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Employment Injuries: Benefits and Rehabilitation*

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I. Introduction

Korean national employment injury compensation system has developed from a traditional fault liability system to a no-fault, absolute liability system, and from a private non-insurance system to a compulsory insurance system. The present employment injury compensation system that is based on the compulsory insurance and no-fault liability system in broad outline is the result of the long and steady development with the progress of industrialization, the substantial increase in the number of industrial wageworkers and the tremendous increase of industrial accidents in number and in scale. Main acts regulating emoloyment injury compensation are the Labour Standard Act and the Industrial Injury Compensation Insurance Act: the first is of the so-called no-fault liability system and the second is of the compulsory insurance system. When industrial accidents occur, the injured can claim compensation provided in the Industrial Injury Compensation Insurance Act, which makes sure of the compensation provided in the Labour Standard Act. If the injured are employed in enterprises or workplaces that are not covered by the Industrial Injury Compensation Insurance Act, they are compensated by the Labour Standard Act. But it is not so prompt and sure as that by the Industrial Injury Compensation Insurance Act because the compensation is at the mercy of the individual employers' finance. When the injured are not satisfied with the limited compensation provided in the above mentioned acts or the injured are not covered even by the

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Labour Standard Act, they may claim compensation for industrial accidents through the tort system in the Civil Code.

Before 1953 when the Labour Standard Act(hereinafter referred to as the "LSA") was enacted, compensation for industrial accidents was dealt with by the tort system provided in the Civil Code. The injured should prove the bad faith or fault of employers and fairness of the amount of damages to be compensated, and it is very difficult to prove them. To make it worse, a lawsuit to collect damages for injuries takes too much time and costs too much. So, it is necessary to devise a machinery which could get rid of all these inconveniences and could make more simple and less costly the compensation for employment injuries. To satisfy this demand, the Labour Standard Act was enacted in 1953.

As the LSA is based on the strict, absolute, so-called no fault liability, the injured are exempted from the burden of proof concerning the bad faith or fault of employers. As it provides a reasonable compensation, the injured are also exempted from the burden of proof concerning the amount of damages. In case an injured person is dissatisfied with affirmation of occupational disease, method of medical treatment, determination of the amount of compensation or other compensational actions, he may request the Minister of Labour and the Labour Committee for investigation or arbitration of dispute. In principle no civil procedure shall be instituted before going through the investigation or arbitration by the Labour Committee. But it does not provide any compulsory reserve fund for compensation. The compensation by the LSA is not sure and stable because the injured could be satisfied only with individual funds of employers. Since the introduction of the LSA a demand for prompt and fair compensation for employment injuries has grown.

If employers could not pay compensational benefits from their own funds, purpose of legislation of workmen's compensation system could not be achieved. In order to ensure fair and prompt compensation and at the same time to protect employers financially, a compulsory insurance program has been develo-

ped. As a result, the Industrial Injury Compensation Insurance Act was enacted in 1963. The Industrial Injury Compensation Insurance Act(hereinafter referred to as the "IICIA") and the LSA are sister acts. The IICIA ensures the compensation by the LSA. Consequently in case the injured receives insurance benefits provided in the IICIA, the insurant, namely, the employer of the injured, shall be exempted from liability for injuries compensation to the extent of the paid compensation. Thanks to the insurance against the risk of injuries and of other physical disabilities which may occur to workers on the job, on the one hand, workers could be compensated fairly and promptly, on the other hand, employers could be protected from the bankruptcy of their own enterprises because of enormous industrial accidents. Enterprisers become the insurant and they pay premiums.

There exist special acts applying to certain categories of workers. Instead of the LSA and the IICIA, the Seamen Act and the Seamen Insurance Act apply to seamen, the Public Officials Pension Act applies to public officials and the Private School Teachers Pension Act applies to private school teachers. The rest ordinary workers are covered by the LSA and the IICIA.

II. Employers' Liability for Employment Injuries under the LSA

1. Conditions of employers' liability

(1) *Occurence of employment injury*

(a) Definition of "employment injury"

There could be found no definition of the concept of employment injury in the LSA. It is long since the definition of employment injury has been subject of legal controversy and still there could be found no thorough accord among legal theorists. However, in spite of a little difference among legal opinions, two conditions have been generally required. For an jnjury to be an employment injury to be compensable it should (1) arise out of employment and (2) occur in the course of employment. The meaning of "arising out of employment" is

that there exists causal relation between an injury and the performance of duty or business, that is, an injury would not happen without the performance of duty. The meaning of "occuring in the course of employment" is that an injury happens during the performance of duty or business which is done under command, direction and supervision of an employer. Even though accepting the requirement of these two conditions, they should not be interpreted narrowly and they should be liberalized. Some say that as long as employers' liability for employment injuries is based not on fault liability system but on no-fault liability system, the existence of the first condition could be deduced from the second condition. They go on to say that it is not that the injured should prove the first condition but that their employers should disprove the first condition, that is, they should offer evidence in disproof of the presumption of the existence of the first condition(for details, turn to Chapter III, 2).

(b) Commuting accidents

Employment injury refers to hurt, disease, physical disability or death which arises out of employment(business) and occurs in the course of employment (business). Business means in principle that under one's charge. But it also includes other businesses incidental to the principal business. So, the definition of employment injury can extend to incidental accidents or other accidents not directly related to employment or business as long as the purpose of workmen's compensation system, to supplement the loss of labour value, could be achieved. Incidental businesses are as follows: (1) preliminary and post arrangements necessary for business under charge; maintenance and inspection of equipments, arrangement of workshops, (2) business given by special command or implicit command necessary for operation of enterprise; participating in sporting event with other enterprises or within an enterprise, (3) practice customarily accepted as part of business under charge. Accidents occuring during the performance of above mentioned businesses are also covered by workmen's compensation system.

(c) Occupational disease

It is very difficult to decide whether a disease suffered by a worker is an

"occupational disease" or a "non-occupational disease" because the demarcation line between them is not always clear. According to the authorative interpretation of the Labour Ministry, an occupational disease is one that has its origin directly or indirectly in the speciality of working environment or working process of an occupation. Leaving room for controversy, it defines occupational disease correctly to a certain degree. Among the causes which can contribute to occupational disease we may enumerate them as follows: abnormalities of air pressure, dampness, defective illumination, dust infections, radiant energy, pressure, shock, excessive heat or cold, mental and physical overwork and others. To get rid of the difficult to be found in affirming occupational disease, the extent of occupational disease is to be provided in the Presidential Decree(Enforcement Decree) and the Enforcement Decree of the Labour Standard Act(hereinafter referred to as the "EDLSA") enumerates occupational diseases(EDLSA, Art. 54). Main occupational diseases are as follows: conjunctivitis and other eye diseases caused by heat, pungent gas or vapour and noxious ray; heatstroke, burns and chilblains; tuberculosis; caisson disease and its sequelae by compressed air; dermatisis; neuritisis; poisoning and its sequelae by lead, mercury, manganese, amalgam, arsenic, phosphorus, benzene, carbon monoxide gas, carbon dioxide gas, cyanide, acetone and halogen derivatives of hydrocarbon; epitheliomatous cancer due to soot, tar, pitch, bitumen, mineral oil, paraffin and any compound of these substances; anthrax; asbestosis

(2) *Non-existence of gross negligence of the injured*

In case a worker is injured or diseased through his own gross negligence and the employer has obtained the permission of the Labour Committee, the employer need not provide the compensation for temporary disability or physical handicap(LSA, Art. 81). But in spite of this provision, the employer is not to be exempted from the compensation for surviving family and funeral expenses. Taking into consideration the purpose of workmen's compensation system, to compensate for the loss of labour value caused by the realization of danger inherent in the management of an enterprise, the gross negligence of the injured

should be narrowly interpreted.

2. Employers' liability

(1) *Coverage of workers*

Employees of enterprises or workplaces with 5 or more workers are all covered by the LSA (LSA, Art. 10, EDLSA, Art. 1). There could be found no discriminations with regard to the amount of their earning and their employment status; regular employees, temporary employees or daily workers. There are also no exclusions of employees of specific categories of enterprises or workplaces that could be found in the IICIA. But domestic servants and employees of enterprises or workplaces where only the relatives of the employer are employed are excluded from the purview of the application of the LSA(proviso of Art. 10). As mentioned above, seamen, public officials and private school teachers are also excluded because they are covered by the Seamen Act and the Seamen Insurance Act, Public Officials Pension Act and Private School Teachers Pension Act.

(2) *Extent of the employers' liability*

Compensations provided for the injured in the LSA are medical care compensation, temporary disability compensation(called also "off-duty compensation" in Korea), permanent disability compensation(called also "physical handicap compensation" in Korea), survivors' compensation and funeral expenses compensation. They could be again classified into compensation in cash and compensation in kind; the first is one in kind and the others are ones in cash.

(a) Medical care compensation

An employer shall provide necessary medical care at his own expenses or give the corresponding expense for a worker who is hurt or diseased during the performance of the contractual duty(LSA, Art. 78). This medical care compensation is provided free and should be provided more than once a month (EDLSA, Art. 58). Possible medical services are as follows: diagnosis; medicines or medical treatment materials and artificial limbs and other supplement instruments; disposition, operation and other treatment; hospitalization in medical

establishments; safe custody; evacuation(EDLSA, Art. 55). These services are in principle available untill complete recovery. In case the injured receiving medical care compensation is not completely recovered from the said employment injury or occupational disease even after two years of medical treatment, the employer may be exonerated from all further liability of compensation under the LSA after providing a lump sum in an amount equivalent to 1,340 days' average wage(LSA, Art. 84).

(b) Temporary disability compensation

While an injured or diseased employee is in the course of medical care, the employer shall make a off-duty compensation equivalent to 60% of average wage during the period of medical care(LSA, Art. 79). If an injured or diseased employee could not work temporarily during the duration of his incapacity but could return to work after recovery, he is eligible for temporary disability compensation. "Average wage" means the amount calculated by dividing the total amount of wage, paid to employee during the period of three months prior to the occurence of reason for computation of average wage, by the number of total calender days during that three months(LSA, Art. 19). As stated above, if an employee is injured or diseased through his own gross negligence, the employer need not provide this temporary disability compensation.

(c) Pemanent disability compensation

If an employment injury results in permanent disability, it is just and natural that the employer should make a compensation for the permanent disability of an injured. The LSA provides that in case an employee suffers permanent disability after complete recovery from an employment injury or an occupational disease, the employer shall provide the permanent disability compensation equivalent to the sum of average wage multiplied by the number of days provided in the separate table according to the degree of permanent disability(LSA, Art. 80). The degree of permanent disability is from the highest degree 1340 days' average wage to the lowest degree 50 days' average wage.

(d) Survivors' compensation

If an employee is dead during or as a result of the performance of the contractual duty, the employer shall provide a compensation equivalent to one thousand days' average wage for survivors(LSA, Art. 82). The extent of the coverage of survivors is determined by the EDLSA(Arts. 61, 62, 63). Widow or widower and children born in *de facto* marriage are also covered and consideration is given to foster parents in preference to blood parents.

(e) Funeral expenses compensation

In case an employee is dead during or as a result of the performance of the contractual duty, the employer shall provide funeral expenses equivalent to 90 days' average wage(LSA, Art. 83). This compensation is made for those who actually hold the funeral of the diseased.

3. Administrative procedure

By providing reasonable compensation, the LSA has gotten rid of those inconveniences which a lawsuit to collect damages for injuries caused and the compensation for employment injuries has been made more simple and less costly. But there still remains a room for the occurence of a dispute over the compensation for employment injuries by the LSA. So, the LSA devises a machinery to settle this dispute. One who is dissatisfied with compensation may request the Minister of Labour and the Labour Committee for investigation and arbitration of dispute.

(1) *Investigation and arbitration by the Minister of Labour*

In case a person, an injured person or an employer, is dissatisfied with affirmation of occupational injury, disease or death, method of medical treatment, determination of compensation or other compensational actions, the said person may request the Minister of Labour for investigation or arbitration of dispute (LSA, Art. 88, Sect. 1). The Minister of Labour should investigate or arbitrate the case within one month from the request and may request a physician, when necessary, to conduct medical examination or diagnosis(Art. 88, Sects. 2, 4). Not only by the request of a person, the Minister of Labour has the authority to conduct an investigation or arbitration of dispute *ex officio* whenever it may

be necessary(Art. 88, Sect. 3). With regard to interruption of prescription, the request for investigation or arbitration by the concerned and the commencement of investigation or arbitration *ex officio* shall be regarded as a judicial claim (Art. 88, Sect. 5).

(2) *Investigation and arbitration by the Labour Committee*

In case an investigation or arbitration fails to be conducted within one month from the request by the concerned or when a person is dissatisfied with the result of the investigation or arbitration already made, a request shall be filed with the Labour Committee for investigation or arbitration(LSA, Art. 89, Sect. 1). The Labour Committee should conduct an investigation or arbitration within not later than one month from acceptance when a request is filed(LSA, Art. 89, Sect. 2). The Labour Committee is a kind of labour administrative body but it is operated independently from the administrative authority. It is a tripartite body composed of three categories of members, those representing workers, those representing employers and those representing public interests. No civil action shall be instituted with regard to matters concerning the workmen's compensation under the LSA before going through investigation or arbitration by the Labour Committee, except for the case where an investigation or arbitration has not been completed within one month from the acceptance (LSA, Art. 90).

4. Other provisions

No claim for workmen's compensation shall be closed or modified because of retirement, transferred or confiscated(LSA, Art. 86). Claim for workmen's compensation under the provisions of the LSA shall be extinguished by prescription, if not exercised for three years(LSA, Art. 93). An employer shall keep on file essential documents concerning workmen's compensation for two years (LSA, Art. 92). In case a person entitled to compensation is to receive cash or goods for the same reason by force of Civil Code or other provisions in an equal value, the employer shall be exonerated from liability to the extent of the said value(LSA, Art. 87).

III. Employers' Liability for Employment Injuries under the IICIA

I. Introduction

The IICIA is based on compulsory insurance system. It has the purpose to compensate employment injuries on a prompt and fair basis and to protect employers financially from enormous accidents. The IICIA and the LSA are sister acts, the former makes sure of the compensation provided in the latter which cannot help depending upon individual funds of employers for the com pensation for employment injuries. Except for several provisions in the IICIA that are peculiar to insurance system, in principle the IICIA and the LSA have common basis: the extent of employment injury, the coverage of workers, conditions of employers' liability and kinds of compensation are same. So, when a person receives insurance benefit pursuant to the IICIA, the insurant, namely, the employer, shall be exonerated from the liability for compensation under the LSA for the same cause within the scope of the amount received by the beneficiary.

In Korea there exists no general social insurance system. We can only find the IICIA and the Medical Care Insurance Act(hereinafter referred to as the MCIA) as part of social insurance system. The former insures employees against accidents and injuries arising out of employment and occuring in the course of employment while the latter insures employees and their dependents against accidents and injuries that do not arise out of employment and do not occur in the course of employment. Therefore, the demarcation line of them is whether accidents and injuries arise out of employment and occur in the course of employment or not. However, in practice the demarcation line is not so clear. Decisions as to whether accidents and injuries are connected with employment or business or not could be divided and different because institutions responsible for the administration of each system are separated from each other. There also exists the possibility that benefits are paid by neither of these institutions or benefits are paid

double by both of these institutions. These problems could be thorouly solved by establishing a general social security system, free of charge, unifying two Acts.

2. Definition of "employment injury" and "occupational disease"

The IICIA(Art. 3) provides that an employment injury refers to hurt, disease, physical disability or death that arises out of employment. Formerly the IICIA required two conditions, condition of "arising out of employment" and condition of "occuring in the course of employment". However, since 1982 the IICIA abolished the second condition, leaving the first condition as the only requirement for compensation. As to the interpretation of the present Art. 3 of the IICIA, there are diversities of opinions. Some say that only the first condition, condition of "arising out of employment" is required. According to them a very broad range of employees' activities occuring during the time spent between leaving and returning home has come to be considered work-related. Opinions are again divided as to who are to prove the condition of "arising out of employment". On the contrary, others say that, in spite of the formal amendment of Art. 3 of the IICIA, not only the first condition but also the condition of "occuring in the course of employment" is still required, but that the latter condition should be interpreted more broadly and liberally than before the 1982 amendment. They go on to say that the injured need not prove both of them. The injured have only to prove the second condition which is more easy to prove than the first condition. The reason is that the existence of the first condition could be deduced from the existence of the second condition. So, according to them, it is not that the injured should prove the first condition but that their employers should disprove the first condition by offering evidence in disproof of the presumption of the existence of the first condition. Taking into consideration the fact that to prove the first condition meaning that there exists causal relation between an injury and the performance of duty is very difficult, we may rightly say that the latter opinion may do.

The above explanation of the difinition of employment injury can be also applicable to the LSA that does not define the the concept of it because the

IICIA and the LSA have common basis. On the contrary, the explanation of the definition of occupational disease which we have already made in Chapter II(1,(1),(c) occupational disease) can be also applicable to the IICIA that does not define and enumerate what are occupational diseases.

3. Persons concerned with the industrial injury compensation insurance

(1) *Introduction*

In the IICIA an employer concludes an insurance contract with the Government and insurance benefits are to be paid to injured employees when employment accidents occur. In an insurance contract an employer is the insurant and the Government is the insurer. They are parties to the insurance contract. Employees are not parties to the insurance contract. They are nor the insured that could be found in ordinary insurance contracts, for example, life insurance, unemployment insurance and accidental insurance because the industrial injury compensation insurance has the character of liability insurance. But they are protected as recipients of insurance benefits by the IICIA when they suffer employment injuries. In what follows we will see "the scope of employees protected", "the insurant(employer)" and "establishment and extinction of insurance relations". The insurer who is also responsible for the administration of the industrial injury compensation insurance system we will see later

(2) *Scope of employees protected and the insurant*

Employees of enterprises or workplaces subject to the application of the LSA are in principle all covered by the IICIA except for those of enterprises as provided by the Presidential Decree(IICIA, Art. 4). Except for domestic servants and employees of enterprises or workplaces where only the relatives of the employer, living in the same house, are hired, employees of enterprises or workplaces with 5 or more workers are coverd by the LSA. But the Presidential Decree makes several exceptions by taking into consideration the ratio of risk, scale and location of enterprises or workplaces: agriculture, hunting, forestry and fishing; wholesale and retail trade; financing, insurance, real estate and services; social and personal services; business run by the Government or provincial self-

governing bodies; businesses, except for the above-mentioned businesses, employing less than 10 workers; business with definite period of time or seasonal business requiring less than 2,700 man-days; construction work the total cost of which is less than 40 million won(Presidential Decree of the IICIA). Seamen, public officials and private school teachers are covered by special acts.

The employers of enterprises except for those as provided by the Presidential Decree of the IICIA become naturally the insurant of the industrial injury compensation insurance(hereinafter referred to as the "insurance"). But employers of enterprises to which the IICIA does not apply as provided by the Presidential Decree may become the insurant with approval of the Ministry of Labour. In this case employees of enterprises provided in the Presidential Decree can be also protected by the IICIA.

4. Insurance benefits

Insurance benefits provided for the injured employees in the IICIA are as follows: (1) medical care benefit (2) temporary disability benefit (3) permanent disability benefit (4) survivors' benefit (5) hurt and disease compensation benefit (6) funeral expenses(IICIA, Art. 9). In addition to these principal benefits, under certain conditions, special benefits(special survivors' benefit and special permanent disability benefit) are also provided for the injured employees (Arts. 10 and 10-2). Insurance benefits could be again classified into the benefit in kind and the benefit in cash: the medical care benefit is the former, the other benefits are the latter.

(1) *Medical care benefit*

Medical care benefit shall be the total amount of medical care expenses and the injured employees shall receive medical care at insurance establishments set up or medical institutions designated by the Minister of Labour(Art. 9-3). But, if inevitable, the medical care expenses may be paid to the injured employees. There could be found no limit as to the amount of expenses or as to the period of medical care which could be found in the LSA. Scope of medical care benefit on which the assessment of medical care expenses is based is as follows: (1)

diagnosis (2) medicines or medical treatment materials and artificial limbs, and other supplement instruments (3) disposition, operation and other treatment (4) hospitalization in medical establishments (5) safe custody (6) evacuation (7) other matters to be determined by the Minister of Labour(Art. 9-3, Sect. 3). It should take more than 3 days for an employment injury(hurt or disease) to be cured so that medical care benefit is to be paid(Art. 9-3, Sect. 2).

(2) *Temporary disability benefit*

Temporary disability benefit shall be an amount equivalent to 60% of the average wage for one day during the period in which the injured employees cannot work due to medical care, provided that this benefit shall not be paid if the period in which they cannot work is of 3 days or less (IICIA, Art. 9-4). Contrary to the LSA(Art. 81), even though an employee is injured or diseased through his own gross negligence, the temporary benefit is paid. Average wage means that provided in the LSA(Art. 19).

(3) *Permanent disability benefit*

When the injured employees suffer permanent disability after complete recovery from the employment injury, the permanent disability benefit the extent of which shall be decided in accordance with the degree of disability is paid(IICIA, Art. 9-5, Sect. 1). The permanent disability benefit is paid in the form of annual pension or in the form of lump sum payment and the choice of the form of this benefit is left to the discretion of persons who have the right of receipt of payment(Art. 9-5, Sect. 2). This benefit is decided by multiplying the sum of average wage by the number of days provided in the Presidential Decree according to the degree of disability. Contrary to the LSA(Art. 81), this benefit is paid even though the permanent disability is caused by gross negligence of the injured employees.

(4) *Special permanent disability benefit*

In case the injured employees suffer permanent disability due to employment injuries through bad faith or fault of the insurant, persons who have the right of receipt of temporary disability benefit can claim for special permanent disabi-

lity benefit, in lieu of the claim for compensation by the Civil Code, in addition to the ordinary permanent disability benefit(Art. 10, Sect. 1). If the persons have received the special permanent disability benefit, they can no more claim for employment injury compensation by the Civil Code or other laws for the same reason(Art. 10, Sect. 2). Extent of the special permanent disability benefit is to be determined by the Presidential Decree(IICIA, Art. 10, Sect. 1). According to the Presidential Decree(Art. 14-2) special permanent disability benefit is paid to only those who suffer permanent disability falling under from 1 degree to 3 degree, and the extent of the special permanent disability benefit is calculated by substracting the permanent disability benefit already paid to those who suffer permanent disability from the amount which is calculated by multiplying 30 days' average wage by the percentage of loss of labour and the Leibnitz Coefficient according to the possible working months.

(5) *Survivors' benefit*

The survivors' benefit shall be paid in the form of annual pension or in the form of lump sum payment and the matters concerning extent of benefit, qualifications, disqualifications, suspension of payment and etc. of the survivors' compensation annual pension shall be determined by the Presidential Decree (IICIA, Art. 9-6, Sect. 1). The choice of the form of the survivors' benefit is left to the discretion of persons who have the right of receipt of payment(Sect. 3) and the survivors' compensation lump sum payment is amount equivalent to the 1000 days' average wage(earning)(Sect. 2). Survivors are as follows: (1) widow or widower (2) parents and grandparents (3) children and grandchildren (4) brothers and sisters(Presidential Decree, Art 17). The priority order of the right of receipt of payment among survirors is the order of the above enumeration and not only those of marriage *de jure* but also those of marriage *de facto* are protected.

(6) *Special survivors' benefit*

In case the injured employees are dead due to employment injuries through bad faith or fault of the insurant, persons who have the right of receipt of

survivors' benefit can claim for special survivors' benefit, in lieu of the claim for compensation by the Civil Code, in addition to the ordinary survivors' benefit(IICIA, Art. 10-2, Sect. 1). If the persons have received this special survivors' benefit, they can no more claim for employment injury compensation by the Civil Code or other laws for the same reason(Art. 10-2, Sect. 2). The amount of this benefit is calculated by substracting the survivors' benefit already paid to the persons from the amount which is calculated by multiplying 30 days' average wage from which living expenses of the dead are to be substracted by the Leibnitz Coefficient according to the possible working months.

(7) *Hurt and disease compensation benefit*

In case hurt or disease, even after two years of medical treatment, has not been cured and it falls under the degree of incurability provided by the Presidential Decree, hurt and disease compensation pension shall be paid in addition to medical care benefit(IICIA, Art. 9-7). To those who have the right of receipt of this pension, temporary disability benefit shall not be paid(Art. 9-7, Sect. 3).

(8) *Funeral expenses benefit*

This benefit shall be expenses equivalent to 90 days' average wage(IICIA, Art. 9-8). It is paid to those who actually hold the funeral of the the diseased.

5. Administration of the industrial injury compensation insurance system

(1) *Introduction*

As one of the parties to the insurance contract, namely, the insurer, the Government insures employers of enterprises against the risk of the occurence of employment injuries. According to the IICIA(Art. 2), the Minister of Labour shall take charge of the insurance business and the insurance year of the insurance business shall be in accordance with the fiscal year of the Government. The Government may bear the whole or part of expenses necessary for the execution of the affairs of the insurance business from the general account of the national budget within its limit(IICIA, Art. 2—2). Concerning the admini-

stration of the industrial injury compensation insurance system, it may be helpful to refer to the "Industrial Injury Compensation Insurance Council" (hereinafter referred to as the "Council") and the "Industrial Injury Compensation Insurance Affairs Association" (hereinafter referred to as the "Association").

(2) *Industrial Injury Compensation Insurance Council*

The Council is established in the Ministry of Labour. Its main function is to provide advices and suggestions on insurance business and to examine important matters on insurnace business by the request of the Minister of Labour. It is not an independent organization responsible for the administration of the insurnace business but an internal organization subordinate to the Minister of Labour. It is composed of the equal number of members each representing workers, employers and public interest (IICIA, Art. 2, Sect. 2).

(3) *Industrial Injury Compensation Insurance Affairs Association*

This association is a body composed of employers that does insurance affairs on behalf of employers, namely, paying premiums and other fees. It is not before the approval of the Minister of Labour has been obtained that the association can do insurance affairs(IICIA, Art. 19-2, Sect. 2). Accoding to the Presidential Decree, only the insurant employing less than 300 workers, in case of the insurant doing construction less than 200 workers, can join the association and can entrust the association with insurance affairs(Art. 37). In case an association is organized among insurants, the Minister of Labour can give notice to pay premiums and other fees to the association in stead of giving notice to insurants. Then, the notice is considered to have been delivered to insurants themselves.

6. Financing system of the industrial injury compensation insurance

(1) *Calculation of premium*

Differently from the case of the Medical Care Insurance, in the Industrial Injury Compensation Insurance only the insurant pays premium. That is because the IICIA insures the liability of employers for employment injuries that is imposed by the LSA. So, employees do not share premium with their emplo-

yers. This reflects the traditional assumption that it is employers who are liable for employment injuries that their employees suffer.

The premium charged to employers is calculated by multiplying the total amount of wages of the enterprise by the premium rate to be applied in the same kind of business(IICIA, Art. 20). As there could be found no provision concerning what means the wage, we may rightly say that it has the same meaning as that defined in the LSA(Art. 18). According to the LSA "Wage" means all the money and goods paid to a worker by employer for the labour service offered by the worker, whether in the form of wage, salary or other goods.

The premium rate is determined by grades on the basis of the rate of employment injury in the past 3 years from the date of September 30 (Art. 21). The lower the rate of employment injury, the less the premium. This way of assessing premium serves as an incentive to accidents prevention efforts of enterprises. In those enterprises which are designated by the Presidential Decree and where it has passed three years, as of September 30 of every year, since the insurance relations were established, if the ratio of insurance benefit amount paid to premium amount exceeds 85/100 or is 75/100 or less, the Minister of Labour may reduce or raise the premium rate to be applied in those enterprises within the scope of 30/100(Art. 22). This system is so-called the merit system which has the purpose to reduce the rate of the employment injuries by determining the rate of premium in accordance with the actual results of employment injuries.

In 1982 the premium rate charged to enterprises ranges from 0.2% to 10.4% depending upon kinds of industries in which enterprises are classified and the average premium rate was 1.18%. The premium rate was 0.2% in such industries as electronics, publications, communications and pharmaceuticals, while it was 10.4% in the limestone mining industry.

(2) *Payment and collection of premium*

There are two kinds of premiums, estimate premium and final premium. The

estimate premium is calculated by multiplying estimate of total wages to be paid to all workers to be used for one year by premium rate to be applied. The insurant shall report and pay this estimate premium to the Minister of Labour on the first day of the insurance year or within 60 days form the date of the establishment of insurance relations(IICIA. Art. 23). The final premium is calculated by multipling the actual amount of wages paid to all workers who are employed by the end of each insurance year or by the date when the insurance relations are extinguished by the premium rate. The insurant shall report to the Minister of Labour this final premium within 60 days from the first day of the following insurance year or within 30 days from the date following the date when the insurance relations are extingusihed(Art, 25).

In case the amount of estimate premium paid or additionally collected exceeds the amount of the final premium, the Minister of Labour shall return the excessive amount to the insurant, and in case the amount of estimate premium is less than the amount of the final premium, the insurant shall pay the shortage amount within 60 days from the first day of the following insurance year or within 30 days from the date following the date when the insurance relations are extinguished(Art. 25, Sect. 2). Total collected premiums throughout the country in 1981 amounted to 86.6 billion won, the approximate equivalent of US$ 115 million, out of which 76.2 billion won (US$ 101 million) was paid out as insurance benefits.

7. Provisions concerning the procedure for claim and appeal

(1) *Procedure for the submission of claims*

Under the general supervision of the Minister of Labour, 35 Local Labour Offices throughout the nation are in charge of the collection of premiums and the payment of insurance benefits through designated banks. Persons who have the right of the receipt of insurance benefits submit a bill for payment to the head of the competent local labour office. Then, the head of the competent local labour office must decide whether insurance benefits should be paid or not and what is the extent of insurance benefits, and must notify those applicants

of them (Presidential Decree of the IICIA, Art. 27). There could not be found any time limit within which the head should notify applicants. It is left to the discretion of the head.

(2) *Procedure for the submission of and hearing of appeals*

If a person is not satisfied with the insurance benefit paid to him, he may request the Industrial Injury Judge for investigation, and if he is not satisfied with the judgement of the Industrial Injury Judge(hereinafter referred to as the "Judge"), he may request the Industrial InJury Committee for re-investigation (the Act Concerning the Industrial Injury Compensation Insurance Business and Investigation, Art. 3). If he is not satisfied even with the award of the Industrial Injury Committee (hereinafter referred to as the "Committee"), he may institute an administrative litigation(Art. 3). The Judge belongs to the Ministry of Labour and the Committee is established in the Ministry of Labour. The request should be made toward the competent Judge who has competence over the jurisdictional sphere of the Local Labour Office(Art. 5). The competent Judge may have the applicant or persons involved presesnt themselves, or have them submit documents or other articles(Art. 11). The Committee is composed of 7 members or less including a chairman. A meeting shall open with the presence of a majoriry of members and an award shall be made by an affirmative vote of two thirds or more of the members present (Art. 22). The Committee also has the competence to have the applicant or persons involved present themselves, to question on matters concerning the case, or to have them submit documents or other articles(Art. 25).