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Legislative Council

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**Paper for the House Committee meeting
on 16 June 2000**

**Report of the Bills Committee on
Employees' Compensation (Amendment) (No. 2) Bill 2000**

Purpose

This paper reports on the deliberations of the Bills Committee on the Employees' Compensation (Amendment) Bill 2000.

Background

2. Under the existing provisions of the Employees' Compensation Ordinance (Cap. 282), where a person dies as a result of an accident arising out of and in the course of employment, compensation is payable to his dependants i.e. those family members who were dependent wholly or in part upon the employee's earning at the time of his death. Application for compensation has to be made to the court which will determine who the dependants are; their dependence; and their share of the compensation.

3. At present, compensation is not payable if a deceased employee leaves no dependant. In such case, the employer is only liable to pay the reasonable expenses for the burial of and medical attendance on the deceased employee, subject to a maximum amount, currently set at \$16,000, to any person to whom such expenses are due.

4. According to the Legislative Council Brief on the Bill, the existing provisions and arrangement for fatal compensation claims under the Ordinance have the following drawbacks -

- (a) determination by the court is the only avenue for settlement of a claim. The average time taken through the legal process to settle fatal compensation claims ranges between 18 and 24 months. Legal costs are incurred even in straightforward and uncontested cases;

- (b) as compensation payable is assessed on the degree of dependency, family members who were not dependent on the earnings of the deceased employee will receive no compensation;
- (c) an employer will be liable to pay less compensation if he can successfully argue that the dependants are only partially dependent on the deceased employee. Dependency therefore often becomes a point of contention and delays settlement;
- (d) immediate financial relief is not available to the families of the deceased employee. During the lengthy period of legal proceedings, they may have difficulty in making ends meet; and
- (e) an employer is not liable to pay funeral expenses if the deceased employee is survived by dependants, thus causing additional financial hardship to the latter.

The Bill

5. This Bill seeks to improve the settlement mechanism of fatal compensation claims; to revise the penalty provisions under the Employees' Compensation Ordinance; and to clarify the liability of the principal contractor under section 24 of the Ordinance.

The Bills Committee

6. At the House Committee meeting on 3 March 2000, members agreed that a Bills Committee be formed to study the Bill. The membership list of the Bills Committee is in **Appendix I**.

7. Under the chairmanship of Mr. Kenneth TING Woo-shou, JP, the Bills Committee has held three meetings with the Administration to discuss the Bill.

Deliberations of the Bills Committee

8. The main deliberations of the Bills Committee are summarised in the following paragraphs.

Settlement mechanism of fatal compensation claims

9. Members note that the Bill provides an additional avenue to settle straightforward cases i.e. where the employers' liability to pay compensation and the relationship of the family members are not in dispute. According to the Administration, it is estimated that about 50% of the cases will fall within this category. Under the proposed settlement mechanism, parties to the claim may agree to

submit a claim to the Commissioner. The Commissioner, as he thinks fit, will assess the compensation payable and apportion the compensation amount according to a new Schedule to be added to the Ordinance and issue a certificate for this purpose. If any party to the claim is not satisfied with the determination of the Commissioner, he can either object to the determination of the Commissioner, who will review his determination upon receipt of such objection, or can lodge an appeal against the determination in court.

10. The Administration has explained to members that the Bill proposes to make compensation for death payable to family members instead of dependants of a deceased employee so as to enable the proposed settlement mechanism to operate and to simplify the determination process by removing any potential dispute over the degree of dependency. The Bill also proposes to make the full amount of compensation payable because the full earning capacity of an employee would be forgone with his death, and it is not feasible to delineate the proportional amount of compensation to be paid in each individual claim when the dependency criterion is abolished. The amount of compensation will be apportioned according to a schedule which will provide a larger share of compensation to the core members of the family such as the spouse, the child(ren) and parent(s) of a deceased employee.

11. Members also note that the Bill requires an employer to make interim payment to the spouse of the deceased employee pending the issue of the certificate of compensation assessment in respect of the claim which is to be determined by the Commissioner. It is proposed to make interim payment available to the spouse only because the spouse is easy to identify and is normally the one who looks after the family. On the other hand, making advance payment to the other family members will be difficult to administer. Verification of identity will take time and there will be problems of apportionment, guardianship for minors, etc. The aggregate amount of such payment will be subject to a ceiling and deductible from the total amount of compensation payable.

12. The Administration has informed members that it is estimated that the processing time for apportionment of compensation under the proposed settlement mechanism can be reduced by nine to 15 months. A member asks whether the processing time can be further reduced. The Administration has explained that a reasonable period i.e. six months from the date of death of the employee is necessary in order to allow for the parties who may not be in Hong Kong to make the claim. The Commissioner will process and issue the certificate of compensation assessment for fatal case in the following two to three months. The Administration has further pointed out that the Commissioner may extend the period for making the application if he thinks fit.

13. Members are generally in support of the proposals to improve the settlement mechanism of fatal compensation claims as described in the Bill.

Funeral and medical attendance expenses

14. The Bills Committee notes that the Bill requires the employer to pay funeral and medical attendance expenses in all fatal cases subject to a maximum amount currently provided under the Ordinance i.e. \$16,000. The Administration has explained that these funeral and medical attendance expenses are not deductible from the total amount of compensation payable. Some members are of the view that the current maximum funeral and medical attendance expenses of \$16,000 is too low. These members consider that a maximum of \$50,000 should be generally adequate for meeting funeral and medical attendance expenses. However, some members have expressed concern about the possible impact on the financial burden of employers, particularly of those small business employers. Members proposing the increase have pointed out that the proposed increase will not cause too much financial hardship to the employer because the payment can be covered by insurance if the amount is provided under the Ordinance. These members requested the Administration to consider the proposal.

15. The Administration has advised the Bills Committee that after internal consultation, the Administration agrees that the proposal of increasing the maximum amount of funeral and medical attendance expenses from \$16,000 to \$50,000 is acceptable but consultation with the Labour Advisory Board (LAB) is required.

16. The Administration has subsequently reported to the Bills Committee that the LAB has divided views on the proposal of increasing the maximum amount of funeral and medical attendance expenses to \$50,000 and it is the LAB's consensus that the maximum amount should be \$35,000. The majority of the members agree that the maximum amount of funeral and medical attendance expenses payable by the employer in all fatal compensation cases be set at \$35,000, and that the Administration should introduce Committee Stage amendments (CSAs) accordingly. However, several members have expressed different views.

17. A member has expressed concern that the proposed increase from \$16,000 to \$35,000 still represents a substantial increase which may cause financial hardship to employers. The member queries the justification for proposing an increase of such magnitude. However, the member has indicated his acceptance of the proposed increase because it is the LAB's consensus.

18. Two other members have expressed disappointment that the LAB is unable to reach a consensus of supporting the increase from \$16,000 to \$50,000. They point out that the amount of \$35,000 is at a low level and may not be adequate to hold a decent funeral for the deceased. One of these two members says that he reluctantly accepts the proposed amount of \$35,000 as the LAB has divided views on the proposal of \$50,000. The other member has expressed strong reservation on setting the maximum amount of the funeral and medical attendance expenses at \$35,000 only.

Employees' compensation insurance cost impact

19. Members note that among the proposed improvements to the settlement of fatal compensation claims, the following proposals will have an impact on the cost of insurers underwriting employees' compensation insurance -

- (a) to make compensation for death payable in full to the family members of deceased employees; and
- (b) to require the employer to pay funeral and medical attendance expenses in all fatal compensation cases subject to a maximum amount.

20. In response to concern expressed by some members about the additional financial burden on employers arising from the above two proposals, the Administration has advised that when the proposals were first put forward for consultation in 1996, the insurance industry estimated that the above two proposals would likely lead to an increase of 1%-2% in the cost of insurers underwriting employees' compensation insurance. The insurance industry has re-assessed the impact on their cost arising from the proposals to improve the settlement of fatal compensation claims after the Bill was published in the Gazette in February 2000. According to their re-assessment, the cost impact for the following proposals would be -

<u>Proposal</u>	<u>Cost Impact</u>
(a) to make compensation payable in full to family members of deceased employees	3.49%
(b) to require the employers to pay funeral and medical attendance expenses in all cases	
- subject to a ceiling of \$35 000	0.41%
- subject to a ceiling of \$50 000	0.63%

21. According to the Administration, when the insurance industry conducted the assessment in 1996 which took into account the compensation level in 1996, it was made in the context that insurers underwriting employees' compensation insurance had collected about \$3,000 million (1995 level) as gross premium. While the gross premium collected by employees' compensation insurance insurers dropped to about \$2,000 million in 1998, the levels of compensation under the Ordinance was adjusted upwards. If the insurers have to recoup the same amount of income from premium

to meet the additional liabilities, an increase of 2% at the 1995/1996 level would be translated to around 3.5% at the 1998/1999 level.

22. Several members are of the view that Government should establish a central insurance system in order to fundamentally address the concern about financial burden of employees' compensation insurance cost on the employers.

Levels of fine

23. Members note that there are different levels of maximum fine under various sections of the Ordinance on offences committed by an employer against -

- (a) non-payment of compensation as stated in a certificate issued by the Commissioner;
- (b) failure to comply with the requirements relating to compulsory insurance; and
- (c) failure to comply with a written demand from the Commissioner for producing a policy insurance for inspection.

Members also note that the Bill proposes to increase the level of fine for failure to comply with the requirements relating to compulsory insurance from \$50,000 upon conviction by indictment and \$25,000 upon summary conviction to \$100,000 in both circumstances.

24. The Administration has informed the Bills Committee that the total numbers of prosecution and conviction cases for failure to comply with the requirements relating to compulsory insurance are 923 and 861 respectively in 1999; and that the average level of fine is \$2 700. Some members are of the view that the proposed level of fine should be further increased in order to achieve adequate deterrent effect. They point out that the Employees' Compensation Assistance Fund is financed by a levy on employees' compensation insurance premium payable by employers. It is unfair that the Fund has to effect payments because some employers have failed to take out insurance cover for their employees and thus are unable to provide compensation. The Administration has responded that it is expected that the average level of fine will be adjusted upwards after the proposed level of fine has been substantially increased.

Remedies independently of Ordinance against employer

25. The Administration proposes to introduce a CSA to amend section 26(1) of the Ordinance by repealing "to an employee" and substituting "against an employer". The Administration has explained that it is the current policy that where any injury is caused to an employee by negligence, breach of statutory duty or other wrongful act or omission of the employer, any damages awarded to the employee in an action at common law shall be reduced by the value of any compensation which has been paid

or is payable under the Ordinance in respect of the injury sustained by the employee. The purpose of the new amendment is to reflect more accurately the policy intent. Members find the proposed amendment acceptable.

Committee Stage amendments

26. Apart from the CSAs mentioned above, the Administration will introduce some technical amendments to improve the drafting of the Bill. The CSAs proposed by the Administration are in **Appendix II**. The Bills Committee has not proposed any amendments.

Recommendation

27. The Bills Committee recommends that, subject to the CSAs to be moved by the Administration, the Second Reading debate on the Bill be resumed on 26 June 2000.

Advice sought

28. Members are invited to support the recommendation of the Bills Committee in paragraph 27 above.

Legislative Council Secretariat

11 June 2000

**Bills Committee on Employees' Compensation
(Amendment) (No.2) Bill 2000**

Membership List

Hon Kenneth TING Woo-shou, JP (Chairman)
Hon David CHU Yu-lin
Hon HO Sai-chu, SBS, JP
Hon Cyd HO Sau-lan
Hon LEE Cheuk-yan
Hon LEE Kai-ming, SBS, JP
Dr Hon LUI Ming-wah, JP
Hon CHAN Yuen-han
Hon Bernard CHAN
Hon CHAN Wing-chan
Hon LEUNG Yiu-chung
Hon LAU Chin-shek, JP
Hon Andrew CHENG Kar-foo

Total : 13 members
Date : 23 May 2000

EMPLOYEES' COMPENSATION (AMENDMENT) (NO. 2) BILL 2000

COMMITTEE STAGE

Amendments to be moved by the Secretary for

Education and Manpower

<u>Clause</u>	<u>Amendment Proposed</u>
6	In the proposed section 6E(6), by deleting “法定” and substituting “合法”。
13	In the proposed section 24(1A), by deleting “was” and substituting “were”.
New	By adding - “14A. Remedies independently of Ordinance against employer Section 26(1) is amended, in the proviso, by repealing “to an employee” and substituting “against an employer”.”.
15	By deleting everything after “repealing” and substituting ““personal representative or dependant” and substituting “legal personal representative or member of his family”.”.
26	In the proposed Sixth Schedule, in the second column, by deleting “16,000” and substituting “35,000”.