

**LegCo Panel on Manpower
Meeting on 16 May 2002**

**Recognition of Chinese medicine for entitlement to employee benefits under
the Employment Ordinance, Employees' Compensation Ordinance,
Pneumoconiosis (Compensation) Ordinance and
Pneumoconiosis Ex Gratia Scheme**

Purpose

This paper seeks Members' views on the Administration's proposal to recognise Chinese medicine for entitlement of employee benefits under the Employment Ordinance (EO), Employees' Compensation Ordinance (ECO), Pneumoconiosis (Compensation) Ordinance (PCO) and the Pneumoconiosis Ex Gratia Scheme¹ (the Ex Gratia Scheme).

Background

2. With the majority of population in the local community being Chinese, Chinese medicine has throughout the years been playing an important role in the promotion of health alongside with western medicine in Hong Kong. According to results of the Thematic Household Survey conducted in 1999 by the Census and Statistics Department, 22.7% of medical consultations made by Hong Kong people were attended by Chinese medicine practitioners (CMPs) as compared to the corresponding figure of 10.5% collected in 1996 under the General Household Survey. Moreover, the Thematic Household Survey also revealed that among respondents who had consulted medical practitioners (MPs) during the fourteen days before enumeration, 19.9% had consulted CMPs.

3. Chinese medicine is also common in the labour context. According to a survey conducted by the Labour Department (LD) in 1999 on 2 550 injured employees who attended its Occupational Medicine Unit, 30.5% of respondents had sought treatment in Chinese medicine for work-

¹ The Pneumoconiosis Ex Gratia Scheme is an administrative scheme to provide benefits to those pneumoconiotic persons who were diagnosed before 1981 to be suffering from the disease and thus not eligible for compensation under the PCO.

related injuries and 8.3% for non-work-related sickness. However, only Western medicine is recognized for the provision of employment-related benefits and compensation under our labour laws and the Ex Gratia Scheme.

4. The Chinese Medicine Ordinance (CMO) was enacted in July 1999 for setting up a statutory regulatory framework for the practice of CMPs and the use, manufacture and trading of Chinese medicines. It also provides for a registration system of CMPs to ensure that only persons with the required standard of knowledge and practice experience are allowed to practise Chinese medicine in Hong Kong. The registration system covers CMPs in general practice, bone-setting and acupuncture. The first batch of registered CMPs would be gazetted by mid-2002.

5. With a regulatory system for Chinese medicine now in place and the fact that Chinese medicine is rather common in Hong Kong as explained in paragraphs 2 to 3 above, recognition of Chinese medicine in labour legislation on a par with western medicine, where appropriate, is considered necessary.

6. In early 1999, LD set up an internal Working Group (WG) to study the feasibility of recognising Chinese medicine in the EO, ECO, PCO, Occupational Deafness (Compensation) Ordinance, Factories and Industrial Undertakings Ordinance (F&IUO), Occupational Safety and Health Ordinance (OSHO) and the Ex Gratia Scheme. The WG interviewed associations of Chinese medicine practitioners and tertiary education institutes involved in the training of Chinese medicine, conducted surveys on the use of Chinese medicine treatment by injured employees and pneumoconiotic persons, and considered views expressed by the Health and Welfare Bureau (HWB) and Department of Health (DH). The WG completed its deliberations in April 2000 and made a number of recommendations.

The Proposal

7. Having considered the recommendations of the Working Group and views expressed during the consultation, the Administration proposes that where registered CMPs are competent in performing the medical functions stipulated under labour legislation and the Ex Gratia Scheme, they should be recognised and granted the same status as registered medical practitioners² (MPs). The proposal includes -

² Under the relevant labour legislation, medical practitioners are persons who are

(A) Employment Ordinance

- (a) Registered CMPS should be recognised for certifying
 - (i) sickness days;
 - (ii) pregnancy, expected date of confinement, date of confinement;
 - (iii) illness or disability arising from pregnancy or confinement;
 - (iv) unfitness of a pregnant employee to handle heavy, hazardous or harmful work; and
 - (v) permanent unfitness of an employee to do the present job;
- (b) Employers may include medical treatment by registered CMPs in recognised medical scheme³. Where the recognised medical scheme does not cover treatment by registered CMPs, the employee would have the option to seek treatment from registered CMPs and the employer shall be liable to pay sickness allowance for sick leave granted by such registered CMPs.

(B) Employees' Compensation Ordinance (ECO)

- (a) Registered CMPs should be recognised for certifying periods of temporary incapacity (i.e. sick leave arising from a work injury);
- (b) Medical expenses incurred directly for treatment of the work injury by registered CMPs should be reimbursable to injured employees;
- (c) An injured employee should be allowed to claim medical expenses for medical treatment given by registered CMPs if the free medical treatment provided by his employer does not include Chinese medicine;

registered or deemed to be registered medical practitioners under the Medical Registration Ordinance.

³ Section 34 of the EO provides that the Director of Health may recognise a scheme of medical treatment operated by an employer, under which the employees are provided with out-patient medical treatment by a medical practitioner or a registered dentist without expense to them. Where an employer is operating such a recognised medical scheme, he shall not be liable to pay sickness allowance to an employee if the latter, unless being a patient in hospital, refuses without reasonable excuse to submit to treatment under the scheme.

- (d) The Commissioner for Labour (C for L) and the Director of Health should be empowered to appoint registered CMPs, on a need basis, to the Employees' Compensation Assessment Board (ECAB) or the Prostheses and Surgical Appliances Board⁴ respectively.

(C) Pneumoconiosis (Compensation) Ordinance (PCO)

- (a) Medical expenses incurred directly for treatment in connection with pneumoconiosis by registered CMPs should be reimbursable to pneumoconiotic persons;
- (b) Pneumoconiotic persons should be allowed to claim medical expenses for medical treatment given by registered CMPs if the free medical treatment provided by his employer does not include Chinese medicine;
- (c) Registered CMPs should be recognised for giving advice to the Pneumoconiosis Compensation Fund Board (PCFB) on claims for medical expenses in relation to treatment given by registered CMPs;
- (d) Registered CMPs should be recognised for giving advice on whether, in accordance with the provisions of the PCO, a pneumoconiotic person should be considered for an earlier re-assessment.

(D) Pneumoconiosis Ex Gratia Scheme

Medical expenses incurred directly for treatment in connection with pneumoconiosis by registered CMPs should be reimbursable to pneumoconiotic persons covered by the Ex Gratia Scheme.

8. On the other hand, it is considered that registered CMPs should not be recognised to conduct pre-employment medical examinations in respect of occupational diseases under the ECO, advise on medical appliances required by pneumoconiotic persons and perform assessments on pneumoconiosis under the PCO, and perform the various medical

⁴ The Employees' Compensation Assessment Board and the Prostheses and Surgical Appliances Board are formed under the ECO. The former is to assess permanent loss of earning capacity suffered by an injured employee and the necessary period of absence from work as a result of injury. The latter is to assess the cost of medical appliances required by an employee injured at work.

functions as a registered MP under the ODCO, F&IUO and OSHO. This is because the training, technology and equipment required for the performance of such medical functions are unique in western medicine.

Justifications

(A) Employment Ordinance

(a) Medical certificates

(i) Certification of sickness day

9. Part VII of the EO stipulates the entitlement to sickness allowance. An employee employed under a continuous contract shall be entitled to sickness allowance if he is on sick leave for not less than four consecutive days (with certain exceptions⁵), provided that he has accumulated sufficient number of paid sickness days. Paid sickness days are divided into two categories. They can first be accumulated up to 36 days in Category 1 and then 84 days in Category 2.

10. To take paid sickness days in Category 1, an employee has to produce a medical certificate issued by a registered MP (or a registered dentist). When the paid sick leave taken by the employee exceeds the total number of sickness days accumulated in Category 1, the employee has to take paid sickness days in Category 2. For Category 2, the employee has to produce a medical certificate issued by a registered MP (or a registered dentist) attending him as an out-patient or in-patient in a hospital or a specialist clinic operated by the Government if so required by the employer. In addition, the employer may ask an employee taking paid sickness days in Category 2 to produce a brief record of the examination carried out and the treatment prescribed by the registered MP or registered dentist.

11. According to section 33(7) of the EO, every medical certificate shall specify the number of days on which, in the opinion of the registered MP (or registered dentist) by whom it is issued, the employee was, is or will be, as the case may be, unfit for work. It shall also specify the nature of the sickness or injury of the employee.

12. With the enactment of the CMO and the registration of CMPs, Chinese medicine is accepted by the community as an alternative medical

⁵ The requirement of having four consecutive sickness days is not applicable for sick leave taken by female employees for pregnancy check-ups, post-confinement treatment or miscarriage.

discipline to western medicine. It is considered appropriate to allow (a) registered CMPs to certify that an employee is unfit for work on account of sickness or injury and hence be granted sickness days; and (b) employers to have the same right to request for brief records of the examination and the treatment prescribed by the registered CMPs for paid sickness days in Category 2.

(ii) Certification on matters relating to pregnancy or confinement

13. Under Part III (Maternity Protection) of the EO, a female employee shall be entitled to maternity rights and benefits due to her pregnancy. At present, a registered MP (or a registered midwife) may issue a medical certificate to a pregnant employee certifying her pregnancy. With such a certificate, the pregnant employee intending to claim maternity benefits shall give notice to her employer of her pregnancy and her intention to take maternity leave. After serving this pregnancy notice, a pregnant employee employed under a continuous contract will enjoy employment protection against dismissal on grounds of pregnancy.

14. Pregnancy can now be confirmed by a simple test, the use of which is not restricted to registered MPs. Even pregnant women themselves may manage such test. It is considered that registered CMPs should have no difficulty in performing such pregnancy test for their female patients and certifying their pregnancy.

15. Under the existing provisions, a pregnant employee, if so required by her employer, has to produce a medical certificate issued by a registered MP (or a registered midwife) to certify her expected date of confinement. With appropriate training and sufficient information about the conditions of a pregnant woman, registered CMPs should have adequate knowledge and experience in estimating the expected date of confinement of a pregnant patient and certifying it.

16. When confinement takes place before a pregnancy notice is served on the employer or before the commencement of maternity leave, the employee has to produce a medical certificate issued by a registered MP (or a registered midwife) certifying the date of confinement, if so required by her employer. If confinement takes place after the expected date of confinement, the employee has to produce such certificate, if so required by her employer, for taking a further period of maternity leave. It is proposed that registered CMPs who are responsible for the delivery of the baby should be allowed to certify such dates of confinement.

(iii) Certification of illness or disability arising out of pregnancy or confinement

17. Under the EO, a female employee may take maternity leave for a further period not exceeding four weeks on grounds of illness or disability arising out of pregnancy or confinement. The employee has to produce a medical certificate issued by a registered MP certifying the illness or disability. It is considered that registered CMPs should have knowledge and experience to provide pre-natal and post-natal medical care or treatment for illness or disability arising out of pregnancy or confinement and should therefore be allowed to certify illness or disability arising out of pregnancy or confinement.

(iv) Certification of pregnant employee's unfitness to handle heavy, hazardous or harmful work

18. Under the existing provisions of the EO, a registered MP may issue a medical certificate certifying that a pregnant employee is unfit to handle heavy, hazardous or harmful work. The EO provides that, with this medical certificate, the pregnant employee may request her employer to refrain from giving her such work during her pregnancy period. If the employer does not agree to the medical opinion obtained by the employee, he may arrange for the employee to attend another medical examination by a registered MP for a second opinion. If there are conflicting medical opinions between the two registered MPs, the case will be referred to C for L for determination.

19. Since registered CMPs should be competent in assessing the overall health conditions of a pregnant woman, it is recommended that they should be allowed to certify whether she is unfit to handle heavy, hazardous or harmful work. In cases of conflicting medical opinions, C for L may appoint a panel of experts in Chinese medicine to advise her in the determination.

(v) Certification of permanent unfitness for the present work

20. Under the EO, an employee who has been employed under a continuous contract for not less than five years may terminate his contract of employment on grounds of ill health without notice or wages in lieu of notice if he is certified by a registered MP as permanently unfit for the present work. He would also be entitled to claim long service payment

from the employer. However, the employer may disagree with the medical opinion obtained by the employee and arrange for the latter to attend another medical examination by a registered MP for a second opinion. If there are conflicting medical opinions between the two registered MPs, the case could be referred to C for L for determination.

21. Since registered CMPs should possess medical knowledge and experience in assessing the health conditions of an employee and his unfitness to handle a particular kind of work, they should be able to certify whether an employee is permanently unfit to perform his present work. When there are conflicting medical opinions on an employee's permanent unfitness for his present work, C for L may appoint a panel of experts to advise her in the determination.

(b) Recognised scheme of medical treatment operated by employer

22. The EO provides that the Director of Health may recognise a scheme of medical treatment operated by an employer under which his employees are provided with out-patient medical treatment by a registered MP (or a registered dentist) without expense to them. Where the employer is operating a recognised scheme of medical treatment, only the medical certificate issued by the registered MP (or registered dentist) of the scheme is considered to be an "appropriate medical certificate" for the purpose of claiming sickness allowance. If an employee, unless he is a patient in a hospital, refuses without reasonable excuse the medical treatment provided under the scheme or disregards the advice of the registered MP (or registered dentist), he shall not be entitled to sickness allowance.

23. If registered CMPs are recognised under the EO for issuing medical certificates in relation to sick leave, maternity rights and benefits and permanent unfitness to work, it is considered reasonable to allow the recognised medical schemes operated by employers to include treatment in Chinese medicine. It is therefore suggested that an employer may operate a medical scheme providing medical treatment by registered MPs and/or registered dentists and/or registered CMPs. By doing so, employers would have the flexibility to decide on the coverage of the medical schemes. It could also help the existing schemes continue to operate without the need to revoke their recognition just because they do not provide treatment in Chinese medicine. Nevertheless, where an employer has decided not to include treatment by registered CMPs under his medical scheme, his employee would have the option to seek treatment from

registered CMPs and would be entitled to sickness allowance for sickness days certified by registered CMPs.

(B) Employees' Compensation Ordinance

(a) Certification of temporary incapacity

24. Under section 10(2) of the ECO, registered MPs and registered dentists may issue medical certificates to injured employees to certify the period of absence from duty necessary as a result of a work injury. With this certificate, the employee is entitled to receive periodical payments from his employer during the period of temporary incapacity. Through the sick leave clearance procedures, the Occupational Medicine Unit of LD vets the medical certificates issued for the purpose of the ECO; those sick leave periods not relating to a work injury would not be included in the Certificate of Compensation Assessment issued by C for L. Employers or employees who are not satisfied with the determination of C for L could object to the determination or lodge an appeal at court against the decision.

25. Registered CMPs should be competent to certify that an employee injured in a work accident is temporarily incapacitated by the injury. It is recommended that injured employees with a certificate issued by registered CMP should also be entitled to receive periodical payments during the period of temporary incapacity.

(b) Medical expenses

26. By virtue of sections 3 and 10A of the ECO, an injured employee who has incurred expenses for medical treatment in respect of his work injury from a registered MP, registered dentist, registered chiropractor, registered physiotherapist or registered occupational therapist is entitled to recover such expenses from his employer, subject to a daily ceiling which is currently \$175. Where there are disputes in the claims for medical expenses, C for L is empowered to determine the liability and the amount of such expenses under section 10B of the ECO.

27. If the medical certificates issued by registered CMPs are recognised for claiming periodical payments, it is reasonable to allow an injured employee to claim reimbursement of the related medical expenses for the treatment of his injury by registered CMPs. The same daily ceiling will apply. C for L's power of determination will also apply to disputes on claims for medical expenses for treatment by registered CMPs.

28. At present, medical expenses include amongst other items the cost of medicines. It is recommended that only proprietary Chinese medicines which are registered, deemed to be registered or exempted from registration under the CMO, and Chinese herbal medicines, as the case may be, prescribed by registered CMPs directly for treating the work injury would be recognised for the purpose of claiming the cost of medicines.

(c) Provision of free medical treatment by employers

29. Section 10A of the ECO provides that an employer shall not be liable to pay medical expenses to an injured employee if he has provided adequate free medical treatment to the latter. After the recognition of registered CMPs for the purpose of certifying the period of temporary incapacity, injured employees should have the freedom of choice in selecting appropriate treatment of his work injury. In view of this, it is considered that where the employer provides free medical treatment to take advantage of section 10A, the treatment offered should include treatment by registered CMPs. If the free medical treatment provided by the employer does not include Chinese medical treatment, his employees should be allowed to claim medical expenses for such treatment.

(d) Assessment of Permanent Incapacity and Need for Prostheses and Surgical Appliances

30. Under the ECO, Employees' Compensation Assessment Boards (ECABs) are responsible for assessing the permanent loss of earning capacity suffered by an injured employee. At present, the ECABs are held at public hospitals. Their members, consisting of two registered MPs/dentists and one Labour Officer, are appointed by C for L. As for the need of injured employees in relation to prostheses and surgical appliances, the determination is made by the Prostheses and Surgical Appliances Board (PSAB) appointed by the Director of Health. The law provides that members of the PSAB should be registered MPs/dentists.

31. As injured employees may have consulted CMPs for treating the work injury, it is proposed that C for L and Director of Health, as the case may be, should be empowered to appoint registered CMPs, on a need basis, to serve on these boards so as to facilitate their work.

(C) Pneumoconiosis (Compensation) Ordinance (PCO)

(a) Medical expenses

32. Under the PCO, a pneumoconiotic person may claim reimbursement of medical expenses for treatment in connection with pneumoconiosis. The amount of reimbursement is subject to a daily ceiling, which is currently \$175. From time to time, the Labour Department has received feedback from pneumoconiotic persons requesting that they should be allowed to claim reimbursement of expenses incurred in consulting registered CMPs.

33. With a regulatory system now in place for CMPs, it is proposed that the medical expenses incurred for treatment given in connection to pneumoconiosis by registered CMPs should be reimbursable under the PCO and subject to the same daily ceiling. However, only proprietary Chinese medicines that are registered, deemed to be registered or exempted from registration under the CMO, and Chinese herbal medicines, as the case may be, prescribed by registered CMPs directly for treatment in connection with pneumoconiosis would be recognised for the purpose of claiming the cost of medicines.

(b) Free medical treatment provided by employer

34. The PCO provides that a pneumoconiotic person shall not be entitled to claim medical expenses from the PCFB if his employer provides him with a reasonable level of medical treatment free of charge.

35. Since it has been recommended that Chinese medicine should be recognised under the PCO, it is proposed that the free medical treatment provided by an employer to a pneumoconiotic person should include Chinese medical treatment. If the employer could not provide such treatment, the pneumoconiotic person shall be entitled to claim medical expenses in relation to the treatment given by a registered CMP.

(c) Medical advice to the PCFB

36. Currently, section 12B of the PCO empowers the PCFB to seek advice from registered MPs or the Pneumoconiosis Medical Board⁶ (PMB) on whether the treatment received by a pneumoconiotic person is reasonably necessary in connection with pneumoconiosis. Since it is proposed that the medical expenses relating to treatment given by registered CMPs should be reimbursable by the PCFB under the PCO, it is

⁶ The Pneumoconiosis Medical Board is set up under the PCO. It is comprised of two medical practitioners and one Occupational Health Officer who is also a medical practitioner.

necessary that the PCFB should also be empowered to seek advice from registered CMPs in case of doubt.

(d) Medical advice for earlier re-assessment

37. Section 23A of the PCO provides that an eligible pneumoconiotic person who has been assessed to have suffered incapacity as a result of pneumoconiosis may request the PMB to conduct a further medical examination for determining any increase in the degree of incapacity. Normally, the re-assessment is conducted at intervals of 21 months and the PMB has the power to advance a determination to an earlier date. By virtue of section 23A of the PCO, the PMB may, subject to a request supported by an opinion from a registered MP, conduct the biennial re-assessment at a shorter interval in view of a pneumoconiotic person's deteriorating health.

38. In respect of the need for earlier re-assessment, the PCO has laid down clear criteria, namely, that the person's health has deteriorated such that incapacity or death is likely to occur before the lapse of the 21-month period from the last assessment. It is considered that registered CMPs should be competent to make such recommendations in accordance with these criteria. Therefore, it is proposed that they should also be empowered under the PCO to advise the PMB on whether a pneumoconiotic person should be considered for an earlier re-assessment.

(D) Pneumoconiosis Ex Gratia Scheme

39. In paragraph 33, it is proposed that the medical expenses incurred for treatment given by registered CMPs in connection with pneumoconiosis should be reimbursable under the PCO. Having considered that similar eligibility criteria are currently adopted under both the PCO and the Ex Gratia Scheme, it is proposed that medical expenses incurred for treatment by registered CMPs in connection with pneumoconiosis should be reimbursable under the Ex Gratia Scheme and subject to the same daily maximum as prescribed for treatment given by MPs. However, only proprietary Chinese medicines that are registered, deemed to be registered or exempted from registration under the CMO, and Chinese herbal medicines, as the case may be, prescribed by registered CMPs directly for treatment in connection with pneumoconiosis would be recognised for the purpose of claiming the cost of medicines.

Aspects in which registered CMPs would not be recognised

(a) Pre-employment medical examination under the ECO

40. Section 33 of the ECO provides that an employer may, before employing an employee in any trade, industry or process specified in the list of prescribed occupational diseases, require the employee to undergo a medical examination by a registered MP at the cost of the employer⁷. Given that most of the prescribed occupational diseases (for example, Legionnaires' disease or dysbarism) cannot be diagnosed by traditional Chinese medical techniques, it is proposed not to empower registered CMPs to conduct pre-employment medical examination under section 33 of the ECO.

(b) Medical advice on the pneumoconiotic's need for medical appliances under the PCO

41. As regards medical advice on the pneumoconiotic's need for medical appliances, which include oxygen concentrator, oxygen cylinder and wheelchair, it is recommended that the PCFB should continue to seek the advice of registered MPs only. In recommending the use of oxygen appliances, the registered MP has to determine the dosage of oxygen to be used by the pneumoconiotic person concerned. At present, CMPs are generally not trained in the use of oxygen appliances and the assessment of oxygen dosage. Therefore, it is considered that registered CMPs are not yet in a position to advise on the provision of medical appliances to pneumoconiotic persons.

(c) Medical assessment under the PCO

42. The PMB also serves to determine whether a person is suffering from pneumoconiosis, and if so, the degree of such incapacity. It also assesses whether a person is in need of the constant care and attention of another person on account of pneumoconiosis. For fatal cases, the PMB determines whether the death of a person results from the disease. The PCO has laid down the method of assessment which is widely accepted around the world and which registered CMPs are not trained in.

⁷ If an employee refuses to undergo such medical examination, his right to claim compensation arising from a prescribed occupational disease under the ECO would be affected.

43. Given that registered CMPs are not likely to be conversant with the techniques and methodology involved in the assessments mentioned in paragraph 42, it is proposed that the assessment duties as performed by PMB should continue to be undertaken by registered MPs.

(d) Medical advice under the Ex Gratia Scheme

44. In paragraphs 41 to 42, it is considered that registered CMPs should not be empowered to give advice on medical appliances or to perform the assessment duties undertaken by the PMB. Therefore, registered CMPs should not be empowered to give advice on medical appliances under the Ex Gratia Scheme too. Similarly, assessment work in relation to fatal cases and claims for care and attention under the Ex Gratia Scheme should continue to be performed by the PMB.

Regulation by the CMO

45. The CMO provides for the establishment of the Chinese Medicine Council of Hong Kong (CMC). Registered CMPs are subject to the regulation of the CMC. They have to follow the Code of Practice, to be issued by the CMC, which lays down detailed guidelines on professional responsibilities, ethics and practicing criteria. Employers or employees who have any grievance over the professional conduct of registered CMPs could complain to the CMC for investigation. Disciplinary action will be taken by the CMC if the complaint is justified.

Redress mechanisms under the relevant labour laws

46. There are established mechanisms under the EO, ECO and PCO for determining claims or resolving disputes between employers and employees arising from certification issued by registered MPs. It is proposed that the same mechanism will be applicable to the certificates issued by registered CMPs. Expertise in Chinese medicine will also be acquired by the Labour Department so that C for L has access to expert advice to deal with matters arising out of recognition of Chinese medicine.

Consultation

47. The Chinese Medicine Practitioners Board (CMPB) of the Chinese Medicine Council, DH, Hospital Authority (HA), PCFB and PMB have been consulted and they have agreed to the proposal. The HA has suggested that clear guidelines should be laid down for registered CMPs to issue medical certificates, medical reports and keep medical records. We

have conveyed this suggestion to CMC for incorporation into the Code of Practice for registered CMPs, as appropriate. The PCFB has supported in principle the proposal of recognising Chinese medicine for the purpose of claiming medical expenses under the PCO.

48. The PMB has raised the possible situation of concomitant treatment by registered MPs and CMPs. But since assessment duties would continue to be taken up by the PMB according to assessment criteria set out in the PCO, the type of treatment received by a pneumoconiotic whether by a medical practitioner or a registered CMP, should not affect the assessment of the pneumoconiotic's degree of incapacity or need for care and attention by another person. In so far as the proposals regarding PCO is concerned, if a pneumoconiotic seeks treatment from both medical practitioner and registered CMP, the maximum amount of medical expenses reimbursable is still subject to the daily ceiling of \$175. Should the health condition of the pneumoconiotic deteriorate such that an assessment should be conducted before the lapse of the two-year regular re-assessment period, both the medical practitioner and registered CMP who have treated the person could give their recommendation for PMB to consider. It is still the PMB which has the power of determination on whether a re-assessment should be conducted earlier. The criteria for deciding whether earlier re-assessment is justified is clearly laid down in section 23A(3) of the PCO.

49. The Labour Advisory Board (LAB) has also been consulted. It has supported the principle of recognizing Chinese medicine in labour legislation. The LAB has also agreed that subject to the availability of a Code of Practice for registered CMPs and to the progress of other related work (such as preparation of sample sick leave certificate, medical record, receipt of medical treatment, in consultation with major CMP associations), the LAB will further discuss the commencement date of the legislative amendments.

Promotion of good practices to CMPs

50. Among the CMPs in Hong Kong, the vast majority are not familiar with the medical functions and the legal responsibilities to employers and employees under our labour legislation. Furthermore, after Western medicine has been recognised for so many years, MPs have roughly adopted similar format in the sick leave certificates that they issued and employers are familiar with the format but not with that of CMPs. Against this background and the vast number of CMPs, it is considered

necessary to prepare registered CMPs for the intended role they would assume under labour legislation. It would also take time to lay the foundation that would ensure proper understanding among the concerned parties and reduce any confusion that may arise upon the recognition of registered CMPs under labour legislation.

51. We have started by seeking the co-operation of major CMP associations to promote professional practices among their members, especially in the issue of medical certificates and medical reports. We have met with these associations to impress upon them the need to adopt suitable guidelines and to lay down certain standards for their members in these areas. In July 2001, LD organized a seminar for representatives of CMP associations to share experience on keeping treatment records and writing medical reports. We also introduced to participants the medical functions performed by MPs under the relevant labour legislation.

52. In the meantime, we are liaising with the major CMP associations on the preparation of sample certificates, medical records etc. for the reference of their members. When the first batch of registered CMPs is promulgated, we will explore ways to facilitate exchange of views and information with them so as to promote better understanding of the medical functions under the respective labour legislation.

53. LD will also disseminate to employers information on avenues made available by the CMC to receive complaints against registered CMPs suspected of issuing untrue or misleading medical certificates.

Economic Implications

54. The recognition of registered CMPs under the EO only has minimal implications on employers' liabilities since the upper limit of 120 days of sick leave in aggregate as well as the eligibility criteria of other benefits such as long service payment on certification of permanent unfitness for the present work and maternity leave would not be affected by the recognition of registered CMPs.

55. We consulted the Accident Insurance Association in August 2000 on the impact of the proposals on employees' compensation insurance premium. The Association considered that by recognizing Chinese medicine under the ECO, insurers would face possible increase in

administrative cost and claim cost. At that time, the Association felt that it was too early to suggest any indication on premium increase since there was inadequate information to make a fair assessment.

56. We approached the General Insurance Council (GIC) of the Hong Kong Federation of Insurers in February 2002 for an assessment of the possible premium increase in employees' compensation insurance as a result of the recognition of Chinese medicine under ECO. The Task Force on Chinese Medicine established by the GIC also declined to make any assessment due to the absence of practical experience in handling claims for medical treatment given by registered CMPs. We will continue to liaise with the insurance industry on the information needed to facilitate such an assessment.

Financial and Staffing Implications

57. The proposal to recognise Chinese medicine in labour legislation would have financial and staffing implications for the Government in the following aspects :

- (a) **medical expenses under ECO** – the Government as an employer provides free medical treatment to civil servants who are injured on duty. With the recognition of Chinese medicine under the ECO, there would be financial implications for the Government in meeting the expenses for treatment in Chinese medicine for injured civil servants. It is estimated that an annual sum of \$13 million might be required for reimbursing medical expenses to Government employees injured on duty if they seek treatment from registered CMPs;
- (b) **medical expenses under Pneumoconiosis Ex Gratia Scheme** – it is estimated that about \$0.5 million would be required by the Pneumoconiosis Ex Gratia Fund to meet the additional liabilities arising from an increase in the payouts of medical expenses. Given that the Fund has a reserve of about \$80 million, it should be able to absorb the additional payouts from existing resources without further injection of funds from the Government; and
- (c) **staff cost for obtaining expertise in Chinese medicine** – the LD would need additional resources to engage experts to help determine claims arising from the recognition of Chinese

medicine and resolve conflicting medical opinions under the EO, the ECO and the PCO. The recurrent expenditure for this purpose is estimated to be about \$1.78 million per annum.

Legislative Timetable

58. We aim to introduce the proposed legislative amendments into the Legislative Council within 2002.

Advice sought

59. Members are invited to comment on the proposal as set out in paragraph 7.

Education and Manpower Bureau
May 2002