

**Information Paper for
Legislative Council Panel on Manpower
Meeting on 24 February 2000**

Employees' Compensation Ordinance
(Chapter 282)

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

BACKGROUND

Existing Provisions for Settlement of Fatal Compensation Cases

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

- (a) who the dependants are;
- (b) the degree of their dependency;
- (c) the amount of compensation payable; and
- (d) how compensation should be apportioned.

2. 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.

3. The existing provisions and arrangement for compensation for death 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 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. During the lengthy period of legal proceedings, they may have difficulty in making ends meet; and
- (e) the employer is not liable to pay for funeral expenses if the deceased employee is survived by dependants, thus causing additional financial hardship to the latter.

The proposal

4. To improve the system of settling compensation claims for fatal cases under the Ordinance, we propose to –

- (a) provide an additional avenue to settle straightforward cases (i.e. where the employer's liability to pay compensation and the relationship of the family members are not in dispute). It is estimated that about 50% of the cases (i.e. about 110 cases per year) would fall within this category. Under the proposed settlement mechanism, parties to the claim may agree to submit a claim to the Commissioner for Labour (the Commissioner) for compensation. The Commissioner, as he thinks fit, will assess the compensation payable and apportion the compensation amount according to the schedule mentioned in (b) below and issue a certificate for this purpose. It is estimated that the processing time for apportionment of compensation under the proposed settlement system can be reduced by nine to 15 months. If any party to the claim is not satisfied with the determination of the Commissioner, he/she could either object to the determination of the Commissioner, who will review his determination upon receipt of such objection, or could lodge an appeal against the determination in Court;
- (b) make compensation for death payable to family members instead of dependants of a deceased employee so as to enable the proposed settlement mechanism at (a) to operate and to simplify the determination process by removing any potential dispute over the degree of dependency. With the dependency criterion being taken away, which signifies a fundamental change to the basis for awarding compensation in fatal cases, the full amount of

compensation as calculated according to the formula laid down under the Ordinance will be payable in each case. We propose 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. An illustration of the payment of compensation under the existing and the proposed provisions is given in the **Annex A**;

- (c) require the employer to make interim payments to the spouse of the deceased employee pending the issue of the certificate of compensation assessment in respect of claims which are to be determined by the Commissioner. It is proposed to make interim payments 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 payments 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 payments will be subject to a ceiling and deductible from the total amount of compensation payable; and
- (d) require the employer to pay funeral expenses in all fatal cases subject to a maximum amount currently provided under the Ordinance.

Levels of fine and other proposed amendments

5. In addition to the proposed improvements to the system of settling compensation claim for fatal cases, it is proposed that the levels of fines under some provisions of the Ordinance be updated and the liability of the principal contractor be clarified under section 24.

(A) Levels of Fines

6. There are different levels of maximum fine under various sections of the Ordinance on offences committed by an employer against -

- (i) non-payment of compensation as stated in a certificate issued by the Commissioner;
- (ii) failure to comply with the requirements relating to compulsory insurance; and

- (iii) failure to comply with a written demand from the Commissioner for producing a policy of insurance for inspection.

Since these levels of maximum fine have not been revised since 1984, there is a need to update them so as to restore their deterrent effect on offenders.

7. Whilst some of the penalty provisions under the Ordinance are expressed in terms of the penalty levels prescribed by section 113(c) of the Criminal Procedure Ordinance (Cap. 221), there are still a few which are expressed in monetary terms. For the sake of consistency, we propose that these provisions of fines should be converted into the corresponding penalty levels.

(B) Liability of Principal Contractor

8. Section 24 of the Ordinance provides that when an employee of a sub-contractor is injured at work, the principal contractor shall be liable for any claim of compensation made by the employee. It also provides that where the principal contractor has made any payment for such claims, he shall be entitled to recover the payment from the sub-contractor, i.e. the direct employer of the injured employee. In order to facilitate the injured employee to claim compensation from the principal contractor, section 24 further provides that where compensation is claimed from or proceedings are taken against the principal contractor, then in the application of the Ordinance, references to the principal contractor shall be substituted for references to the employer.

9. In a number of cases, Labour Department assisted the injured employees who were engaged by a sub-contractor to claim compensation from the principal contractor concerned. Where a principal contractor has failed to pay compensation to the injured employee without reasonable excuse, Labour Department would prosecute him as if he were the employer.

10. Since the policy intent of section 24 was to regard a principal contractor as an employer for the purpose of assuming liability under the Ordinance, there is a need to amend this section to reflect more accurately the policy intent and to remove any ambiguity.

The proposal

- 11. We propose to make the following amendments to the Ordinance –
 - (a) increase the level of fine in section 16A(12) for non-payment of compensation as stated in a certificate issued by the Commissioner from \$50,000 (i.e. Level 5) to \$100,000 (i.e. Level 6);

- (b) increase the level of fine in section 40(2) 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 (i.e. Level 6) in both circumstances; (the penalty clauses for the two types of conviction still carry a distinction in the imprisonment term, which is one year for summary conviction and two years for conviction by indictment);
- (c) increase the level of fine in section 45C(2)(a) for failure to comply with a written demand for producing a policy of insurance for inspection from \$50,000 upon conviction by indictment and \$25,000 upon summary conviction to \$100,000 (i.e. Level 6) in both circumstances; (the penalty clauses for the two types of conviction still carry a distinction in the imprisonment term, which is one year for summary conviction and two years for conviction by indictment);
- (d) amend sections 41(3), 45D(2), 47(1) and 49(2) by converting the penalty levels therein expressed in monetary terms into the corresponding levels of fine (Levels 1 to 6) in accordance with section 113(c) of the Criminal Procedure Ordinance (Cap. 221); and
- (e) amend section 24 by making it clear that where a principal contractor is liable to pay compensation to the employees of his sub-contractors, he shall be liable for the offences of non-payment of compensation as if he were an employer.

THE BILL

12. The Bill is at **Annex B**. The main provisions are:

- (a) **Clause 3** introduces certain new definitions into the Ordinance, including a new definition of “member of the family” to substitute for the definition of “dependants” (the latter will be repealed).
- (b) **Clause 5** provides for the payment of compensation to family members and the reimbursement of funeral and medical attendance expenses by the employer in all fatal cases.
- (c) **Clause 6** adds :-
 - (i) new section 6A which, together with the new Seventh Schedule at Clause 26, set out the manner in which the compensation is to be apportioned among family members;

- (ii) new sections 6B and 6D to set out the procedure for making claims to the Commissioner and for making determination of claims by the Commissioner;
 - (iii) new section 6C to set out the procedure for application for interim payments by the spouse and for making determination of those payments by the Commissioner;
 - (iv) new section 6E to set out the procedure for making claims for reimbursement of funeral and medical attendance expenses and for making determination of those reimbursement by the Commissioner;
 - (v) new section 6F to provide that the Commissioner, for the purpose of making determination, may require production of supporting documents by any person;
 - (vi) new section 6G to set out the total liability of the employer and his insurer in respect of one deceased employee; and
 - (vii) new section 6H to provide for an avenue for appeal to the Court against a determination made by the Commissioner.
- (d) **Clauses 11, 18 to 22 and 24** revise the level of fines for offences committed under the Ordinance.
 - (e) **Clause 13** clarifies the criminal liabilities of principal contractors for failing to pay compensation in accordance with section 24 of the Ordinance.
 - (f) **Clauses 28 to 43** contain consequential amendments to other related Ordinances and subsidiary legislation.

LEGISLATIVE TIMETABLE

13. The legislative timetable for the Bill is as follows:

Publication in the Gazette	25 February 2000
First Reading and commencement of Second Reading debate	1 March 2000
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

ECONOMIC IMPLICATIONS

14. The Accident Insurance Association of Hong Kong has estimated that the proposed amendments to improve the settlement of fatal compensation cases would, prima facie, increase the premium payable by employers to insurance companies by 1 - 2%. Hence the proposal should have only marginal impact on the insurance premium cost incurred by employers. With the additional option of settling the claim by certificates issued by the Commissioner, cases that need to go to the Court are likely to be reduced. This should bring about gains in efficiency of processing and savings in time and legal costs.

15. The proposal to amend the penalty provisions will not create additional liabilities for employers. There will be no economic implications arising from the proposal.

PUBLIC CONSULTATION

16. The Labour Advisory Board has been consulted and endorsed the above proposals.

Education and Manpower Bureau
February 2000

An illustration of the compensation payable under the existing and proposed settlement mechanism for fatal compensation claims

Case 1

Injured person: sales representative

Age: 19

Year of injury: 1998

Earnings: \$8,195 per month

Family member: two parents, one brother and one sister-in-law

Dependants: two parents
(as claimed)

Compensation for death awarded:

<u>Under existing provisions</u>	<u>Under proposed provisions</u>
Nil	\$688,380* (full compensation)
(a) dismissed by Court	*\$8,195 x 84 months of earnings
(b) dependency could not be established	<i>Apportionment of Compensation:</i>
(c) only burial expenses not exceeding \$16,000 was payable	Father: \$326,980.50 (47.5% of the full compensation)
	Mother: \$326,980.50 (47.5% of the full compensation)
	Elder brother living with the deceased employee: \$17,209.50 (2.5% of the full compensation)
	Sister-in-law living with the deceased employee: \$17,209.50 (2.5% of the full compensation)

* For the purpose of calculating compensation, the earning is subject to a maximum of \$21,000 per month.

Case 2

Injured person: forklift operator

Age: 49

Year of injury: 1998

Earnings: \$11,000 per month

Family members: one wife, one son and one father

Dependants: one wife, one son and one father

Compensation for death awarded:

	<u>Under existing provisions</u>	<u>Under proposed provisions</u>
	\$450,000	\$660,000* (full compensation)
(a) settled at Court by consent summons		*\$11,000 x 60 months of earnings
(b) Apportionment of Compensation		<i>Apportionment of Compensation:</i>
Son: \$200,000		Son: \$297,000 (45% of the full compensation)
Wife: \$200,000		Wife: \$297,000 (45% of the full compensation)
Father: \$50,000		Father: \$66,000 (10% of the full compensation)

* For the purpose of calculating compensation, the earning is subject to a maximum of \$21,000 per month.

Case 3

Injured person: computer programmer

Age: 28

Year of injury: 1996

Earnings: \$12,200 per month

Family members: two parents and three elder sisters (two of whom had already emigrated to Canada)

Dependants: two parents and one sister

Compensation for death awarded:

	<u>Under existing provisions</u>	<u>Under proposed provisions</u>
	\$500,000	\$1,024,800* (full compensation)
(a) settled at Court by consent summons		*\$12,200 x 84 months of earnings
(b) the dependants were only partially dependent on the deceased for financial support		<i>Apportionment of Compensation:</i> Father: \$486,780 (47.5% of the full compensation) Mother: \$486,780 (47.5% of the full compensation) Elder sister living with the deceased employee: \$51,240 (5% of the full compensation) Elder sisters emigrated to Canada : Nil

* For the purpose of calculating compensation, the earning is subject to a maximum of \$21,000 per month.

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

Clause		Page
1.	Short title and commencement	1
2.	Meaning of "employee"	1
3.	Interpretation	1
4.	Application to certain employees	6
5.	Compensation in fatal cases	6
6.	Sections added	
	6A. Apportionment of compensation	7
	6B. Determination by Commissioner of claims for compensation in fatal cases	8
	6C. Determination by Commissioner of interim payments	11
	6D. Payment of compensation and objection to determination of Commissioner	19
	6E. Determination by Commissioner of claims for funeral and medical attendance expenses	24
	6F. Supply of particulars to Commissioner	31
	6G. Discharge of liability of employer and his insurer in fatal cases	32
	6H. Appeal against determination of Commissioner in fatal cases	33
7.	Persons entitled to compensation	35
8.	Distribution of Compensation	36
9.	Requirements as to notice of accident and application for compensation	38
10.	Employer to report the injury to or death of an employee and method of notification	38
11.	Determination of claims in respect of minor injuries	38

12.	Determination of claims by the Court	38
13.	Liability in case of employees employed by sub-contractors	39
14.	Remedies against both employer and third party	39
15.	Limitation of right of indemnity against third party under section 25	40
16.	Application to persons employed on ships	40
17.	Compensation in the case of occupational disease	40
18.	Compulsory insurance against employer's liability	40
19.	Notice of insurance	40
20.	Notice to produce documents etc.	41
21.	Notice of premium increases	41
22.	Deduction of insurance premiums from earnings to be an offence	41
23.	Section added	41
	48B. Amendment of Seventh Schedule	41
	48C. Protection of public officers	41
24.	Regulations	42
25.	Transitional	42
26.	Schedule substituted	43
27.	Schedule added	44

Consequential Amendments

Pensions Ordinance

28.	Pensions to dependants when an officer dies on duty	51
29.	Section added	
	23. Transitional	51

Pension Benefits Ordinance

30.	Dependant pension	52
-----	-------------------	----

31.	Section added	
	36. Transitional	52
	Auxiliary Forces Pay and Allowances (Pensions) Regulation	
32.	Exclusion from application	52
33.	Section added	
	9. Transitional	53
	Employees' Compensation Regulations	
34.	Certificate as to compensation payable	53
	Employees' Compensation (Rules of Court) Rules	
35.	Rule substituted	
	25. Medical and funeral expenses	54
36.	Application to make a certificate as to compensation payable an order of the court	54
37.	Schedule amended	54
	Employees Compensation Assistance Ordinance	
38.	Interpretation	55
39.	Application by employee etc. for payment from the Fund	55
40.	Applications	57
41.	Transitional	57
	Pension Benefits (Judicial Officers) Ordinance	
42.	Dependant pension	58
43.	Section added	58
	39. Transitional	58

A BILL

To

Amend the Employees' Compensation Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Employees' Compensation (Amendment) (No. 2) Ordinance 2000.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Education and Manpower by notice in the Gazette.

2. Meaning of "employee"

Section 2(3) of the Employees' Compensation Ordinance (Cap. 282) is amended -

- (a) by repealing "his dependants" and substituting "the members of his family";
- (b) by repealing "the dependants" and substituting "the members of the family".

3. Interpretation

Section 3 is amended -

- (a) by renumbering it as section 3(1);
- (b) in subsection (1) -
 - (i) in the definition of "compensation" -
 - (A) in paragraph (a), by repealing

"burial" and substituting "the funeral";

(B) by adding -

"(da) interim payment;"

(C) in paragraph (e), by repealing

"(c) or (d)" and substituting

"(c), (d) or (da)";

(ii) by repealing the definition of

"dependants";

(iii) by repealing the definition of "member of the family" and substituting -

"member of the family "(家庭成員), in

relation to an employee, means

a person who has any of the

following relationships in

respect of the employee,

whether by blood or an adoption

specified in subsection (2) -

(a) a spouse or cohabitee;

(b) a child;

(c) a parent or
grandparent; or

(d) a grandson,
granddaughter,
stepfather,
stepmother, stepson,
stepdaughter, son-in-

law, daughter-in-law,
brother, sister,
half-brother, half-
sister, father-in-law,
mother-in-law,
brother-in-law,
sister-in-law, and
child of a brother or
sister of the whole
blood, any of whom
has been living with
the employee as a
member of the same
household and has
been so living for
the period of 24
months immediately
preceding the
accident concerned;"

(iv) by adding -

"Certificate for Funeral and Medical
Attendance Expenses" (殯殮費和醫
護費證明書) means a certificate
issued under section 6E(1)(b);
"Certificate of Compensation
Assessment for Fatal Case" (致命

個案補償評估證明書) means a certificate issued under section 6B(1)(b);

"Certificate of Interim Payment" (臨時付款證明書) means a certificate issued under section 6C(1)(b);

"cohabitee" (同居者), in relation to an employee, means any person who at the time of the accident concerned was living with the employee as the employee's wife or husband;

"interim payment" (臨時付款) means an interim payment of compensation the subject of a determination under section 6C(1)(a);

"Review Certificate for Funeral and Medical Attendance Expenses" (殯殮費和醫護費審核證明書) means a certificate issued under section 6E(12)(c);

"Review Certificate of Compensation Assessment for Fatal Case" (致命個案補償評估審核證明書) means a certificate issued under section 6D(6)(c);

"Review Certificate of Interim
Payment" (臨時付款審核證明書)
means a certificate issued
under section 6C(11)(c);";

(c) by adding -

"(2) For the purposes of the definition
of "member of the family" -

(a) an adoption means an adoption -

(i) made under an
adoption order made
in accordance with
the Adoption
Ordinance (Cap. 290);

(ii) to which section 17
of the Adoption
Ordinance (Cap. 290)
applies; or

(iii) made in Hong Kong in
accordance with
Chinese law and
custom before 1
January 1973; and

(b) any person so adopted shall be
treated as the child of the
adopter, and not as the child
of any other person, and all

relationships to the adopted person shall be deduced accordingly."

4. Application to certain employees

Section 4(1) is amended, in the proviso, by repealing "his dependants" and substituting "the members of his family".

5. Compensation in fatal cases

Section 6 is amended -

(a) in subsection (1), by repealing "if the employee leaves any dependants wholly dependent on his earnings, the amount of compensation" and substituting "then, subject to section 6A, the amount of compensation payable to the members of the family of the employee";

(b) by repealing subsection (4);

(c) in subsection (5) -

(i) by repealing "if the employee leaves no dependants, the reasonable expenses of the burial" and substituting "reimbursement of the reasonable expenses of the funeral";

(ii) by repealing "to whom such expenses are due, within 21 days after receipt by the employer of a request in writing by such person" and substituting "who has paid the expenses";

(d) by repealing subsection (6).

6. Sections added

The following are added -

"6A. Apportionment of compensation

(1) Where death results from the injury, the compensation shall be payable only to eligible members of the family and apportioned in the manner set out in the Seventh Schedule.

(2) For the purposes of this section -

- (a) "eligible" (合資格), in relation to a member of the family, means the member is entitled to compensation under section 6(1) by virtue of a determination under section 6B(1), 6D(6), 6H(4) or 18A(1);
- (b) a reference to a child of a deceased employee includes a child born after the death of the employee but before a determination made under section 6B(1)(a), 6D(6), 6H(4) or 18A(1) in respect of the employee.

(3) In determining the amount of compensation payable under section 6(1), the Commissioner or the Court shall take into account -

- (a) any compensation deductible under section 6(3);
- (b) any interim payments paid under subsection (4).

(4) Where the spouse of the employee who has been paid any interim payments dies prior to the Certificate of Compensation Assessment for Fatal Case or Review Certificate of Compensation Assessment for Fatal Case is issued, the aggregate amount of interim payments already paid shall be deducted from the total amount of compensation payable before the apportionment of the amount for other members of the family.

(5) In stating the amount of compensation payable to each member of the family named in the Certificate of Compensation Assessment for Fatal Case or Review Certificate of Compensation Assessment for Fatal case, the Commissioner and the Court may round down the amounts to the nearest dollar.

**6B. Determination by Commissioner
of claims for compensation
in fatal cases**

(1) Subject to subsection (2), where death results from the injury, the Commissioner may, on application by the members of the family under subsection (4) and with the consent in writing of the employer and signed by him -

(a) determine in respect of the members of the family making the application -

(i) the total amount of compensation payable;

(ii) the persons to whom the compensation is payable and the amount of

compensation payable to each such person; and

(iii) the persons who are not entitled to the compensation; and

(b) issue a certificate -

(i) as to his determination under paragraph (a); and

(ii) as soon as practicable after making the determination, but in any case not earlier than 6 months from the date of death of the employee or the date of accident if the date of death cannot be ascertained.

(2) The Commissioner shall not determine or continue to determine a claim under subsection (1)(a) where -

(a) the employer does not give his consent in writing signed by him to the Commissioner determining the claim;

(b) the employer gives his consent to the Commissioner determining the claim but prior to determination withdraws such consent by notice in writing signed by him to the Commissioner;

(c) there is a dispute on the familial connection between the employee and any of the persons claiming compensation;

(d) any party to the claim, at any time prior to

the issue of the Certificate of Compensation Assessment for Fatal Case, declines determination by the Commissioner;

- (e) a claim for compensation in respect of the same employee has been filed with the Court;
- (f) in the Commissioner's opinion, the claim is not suitable for such determination; or
- (g) the first application under subsection (4) has not been made within 24 months from the date of death of the employee.

(3) Where the Commissioner has proceeded to determine a claim under subsection (1)(a) but prior to the issue of the Certificate of Compensation Assessment for Fatal Case, the process of determination is terminated by virtue of subsection (2) -

- (a) the claim shall be determined by the Court pursuant to section 18A(1); and
- (b) the Commissioner shall notify the parties concerned of the termination.

- (4) An application under subsection (1) shall be made -
- (a) in such form as the Commissioner may specify and signed by the person making it;
 - (b) within 6 months from the date of death of the employee or the date of accident if the date of death cannot be ascertained (but the Commissioner may, if he thinks fit, extend the period for making the application);

- (c) subject to paragraph (d), separately by each person claiming compensation or by his authorized representative;
- (d) where the person claiming compensation is a minor or a person incapable of managing himself and his affairs, by his guardian or legal representative, as the case may be.

(5) A Certificate of Compensation Assessment for Fatal Case shall -

- (a) be in such form as may be specified by the Commissioner giving details of the determination; and
- (b) be sent -
 - (i) to the employer; and
 - (ii) to each person named in the certificate, whether or not compensation is payable to the person.

(6) The Commissioner shall, as soon as practicable after he decides to determine a claim for compensation under subsection (1)(a), send to the Court a notice advising the Court of that decision.

6C. Determination by Commissioner of interim payments

(1) Where a claim for compensation is to be determined under section 6B(1)(a), upon application by the spouse of the

deceased employee, the Commissioner -

- (a) may, irrespective of whether applications for compensation have been made by other members of the family and prior to the issue of the Certificate of Compensation Assessment for Fatal Case, on application by the spouse in a form as the Commissioner may specify and signed by the spouse, determine that interim payment of compensation be made by the employer to the spouse; and
 - (b) where he makes a determination under paragraph (a), shall issue a certificate -
 - (i) as to his determination; and
 - (ii) as soon as practicable after making the determination.
- (2) A Certificate of Interim Payment shall -
- (a) be in such form as may be specified by the Commissioner giving details of the determination; and
 - (b) be sent -
 - (i) to the employer;
 - (ii) to the spouse of the employee; and
 - (iii) to each of the persons who has made an application under section 6B(1).
- (3) Interim payments -
- (a) shall be payable to the spouse named in the Certificate of Interim Payment or, where that

Certificate is cancelled under subsection (12), in the Review Certificate of Interim Payment concerned until the aggregate amount referred to in paragraph (c) is fully paid;

(b) shall comprise -

(i) **an initial payment calculated by multiplying the monthly payment referred to in subparagraph (ii) by the number of months elapsed between the date of death, or the date of accident if the date of death cannot be ascertained, and the date of issue of the Certificate of Interim Payment or Review Certificate of Interim Payment, as the case may require;**

(ii) **subsequent monthly payments calculated at the rate of 50% of -**

(A) the monthly earnings of the

deceased employee at the time of the accident as determined in accordance with section 11;

or

(B) the amount specified in the

second column of the Sixth

Schedule shown opposite section

6(1)(a) specified in the first

column of the Schedule,

whichever is the less;

(c) shall not in aggregate exceed 45% of the total amount of compensation payable under section 6(1) after deducting any compensation which has already been paid under sections 7, 9 and 13(3);

(d) shall -

(i) be deducted from the compensation payable under section 6A to the person to whom interim payments have been paid; and

(ii) where the spouse dies before the issue of the Certificate of Compensation Assessment for Fatal Case, be deducted from the compensation payable to the members of the family under section 6(1),

except that any surcharge payable under subsection (8) by the employer for late payment of interim payments shall not be deductible.

(4) Interim payments shall be payable by the employer -

(a) as to the initial payment, not later than 21 days after the date of issue of the Certificate of Interim Payment or Review Certificate of Interim Payment, as the case may require;

(b) as to each monthly payment, not later than the date corresponding to the date on which the preceding initial payment or monthly payment is payable or if there is no such corresponding date in that month, the last day of that month.

(5) An employer is not required to make payments under a Certificate of Interim Payment pending the completion of a review under subsection (10) or (11).

(6) Where the Commissioner is satisfied on reasonable grounds that a determination which gave rise to a Certificate of Interim Payment was based on information false or misleading in a material particular, he may, by notice in writing to the employer and spouse named in the Certificate of Interim Payment setting out those grounds, order that interim payments under that Certificate shall cease on and from a date specified in the notice for the purpose until such time, if any, that the notice is revoked.

(7) Interim payments shall cease to be payable -

- (a) 7 days before the date on which compensation under section 6(1) is due in accordance with a Certificate of Compensation Assessment for Fatal Case;
- (b) on the date specified in a notice under subsection (6) for the purpose;
- (c) when the total amount of interim payments paid to the spouse reaches the aggregate amount that may be payable as stated in the Certificate of Interim Payment or Review Certificate of Interim Payment, as the case may require; or
- (d) on the date the Commissioner notifies the employer and the spouse of his decision that

the claim shall be determined by the Court under section 18A(1), whichever is the earlier.

(8) An employer who fails without reasonable excuse to make interim payments in accordance with a Certificate of Interim Payment or Review Certificate of Interim Payment, as the case may require, shall pay to the spouse of the employee, in addition to the amount of interim payments -

(a) upon the expiry of the payment period, a surcharge of -

(i) the amount specified in the second column of the Sixth Schedule shown opposite section 6C(8)(a) specified in the first column of that Schedule; or

(ii) the percentage specified in the third column of the Sixth Schedule shown opposite section 6C(8)(a) specified in the first column of that Schedule of the amount of interim payment then remaining unpaid,

whichever is the greater; and

(b) thereafter upon the expiry of 3 months after the expiry of the payment period, a surcharge of -

(i) the amount specified in the second

column of the Sixth Schedule shown opposite section 6C(8)(b) specified in the first column of that Schedule; or

- (ii) the percentage specified in the third column of the Sixth Schedule shown opposite section 6C(8)(b) specified in the first column of that Schedule of the amount of interim payment then remaining unpaid,

whichever is the greater.

(9) A person may object to a determination under subsection (1)(a) by sending an objection in writing signed by him to the Commissioner within 14 days from the date of issue of the Certificate of Interim Payment, or within such further time as the Commissioner, in the circumstances of any particular case, thinks fit, stating the grounds of the objection.

(10) Without prejudice to the right of any other person to object to a determination under subsection (1)(a), the Commissioner may on his own initiative review any such determination at any time if he considers that it -

- (a) was made in ignorance of, or under a mistake as to the circumstances of the claim; or

- (b) was based upon any false or misleading information or statement given or made to the

Commissioner.

(11) On receipt of an objection under subsection (9) or on a review under subsection (10), the Commissioner shall -

- (a) in the case of an objection, send a copy of the objection to any other person who has made an application under section 6B(1) and to the employer if the employer is not the objector;
- (b) review the determination under subsection (1)(a) concerned and confirm or vary the determination as he thinks fit (including ceasing interim payments);
- (c) upon completing the review, issue to the employer and the spouse a certificate in such form as he may specify stating -
 - (i) that the original determination is confirmed and giving details thereof;
 - (ii) details of the determination as varied; and
- (d) send a copy of the Certificate to each of the persons who has made an application under section 6B(1).

(12) Upon the issue of a Review Certificate of Interim Payment, the Certificate of Interim Payment to which it relates shall be cancelled.

(13) A Certificate of Interim Payment or Review Certificate of Interim Payment, other than a Certificate

cancelled under subsection (12), purporting to be issued and signed by or for the Commissioner shall be admitted in evidence without further proof on its production before any Magistrate or in any court, and -

(a) until the contrary is proved it shall be presumed that the Certificate is so issued and signed; and

(b) shall be evidence of the matters stated therein.

(14) A Certificate of Interim Payment or Review Certificate of Interim Payment, other than a Certificate cancelled under subsection (12) may, on application to the Court by the employer or the spouse of the employee, be made an order of the Court and, for the purposes of this subsection, the amount payable under any such Certificate shall include any surcharge payable under subsection (8).

(15) An employer who fails without reasonable excuse to comply with subsection (4) or (8) commits an offence and is liable to a fine at level 6.

(16) This section shall not apply in the case of a member of the family where the employee was in the service of the Government unless and until the member gives up his rights under the Pensions Ordinance (Cap. 89), the Pension Benefits Ordinance (Cap. 99), the Pension Benefits (Judicial Officers) Ordinance (Cap. 401) and the Auxiliary Forces Pay and Allowances Ordinance (Cap. 254) to receive pension or gratuities arising from the death of the employee in

consequence of injury received in the discharge of his duties.

(17) For the purposes of this section -

"date of issue" (發出日期) means the date appearing on the

Certificate of Interim Payment or Review Certificate of Interim Payment;

"payment period" (付款期) means the appropriate period of

payment referred to in subsection (4);

"spouse" (配偶) does not include a cohabitee.

6D. Payment of compensation and objection to determination of Commissioner

(1) Where the Commissioner determines a claim under section 6B(1)(a) (including any case where such a determination is varied under this section), compensation, other than interim payments payable under a Certificate of Interim Payment or Review Certificate of Interim Payment, shall be payable by the employer not earlier than 42 days but not later than 49 days after the date of issue of the Certificate of Compensation Assessment for Fatal Case or Review Certificate of Compensation Assessment for Fatal Case, as the case may be.

(2) If any person named in the Certificate of Compensation Assessment for Fatal Case has received any interim payment or payment under section 13(3), the employer shall only be required to pay the balance of the amount of compensation, if any, stated in the Certificate after

deducting from that amount the amount of any such payment paid to that person.

(3) An employer who fails without reasonable excuse to make payment in accordance with a Certificate of Compensation Assessment for Fatal Case or Review Certificate of Compensation Assessment for Fatal Case shall pay, in addition to the amount of compensation payable -

(a) upon the expiry of the payment period, a surcharge of -

(i) the amount specified in the second column of the Sixth Schedule shown opposite section 6D(3)(a) specified in the first column of that Schedule; or

(ii) the percentage specified in the third column of the Sixth Schedule shown opposite section 6D(3)(a) specified in the first column of that Schedule of the amount of compensation then remaining unpaid,

whichever is the greater; and

(b) upon the expiry of 3 months after the expiry of the payment period, a further surcharge of -

(i) the amount specified in the second column of the Sixth Schedule shown opposite section 6D(3)(b) specified

in the first column of that
Schedule; or

- (ii) the percentage specified in the
third column of the Sixth Schedule
shown opposite section 6D(3)(b)
specified in the first column of
that Schedule of the amount then
remaining unpaid of the aggregate of
any amount of compensation referred
to in paragraph (a) and the
surcharge imposed under that
paragraph,

whichever is the greater.

(4) The employer or any person who has made an application under section 6B(1) may object to a determination under section 6B(1)(a) by sending an objection in writing signed by him to the Commissioner within 30 days of the date of issue of the Certificate of Compensation Assessment for Fatal Case (but the Commissioner may, if he thinks fit, extend the period for making the objection), stating the grounds of the objection.

(5) Without prejudice to the right of any other person to object to a determination under section 6B(1)(a), the Commissioner may on his own initiative review any such determination at any time if he considers that it -

- (a) was made in ignorance of, or under a mistake
as to the circumstances of the claim; or

- (b) was based upon any false or misleading information or statement given or made to the Commissioner.

(6) On receipt of an objection under subsection (4) or on a review under subsection (5), the Commissioner shall -

- (a) in the case of the objection, send a copy of the objection to any other person who has made an application under section 6B(1) and to the employer if the employer is not the objector;
- (b) review the determination under section 6B(1)(a) concerned and confirm or vary the determination as he thinks fit;
- (c) upon completing the review, issue to the employer and each of the members of the family a certificate in such form as he may specify stating -
 - (i) that the original determination is confirmed and giving details thereof;
 - (ii) details of the determination as varied; or
 - (iii) that due to the reasons set out under section 6B(2), the Commissioner shall not continue to determine the claim;
- (d) send a copy of the certificate to each of the persons who has made an application under

section 6B(1).

(7) Upon the issue of a Review Certificate of Compensation Assessment for Fatal Case, the original Certificate of Compensation Assessment for Fatal Case to which it relates shall be cancelled.

(8) A certificate of Compensation Assessment for Fatal Case or Review Certificate of Compensation Assessment for Fatal Case, other than a Certificate cancelled under subsection (7), purporting to be issued and signed by or for the Commissioner shall be admitted in evidence without further proof on its production before any Magistrate or in any court, and -

(a) until the contrary is proved it shall be presumed that the Certificate is so issued and signed; and

(b) shall be evidence of the matters stated therein.

(9) A Certificate of Compensation Assessment for Fatal Case or Review Certificate of Compensation Assessment for Fatal Case, other than a Certificate cancelled under subsection (7) may, on application to the Court by the employer, or any person named in the Certificate, be made an order of the Court, and for the purposes of this subsection, the amount payable under any such Certificate shall include any surcharge payable under subsection (3).

(10) An employer who fails without reasonable excuse to comply with subsection (1) or (3) commits an offence and is

liable to a fine at level 6.

(11) For the purposes of this section -

"date of issue" (發出日期) means the date appearing on the Certificate of Compensation Assessment for Fatal Case or Review Certificate of Compensation Assessment for Fatal Case;

"payment period" (付款期) means the appropriate period of payment referred to in subsection (1).

6E. Determination by Commissioner of claims for funeral and medical attendance expenses

(1) Subject to subsection (17), where an application seeking a determination under this section is made to the Commissioner by any person who has paid the expenses of the funeral of the employee or the expenses of medical attendance on the employee, and the employer has given his consent in writing signed by him to the Commissioner that the Commissioner may make such determination, then the Commissioner, after the period referred to in subsection (3)(b) -

(a) if there is a liability to pay any such expenses under section 6(5), may determine, in respect of the persons making the application, the persons to whom reimbursement of such expenses under that section is payable and the amount of

reimbursement payable to each such person;

and

- (b) where he makes a determination under paragraph (a), shall issue a certificate -
 - (i) as to his determination; and
 - (ii) as soon as practicable after making the determination.

(2) A consent referred to in section 6B(1) given by an employer in respect of an employee shall be deemed to be a consent referred to in subsection (1) given by the employer in respect of the employee.

- (3) An application under subsection (1) shall be -
 - (a) made in such form as the Commissioner may specify and signed by the person making it;
 - (b) made within 30 days from the date of cremation or date of burial of the employee, or the date on which the Commissioner receives the consent or deemed consent referred to in subsection (1) or (2), as the case may be, from the employer, whichever is the later;
 - (c) made separately by each of the persons who has paid the expenses or his authorized representative; and
 - (d) accompanied by supporting documents.

(4) A Certificate for Funeral and Medical Attendance Expenses shall -

(a) be in such form as may be specified by the Commissioner giving details of the determination; and

(b) be sent -

(i) to the employer;

(ii) to each person who has made an application under subsection (1) whether or not reimbursement of the expenses is payable to him.

(5) In determining the amount of reimbursement payable under section 6(5), if the aggregate claimed amount exceeds the amount specified in the second column of the Sixth Schedule shown opposite section 6(5) specified in the first column of that Schedule, the Commissioner shall apportion the amount payable on a pro rata basis.

(6) Where a person who has paid any expenses of the funeral of the employee and expenses of medical attendance on the employee dies prior to the reimbursement of the expenses is paid to him, his legal personal representative shall substitute for him in pursuing the claim.

(7) In stating the reimbursement payable to each person named in the Certificate for Funeral and Medical Attendance Expenses or Review Certificate for Funeral and Medical Attendance Expenses, the Commissioner may round down the amounts to the nearest dollar.

(8) Reimbursement of the expenses of the funeral of the employee and expenses of medical attendance on the employee

shall be payable by the employer not earlier than 42 days but not later than 49 days after the date of issue of the Certificate for Funeral and Medical Attendance Expenses or Review Certificate for Funeral and Medical Attendance Expenses, as the case may be.

(9) An employer who fails without reasonable excuse to pay reimbursement in accordance with a Certificate for Funeral and Medical Attendance Expenses or Review Certificate for Funeral and Medical Attendance Expenses, shall pay, in addition to the reimbursement payable -

(a) upon the expiry of the payment period, a surcharge of -

(i) the amount specified in the second column of the Sixth Schedule shown opposite section 6E(9)(a) specified in the first column of that Schedule; or

(ii) the percentage specified in the third column of the Sixth Schedule shown opposite section 6E(9)(a) specified in the first column of that Schedule of the reimbursement then remaining unpaid,

whichever is the greater; and

(b) upon the expiry of 3 months after the expiry of the payment period, a further surcharge of -

- (i) the amount specified in the second column of the Sixth Schedule shown opposite section 6E(9)(b) specified in the first column of that Schedule; or
- (ii) the percentage specified in the third column of the Sixth Schedule shown opposite section 6E(9)(b) specified in the first column of that Schedule of the amount then remaining unpaid of the aggregate of any reimbursement referred to in paragraph (a) and the surcharge imposed under that paragraph, whichever is the greater.

(10) The employer or any person who has made an application under subsection (1) may object to a determination under subsection (1)(a) by sending an objection in writing signed by him to the Commissioner within 30 days of the date of issue of the Certificate for Funeral and Medical Attendance Expenses, stating the grounds of the objection.

(11) Without prejudice to the right of any other person to object to a determination under subsection (1)(a), the Commissioner may on his own initiative review any such determination at any time if he considers that it -

- (a) was made in ignorance of, or under a mistake

as to the circumstances of the claim; or

- (b) was based upon any false or misleading information or statement given or made to the Commissioner.

(12) On receipt of an objection under subsection (10) or on a review under subsection (11), the Commissioner shall -

- (a) in the case of the objection, send a copy of the objection to any other person who has made an application under subsection (1) and to the employer if the employer is not the objector;
- (b) review the determination under subsection (1)(a) concerned and confirm or vary the determination as he thinks fit;
- (c) upon completing the review, issue to the employer and each of the persons who has made an application under subsection (1) a certificate in such form as he may specify stating -
 - (i) that the original determination is confirmed and giving the details thereof; or
 - (ii) details of the determination as varied.

(13) Upon the issue of a Review Certificate for Funeral and Medical Attendance Expenses, the Certificate for Funeral

and Medical Attendance Expenses to which it relates shall be cancelled.

(14) A Certificate for Funeral and Medical Attendance Expenses or Review Certificate for Funeral and Medical Attendance Expenses, other than a Certificate cancelled under subsection (13), purporting to be issued and signed by or for the Commissioner shall be admitted in evidence without further proof on its production before any Magistrate or in any court, and -

(a) until the contrary is proved it shall be presumed that the Certificate is so issued and signed; and

(b) shall be evidence of the matters stated therein.

(15) A Certificate for Funeral and Medical Attendance Expenses or Review Certificate for Funeral and Medical Attendance Expenses, other than a Certificate cancelled under subsection (13) may, on application to the Court by the employer, or the persons named in the Certificate, be made an order of the Court and the amount payable under the Certificate shall include any surcharge payable under subsection (9).

(16) An employer who fails without reasonable excuse to comply with subsection (8) or (9) commits an offence and is liable to a fine at level 6.

(17) The Commissioner shall not determine or continue to determine under subsection (1) a claim for funeral expenses or medical attendance expenses where -

- (a) the employer does not give his consent in writing signed by him to the Commissioner to make such determination;
- (b) the employer gives his consent to the Commissioner to determine the claim but prior to the determination withdraws such consent by notice in writing signed by him to the Commissioner;
- (c) any party to the claim, at any time prior to the issue of the Certificate for Funeral and Medical Attendance Expenses, declines determination by the Commissioner;
- (d) a claim for funeral and medical attendance expenses has been filed with the Court; or
- (e) in the Commissioner's opinion, the claim is not suitable for such determination.

(18) For the purposes of this section -

"date of issue" (發出日期) means the date of issue appearing on the Certificate for Funeral and Medical Attendance Expenses or the Review Certificate for Funeral and Medical Attendance Expenses;

"expenses for medical attendance" (醫護費) means any expenses incurred by any person other than the deceased employee

for the convalescence given in a hospital or medical treatment given to the employee arising from the accident before his death;

"payment period" (付款期) means the appropriate period of payment referred to in subsection (8).

6F. Supply of particulars to Commissioner

(1) For the purposes of making a determination under section 6B(1)(a), 6C(1)(a) or (11), 6D(6)(b) or 6E(1)(a) or (12), the Commissioner may by notice in writing require -

- (a) any person making the claim; and
- (b) the employer of the employee and if the employer is a sub-contractor, the principal contractor,

to provide such particulars in writing as the Commissioner thinks necessary, or by the production of documents or the submission of copies of documents, as the Commissioner may direct.

(2) Any person who -

- (a) fails or refuses without reasonable excuse to provide any particular required to be provided under this section; or
- (b) provides any particular which he knows or reasonably ought to know to be false or misleading in any material particular,

commits an offence and is liable to a fine at level 5.

6G. Discharge of liability of employer and his insurer in fatal cases

(1) Subject to subsections (2), (3) and (4), the total liability of an employer and his insurer shall not in respect of any one deceased employee exceed the aggregate amount payable under section 6(1) and (5).

(2) Where the employer is liable to pay reimbursement of the expenses of the funeral of the employee and the expenses of medical attendance on the employee, the total amount payable for such expenses by the employer and his insurer shall not in any one fatal case for any one deceased employee exceed the aggregate amount payable under section 6(5).

(3) Any compensation paid to the employee under sections 10 and 10A prior to his death and any surcharge payable under sections 6C(8), 6D(3), and 6E(9) shall not be taken into account when calculating the aggregate amount of compensation paid or payable by the employer under section 6.

(4) Where an amount in excess of the compensation payable by the employer under section 6 is paid to the employee by the employer under sections 7 and 9 prior to his death, the employer shall not recover any such excess amount.

6H. Appeal against determination of Commissioner in fatal cases

(1) Subject to the provisions of this section, an appeal shall lie to the Court from a determination under

section 6B(1)(a), 6C(1)(a) or (11), 6D(6)(b) or 6E(1)(a) or (12), as the case may be.

(2) No appeal shall lie after the expiry of 42 days from the date of issue of the certificate concerned under section 6B, 6C, 6D or 6E, unless the Court, as it thinks fit, extends the time for an appeal notwithstanding that the 42 days period has elapsed.

(3) On an appeal under this section, the Court may confirm or vary the determination of the Commissioner.

(4) Where the Court varies the determination of the Commissioner, the Court shall -

(a) in the case of a determination under section 6B(1)(a) or 6D(6)(b), make an order to apportion the amount of compensation payable under section 6(1) to the member of the family of the employee according to section 6A;

(b) in the case of a determination made under section 6E(1)(a) or (12), make an order to apportion the amount of reimbursement payable to each person who has paid the expenses of the funeral of the employee and the expenses of medical attendance on the employee taking into account section 6E(5).

(5) The Court shall -

(a) subject to section 6G, direct the employer to pay to the Court any amount of payment which

is payable by the employer but not yet paid;
and

- (b) direct any person who has received the payment from the employer in accordance with a Certificate of Compensation Assessment for Fatal Case or Review Certificate of Compensation Assessment for Fatal Case, a Certificate of Interim Payment or Review Certificate of Interim Payment, a Certificate for Funeral and Medical Attendance Expenses or Review Certificate for Funeral and Medical Attendance Expenses to pay to the Court any amount which has been overpaid to the person taking into account the apportionment made by the Court; and

- (c) make such order as to costs as the Court thinks fit.

(6) The amount apportioned to -

- (a) any member of the family ; or
- (b) any person who has paid the expenses of the funeral of the employee and the expenses of medical attendance on the employee,

shall be paid to him, or be invested, applied or otherwise dealt with for his benefit in such manner as the Court thinks fit."

7. Persons entitled to compensation

Section 12 is amended -

(a) in subsection (1), by repealing "his dependants" and substituting "the members of his family";

(b) by repealing subsections (2) and (3) and substituting -

"(2) Where a member of the family dies -

(a) prior to an application made under section 6B(1) or 18A(1);

(b) if an application under section 6B(1) has been made, prior to a Certificate of Compensation Assessment for Fatal Case or Review Certificate of Compensation Assessment for Fatal Case is issued; or

(c) if a claim has been made to the Court, prior to an order for the payment of compensation has been made,

the legal personal representative of the member of the family shall have no right to payment of compensation."

8. Distribution of Compensation

Section 13 is amended -

(a) in subsection (1) -

- (i) by repealing the first paragraph and substituting -

"Compensation payable where the death of an employee has resulted from an injury, other than those which have been determined under section 6B(1)(a), 6C(1)(a) or (11), 6D (6)(b) or 6E(1)(a) or (12), shall be paid to the Court, and the Court may -

(a) in the case of compensation paid under section 6(1), order any sum so paid in to be apportioned among the members of the family according to section 6A; and

(b) in the case of reimbursement paid under section 6(5), order any sum so paid in to be apportioned to the persons who have paid the expenses of the funeral of the

employee and the expenses of medical attendance on the employee according to section 6E(5);

and the sum so apportioned shall be paid to them or be invested, applied or otherwise dealt with for their benefit in such manner as the Court thinks fit.";

(ii) in the second paragraph, by repealing "dependants" and substituting "members of the family";

(b) in subsection (3) -

(i) by repealing "dependant" where it twice appears and substituting "member of the family";

(ii) in the proviso -

(A) in paragraph (a), by adding "or an interim payment" after "payment";

(B) in paragraph (b), by adding "or an interim payment" after "payment".

9. Requirements as to notice of accident and application for compensation

Section 14(1) is amended by adding "or prior to a determination made by the Commissioner under section 6B(1)(a), whichever is the earlier" after "date of death".

10. Employer to report the injury to or death of an employee and method of notification

Section 15(3)(a) is amended -

(a) in subparagraph (i), by repealing everything after "any" and substituting "members of the family of the deceased employee; and";

(b) in subparagraph (ii) -

(i) by repealing "dependants" and substituting "members of the family";

(ii) by repealing "and" at the end and substituting "or";

(c) by repealing subparagraph (iii).

11. Determination of claims in respect of minor injuries

Section 16A(12) is amended by repealing "5" and substituting "6".

12. Determination of claims by the Court

Section 18A is amended -

(a) in subsection (1), by adding -

"(ab) by a Certificate of Compensation

Assessment for Fatal Case or Review

Certificate of Compensation Assessment
for Fatal Case; or

(ac) by a Certificate for Funeral and Medical
Attendance Expenses or Review Certificate
for Funeral and Medical Attendance
Expenses; or";

(b) by adding -

"(3) The Court shall, as soon as
practicable after it receives a claim for
compensation where death results from the
injury concerned, cause to be sent to the
Commissioner a notice advising the
Commissioner of the receipt of that claim.".

**13. Liability in case of employees
employed by sub-contractors**

Section 24 is amended by adding -

"(1A) Where a principal contractor is liable to pay
compensation under this section, he shall be liable for the
offences under section 6C(15), 6D(10), 6E(16), 10(10),
16A(12) and 16I(6) as if he was an employer.".

**14. Remedies against both employer
and third party**

Section 25(5) is amended by adding -

"(aaa) determined by a Certificate of Compensation Assessment
for Fatal Case or Review Certificate of Compensation
Assessment for Fatal Case; or".

**15. Limitation of right of indemnity
against third party under
section 25**

Section 27 is amended by repealing "dependant" and substituting "member of his family".

**16. Application to persons
employed on ships**

Section 29(1)(d) is amended by repealing "leaving no dependants, no compensation " and substituting ", no reimbursement of the reasonable expenses of the funeral".

**17. Compensation in the case of
occupational disease**

Section 32(1), (2) and (5) is amended by repealing "his dependants" and substituting "members of his family".

**18. Compulsory insurance against
employer's liability**

Section 40(2) is amended -

(a) in paragraph (a), by repealing "of \$50,000" and substituting "at level 6";

(b) in paragraph (b), by repealing "of \$20,000" and substituting "at level 6".

19. Notice of insurance

Section 41(3) is amended by repealing "of \$10,000" and substituting "at level 3".

20. Notice to produce documents etc.

Section 45C(2)(a) is amended -

- (a) in subparagraph (i), by repealing "of \$50,000" and substituting "at level 6";
- (b) in subparagraph (ii), by repealing "of \$20,000" and substituting "at level 6".

21. Notice of premium increases

Section 45D(2) is amended by repealing "of \$20,000" and substituting "at level 4".

22. Deduction of insurance premiums from earnings to be an offence

Section 47(1) is amended by repealing "of \$10,000" and substituting "at level 3".

23. Section added

The following is added -

"48B. Amendment of Seventh Schedule

The Commissioner may, by order in the Gazette, amend the Seventh Schedule.

48C. Protection of public officers

(1) A public officer is not personally liable in respect of any act or omission of his if it was done or made by him in the honest belief that it was

required or authorized in the exercise of any function or power under this Ordinance.

(2) The protection conferred on public officers by subsection (1) in respect of any act or omission shall not in any way affect any liability of the Government in tort for that act or omission."

24. Regulations

Section 49(2) is amended by repealing "of \$10,000" and substituting "at level 3".

25. Transitional

Section 55 is amended by adding -

"(8) Subject to subsection (9), nothing in the Employees' Compensation (Amendment) (No. 2) Ordinance 2000 (of 2000) ("the amending Ordinance") shall apply with respect to claims for compensation or other rights, obligations or liabilities in respect of accidents happening before the commencement of the amending Ordinance; and the provisions of this Ordinance in force immediately before the commencement of the amending Ordinance shall continue to apply to such claims, rights, obligations or liabilities as if such provisions had never been repealed or amended by the amending Ordinance.

(9) Subsection (8) shall not apply to section 16A(12), 24, 40(2), 41(3), 45C(2)(a), 45D(2), 47(1) or 49(2) as amended by sections 11, 13, 18, 19, 20, 21, 22 and 24 respectively of the amending Ordinance."

26. Schedule substituted

The Sixth Schedule is repealed and the following substituted -

"SIXTH SCHEDULE [ss. 6, 6C, 6D,
6E, 7, 8, 11, 16A,
36C, 36J and 48A]

SPECIFIED AMOUNT OF COMPENSATION

Section	Amount \$	Percentage
6(1)(a)	21,000	
6(1)(b)	21,000	
6(1)(c)	21,000	
6(2)	303,000	
6(5)	16,000	
6C(8)(a)	490	5
6C(8)(b)	970	10
6D(3)(a)	490	5
6D(3)(b)	970	10
6E(9)(a)	490	5
6E(9)(b)	970	10
7(1)(a)	21,000	
7(1)(b)	21,000	
7(1)(c)	21,000	
7(2)	344,000	
8(1)(a)	412,000	
8(1)(b)	412,000	

	xlix	
11(5)	3,490	
16A(10)(a)	490	5
16A(10)(b)	970	10".
36C	33,000	
36J	100,000	

27. Schedule added

The following is added -

"SEVENTH SCHEDULE [ss. 6A & 48B]

APPORTIONMENT OF COMPENSATION PAYABLE TO
ELIGIBLE MEMBERS OF THE FAMILY

1. If the only eligible members of the family are spouses or cohabitees, or any combination thereof, then the compensation shall be paid to all of them in equal amounts.

2. If the only eligible members of the family are children, then the compensation shall be paid to all of them in equal amounts.

3. If the only eligible members of the family are parents or grandparents, or any combination thereof, then -

(a) the compensation shall be paid to all of those parents in equal amounts if there are no grandparents;

(b) the compensation shall be paid to all of those grandparents in equal amounts if there are no parents;

(c) in any other case -

(i) 70% of the compensation shall be paid to all of those parents in equal amounts; and

(ii) the remaining 30% of the compensation shall be paid to all of those grandparents in equal amounts.

4. If the only eligible members of the family are members other than spouses, cohabitees, children, parents and grandparents, then the compensation shall be paid to all of those eligible members in equal amounts.

5. If the only eligible members of the family are -

(a) spouses or cohabitees, or any combination thereof;

and

(b) children,

then -

(i) 50% of the compensation shall be paid to all of those spouses or cohabitees in equal amounts; and

(ii) the remaining 50% of the compensation shall be paid to all of those children in equal amounts.

6. If the only eligible members of the family are or the eligible members of the family include -

(a) spouses or cohabitees, or any combination thereof,

(b) children; and

(c) parents or grandparents, or any combination thereof;

then, whether or not there is any other eligible member of the family -

- (i) 45% of the compensation shall be paid to all of those spouses or cohabitees in equal amounts;
- (ii) 45% of the compensation shall be paid to all of those children in equal amounts;
- (iii) the remaining 10% of the compensation shall be paid -
 - (A) to all of those parents in equal amounts if there are no grandparents;
 - (B) to all of those grandparents in equal amounts if there are no parents; and
 - (C) in any other case, to all of those parents and grandparents such that 70% of that 10% is paid to all of those parents in equal amounts and 30% of that 10% is paid to all of those grandparents in equal amounts.

7. If the only eligible members of the family are -

- (a) spouses or cohabitees, or any combination thereof;
and
- (b) parents or grandparents, or any combination thereof,

then -

- (i) 80% of the compensation shall be paid to all of those spouses or cohabitees in equal

amounts;

(ii) the remaining 20% of the compensation shall be paid -

(A) to all of those parents in equal amounts if there are no grandparents;

(B) to all of those grandparents in equal amounts if there are no parents; and

(C) in any other case, to all of those parents and grandparents such that 70% of that 20% is paid to all of those parents in equal amounts and 30% of that 20% is paid to all of those grandparents in equal amounts.

8. If the only eligible members of the family are -

(a) spouses or cohabitees, or any combination thereof; and

(b) other members who are not children, parents or grandparents;

then -

(i) 95% of the compensation shall be paid to all of those spouses or cohabitees in equal amounts;

(ii) the remaining 5% of the compensation shall be paid to all of those other members in equal amounts.

9. If the only eligible members of the family are -

(a) spouses or cohabitatives, or any combination thereof;

- (b) parents or grandparents, or any combination thereof;
and
- (c) other members who are not children,

then -

- (i) 75% of the compensation shall be paid to all of those spouses or cohabitees in equal amounts;
- (ii) 20% of the compensation shall be paid -
 - (A) to all those parents in equal amounts if there are no grandparents;
 - (B) to all of those grandparents in equal amounts if there are no parents; and
 - (C) in any other case, to all of those parents or grandparents such that 70% of that 20% is paid to all of those parents in equal amounts and 30% of that 20% is paid to all of those grandparents in equal amounts;
- (iii) the remaining 5% of the compensation shall be paid to all of those other members in equal amounts.

10. If the only eligible members of the family are -

- (a) spouses or cohabitees, or any combination thereof;
- (b) children; and
- (c) other members who are not parents or grandparents,

then -

- (i) 50% of the compensation shall be paid to all

of those spouses or cohabitees in equal amounts;

(ii) 45% of the compensation shall be paid to all of those children in equal amounts;

(iii) the remaining 5% of the compensation shall be paid to all of those other members of the family in equal amounts.

11. If the only eligible members of the family are -

(a) children; and

(b) parents or grandparents, or any combination thereof,

then -

(i) 80% of the compensation shall be paid to all of those children in equal amounts;

(ii) the remaining 20% of the compensation shall be paid -

(A) to all of those parents in equal amounts if there are no grandparents;

(B) to all of those grandparents in equal amounts if there are no parents; and

(C) in any other case, to all of those parents and grandparents such that 70% of that 20% is paid to all of those parents in equal amounts and 30% of that 20% is paid to all of those grandparents in equal amounts.

12. If the only eligible members of the family are -

(a) children; and

- (b) other members who are not spouses, cohabitees, parents or grandparents,

then -

- (i) 95% of the compensation shall be paid to all of those children in equal amounts;
- (ii) the remaining 5% of the compensation shall be paid to all those other members in equal amounts.

13. If the only eligible members of the family are -

- (a) children;
- (b) parents or grandparents, or any combination thereof; and
- (c) other members who are not spouses or cohabitees,

then -

- (i) 75% of the compensation shall be paid to all of those children in equal amounts;
- (ii) 20% of the compensation shall be paid -
 - (A) to all of those parents in equal amounts if there are no grandparents;
 - (B) to all of those grandparents in equal amounts if there are no parents; and
 - (C) in any other case, to all of those parents or grandparents such that 70% of that 20% is paid to all of those parents in equal amounts and 30% of that 20% is paid to all of those grandparents in equal amounts;

- (iii) the remaining 5% of the compensation shall be paid to all of those other members in equal amounts.

14. If the only eligible members of the family are -

- (a) parents or grandparents, or any combination thereof;
and
- (b) other members who are not spouses, cohabitees or children,

then -

- (i) 95% of the compensation shall be paid -
 - (A) to all of those parents in equal amounts if there are no grandparents;
 - (B) to all of those grandparents in equal amounts if there are no parents; and
 - (C) in any other case, to all of those parents or grandparents such that 70% of that 95% is paid to all of those parents in equal amounts and 30% of that 95% is paid to all of those grandparents in equal amounts;
- (ii) the remaining 5% of the compensation shall be paid to all of those other members in equal amounts."

Consequential Amendments

Pensions Ordinance

28. Pensions to dependants when an officer dies on duty

Section 18(6) of the Pensions Ordinance (Cap. 89) is amended by repealing "dependants" and substituting "members of the family".

29. Section added

The following is added -

"23. Transitional

Nothing in the Employees' Compensation (Amendment) (No. 2) Ordinance 2000 (of 2000) ("the amending Ordinance") shall apply to claims for compensation in respect of accidents occurring before the commencement of the amending Ordinance, and the provisions in force immediately before the commencement of the amending Ordinance shall continue to apply to such claims as if they had not been amended by the amending Ordinance."

Pension Benefits Ordinance

30. Dependant pension

Section 19(9) of the Pension Benefits Ordinance (Cap. 99) is amended by repealing "dependants" and substituting "members of the family".

31. Section added

The following is added -

"36. Transitional

Nothing in the Employees' Compensation (Amendment) (No. 2) Ordinance 2000 (of 2000) ("the amending Ordinance") shall apply to claims for compensation in respect of accidents occurring before the commencement of the amending Ordinance, and the provisions in force immediately before the commencement of the amending Ordinance shall continue to apply to such claims as if they had not been amended by the amending Ordinance."

**Auxiliary Forces Pay and Allowances
(Pensions) Regulation**

32. Exclusion from application

Section 8 of the Auxiliary Forces Pay and Allowances (Pensions) Regulation (Cap. 254 sub. leg.) is amended, in paragraph (b), by repealing "dependants as defined in section 3 of the Employees' Compensation Ordinance (Cap. 282) or any member of his family as defined in" and substituting "member of the family as defined in section 3 of the Employees' Compensation Ordinance (Cap. 282) or".

33. Section added -

The following is added -

"9. Transitional

Nothing in the Employees' Compensation (Amendment) (No. 2) Ordinance 2000 (of 2000) ("the amending Ordinance") shall apply to claims for compensation in

respect of accidents occurring before the commencement of the amending Ordinance, and the provisions in force immediately before the commencement of the amending Ordinance shall continue to apply to such claims as if they had not been amended by the amending Ordinance."

Employees' Compensation Regulations

34. Certificate as to compensation payable

Regulation 5 of the Employees' Compensation Regulations (Cap. 282 sub. leg.) is amended by adding -

- "(c) a Certificate of Interim Payment or Review Certificate of Interim Payment has been issued and it is desired to proceed in accordance with section 6C(14) of the Ordinance; or
- (d) a Certificate of Compensation Assessment for Fatal Case or Review Certificate of Compensation Assessment for Fatal Case has been issued and it is desired to proceed in accordance with section 6D(9) of the Ordinance; or
- (e) a Certificate for Funeral and Medical Attendance Expenses or Review Certificate for Funeral and Medical Attendance Expenses has been issued and it is desired to proceed in accordance with section 6E(14) of the Ordinance,".

35. Rule substituted

Rule 25 of the Employees' Compensation (Rules of Court) Rules (Cap. 282 sub. leg.) is repealed and the following substituted -

"25. Medical and funeral expenses

(1) An application to determine the reimbursement payable in respect of the expenses of medical attendance on or the funeral of a deceased employee shall be made by any person who has paid the expenses and any other person known to the applicant to be a person who has paid the expenses shall be joined in the application either as applicant or as respondent.

(2) Where the amount awarded by the court on such applications is insufficient to reimburse such expenses in full, it shall be apportioned between the persons to whom such reimbursement are payable on a pro rata basis."

36. Application to make a certificate as to compensation payable an order of the court

Rule 27 is amended by repealing "section 16A(8)" and substituting "sections 6C(14), 6D(9), 6E(14) or 16A(8)".

37. Schedule amended

The Schedule is amended, in Form 2 -

- (a) in the heading, by repealing "*Dependants of Deceased Employee*" and substituting "*Members of the Family*";

- (b) in paragraph 2, by repealing "dependents of the deceased employee" and substituting "members of the family";
- (c) in paragraph 3(6), -
 - (i) by repealing "dependants of the deceased" and substituting "members of the family";
 - (ii) by repealing "*Wholly/Partially Dependant*".

Employees Compensation Assistance Ordinance

38. Interpretation

Section 2 of the Employees Compensation Assistance Ordinance (Cap. 365) is amended by repealing the definition of "dependants" and substituting -

"member of the family" (家庭成員) has the meaning assigned to it under section 3 of the Employees' Compensation Ordinance (Cap. 282);".

39. Application by employee etc. for payment from the Fund

Section 16 is amended -

- (a) in subsection (2) -
 - (i) in paragraph (a), by adding -
 - "(iv) pursuant to a Certificate of Compensation Assessment for Fatal Case or Review

Certificate of Compensation
Assessment for Fatal Case
issued under the Employees'
Compensation Ordinance (Cap.
282);";

(ii) in paragraph (b), by repealing "or" at
the end;

(iii) in paragraph (c)(iii), by repealing the
full stop and substituting "; or";

(iv) by adding -

"(d) in the case of reimbursement of
the expenses of the funeral of
the deceased employee and
expenses of the medical
attendance on the deceased
employee, a Certificate for
Funeral and Medical Attendance
Expenses or Review Certificate
for Funeral and Medical
Attendance Expenses has been
issued under the Employees'
Compensation Ordinance (Cap.
282).".

(b) by adding -

"(4) Notwithstanding subsection (1) and
(3), where -

- (a) compensation under section 6(1) of the Employees' Compensation Ordinance (Cap. 282) payable pursuant to -
 - (i) a Certificate of Compensation Assessment for Fatal Case;
 - (ii) a Review Certificate of Compensation Assessment for Fatal Case; or
 - (b) reimbursement under section 6(5) of that Ordinance payable pursuant to -
 - (i) a Certificate for Funeral and Medical Attendance Expenses; or
 - (ii) a Review Certificate for Funeral and Medical Attendance Expenses,
- has been fully paid by the employer or his insurer, no application shall lie for the payment thereof from the Fund."

40. Applications

Section 21(4) is amended, in paragraph (a), by repealing "dependant" where it twice appears and substituting "member of the family".

41. Transitional

Section 46 is amended -

(a) by renumbering it as section 46(1);

(b) by adding -

"(2) Nothing in the Employees' Compensation (Amendment) (No. 2) Ordinance 2000 (of 2000) shall apply to applications for payment from the Fund in respect of claims for compensation arising from accidents occurring before the commencement of that Ordinance, and the provisions in force immediately before the commencement of that Ordinance shall continue to apply to such applications as if they had not been repealed or amended by that Ordinance.".

Pension Benefits (Judicial Officers) Ordinance

42. Dependant pension

Section 20(9) of the Pension Benefits (Judicial Officers) Ordinance (Cap. 401) is amended by repealing "dependants" and substituting "members of the family".

43. Section added

The following is added -

"39. Transitional

Nothing in the Employees' Compensation (Amendment) (No. 2) Ordinance 2000 (of 2000) ("the amending Ordinance") shall apply to claims for compensation in respect of accidents occurring before the commencement of the amending Ordinance, and the provisions in force immediately before the commencement of the amending ordinance shall continue to apply to such claims as if they had not been amended by the amending Ordinance."

Explanatory Memorandum

This Bill amends the Employees' Compensation Ordinance (Cap. 282) ("the Ordinance"). The main purposes are to make compensation, in case of death of an employee, payable to members of his family instead of his dependants; to provide an additional avenue for settlement of claims to compensation whereby in straightforward cases the Commissioner for Labour ("the Commissioner") may determine a claim; to require the employer to make interim payment to the spouse of the deceased employee pending final determination by the Commissioner; to require an employer to reimburse funeral and medical attendance expenses in all fatal cases; and to revise the level of fines on offences committed under the Ordinance.

2. Clause 3 amends section 3 to introduce certain new definitions used in the Ordinance including a new definition of "member of the family" in substitution for the definition of "dependants".
3. Clause 5 amends section 6(1) to provide that compensation shall

be payable to the members of family of the deceased employee and amends section 6(5) to provide the payment of reimbursement of funeral and medical attendance expenses by the employer.

4. Clause 6 adds new sections 6A to 6H -

- (a) new section 6A sets out in the new Seventh Schedule the manner in which the compensation is to be apportioned;
- (b) new sections 6B and 6D set out the procedure for making claims to the Commissioner and for making determination of claims by the Commissioner;
- (c) new section 6C sets out the procedure for application for interim payments by the spouse and for making determination of those payments by the Commissioner;
- (d) new section 6E sets out the procedure for making claims for reimbursement of funeral and medical attendance expenses and for making determination of those reimbursements by the Commissioner;
- (e) new section 6F provides that the Commissioner may require production of supporting documents by any person making a claim;
- (f) new section 6G sets out the total liability of the employer and his insurer in respect of one deceased employee;
- (g) new section 6H provides for an avenue for appeal to the Court against a determination made by the Commissioner.

5. Clauses 11, 18, 19, 20, 21, 22 and 24 revise the level of fines for offences committed under the Ordinance.
6. Clauses 28 to 43 contain consequential amendments to other related Ordinances and subsidiary legislation.