

Committee Stage Amendment to  
the Occupational Deafness (Compensation) (Amendment) Bill 2009

**Note :** *For ease of reference, the amendments proposed under the Bill are incorporated into the BLIS version of the Occupational Deafness (Compensation) Ordinance (Cap. 469) as shown in **red**. The proposed CSAs are incorporated as shown in **blue**.*

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| Chapter: | 469 | OCCUPATIONAL DEAFNESS<br>(COMPENSATION) ORDINANCE | Gazette Number | Version Date |
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|  |  | Long title | 16 of 2003 | 16/05/2003 |
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An Ordinance to provide for the compensation and other benefits of persons who have been exposed to noise in their working environment and have suffered noise-induced deafness and for connected matters.

(Enacted 1995. Amended 16 of 2003 s. 2)

|   |   |                |                          |
|---|---|----------------|--------------------------|
| [Parts I to IV  | } | 1 June 1995    |                          |
| Parts V to IX and sections 40,<br>41, 42, 45, 46 and 47 | } | 1 July 1995    |                          |
| Sections 43 and 44                                      | } | 1 October 1995 | <i>L.N. 214 of 1995]</i> |

(Originally 21 of 1995)

|          |   |             |  |            |
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| Section: | 1 | Short title |  | 30/06/1997 |
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## PART I

### PRELIMINARY

- (1) This Ordinance may be cited as the Occupational Deafness (Compensation) Ordinance.
- (2) (Omitted as spent)

(Enacted 1995)

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| Section: | 2 | Interpretation | L.N. 130 of 2007 | 01/07/2007 |
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**Remarks:**

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

In this Ordinance, unless the context otherwise requires-

"amending Ordinance" (《修訂條例》) means the Occupational Deafness (Compensation) (Amendment) Ordinance 1998 (5 of 1998); (Added 5 of 1998 s. 2)

"applicant" (申請人) means a person who makes an application for **direct payment of expenses or reimbursement of expenses under section 27D**; (Added 16 of 2003 s. 3)

**“binaural hearing loss” (雙耳聽力損失) means sensorineural hearing loss amounting to not less than 40 dB in each ear, where such loss is due in the case of at least one ear to noise, and being the average of hearing losses measured by audiometry over the 1, 2 and 3 kHz frequencies;**

"Board" (管理局) means the Occupational Deafness Compensation Board established by section 4;

"claimant" (申索人) means a person who has submitted an application for compensation under this Ordinance;

"compensation" (補償) means compensation as provided under this Ordinance and includes any interest payable in respect of such compensation;

"continuous contract" (連續性合約) has the same meaning as in section 3 of the Employment Ordinance (Cap 57);

"designated medical practitioner" (指定醫生) means-

(a) a medical practitioner conferred by the Hong Kong Academy of Medicine with the designation of Fellow of the Hong Kong Academy of Medicine (Otorhinolaryngology); or

(b) a medical practitioner conferred by the Hong Kong Academy of Medicine with the designation of Fellow of the Hong Kong Academy of Medicine (Community Medicine) and in the field of occupational medicine;

"device provider" (器具提供者), in relation to an application made under section 27B(1A), means the person from whom the applicant has acquired, or intends to acquire, the hearing assistive device mentioned in that section or the service for fitting, repair or maintenance of the hearing assistive device;

"direct payment of expenses" (直接支付開支) means the payment by the Board of the expenses mentioned in section 27B(1A) directly to the device provider on an application made under that section;

"discotheque" (的士高) means any premises used mainly for the purpose of carrying out an activity where-

(a) the main attribute of the activity is dancing by the persons participating in the activity;

(b) recorded music characterized by a heavy rhythmic element is provided for the activity; and

(c) the control or operation of a system for playing back and broadcasting the music referred to in paragraph (b) by a disc jockey forms part of the activity; (Added 16 of 2003 s. 3)

"Employees' Compensation Insurance Levies Management Board" (僱員補償保險徵款管理局) means the board established by section 3 of the Employees' Compensation Insurance Levies Ordinance (Cap 411);

"employer" (僱主) includes Her Majesty in right of the Government of Hong Kong;

"financial year" (財政年度) means the financial year of the Board fixed under section 8 of Schedule 1;

"Fund" (基金) means the Occupational Deafness Compensation Fund established by section 6;

"hearing assistive device" (聽力輔助器具) means a device prescribed in Schedule 6 and any component or accessory of such device; (Added 16 of 2003 s. 3)

"hearing test" (聽力測驗) means a hearing test designated by the Board under section 36;

"hearing test centre" (聽力測驗中心) means a place designated by the Board as a hearing test centre under section 36;

"Hong Kong Academy of Medicine" (香港醫學專科學院) means the Hong Kong Academy of Medicine established by the Hong Kong Academy of Medicine Ordinance (Cap 419);

"Hospital Authority" (醫管局) means the Hospital Authority established by the Hospital Authority Ordinance (Cap 113);

"Medical Committee" (醫事委員會) means the Occupational Deafness Medical Committee appointed under section 12;

"medical examination" (醫療檢驗) means a medical examination designated by the Board under section 36;

"monaural hearing loss" (單耳聽力損失) means sensorineural hearing loss amounting to not less than 40 dB in only one ear, where such loss is due to noise, and being the average of hearing losses

measured by audiometry over the 1, 2 and 3 kHz frequencies;

"noise-induced deafness" (噪音所致的失聰) means =

~~(a) sensorineural hearing loss amounting to not less than 40 dB in each ear, where such loss is due in the case of at least one ear to noise, and being the average of hearing losses measured by audiometry over the 1, 2 and 3 kHz frequencies~~ binaural hearing loss; or (Amended 99 of 1997 s. 2; 5 of 1998 s. 2)

(b) monaural hearing loss;

"noisy occupation" (高噪音工作) means an occupation specified in Schedule 3;

"reimbursement of expenses" (付還開支) means the reimbursement of any expenses under Part VIIA; (Added 16 of 2003 s. 3)

"Secretary" (局長) means the Secretary for Labour and Welfare; (Replaced L.N. 106 of 2002. Amended L.N. 130 of 2007)

"specified form" (指明表格、指明格式) means such form as may be specified by the Board under section 38.

(Enacted 1995)

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| Section: | 3 | Application to the Crown |  | 30/06/1997 |
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This Ordinance binds the Crown.

(Enacted 1995)

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| Section: | 4 | Establishment of the Board |  | 30/06/1997 |
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## PART II

### OCCUPATIONAL DEAFNESS COMPENSATION BOARD

- (1) There is established a board known as the Occupational Deafness Compensation Board.
- (2) The Board is a body corporate.
- (3) Schedule 1 has effect with respect to the Board.

(Enacted 1995)

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|----------|---|-----------------------------------|------------|------------|
| Section: | 5 | Functions and powers of the Board | 16 of 2003 | 16/05/2003 |
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- (1) The functions of the Board are-
  - (a) to hold the Fund upon trust and to manage and administer the Fund in accordance with this Ordinance;
  - (b) to receive for the benefit of the Fund any sum paid to the Board pursuant to section 7 of the Employees' Compensation Insurance Levies Ordinance (Cap 411) and any sum paid to the Board under section 7(1);
  - (c) to process and determine applications by persons applying for compensation, direct payment of expenses or reimbursement of expenses; (Amended 16 of 2003 s. 4)
  - (d) to advise the Employees' Compensation Insurance Levies Management Board with respect to the amounts of known and anticipated claims against the Fund; (Amended 5 of 1998 s. 3)
  - (da) to conduct or finance educational and publicity programmes for the purpose of preventing noise-induced deafness by reason of employment; (Added 5 of 1998 s. 3. Amended 16 of 2003 s. 4)
  - (db) to conduct or finance programmes for the rehabilitation of persons suffering, or who have suffered, from noise-induced deafness by reason of employment; and (Added 16 of 2003 s. 4)
  - (e) such other functions as are assigned to it under this Ordinance.
- (2) The Board may-

- (a) hold, acquire, sell, lease or otherwise dispose of all kinds of property;
- (b) enter into, assign or accept the assignment of, and vary any contract or obligation;
- (c) meet expenditure on any item shown in the estimates of expenditure of the Board approved under section 8 of Schedule 1;
- (d) subject to subsection (3), borrow or otherwise raise money on such security as may be necessary and, for that purpose, charge all or any of the property of the Board;
- (e) charge fees for the use of any facility or service provided by the Board; and (Amended 5 of 1998 s. 3)
- (f) (Repealed 5 of 1998 s. 3)
- (g) do such other things as are necessary for, or incidental or conducive to, the better carrying out of its functions.

(3) Except with the prior approval of the Financial Secretary, the Board shall not allow the aggregate sum borrowed or otherwise raised under subsection (2)(d) at any time to exceed 10% of the total estimated expenditure approved under section 8 of Schedule 1 for the current financial year.

(Enacted 1995)

|          |   |  |  |            |
|----------|---|--|--|------------|
| Section: | 6 | Establishment of Occupational Deafness Compensation Fund |  | 30/06/1997 |
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### PART III

#### FINANCIAL PROVISIONS

- (1) There is established an Occupational Deafness Compensation Fund which consists of-
  - (a) moneys received by the Board from the Employees' Compensation Insurance Levies Management Board;
  - (b) any moneys provided by the Government for the purposes of the Fund; and
  - (c) any other moneys and property, including gifts, donations, interests and accumulation of income received by the Board.
- (2) The Fund is vested in the Board.

(Enacted 1995)

|          |   |                     |  |            |
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| Section: | 7 | Government payments |  | 30/06/1997 |
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(1) The Government shall each year make payments to the Board for the benefit of the Fund out of moneys appropriated for that purpose by the Legislative Council.

- (2) The Government's payment under subsection (1) is ascertained as follows-

$$\text{Government payment} = A \times B \times \frac{C}{D}$$

where-

"A" is the levy received or receivable by the Employees' Compensation Insurance Levies Management Board under Part IV of the Employees' Compensation Insurance Levies Ordinance (Cap 411);

"B" is the proportion of the net resources of the Employees' Compensation Insurance Levies Management Board specified in the third column of Schedule 2 to the Employees' Compensation Insurance Levies Ordinance (Cap 411) to be distributed to the Occupational Deafness Compensation Board under section 7(1) of that Ordinance;

"C" is the number of employees in the civil service sector;

"D" is the total number of employees in Hong Kong, excluding the number of employees in the civil service sector.

The number of employees in the civil service sector and the total number of employees in Hong Kong are those respective numbers estimated and published from time to time by the Commissioner for Census and Statistics.

(Enacted 1995)

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| Section: | 8 | Payments by the Board from the Fund | 16 of 2003 | 16/05/2003 |
|----------|---|-------------------------------------|------------|------------|

The Board shall pay from the Fund-

- (a) compensation;
- (aa) reimbursement of expenses; (Added 16 of 2003 s. 6)
- (b) any sum payable under section 27;
- (c) (Repealed 5 of 1998 s. 4)
- (d) costs of hearing tests and medical examinations arranged by the Board under section 16;
- (e) any other expenses incurred by the Board in the performance of its functions or exercise of its powers under this Ordinance; and
- (f) any other sums required or permitted to be paid by the Board under this Ordinance.

(Enacted 1995)

|          |   |                     |  |            |
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| Section: | 9 | Investment of funds |  | 30/06/1997 |
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The Board may deal with the funds of the Board that are not immediately required in the following manner-

- (a) by depositing them on fixed term or call deposit or in a savings account in any bank within the meaning of the Banking Ordinance (Cap 155); or
- (b) subject to the prior approval of the Financial Secretary, by investing them in such investments as the Board thinks fit.

(Enacted 1995)

|          |    |                                 |  |            |
|----------|----|---------------------------------|--|------------|
| Section: | 10 | Director of Audit's examination |  | 30/06/1997 |
|----------|----|---------------------------------|--|------------|

(1) The Director of Audit may carry out such examination as he thinks fit into the economy, efficiency and effectiveness with which the Board has used its resources in performing its functions and exercising its powers.

(2) The Director of Audit has a right of access at all reasonable times to all such documents in the custody or under the control of the Board as he may reasonably require for the purpose of carrying out any examination under subsection (1) and is entitled to require from any person holding or accountable for any such document such information and explanations (if any) as are reasonably necessary for that purpose.

(3) The Director of Audit may submit to the President of the Legislative Council a report in respect of any examination carried out under subsection (1).

(4) Subsection (1) does not give the Director of Audit the right to question the merits of any of the Board's policy objectives.

(Enacted 1995)

|          |    |   |            |            |
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| Section: | 11 | Statements and reports to be laid on table of Legislative Council | 16 of 2003 | 16/05/2003 |
|----------|----|---|------------|------------|

The Board shall, within 9 months after the end of each financial year or such longer period as the Chief Executive may determine, submit- (Amended 16 of 2003 s. 8)

- (a) a report on the activities and affairs of the Board for that year;
  - (b) a copy of the statements of the accounts therefor; and
  - (c) the auditor's report on the accounts prepared under section 12(3) of Schedule 1,
- to the Chief Executive who shall cause them to be laid on the table of the Legislative Council.

(Enacted 1995. Amended 16 of 2003 s. 8)

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| Section: | 12 | Appointment of Medical Committee |  | 30/06/1997 |
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## PART IV

### OCCUPATIONAL DEAFNESS MEDICAL COMMITTEE

(1) The Secretary shall appoint a committee to be known as the Occupational Deafness Medical Committee.

(2) Schedule 2 has effect with respect to the Medical Committee.

(Enacted 1995)

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|----------|----|--------------------------------|------------|------------|
| Section: | 13 | Functions of Medical Committee | 16 of 2003 | 16/05/2003 |
|----------|----|--------------------------------|------------|------------|

The functions of the Medical Committee are-

- (a) to recommend to the Board hearing tests and medical examinations to be performed generally and in any particular case for the diagnosis and assessment of noise-induced deafness for the purpose of this Ordinance;
- (b) to recommend to the Board audiological facilities and calibration methods to be used in such hearing tests and medical examinations;
- (c) to recommend to the Board places where hearing tests under section 15(2) can be performed;
- (d) to advise the Board under section 19 or 27E(3)(b)(i); (Amended 5 of 1998 s. 5; 16 of 2003 s. 9)
- (da) to recommend to the Board categories of persons that may be designated under section 36(1)(e); and (Added 16 of 2003 s. 9)
- (e) (Repealed 5 of 1998 s. 5)
- (f) to advise the Board generally on the medical, technical and professional aspects of any matter relating to the performance of the Board's functions.

(Enacted 1995)

|          |    |   |                |            |
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| Section: | 14 | Entitlement to compensation <u>for the first time</u> | 5 of 1998 s. 6 | 06/03/1998 |
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## PART V

### ENTITLEMENT TO AND APPLICATIONS FOR COMPENSATION

(1) Subject to subsections (3) and (4) and sections 17 and 29, a person who suffers noise-induced deafness is entitled to such compensation as determined by the Board under this Ordinance if he also satisfies the Board that he fulfils the conditions specified in subsection (2).

(2) The conditions referred to in subsection (1) are-

- (a) (i) that he has had at least 10 years of employment in aggregate in any noisy occupation in Hong Kong before the date of the relevant application under section 15; or
- (ii) that he has had at least 5 years of employment in aggregate in any noisy occupation specified in paragraphs (c), (j), (k) and (y) of Schedule 3 in Hong Kong before the date of the relevant application under section 15; (Replaced 5 of 1998 s. 6)
- (b) subject to subsection (4), that he has at any time been employed under a continuous contract in any noisy occupation in Hong Kong-
  - (i) within the 72 months before the commencement of this Part; or
  - (ii) within the 12 months before the date of his relevant application under section 15; (Amended 5 of 1998 s. 6)
- (c) he has not been awarded any compensation; and (Amended 5 of 1998 s. 6)
- (d) subject to subsection (5), in the case where if he has previously made an application for compensation for which the entitlement arose under this section ("previous application") -
  - ~~(i) — before the date of his relevant application under section 15;~~

- (ii) which has been refused under section 22(1)(a) on or after 6 March 1998; and
  - (iii) in respect of which the Board has not been requested to review its decision under section 23(1) or the Board has confirmed its decision under section 23(2), he has had at least 24 months of employment in aggregate in any noisy occupation in Hong Kong after the date of that previous application or, where he has made more than one such previous application, after the date of the last such application. (Added 5 of 1998 s. 6)
- (3) No compensation is payable-
- (a) to a member of Her Majesty's armed forces;
  - (b) to a person in the civil employment of Her Majesty, otherwise than Her Majesty in right of the Government of Hong Kong, who has been engaged in a place outside Hong Kong;
  - (c) to a person in the service of or formerly in the service of the Government who, in consequence of incapacity resulting from noise-induced deafness which arose in the course of his employment, is paid a pension or gratuity under any Ordinance which would not be payable if such deafness arose otherwise than in the course of his employment.
- (4) No compensation is payable to a person who fulfils the condition specified in subsection (2)(b)(i) but not the condition specified in subsection (2)(b)(ii) unless his application for compensation is made not later than 30 June 1997. (Amended 69 of 1996 s. 2)

~~(5) Subsection (2)(d) shall only apply to a previous application referred to in that subsection which has been refused by the Board under section 22(1)(a) on or after the commencement of sections 1 to 20 of the amending Ordinance.~~ (Added 5 of 1998 s. 6)

(Enacted 1995)

|          |            |  |  |  |
|----------|------------|--|--|--|
| Section: | <u>14A</u> | <u>Entitlement to further compensation for additional permanent incapacity resulting from noise-induced deafness</u> |  |  |
|----------|------------|--|--|--|

(1) Subject to sections 14(3), 17 and 29, after a person has been awarded compensation on an application under section 15, the person is entitled to further compensation for any additional permanent incapacity resulting from noise-induced deafness suffered if the Board is satisfied that the person fulfils the conditions specified in subsection (2).

(2) The conditions referred to in subsection (1) are that –

- (a) the person has had at least ~~5~~3 years of employment in aggregate in any noisy occupation in Hong Kong after –
  - (i) the date of the person's last successful application for compensation under section 15 ("the latest successful application"); ~~or~~
  - (ii) if the latest successful application was made for compensation for which the entitlement arose under section 48(3), the date of the previous unsuccessful application mentioned in section 48(3)(b) or, where there was more than one such previous unsuccessful application, the date of the last such application; or
  - (iii) if the latest successful application was made for compensation for which the entitlement arose under section 48(5), the date of the self-arranged audiometric test mentioned in section 48(5)(a) or, where there was more than one such test, the date of the last such test;
- (b) the person has at any time been employed under a continuous contract in any noisy occupation in Hong Kong –
  - (i) within the 12 months before the person makes an application for compensation based on an entitlement arising under this section; or
  - (ii) subject to subsection (3), within the 12 months before the date of the latest successful application; and
- (c) if the person has previously made an application for compensation for which the

entitlement arose under this section and –  
 (i) the Board refused the application under section 22(1)(ab); and  
 (ii) the Board has not been requested to review the decision under section 23(1) or the Board has confirmed the decision under section 23(2),  
the person has had at least 24 months of employment in aggregate in any noisy occupation in Hong Kong after the date of the previous application or, if the person has made more than one such previous application in respect of which the facts mentioned in subparagraphs (i) and (ii) apply, after the date of the last such application.

- (3) The condition specified in subsection (2)(b)(ii) applies only if –  
 (a) the latest successful application was made for compensation for which the entitlement arose under section 48(3);  
 (b) the person cannot fulfil the condition specified in subsection (2)(b)(i); and  
 (c) the application for compensation based on an entitlement arising under this section is made within a period of 12 months beginning on the date when compensation was paid in respect of the latest successful application.

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| Section: | 15 | Application for compensation | 5 of 1998 s. 7 | 06/03/1998 |
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(1) A person ~~who has never been awarded compensation and~~ who wishes to apply for compensation ~~shall~~must apply to the Board in the specified form and ~~shall~~must submit, together with ~~his~~the application, such information ~~about his past and current employment~~ as will satisfy the Board that he or she fulfils the conditions specified in section 14(2), 14A(2) or 48(1)(i), or (3) or (5), where appropriate, section 48(1)(i). (Amended 5 of 1998 s. 7)

(1A) A person who wishes to apply for compensation based on an entitlement arising under section 14A must also submit a certificate of determination of compensation under section 24(1) or (3), or a copy of a court order made under section 28(4), in relation to the latest successful application mentioned in section 14A(2)(a).

(2) Subject to section 48(4) and (8), Upon confirmation by the Board that a claimant fulfils the conditions specified in section 14(2), 14A(2) or 48(1)(i), where appropriate, section 48(1)(i), he shallthe claimant must undergo a hearing test at a hearing test centre or a medical examination, or both, arranged by the Board under section 16(1). (Replaced 5 of 1998 s. 7)

(3)-(6) (Repealed 5 of 1998 s. 7)

(Enacted 1995)

|          |    |   |                |            |
|----------|----|---|----------------|------------|
| Section: | 16 | Hearing tests, medical examinations and inquiries | 5 of 1998 s. 8 | 06/03/1998 |
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## PART VI

### ASSESSMENT OF NOISE-INDUCED DEAFNESS AND DETERMINATION OF PERMANENT INCAPACITY

(1) The Board may-

- (a) require a claimant to undergo such hearing tests and medical examinations arranged by the Board as it considers necessary; and (Amended 5 of 1998 s. 8)
- (b) (Repealed 5 of 1998 s. 8)
- (c) make such investigations and inquiries into any other matter concerning a claimant's deafness or his occupational history as it considers necessary.

(2) Where a claimant undergoes a hearing test or medical examination as arranged by the Board under subsection (1), the person who performs the test or examination shall, as soon as practicable, issue to the Board a report in the specified form. (Amended 5 of 1998 s. 8)

(3) The Board may delegate its powers to make investigations and inquiries to such persons as it thinks fit.

(4) A person from whom information relevant to an application for compensation is requested by the Board or its delegates under subsection (3) in exercise of its power under subsection (1) shall



provide such information which is in his possession or under his control to the Board or its delegates.

(5) Any person who, without reasonable excuse, contravenes subsection (4) commits an offence and is liable on conviction to a fine at level 5.

(Enacted 1995)

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| Section: | 17 | Duty of claimants and failure by claimants |  | 30/06/1997 |
|----------|----|--|--|------------|

(1) Every claimant shall assist the Board or its delegates in making investigations or inquiries under section 16 and shall undergo all hearing tests and medical examinations arranged by the Board under that section.

(2) Where a claimant, without reasonable excuse, fails to comply with subsection (1), the Board may determine that the claimant is not entitled to compensation.

(Enacted 1995)

|          |    |  |  |            |
|----------|----|--|--|------------|
| Section: | 18 | Diagnosis and assessment of noise-induced deafness |  | 30/06/1997 |
|----------|----|--|--|------------|

(1) Where a claimant undergoes a medical examination by a designated medical practitioner arranged under section 16, the designated medical practitioner shall-

- (a) diagnose whether the claimant is suffering from noise-induced deafness; and
- (b) (where noise-induced deafness is diagnosed) assess the noise-induced deafness suffered by the claimant,

and shall include the diagnosis, and assessment if any, in the report under section 16(2).

(2) Where the designated medical practitioner performing a medical examination arranged under section 16 is uncertain of-

- (a) the cause of the claimant's deafness; or
- (b) the degree of the claimant's noise-induced deafness,

he shall report the matter in the report under section 16(2).

(Enacted 1995)

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| Section: | 19 | Referral to Medical Committee | 5 of 1998 s. 9 | 06/03/1998 |
|----------|----|-------------------------------|----------------|------------|

The Board may refer a report referred to in section 16(2) or 48(5)(a) to the Medical Committee for such advice as may be conducive to the Board's determination on the relevant application for compensation.

(Enacted 1995. Amended 5 of 1998 s. 9)

|          |    |   |                 |            |
|----------|----|---|-----------------|------------|
| Section: | 20 | Determination of noise-induced deafness, <del>and</del> permanent incapacity <u>and additional permanent incapacity</u> | 5 of 1998 s. 10 | 06/03/1998 |
|----------|----|---|-----------------|------------|

(1) Subject to section 48(4) and (8), ~~The~~ Board ~~shall~~must determine the noise-induced deafness suffered by the claimant having regard to the diagnoses and assessments in the report or reports referred to in section 16(2) and the advice of the Medical Committee, where appropriate.

(2) In relation to a claimant suffering from noise-induced deafness other than monaural binaural hearing loss, ~~The~~ Board ~~shall~~must, on the basis of the noise-induced deafness of ~~the~~ claimant determined under subsection (1), determine, in accordance with Schedule 4, the percentage of permanent incapacity of the claimant which is to be the percentage correlating to the average hearing loss for both the better ear and the worse ear of the claimant.

(2A) In relation to a claimant suffering from monaural hearing loss, the Board must, on the basis of the noise-induced deafness of the claimant determined under subsection (1) or section 48(4) or (8), determine the percentage of permanent incapacity of the claimant which is to be the percentage set out in subsection (2B).

(2B) The percentage mentioned in subsection (2A) is half of the percentage shown in Schedule 4 that correlates to –

- (a) the average hearing loss for the worse ear of the claimant; and
- (b) the average hearing loss shown in the first column for the better ear as shown in Schedule 4.

(2C) In relation to a claimant applying for compensation based on an entitlement arising under section 14A, the Board must determine the percentage of additional permanent incapacity of the claimant which is to be calculated as follows –

$$\underline{A} = \underline{B}$$

where –

- (a) “A” means the percentage of permanent incapacity determined under subsection (2) or (2A);
- (b) “B” means the percentage of permanent incapacity stated in the certificate of determination of compensation or the court order in relation to the latest successful application mentioned in section 14A(2)(a).

(2D) If the percentage of additional permanent incapacity is smaller than zero, the percentage is to be taken to be zero.

(3) Subject to section 48(2)(c), the Board ~~shall~~must make a determination under subsection (1), ~~or (2) or (2A) or section 48(4) or (8)~~ in accordance with this Ordinance as in force on the date of that determination, irrespective of the date of the application under section 15 to which the determination relates. (Added 5 of 1998 s. 10)

(Enacted 1995. Amended 5 of 1998 s. 10)

|          |    |   |            |            |
|----------|----|---|------------|------------|
| Section: | 21 | Determination of compensation <u>for permanent incapacity and additional permanent incapacity</u> | 16 of 2003 | 16/05/2003 |
|----------|----|---|------------|------------|

## PART VII

### DETERMINATION AND PAYMENT OF COMPENSATION

~~Where the Board has determined the percentage of permanent incapacity of a claimant under section 20(2),~~ The Board ~~shall~~must determine the amount of compensation payable to ~~him~~a claimant for permanent incapacity or additional permanent incapacity in accordance with Schedule 5 as in force on the date of the determination of ~~such~~the amount, irrespective of the date of the application under section 15 to which the determination relates.

(Enacted 1995. Amended 16 of 2003 s. 10)

|          |    |                        |                 |            |
|----------|----|------------------------|-----------------|------------|
| Section: | 22 | Refusal of application | 5 of 1998 s. 11 | 06/03/1998 |
|----------|----|------------------------|-----------------|------------|

- (1) Where the Board-
  - (a) determines that the claimant does not suffer from noise-induced deafness; ~~or~~  
(ab) determines under section 20 that the percentage of additional permanent incapacity suffered by the claimant is zero; or
  - (b) otherwise determines that the claimant is not entitled to compensation,
 the Board shall refuse his application for compensation and shall send a notice of refusal informing the claimant of such refusal and reasons for the refusal.
- (2) Where a claimant has undergone a hearing test or medical examination under section 16(1) in respect of his application for compensation, a notice of refusal referred to in subsection (1) shall be accompanied by a copy of the report issued to the Board in accordance with section 16(2).

(Replaced 5 of 1998 s. 11)

|          |    |                                |                 |            |
|----------|----|--------------------------------|-----------------|------------|
| Section: | 23 | Review of refusal by the Board | 5 of 1998 s. 12 | 06/03/1998 |
|----------|----|--------------------------------|-----------------|------------|

(1) A claimant receiving a notice of refusal from the Board under section 22 may, within 14 days beginning on the date of the notice, request the Board to review its decision by sending to the Board a request in writing stating his reasons.

(1A) The Board may, if it thinks fit, extend the time within which a claimant may request the Board to review its decision under this section. (Added 5 of 1998 s. 12)

(2) Upon receipt of a request under subsection (1), the Board shall review its decision and may confirm, vary or reverse the decision, and shall inform the claimant of the result of the review in writing.

(Enacted 1995)

|          |    |  |                 |            |
|----------|----|--|-----------------|------------|
| Section: | 24 | Certificate of determination of compensation, objection and review | 5 of 1998 s. 13 | 06/03/1998 |
|----------|----|--|-----------------|------------|

(1) Where the Board has determined under section 21 that a claimant is entitled to compensation and the amount payable, the Board shall issue a certificate in the specified form-

- (a) stating the particulars of the claimant's noise-induced deafness, his percentage of permanent incapacity or additional permanent incapacity and the amount of compensation payable to him, as determined by the Board; and
- (b) asking the claimant to indicate in the specified form whether he objects to the amount of compensation payable.

(1A) A certificate issued under subsection (1) shall be accompanied by a copy of the report issued to the Board in accordance with section 16(2). (Added 5 of 1998 s. 13)

(2) A claimant may object to the amount of compensation stated in the certificate issued to him under subsection (1) within 14 days beginning on the date of the certificate by indicating to the Board in the specified form that he objects to the amount and stating the grounds of his objection.

(2A) The Board may, if it thinks fit, extend the time within which a claimant may object to the amount of compensation under this section. (Added 5 of 1998 s. 13)

(3) On receipt of an objection under subsection (2), the Board shall review its determination and shall issue a certificate in the specified form stating-

- (a) that the original determination is confirmed; or
- (b) the revised amount of compensation determined and the particulars of the revised determination.

(4) Where a claimant has received compensation from the Board, he loses his right to object under subsection (2).

(Enacted 1995)

|          |    |                         |            |            |
|----------|----|-------------------------|------------|------------|
| Section: | 25 | Payment of compensation | 16 of 2003 | 16/05/2003 |
|----------|----|-------------------------|------------|------------|

(1) Subject to section 30A, where the claimant indicates in writing that he does not object to the amount of the compensation, the Board shall pay to the claimant compensation as stated in the certificate issued under section 24(1) within 21 days beginning on the date of the receipt of the indication. (Amended 16 of 2003 s. 11)

(2) Subject to section 30A, where the Board has conducted a review under section 24(3), the Board shall, within 21 days beginning on the date of the certificate issued under section 24(3), pay to the claimant compensation as stated in the certificate- (Amended 16 of 2003 s. 11)

- (a) under section 24(1), where the original determination is confirmed; or
- (b) under section 24(3), where the original determination is revised.

(3) Compensation that remains unpaid at the expiry of the period prescribed in subsection (1) or (2) shall carry simple interest as from the date of such expiry until such time as it is paid, calculated at the rate determined from time to time by the Chief Justice for the purposes of section 49(1)(b) of the High Court Ordinance (Cap 4). (Replaced 16 of 2003 s. 11)

(4)-(8) (Repealed 16 of 2003 s. 11)

|          |    |                   |  |            |
|----------|----|-------------------|--|------------|
| Section: | 26 | Death of claimant |  | 30/06/1997 |
|----------|----|-------------------|--|------------|

Where a certificate stating that an amount of compensation is payable to a claimant has been issued under section 24(1) or (3) and the claimant dies before the compensation is paid to him, the Board shall pay the compensation to the estate of the deceased claimant.

(Enacted 1995)

|          |    |  |  |            |
|----------|----|--|--|------------|
| Section: | 27 | The Board to pay compensation to the Government in certain circumstances |  | 30/06/1997 |
|----------|----|--|--|------------|

Where the Board is satisfied by the Government that-

- (a) the Government has paid a pension or gratuity to a person in respect of his permanent incapacity resulting from noise-induced deafness under any Ordinance; and
- (b) had the person not been paid such pension or gratuity, he would have been entitled to compensation,

the Board shall pay to the Government from the Fund a sum equal to the amount of compensation that would have been payable to that person in respect of that permanent incapacity.

(Enacted 1995)

|          |     |  |                 |            |
|----------|-----|--|-----------------|------------|
| Section: | 27A | Determination of application upon withdrawal | 5 of 1998 s. 14 | 06/03/1998 |
|----------|-----|--|-----------------|------------|

Where-

- (a) a claimant indicates in writing or otherwise to the Board that he does not wish to proceed with his application for compensation; and
- (b) he has undergone a hearing test or medical examination under section 16(1) in respect of that application,

the Board may, if it thinks fit, continue to process or determine the application as if the claimant had not made such indication.

(Added 5 of 1998 s. 14)

|          |     |   |            |            |
|----------|-----|---|------------|------------|
| Section: | 27B | <u>Direct payment of expenses or Reimbursement of expenses in relation to hearing assistive devices</u> | 16 of 2003 | 16/05/2003 |
|----------|-----|---|------------|------------|

#### PART VIIA\*

#### DIRECT PAYMENT OF EXPENSES OR REIMBURSEMENT OF EXPENSES IN RELATION TO HEARING ASSISTIVE DEVICES

(1) A person who-

- (a) ishes at any time been entitled to compensation pursuant to a determination made under section 21;
- (aa) has at any time been entitled to compensation pursuant to a decision made under section 23;
- (b) ishes at any time been entitled to compensation pursuant to a court order made under section 28; or
- (c) has at any time been paid by the Government a pension or gratuity under any Ordinance in consequence of incapacity resulting from noise-induced deafness which arose in the course of his or her employment,

may on application to the Board be reimbursed by the Board for any expenses he or she has reasonably incurred in the acquisition, fitting, repair or maintenance of a hearing assistive device used by him or her in connection with his or her ear that suffers, or has suffered, from noise-induced deafness.

(1A) A person who fulfils the conditions specified in subsection (1)(a), (aa), (b) or (c) may apply to the Board for payment by the Board directly to the device provider of any expenses he or she may

reasonably incur in the acquisition, fitting, repair or maintenance of a hearing assistive device used or to be used by him or her in connection with his or her noise induced deafness his or her ear that suffers, or has suffered, from noise-induced deafness.

(2) The following expenses are not reimbursable under subsection (1) or payable under subsection (1A) -

- (a) expenses incurred before the date on which-
  - (i) a certificate was issued to the person under section 24(1);
  - (ii) the court order referred to in subsection (1)(b) was made; or
  - (iii) any pension or gratuity referred to in subsection (1)(c) was first paid to him or her; and
- (b) expenses met by any grant, sponsorship or donation given to him or her by any person for the purpose of the acquisition, fitting, repair or maintenance of a hearing assistive device.

(3) Expenses ~~incurred in relation to~~ in respect of a hearing assistive device that is a hearing aid ~~shall~~ must not be reimbursed under subsection (1) or paid under subsection (1A) unless advice in writing indicating that the applicant reasonably requires the use of the hearing aid has been given by a person belonging to a category of persons designated under section 36(1)(e).

(Part VIIA added 16 of 2003 s. 12)

**Note:**

\* **For the transitional provision relating to the addition of Part VIIA by the Occupational Deafness (Compensation) (Amendment) Ordinance 2003 (16 of 2003), see section 26 of the Ordinance.**

|          |     |   |            |            |
|----------|-----|---|------------|------------|
| Section: | 27C | Limits of <u>direct payment of expenses and reimbursement of expenses</u> | 16 of 2003 | 16/05/2003 |
|----------|-----|---|------------|------------|

(1) If –

- (a) a person applies for reimbursement of expenses or direct payment of expenses for the purpose of the acquisition and fitting of a hearing assistive device; and
- (b) the application is the person’s first application for that purpose under this Part,

~~The~~ amount of expenses that may be reimbursed to ~~an~~ the applicant or paid directly to the device provider for the first time in respect of an application under section 27D in relation to the acquisition and fitting of a hearing assistive device shall for the applicant as determined under section 27E must not exceed the amount prescribed for the purposes of this subsection in Schedule 7, as in force on the date of ~~the~~ that determination ~~by the Board under section 27E(1)(b) in respect of such application.~~

(2) The aggregate of –

- (a) any amount of expenses that may be reimbursed to an applicant as determined under section 27E; and
- (b) any amount of expenses paid directly to the device provider for the applicant as determined under that section,

~~shall~~ must not ~~in aggregate~~ exceed the amount prescribed for the purposes of this subsection in Schedule 7, as in force on the date of the ~~first~~ determination by the Board ~~under section 27E(1)(b)~~ in respect of the applicant under that section, irrespective of the number of applications under section 15 that the applicant has made.

(Part VIIA added 16 of 2003 s. 12)

|          |     |  |            |            |
|----------|-----|--|------------|------------|
| Section: | 27D | Application for <u>direct payment of expenses or reimbursement of expenses</u> | 16 of 2003 | 16/05/2003 |
|----------|-----|--|------------|------------|

(1) An application for reimbursement of expenses based on an entitlement arising under section 27B(1) ~~shall~~ must be in a specified form and ~~shall~~ must be made within a period of 12 months beginning on the date on which the expenses were incurred.

(2) An application made under subsection (1) ~~shall~~ must be accompanied by-

- (a) the original receipt issued in respect of the expenses to which the application relates;

and

- (b) if the expenses relate to a hearing aid, the advice referred to in section 27B(3), unless the advice has already been sent to the Board.

(3) An application for direct payment of expenses under section 27B(1A) must be in a specified form and accompanied by –

- (a) such documents relating to the expenses as may be reasonably required by the Board; and  
(b) if the expenses relate to a hearing aid, the advice referred to in section 27B(3), unless the advice has already been sent to the Board.

(Part VIIA added 16 of 2003 s. 12)

|          |     |                              |            |            |
|----------|-----|------------------------------|------------|------------|
| Section: | 27E | Determination of application | 16 of 2003 | 16/05/2003 |
|----------|-----|------------------------------|------------|------------|

(1) The Board shall consider any application made under section 27D, and shall determine in accordance with sections 27B, 27C and 27D-

- (a) if the application relates to reimbursement of expenses –  
(i) whether ~~or not~~ the applicant is entitled to reimbursement of any expenses; and  
(ii) if the applicant is so entitled, the amount of that reimbursement; or  
~~(b) if he is entitled to reimbursement of any expenses, the amount of that reimbursement.~~  
(b) if the application relates to direct payment of expenses –  
(i) whether the applicant is entitled to have any expenses paid by the Board directly to the device provider; and  
(ii) if the applicant is so entitled, the amount of those expenses.

(2) The Board shall by notice in writing inform an applicant of its determination under subsection (1).

(3) For the purposes of making a determination under subsection (1), the Board may-

- (a) require an applicant to undergo such test or examination as it considers necessary, at the cost of the Board;
- (b) refer any information relevant to an application to-
- (i) the Medical Committee;
  - (ii) a designated medical practitioner; or
  - (iii) a person belonging to a category of persons designated under section 36(1)(e), for advice as to whether the use by the applicant of the relevant hearing assistive device or the repair or maintenance of such device is or was reasonably required.

(4) Where an applicant fails without reasonable excuse to undergo a test or examination required under subsection (3)(a), the Board may determine that he is not entitled to any reimbursement of expenses or to have any expenses paid by the Board directly to the device provider.

(Part VIIA added 16 of 2003 s. 12)

|          |     |                         |            |            |
|----------|-----|-------------------------|------------|------------|
| Section: | 27F | Review of determination | 16 of 2003 | 16/05/2003 |
|----------|-----|-------------------------|------------|------------|

(1) An applicant in respect of whom a determination has been made under section 27E(1) may request the Board to review the determination.

(2) A request under subsection (1) shall-

- (a) be in writing;
- (b) be sent to the Board within a period of 14 days beginning on the date of the notice issued to him under section 27E(2); and
- (c) state the reasons for requesting the review.

(3) The Board may, if it thinks fit, extend the time limit mentioned in subsection (2)(b).

(4) Upon receipt of a request under subsection (1), the Board shall review its determination and may, after the review, confirm, vary or reverse the determination.

(5) The Board shall by notice in writing inform the applicant of the result of its review.

(6) No request for review shall be made under subsection (1) in respect of any amount of

~~reimbursement of expenses the payment of which has been made by the Board and received by the applicant that –~~

~~(a) have been reimbursed to, and received by, the applicant; or~~

~~(b) have been determined by the Board to be paid for the applicant directly to the device provider, if any of the events mentioned in subsection (7) happens.~~

~~(7) The events referred to in subsection (6)(b) are as follows –~~

~~(a) if the hearing assistive device is to be acquired by the applicant from the device provider, the hearing assistive device has been acquired by the applicant; and~~

~~(b) if the hearing assistive device is to be fitted, repaired or maintained by the device provider, the hearing assistive device so fitted, repaired or maintained has been returned to the applicant.~~

(Part VIIA added 16 of 2003 s. 12)

|          |     |   |            |            |
|----------|-----|---|------------|------------|
| Section: | 27G | <del>Payment of</del> <u>Direct payment of expenses and reimbursement of expenses</u> | 16 of 2003 | 16/05/2003 |
|----------|-----|---|------------|------------|

(1) Subject to section 30A, ~~whereif~~ an applicant is entitled to any amount pursuant to a determination made under section 27E(1)(~~b~~)(a)(ii) or (b)(ii), the Board ~~shall~~must –

~~(a) if the application relates to reimbursement of expenses,~~ pay the amount to the applicant within a period of 21 days beginning on the date of the notice issued to ~~him~~the applicant under section 27E(2);

~~(b) if the application relates to direct payment of expenses, pay the amount directly to the device provider as soon as reasonably practicable after the date mentioned in subsection (3A) or the expiry of a period of 14 days beginning on the date of the notice mentioned in paragraph (a), whichever is the later.~~

(2) Where a request has been made for the review of a determination of the Board under section 27F(1), subsection (1) shall not apply in respect of any amount payable under the determination.

(3) Subject to section 30A, ~~–~~

~~(a) any amount payable to an applicant at the conclusion of a review shall~~must be paid within a period of 21 days beginning on the date of the notice issued to the applicant under section 27F(5); ~~and~~

~~(b) any amount that the Board must, at the conclusion of a review, pay for the applicant directly to the device provider must be paid as soon as reasonably practicable after the date of the notice issued to the applicant under section 27F(5) or the date mentioned in subsection (3A),] whichever is the later.~~

~~(3A) The date referred to in subsections (1)(b) and (3)(b) is –~~

~~(a) if the hearing assistive device is to be acquired by the applicant from the device provider, the date when the device provider satisfied the Board that the hearing assistive device has been acquired by the applicant; or~~

~~(b) if the hearing assistive device is to be fitted, repaired or maintained by the device provider, the date when the device provider satisfies the Board that the hearing assistive device so fitted, repaired or maintained has been returned to the applicant.~~

(4) Any amount of reimbursement of expenses that remains unpaid at the expiry of the period prescribed in subsection (1) or (3) shall carry simple interest as from the date of such expiry until such time as it is paid, calculated at the rate determined from time to time by the Chief Justice for the purposes of section 49(1)(b) of the High Court Ordinance (Cap 4).

(Part VIIA added 16 of 2003 s. 12)

|          |     |                    |            |            |
|----------|-----|--------------------|------------|------------|
| Section: | 27H | Death of applicant | 16 of 2003 | 16/05/2003 |
|----------|-----|--------------------|------------|------------|

Where an applicant to whom any amount is payable pursuant to a notice issued under section 27E(2) or 27F(5) dies before the amount is paid to him, that amount shall be payable to his estate.

(Part VIIA added 16 of 2003 s. 12)

|          |    |        |            |            |
|----------|----|--------|------------|------------|
| Section: | 28 | Appeal | 16 of 2003 | 16/05/2003 |
|----------|----|--------|------------|------------|

## PART VIII

### LEGAL MATTERS

- (1) A claimant who is dissatisfied with-
- (a) the result of a review by the Board under section 23; or
  - (b) the amount of compensation awarded to him as determined by the Board after a review under section 24(3),

may appeal to the District Court.

(1A) An applicant who is dissatisfied with the result of a review conducted under section 27F(4) may appeal to the District Court. (Added 16 of 2003 s. 13)

(2) The time for making an appeal under this section is 6 months from the date of the written result of review issued under section 23(2), or of the certificate issued under section 24(3) or of the notice issued under section 27F(5) (as the case may be). (Amended 16 of 2003 s. 13)

(3) The District Court may, if it thinks fit, extend the time within which an appeal may be made under this section.

(4) On an appeal under this section, the District Court may confirm, vary or reverse any decision or determination of the Board and may make any further order, including any order as to costs, as it thinks fit.

(Enacted 1995)

|          |    |   |  |            |
|----------|----|---|--|------------|
| Section: | 29 | Damages under common law and other enactments |  | 30/06/1997 |
|----------|----|---|--|------------|

(1) Nothing in this Ordinance diminishes or extinguishes any right to damages or other compensation at common law or under any other enactment for permanent incapacity resulting from deafness.

(2) Subject to subsection (3), where any person is awarded any damages or other compensation at common law or under any other enactment by a court in Hong Kong in respect of permanent incapacity resulting from sensorineural deafness suffered by him as a result of his exposure to noise in his working environment, the whole of the person's entitlement to compensation or other payment under this Ordinance, if any, other than compensation or other payment payable prior to the date of such judgment, is extinguished.

(3) Where a person's entitlement to compensation or other payment under this Ordinance has been extinguished under subsection (2), his entitlement is revived if he satisfies the Board that he has tried all practicable means to obtain payment of the damages or other compensation awarded but has failed to obtain payment in full.

(Enacted 1995)

|          |    |         |            |            |
|----------|----|---------|------------|------------|
| Section: | 30 | Offence | 16 of 2003 | 16/05/2003 |
|----------|----|---------|------------|------------|

## PART IX

### MISCELLANEOUS

(1) Any person who in connection with an application for compensation, direct payment of expenses or reimbursement of expenses by himself or any other person provides any document or



makes any statement or certification of facts which is false in a material particular and which- (Amended 16 of 2003 s. 14)

- (a) he knows to be false in such particular; or
- (b) he has no reasonable ground to believe to be true in such particular,

commits an offence and is liable on conviction to imprisonment for 1 year and a fine at level 5.

(2) Where a member of a professional body is alleged to have committed an offence under subsection (1), the Board may refer the allegation to that professional body.

(Enacted 1995)

|          |     |                     |            |            |
|----------|-----|---------------------|------------|------------|
| Section: | 30A | Priority of payment | 16 of 2003 | 16/05/2003 |
|----------|-----|---------------------|------------|------------|

(1) If in the opinion of the Board, the available funds of the Fund are insufficient to pay all amounts of compensation, direct payment of expenses and reimbursement of expenses within the periods prescribed for their payment, the Board shall apply the available funds in payment of the compensation and reimbursement of expenses in order of priority of the dates of the certificates or notices issued under section 24(1), 24(3), 27E(2) or 27F(5) (as the case may be).

(2) Where the dates of any 2 or more certificates or notices referred to in subsection (1) are the same, the order of priority of payment for the purposes of that subsection is to be determined by reference to the dates of birth of the relevant claimants or applicants, with the amount payable in relation to the claimant or applicant who was born earlier being paid first.

(3) Where the Board has come to the opinion described in subsection (1), it shall attach to any certificate or notice referred to in that subsection a statement indicating that the amount of the compensation, direct payment of expenses or reimbursement of expenses to which the certificate or notice relates is payable in the manner described in subsections (1) and (2).

(Added 16 of 2003 s. 15)

|          |    |                            |                 |            |
|----------|----|----------------------------|-----------------|------------|
| Section: | 31 | (Repealed 5 of 1998 s. 15) | 5 of 1998 s. 15 | 06/03/1998 |
|----------|----|----------------------------|-----------------|------------|

|          |    |  |            |            |
|----------|----|--|------------|------------|
| Section: | 32 | Compensation, <u>direct payment of expenses</u> or reimbursement of expenses not to be assigned, charged or attached | 16 of 2003 | 16/05/2003 |
|----------|----|--|------------|------------|

Except under section 18A of the Legal Aid Ordinance (Cap 91), compensation, direct payment of expenses or reimbursement of expenses is not capable of being assigned, charged or attached and does not pass to any other person by operation of law and no claim is to be set off against such compensation, direct payment of expenses or reimbursement of expenses.

(Enacted 1995. Amended 16 of 2003 s. 16)

|          |    |                                     |  |            |
|----------|----|-------------------------------------|--|------------|
| Section: | 33 | Financial Secretary may charge fees |  | 30/06/1997 |
|----------|----|-------------------------------------|--|------------|

The Financial Secretary may charge the Board fees for any service provided to the Board or the Medical Committee by the Government.

(Enacted 1995)

|          |    |  |  |            |
|----------|----|--|--|------------|
| Section: | 34 | Protection of members, etc. of Board and Medical Committee |  | 30/06/1997 |
|----------|----|--|--|------------|

- (1) No-
  - (a) member of the Board;
  - (b) member of the Medical Committee;
  - (c) member of any committee of the Board;
  - (d) employee of the Board,

acting in good faith is personally liable for any act done or default made by-

- (i) the Board;
- (ii) the Medical Committee;
- (iii) any committee of the Board,

in the performance or purported performance of any function of the Board, the Medical Committee or such committee, as may be appropriate, under this Ordinance.

(2) The protection afforded under subsection (1) to any member or employee in respect of any act or default does not affect any liability of the Board for the act or default.

(Enacted 1995)

|          |    |                         |  |            |
|----------|----|-------------------------|--|------------|
| Section: | 35 | Evidence by certificate |  | 30/06/1997 |
|----------|----|-------------------------|--|------------|

A certificate purporting to be signed by the Chairman of the Board or any member of the Board authorized by the Board in that behalf stating that an amount of money has been paid from the Fund to the person named in the certificate on the date specified in the certificate is evidence of the fact in any proceedings.

(Enacted 1995)

|          |    |                           |            |            |
|----------|----|---------------------------|------------|------------|
| Section: | 36 | Designations by the Board | 16 of 2003 | 16/05/2003 |
|----------|----|---------------------------|------------|------------|

(1) The Board may, on the recommendation of the Medical Committee, from time to time designate-

- (a) the medical examinations to be performed by designated medical practitioners for the diagnosis and assessment of noise-induced deafness;
- (b) the hearing tests to be performed for the assessment of hearing loss and different classes or descriptions of hearing tests may be so designated to be performed by different categories of persons;
- (c) the audiological facilities and calibration methods to be used in hearing tests and medical examinations;
- (d) places as hearing test centres where hearing tests under section 15(2) may be performed; (Amended 16 of 2003 s. 17)
- (e) the categories of persons who may give an advice under section 27B(3) or 27E(3)(b)(iii). (Added 16 of 2003 s. 17)

(2) The Board may, by notice in the Gazette or any other means, promulgate any designation made under subsection (1).

(Enacted 1995)

|          |    |   |            |            |
|----------|----|---|------------|------------|
| Section: | 37 | Regulations by Chief Executive in Council | 16 of 2003 | 16/05/2003 |
|----------|----|---|------------|------------|

The Chief Executive in Council may by regulation provide for any matter generally for the better carrying out of the provisions and purposes of this Ordinance.

(Enacted 1995. Amended 16 of 2003 s. 18)

|          |    |       |  |            |
|----------|----|-------|--|------------|
| Section: | 38 | Forms |  | 30/06/1997 |
|----------|----|-------|--|------------|

The Board may specify the form of any application, report, certificate or notice for the purposes of this Ordinance.

(Enacted 1995)

|          |    |                        |            |            |
|----------|----|------------------------|------------|------------|
| Section: | 39 | Amendment of Schedules | 16 of 2003 | 16/05/2003 |
|----------|----|------------------------|------------|------------|

- (1) The Chief Executive in Council may, by notice in the Gazette, amend Schedules 1, 2 and 3.
- (2) The Legislative Council may, by resolution, amend Schedules 4, 5 and 7.
- (3) The Secretary may, by notice in the Gazette, amend Schedule 6. (Added 16 of 2003 s. 19)

(Enacted 1995. Amended 16 of 2003 s. 19)

|          |    |                    |  |            |
|----------|----|--------------------|--|------------|
| Section: | 40 | (Omitted as spent) |  | 30/06/1997 |
|----------|----|--------------------|--|------------|

(Omitted as spent)

(Enacted 1995)

|          |    |                    |  |            |
|----------|----|--------------------|--|------------|
| Section: | 41 | (Omitted as spent) |  | 30/06/1997 |
|----------|----|--------------------|--|------------|

(Omitted as spent)

(Enacted 1995)

|          |    |                    |  |            |
|----------|----|--------------------|--|------------|
| Section: | 42 | (Omitted as spent) |  | 30/06/1997 |
|----------|----|--------------------|--|------------|

(Omitted as spent)

(Enacted 1995)

|          |    |                    |  |            |
|----------|----|--------------------|--|------------|
| Section: | 43 | (Omitted as spent) |  | 30/06/1997 |
|----------|----|--------------------|--|------------|

(Omitted as spent)

(Enacted 1995)

|          |    |                    |  |            |
|----------|----|--------------------|--|------------|
| Section: | 44 | (Omitted as spent) |  | 30/06/1997 |
|----------|----|--------------------|--|------------|

(Omitted as spent)

(Enacted 1995)

|          |    |                    |  |            |
|----------|----|--------------------|--|------------|
| Section: | 45 | (Omitted as spent) |  | 30/06/1997 |
|----------|----|--------------------|--|------------|

(Omitted as spent)

(Enacted 1995)

|          |    |                    |  |            |
|----------|----|--------------------|--|------------|
| Section: | 46 | (Omitted as spent) |  | 30/06/1997 |
|----------|----|--------------------|--|------------|

(Omitted as spent)

(Enacted 1995)

|          |    |                    |  |            |
|----------|----|--------------------|--|------------|
| Section: | 47 | (Omitted as spent) |  | 30/06/1997 |
|----------|----|--------------------|--|------------|

(Omitted as spent)

(Enacted 1995)

|          |    |              |           |            |
|----------|----|--------------|-----------|------------|
| Section: | 48 | Transitional | 5 of 1998 | 06/03/1998 |
|----------|----|--------------|-----------|------------|

(1) Notwithstanding section 14(1), a person who-

(a) suffers noise-induced deafness; but

(b) fails to satisfy the Board that he has at any time been employed under a continuous contract in any noisy occupation in Hong Kong within the 12 months before the date of his relevant application under section 15,

is, subject to sections 14(3), 17 and 29, entitled to such compensation as determined by the Board under this Ordinance, if-

(i) he satisfies the Board that-

(A) he fulfils the conditions specified in section 14(2)(a), (c) and (d); and

(B) he has been employed at any time beginning on 1 July 1989 under a continuous

contract in any noisy occupation in Hong Kong; and

(ii) he makes his application for compensation within 12 months beginning on the commencement of sections 1 to 20 of the amending Ordinance, that is to say, 6 March 1998.

(2) Where, before the commencement of sections 1 to 20 of the amending Ordinance, that is to say, 6 March 1998-

(a) a claimant has incurred expenses under section 15(2) or (3) of the pre-amended 1998 Ordinance, then sections 8(c), 15(4) to (6) and 31 of the pre-amended 1998 Ordinance shall continue to apply to or in relation to such claimant;

(b) a report prepared under section 15(2) or (3) of the pre-amended 1998 Ordinance has been provided to the Board, then sections 16(1), 19 and 20(1) of the pre-amended 1998 Ordinance shall continue to apply to or in relation to such report;

(c) a claimant has applied for compensation under section 15 of the pre-amended 1998 Ordinance and the Board has not determined the percentage of permanent incapacity of the claimant under section 20, the Board shall make such determination in accordance with Schedule 4 to the pre-amended 1998 Ordinance.

(3) Despite section 14(1) and subject to sections 14(3) and 29, a person is entitled to such compensation as is determined by the Board under this Ordinance if –

(a) the person fulfils the conditions specified in section 14(2)(a) and (c) has not been awarded any compensation;

(b) the person has made ~~one or more~~ previous applications for compensation under the pre-amended ~~2009~~2010 Ordinance, and the previous application or the last of such previous applications that was refused under section 22(1)(a) of that Ordinance on the ground that he or she suffered from ~~sensorineural hearing loss of not less than 40dB in only one ear~~ monaural hearing loss only (“previous unsuccessful application”); and

(c) there is no evidence proving that the ~~sensorineural~~ monaural hearing loss was not due to noise.

(4) In relation to a claimant applying for compensation based on an entitlement arising under subsection (3), the Board must determine the noise-induced deafness of the claimant having regard to the result of –

(a) the result of the hearing test or medical examination as stated in the notice sent under section 22 in respect of the claimant’s previous unsuccessful application mentioned in subsection (3)(b) or, where there was more than one such previous unsuccessful application, the last such application;

(b) any advice of the Medical Committee given in respect of the deafness of the claimant;

(c) the result of any medical examination that the Board may have required the claimant to undergo under section 16(1); and

(d) any investigations and inquiries into any other matter concerning the claimant’s deafness or the claimant’s occupational history that the Board may have made under section 16(1).

(5) Despite section 14(1) and subject to sections 14(3) and 29, a person who suffers noise-induced deafness is entitled to such compensation as is determined by the Board under this Ordinance if –

(a) the person provides the Board with a report of a self-arranged audiometric test in relation to which report or test the requirements specified in subsection (6) are met;

(b) the person has had –

(i) at least 10 years of employment in aggregate in any noisy occupation in Hong Kong before the date of the self-arranged audiometric test; or

(ii) at least 5 years of employment in aggregate in any noisy occupation specified in paragraphs (c), (j), (k) and (y) of Schedule 3 in Hong Kong before the date of the self-arranged audiometric test;

(c) the person has at any time been employed under a continuous contract in any noisy occupation in Hong Kong within the 12 months before the date of the self-arranged audiometric test;

(d) the person has not been awarded any compensation; and

- (e) there is no evidence proving that the sensorineural hearing loss was not due to noise.
- (6) The requirements referred to in subsection (5)(a) are that –
- (a) the report must show the date on which the self-arranged audiometric test was conducted;
  - (ab) the report must show that the person suffered from –
    - (i) hearing loss amounting to not less than 40 dB in only one ear, being the average of hearing losses measured by audiometry over the 1, 2 and 3 kHz frequencies; or
    - (ii) any hearing loss that the Medical Committee may, under subsection (7), infer from the report to amount to the hearing loss mentioned in subparagraph (i);
  - (ac) the report does not indicate that the person mentioned in paragraph (d) has opined that the result of the self-arranged audiometric test is unreliable.
  - (b) the self-arranged audiometric test was conducted within the period from 1 July 1995 to the date immediately before the date of gazettal of the 2010 Amendment Ordinance;
  - (c) if the person has undergone one or more hearing tests arranged by the Board in connection with the person’s application for compensation that was refused under section 22(1)(a) or, where there was more than one such application, the last such application, the self-arranged audiometric test was conducted after –
    - (i) the date of the hearing test on the result of which the Board’s decision to refuse the application (“first decision”) was based;
    - (ii) if the person has, under section 23, requested the Board to review the first decision, the date of the hearing test on the result of which the Board’s decision to refuse to vary or reverse the first decision (“second decision”) was based;
    - (iii) if the person has, under section 28, appealed to the Court against the second decision, the date of the hearing test on the result of which the Court’s decision to refuse to vary or reverse the second decision was based; and
  - (d) the self-arranged audiometric test was conducted, or the result of the test was certified by a person belonging to a category of persons designated under section 36(1)(b).
- (6A) If it is not reasonably practicable to ascertain the date of the hearing test mentioned in subparagraph (i), (ii) or (iii) of subsection (6)(c), that subparagraph is to be construed as if the reference to that date were a reference to the date of the Board’s decision or the Court’s decision mentioned in that subparagraph.
- (7) If the hearing losses as shown in the self-arranged audiometric test mentioned in section 48(5)(a) were not measured by audiometry over the 1, 2 and 3 kHz frequencies –
- (a) the report of the self-arranged audiometric test must contain information that makes it possible for the Medical Committee to infer the average hearing loss of the person over the 1, 2 and 3 kHz frequencies; and
  - (b) the Medical Committee may, if it considers it appropriate, infer the average hearing loss of the person over the 1, 2 and 3 kHz frequencies relying on the information given in the report.
- (8) In relation to a claimant applying for compensation based on an entitlement arising under subsection (5), the Board must determine the noise-induced deafness of the claimant having regard to –
- (a) the report mentioned in subsection (5)(a) or, where there was more than one such report, the last such report;
  - (b) any advice of the Medical Committee given in respect of the deafness of the claimant;
  - (c) the result of any medical examination that the Board may have required the claimant to undergo under section 16(1); and
  - (d) any investigations and inquiries into any other matter concerning the claimant’s deafness or the claimant’s occupational history that the Board may have made under section 16(1).
- (9) Subsection (5) does not apply to a person who is entitled to apply for compensation for which the entitlement arises under section 14 or subsection (3).
- (10) A person who has applied for compensation for which the entitlement arose under section

14 (“existing application”) must not apply for compensation for which the entitlement arises under subsection (3) or (5) if –

- (a) the existing application is still pending;
- (b) the existing application has been refused by the Board under section 22 but there is –
  - (i) a pending review by the Board under section 23 in respect of the existing application; or
  - (ii) a pending appeal to the Court under section 28 concerning the Board’s review under section 23 in respect of the existing application.

(11) If a person’s existing application has been refused by the Board under section 22 but before the person –

- (a) requests a review by the Board under section 23 in respect of the existing application; or
- (b) appeals to the Court under section 28 concerning the Board’s review under section 23 in respect of the existing application,

the person makes an application for compensation for which the entitlement arises under subsection (3) or (5), the Board must not process the application until the review or appeal is disposed of.

(512) If before the commencement of the 20092010 Amendment Ordinance, a claimant had applied for compensation under the pre-amended 20092010 Ordinance but the Board had not at that commencement determined the noise-induced deafness of the claimant under section 20 of the pre-amended 20092010 Ordinance, then, on or after that commencement, the Board must make the determination under this Ordinance.

(3613) In this section, –

- (a) “pre-amended 1998 Ordinance” (修訂前的1998年本條例) means this Ordinance as in force immediately before the commencement of sections 1 to 20 of the amending Ordinance, that is to say, 6 March 1998-;
- (b) “pre-amended 20092010 Ordinance” (修訂前的20092010年條例) means this Ordinance as in force immediately before the commencement of the 20092010 Amendment Ordinance;
- (c) “20092010 Amendment Ordinance” (《20092010年修訂條例》) means the Occupational Deafness (Compensation) (Amendment) Ordinance 20092010 ( of 20092010).

(Added 5 of 1998 s. 16)

|           |   |  |            |            |
|-----------|---|--|------------|------------|
| Schedule: | 1 | PROVISIONS WITH RESPECT TO THE BOARD AND MEMBERS THEREOF | 16 of 2003 | 16/05/2003 |
|-----------|---|--|------------|------------|

[sections 2, 4, 5, 11 & 39]

**1. Common seal**

The Board has a common seal.

**2. Board not servant or agent of Government**

The Board is not to be regarded as a servant or agent of the Government or as enjoying any status, immunity or privilege of the Government.

(Amended 23 of 2002 s. 38)

**3. Composition of the Board**

(1) The Board consists of the following members all of whom are appointed by the Chief Executive- (Amended 16 of 2003 s. 20)

- (a) a chairman;
- (b) not more than 2 persons, not being public officers, who, in the opinion of the Chief Executive, represent employers;
- (c) not more than 2 persons, not being public officers, who, in the opinion of the Chief

- Executive, represent employees;
- (d) a medical practitioner;
  - (e) an officer of the Hospital Authority who is a medical practitioner; and
  - (f) not more than 2 public officers.

(2) The appointment of a person appointed to the Board under subsection (1)(a), (b), (c), (d) or (e) must not exceed 3 years.

(3) A person appointed to the Board under subsection (1)(f) holds office at the pleasure of the Chief Executive.

(Amended 16 of 2003 s. 20)

#### **4. Terms and appointment of members**

(1) Subject to subsection (3), a member of the Board holds and vacates his office in accordance with the terms of his appointment and, on ceasing to be a member, is eligible for reappointment.

(2) Any member appointed under section 3(1)(a), (b), (c), (d) or (e) may at any time-

- (a) resign from his office by notice in writing to the Chief Executive; or
- (b) be removed from office by the Chief Executive for permanent incapacity or other sufficient cause,

and upon such resignation or removal the term for which he was appointed is deemed to have expired.

(3) Where any member appointed under section 3(1)(a), (b), (c), (d) or (e) is precluded by temporary incapacity or other cause from performing his functions as a member for any period, the Chief Executive may appoint another person to act in place of that member during that period.

(4) Where any question arises under subsection (2)(b) or (3) as to whether any incapacity or cause exists or whether any incapacity is temporary or permanent or any cause is sufficient, the decision of the Chief Executive shall be final.

(Amended 16 of 2003 s. 20)

#### **5. Chief Executive may declare office of member of Board to be vacant**

If the Chief Executive is satisfied that a member of the Board appointed under section 3(1)(a), (b), (c), (d) or (e)- (Amended 16 of 2003 s. 20)

- (a) has failed to attend 3 consecutive meetings of the Board without the permission of the Board; or
- (b) has become bankrupt or made an arrangement with his creditors; or
- (c) is incapacitated by physical or mental illness; or
- (d) is otherwise unable or unfit to discharge the functions of a member,

the Chief Executive may declare his office as a member of the Board to be vacant, and shall notify that fact in such manner as the Chief Executive thinks fit and upon such declaration the office shall become vacant.

(Amended 16 of 2003 s. 20)

#### **6. Quorum**

The quorum of the Board is 5 and, while a member is disqualified from taking part in a decision or deliberation of the Board in respect of a matter, he is disregarded for the purposes of constituting a quorum of the Board for deciding, or deliberating on, that matter.

#### **7. Procedure of Board**

(1) Subject to the foregoing provisions of this Schedule and to subsections (2) to (5), the Board has power to regulate its own procedure including the manner in which decisions of the Board may be made by a quorum of its members otherwise than at a meeting of the Board.

(2) Meetings of the Board shall be held at such times and places as the chairman of the Board may appoint.

(3) The chairman appointed under section 3(1)(a) shall preside at any meeting of the Board.

(4) If the chairman appointed under section 3(1)(a) is absent from any meeting of the Board, the members present at the meeting shall elect one of their number to act as chairman in his place.

(5) The chairman appointed under section 3(1)(a) or the member acting in his place has a deliberative vote on all matters coming before the Board and in the case of an equality of votes he also

has a casting vote.

#### **8. Financial year and estimates**

(1) The Board may, with the prior approval of the Secretary, fix a period of 12 months to be the financial year of the Board.

(2) The Board shall, in each financial year, before a date to be appointed by the Secretary, submit to the Secretary a programme of its proposed activities and estimates of its income and expenditure for the next financial year.

(3) The Secretary may approve or reject the programme and estimates submitted to him under subsection (2) and, in the case of a rejection, may require the Board to resubmit, within such time as he may direct, the programme or estimates, or both, modified in such manner as he may direct.

(4) The Board shall comply with any requirement under subsection (3).

(5) Subject to subsection (6), the Board may from time to time vary the estimates submitted under subsection (2), even after their approval by the Secretary.

(6) Where the variation referred to in subsection (5) is an upward adjustment, the Board shall obtain the Secretary's prior approval for the variation and where it is a downward adjustment the Board shall inform the Secretary in writing of the details of the variation.

#### **9. Bank account**

(1) The Board shall open and maintain an account with a bank within the meaning of the Banking Ordinance (Cap 155).

(2) The Board shall pay all moneys received by it into the account referred to in subsection (1).

#### **10. Power to write off**

(1) The Board may write off the whole or any part of any debt due to the Board which it reasonably considers irrecoverable.

(2) Any write off under subsection (1) takes effect for accounting purposes alone and does not extinguish any right of the Board to recover the debt which has been written off.

#### **11. Accounts**

(1) The Board shall maintain proper accounts and records of all income and expenditure.

(2) After the end of each financial year, the Board shall cause to be prepared statements of income and expenditure during the previous financial year and of the assets and liabilities of the Board on the last day thereof and shall provide the statements to the auditor appointed under section 12 within 4 months after the end of the financial year.

#### **12. Auditor**

(1) The Board shall appoint an auditor, who has the right of access to all books of account, documents, vouchers and other records of the Board.

(2) The auditor may also require from any person holding or accountable for any such books, documents, vouchers and records such information and explanations that he considers necessary in the performance of his functions.

(3) The auditor shall audit the statements prepared under section 11(2) and shall report thereon to the Board within 3 months of the receipt of the statements from the Board.

#### **13. Board may transact business by circulation of papers**

The Board may transact any of its business by circulation of papers amongst members whether any such member is in or outside Hong Kong, and a resolution in writing which is approved in writing by a majority of the members is as valid and effectual as if it had been passed at a meeting of the Board.

#### **14. Establishment of committees**

(1) The Board may establish, and appoint the members of, such committees for the better carrying out of the powers and functions of the Board as it thinks fit.



- (2) Persons who are not members of the Board are eligible for appointment to committees.
- (3) The Board shall appoint the chairman of a committee established under subsection (1) and the number of members of a committee is determined by the Board.
- (4) A committee may regulate its own procedure.
- (5) The proceedings of any committee established under subsection (1) is not invalidated by any defect in the appointment of any member thereof, the absence of any member from the meeting at which any such proceeding occurred or any vacancy amongst such members.

#### **15. Delegation by the Board**

- (1) Subject to subsection (2) the Board may delegate in writing any of its powers or duties to any of its employees or any committee established under section 14(1).
- (2) The Board shall not delegate the power or duty-
  - (a) to establish any committee;
  - (b) to determine matters relating to the remuneration and terms and conditions of appointment or employment of the employees of the Board;
  - (c) to establish, manage and control, or enter into an arrangement for the establishment, management and control of, any fund or scheme for the purpose of providing for the payment of allowances, benefits, gratuities, pensions and remuneration to the employees of the Board; or
  - (d) to furnish after the expiry of a financial year, a report on the activities and affairs of the Board for that year, a copy of its statements of accounts therefor and the auditor's report on the accounts.
- (3) Subject to the terms of any delegation by the Board or to any directions of the Board, an employee or a committee delegated with a power or a duty under subsection (1)-
  - (a) may exercise and perform the delegated powers and duties with the same effect as if it were the Board itself; and
  - (b) is presumed to be acting in accordance with the terms of the delegation in the absence of proof to the contrary.

#### **16. Documents of Board**

Every document purporting to be an instrument made or issued by or on behalf of the Board and to be duly executed under the seal of the Board or to be signed or executed by a person authorized by the Board to act in that behalf, can be received in evidence and are deemed, without further proof, to be so made or issued unless the contrary is shown.

#### **17. Technical and professional advisers**

The Board may engage the services of technical and professional advisers as it thinks fit, and may determine all matters relating to their remuneration and terms and conditions of engagement.

#### **18. Employees**

The Board may appoint such employees as it thinks fit and determine all matters relating to their remuneration and terms and conditions of appointment or employment.

#### **19. Pension benefits of employees**

- (1) The Board may-
  - (a) grant, or make provision for the grant of, pensions, gratuities and retirement benefits, to or in respect of its employees;
  - (b) provide other benefits for and in respect of its employees; and
  - (c) make payments, whether ex gratia or legally due, to the personal representative of a deceased employee or to any person who was dependent on such employee at his death.
- (2) The Board may-
  - (a) establish, manage and control any fund or scheme; and
  - (b) enter into an arrangement with any company or association for the establishment, management and control by such company or association either alone or jointly with the Board of any fund or scheme,

for the purpose of providing for the pensions, gratuities, benefits and payments referred to in subsection (1).

(3) The Board may make contribution to any fund or scheme referred to in subsection (2) and may require its employees to make contributions thereto.

(4) In this section "employees" (僱員) includes any class of employee which the Board may specify and in subsection (1) includes former employees.

(Enacted 1995)

|           |   |  |                 |            |
|-----------|---|--|-----------------|------------|
| Schedule: | 2 | PROVISIONS WITH RESPECT TO THE MEDICAL COMMITTEE AND MEMBERS THEREOF | 5 of 1998 s. 17 | 06/03/1998 |
|-----------|---|--|-----------------|------------|

[Sections 12 & 39]

## 1. Composition of Medical Committee

(1) The Medical Committee consists of the following 5 members-

- (a) 1 medical practitioner nominated by the Hospital Authority;
- (b) 1 medical practitioner nominated by the Department of Health;
- (c) 1 medical practitioner nominated by the Hong Kong College of Otorhinolaryngologists of the Hong Kong Academy of Medicine; (Amended 5 of 1998 s. 17)
- (d) 1 medical practitioner nominated by the Hong Kong College of Community Medicine of the Hong Kong Academy of Medicine; and
- (e) 1 audiologist nominated by the Hong Kong Society of Audiology.

(2) The appointment of a member must not exceed 3 years.

(3) A member may at any time-

- (a) resign from his office by notice in writing to the Secretary; or
- (b) be removed from office by the Secretary for permanent incapacity or other sufficient cause.

(4) Where a member referred to in subsection (1) is precluded by temporary incapacity or other cause from performing his functions as such member for any period, the Secretary may appoint another person to act in place of that member during that period.

(5) Where any question arises under subsection (3) or (4) as to whether any incapacity or cause exists or whether any incapacity is temporary or permanent or any cause is sufficient, the decision of the Secretary is final.

## 2. Procedure of Medical Committee

The Medical Committee may determine its own procedure at its meetings and for conducting other business.

(Enacted 1995)

|           |   |                   |            |            |
|-----------|---|-------------------|------------|------------|
| Schedule: | 3 | NOISY OCCUPATIONS | 16 of 2003 | 16/05/2003 |
|-----------|---|-------------------|------------|------------|

[sections 2 & 39]

A noisy occupation is an occupation involving-

- (a) the use of power driven grinding tools on metal or on billets of metal or blooms, or work wholly or mainly in the immediate vicinity of those tools whilst they are being so used;
- (b) the use of power driven percussive tools on metal or on billets of metal or blooms, or

- work wholly or mainly in the immediate vicinity of those tools whilst they are being so used;
- (c) the use of power driven grinding, chiselling, cutting or percussive tools on rocks, concrete or marble, or work wholly or mainly in the immediate vicinity of those tools whilst they are being so used;
  - (d) work wholly or mainly in the immediate vicinity of plant (excluding power press plant) engaged in the forging (including drop stamping) of metal by means of closed or open dies or drop hammers;
  - (e) work in textile manufacturing where the work is undertaken wholly or mainly in rooms or sheds in which there are machines engaged in weaving man-made or natural (including mineral) fibres or in the high speed false twisting of fibres;
  - (f) the use of, or work wholly or mainly in the immediate vicinity of, machines engaged in cutting, shaping or cleaning metal nails or screws;
  - (g) the use of, or work wholly or mainly in the immediate vicinity of, plasma spray guns engaged in the deposition of metal;
  - (h) the use of, or work wholly or mainly in the immediate vicinity of, any of the following machines: multi-cutter moulding machines, planing machines, automatic or semi-automatic lathes, multiple cross-cut machines, automatic shaping machines, double-end tenoning machines, vertical spindle moulding machines (including high-speed routing machines), edge banding machines, bandsawing machines with a blade width of not less than 75 mm and circular sawing machines;
  - (i) the use of chain saws;
  - (j) the use of or work wholly or mainly in the immediate vicinity of, machines engaged in percussive pile or metal plank driving on construction sites;
  - (k) work wholly or mainly in the immediate vicinity of abrasive blasting operations;
  - (l) the use of, or work wholly or mainly in the immediate vicinity of, machines engaged in grinding of glass;
  - (m) work wholly or mainly in the immediate vicinity of machines engaged in crushing or screening of rocks or stone aggregate;
  - (n) the use of, or work wholly or mainly in the immediate vicinity of, machines engaged in granulating of plastic materials;
  - (o) work wholly or mainly in the immediate vicinity of machines or hand tools engaged in descaling of ships;
  - (p) work wholly or mainly in the immediate vicinity of internal combustion engines or turbines or pressurized fuel burners or jet engines; (Amended 5 of 1998 s. 18)
  - (q) work wholly or mainly in the immediate vicinity of car body repair, or of making metal articles by manual hammering; (Amended 5 of 1998 s. 18)
  - (r) the use of, or work wholly or mainly in the immediate vicinity of, machines engaged in extruding of plastic materials; (Added 5 of 1998 s. 18)
  - (s) the use of paper corrugating machines, or work wholly or mainly in the immediate vicinity of those machines whilst they are being so used; (Added 5 of 1998 s. 18)
  - (t) work wholly or mainly in the immediate vicinity of bleaching and dyeing of fabric involving machines using pressurized steam; (Added 5 of 1998 s. 18)
  - (u) work wholly or mainly in the immediate vicinity of glass-bottling lines; (Added 5 of 1998 s. 18)
  - (v) work wholly or mainly in the immediate vicinity of metal-can bottling lines; (Added 5 of 1998 s. 18)
  - (w) the use of paper folding machines, or work wholly or mainly in the immediate vicinity of those machines whilst they are being so used; (Added 5 of 1998 s. 18)
  - (x) the use of high speed web-fed offset printing machines, or work wholly or mainly in the immediate vicinity of those machines whilst they are being so used; (Added 5 of 1998 s. 18. Amended 16 of 2003 s. 22)
  - (y) work wholly or mainly in the immediate vicinity of gun-firing operation; (Added 5 of 1998 s. 18. Amended 16 of 2003 s. 22)
  - (z) work wholly or mainly in the immediate vicinity of a place where the electric stunning

- of pigs for the purpose of slaughter takes place; (Added 16 of 2003 s. 22)
- (za) playing mahjong (as the main duty) inside a mahjong parlour licensed under section 22(1)(b) of the Gambling Ordinance (Cap 148); (Added 16 of 2003 s. 22)
- (zb) preparing or serving drinks (as the main duty) in the immediate vicinity of the dancing area of a discotheque; or (Added 16 of 2003 s. 22)
- (zc) controlling or operating a system for playing back and broadcasting recorded music in a discotheque. (Added 16 of 2003 s. 22)

(Enacted 1995)

|           |   |   |            |            |
|-----------|---|---|------------|------------|
| Schedule: | 4 | PERCENTAGE OF PERMANENT INCAPACITY BY REFERENCE TO NOISE-INDUCED DEAFNESS | 16 of 2003 | 16/05/2003 |
|-----------|---|---|------------|------------|

[sections 20, 39 & 48]

| Average hearing loss (dB) at 1, 2, 3 kHz frequencies as determined by the Board |                   | FOR BETTER EAR    |                   |                   |                   |                   |                   |                   |                   |                   |                   |                |
|---|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|----------------|
|   |                   | 40 to below 45 dB | 45 to below 50 dB | 50 to below 55 dB | 55 to below 60 dB | 60 to below 65 dB | 65 to below 70 dB | 70 to below 75 dB | 75 to below 80 dB | 80 to below 85 dB | 85 to below 90 dB | 90 dB or above |
| FOR WORSE EAR   | 40 to below 45 dB | 1                 |                   |                   |                   |                   |                   |                   |                   |                   |                   |                |
|   | 45 to below 50 dB | 2                 | 5                 |                   |                   |                   |                   |                   |                   |                   |                   |                |
|   | 50 to below 55 dB | 3                 | 6                 | 10                |                   |                   |                   |                   |                   |                   |                   |                |
|   | 55 to below 60 dB | 4                 | 7                 | 11                | 15                |                   |                   |                   |                   |                   |                   |                |
|   | 60 to below 65 dB | 5                 | 8                 | 12                | 16                | 20                |                   |                   |                   |                   |                   |                |
|   | 65 to below 70 dB | 6                 | 9                 | 13                | 17                | 21                | 25                |                   |                   |                   |                   |                |
|   | 70 to below 75 dB | 7                 | 10                | 14                | 18                | 22                | 26                | 30                |                   |                   |                   |                |
|   | 75 to below 80 dB | 8                 | 11                | 15                | 19                | 23                | 27                | 31                | 35                |                   |                   |                |
|   | 80 to below 85 dB | 9                 | 13                | 17                | 21                | 25                | 29                | 33                | 37                | 43                |                   |                |
|   | 85 to below 90 dB | 11                | 14                | 18                | 22                | 26                | 30                | 34                | 38                | 45                | 51                |                |
|   | 90 dB or above    | 13                | 16                | 20                | 24                | 28                | 32                | 36                | 40                | 46                | 53                | 60             |

(Schedule 4 replaced 16 of 2003 s. 23)

|           |   |                        |            |            |
|-----------|---|------------------------|------------|------------|
| Schedule: | 5 | AMOUNT OF COMPENSATION | 16 of 2003 | 16/05/2003 |
|-----------|---|------------------------|------------|------------|

[sections 21 & 39]

1. The amount of compensation payable to a claimant is a lump sum which is obtained by multiplying the percentage of permanent incapacity ~~suffered by the claimant as determined by the Board under section 20(2) or additional permanent incapacity of the claimant determined under section~~

20 of this Ordinance by either of the following 2 sums, whichever is the less-

- (a) the higher of-
  - (i) a sum calculated by multiplying the monthly earnings of the claimant by the appropriate factor in column 2 of Table 1 according to the age of the claimant at the relevant date of application as specified in column 1 of that Table-

TABLE 1

| Age            | Multiplying factor |
|----------------|--------------------|
| under 40       | 96                 |
| 40 to under 56 | 72                 |
| 56 and above   | 48; or             |

- (ii) the sum of \$341000; or (Amended 16 of 2003 s. 24)
- (b) the appropriate sum specified in column 2 of Table 2 according to the age of the claimant at the relevant date of application as specified in column 1 of that Table-

TABLE 2

| Age            | Sum       |
|----------------|-----------|
| under 40       | \$2016000 |
| 40 to under 56 | \$1512000 |
| 56 and above   | \$1008000 |

(Amended 16 of 2003 s. 24)

- 2. For the purpose of this Schedule, earnings include-
  - (a) any remuneration or profit derived from an employment;
  - (b) any privilege or benefit the value of which is capable of being estimated in money;
  - (c) the value of any food, fuel or quarters supplied to a claimant by his employer if, as the result of the claimant's permanent incapacity, the claimant is deprived of such food, fuel or quarters;
  - (d) any overtime payments or other special remuneration for work done, whether by way of bonus, allowance or otherwise, if of constant character or for work habitually performed; and
  - (e) tips if the employment be of such a nature that the habitual giving or receiving thereof is open and well known and is recognized by the employer, but do not include-
    - (i) remuneration for intermittent overtime;
    - (ii) casual payments of a non-recurrent nature;
    - (iii) the value of a travelling allowance or a travelling concession;
    - (iv) a contribution paid by the employer of a claimant towards any pension or provident fund; or
    - (v) a sum paid to a claimant to cover any special expenses entailed on him by the nature of his employment.
- 3. For the purpose of this Schedule-
  - (a) if a claimant can provide documentary evidence to the satisfaction of the Board concerning the earnings received by him as remuneration from his employer or employers in respect of his employment for 12 months in aggregate immediately preceding the relevant date of application in noisy occupations in Hong Kong, the monthly earnings of the claimant are the average monthly earnings for those 12 months;
  - (b) if a claimant cannot provide the documentary evidence as required by paragraph (a) and he is entitled to compensation by virtue of his fulfilling the condition in section 14(2)(b)(i) of this Ordinance but not section 14(2)(b)(ii) of this Ordinance or he is

entitled to compensation by virtue of section 48(1) of this Ordinance, the monthly earnings of the claimant are, subject to paragraph (ba), the median monthly employment earnings of the total employed population of Hong Kong published by the Census and Statistics Department for the quarter immediately before the commencement of Part V of this Ordinance; (Amended 5 of 1998 s. 20)

- (ba) if a claimant referred to in paragraph (b) has been employed at any time beginning on the commencement of Part V of this Ordinance under a continuous contract in any noisy occupation in Hong Kong, the monthly earnings of the claimant are the median monthly employment earnings of the total employed population of Hong Kong published by the Census and Statistics Department for the quarter immediately before the commencement of sections 1 to 20 of the amending Ordinance, that is to say, 6 March 1998; (Added 5 of 1998 s. 20)
- (c) in any other case, the monthly earnings of a claimant are the median monthly employment earnings of the total employed population of Hong Kong published by the Census and Statistics Department for the quarter immediately before the relevant date of application.

3A. Section 3(ba) shall only apply to an application for compensation made on or after the commencement of sections 1 to 20 of the amending Ordinance, that is to say, 6 March 1998. (Added 5 of 1998 s. 20)

3B. For the purposes of computing a claimant's employment for 12 months in aggregate under section 3(a), the claimant's absence from work by reason of-

- (a) the claimant's taking any period of maternity leave under section 12 of the Employment Ordinance (Cap 57);
- (b) the claimant's being unfit therefor on account of injury or sickness; (Amended 16 of 2003 s. 24)
- (c) the claimant's injury or his suffering from an occupational disease in respect of which compensation is payable in accordance with the Employees' Compensation Ordinance (Cap 282); (Amended 16 of 2003 s. 24)
- (d) the claimant's having obtained his employer's consent to the absence subject to a condition that no earnings are accrued for the claimant during such absence, (Added 16 of 2003 s. 24)

shall not be counted towards the 12-month period in aggregate if the period or periods of absence from work amount to 30 consecutive days or more. (Added 5 of 1998 s. 20)

4. In this Schedule, subject to section 5, "relevant date of application" (提出申請的有關日期) means the date of an application for compensation under section 15 of this Ordinance by a claimant and pursuant to that application compensation is payable or was paid to the claimant.

5. In calculating the amount of compensation payable to a claimant on the basis of the noise-induced deafness of the claimant determined under section 48(4) of this Ordinance, "relevant date of application" (提出申請的有關日期) means –

- (a) for the purposes of sections 1 and 3(a), the date of the previous unsuccessful application mentioned in section 48(3)(b) of this Ordinance or, where there was more than one such previous unsuccessful application, the date of the last such application; and
- (b) for the purposes of section 3(c), the date of the commencement of section 48(4) of this Ordinance.

6. In calculating the amount of compensation payable to a claimant on the basis of the noise-induced deafness of the claimant determined under section 48(8) of this Ordinance, "relevant date of application" (提出申請的有關日期) means –

- (a) for the purposes of sections 1 and 3(a), the date of the self-arranged audiometric test

mentioned in section 48(5)(a) of this Ordinance or, where there was more than one such test, the date of the last such test; and  
 (b) for the purposes of section 3(c), the date of the commencement of section 48(8) of this Ordinance.

(Enacted 1995)

|           |   |                          |            |            |
|-----------|---|--------------------------|------------|------------|
| Schedule: | 6 | HEARING ASSISTIVE DEVICE | 16 of 2003 | 16/05/2003 |
|-----------|---|--------------------------|------------|------------|

[sections 2 & 39]

1. Hearing aid.
2. Telephone amplifier specially designed for use by persons with hearing difficulty.
3. Desktop telephone with flashing light or other visual device to indicate ringing.
4. Any device the use of which by a person suffering from noise-induced deafness is determined by the Board, upon the advice of the Medical Committee, to be reasonably necessary in connection with such deafness.

(Schedule 6 added 16 of 2003 s. 25)

|           |   |   |            |            |
|-----------|---|---|------------|------------|
| Schedule: | 7 | LIMITS OF <u>DIRECT PAYMENT OF EXPENSES AND REIMBURSEMENT OF EXPENSES</u> | 16 of 2003 | 16/05/2003 |
|-----------|---|---|------------|------------|

[sections 27C & 39]

1. The amount prescribed for the purposes of section 27C(1) is \$~~9000~~12,000.
2. The amount prescribed for the purposes of section 27C(2) is \$~~18000~~36,000.

(Schedule 7 added 16 of 2003 s. 25)