



中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China



立法會秘書處 法律事務部
LEGISLATIVE COUNCIL SECRETARIAT
LEGAL SERVICE DIVISION

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By Fax (2815 6061)

17 June 2009

Ms. Melody LUK
Senior Labour Officer (Employees' Compensation)
Labour Department
15/F, Harbour Building
38 Pier Road
Central
Hong Kong

Dear Ms. LUK,

Occupational Deafness (Compensation) (Amendment) Bill 2009

I am scrutinizing the legal and drafting aspects of the above Bill. I would be most grateful if you could clarify the following matters:-

Clause 4

Clause 4 amends section 5(1)(c) of the Occupational Deafness (Compensation) Ordinance (Cap. 469) (the Ordinance) to include the processing and determination of applications for "direct payment of expenses" (in addition to applications for compensation or reimbursement of expenses) as part of the functions of the Occupational Deafness Compensation Board. Please consider whether it is also necessary to add "direct payment of expenses" to section 8 of the Ordinance relating to payments by the Board from the Occupational Deafness Compensation Fund.

Clause 6

Clause 6 adds a new section 14A to the Ordinance to provide for further compensation for additional permanent incapacity resulting from noise-induced deafness. Please provide information on whether the Government's policy under the existing section 27 of the Ordinance concerning payment in respect of permanent incapacity would be affected by the new section 14A.

Clause 8(3) and (4)

It is noted that "shall" is used in the existing section 20(1) of the Ordinance. However, "must" is used in clause 8(3) which amends section 20(2) of the Ordinance. "Must" is also used in the new section 20(2A) and (2C) as added by clause 8(4). Please consider whether it would be more consistent to use the same wording (either "shall" or "must") in the same section of an ordinance. Please also explain the rationale for preferring "must" to "shall", and let us know if this is a new drafting practice.

Clause 13(2)

It is noted that "he" and "his noise-induced deafness" are used in the existing section 27B(1) of the Ordinance. According to section 7(1) of the Interpretation and General Clauses Ordinance (Cap. 1), words and expressions importing the masculine gender include the feminine and neuter genders. However, it is noted that "he or she" and "his or her noise-induced deafness" are used in the new section 27B(1A) which is added by clause 13(2). Please consider whether it would be more consistent to use the same phrase in the same section of an ordinance. Please also explain if this is a new drafting practice.

Clause 15(3)

It is noted that "shall" is used in the existing section 27D(1) and (2) of the Ordinance. However, "must" is used in the new section 27D(3) which is added by clause 15(3). Please consider whether it would be more consistent to use the same wording (either "shall" or "must") in the same section of an ordinance. Please also explain the rationale for preferring "must" to "shall", and let us know if this is a new drafting practice.

Clause 17

Clause 17 amends section 27F of the Ordinance. According to the amended section 27F(6)(b), no request for review shall be made in respect of any amount of expenses that have been determined by the Board to be paid for the applicant directly to the device provider, if any of the events mentioned in subsection (7) happens. Please consider whether the word "and" at the end of the new section 27F(7)(a) is appropriate.

Clause 18

Clause 18(2) and (3) respectively amends section 27G(1) and (3) of the Ordinance to provide for the payment of money to the applicant or the device provider in different situations. Please explain the rationale for the different payment dates in respect of the different situations under those provisions.

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It is noted that section 27G(4) of the Ordinance is not amended by the Bill and it is only applicable to "reimbursement of expenses" but not to "direct payment of expenses". Please explain the rationale for the non-application of section 27G(4) of the Ordinance to "direct payment of expenses".

Clause 23(5)

Clause 23(5) amends Schedule 5 to the Ordinance by adding section 5(a) and (b). According to the new section 5(a), "relevant date of application" means the date of the previous unsuccessful application mentioned in section 48(3)(b) of the Ordinance for the purposes of sections 1 and 3(a). However, it is noted that according to the new section 5(b), "relevant date of application" means the date of the commencement of section 48(4) of the Ordinance for the purposes of section 3(c). Please explain the rationale for this difference.

I shall be most grateful if you could let me have your response in both Chinese and English on the above queries at your earliest convenience, preferably before the first meeting of the Bills Committee (tentatively fixed to be held on 22 June 2009).

Yours sincerely,



(Timothy TSO)
Assistant Legal Adviser

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