accident and emergency, outpatient, inpatient and rehabilitation, to employees suffering from work injuries. Those in need would also be referred to receive appropriate follow-up treatment and rehabilitative care (including physiotherapy and occupational therapy). Members were advised that the Labour Department ("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. To further strengthen rehabilitation services for employees injured at work, LD would introduce a three-year pilot programme targeting at injured construction employees to provide private out-patient rehabilitation treatment services for eligible injured employees in a timely and well co-ordinated manner to facilitate their early recovery and return to work. It was the Administration's plan to introduce an amendment bill into LegCo in the 2020-2021 legislative session and launch the Pilot Programme in 2022.

Review of employees' compensation system

16. 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 with a view to covering more work-related diseases, such as sudden death caused by overexertion at work, heat stroke and musculoskeletal disorder.

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, 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. As regards the suggestion to expand the list of prescribed occupational diseases to cover sudden death of employees due to overexertion at work, the Administration considered that the causes of sudden death other than by work accidents in the course of employment were complex and might involve a multitude of factors. Nevertheless, LD had commissioned the Occupational Safety and Health Council to conduct a study on the subject.

18. Some members expressed concern as to whether the Administration would consider expanding the scope of ODCO to cover employees such as bus drivers, employees having to wear headset at work and airport staff working in the apron who were also exposed to noisy working environment.

19. The Administration advised that LD reviewed ODCO from time to time and came up with proposals to enhance the protection accorded by the Ordinance as appropriate. Notably, since 2003 eligible employees of four new specified noisy occupations, including slaughterhouse employees working in the immediate vicinity of electric stunning of pigs for the purpose of slaughter, mahjong parlour workers employed to play mahjong as the main duty, bartenders and waiters working near the dancing area in discotheques, and disc jockeys working in discotheques, had become eligible for compensation for occupational deafness if they met the conditions stipulated under ODCO. The findings of LD's study to assess the sound level of workplaces such as fee collection areas of tunnels, game centres and various kinds of telephone customer service centres did not indicate that noise exposure levels of employees in such workplaces reached the level for developing occupational deafness i.e. daily exposure in a working environment to a sound level at an average of 90 decibel or above for eight hours. Nevertheless, the Administration would closely monitor the situation.

Protection of employees commuting to or from work under adverse weather conditions

20. In view of the massive devastation caused by Super Typhoon Mangkhut in Hong Kong in September 2018, members expressed grave concern about the difficulties for members of the public in resuming work due to the serious disruption of public transport services. Members were advised that the Administration had conducted a review of the Government's mechanism of

handling future super typhoons. In the case of super typhoons (or other natural disasters of a substantial scale), a Steering Committee would be set up under the chairmanship of the Chief Secretary for Administration to oversee the work and planning throughout the preparedness, response and recovery stages. One of the new measures was that the Steering Committee would assess the latest situation and, where necessary, issue an announcement on "extreme conditions" which might include large-scale power outage, extensive flooding or unavailability of public transport. Under "extreme conditions", employees should be advised to stay in their place for another two hours, instead of heading to work (or going out immediately) after cancellation of Typhoon Warning Signal No. 8 ("T8"). Where situation warranted, the Steering Committee would extend the number of hours for resumption of work. In this connection, LD issued the revised "Code of Practice in times of Typhoons and Rainstorms" ("CoP") which provided reference guidelines to employers and employees on the work and resumption of work arrangements in times of adverse weather conditions. While being asked to exercise greater flexibility for resumption of work after typhoon, employers were reminded to reach prior arrangement with employees on work arrangements under typhoons, rainstorm warnings as well as "extreme condition" after super typhoons and other adverse weather conditions.

21. While some members were in support of adopting the newly revised CoP as reference guidelines for employers and employees on the work and resumption of work arrangement under "extreme condition", some other members cast doubt on the effectiveness of CoP as it was not legally binding. These members called on the Administration to enact legislation to better protect employees' rights and benefits in times of adverse weather conditions, in particular the work safety of those employees who were required to perform duties under such conditions as well as the employees' entitlement to absence from work after super typhoons or other natural disasters. It was also necessary to strengthen the protection of labour rights and benefits of employees when travelling between their places of residence and workplaces or working under extreme weather condition.

22. At the meeting of the Panel on Security on 7 May 2019, members were briefed by Mr Alvin YEUNG on his proposed Member's Bill which sought to, among others, amend ECO to the effect that an employer would be liable if his/her employee be victim to an accident which arouse from the employee's commuting to work or from work within the duration of a state of disaster. At the meeting of the Panel on Manpower on 25 June 2019, members were briefed by Mr LUK Chung-hung on his proposed Member's Bill which sought to, among others, amend ECO to prescribe the employer's liability for compensation for death or incapacity resulting from accidents during the suspension of work, and extend the time span of commuting to work that

entitled to the compensation of injury to four hours before and after a gale or rainstorm warning and a period of suspension of work in force.

23. Members noted the Administration's view that there was no genuine need to legislate on disastrous situations and introduce an across-the-board legislation governing work arrangements under "extreme conditions" as the Steering Committee would enhance the coordination of resources and implement the new arrangements for resumption of work after super typhoons. Given the diversity in nature and requirements of different jobs in various trades and industries, the Administration considered it more pragmatic to adopt a flexible approach in drawing up the work arrangements for adverse weather conditions between employers and employees, instead of across-the-board arrangement. LD would strengthen its promotional work among employers and promotional activities through various channels in order to remind employers to implement reasonable and practicable measures for employees having regard to their actual circumstances.

24. Some members expressed concern about the protection of employees who were required to work under adverse weather conditions, in particular the insurance coverage for injury or death caused by accidents when travelling to their workplaces. According to Administration, under ECO, an accident was deemed to arise out of and in the course of employment if an employee sustained an injury or died as a result of an accident when T8 or above or a Red/Black Rainstorm Warning was in force, while travelling from his place of residence to his place of work by a direct route within a period of four hours before the time of commencement of his working hours for that day, or from his place of work to his place of residence within a period of four hours after the time of cessation of his working hours for the day. Under these circumstances, the employer was liable to pay compensation under ECO.

Relevant papers

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

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)	Agenda Minutes
	20.1.2012 (Item IV)	Agenda Minutes
	23.5.2012 (Item IV)	Agenda Minutes
	--	LC Paper No. CB(2)2311/13-14(01)
	18.11.2014 (Item V)	Agenda Minutes
	--	LC Paper No. CB(2)1944/15-16(01)
	20.12.2016 (Item IV)	Agenda Minutes
	18.7.2017 (Item III)	Agenda Minutes
Subcommittee on Proposed Resolutions under Construction Industry Council Ordinance and Pneumoconiosis and Mesothelioma (Compensation) Ordinance	--	Report
House Committee	4.10.2018 (Item I)	Agenda Minutes

Committee	Date of meeting	Paper
Panel on Manpower	18.12.2018 (Item V)	Agenda Minutes
Panel on Security	7.5.2019 (Item IV & V)	Agenda Minutes
Panel on Manpower	25.6.2019 (Item IV)	Agenda Minutes CB(2)104/19-20(01)

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