

Employees' Compensation Ordinance

(Cap. 282)

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To provide for the payment of compensation to employees who are injured in the course of their employment.

(Amended 44 of 1980 s. 2)

[1 December 1953] *G.N.A. 160 of 1953*

Part I

Preliminary

(Added 19 of 1964 s. 2)

(Format changes—E.R. 1 of 2018)

1. Short title

This Ordinance may be cited as the Employees' Compensation Ordinance.

(Amended 44 of 1980 s. 15)

2. Meaning of *employee*

- (1) In this Ordinance, unless the context otherwise requires, the expression ***employee*** (僱員), subject to section 4 and the proviso to this subsection, means any person who has, either before or after the commencement of this Ordinance, entered into or works under a contract of service or apprenticeship with an employer in any employment, whether by way of manual labour, clerical work, or otherwise, and whether the contract is expressed or implied, is oral or in writing:
(Amended 11 of 1958 s. 2)

Provided that the following persons are excepted from the definition of ***employee*** (僱員) —

- (a) *(Repealed 44 of 1980 s. 3)*
 - (b) any person whose employment is of a casual nature, and who is employed otherwise than for the purposes of the employer's trade or business, not being a person employed for the purposes of any game or recreation and engaged or paid through a club and not being a part-time domestic helper; or *(Amended 63 of 1992 s. 2)*
 - (c) an outworker; or
 - (d) a member of the employer's family employed by such employer and who resides with the employer. *(Amended 55 of 1969 s. 2)*
- (2) If, in any proceedings for the recovery of compensation under this Ordinance, it appears to the Court that the contract of service or apprenticeship under which the injured person was working, at the time when the accident causing the injury happened, was illegal, the Court may, if having regard to all the circumstances of the case it thinks proper so to do, deal with the matter as if the injured person had at the time aforesaid been a person working under a valid contract of service or apprenticeship.
- (3) In this Ordinance, unless the context otherwise requires, any reference to an employee who has been injured shall, where the employee is dead, include a reference to his legal personal representative, or to the members of his family or any of them or the Official Administrator or such other officer as the Chief Executive may appoint to act on behalf of the members of the family of the employee. *(Amended 36 of 1996 s. 2; 52 of 2000 s. 2; 56 of 2000 s. 3)*
- (4) Where, in any employment, personal injury by accident arising out of and in the course of the employment is caused to any person, and at the time of the accident—

- (a) that person would, but for paragraph (d) of the proviso to subsection (1), have been an employee within the meaning of that subsection; and
- (b) there is in force in relation to that person a policy of insurance which indemnifies the employer against liability in respect of such injury whether or not the indemnity is for an amount which is less than the full amount of the liability in respect of which the employer would, under section 40(1), be required to be insured if such person were an employee within the meaning of subsection (1),

this Ordinance shall, notwithstanding paragraph (d) of the proviso to subsection (1), apply in relation to that person for all purposes as if he were an employee within the meaning of the subsection. (*Added 76 of 1982 s. 2*)

(*Amended 44 of 1980 s. 15*)

3. Interpretation

- (1) In this Ordinance, unless the context otherwise requires— (*Amended 52 of 2000 s. 3*)

accident insurance business (意外保險業務) means the business of effecting contracts of insurance against the liability of an employer for personal injury by accident to any employee in his employment arising out of and in the course of such employment; (*Added 55 of 1969 s. 3*)

Certificate for Funeral and Medical Attendance Expenses (殯殮費和醫護費證明書) means a certificate issued under section 6E(1)(b); (*Added 52 of 2000 s. 3*)

Certificate of Compensation Assessment for Fatal Case (致命個案補償評估證明書) means a certificate issued under section 6B(1)(b); (*Added 52 of 2000 s. 3*)

Certificate of Interim Payment (臨時付款證明書) means a certificate issued under section 6C(1)(b); (*Added 52 of 2000 s. 3*)

cohabitee (同居者), in relation to an employee, means any person who at the time of the accident concerned was living with the employee as the employee's wife or husband; (*Added 52 of 2000 s. 3*)

Commissioner (處長) means the Commissioner for Labour; (*Replaced 13 of 1966 Schedule. Amended 55 of 1969 s. 3; L.N. 142 of 1974*)

compensation (補償) means any of the following—

- (a) compensation payable under section 6, 7, 8, 9 or 10, including the expenses of the funeral and medical attendance payable under section 6(5); (*Amended 52 of 2000 s. 3*)
- (b) medical expenses payable under section 10A;
- (c) wages or salary payable under section 16I(3) or 36MA; (*Amended 36 of 1996 s. 3*)
- (d) the cost of the supplying and fitting of a prosthesis or surgical appliance payable under section 36B, and the probable cost of repair and renewal thereof payable under section 36I;
- (da) interim payment; (*Added 52 of 2000 s. 3*)
- (e) any surcharge or interest payable under this Ordinance on the compensation referred to in paragraph (a), (b), (c), (d) or (da); (*Replaced 76 of 1982 s. 3. Amended 52 of 2000 s. 3*)

contract of apprenticeship (學徒訓練合約) includes a contract of improvership or learnership; (*Added 55 of 1969 s. 3*)

Court (法院) means—

- (a) in relation to any proceedings for the recovery of compensation in or required to be in the District Court, the District Court; or
- (b) in relation to any proceedings for the recovery of compensation in any other court or tribunal, or to be determined by the Commissioner, that court or tribunal, or the Commissioner, as the case may be; (*Replaced 76 of 1982 s. 3*)

damages (損害賠償) means any damages recoverable by an employee independently of this Ordinance in the case of personal injury to the employee by accident arising out of and in the course of his employment, and any interest payable on such damages; (*Added 55 of 1969 s. 3. Amended 54 of 1991 s. 47*)

earnings (收入) means any wages paid in cash to the employee by the employer and any privilege or benefit which is capable of being estimated in money and includes the value of any food, fuel, or quarters supplied to the employee by the employer if as a result of the accident the employee is deprived of such food, fuel or quarters; and any overtime payments or other special remuneration for work done, whether by way of bonus, allowance or otherwise, if of constant character or for work habitually performed and including tips if the employment be of such a nature that the habitual giving and receiving thereof is open and notorious and is recognized by the employer: but shall not include remuneration for intermittent overtime, or casual payments of a non-recurrent nature, or the value of a travelling allowance, or the value of any travelling concession or a contribution paid by the employer of an employee towards any pension or provident fund, or a sum paid to an employee to cover any special expenses entailed on him by the nature of his employment;

ECAFB (管理局) means the Employees Compensation Assistance Fund Board constituted by section 3(1) of the Employees Compensation Assistance Ordinance (Cap. 365); (*Added 16 of 2002 s. 33*)

employer (僱主) includes the Government and any body of persons corporate or unincorporate and the legal personal representative of a deceased employer, and, where the services of an employee are temporarily lent or let on hire to another person by the person with whom the employee has entered into a contract of service or apprenticeship, the latter shall, for the purposes of this Ordinance, be deemed to continue to be the employer of the employee whilst he is working for that other person; and in relation to a person engaged, employed or paid through a club or hostel, the manager or members of the managing committee of the club or hostel shall, for the purposes of this Ordinance, be deemed to be the employer; (*Amended 76 of 1982 s. 37; 68 of 1995 s. 2; 56 of 2000 s. 3*)

hospital (醫院) means any hospital within the meaning of the Private Healthcare Facilities Ordinance (Cap. 633) for which a licence under that Ordinance is in force, any hospital maintained by the Government, any military hospital, any public hospital within the meaning of the Hospital Authority Ordinance (Cap. 113) or The Chinese Medicine Hospital of Hong Kong (as defined by section 2(5) of The Chinese Medicine Hospital of Hong Kong Ordinance (15 of 2025)); (*Added 74 of 1977 s. 2. Amended 82 of 1991 s. 2; 2 of 2012 s. 3; 34 of 2018 s. 166 and E.R. 5 of 2018; 15 of 2025 s. 3*)

insurance company (保險公司) and ***insurer*** (保險人) mean a person carrying on accident insurance business in Hong Kong and include—

- (a) a company authorized under section 8 of the Insurance Ordinance (Cap. 41) to carry on class 13 of the classes

of insurance business specified in Part 3 of Schedule 1 to that Ordinance; (*Amended 12 of 2015 s. 111*)

- (b) an association of underwriters approved by the Governor in Council before 1 July 1994 or by the Insurance Authority under section 6 of that Ordinance; (*Amended 47 of 1995 s. 2; 12 of 2015 s. 111*)
- (c) the society of underwriters known in the United Kingdom as Lloyd's; (*Replaced 33 of 1990 s. 31*)

interim payment (臨時付款) means an interim payment of compensation the subject of a determination under section 6C(1)(a); (*Added 52 of 2000 s. 3*)

medical expenses (醫療費)—

- (a) in relation to medical treatment given in Hong Kong, means all or any of the following expenses incurred in respect of the medical treatment of an employee—
 - (i) the fees of a registered medical practitioner, registered Chinese medicine practitioner, registered dentist, registered chiropractor, registered physiotherapist or registered occupational therapist; (*Replaced 16 of 2006 s. 12*)
 - (ii) the fees for any surgical or therapeutic treatment;
 - (iii) the cost of nursing attendance;
 - (iv) the cost of hospital accommodation as an in-patient;
 - (v) subject to section 10AB, the cost of medicines, curative materials and medical dressings; (*Amended 16 of 2006 s. 12*)
- (b) in relation to medical treatment given outside Hong Kong, means such expenses incurred in respect of the medical treatment of an employee as the Commissioner, by certificate in writing issued under section 10B(1)(b),

determines to be medical expenses; (*Replaced 1 of 1995 s. 2*)

medical treatment (醫治), in relation to an employee to whom a personal injury is caused by accident arising out of and in the course of his employment, means medical treatment of any kind whatsoever given to the employee—

- (a) in the case of medical treatment given in Hong Kong, by, or under the supervision of, a registered medical practitioner, registered Chinese medicine practitioner, registered dentist, registered chiropractor, registered physiotherapist or registered occupational therapist; (*Amended 16 of 2006 s. 12*)
- (b) in the case of medical treatment given outside Hong Kong, by, or under the supervision of, a person who is allowed to practise medicine, surgery, dentistry, chiropractic, physiotherapy or occupational therapy in the place where such medical treatment is given,

in a hospital, whether as an in-patient or other than as an in-patient, or elsewhere; (*Added 74 of 1977 s. 2. Amended 1 of 1995 s. 2*)

member of the family (家庭成員), in relation to an employee, means a person who has any of the following relationships in respect of the employee, whether by blood or an adoption specified in subsection (2)—

- (a) a spouse or cohabitee;
- (b) a child;
- (c) a parent or grandparent; or
- (d) a grandson, granddaughter, stepfather, stepmother, stepson, stepdaughter, son-in-law, daughter-in-law, brother, sister, half-brother, half-sister, father-in-law, mother-in-law, brother-in-law, sister-in-law, and child of

a brother or sister of the whole blood, any of whom has been living with the employee as a member of the same household and has been so living for the period of 24 months immediately preceding the accident concerned; (*Replaced 52 of 2000 s. 3*)

occupational disease (職業病) means any of the diseases specified in the second column of the Second Schedule and any recurrence or sequelae thereof; (*Added 19 of 1964 s. 3*)

Ordinary Assessment Board (普通評估委員會) means an Employees' Compensation (Ordinary Assessment) Board appointed under section 16D; (*Added 76 of 1982 s. 3*)

outworker (外發工) means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, or repaired, or adapted for sale in his own home or on other premises not under the control or management of the person who gave out the materials or articles;

partial incapacity (部分喪失工作能力) means, where the incapacity is of a temporary nature, such incapacity as reduces the earning capacity of an employee in any employment in which he was engaged at the time of the accident resulting in the incapacity, and, where the incapacity is of a permanent nature, such incapacity (which may include disfigurement) as reduces his earning capacity, present or future, in any employment which he was capable of undertaking at that time; (*Amended 55 of 1969 s. 3; 49 of 1985 s. 2*)

principal contractor (總承判商) means a person referred to as a principal contractor in section 24; (*Added 76 of 1982 s. 3*)

registered Chinese medicine practitioner (註冊中醫) has the meaning assigned to it by section 2 of the Chinese Medicine Ordinance (Cap. 549); (*Added 16 of 2006 s. 12*)

registered chiropractor (註冊脊醫) has the meaning assigned to it by section 2 of the Chiropractors Registration Ordinance (Cap. 428); (*Added 16 of 2006 s. 12*)

registered dentist (註冊牙醫) has the meaning given by section 2(1) of the Dentists Registration Ordinance (Cap. 156); (*Replaced 22 of 2024 s. 127*)

registered medical practitioner (註冊醫生) means a medical practitioner who—

- (a) is registered under the Medical Registration Ordinance (Cap. 161); or
- (b) is deemed to be a registered medical practitioner by virtue of section 29(a) of that Ordinance; (*Added 16 of 2006 s. 12*)

registered occupational therapist (註冊職業治療師) means a person who is an occupational therapist and is registered in respect of that profession under the Allied Health Professions Ordinance (Cap. 359); (*Added 16 of 2006 s. 12. Amended 33 of 2025 s. 190*)

registered physiotherapist (註冊物理治療師) means a person who is a physiotherapist and is registered in respect of that profession under the Allied Health Professions Ordinance (Cap. 359); (*Added 16 of 2006 s. 12. Amended 33 of 2025 s. 190*)

Review Certificate for Funeral and Medical Attendance Expenses (殯殮費和醫護費審核證明書) means a certificate issued under section 6E(12)(c); (*Added 52 of 2000 s. 3*)

Review Certificate of Compensation Assessment for Fatal Case (致命個案補償評估審核證明書) means a certificate issued under section 6D(6)(c); (*Added 52 of 2000 s. 3*)

Review Certificate of Interim Payment (臨時付款審核證明書) means a certificate issued under section 6C(11)(c); (*Added 52 of 2000 s. 3*)

Special Assessment Board (特別評估委員會) means an Employees' Compensation (Special Assessment) Board appointed under section 16E; (*Added 76 of 1982 s. 3*)

sub-contractor (次承判商) means—

- (a) any person who enters into a contract, express or implied, with a principal contractor to perform all or any part of the work which the principal contractor has undertaken to perform; and
- (b) any other person who enters into a contract, express or implied, to perform all or any part of the work which a sub-contractor within the meaning of paragraph (a) has undertaken to perform; (*Added 76 of 1982 s. 3*)

total incapacity (完全喪失工作能力) means such incapacity whether of a temporary or permanent nature as incapacitates an employee for any employment which he was capable of undertaking at the time of the accident resulting in such incapacity. (*Amended 49 of 1985 s. 2*)

(*Amended 44 of 1980 s. 15; 52 of 2000 s. 3; 16 of 2006 s. 12*)

(2) For the purposes of the definition of ***member of the family*** (家庭成員)—

- (a) an adoption means an adoption—
 - (i) made under an adoption order made in accordance with the Adoption Ordinance (Cap. 290);
 - (ii) to which section 17 or 20F of that Ordinance applies; or (*Amended 28 of 2004 s. 35*)
 - (iii) made in Hong Kong in accordance with Chinese law and custom before 1 January 1973; (*Amended 28 of 2004 s. 35*)

- (b) subject to paragraph (c), any person so adopted shall be treated as the child of the adopter, and not as the child of any other person, and all relationships to the adopted person shall be deduced accordingly; and (*Added 52 of 2000 s. 3. Amended 28 of 2004 s. 35*)
- (c) any person adopted under an adoption order granted under paragraph (c) of section 5(1) of the Adoption Ordinance (Cap. 290) shall be treated as the child of the adopter and the parent referred to in that paragraph, and not as the child of any other person, and all relationships to the adopted person shall be deduced accordingly. (*Amended 28 of 2004 s. 35*)

4. Application to certain employees

- (1) This Ordinance shall apply to employees employed by or under the Crown in the same way and to the same extent as if the employer were a private person, except in the case of—
 - (a) members of the Chinese People's Liberation Army; and (*Amended 2 of 2012 s. 3*)
 - (b) persons in the civil employment of Her Majesty, otherwise than in Her Government of Hong Kong, who have been engaged in a place outside Hong Kong:

Provided that this Ordinance shall not apply in the case of an employee in the service of the Government of Hong Kong where, in consequence of injury received by any such employee in the discharge of his duties, a pension or gratuity which would not be payable if such injury were received otherwise, is paid to him or, in the case of his death, to any of the members of his family as defined in this Ordinance, under any Ordinance or regulation providing for the grant of such pension or gratuity. (*Replaced 50 of 1954 s. 3. Amended 11 of 1958 s. 4; 55 of 1969 s. 4; 44 of 1980 s. 15; 76 of 1982 s. 37; 52 of 2000 s. 4*)

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Part I

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Section 4

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- (2) The exercise and performance of the powers and duties of any public body shall for the purposes of this Ordinance, unless a contrary intention appears, be deemed to be the trade or business of such public body. (*Added 55 of 1969 s. 4*)
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Part II

Compensation for Injury

(Added 19 of 1964 s. 4)

(Format changes—E.R. 1 of 2018)

5. Employer's liability for compensation for death or incapacity resulting from accident

- (1) Subject to subsections (2) and (3), if in any employment, personal injury by accident arising out of and in the course of the employment is caused to an employee, his employer shall be liable to pay compensation in accordance with this Ordinance.
- (2) No compensation shall be payable under this Ordinance in respect of—
 - (a) any injury, other than an injury which results in partial incapacity of a permanent nature, which does not incapacitate the employee from earning full wages at work at which he was employed; *(Amended 67 of 1996 s. 2)*
 - (b) any incapacity or death resulting from a deliberate self-injury;
 - (c) any incapacity or death resulting from personal injury if the employee has at any time represented to the employer that he was not suffering or had not previously suffered from that or a similar injury, knowing that the representation was false; or
 - (d) any injury, not resulting in death or serious and permanent incapacity, caused by an accident which is directly attributable to the employee's addiction to drugs

or his having been at the time of the accident under the influence of alcohol.

- (3) In any proceedings under this Ordinance where it is proved that the injury to an employee is attributable to the serious and wilful misconduct of that employee, or that an injury by accident arising out of and in the course of his employment is deliberately aggravated by the employee, any compensation claimed in respect of that injury shall be disallowed; except that where the injury results in death or serious incapacity, the Court on consideration of all the circumstances may award the compensation provided by this Ordinance or such part thereof as it shall think fit.
- (4) For the purposes of this Ordinance—
 - (a) an accident arising in the course of an employee's employment shall be deemed, in the absence of evidence to the contrary, also to have arisen out of that employment;
 - (b) an accident to an employee shall be deemed to arise out of and in the course of his employment, notwithstanding that the employee was at the time when the accident happened acting in contravention of any statutory or other regulation applicable to his employment, or of any orders given by or on behalf of his employer, or that he was acting without instructions from his employer, if such act was done by the employee for the purposes of and in connection with his employer's trade or business;
 - (c) an accident to an employee shall be deemed to arise out of and in the course of his employment if it happens—
 - (i) while, with the consent of his employer, the employee is being trained in first aid, ambulance or rescue work or engaged in any competition or exercise in connection therewith;

- (ii) in, at or about any premises other than his employer's while, with the consent of his employer, the employee is engaged in any first aid, ambulance or rescue work or in any competition or exercise in connection therewith; or
- (iii) in, at or about his employer's premises while the employee is engaged in any first aid, ambulance or rescue work,

notwithstanding that in the case of rescue work the employee was acting in contravention of any statutory or other regulation applicable to his employment, or of any orders given by or on behalf of his employer, or that he was acting without instructions from his employer, if when such act was done the employee reasonably acted in order to rescue, succour or protect any other person who had suffered, or who was reasonably believed to be in danger of, injury, or to avert or minimize serious damage to property of the employer;

- (d) an accident to an employee shall be deemed to arise out of and in the course of his employment if it happens to the employee while he is, with the express or implied permission of his employer, travelling as a passenger by any means of transport to or from his place of work and at the time of the accident, the means of transport is being operated—
 - (i) by or on behalf of his employer or by some other person pursuant to arrangements made with his employer; and
 - (ii) other than as part of a public transport service;
- (e) an accident to an employee shall be deemed to arise out of and in the course of his employment if it happens to the employee while he is driving or operating any

means of transport arranged or provided by or on behalf of his employer or by some other person pursuant to arrangements made with his employer between his place of residence and his place of work, travelling by a direct route—

- (i) to his place of work for the purposes of and in connection with his employment; or
 - (ii) to his place of residence after attending to those purposes;
- (f) an accident to an employee shall be deemed to arise out of and in the course of his employment if it happens to the employee when, within the duration of a gale warning or rainstorm warning, or within the period (including any extended period) during which extreme conditions exist as specified in an extreme conditions announcement, he is travelling between his place of residence and his place of work— (*Amended 24 of 2000 s. 2; 4 of 2021 s. 3*)
- (i) to his place of work, by a direct route within a period of 4 hours before the time of commencement of his working hours for that day or to his place of residence, within a period of 4 hours after the time of cessation of his working hours for that day, as the case may be; or
 - (ii) in such other circumstances as the Court thinks reasonable, (*Amended 24 of 2000 s. 2*)

and for the purposes of this paragraph— (*Amended 24 of 2000 s. 2*)

- (A) ***gale warning*** (烈風警告) means a warning of the occurrence of a tropical cyclone in, or in the vicinity of, Hong Kong by the use of the tropical cyclone warning signals issued by the Director of

the Hong Kong Observatory to the effect that any of the tropical cyclone warning signals commonly referred to as No. 8NW, 8SW, 8NE, 8SE, 9 or 10 is in force;

- (B) **rainstorm warning** (暴雨警告) means a warning of a heavy rainstorm in, or in the vicinity of, Hong Kong by the use of the heavy rainstorm warning signals issued by the Director of the Hong Kong Observatory to the effect that any of the heavy rainstorm warning signals commonly referred to as Red or Black is in force; (*Added 24 of 2000 s. 2*)
- (C) **extreme conditions announcement** (極端情況公布) means an announcement made by the Chief Secretary for Administration stating the existence of extreme conditions that arise from a super typhoon or other natural disaster of a substantial scale during the period (including any extended period) specified in the announcement; (*Added 4 of 2021 s. 3*)
- (D) **super typhoon** (超強颱風) means a typhoon that has a maximum sustained wind speed of 185 km/h or above near its centre; (*Added 4 of 2021 s. 3*)
- (g) an accident to an employee shall be deemed to arise out of and in the course of his employment if it happens to the employee while he is, with the express or implied permission of his employer, travelling by any means of transport for the purposes of and in connection with his employment between Hong Kong and any place outside Hong Kong or between any place outside Hong Kong and any other such place.

(*Replaced 1 of 1995 s. 3*)

6. Compensation in fatal cases

- (1) Where death results from the injury, then, subject to section 6A, the amount of compensation payable to the members of the family of the employee shall be— (*Amended 52 of 2000 s. 5*)
 - (a) in the case of an employee under 40 years of age at the time of the accident, a lump sum equal to 84 months' earnings or 84 times the amount specified in the second column of the Sixth Schedule shown opposite section 6(1)(a) specified in the first column of that Schedule, whichever is the less;
 - (b) in the case of an employee of or over 40 years of age but under 56 years of age at the time of the accident, a lump sum equal to 60 months' earnings or 60 times the amount specified in the second column of the Sixth Schedule shown opposite section 6(1)(b) specified in the first column of that Schedule, whichever is the less;
 - (c) in the case of an employee of or over 56 years of age at the time of the accident, a lump sum equal to 36 months' earnings or 36 times the amount specified in the second column of the Sixth Schedule shown opposite section 6(1)(c) specified in the first column of that Schedule, whichever is the less. (*Amended L.N. 79 of 1983; L.N. 321 of 1985; L.N. 390 of 1987; L.N. 386 of 1989; L.N. 435 of 1991; 66 of 1993 s. 2; L.N. 566 of 1995; 36 of 1996 s. 4*)
- (2) The amount of compensation payable under subsection (1) shall in no case be less than the amount specified in the second column of the Sixth Schedule shown opposite section 6(2) specified in the first column of that Schedule. (*Amended L.N. 79 of 1983; L.N. 321 of 1985; L.N. 390 of 1987; L.N. 386 of 1989; L.N. 435 of 1991; L.N. 463 of 1993; L.N. 566 of 1995; 36 of 1996 s. 4*)

- (3) Notwithstanding anything in subsection (1) or (2), where in respect of the same accident compensation has been paid under section 7 or 9, there shall be deducted from the sum payable under subsection (1) any sums so paid as compensation.
- (4) *(Repealed 52 of 2000 s. 5)*
- (5) Where death results from the injury, reimbursement of the reasonable expenses of the funeral of the deceased employee and the reasonable expenses of medical attendance on the deceased employee, not exceeding in all the sum of the amount specified in the second column of the Sixth Schedule shown opposite section 6(5) specified in the first column of that Schedule, shall be paid by the employer to any person who has paid the expenses. *(Amended 76 of 1982 s. 5; L.N. 386 of 1989; L.N. 435 of 1991; L.N. 463 of 1993; L.N. 566 of 1995; 36 of 1996 s. 4; 52 of 2000 s. 5)*
- (6) *(Repealed 52 of 2000 s. 5)*

(Replaced 44 of 1980 s. 4)

6A. Apportionment of compensation

- (1) Where death results from the injury, the compensation shall be payable only to eligible members of the family and apportioned in the manner set out in the Seventh Schedule.
- (2) For the purposes of this section—
 - (a) ***eligible*** (合資格), in relation to a member of the family, means the member is entitled to compensation under section 6(1) by virtue of a determination under section 6B(1), 6D(6), 6H(4) or 18A(1);
 - (b) a reference to a child of a deceased employee includes a child born after the death of the employee but before a determination made under section 6B(1)(a), 6D(6), 6H(4) or 18A(1) in respect of the employee.

- (3) In determining the amount of compensation payable under section 6(1), the Commissioner or the Court shall take into account—
- (a) any compensation deductible under section 6(3);
 - (b) any interim payments paid under subsection (4).
- (4) Where the spouse of the employee who has been paid any interim payments dies prior to the Certificate of Compensation Assessment for Fatal Case or Review Certificate of Compensation Assessment for Fatal Case is issued, the aggregate amount of interim payments already paid shall be deducted from the total amount of compensation payable before the apportionment of the amount for other members of the family.
- (5) In stating the amount of compensation payable to each member of the family named in the Certificate of Compensation Assessment for Fatal Case or Review Certificate of Compensation Assessment for Fatal Case, the Commissioner and the Court may round down the amounts to the nearest dollar.

(Added 52 of 2000 s. 6)

6B. Determination by Commissioner of claims for compensation in fatal cases

- (1) Subject to subsection (2), where death results from the injury, the Commissioner may, on application by the members of the family under subsection (4) and with the consent in writing of the employer and signed by him—
- (a) determine in respect of the members of the family making the application—
 - (i) the total amount of compensation payable;

- (ii) the persons to whom the compensation is payable and the amount of compensation payable to each such person; and
 - (iii) the persons who are not entitled to the compensation; and
 - (b) issue a certificate—
 - (i) as to his determination under paragraph (a); and
 - (ii) as soon as practicable after making the determination, but in any case not earlier than 6 months from the date of death of the employee or the date of accident if the date of death cannot be ascertained.
- (2) The Commissioner shall not determine or continue to determine a claim under subsection (1)(a) where—
 - (a) the employer does not give his consent in writing signed by him to the Commissioner determining the claim;
 - (b) the employer gives his consent to the Commissioner determining the claim but prior to determination withdraws such consent by notice in writing signed by him to the Commissioner;
 - (c) there is a dispute on the familial connection between the employee and any of the persons claiming compensation;
 - (d) any party to the claim, at any time prior to the issue of the Certificate of Compensation Assessment for Fatal Case, declines determination by the Commissioner;
 - (e) a claim for compensation in respect of the same employee has been filed with the Court;
 - (f) in the Commissioner's opinion, the claim is not suitable for such determination; or

- (g) the first application under subsection (4) has not been made within 24 months from the date of death of the employee.
- (3) Where the Commissioner has proceeded to determine a claim under subsection (1)(a) but prior to the issue of the Certificate of Compensation Assessment for Fatal Case, the process of determination is terminated by virtue of subsection (2)—
 - (a) the claim shall be determined by the Court pursuant to section 18A(1); and
 - (b) the Commissioner shall notify the parties concerned of the termination.
- (4) An application under subsection (1) shall be made—
 - (a) in such form as the Commissioner may specify and signed by the person making it;
 - (b) within 6 months from the date of death of the employee or the date of accident if the date of death cannot be ascertained (but the Commissioner may, if he thinks fit, extend the period for making the application);
 - (c) subject to paragraph (d), separately by each person claiming compensation or by his authorized representative;
 - (d) where the person claiming compensation is a minor or a person incapable of managing himself and his affairs, by his guardian or legal representative, as the case may be.
- (5) A Certificate of Compensation Assessment for Fatal Case shall—
 - (a) be in such form as may be specified by the Commissioner giving details of the determination; and
 - (b) be sent—
 - (i) to the employer; and

- (ii) to each person named in the certificate, whether or not compensation is payable to the person.
- (6) The Commissioner shall, as soon as practicable after he decides to determine a claim for compensation under subsection (1)(a), send to the Court a notice advising the Court of that decision.

(Added 52 of 2000 s. 6)

6C. Determination by Commissioner of interim payments

- (1) Where a claim for compensation is to be determined under section 6B(1)(a), upon application by the spouse of the deceased employee, the Commissioner—
 - (a) may, irrespective of whether applications for compensation have been made by other members of the family and prior to the issue of the Certificate of Compensation Assessment for Fatal Case, on application by the spouse in a form as the Commissioner may specify and signed by the spouse, determine that interim payment of compensation be made by the employer to the spouse; and
 - (b) where he makes a determination under paragraph (a), shall issue a certificate—
 - (i) as to his determination; and
 - (ii) as soon as practicable after making the determination.
- (2) A Certificate of Interim Payment shall—
 - (a) be in such form as may be specified by the Commissioner giving details of the determination; and
 - (b) be sent—
 - (i) to the employer;

- (ii) to the spouse of the employee; and
 - (iii) to each of the persons who has made an application under section 6B(1).
- (3) Interim payments—
 - (a) shall be payable to the spouse named in the Certificate of Interim Payment or, where that Certificate is cancelled under subsection (12), in the Review Certificate of Interim Payment concerned until the aggregate amount referred to in paragraph (c) is fully paid;
 - (b) shall comprise—
 - (i) an initial payment calculated by multiplying the monthly payment referred to in subparagraph (ii) by the number of months elapsed between the date of death, or the date of accident if the date of death cannot be ascertained, and the date of issue of the Certificate of Interim Payment or Review Certificate of Interim Payment, as the case may require;
 - (ii) subsequent monthly payments calculated at the rate of 50% of—
 - (A) the monthly earnings of the deceased employee at the time of the accident as determined in accordance with section 11; or
 - (B) the amount specified in the second column of the Sixth Schedule shown opposite section 6(1)(a) specified in the first column of the Schedule,whichever is the less;
 - (c) shall not in aggregate exceed 45% of the total amount of compensation payable under section 6(1) after deducting

any compensation which has already been paid under sections 7, 9 and 13(3);

(d) shall—

(i) be deducted from the compensation payable under section 6A to the person to whom interim payments have been paid; and

(ii) where the spouse dies before the issue of the Certificate of Compensation Assessment for Fatal Case, be deducted from the compensation payable to the members of the family under section 6(1),

except that any surcharge payable under subsection (8) by the employer for late payment of interim payments shall not be deductible.

(4) Interim payments shall be payable by the employer—

(a) as to the initial payment, not later than 21 days after the date of issue of the Certificate of Interim Payment or Review Certificate of Interim Payment, as the case may require;

(b) as to each monthly payment, not later than the date corresponding to the date on which the preceding initial payment or monthly payment is payable or if there is no such corresponding date in that month, the last day of that month.

(5) An employer is not required to make payments under a Certificate of Interim Payment pending the completion of a review under subsection (10) or (11).

(6) Where the Commissioner is satisfied on reasonable grounds that a determination which gave rise to a Certificate of Interim Payment was based on information false or misleading in a material particular, he may, by notice in writing to the employer and spouse named in the Certificate

of Interim Payment setting out those grounds, order that interim payments under that Certificate shall cease on and from a date specified in the notice for the purpose until such time, if any, that the notice is revoked.

- (7) Interim payments shall cease to be payable—
 - (a) 7 days before the date on which compensation under section 6(1) is due in accordance with a Certificate of Compensation Assessment for Fatal Case;
 - (b) on the date specified in a notice under subsection (6) for the purpose;
 - (c) when the total amount of interim payments paid to the spouse reaches the aggregate amount that may be payable as stated in the Certificate of Interim Payment or Review Certificate of Interim Payment, as the case may require; or
 - (d) on the date the Commissioner notifies the employer and the spouse of his decision that the claim shall be determined by the Court under section 18A(1),
whichever is the earlier.
- (8) An employer who fails without reasonable excuse to make interim payments in accordance with a Certificate of Interim Payment or Review Certificate of Interim Payment, as the case may require, shall pay to the spouse of the employee, in addition to the amount of interim payments—
 - (a) upon the expiry of the payment period, a surcharge of—
 - (i) the amount specified in the second column of the Sixth Schedule shown opposite section 6C(8)(a) specified in the first column of that Schedule; or
 - (ii) the percentage specified in the third column of the Sixth Schedule shown opposite section 6C(8)(a)

- specified in the first column of that Schedule of the amount of interim payment then remaining unpaid, whichever is the greater; and
- (b) thereafter upon the expiry of 3 months after the expiry of the payment period, a surcharge of—
- (i) the amount specified in the second column of the Sixth Schedule shown opposite section 6C(8)(b) specified in the first column of that Schedule; or
 - (ii) the percentage specified in the third column of the Sixth Schedule shown opposite section 6C(8)(b) specified in the first column of that Schedule of the amount of interim payment then remaining unpaid, whichever is the greater.
- (9) A person may object to a determination under subsection (1)(a) by sending an objection in writing signed by him to the Commissioner within 14 days from the date of issue of the Certificate of Interim Payment, or within such further time as the Commissioner, in the circumstances of any particular case, thinks fit, stating the grounds of the objection.
- (10) Without prejudice to the right of any other person to object to a determination under subsection (1)(a), the Commissioner may on his own initiative review any such determination at any time if he considers that it—
- (a) was made in ignorance of, or under a mistake as to the circumstances of the claim; or
 - (b) was based upon any false or misleading information or statement given or made to the Commissioner.
- (11) On receipt of an objection under subsection (9) or on a review under subsection (10), the Commissioner shall—
- (a) in the case of an objection, send a copy of the objection to any other person who has made an application under

- section 6B(1) and to the employer if the employer is not the objector;
- (b) review the determination under subsection (1)(a) concerned and confirm or vary the determination as he thinks fit (including ceasing interim payments);
 - (c) upon completing the review, issue to the employer and the spouse a certificate in such form as he may specify stating—
 - (i) that the original determination is confirmed and giving details thereof;
 - (ii) details of the determination as varied; and
 - (d) send a copy of the Certificate to each of the persons who has made an application under section 6B(1).
- (12) Upon the issue of a Review Certificate of Interim Payment, the Certificate of Interim Payment to which it relates shall be cancelled.
- (13) A Certificate of Interim Payment or Review Certificate of Interim Payment, other than a Certificate cancelled under subsection (12), purporting to be issued and signed by or for the Commissioner shall be admitted in evidence without further proof on its production before any Magistrate or in any court, and—
- (a) until the contrary is proved it shall be presumed that the Certificate is so issued and signed; and
 - (b) shall be evidence of the matters stated therein.
- (14) A Certificate of Interim Payment or Review Certificate of Interim Payment, other than a Certificate cancelled under subsection (12) may, on application to the Court by the employer or the spouse of the employee, be made an order of the Court and, for the purposes of this subsection, the amount

payable under any such Certificate shall include any surcharge payable under subsection (8).

- (15) An employer who fails without reasonable excuse to comply with subsection (4) or (8) commits an offence and is liable to a fine at level 6.
- (16) This section shall not apply in the case of a member of the family where the employee was in the service of the Government unless and until the member gives up his rights under the Pensions Ordinance (Cap. 89), the Pension Benefits Ordinance (Cap. 99), the Pension Benefits (Judicial Officers) Ordinance (Cap. 401) and the Auxiliary Forces Pay and Allowances Ordinance (Cap. 254) to receive pension or gratuities arising from the death of the employee in consequence of injury received in the discharge of his duties.
- (17) For the purposes of this section—
 - date of issue* (發出日期) means the date appearing on the Certificate of Interim Payment or Review Certificate of Interim Payment;
 - payment period* (付款期) means the appropriate period of payment referred to in subsection (4);
 - spouse* (配偶) does not include a cohabitee.

(Added 52 of 2000 s. 6)

6D. Payment of compensation and objection to determination of Commissioner

- (1) Where the Commissioner determines a claim under section 6B(1)(a) (including any case where such a determination is varied under this section), compensation, other than interim payments payable under a Certificate of Interim Payment or Review Certificate of Interim Payment, shall be payable by the employer not earlier than 42 days but not later than 49 days after the date of issue of the Certificate of Compensation

Assessment for Fatal Case or Review Certificate of Compensation Assessment for Fatal Case, as the case may be.

- (2) If any person named in the Certificate of Compensation Assessment for Fatal Case has received any interim payment or payment under section 13(3), the employer shall only be required to pay the balance of the amount of compensation, if any, stated in the Certificate after deducting from that amount the amount of any such payment paid to that person.
- (3) An employer who fails without reasonable excuse to make payment in accordance with a Certificate of Compensation Assessment for Fatal Case or Review Certificate of Compensation Assessment for Fatal Case shall pay, in addition to the amount of compensation payable—
 - (a) upon the expiry of the payment period, a surcharge of—
 - (i) the amount specified in the second column of the Sixth Schedule shown opposite section 6D(3)(a) specified in the first column of that Schedule; or
 - (ii) the percentage specified in the third column of the Sixth Schedule shown opposite section 6D(3)(a) specified in the first column of that Schedule of the amount of compensation then remaining unpaid, whichever is the greater; and
 - (b) upon the expiry of 3 months after the expiry of the payment period, a further surcharge of—
 - (i) the amount specified in the second column of the Sixth Schedule shown opposite section 6D(3)(b) specified in the first column of that Schedule; or
 - (ii) the percentage specified in the third column of the Sixth Schedule shown opposite section 6D(3)(b) specified in the first column of that Schedule of the amount then remaining unpaid of the aggregate

of any amount of compensation referred to in paragraph (a) and the surcharge imposed under that paragraph,

whichever is the greater.

- (4) An objection to a determination under section 6B(1)(a) may be made in writing—
 - (a) by the employer, any person who has made an application under section 6B(1) or the ECAFB;
 - (b) within 30 days after—
 - (i) in the case of the employer or any person who has made an application under section 6B(1), the date of issue of the Certificate of Compensation Assessment for Fatal Case concerned;
 - (ii) in the case of the ECAFB, the date on which an application is made under section 16 of the Employees Compensation Assistance Ordinance (Cap. 365) by a member of the family of the deceased employee,or within such further time as the Commissioner, in the circumstances of any particular case, thinks fit; and
 - (c) stating the grounds of the objection. (*Replaced 16 of 2002 s. 33*)
- (5) Without prejudice to the right of any other person to object to a determination under section 6B(1)(a), the Commissioner may on his own initiative review any such determination at any time if he considers that it—
 - (a) was made in ignorance of, or under a mistake as to the circumstances of the claim; or
 - (b) was based upon any false or misleading information or statement given or made to the Commissioner.

- (6) On receipt of an objection under subsection (4) or on a review under subsection (5), the Commissioner shall—
- (a) in the case of the objection, send a copy of the objection to any other person who has made an application under section 6B(1), to the employer if the employer is not the objector and to the ECAFB if the ECAFB, as the case requires, is not the objector; (*Amended 16 of 2002 s. 33*)
 - (b) review the determination under section 6B(1)(a) concerned and confirm or vary the determination as he thinks fit;
 - (c) upon completing the review, issue to the employer, each of the members of the family and the ECAFB, as the case requires, a certificate in such form as he may specify stating— (*Amended 16 of 2002 s. 33*)
 - (i) that the original determination is confirmed and giving details thereof;
 - (ii) details of the determination as varied; or
 - (iii) that due to the reasons set out under section 6B(2), the Commissioner shall not continue to determine the claim;
 - (d) send a copy of the certificate to each of the persons who has made an application under section 6B(1).
- (7) Upon the issue of a Review Certificate of Compensation Assessment for Fatal Case, the original Certificate of Compensation Assessment for Fatal Case to which it relates shall be cancelled.
- (8) A certificate of Compensation Assessment for Fatal Case or Review Certificate of Compensation Assessment for Fatal Case, other than a Certificate cancelled under subsection (7), purporting to be issued and signed by or for the Commissioner shall be admitted in evidence without further

proof on its production before any Magistrate or in any court, and—

- (a) until the contrary is proved it shall be presumed that the Certificate is so issued and signed; and
 - (b) shall be evidence of the matters stated therein.
- (9) A Certificate of Compensation Assessment for Fatal Case or Review Certificate of Compensation Assessment for Fatal Case, other than a Certificate cancelled under subsection (7) may, on application to the Court by the employer, any person named in the Certificate, or the ECAFB, be made an order of the Court, and for the purposes of this subsection, the amount payable under any such Certificate shall include any surcharge payable under subsection (3). (*Amended 16 of 2002 s. 33*)
- (10) An employer who fails without reasonable excuse to comply with subsection (1) or (3) commits an offence and is liable to a fine at level 6.
- (11) For the purposes of this section—

date of issue (發出日期) means the date appearing on the Certificate of Compensation Assessment for Fatal Case or Review Certificate of Compensation Assessment for Fatal Case;

payment period (付款期) means the appropriate period of payment referred to in subsection (1).

(*Added 52 of 2000 s. 6*)

6E. Determination by Commissioner of claims for funeral and medical attendance expenses

- (1) Subject to subsection (17), where an application seeking a determination under this section is made to the Commissioner by any person who has paid the expenses of the funeral of the employee or the expenses of medical attendance on the

employee, and the employer has given his consent in writing signed by him to the Commissioner that the Commissioner may make such determination, then the Commissioner, after the period referred to in subsection (3)(b)—

- (a) if there is a liability to pay any such expenses under section 6(5), may determine, in respect of the persons making the application, the persons to whom reimbursement of such expenses under that section is payable and the amount of reimbursement payable to each such person; and
 - (b) where he makes a determination under paragraph (a), shall issue a certificate—
 - (i) as to his determination; and
 - (ii) as soon as practicable after making the determination.
- (2) A consent referred to in section 6B(1) given by an employer in respect of an employee shall be deemed to be a consent referred to in subsection (1) given by the employer in respect of the employee.
- (3) An application under subsection (1) shall be—
- (a) made in such form as the Commissioner may specify and signed by the person making it;
 - (b) made within 30 days from the date of cremation or date of burial of the employee, or the date on which the Commissioner receives the consent or deemed consent referred to in subsection (1) or (2), as the case may be, from the employer, whichever is the later;
 - (c) made separately by each of the persons who has paid the expenses or his authorized representative; and
 - (d) accompanied by supporting documents.

- (4) A Certificate for Funeral and Medical Attendance Expenses shall—
- (a) be in such form as may be specified by the Commissioner giving details of the determination; and
 - (b) be sent—
 - (i) to the employer;
 - (ii) to each person who has made an application under subsection (1) whether or not reimbursement of the expenses is payable to him.
- (5) In determining the amount of reimbursement payable under section 6(5), if the aggregate claimed amount exceeds the amount specified in the second column of the Sixth Schedule shown opposite section 6(5) specified in the first column of that Schedule, the Commissioner shall apportion the amount payable on a pro rata basis.
- (6) Where a person who has paid any expenses of the funeral of the employee and expenses of medical attendance on the employee dies prior to the reimbursement of the expenses is paid to him, his legal personal representative shall substitute for him in pursuing the claim.
- (7) In stating the reimbursement payable to each person named in the Certificate for Funeral and Medical Attendance Expenses or Review Certificate for Funeral and Medical Attendance Expenses, the Commissioner may round down the amounts to the nearest dollar.
- (8) Reimbursement of the expenses of the funeral of the employee and expenses of medical attendance on the employee shall be payable by the employer not earlier than 42 days but not later than 49 days after the date of issue of the Certificate for Funeral and Medical Attendance Expenses or Review Certificate for Funeral and Medical Attendance Expenses, as the case may be.

- (9) An employer who fails without reasonable excuse to pay reimbursement in accordance with a Certificate for Funeral and Medical Attendance Expenses or Review Certificate for Funeral and Medical Attendance Expenses, shall pay, in addition to the reimbursement payable—

 - (a) upon the expiry of the payment period, a surcharge of—

 - (i) the amount specified in the second column of the Sixth Schedule shown opposite section 6E(9)(a) specified in the first column of that Schedule; or
 - (ii) the percentage specified in the third column of the Sixth Schedule shown opposite section 6E(9)(a) specified in the first column of that Schedule of the reimbursement then remaining unpaid,

whichever is the greater; and
 - (b) upon the expiry of 3 months after the expiry of the payment period, a further surcharge of—

 - (i) the amount specified in the second column of the Sixth Schedule shown opposite section 6E(9)(b) specified in the first column of that Schedule; or
 - (ii) the percentage specified in the third column of the Sixth Schedule shown opposite section 6E(9)(b) specified in the first column of that Schedule of the amount then remaining unpaid of the aggregate of any reimbursement referred to in paragraph (a) and the surcharge imposed under that paragraph,

whichever is the greater.
- (10) An objection to a determination under subsection (1) may be made in writing—

 - (a) by the employer, any person who has made an application under that subsection or the ECAFB;
 - (b) within 30 days after—

- (i) in the case of the employer or any person who has made an application under that subsection, the date of issue of the Certificate for Funeral and Medical Attendance Expenses concerned;
 - (ii) in the case of the ECAFB, the date on which an application is made under section 16 of the Employees Compensation Assistance Ordinance (Cap. 365) by a person who is entitled to the reimbursement of the expenses of the funeral of the deceased employee or of the expenses of the medical attendance on the deceased employee, or within such further time as the Commissioner, in the circumstances of any particular case, thinks fit; and
 - (c) stating the grounds of the objection. (*Replaced 16 of 2002 s. 33*)
- (11) Without prejudice to the right of any other person to object to a determination under subsection (1)(a), the Commissioner may on his own initiative review any such determination at any time if he considers that it—
 - (a) was made in ignorance of, or under a mistake as to the circumstances of the claim; or
 - (b) was based upon any false or misleading information or statement given or made to the Commissioner.
- (12) On receipt of an objection under subsection (10) or on a review under subsection (11), the Commissioner shall—
 - (a) in the case of the objection, send a copy of the objection to any other person who has made an application under subsection (1), to the employer if the employer is not the objector and to the ECAFB if the ECAFB, as the case requires, is not the objector; (*Amended 16 of 2002 s. 33*)

- (b) review the determination under subsection (1)(a) concerned and confirm or vary the determination as he thinks fit;
 - (c) upon completing the review, issue to the employer, each of the person who has made an application under subsection (1) and the ECAFB, as the case requires, a certificate in such form as he may specify stating— (*Amended 16 of 2002 s. 33*)
 - (i) that the original determination is confirmed and giving the details thereof; or
 - (ii) details of the determination as varied.
- (13) Upon the issue of a Review Certificate for Funeral and Medical Attendance Expenses, the Certificate for Funeral and Medical Attendance Expenses to which it relates shall be cancelled.
- (14) A Certificate for Funeral and Medical Attendance Expenses or Review Certificate for Funeral and Medical Attendance Expenses, other than a Certificate cancelled under subsection (13), purporting to be issued and signed by or for the Commissioner shall be admitted in evidence without further proof on its production before any Magistrate or in any court, and—
 - (a) until the contrary is proved it shall be presumed that the Certificate is so issued and signed; and
 - (b) shall be evidence of the matters stated therein.
- (15) A Certificate for Funeral and Medical Attendance Expenses or Review Certificate for Funeral and Medical Attendance Expenses, other than a Certificate cancelled under subsection (13) may, on application to the Court by the employer, the persons named in the Certificate, or the ECAFB, be made an order of the Court and the amount payable under

the Certificate shall include any surcharge payable under subsection (9). (*Amended 16 of 2002 s. 33*)

- (16) An employer who fails without reasonable excuse to comply with subsection (8) or (9) commits an offence and is liable to a fine at level 6.
- (17) The Commissioner shall not determine or continue to determine under subsection (1) a claim for funeral expenses or medical attendance expenses where—
 - (a) the employer does not give his consent in writing signed by him to the Commissioner to make such determination;
 - (b) the employer gives his consent to the Commissioner to determine the claim but prior to the determination withdraws such consent by notice in writing signed by him to the Commissioner;
 - (c) any party to the claim, at any time prior to the issue of the Certificate for Funeral and Medical Attendance Expenses, declines determination by the Commissioner;
 - (d) a claim for funeral and medical attendance expenses has been filed with the Court; or
 - (e) in the Commissioner's opinion, the claim is not suitable for such determination.
- (18) For the purposes of this section—

date of issue (發出日期) means the date of issue appearing on the Certificate for Funeral and Medical Attendance Expenses or the Review Certificate for Funeral and Medical Attendance Expenses;

expenses for medical attendance (醫護費) means any expenses incurred by any person other than the deceased employee for the convalescence given in a hospital or medical treatment

given to the employee arising from the accident before his death;

payment period (付款期) means the appropriate period of payment referred to in subsection (8).

(Added 52 of 2000 s. 6)

6F. Supply of particulars to Commissioner

(1) For the purposes of making a determination under section 6B(1)(a), 6C(1)(a) or (11), 6D(6)(b) or 6E(1)(a) or (12), the Commissioner may by notice in writing require—

- (a) any person making the claim; and
- (b) the employer of the employee and if the employer is a sub-contractor, the principal contractor,

to provide such particulars in writing as the Commissioner thinks necessary, or by the production of documents or the submission of copies of documents, as the Commissioner may direct.

(2) Any person who—

- (a) fails or refuses without reasonable excuse to provide any particular required to be provided under this section; or
- (b) provides any particular which he knows or reasonably ought to know to be false or misleading in any material particular,

commits an offence and is liable to a fine at level 5.

(Added 52 of 2000 s. 6)

6G. Discharge of liability of employer and his insurer in fatal cases

- (1) Subject to subsections (2), (3) and (4), the total liability of an employer and his insurer shall not in respect of any one deceased employee exceed the aggregate amount payable under section 6(1) and (5).
- (2) Where the employer is liable to pay reimbursement of the expenses of the funeral of the employee and the expenses of medical attendance on the employee, the total amount payable for such expenses by the employer and his insurer shall not in any one fatal case for any one deceased employee exceed the aggregate amount payable under section 6(5).
- (3) Any compensation paid to the employee under sections 10 and 10A prior to his death and any surcharge payable under sections 6C(8), 6D(3), and 6E(9) shall not be taken into account when calculating the aggregate amount of compensation paid or payable by the employer under section 6.
- (4) Where an amount in excess of the compensation payable by the employer under section 6 is paid to the employee by the employer under sections 7 and 9 prior to his death, the employer shall not recover any such excess amount.

(Added 52 of 2000 s. 6)

6H. Appeal against determination of Commissioner in fatal cases

- (1) Subject to the provisions of this section, an appeal shall lie to the Court from a determination under section 6B(1)(a), 6C(1)(a) or (11), 6D(6)(b) or 6E(1)(a) or (12), as the case may be.
- (2) No appeal shall lie after the expiry of 42 days from the date of issue of the certificate concerned under section 6B, 6C, 6D or 6E, unless the Court, as it thinks fit, extends the time for an appeal notwithstanding that the 42 days period has elapsed.

- (3) On an appeal under this section, the Court may confirm or vary the determination of the Commissioner.
- (4) Where the Court varies the determination of the Commissioner, the Court shall—
 - (a) in the case of a determination under section 6B(1)(a) or 6D(6)(b), make an order to apportion the amount of compensation payable under section 6(1) to the member of the family of the employee according to section 6A;
 - (b) in the case of a determination made under section 6E(1)(a) or (12), make an order to apportion the amount of reimbursement payable to each person who has paid the expenses of the funeral of the employee and the expenses of medical attendance on the employee taking into account section 6E(5).
- (5) The Court shall—
 - (a) subject to section 6G, direct the employer to pay to the Court any amount of payment which is payable by the employer but not yet paid; and
 - (b) direct any person who has received the payment from the employer in accordance with a Certificate of Compensation Assessment for Fatal Case or Review Certificate of Compensation Assessment for Fatal Case, a Certificate of Interim Payment or Review Certificate of Interim Payment, a Certificate for Funeral and Medical Attendance Expenses or Review Certificate for Funeral and Medical Attendance Expenses to pay to the Court any amount which has been overpaid to the person taking into account the apportionment made by the Court; and
 - (c) make such order as to costs as the Court thinks fit.
- (6) The amount apportioned to—

- (a) any member of the family ; or
- (b) any person who has paid the expenses of the funeral of the employee and the expenses of medical attendance on the employee,

shall be paid to him, or be invested, applied or otherwise dealt with for his benefit in such manner as the Court thinks fit.

(Added 52 of 2000 s. 6)

7. Compensation in case of permanent total incapacity

- (1) Where permanent total incapacity results from the injury, the amount of compensation shall be—
 - (a) in the case of an employee under 40 years of age at the time of the accident, a lump sum equal to 96 months' earnings or 96 times the amount specified in the second column of the Sixth Schedule shown opposite section 7(1)(a) specified in the first column of that Schedule, whichever is the less;
 - (b) in the case of an employee of or over 40 years of age but under 56 years of age at the time of the accident, a lump sum equal to 72 months' earnings or 72 times the amount specified in the second column of the Sixth Schedule shown opposite section 7(1)(b) specified in the first column of that Schedule, whichever is the less;
 - (c) in the case of an employee of or over 56 years of age at the time of the accident, a lump sum equal to 48 months' earnings or 48 times the amount specified in the second column of the Sixth Schedule shown opposite section 7(1)(c) specified in the first column of that Schedule, whichever is the less. *(Amended L.N. 79 of 1983; L.N. 321 of 1985; L.N. 390 of 1987; L.N. 386 of*

1989; L.N. 435 of 1991; 66 of 1993 s. 3; L.N. 566 of 1995; 36 of 1996 s. 5)

- (2) The amount of compensation payable under subsection (1) shall in no case be less than the amount specified in the second column of the Sixth Schedule shown opposite section 7(2) specified in the first column of that Schedule. *(Amended L.N. 79 of 1983; L.N. 321 of 1985; L.N. 390 of 1987; L.N. 386 of 1989; L.N. 435 of 1991; L.N. 463 of 1993; L.N. 566 of 1995; 36 of 1996 s. 5)*
- (3) For the purposes of this section, permanent total incapacity shall be deemed to result from an injury where the percentage or aggregate percentage of the loss of earning capacity amounts—
 - (a) in the case of an incapacity of a permanent nature which results from an injury specified in the First Schedule, to 100 per cent or more as specified in that Schedule; or
 - (b) in the case of an incapacity of a permanent nature which results from an injury not specified in the First Schedule, to 100 per cent or more as assessed by an Ordinary Assessment Board, a Special Assessment Board or the Court,

and a reference in this subsection to an injury shall include a reference to a combination of injuries whether they are mentioned in paragraph (a) or (b) or in both those paragraphs. *(Added 49 of 1985 s. 3)*

(Replaced 44 of 1980 s. 4)

8. Employee requiring attention

- (1) Where permanent incapacity which results from the injury is of such a nature that the employee is unable to perform the essential actions of life, without the attention of another person, the compensation payable under this section for

and in relation to such attention shall, in addition to any compensation payable under other provisions of this Ordinance, be— (*Amended 1 of 1995 s. 4*)

- (a) such amount not exceeding the amount specified in the second column of the Sixth Schedule shown opposite section 8(1)(a) specified in the first column of that Schedule as the Court considers necessary to meet the cost of such attention; or (*Added 1 of 1995 s. 4*)
 - (b) an amount of the amount specified in the second column of the Sixth Schedule shown opposite section 8(1)(b) specified in the first column of that Schedule payable pursuant to an agreement entered into by the employer with the injured employee and approved by the Commissioner under this section. (*Added 1 of 1995 s. 4; L.N. 566 of 1995; 36 of 1996 s. 6*)
- (2) Compensation under subsection (1)(a) shall be— (*Amended 1 of 1995 s. 4*)
- (a) a lump sum payment calculated with regard to the probable duration and cost of the attention; or (*Amended 1 of 1995 s. 4*)
 - (b)
 - (i) periodical payments, payable at such intervals as the Court may order, to cover periods not exceeding a total of 2 years after the date on which the employee becomes entitled to receive compensation under section 7; and
 - (ii) if on the expiry of the period of 2 years prescribed in sub-paragraph (i) the Court considers that the employee is still in need of attention, such lump sum payment, as the Court may order, calculated with regard to the probable duration and cost of the attention. (*Amended 1 of 1995 s. 4*)

- (3) No compensation under this section shall be payable in respect of any period during which the employee is receiving free medical treatment as an in-patient in a hospital or otherwise.
- (4) Every agreement under this section shall, as soon as possible after the execution thereof, be submitted in triplicate by the employer to the Commissioner. *(Replaced 1 of 1995 s. 4)*
- (5) Where an agreement under this section is submitted to the Commissioner, he may—
 - (a) subject to subsection (6), approve the agreement and signify his approval in writing; or
 - (b) refuse to approve the agreement. *(Added 1 of 1995 s. 4)*
- (6) Where the Commissioner has reason to believe that the interests of the employee require that the agreement be read over and explained to the employee, the Commissioner shall not signify his approval of the agreement under subsection (5)(a) until he has so read and explained it to the employee. *(Added 1 of 1995 s. 4)*
- (7) No agreement made under this section shall be binding on any party thereto until the Commissioner has signified his approval thereof in writing under subsection (5)(a). *(Added 1 of 1995 s. 4)*
- (8) Where the Commissioner refuses to approve an agreement under subsection (5)(b), he shall notify the employer in writing of his refusal giving his reasons therefor, and at the same time may return the agreement to the employer for amendment in such manner as he may specify. *(Added 1 of 1995 s. 4)*
- (9) The Commissioner shall, as soon as possible after signifying his approval to an agreement under subsection (5)(a), forward one copy thereof each to the employer and the employee and retain one copy for his records. *(Added 1 of 1995 s. 4)*

- (10) Any agreement made under this section which has been approved by the Commissioner may, on application to the Court by any party thereto or by the Commissioner, be made an order of the Court. *(Added 1 of 1995 s. 4)*

(Added 55 of 1969 s. 8. Amended 44 of 1980 s. 15)

9. Compensation in case of permanent partial incapacity

- (1) Subject to subsection (1A), where permanent partial incapacity results from the injury the amount of compensation shall be— *(Amended 76 of 1982 s. 6)*
- (a) in the case of an injury specified in the First Schedule, such percentage of the compensation which would have been payable in the case of permanent total incapacity as is specified therein as being the percentage of the loss of earning capacity caused by that injury;
 - (aa) in the case of a combination of injuries specified in the First Schedule, the aggregate of the compensation which would have been payable in respect of the injuries; and *(Added 4 of 1973 s. 2)*
 - (b) in the case of an injury not specified in the First Schedule, such percentage of the compensation which would have been payable in the case of permanent total incapacity as is proportionate to the loss of earning capacity permanently caused by the injury in any employment which the employee was capable of undertaking at that time: *(Amended 19 of 1964 s. 7; 55 of 1969 s. 9; 44 of 1980 s. 15)*

Provided that—

- (i) in the case of injury to any part of the body specified in the First Schedule not amounting to the loss of that part, the loss of earning capacity permanently caused by that injury, expressed as

a percentage, shall not exceed the appropriate percentage specified in the First Schedule in respect of the loss of such part; (*Added 4 of 1978 s. 3*)

- (ii) in the case of injury not specified in the First Schedule, the loss of earning capacity permanently caused by such injury shall be assessed as a percentage having regard so far as possible to the scale of percentages specified in that Schedule and to the Note thereto. (*Replaced 49 of 1985 s. 4*)

(1A) Where—

- (a) permanent partial incapacity results from an injury or a combination of injuries (whether or not specified in the First Schedule); and
- (b) the percentage of the loss of earning capacity specified or assessed in relation to that injury or combination of injuries in accordance with subsection (1) would be substantially less than the percentage of the loss of earning capacity permanently caused by the injury or injuries in the special circumstances of the employee, including, without limiting the generality of the foregoing—
 - (i) the nature of the injury or injuries in relation to the nature of his former usual employment; and
 - (ii) his qualifications, previous training and experience,

the amount of compensation shall be such percentage of the compensation which would have been payable in the case of permanent total incapacity as is proportionate to the loss of earning capacity permanently caused by the injury or injuries in any employment which, having regard to those special circumstances, the employee was capable of undertaking at that time. (*Added 76 of 1982 s. 6*)

- (2) Where more injuries than one are caused by the same accident, the amount of compensation payable under the provisions of this section shall be aggregated, but not so in any case as to exceed the amount which would have been payable if permanent total incapacity had resulted from the injuries.
- (3) For the purposes of this section, permanent partial incapacity shall be deemed to result from an injury where the percentage or aggregate percentage of the loss of earning capacity amounts—
 - (a) in the case of an incapacity of a permanent nature which results from an injury specified in the First Schedule, to less than 100 per cent as specified in that Schedule; or
 - (b) in the case of an incapacity of a permanent nature which results from an injury not specified in the First Schedule, to less than 100 per cent as assessed by an Ordinary Assessment Board, a Special Assessment Board or the Court,and a reference in this subsection to an injury shall include a reference to a combination of injuries whether they are mentioned in paragraph (a) or (b) or in both those paragraphs.
(Added 49 of 1985 s. 4)
- (4) In assessing the loss of earning capacity for the purposes of subsection (3)(b), an Ordinary Assessment Board, a Special Assessment Board or the Court, as the case may be, may but shall not be obliged to give weight to any actual earnings of the employee earned after the accident causing the injury.
(Added 49 of 1985 s. 4)

10. Compensation in case of temporary incapacity

- (1) Where temporary incapacity whether total or partial results from the injury, the compensation shall be the periodical

payments hereinafter mentioned, or a lump sum calculated accordingly, having regard to the probable duration, and probable changes in the degree, of the incapacity. Such periodical payments shall be, or shall be at the rate proportionate to, a monthly payment of four-fifths of the difference between the monthly earnings which the employee was earning at the time of the accident and the monthly earnings which he is earning, or is capable of earning, in some suitable employment or business during the period of the temporary incapacity after the accident. (*Amended 55 of 1969 s. 10; 76 of 1982 s. 7; 67 of 1996 s. 3*)

- (2) For the purposes of this section a period of absence from duty certified to be necessary by a registered medical practitioner, a registered Chinese medicine practitioner, a registered dentist, an Ordinary Assessment Board or a Special Assessment Board shall be deemed to be a period of total temporary incapacity irrespective of the outcome of the injury. (*Added 55 of 1969 s. 10. Amended 31 of 1985 s. 2; 16 of 2006 s. 13*)
- (3) Periodical payments under this section shall be payable on the same days as wages would have been payable to the employee if he had continued to be employed under the contract of service or apprenticeship under which he was employed at the time of the accident:

Provided that—

- (a) by agreement or by order of the Court, the periodical payments may be made at shorter intervals; and
 - (b) the interval between periodical payments shall not exceed 1 month. (*Added 55 of 1969 s. 10*)
- (4) In the event of death or permanent incapacity following a period of temporary incapacity whether total or partial, no periodical or lump sum payments paid or payable under this

section shall be deducted from any amount of compensation payable under section 6, 7, 8 or 9. (*Added 55 of 1969 s. 10*)

- (5) An employee who has received periodical payments under this section for a period of 24 months from the date of the commencement of the temporary incapacity or for such further period being not more than 12 months as the Court may allow in any particular case shall no longer be entitled to periodical payments under this section but shall be deemed to have suffered permanent incapacity and the provisions of section 7 or 9, as the case may be, shall apply to the employee. (*Added 55 of 1969 s. 10. Amended 1 of 1995 s. 5*)
- (6) In fixing the amount of the periodical payment, the Court shall have regard to any payment, allowance or benefit which the employee may receive from the employer during the incapacity.
- (7) On the ceasing of the incapacity before the date on which any periodical payment falls due, there shall be payable in respect of that period a sum proportionate to the duration of the incapacity in that period.
- (8) An employee in receipt of periodical payments under this section who intends to leave Hong Kong for the purpose of residing outside Hong Kong may apply to the Court for an order for the redemption of such periodical payments and the payment to him, subject to subsection (9), of a lump sum amount to be determined by the Court. (*Replaced 1 of 1995 s. 5*)
- (9) The amount of a lump sum payable to an employee under subsection (8) together with the periodical payments already made to the employee under subsection (1) shall not exceed the lump sum which would be payable in respect of the same degree of incapacity under the provisions of section 7 or 9, as the case may be, if the incapacity were permanent. (*Replaced 1 of 1995 s. 5*)

- (10) Without prejudice to any other provision of this Ordinance, an employer who without reasonable excuse fails to pay to the employee or to the Court any compensation or any proportionate part thereof under this section within a period of 7 days after the date on which such compensation falls due (whether under subsection (3) or by agreement or by order of the Court), commits an offence and is liable to a fine at level 6. *(Added 76 of 1982 s. 7. Amended 63 of 1992 s. 4; 64 of 1992 s. 2; 36 of 1996 s. 7)*
- (11) If the period of temporary incapacity does not exceed 3 days and the employer fails to pay to the employee or to the Court the compensation or any proportionate part thereof that he is liable to pay under this section within the period referred to in subsection (10), the compensation or proportionate part thereof may be recovered by the employee from the employer—
- (a) as a civil debt in the Small Claims Tribunal established under the Small Claims Tribunal Ordinance (Cap. 338); or
 - (b) where the amount claimed exceeds the jurisdiction of the Small Claims Tribunal, as a civil debt in the District Court. *(Added 67 of 1996 s. 3)*
- (12) A claim for compensation or any proportionate part thereof may be brought in the District Court under subsection (11)(b) either independently of or in conjunction with any other claim for compensation which is, under this Ordinance, to be brought in the District Court. *(Added 67 of 1996 s. 3)*
- (Amended 44 of 1980 s. 15)*

10A. Payment of medical expenses

- (1) Subject to this Ordinance, if, in any employment, personal injury is caused to an employee by accident occurring on

or after the date on which this section comes into operation and arising out of and in the course of his employment his employer shall be liable to pay the medical expenses for the medical treatment in respect of such injury. (*Amended 76 of 1982 s. 8*)

- (1A) Medical expenses which an employer is liable to pay under subsection (1) shall, unless otherwise provided by agreement in writing entered into by the employer with the employee, not include those in respect of medical treatment given outside Hong Kong in relation to an accident occurring in Hong Kong. (*Added 1 of 1995 s. 6*)
- (2) Medical expenses which an employer is liable to pay under subsection (1) shall be payable in addition to any other compensation which the employer is liable to pay under this Ordinance. (*Replaced 76 of 1982 s. 8*)
- (3) Medical expenses which the employer is liable to pay under subsection (1) shall be payable in accordance with the Third Schedule in respect of the period during which the employee receives medical treatment until the attending registered medical practitioner, registered Chinese medicine practitioner or registered dentist certifies that in his opinion no further treatment is required. (*Replaced 76 of 1982 s. 8. Amended 16 of 2006 s. 14*)
- (4) An employer shall not be liable to pay medical expenses under subsection (1)—
- (a) if the employer has provided adequate free medical treatment to the employee; or
 - (b) if, by a written undertaking given in accordance with subsection (5), the employer has agreed to provide adequate free medical treatment and the employee fails, without reasonable excuse, to submit himself for such medical treatment. (*Amended 16 of 2006 s. 14*)

- (5) Where an employer proposes to provide free medical treatment to an employee for personal injury caused to the employee by accident arising out of and in the course of his employment, he— (*Amended 16 of 2006 s. 14*)
- (a) shall give to the employee a written undertaking to—
 - (i) provide free medical treatment; or
 - (ii) pay the medical expenses for the medical treatment;
 - (b) shall specify in such undertaking the description of the medical treatment; and
 - (c) shall not recover any part of the cost of the medical expenses from the employee. (*Amended 16 of 2006 s. 14*)
- (5A) Subsection (4) does not relieve an employer of the liability to pay medical expenses in respect of medical treatment of any description received by an employee unless the free medical treatment provided or agreed to be provided by the employer covers medical treatment of the same description. (*Added 16 of 2006 s. 14*)
- (5B) In subsections (5) and (5A), a reference to a description of medical treatment is a reference to any of the following—
- (a) medical treatment given by, or under the supervision of, a registered medical practitioner;
 - (b) medical treatment given by, or under the supervision of, a registered Chinese medicine practitioner;
 - (c) medical treatment given by, or under the supervision of, a registered dentist;
 - (d) physiotherapy given by, or under the supervision of, a registered physiotherapist or registered medical practitioner;

- (e) occupational therapy given by, or under the supervision of, a registered occupational therapist or registered medical practitioner;
 - (f) medical treatment given by, or under the supervision of, a registered chiropractor. (*Added 16 of 2006 s. 14*)
- (6) Where an employee has paid for any medical treatment received by him he shall be entitled to recover the medical expenses which his employer is liable to pay under subsection (1) from his employer by serving on the employer a request in writing for the payment of the medical expenses together with a receipt for the payment for the medical treatment.
- (7) If an employer does not pay an employee the medical expenses he is liable to pay under subsection (1) within 21 days after the date of receipt of a request for payment under subsection (6) or, where an application is made to the Commissioner under section 10B for the determination of a dispute, within 21 days after the date of determination of the dispute, the medical expenses may be recovered by the employee from the employer—
 - (a) as a civil debt in the Small Claims Tribunal established under the Small Claims Tribunal Ordinance (Cap. 338); or
 - (b) where the amount claimed exceeds the jurisdiction of the Small Claims Tribunal, as a civil debt in the District Court.
- (8) A claim for medical expenses in the District Court may be brought either independently of or in conjunction with any other claim for compensation which is, under this Ordinance, to be brought in the District Court.
- (9) (*Repealed 76 of 1982 s. 8*)
(*Added 74 of 1977 s. 3. Amended 44 of 1980 s. 15*)

10AA. Medical expenses for accidents occurring outside Hong Kong

- (1) This section applies to the liability imposed on an employer under section 10A, for the payment of medical expenses for medical treatment, given outside Hong Kong, in respect of personal injury caused to an employee by accident occurring outside Hong Kong and arising out of and in the course of that employee's employment.
- (2) An employer shall not be liable to pay medical expenses under section 10A(1)—
 - (a) in respect of medical treatment given outside Hong Kong to an employee in relation to an accident occurring—
 - (i) outside Hong Kong; and
 - (ii) before the commencement of the Employees' Compensation (Amendment) Ordinance 1995 (1 of 1995);
 - (b) in respect of medical treatment given outside Hong Kong to an employee, unless and until a certificate has been issued by the Commissioner under section 10B(1)(b) stating the amount of such medical expenses;
 - (c) if the employer has provided adequate free medical treatment outside Hong Kong to the employee; or
 - (d) if, by a written undertaking, the employer has agreed to provide adequate free medical treatment outside Hong Kong to the employee and the employee fails, without reasonable excuse, to submit himself for such medical treatment.

(Added 1 of 1995 s. 7)

10AB. Cost of medicines

- (1) This section applies where an employer is liable under section 10A to pay the medical expenses for the medical treatment given in Hong Kong in respect of an employee's personal injury.
- (2) Subject to the other provisions of this section, the medical expenses that an employer is liable to pay in respect of an employee's personal injury—
 - (a) include the cost of medicines to the extent that the medicines are prescribed medicines for the direct treatment of the injury; but
 - (b) do not include the cost of any tonic or substance that is prescribed for the purpose of the maintenance of general health only.
- (3) For the purposes of this section, a reference to prescribed medicines is a reference to—
 - (a) medicines prescribed by a registered medical practitioner or registered dentist; or
 - (b) Chinese herbal medicines or proprietary Chinese medicines prescribed by a registered Chinese medicine practitioner.
- (4) An employer is not liable to pay any cost of medicines relating to any pharmaceutical product or substance that is required to be registered under the Pharmacy and Poisons Ordinance (Cap. 138) unless it is so registered.
- (5) An employer is not liable to pay any cost of medicines relating to any proprietary Chinese medicine unless the proprietary Chinese medicine—
 - (a) is registered under section 121 of the Chinese Medicine Ordinance (Cap. 549);
 - (b) is deemed to have been registered under section 128 of that Ordinance;

- (c) is exempted from registration by virtue of section 158(6) of that Ordinance;
 - (d) is exempted from registration by virtue of section 37 of the Chinese Medicines Regulation (Cap. 549 sub. leg. F); or
 - (e) is a substance or product that is registered under the Pharmacy and Poisons Ordinance (Cap. 138).
- (6) An employer is not liable to pay any cost of medicines relating to any Chinese herbal medicine unless the Chinese herbal medicine—
 - (a) is sold to the employee concerned by a person who—
 - (i) is the holder of a retailer licence issued under section 114 of the Chinese Medicine Ordinance (Cap. 549); or
 - (ii) is deemed, under section 118(1) of that Ordinance, to have been granted such a licence; or
 - (b) is sold by a registered Chinese medicine practitioner for the purpose of administering, as described in section 158(2) of that Ordinance, to the employee concerned who is a patient under that Chinese medicine practitioner's direct care.
- (7) An employer is not liable to pay any cost of medicines relating to medicines dispensed pursuant to the same prescription on a second or subsequent occasion unless—
 - (a) the prescription contains a direction that the medicines are to be dispensed for a stated number of times; and
 - (b) the medicines are dispensed in accordance with that direction.
- (8) Where the medical expenses for the medical treatment of an employee include the cost of medicines, the employer or the Commissioner may request the employee to produce to

him the prescription for the medicines and the receipt for the payment of that cost. The employer is not liable to pay the cost of medicines if the employee fails, without reasonable excuse, to comply with the request.

- (9) A prescription given by a registered medical practitioner or registered dentist and produced for the purposes of subsection (8) must show—
- (a) the name of the medical practitioner or dentist;
 - (b) the name of the patient to whom the prescription is given;
 - (c) the trade name or pharmacological name and dosage of each medicine prescribed; and
 - (d) the date on which the prescription is given.
- (10) A prescription given by a registered Chinese medicine practitioner and produced for the purposes of subsection (8) must show—
- (a) the name of the Chinese medicine practitioner;
 - (b) the name of the patient to whom the prescription is given;
 - (c) if any Chinese herbal medicine is prescribed, its name and quantity;
 - (d) if any proprietary Chinese medicine registered under section 121 of, or deemed to have been registered under section 128 of, the Chinese Medicine Ordinance (Cap. 549) is prescribed, its product name and dosage;
 - (e) if any proprietary Chinese medicine exempted from registration by virtue of section 158(6) of the Chinese Medicine Ordinance (Cap. 549) is prescribed, the name and quantity of each Chinese herbal medicine that is contained in the proprietary Chinese medicine; and

- (f) the date on which the prescription is given.
- (11) A receipt for the payment of the cost of medicines produced for the purposes of subsection (8) must show—
 - (a) the name and address of the person by whom the prescribed medicines were sold;
 - (b) the date of sale; and
 - (c) the name, quantity and price of the prescribed medicines sold.

- (12) For the purposes of this section—

Chinese herbal medicine (中藥材) means—

- (a) a Chinese herbal medicine specified in Schedule 1 or 2 to the Chinese Medicine Ordinance (Cap. 549); or
- (b) any other material of herbal, animal or mineral origin customarily used by the Chinese for medicinal purpose;

proprietary Chinese medicine (中成藥) has the meaning assigned to it by section 2 of the Chinese Medicine Ordinance (Cap. 549).

(Added 16 of 2006 s. 15)

10B. Determination by Commissioner of medical expenses payable

- (1) The Commissioner shall, on application made to him by an employee or employer—
 - (a) determine whether or not there is a liability to pay medical expenses under section 10A in respect of medical treatment given outside Hong Kong to the employee; and
 - (b) where the Commissioner has determined that there is such liability, determine the amount of such medical expenses and issue a certificate to the employee and the employer stating the amount of such medical expenses.

- (2) Where there is a dispute as to—
- (a) the liability to pay medical expenses under section 10A; or
 - (b) the amount of such medical expenses,
- in respect of medical treatment given in Hong Kong to an employee, the Commissioner shall, on application made to him by the employee or the employer—
- (i) in the case of paragraph (a)—
 - (A) determine whether or not there is a liability to pay such medical expenses; and
 - (B) where the Commissioner has determined that there is such liability, determine the amount of such medical expenses and issue a certificate to the employee and the employer stating the amount of such medical expenses;
 - (ii) in the case of paragraph (b), determine the amount of such medical expenses and issue a certificate to the employee and the employer stating the amount of such medical expenses.
- (3) A certificate purporting to be issued under subsection (1)(b) or (2)(i)(B) or (ii) and to be signed by or for the Commissioner shall be admitted in evidence without further proof on its production in any court and—
- (a) unless there is evidence to the contrary, it shall be presumed that the certificate is so issued and signed;
 - (b) shall be evidence of the amount of medical expenses payable by the employer.
- (4) A determination by the Commissioner under this section as to any liability to pay medical expenses, and as to the amount of such medical expenses, may be reviewed by the Court on the application either of the employee or of the

employer within 14 days of the issue by the Commissioner of a certificate under subsection (1)(b) or (2)(i)(B) or (ii), or within such further time as the Court, in the circumstances of any particular case, thinks fit; and on any such review the Court may confirm, vary or reverse the determination or may substitute its own determination for that of the Commissioner and may make such order in respect thereof, including any order as to costs, as it thinks fit.

(Replaced 1 of 1995 s. 8)

11. Method of calculating earnings

- (1) Subject to this section, for the purposes of this Ordinance the monthly earnings of an employee at the time of the accident shall be the earnings—
- (a) for the month immediately preceding the date of the accident; or
 - (b) computed in such manner as is best calculated to give the rates per month at which the employee was being remunerated during the previous 12 months if he has been so long employed by the same employer, but, if not, then for any lesser period during which he has been employed by the same employer,

whichever calculation is more favourable to the employee.
(Replaced 76 of 1982 s. 9)

- (1A) Where an employee suffers temporary incapacity after an accident and such incapacity extends beyond 12 months after the date of the accident the monthly earnings of an employee at the time of the accident shall, in respect of temporary incapacity beyond the 12-month period after the date of the accident, be computed for the purposes of section 6, 7, 9 or 10 as being the earnings calculated—

- (a) where the employer employs, in similar employment, other persons of similar earning capacity to the employee, as the earnings that, if the accident had not occurred, the employee would have received at the end of a 12-month period after the date of the accident in accordance with the average rate of increase in respect of the earnings of other persons of similar earning capacity employed by the employer in similar employment;
 - (b) where the employer does not employ, in similar employment, other persons of similar earning capacity to the employee, as the monthly earnings of the employee computed under subsection (1) or (2) and adjusted in accordance with the rate of increase in the Consumer Price Index at the end of a 12-month period after the date of the accident. (*Added 1 of 1995 s. 9*)
- (1B) Where an employee suffers temporary incapacity after an accident and such incapacity extends beyond 24 months or such further period as the Court may have allowed under section 10(5) the monthly earnings of an employee at the time of the accident shall, in respect of temporary incapacity beyond the 24-month period or beyond such further period after the date of the accident, be computed for the purposes of section 6, 7, 9 or 10 as being the earnings calculated—
 - (a) where the employer employs, in similar employment, other persons of similar earning capacity to the employee, as the earnings that, if the accident had not occurred, the employee would have received at the end of a 24-month period after the date of the accident in accordance with the average rate of increase in respect of the earnings of other persons of similar earning capacity employed by the employer in similar employment;

- (b) where the employer does not employ, in similar employment, other persons of similar earning capacity to the employee, as the monthly earnings of the employee computed under subsection (1) or (2) and adjusted in accordance with the rate of increase in the Consumer Price Index at the end of a 24-month period after the date of the accident. (*Added 1 of 1995 s. 9*)
- (1C) For the purposes of subsections (1A) and (1B), **Consumer Price Index** (消費物價指數) means the consumer price index as compiled and published as CPI(A) in a Consumer Price Index Report by the Commissioner for Census and Statistics. (*Added 1 of 1995 s. 9*)
- (2) Where by reason of the shortness of the time during which an employee has been in the employment of his employer or of the casual nature of the employment, or of the terms of employment, it is impracticable to compute the rate of remuneration of such employee at the date of the accident, regard may be had to the average monthly amount which, during the 12 months previous to the accident, was being earned by a person of similar earning capacity in the same grade employed at the same work by the same employer, or, if there is no person so employed, by a person of similar earning capacity in the same grade employed in the same class of employment and in the same district. (*Added 55 of 1969 s. 11*)
- (3) Where an employee was, at the date of the accident, under the age of 18 years his earnings shall, for the purposes of assessing compensation payable in the case of death or permanent incapacity, be deemed to be such amount as, if the accident had not occurred, he would probably have received upon attaining the age of 18 years, or at the end of a period of 5 years after the accident, whichever calculation

is more favourable to the employee. (*Added 55 of 1969 s. 11. Amended 76 of 1982 s. 9*)

- (4) Where an employee was, at the date of the accident, employed under a contract of apprenticeship his earnings shall, for the purposes of assessing compensation payable in the case of death or permanent incapacity, be deemed to be such amount as, if the accident had not occurred, he would probably have received upon the completion of his contract of apprenticeship. (*Added 55 of 1969 s. 11. Amended 76 of 1982 s. 9*)
- (4A) Where an employee was, at the date of the accident, under the age of 18 years and employed under a contract of apprenticeship, his earnings shall, for the purposes of assessing compensation payable in the case of death or permanent incapacity, be deemed to be the amount calculated under subsection (3) or (4), whichever calculation is more favourable to the employee. (*Added 76 of 1982 s. 9*)
- (5) Where the earnings of an employee calculated under any of the provisions of this section amount to less than the amount specified in the second column of the Sixth Schedule shown opposite section 11(5) specified in the first column of that Schedule per month, the earnings of such employee shall, for the purposes of this Ordinance, be deemed to be the amount specified in the second column of the Sixth Schedule shown opposite section 11(5) specified in the first column of that Schedule per month. (*Added 55 of 1969 s. 11. Amended 76 of 1982 s. 9; L.N. 321 of 1985; L.N. 390 of 1987; L.N. 386 of 1989; L.N. 435 of 1991; L.N. 463 of 1993; L.N. 566 of 1995; 36 of 1996 s. 8*)
- (6) For the purposes of subsections (1) and (2), employment by the same employer shall be taken to mean employment by the same employer in the grade in which the employee was employed at the time of the accident, uninterrupted by

absence from work due to illness or any other unavoidable cause. (*Amended 55 of 1969 s. 11*)

- (7) Where the employee had entered into concurrent contracts of service with 2 or more employers under which he worked at one time for one such employer and at another time for another such employer, his monthly earnings shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident:

Provided that the earnings of the employee under the concurrent contract shall be taken into account only so far as the employee is incapacitated from performing the concurrent contract:

Provided further that this subsection shall not apply where an employee is in the full time employment of that employer for whom he was working at the time of the accident, in which case the earnings of such employee shall be his earnings in such full time employment. For the purposes of this proviso, full time employment means employment for not less than 40 hours during a minimum period of 5 days in any 1 week. (*Amended 76 of 1982 s. 9*)

- (7A) An employee shall, at the written request of his employer, give his employer sufficient written information to enable the employer to comply with section 40 regarding any of the employee's concurrent contracts of service referred to in subsection (7) that are then in force or subsequently entered into. (*Added 59 of 1988 s. 2*)
- (7B) Subsection (7) does not apply where an employee fails to comply with subsection (7A). (*Added 59 of 1988 s. 2*)
- (8) Within 14 days after the date of issue of a written request of the employee or of the Commissioner to the employer liable to pay compensation, that employer shall furnish in writing a

list of the earnings which have been earned by that employee upon which the amount of the monthly earnings may be calculated for the purpose of this section. *(Amended 76 of 1982 s. 9)*

- (9) An employer who without reasonable excuse contravenes subsection (8) commits an offence and is liable to a fine at level 3. *(Added 76 of 1982 s. 9. Amended 36 of 1996 s. 8)*

(Amended 44 of 1980 s. 15)

12. Persons entitled to compensation

- (1) Except where otherwise provided by or under this Ordinance, compensation shall be payable to or for the benefit of the employee, or, where death results from the injury, to or for the benefit of the members of his family as provided by this Ordinance. *(Amended 76 of 1982 s. 10; 52 of 2000 s. 7)*

- (2) Where a member of the family dies—

- (a) prior to an application made under section 6B(1) or 18A(1);
- (b) if an application under section 6B(1) has been made, prior to a Certificate of Compensation Assessment for Fatal Case or Review Certificate of Compensation Assessment for Fatal Case is issued; or
- (c) if a claim has been made to the Court, prior to an order for the payment of compensation has been made,

the legal personal representative of the member of the family shall have no right to payment of compensation. *(Replaced 52 of 2000 s. 7)*

- (3) *(Repealed 52 of 2000 s. 7)*

(Amended 44 of 1980 s. 15)

13. Distribution of compensation

- (1) Compensation payable where the death of an employee has resulted from an injury, other than those which have been determined under section 6B(1)(a), 6C(1)(a) or (11), 6D(6)(b) or 6E(1)(a) or (12), shall be paid to the Court, and the Court may—

- (a) in the case of compensation paid under section 6(1), order any sum so paid in to be apportioned among the members of the family according to section 6A; and
- (b) in the case of reimbursement paid under section 6(5), order any sum so paid in to be apportioned to the persons who have paid the expenses of the funeral of the employee and the expenses of medical attendance on the employee according to section 6E(5),

and the sum so apportioned shall be paid to them or be invested, applied or otherwise dealt with for their benefit in such manner as the Court thinks fit.

Where, on application being made in accordance with rules made under this Ordinance, it appears to the Court that, on account of the variation of the circumstances of the various members of the family, or for any other sufficient cause, an order made under this subsection ought to be varied, the Court may make such order for the variation of the former order as in the circumstances of the case the Court may think just:

Provided that no such order shall be made which requires the repayment by a dependant of any compensation already paid to him except where such payment has been obtained by fraud, impersonation or other improper means. (*Amended 52 of 2000 s. 8*)

- (2) Except where otherwise provided by or under this Ordinance, any other compensation payable under this Ordinance shall be paid to the Court, and any sum so paid shall— (*Amended 76 of 1982 s. 11*)

- (a) be paid by the Court to the person entitled thereto; or
- (b) if the compensation is payable under the provisions of section 7, 8 or 9 or is a lump sum payable under the provisions of section 10, be invested, applied or otherwise dealt with by the Court for his benefit in such manner as the Court thinks fit:

Provided that—

- (i) where periodical payments are payable under the provisions of section 8(2)(b)(i) or section 10, such payments may be paid by the employer direct to the employee; and
 - (ii) where compensation has been agreed and approved in accordance with the provisions of section 8, such compensation may be paid by the employer direct to the employee. (*Amended 55 of 1969 s. 12; 36 of 1996 s. 9*)
- (3) An employer may make a payment direct to an employee or member of the family on account of a claim which is pending settlement or determination, and the Court or, if the compensation is not paid to the Court, the Commissioner may order that the whole or any part of such payment shall be deducted from the amount of compensation payable to the employee or member of the family under the provisions of this Ordinance: (*Replaced 55 of 1969 s. 12. Amended 76 of 1982 s. 11; 59 of 1988 s. 3; L.N. 435 of 1991; 63 of 1992 s. 5*)

Provided that no such payment shall—

- (a) constitute a periodical payment or an interim payment for the purposes of this Ordinance; or
- (b) relieve the employer of an obligation to make any periodical payment or an interim payment under this Ordinance. (*Added 76 of 1982 s. 11. Amended 52 of 2000 s. 8*)

- (4) The receipt of the Registrar of the Court shall be a sufficient discharge in respect of any amount paid to the Court under the provisions of this Ordinance.
- (5) No appeal shall lie from any order or direction of the Court or of the Commissioner made or given under this section.
(Amended 50 of 1954 s. 5)

(Amended 44 of 1980 s. 15)

14. Requirements as to notice of accident and application for compensation

- (1) Except where otherwise provided by this Ordinance, proceedings for the recovery under this Ordinance of compensation for an injury shall not be maintainable unless notice of the accident has been given to the employer by or on behalf of the employee, in the manner hereinafter provided, as soon as practicable after the happening thereof and before the employee has voluntarily left the employment in which he was injured, and unless the application for compensation with respect to such accident (being an application to the Court by an employee under section 18A(2)) has been made within 24 months from the occurrence of the accident causing the injury or, in the case of death, within 24 months from the date of death or prior to a determination made by the Commissioner under section 6B(1)(a), whichever is the earlier: *(Amended 55 of 1969 s. 13; 4 of 1978 s. 4; 76 of 1982 s. 12; 52 of 2000 s. 9)*

Provided that the want of, or any defect or irregularity in, a notice shall not be a bar to the maintenance of proceedings—

- (a) if the application is made in respect of the death of an employee resulting from an accident which occurred on the premises of the employer, or at any place where the employee at the time of the accident was working under the control of the employer or of any person employed by him, and the employee died on such premises or

- at such place, or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred; or
- (b) if the employer is proved to have had knowledge of the accident from any other source at or about the time of the accident, or if it is found in the proceedings for settling that claim that the employer is not prejudiced or would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in his defence by the want, defect or irregularity, or that such want, defect or irregularity was occasioned by mistake, absence from Hong Kong, or other reasonable cause.
(Amended 76 of 1982 ss. 12 & 37)
- (2) A notice under this section may be given either in writing or orally to the employer (or, if there is more than one employer, to one of such employers), or to any foreman or other official under whose supervision the employee is employed, or to any person designated for the purpose by the employer, and shall specify the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date on which and the place at which the accident occurred.
- (3) Where section 24 applies, notice of an accident to an employee employed by a sub-contractor given in accordance with this section to the sub-contractor, or to any foreman or other official under whose supervision the employee is employed, or to any person designated for the purpose by the sub-contractor, shall be deemed to be notice to the principal contractor. *(Replaced 76 of 1982 s. 12)*
- (4) The Court may receive and determine any application for compensation in any case notwithstanding that the notice required by subsection (1) has not been given, or that the application has not been made in due time as required by that subsection, if it is satisfied that there was reasonable excuse

for the failure so to give notice or to make an application, as the case may be.

(Amended 44 of 1980 s. 15)

15. Employer to report the injury to or death of an employee and method of notification

- (1) Notice of any accident which results in the death of the employee within 3 days after the accident shall be given in the prescribed form to the Commissioner by the employer not later than 7 days after the accident irrespective of whether the accident gives rise to any liability to pay compensation. *(Replaced 64 of 1992 s. 3)*
- (1A) Notice of any accident which results in the total or partial incapacity of the employee shall be given to the Commissioner by the employer not later than 14 days after the accident, irrespective of whether the accident gives rise to any liability to pay compensation, and shall be given—
 - (a) in the prescribed form, if the accident results in the total or partial incapacity of the employee for a period exceeding 3 days immediately following the accident; or
 - (b) in the form specified by the Commissioner, if the accident results in the total or partial incapacity of the employee for a period not exceeding 3 days immediately following the accident. *(Replaced 67 of 1996 s. 4)*
- (1B) If the happening of such accident was not brought to the notice of the employer or did not otherwise come to his knowledge within such periods of 7 and 14 days respectively referred to in subsections (1) and (1A) then such notice shall be given not later than 7 days or, as may be appropriate, 14 days after the happening of the accident was first brought to the notice of the employer or otherwise came to his knowledge. *(Added 64 of 1992 s. 3)*

(1BA) Where—

- (a) an employer has given notice of an accident in the form specified by the Commissioner for the purposes of subsection (1A)(b); and
- (b) the total or partial incapacity of the employee resulting from the accident extends beyond the period referred to in that subsection,

the employer shall give further notice of the accident to the Commissioner in the form prescribed for the purposes of subsection (1A)(a) not later than 14 days after the extension of the incapacity beyond the period referred to in subsection (1A)(b) was first brought to the notice of the employer or otherwise came to his knowledge. (*Added 67 of 1996 s. 4*)

(1C) The Commissioner may, by notice in writing to an employer, require the employer to give notice to the Commissioner of an accident causing injury to an employee, being an accident— (*Amended 64 of 1992 s. 3*)

- (a) which may give rise to a liability to pay compensation;
- (b) to which subsections (1) and (1A) do not apply; and (*Amended 64 of 1992 s. 3*)

(c) which does not result in the death of the employee, in the prescribed form within such period, not being less than 7 days, as is specified in the notice to the employer. (*Added 76 of 1982 s. 13*)

(2) When the death of an employee in any circumstances other than those specified in subsection (1) is brought to the notice of, or comes to the knowledge of, his employer, the employer shall, not later than 7 days after the death, give notice thereof in the prescribed form to the Commissioner, irrespective of whether the death gives rise to any liability to pay compensation: (*Amended 64 of 1992 s. 3*)

Provided that if the death was not brought to the notice of the employer or did not otherwise come to his knowledge within such period of 7 days then such notice shall be given not later than 7 days after the death was first brought to the notice of the employer or otherwise first came to his knowledge. *(Replaced 55 of 1969 s. 14)*

- (2A) The notice of accident referred to in subsections (1), (1A) and (2) shall contain such matters relating to the accident, the employer, the employee, any compensation agreed, paid or payable, and any matters incidental thereto as may be prescribed or, where the notice of accident is required to be given in the form specified by the Commissioner for the purposes of subsection (1A)(b), as may be specified by the Commissioner. *(Replaced 67 of 1996 s. 4)*
- (3) On receipt of a notice under subsection (1), (1A) or (2) the Commissioner may make such inquiry as he thinks fit and if it appears to him that a claim for compensation may arise in respect of— *(Amended 64 of 1992 s. 3)*
 - (a) the death of the employee, he may—
 - (i) make such inquiry as he thinks fit to ascertain whether there are any members of the family of the deceased employee; and *(Amended 52 of 2000 s. 10)*
 - (ii) inform such members of the family, if any, of the reported cause and circumstances of the death of the employee and advise them of their right to compensation; or *(Amended 52 of 2000 s. 10)*
 - (iii) *(Repealed 52 of 2000 s. 10)*
 - (b) the incapacity of the employee, he may, if the employee so requests, make a claim for compensation on behalf of the employee. *(Added 55 of 1969 s. 14)*

- (4) In any claim for compensation under section 6 the Court may, for the purposes of section 13(1), take into consideration a written report from the Commissioner of his findings on an inquiry under subsection (3)(a)(i). *(Added 55 of 1969 s. 14)*
- (5) For the purposes of subsections (1) and (2), the death of an employee on the premises of his employer shall be deemed to be within the knowledge of such employer. *(Amended 55 of 1969 s. 14; 64 of 1992 s. 3)*
- (6) Any employer who—
 - (a) without reasonable excuse fails to give notice as required by subsection (1), (1A), (1B) or (2) or as required by a notice of the Commissioner under subsection (1C); or
 - (b) in or in connection with any notice given by him under subsection (1), (1A), (1C) or (2), makes any false or misleading statement or furnishes any false or misleading information,commits an offence and is liable to a fine at level 5. *(Replaced 76 of 1982 s. 13. Amended 63 of 1992 s. 6; 64 of 1992 s. 3; 36 of 1996 s. 10)*
- (7) Nothing contained in this section shall prevent any person from making a claim for compensation under this Ordinance.

(Amended 44 of 1980 s. 15)

16. Medical examination and treatment

- (1) Where an employee has given notice of an accident—
 - (a) the employer may, within 7 days from the time at which the notice is given, require the employee to undergo a medical examination without expense to the employee; and
 - (b) the employee shall undergo the examination. *(Replaced 16 of 2006 s. 16)*

- (1A) An employer may require an employee who is in receipt of a periodical payment under section 10 to undergo a medical examination from time to time, without expense to the employee, and the employee shall undergo the examination. *(Added 16 of 2006 s. 16)*
- (1B) Where an employee is required under subsection (1) or (1A) to undergo a medical examination—
- (a) if the employee is attended—
 - (i) by a registered medical practitioner, the examination shall be conducted by a registered medical practitioner named by the employer;
 - (ii) by a registered Chinese medicine practitioner, the examination shall be conducted by a registered Chinese medicine practitioner named by the employer; or
 - (iii) by a registered dentist, the examination shall be conducted by a registered dentist named by the employer; or
 - (b) in any other case, the examination shall be conducted by a registered medical practitioner, registered Chinese medicine practitioner or registered dentist named by the employer. *(Added 16 of 2006 s. 16)*
- (2) The employee shall, when required, attend upon the registered medical practitioner, registered Chinese medicine practitioner or registered dentist concerned at the time and place notified to the employee by the employer or that medical practitioner, Chinese medicine practitioner or dentist (as the case may be), provided such time and place is reasonable.
- (3) If the employee is, in the opinion of any registered medical practitioner, registered Chinese medicine practitioner or registered dentist, unable or not in a fit state to attend on the

registered medical practitioner, registered Chinese medicine practitioner or registered dentist named by the employer—

- (a) that fact shall be notified to the employer; and
 - (b) the medical practitioner, Chinese medicine practitioner or dentist so named shall—
 - (i) fix a reasonable time and place for a medical examination of the employee; and
 - (ii) notify the employee accordingly. (*Replaced 16 of 2006 s. 16*)
- (3A) As soon as reasonably practicable after an employee has undergone a medical examination required under this section, the medical practitioner, Chinese medicine practitioner or dentist who conducts the examination shall, at the employer's expenses—
- (a) prepare a report on the examination, setting out all findings reasonably related to the injury of the employee; and
 - (b) send the report to the employer. (*Added 16 of 2006 s. 16*)
- (3B) The employee may in writing request the employer to send to him, free of charge, a copy of the report referred to in subsection (3A). (*Added 16 of 2006 s. 16*)
- (3C) The employer commits an offence and is liable on conviction to a fine at level 3 if he fails, without reasonable excuse, to comply with a request under subsection (3B) before the later of the following—
- (a) the expiry of 21 days after the employer receives the request; or
 - (b) the expiry of 14 days after the report concerned is received by the employer. (*Added 16 of 2006 s. 16*)

- (4) If the employee fails to undergo a medical examination as required under this section, his right to compensation shall be suspended until such examination has taken place; and if such failure extends over a period of 15 days from the date when the employee was required to undergo the examination under subsection (2) or (3), as the case may be, no compensation shall be payable, unless the Court is satisfied that there was reasonable cause for such failure.
- (5) The employee shall be entitled to have his own registered medical practitioner, registered Chinese medicine practitioner or registered dentist present at such examination, but at his own expense.
- (6) Where the employee is not attended by a registered medical practitioner, registered Chinese medicine practitioner or registered dentist he shall, if so required by the employer, submit himself for treatment by a registered medical practitioner, registered Chinese medicine practitioner or registered dentist without expense to the employee.
- (7) If the employee fails to submit himself for treatment when so required under subsection (6), or having submitted himself for such treatment disregards the instructions of the registered medical practitioner, registered Chinese medicine practitioner or registered dentist concerned, then if it is proved that such failure or disregard was unreasonable in the circumstances of the case and that the injury has been aggravated thereby, the injury and resulting incapacity shall be deemed to be of the same nature and duration as they might reasonably have been expected to be if the employee had submitted himself for such treatment, and had duly carried out the instructions of, such medical practitioner, Chinese medicine practitioner or dentist, and compensation, if any, shall be payable accordingly.

- (8) Where under this section a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension.
- (9) Notwithstanding the previous provisions of this section, where a claim for compensation is made in respect of the death of an employee, then if the employee failed to undergo a medical examination or submit himself for treatment when so required under this section or having submitted himself for such treatment disregarded the instructions of the registered medical practitioner, registered Chinese medicine practitioner or registered dentist concerned, and if it is proved that such failure or disregard was unreasonable in the circumstances of the case and that the death of the employee was caused thereby, the death shall not be deemed to have resulted from the injury, and no compensation shall be payable in respect of the injury.

(Amended 44 of 1980 s. 15; 16 of 2006 s. 16)

16A. Determination of claims in respect of injuries

- (1) Where—
 - (a) a claim for compensation arises in respect of an accident causing injury to an employee that results in temporary incapacity, whether total or partial; or
 - (b) a claim for compensation arises in respect of an accident causing injury to an employee that results in loss of earning capacity as assessed under section 16D(5), 16E(8) or (9), 16G(2) or 16GA(1), *(Amended 36 of 1996 s. 11)*

the Commissioner may assess the compensation payable under sections 7, 9 and 10. *(Replaced 59 of 1988 s. 4. Amended 36 of 1996 s. 11)*

- (1A) Compensation shall not be assessed by the Commissioner under subsection (1) unless claim for compensation arises within 24 months after the happening of the accident. (*Added 59 of 1988 s. 4*)
- (2) Where the Commissioner assesses compensation under subsection (1) he shall issue to the employer and the employee a certificate in such form as he may specify stating the amount of the compensation and details of the assessment, and shall retain one copy of the certificate for his records.
- (3) An objection to the amount of compensation assessed under subsection (1) may be made in writing—
- (a) by the employer, the employee or the ECAFB;
 - (b) within 14 days after—
 - (i) in the case of the employer or employee, the date of issue of the certificate issued under subsection (2);
 - (ii) in the case of the ECAFB, the date on which an application is made under section 16 of the Employees Compensation Assistance Ordinance (Cap. 365) by the employee,or within such further time as the Commissioner, in the circumstances of any particular case, thinks fit;
 - (c) stating the grounds of the objection; and
 - (d) by the objector sending a copy of the objection—
 - (i) where the objector is the employer, to the employee;
 - (ii) where the objector is the employee, to the employer;
 - (iii) where the objector is the ECAFB, to the employer and the employee. (*Replaced 16 of 2002 s. 33*)

- (4) On receipt of an objection under subsection (3) the Commissioner shall—
- (a) if the objection relates to the assessment of the percentage of loss of earning capacity made by an Ordinary Assessment Board under section 16D(5) or by a Special Assessment Board under section 16E(8) or (9), forward a copy of the objection to the Ordinary Assessment Board or the Special Assessment Board, as the case may be, for a review under section 16G(2); and
 - (b) after taking into account the objection and any review referred to in paragraph (a) of this subsection, confirm, vary or cancel the assessment of compensation under subsection (1). *(Replaced 59 of 1988 s. 4. Amended 63 of 1992 s. 7; 36 of 1996 s. 11)*
- (4A) *(Repealed 36 of 1996 s. 11)*
- (5) Upon completing a review under subsection (4), the Commissioner shall issue to the employer and the employee and, where applicable, the ECAFB a certificate in such form as he may specify stating— *(Amended 16 of 2002 s. 33)*
- (a) that the original assessment is confirmed and giving details thereof; or
 - (b) details of the assessment as varied,
- and shall retain one copy of the certificate for his records.
- (6) Upon the issue of a certificate under subsection (5), the certificate issued under subsection (2) shall be cancelled.
- (7) A certificate purporting to be issued—
- (a) under subsection (2), other than a certificate cancelled under subsection (6); or
 - (b) under subsection (5),

and to be signed by or for the Commissioner shall be admitted in evidence without further proof on its production in any court, and—

- (i) until the contrary is proved it shall be presumed that the certificate is so issued and signed; and
- (ii) shall be evidence of the matters stated therein.

(8) A certificate issued—

- (a) under subsection (2), other than a certificate cancelled under subsection (6); or
- (b) under subsection (5),

may, on application to the Court by the employer, the employee, the ECAFB or the Commissioner, be made an order of the Court and, for the purposes of this subsection, the amount payable under any such certificate shall include any surcharge payable in respect thereof under subsection (10).
(Amended 16 of 2002 s. 33)

(9) Subject to section 18, the employer shall pay to the employee within a period of 21 days after—

- (a) the date of issue of the certificate issued under subsection (2); or
- (b) where an objection is made under subsection (3), the date of issue of the certificate issued under subsection (5),

the balance (if any) of the amount of compensation stated in the certificate after deducting from such amount—

- (i) the total sum of any periodical payments made by the employer to the employee under section 10 in respect of the injury to which the certificate relates; and
- (ii) any sum which the Commissioner has ordered to be deducted under section 13(3).

- (10) An employer who fails without reasonable excuse to comply with subsection (9) shall pay to the employee, in addition to the amount of compensation payable under that subsection— (*Amended 59 of 1988 s. 4*)
- (a) upon the expiry of the payment period, a surcharge of the percentage specified in the third column of the Sixth Schedule shown opposite section 16A(10)(a) specified in the first column of that Schedule of the amount of compensation then remaining unpaid or the amount specified in the second column of the Sixth Schedule shown opposite that section as specified, whichever is the greater; and
 - (b) upon the expiry of 3 months after the expiry of the payment period, a further surcharge of the percentage specified in the third column of the Sixth Schedule shown opposite section 16A(10)(b) specified in the first column of that Schedule of the amount then remaining unpaid of the aggregate of the amount of compensation referred to in paragraph (a) and the surcharge imposed under that paragraph or the amount specified in the second column of the Sixth Schedule shown opposite that section as specified, whichever is the greater. (*Amended L.N. 390 of 1987; L.N. 435 of 1991; L.N. 463 of 1993; L.N. 566 of 1995; 36 of 1996 s. 11*)
- (11) For the purposes of subsection (10) **payment period** (付款期) means the appropriate period for payment referred to in subsection (9).
- (12) An employer who fails without reasonable excuse to comply with subsection (9) or (10) commits an offence and is liable to a fine at level 6. (*Added 59 of 1988 s. 4. Amended 36 of 1996 s. 11; 52 of 2000 s. 11*)

- (13) For the purposes of this section ***date of issue*** (發出日期) means the date appearing on the certificate of assessment.
(Added 63 of 1992 s. 7)

(Added 76 of 1982 s. 14)

16B. Cancellation of injuries claim certificate by the Court

- (1) Notwithstanding anything in section 16A, the Court may, on application by the employer, the employee, the Commissioner or the ECAFB, cancel a certificate issued under section 16A(2) or (5) and make such order (including an order as to any sum already paid under the certificate) as in the circumstances the Court may think just, if it is proved that— (Amended 16 of 2002 s. 33)
- (a) the sum paid or to be paid was or is not in accordance with the provisions of this Ordinance; or
 - (b) the certificate was issued in ignorance of, or under a mistake as to, the true nature or the extent of the injury; or (Amended 60 of 1986 s. 2)
 - (c) the certificate was based upon any false or misleading information or statement given or made.
- (2) An application under subsection (1) shall be made within 6 months of the date of issue of the certificate in respect of which the application is made, or within such further time as the Court, in the circumstances of any particular case, thinks fit.

(Added 76 of 1982 s. 14)

16C. (Repealed 31 of 1985 s. 4)

16CA. Determination of compensation by agreement in certain cases

- (1) Where a claim arises in respect of an accident causing injury to an employee that results in temporary incapacity,

whether total or partial, for a period exceeding 3 days but not exceeding 7 days, the employer may enter into an agreement with the injured employee as to the compensation payable by him under section 10(1). (*Amended 67 of 1996 s. 5*)

- (2) Periodical payments agreed under section (1) shall be made in the manner specified under section 10(3).
- (3) Any lump sum agreed under subsection (1) shall be paid on or before the day immediately following such agreement on which wages would have been payable to the employee if he had continued to be employed under the contract of service or apprenticeship under which he was employed at the time of accident.

(*Added 64 of 1992 s. 4*)

16CB. Cancellation of agreement by Commissioner

- (1) Where an agreement has been entered into under section 16CA, the Commissioner may on the application of either party to the agreement cancel the agreement if he is satisfied that—
 - (a) the sum paid or to be paid was or is not in accordance with the provisions of this Ordinance; or
 - (b) the agreement was entered into in ignorance of, or under a mistake as to, the true nature or extent of the injury; or
 - (c) the agreement was obtained by such fraud, undue influence, misrepresentation or other improper means as would, in law, be sufficient ground for avoiding it.
- (2) An application under subsection (1) shall be made within 6 months after the date on which the parties entered into the agreement or within such further time as the Commissioner in the circumstances of any particular case thinks fit.

- (3) Where the Commissioner cancels the agreement under subsection (1), he shall make an assessment under section 16A of the compensation payable under section 10 and the provisions in this Ordinance affecting such assessment shall apply accordingly.

(Added 64 of 1992 s. 4)

16D. Employees' Compensation (Ordinary Assessment) Boards

- (1) The Commissioner shall for the purposes of this section appoint one or more boards to be known as Employees' Compensation (Ordinary Assessment) Boards.
- (2) An Ordinary Assessment Board shall consist of—
- (a) 2 persons each of whom shall be a registered medical practitioner, a registered Chinese medicine practitioner or a registered dentist; and *(Amended 16 of 2006 s. 17)*
 - (b) a Senior Labour Officer or a Labour Officer. *(Amended 31 of 1985 s. 5)*
- (3) A member of an Ordinary Assessment Board shall hold office on such terms and for such period as the Commissioner may determine.
- (4) The Commissioner may refer to an Ordinary Assessment Board any claim for compensation for an injury to an employee of which he has notice if in the opinion of the Commissioner such injury is likely to result in permanent total or partial incapacity.
- (5) In respect of a claim referred to it under subsection (4), an Ordinary Assessment Board shall—
- (a) subject to subsection (6), assess the percentage of the loss of earning capacity permanently caused by the injury in accordance with this Ordinance; and

- (b) assess the period of absence from duty necessary as a result of the injury. (*Replaced 63 of 1992 s. 8*)
- (6) Where it appears to an Ordinary Assessment Board that a claim referred to it under subsection (4) is one to which section 9(1A) applies, it shall refer the claim to a Special Assessment Board.
- (7) A decision of an Ordinary Assessment Board, if not unanimous, shall be that of the majority of the members thereof.
- (8) Subject to this section, the procedure of an Ordinary Assessment Board shall be such as the Commissioner may determine.

(Added 76 of 1982 s. 14)

16E. Employees' Compensation (Special Assessment) Boards

- (1) The Commissioner shall for the purposes of this section appoint one or more boards to be known as Employees' Compensation (Special Assessment) Boards.
- (2) Subject to subsection (4), a Special Assessment Board shall consist of—
 - (a) one of the following, that is to say—
 - (i) the Occupational Health Consultant; or
 - (ii) a Senior Occupational Health Officer; or
 - (iii) an Occupational Health Officer;
 - (b) a Senior Labour Officer; and
 - (c) a Labour Officer who is a member of an Ordinary Assessment Board appointed under section 16D(2).
- (3) A member of a Special Assessment Board referred to in subsection (2) shall hold office on such terms and for such period as the Commissioner may determine.

- (4) The Commissioner may appoint as additional members of a Special Assessment Board not more than 2 persons who are, in his opinion, qualified to give expert advice on any matter relating to a claim for compensation referred to the Special Assessment Board, and may at any time revoke any such appointment.
- (5) A member appointed under subsection (4) may at any time resign by giving notice in writing to the Commissioner.
- (6) The Commissioner shall appoint a member of a Special Assessment Board to be the chairman of the Special Assessment Board.
- (7) At all meetings of a Special Assessment Board 3 members shall form a quorum.
- (8) In respect of a claim referred to it by an Ordinary Assessment Board under section 16D(6), a Special Assessment Board shall, subject to subsection (9), assess the percentage of the loss of earning capacity permanently caused by the injury in accordance with this Ordinance.
- (9) Where it appears to a Special Assessment Board that a claim referred to it by an Ordinary Assessment Board under section 16D(6) is a claim to which section 9(1A) applies, the Special Assessment Board shall assess the percentage of the loss of earning capacity permanently caused by the injury for the purposes of section 9(1A).
- (10) A decision of a Special Assessment Board shall be that of the majority of the members in attendance or, if there is no majority, shall be that of the chairman thereof.
- (11) Subject to this section, the procedure of a Special Assessment Board shall be such as the Commissioner may determine.

(Added 76 of 1982 s. 14)

16F. Certificates of assessment

An Ordinary Assessment Board, where it has made an assessment under section 16D(5) or a Special Assessment Board, where it has made an assessment under section 16E(8) or (9), shall issue to the employee, the employer and the Commissioner a certificate in such form as may be specified by the Commissioner giving details of the assessment.

(Added 76 of 1982 s. 14)

16G. Review of assessments

- (1) An objection to an assessment by an Ordinary Assessment Board under section 16D(5) or by a Special Assessment Board under section 16E(8) or (9) may be made by the employer or the employee in writing to the Commissioner within 14 days after the date of issue to him of the relevant certificate under section 16F, or within a further time that the Commissioner, in the circumstances of any particular case, thinks fit, stating the ground of the objection, and a copy of the objection shall be sent by the objector—
 - (a) where the objector is the employer, to the employee; and
 - (b) where the objector is the employee, to the employer.*(Replaced 59 of 1988 s. 5)*
- (1A) On receipt by the Commissioner of an objection under subsection (1)—
 - (a) the Commissioner shall forward a copy of the objection to the Ordinary Assessment Board or the Special Assessment Board, as the case may be; and
 - (b) all issued certificates and proceedings in progress under or pursuant to section 16A are void. *(Added 59 of 1988 s. 5)*
- (2) On receipt of a copy of the objection forwarded under subsection (1A) or under section 16A(4)(a), the Ordinary Assessment Board or the Special Assessment Board, as the

case may be, shall review its assessment and, after taking into account the objection, may confirm or vary the assessment. *(Amended 59 of 1988 s. 5)*

- (3) Upon completing a review under subsection (2) the Ordinary Assessment Board or the Special Assessment Board, as the case may be, shall issue to the employee, the employer and the Commissioner a certificate in such form as may be specified by the Commissioner stating—
 - (a) that the original assessment is confirmed and giving details thereof; or
 - (b) details of the assessment as varied.
- (4) Upon the issue of a certificate under subsection (3), the certificate referred to in subsection (1) shall be cancelled.
- (5) Notwithstanding anything in subsection (2), (3) or (4), where upon a review of an assessment by an Ordinary Assessment Board under subsection (2), it appears to the Ordinary Assessment Board that the claim for compensation to which the assessment relates is one to which section 9(1A) applies, it shall not complete the review but shall refer the claim to a Special Assessment Board.
- (6) The provisions of sections 16E, 16F and this section shall apply to a claim referred to a Special Assessment Board under subsection (5) as if it were a claim referred to a Special Assessment Board under section 16D(6).
- (7) Upon the issue by the Special Assessment Board of a certificate under section 16F in respect of a claim referred to it under subsection (5), the certificate issued under section 16F in respect of that claim by the Ordinary Assessment Board shall be cancelled.
- (8) Subsections (2), (3), (4), (5), (6) and (7) shall not apply where an assessment is reviewed under section 16GA (2). *(Added 31 of 1985 s. 6)*

(Added 76 of 1982 s. 14)

16GA. Review of assessments other than under section 16G

- (1) Without prejudice to section 16G, an Ordinary Assessment Board or a Special Assessment Board may, on its own initiative, review its assessment under section 16D(5) or section 16E(8) or (9), as the case may be, within 3 months after the date of issue of a certificate under section 16F, or within such further time as the Ordinary Assessment Board or the Special Assessment Board, in the circumstances of any particular case, thinks fit, if the assessment—
 - (a) was made in ignorance of, or under a mistake as to, the true nature or the extent of the injury; or *(Amended 60 of 1986 s. 3)*
 - (b) was based upon any false or misleading information or statement given or made,and may confirm or vary the assessment.
- (2) An Ordinary Assessment Board or a Special Assessment Board may review its assessment under subsection (1) and at the same time take into account any objection under section 16G(1).
- (3) Before proceeding with a review under subsection (1), the Ordinary Assessment Board or the Special Assessment Board, as the case may be, shall notify the employer, the employee and the Commissioner in writing of the review and the ground of the review specified in subsection (1), and (where applicable) that an objection under section 16G(1) is being taken into account.
- (4) Upon completing a review under subsection (1) or (2), the Ordinary Assessment Board or the Special Assessment Board, as the case may be, shall issue to the employer, the employee

and the Commissioner a certificate in such form as may be specified by the Commissioner stating—

- (a) that the original assessment is confirmed and giving details thereof; or
 - (b) details of the assessment as varied.
- (5) Upon the issue of a certificate under subsection (4), the certificate referred to in subsection (1) shall be cancelled.
- (6) Notwithstanding anything in subsection (1), (2), (4) or (5), where upon a review of an assessment by an Ordinary Assessment Board under subsection (1) or (2), it appears to the Ordinary Assessment Board that the claim for compensation to which the assessment relates is one to which section 9(1A) applies, it shall not complete the review but shall refer the claim to a Special Assessment Board.
- (7) The provisions of sections 16E and 16F and of this section shall apply to a claim referred to a Special Assessment Board under subsection (6) of this section as if it were a claim referred to a Special Assessment Board under section 16D(6).
- (8) Upon the issue by the Special Assessment Board of a certificate under section 16F in respect of a claim referred to it under subsection (6) of this section, the certificate issued under section 16F in respect of the claim by the Ordinary Assessment Board shall be cancelled.

(Added 31 of 1985 s. 7)

16H. Certificates as evidence

A certificate purporting to be issued—

- (a) under section 16F, other than a certificate cancelled under section 16G(4) or (7) or section 16GA(5) or (8); or

- (b) under section 16G(3) or section 16GA(4), (*Amended 31 of 1985 s. 8*)

and to be signed by or for an Ordinary Assessment Board or a Special Assessment Board, as the case may be, shall be admitted in evidence without further proof on its production in any court and—

- (i) until the contrary is proved, it shall be presumed that the certificate is so issued and signed; and
- (ii) shall be evidence of the matters stated therein.

(Added 76 of 1982 s. 14)

16I. Attendance of employee for purposes of assessment, etc.

- (1) The Commissioner, an Ordinary Assessment Board or a Special Assessment Board may by notice in writing to an injured employee require the employee to attend for the purposes of an examination or assessment on such date and at such time and place as is specified in the notice.
- (2) An employee who receives a notice under subsection (1) shall as soon as possible notify his employer (if any) of the date, time and place for such attendance.
- (3) For the purposes of an attendance referred to in subsection (1) an employer shall, if the employee is not already—
 - (a) on leave of absence from work; and
 - (b) receiving periodical payments under section 10,
 grant to the employee leave of absence from work and, subject to subsection (4), shall pay to the employee, within 7 days after the day on which wages are normally paid to the employee next following such absence from work, the wages or salary in respect of such absence from work or the wages or salary he would have earned if he had worked during such period.

- (4) No wages or salary shall be payable under subsection (3) by an employer unless he was the employer of the employee at the time of the accident.
- (5) A claim for wages or salary payable under subsection (3) may be brought—
 - (a) as an action for civil debt in any court or tribunal of competent jurisdiction; or
 - (b) as a claim for compensation in the Court, either independently of or in conjunction with any other claim for compensation brought in the Court.
- (6) Any employer who without reasonable excuse contravenes subsection (3) commits an offence and is liable to a fine at level 5. (*Amended 63 of 1992 s. 9; 36 of 1996 s. 12*)

(Added 76 of 1982 s. 14)

17. (*Repealed 36 of 1996 s. 13*)

17A. (*Repealed 36 of 1996 s. 14*)

17B. (*Repealed 36 of 1996 s. 15*)

18. Appeals to the Court

- (1) Subject to this section, an appeal shall lie to the District Court from any decision or assessment of the Commissioner, an Ordinary Assessment Board or a Special Assessment Board under section 16A, 16D, 16E, 16G or 16GA. (*Amended 31 of 1985 s. 10*)
- (2) No appeal shall lie after the expiry of 6 months from the date of the decision or, in the case of an assessment, of the date of issue of the relevant certificate under section 16A, 16F, 16G or 16GA, as the case may be: (*Amended 31 of 1985 s. 10; 59 of 1988 s. 8*)

Provided that the Court may, if it thinks fit, extend the time within which to appeal under this section notwithstanding that the time has elapsed.

- (3) On an appeal under this section, the Court may confirm or reverse any decision, or confirm or vary any assessment, of the Commissioner, an Ordinary Assessment Board or a Special Assessment Board, or may substitute its own assessment, and may determine the amount of compensation payable and may make such order in respect thereof, including any order as to costs, as it thinks fit.

(Replaced 76 of 1982 s. 16)

18A. Determination of claims by the Court

- (1) Except where otherwise provided under this Ordinance, all claims for compensation, except to the extent that such claims are determined—
 - (a) by agreement under section 8; or *(Replaced 1 of 1995 s. 10)*
 - (aa) *(Repealed 1 of 1995 s. 10)*
 - (ab) by a Certificate of Compensation Assessment for Fatal Case or Review Certificate of Compensation Assessment for Fatal Case; or *(Added 52 of 2000 s. 12)*
 - (ac) by a Certificate for Funeral and Medical Attendance Expenses or Review Certificate for Funeral and Medical Attendance Expenses; or *(Added 52 of 2000 s. 12)*
 - (b) by certificate under section 16A; or *(Replaced 1 of 1995 s. 10)*
 - (c) by agreement under section 16CA, *(Added 1 of 1995 s. 10. Amended E.R. 1 of 2018)*
 - (d) *(Repealed 36 of 1996 s. 16)*

and any matter arising out of proceedings in respect of such claims shall be determined by the District Court, whatever may be the amount involved, and the Court may, for that purpose, call upon any person to give evidence, if the Court is of the opinion that such person is, by virtue of his expert knowledge, able to assist the Court.

- (2) An employee may, in the prescribed form and manner, make an application for enforcing his claim for compensation to the Court:

Provided that no application shall be made—

- (a) in the case of a claim in respect of an injury to which section 16A applies, until after the expiry of the payment period within the meaning of subsection (11) of that section. *(Amended E.R. 1 of 2018)*
 - (b) *(Repealed 36 of 1996 s. 16)*
- (3) The Court shall, as soon as practicable after it receives a claim for compensation where death results from the injury concerned, cause to be sent to the Commissioner a notice advising the Commissioner of the receipt of that claim. *(Added 52 of 2000 s. 12)*

(Added 76 of 1982 s. 16)

19. Review

- (1) Any periodical payment payable under this Ordinance either under agreement between the parties or under an order of the Court, may be reviewed by the Court on the application either of the employer or of the employee:

Provided that where the application for review is based on a change in the condition of the employee any such application shall be supported by a certificate of a registered medical practitioner, registered Chinese medicine practitioner or registered dentist. *(Amended 16 of 2006 s. 18)*

- (2) Subject to the provisions of this Ordinance, any periodical payment may, on review under this section, be continued, increased, diminished, converted to a lump sum, or ended. If the accident is found to have resulted in permanent incapacity, the provisions of section 7 or 9 shall apply, as the case may be. *(Replaced 55 of 1969 s. 16)*
- (3) Where application is made by an employer under this section for any periodical payment to be ended or diminished and the application is supported by the certificate of a registered medical practitioner, registered Chinese medicine practitioner or registered dentist, the employer may pay into Court the periodical payment, or so much thereof as is equal to the amount by which he contends that the periodical payment should be diminished, to abide the decision of the Court made on a review under this section. *(Amended 16 of 2006 s. 18)*
- (4) In making a review under this section, the Court shall have regard only to the capacity for work of the employee as affected by the accident.

(Amended 44 of 1980 s. 15)

20. Limitation of power of employer to end or decrease periodical payments

Subject to the provisions of sections 10(5), 16(4) and 19(3), an employer shall not be entitled, otherwise than in pursuance of an order of the Court or a certificate under section 16A— *(Amended 55 of 1969 s. 17; 76 of 1982 s. 17; 1 of 1995 s. 11; 36 of 1996 s. 17)*

- (a) to end periodical payments except—
 - (i) where an employee resumes work and his earnings are not less than the earnings which he was obtaining before the accident; or
 - (ii) where an employee dies;

- (b) to diminish periodical payments except—
 - (i) where an employee in receipt of periodical payments in respect of total incapacity has actually returned to work; or
 - (ii) where the earnings of an employee in receipt of periodical payments in respect of partial incapacity have actually been increased.

(Amended 44 of 1980 s. 15)

21. Jurisdiction of the Court

- (1) Save as is provided in this Ordinance and any rules made thereunder, the District Court shall, upon or in connection with any question to be investigated or determined thereunder, have all the powers and jurisdictions exercisable by the District Court in or in connection with civil actions in such Court in like manner as if the Court had by the District Court Ordinance (Cap. 336) been empowered to determine all claims for compensation under this Ordinance whatever the amount involved and the law, rules and practice relating to such civil actions and to the enforcement of judgments and orders of the Court shall mutatis mutandis apply. *(Amended 76 of 1982 s. 18)*
- (2) The Court shall have jurisdiction to hear and determine any action notwithstanding that the amount claimed exceeds the sum mentioned in section 33 of the District Court Ordinance (Cap. 336). *(Added 55 of 1969 s. 18. Amended 79 of 1981 s. 3)*
- (3) The Court may, in any proceedings brought in the Court for the recovery of any compensation, order that there shall be included in the sum for which an order for payment is made interest at such rate as it thinks fit on the whole or any part of such sum for the whole or any part of the period between the

date of the accident and the date of the order. (*Added 76 of 1982 s. 18*)

22. Power of the Court to submit questions of law

- (1) The Court may, if it thinks fit, submit any question of law for the decision of the Court of Appeal.
- (2) Such submission shall be in the form of a special case in accordance with rules made under this Ordinance.

23. Appeals

- (1) Subject to the provisions of this section and of section 13, an appeal shall lie to the Court of Appeal from any order of the Court.
- (2) Except with the leave of the Court or of the Court of Appeal (which shall not be granted unless in the opinion of the Court of Appeal some substantial question of law is involved in the appeal) no appeal shall lie if the amount in dispute is less than \$1,000.
- (3) No appeal shall lie in any case in which the parties have agreed to abide by the decision of the Court, or in which the order of the Court gives effect to an agreement come to by the parties.
- (4) No appeal shall lie after the expiration of 30 days from the date of the order of the Court:

Provided that the Court of Appeal may, if it thinks fit, extend the time within which to appeal under this section notwithstanding that that time has elapsed.

24. Liability in case of employees employed by sub-contractors

- (1) Where any person (in this section referred to as the principal contractor), in the course of or for the purposes of his trade or business, contracts with a sub-contractor for the execution

by or under the sub-contractor of the whole or any part of any work undertaken by the principal contractor, the principal contractor shall be liable to pay to any employee employed by that sub-contractor or by any other sub-contractor in the execution of the work any compensation under this Ordinance which the principal contractor would have been liable to pay if that employee had been immediately employed by him; and where compensation is claimed from or proceedings are taken against the principal contractor, then, in the application of this Ordinance, references to the principal contractor shall be substituted for references to the employer, except that the amount of any compensation calculated by reference to earnings shall be calculated by reference to the earnings of the employee under the employer by whom he is immediately employed.

- (1A) Where a principal contractor is liable to pay compensation under this section, he shall be liable for the offences under sections 6C(15), 6D(10), 6E(16), 10(10), 16A(12) and 16I(6) as if he were an employer. (*Added 52 of 2000 s. 13*)
- (2) Where the principal contractor is liable to pay compensation under this section, he shall be entitled to be indemnified by any person who would have been liable to pay compensation to the employee independently of this section.
- (3) An employee employed by a sub-contractor may issue a written request to the sub-contractor to supply to the employee the name and address of the principal contractor.
- (4) A sub-contractor shall within 7 days after the date of issue of a written request under subsection (3)—
 - (a) supply to the employee the name and address of the principal contractor; and
 - (b) deliver a copy of the written request to the principal contractor.

- (5) A sub-contractor who without reasonable excuse fails to comply with subsection (4) commits an offence and is liable to a fine at level 5. (*Amended 63 of 1992 s. 11; 36 of 1996 s. 18*)
- (6) An employee shall, before making any claim or application by virtue of this section against a principal contractor, serve on the principal contractor a notice in writing stating—
 - (a) the name and address of the employee;
 - (b) the name and address of the sub-contractor by whom he is employed;
 - (c) the address of the place of employment of the employee;
 - (d) the particulars of the accident and the injury suffered; and
 - (e) the amount of compensation to be claimed.
- (7) Where a claim or application is made by virtue of this section against a principal contractor, the principal contractor shall give notice thereof to the sub-contractor specified in the notice served on the principal contractor under subsection (6), who shall thereupon be entitled to intervene in any application made against the principal contractor.
- (8) Nothing in this section shall be construed as preventing an employee recovering compensation under this Ordinance from a subcontractor instead of the principal contractor.

(Replaced 76 of 1982 s. 19)

25. Remedies against both employer and third party

- (1) Where the injury in respect of which compensation is payable was caused in circumstances creating a legal liability in some person other than the employer (in this section referred to as the third party) to pay damages to the employee in respect thereof—

- (a) the employee may both claim compensation under this Ordinance and take proceedings against the third party in the Court of First Instance or, subject to the provisions of the District Court Ordinance (Cap. 336) relating to the limits of jurisdiction, in the District Court to recover damages: (*Amended 25 of 1998 s. 2*)

Provided that where any such proceedings are instituted the court in which the action is tried shall, in awarding damages, have regard to the amount which, by virtue of paragraph (b), has become or is likely to become payable to the employer by the third party; and

- (b) the employer by whom compensation is payable, and any person who may be called upon to pay an indemnity under section 24 in the case of an employee employed by a sub-contractor, shall have a right of action against the third party for the recovery of any sum which he is obliged to pay as a result of the accident, whether by way of compensation or indemnity or by virtue of any agreement made with the employee prior to the accident, and may exercise such right either by joining in an action begun by the employee against the third party or by instituting separate proceedings:

Provided that the amount recoverable under this paragraph shall not exceed the amount of damages, if any, which in the opinion of the court would have been awarded to the employee but for the provisions of this Ordinance.

- (2) An employee shall, before instituting proceedings for damages under subsection (1), in writing notify the employer of his intention to do so and shall likewise notify the employer if he decides to abandon such proceedings or to relinquish or settle his claim for damages, and shall in connection with any

such notification furnish such particulars as the employer may require.

- (3) If an employee who has—
 - (a) failed to notify the employer of his intention to institute proceedings under subsection (1); or
 - (b) in connection with any such notification, failed to furnish such particulars as the employer may require, recovers damages against a third party in any such proceedings, then—
 - (i) where the amount of damages recovered is equal to or greater than the amount of compensation which would, but for this subsection, be payable, no compensation shall be payable; or
 - (ii) where the amount of damages recovered is less than the amount of compensation which would, but for this subsection, be payable, the amount of compensation payable shall be a sum equal to the difference between the amount of damages recovered and the amount of compensation which would, but for this subsection, be payable.
- (4) In any proceedings to which subsection (3) applies the court may, where any sum of compensation referred to in that subsection has already been paid, make such order with respect to the repayment of such sum or any part thereof as is necessary to give effect to that subsection.
- (5) Notwithstanding anything to the contrary in any other enactment, where written notice of intention to institute proceedings under subsection (1)(b) has been given by an employer, or by any person who may be called upon to pay an indemnity under section 24, to a third party within 12 months of the receipt by the employer or such person of due notice of the accident concerned, no such proceedings

shall lapse, or be barred, under any enactment relating to the limitation of actions, until after the expiry of a period of 3 months from the date upon which a claim for compensation in respect of such accident has been—

- (a) determined by certificate under section 16A; or
 - (aa) settled by agreement under section 16CA; or *(Added 64 of 1992 s. 6)*
 - (aaa) determined by a Certificate of Compensation Assessment for Fatal Case or Review Certificate of Compensation Assessment for Fatal Case; or *(Added 52 of 2000 s. 14)*
 - (b) *(Repealed 36 of 1996 s. 19)*
 - (c) finally determined by a court,
as the case may be.
- (6) Where notice is given to the employer under subsection (2) and the provisions of section 24 apply, the employer shall give notice thereof to any person who may be called upon to pay an indemnity under that section.

(Replaced 76 of 1982 s. 19)

26. Remedies independently of Ordinance against employer

- (1) Where any injury is caused to an employee by the negligence, breach of statutory duty or other wrongful act or omission of the employer, or of any person for whose act or default the employer is responsible, nothing in this Ordinance shall limit or in any way affect any civil liability of the employer independently of this Ordinance: *(Amended 32 of 2000 s. 48)*

Provided that any damages awarded against an employer in an action at common law or under any enactment in respect of any such negligence, breach of statutory duty, wrongful act or omission, shall be reduced by the value, as decided by the Court of First Instance or the District Court, as the case may

be, of any compensation which has been paid or is payable under the provisions of this Ordinance in respect of the injury sustained by the employee. (*Replaced 55 of 1969 s. 20. Amended 44 of 1980 s. 15; 76 of 1982 s. 20; 25 of 1998 s. 2; 52 of 2000 s. 15*)

- (2) If, within the time limited for taking proceedings under this Ordinance by section 14(1), an action is brought to recover damages independently of this Ordinance for injury caused by an accident, and it is determined in such action or on appeal that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this Ordinance, the action shall be dismissed; but the court in which the action is tried, or, if the determination is the determination (on an appeal by either party) by an appellate tribunal, that tribunal, shall, if the plaintiff so choose, proceed to assess such compensation, but may deduct from such compensation all or part of the costs, which, in its judgment, have been caused by the plaintiff bringing the action instead of proceeding under this Ordinance. In any proceeding under this subsection, when a court or appellate tribunal assesses the compensation, it shall give a certificate of the compensation it has awarded and the directions it has given as to the deduction of costs, and such certificate shall have the force and effect of an order of the District Court under this Ordinance:

Provided that an appellate tribunal may, instead of itself assessing such compensation, remit the case to the District Court for the assessment of the compensation, and in such case may order the District Court to deduct from the amount of compensation assessed by it all or part of such costs as aforesaid. (*Amended 76 of 1982 s. 20*)

- (3) Where, within the time limited for taking proceedings under this Ordinance by section 14(1), an action is brought to

recover damages independently of this Ordinance in respect of an injury giving rise to a claim for compensation under this Ordinance, and it is determined in that action that—

- (a) damages are recoverable independently of this Ordinance subject to such reduction as is mentioned in section 21(1) of the Law Amendment and Reform (Consolidation) Ordinance (Cap. 23); and
- (b) the employer would have been liable to pay compensation under this Ordinance,

subsection (2) shall apply in all respects as if the action had been dismissed, and, if the plaintiff chooses to have compensation assessed and awarded in accordance with the said subsection (2), no damages shall be recoverable in the said action.

- (4) Without prejudice to section 21(3), where a court or appellate tribunal assesses compensation in accordance with subsection (2) it may include in the sum awarded interest at such rate as it thinks fit on the whole or any part of such sum for the whole or any part of the period between the date of the accident and the date of the certificate given under that subsection. (*Added 76 of 1982 s. 20*)

[cf. 1925 c. 84 s. 29 U.K.]

27. Limitation of right of indemnity against third party under section 25

Where an employee or his legal personal representative or member of his family has recovered compensation under this Ordinance or any sum by virtue of an agreement referred to in section 25(1)(b) in respect of an injury caused under circumstances which would give a right to recover reduced damages in respect thereof by virtue of section 21 of the Law Amendment and Reform (Consolidation) Ordinance (Cap. 23), from some person other

than the employer (hereinafter referred to as the third party), any right conferred by section 25 of this Ordinance on the person by whom the compensation or sum was paid, or on any person called on to pay an indemnity under section 24 of this Ordinance, to be indemnified by the third party shall be limited to a right to be indemnified in respect of such part only of the compensation, sum or indemnity paid or payable as bears to the total compensation, sum or indemnity so paid or payable the same proportion as the said reduced damages bear to the total damages which would have been recoverable if the employee had not been at fault.

(Replaced 76 of 1982 s. 21. Amended 52 of 2000 s. 16)

[cf. 1945 c. 28 s. 2(2) U.K.]

28. *(Repealed 66 of 1993 s. 4)*

29. **Application to persons employed on ships**

(1) This Ordinance shall apply to masters and seafarers who are employees within the meaning of this Ordinance and are members of the crew of a Hong Kong ship, subject to the following modifications— *(Amended 44 of 1980 s. 15; 44 of 1995 s. 143)*

- (a) the notice of accident and the claim for compensation may, except where the person injured is the master, be given to the master of the ship as if he were the employer, but where the accident happened and the incapacity commenced on board the ship it shall not be necessary for any seafarer to give notice of the accident; *(Amended 44 of 1995 s. 143)*
- (b) in the case of the death of the master or seafarer, the application for compensation shall be made within 2 years after the occurrence of the death or, where the ship has been or is deemed to have been lost with all hands, within 2 years of the date on which the ship was, or

is deemed to have been, so lost; (*Amended 44 of 1995 s. 143*)

- (c) whenever in the course of any legal proceeding under this Ordinance the testimony of any witness is required in relation to the subject matter of the proceeding, then, upon due proof that the witness cannot be found in Hong Kong, any deposition which the witness may have previously made on oath in relation to the same subject matter before any justice or magistrate in Her Majesty's dominions or in any place where Her Majesty exercises jurisdiction or before any British Consular Officer elsewhere and which, if the proceeding had been under the Merchant Shipping Act 1894 (1894 c. 60 U.K.)[#], would have been admissible in such proceeding by virtue of sections 691 and 695 of that Act, shall be admissible in evidence subject to similar conditions as are laid down in the said sections 691 and 695;
 - (d) in case of the death of a master or seafarer, no reimbursement of the reasonable expenses of the funeral shall be payable, if the owner of the ship is, under any law in force for the time being in Hong Kong relating to merchant shipping, liable to pay the expenses of burial. (*Amended 76 of 1982 ss. 22 & 37; 44 of 1995 s. 143; 52 of 2000 s. 17*)
- (2) This Ordinance shall also apply to any person, not being a master or seafarer, employed or engaged in any capacity on board and on or about the business of a Hong Kong ship and if he is otherwise an employee within the meaning of this Ordinance. (*Amended 44 of 1980 s. 15; 44 of 1995 s. 143*)
 - (3) (*Repealed 76 of 1982 s. 22*)
 - (4) In this section—

Hong Kong ship (香港船舶) includes any ship or vessel registered or licensed in Hong Kong; (*Amended 23 of 1998 s. 2*)

ship (船舶), ***vessel*** (船隻), ***seafarer*** (海員) and ***master*** (船長) shall have the respective meanings ascribed to them by the Merchant Shipping (Seafarers) Ordinance (Cap. 478) or the Shipping and Port Control Ordinance (Cap. 313), as the case may require. (*Replaced 44 of 1995 s. 143*)

Editorial Note:

Please also see following—

- (a) in relation to the Merchant Shipping Act 1894, Part 3 of Schedule 5 to Cap. 415 and s. 1 of Schedule 2 to Cap. 508;
- (b) in relation to the Merchant Shipping Acts 1894 to 1979, s. 117 of Cap. 281, s. 103 of Cap. 415 and s. 142 of Cap. 478.

30. **Application to persons employed on non-Hong Kong ships**

- (1) If the employer submits or has agreed to submit to the jurisdiction of the Court, then, notwithstanding that the accident causing the personal injury occurred outside Hong Kong, this Ordinance shall apply, subject to the modifications in subsections (2) and (3) and section 30A, to seafarers who are employees within the meaning of this Ordinance and, having been recruited or engaged in Hong Kong, are members of the crew of a ship which is not a Hong Kong ship as defined in section 29(4). (*Amended 44 of 1980 s. 15; 59 of 1988 s. 9; 44 of 1995 s. 143; 23 of 1998 s. 2*)
- (2) The notice of accident and the claim for compensation may be given to the master of the ship as if he were the employer, but where the accident occurred and the incapacity commenced on board the ship it shall not be necessary to give any notice of the accident. (*Replaced 76 of 1982 s. 23*)

- (3) In the case of the death of a seafarer to whom this section applies, the application for compensation shall be made within 2 years after the death occurred or, where the ship has been or is deemed to have been lost with all hands, within 2 years after the date on which the ship was, or is deemed to have been, so lost. (*Amended 44 of 1995 s. 143*)
- (4) (*Repealed 59 of 1988 s. 9*)
- (5) In this section—
seafarer (海員) has the meaning that it has for the purposes of the Merchant Shipping (Seafarers) Ordinance (Cap. 478). (*Replaced 44 of 1995 s. 143*)
(*Added 55 of 1969 s. 21A. Amended 23 of 1998 s. 2*)

30A. Testimony of witness outside Hong Kong

- (1) Where in a proceeding under this Ordinance in relation to an injury that occurred outside Hong Kong the testimony of a witness is required, on proof that the witness cannot be found in Hong Kong a deposition, or a certified copy of it, which the witness may have previously made on oath outside Hong Kong in relation to that injury before a justice or magistrate in Her Majesty's dominions or in any place where Her Majesty exercises jurisdiction or before any British Consular Officer elsewhere is, subject to subsection (2), admissible in evidence without proof of the signature or official character of the person appearing to have signed the deposition.
- (2) The person before whom the deposition was made shall sign it and certify that the witness was present at the making of the deposition.

(*Added 59 of 1988 s. 10*)

30B. Application to an employee injured outside Hong Kong

- (1) In this section—

foreign compensation (外地補償) means compensation paid to an employee in respect of an injury under the law of a place outside Hong Kong where the injury occurred;

person carrying on business (經營業務的人) has the same meaning as in the Business Registration Ordinance (Cap. 310).

- (2) This Ordinance also applies where personal injury by accident arising out of and in the course of employment is caused to an employee outside Hong Kong where the employee's contract of employment is entered into in Hong Kong with an employer who is a person carrying on business in Hong Kong.
- (3) Compensation payable under this Ordinance to an employee referred to in subsections (2) and (5) shall be reduced by the amount of any foreign compensation paid to him in respect of the same injury. (*Amended 63 of 1992 s. 12*)
- (4) Where foreign compensation is paid to an employee after compensation in respect of the same injury is paid under this Ordinance, the amount paid under this Ordinance, not exceeding the amount of the foreign compensation paid, shall be repaid to the employer by the employee and the amount is recoverable as a civil debt.
- (5) If an employer who is a person carrying on business outside Hong Kong submits or has agreed to submit to the jurisdiction of the Court, then, notwithstanding that the accident causing the personal injury occurred outside Hong Kong, this Ordinance shall apply to employees within the meaning of this Ordinance who have been recruited or engaged in Hong Kong. (*Added 63 of 1992 s. 12*)

(*Added 59 of 1988 s. 10*)

31. Contracting out

- (1) Any contract or agreement whether made before or after the commencement of this Ordinance, whereby an employee relinquishes any right to compensation from an employer for personal injury by accident arising out of and in the course of his employment, shall, subject to subsection (2), be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under the provisions of this Ordinance.
- (2) The Commissioner may, if satisfied that, by reason of old age or serious physical defect or infirmity, a person, if employed as an employee, is specially liable to meet with an accident, or, if he meets with an accident is specially liable to sustain injury, in connection with any contract of such employment, authorize the person and the employer to enter into an agreement in writing reducing or giving up the right of such person to compensation under the provisions of this Ordinance in respect of any accident which is caused or contributed to by the old age or serious physical defect or infirmity.
- (3) An agreement entered into under subsection (2) shall be ineffective unless the Commissioner certifies that in his opinion such agreement is fair and reasonable.

(Amended 55 of 1969 s. 22; 44 of 1980 s. 15)

Part III

Compensation for Occupational Diseases

(Format changes—E.R. 1 of 2018)

32. Compensation in the case of occupational disease

- (1) If the total or partial incapacity (whether of a permanent or temporary nature) or the death of an employee results from an occupational disease and is due to the nature of any employment in which the employee was employed at any time within the prescribed period immediately preceding such incapacity or death, whether under one or more employers, then, the employee or members of his family, as the case may be, shall be entitled to compensation under this Ordinance as if such incapacity or death had been caused by an accident arising out of and in the course of employment in respect of which the provisions of section 5 apply, and the provisions of this Ordinance (including in particular section 15) shall, *mutatis mutandis*, apply thereto, subject to the following modifications— *(Amended 1 of 1995 s. 12; 52 of 2000 s. 18)*
 - (a) the incapacity or the death shall be treated as the happening of the accident;
 - (b) if it is proved that the employee, at the time of entering into the employment, wilfully and with intent to deceive represented in writing that he had not previously suffered from the disease resulting in the incapacity or death, compensation shall not be payable;
 - (c) subject to subsection (3), the compensation shall be recoverable from the employer who last employed the employee during the prescribed period immediately

- preceding the incapacity or death in the employment to the nature of which the disease was due;
- (d) the amount of the compensation shall be calculated with reference to the earnings of the employee under the employer from whom the compensation is recoverable pursuant to paragraph (c) or subsection (3);
 - (e) the employer to whom notice of incapacity or death is given shall be the employer who last employed the employee during the prescribed period immediately preceding the incapacity or death in the employment to the nature of which the disease was due, and the notice may be given notwithstanding that the employee has voluntarily left such employer's employment.
- (2) Where an employee suffers incapacity or dies as a result of an occupational disease, the employee or members of his family, as the case may be, shall, if so required, furnish to the employer who last employed the employee during the prescribed period immediately preceding the incapacity or death in the employment to the nature of which the occupational disease was due such information as to the names and addresses of all other employers who employed him in such employment during such period as he or they may possess, and, if such information is not furnished or is not sufficient to enable that employer to take proceedings under subsection (3), that employer, upon proving that the disease was not contracted whilst the employee was in his employment, shall not be liable to pay compensation.
(Amended 52 of 2000 s. 18)
- (3) If the employer who last employed the employee during the prescribed period immediately preceding the incapacity or death in the employment to the nature of which the occupational disease was due alleges that the disease was in fact contracted whilst the employee was in the employment

of some other employer during such period, and not whilst in his employment, he may join such other employer as a party to the proceedings in respect of the claim for compensation, and if the allegation is proved that other employer shall be the employer from whom the compensation is recoverable.

- (4) If the occupational disease is of such a nature as to be contracted by a gradual process, any other employers who during the prescribed period immediately preceding the incapacity or death employed the employee in the employment to the nature of which the disease was due shall be liable to make to the employer from whom compensation is recoverable pursuant to subsection (1)(c) or subsection (3) such contribution as, in default of agreement, may be determined by a Court at the hearing of the claim for compensation, or, if the amount of and liability to pay the compensation is not in dispute, by the Court at a separate hearing.
- (5) Nothing in subsection (2) shall be construed as preventing the employee or members of his family, as the case may be, from recovering compensation under this Part from any other employer who employed the employee in the employment to the nature of which the occupational disease was due during the prescribed period immediately preceding the incapacity or death in the event of the employer who last employed the employee in such employment proving that the disease in question was not contracted whilst the employee was in his employment. (*Amended 52 of 2000 s. 18*)
- (6) For the purposes of this section—
 - (a) the date of the incapacity shall, in the absence of agreement, be such date as the Court shall determine as being the date upon which the incapacity commenced; and no employee shall be prejudiced in any claim for compensation under this Part by reason only of the

fact that the notice of incapacity given to the employer specified some other date;

- (b) the prescribed period shall be the period specified in the fourth column of the Second Schedule in relation to the trade, industry or process specified in the third column of that Schedule.

(Added 19 of 1964 s. 5. Amended 55 of 1969 s. 23; 44 of 1980 s. 15)

33. Medical examination before employment

- (1) Any employer may, before employing an employee in any trade, industry or process specified in the third column of the Second Schedule, require the employee to undergo a medical examination by a registered medical practitioner at the cost of the employer. *(Amended 16 of 2006 s. 19)*
- (2)
 - (a) Subject to paragraph (b), any employee who refuses to undergo a medical examination required under subsection (1) shall not be entitled to recover from that employer compensation under this Ordinance for incapacity or death suffered as a result of an occupational disease.
 - (b) Paragraph (a) shall not apply unless the refusal to undergo the medical examination is evidenced by writing under the hand of the employee.

(Added 19 of 1964 s. 5. Amended 44 of 1980 s. 15)

34. Presumption as to cause of occupational disease

If an employee who suffers incapacity or dies as a result of an occupational disease was within the period specified opposite to that disease in the fourth column of the Second Schedule immediately preceding such incapacity or death employed in any trade, industry or process specified opposite to that disease in

the third column of that Schedule, it shall be presumed, until the contrary is proved, that such disease was due to the nature of such employment.

(Added 19 of 1964 s. 5. Amended 55 of 1969 s. 24; 44 of 1980 s. 15)

35. Amendment of Second Schedule

The Commissioner may from time to time by order, which shall be published in the Gazette, amend the Second Schedule.

(Added 19 of 1964 s. 5. Amended 66 of 1993 s. 5)

36. Saving in case of diseases other than occupational diseases

- (1) Subject to subsection (2), nothing in this Part shall prejudice the right of an employee to recover compensation under this Ordinance in respect of a disease to which this Part does not apply, if the disease is a personal injury by accident within the meaning of section 5. *(Added 19 of 1964 s. 5. Amended 44 of 1980 s. 15; 51 of 1980 s. 48)*
 - (2) Subsection (1) does not apply to any incapacity resulting from—
 - (a) pneumoconiosis or mesothelioma (or both) in respect of which compensation is recoverable under the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap. 360); or *(Replaced 6 of 2008 s. 45)*
 - (b) noise-induced deafness in respect of which compensation is payable under the Occupational Deafness (Compensation) Ordinance (Cap. 469). *(Replaced 21 of 1995 s. 41)*
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Part IIIA

Prostheses and Surgical Appliances

(Amended 44 of 1980 s. 6)

(Format changes—E.R. 1 of 2018)

36A. Interpretation of Part IIIA

In this Part—

Board (委員會) means the Prostheses and Surgical Appliances Board appointed under section 36M(1); *(Added 44 of 1980 s. 7)*

Director (署長) means the Director of Health; *(Added 44 of 1980 s. 7. Amended L.N. 76 of 1989)*

prosthesis (義製人體器官) means any artificial item which replaces a part of the body removed or amputated as a result of an injury;

surgical appliance (外科器具) means any artificial item which supports directly or indirectly the structure or function or a part of the body impaired as a result of an injury.

(Added 67 of 1971 s. 2)

36B. Employer's liability to pay for the cost of supplying and fitting prosthesis or surgical appliance

- (1) Subject to the provisions of this section, if, in any employment, personal injury is caused to an employee by accident arising out of and in the course of the employment, the employer shall, notwithstanding any other compensation he may be liable to pay under this Ordinance, be liable to pay for the cost of supplying and fitting to the employee a

prosthesis or surgical appliance required by him as a result of his injury. (*Amended 76 of 1982 s. 24*)

- (1A) Notwithstanding anything in section 5(2)(a), the employer shall be liable under subsection (1) whether or not the injury has resulted or is likely to result in any temporary incapacity or permanent incapacity causing a loss of earning capacity. (*Added 76 of 1982 s. 24. Amended 1 of 1995 s. 13; 67 of 1996 s. 6*)
- (2) The employer shall not be liable under subsection (1) unless—
- (a) the employee submits himself to treatment by a registered medical practitioner, a registered Chinese medicine practitioner or a registered dentist; (*Amended 16 of 2006 s. 20*)
 - (b) the prosthesis or surgical appliance is supplied and fitted to the employee; and
 - (c) the prosthesis or surgical appliance so supplied and fitted is—
 - (i) manufactured or on sale in Hong Kong; and
 - (ii) certified by the Board under section 36M(4). (*Replaced 44 of 1980 s. 8*)
- (2A) Where an employee who has sustained injury outside Hong Kong in an accident arising out of and in the course of his employment submits himself to medical treatment outside Hong Kong by or under the supervision of a person who is allowed to practise medicine, surgery or dentistry in the place where such medical treatment is given, the employer shall, notwithstanding subsection (2)(a), if the Board so approves, be liable to pay for the cost of supplying and fitting the prosthesis or surgical appliance required by the employee. (*Added 1 of 1995 s. 13*)

- (3) If the prosthesis or surgical appliance required by the employee is not manufactured or on sale in Hong Kong, and the Director gives his approval, the employee may be supplied and fitted with a prosthesis or surgical appliance which is manufactured or on sale at a place other than Hong Kong, in which case, the employer shall, notwithstanding subsection (2)(c)(i), be liable to pay for the cost of supplying and fitting the same to the employee.

(Added 67 of 1971 s. 2. Amended 44 of 1980 ss. 8 & 15)

36C. Limit of employer's liability to pay under section 36B

The amount of the cost which the employer is liable to pay under section 36B shall not, in the case of any one employee, exceed an aggregate of the amount specified in the second column of the Sixth Schedule shown opposite section 36C specified in the first column of that Schedule in respect of any one accident.

(Added 67 of 1971 s. 2. Amended 44 of 1980 s. 15; L.N. 321 of 1985; L.N. 390 of 1987; L.N. 386 of 1989; L.N. 435 of 1991; L.N. 463 of 1993; L.N. 566 of 1995; 36 of 1996 s. 20)

36D. Manner in which a claim under section 36B may be made

- (1) A claim for the cost of supplying and fitting any prosthesis or surgical appliance which the employer is liable to pay under section 36B may be made by the Director by serving on the employer a request in writing for the payment of the cost.
- (2) A request for payment under subsection (1) shall specify—
- (a) *(Repealed 59 of 1988 s. 11)*
 - (b) the amount claimed; and
 - (c) the address at which the Director may be served under section 36E(2)(b) if the employer disputes the claim.

- (3) A request for payment under subsection (1) shall be supported by a certificate issued by the Board under section 36M(4).

(Added 67 of 1971 s. 2. Amended 44 of 1980 s. 9)

36E. Employer to pay amount in 1 month unless he disputes the claim

- (1) The employer shall, on receipt of a request for payment under section 36D and before the expiry of 1 month from the time of receipt, pay the amount of the cost to the Director, unless he disputes his liability to pay or the necessity or cost of the prosthesis or surgical appliance.
- (2) If the employer so disputes, he shall within the period specified in subsection (1)—
- (a) deposit the amount of the cost claimed with the Director who shall hold the same until any such dispute is determined; and
- (b) serve on the Director at the address specified in section 36D (2) a notice setting out the grounds of dispute.
- (3) If the employer so disputes, but fails without reasonable excuse to comply with the provisions of subsection (2), he shall be deemed to have agreed to pay the amount of the cost claimed in the request for payment.

(Added 67 of 1971 s. 2. Amended 44 of 1980 s. 10)

36F. Disputes to be determined by the Court

- (1) Where any dispute arises as to the liability to pay or the necessity or cost of any prosthesis or surgical appliance supplied and fitted to the employee under this Part, the dispute shall be determined by the Court.
- (2) At the determination of the dispute, the Court may make such order as it may deem fit in respect of the deposit under

section 36E(2)(a), but shall order the return of the deposit to the employer if it finds the employer not liable or that the prosthesis or surgical appliance is not necessary for the employee.

(Added 67 of 1971 s. 2. Amended 44 of 1980 s. 15)

36G. Application to the Court

Where the employer on whom a request for payment under section 36D is served fails to pay within the period specified in section 36E(1), or disputes the claim, an application to the Court in the prescribed form and manner may be made by the Director for enforcing his claim to the amount of the cost or for the determination of the dispute.

(Added 67 of 1971 s. 2. Amended 44 of 1980 s. 11)

36H. Claim under section 36B to be made within 5 years

All claims for the cost of supplying and fitting any prosthesis or surgical appliance to an employee under this Part shall be made within 5 years from the occurrence of the accident giving rise to the injury.

(Added 67 of 1971 s. 2. Amended 44 of 1980 s. 15)

36I. Employer's liability to pay for the cost of repair or renewal of prostheses or surgical appliances

Subject to section 36J, where in respect of an accident occurring on or after the date on which this section comes into operation an employer is liable to pay for the cost of supplying and fitting a prosthesis or surgical appliance to an employee under section 36B, he shall also be liable to pay for the probable cost of the normal repair and renewal of the prosthesis or surgical appliance during a period of 10 years after the date on which the prosthesis or surgical appliance is originally fitted.

(Replaced 44 of 1980 s. 12)

36J. Limit of employer's liability to pay under section 36I

The amount of the cost which the employer is liable to pay under section 36I shall be the total amount assessed by the Board under section 36M(2)(c) and (3) and shall not, in the case of any one employee, exceed an aggregate of the amount specified in the second column of the Sixth Schedule shown opposite section 36J specified in the first column of that Schedule in respect of any one accident.

(Replaced 44 of 1980 s. 12. Amended L.N. 321 of 1985; L.N. 390 of 1987; L.N. 386 of 1989; L.N. 435 of 1991; L.N. 463 of 1993 L.N. 566 of 1995; 36 of 1996 s. 21)

36K. Treatment of claims under section 36I

- (1) A claim for payment of the cost which an employer is liable to pay under section 36I shall be treated as a claim for the cost of supplying and fitting a prosthesis or surgical appliance under section 36B, and, subject to subsection (2), sections 36D, 36E, 36F, 36G and 36H shall, with the necessary modifications, apply in respect of a claim under section 36I. *(Amended 76 of 1982 s. 25)*
- (2) An employer may not, in respect of any claim made under section 36I, dispute the necessity for renewal and repair of the prosthesis or surgical appliance.

(Added 44 of 1980 s. 12)

36L. Payment of costs from and into general revenue

- (1) Where, in respect of an accident occurring on or after the date on which this section comes into operation, an employer is liable to pay for the cost of—

- (a) supplying and fitting any prosthesis or surgical appliance to an injured employee under section 36B; and
- (b) the normal repair and renewal of such prosthesis or surgical appliance under section 36I,

then, subject to the rights of the Director in respect of the recovery of any amount from the employer under this Part, the cost—

- (i) of the supplying and fitting; and
- (ii) whenever incurred, of the normal repair and renewal, of such prosthesis or surgical appliance shall be payable out of the general revenue of Hong Kong.

(2) All amounts—

- (a) paid to the Director under section 36E(1); and
 - (b) recovered by him under sections 36F(2) and 36G,
- shall be paid by him into the general revenue of Hong Kong.

(Added 44 of 1980 s. 12)

36LA. Director may proceed against insurer

(1) Where the Director is satisfied that—

- (a) the employer cannot be readily located in Hong Kong;
- (b) the employer is insolvent; or
- (c) the insurer of the employer has disclaimed liability under the policy of insurance issued for the purposes of Part IV,

the Director may take proceedings directly against the insurer for a claim under this Part as if the insurer were the employer.

(2) Where under this Part an amount is paid by the insurer which would, but for this section, not be payable under the policy

of insurance, the employer is liable to pay that amount to the insurer.

(Added 66 of 1993 s. 6)

36M. Prostheses and Surgical Appliances Board

- (1) The Director shall appoint a board to be known as the Prostheses and Surgical Appliances Board which shall consist of—
 - (a) 2 persons each of whom shall be a registered medical practitioner, a registered Chinese medicine practitioner or a registered dentist; and *(Replaced 16 of 2006 s. 21)*
 - (b) the Senior Occupational Health Officer or any Occupational Health Officer. *(Amended L.N. 248 of 1982)*
- (2) The functions of the Board shall be—
 - (a) to determine whether a prosthesis or surgical appliance required by an injured employee is necessary for him having regard to the nature and extent of his injury and, if so, to determine the cost of supplying and fitting the same;
 - (b) in any case where a prosthesis or surgical appliance has already been fitted to an injured employee, to determine whether the prosthesis or surgical appliance is necessary for him having regard to the nature and extent of his injury and, if so, to determine whether the cost of the same is reasonable; and
 - (c) in any case to which section 36I applies, to assess the total amount of the probable cost of the normal repair and renewal of any prosthesis or surgical appliance during a period of 10 years after the date of the original fitting of the same.

- (2A) Where a prosthesis or surgical appliance has already been supplied and fitted outside Hong Kong to an injured employee, the Board, in the exercise of its functions pursuant to subsection (2), may regard the injured employee as not having been fitted with that prosthesis or surgical appliance but, instead, as having been supplied and fitted with a prosthesis or surgical appliance manufactured or on sale in Hong Kong. (*Added 1 of 1995 s. 14*)
- (3) The Board shall, when assessing the total amount of the probable cost of the normal repair and renewal of a prosthesis or surgical appliance under subsection (2)(c), have regard to—
- (a) the durability of the prosthesis or surgical appliance originally fitted;
 - (b) the probable number of replacements of such prosthesis or surgical appliance required during a period of 10 years after the date of the original fitting; and
 - (c) the cost of the prosthesis or surgical appliance at the time of the assessment.
- (4) If the Board is satisfied—
- (a) in any case to which subsection (2)(a) applies, that the prosthesis or surgical appliance is necessary; or
 - (b) in any case to which subsection (2)(b) applies, that the prosthesis or surgical appliance is necessary and that the cost of supplying and fitting the same is reasonable,
- it shall issue a certificate to the Director, stating in respect of such prosthesis or surgical appliance—
- (i) that it is necessary;
 - (ii) the cost of the supplying and fitting;
 - (iii) that such cost has been determined by the Board under subsection (2)(a) or has been determined by the Board

to be reasonable under subsection (2)(b), as the case may be; and

- (iv) where applicable, the Board's assessment of the total amount of the probable cost under subsection (2)(c).
- (5) A certificate purporting to be issued under subsection (4) and to be signed by or for the Board shall be admitted in evidence without further proof on its production in the Court and—
 - (a) until the contrary is proved, it shall be presumed that the certificate is so issued and signed;
 - (b) shall be evidence of the matters stated therein.

(Added 44 of 1980 s. 12)

36MA. Attendance of employee for purposes of section 36M

The Board may for the purposes of section 36M, by notice in writing to an injured employee, require the employee to attend for an examination or assessment on such date and at such time and place as is specified in the notice, and the provisions of section 16I(2), (3), (4), (5) and (6) shall apply in respect of a notice under this section as they apply in respect of a notice under section 16I(1).

(Added 76 of 1982 s. 26)

36N. Director to take steps to ensure supply, etc.

The Director shall take such steps as to him seem necessary to ensure—

- (a) the supply and fitting of a prosthesis or surgical appliance to an injured employee under section 36B; and
- (b) the normal repair and renewal of such prosthesis or surgical appliance under section 36I.

(Added 44 of 1980 s. 12)

36O. Application of certain provisions

Notwithstanding anything in section 24 or 31, in the application of those sections in respect of any claim for the cost of supplying and fitting a prosthesis or surgical appliance and for the cost of repair and renewal of such prosthesis or surgical appliance under this Part—

- (a) the rights possessed by or vested in an employee under section 24 shall be vested in the Director; and
- (b) the right of any person to compensation referred to in section 31(2) shall be deemed to include the right of the Director to claim for such cost under this Part.

(Replaced 76 of 1982 s. 27. Amended 66 of 1993 s. 7)

Part IV

Compulsory Insurance

(Format changes—E.R. 1 of 2018)

37. *(Omitted as spent—E.R. 1 of 2014)*

38. Interpretation

In this Part, unless the context otherwise requires—

company (公司) has the meaning given by section 2(1) of the Companies Ordinance (Cap. 622); *(Added 47 of 1995 s. 3. Amended 28 of 2012 ss. 912 & 920)*

construction work (建造工作) means—

- (a) the construction, erection, installation, reconstruction, repair, maintenance (including redecoration and external cleaning), renewal, removal, alteration, improvement, dismantling, or demolition of any structure or works specified in the Fifth Schedule;
- (b) any work involved in preparing for any operation referred to in paragraph (a), including the laying of foundations and the excavation of earth and rock prior to the laying of foundations;
- (c) the use of machinery, plant, tools, gear, and materials in connection with any operation referred to in paragraph (a) or (b); *(Added 47 of 1995 s. 3)*

domestic premises (住宅處所) means any premises used exclusively for residential purposes; *(Amended E.R. 1 of 2018)*

group of companies (公司集團) has the meaning given by section 2(1) of the Companies Ordinance (Cap. 622); (*Added 28 of 2012 ss. 912 & 920*)

holding company (控股公司) has the meaning given by section 13 of the Companies Ordinance (Cap. 622) for the purposes of that Ordinance; (*Added 28 of 2012 ss. 912 & 920*)

policy of insurance issued for the purposes of this Part (因本部的規定而發出的保險單) means any policy of insurance issued by an insurer that insures or purports to insure an employer against his liability to pay compensation for the injury by accident or for the death of an employee that arises out of and in the course of employment; (*Added 66 of 1993 s. 8. Amended 28 of 2012 ss. 912 & 920*)

subsidiary (附屬公司) has the meaning given by section 15 of the Companies Ordinance (Cap. 622) for the purposes of that Ordinance; (*Added 28 of 2012 ss. 912 & 920. Amended E.R. 1 of 2018*)

the available amount covered by the policy of insurance (可得的保險單承保款額) means the amount covered by the policy of insurance after deducting therefrom any amount which is either paid or due and payable by the insurer under the policy in respect of the same event. (*Added 47 of 1995 s. 3. Amended E.R. 1 of 2018*)

(*Amended 28 of 2012 ss. 912 & 920; E.R. 1 of 2018*)

39. Application of this Part

- (1) Subject to subsection (2), this Part shall apply to all employments other than any employment exempted under subsection (3).
- (2) Notwithstanding section 4, this Part shall not apply to any employment by or under the State.

- (3) The Chief Executive in Council may, by notice in the Gazette, exempt any employment from the application thereto of this Part.

(Amended 56 of 2000 s. 3)

40. Compulsory insurance against employer's liability

- (1) Subject to subsections (1B) and (1C), no employer shall employ any employee in any employment unless there is in force in relation to such employee a policy of insurance issued by an insurer for an amount not less than the applicable amount specified in the Fourth Schedule in respect of the liability of the employer. *(Amended 47 of 1995 s. 4)*
- (1A) Subsection (1) does not require an employer to obtain insurance for any liability he may have in respect of damages awarded by a court outside Hong Kong to an employee referred to in section 30B. *(Added 59 of 1988 s. 12)*
- (1B) A principal contractor who has undertaken to perform any construction work may, in compliance with subsection (1), take out a policy of insurance issued by an insurer for an amount not less than the amount specified in the Fourth Schedule in relation to a principal contractor in respect of the liability of the principal contractor and the liability of his sub-contractor. *(Added 47 of 1995 s. 4)*
- (1C) A group of companies may, in compliance with subsection (1), take out a policy of insurance issued by an insurer for an amount not less than the amount specified in the Fourth Schedule in relation to a group of companies in respect of the liabilities of the companies, bodies corporate and corporations in the group specified in the policy. *(Added 47 of 1995 s. 4)*
- (1D) For the purpose of this section, section 44B and the definition of ***the available amount covered by the policy of insurance*** (可得的保險單承保款額) in section 38, ***accident*** (意外)

means an accident or a series of accidents arising out of one event, and in relation to an occupational disease—

- (a) where incapacities or deaths of more than one employee are attributable to a cause that does not arise out of a sudden and identifiable event, the incapacities or deaths of such employees are regarded as being caused by separate accidents arising out of separate events; and
- (b) where incapacities or deaths of more than one employee are attributable to a cause that arises out of a sudden and identifiable event, the incapacities or deaths of such employees are regarded as being caused by an accident or a series of accidents arising out of one event. (*Added 47 of 1995 s. 4*)

(1E) For the avoidance of doubt, it is declared that—

- (a) the amount required by subsection (1) is ascertained by reference to the number of employees in relation to whom the policy is in force and in accordance with the Fourth Schedule;
- (b) the amount that may be taken out under subsection (1B) or (1C) is irrespective of the number of employees in relation to whom the policy is in force and in the case of subsection (1B), is also irrespective of the number of sites on which construction work undertaken by a principal contractor is performed;
- (c) the amount required by subsection (1), (1B) or (1C) may be inclusive of interest, costs and expenses indemnified under the policy and other costs and expenses incurred by the employer (including a principal contractor, a sub-contractor, a holding company or a subsidiary) and recoverable from the insurer under the policy;
- (d) where a principal contractor has taken out a policy of insurance under subsection (1B), the principal contractor

and a sub-contractor insured under the policy shall be regarded as having complied with subsection (1);

- (e) where a group of companies has taken out a policy of insurance under subsection (1C), all the companies, bodies corporate and corporations in the group insured under the policy shall be regarded as having complied with subsection (1). *(Added 47 of 1995 s. 4)*

(1F) The reference in this section to the liability of a person is a reference to the liability of the person under this Ordinance and independently of this Ordinance for any injury to his employee by accident arising out of and in the course of the employee's employment. *(Added 47 of 1995 s. 4)*

(2) An employer who contravenes subsection (1) commits an offence and is liable—

- (a) on conviction upon indictment to a fine at level 6 and to imprisonment for 2 years; and
- (b) on summary conviction to a fine at level 6 and to imprisonment for 1 year. *(Amended 52 of 2000 s. 19)*

40A. Mandatory information in policy

An insurer shall include in a policy of insurance issued for the purposes of this Part the information referred to in paragraphs (a) to (g) of section 41(1).

(Added 66 of 1993 s. 9. Amended 47 of 1995 s. 5)

41. Notice of insurance

- (1) Subject to subsection (2), an employer to whom a policy of insurance is issued for the purposes of this Part shall display, in a conspicuous place on each of his premises where any employee is employed by him, a notice, in such form as may be specified by the Commissioner, showing in both the English and Chinese languages—

- (a) the name of the employer;
 - (b) the name of the insurer;
 - (c) the policy number;
 - (d) the date of issue of the policy;
 - (e) the dates of commencement and expiry of the period of insurance; (*Amended 66 of 1993 s. 10; 47 of 1995 s. 6*)
 - (f) the number of employees insured under the policy at the time of issue thereof; and (*Amended 66 of 1993 s. 10; 47 of 1995 s. 6*)
 - (g) the amount of the liability insured under the policy. (*Added 47 of 1995 s. 6*)
- (2) Subsection (1) shall not apply where the policy of insurance, in so far as it is issued for the purposes of this Part, relates solely to domestic servants employed in, or in connection with, the private household of the employer or relates to an employee referred to in section 30B whose work is performed outside Hong Kong. (*Amended 59 of 1988 s. 13*)
- (3) An employer who without reasonable excuse contravenes subsection (1) commits an offence and is liable to a fine at level 3. (*Amended 52 of 2000 s. 20*)
- (4) Any employer who without reasonable excuse provides any false or misleading information in a notice under subsection (1) commits an offence and is liable to a fine at level 5. (*Added 47 of 1995 s. 6*)

42. Insurer's liability

- (1) Notwithstanding anything in a policy of insurance issued for the purposes of this Part, an insurer is liable, in a proceeding under section 36LA or 44, for the amount of the liability of the employer not exceeding the available amount covered by the policy of insurance. (*Amended 47 of 1995 s. 7*)

- (1A) For the avoidance of doubt, it is declared that an insurer is liable, in a proceeding under section 36LA or 44, for the amount of the liability of the employer not exceeding the available amount covered by the policy of insurance issued for the purposes of this Part notwithstanding the obligation imposed upon the employer by section 40 to insure for an amount in excess of the amount insured. (*Added 47 of 1995 s. 7*)
- (2) This section does not apply to a policy of insurance issued for the purposes of this Part that is issued before the commencement of this section.
- (3) Where under this Part an amount is paid by the insurer which would, but for this section, not be payable under the policy of insurance, the employer is liable to pay that amount to the insurer.

(Replaced 66 of 1993 s. 12)

43. Conditions under which liability for payment by insurer arises

- (1) Subject to this section, where in relation to an employee there is in force a policy of insurance issued for the purposes of this Part and the employer of the employee becomes liable to pay any sum under this Ordinance or independently of this Ordinance in respect of an injury to the employee arising out of and in the course of his employment, such sum shall forthwith become due and payable by the insurer, including any sum payable in respect of interest and costs, notwithstanding anything to the contrary in the policy of insurance. (*Amended 66 of 1993 s. 13*)
- (2) No sum shall be payable by an insurer under this section—
 - (a) unless, in the case of compensation agreed upon between the employer and an employee under section 16CA, such insurer has consented to pay the sum agreed

upon as compensation to the employee; (*Amended 66 of 1993 s. 13*)

- (b) unless, in the case of compensation or damages determined or adjudged by a court or tribunal to be payable to the employee or any other person, the insurer had sufficient notice of the institution in the court or tribunal of proceedings for compensation or damages, as the case may be, to enable such insurer to be added as a party to the proceedings;
- (c) in respect of any judgment to pay compensation or damages, while execution thereon is stayed by the court or pending appeal; (*Amended 47 of 1995 s. 8*)
- (d) if before the happening of the accident which was the cause of the injury giving rise to the liability, the policy of insurance was cancelled by mutual consent or by virtue of any provision contained therein; or (*Amended 47 of 1995 s. 8*)
- (e) in respect of the sum liable to be paid under subsection (1) in excess of the available amount covered by the policy of insurance. (*Added 47 of 1995 s. 8*)

(2A)-(2B) (*Repealed 36 of 1996 s. 22*)

- (3) If sufficient notice of the institution of proceedings for the recovery of compensation or damages is given to an insurer to enable such insurer to apply to be added as a party to the proceedings, the court or tribunal, as the case may be, shall, on such application being made, add the insurer as a party and the insurer shall have the same right to defend the proceedings as if such insurer were the employer.
- (4) Where under this Part an amount is paid by the insurer which would, but for this section, not be payable under the policy of insurance, the employer is liable to pay that amount to the insurer. (*Replaced 66 of 1993 s. 13*)

44. Right of injured party to proceed against insurer

- (1) Every policy of insurance issued for the purposes of this Part shall be deemed to provide that any employee or other person having a claim against the person insured in respect of the liability in regard to which such policy was issued shall, subject to section 42, be entitled to recover in his own name, as though he were a party to the policy, directly from the insurer any amount which he would have been entitled to recover from the person insured. (*Amended 66 of 1993 s. 14; 47 of 1995 s. 9*)
- (2) An employee or other person having a claim against the person insured under a policy of insurance issued for the purposes of this Part shall not commence proceedings against the insurer unless he also commences or has commenced proceedings against the person insured. (*Added 66 of 1993 s. 14*)
- (3) Notwithstanding subsection (2), where an employee or other person having a claim against the person insured has reasonable grounds to be satisfied that—
 - (a) the person insured cannot be readily located in Hong Kong;
 - (b) the person insured is insolvent; or
 - (c) the insurer has disclaimed liability under the policy of insurance,he may take proceedings against the insurer without taking or having taken proceedings against the person insured. (*Added 66 of 1993 s. 14*)

44A. Employer must produce policy

An employer insured under a policy of insurance issued for the purposes of this Part shall, within 10 days after receiving the

written request of an employee or other person having a claim against the employer, produce for inspection to the employee or other person or his agent the policy of insurance and all other documents relating to the policy.

(Added 66 of 1993 s. 15)

44B. Holding company responsible for liability of subsidiary in certain cases

(1) Where—

- (a) in relation to an employee there is in force a policy of insurance taken out by a group of companies pursuant to section 40(1C);
- (b) the employee's employer, being a subsidiary of a holding company which is also insured under the policy, becomes liable to pay any amount of compensation or damages in respect of an injury to the employee by accident arising out of and in the course of his employment; and
- (c) the employee is unable to recover payment of the amount or any part thereof from the employer or from the insurer,

the holding company is liable to pay the amount or part thereof to the employee.

- (2) An employee employed by a subsidiary which is insured under a policy of insurance taken out by a group of companies pursuant to section 40(1C) may issue a written request to the subsidiary to supply to the employee the names and addresses of all its holding companies which are also insured under the policy.
- (3) A subsidiary shall within 7 days after the date of issue of a written request under subsection (2)—

- (a) supply to the employee the names and addresses of all its holding companies which are also insured under the policy; and
 - (b) deliver a copy of the written request to the holding companies.
- (4) A subsidiary which without reasonable excuse fails to comply with subsection (3) commits an offence and is liable to a fine at level 3.

(Added 47 of 1995 s. 10)

45. Inspection of premises other than domestic premises

- (1) The Commissioner, and any public officer authorized in writing by him in that behalf (which authority shall be produced by such public officer on demand) may for the purposes of this Part— *(Amended 68 of 1995 s. 45)*
 - (a) enter and inspect without a warrant at any reasonable time any premises of an employer where persons are employed, other than domestic premises;
 - (b) require the production of, inspect, examine or take copies of any record or other document on such premises, relating to the compliance by the employer with the requirements of this Part in respect of his employees;
 - (c) require any person who manages or appears to be in charge of such premises or of employees on such premises to furnish such information or particulars as he may specify relating to the compliance by the employer with the requirements of this Part in respect of his employees; and
 - (d) make such other inquiries from any other person on such premises as he thinks fit.

- (2) In this section, **Commissioner** (處長) includes a Deputy Commissioner for Labour and an Assistant Commissioner for Labour. (*Added 68 of 1995 s. 45*)

45A. Inspection of domestic premises

A magistrate may, if he is satisfied by information on oath that there may be found in any domestic premises any evidence of an offence under section 40, issue a warrant authorizing the Commissioner or any other person named in the warrant to—

- (a) enter the domestic premises at any reasonable time; and
- (b) require the production of, inspect, examine or take copies of any insurance policy, cover note or other document issued for the purposes of this Part in respect of any employee employed in such domestic premises.

45B. Offences against sections 45 and 45A

Without prejudice to section 45C, any person who in connection with any inspection under section 45 or 45A—

- (a) fails without reasonable excuse to produce any record or other document referred to in that section when required to do so by the Commissioner or any person authorized under that section; or
- (b) furnishes to the Commissioner or any such person any information which he knows or reasonably ought to know to be false or misleading in any material particular,
- (c) (*Repealed 63 of 1992 s. 13*)

commits an offence and is liable to a fine at level 5. (*Amended 36 of 1996 s. 23*)

(*Amended 63 of 1992 s. 13*)

45C. Notice to produce documents etc.

- (1) The Commissioner may, by notice in writing to an employer, require the employer to produce for inspection by the Commissioner, on such date and at such time and place as is specified in the notice—
 - (a) a policy of insurance issued and in force for the purposes of this Part as at the date of the notice or as at a date specified in the notice or a cover note in respect of any such policy of insurance, or such other evidence as to the existence of any such policy as the Commissioner may specify in the notice; and (*Amended 59 of 1988 s. 14*)
 - (b) any other document, or any article or record, specified in the notice, relating to employees of the employer or to such insurance.
- (1A) An employer is not required to produce anything under subsection (1)(a) in respect of a date specified by the Commissioner in his notice that is earlier than 3 years preceding the date of the Commissioner's notice. (*Added 59 of 1988 s. 14*)
- (2) An employer who fails without reasonable excuse to comply with the requirements of a notice under subsection (1) commits an offence and is liable—
 - (a) where the offence relates to a document or matter referred to in subsection (1)(a)—
 - (i) on conviction upon indictment to a fine at level 6 and to imprisonment for 2 years; and
 - (ii) on summary conviction to a fine at level 6 and to imprisonment for 1 year; or (*Amended 52 of 2000 s. 21*)

- (b) where the offence relates to a document or matter referred to in subsection (1)(b), to a fine at level 5. *(Amended 63 of 1992 s. 14; 36 of 1996 s. 24)*
- (3) The Commissioner may inspect, examine or take copies of any article, record or document produced under subsection (1).
- (4) Any person who hinders or impedes the Commissioner in the exercise of his powers under subsection (3) commits an offence and is liable to a fine at level 5. *(Amended 63 of 1992 s. 14; 36 of 1996 s. 24)*

45D. Notice of premium increases

- (1) Notwithstanding anything in section 49, the Chief Executive in Council may by regulations require an insurer to give notice in advance to the Commissioner of any increase proposed in the premium generally charged by the insurer for a policy of insurance issued for the purposes of this Part, whether or not such increase is to apply in relation to a particular trade, industry or occupation. *(Amended 56 of 2000 s. 3)*
- (1A) Regulations made under this section may require the insurer referred to in subsection (1) to also provide details of current premiums in a form that will enable the Commissioner to compare the proposed increase with the current premiums. *(Added 66 of 1993 s. 16)*
- (2) Regulations made under this section may provide that a contravention of any specified provision shall be an offence, and may prescribe penalties therefor not exceeding a fine at level 4 and imprisonment for 6 months. *(Amended 52 of 2000 s. 22)*
- (3) When at any time a body corporate commits an offence under regulations made under this section with the consent or

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connivance of, or because of neglect by, any individual, the individual commits the like offence if at that time—

- (a) he is a director, manager, secretary or similar officer or main agent of the body corporate or is purporting to act as such officer or as agent of such body corporate; or
- (b) the body corporate is managed by its members, of whom he is one.

(Part IV replaced 76 of 1982 s. 28)

Part V

Miscellaneous

(Added 19 of 1964 s. 6)

(Format changes—E.R. 1 of 2018)

46. Compensation not to be assigned, charged or attached

- (1) Compensation payable under the provisions of this Ordinance shall not be capable of being assigned, charged or attached, and shall not pass to any other person by operation of law nor shall any claim be set off against such compensation. *(Amended 63 of 1992 s. 15)*
- (2) Notwithstanding subsection (1), compensation payable under the provisions of this Ordinance to any person who is or has been an aided person within the meaning of the Legal Aid Ordinance (Cap. 91) shall be subject to the first charge for the benefit of the Director of Legal Aid under section 18A of that Ordinance in respect of any unpaid contribution or deficiency referred to in that section. *(Added 63 of 1992 s. 15)*

47. Deduction of insurance premiums from earnings to be an offence

- (1) An employer who, for the purpose of defraying or partly defraying the cost of insurance in respect of his liability to pay compensation under the provisions of this Ordinance, makes any deduction from the earnings of an employee in his employ, shall be guilty of an offence and shall be liable on summary conviction to a fine at level 3 and to imprisonment for 6 months. *(Amended 44 of 1980 s. 15; 76 of 1982 s. 29; 63 of 1992 s. 16; 52 of 2000 s. 23)*

(2) An employer convicted of an offence under subsection (1) shall, in addition to any penalty imposed under that subsection, if the court or magistrate before which the conviction was obtained so orders, pay to the employee any sum deducted from the employee's earnings—

(a) in respect of which the offence was committed; and

(b) which has not at the time of the conviction been repaid.

(Added 76 of 1982 s. 29)

48. Contract of service not to be terminated during incapacity

(1) An employer shall not, without the consent of the Commissioner—

(a) terminate the contract of service or apprenticeship of an employee who has suffered incapacity in circumstances which entitle him to compensation under this Ordinance; or

(b) give notice to the employee of such termination, before—

(i) the Commissioner has issued a certificate under section 16A(2), to the employer and the employee; or

(ii) the employer has entered into an agreement under section 16CA(1), with the injured employee; or

(iii) an Ordinary Assessment Board or a Special Assessment Board, as the case may be, has issued a certificate under section 16F or 16G(3), to the employee, the employer and the Commissioner,

whichever occurs first. *(Replaced 1 of 1995 s. 15)*

(1A) Further to subsection (1), an employer shall not, without the consent of the Commissioner—

- (a) terminate the contract of service or apprenticeship of an employee who has suffered temporary incapacity for a period not exceeding 3 days in circumstances which entitle him to compensation under this Ordinance; or
- (b) give notice to the employee of such termination, before—
 - (i) the period of temporary incapacity has expired; and
 - (ii) the compensation has been paid under section 10 to the employee or to the Court. *(Added 67 of 1996 s. 7)*
- (2) Any employer who contravenes any of the provisions of subsection (1) or (1A) shall be guilty of an offence and shall be liable on conviction to a fine at level 6. *(Added 55 of 1969 s. 26. Amended 44 of 1980 s. 15; 76 of 1982 s. 30; 63 of 1992 s. 17; 36 of 1996 s. 25; 67 of 1996 s. 7)*

48A. Legislative Council may amend amounts of compensation etc.

The Legislative Council may by resolution amend—

- (a)-(b) *(Repealed 36 of 1996 s. 26)*
- (c) *(Repealed 68 of 1995 s. 2)*
- (d) *(Repealed 36 of 1996 s. 26)*
- (e) the amount specified in section 23(2);
- (f) *(Repealed 36 of 1996 s. 26)*
- (fa) the First Schedule; *(Added 66 of 1993 s. 17)*
- (g) the daily rates specified in the Third Schedule;
- (h) the minimum amount of insurance cover specified in the Fourth Schedule; *(Added 47 of 1995 s. 11)*
- (i) the amounts and percentages specified in the Sixth Schedule. *(Added 36 of 1996 s. 26)*

(Replaced 76 of 1982 s. 31)

48B. Amendment of Seventh Schedule

The Commissioner may, by order in the Gazette, amend the Seventh Schedule.

(Added 52 of 2000 s. 24)

48C. Protection of public officers

- (1) A public officer is not personally liable in respect of any act or omission of his if it was done or made by him in the honest belief that it was required or authorized in the exercise of any function or power under this Ordinance.
- (2) The protection conferred on public officers by subsection (1) in respect of any act or omission shall not in any way affect any liability of the Government in tort for that act or omission.

(Added 52 of 2000 s. 24)

49. Regulations

- (1) The Commissioner may make regulations— *(Amended 66 of 1993 s. 18)*
 - (a) requiring employers to make periodic or other returns as to such matters as he may think fit, and prescribing a time limit for the making of such returns;
 - (b)-(c) *(Repealed 76 of 1982 s. 32)*
 - (d) prescribing procedure and fees; *(Amended 13 of 1966 Schedule)*
 - (e) prescribing anything which is to be or may be prescribed under this Ordinance;
 - (f) generally, for carrying into effect the provisions of this Ordinance and of any regulations made thereunder.

- (2) Any regulations made under this Ordinance may provide that such contraventions thereof as may be specified shall constitute an offence and may provide for the punishment of any such offence on summary conviction by a fine at level 3 and by imprisonment for a term of 3 months and, in the case of a continuing offence, by a fine of \$200 for every day during which the default continues. (*Amended 76 of 1982 s. 32; 63 of 1992 s. 18; 52 of 2000 s. 25*)

50. Rules of Court

The Chief Justice may make Rules of Court for regulating proceedings before the Court and appeals to the Court under the provisions of this Ordinance, and for the fees payable in respect thereof.

(Amended 76 of 1982 s. 33)

51. *(Repealed 66 of 1993 s. 19)*

52. *(Repealed 1 of 1995 s. 16)*

53. *(Repealed 63 of 1992 s. 19)*

54. Amendment of references in Ordinances and documents to Workmen's Compensation Ordinance or Workmen's Compensation Regulations

Every reference in an Ordinance or in any document to the Workmen's Compensation Ordinance or the Workmen's Compensation Regulations shall, unless the context otherwise requires, be read as a reference to the Employees' Compensation Ordinance (Cap. 282) or the Employees' Compensation Regulations (Cap. 282 sub. leg. A), as the case may be.

(44 of 1980 s. 15(2) incorporated)

(Amended E.R. 1 of 2018)

55. Transitional

- (1) Nothing in the Workmen's Compensation (Amendment) Ordinance 1980 (44 of 1980) (hereinafter called the ***amending Ordinance***) shall apply with respect to claims for compensation or other rights, obligations or liabilities in respect of accidents happening before the date of commencement* of sections 4, 5, 8 and 12 or of section 14 of the amending Ordinance, as the case may be; and without limiting the provisions of the Interpretation and General Clauses Ordinance (Cap. 1), the provisions of the Workmen's Compensation Ordinance repealed or deleted by the amending Ordinance shall continue to apply to such claims, rights, obligations or liabilities as if such provisions had not been repealed or deleted by the amending Ordinance. *(44 of 1980 s. 16 incorporated)*
- (2) Nothing in the Employees' Compensation (Amendment) Ordinance 1982 (76 of 1982) shall apply with respect to claims for compensation or other rights, obligations or liabilities in respect of accidents happening before the commencement* of that Ordinance; and the provisions of this Ordinance in force immediately before the commencement of that Ordinance shall continue to apply to such claims, rights, obligations or liabilities as if such provisions had not been repealed or amended by that Ordinance. *(Added 76 of 1982 s. 35)*
- (3) The amendments made by sections 4(a) and (b), 5, 6, 8, 9, 10, 12 and 13 of the Employees' Compensation (Amendment) Ordinance 1988 (59 of 1988) do not apply to claims for compensation or other rights, obligations or liabilities in respect of accidents happening before the commencement* of the amendments; and the provisions of this Ordinance in force

immediately before the commencement of the amendments continue to apply to those claims, rights, obligations or liabilities as if they had not been repealed or amended by that Ordinance. (*Added 59 of 1988 s. 15*)

- (4) The amendments made by sections 2, 3 and 21 of the Employees' Compensation (Amendment) Ordinance 1993 (66 of 1993) do not apply to claims for compensation or other rights, obligations or liabilities in respect of accidents happening before the commencement of the amendments; and the provisions of this Ordinance in force immediately before the commencement of the amendments continue to apply to those claims, rights, obligations or liabilities as if they had not been amended by that Ordinance. (*Added 66 of 1993 s. 20*)
- (5) Despite the repeal of section 42 by section 12 of the Employees' Compensation (Amendment) Ordinance 1993 (66 of 1993), section 42 as it was before its repeal shall be deemed not to have been repealed in respect of policies of insurance issued before the commencement of section 12 of the Employees' Compensation (Amendment) Ordinance 1993 (66 of 1993). (*Added 66 of 1993 s. 20*)
- (6) The amendments made by sections 2, 3, 9, 11, 13, 14, 15, 16, 17, 19, 22, 29, 30, 31 and 32 of the Employees' Compensation (Amendment) Ordinance 1996 (36 of 1996) (***the amending Ordinance***) do not apply to claims for compensation or other rights, obligations or liabilities in respect of accidents occurring before the commencement** of the amending Ordinance, and the provisions of this Ordinance in force immediately before the commencement of the amending Ordinance continue to apply to those claims, rights, obligations or liabilities as if they had not been repealed or amended by the amending Ordinance. (*Added 36 of 1996 s. 27*)

- (7) The amendments made by sections 2 to 7 of the Employees' Compensation (Amendment) (No. 2) Ordinance 1996 (67 of 1996) (*the amending Ordinance*) do not apply to claims for compensation or other rights, obligations or liabilities in respect of accidents occurring before the commencement of the amending Ordinance, and the provisions of this Ordinance in force immediately before the commencement^{††} of the amending Ordinance continue to apply to those claims, rights, obligations or liabilities as if they had not been repealed or amended by the amending Ordinance. (*Added 67 of 1996 s. 8*)
- (8) Subject to subsection (9), nothing in the Employees' Compensation (Amendment) (No. 2) Ordinance 2000 (52 of 2000) (*the amending Ordinance*) shall apply with respect to claims for compensation or other rights, obligations or liabilities in respect of accidents happening before the commencement[#] of the amending Ordinance; and the provisions of this Ordinance in force immediately before the commencement[#] of the amending Ordinance shall continue to apply to such claims, rights, obligations or liabilities as if such provisions had never been repealed or amended by the amending Ordinance. (*Added 52 of 2000 s. 26*)
- (9) Subsection (8) shall not apply to section 16A(12), 24, 40(2), 41(3), 45C(2)(a), 45D(2), 47(1) or 49(2) as amended by sections 11, 13, 19, 20, 21, 22, 23 and 25 respectively of the amending Ordinance. (*Added 52 of 2000 s. 26*)
- (10) An amendment to this Ordinance made by any provision of Part 3 of the Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Ordinance 2006 (16 of 2006) (*2006 Ordinance*) does not apply to claims for compensation or other rights, obligations or liabilities in respect of accidents happening before the commencement^{***} of that provision. The provisions of this Ordinance as were in force immediately before that commencement shall

continue to apply with respect to claims for compensation or other rights, obligations or liabilities in respect of accidents happening before that commencement as if the amendment had not been made. *(Added 16 of 2006 s. 22 and replaced 10 of 2008 s. 62)*

- (11) Despite subsection (10), as soon as any provision of section 10AB(5), (6) and (10)(d) and (e) (***relevant provision***) has commenced, the relevant provision shall apply with respect to claims for compensation or other rights, obligations or liabilities in respect of accidents happening on or after the first commencement of section 10AB as far as cost of medicines incurred on or after the commencement of the relevant provision is concerned. *(Added 16 of 2006 s. 22 and 10 of 2008 s. 62)*
- (12) In subsection (11)—
 - (a) the commencement of a provision of section 10AB means the day appointed for the coming into operation of section 15 of the 2006 Ordinance in so far as that section 15 relates to the adding of that provision of section 10AB;
 - (b) the first commencement of section 10AB means, where different days are appointed for the coming into operation of section 15 of the 2006 Ordinance in so far as that section 15 relates to the adding of different provisions of section 10AB, the earliest of those days. *(Added 16 of 2006 s. 22 and 10 of 2008 s. 62)*

Editorial Note:

The operation of this Ordinance is affected by the transitional provision contained in the Employees' Compensation (Amendment) Ordinance 1995 (1 of 1995). Such transitional provision reads as follows:—

"18. Transitional

The amendments made by sections 2 to 10 and 13 and 14 of this Ordinance do not apply to claims for compensation or other rights, obligations or liabilities in respect of accidents happening before the commencement of this Ordinance; and the provisions of the principal Ordinance in force immediately before that commencement continue to apply to those claims, rights, obligations or liabilities as if they had not been repealed or amended by this Ordinance.”.

* Editorial Note: Commencement of—

- (a) Workmen's Compensation (Amendment) Ordinance 1980—
 - (i) sections 4, 5, 8 and 12: 1 November 1980 (*See L.N. 209 of 1980*);
 - (ii) section 14: 1 November 1981 (*See L.N. 209 of 1980*);
- (b) Employees' Compensation (Amendment) Ordinance 1982: 1 July 1983 (*See L.N. 107 of 1983*);
- (c) Employees' Compensation (Amendment) Ordinance 1988—
 - (i) section 8: 8 July 1988;
 - (ii) sections 9, 10, 12 and 13: 6 October 1988 (*See L.N. 226 of 1988*);
 - (iii) sections 4(a) & (b), 5 and 6: 1 January 1989 (*See L.N. 226 of 1988*).

** Commencement date: 1 July 1996.

†† Commencement date: 1 January 1997.

Commencement date: 1 August 2000.

*** Commencement date: 1 September 2008.

First Schedule

[s. 9]

(Format changes—E.R. 1 of 2018)

Item	Injury	Percentage of loss of earning capacity	
1.	Loss of 2 limbs	100	
2.	Loss of both hands or of all fingers and both thumbs		
3.	Loss of both feet		
4.	Total loss of sight		
5.	Total paralysis		
6.	Injuries resulting in being permanently bedridden		
7.	Paraplegia		
8.	Any other injury causing p e r m a n e n t t o t a l disablement		
9.	Loss of arm at shoulder	75	80 (preferred hand)
10.	Ankylosis of shoulder joint— in optimum position	35	
	in worst position	55	
11.	Loss of arm between elbow and shoulder	75	80 (preferred hand)
12.	Loss of arm at elbow	75	80 (preferred hand)

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Item	Injury	Percentage of loss of earning capacity	
13.	Ankylosis of the elbow joint—		
	in optimum position	30	
	in worst position	50	
14.	Loss of arm between wrist and elbow	70	75 (preferred hand)
15.	Loss of hand at wrist	70	75 (preferred hand)
16.	Ankylosis of wrist joint—		
	in optimum position	30	
	in worst position	40	
17.	Loss of 4 fingers and thumb of one hand	70	75 (preferred hand)
18.	Loss of 4 fingers of one hand	60	65 (preferred hand)
19.	Loss of thumb—		
	both phalanges	30	32 (preferred hand)
	one phalanx	20	22 (preferred hand)
	guillotine loss of tip without loss of bone .	8	
20.	Ankylosis of—		
	interphalangeal joint of the thumb	4	
	metacarpophalangeal joint of the thumb	8	
	all these 2 joints of the thumb	12	

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Item	Injury	Percentage of loss of earning capacity	
21.	Loss of index finger—		
	3 phalanges	14	15 (preferred hand)
	2 phalanges	11	12 (preferred hand)
	one phalanx	9	10 (preferred hand)
	guillotine amputation of tip without loss of bone	4	
22.	Ankylosis of—		
	distal interphalangeal joint of the index finger	2	
	proximal interphalangeal joint of the index finger	3	
	metacarpophalangeal joint of the index finger	4	
	all these 3 joints of the index finger	9	
23.	Loss of middle finger—		
	3 phalanges	12	
	2 phalanges	9	
	one phalanx	7	

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Item	Injury	Percentage of loss of earning capacity
	guillotine amputation of tip without loss of bone	2
24.	Ankylosis of—	
	distal interphalangeal joint of the middle finger	2
	proximal interphalangeal joint of the middle finger	2
	metacarpophalangeal joint of the middle finger	3
	all these 3 joints of the middle finger	7
25.	Loss of ring finger—	
	3 phalanges	8
	2 phalanges	6
	one phalanx	5
	guillotine amputation of tip without loss of bone	2
26.	Ankylosis of—	
	distal interphalangeal joint of ring finger	1

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Item	Injury	Percentage of loss of earning capacity
	proximal interphalangeal joint of ring finger	2
	metacarpophalangeal joint of ring finger	2
	all these 3 joints of the ring finger	5
27.	Loss of little finger—	
	3 phalanges	7
	2 phalanges	6
	one phalanx	5
	guillotine amputation of tip without loss of bone	2
28.	Ankylosis of—	
	distal interphalangeal joint of little finger ...	1
	proximal interphalangeal joint of little finger ...	1
	metacarpophalangeal joint of little finger ...	2
	all these 3 joints of the little finger	4

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Item	Injury	Percentage of loss of earning capacity
28A.	In the case of a loss of a whole finger of one hand, the following percentages shall be awarded in addition to those provided for the loss of a single finger. In this item “finger” does not include “thumb”. These additional percentages shall be awarded when 2 or more fingers of the same hand are lost in the same injury; or when one or more fingers of the same hand are lost in the same injury to a hand of which one or more fingers were lost in a previous injury, whether or not the previous injury was work related or whether compensation was paid or is payable for the loss—	
	loss of a second finger of the hand	6 7 (preferred hand)
	loss of a third finger of the hand	6 7 (preferred hand)
	loss of the last finger of the hand (<i>Added 66 of 1993 s. 21</i>)	7 9 (preferred hand)

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Item	Injury	Percentage of loss of earning capacity
29.	Loss of metacarpals—	
	first (additional)	8
	second, third, fourth or fifth (additional)	3
30.	Loss of leg at hip	80
31.	Loss of leg at or above knee .	75
32.	Ankylosis of hip joint—	
	in optimum position	35
	in worst position	50
33.	Loss of leg below knee	65
34.	Ankylosis of knee joint—	
	in optimum position	25
	in worst position	35
35.	Loss of foot	55
36.	Ankylosis of ankle joint—	
	in optimum position	15
	in worst position	25
37.	Loss of toes—	
	all of one foot	20
	great, both phalanges	14
	great, one phalanx	4
	other than great, for each one toe lost	3

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Item	Injury	Percentage of loss of earning capacity
38.	Loss of sight of one eye	50
39.	Loss of hearing of one ear	30
40.	Total loss of hearing, both ears	100
41.	Loss or deformity of outer ear (<i>Added 66 of 1993 s. 21</i>)....	2
42.	Loss of entire nose (<i>Added 66 of 1993 s. 21</i>).....	25
43.	Apparent deformity of nose (<i>Added 66 of 1993 s. 21</i>)....	5
44.	Loss of spleen (<i>Added 66 of 1993 s. 21</i>).....	5
45.	Loss of one kidney— if the other kidney is normal	15
	if the other kidney is abnormal (<i>Added 66 of 1993 s. 21</i>).....	65-90
46.	Urethral injury— if urethral stricture requires dilation less frequently than once every 2 weeks	5

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Item	Injury	Percentage of loss of earning capacity
	if urethral stricture requires dilation once every 2 weeks or more frequently	10-20
	if urethra is severed (<i>Added 66 of 1993 s. 21</i>)	20
47.	Impairment of urinary bladder function—	
	impairment in form of urgency or other mild urinary bladder disorder	5-12
	good reflex activity without voluntary control	13-22
	poor reflex activity without voluntary control	23-37
	no reflex and no voluntary control (<i>Added 66 of 1993 s. 21</i>)	38-60
48.	Impairment of anorectal function—	
	limited voluntary control	0-7

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Item	Injury	Percentage of loss of earning capacity
	has reflex regulation but no voluntary control .	8-17
	no reflex regulation and no voluntary control (<i>Added 66 of 1993 s. 21</i>)	18-25

- Note: (1) Total permanent loss of the use of a member shall be treated as loss of such member.
- (1A) Partial loss of a member or partial permanent loss of the use of a member shall be treated as the loss of such proportion of the percentage of loss of earning capacity prescribed in this Schedule as the partial loss of the member, or partial permanent loss of the use of the member, bears to the total loss of that member. (*Added 49 of 1985 s. 5*)
- (2) Where there is loss of 2 or more parts of the hand, the percentage shall not be more than the loss of the whole hand.
- (3) Loss of remaining arm, leg or eye, if one has already been lost, shall be the difference between the compensation for the total incapacity, and compensation already paid or that which would have been paid for the previous loss of limb or eye.
- (4) Where there is loss of a thumb and one or more fingers of the same hand, the aggregate percentage shall not be more than that in respect of the loss of 4 fingers and the thumb of the same hand.

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- (5) Where there is loss of a great toe and one or more other toes of the same foot, the aggregate percentage shall not be more than the percentage for the loss of all toes of one foot. *(Added 66 of 1993 s. 21)*
- (6) Where a range of percentage is provided in this Schedule, the highest percentage shall be applied in the most severe case, the lowest percentage in the least severe case and percentages in between according to the degree of severity. *(Added 66 of 1993 s. 21)*

(Replaced 44 of 1980 s. 14. Amended 66 of 1993 s. 21)

Second Schedule

[ss. 3, 32, 33 & 34]

Occupational Diseases*(Format changes—E.R. 1 of 2018)*

Item	Description of occupational disease	Nature of trade, industry or process	Prescribed period for purposes of section 32
A. Caused by Physical Agents			
A1	Inflammation, ulceration or malignant disease of the skin or subcutaneous tissues or of the bones, or blood dyscrasia, or cataract, due to electro-magnetic radiations (other than radiant heat), or to ionising particles	Any occupation involving exposure to electro-magnetic radiations other than radiant heat, or to ionising particles.	10 years.
A2	Heat cataract	Any occupation involving frequent or prolonged exposure to rays from molten or red-hot material.	3 years.

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Second Schedule

S2-4

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Item	Description of occupational disease	Nature of trade, industry or process	Prescribed period for purposes of section 32
A3	Dysbarism, including decompression sickness, barotrauma and osteonecrosis	Any occupation involving subjection to compressed or rarefied air or other gases or gaseous mixtures.	1 year. In the case of arthritis —5 years.
A4	Cramp of the hand or forearm due to repetitive movements	Any occupation involving prolonged periods of handwriting, typing or other repetitive movements of the fingers, hand or arm.	1 year.
A5	Subcutaneous cellulitis of the hand (Beat hand)	Any occupation involving manual labour causing severe or prolonged friction or pressure on the hand.	1 year.
A6	Bursitis or subcutaneous cellulitis arising at or about the knee due to severe or prolonged external friction or pressure at or about the knee (Beat knee)	Any occupation involving manual labour causing severe or prolonged external friction or pressure at or about the knee.	1 year.

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Second Schedule

S2-6

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Item	Description of occupational disease	Nature of trade, industry or process	Prescribed period for purposes of section 32
A7	Bursitis or subcutaneous cellulitis arising at or about the elbow due to severe or prolonged external friction or pressure at or about the elbow (Beat elbow)	Any occupation involving manual labour causing severe or prolonged external friction or pressure at or about the elbow.	1 year.
A8	Traumatic inflammation of the tendons of the hand or forearm (including elbow), or of the associated tendon sheaths (<i>Amended L.N. 146 of 1999</i>)	Any occupation involving manual labour, or frequent or repeated movements of the hand or wrist.	1 year.
A9	Carpal tunnel syndrome	Any occupation involving repetitive use of hand-held powered tools whose internal parts vibrate so as to transmit that vibration to the hand, but excluding those which are solely powered by hand.	1 year.

(*Added L.N. 146 of 1999*)

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Second Schedule

S2-8

Cap. 282

Item	Description of occupational disease	Nature of trade, industry or process	Prescribed period for purposes of section 32
	B. Caused by Biological Agents		
B1	Anthrax	Any occupation involving contact with animals infected with anthrax or the handling (including the loading and unloading or transport) of animal products or residues.	1 month.
B2	Glanders	Any occupation involving contact with equine animals or their carcasses.	1 month.
B3	Infection by leptospira	Any occupation involving— (a) work in places which are, or are liable to be, infested by rats, field mice or voles, or other small mammals; (b) work at dog kennels or the care or handling of dogs;	3 months.

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Second Schedule

S2-10

Cap. 282

Item	Description of occupational disease	Nature of trade, industry or process	Prescribed period for purposes of section 32
		(c) contact with bovine animals or their meat products or pigs or their meat products.	
B4	Pulmonary disease due to the inhalation of the dust of mouldy hay or other mouldy vegetable produce, and characterized by symptoms and signs attributable to a reaction in the peripheral part of the bronchopulmonary system, and giving rise to a defect in gas exchange (Farmer's lung)	Any occupation involving exposure to the dust of mouldy hay or other mouldy vegetable produce by reason of employment— (a) in agriculture, horticulture or forestry; or (b) loading or unloading or handling in storage such hay or other vegetable produce; or (c) handling bagasse.	1 year.

Employees' Compensation Ordinance

Second Schedule

S2-12

Cap. 282

Item	Description of occupational disease	Nature of trade, industry or process	Prescribed period for purposes of section 32
B5	Infection by organisms of the genus brucella	Any occupation involving contact with— (a) animals infected by brucella, or their carcasses or parts thereof, or their untreated products; or (b) laboratory specimens or vaccines of, or containing, brucella.	1 year.
B6	Tuberculosis	Any occupation involving close and frequent contacts with a source or sources of tuberculosis infection by reason of employment—	6 months.

Employees' Compensation Ordinance

Second Schedule

S2-14

Cap. 282

Item	Description of occupational disease	Nature of trade, industry or process	Prescribed period for purposes of section 32
		<p>(a) in the medical treatment or nursing of a person or persons suffering from tuberculosis, or in a service ancillary to such treatment or nursing;</p> <p>(b) in attendance upon a person or persons suffering from tuberculosis, where the need for such attendance arises by reason of physical or mental infirmity;</p> <p>(c) as a research worker engaged in research in connection with tuberculosis;</p>	

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Second Schedule

S2-16

Cap. 282

Item	Description of occupational disease	Nature of trade, industry or process	Prescribed period for purposes of section 32
		(d) as a laboratory worker, pathologist, or post-mortem worker, where the occupation involves working with materials which are a source of tuberculosis infection, or in any occupation ancillary to such employment.	
B7	Parenterally contracted viral hepatitis	Any occupation involving contact with— (a) human blood or human blood products; or (b) a source of viral hepatitis.	6 months.

Employees' Compensation Ordinance

Second Schedule

S2-18

Cap. 282

Item	Description of occupational disease	Nature of trade, industry or process	Prescribed period for purposes of section 32
B8	Infection by streptococcus suis	Any occupation involving contact with pigs infected by streptococcus suis, or with the carcasses, products or residues of pigs so infected.	1 month.
B9	Avian chlamydiosis	Any occupation involving contact with birds infected with chlamydia psittaci, their remains or untreated products.	1 month.
B10	Legionnaires' disease	Any occupation involving the repair, maintenance or service of— (a) cooling systems that use fresh water; or (b) hot water service systems.	1 month.

(Added L.N. 146 of 1999)

Employees' Compensation Ordinance

Second Schedule

S2-20

Cap. 282

Item	Description of occupational disease	Nature of trade, industry or process	Prescribed period for purposes of section 32
B11	Severe acute respiratory syndrome	Any occupation involving close and frequent contacts with a source or sources of severe acute respiratory syndrome infection by reason of employment— (a) in the medical treatment or nursing of a person suffering from severe acute respiratory syndrome, or in a service ancillary to that treatment or nursing;	1 month.

Employees' Compensation Ordinance

Second Schedule

S2-22

Cap. 282

Item	Description of occupational disease	Nature of trade, industry or process	Prescribed period for purposes of section 32
		(b) in attending to a person suffering from severe acute respiratory syndrome, where the need for attendance arises by reason of the person's physical or mental infirmity;	
		(c) in identifying, detecting, tracing, isolating, detaining, supervising or surveillance of a person suffering from severe acute respiratory syndrome;	

Employees' Compensation Ordinance

Second Schedule

S2-24

Cap. 282

Item	Description of occupational disease	Nature of trade, industry or process	Prescribed period for purposes of section 32
		(d) as a research worker engaged in research in connection with severe acute respiratory syndrome, or in a service ancillary to that research; or	
		(e) as a laboratory worker, pathologist, post-mortem worker or funeral services worker, where the employment involves the handling of any human body or other materials that are a source of severe acute respiratory syndrome infection, or in a service ancillary to that handling.	

(Added L.N. 213 of 2004)

Employees' Compensation Ordinance

Second Schedule

S2-26

Cap. 282

Item	Description of occupational disease	Nature of trade, industry or process	Prescribed period for purposes of section 32
B12	Avian influenza A	<p>Any occupation involving close and frequent contacts with a source or sources of avian influenza A infection by reason of employment—</p> <p>(a) as a worker engaged in the handling of poultry or birds or their uncooked remains or residues, or their untreated products, that are a source of avian influenza A infection, or in a service ancillary to that handling;</p> <p><i>(Amended L.N. 13 of 2005)</i></p>	14 days.

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S2-28

Cap. 282

Item	Description of occupational disease	Nature of trade, industry or process	Prescribed period for purposes of section 32
		(b) as a research worker engaged in research in connection with avian influenza A, or in a service ancillary to that research; or	
		(c) as a laboratory worker engaged in the handling of materials that are a source of avian influenza A infection, or in a service ancillary to that handling.	
		<i>(Added L.N. 213 of 2004)</i>	
	C. Caused by Chemical Agents		
C1	Poisoning by lead or a compound of lead	Any occupation involving the use or handling of, or exposure to the fumes, dust or vapour of, lead or a compound of lead, or a substance containing lead.	2 years. In the case of nephritis —4 years.

Employees' Compensation Ordinance

Second Schedule

S2-30

Cap. 282

Item	Description of occupational disease	Nature of trade, industry or process	Prescribed period for purposes of section 32
C2	Poisoning by manganese or a compound of manganese	Any occupation involving the use or handling of, or exposure to the fumes, dust or vapour of, manganese or a compound of manganese, or a substance containing manganese.	2 years.
C3	Poisoning by phosphorus or an inorganic compound of phosphorus or the anti-cholinesterase or pseudo anti-cholinesterase action of organic phosphorus compounds	Any occupation involving the use or handling of, or exposure to the fumes, dust or vapour of, phosphorus or a compound of phosphorus, or a substance containing phosphorus.	3 years.

Employees' Compensation Ordinance

Second Schedule

S2-32

Cap. 282

Item	Description of occupational disease	Nature of trade, industry or process	Prescribed period for purposes of section 32
C4	Poisoning by arsenic or a compound of arsenic	Any occupation involving the use or handling of, or exposure to the fumes, dust or vapour of, arsenic or a compound of arsenic, or a substance containing arsenic.	1 year.
C5	Poisoning by mercury or a compound of mercury	Any occupation involving the use or handling of, or exposure to the fumes, dust or vapour of, mercury or a compound of mercury, or a substance containing mercury.	2 years.

Employees' Compensation Ordinance

Second Schedule

S2-34

Cap. 282

Item	Description of occupational disease	Nature of trade, industry or process	Prescribed period for purposes of section 32
C6	Poisoning by carbon bisulphide	Any occupation involving the use or handling of, or exposure to the fumes, or vapour of, carbon bisulphide or a compound of carbon bisulphide, or a substance containing carbon bisulphide.	1 year.
C7	Poisoning by benzene or a homologue of benzene	Any occupation involving the use or handling of, or exposure to the fumes of, or vapour containing, benzene or any of its homologues.	1 year.
C8	Poisoning by a nitro- or amino- or chloro-derivative of benzene or of a homologue of benzene, or poisoning by nitro-chlorobenzene	Any occupation involving the use or handling of, or exposure to the fumes of, or vapour containing, a nitro- or amino- or chloro-derivative of benzene or nitro-chlorobenzene.	1 year. In the case of neoplasm —10 years.

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Second Schedule

S2-36

Cap. 282

Item	Description of occupational disease	Nature of trade, industry or process	Prescribed period for purposes of section 32
C9	Poisoning by dinitrophenol or a homologue or by substituted dinitrophenols or by the salts of such substances	Any occupation involving the use or handling of, or exposure to the fumes of, or vapour containing, dinitrophenol or a homologue or substituted dinitrophenols or the salts of such substances.	1 year.
C10	Poisoning by halogen derivatives of hydrocarbons of the aliphatic series	Any occupation involving the use or handling of, or exposure to the fumes of, or vapour containing, halogen derivatives of hydrocarbons of the aliphatic series.	1 year.
C11	Poisoning by diethylene dioxide (dioxan)	Any occupation involving the use or handling of, or exposure to the fumes of, or vapour containing, diethylene dioxide (dioxan).	1 year.

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Second Schedule

S2-38

Cap. 282

Item	Description of occupational disease	Nature of trade, industry or process	Prescribed period for purposes of section 32
C12	Poisoning by chlorinated naphthalene	Any occupation involving the use or handling of, or exposure to the fumes of, or dust or vapour containing, chlorinated naphthalene.	1 year.
C13	Poisoning by oxides of nitrogen	Any occupation involving the use or handling of, or exposure to the fumes of, or dust or vapour containing, oxides of nitrogen.	1 year.
C14	Poisoning by beryllium or a compound of beryllium	Any occupation involving the use or handling of, or exposure to the fumes, dust or vapour of, beryllium or a compound of beryllium or a substance containing beryllium.	1 year.

Employees' Compensation Ordinance

Second Schedule

S2-40

Cap. 282

Item	Description of occupational disease	Nature of trade, industry or process	Prescribed period for purposes of section 32
C15	Poisoning by cadmium	Any occupation involving the use or handling of, or exposure to the dust or fumes of, cadmium.	1 year.
C16	Dystrophy of the cornea (including ulceration of the corneal surface) of the eye	Any occupation involving the use or handling of, or exposure to, arsenic, tar, pitch, bitumen, mineral oil (including paraffin), soot or any compound, product, (including quinone or hydroquinone) or residue of any of these substances.	1 year.

Employees' Compensation Ordinance

Second Schedule

S2-42

Cap. 282

Item	Description of occupational disease	Nature of trade, industry or process	Prescribed period for purposes of section 32
C17	Primary epitheliomatous cancer of the skin	Any occupation involving the use or handling of, or exposure to, arsenic, tar, pitch, bitumen, mineral oil (including paraffin), soot or any compound, product, or residue of any of these substances.	10 years.
C18	Chrome ulceration including perforation of nasal septum	Any occupation involving the use or handling of chromic acid, chromate or bichromate of ammonium, potassium, sodium or zinc, or any preparation or solution containing any of these substances.	1 year.

Employees' Compensation Ordinance

Second Schedule

S2-44

Cap. 282

Item	Description of occupational disease	Nature of trade, industry or process	Prescribed period for purposes of section 32
C19	Primary neoplasm of the epithelial lining of the urinary tract, (renal pelvis, ureter, bladder and urethra) including papilloma, carcinoma-in-situ and invasive carcinoma	Any occupation involving the production, use or handling of alpha-naphthylamine, beta-naphthylamine or methylene-bis-ortho-chloraniline, or diphenyl substituted by at least one nitro or primary amino group or by at least one nitro and primary amino group (including benzidine) and any of the above substances if further ring substituted by halogeno methyl or methoxyl group and the salts of any of the above substances and the production of auramine and magenta.	20 years.

Employees' Compensation Ordinance

Second Schedule

S2-46

Cap. 282

Item	Description of occupational disease	Nature of trade, industry or process	Prescribed period for purposes of section 32
C20	Peripheral poly-neuropathy	Any occupation involving the production, use or handling of, or exposure to, any physical form of or any preparation or solution containing n-Hexane or methyl-n-butyl ketone.	1 year.
C21	Localised new growth of the skin, papillomatous or keratotic	Any occupation involving the use or handling of, or exposure to, arsenic, tar, pitch, bitumen, mineral oil (including paraffin), soot or any compound, product or residue of any of these substances.	10 years.

Employees' Compensation Ordinance

Second Schedule

S2-48

Cap. 282

Item	Description of occupational disease	Nature of trade, industry or process	Prescribed period for purposes of section 32
C22	Occupational vitiligo	Any occupation involving the use or handling of, or exposure to, paratertiary-butyl phenol, paratertiary-butyl catechol, para-amyl-phenol, hydroquinone or the monobenzyl or monobutyl ether of hydroquinone.	1 year.
D. Caused by Miscellaneous Agents			
D1	Inflammation or ulceration of the skin produced by dust, liquid or vapour (including the condition known as chloracne but excluding chrome ulceration)	Any occupation involving exposure to dust, liquid or vapour, capable of irritating the skin.	1 year.

Employees' Compensation Ordinance

Second Schedule

S2-50

Cap. 282

Item	Description of occupational disease	Nature of trade, industry or process	Prescribed period for purposes of section 32
D2	Inflammation or ulceration of the mucous membrane of the upper respiratory passages or mouth produced by dust, liquid or vapour	Any occupation involving exposure to dust, liquid or vapour.	1 year.
D3	Carcinoma of the nasal cavity or associated air sinuses (nasal carcinoma)	Any occupation involving the manufacture or repair of wooden goods or the manufacture or repair of footwear or components of footwear made wholly or partly of leather or fibre board.	10 years.
D4	Byssinosis	Any occupation involving exposure to raw cotton dust.	1 year.

Employees' Compensation Ordinance

Second Schedule

S2-52

Cap. 282

Item	Description of occupational disease	Nature of trade, industry or process	Prescribed period for purposes of section 32
D5	Occupational asthma	<p>Any occupation involving the use or handling of, or exposure to, any of the following agents which may irritate or sensitise the respiratory system—</p> <ul style="list-style-type: none"> (a) isocyanates; (b) platinum salts; (c) fumes or dusts arising from the manufacture, transport or use of hardening agents (including epoxy resin curing agents) based on phthalic anhydride, trimellitic anhydride or triethylenetetramine; 	1 month.

Employees' Compensation Ordinance

Second Schedule

S2-54

Cap. 282

Item	Description of occupational disease	Nature of trade, industry or process	Prescribed period for purposes of section 32
		(d) fumes arising from the use of rosin as a soldering flux;	
		(e) formaldehyde;	
		(f) proteolytic enzymes;	
		(g) animals or insects used for the purposes of research or education or in laboratories;	

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Second Schedule

S2-56

Cap. 282

Item	Description of occupational disease	Nature of trade, industry or process	Prescribed period for purposes of section 32
		(h) dusts arising from the sowing, cultivation, harvesting, drying, handling, milling, transport or storage of barley, oats, rye, wheat or maize, or the handling, milling, transport or storage of meal or flour made therefrom; <i>(Amended E.R. 1 of 2018)</i>	
		(i) any other sensitising agent inhaled at work. <i>(Added L.N. 146 of 1999)</i>	
<i>(Replaced L.N. 386 of 1983. Amended L.N. 52 of 1987; L.N. 397 of 1991; L.N. 410 of 1993)</i>			

Third Schedule

[ss. 10A & 48A]

Medical Expenses Payable by an Employer in Respect of an Injury Due to Accident Arising out of and in the Course of Employment

(Format changes—E.R. 1 of 2018)

1. Subject to paragraph 3, where an employee is given medical treatment as an in-patient in a hospital, the medical expenses payable by the employer are—
 - (a) the total amount of medical expenses incurred in respect of the medical treatment; or
 - (b) the total amount at the rate of \$300 for each day of stay in the hospital,whichever total amount is the less.

2. Subject to paragraph 3, where an employee is given medical treatment other than as an in-patient in a hospital, the medical expenses payable by the employer are—
 - (a) the total amount of the medical expenses incurred in respect of the medical treatment; or
 - (b) the total amount at the rate of \$300 for each day on which medical treatment is given,whichever total amount is the less.

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3. Where an employee is given medical treatment on any day both as an in-patient in a hospital and other than as an in-patient in a hospital, the daily rate for the purpose of this Schedule shall be \$370.

(Added 74 of 1977 s. 4. Amended 44 of 1980 s. 15; 76 of 1982 s. 36; L.N. 321 of 1985; L.N. 390 of 1987; L.N. 386 of 1989; L.N. 435 of 1991; L.N. 463 of 1993; L.N. 566 of 1995; L.N. 285 of 1998; L.N. 98 of 2003; L.N. 25 of 2018)

Fourth Schedule

[ss. 40 & 48A]

Minimum Insurance Cover for the Purpose of Section 40

(Format changes—E.R. 1 of 2018)

1. For the purpose of section 40(1)

Where the number of employees in relation to whom the policy is in force	Applicable amount
does not exceed 200	\$100 million per event
exceeds 200	\$200 million per event

2. For the purpose of section 40(1B)

Where a principal contractor takes out a policy of insurance	\$200 million per event
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3. For the purpose of section 40(1C)

Where a group of companies takes out a policy of insurance	\$200 million per event
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(Added 47 of 1995 s. 12)

Fifth Schedule

[s. 38]

Specified Structures and Works

(Format changes—E.R. 1 of 2018)

1. Any building, edifice, wall, fence, or chimney, whether constructed wholly or partly above or below ground level.
2. Any road, motorway, railway, tramway, cableway, aerial ropeway or canal.
3. Any harbour works, dock, pier, sea defence work, or lighthouse.
4. Any aqueduct, viaduct, bridge, or tunnel.
5. Any sewer, sewage disposal works, or filter bed.
6. Any airport or works connected with air navigation.
7. Any dam, reservoir, well, pipeline, culvert, shaft, or reclamation.
8. Any drainage, irrigation, or river control work.
9. Any water, electrical, gas, telephonic, telegraphic, radio, or television installation or works, or any other works designed for the manufacturing or transmission of power or the transmission or reception of radio or sound waves.

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Fifth Schedule

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10. Any structure designed for the support of machinery, plant, or power transmission lines.

(Added 47 of 1995 s. 12)

Sixth Schedule

[ss. 6, 6C, 6D, 6E, 7, 8, 11,
16A, 36C, 36J & 48A]

Specified Amount of Compensation

(Format changes—E.R. 2 of 2012)

Section	Amount \$	Percentage
6(1)(a)	38,670	
6(1)(b)	38,670	
6(1)(c)	38,670	
6(2)	514,510	
6(5)	98,950	
6C(8)(a)	830	5
6C(8)(b)	1,670	10
6D(3)(a)	830	5
6D(3)(b)	1,670	10
6E(9)(a)	830	5
6E(9)(b)	1,670	10
7(1)(a)	38,670	
7(1)(b)	38,670	
7(1)(c)	38,670	
7(2)	584,220	

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Section	Amount \$	Percentage
8(1)(a)	700,390	
8(1)(b)	700,390	
11(5)	5,710	
16A(10)(a)	830	5
16A(10)(b)	1,670	10
36C	47,310	
36J	143,320	

(Sixth Schedule replaced 52 of 2000 s. 27. Amended L.N. 93 of 2010; L.N. 126 of 2012; L.N. 31 of 2015; L.N. 30 of 2017; L.N. 60 of 2019; L.N. 42 of 2021; L.N. 36 of 2023; L.N. 43 of 2025)

Seventh Schedule

[ss. 6A & 48B]

Apportionment of Compensation Payable to Eligible Members of the Family

(Format changes—E.R. 1 of 2018)

1. If the only eligible members of the family are spouses or cohabitees, or any combination thereof, then the compensation shall be paid to all of them in equal amounts.
2. If the only eligible members of the family are children, then the compensation shall be paid to all of them in equal amounts.
3. If the only eligible members of the family are parents or grandparents, or any combination thereof, then—
 - (a) the compensation shall be paid to all of those parents in equal amounts if there are no grandparents;
 - (b) the compensation shall be paid to all of those grandparents in equal amounts if there are no parents;
 - (c) in any other case—
 - (i) 70% of the compensation shall be paid to all of those parents in equal amounts; and
 - (ii) the remaining 30% of the compensation shall be paid to all of those grandparents in equal amounts.
4. If the only eligible members of the family are members other than spouses, cohabitees, children, parents and grandparents, then the

compensation shall be paid to all of those eligible members in equal amounts.

5. If the only eligible members of the family are—
- (a) spouses or cohabitees, or any combination thereof; and
 - (b) children,
- then—
- (i) 50% of the compensation shall be paid to all of those spouses or cohabitees in equal amounts; and
 - (ii) the remaining 50% of the compensation shall be paid to all of those children in equal amounts.
6. If the only eligible members of the family are or the eligible members of the family include—
- (a) spouses or cohabitees, or any combination thereof;
 - (b) children; and
 - (c) parents or grandparents, or any combination thereof,
- then, whether or not there is any other eligible member of the family—
- (i) 45% of the compensation shall be paid to all of those spouses or cohabitees in equal amounts;
 - (ii) 45% of the compensation shall be paid to all of those children in equal amounts;
 - (iii) the remaining 10% of the compensation shall be paid—
 - (A) to all of those parents in equal amounts if there are no grandparents;
 - (B) to all of those grandparents in equal amounts if there are no parents; and

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Section 7

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- (C) in any other case, to all of those parents and grandparents such that 70% of that 10% is paid to all of those parents in equal amounts and 30% of that 10% is paid to all of those grandparents in equal amounts.

7. If the only eligible members of the family are—

- (a) spouses or cohabitees, or any combination thereof; and
- (b) parents or grandparents, or any combination thereof,

then—

- (i) 80% of the compensation shall be paid to all of those spouses or cohabitees in equal amounts;
- (ii) the remaining 20% of the compensation shall be paid—
 - (A) to all of those parents in equal amounts if there are no grandparents;
 - (B) to all of those grandparents in equal amounts if there are no parents; and
 - (C) in any other case, to all of those parents and grandparents such that 70% of that 20% is paid to all of those parents in equal amounts and 30% of that 20% is paid to all of those grandparents in equal amounts.

8. If the only eligible members of the family are—

- (a) spouses or cohabitees, or any combination thereof; and
- (b) other members who are not children, parents or grandparents,

then—

- (i) 95% of the compensation shall be paid to all of those spouses or cohabitees in equal amounts;

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- (ii) the remaining 5% of the compensation shall be paid to all of those other members in equal amounts.

9. If the only eligible members of the family are—

- (a) spouses or cohabitants, or any combination thereof;
- (b) parents or grandparents, or any combination thereof; and
- (c) other members who are not children,

then—

- (i) 75% of the compensation shall be paid to all of those spouses or cohabitants in equal amounts;
- (ii) 20% of the compensation shall be paid—
 - (A) to all those parents in equal amounts if there are no grandparents;
 - (B) to all of those grandparents in equal amounts if there are no parents; and
 - (C) in any other case, to all of those parents or grandparents such that 70% of that 20% is paid to all of those parents in equal amounts and 30% of that 20% is paid to all of those grandparents in equal amounts;
- (iii) the remaining 5% of the compensation shall be paid to all of those other members in equal amounts.

10. If the only eligible members of the family are—

- (a) spouses or cohabitants, or any combination thereof;
- (b) children; and
- (c) other members who are not parents or grandparents,

then—

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- (i) 50% of the compensation shall be paid to all of those spouses or cohabitees in equal amounts;
- (ii) 45% of the compensation shall be paid to all of those children in equal amounts;
- (iii) the remaining 5% of the compensation shall be paid to all of those other members of the family in equal amounts.

11. If the only eligible members of the family are—

- (a) children; and
- (b) parents or grandparents, or any combination thereof,

then—

- (i) 80% of the compensation shall be paid to all of those children in equal amounts;
- (ii) the remaining 20% of the compensation shall be paid—
 - (A) to all of those parents in equal amounts if there are no grandparents;
 - (B) to all of those grandparents in equal amounts if there are no parents; and
 - (C) in any other case, to all of those parents and grandparents such that 70% of that 20% is paid to all of those parents in equal amounts and 30% of that 20% is paid to all of those grandparents in equal amounts.

12. If the only eligible members of the family are—

- (a) children; and
- (b) other members who are not spouses, cohabitees, parents or grandparents,

then—

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- (i) 95% of the compensation shall be paid to all of those children in equal amounts;
- (ii) the remaining 5% of the compensation shall be paid to all those other members in equal amounts.

13. If the only eligible members of the family are—

- (a) children;
- (b) parents or grandparents, or any combination thereof; and
- (c) other members who are not spouses or cohabitees,

then—

- (i) 75% of the compensation shall be paid to all of those children in equal amounts;
- (ii) 20% of the compensation shall be paid—
 - (A) to all of those parents in equal amounts if there are no grandparents;
 - (B) to all of those grandparents in equal amounts if there are no parents; and
 - (C) in any other case, to all of those parents or grandparents such that 70% of that 20% is paid to all of those parents in equal amounts and 30% of that 20% is paid to all of those grandparents in equal amounts;
- (iii) the remaining 5% of the compensation shall be paid to all of those other members in equal amounts.

14. If the only eligible members of the family are—

- (a) parents or grandparents, or any combination thereof; and
- (b) other members who are not spouses, cohabitees or children,

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then—

- (i) 95% of the compensation shall be paid—
 - (A) to all of those parents in equal amounts if there are no grandparents;
 - (B) to all of those grandparents in equal amounts if there are no parents; and
 - (C) in any other case, to all of those parents or grandparents such that 70% of that 95% is paid to all of those parents in equal amounts and 30% of that 95% is paid to all of those grandparents in equal amounts;
- (ii) the remaining 5% of the compensation shall be paid to all of those other members in equal amounts.

(Seventh Schedule added 52 of 2000 s. 28)