

# **No Employees' Compensation Insurance – A Big Trouble – Notes for Employers and Employees**

## **P. 1**

**All employers must take out employees' compensation insurance (ECI) or else get into big trouble**

Under **the Laws of Hong Kong** → All employers **when employing** any employee → must take out **ECI**

Irrespective of:

- ✓ Job nature
- ✓ Full-time or part-time employment
- ✓ Permanent or temporary status
- ✓ Duration of working hours
- ✓ Duration of employment contract

of the employee

### **More to know**

Under section 40 of the Employees' Compensation Ordinance (ECO), Chapter 282 of the Laws of Hong Kong, no employer shall employ any employee in any employment unless there is in force a policy of ECI to cover the employer's liabilities under the laws (including common law), irrespective of the duration of employment contract or working hours, full-time or part-time employment, permanent or temporary status.

## P. 2

### **Failure to secure an ECI cover is a criminal offence liable to fine and imprisonment**

#### **An employer who fails to secure an ECI cover for an employee commits an offence and:**

- ✓ is liable on conviction to a **maximum fine of \$100,000** and **imprisonment for two years**
- ✓ shall pay a **surcharge** to the Employees Compensation Assistance Fund Board
- ✓ is still liable to bear the **employees' compensation liabilities** under the laws for the employee who is injured or dies at work or suffers from a prescribed occupational disease

#### **More to know**

An employer who fails to comply with ECO to secure an ECI cover:

- is liable to prosecution and, upon conviction, to a maximum fine of \$100,000 and imprisonment for two years;
- is liable to pay a surcharge to the Employees Compensation Assistance Fund Board under section 36A of the Employees Compensation Assistance Ordinance, Chapter 365 of the Laws of Hong Kong; and
- is still liable to bear the compensation liabilities under the laws (including common law) if his/her employee sustains an injury or dies from an accident arising out of and in the course of employment or suffers from an occupational disease prescribed under ECO.

## P. 3

**Never use a false insurance policy It is a serious criminal offence**

**The following acts are serious offences liable to prosecution:**

- Reproducing an insurance policy for falsification of multiple insurance policies for the purpose of pretending ECI covering employees
- Stealing or misappropriating another person's insurance policy
- Unlawfully modifying the contents of an insurance policy
- Making a false insurance policy or document

### **More to know**

Any intention to deceive and evade the liability of taking out ECI for employees may constitute a breach of the following Ordinances:

(i) Crimes Ordinance (Chapter 200):

- Forgery
- Possession or use of a false instrument  
(The maximum penalty for the offences of forgery, possession of a false instrument or use of a false instrument is imprisonment for 14 years)

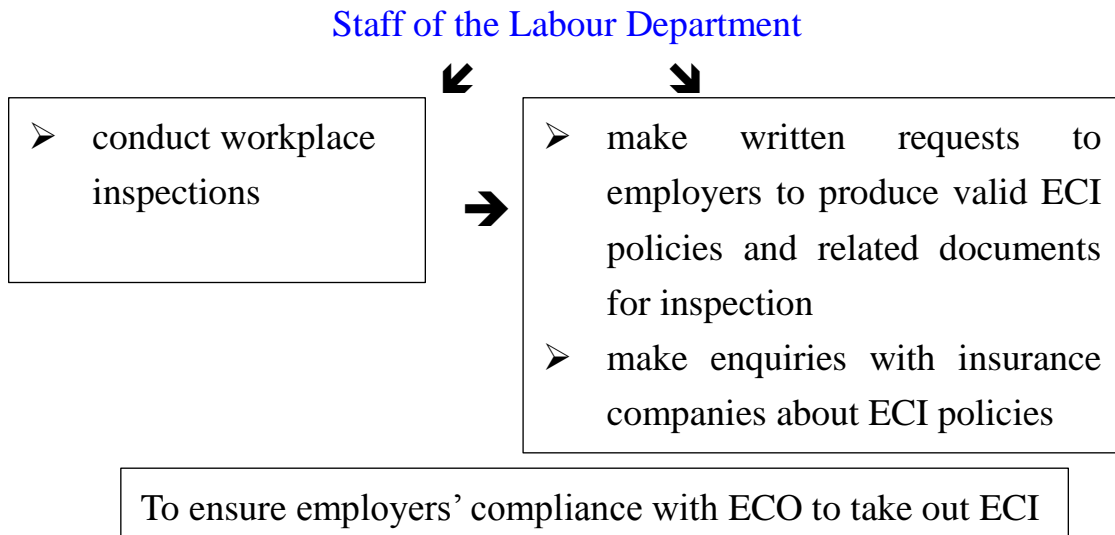
(ii) Theft Ordinance (Chapter 210):

- Fraud  
(The maximum penalty for the offence of fraud is imprisonment for 14 years)

In addition, an employer who fails to take out ECI for his/her employees is liable to prosecution under ECO. The maximum penalty is a fine of \$100,000 and imprisonment for two years.

## P. 4

### Labour Department takes rigorous enforcement actions to ensure employers' compliance with the law



## P. 5

### Enforcement Case 1

- After an inspection to a scaffolding worksite, the staff of the Labour Department detected a suspected case of false ECI policy.
- The Labour Department referred the case to the police for investigation.
- Ultimately, a man was arrested, charged with using a false instrument and sentenced to 120 hours' community service order.

### Enforcement Case 2

- An employee sustained an injury as a result of an accident at work.
- After investigation, the Labour Department found that the employer of the injured employee had failed to take out ECI for the employee as required statutorily. Thus, the Labour Department took out prosecution against the employer.
- The employer was sentenced to six months' immediate imprisonment for contravening ECO by failing to take out ECI for the employee.

\*The above is sourced from real cases and for reference only.

## P. 6

### Enforcement Case 3

- A renovation worker fell from height and sustained multiple injuries while working.
- The Labour Department investigated and found that his employer had failed to take out ECI for him as required by ECO.
- The employer also failed to pay periodical payments to him according to the law.
- The employer was prosecuted and sentenced to two months' imprisonment suspended for 18 months and fined a total of \$42,000.

\*The above is sourced from real cases and for reference only.

## P. 7

### Distinguish between “employees” and “self-employed persons” Getting the status wrong can lead to trouble

You must be aware that

**ECI** only applies to employees

**Contractors or self-employed persons** have to consider taking out adequate coverage of personal accident insurance policies on their own

An employee who suspects that his/her employer **has not taken out ECI** or **does not possess a valid ECI policy**

- can ask for details about ECI from the employer
- should report to the Labour Department as soon as possible

**Complaint hotline: 2815 2200**

## P. 8

### More to know

In distinguishing between an employee and a contractor or self-employed person, all relevant factors have to be taken into account. The common key factors include:

- control over work procedures, working time and method
- ownership and provision of work equipment, tools and materials
- whether the person is carrying on business on his/her own account with investment and management responsibilities
- whether the person is properly regarded as part of the employer's organization
- whether the person is free to hire helpers to assist in the work
- bearing of financial risk over business (e.g. any prospect of profit or risk of loss)
- responsibilities in insurance and tax
- traditional structure and practices of the trade or profession concerned
- other factors that the Court considers as relevant

Before an employee considers changing his/her status to a contractor or self-employed person, he/she must cautiously assess the pros and cons involved, including the employment rights and benefits that he/she may lose in such a change.

If in essence there exists an employer-employee relationship, even though the worker is called a contractor or self-employed person, or has been labelled as a self-employed person in the contract, the employer is still required to fulfil his/her responsibilities under the relevant legislation by paying back statutory benefits retroactively to the worker who is falsely labelled as a self-employed person. Moreover, the employer may be criminally liable under the relevant legislation.

Since the actual circumstances in each case are different, the final interpretation shall rest with the Court in case of a dispute.

## P. 9

### Take out adequate coverage of ECI to bear the risk

**ECI policy** is a written contract made between an employer and an insurance company

**Purpose of ECI** is to **bear employers' risk** of paying employees' compensation for work-related injuries and fatalities

## P. 10

### More to know

ECI cover taken out by an **employer**

	<b>No. of employees in relation to whom the policy is in force</b>	<b>Amount of insurance cover per event</b>
<b>ECI cover to be taken out by an employer</b>	Not exceeding 200	Not less than \$100 million
	Exceeding 200	Not less than \$200 million

ECI cover taken out by a **principal contractor**

- Where a principal contractor has undertaken to perform any construction works, he/she may take out an insurance policy for an amount **not less than \$200 million** per event to cover his/her liability and that of his/her sub-contractor(s) under the laws (including common law).
- The principal contractor of the works and his/her sub-contractor(s) should clearly define their liabilities in this respect in writing.

## P. 11

### **Providing inaccurate ECI information causes heavy compensation burden in return**

Notes for employers

- **Take out ECI for employees** before the commencement of work
- **Process ECI through an authorised insurance company or a licensed insurance intermediary**

### **Remember to provide accurate information to the insurance company when taking out ECI**

**Employment conditions during the validity period of the policy**

- |   |   |
|---|---|
| <ul style="list-style-type: none"><li>➤ E.g. total number of employees, actual earnings, occupations and relevant details</li></ul> | <p><b>Documentary proof</b></p> <ul style="list-style-type: none"><li>➤ E.g. employees' salary records/ mandatory provident fund contribution statements/tax returns and accounting records</li></ul> |
|---|---|

**To make sure that the insurance policy can fully cover the employer's liability under the laws**

**\*If employers have any occupational safety and health improvement measures in place, they should report them to the insurance companies as this may assist them in the related risk assessment and underwriting consideration.**



## P. 12

### **When taking out ECI and during the validity period of, or at the time of expiry or termination of the insurance policy, an employer must**

- report the **required information** to the insurance company; and
- pay attention to the expiry date of the insurance policy and take action to **renew it in advance to avoid loss of protection and contravention of the law** once it lapses.

#### **More to know**

- ECI policy is a written contract made between an employer and an insurance company. The main purpose of ECI is to share employers' risk of paying employees' compensation for work-related injuries and fatalities.
- The registers of the authorised insurance companies and licensed insurance intermediaries can be accessed on the website of the Insurance Authority.
- When taking out ECI, an employer should:
  - ✓ carefully check the details of the insurance policy, and provide true information and the policy holder's personal signature on the proposal form; and
  - ✓ read the contents of the insurance policy carefully to understand its coverage.
- In case of any significant change in the employment conditions (e.g. the number of employees, actual earnings, place of work, occupations or details of posts), the employer should inform the insurance company as soon as possible.
- The employer can ask the insurance company (or insurance intermediary) direct if he/she is unsure whether to disclose a particular piece of information, or has any questions about taking out ECI or the policy terms, such as the information/documents that should be submitted to the insurance company (or insurance intermediary) for taking out/renewing an ECI policy.
- If the employer fails to report the material facts with accurate particulars at the time of taking out/renewing the ECI policy, this may leave the employer open to legal action by the insurer for recovery of monies previously paid by the insurer to indemnify any claim under the policy.

## **Implement occupational safety and health (OSH) measures to enjoy premium discounts on ECI**

### **Employers can implement OSH improvement measures**

- Acquire sufficient and suitable **equipment and relevant facilities that meet safety standards**
- **Provide** staff with various equipment and facilities and **ensure their proper use**
- Ensure **proper maintenance**
- Provide staff with **information, instruction, training and supervision in relation to work safety**
- Establish and implement a safety management system, such as devising **improvement measures** to address the causes of work-related casualties, to prevent recurrence of accidents

**Insurance companies may consider providing special offers on premium!**

#### **More to know**

##### **OSH Star Enterprise - Repair, Maintenance, Alteration and Addition (RMAA) Safety Accreditation Scheme**

The Occupational Safety and Health Council (OSHC), in collaboration with the Labour Department, has launched the “OSH Star Enterprise - RMAA Safety Accreditation Scheme” to help the insurance sector identify safety-conscious RMAA proprietors/contractors so as to consider providing the eligible enterprises with a favourable premium rate when obtaining ECI under the Employees’ Compensation Insurance Residual Scheme. The premium discounts can be as high as 50%.

##### **OSH Star Recycling Enterprise - Recycling Industry Safety and Health Enhancement Scheme**

OSHC has launched the “OSH Star Recycling Enterprise - Recycling Industry Safety and Health Enhancement Scheme” to promote good recycling work safety standards and sustainable development in the industry. It offers ECI premium rebates (up to 2 years) from the Recycling Fund to those employers who have attained OSH Star under the scheme. The rebates can be as high as 60% of the annual ECI premium, subject to a ceiling of \$70,000 per year.

Employers can contact OSHC (Tel: 2739 9377/Email: [oshc@oshc.org.hk](mailto:oshc@oshc.org.hk)) if they want to join these Schemes.

## P. 14

### What to do if there are difficulties in taking out ECI?

**The insurance industry in Hong Kong has put in place the Employees' Compensation Insurance Residual Scheme as a market of last resort to assist employers who have difficulties in taking out ECI**

**To ensure that employers are able to acquire ECI**

#### **More to know**

Employers having difficulties in taking out ECI may contact the Employees' Compensation Insurance Residual Scheme Bureau Limited (Tel: 2591 9316/ Email: administrator@ecirsb.com.hk).

## P. 15

### Learn how to check an insurance policy Be smart about ECI

**When checking an ECI policy, make sure that **all employees are covered** by the policy and **pay attention to the following details****

- The type of policy should be stated as ECI
- The name of the insured company
- Validity period of the insurance policy
- Work nature and/or business
- Work areas/locations covered (if applicable)
- Actual earnings of employees
- Number of employees insured
- Occupations covered
- Exclusions
- Warranty

**P. 16**

**XX Insurance Company Limited  
Schedule**

<b>Policy No.</b>	: CBDDAS/18/1		
<b>Date</b>	: 15 Jan 2021		
<b>Insurance Type</b>	: Employees' Compensation Insurance		
<b>Insured Name</b>	: <b>XX Trading Company Limited</b>		
<b>Period of Insurance</b>	: 1 Feb 2021 to 31 Jan 2022		
<b>Business</b>	: Trading		
<b>Place of employment</b>	: 1) <b>21/F, ECI Building, Hong Kong</b> 2) Anywhere within Hong Kong		
<b>Limit of Liability</b>	: HK\$100 million in respect of any one claim or series of claims resulting from or arising out of one event		
<b>Insured Employees</b>	: Description of Employees	No. of Employees	Wage roll
	Director	2	HK\$967,200.00
	Manager	2	HK\$561,600.00
	Assistant	1	HK\$249,600.00
	Business Partner (Non-manual works)	1	HK\$400,000.00
<b>Condition &amp; Warranty</b>	: 1) Extraordinary Weather Clause 2) Meal and lunch time Clause		

For and on behalf of  
**XX Insurance Company Limited**

\*ECI policy schedule is for reference only. Any similarity is entirely coincidental.

## P. 17

### More to know

- Employers must pay attention to the scope of coverage and protection afforded by the respective insurance policies, as well as the terms that may possibly be attached thereto by the insurance companies;
- Please consult your insurance companies (or insurance intermediaries) direct for any enquiries about taking out ECI policies or the policy terms;
- If it is related to construction works,
  - ✓ the name of the insured company on the insurance policy should be the same as that undertaking the works (if not, what the relationship between the two companies is and whether the employees of the company undertaking the works are covered);
  - ✓ the working period should fall within the validity period of the insurance policy; and
  - ✓ owners/property management companies should use the services of contractors/companies with valid ECI policies. Before the commencement of works, the owners/property management companies can request the contractors/companies to produce valid ECI and third party insurance policies so as to minimise the amount of compensation to be borne in case of an accident.

## P. 18

### Settle employees' compensation (EC) disputes through litigation or by mediation?

The Labour Department assists employees who suffer from work injuries or prescribed occupational diseases to obtain compensation under ECO



In case of dispute



The Labour Department may assist the employer and the employee in resolving EC disputes



If the employer and the employee cannot reach any settlement, the case shall be determined by the Court.

#### **More to know**

Handling EC disputes takes time, such as the collection of relevant information and medical reports, etc., depending on the circumstances of individual case. ECO does not empower the Labour Department to adjudicate on an EC case or issues arising from/relating to an EC case. Therefore, if the employer and the employee cannot reach any settlement agreement with the assistance of the Labour Department, the EC dispute will be determined by the Court.

After commencing the ECO procedures, if the employer and the employee would like to adopt alternative dispute resolution means to settle the EC disputes, they may attempt mediation to resolve the dispute to save time and legal costs, thereby avoiding the litigation risks arising from the Court procedures. Without adjudicating on a dispute, professional mediators would assist the parties in identifying the issues in dispute, exploring options, communicating with one another and reaching an agreement regarding the resolution of the dispute. Moreover, mediation is a confidential process and all information communicated in a mediation session will not be disclosed to any third party unless with consent or required by law.

To know more about mediation, please visit the webpage “Legal and dispute resolution services” on the Department of Justice’s website:

([www.doj.gov.hk/en/legal\\_dispute/mediation.html](http://www.doj.gov.hk/en/legal_dispute/mediation.html)).

## **Enquiries/Reports**

Please consult your insurance companies (or insurance intermediaries) direct for any enquiries about taking out ECI policies or the policy terms. For enquires about the contents of this pamphlet, please contact the relevant department/organisation(s) listed below for more information.

### **Labour Department**

Website: [www.labour.gov.hk](http://www.labour.gov.hk)

Enquiry hotline: 2717 1771 (handled by “1823”)

**Complaint hotline to report employers’ non-compliance with the statutory ECI requirements: 2815 2200**

**OSH complaint hotline to report unsafe practices\*: 2542 2172**

### **Insurance Authority**

Website: [www.ia.org.hk](http://www.ia.org.hk)

Tel: 3899 9983

### **The Hong Kong Federation of Insurers**

Website: [www.hkfi.org.hk](http://www.hkfi.org.hk)

Tel: 2520 1868

### **The Employees’ Compensation Insurance Residual Scheme Bureau Limited**

Website: [www.ecirsb.com.hk](http://www.ecirsb.com.hk)

Tel: 2591 9316

### **Occupational Safety and Health Council**

Website: [www.oshc.org.hk](http://www.oshc.org.hk)

Tel: 2739 9377

**For further information on taking out ECI, please refer to the “Know More about Taking out Employees’ Compensation Insurance” leaflet co-produced by the Insurance Authority and the Labour Department.**

\* The public can also report unsafe OSH practices by filling in the OSH complaint form available on the Labour Department’s website or GovHK (<https://eform.one.gov.hk/form/ld0001/en/>).

## **Back cover**

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