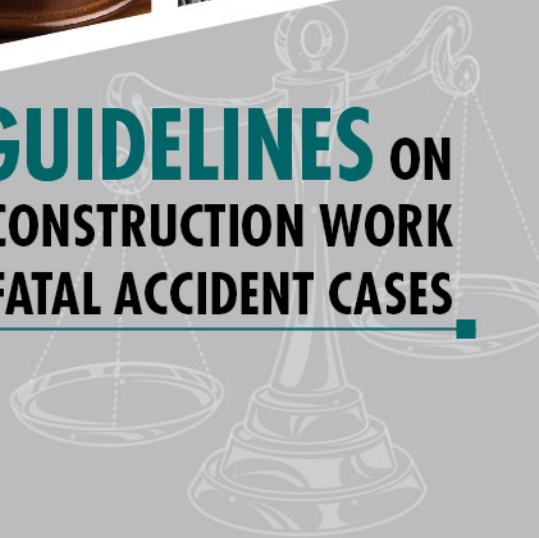




CONSTRUCTION
INDUSTRY COUNCIL
建造業議會



GUIDELINES ON HANDLING CONSTRUCTION WORK INJURY AND FATAL ACCIDENT CASES



Disclaimer

This publication is prepared by the Construction Industry Council (CIC) to report findings or promote good practices on specific subjects for reference by the industry. To the best of our knowledge, information contained in this publication reflects the latest legislation, policy and rules as per the date of publication. You are strongly advised to seek independent advice on any future legislation, policy and rules amendments where possible.

This publication may become relevant before a court or tribunal to establish any alleged breach of a duty of care on the part of an industry stakeholder. However, it is NOT intended to constitute any professional advice on these or any other subjects. The CIC (including its members and employees) will NOT accept responsibilities for any consequences resulting from the use of or failure to use this publication.

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Preface

The Construction Industry Council (CIC) is committed to seeking continuous improvement in all aspects of the construction industry in Hong Kong. To achieve this aim, the CIC forms Committees, Task Forces and other forums to review specific areas of work with the intention of producing Guidelines, Codes of Practice and Codes of Conduct to assist participants in the industry to strive for excellence.

The CIC appreciates that some improvements and practices can be implemented immediately whilst others may take more time to complete the adjustment. It is for this reason that three separate categories of publication have been adopted, the purpose of which is as follows:

Guidelines	These are intended to guide industry participants to adopt new standards, methodologies or practices. The CIC strongly recommends the adoption of these Guidelines by industry stakeholders where appropriate.
Codes of Practice	The CIC expects all industry participants to adopt the recommendations set out in such Codes as soon as practicable and to adhere to such standards or procedures therein at all times.
Codes of Conduct	The CIC encourages the upholding of professionalism and integrity within the industry through self discipline. The Codes of Conduct set out the relevant principles that all industry participants are expected to follow.

The parties adopting the practices set out in this publication will normally be considered by the CIC in general as adopting good practices (where relevant) on the specific subjects. The parties using this publication should therefore seek appropriate advice from their professional advisers.

If you have attempted to follow this publication, we do urge you to share your feedback with us in order that we can further enhance them for the benefit of all concerned. On this basis the CIC Secretariat is in the process of developing a “feed-back” mechanism, whereby your views can be consolidated for such purposes. With our joint efforts, we believe our construction industry will develop further and will continue to prosper for years to come.

Foreword

The Hong Kong construction industry has been working for years to improve the safety performance of construction activities. Nevertheless, accidents sometimes still take place at construction sites. Despite that a number of safety measures have been introduced and implemented over the years, most construction site accidents may cause injuries, ranging from a minor scratch to multiple injuries. Occasionally, a few accidents may even take away human lives.

A Task Force on the Application of Mediation on Construction Injuries Dispute under the Committee on Construction Site Safety of the Construction Industry Council (CIC) was formed in 2009. The objective of the Task Force is to review the applicability of mediation for resolving work injury and fatal accident claims. The Task Force agreed that mediation would be an effective dispute resolution mechanism which could be used to assist the workers, the employers and the insurance companies in settling work injury and fatal accident claims, without resort to litigation which is often regarded as time-consuming and expensive. If effectively implemented, mediation could facilitate a win-win-win situation for the injured worker, the employer and the insurance company.

To promote the adoption of mediation, the Task Force determined that the CIC should prepare guidelines on the whole injury compensation process to facilitate workers and employers to understand their rights and obligations subsequent to the occurrence of an accident.

Purpose

This publication intends to concisely explain to workers, employers and all other stakeholders the procedures for handling construction work injury and fatal accident cases. Such procedures are presented in a convenient, logical and coherent form for easy reference.

Terminology

In this document, unless the context otherwise requires:

Following this statement, a list of all words or phrases that might be misinterpreted should be clearly explained in list format using numbers.

Hong Kong Laws

“ECO”	Employees’ Compensation Ordinance (Chapter 282)
“FAO”	Fatal Accidents Ordinance (Chapter 22)
“LARCO”	Law Amendment & Reform (Consolidation) Ordinance, (Chapter 23)
“LO”	Limitation Ordinance (Chapter 347)

Government Departments/Organisations

“CIC”	Construction Industry Council
“LAD”	Legal Aid Department
“LD”	Labour Department
“SWD”	Social Welfare Department

Relevant Parties

“CP”	Concerned parties
“D”	The deceased
“DFM”	The deceased’s family member(s)
“E”	Employer
“IW”	Injured worker
“PC”	Principal Contractor
“W”	Witness to a work injury

Miscellaneous

“CSSAS”	Comprehensive Social Security Assistance Scheme
“FAQ”	Frequently Asked Questions & Answers
“HKFI”	Hong Kong Federation of Insurers
“HKMC”	Hong Kong Mediation Council
“LAESP”	Legal Aid Electronic Services Portal
“NIMPS”	New Insurance Mediation Pilot Scheme
“OLAS”	Ordinary Legal Aid Scheme

“OMU”	Occupational Medicine Unit
“PSLA”	Pain, suffering and loss of amenities
”SLAS”	Supplementary Legal Aid Scheme
“SSAS”	Social Security Allowance Scheme
“SSPH”	Samaritans Suicide Prevention Hotline
“VRP”	Voluntary Rehabilitation Programme

Background

Under the existing provisions of the Employees' Compensation Ordinance (ECO) (Chapter 282), when a construction worker sustains injury/dies as a result of an accident arising out of and in the course of employment, compensation is payable to the injured person/the deceased's family members.

As required by the ECO, an employer must notify the Commissioner for Labour of any accident in the prescribed manner. With respect to claims for employees' compensation resulting from the accident ("Employees' Compensation Claim"), the Commissioner for Labour will, subject to the provisions of the ECO, determine the amount of compensation payable based on the merits and the nature of each case.

In addition to the Employees' Compensation Claim, the injured worker/the deceased's family members could make a civil claim for damages at common law if the injury/death is caused by the employer's fault or in circumstances which create a legal liability in a third party.

Introduction

This publication is divided into 9 Chapters.

Chapter 1 explains to an injured worker and his employer what actions should be taken after an accident occurred in a construction site. Follow-up actions such as completing the Notification of Work Accident Form by the injured worker and the Form 2B/2 by the employer are also illustrated.

Chapter 2 deals with the Sick Leave Clearance procedures. Questions such as what to do with the sick leave certificates issued by a medical practitioner, what assistance are available to the injured worker during the sick leave period, and how to make an appointment for Sick Leave Clearance are addressed.

Chapter 3 explains the procedures of medical assessment, including what could the injured worker do if he does not agree with the assessment result and the necessary procedures of making an application to the District Court.

Chapter 4 explains the qualifying conditions and calculation methods for assessing compensation under the ECO.

Chapter 5 and **Chapter 6** deal with the options available to the injured worker/the deceased's family members when making a civil claim against the employer. The options include: 1) seeking legal aid; 2) engaging a private lawyer; 3) do-it-yourself as self-litigant. At the end of Chapter 6, a recent Hong Kong case is highlighted to explain the consequences of using recovery agents.

Chapter 7 explains how and why does mediation work. With the promotion of mediation as an alternative to litigation, the injured worker, the deceased's family members and the employer are encouraged to use mediation for resolving disputes.

Chapter 8 and **Chapter 9** deal with work injury claims and fatal accident claims respectively. The establishment of liability and the calculation of compensation for each type of claims are explained.

Chapter 1 - Notification of Work Injury

Actions to be taken by Injured Worker and the Employer after a Work Injury Occurred

Item		ECO	Description	Action by	Useful Contact	FAQ
a	When work Injury occurs		The employer (E) (and his employees including supervisor/safety officer) or witness to a work injury (W) at the scene should take emergency measures:	E, W		
			<ul style="list-style-type: none"> ● Call the ambulance or the Police. 	E, W	Call 999	
			<ul style="list-style-type: none"> ● If necessary, first aid treatment should be given to the injured worker. 	E, W		
			<ul style="list-style-type: none"> ● Where the injury results in death, the employer should immediately inform the family members of the deceased worker and provide them with appropriate assistance. 	E		
i	Inform the medical staff		The injured worker or the witness of the injury should inform the attending medical staff of the cause and course of the injury to facilitate them to make proper diagnosis and offer appropriate treatments.	IW, W		
ii	Retain relevant documents		Consultation documents such as consultation cards and receipts of medical expenses should be retained for evidence purpose.	IW		
b	The injured worker shall notify the employer as soon as possible		Apart from verbal notification, the injured worker should inform the employer formally in writing as soon as possible. He should also provide accurate and comprehensive information about the accident including date, time, location, eyewitnesses, nature of injury and other details. The injured worker could also use the Notification of Work Accident Form which could be obtained from the branch offices of the Employees' Compensation Division of the LD or downloaded from its website.	IW	LD Tel: 2717 1771 Website: www.ecd.labor.gov.hk	
i	Return the original Notification Form		The injured worker should send the original written notice or Notification Form to the employer and keep a copy for his own reference.	IW	LD Tel: 2717 1771	

Item		ECO	Description	Action by	Useful Contact	FAQ
ii	Remind the employer		The injured worker should make sure that the employer receives the Notification Form and should remind the employer to report the work injury to the LD within the specified time.	IW		Q: What if the employer has not reported the work injury to the LD? A: The injured worker should report the matter to the respective Employees' Compensation Division branch office of the LD and fill in the Notification of Accident Form. Upon receipt of the notification, the LD will follow up with the employer.
iii	Attending medical examination requested by the employer	s.16	The employer may, within 7 days upon receipt of the notice of accident from the injured worker, require the injured worker to attend a medical examination conducted by a registered medical practitioner, a registered Chinese medicine practitioner or a registered dentist named by the employer. The employer has to pay all the expenses.	E		
iv	Copy of Examination Report		The registered medical practitioner, registered Chinese medicine practitioner or registered dentist named by the employer to conduct the medical examination should prepare a report on the examination and send it to the employer at the employer's expense. The injured worker may in writing request the employer to send him, free of charge, a copy of the examination report.	E, IW		
v	Suspension of Compensation		If the injured worker fails without reasonable excuse to submit himself for the examination, his right to compensation shall be suspended until such examination has been taken place.	E, IW		

Item		ECO	Description	Action by	Useful Contact	FAQ
c	The employer must notify the LD of the work accident within the time limit	s.15	The employer must notify the Commissioner for Labour of the work injury case irrespective of whether the accident will give rise to any liability to pay compensation, within 7 or 14 days, as the case may be.	E	LD Tel: 2717 1771	Q: What if the employer fails to give notice of the work accident within the time limit? A: If the employer, without reasonable excuse, fails to give notice of the work accident or makes false or misleading statements to the Commissioner for Labour, he commits a criminal offence and is liable to a maximum fine of HK\$ 50,000.
i	Time limit		<ul style="list-style-type: none"> For work injury resulting in incapacity, the time limit is 14 days; For work injury resulting in death, the time limit is 7 days. 	E		
ii	Notification Form					
	Incapacity < 3 days		For work injury resulting in incapacity for a period not exceeding 3 days, the employer should complete Form 2B.	E		
	Incapacity > 3 days		For work injury resulting in incapacity for a period exceeding 3 days, the employer should complete Form 2.	E		
	Death		For work injury resulting in death, the employer should complete Form 2	E		

Item		ECO	Description	Action by	Useful Contact	FAQ
	Return the completed Form 2B/2		The employer should return the completed Form to the respective branch office of the Employees' Compensation Division of the LD as listed out in Annex C. (Details see Annex C)	E		Q: What if the employer has not yet obtained all the required information for completing the notification form? A: The employer is still obliged to complete and submit the form within the time limit on the basis of available information. The employer could provide supplementary information to the LD after submitting the form.
iii	The employer not aware of the work accident		If the employer is not aware of the happening of work accident within the time limit, he must notify the Commissioner for Labour within 7 or 14 days, as the case may be, after the work accident came to his knowledge. The employer is presumed to have had knowledge of the accident if the employee died on or near the employer's premises, or at the place where he was working.	E		
iv	Doubtful Work Injury		Even if the employer has doubts about the cause of the injured worker's injury, he is still required to notify the Commissioner for Labour of the work injury within the time limit.	E		
v	Possible actions by the employer		<ul style="list-style-type: none"> ● The employer may conduct a preliminary investigation such as interviewing the injured worker to obtain details about the accident; 	E		
			<ul style="list-style-type: none"> ● The employer may inquire the witnesses about the details of the work accident; 	E		

Item		ECO	Description	Action by	Useful Contact	FAQ
			<ul style="list-style-type: none"> The employer may gather circumstantial evidence or assess the possibility of the work environment leading to the accident; 	E		
			<ul style="list-style-type: none"> The employer may seek advice from his insurer for appropriate follow-up actions; 	E		
			<ul style="list-style-type: none"> The employer may seek professional legal advice; 	E		
			<ul style="list-style-type: none"> The employer may request the attending registered medical practitioner, Chinese medicine practitioner or dentist of the injured worker to provide a medical report for reference; 	E		
			<ul style="list-style-type: none"> The employer may pass his views and the relevant evidence to the LD for their follow-up actions. However, the LD does not have the authority to make adjudication on any dispute of the case. If the employer and the injured worker / DFM could not reach any settlement with the assistance of the LD, the case shall be determined by the court; 	E	LD Tel: 2717 1771	
			<ul style="list-style-type: none"> If the employer suspects a fraudulent case, he may forward the relevant evidence to the Police for their follow-up actions. 	E	Call Police at 999	
vi	The Principal Contractor (PC)	s.24	The ECO provides that where an employee of a sub-contractor is injured / dies at work, the principal contractor (PC) shall be liable for any claim of compensation made by the injured employee / DFM if the subcontractor fails to pay compensation to the injured worker / DFM.	PC		
vii	Indemnity by the subcontractor	s.24 (2)	The PC shall be entitled to be indemnified by any person who would have been liable to pay compensation to the injured worker / DFM.	PC		
viii	Supply the name and address of the PC	s.24	An injured worker employed by a sub-contractor may issue a written request to the sub-contractor for the name and address of the PC.	IW		

Item		ECO	Description	Action by	Useful Contact	FAQ
ix	Serve written notice to the PC		With the name and address of the PC, the injured worker shall, before making any claim against the PC, serve on the PC a notice in writing stating : <ul style="list-style-type: none"> ● the name and address of the injured worker; ● the name and address of the sub-contractor by whom he is employed; ● the address of the place of employment of the injured worker; ● the particulars of the accident and the injury suffered; ● the amount of compensation to be claimed. 	IW	LD Tel: 2717 1771 www.ecd.labor.gov.hk	
d.	The employer should notify the insurer of the work accident					
i	Compulsory Insurance against the employer's liability	s.40	The ECO provides that no employer shall employ any employee in any employment unless there is in force a policy of insurance to cover their liabilities both under the Ordinance and at common law for work injuries sustained by his employees.	E		Q: What could happen to an employer if he has not taken out a valid insurance policy to cover his liabilities for work injuries sustained by his employees? A: An employer who fails to comply with s.40 of the ECO to secure a valid insurance cover for his employees commits an offence and is liable on conviction to a maximum fine of HK\$100,000 and imprisonment for 2 years.

Item		ECO	Description	Action by	Useful Contact	FAQ
ii	To notify the insurer		The employer should notify the insurer of the work accident according to the stipulated period and in the specified format in the policy. The insurer may need to send an adjuster to investigate the work accident right away. If possible, the employer should take photographs of the scene immediately after the accident and submit them to the insurer. The employer should also provide the insurer with all relevant documents, including :	E		
	For Work Injury Case		<ul style="list-style-type: none"> - Form 2B/2 copy; - HKID card copy of the injured worker; - employment contract; - salary record (for the last 12 months immediately before the date of accident); - MPF record; - original sick leave certificate(s) with diagnosis issued by the medical practitioner; - receipts of medical expenses, if any. 			
	For Fatal Accident Case		<ul style="list-style-type: none"> - Form 2 copy; - HKID card copy of the deceased worker; - employment contract; - salary record (for the last 12 months immediately before the date of accident); - MPF record; - receipts of medical expenses, if any; - Death Certificate; - Autopsy Report; - incident report issued by relevant authority, if applicable. 			

Chapter 2 - Sick Leave & Sick Leave Clearance

Actions to be taken by Injured Worker /Employer

Item		ECO	Description	Action by	Useful Contact	FAQ
a	Sick Leave		After a medical consultation or treatment, the injured worker may be granted sick leave.			
i	Sick Leave Not Granted		If the injured worker is not granted for any sick leave, he should in principle return to work. However, he may discuss other arrangements with the employer.	IW		
ii	Sick Leave Granted		The injured worker should have a good rest, take medication according to the prescribed instructions, receive necessary treatments and attend follow-ups timely during the sick leave period.	IW		
iii	Sick Leave Certificates		The injured worker should forward the original copy of his sick leave certificates to the employer as soon as possible and keep a photocopy for himself. This could facilitate the employer in effecting periodical payment (sick leave payment) on time.	IW, E		
iv	Periodical Payments		During the period of sick leave, the injured worker is entitled to periodical payments up to 24 months at the rate of four-fifths of the difference between the injured worker's monthly earnings at the time of the accident and his monthly earning during the period of temporary incapacity, which is payable on the normal pay days.	E		
v	Extension of temporary incapacity period		If the injured worker's temporary incapacity lasts more than 24 months, he may apply to the District Court for an extension of the period to receive periodical payments. The extension period shall not be longer than 12 months. The injured worker can approach the LD for information.	IW	LD Tel: 2717 1771	

Item		ECO	Description	Action by	Useful Contact	FAQ
vi	Consequences if the Employer fail to make periodical payment		The employer, without reasonable excuse, fails to make periodical payment within 7 days after the normal pay day commits an offence and is liable to a fine of HK\$ 100,000. The injured worker could report the case to the LD. The LD would help the injured worker contacting the employer or the insurance company where appropriate, requesting them to make periodical payment to the injured worker direct. The LD could also issue written warning(s) to the employer for failing to make periodical payment. If there is sufficient evidence and the injured worker is willing to act as a prosecution witness, the LD may also consider to instituting criminal prosecution against the employer.	IW, E		
vii	Definition of “monthly earnings”		The “monthly earnings” is to be taken as the earnings for the month immediately preceding the date of accident, or the average monthly earnings for the previous 12 months of employment (or any lesser period if the injured worker has not been employed for so long), whichever calculation is more favourable to the injured worker.			Q: What is the definition of “earnings”? A: According to the ECO, “earnings” includes cash wages, overtime payments of a constant nature, customary tips, etc. but does not include items such as remuneration for intermittent overtime, causal payments of a non-recurrent nature, the value of travelling allowances or concession and the employer’s contributions to provident funds.

Item		ECO	Description	Action by	Useful Contact	FAQ
viii	Medical Examination requested by the employer		The injured worker who is receiving periodical payments from the employer shall submit himself for medical examination from time to time as required by the employer and all the expenses incurred will be paid by the employer. If the injured worker without reasonable cause fails to submit himself for such examination, his right to compensation shall be suspended until such examination has been taken place. [Please refer to Chapter 1 b(iv) for arrangement of obtaining copy of the examination report.]	IW		
ix	Rehabilitation Programme		The injured worker may be invited by the employer's insurer to participate, on a voluntary basis, in the Voluntary Rehabilitation Programme (VRP). The objective of the VRP is to provide timely and free rehabilitation services to injured workers for better and sooner recovery and to facilitate their safe and early return to work. The injured worker may contact the insurer or the Employees' Compensation Division for enquires on the VRP.	IW	LD Tel: 2717 1771	
x	Work for other employers		If the injured worker works for other employers to earn wages during his absence from duty for a work injury, the effectiveness of the treatment would very likely be affected and unnecessary disputes would arise. The injured worker should think twice before doing so and might consider seeking the consent of the employer.	IW		Q: What are the other consequences? A: The employer may cast doubt on the injury should the injured worker continue to work during the sick leave and may even refuse to effect periodical payment. Moreover, the employer can take into account the wages earned during the period of incapacity when calculating the four-fifth periodical payment.

Item		ECO	Description	Action by	Useful Contact	FAQ
xi	Counselling Service		<p>If the injured worker is in need of counselling service, he may contact the following parties for assistance:-</p> <ul style="list-style-type: none"> ● The Social Welfare Department (SWD) Nature of service: counselling services and emergency assistance 	IW	SWD Tel: 2343 2255	
			<ul style="list-style-type: none"> ● Caritas Family Crisis Support Centre (Caritas) Nature of service: provides various kinds of support and counselling service 	IW	Caritas Tel: 18288	
			<ul style="list-style-type: none"> ● The Samaritans Suicide Prevention Hotline (SSPH) Nature of service: provides emergency counselling service 	IW	SSPH Tel: 2896 0000	
xii	Financial Assistance					
	<i>Social Security Allowance Scheme (SSAS)</i>		The injured worker who is severely disabled could apply to the SSAS. Upon successful application to the Scheme, a monthly allowance will be provided to the injured worker. Subject to the degree of disability, he may be granted Normal Disability Allowance or Higher Disability Allowance.	IW	SWD Tel: 2343 2255	
	<i>Comprehensive Social Security Assistance Scheme (CSSAS)</i>		The CSSAS aims to offering financial assistance to those who suffers from financial hardship. If the injured worker wants to seek financial assistance, he may apply to the CSSAS. To be eligible, one must satisfy the residence requirements and pass both the income and means test. Upon successful application, a monthly allowance will be granted.	IW	SWD Tel: 2343 2255	

Item		ECO	Description	Action by	Useful Contact	FAQ
	<i>Medical Expenses</i>		<p>Unless adequate and free medical treatment has been provided to the injured worker, the employer is liable to pay medical expenses within 21 days after the injured worker has submitted the receipts for payment of medical expenses. The daily maximum of medical expenses payable by the employer are as follows:</p> <ul style="list-style-type: none"> ● In-patient treatment or treatment other than as an in-patient in a hospital: HK\$ 200 ● Treatment both as an in-patient AND other than as an in-patient in a hospital on the same day: HK\$ 280 	E		
b	Sick Leave Clearance Procedures		Sick Leave Clearance Procedures refer to the vetting and recording of injured worker's sick leave certificates by staff of the Occupational Medicine Unit (OMU) of the LD and the referral of the injured worker to receive medical assessment if required.			
i	Sick Leave Clearance Procedures at the OMU		Except for Form 2B cases, upon receipt of the work injury notification from the employer, the Employees' Compensation Division will issue a Sick Leave Clearance notice and other related information to the injured worker by post. Upon receipt of the Sick Leave Clearance notice, the injured worker should contact the designated office of the Occupational Medicine Unit (OMU) one month after the injury. An appointment for Sick Leave Clearance can be made by phone or internet.	IW		<p>Q: What is sick leave clearance? A: Sick Leave Clearance refers to the vetting and recording of the injured worker's sick leave certificates by staff of the OMU and their arrangement for the injured worker to receive medical assessment if necessary. The procedure is required to facilitate the settlement of employees' compensation claim</p>

Item		ECO	Description	Action by	Useful Contact	FAQ
ii	Sick Leave Clearance Appointment Booking Service		(Details see Annex D)	IW	Telephone no. for booking sick leave clearance appointment: 2114 3300 www.ecd.labor.gov.hk	
iii	Circumstances when Sick Leave Clearance is not required		If the work injury involves sick leave not exceeding 7 days and with no permanent incapacity, the employer may agree with the injured worker to settle the injury claim directly and make the sick leave payments on time, then the injured worker is not required to undergo the sick leave clearance procedures	E, IW		
iv	The injured worker is not notified of the Sick Leave Clearance		This is probably because either the employer has not notified the LD of the work injury, or the employer/insurance company has cast doubt on the employees' compensation claim. The injured worker should make enquiries with the Employees' Compensation Division of the LD immediately for follow-up actions and assistance by the Division.	IW	LD Tel: 2717 1771	
v	Paper Sick Leave Clearance Scheme		If the injury of the injured worker involves sick leave for a period exceeding 7 days but not more than 30 days, the sick leave of the injured worker has ended, and the injury does not result in permanently incapacity, the employer may fill in an application form for "Paper Sick Leave Clearance by Agreement of Employer and Employee" and send it by post with the relevant information to the Employees' Compensation Division of the LD. By so doing, the injured worker is not required to complete the Sick Leave Clearance procedures in person. After verification, the LD will issue a Certificate of Compensation Assessment (Form 5) to settle the employees' compensation claim.	E		

Item		ECO	Description	Action by	Useful Contact	FAQ
			The Paper Sick Leave Clearance Agreement of Employer & Employee should be sent by post to:- Branch Offices of the Employees' Compensation Division (Details see Annex C)			
vi	Attending appointment for Sick Leave Clearance		In attending the appointment, the injured worker should bring along the following documents: <ul style="list-style-type: none"> ● Sick Leave Clearance notice ● HK Identity Card ● sick leave certificates copy; ● consultation cards; ● medical reports or other relevant documents. 	IW		

**Chapter 3 - Medical Assessment, Certificate of Assessment,
Certificate of Compensation Assessment, and Application to the District Court**

Actions to be taken by Injured Worker (IW)/Employer (E)

Item		ECO	Description	Action by	Useful Contact	FAQ
a	Medical Assessment arranged by the LD		<p>If the work injury is likely to result in permanent total or partial incapacity, the OMU of the LD will arrange the injured worker to attend a medical assessment for assessing:</p> <ul style="list-style-type: none"> (1) the percentage of permanent loss of earning capacity caused by the work injury; and (2) the period of absence from work so required <p>These will serve as the basis for calculating the amount of compensation for the work injury.</p>			<p>Q: Should further sick leave be granted to the injured worker until he has attended a medical assessment arranged by the LD?</p> <p>A: A medical practitioner will exercise professional judgment to determine whether the injured worker should be granted further sick leave, having regard to his medical conditions.</p>
i	Suitable timing for Medical Assessment		<p>The suitable time for the injured worker to undergo medical assessment is usually determined by the attending doctor. Generally speaking, after the injured worker has received the necessary treatment and his medical conditions and injury have stabilized, he is suitable for medical assessment.</p>			<p>Q: If the injured worker is still certified with sick leave entitlement by a medical practitioner, does it mean that he is not yet suitable for medical assessment?</p> <p>A: The fact that the injured worker continues to be granted with sick leave certificates by a medical practitioner only suggests that the injured worker is still not fit for work for the time being. It does not mean that he</p>

Item		ECO	Description	Action by	Useful Contact	FAQ
						is not yet suitable for medical assessment. Provided that his medical conditions and injury have stabilized, despite he may still need to attend follow-up consultation, the injury worker would be suitable for medical assessment.
ii	Notification of Medical Assessment by attending doctor		Where appropriate, the attending doctor will notify the LD to make arrangement for medical assessment. The OMU of the LD will arrange for the assessment as soon as possible. If the injured worker does not hear from the LD after attending sick leave clearance, he may contact the OMU by phone for enquiries.	IW	Occupational Medicine Unit Hong Kong Office Tel: 2835 2025 Kowloon Office Tel: 2150 6570	Q: Is the injured worker unable to resume work prior to medical assessment? A: Whether the injured worker could resume work prior to medical assessment mainly depends on his rehabilitation progress, confidence, capability and the nature of his work. If special arrangements for resumption of work are required, the injured worker should discuss with the employer.
iii	Upon receipt of the Notification of Medical Assessment		The injured worker should notify his employer of the assessment date and time, and attend the designated hospital punctually on the appointed date and time for the assessment. He should bringing along with him: ● the Notification of Medical Assessment Appointment; ● HK Identity Card;	IW		

Item		ECO	Description	Action by	Useful Contact	FAQ
			<ul style="list-style-type: none"> copies of all sick leave certificates. 			
iv	Procedures of Medical Assessment		<p>The Employees' Compensation (Ordinary Assessment) Board comprises two registered medical practitioners, registered Chinese medicine practitioners and a Labour Officer appointed by the Commissioner for Labour (the Assessment Board). The Assessment Board will examine carefully the medical records and reports of the injured worker, and, in the light of the actual medical conditions and state of recovery of the injured worker, assess in accordance with the provisions of the ECO:</p> <ul style="list-style-type: none"> the percentage of permanent loss of earning capacity caused by the work injury; the period of absence from work so required. <p>The Assessment Board will issue the assessment results by a Certificate of Assessment (Form 7) to the injured worker and the employer.</p>			<p>Q: Will the injured worker be paid wages for attending the medical assessment?</p> <p>A: The Labour Officer will issue a Notice to Employer to the injured worker on the spot during the medical assessment to certify the injured worker's attendance at the medical assessment that day. The half-day required for attending the medical assessment shall not be regarded as absence from work. If the injured worker still works with the same employer as when he was injured and has not received periodical payment for the sick leave that day, the employer should pay the half-day wages to the injured worker.</p>
v	Consequences of failure to attend Medical Assessment		<p>If the injured worker fails to attend the medical assessment without good cause, the Labour Department will presume that the injured worker does not wish to have medical assessment and has abandoned his claim for compensation for permanent</p>	IW	Contact the OMU for enquiries	

Item		ECO	Description	Action by	Useful Contact	FAQ
			incapacity, and the injured worker may only get the work injury sick leave payments without other compensation. Therefore, if the injured worker is unable to attend the medical assessment due to special reasons, he must notify the OMU promptly and provide good reasons and supporting evidence. The Occupational Medicine Unit will consider each case on its merit and may consider rearranging the assessment date.		OMU(HK) Office Tel: 2835 2025 OMU(KIn) Office Tel: 2150 6570	
vi	Assessment Result		About two weeks after the Assessment Board has completed the assessment, the LD will send by post a Certificate of Assessment (Form 7) issued by the Assessment Board to the injured worker and his employer, together with information on the procedures for settling the employees' compensation claim and for raising an objection to the assessment result.			
b	Upon receipt of the Certificate of Assessment (Form 7)		Upon receipt of the Certificate of Assessment (Form 7), the employer and the injured worker have to decide whether or not to raise objection to the assessment result. Should there be no objection to the assessment result by both parties, a Certificate of Compensation Assessment (Form 5) will be issued to the parties by the LD.	E, IW		
i	For the injured worker		Upon receipt of the Certificate of Assessment (Form 7), the injured worker has to decide whether or not to object the assessment result. <ul style="list-style-type: none"> ● <u>No Objection</u> If the injured worker has no objection to the assessment result, a Certificate of Compensation Assessment (Form 5) will be issued by the LD to the injured worker and his employer about one week after a Certificate of Assessment (Form 7) is issued. 	IW		
			<ul style="list-style-type: none"> ● <u>Objection</u> If the injured worker has objection to the assessment result, such objection should be made in writing to the Commissioner for Labour within 14 days after the date of issue of the Certificate of Assessment (Form 7), with a copy 	IW		

Item		ECO	Description	Action by	Useful Contact	FAQ
			of the notice to the employer.			
ii	For the employer		Upon receipt of the Certificate of Assessment (Form 7), the employer should notify its insurer and send the Form 7 to the insurer for his / her handling.	E		
			<ul style="list-style-type: none"> ● <u>No Objection</u> If the employer or the insurer has no objection to the assessment result, a Certificate of Compensation Assessment (Form 5) will be issued by the LD to the injured worker and his employer about one week after a Certificate of Assessment is issued. 	E		
			<ul style="list-style-type: none"> ● <u>Objection</u> If the employer has objection to the assessment result, such objection should be made in writing to the Commissioner for Labour within 14 days after the date of issue of the Certificate of Assessment (Form 7), with a copy of the notice to the injured worker. 	E		
iii	Upon receipt of the Objection Notice		Unless there are significant changes to the medical conditions or treatment of the injured worker at the time the objection is raised, the LD will, upon receipt of the objection notice, arrange an Assessment Board to review the assessment. The Assessment Board will issue a Certificate of Review of Assessment (Form 9) upon completion of the review.			<p>Q: If an objection is raised to the assessment result (i.e. the period of sick leave and the percentage of permanent loss of earning capacity), will the result of the review assessment be an upward adjustment only?</p> <p>A: No, the result of the review assessment could be an upward or downward adjustment or no change. It depends</p>

Item		ECO	Description	Action by	Useful Contact	FAQ
						mainly on the actual medical conditions and state of recovery of the injured worker.
c	Upon receipt of the Certificate of Review Assessment (Form 9)		<ul style="list-style-type: none"> <u>No Objection</u> Should the parties have no objection to the review assessment, a Certificate of Compensation Assessment (Form 5) will be issued by the LD to the injured worker and the employer within about 7 days. 	E, IW		
			<ul style="list-style-type: none"> <u>Further Objection</u> Any further objection raised by either party to the review assessment should be made to the District Court within 6 months after the date of issue of the Certificate of Review of Assessment. 	E, IW		
d	Upon receipt of the Certificate of Compensation Assessment (Form 5)		<p>The employer and the injured worker have to decide whether or not to raise objection to the compensation assessment. Should the parties have no objection to the assessment or the reviewed assessment results, the Certificate of Compensation Assessment (Form 5) will be issued by the LD to the parties stating:</p> <ul style="list-style-type: none"> the sick leave period and amount of periodical payment; the loss of earning capacity permanently caused by the work injury and the amount of compensation; the total amount of compensation. 	E, IW		
i	For the injured worker		<ul style="list-style-type: none"> <u>No Objection</u> If the injured worker has no objection, the employer should pay the employee, within 21 days from the date of issue of the certificate, the amount of compensation, or any outstanding amount, as stated in the certificate. 	E,IW		

Item		ECO	Description	Action by	Useful Contact	FAQ
			<ul style="list-style-type: none"> ● <u>Objection</u> Any objection to the compensation assessment should be made by the injured worker in writing to the Commissioner for Labour within 14 days after the date of issue of the Certificate of Compensation Assessment (Form 5), with a copy of the notice to the employer 	IW		
ii	For the employer		Upon receipt of the Certificate of Compensation Assessment (Form 5), the employer should notify the insurer and send the Form 5 to the insurer for her handling.	E		
			<ul style="list-style-type: none"> ● <u>No Objection</u> If the employer / the insurer has no objection to the compensation assessment result, the employer should pay the employee, within 21 days from the date of issue of the certificate, the amount of compensation, or any outstanding amount, as stated in the certificate. 	E		
			<ul style="list-style-type: none"> ● <u>Objection</u> Any objection to the compensation assessment should be made in writing by the employer to the Commissioner for Labour within 14 days after the date of issue of the Certificate of Compensation Assessment (Form 5), with a copy of the notice to the injured worker. 	E		
iii	Upon Receipt of Objection Notice		Upon receipt of the objection notice, the Commissioner for Labour will review its assessment and issue a Certificate of Review of Compensation Assessment (Form 6) to the injured worker and employer.			
e	Upon receipt of the Certificate of Review of Compensation Assessment (Form 6)		<ul style="list-style-type: none"> ● <u>No Objection</u> Should the parties have no objection to the reviewed compensation assessment, the employer should pay the employee, within 21 days from the date of issue of the certificate, the amount of compensation, or any outstanding amount, as stated in the certificate. 	E, IW		

Item		ECO	Description	Action by	Useful Contact	FAQ
			<ul style="list-style-type: none"> <u>Further Objection</u> Any further objection by either party to the reviewed compensation assessment should be made to the District Court within 6 months after the date of issue of the Certificate of Review of Compensation Assessment (Form 6). 	E, IW		
i	Consequences of failing to settle the amount of compensation		Unless the employer pays to the injured worker the amount of compensation stated in the Form 5 or Form 6 or any outstanding amount within 21 days from the date of issue of the certificate, the employer is liable to pay to the worker a surcharge of \$500 or 5% of the amount of compensation then remaining unpaid, whichever is the greater. If the employer still fails to pay within 3 months after the expiry of the payment period, he is liable to pay a further surcharge of \$1,000 or 10% of the aggregate amount of compensation then remaining unpaid, whichever is the greater.	E		<p>Q: What if the employer fails to pay the compensation or the surcharge?</p> <p>A: The employer, without reasonable excuse, fails to pay the compensation or the surcharge commits an offence and is liable upon conviction to a fine of HK\$100,000.</p>
f	Application to the District Court					
i	Appeal	s.18	The injured worker or the employer may appeal to the decision of the Commissioner for Labour or the Assessment Board by an application to the District Court.	E, IW		
ii	Form 1 under the Employees' Compensation (Rules of Court) Rules Schedule		The injured worker should complete Form 1 and filed it at the District Court.	IW	District Court Tel: 2582 4295	
iii	Form 3 under the Employees'		The employer should complete Form 3 and filed it at the District Court.	E	District Court Tel:	

Item		ECO	Description	Action by	Useful Contact	FAQ
	Compensation (Rules of Court) Rules Schedule				2582 4295	
iv	Time Limit	s.18	If the injured worker/ the employer decides to appeal the decision of the Commissioner for Labour or the Assessment Board, he must do so within 6 months from the date of the issue of the relevant certificates or the date of the decision of the Commissioner for Labour.	E, IW	LD Tel: 2717 1771 District Court 2582 4295	

Chapter 4 - Qualifying Conditions and Compensation Calculations

Actions to be taken by Injured Worker, the Employer or the Deceased's Family Member

Item		ECO	Description	Action by	Useful Contact	FAQ
a	Qualifying Conditions	s.5(1)	<p>If the work injury was caused by an accident arising out of and in the course of the employment, the employer shall be liable to pay compensation. This provision in effect requires the injured worker / the deceased to satisfy three qualifying conditions:</p> <ul style="list-style-type: none"> ● there was an employer - employee relationship; ● the accident was arising out of and in the course of employment; ● the injury or death was caused by the accident. 			
i	Employer - Employee relationship		<p>The law is that the employer is not liable to the injury of “self-employed” but liable to the injury / death of “employee”. However, if in essence there exists an employer-employee relationship, even though the worker is called a contractor or a self-employed person or has been labelled as a self-employed person in the contract, the employer is still required to fulfil his responsibilities under the Ordinance. To differentiate between an employee and a contractor or self-employed person, reference could be made to the following Eight (8) criteria¹ which have been adopted by the Courts in Hong Kong.</p> <ol style="list-style-type: none"> (1) the degree of control exercised by the employer; (2) whether the worker's interest in the relationship involved any prospect of profit or risk of loss; (3) whether the worker was properly regarded as part of the employer's organisation; (4) whether the worker was carrying on business on his own account or carrying on the business of the employer; (5) the provision of equipment; (6) the incidence of tax and MPF; (7) the parties' own view of their relationship; and (8) the traditional structure of the trade or profession concerned and the arrangements within it. 			

¹ Poon Chau Nam v Yim Siu Cheung, FACV No.14 of 2006, paras 20-21

Item		ECO	Description	Action by	Useful Contact	FAQ
			All relevant factors of each case should be taken into account in differentiating these 2 identities.			
ii	Accident arising out of and in the course of employment	s.5(4)	<p>According to the ECO, 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. An employee is also deemed to have been injured in an accident arising out of and in the course of his employment if he sustains an injury in the following circumstances:</p> <ul style="list-style-type: none"> ● the accident occurs during rescue operations, rescue training, activities for the purpose of and in connection with the employer's trade or business; ● while travelling as a passenger to or from his place of work by a means of transport operated or arranged by his employer; ● while travelling by a direct route between his residence and his place of work for the purpose of and in connection with his employment by driving or operating a means of transport arranged or provided by his employer; ● when typhoon signal No.8 or above or a red/black rainstorm warning is in force, while travelling from his place of residence to his place of work by a direct route within a period of four hours before the time of commencement of his working hours for that day, or from his place of work to his place of residence within a period of four hours after the time of cessation of his working hours for that day; ● while travelling, for the purpose of and in connection with his employment by any means of transport permitted by his employer, between Hong Kong and any place outside Hong Kong or between any other such places outside Hong Kong. <p>The effect of the above is to expand the scope of the protection, so that injuries incurred in circumstances that may not at first glance appear to have been incurred in the course of employment will nonetheless be included.</p>			

Item		ECO	Description	Action by	Useful Contact	FAQ
iii	Circumstances when no compensation is payable	s.5(2)	<p>No compensation shall be payable by the employer in respect of the following circumstances:</p> <ul style="list-style-type: none"> ● the injury does not result in permanent incapacity nor incapacitate the employee from earning full wages at his normal work; ● any incapacity or death resulting from a deliberate self-injury; ● the death or incapacity results from an injury (including a specified occupational disease) which the employee has falsely represented to his employer that he was free from; or ● the injury is caused by an accident directly attributable to the employee's addiction to drugs or his having been at the time of accident under the influence of alcohol and does not result in death or serious and permanent incapacity. 			
iv	Injury caused by the accident		The phrase "injury by accident" connotes a causation requirement. In case of disputes or when there are no eye witnesses to the accident, the cases shall be determined by the Court. The court would adopt a common sense approach to the facts in its decision.			
b	Compensation (for Work Injury Cases)		Having satisfied the qualifying conditions, the injured worker is entitled to compensation under the ECO. The next question is how to calculate the amount of compensation.			
i	Employees' Compensation Assessment Boards		Employees' Compensation Assessment Boards are appointed by the Commissioner for Labour to assess the percentage of permanent loss of earning capacity caused by the injury and the period of absence from duty so required.			
ii	Permanent Total Incapacity		In case of permanent <u>total</u> incapacity, the employer is liable to pay a lump sum to the injured worker. A summary of calculations of the amount of compensation is available at Annex E.			

Item		ECO	Description	Action by	Useful Contact	FAQ
iii	Permanent Partial Incapacity		In case of permanent <u>partial</u> incapacity, the amount of compensation is available at Annex E.			
iv	Compensation for attention and care		<p>If the injured worker suffers from permanent incapacity and requires attention and is unable to perform the essential actions of life without the attention of another person, compensation for attention shall be payable. The compensation should be:</p> <ul style="list-style-type: none"> ● an amount not exceeding HK\$422,000 as the court considers necessary; or ● an amount of HK\$422,000 as specified by the ECO and set down in an agreement entered into by the employer and the injured worker and approved by the Commissioner for Labour 			
v	Temporary Incapacity		In case of temporary incapacity, the injured worker is entitled to receive periodical (sick leave) payments during the sick leave up to 24 months. The sick leave payments should be calculated as follows:			
			<p>[Monthly earnings (at the time of the accident) LESS Monthly earnings (during the sick leave)] x 4/5**</p> <p>**The periodical payments are payable on the injured worker's normal pay days</p>			
vi	Extension of temporary incapacity period		If the injured worker's temporary incapacity lasts more than 24 months, he may apply to the District Court for an extension of the period to receive periodical payment. The extension period shall not be longer than 12 months.	IW	District Court Tel: 2582 4295	
vii	Medical Expenses	s.10A	Unless the employer has provided adequate free medical treatment to the injured worker, the injured worker is entitled to reimburse his medical expenses from the employer.	E		

Item		ECO	Description	Action by	Useful Contact	FAQ
viii	What are medical expenses?		Medical expenses can be, but not limited to, fees for consultation, any surgical or therapeutic treatment, cost of nursing attendance, and hospital accommodation as an in-patient, medicines, curative materials and medical dressings.			
ix	Medical Expenses Payable		Medical treatment given by, or under the supervision of, a registered medical practitioner, Chinese medicine practitioner or dentist shall be payable under the ECO. The employer is also liable to pay to the injured worker medical expenses in respect of medical treatment given by, or under the supervision of, a registered physiotherapist, occupational therapist or chiropractor. The employer should pay for the medical expenses within 21 days from the date the injured worker submitted the receipts of medical expenses. The daily maximum of medical expenses payable by the employer is available at Annex E.	E, IW		
x	Default Payment of medical expenses		If payment of medical expenses is defaulted, the injured worker may make a claim against the employer in the Small Claims Tribunal if the amount claimed is not exceeding \$50,000 or the District Court if the amount exceeds \$50,000.	IW		
xi	Prostheses and Surgical Appliances	s.36B, 36C, 36I & 36J	If the injured worker requires a prosthesis or surgical appliance, his employer is liable to pay for the initial costs of supplying and fitting the prosthesis or surgical appliance, subject to a maximum amount of HK\$ 33,000 and the probable costs of repair and renewal of such item during a period of 10 years after the initial fitting of the item, subject to a maximum amount of HK\$ 100,000. The Director of Health will take such steps as necessary to ensure the supply, fitting, repair and renewal of the prosthesis or surgical appliance to the injured employee and may make claims from the employer for such costs. For further enquiries, please contact the relevant OMU office of the LD.	E, IW	OMU(HK) Office Tel: 2835 2025 OMU(KIn) Office Tel: 2150 6570	

Item		ECO	Description	Action by	Useful Contact	FAQ
c	Compensation (for Fatal Accident Cases)					
i	Determination by the Commissioner for Labour	s.6B	Where death results from the injury, the Commissioner for Labour may, on application by DFM and with the consent in writing of the employer and other concerned parties to the claim, determine: <ul style="list-style-type: none"> ● the amount of compensation for death payable; ● the persons to whom the compensation is payable and the amount of compensation payable to each such person. 	E, DFM, CP		
ii	Form 21		The Commissioner will issue a Certificate of Compensation Assessment for Fatal Case (Form 21) to DFM within three weeks after receipt of all relevant information and documentation and expiry of statutory application period.			
iii	Time Limit	s.6B (4)	An application should be submitted to the Commissioner for Labour within 6 months from the date of death of the injured worker or from the date of accident if the date of death cannot be ascertained (but the Commissioner for Labour may, if he thinks fit, extend the period for making the application).	DFM		
iv	Objection to the Commissioner's Determination		Either the employer or DFM may object to the determination made by the Commissioner for Labour. In such cases, the Commissioner for Labour shall review his decision and issue a Review Certificate of Compensation Assessment for Fatal Case (Form 22A or 22B) to the parties. Alternatively, the employer or DFM may appeal to the District Court against the decision of the Commissioner for Labour.	E, DFM		
v	Amount of Compensation		A summary of the calculations of compensation is provided at Annex F.			

Item		ECO	Description	Action by	Useful Contact	FAQ
vi	Maximum Amount		Up to a maximum of \$1,806,000 (\$21,500 x 84 months)			
vii	Apportionment of Compensation		The compensation shall be apportioned among DFM in accordance with the apportionment schedule provided in the ECO. (Details see Table 1 at the end of this Chapter)			
viii	Entitlement of the Compensation	s.3	<p>The compensation for death shall be payable to “members of the family” of a deceased employee. Under the ECO, the “members of the family” (whether by blood or by an adoption recognized by law) of a deceased employee are:</p> <ul style="list-style-type: none"> ● a spouse or cohabitee ("cohabitee" means any person who at the time of accident concerned was living with the employee as the employee's wife or husband); ● a child; ● a parent or grandparent; or <p>a grandchild, stepparent, stepchild, brother, sister, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, child of a brother or sister of whole blood, half-brother and half-sister, any of whom shall be residing with the employee as a member of the same household for the period of 24 months immediately preceding the accident concerned.</p>	DFM		
ix	Reimbursement of Funeral and Medical Attendance Expenses	s.6E	Any person who has paid the expenses of funeral of or medical attendance on the deceased is entitled to the reimbursement of the expenses not exceeding HK\$ 35,000 from the employer.			
	Determination by the Commissioner for Labour	s.6E (1)	<p>The Commissioner for Labour may, on application by any person who has paid the expenses and with the consent in writing of the employer and other concerned parties to the claim, determine:</p> <ul style="list-style-type: none"> • the persons to whom reimbursement of such expenses is payable; • the amount of reimbursement payable to each such person. 	E, Any person who has the expenses		

Item		ECO	Description	Action by	Useful Contact	FAQ
x	Time Limit	s.6E (3)	Any person who has paid the expenses shall submit claim for such expenses within 30 days from the date of cremation/burial of the deceased or the date on which the Commissioner receives the employer's consent to the determination, whichever is the later.	Any person who has the expenses		
xi	Form 25		The Commissioner for Labour will issue a Certificate of Funeral and Medical Attendance Expenses (Form 25) to the applicants and the employer within two weeks after receipt of all relevant information and documentation and expiry of the statutory application period.			
xii	Retain Relevant Documents		Any receipts of medical expenses, funeral expenses, etc, should be retained for evidence purposes.	Any person who has the expenses		
xiii	Application for Interim Payments	s.6B & 6C	If a claim for the compensation for death is to be determined by the Commissioner for Labour, the spouse of the deceased may apply to the Commissioner for determination on the interim payments while pending determination on the compensation for death. Upon receiving such an application, the Commissioner shall issue a Certificate of Interim Payment giving details of his determination.	Spouse of the deceased		
xiv	Interim Payments	s.6C (3)	The interim payments shall be payable by the employer to the spouse of the deceased. Comprising an initial payment and subsequent monthly payments at the rate of 50% of the monthly earnings of the deceased, the interim payments shall not in aggregate exceed 45% of the total amount of compensation for death payable. The aggregate amount of the interim payments paid shall be deductible from the share of compensation to which the spouse would be entitled.	E, Spouse of the deceased		

Item		ECO	Description	Action by	Useful Contact	FAQ
xv	Time Limit		Interim payments shall be payable by the employer:-	E		
		s.6C (3)	<ul style="list-style-type: none"> ● 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; ● 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. 			
xvi	Determination by the District Court		<p>If the Commissioner for Labour considers that a claim is not suitable for his determination, or if the employer or DFM does not agree to submit the claim to the Commissioner for determination, the case would have to be adjudicated by the District Court.</p> <p>If a claim has to be determined by the District Court, DFM may:</p> <ul style="list-style-type: none"> ● apply to LAD for legal aid; ● apply to the District Court direct; or ● engage a private lawyer to represent them. 	DFM		
xvii	Fatal Cases Office		For enquiries, one may contact the Fatal Cases Office of the Employees' Compensation Division, Labour Department Address: Room 601, 6/F, Harbour Building, 38 Pier Road, Central, Hong Kong		Tel: 2852 3994	

d. Table 1 - Apportionment of Compensation

Family Members Eligible for Compensation	Apportionment of Compensation
1. Only spouse/cohabitee	100% to spouse/cohabitee
2. Only child(ren)	100% to child(ren)
3. Only parent(s)/grandparent(s)	100% to parent(s)/ grandparent(s)
4. Only spouse/cohabitee and child(ren)	50% to spouse/cohabitee 50% to child(ren)
5. Only spouse/cohabitee and parent(s) / grandparent(s)	80% to spouse/cohabitee 20% to parent(s)/ grandparent(s)
6. Only spouse/cohabitee, child(ren), and parent(s)/grandparent(s) (whether or not there is any other eligible members of the family)	45% to spouse/cohabitee 45% to child(ren) 10% to parent(s)/ grandparent(s) other member(s) of the family is/are not entitled to compensation
7. Only child(ren) and parent(s)/grandparent(s)	80% to child(ren) 20% to parent(s)/ grandparent(s)
8. Only other member(s) of the family with no surviving spouse/cohabitee, child(ren) or parent(s)/grandparent(s)	100% to the other member(s) of the family
9. Only spouse/cohabitee and other member(s) of the family	95% to spouse/cohabitee 5% to other member(s) of the family
10. Only child(ren) and other member(s) of the family	95% to child(ren) 5% to other member(s) of the family

Family Members Eligible for Compensation	Apportionment of Compensation
11. Only parent(s)/grandparent(s) and other member(s) of the family	95% to parent(s)/ grandparent(s) 5% to other member(s) of the family
12. Only spouse/cohabitee, child(ren) and other member(s) of the family	50% to spouse/cohabitee 45% to child(ren) 5% to other member(s) of the family
13. Only spouse/cohabitee, parent(s)/ grandparent(s) and other member(s) of the family	75% to spouse/cohabitee 20% to parent(s)/ grandparent(s) 5% to other member(s) of the family
14. Only child(ren), parent(s)/grandparent(s) and other member(s) of the family	75% to child(ren) 20% to parent(s)/ grandparent(s) 5% to other member(s) of the family

Note 1: If there are more than one eligible person in the same category, the amount of compensation shall be shared among them equally. However, where the deceased employee is survived by both parent(s) and grandparent(s), the amount of compensation payable to this category of family members shall be divided as follows:
70% to parent(s)
30% to grandparent(s)

Note 2: Other member(s) of the family includes grandchild, stepparent, stepchild, brother, sister, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, child of a brother or sister of whole blood, half-brother and half-sister, any of whom shall be residing with the employee as a member of the same household for the period of 24 months immediately preceding the accident.

Chapter 5 - Legal Aid Service

Getting assistance from the Legal Aid Department

Item		Description	Action by	Useful Contact	FAQ
	After injury/death occurs	The injured worker or the deceased's family member may take legal action against the employer under the ECO or/and common law for compensation. A lawyer in private practice may be engaged to handle relevant legal proceedings.	IW, DFM		
	Getting assistance from the Legal Aid Department (LAD)	Alternatively, the injured worker or the deceased's family member may consider applying for legal aid if certain requirements are met (e.g. both the means and merits test are passed).	IW, DFM		
a.	Legal Aid Service				
i	Legal Aid	Legal aid is a means by which an eligible applicant can obtain legal representation by a solicitor and, if necessary, a barrister in proceedings before the courts in Hong Kong. Legal aid is available to any person who is or may be a party to legal proceedings in Hong Kong, regardless of he or she is a Hong Kong resident.			
ii	Two Schemes	Two civil legal aid schemes are currently administered by the LAD, namely: <ul style="list-style-type: none"> ● Ordinary Legal Aid Scheme (OLAS) ● Supplementary Legal Aid Scheme (SLAS) 			

Item		Description	Action by	Useful Contact	FAQ
iii	Cases covered by Schemes	Personal injury and fatal accident cases are covered by both OLAS and SLAS. For more details about cases covered by OLAS and SLAS, please refer to the leaflet "Guide to Legal Aid Services in Hong Kong".			<p>"Guide to Legal Aid Services in Hong Kong"</p> <p>http://www.lad.gov.hk/english/documents/ppr/publication/guide_to_legal_aid_services_in_hongkong(e)_lowr.pdf</p>
b	Applying for Legal Aid	To qualify for OLAS or SLAS, the applicant must pass both the means test and the merits test.			
i	Means Test	<p>The applicant must pass the means test, i.e. whether the applicant's "financial resources" are within the financial eligibility limit.</p> <p>The financial eligibility limited allowed is \$175,800 for OLAS; for SLAS, the financial eligibility ranges from \$175,800 to \$488,400.</p>			
ii	"Financial resources"	<p>"Financial resources" is calculated as an applicant's monthly income multiple by 12 plus his disposable capital.</p> <p>A monthly income is defined as the net monthly income after various deductions (including rent, rates and the statutory personal allowances for his living expenses and his dependents) have been made from gross income.</p> <p>For more information about the calculation of financial resources, please refer to the leaflet "How Your Financial Resources and Contribution are Calculated".</p> <p>In order for the Director of Legal Aid to make an informed decision, the applicant must provide all the relevant information about his financial resources.</p>			<p>"How Your Financial Resources and Contribution are Calculated"</p> <p>http://www.lad.gov.hk/english/documents/ppr/publication/Fin_Res_Cal.pdf</p>

Item		Description	Action by	Useful Contact	FAQ
iii	Merits Test	<p>The merits test for OLAS and SLAS is the same that the applicant needs to show that he has reasonable grounds for pursuing (or defending) a claim.</p> <p>However, the Director for Legal Aid may refuse legal aid if it is unreasonable for legal aid to be granted in light of the particular circumstances of the case (e.g. a situation where the alleged defendant cannot be identified).</p> <p>In order for the Director of Legal Aid to make an informed decision, the applicant must provide all the relevant information about the merits of his case. For more details, please refer to the leaflet "Guide to Legal Aid Services in Hong Kong".</p>			<p>"Guide to Legal Aid Services in Hong Kong":</p> <p>http://www.lad.gov.hk/english/documents/ppr/publication/guide_to_legal_aid_services_in_hongkong(e)_lowr.pdf</p>
c	How and where to apply				
i	Pre-application information form	<p>To apply for legal aid, the applicant has to fill in a pre-application information form and some questionnaires which can be obtained from the enquiry counters at the offices of LAD. The applicant must provide all information and documents relating to the means and the case (for example, bank statements, accident or medical reports, salary slips, etc.)</p> <p>The applicant will be given an appointment for an interview ONLY when he has completed the form and questionnaires and provided the LAD with all relevant documents.</p>	IW, DFM		
ii	Application Fee	<ul style="list-style-type: none"> ● <u>OLAS</u> No application fee is required. ● <u>SLAS</u> An application fee of \$1,000 is payable upon application. This fee will not be refunded if the application is not successful. 	IW, DFM		

Item		Description	Action by	Useful Contact	FAQ
iii	In Person	<p>The applicant can apply in person at the following offices of LAD:</p> <p><u>Headquarters</u> 24/F Queensway Government Offices, 66 Queensway, Hong Kong (near Admiralty MTR Station) or</p> <p><u>Kowloon Branch Office</u> G/F, Mongkok Government Offices 30 Luen Wan Street, Kowloon (adjacent to Mongkok East MTR Station)</p>	IW, DFM		
iv	Online Application	<p>Alternatively, if the applicant is over the age of 18 and the case is not urgent, the applicant can submit pre-application information online as a first step towards making an application for legal aid through the Legal Aid Electronic Services Portal (LAESP) via LAD's website. By assessing LAESP, the applicant can download the relevant "Legal Aid Pre-application Information Form". The form, once filled in, can be forwarded online to LAD.</p> <p>The applicant must have an electronic certificate for pre-application submission using LAESP.</p>	IW, DFM	http://laesp.lad.gov.hk/general_en.html	
d	Outcome of Application				
i	Notification of Result	<p>Normally the applicant will be notified of the result within three (3) months of the application. The Applicant can check the status of his application through the LAESP (but this can only be done if he has an electronic certificate). For more details, please refer to the leaflet "How to Apply For Legal Aid In Civil Cases".</p>			<p>"How to Apply For Legal Aid In Civil Cases"</p> <p>http://www.lad.gov.hk/english/documents/ppr/publication/leaflet(e1).pdf</p>

Item		Description	Action by	Useful Contact	FAQ
ii	Grant of Legal Aid	When the application is successful and legal aid is to be granted, the applicant should read the terms of the offer carefully, especially those concerning the amount of his contribution and the Director's First Charge. If the applicant is in doubt, please contact the LAD for clarification.	IW, DFM		
iii	Acceptance Form and Legal Aid Certificate	If the terms of offer of legal aid are acceptable to the applicant, he has to sign and date the Acceptance Form and return it to the LAD together with the contribution payment, if required, within 14 days of the date of the offer. Upon receipt of the Acceptance Form, a Legal Aid Certificate will be issued to the applicant.			
iv	Choice of Solicitor	The applicant can nominate a solicitor on the legal aid panel to represent him. If the Director for Legal Aids considers the selected solicitor to be suitable, he will assign the selected solicitor to conduct the legal proceedings for the applicant.	IW, DFM		
v	If the Applicant is refused for Legal Aid	The Applicant may appeal to the Registrar of the High Court. The staff of LAD will help the applicant fill in the relevant form for the appeal and arrange a date for the appeal hearing. For more details, please refer to the leaflet "How To Apply For Legal Aid In Civil Cases".	IW, DFM		"How to Apply For Legal Aid In Civil Cases" http://www.lad.gov.hk/english/documents/ppr/publication/leaflet(e1).pdf
e	Contribution and First Charge				
i	Contribution	Not every successful applicant is required to contribute towards the costs and expenses incurred by the LAD.	IW, DFM		

Item		Description	Action by	Useful Contact	FAQ
		<ul style="list-style-type: none"> ● <u>OLAS</u> An applicant with financial resources less than \$20,000 is not required to pay a contribution. For an applicant with financial resources more than \$20,000 (but less than the financial eligibility limit of \$175,800), he can refer to the leaflet “Financial Information Sheet” for the amount of contribution payable. <p>If the applicant loses the case, any contribution paid by him will be used to offset the costs and expenses incurred by the LAD. If the contribution has been partially paid and the amount paid is less than the costs and expenses incurred, the applicant will be asked to pay an amount up to the full amount of the contribution payable to cover the difference. If the contribution paid is more than the costs and expenses incurred, the applicant will receive a refund for the difference.</p>			<p>“Financial Information Sheet”</p> <p>http://www.lad.gov.hk/en/g/documents/wnew/FinInfoSheet_e.pdf</p>
		<ul style="list-style-type: none"> ● <u>SLAS</u> <i>Interim Contribution</i> The applicant is required to pay an interim contribution \$43,950 upon acceptance of legal aid. The Director of Legal Aid may allow, in appropriate circumstances, payment of the interim contribution, by not more than six monthly instalments. 			
		<p><i>Final Contribution</i> If the applicant wins the case and recovers damages, the applicant will pay a percentage of the damages recovered to the SLAS Fund, i.e. 10% of the damages recovered. If the case is settled before counsel is briefed to attend trial, the amount to be paid by the applicant to the Fund will be reduced, i.e. 6% of the damages recovered.</p>			

Item		Description	Action by	Useful Contact	FAQ
ii	Director's First Charge	<ul style="list-style-type: none"> ● <u>OLAS</u> Where no contribution is payable or the contribution paid does not cover the costs and expenses incurred by the LAD (including legal costs which cannot be recovered from the opposite party), the Director has a right to recover the costs and expenses incurred from property recovered or preserved in the proceedings. This right is known as the Director's first charge. Property recovered or preserved in the proceedings includes employees' compensation, damages in personal injury cases, land or interest in land, etc. 			
		<ul style="list-style-type: none"> ● <u>SLAS</u> All costs and expenses incurred by the SLAS Fund will be deducted from the damages recovered. However, the total sum deducted will be reduced by the application fee and the interim contribution already paid. For more details, please refer to the leaflet "Financial Information Sheet" which contains information about contribution payable for Ordinary Legal Aid Scheme and Supplementary Legal Aid Scheme. 			
f	Funding Support for Mediation	Legally aided persons involved in civil proceedings including personal injury and fatal accident claims are now given funding support for mediation. Assigned solicitors acting for legally aided persons must obtain prior approval from the Director before engaging mediation. The applicant may consult with the assigned solicitor for his/her view whether the case is suitable for mediation. For more information about mediation, please refer to Chapter 7 Mediation.			
g	Enquiries	For enquiries about funding support for mediation, call the LAD Hotline or visit their website.		LAD Tel: 2537 7677	

Chapter 6 - Private Lawyer or Self-litigant, but DO NOT engage Recovery Agent

Item	Background	Description	Action by	Useful Contact	FAQ
a	Background	<p>Crack Down on Recovery Agents</p> <p>In 2009, the Panel on Administration of Justice and Legal Services of the Legislative Council was advised that as many victims of personal injuries were not eligible for legal aid, they had resorted to entering into contracts with recovery agents (RAs) which claimed to be able to help them in their claims for compensation. These RAs operated for profits under the pledge of “no win, no charge” and would take a percentage of the damages recovered as their service fees. To tackle the issue of RAs, the Government had taken the following steps²:-</p>			
i		<p>Public Education – putting up of posters or notices and making available leaflets at the offices of the Labour Department, the Traffic Accident Victims Assistance Section of the Social Welfare Department, Legal Aid Department and Hospital Authority hospitals where serious touting activities had been carried out by RAs, and requesting relevant Government departments to stop any touting activities of RAs on their premises. Media announcements to inform the public about the risks of the activities of RAs had already been launched.</p>			
ii		<p>Prosecution – A number of cases relating to RAs had been investigated by the Police and subsequently convicted by the courts. The Police would step up patrol at spots where RAs had conducted extensive touting activities.</p>			

² Background brief prepared by the Legislative Council Secretariat for the meeting on 23 February 2009 – Recovery Agents, Panel on Administration of Justice and Legal Service, LC Paper No. CB(2)899/08-09(05)

Item		Description	Action by	Useful Contact	FAQ
iii		Legislation – the Government did not rule out the possibility of introducing legislation against the activities of RAs in order to protect the public interest. Champerty and maintenance were common law offences in Hong Kong and offenders could be liable to prosecution. The Government would review the need for legislation in due course.			
b	Engage Lawyer in Private Practice	The injured worker/DFM may seek legal advice from solicitors on the merits of the case before pursuing a legal action.	IW, DFM		
i	The Hong Kong Law Society's Personal Injuries Helpline	The Law Society of Hong Kong's Personal Injuries Helpline has been established to provide assistance to members of the public involved in accidents, suffered personal injuries and want to find help to make a claim for compensation. The Law Society has also established a panel of solicitors who have agreed to provide up to 1 hour free consultation to accident victims. For enquires, please contact the Law Society.		The Law Society of Hong Kong Helpline: 2840 1211 www.hklawsoc.org.hk	
	Other legal advisory service	The injured worker/DFM may also seek advice via the Free Legal Advice Scheme of Home Affairs Department or the Duty Lawyer Scheme.		Free Legal Advice Scheme of Home Affairs Department: 2835 2500 www.had.gov.hk Duty Lawyer Scheme: 2521 3333/ 2526 5969 www.dutylawyer.org.hk	

Item		Description	Action by	Useful Contact	FAQ
c	Do it yourself as Self-litigant	In theory, the injured worker/ DFM (“the claimant”) may pursue a claim against the employer for damages without the assistance of solicitors. Such claimant is commonly known as “self-litigant”.			
i	Mode of starting an action	The injured worker / DFM can commence the action by way of filing a Writ of Summons in District Court or High Court. However, apart from being an employees’ compensation litigation at the court, it may also involve many legal rights and procedures under the laws other than the ECO. The law, drafting and preparation of the necessary documents can be highly technical. To safeguard one’s interest, a claimant should carefully consider the advisability of instructing a solicitor at his own expense or through legal aid, or consult the professional legal advice if one is not intended to appoint his own legal representative.	IW, DFM		
ii	District Court or High Court	The Writ of Summons shall be filed at the District Court if the claim amount is between \$50,000 and \$1,000,000. For claim amount exceeds \$1,000,000, the Writ of Summons shall be filed at the Court of First Instance of the High Court.			
iii	Writ of Summons	A Writ of Summons (Form 1) is used to commence the claim which would involve a substantial dispute of facts (e.g. the other side does not agree with the extent of injuries sustained by the injured workers). Form 1 and the accompanying acknowledgment of service (Form 14) can be obtained at the District Court or High Court Registry.			
iv	The Registry	District Court Address: <u>Wanchai Law Courts, Wanchai Tower, 12 Harbour Road, Hong Kong</u>		Tel: 2845 5696	
		High Court Address: <u>LG1, High Court Building, 38 Queensway, Hong Kong</u>		Tel: 2523 2212	

Item		Description	Action by	Useful Contact	FAQ
v	Downloading Forms	High Court Form 1 (Cap 4A) and Form 14 (Cap 4A) and District Court Form 1 (Cap 336H) and Form 14 (Cap 336H) can be downloaded from the Judiciary's Website.	IW, DFM	www.judiciary.gov.hk/en/crt_services/forms/dc.htm	
vi	Filing Fee & Returning the Completed Form	The forms can be completed in Chinese or English. Upon filing of the forms, the injured worker / DFM will be asked to pay a filing fee of \$630 (District Court)/ \$1045 (High Court) at the Accounts Office of the District Court / High Court. The injured worker will then return the completed forms to the respective Registry. It is the responsibility of the injured worker to serve the writ and acknowledgment of service on the defendant. If the defendant is in Hong Kong, this can be done by personal service, by registered post, or by inserting the relevant documents through letter box of the defendant at his usual or last known address.	IW, DFM		
vii	Filing of Acknowledgment of Service by the Defendant	When the defendant is served with the Writ and the acknowledgment of service, he or she must fill in Form 14 to indicate if he or she wishes to defend the action and file it with the Registry within 14 days after service of the Writ (including the day of service).	E		
viii	Filing and serving of defence by the Defendant	The defendant must explain in his defence why he/she is disputing the claim and may include a counterclaim against the injured worker, e.g. contributory negligence. Any defence must be filed with the court and served on the injured worker / DFM within 28 days after the time limit for acknowledgment of service expires.	E		
ix	If the employer does not file an acknowledgment of service or a defence	The injured worker / DFM can apply to the court for summary judgment on the claim if the employer as the defendant fails to file the acknowledgment of service or a defence within the time limit. A master or a judge will assess the amount of damages the injured worker / DFM is entitled to after the summary judgment is granted.	IW, DFM		

Item		Description	Action by	Useful Contact	FAQ
x	Filing a Reply to Defence and Counterclaim	As the plaintiff, the injured worker / DFM may file with the court and serve on the employer a reply (e.g. set out additional facts in reply) to any defence and Counterclaim filed by the employer within 28 days after service of the defence.	IW, DFM		
xi	Statement of Truth	All documents (including Statement of Claim, Defence, Counterclaim, Reply to Defence and Counterclaim, etc.) have to be verified by a statement of truth. The form of a Statement of Truth verifying a document is as follows: I believe / the _____ (<i>state the party verifying e.g. plaintiff, defendant etc.</i>) believes* that the facts stated in this _____ (<i>fill in the name of the document being verified</i>) are true. * Delete as appropriate	IW, DFM, E		
xii	Discovery of Documents	This is where each party must disclose to the other the documents he /she possess that relate to the case. After disclosing the documents in the form of a list, both sides must allow the other side to inspect the actual documents.	IW, DFM, E		
xiii	Timetabling Questionnaire	Each party shall file and serve a timetabling questionnaire within 28 days after the pleading stage is completed (i.e. The parties should try to agree on what directions should be sought to prepare the case for trial).	IW, DFM, E		
xiv	Case Management Summons	As the plaintiff, the injured worker / DFM must, within 14 days after receiving the timetabling questionnaire from the other party or within 14 days upon expiry of the period for filing and serving a timetabling questionnaire, issue a case management summons for the court to give directions relating to the management of the case.	IW, DFM, E		

Item		Description	Action by	Useful Contact	FAQ
xv	Complying with the Court Directions	The court will fix a timetable for the steps to be taken and may fix a milestone date for a case management conference, pre-trial review and/or the trial. The injured worker / DFM should comply with the directions as the court may not allow extension of time without sufficient grounds. The injured worker / DFM should attend court on the milestones dates, otherwise the claim may be struck out.	IW, DFM		
xvi	Trial Hearing	Both parties should attend the Court on time on the trial date, and should bring along relevant original documents and photocopies for the judge and the other party if necessary. The witnesses should come with the injured worker. At the trial, the Court will hear the evidence of witnesses and the submissions of the parties. The Court may adjourn the case to another date if further evidence is needed. The Court may deliver judgment at the end of the trial or hand down the judgment at a later date.	IW, DFM		
xvii	Notification of proceedings	<p>Under section 25B of the Employees Compensation Assistance Ordinance (Chapter 365), a person commences by writ proceedings in respect of a claim for compensation or damages for work injuries shall serve on the Employees Compensation Assistance Fund Board (“the Board”), and where applicable, the insurer concerned a notice of the proceedings. The notice should be in writing in a form specified by the Board, signed by the person and accompanied by a copy of the writ. It should be served on the Board by registered post not later than 30 days after the date on which the writ is filed with the court.</p> <p>The injured worker / DFM who fail to receive the compensation or damages entitled after exhausting all legal and financially viable means of recovery from the employer or insurer, may apply for assistance from the Employees Compensation Assistance Fund. The Board shall make the necessary investigation and inquiry in respect of each application.</p>	IW, DFM	Employees Compensation Assistance Fund Board Tel: 2116 5684	

Item		Description	Action by	Useful Contact	FAQ
d	Recovery Agent				
i	Maintenance	It is a crime of assisting and encouraging a party in litigation by a person who has no interest in the litigation.			
ii	Champerty	It is an aggravated form of maintenance in which the consideration given for the maintenance of a legal proceeding is part of anything gained as the result of the proceedings.			
iii	Do Not Approach Recovery Agent	It is not uncommon that recovery agents solicit injured workers / the deceased's immediate family members to take legal actions and share the compensation awards arising from the legal proceedings. These agents often claim they are practicing on a "no win, no fee" basis and may require the injured worker / DFM to enter into a contract with them and share parts of the compensation recovered.	IW, DFM		
iv	Recent Case	In the HKSAR v Cheung Oi-ping and Winnie Lo case, DCCC 610/2008, a recovery agent and a solicitor accused of offering a "no win, no fee" deal to a mother seeking compensation for her injured son were convicted of offences relating to champerty and maintenance. They were sentenced to 15 months' and 16 months' imprisonment respectively.			
v	Report to the Police	If the injured worker/ DFM has been approached by a recovery agent, he or she should consider it carefully before disclosing any personal particulars, discussing the employees' compensation case or signing any documents, so as to avoid being taken advantage of and incurring unanticipated financial losses. Anyone who feels harassed should report the matter to the Police for follow-up actions.	IW, DFM	Call Police at 999	

Chapter 7 - Mediation

Item		Description	Action by	Useful Contact	FAQ
a	Background	<p>In the 2007-08 Policy Address “<i>Investing for a caring society</i>”, the Chief Executive had stated that:</p> <p style="padding-left: 40px;"><i>“To alleviate conflicts and foster harmony, we will promote the development of mediation services. On many occasions, interpersonal conflicts need not go to court. Mediation can reduce social costs and help parties concerned to rebuild their relationship. This is a new trend in advanced regions around the world. The cross-sector working group headed by the Secretary for Justice will map out plans to employ mediation more extensively and effectively in handling higher-end commercial disputes and relatively small-scale local disputes.”</i></p> <p>Since then, there has been a sharp increase in the use of mediation as a means of resolving personal injury and fatal accident claims. When approached effectively, mediation helps end a claim without further costs to the injured worker; when it fails, the injured worker may resort to litigation without any penalties. It is widely accepted that mediation could save injured workers an enormous amount of money in litigation expenses. Given its many benefits, it is not a surprise that a number of initiatives to promote mediation as an alternative dispute resolution mechanism been taken by Government departments and professional bodies. Notably, these include the funding support for mediation in legally aided civil cases by the Legal Aid Department and the New Insurance Mediation Pilot Scheme by the Hong Kong Federation of Insurers and the Hong Kong Mediation Council.</p>			

Item		Description	Action by	Useful Contact	FAQ
		<p><i>Legal Aid Department (LAD)</i> Following the implementation of the Civil Justice Reform³ and the Pilot Scheme on Family Mediation⁴ in resolving matrimonial disputes, LAD is now providing funding support for mediation, i.e., legally aided persons involved in civil proceedings including personal injuries and fatal accident claims are given funding support for mediation.</p> <p>According to LAD, it is not necessary to have tried mediation before a person is granted legal aid. However, it is in the interest of that aided person to consider mediation as an option unless his/her case is not suitable for mediation. The aided person can consult his/her lawyer on the suitability of the case for mediation. The lawyer is under a duty to give appropriate advice⁵.</p>			
		<p><i>The New Insurance Mediation Pilot Scheme (NIMPS)</i> The Hong Kong Federation of Insurers (HKFI) has been providing financial support to the Hong Kong Mediation Council (HKMC) for the purpose of running the NIMPS which encourages disputing parties to settle disputes in work-related personal injuries claims by mediation. Under the NIMPS rules, the following parties may request for the initiation of mediation from the NIMPS Committee of the Hong Kong Mediation Council (“the Committee”):</p> <ul style="list-style-type: none"> i. An insurance company which has agreed to participate in the NIMP Scheme (an “Insurer”); ii. The insured (a person, company or organisation who is insured by an Insurer); or iii. A Claimant who has a claim against the Insured 			
		<p>For the purposes of facilitating more mediation cases under the NIMPS, the Insurer who is a party to a mediation under the NIMPS will be required to contribute to the NIMPS Fund the</p>			

³ Under Order 1A Rule 4(2) of RHC, the court has a duty to “actively manage” cases, which includes encouraging and facilitating parties to use an ADR procedure if the court considers it appropriate and helping parties to settle the case.

⁴ The Pilot Scheme was launched by LAD in 2003 to test the effectiveness of mediation in resolving matrimonial disputes.

⁵ “Litigation vs. Mediation – An alternative way to settle disputes”, L.A.D. News (Issue No.36) July 2010

Item		Description	Action by	Useful Contact	FAQ
		amount of honorarium and reimbursement incurred by the Committee for facilitating the mediation between the Insurer and the injured worker. This amount is limited to a maximum of HK\$55,000 ⁶ .			
b	Mediation	The injured worker / DFM may consider the use of mediation in settling their claims against the employer.	IW, DFM, E		
i	For Whom?	Any party to a claim involves work injury or fatal accident may consider using mediation. For example, the injured worker may inform the employer of his intention to mediate a dispute over the amount of compensation for his injuries sustained as a result of the accident.			
ii	What is Mediation?	Mediation is a voluntary, non-binding, private dispute resolution process in which a neutral person, the mediator, helps the parties to reach their own negotiated agreement.			
iii	Why does it work?	The mediator facilitates the parties to communicate and negotiate disputing issues. Each party has a chance to put its case and to hear what the other party has to say. It is important to note that the mediator's job is not to make a decision. He assists the parties to explore the strengths and weaknesses of their cases and to identify possible solutions or alternatives, helping them to resolve their differences between themselves. The mediation process is confidential: one party cannot divulge any information in relation to the process without permission from the other party.			
iv	What does the mediator do?	In mediation, the mediator will help the parties to: <ul style="list-style-type: none"> ● identify what issues are in dispute ● identify each party's real needs and interests ● identify settlement options and assess the most suitable solution 			

⁶ New Insurance Mediation Pilot Scheme ("NIMPS") jointly prepared by HKMC and HKIAC on 12 April 2010.

Item		Description	Action by	Useful Contact	FAQ
		<ul style="list-style-type: none"> draw up the settlement agreement, setting out the terms that the parties agree to be bound by 			
v	Some useful observations about mediation				
	<i>Observation (1)</i>	Mediators do not take sides with either party. They do not provide legal advice.			
	<i>Observation (2)</i>	It may not be suitable for every case. For example, in a fatal accident case where the DFM has commenced legal proceedings, the apportionment of compensation involving the interest of the Deceased's children.			
	<i>Observation (3)</i>	Both parties have the right to terminate the mediation at any time. Such right does not prevent one from pursuing matters in court.			
	<i>Observation (4)</i>	Both parties must appreciate that what the other party has said in mediation is without prejudice and therefore cannot be used in subsequent legal proceedings.			
	<i>Observation (5)</i>	The settlement agreement drafted by the mediator and signed by the parties is legally binding as a contract.			
vi	What are the advantages	Advantages of medication are: <ul style="list-style-type: none"> avoid the tension and conflict in adversarial litigation save time and money by not having to contest disputes in court agreements with which the parties are more willing to comply with continuing relationships with the other party 			
vii	What are the disadvantages	Disadvantages of mediation are: <ul style="list-style-type: none"> it can only work if both parties have genuine intention to resolve the dispute if it fails, the costs of mediation will be wasted 			
viii	How long does Mediation take?	Each case is unique. Therefore, it depends on the complexity of issues the parties need to resolve. The degree of the parties'			

Item		Description	Action by	Useful Contact	FAQ
		cooperation and willingness to resolve the issues is the key factor. Generally speaking, it may only take 2 or 3 days for the parties to reach an agreement.			
ix	Confidentiality	Accredited mediators are required by their ethical and professional code of practice to observe confidentiality in respect of all matters disclosed in the mediation session. When the parties agree to mediate, they are required by the mediator to sign a mediation agreement that all communications made during the mediation are to be privileged and made on a without prejudice basis.			
x	Costs of Mediation	The parties need to pay for the mediation which will include the mediator's time-charge for his service together with any room hiring costs. It is important for the parties to agree on the arrangement of all the costs before commencing mediation. If one party decides to instruct a lawyer to assist him during the mediation, he is responsible for that particular charge.			
xi	How to find a Mediator?	Mediators come from different backgrounds. The injured worker /the DFM are advised to appoint an experienced mediator.			
xii	Differences between Mediation and Litigation	<p>Some observations about differences between mediation and litigation are as follows:</p> <ul style="list-style-type: none"> ● mediation involves lesser costs because it does not involve tedious legal procedures ● litigation destroys relationship whereas mediation preserves long-term relationship ● unlike litigation, in mediation, the parties determine the process and the outcomes ● the party to mediation can terminate the mediation anytime. In litigation, the party requires permission from the court or by agreement with the other party 			

Item		Description	Action by	Useful Contact	FAQ
c	Useful Contact				
i	Mediation Information Office of the Judiciary	The Mediation Information Office of the Judiciary aims to assist the parties to understand the nature of mediation and how it will help the parties resolve their disputes. It is set up to facilitate the parties to seek mediation from the professional bodies.		Tel: 2825 0470 http://mediation.judiciary.gov.hk/en	
		Address: Room LG 104, Lower Ground Floor 1, High Court Building, 38 Queensway, Hong Kong			

Chapter 8 - Work Injury Claim: Liability and Quantum

Actions that could be taken by the Injured Worker

Item			Description	Action by	Useful Contact	FAQ
a	Work Injury Claim					
i	Claim for Damages		The ECO does not limit the civil liability of the employer. The injured worker may issue a claim against the employer for damages as a result of his injury.	IW		
ii	Work Injury Claim		It is a personal injury claim for monetary compensation for injuries including physical, psychological and psychiatric.			
iii	Time limit	LO – s.27	There is a time limit for filing a work injury claim to the court. The limitation period is 3 years from the date of accident or the date of knowledge of accident, whichever is later.			
b	Establishing Liability					
i	Liability		The employer owes a non-delegable duty of care to provide a safe place/system of work. If the employer is in breach of that duty, then he may be held liable to any losses as a result of his breach. Negligence is the most common cause of action pleaded by injured workers. For example, a failure on the employer's part to provide a safety belt to his employee working at height.			
ii	Contributory Negligence		The burden is on the defendant (i.e. the employer) to show contributory negligence on the part of the injured worker (e.g. he did not wear the safety belt despite it had been provided by the employer).			

Item		Description	Action by	Useful Contact	FAQ
iii	Discounted amount of compensation	If the court finds an injured worker to be contributory negligent, the amount of compensation awarded will be discounted by a percentage by which the court thinks fit. For example, if the court finds an injured worker is 30% responsible for the accident, the final award will be reduced by 30% to reflect the injured worker's negligence.			
iv	Causation	The court must be satisfied that the work injury was caused by the employer's negligence. That is to say, there must be a causal link between the negligence and the injury.			
c	Quantum	The court may order the employer to pay compensations to the injured worker for his non-financial and financial losses.			
i	<u>Non-financial Losses</u>				
	<i>Pain, suffering and loss of amenities (PSLA)</i>	The injured worker may receive a compensation for pain, loss of amenities and suffering. To determine the amount of compensation, the court would assess how serious the injury is, how it has affected the lifestyle of the injured worker, and whether there is any permanent disability.			
		In the case of <i>Lee Ting Lam</i> , the Court classified injuries into four categories namely Serious, Substantial, Gross Disability and Disaster. In the case of <i>Chan Pui Ki and Leung On and Another</i> , the Court held that the level of awards for the various categories of injuries should be as follows:			
	<u>Category</u>				
	• <i>Serious</i>	HK\$ 400,000 - 540,000			
	• <i>Substantial</i>	HK\$ 540,000 - 660,000			
	• <i>Gross Disability</i>	HK\$ 660,000 - 1,000,000			
	• <i>Disaster</i>	over HK\$ 1,000,000			
	• <i>Loss of Earning Capacity</i>	The question for the court is: given the injured worker's conditions, whether there is a real and substantial risk that the injured worker will not hold his job in the future.			

Item		Description	Action by	Useful Contact	FAQ
ii	<u>Financial Losses</u>	This can be further sub-divided into (1) past and (2) future losses. Present loss means all losses that could be quantified at the date of the trial. For examples, medical expenses incurred, the loss of earnings from the date of the accident to the date of judgment, and reasonable travelling expenses of the injured worker or his family members.			
	• <i>Loss of Earnings</i>	It consists of past and future losses, such as pre-trial loss of earnings (between the date of accident and the date of trial), future loss of earnings (from the date of trial to the expected date of recovery or retirement) .The court would consider the injured worker's income before and after the injury in assessing the loss of earnings.			
	• <i>Calculation of Loss of Future Earnings</i>	For example, if an injured worker is earning HK\$ 100,000 per year as a site worker but, as a result of the work accident, could only earn HK\$ 50,000 per year as a security guard, then his future loss of earnings would be HK\$ 50,000 times a multiplier (representing the number of years he is expected to work till retirement). For example, an injured person aged 40 may only be awarded a multiplier of 12. In determining the multiplier, the court would make reference to similar case.			
	• <i>Loss of MPF Benefits</i>	Loss under this head should be calculated at 5% of lost of earnings commencing from the date of the accident to trial.			
	• <i>Special Damages</i>	This head of damages would include medical and travelling expenses supported by receipts and corroborated by other medical documents produced.			
	• <i>Future Medical Expenses</i>	The court would allow this claim if medical reports support the fact that the injured worker will require future medical treatments.			

Item		Description	Action by	Useful Contact	FAQ
	<ul style="list-style-type: none"> • <i>Legal Costs</i> 	<p>As a general rule, the loser pays the winner's legal costs. However, the court has total discretion in deciding who will bear the legal costs.</p>			
	<ul style="list-style-type: none"> • <i>Interest</i> 	<p>Interest is decided by the court. For example, interest is payable on the award for PSLA at 2% per annum and on pre-trial loss of earnings and special damages but less the employees' compensation from the date of the accident to the date of judgment at 4% per annum.</p>			

Chapter 9 - Fatal Accident Claim: Liability and Quantum

Actions that could be taken by Family Members of the Deceased

Item			Description	Action by	Useful Contact	FAQ
a	Fatal Accident Case					
i	Right of Action	FAO – s.3	If death is caused to the injured worker, DFM may take action and recover damages against the employer.	DFM		
ii	Time limit	LO – s.28	There is a time limit for filing a fatal accident claim to the court. The limitation period is 3 years from the date of death or the date of knowledge of death, whichever is later.			
b	Establishing Liability					
i	Liability		The employer owes a non-delegable duty of care to provide a safe place/system of work. If the employer is in breach of that duty, then he may be held liable to any losses as a result of his breach. Negligence is the most commonly cause of action pleaded by DFM. For example, a failure on the employer's party to provide a safety belt to his employee working in height.			
ii	Contributory Negligence		The burden is on the defendant (i.e. the employer) to show contributory negligence on the part of the deceased (e.g. he did not wear a safety belt despite repeated warnings).			
iii	Causation		The court must be satisfied that the death was caused by the employer's negligence. That is to say, there must be a causal link between the negligence and the death (i.e. but for the employer's failure to provide the safety belt, the deceased would not have fallen from height).			

Item			Description	Action by	Useful Contact	FAQ
c	Quantum of Damages					
i	<u>Under FAO</u>		This is an action by the administrators of the deceased for the benefit of his dependants under the FAO.			
	Bereavement	FAO – s.4	A claim for damages for bereavement shall only be for the benefit of the persons named in s.4 (2) of FAO, such as the spouse and the children of deceased.			
	Sum to be awarded	FAO – s.4(3)	The sum to be awarded as damages under bereavement shall not exceed HK\$ 150,000.			
	Division of Sum	FAO – s.4(4)	Where there is a claim for damages under bereavement for the benefit of 2 or more persons, the sum awarded shall be divided equally between them.			
	Loss of Dependency	FAO – s.6	The dependants of the deceased, who may be his children, spouse or parents, could make a claim for loss of dependency. Such claim is based on the deceased's contribution to the dependants' living expenses and the number of years for which the dependants would have received such contribution from the deceased had he survived.			
ii	<u>Under LARCO</u>		This is an action by the administrators of the deceased for the benefit of his estate under the LARCO.			
	Loss of Accumulation of Wealth	LAR CO – s.20	It is the assessment of the amount which the D would have saved during his working life, not spent during his retirement and died possessed of.			
	Funeral Expenses	LAR CO – s.20	Funeral expenses (excluding mourners' meals) are recoverable. DFM are advised to retain receipts of such expenses for evidence.	DFM		

Item		Description	Action by	Useful Contact	FAQ
	Interest	The Court would determine the interest. For example, interest may be awarded at 4% per annum from the date of accident until judgment on the total pre-trial loss of dependency and for the funeral expenses. Interests at the suitor's fund rate will be awarded on the bereavement award from the date of death.			
	Legal Costs	Generally speaking, the loser pays the winner's legal costs. Legal costs may be sought by the successful DFM from the employer.	DFM		

Reference List

During the preparation of this Manual, references have been made to the following publications, websites, laws and cases:

1. Hong Kong Cases

- a. Chan Pui Ki (an infant) v Leung On and Another, CACV 263A/1995
- b. HKSAR v Cheung Oi-ping and Winnie Lo, DCCC 610/2008, unreported
- c. Lee Ting Lam v Leung Kam Ming [1980] HKLR 657
- d. Poon Chau Nam v Yim Siu Cheung trading as Yat Cheung Air-conditioning & Electric Co., FACV No. 14 of 2006

2. Hong Kong Laws

- a. Employees' Compensation Ordinance, Cap. 282
- b. Fatal Accidents Ordinance, Cap. 22
- c. Law Amendment & Reform (Consolidation) Ordinance, Cap. 23
- d. Limitation Ordinance, Cap. 347

3. Publications by LAD

- a. How to apply Legal Aid in Civil Cases (12/2009)
- b. How to apply Legal Aid under the Supplementary Legal Aid Scheme (04/2010) (*LD's note to CIC: please confirm with LAD*)

4. Legal Journal

- a. Gkofcheski R. (2009) Connecting The Injury With The Employment In The Proof of Employees' Compensation Claims. Law Lectures for Practitioners 2005, edited by Julienne Jen and Jessica Young.

5. Publications by LD

- a. A Concise Guide to the Employees' Compensation Ordinance with frequently asked questions on common employees' compensation issues (5/2011)
- b. Employees' Rights to Compensation under the Employees' Compensation Ordinance (8/2010)
- c. How to Apply for Employee's Compensation for Death (8/2009)
- d. Important Information for Employers and Employees on Compensation for Work Injuries and Occupational Diseases
- e. Points to Note for Employees Injured at Work (9/2008)
- f. Timely Notifications of Occupational Injuries Protect both Employers and Employees (8/2008)

6. Publications by the Judiciary

- a. What is Mediation - An alternate means to resolve disputes (12/2009)
- b. Pilot Scheme Mediation Construction and Arbitration List High Court (8/2006)

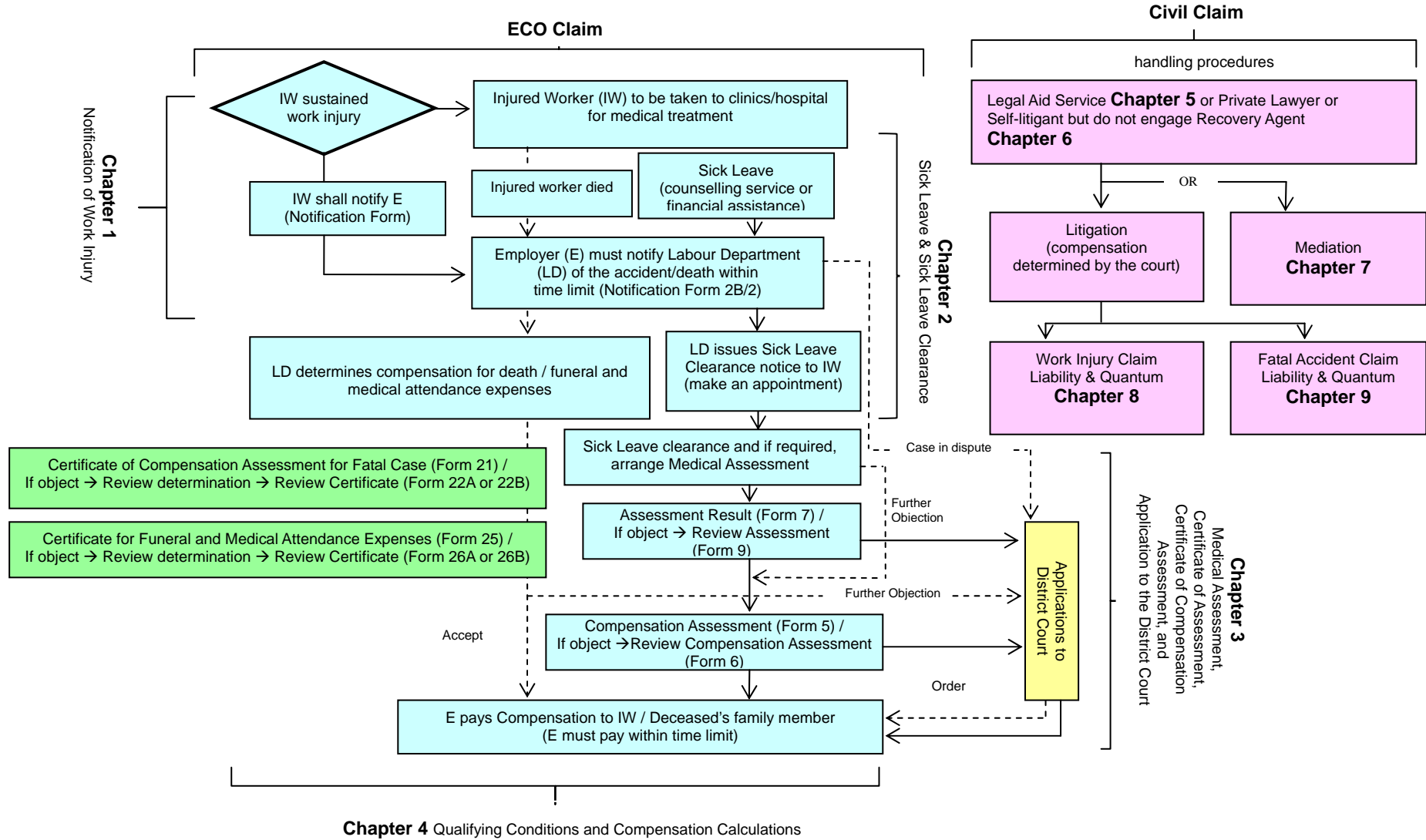
Reference List

7. Websites

- a. The Community Legal Information Centre: <http://www.hkcllc.org/en/topics>
- b. The Legal Aid Department: <http://www.lad.gov.hk>
- c. The Law Society of Hong Kong: <http://www.hklawsoc.org.hk>
- d. The Labour Department : <http://www.labour.gov.hk>
- e. The Social Welfare Department: <http://www.swd.gov.hk>

Annex A

Flowchart - Procedures for Handling Construction Work Injury and Fatal Accident Cases



Annex B

Useful Contacts

Name of Government Department/ Organisation	Address in Hong Kong	Phone Number	Email	Website
Construction Industry Council (CIC)	15/F, Allied Kajima Building, 138 Gloucester Road, Wan Chai	Hotline 2100 9000	enquiry@hk cic.org	www.hkcic.org
Tel-Law Scheme (provided by the Duty Lawyer Service)	Room 2707-8, Gloucester Tower, The Landmark, 11 Pedder Street, Central	General 2526 5969 Tel-Law 2521 3333	-	www.dutyla wyer.org.hk
Hong Kong Mediation Council c/o HKIAC	38/F, Two Exchange Square, 8 Connaught Place, Central	2525 2381	adr@hkiac.org	www.hkiac.org
Hong Kong International Arbitration Centre	38/F, Two Exchange Square, 8 Connaught Place	2525 2381	adr@hkiac.org	www.hkiac.org
Labour Department (LD)	16/F, Harbour Building, 38 Pier Road, Central	Hotline 2717 1771	enquiry@la bour.gov.hk	www.labour.gov.hk
The Law Society of Hong Kong	3/F, Wing On House, 71 Des Voeux Road Central, Central	2846 0500	adea@hkla wsoc.org.hk	www.hklawsoc.org.hk
Legal Aid Department (LAD)	24/F, Queensway Government Offices, 66 Queensway	Hotline 2537 6777	ladinfo@lad.gov.hk	www.lad.gov.hk
Mediation Information Office of the Judiciary	Room LG104, LG1 High Court Building, 38 Queensway	2825 0470	mediation@ judiciary.gov.hk	www.judiciary.gov.hk
Social Welfare Department (SWD)	-	Hotline 2343 2255	swdenq@swd.gov.hk	www.swd.gov.hk

Annex C

Branch Offices of the Employees' Compensation Division, Labour Department

Place of Accident (Form 2, 2B)/ Place of Employment (Form 2A)	Branch Offices	Office Address
Hong Kong Island, Outlying Islands and areas outside Hong Kong	Hong Kong Offices	Room 1605, 16/F, Southorn Centre, 130 Hennessy Road, Hong Kong
Kowloon, Sai Kung and seamen and government employees cases	Kowloon Offices	Room 1007, 10/F, Cheung Sha Wan Government Offices, 303 Cheung Sha Wan Road, Kowloon
Kwai Chung, Tsing Yi, Tsuen Wan, Tuen Mun and Yuen Long	Kwai Chung & Tsuen Wan Offices	6/F, Tsuen Wan Government Offices, 38 Sai Lau Kok Road, Tsuen Wan, N.T.
Shatin, Taipo, Fanling and North District	Shatin Office	Room 239, 2/F, Shatin Government Offices, 1 Sheung Wo Che Road, Shatin, N.T.
Fatal cases, irrespective of place of accident / employment	Fatal Cases Office	Rm 601, 6/F, Harbour Building, 38 Pier Road, Central, Hong Kong

Annex D

Sick Leave Clearance Appointment Booking Service and branch offices of the Occupational Medicine Unit, Labour Department

Website: www.ecd.labour.gov.hk

Appointment Booking Telephone No.: 2114 3300

For further enquiries, please contact:

OMU (Hong Kong) Office	OMU (Kowloon) Office
Address: 22/F. Southorn Centre, 130 Hennessy Road, Hong Kong	Address: Room 1003, 10/F, Cheung Sha Wan Government Offices, 303 Cheung Sha Wan Road, Kowloon
Tel: 2835 2025	Tel: 2150 6570

Annex E

Summary of Calculation of the Amount of Compensation – Work Injury Cases

1. Permanent Total Incapacity		
<u>Age of Injured worker</u>	<u>Amount of Compensation</u>	
Under 40	96 months' earnings*	or \$352,000 whichever is higher
40 to under 56	72 months' earnings*	
56 or above	48 months' earnings*	
*Monthly earnings are subject to a maximum of HK\$21,500		
2. Permanent Partial incapacity		
Amount of compensation payable for Permanent Total Incapacity	X	Percentage of permanent loss of earning capacity caused by the injury
3. Compensation for Attention and Care		
a. such an amount not exceeding HK\$422,000 as the court considers necessary; or		b. an amount of HK\$422,000 as specified by the ECO and set down in an agreement entered into by the employer and the injured worker and approved by the Commissioner for Labour
4. Temporary Incapacity		
The Periodical Payments should be calculated as follows: Monthly earnings (at the time of the accident) LESS Monthly earnings (during the sick leave) x 4/5**		
** The periodical payments are payable on the injured worker's normal pay days		
5. Medical Expenses Payable		
	Expenses incurred for	Daily Maximum
i.	the medical expenses for each day of stay in the hospital where an injured worker is given medical treatment as an in-patient	HK\$200
ii.	the medical expenses for each day on which an injured worker is given medical treatment other than as an in-patient in a hospital	HK\$200
iii.	the medical expenses for each day on which an injured worker is given medical treatment both as an in-patient in a hospital and other than as an in-patient in a hospital	HK\$280

Notes:

For accidents happened before 1 August 2010:

- (a) The monthly earnings for calculating compensation for permanent total incapacity are subject to a maximum of \$21,000;
- (b) The minimum amount of compensation for permanent total incapacity is \$344,000; and
- (c) The compensation for attention and care is \$412,000.

Annex F

Summary of Calculation of the Amount of Compensation – Fatal Accident Cases

A summary of the calculations of compensation is provided below:

Age of the Deceased	Amount of Compensation for Death	
Under 40	84 months' earnings*	or \$310,000, whichever is higher
40 to under 56	60 months' earnings*	
56 or above	36 months' earnings*	
*Monthly earnings are subject to a maximum of HK\$21,500		

Up to a maximum of \$1,806,000 (\$21,500 x 84 months)

Notes:

For accidents happened before 1 August 2010:

- (a) The monthly earnings for calculating compensation for death are subject to a maximum of \$21,000; and
- (b) The minimum amount of compensation for death is \$303,000.