

**Bills Committee on
Statute Law (Miscellaneous Provisions) Bill 2007**

**Administration's Response to Request Raised
at the Bills Committee Meeting Held on 24 September 2007**

Purpose

At its meeting on 24 September 2007, Members considered, among others, Division 5 of Part 13 of the Statute Law (Miscellaneous Provisions) Bill 2007 ("Statute Law Bill"). That part of the Statute Law Bill proposes technical amendments to the Certification for Employee Benefits (Chinese Medicine)(Miscellaneous Amendments) Ordinance (16 of 2006) ("Certification Ordinance"). The Administration was requested to provide the Committee with background information on the amendments proposed.

Background

2. Division 5 of Part 13 of the Statute Law Bill seeks to provide for partial commencement of Parts 3 and 4 of the Certification Ordinance while certain provisions in the Chinese Medicine Ordinance (Cap. 549) that are referred to in these parts of the Certification Ordinance are not yet in operation. The amendments proposed are only of a technical nature.

3. The Certification Ordinance, passed by the Legislative Council (LegCo) on 28 June 2006, amends several labour ordinances to provide for the recognition of certification in various forms given by, and medical examination and treatment conducted or given by, a registered Chinese medicine practitioner (CMP) for the purposes of entitlement to certain employee benefits. The amendments to each of the labour ordinances are contained in the respective parts of the Certification Ordinance, namely:

- a. Part 2: amendments to the Employment Ordinance (EO) (Cap. 57) and its subsidiary legislation
- b. Part 3: amendments to the Employees' Compensation Ordinance (ECO) (Cap. 282)
- c. Part 4: amendments to the Pneumoconiosis (Compensation) Ordinance (PCO) (Cap. 360)
- d. Part 5: amendments to two regulations under the Mandatory Provident Fund Schemes Ordinance (MPFSO) (Cap. 485)

4. Upon the enactment of the Certification Ordinance in June 2006, there was consensus among employers, employees and the Administration that the Certification Ordinance should come into operation as soon as possible. Having regard to the fact that certain provisions in the Chinese Medicine Ordinance (CMO) (Cap. 549) that are referred to in Parts 3 and 4 of the Certification Ordinance are not yet in operation, the Administration's plan then was to have these parts of the Certification Ordinance partially commenced.

5. However, in making commencement preparation, it was considered that it may not be entirely clear from the existing wording of the Certification Ordinance that the partial commencement approach for Parts 3 and 4 is authorised. On the one hand, partial commencement is a common practice and is generally authorized under section 20 of the Interpretation and General Clauses Ordinance (Cap. 1) (which says different commencement dates may be specified for different provisions.) On the other hand, the relevant clauses on the transitional arrangement¹ refer to the commencement of Part 3 and Part 4 respectively. It may be possible for some to argue that Parts 3 and 4 should each commence as a whole and not in parts. To avoid uncertainties and any possible complications in future, it is proposed to amend the Certification Ordinance to specifically authorize partial commencement as planned.

6. To cater for this, amendment is proposed in Division 5 of Part 13 of the Statute Law Bill. This Division amends the Certification Ordinance

¹ i.e. sections 22 and 31 of the Certification Ordinance, which add s.55(10) to the ECO and s.50 to the PCO

to expressly enable Parts 3 and 4 of that Ordinance to be commenced with certain specified provisions excepted. Under those specified provisions, the cost of a Chinese herbal medicine is recoverable as compensation under the ECO and the PCO if the medicine is sold by a Chinese medicine trader licensed under the CMO or if an alternative condition is met. Similarly, the cost of a proprietary Chinese medicine is so recoverable if it is registered under the CMO or if an alternative condition is met. At present, the schemes under the CMO on licensing of Chinese medicine retailers and registration of proprietary Chinese medicine have not been fully implemented. Therefore, Parts 3 and 4 of the Certification Ordinance are to be commenced with the specified provisions excepted. The effect is that the cost of a Chinese herbal medicine and the cost of a proprietary Chinese medicine will be recoverable as compensation without regard to the restrictions imposed by the specified provisions.

7. Members may also wish to note that all the other parts of the Certification Ordinance (i.e. Parts 1, 2 and 5) have come into operation on 1 December 2006 and certification by a registered Chinese medicine practitioner has since been recognized under the EO and MPFSO.

Labour Department
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