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Secretary for Education and Manpower
Education and Manpower Bureau
(Attn: Mr K K LAM
PAS EM (7))
Room 611, West Wing
CGO, Hong Kong

By Fax (2899 2967) By Post

24 May 2000

Dear Sir,

Employees' Compensation (Amendment)(No. 2) Bill 2000

As agreed at the meeting of the Bills Committee yesterday, matters for your clarification are set out below -

- (a) in the proposed definition of "co-habitee", would it be clearer to say that the person was living with the employee as if he (or she) were (instead of simply "as") the employee's spouse;
- (b) should amendments be made to section 4 of the principal ordinance to remove references to "Crown" and "Her Majesty";
- (c) with the proposed repeal of section 6(6) of the principal ordinance, how would a person who has paid funeral expenses recover the expenses if the employer fails to pay up;
- (d) in the proposed section 6B(1), how would "on application by the members of the family" be construed? Can the Commissioner proceed to a determination even if there is only one application from any one member of the family or does he have to wait until all members of the family have applied? In the former case, can he make the

determination in respect of all eligible members? Has consent to be given in respect of each application or consent to any one application would suffice. In other words, can the Commissioner still proceed to determination if the employer consent to one but withhold his consent as to another? Proposed section 6B(4)(c) seems to require separate application;

- (e) under the circumstances listed in the proposed section 6B(2), should the Commissioner continue with his determination if there is only one claim and it is withdrawn?
- (f) does "certificate" in the proposed section 6C(1)(b) means a "Certificate of Interim Payment"? If so, should this be made clear?
- (g) in the proposed section 6C(3)(b)(i), is it necessary to say "the number of months that have elapsed"?
- (h) section 4, if amended as proposed, of the principal ordinance would provide that the Ordinance shall not apply in the case of any Government employee if any of the members of his family is paid a pension or gratuity under any other ordinance. What would be the effect of proposed section 6C(16) if one of the family members gives up his rights as provided thereunder but another family member chooses to be paid such a pension or gratuity;
- (i) would it not be obvious from other proposed provisions that co-habitee is excluded from "spouse" as expressly provided in proposed section 6C(17). In what context might "spouse" be interpreted to include a co-habitee so as to make it necessary that the exclusive definition has to be made for the purpose of that section?
- (j) what is the difference between "legal personal representative" in the proposed sections 6E(6) and 12(2) and "personal representative" in section 27;
- (k) in the case of a death prior to the issue of a Review Certificate of Compensation Assessment for Fatal Case, is there any provision for that Review Certificate to be further revised?

- (l) in the proposed new section 24(1A), should not "as if he was an employer" be "as if he were an employer"; and
- (m) would consideration be given to taking the opportunity to remove the word "or" from section 18A(1)(c)?

Yours faithfully,

(Arthur CHEUNG)
Assistant Legal Adviser

c.c. Clerk to Bills Committee