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13 June 2018

Mr Lemuel Woo
Clerk to Panel on Administration of
Justice and Legal Services
Legislative Council
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Mr Woo,

**Panel on Administration of Justice and Legal Services
Meeting on 28 May 2018**

At the captioned meeting, a Member asked “whether a dependant of a deceased person in a marriage not recognized under the Hong Kong legislation is entitled to claim for damages for bereavement under section 4(3) of the *Fatal Accidents Ordinance* (Cap 22) (“**the Ordinance**”)”. Our reply is set out in the ensuing paragraphs for Members’ reference.

The statutory sum to be awarded as damages for bereavement under section 4 of the Ordinance is pitched at \$150,000 as stipulated under its sub-section (3).

Section 4(2) of the Ordinance provides that a claim for damages for bereavement shall only be for the benefit of such of the following persons as

survive the deceased for not less than 30 days:

- “(a) the wife or husband of the deceased, unless they had been living apart for a continuous period of at least 2 years immediately preceding the death of the deceased; or
- (b) where there is no spouse by or for whom a claim can be made under paragraph (a), the children of the deceased; or
- (c) where there is no person by or for whom a claim can be made under paragraph (a) or (b), the wife or husband of the deceased (notwithstanding that they had been living apart); or
- (d) where there is no person by or for whom a claim can be made under paragraph (a), (b) or (c), any concubine taken by the deceased before 7 October 1971; or
- (e) where there is no person by or for whom a claim can be made under paragraph (a), (b), (c) or (d), any person who -
 - (i) was living with the deceased in the same household immediately before the date of his death; and
 - (ii) had been living with the deceased in the same household for at least 2 years before that date, as the husband or wife of the deceased; or
- (f) where there is no person by or for whom a claim can be made under paragraph (a), (b), (c), (d) or (e), the parents of the deceased or (if the deceased was illegitimate) his mother; or
- (g) where there is no person by or for whom a claim can be made under paragraph (a), (b), (c), (d), (e) or (f), but the deceased was at the date of his death a minor, any person who during any marriage to which that person was a party treated the deceased as a son or daughter of the family in relation to that marriage; or

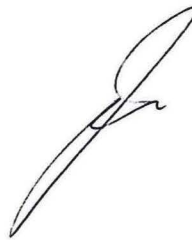
- (h) where there is no other person by or for whom a claim can be made under this subsection, any brother or sister of the deceased.”

Section 2 sets out the general interpretation provisions of the Ordinance. Section 2(1) defines the term “wife” as follows:

- “(a) in the case of a Christian marriage or its civil equivalent, the lawful wife; and
- (b) in the case of any other lawful marriage-
 - (i) the lawful wife of such marriage; or
 - (ii) if there is more than one lawful wife, the lawful principal wife recognized as such by the personal law of the husband of such marriage, or if there is no lawful principal wife, the lawful wives so recognized.”

Whether or not any class of persons regarded as “dependant of a deceased person in a marriage not recognized under the Hong Kong legislation” is entitled to claim for damages for bereavement under section 4(3) of the Ordinance would depend on whether the individual concerned falls within any of the categories of persons as listed in section 4(2) of the Ordinance, as read with the definition of “wife” and other interpretation provisions in section 2 of the Ordinance, as well as where that person ranks in the order of entitlement. Every case has to be decided on its own facts in accordance with the provisions of the Ordinance and upon an adjudication of any contested legal contentions as may be advanced by the parties and ventilated before the court.

Yours sincerely,



(Jason Chow)
Administrative Officer
Secretary for Justice’s Office