

Bangladesh

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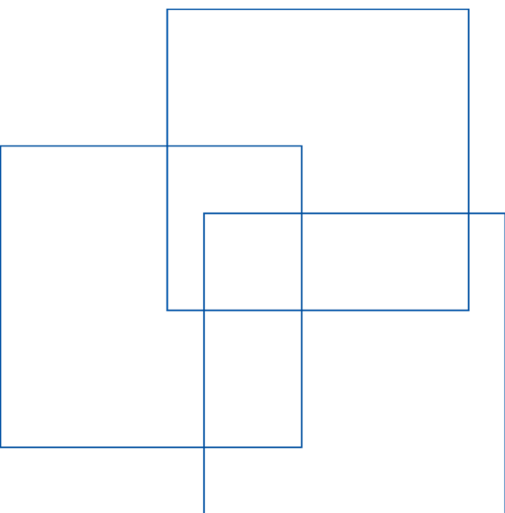
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International
Labour
Organization

Supporting Document

A Proposed Legal Framework for a Bangladesh Employment Injury Insurance Scheme



Global Employment Injury Programme

Enterprises
Department

ILO Country
Office for
Bangladesh

Bangladesh

Supporting Document

A Proposed Legal Framework for a Bangladesh Employment Injury Insurance Scheme

ILO/Global Employment Injury Programme (ILO/GEIP)
Enterprises Department, Geneva

ILO Country Office for Bangladesh

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INTRODUCTION

The legal feasibility study aims at proposing a legal framework for a Bangladesh employment injury insurance scheme: adequate, affordable and sustainable medical and financial protection for workers who suffer a loss through injury in the workplace.

This study is part of a collection of supporting document for:

“ILO Technical Recommendations on the Feasibility Assessment of an Employment Injury Insurance Scheme in Bangladesh”

Supporting documents:

- 1) *Preliminary feasibility study for the introduction of a National Employment Injury Social Insurance System*
- 2) *Health feasibility study: Health Care, Disability Assessment and Rehabilitation Services*
- 3) ***A proposed legal framework for a Bangladesh Employment Injury Insurance scheme (current document)***
- 4) *Main Findings of Work-Related Injuries in Manufacturing and Service Sectors in Bangladesh with a View to Implement an Employment Injury Compensation Scheme*
- 5) *Main Findings of Work-Related Injuries: the Case of Readymade Garment Sector of Bangladesh with a View to Implement an Employment Injury Compensation Scheme*
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1 A PROPOSED LEGAL FRAMEWORK FOR A BANGLADESH EMPLOYMENT INJURY INSURANCE SCHEME

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December 6, 2017

A PROPOSED LEGAL FRAMEWORK FOR A BANGLADESH EMPLOYMENT INJURY INSURANCE "EII" SCHEME

OUR OBJECTIVE:

Adequate, affordable and sustainable medical and financial protection for Workers who suffer a loss through injury in the workplace.

Bangladesh places legal responsibility on employers for workplace injuries to their employees and there are administrative processes established in the law, as well as established levels of compensation. However, the Rana Plaza disaster exposed the inadequacy of these systems to deal with a catastrophic event as well as the inadequacy of the established levels of compensation. The ILO played a key role in the establishment of an ad-hoc response to the Rana Plaza disaster. That ad-hoc scheme was successful in delivering medical aide. Although the loss of income support was greater than the standards existing at the time, they were lump sum payments and it is difficult to know the extent of lasting benefit to injured workers and their families.

Subsequent to this ad-hoc response, and in an effort to comply with International Standards, and in particular ILO Conventions C. 102 and C. 121, the government of Bangladesh asked ILO to recommend a legal framework for an Employment Injury Indemnity plan. EII schemes are based on a fundamental bargain between workers and employers. That bargain is that a worker who is injured in his employment will accept an established scale of benefits as a complete discharge of his/her employers legal obligations to compensate him for what he lost as a result of that injury. An EII scheme is a no-fault system funded collectively by employers. Efficiency and cost saving results from removing "fault determination" from the scheme and from standardizing the determination of benefits the injured worker is entitled to as a result of his injury. Because it is a discharge of the employer's legal obligations, and

to ensure that workers receive the benefits they are entitled to, this fundamental bargain is enshrined in law by a special statute.

An EII scheme provides protection to the everyday victims of workplace accidents as well as providing workers and employers with protection in the event of large-scale work-place incident like the Rana Plaza disaster. Because there is a continuing administrative agency established in the law disability payments and loss of earnings payments can be made secure and can be paid out over the injured worker's lifetime.

If there had been an EII scheme in place at the time of the Rana Plaza disaster:

- Medical treatment would have been immediately available.
- Funds would have been immediately available to pay benefits to injured workers over their lifetime.
- The EII administrative agency would have been able to commence payments to injured workers within days/weeks
- The employer's financial status would not have been a factor in workers ability to collect benefits.
- It would not have been necessary to look to outside sources of funding for benefits to workers.
- Business failure would not result from injured worker claims.

When the law makes these schemes universal (applying to all employers in a sector and requiring all employers to fund them) the scheme becomes very efficient as a means of maximizing benefits to injured workers with minimum costs to employers.

Employers in Bangladesh have an established legal responsibility for injury to their workers. There are specific financial obligations on employers in the existing law regarding medical treatment and financial compensation. The proposal for an Employment Injury Indemnity scheme is simply a more efficient scheme for employers to discharge their responsibility. An EII scheme has the potential to deliver better protection to injured workers and a more affordable scheme for employers. Most importantly it provides the security of payments to injured workers and financial protection to employers in the event of a catastrophic loss.

In developing a proposed "legal framework" for an EII scheme for Bangladesh we prepared a Draft in the form of proposed legislation. The stakeholders should not be distracted by the form of this document. It is intended only as an outline of the

essential features of the scheme to assist the stakeholders in an understanding of how an EII scheme might be integrated into the fabric of labour relations in Bangladesh.

In addition to prescribed benefits to injured workers enforceable through labour courts, Bangladesh has adopted a unique scheme for providing social security benefits to its population through profit sharing with employers. There is no intention to affect these profit sharing schemes which are administered through tri-partite administrative bodies established by legislation. However, to the extent these schemes also pay benefits to injured workers on behalf of employers, EII would supplant those payments.

From the ILO's point of view it is important that there is a competent tri-partite Board overseeing the administration of the system and fulfilling the responsibilities as trustees of the substantial fund that is held by the agency for the payment of future liabilities. In an initial Draft legal framework it was suggested that the Central Fund (which seemed to have been already established) might also administer the EII scheme. In order to focus attention on the more important issues and in order to simplify the proposal we have removed the references to the Central Fund as administrators of the system. In the end it is the stakeholders and the government that must decide on the administrative agency to oversee the system and they can create a new agency or delegate the responsibilities to an existing agency.

The model legal framework that follows simply refers to the "EII Agency" and the "EII Agency Governance Board". This tri-partite governing body would be the Governance Board for the system. They would oversee the administration claims processing and payments from the fund. This Board would have fiduciary responsibility for the fund, responsible for its investment and safekeeping of the money held in reserve for future payments.

The EII scheme is funded through a levy on payroll. Payroll is used because the amount of payroll is closely co-related to the expected accident costs the employer might contribute to the scheme. Thus, through a levy on payroll, in the long run all employers covered pay their "fair share" of the cost of the scheme. Having paid their fair share of the cost the employer is no longer subject to the risk of a large number of claims. In this respect an EII scheme is a risk sharing scheme for employers similar to the sort of scheme some employers in Bangladesh would be familiar with through mutual trade associations.

In any one year the funds raised must be sufficient to provide the victims of workplace accidents with present and future medical treatment and rehabilitation related to the workplace injury as well as future disability payments commensurate with their loss of earnings capacity and death benefits to their families. The administrative costs of the scheme are also paid from the fund. The stakeholders have control over those administrative costs through their representation on the Governing Board of the agency.

The proposed model provides benefits to injured workers intended to meet the international standard set in ILO C. 121. Those benefits are superior to what is currently received by injured workers in Bangladesh. The most important improvement in injured workers welfare is the replacement of lump sums with lifetime periodic payments intended to support the permanently impaired worker and his family through the replacement of the income stream he lost when he became injured at work.

The ILO asked BIDS (Bangladesh Institute of Development Studies) to conduct a survey of Bangladesh workplaces in order to get a sense of accident frequency so that an actuarial estimate of the costs of a system for the Bangladesh Ready Made Garment Industry could be made. That cost estimate was based on a schedule of benefits that are set out in Appendix "A" to this Report. Clearly the estimate of the costs of the system depends on the extent and level of benefits. The cost is also dependent on other factors such as the defined level of insurable earnings and funding targets. The cost of the model we proposed to employers in the ready-made garment sector is estimated to be .33% of covered payroll. We caution that there is uncertainty in any new system and experience has to be monitored closely. Rates should be reviewed after 2-3 years of experience. However, it is expected that rate stability would be achieved in 5-10 years.

Matters for stakeholder consideration/discussion

At present we are trying to establish a commitment by the key players to a timetable for the introduction of an EII scheme based on the principles of ILO Convention 121. There must be a consensus on the core elements of the scheme and the necessary legal framework to support it. What follows in this Report is an explanation of what we mean by a legal framework and an explanation of some of the essential features of the scheme that have to be a part of the law and which should be considered by stakeholders if they want to develop an EII scheme for Bangladesh.

When speaking about the legal framework of an EII scheme we are referring to those elements of the system that must be grounded in law or policy. ILO Convention 121 sets standards for medical care and loss of earnings protection for workers injured in a workplace accident or who suffer from a recognized “occupational disease”. There are many different EII schemes developed by countries signatory to ILO Convention 121. The Convention is purposely flexible to allow member countries to develop a scheme that fits with their established institutions and meets the needs of their workers and employers.

These established EII schemes give rights of compensation to injured workers and impose obligations on employers to fund those benefits. But there is also an important *quid pro quo*. Workers give up the right to pursue a civil action in return for these guaranteed payments and the payments are defined. Employer’s benefit from these schemes through risk sharing and are protected from catastrophic loss that could accompany a workplace accident affecting a large number of their employees. These basic rights and obligations must be clearly expressed in the law or policy, particularly where they take the right of civil legal action away from injured employees and impose funding obligations on employers. *It is fundamental to these schemes that the EII benefit is the only financial compensation funded by the employer. The EII benefit is not intended to supplement any other benefit and is intended to completely satisfy the employer’s legal obligation to his injured employee.*

The legal framework is also the foundation for the administrative actions that must take place in the operation of the scheme. It must clearly identify the agency having authority to oversee the scheme. That governing body is charged with the responsibility of enforcing the obligations and fulfilling the rights. In addition, the tripartite governing body must be given authority to make “policy” decisions on details that are necessary to implement the scheme. If the benefits are a legal right in the hands of the injured worker then there must be a corresponding legal obligation on employers to fund the scheme. The legal framework must define who will contribute financially to the system and establish the legal obligation to make that contribution. Because benefits are promised to be paid far into the future the administrative agency is usually the trustee of an accident fund that is sufficient (according to actuarial standards) to meet those future obligations.

We have already provided the stakeholders in Bangladesh with a Draft of what legislation establishing an EII scheme might look like. That Draft has been revised several times and the latest version which takes into consideration feed-back we received from stakeholders is attached as an Appendix. The principal features of that Draft are:

- An “EII Agency” and an “EII Agency Governance Board”, is established and empowered to be the administrative agency for the new proposed EII scheme.
- Workers who are injured on the job are entitled to prescribed medical aide and to loss of income benefits resulting from temporary and permanent disabilities paid over their lifetime.
- Beneficiaries of workers who are killed in workplace accidents are entitled to benefits paid periodically over their lifetime.
- The employer’s participation in the scheme through the payment of prescribed assessments discharges their legal responsibility for injury to employees that result from workplace accidents and occupational diseases.
- Employers have immunity from civil action and share the risk of workplace injuries in their industry through contributions to a fund that guarantees benefits to injured workers.
- The ready-made garment industry is exempted from the existing mechanism for recovery of benefits from workplace injury by workers (Chapter XII of the Labour Act, 2006 as amended in 2013)
- This model can readily be extended to other industries, either under the Central Fund for export oriented industry, or the Bangladesh Labour Welfare Foundation established for all other industries under the Labour Act.

This proposed legal framework is not a complete scheme. It is a “framework” in the sense that the features of the system that satisfy the unique interests of the Worker and Employer stakeholders in Bangladesh need to be added to this framework. What those unique features are and how the interests of Worker and Employer stakeholders are accommodated can only be resolved through extensive discussions between these stakeholders and government representatives. It is only through that process that an EII scheme that serves the interests of the people of Bangladesh can be established.

In those discussions the parties would be well served by keeping in mind the objectives of such a scheme.

In those discussions it is important to keep in mind, although there are some elements that must be there, they can be modified. Other features can be added by the authors of the scheme to suit their jurisdiction. In proposing this legal framework for Bangladesh we attempted to keep in mind that we are adding an element to an existing labour law regime. We were conscious that this new scheme had to be compatible with the existing regime and it had to be consistent with the overall objectives that Bangladesh has established in their labour law.

Our objective is to ensure that, in the discussion of this legal framework, the stakeholders in Bangladesh are aware of the issues they should think about and address. The legal framework we propose is intended to be integrated with existing law. It is intended to be a framework that can be built on to suit the needs of Bangladesh stakeholders.

We said at the outset that our goal was adequate, affordable and sustainable medical and financial protection for workers in Bangladesh. In the stakeholder discussions that will have to take place it would be useful to keep these objectives in mind:

Adequate:

The scheme must be fully sufficient and suitable to its task.

- Does the scheme provide injured workers with proper medical treatment and rehabilitation
- Does the scheme provide income replacement for lost wages
- Does the scheme provides survivor benefits
- Does the scheme provide for a capable administrative agency

Affordable:

To able to guarantee payments to injured workers and protect employers from catastrophic loss the scheme must be affordable, keeping in mind:

- The nature of the Employer's obligation to injured workers and the real cost to employers of the existing mechanisms
- The scheme replaces all other employer funded remedies for workplace injuries
- Universality ensures efficiency through shared risk
- An actuarial estimate of the cost of the system is essential

Sustainable:

An EII scheme by its very nature involves long-term commitments. It must be designed as a permanent fixture and a part of the social fabric of the country. The parties are designing:

- A permanent administrative agency
- A scheme to protect funds set aside for future benefit payments
- A scheme that entails a commitment to injured workers for life-time assistance

Conclusion:

This document is intended to assist stakeholders in developing an appropriate model for an EII scheme for Bangladesh.

Dec. 6, 2017

APPENDIX A:

BENEFITS:

Benefits (base scenario)

“Employment injury” covers both industrial injuries and occupational diseases. The qualifying condition for benefit is that of being in insurable employment at the relevant time.

“Medical benefit”, provided to victims of employment injury, includes: general practitioner and specialist in-patient and out-patient care, including domiciliary visiting, dental care, nursing care at home or in hospital or other medical institutions, maintenance in hospitals, convalescent homes, sanatoria or other medical institutions, dental, pharmaceutical and other medical or surgical supplies, including prosthetic appliances kept in repair and renewed as necessary, and eyeglasses, the care furnished by members of such other professions as may at any time be legally recognised as allied to the medical profession, under the supervision of a medical or dental practitioner and the following treatment at the place of work wherever possible: emergency treatment of persons sustaining a serious accident and follow-up treatment of those whose injury is slight and does not entail discontinuance of work.

“Temporary disablement benefit” is paid in the event of certified incapacity for work arising out of an employment injury, subject to a waiting period of three days. The daily rate of benefit is 60 percent of the reference wage - i.e. one-thirtieth of the average assumed monthly wage over the preceding ‘x’ months - subject to a maximum of ‘xx’takas per day. The benefit is payable for seven days a week until the temporary disablement ends.

“Permanent disablement benefit” is payable if permanent disablement, partial or total, results from an employment injury. The monthly rate of total disablement benefit is 60 percent of the reference wage. The benefit rate for partial disablement is proportional to the degree of disablement. If the degree is 20 percent or less, the benefit can be commuted into a lump sum. A constant attendance allowance tentatively set at 50 percent of the average monthly wage is payable to total disablement pensioners in need of assistance.

“Dependants’ benefit” is payable in the event of death arising out of an employment injury, to a widow or widower, orphans and parents. The proposed monthly rates of benefit are presented in the following table. The total percentage must not exceed 60 percent. In case the total exceeds 60 percent, the share for each dependent is proportionately reduced.

Dependent	Percentage of reference salary	Benefit duration
Widow	40%	Life, terminates at remarriage
Dependent widower	40%	Life, terminates at remarriage
Child	10%	Termination reaching the age 21
Orphans (no surviving parent)	30% for the first one, and 15% for each additional one	Termination reaching the age 21
Dependent parents	45% if both are alive 30% if only one is alive	Life

Funeral benefits, preliminarily set at 5,000 takas, are payable to the heirs.

“Rehabilitation benefit”, consisting of vocational and physical rehabilitation, is available to employees suffering from permanent disablement.

APPENDIX “B”

Proposed legal framework for an EII Act for Bangladesh

Sections 1 to 3 establish a separate ACT that creates the Agency and the tri-partite governing Board – it establishes the scope of the scheme as applying to the 100% Export Oriented Garment Sector.

Short title, commencement and application.

1. (1) This Act may be called the Employment Injury Indemnification (EII) Act
(2) It shall come into force at once.
(3) Save as otherwise specified elsewhere in this Act, it extends to the whole of Bangladesh.
(4) Notwithstanding anything contained in sub-section (3), this Act shall apply to 100% Export Oriented Employers in the ready made garment trade who are captured by Chapter XV of the Labour Rules of 2015.
(5) This act shall exempt the Export Oriented Industry from chapter XII of the Bangladesh Labour Act, 2006 as amended in 2013.
2. (1) There is established by this Act a corporation named the Employment Injury Indemnification Agency.
(2) The corporation shall be under the direction of an EII Governance Board composed of three (3) representatives of the Goernment, three (3) representatives of the Employers and three (3) representatives of Workers and a Chair shall be appointed by the Government.
(4) The EII Governance Board shall set and revise as necessary the policies of the board of directors, including policies respecting compensation, assessment, medical treatment and rehabilitation.
2. (adefinition section needs to be developed)
- 3 (1) There is established by this Act a legal corporation named the “EII Agency” and the “EII Agency Governance Board” composed of three (3) representatives of the Government, three (3) representatives of the Employers and three (3) representatives of Workers and a Chair appointed by the Government shall constitute the Management Board responsible to administer an account named

the Workplace Accident Compensation account and to administer the provisions of this Act.

(2) The EII Agency Governance Board must continue and maintain an account for payment of the compensation, outlays and expenses under this Part and for payment of expenses incurred in administering this Act.

(3) The EII Agency Governance Board is solely responsible for the management of the accident account and must manage it with a view to the best interests of the workers' compensation system established by this Act.

(4) The EII Agency Governance Board shall set and revise as necessary the policies of the EII Agency, including policies respecting compensation, assessment, medical treatment and rehabilitation.

(5) The EII Agency Governance Board shall take measures as are within their powers to prevent industrial accidents and occupational diseases and promote occupational health and safety within the industry covered by this Act.

Sections 4-5 establish Employer protection from civil action and the principle of indemnification, limitation of actions, election and subrogation

4. The provisions of this Act are in lieu of any right and rights of action under the *Fatal Accidents Act, 1855* or any other basis statutory or otherwise, founded on a breach of duty of care or any other cause of action, whether that duty or cause of action is imposed by or arises by reason of law or contract, express or implied, to which a worker, dependant or member of the family of the worker is or may be entitled against the employer of the worker, or against any employer within the scope of this Act, or against any worker, in respect of any personal injury, disablement or death arising out of and in the course of employment and no action in respect of it lies. This provision applies only when the action or conduct of the employer, the employer's servant or agent, or the worker, which caused the breach of duty arose out of and in the course of employment within the scope of this Act.

5 (1) Where the cause of the injury, disablement or death of a worker is such that an action based on the *Fatal Accidents Act, 1855* or otherwise, lies against some person, other than an employer or worker within the scope of this Act, the worker or dependant may claim compensation or may bring an action. If the worker or dependant elects to claim compensation, he or she must do so within

3 months of the occurrence of the injury or any longer period that the EII Agency allows.

(2) Where the EII Agency is satisfied that due to the worker's physical or mental disability a worker is unable to exercise his or her right of election, and undue hardship will result, it may pay the compensation provided by this Part until the worker is able to make an election. If the worker then elects not to claim compensation, no further compensation may be paid, but the compensation so paid is a first charge against any sum recovered.

(3) An application filed by a parent, guardian or the Official Guardian for compensation for the infant child of a deceased worker is a valid election on behalf of that child.

(4) If after trial, or after settlement out of court with the written approval of the EII Agency, less is recovered and collected than the amount of the compensation to which the worker or dependant would be entitled under this Part, the worker or dependant is entitled to compensation under this Part to the extent of the amount of the difference.

(5) If the worker or dependant applies to the EII Agency claiming compensation under this Part, neither the making of the application nor the payment of compensation under it restricts or impairs any right of action under the Fatal Accidents Act or otherwise against the party liable, but as to every such claim the EII Agency is subrogated to the rights of the worker or dependant and may maintain an action in the name of the worker or dependant or in the name of the EII Agency; and if more is recovered and collected than the amount of the compensation to which the worker or dependant would be entitled under this Part, the amount of the excess, less costs and administration charges, must be paid to the worker or dependant. The EII Agency has exclusive jurisdiction to determine whether to maintain an action or compromise the right of action, and its decision is final and conclusive.

Section 6 establishes the liability of the Fund to pay compensation and the right of an injured worker to recover from the fund:

6. (1) If a worker covered by this Chapter is bodily injured by an accident arising out of the course of his employment, the EII Agency shall be liable to pay him compensation in accordance with the provisions of this Chapter and provide care and rehabilitation in accordance with the provisions of this chapter.

- (2) The EII Agency shall not be liable to pay such compensation, if:
- (a) a worker does not lose the ability to work, in whole or in part, for a period exceeding three days due to injury;
 - (b) the cause of injury to a worker, not resulting in death or permanent total disability, by the accident directly attributed to
 - (i) the worker having been at that time under the influence of drink or drugs;
 - (ii) the willful disobedience by the worker of a clear order or to rules made for the purpose of securing the safety of workers;
 - (iii) the willful removal or disregard by the worker of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workers. ☐

- (3) If any worker, employed in any employment covered by this section is attacked with any disease specified in a schedule under this section as an occupational disease peculiar to that of employment being attacked of such disease shall be deemed to be an injury by accident within the meaning of this section, and, unless the employer proves the contrary, such accident shall be deemed to have arisen out of the course of his employment.

Sections 7-8 establish the principle that workers may not contract out of the scheme or be required to pay any portion of the Employer's responsibility:

7. A worker may not agree with his or her employer to waive or to forego any benefit to which the worker or the worker's dependants are or may become entitled under this Part, and every agreement to that end is void.
8. (1) It is not lawful for an employer, either directly or indirectly, to deduct from the wages of the employer's worker any part of a sum which the employer is or may become liable to pay into the EII Agency or otherwise under this Part, or to require or to permit the worker to contribute in any manner toward indemnifying the employer against a liability which the employer has incurred or may incur under this Part.

(2) Every person who contravenes subsection (1) commits an offence and is liable to repay to the worker any sum which has been so deducted from his or her wages or which he or she has been required or permitted to pay in contravention of subsection (1).

Section 9 - Requirements on workers and employers to give notice of accidents and industrial disease:

- 9 (1) In every case of an injury or disabling occupational disease to a worker in an industry within the scope of this Part, the worker, or in case of death the dependent, must as soon as practicable after the occurrence inform the employer by giving information of the disease or injury to the person in charge of the work where the injury occurred or other appropriate representative of the employer, and the information must include the name of the worker, the time and place of the occurrence, and, in ordinary language, the nature and cause of the disease or injury.
- (2) In the case of an occupational disease, the employer to be informed of the death or disablement is the employer who last employed the worker in the employment to the nature of which the disease was due.
- (3) The worker must, if he or she is fit to do so and on request of the employer, provide to the employer particulars of the injury or occupational disease on a form prescribed by the Central Fund and supplied to the worker by the employer.
- (4) Failure to provide the information required by this section is a bar to a claim for compensation under this Part, unless the EII Agency is satisfied that
- (a) the information, although imperfect in some respects, is sufficient to describe the disease or injury suffered, and the occasion of it;
 - (b) the employer or the employer's representative had knowledge of it;
- or
- (c) the employer has not been prejudiced, and the EII Agency considers that the interests of justice require that the claim be allowed.

Employer's notification of injury

- 10 (1) Subject to subsection (6), an employer must report to the EII Agency within 3 days of its occurrence every injury to a worker that is or is claimed to be one arising out of and in the course of employment.
- (2) Subject to subsection (6), an employer must report to the EII Agency Governance Board, within 3 days of receiving information under section 53 of the Bangladesh Labour Act 2006 as amended in 2013, every disabling occupational disease, or claim for or allegation of an occupational disease.

(3) An employer must report immediately to the EII Agency in the manner prescribed the death of a worker where the death is or is claimed to be one arising out of and in the course of employment.

(4) The report must be on the form prescribed by the EII Agency and must state:

- (a) the name and address of the worker;
- (b) the time and place of the disease, injury or death;
- (c) the nature of the injury or alleged injury;
- (d) the name and address of any physician or qualified practitioner who attended the worker; and
- (e) any other particulars required by the EII Agency or by the regulations,

and may be made by mailing copies of the form addressed to the EII Agency at the address they prescribe.

(5) The failure to make a report required by virtue of this section, unless excused by the EII Agency on the ground that the report for some sufficient reason could not have been made, constitutes an offence against this Part.

(6) The EII Agency may, by regulation:

- (a) define and prescribe a category of minor injuries not required to be reported under this section; and
- (b) define or vary the time at which the obligation to report under this section commences.

(7) Where a report required by this section is not received by the EII Agency within 7 days of an injury or death, or any other time prescribed by regulation under subsection (6), the EII Agency may make an interim adjudication of the claim, and, where it allows the claim on an interim basis, may commence the payment of compensation in whole or in part.

(8) Any compensation paid under subsection (7), until 3 days after receipt by the EII Agency of the report required by this section, may be assessed and collected from the employer by way of additional assessment as a contribution to the accident account, and payment may be enforced in like manner as other assessments.

(9) Where the EII Agency is satisfied that the delay in reporting was excusable, it may relieve the employer in whole or in part of the additional assessment imposed under subsection (8).

Sections 11-13 outline benefits to be received by an injured/deceased worker. These benefits will be incorporated into a “schedule” that is a part of the Act. Those schedules are not included here but the benefits will be those described in “Appendix A”

Primary Health care.

11 (1) In fulfilling its obligation to provide care and rehabilitation and in order to restore an injured worker's physical and psychological health and capacity for work the EII Agency shall furnish or provide for an injured worker any medical, surgical, hospital, nursing and other care or treatment, transportation, medicines, crutches and apparatus, including prosthetic devices, that it may consider reasonably necessary at the time of the injury, and thereafter during the disability to cure and relieve from the physical and psychological effects of the injury or alleviate those effects, and the EII Agency may adopt rules and regulations with respect to furnishing health care to injured workers entitled to it and for the payment of it.

(2) Where in a case of emergency, or for other justifiable cause, a physician or qualified practitioner other than the one provided by the Fund is called in to treat the injured worker, and if the EII Agency finds there was a justifiable cause and that the charge for the services is reasonable, the cost of the services must be paid from the accident account.

(3) The EII Agency may in its discretion authorize employers to furnish or provide health care at the expense of the accident account and on terms fixed by it. Every employer must, at the employer's own expense, furnish to a worker injured in the employer's employment, when necessary, immediate conveyance and transportation to a hospital, physician or qualified practitioner approved by the Fund for initial treatment.

(4) The objective in providing medical aid and rehabilitation is to physically and psychologically prepare an injured worker to whatever extent possible, for the resumption of his previous activity, or, if this is not possible, the most suitable alternative gainful activity, having regard to his aptitudes and capacity.

(5) Health care furnished or provided under any of the preceding subsections of this section must at all times be consistent with the objective specified in ss (4) and subject to the direction, supervision and control of the EII Agency; and the Agency may contract with physicians, nurses or other persons authorized to treat human ailments, hospitals and other institutions for any health care required, and to agree on a scale of fees or remuneration for that health care; and all questions as to the necessity, character and sufficiency of health care to be furnished must be determined by EII Agency.

(6) Without limiting the power of the EII Agency under this section to supervise and provide for the furnishing of health care in every case where it considers the exercise of that power is expedient, the Fund must permit health care to be administered, so far as the selection of a physician or qualified practitioner is concerned, by the physician or qualified practitioner who may be selected or employed by the injured worker.

12. (1) In cases of death or loss of earnings capacity as a result permanent disability compensation shall be paid in accordance with the following sub-sections.

(2) Subject to the provisions of this Chapter, the amount of compensation shall be as follows, namely:

(a) where death results from the injury, the sum mentioned in [a Schedule to the Act]

under this Chapter [Provided that this amount of compensation shall be in addition to the compensation relating to his normal retrenchment of, dismissal from, termination of, or resignation from, service;]

(b) where permanent total disablement results from the injury, irrespective of whether the worker is an adult or a minor, the sum mentioned in [a Schedule to the Act]

(c) where permanent partial disablement results from the injury,

(i) in the case of injury specified in [a Schedule to the Act], such percentage of the compensation which would have been payable in the case of permanent total disablement which is equal to the ratio specified therein as being the percentage of the loss of earning capacity caused by that injury; ☐

(ii) in the case of an injury not specified in the Schedule, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity permanently caused by the injury. ☐

(d) where temporary disablement, whether total or partial, results from the

injury, a monthly compensation shall be payable on the first day of the month following the month in which it is due after the expiry of a waiting period of 3 (three) days from the date of disablement and thereafter shall be payable for the period of disablement or for a period as specified in Schedule 2, whichever is shorter.

(3) Where more than 1 (one) injury is caused by the same accident, the amount of compensation payable under sub-section (1)(c) shall be aggregated, but not in such a way as to exceed the amount which would have been payable if permanent total disablement would result from the injuries.

(4) If the disablement ceases before the date on which any monthly compensation is payable, a sum proportionate to the duration of the disablement in that month shall be payable in respect of that month.

(5) Disability payments under this section terminate when a worker is deceased.

13. Lump sums to persons with less than 20% disability will be paid in accordance with this Act.

DETERMINATION OF EARNINGS – The legislation has to provide a formula for determining the “earnings” of a worker for the purposes of the Act

14. (1) For the purposes of this Chapter "monthly wages" means the amount of wages deemed to be payable for work of 1 (one) month, whether the wages is payable by month or by other period or at piece rates.

(2) Such wages shall be calculated as follows, namely:

(a) where the worker was in the service of the employer who is liable to pay compensation for a continuous period of not less than 12 (twelve) months immediately preceding the accident, the monthly wages of the worker shall be (one-twelfth) of the total wage to be paid to him by the employer for the preceding 12 (twelve) months.

(b) where the worker was in the service of the employer who is liable to pay the compensation for a continuous period of less than 1 (one) month immediately preceding the accident, the monthly wage of the worker shall be the sum equal to the monthly average of income which, during the 12 (twelve) months immediately preceding the accident, was being earned by a

worker employed on the same work by the same employer, or, if there was no worker so employed, by any other worker employed on similar work in the same locality.

(c) in other cases, the monthly wages shall be the sum arrived at on the basis of the following calculation: 30 (thirty) times of the total wages earned from the employer who is liable to pay compensation for a continuous period of service immediately preceding the accident divided by the number of days comprising such period.

For the purposes of this section, any period of service shall be deemed to be continuous which is not interrupted by a period of absence from work for exceeding 14 (fourteen) days.

(3) For the purposes of this section the calculation of wages shall not exceed an amount established by the EII Agency from time to time as the worker's maximum insurable earnings.

RIGHT OF REVIEW - employers and workers may apply to have their file reviewed

15. (1) Any monthly compensation payable under this Chapter may be reviewed by the EII Agency, if

(a) an application is made either by the employer or by the worker accompanied by a certificate of a registered medical practitioner stating that the condition of the worker has been changed; or

(b) besides such certificate, an application is made either by the employer or by the worker on the ground that the compensation was fixed by fraud or undue influence or other improper means or from the record it is clearly seen that such fixation was wrong.

(2) Subject to the provisions of this Chapter, any monthly compensation may, on review under this section, be continued, increased, decreased or stopped, or if it is found that permanent disablement results from the accident, the monthly compensation payable may be converted to the lump sum to which the worker is entitled, but the sum already received as monthly compensation shall be deducted from it.

Periodic payments under the scheme are protected by ensuring they cannot be assigned or attached

16. Save as provided in this Chapter, any lump sum or monthly compensation payable under this Chapter shall not be assigned, attached or charged, or shall not be transferred to any person other than the worker by operation of any law, or shall not be set off any claim against the same.

Sections 17-18 describe the process for an injured worker to make a claim:

17. (1) No claim for compensation shall be considered by the EII Agency, unless a notice of the accident is given in the manner Specified in section 9-10 as soon as practicable after the occurrence thereof and unless the claim is preferred within 2 (two) years of the occurrence of the accident or in case of death within 2 (two) years of the date of death.

(2) Where the accident is the contracting of a disease the accident shall be deemed to have occurred on the first day of the continuous absence of the worker in consequence of the disablement caused by the said disease.

(3) Any defect or irregularity in or want of a notice shall not be a bar to the consideration of a claim:

(a) if the claim is preferred in respect of the death of a worker resulting from an accident which occurs:

(i) at the house or premises of the employer; or

(ii) at the place where the worker was working under the control of the employer or of any person employed by him; and the worker died on such house or premises or place, or died before having left the vicinity of the house or premises or place; or

(b) if the employer or any person responsible to the employer for the management of the trade or business in which the injured worker was employed had knowledge of the accident from any other source at or about the time when it was occurred.

(4) The EII Agency may consider and decide any claim to compensation in any case notwithstanding that the notice is not given, or the claim is not preferred, in due time, as provided in the aforesaid sub-section, if it is satisfied that there was sufficient reason for the failure to give such notice or prefer such claim.

(5) In every such notice the name and address of the person injured shall be mentioned and the cause of the injury and the date of the accident shall be stated in easy language, and shall be served on the employer or upon any person responsible to the employer for the management of the trade or business in which the injured worker was employed.

(6) A notice under this section shall be served by delivering it at, or sending it by registered post addressed to, the residence or office, or place of business of the person on whom it is to be served, or where a notice-book is maintained, by making an entry in the notice-book.

18. (1) Where a worker gives notice of an accident, the employer shall, within 3 (three) days of service of such notice, cause the worker to be examined by a registered medical practitioner and the worker shall submit himself for such examination and the EII Agency shall pay the expenses for such examination. Provided that if the accident or illness of the worker is of grave nature, the employer shall cause him to be examined at the place where the worker is staying.

(2) If any worker continues to receive monthly compensation under this Chapter, he shall, if so required, submit himself for such examination from time to time.

(3) Where a worker is not examined as aforesaid, he may get himself examined by a registered medical practitioner and the Fund shall pay the expenses for such examination.

(4) No worker shall be ordered to present himself for medical examination under sub-section (1) or (2) otherwise than in accordance with rules made under this Chapter or on any day other than the day prescribed by rules.

(5) If a worker being ordered by the employer under sub-section (1) or (2) or by the EII Agency at any time, refuses to present himself to the registered medical practitioner for medical examination or in any other way obstructs the same, his right to compensation shall remain suspended during the continuance of such refusal or obstruction, unless, in the case of refusal, he was prevented by sufficient cause from so presenting himself.

(6) If a worker, before the expiry of the period within which he is supposed to present himself for medical examination under sub-section (1) or (2),

voluntarily leaves, without having been so examined, the vicinity of his place of employment, his right to compensation shall remain suspended until he returns or offers himself for such examination.

(7) If a worker, whose right to compensation is suspended under sub-sections (5) and (6) dies without having present himself for medical examination as required under any of the foregoing sub-sections, the Agency may, if it thinks fit, direct for the payment of compensation to the dependents of the deceased worker.

(8) Where under sub-section (5) or (6) the right to any compensation is suspended, no compensation shall be payable in respect of the period of suspension and if the period of suspension commences before the expiry of the waiting period referred to in section 151(1)(b), the waiting period shall be increased by the duration of suspension.

(9) Where an injured worker refuses to accept medical treatment by a medical practitioner or, having accepted such offer deliberately disregards the instructions of such medical practitioner, and if it is proved that the worker has not thereafter been regularly attended by a registered medical practitioner or having been so attended has deliberately failed to follow medical practitioner's instructions and such refusal, disregard or failure was unreasonable in the circumstances of the case and the injury is aggravated thereby, the injury and the disablement evident from it shall be deemed to be of the same nature and duration as they might have reasonably been expected to be if the worker had been regularly attended by a registered medical practitioner and had followed his instructions, and the compensation, if any, shall be payable accordingly.

(10) Where any employer or the injured worker is not satisfied with the report of the medical examination by a registered medical practitioner, he may refer the case for re-examination by a medical specialist of at least the rank of an Associate Professor of a Medical College, and the expenses incurred for such examination shall be borne by the employer or the worker, as the case may be.

EMPLOYER'S CONTRIBUTIONS TO ACCIDENT FUND AND ASSESSMENT

19. (1) Every employer in the Industries and Sector described in s. 1 must
- (a) keep at all times at some place complete and accurate particulars of the employer's payrolls;

- (b) cause to be furnished to the EII Agency
 - (i) when the employer becomes an employer within the scope of this Part; and,
 - (ii) at other times as required by a regulation of the EII Agency of general application or an order of the EII Agency limited to a specific employer,an estimate of the probable amount of the payroll of each of the employer's industries within the scope of this Part, together with any further information required by the EII Agency; and
- (c) furnish certified copies of reports of the employer's payrolls, at or after the close of each calendar year and at the other times and in the manner required by the EII Agency.

(2) Where the employer fails to comply with subsection (1), the employer is liable to pay and must pay as a penalty for the default a percentage of the assessment prescribed by the regulations or determined by the EII Agency, and the EII Agency may make its own estimate of the payrolls and may make its assessment and levy on that estimate, and the employer is bound by it.

(3) In computing the amount of the payroll for the purpose of assessment, regard must be had only to that portion of the payroll that represents workers and employment within the scope of this Part. Where the wages of a worker exceed the maximum wage for one year as fixed for the time being under section 14(3), and described as a workers maximum insurable earnings, a deduction may be made in respect of the excess; and where the wages of a worker are shown to exceed the above maximum wage rate, the EII Agency may make a deduction in respect of the portion in excess of that rate; and where a worker within the scope of this Part works at a nominal wage or no wage, the amount of the worker's average earnings for purposes of this Part may be fixed by the EII Agency.

(4) If an employer does not comply with subsection (1), or if a statement made in pursuance of its requirements is not true and accurate, the employer, for every failure to comply and for every such statement, commits an offence against this Part.

20.(1) For the purpose of creating and maintaining an adequate accident fund, the EII Agency is responsible for developing a funding policy and must every year assess and levy on and collect from employers in the Industries and Sector described in s. 1, by assessment rated on the payroll, or in a manner the EII

Agency considers proper, sufficient funds that, according to estimates produced by a member of a recognized actuarial organization, will:

- (a) meet all amounts payable from the accident fund during the year;
- (b) provide in each year capitalized reserves sufficient to meet the periodical payments of compensation accruing in future years in respect of all injuries which occur during the year;
- (c) provide a reserve to be used to meet the loss arising from a disaster or other circumstance which the EII Agency considers appropriate;

(2) Assessments may be made in the manner and form and by the procedure the EII Agency considers adequate and expedient, and may be general as applicable to a class or subclass, or special as applicable to an industry or part or department of it.

(3) Assessments may, wherever it is considered expedient, be collected in half yearly, quarterly or monthly installments, or otherwise.

(4) If the EII Agency thinks that there are not sufficient funds to provide the compensation or additional compensation required to be paid under this Part, it may levy and collect from employers within the scope of this Part sufficient funds for this purpose without regard to the date of injury or the period during which the employer carried on an industry under this Part; and the levy and collection may be made in the manner and at the times the EII Agency considers equitable, and may be by way of addition to the usual assessment or by levy of special or additional assessment.

(5) If the estimated assessments prove insufficient, the EII Agency may make further assessments and levies as necessary, or the EII Agency may temporarily advance the amount of a deficiency out of any reserve provided for that purpose and add that amount to any subsequent assessments.

21 (1) Where the EII Agency

- (a) notifies an employer of assessment rates or percentages determined by the EII Agency; and
- (b) informs the employer of the manner in which the assessment is calculated, and the date it is payable, the notice constitutes an assessment under section 20, and the employer must, within the time limited in the notice,
- (c) make a return on the form provided or prescribed by the EII Agency; and

(d) remit the amount of the assessment.

(2) Every employer who neglects or refuses to comply with subsection (1) is liable for the penalty prescribed by the regulations or determined by the EII Agency, and that penalty is enforceable as an assessment under this Chapter.

22. (1) The EII Agency must establish and maintain an accounting system satisfactory to the Minister of Finance, and shall prepare an annual actuarial report on liabilities related to all injuries and deaths to the end of the current fiscal period.

(2) The Minister of Finance may, at any time, inspect the accounting records of the Board and advise it on all matters respecting its accounts and other financial matters.

23. (1) Where any company or Board of Trustee fails to comply with the provisions of section 23, the Government may, by order, direct it to do acts in accordance with the provisions within such time as may be specified in that order.

(2) If any company or Board of Trustee fails to do any act within the time specified in the order issued under sub-section (1), the Government may, by order, impose on every director, manager or officer of that company who is directly or indirectly responsible for the management of the affairs of the company or, as the case may be, the Chairman, member or a person or persons of the Board of Trustee concerned who is responsible for the management of the affairs of that Board of Trustee a fine of taka not exceeding 1 (one) lac and, in the case of continuous failure, a further amount of taka 5 (five) thousands for every day from the first day of such failure and direct to pay the total amount of fine within the next 30 (thirty) days: Provided that if any person contravenes the aforesaid provisions again or fails to comply therewith, twice the amount of fine specified above shall be imposed on him.

(3) If any amount payable under section 23 remains unpaid and any fine imposed under this section is not paid within the time specified in the relevant order, such unpaid amount and fine shall be deemed to be public demand and be recoverable in accordance with the provisions of the Public Demands Recovery Act, 1913 (Act No. IX of 1913).

(4) Any person aggrieved by an order issued under sub-sections (1) and (2) may, within 30 (thirty) days of making such order, apply to the Government for review thereof and the Government shall, on receipt of such application, within

not exceeding 45 (forty-five) days, review the matter and make appropriate order and inform the person, company or Board of Trustee concerned accordingly.

(5) An order made by the Government under sub-section (4) shall be final.

24. The Government may, at any time call upon a company or a Board of Trustees to furnish it with such information or documents or the records of the proceedings as may be relevant or useful for the purposes of, or necessary, for ensuring proper compliance with the provisions of this Chapter or rules.

Audit

25. The EII Agency Governance Board must appoint an auditor to audit the accounts of the Board at least once each year. The remuneration of an auditor for auditing the accounts must be paid by the EII Agency from the accident account.

Annual report

26. (1) The EII Agency Governance Board must, on or before a date set, make to the Minister a report of its transactions during the last preceding calendar year, and the report must contain the particulars the minister specifies.

(2) The EII Agency Governance Board must publish and distribute among employers, workers and the general public the information in respect of the business transacted by the EII Agency that in its judgment may be useful.