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Paper for the House Committee meeting on 21 January 2005

**Report of the Subcommittee on
Employees' Compensation Ordinance
(Amendment of Second Schedule) Order 2004 and
Occupational Safety and Health Ordinance
(Amendment of Schedule 2) Order 2004**

Purpose

This paper reports on the deliberations of the Subcommittee on Employees' Compensation Ordinance (Amendment of Second Schedule) Order 2004 and Occupational Safety and Health Ordinance (Amendment of Schedule 2) Order 2004.

The Orders

2. The Second Schedule to the Employees' Compensation Ordinance (Cap. 282) (ECO) specifies a list of occupational diseases in respect of which employees' compensation is payable. The Schedule also specifies the nature of the trade, industry or process associated with the occupational diseases and the prescribed period for the purpose of determining the liability to compensation. Under section 32 of ECO, if the incapacity or death of an employee results from an occupational disease and is due to the nature of any employment in which the employee was employed at any time within the prescribed period immediately preceding such incapacity or death, the employee or members of his family, as the case may be, shall be entitled to compensation under ECO as if such incapacity or death had been caused by an accident arising out of and in the course of employment. The Employees' Compensation Ordinance (Amendment of Second Schedule) Order 2004 (L.N. 213) proposes to add two occupational diseases, namely, severe acute respiratory syndrome (SARS) and avian influenza A, to the Second Schedule to ECO.

3. Section 15 of the Occupational Safety and Health Ordinance (Cap. 509) (OSHO) requires a medical practitioner, on examining an employee, to notify the Commissioner for Labour if the practitioner finds or suspects that the employee suffers from an occupational disease specified in Schedule 2 to OSHO. The Occupational Safety and Health Ordinance (Amendment of Schedule 2) Order 2004 (L.N. 214) adds SARS and avian influenza A as occupational diseases to Schedule 2 to OSHO.

4. The two Orders shall come into operation on a date to be appointed by the Commissioner for Labour by notice published in the Gazette.

The Subcommittee

5. At the House Committee meeting on 17 December 2004, Members formed a subcommittee to study the two Orders. The membership list of the Subcommittee is in **Appendix I**.

6. To allow sufficient time for the Subcommittee to study in detail the two Orders, the Chairman of the House Committee moved a motion at the Council meeting on 5 January 2005 to extend the scrutiny period of the subsidiary legislation to the Council meeting on 2 February 2005. The motion was passed by the Council.

7. Under the chairmanship of Hon LEE Cheuk-yan, the Subcommittee held two meetings with the Administration.

Deliberations of the Subcommittee

Reasons for including severe acute respiratory syndrome and avian influenza A as occupational diseases

8. On the reasons for including SARS and avian influenza A as occupational diseases under ECO, the Administration has explained that employees infected with the diseases at work are currently protected under section 36(1) of ECO, but the onus is on the employee to prove that the infection is by accident arising out of and in the course of employment. In order to safeguard the interests of employees in specified high-risk trade, industry or process and to facilitate them in making compensation claims without having to prove that the injury is by accident arising out of and in the course of employment, the Administration proposes to prescribe SARS and avian influenza A as occupational diseases under ECO.

9. As for the amendments to Schedule 2 of OSHO, the Administration has explained that section 15 of OSHO requires medical practitioners to notify the Commissioner for Labour of cases of occupational diseases. The list of notifiable occupational diseases is provided in Schedule 2. If the list of prescribed occupational

diseases under ECO is expanded to include SARS and avian influenza A, the list of notifiable occupational diseases under OSHO should be correspondingly amended. This will facilitate the Labour Department in collecting information about these two diseases and in monitoring the occupational health of affected workers.

Coverage of the Orders

10. According to the Administration, the specified high-risk occupations involving close and frequent contacts with a source or sources of SARS infection by reason of employment include medical and nursing staff, medical research and laboratory workers, pathologists, post-mortem or funeral services workers, etc. There are about 94 000 employees in these occupations. The specified high-risk occupations involving close and frequent contacts with a source or sources of avian influenza A infection include those workers engaged in handling poultry or birds, their remains, residues or untreated products, working in poultry farm, poultry transportation/wholesale and retail sectors, etc., as well as research and laboratory workers. There are about 5 000 employees in these occupations.

11. To provide better protection to employees, Hon LI Fung-ying has suggested that the Orders should be extended to cover those employees who are not in the specified high-risk occupations but may still have a rather high risk of contracting the occupational diseases in the course of employment. For instance, a domestic helper may be required to handle poultry from time to time and may contract avian influenza A.

12. The Administration has explained that in determining whether a disease should be prescribed as a new occupational disease under ECO, the criteria adopted are that –

- (a) the disease would impose significant recognised risk to workers of Hong Kong in a certain occupation; and
- (b) the link between the disease and the occupation can be reasonably presumed or established in individual cases.

Employees engaged in occupations which are not recognised to have significant risk of contracting SARS or avian influenza A would not be able to meet the established criteria. In the event that an employee has contracted the disease and suffered incapacity, he may still claim compensation under section 36(1) of ECO if he can prove that the infection is by accident arising out of and in the course of employment.

Avian influenza A

13. Members have sought clarification on whether it is the intention to cover workers engaged in handling live or uncooked poultry or birds, their remains, residues or untreated products, but not those engaged in handling cooked poultry or birds.

Hon Tommy CHEUNG has expressed concern that workers handling food made from cooked poultry may inadvertently fall within the scope of the Orders. Hon Tommy CHEUNG is also concerned that employees of other industries and trades, for instance domestic helpers, may, in the course of employment, handle poultry or birds from time to time and may inadvertently fall within the scope of the Orders.

14. The Administration has explained that as medical researches indicate that only live poultry or birds, their remains or residues or untreated poultry products may carry a risk of avian influenza A infection, the type of high-risk occupations intended to be covered by the Orders will be the handling of poultry or birds in poultry farms, poultry transportation, wholesale or retail of poultry, and research and laboratory work in connection with avian influenza A viruses. Currently, there is no evidence of transmission of avian influenza A viruses through cooked or undercooked poultry. To address the concern, the Administration has agreed to amend the two Orders to make it clear that among those types of workers who are employed to handle the remains or residues of poultry or birds, only workers who are employed to handle uncooked remains or residues would be covered.

15. The Administration has also explained that for an employee to fall within the scope of the Orders, in addition to having suffered incapacity arising from avian influenza A, he has to fulfil the criteria that –

- (a) by reason of employment, he is engaged as a worker in the types of work specified in the Order; and
- (b) he has close and frequent contacts with poultry or birds in employment.

The Administration has pointed out that a domestic helper who, apart from his/her daily housework, frequently prepares dishes of chicken will not be able to meet the test in (a) above since he/she is not engaged in poultry handling as such.

16. Members have also asked whether avian influenza A viruses could be transmitted through undercooked poultry, for example, those with traces of residual blood.

17. The Administration has advised that according to the studies by the World Health Organization, cooking of poultry products can effectively kill avian influenza A viruses. In response to members' query, the Administration has consulted experts from the Department of Microbiology of the University of Hong Kong. Advice obtained is that there is so far no evidence of transmission of avian influenza A to humans through the consumption of undercooked poultry products. The United States Centers for Disease Control and Prevention also indicates that there is no evidence that humans would acquire avian influenza A by eating poultry products. Therefore, people eating poultry, even less well-cooked ones, face a very low risk of being infected by avian influenza virus. Similarly, the risk is very low for workers responsible for cleaning

food leftovers which occasionally contain parts of cooked poultry with traces of residual blood.

Chinese counterpart of the term “frequent”

18. Having considered members’ view, the Administration has agreed to amend the Chinese counterpart of the term “frequent” as “經常” in the two Orders for the purpose of consistency.

Prescribed period

19. Under section 32(1) of ECO, if the incapacity or death of an employee results from an occupational disease and is due to the nature of any employment in which the employee was employed at any time within the prescribed period immediately preceding such incapacity or death, the employee or members of his family, as the case may be, shall be entitled to compensation under ECO as if such incapacity had been caused by an accident arising out of and in the course of employment. It is proposed in the Employees’ Compensation Ordinance (Amendment of Second Schedule) Order 2004 that the prescribed period in the case of SARS infection should be set at one month, and 14 days in the case of avian influenza A infection. Members have questioned the rationale for the prescribed period for the two proposed occupational diseases and how the prescribed period would work in determining the liability to compensation.

20. The Administration has explained that as the incubation period for SARS is not more than 14 days, the prescribed period is therefore proposed to be one month. Similarly, as the incubation period for avian influenza A virus is not more than seven days, the prescribed period is proposed to be 14 days. Under section 32 of ECO, for instance, if the incapacity or death of an employee results from SARS and is due to the nature of any employment in which the employee was employed at any time within the prescribed period of one month immediately preceding such incapacity or death, the employee shall be entitled to compensation. Under section 32(1)(c) of ECO, the compensation will be recoverable from the employer who last employed the employee during the prescribed period immediately preceding the incapacity or death in the employment to the nature of which the disease was due.

21. Members have asked which employer will be liable to compensation in the case where an employee works for two employers, for instance, a poultry transportation worker who at the same time works for a poultry wholesaler, has contracted avian influenza A and suffered incapacity.

22. The Administration has explained that under section 32(3) of ECO, if the employer who last employed the employee during the prescribed period immediately preceding the incapacity or death in the employment to the nature of which the occupational disease was due alleges that the disease was in fact contracted whilst the

employee was in the employment of some other employer during such period, and not whilst in his employment, he may join such other employer as a party to the proceedings in respect of the claim for compensation, and if the allegation is proved, then the other employer shall be the employer from whom the compensation is recoverable. In the event that an employee has two employers at the same time, the employer from whom the claim for compensation has been sought may bring the other employer as a party into the claim. In reality, most employees will make their claims against both employers. If the employers concerned cannot agree on the apportionment of the liability and compensation payment, the matter could be brought to the court for a determination.

Impact on employees' compensation insurance premium

23. Members have asked for an assessment on the implications on the employees' compensation insurance premium of the proposed addition of SARS and avian influenza A to the Second Schedule of ECO.

24. The Administration considers that the implications on insurance premium should be insignificant. This is because the risk of SARS has already been taken into account in the premium rate for employees' compensation insurance policies issued in 2004, and the number of human infections for avian influenza A is limited. Even if the diseases are not prescribed under the Second Schedule to ECO, an employee may still claim compensation under section 36(1) of ECO if he can prove that such a disease is a personal injury by accident arising out of and in the course of employment. The Administration has earlier consulted the Accident Insurance Association which advises that the impact on employees' compensation insurance premium is unlikely to be significant.

Commencement date

25. In order to provide protection to employees in the specified high-risk occupations and to facilitate the Labour Department in monitoring the occupational health of employees as soon as possible, the Administration has proposed to specify 8 February 2005 as the date on which the two Orders come into operation. The relevant amendments will be made by the Administration. Members have expressed support for the proposed amendments.

Publicity on the Orders

26. At members' request, the Administration has agreed to step up publicity on the two Orders, in particular, on how the prescribed period for SARS and avian influenza A infection would work in determining the liability for compensation under ECO. The Administration has informed members that it will prepare publicity materials giving details on the coverage of the two Orders, together with illustrations to explain how the prescribed period would work under ECO. When the Orders come into operation, the

publicity materials with enquiry telephone numbers will be sent to the relevant employers' and workers' groups to ensure that they properly understand the legislative provisions. Such information will also be uploaded onto the Labour Department's homepage on the internet.

Follow-up action by the Administration

27. The Administration has agreed to step up publicity on the two Orders, in particular, on how the prescribed period for SARS and avian influenza A infection would work in determining the liability for compensation under ECO (paragraph 26 above refers).

Recommendation

28. The Administration has agreed to amend the Employees' Compensation Ordinance (Amendment of Second Schedule) Order 2004 and the Occupational Safety and Health Ordinance (Amendment of Schedule 2) Order 2004 (paragraphs 14, 18 and 25 above refer). A copy of the motion to amend the two Orders to be moved by the Administration at the Council meeting on 2 February 2005 is in **Appendix II**.

29. Subject to the amendments to be made by the Administration, the Subcommittee supports the Employees' Compensation Ordinance (Amendment of Second Schedule) Order 2004 and the Occupational Safety and Health Ordinance (Amendment of Schedule 2) Order 2004.

Advice Sought

30. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 2
Legislative Council Secretariat
20 January 2005

**Subcommittee on
Employees' Compensation Ordinance
(Amendment of Second Schedule) Order 2004 and
Occupational Safety and Health Ordinance
(Amendment of Schedule 2) Order 2004**

Membership list

Chairman Hon LEE Cheuk-yan

Members Dr Hon LUI Ming-wah, JP
Hon Bernard CHAN, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Andrew CHENG Kar-foo
Hon LI Fung-ying, BBS, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon KWONG Chi-kin

Total: 8 Members

Clerk Mrs Sharon TONG LEE Yin-ping

Legal Adviser Miss Kitty CHENG

Date 22 December 2004

**EMPLOYEES' COMPENSATION ORDINANCE (AMENDMENT OF
SECOND SCHEDULE) ORDER 2004**

RESOLUTION

**(Under section 34(2) of the Interpretation and General Clauses Ordinance
(Cap. 1))**

RESOLVED that the Employees' Compensation Ordinance (Amendment of Second Schedule) Order 2004, published in the Gazette as Legal Notice No. 213 of 2004 and laid on the table of the Legislative Council on 15 December 2004, be amended –

- (a) in section 1, by repealing “a day to be appointed by the Commissioner for Labour by notice published in the Gazette” and substituting “8 February 2005”;
- (b) in section 2 –
 - (i) in the new item B11, by repealing “頻繁地” and substituting “經常”;
 - (ii) in the new item B12, by repealing “頻繁地” and substituting “經常”;
 - (iii) in the new item B12, in paragraph (a), by repealing “remains, residues or” and substituting “uncooked remains or residues, or their”.

**OCCUPATIONAL SAFETY AND HEALTH ORDINANCE
(AMENDMENT OF SCHEDULE 2) ORDER 2004**

RESOLUTION

**(Under section 34(2) of the Interpretation and General Clauses Ordinance
(Cap. 1))**

RESOLVED that the Occupational Safety and Health Ordinance (Amendment of Schedule 2) Order 2004, published in the Gazette as Legal Notice No. 214 of 2004 and laid on the table of the Legislative Council on 15 December 2004, be amended –

- (a) in section 1, by repealing “a day to be appointed by the Commissioner for Labour by notice published in the Gazette” and substituting “8 February 2005”;
- (b) in section 2 –
 - (i) the new item 50, by repealing “頻繁地” and substituting “經常”;
 - (ii) in the new item 51, by repealing “頻繁地” and substituting “經常”;
 - (iii) in the new item 51, in paragraph (a), by repealing “remains, residues or” and substituting “uncooked remains or residues, or their”.