

**Business Facilitation Advisory Committee
Food Business and Related Services Task Force**

***Requirements under the Employees' Compensation Ordinance
and Measures for Good Labour Relations***

Purpose

This paper briefs members on the requirements under the Employees' Compensation Ordinance (including employees' compensation insurance) and measures for good labour relations.

Employees' Compensation Ordinance

Liability for Compensation for Work Injury and Occupational Disease

2. The Employees' Compensation Ordinance (Chapter 282) (the Ordinance) applies to all full-time or part-time employees who are employed under contracts of service or apprenticeship. As stipulated by the Ordinance, if an employee sustains an injury or dies as a result of an accident arising out of and in the course of his employment, his employer is in general liable to pay compensation under the Ordinance even if the employee might have committed acts of faults or negligence when the accident occurred.

3. Besides, the Second Schedule of the Ordinance specifies the occupational diseases covered by the Ordinance and its prescribed period. An employee suffering incapacity arising from an occupational disease covered by the Second Schedule of the Ordinance is entitled to receive the same compensation as that payable to an employee injured in an accident arising out of and in the course of employment, if the disease is one due to the nature of certain occupation in which he was employed at any time within the prescribed period immediately preceding the incapacity caused. Notwithstanding the above, an employee may still claim compensation under the Ordinance for a disease outside the Second Schedule if it is certified to be a personal injury by accident arising out of and in the course of employment.

Notification of Accident and Prescribed Occupational Disease

4. The Ordinance stipulates that an employer must notify the Commissioner for Labour in the manner required by the Ordinance of any accident or prescribed occupational disease irrespective of whether the accident or the occupational disease gives rise to any liability to pay compensation. If an employer is in doubt about the cause of the employee's injury or sick leave or cannot reach a decision over the

admission of liability for the concerned accident or occupational disease, he should inform the Labour Department (LD) of his query and relevant information when submitting the above notification to LD. The Employees' Compensation Division of LD would then tender advice and assistance as appropriate. However, LD does not have the authority to make adjudication on any dispute of the case. If the employer and the employee could not reach any settlement with the assistance of LD, the case shall be determined by the Court.

Compulsory Employees' Compensation Insurance

5. According to the Ordinance, no employer shall employ any employee in any employment unless there is in force a policy of insurance to cover his liabilities under the laws (including the common law) for injuries at work in respect of all his employees, irrespective of the length of employment contract or working hours, full-time or part-time employment.

6. The employer should take note of the minimum insurance cover¹ specified in the Ordinance when taking out employees' compensation insurance. The minimum amount of insurance cover specified in the Ordinance is not the maximum liability that the party concerned is required to bear under the laws (including the common law). The party concerned should therefore carefully assess the possible risk and consult insurers for professional advice on whether an insurance policy for an amount more than the minimum under the Ordinance should be taken out.

7. An employer may take out an employees' compensation insurance policy directly from an insurance company authorised to carry on employees' compensation insurance business in Hong Kong or approach an insurance intermediary (insurance agent or insurance broker) for arrangement. Since 1 May 2007, the insurance industry has put in place the Employees' Compensation Insurance Residual Scheme as a market of last resort to assist employers who have difficulties in obtaining employees' compensation insurance cover, with a view to ensuring that employers are able to acquire employees' compensation insurance. If an employer has difficulties in taking out employees' compensation insurance, he may contact the Compensation Insurance Residual Scheme Bureau for more information (www.ecirsb.com.hk).

Good Labour Relations

8. LD proactively enhances the public understanding of the Employment Ordinance (Chapter 57) (EO) as well as promotes employee-oriented and progressive good human resource management (GHRM) culture and practices through a wide range of publicity activities, with a view to fostering harmonious labour relations.

¹ If the number of employees is not more than 200, the amount of insurance cover per event is not less than \$100 million; if the number of employees is more than 200, the amount of insurance cover per event is not less than \$200 million.

9. LD has all along been promoting GHRM practices by adopting a three-pronged strategy targeting the community, enterprise and industry levels, including organising roving exhibitions, seminars and talks, producing relevant publications and promotional items, and discussing and sharing with members of nine industry-based Tripartite Committees (TCs) and 18 Human Resources Managers' Clubs of various trades and industries, etc. Taking the catering industry as an example, in collaboration with the TC on Catering Industry, LD re-edited the publication on "Good Human Resource Management of the Catering Industry – A Guide to Recruitment and Using Written Employment Contract" in 2018. Guidelines on good recruitment procedures and case studies were added to advocate the industry to formulate GHRM policy in recruitment. In November 2019, LD issued the updated booklet "Do's and Don'ts – When Wage Reductions and Retrenchments are Unavoidable" and "Points to note for restaurants on supply of labour by service contractors" to members of the TC on Catering Industry to remind employers and employees of the industry of their obligations as well as rights and benefits under EO.

10. In face of economic adversities, employers may cut the operating costs for maintaining the business. No pay leave, wage reduction or retrenchment, however, is not the only way to save costs. Enterprises should first consider other cost-saving or revenue-generating alternatives. If it is necessary for employers to arrange employees to take no pay leave due to business needs, employers should have prior consultation and frank dialogues with employees, taking into consideration the needs of individual employees, so as to reach mutually agreeable arrangements and maintain harmonious employment relations. Employers and employees should note the provisions on lay-off under EO.² In the event that wage reduction is inevitable, obtaining prior consent of employees is a must. If staff reduction has become unavoidable, employers should make every attempt to do so through natural wastage or voluntary exit schemes instead of retrenchment. When dealing with such situations, employers should let their employees understand the problems of the company and explain to them the reasons for wage reduction or retrenchment, in order to get through tough times together.

² Under EO, if an employee is employed on such terms and conditions that his remuneration depends on his being provided by the employer with work of the kind he is employed to do, he shall be taken to be laid off if the total number of days on which no work is provided and no wages are paid exceeds:

- (a) half of the total number of normal working days in any four consecutive weeks; or
- (b) one-third of the total number of normal working days in any 26 consecutive weeks.

The days of lock-out, rest days, annual leave and statutory holidays should not be counted as normal working days during the above periods. An employee who has been employed for not less than 24 months under a continuous contract is eligible for severance payment in the event of lay-off. An employee who has been employed continuously by the same employer for four weeks or more, with at least 18 hours worked in each week, is regarded as being employed under a continuous contract.

Way Forward

11. Members are invited to note the contents of this paper.

**Labour Department
July 2020**

計劃目的

為未能購買僱員補償保險的僱主提供後援市場，特別是以下**高風險行業**的僱主：

Objective

To act as a market of last resort to assist employers who have difficulties finding ECI cover, especially employers of the **High Risk Groups (HRGs)** listed below:

- | | | |
|--|-----------------------|------------------------------------|
| 1. 冷氣機安裝工人/維修工人
Air Conditioner Installation Workers/Repairers | | |
| 2. 從事爆破
Blasting | 3. 清潔
Cleaning | 4. 吊機操作員
Crane Operators |
| 5. 建築物清拆工作
Demolition Work | 6. 潛水
Diving | 7. 修渠工人
Drain Repairers |
| 8. 搬泥
Earth Removal | 9. 挖泥
Excavation | 10. 填土及堆填
Filling & Reclamation |
| 11. 吊船工人/抹窗工人
Gondola Workers/Window Cleaners | | |
| 12. 物流/運輸
Logistics/Transportation | | |
| 13. 霓虹燈箱安裝工人/維修工人
Neon Light Signboard Installation Workers/Repairers | | |
| 14. 回收
Recycling | 15. 搭棚
Scaffolding | 16. 船隻維修工人
Ship Repairers |
| 17. 紮鐵及鋼架工程
Steel Bending & Erection | | 18. 高空作業工人
Steeplejacks |
| 19. 碼頭裝卸工人
Stevedores | | 20. 隧道工程
Tunnelling |
| 21. 掘井工人及鑽井工人
Well Sinkers and Borers | | |
| 22. 在內河商船上工作人士
Workers on board Launch/River Trade Vessel | | |

僱員補償聯保計劃 Employees' Compensation Insurance Residual Scheme

查詢 Contacts

合資格僱主如欲申請投保或查詢，請與「管理局」聯絡如下：

Qualified employers who wish to make applications under the Scheme or raise enquiry can contact the ECIRSB at:

地址：香港灣仔駱克道353號三湘大廈29樓

電話：2591 9316

圖文傳真：2591 6962

電郵：administrator@ecirsb.com.hk

網頁：www.ecirsb.com.hk

Address: 29/F, Sunshine Plaza, 353 Lockhart Road,
Wanchai, Hong Kong

Tel: 2591 9316

Fax: 2591 6962

E-mail: administrator@ecirsb.com.hk

Website: www.ecirsb.com.hk



2018年2月
February 2018



僱員補償聯保計劃 Employees' Compensation Insurance Residual Scheme

計劃架構

1. 僱員補償聯保計劃管理局有限公司(「管理局」)由所有在本港經營僱員補償保險業務的保險公司組成(約60家)。
2. 15家經營僱員補償保險業務的保險公司組成理事會，負責管理是項計劃。
3. 顧問委員會就各種與成立計劃有關的事宜提供意見。顧問委員會成員包括：保險業監管局、勞工處、職業安全健康局、立法局議員、僱主聯合會、法律界、會計界、再保公司、保險中介人，以及香港保險業聯會的代表組成。
4. 核保委員會和索償委員會分別制定核保指引和賠償程序。

Structure of the Scheme

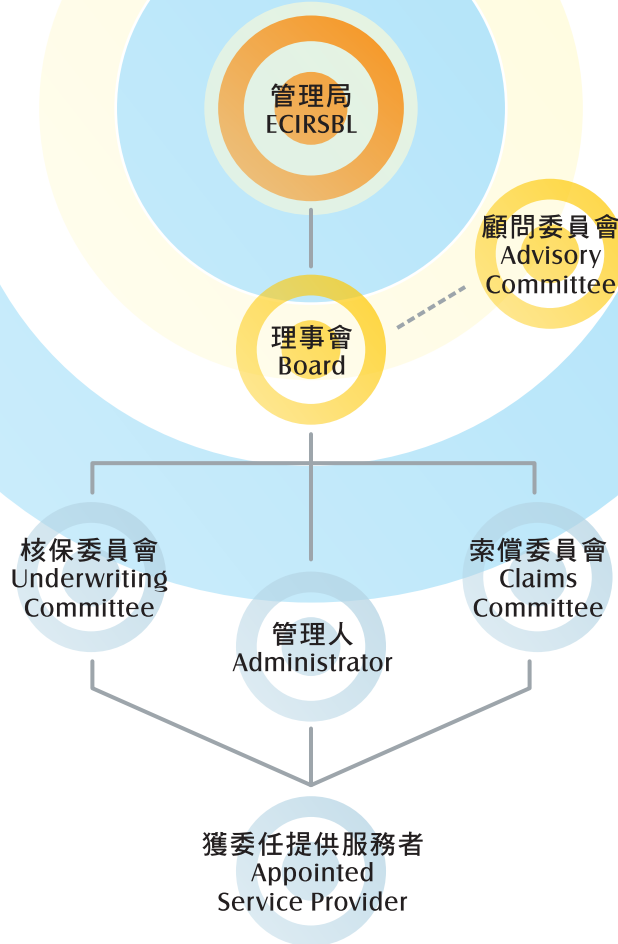
1. All insurers writing EC insurance business (about 60 insurers) are members of the Employees' Compensation Insurance Residual Scheme Bureau Limited (ECIRSBL).
2. The Scheme is supervised by a Board comprising 15 EC insurers.
3. An Advisory Committee consisting of representatives from the Insurance Authority, Labour Department, Occupation Safety & Health Council, legislator, Employers Federation of Hong Kong, lawyer, accountant, reinsurer, insurance intermediary and the Hong Kong Federation of Insurers has been formed to monitor and advise on smooth establishment and operation of the Scheme.
4. An Underwriting Committee and a Claims Committee have been formed to formulate underwriting guidelines and claims procedures respectively.

保費費率基準

保費費率基準是由獨立精算顧問公司參照為提供僱員補償保險所需的基本成本而制訂。

Premium Benchmark

The premium benchmark worked out by an independent actuarial firm represents the basic cost of providing the required insurance cover.



參與該計劃資格

1. 僱主曾被最少三家經營僱員補償的保險公司拒絕其投保申請*；或
2. 僱主雖獲有關保險公司接受承保，惟提供的保費費率報價較是項計劃所訂的高風險行業的相關保費費率基準超出30%或以上。
(僱主申請時必須提供有關保險公司之證明文件。)

* 被拒投保並非由於僱主欠交保費，或者不符合法定職業健康及安全等核保條件。

僱主如何透過計劃獲得承保

1. 收到僱主的投保書及有關文件(「申請書」)。
2. 計劃管理人傳送申請書給所有管理局成員考慮是否承保。
3. 如在兩個工作天內收不到管理局成員回應，計劃管理局會根據核保委員會訂定之保費費率及條款接受僱主投保。
4. 假如所需資料齊備，在收到申請書十個工作天內為僱主提供符合《僱員補償條例》法定要求的最低僱員補償保險保障。

Criteria of entering the Scheme

1. Employers who have been declined insurance cover by at least three EC insurers* ; or
2. In seeking cover, the premium rates quoted by insurers are 30% over the corresponding premium benchmark rates of the relevant HRGs specified by the Scheme. (Employers have to provide written confirmation from the insurers concerned.)

* Provided that the non-availability of insurance is not by reason of the employer failing to pay premiums due or meet statutory requirements on occupational health and safety imposed as a condition of the grant of insurance.

How the Scheme provides cover to employer

1. Receive the employer's proposal form with the required documentation (Proposal);
2. Circulate the Proposal to all Scheme members for consideration of coverage;
3. Accept risk according to the premium and terms prescribed by the Underwriting Committee if no response is received from any Scheme member within two working days;
4. Provide cover to the employer up to the minimum statutory limit under the *Employees' Compensation Ordinance* within ten working days of receipt of the Proposal.