

## LEGISLATIVE COUNCIL BRIEF

### REVIEW OF THE AMOUNT OF DAMAGES FOR BEREAVEMENT UNDER THE FATAL ACCIDENTS ORDINANCE (CHAPTER 22)

#### INTRODUCTION

The Secretary for Justice has given notice to move a resolution at the Legislative Council (“**LegCo**”) meeting of 13 June 2018 under section 4(5) of the Fatal Accidents Ordinance (Cap. 22) (“**the Ordinance**”) to increase the statutory sum to be awarded as damages for bereavement (“**bereavement sum**”) prescribed in section 4(3) Of the Ordinance to HK\$220,000. The resolution is set out at **Annex A**.

**A**

#### JUSTIFICATIONS

2. The Ordinance was enacted in 1986. It allows an action for damages to be brought against a person for the benefit of the 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 LegCo 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 HK\$150,000.

3. 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 consumer price index between 1997 and 2000. The LegCo Panel on Administration of Justice and Legal Services (“**AJLS Panel**”)<sup>1</sup> were informed of the result of the review.

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<sup>1</sup> LC Paper No. CB(2)30/00-01(01)

4. 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.<sup>2</sup>

### **The Review in 2014**

5. In mid-2014, the Department of Justice (“DoJ”) commenced a review of the bereavement sum and proposed to increase the sum to HK\$190,000, having made reference to the cumulative inflation as measured by the CPI(A), and consulted The Law Society of Hong Kong (“LawSoc”) and the Bar Association (“the Bar”). In response to that consultation, the LawSoc and the Bar counter-proposed that the amount be adjusted to HK\$250,000 on the ground that the increase should take into account not only inflation but also “changing social and economic conditions of Hong Kong”<sup>3</sup>.

6. DoJ has then deliberated internally and 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.

7. We have also studied the methodology adopted in other common law jurisdictions. In England and Wales and several jurisdictions in Canada<sup>4</sup> where damages for bereavement are provided, none of them factor in “changing social and economic conditions” when adjusting the amount of damages.

8. In our view, an adjustment based on inflation by making reference to the

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<sup>2</sup> In March 1997, the CPI(A) was 78.5. The CPI(A) rose to 82.3 in March 1998 but thereafter dropped to 80.4 in March 1999. Looking at March in the years between 2000 and 2009, the CPI(A) was below 78.5. It was only until March 2010 when the CPI (A) rose back to 80.5.

<sup>3</sup> The two legal professional bodies referred to the motion debate before the LegCo in April 1997, when Hon. Albert HO moved a resolution to increase the bereavement sum from HK\$70,000 to HK\$150,000. While the then Attorney General pointed out that an inflation adjustment would bring the amount up to about HK\$112,000, Hon. Albert HO had argued that the award should be further increased to meet the changing social and economic conditions of Hong Kong. See the Hansard of the proceedings of the LegCo on 16 April 1997, at p. 97.

<sup>4</sup> The relevant Canadian jurisdictions are Alberta, Manitoba, Saskatchewan and Yukon.

CPI(A) could provide a simple and objective methodology for the coming and future reviews of the bereavement sum.

9. In light of the above, the Government considers that it is not appropriate to include an amount over and above inflation in 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. This will have the advantage of allowing the Government 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.

## **OTHER OPTIONS**

10. The proposed changes can only be effected by legislative means. There is no other option.

## **THE PROPOSED RESOLUTION**

11. By making reference to the CPI(A), it is proposed that the bereavement sum be increased from HK\$150,000 to HK\$220,000, which would be more than sufficient to cover the cumulative inflation reckoned from March 1997 to March 2018.<sup>5</sup>

12. With the exception of the period from March 2017 to March 2018, the figure of HK\$220,000 is arrived at 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 HK\$5,000 upon each notional biennial adjustment. This would help ensure that any increase in the bereavement sum would generally be more than enough to compensate for the effect of the cumulative inflation on the recipients’ purchasing power between actual adjustments. A table showing the details of the calculation is enclosed at **Annex B**.

**B**

## **LEGISLATIVE TIMETABLE**

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<sup>5</sup> With the adjustment of the bereavement sum to HK\$220,000, the maximum amount which may be awarded as damages for loss of society of an injured person pursuant to section 20C of the Law Amendment and Reform (Consolidation) Ordinance (Cap. 23), will correspondingly be increased to HK\$220,000 by operation of section 20C(2)(a) of that Ordinance.

13. The legislative timetable is as follows –

Moving of the Resolution	13 June 2018
Publication in the Gazette	The following Friday after the passing of the resolution by the LegCo

## **IMPLICATIONS OF THE PROPOSAL**

14. The proposal might have relatively minor financial implications for the Government as the Government is only required to pay the bereavement sum to dependants of the deceased in cases where the deceased's death is caused by the Government's wrongful act, neglect or default.

15. The increase in bereavement sum will have a positive impact on the families of deceased persons who died as a result of the wrongful act, neglect or default of another person by providing financial support to them.

16. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It has no economic, productivity, environmental, sustainability, civil service or gender implications. The proposal will not affect the current binding effect of the Ordinance.

## **PUBLIC CONSULTATION**

17. The AJLS Panel was consulted on the above legislative proposal at its meeting on 28 May 2018. The proposal was supported by the members of the Panel. A motion was also passed by the Panel to urge the Government to move the proposed resolution within the current legislative session.

18. The DoJ has also consulted the LawSoc, the Bar and the Hong Kong Federation of Insurers. Both the LawSoc and the Bar expressed support of the proposal and a periodic adjustment of the bereavement sum by reference to the CPI(A) once every two years. The LawSoc also indicated that it would make further submissions on the details and mechanics of a proposed comprehensive review of the bereavement sum to be conducted once every six years so as to ensure that the sum would adequately compensate the value of the life lost and/or the value of the bereavement. The Hong Kong Federation of Insurers was generally supportive of

the proposal and indicated that any adjustment in the bereavement sum would be taken into consideration when reviewing the insurance premium rate.

## **PUBLICITY**

19. A press release will be issued on 28 May 2018. A spokesperson will be available for answering media enquiries.

## **ENQUIRY**

20. Any enquiry on this brief can be addressed to Ms Adeline Wan, Senior Assistant Solicitor General, at Tel. No. 3918 4018 or Miss Joey Ma, Government Counsel, at Tel. No. 3918 4048.

Department of Justice

May 2018

**Fatal Accidents Ordinance**

**Resolution of the Legislative Council**

Resolution made and passed by the Legislative Council under section 4(5) of the Fatal Accidents Ordinance (Cap. 22) on 2018.

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

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**Schedule**

**Amendment to Fatal Accidents Ordinance**

**1. Section 4 amended (bereavement)**

Section 4(3)—

**Repeal**

“\$150,000”

**Substitute**

“\$220,000”.

Clerk to the Legislative Council

2018

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**Explanatory Note**

The sum to be awarded as damages for bereavement in an action under the Fatal Accidents Ordinance (Cap. 22) is currently \$150,000. This Resolution amends section 4(3) of the Ordinance to increase the sum to \$220,000.

**Calculation of the bereavement sum by making reference to the  
CPI(A)  
From March 1997 to March 2018**

March /Year	Consumer Price Index (A)		
	Index#	Cumulative % change (since the specified month)^	Amount of damages* ** (amount of damages before rounding up)
1997	78.5		\$150,000
1998	82.3		
1999	80.4	2.42% (since March 1997)	\$155,000 (\$153,630)
2000	77.2		
2001	75.6		\$155,000
2002	74.1		
2003	72.7		\$155,000
2004	71.4		
2005	72.2		\$155,000
2006	73.2		
2007	74.8		\$155,000
2008	77.7		
2009	78.1		\$155,000
2010	<b>80.5</b>		
2011	84.4	4.98% (since March 1999)	\$165,000 (\$ 162,719)
2012	88.0		
2013	91.5	8.41% (since March 2011)	\$180,000 (\$178,876.5)
2014	95.4		
2015	101.4	10.82% (since March 2013)	\$200,000 (\$199,476)
2016	104.4		
2017	104.5	3.06% (since March 2015)	\$210,000 (\$206,120)
2018	107.4	2.78% (since March 2017)	<b>\$220,000 (\$215,838)</b>

# Index from October 2014 - September 2015 = 100



^ Calculated based on CPI(A) index with 1 decimal place.

\* The adjustments are calculated by applying the formula below and rounded **up** to the nearest \$5,000:

Amount of damages before rounding up = amount of damages in the  
reference year  $\times$  (1 + cumulative % change in the current year)

For example, for the review in 1999, the amount of damages before rounding up = \$150,000  $\times$  (1+2.42%) = \$153,630. It is then rounded up to \$155,000.

\*\* Amount is not adjusted in the years 2001, 2003, 2005, 2007 and 2009 due to deflation (as compared to the CPI(A) in March 1999), and the adjustment resumes in 2011 as the CPI(A) returned to the comparable level of the last adjustment (i.e. March 1999) in March 2010.