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From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 11 July 2018

Proposed resolution under the Fatal Accidents Ordinance

The Secretary for Justice will move the proposed resolution in **Appendix 1** under section 4(5) of the Fatal Accidents Ordinance (Cap. 22) at the above meeting. The President has directed that the proposed resolution be printed in the terms in which it was handed in on the Agenda of the Council.

2. The speech, in both Chinese and English, which the Secretary for Justice will deliver when moving the proposed resolution is in **Appendix 2**.

(Dora WAI)
for Clerk to the Legislative Council

Encl.

Fatal Accidents Ordinance

Resolution

(Under section 4(5) of the Fatal Accidents Ordinance (Cap. 22))

Resolved that the Fatal Accidents Ordinance (Cap. 22) be amended as set out in the Schedule.

Schedule

Amendment to Fatal Accidents Ordinance

1. Section 4 amended (bereavement)

Section 4(3)—

Repeal

“\$150,000”

Substitute

“\$220,000”.

**Speech of the Secretary for Justice
Hon Teresa Cheng, SC
at the Legislative Council on 11 July 2018**

**to move the Proposed Resolution
under the Fatal Accidents Ordinance (Cap 22)**

Mr. President,

I move that the resolution, as printed on the Agenda, be passed.

2. The purpose of this resolution is to increase the statutory sum of damages for bereavement (“**bereavement sum**”) under section 4(3) of the Fatal Accidents Ordinance (Cap. 22) (“**the Ordinance**”) to \$220,000.
3. The Ordinance was enacted in 1986. It allows an action for damages to be brought against a person for the benefit of dependants of the deceased in respect of that person’s wrongful act, neglect or default which has caused the death of the deceased. An action under the Ordinance may include a claim for damages for bereavement in the sum as prescribed in section 4(3). Section 4(5) of the Ordinance provides that the Legislative Council may by resolution vary the sum. Since the enactment of the Ordinance, the bereavement sum was adjusted in 1991 and 1997. The current sum is set at \$150,000.
4. In 2000, the Government conducted a review of the bereavement sum and reached the view that there was no basis for increasing the sum at that stage considering, *inter alia*, the drop in the consumer price index between 1997 and 2000. The Legislative Council Panel on Administration of Justice and Legal Services (“**AJLS Panel**”) was informed of the result of the review.
5. The overall downward trend in the cumulative inflation rate had continued and by making reference to the indices in March of each year, the Consumer Price Index (A) (“**CPI(A)**”) returned to the 1997 level only by March 2010.

6. In mid-2014, the Government commenced a review of the bereavement sum and, having made reference to the cumulative inflation as measured by the CPI(A), proposed to increase the sum to \$190,000. In response to that consultation, The Law Society of Hong Kong and the Hong Kong Bar Association counter-proposed that the proposed increase should take into account not only inflation but also “changing social and economic conditions of Hong Kong”.

7. The Department of Justice (“**DoJ**”) then consulted the Census and Statistics Department and the Office of the Government Economist on whether, and if so how, the “changing social and economic conditions of Hong Kong” could be quantified objectively. It was concluded that the “social and economic conditions” of an economy could embrace many different aspects, including but not limited to population growth and structure, public health, housing, social welfare, crime, social stability, economic growth, business performance, inflation, employment earnings and income. Therefore, there is no single indicator that can serve the purpose of manifesting the changing social and economic conditions in a nutshell.

8. DoJ has also, in parallel, studied the methodology adopted in other common law jurisdictions. In England and Wales and several jurisdictions in Canada (namely Alberta, Manitoba, Saskatchewan and Yukon) where damages for bereavement are provided, none of them factor in “changing social and economic conditions” when adjusting the amount of damages.

9. In light of the above, the Government takes the view that it is not appropriate to include an amount over and above inflation in the review of the bereavement sum to reflect the “changing social and economic conditions of Hong Kong” in the absence of an objective methodology to quantify the same.

10. In May 2018, the AJLS Panel was consulted in relation to the Government’s proposal to move today’s resolution to increase the bereavement sum to \$220,000. Members of the AJLS Panel, the two legal professional bodies and the Hong Kong Federation of Insurers supports the Government’s proposal. The Government’s proposal was

also discussed before the Subcommittee on Proposed Resolution under Section 4(5) of the Fatal Accidents Ordinance (Cap. 22) at its meeting of 19 June 2018, during which all members present expressed support.

11. The figure of \$220,000 in today's resolution is arrived at, with the exception of the period from March 2017 to March 2018, by reviewing the bereavement sum every two years based on the CPI(A) from March 1997 to March 2018 and rounded up to the nearest \$5,000 upon each notional biennial adjustment. Upon passage, the resolution would take effect from the date of its publication in the Gazette, and the increase in the bereavement sum would be more than sufficient to cover the cumulative inflation from March 1997 to March 2018.

12. An adjustment based on inflation by making reference to the CPI(A) could provide a simple and objective methodology for the coming and future reviews of the bereavement sum. On this basis, the Government will in future be able to conduct routine reviews every two years by making reference to the CPI(A) and move a resolution to adjust the bereavement sum if necessary.

13. With the above remarks, I urge Members to support the resolution.