

# **Information about the Surcharge Payable by Employers for Failure to Take out Employees' Compensation Insurance Policy under Section 36A of the Employees Compensation Assistance Ordinance**

## **Introduction**

The Employees Compensation Assistance Fund ("the Fund") is established under the Employees Compensation Assistance Ordinance (Cap. 365) ("ECAO"). It is administered by the Employees Compensation Assistance Fund Board ("the Board") and is financed mainly by a levy payable by employers under the Employees' Compensation Insurance Levies Ordinance (Cap. 411) when they secure employees' compensation insurance cover.

## **Surcharge Imposed upon Employers for Non-compliance with Compulsory Insurance Provisions**

According to section 40(1) of the Employees' Compensation Ordinance (Cap. 282) ("ECO"), all employers are required to take out insurance policies to cover their liabilities under the ECO and at common law for injuries at work in respect of all their employees or they shall not employ any employee in any employment. An employer who fails to comply with section 40(1) commits an offence and is liable on conviction to a maximum fine of \$100,000 and imprisonment for 2 years. In addition, the employer is also liable to pay a surcharge to the Board under section 36A of the ECAO. Subject to the Prescribed Surcharge in Special Circumstances and the Surcharge upon Repeated Contravention of Compulsory Insurance Provisions set out in the following paragraphs, the amount of surcharge payable by an employer is 3 times the levy payable to the Board under the Employees' Compensation Insurance Levies Ordinance on the insurance premium paid. Where a surcharge is payable by an employer, the Board will issue a written notice ("Demand Notice") to the employer, advising the amount of the surcharge, the grounds therefor and the period within which the employer shall pay the surcharge to the Board, etc.

## **Prescribed Surcharge in Special Circumstances**

### **Category One**

The Board may by a written notice require the employer to furnish within the specified period information which enables the Board to determine the amount of surcharge payable by the employer. If the employer fails to comply with the requirement and the Board is otherwise unable to obtain the necessary information, the employer is liable to pay to the Board a surcharge at the fixed amount prescribed in Schedule 4 of the ECAO (currently \$10,000).

### **Category Two**

Where the employer who has contravened section 40(1) of the ECO in failing to take out employees' compensation insurance policy, but is eventually not required to remedy the contravention by taking out an insurance policy as required in that section due to special reasons (e.g. cessation of operation), the amount of surcharge payable by the employer is the fixed amount prescribed in Schedule 4 of the ECAO (currently \$5,000).

## **Surcharge upon Repeated Contravention of Compulsory Insurance Provisions**

Where an employer has contravened section 40(1) of the ECO and has, within 24 months from the service of the Demand Notice by the Board for the first contravention, again contravened section 40(1) ("second contravention"), the amount of surcharge payable by the employer in respect of the second contravention, shall be 2 times of the surcharge for the first contravention.

## **Reviews and Appeals**

The employer may by written notice ("Review Notice") request the Board to review the amount of the surcharge or the grounds for imposing the surcharge within a period specified in the Demand Notice. The Board will carry out the review as requested and issue a written notice ("Final Notice") to the employer advising the result of the review. An employer who is not satisfied with the determination of the Board on the review may appeal to the District Court.

## **Enquiries**

Enquiries relating to the ECAO or the imposition of surcharge under the said Ordinance can be made to the Secretariat of the Board at:

Address : 33/F, Morrison Plaza, 9 Morrison Hill Road, Wanchai, Hong Kong  
(MTR Causeway Bay Station Exit A, walk to Tin Lok Lane via Russell Street and Wan Chai Road)  
Tel : 2116 5684  
Fax : 2109 0310  
Email : [contact@ecafb.org.hk](mailto:contact@ecafb.org.hk)

## **Point to Note**

The Employees Compensation Assistance Ordinance, the Employees' Compensation Ordinance and the Employees' Compensation Insurance Levies Ordinance are the legal basis for imposition of surcharge set out in this flyer. For the full text of the three ordinances which has been uploaded to the Hong Kong e-Legislation of the Department of Justice, please refer to <https://www.elegislation.gov.hk/?lang=en>.