

A BILL

To

Amend—

- (a) the Employees Compensation Assistance Ordinance, to empower the Employees Compensation Assistance Fund Board to make payments in favour of employers and certain principal contractors in respect of costs of proceedings; and
- (b) the Employees Compensation Assistance (Amendment) Ordinance 2002, to enable such employers and principal contractors to apply to the Board in respect of their liability for compensation or damages for employment-related injury, irrespective of whether the liability is determined before, on or after the commencement of certain provisions of that amendment Ordinance.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Employees Compensation Assistance (Miscellaneous Amendments) Ordinance 2003.

PART 1

AMENDMENTS TO EMPLOYEES COMPENSATION ASSISTANCE ORDINANCE

2. Costs: Payment in favour of employees

Section 23 of the Employees Compensation Assistance Ordinance (Cap. 365) is amended—

- (a) by repealing subsections (7) to (10);
- (b) in subsection (11), by repealing “principal application” and substituting “application under section 16”.

3. Sections added

The following are added—

“23A. Costs: Payment in favour of employers

(1) In this section—

“application” (申請) means an application under section 17 or 18;

“relevant court” (相關法庭) means, in relation to costs incurred or payable in respect of relevant proceedings, the court before which those proceedings took place;

“relevant policy of insurance” (相關保險單) means, in relation to an application, the policy of insurance to which the application relates;

“relevant proceedings” (相關訴訟) means, in relation to an application, the proceedings of which the subject is, or has been, the compensation or damages to which the application relates.

(2) Subject to subsection (3), if the Board has determined an application in favour of the applicant, the Board may make a payment from the Fund for the purpose of paying on behalf of the applicant, or indemnifying the applicant for having incurred or paid, any or all of the following costs—

- (a) costs incurred by the applicant in making the application;
- (b) costs incurred by the applicant in defending the relevant proceedings;
- (c) costs ordered by the relevant court to be payable by the applicant in respect of the relevant proceedings to the person who is entitled to receive the compensation or damages concerned (whether the amount of the costs payable is subsequently agreed or ascertained by taxation).

(3) The Board may only make a payment in respect of the costs mentioned in subsection (2)(b) or (c) if the relevant policy of insurance indemnifies the applicant in respect of the applicant’s liability for the costs concerned.

(4) The amount that may be paid in respect of the costs mentioned in subsection (2)(a) shall not exceed—

- (a) if those costs have been taxed on the common fund basis, the amount so allowed; or
- (b) in any other case, such amount as in the opinion of the Board would be allowed on taxation of those costs by the District Court on that basis.

(5) Subject to subsection (7), the amount that may be paid in respect of the costs mentioned in subsection (2)(b) shall not exceed—

- (a) if those costs have been taxed on the common fund basis, the amount so allowed; or

(b) in any other case, such amount as in the opinion of the Board would be allowed on taxation of those costs by the relevant court on that basis.

(6) Subject to subsection (7), the amount that may be paid in respect of the costs mentioned in subsection (2)(c) shall not exceed—

(a) if those costs have been taxed on the party and party basis, the amount so allowed; or

(b) in any other case, such amount as in the opinion of the Board would be allowed on taxation of those costs by the relevant court on that basis.

(7) The amount that may be paid in respect of the costs mentioned in subsection (2)(b) and (c) shall not exceed the amount that the applicant is entitled to receive under the relevant policy of insurance in respect of those costs.

23B. Provisions ancillary to section 23A

(1) In determining under section 23A whether to make a payment in favour of the applicant of an application under section 17 or 18, and if so, the amount to be paid, the Board shall have regard to—

(a) whether and at what time the applicant notified the Board of the likelihood that the applicant would make a claim with the Board (be it for compensation, damages or costs);

(b) whether any part of the costs concerned was, in the opinion of the Board, unnecessary or wasteful; and

(c) if the determination relates to the costs mentioned in section 23A(2)(b) or (c)—

(i) whether the liability to pay the costs concerned is attributed to compliance by the applicant with instructions from an insurer; and

(ii) whether the Board has intervened in the proceedings concerned, or defended the same as an interested party.

(2) In no case is the Board liable under section 23A for the costs of an insolvent insurer, whether incurred before, on or after the insolvency.

(3) An amount determined under section 23A becomes payable when the amount determined in respect of the application under section 17 or 18 becomes payable.

(4) The Board may make a payment in respect of—

(a) any of the costs mentioned in section 23A(2) even if the application under section 17 or 18 was determined by the Board before the commencement of the Employees Compensation Assistance (Miscellaneous Amendments) Ordinance 2003 (of 2003);

- (b) the costs mentioned in section 23A(2)(a) or (b) even if the costs concerned were incurred before that commencement; or
- (c) the costs mentioned in section 23A(2)(c) even if those costs were ordered before that commencement by a court to be payable.”.

PART 2

AMENDMENTS TO EMPLOYEES COMPENSATION ASSISTANCE (AMENDMENT) ORDINANCE 2002

4. Section added

Section 30 of the Employees Compensation Assistance (Amendment) Ordinance 2002 (16 of 2002) is amended, in the new section 46A—

- (a) in subsection (2), by repealing “and 23(7) to (11) inclusive” and substituting “, 23A and 23B”;
- (b) by repealing subsection (8) and substituting—

“(8) Despite the commencement of subsection (2), an employer, or a principal contractor who has taken out a policy of insurance in accordance with section 40(1B) of the Employees’ Compensation Ordinance (Cap. 282), may apply under the repealed section 17 or repealed section 18 as if the section had not been repealed, if the application relates to an insurer in respect of whom a notice has been published, before that commencement, under section 20.

(8A) Despite the commencement of subsection (2), this Ordinance as in force immediately before that commencement shall continue to have force in relation to—

- (a) an application that is made before that commencement under section 17 or 18 (whether the application has been determined by the Board before that commencement); and
- (b) an application that is made under the repealed section 17 or repealed section 18 by virtue of subsection (8).”.

Explanatory Memorandum

This Bill amends the Employees Compensation Assistance Ordinance (Cap. 365) (“principal Ordinance”) and the Employees Compensation Assistance (Amendment) Ordinance 2002 (16 of 2002) (“amendment Ordinance”).

2. Both the principal Ordinance and the amendment Ordinance contain provisions relating to employers and principal contractors who have taken out policies of insurance covering the liability in respect of compensation or damages for employment-related injury. The proposed amendments relate to a situation where an insurer who, after issuing such a policy of insurance, has become insolvent.

3. The main provisions of the Bill are explained below—

PART 1

- (a) Part 1 amends the principal Ordinance. Under section 17 or 18 of the principal Ordinance, an employer or principal contractor in such a situation may apply to the Employees Compensation Assistance Fund Board (“Board”) for payment from the Employees Compensation Assistance Fund (“Fund”) for assistance in paying compensation or damages. Under section 23 of the principal Ordinance, if the Board determines the application in favour of the applicant, the Board may also make a payment from the Fund in respect of the costs that are incurred by the applicant in making the application.
- (b) The purpose of clause 3 is to empower the Board to make payments in favour of the applicant in respect of costs of proceedings. If the compensation or damages are or have been the subject of proceedings, it is proposed that the Board may also make payments in respect of—
 - (i) the costs incurred by the applicant in defending those proceedings; and
 - (ii) the costs ordered by a court to be payable by the applicant in respect of those proceedings to the person who is entitled to receive the compensation or damages.

PART 2

- (c) Part 2 relates to two of the new subsections that are to be added by the amendment Ordinance to section 46A of the principal Ordinance (i.e. section 46A(2) and (8)). Those subsections have not yet commenced operation.

- (d) When section 46A(2) commences operation, sections 17 and 18 and certain other provisions of the principal Ordinance will be repealed. Section 46A(8) provides that if before that commencement a person *is entitled* to apply under section 17 or 18, that person may do so after that commencement as if the section had not been repealed.
- (e) Clause 4 amends section 46A(8) to clarify that the person may apply after that commencement under the repealed section 17 or repealed section 18, irrespective of whether the liability for the compensation or damages concerned is determined before, on or after that commencement.
- (f) Clause 4 also provides that those repealed provisions of the principal Ordinance continue to have force in relation to applications made—
 - (i) before that commencement under section 17 or 18; and
 - (ii) after that commencement under the repealed section 17 or repealed section 18.