

LegCo Panel on Financial Affairs

**Summary of views relating to employees' compensation insurance
expressed at the special meetings on
15 and 22 March 2003 and written views submitted to the Panel**

1. Employees' compensation (EC) insurance

(a) Soaring premium and refusal to underwrite

For the shipping industry, EC plus third party insurance premiums have increased 2-3 folds from 2002 to 2003, although waterborne cargo-related accidents have reduced from 520 in 1999 to 421 in 2001. Also, there has been a 50-150% rise in premium for each barge vessel. Protection and Indemnity (P&I) premium no longer includes employee compensation premium for crewmen. EC premium for crewmen are now calculated on a per head basis of \$30,000 per crewman. There has also been a 185% rise in deductibles for employee compensation insurance, from \$3,500 to \$10,000 per incident. The deductibles for P&I insurance has also risen by 50%.

For concrete mixer truck operators, premiums for substitute drivers have become so high to be affordable by the employers (8.3% of the drivers' annual income).

Some employers request truck drivers to change to self-employed status whilst continuing to be bona fide employees. The drivers may thus be deprived of any protection in the event of an accident.

For certain industries regarded as high risk industries by insurance companies, e.g. the commercial diving industry, the construction industry, the electrical and mechanical industry etc., they are faced with substantial increase in premiums or even refusal of insurance coverage.

(b) Delaying tactic in renewal of policy

Many business operators are notified of the premium for renewal of policy only 1 to 2 days before the expiry of the existing one, making it difficult to find an alternative insurer.

(c) Collusion/sharing of customer information by insurance companies

Collusion/sharing of customer information by insurance companies has resulted in unreasonably high premiums and collective refusal of insurance coverage.

(d) Lack of transparent mechanisms for determining risk level and premiums

(e) Double liability for common law claims and statutory benefits claims

There is a suggestion of restricting employees who have suffered injury to elect pursuing either statutory benefits or common law damages, as in the case of Singapore.

(f) Escalating trend of damages for compensation awarded by the court for employees' claims

(g) Granting of legal aid to mainland workers

The granting of legal aid to mainland workers involved in industrial accidents has caused the increase in EC and hence rise in premiums.

(h) Setting up a centralized employees' compensation system

Such a system may be financially viable and will help stabilize EC premiums, which are currently much affected by the investment performance of insurance companies.

2. Other views

(a) A survey of mortgaged property owners who had taken out fire insurance has revealed that most of the insurers had determined the premium on the basis of the mortgage loan amount when in fact the redevelopment cost could also be based on. In many cases, determining the premium on the basis of the redevelopment cost would result in a substantially reduced premium.

(b) For the construction industry, it is proposed that the Government Terrorism Facility Charge (GTFC) be abolished. Partial repayment of premiums for construction projects with no major insurance claims is also suggested. It is also proposed that construction workers be made to take out insurance coverage for themselves.

- (c) The Law Society of Hong Kong expressed concerns on the escalating trend of damages for compensation awarded by the court both for employees claims and for other personal injury litigations. The Law Society also believed that there was evidence of inconsistency of awards by the courts, inflation of claims for loss of earnings and the use of statistics produced by the Census and Statistics Department which were allegedly out of date. These indicated an increase in wages and earnings in areas where they would not otherwise be expected such as the construction industry. The Law Society also noted that changes in the Employees Compensation Ordinance had resulted in families being able to claim compensation without the need first to prove dependency upon the deceased workman. This had led to an increase in court awards well above the level previously experienced.

3. Views expressed by the insurance industry

- (a) The Hong Kong Federation of Insurers emphasized that the remedy lay in improving the business environment of the insurance industry. This would be achieved by promoting industrial and road safety, thus minimizing losses in the aftermath. The Federation had commissioned an independent study entitled "Review of Employees' Compensation System in Hong Kong" with a view to identifying the causes for the deterioration in the claims experience in employee's compensation business, and recommending remedies to tackle the problem. The Panel on Manpower discussed the report on the study at its meeting on 19 April 2001. The Administration was urged to re-examine the recommendations put forward by the association.
- (b) Noting the huge losses suffered by the insurance industry attributed to the substantial increase in common law damages and statutory benefits, some representatives from the insurance industry suggested that the Administration review the level of statutory benefits and the need for setting an upper limit on damages. They also suggested that the legislation be reviewed to provide for only one type of the claims. They noted that in other countries like Singapore, employers were only liable to either type of claim, ie. common law claim or statutory benefits claim.
- (c) On the viability of a central insurance compensation fund, the Professional Insurance Brokers Association Limited opined that central funds had been instigated in other countries almost always with the result that the problem was ultimately passed back to the

free market to solve. A central fund eliminated the element of competition and so prevented innovation by insurers and others in finding ways of solving the problem. If any central funds were deemed to be desirable, they should be designed and administered by insurance professionals in the private sector, similar to The Motor Insurers' Bureau of Hong Kong and the Employee Compensation Insurer Insolvency Bureau, and should not be administered by Government.

4. Concerns expressed by Members

- (a) Members expressed concerned on whether the significant rise in premium rates was commensurate with the trend of the relevant risks.
- (b) Members opined that the Administration should take urgent measures to tackle the problem which affected a wide spectrum of the society, across many different industries and affected the livelihood of a great many. It should not refrain from tackling the problem under the pretext of a free market economy.
- (c) Members expressed concern that while the insurance market was a free one, industry operators were legally bound to obtain mandatory insurance coverage in respect of motor vehicles, employee compensation and third party liabilities.
- (d) The idea of a central compensation fund for injured workers was also raised.
- (e) Members agreed that some of the issues raised involved important policy issues and might straddle across the purview of two or more Policy Bureaux. It would be appropriate to bring the issues to the attention of the relevant Policy Secretaries such that the issues/problems could be tackled through collaborative efforts among the Policy Bureaux concerned.