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**Bills Committee on
Pneumoconiosis (Compensation) (Amendment) Bill 2008**

Background brief prepared by the Legislative Council Secretariat

**Legislative proposals to make mesothelioma a compensable disease under the
Pneumoconiosis (Compensation) Ordinance**

Purpose

This paper summarises the discussion by the Panel on Manpower on the Administration's proposals to make mesothelioma a compensable disease under the Pneumoconiosis (Compensation) Ordinance (PCO).

The Administration's proposal

2. At its meeting on 15 November 2007, the Panel on Manpower was consulted on the Administration's proposals to make mesothelioma a compensable disease under PCO.

3. The Administration informed the Panel that notwithstanding that mesothelioma, similar to pneumoconiosis, was also caused by inhalation of asbestos dust, it was at present not compensable under PCO. As mesothelioma and pneumoconiosis shared a common cause and some common characteristics, mesothelioma sufferers should be provided with the same compensation and benefits as the pneumoconiotics. The statutory compensation scheme under PCO would take up the responsibility to compensate mesothelioma on the basis of collective liability of employers. Similar to a pneumocomiotic, mesothelioma sufferers would be eligible for compensation if he fulfilled the residence requirement. In order to provide employees' compensation to mesothelioma sufferers, legislation would be required to introduce an amendment bill to give effect to the proposal. The major legislative proposals would include the following -

- (a) extending the coverage of PCO to include malignant mesothelioma

- as a compensable disease;
- (b) subjecting the mesothelioma sufferers to the same eligibility criteria as the pneumoconiotics under PCO for the purpose of applying for compensation, i.e. a person diagnosed as suffering from mesothelioma should have to be resident in Hong Kong for five years or more; mesothelioma sufferers with less than five years' residence would also be eligible if they contracted the disease in Hong Kong;
 - (c) providing for eligible mesothelioma sufferers the same compensation and benefits as those for pneumoconiotics;
 - (d) empowering the Pneumoconiosis Medical Board (PMB) to assess whether the claimants were suffering from mesothelioma and the degree of incapacity, and to determine the cause of death of the sufferers; and
 - (e) amending the title of PCO to reflect the extension of its coverage to include mesothelioma.

Discussion by the Panel

4. At the meeting on 15 November 2007, members were generally supportive of the Administration's proposal. Members expressed the following views on the Administration's proposals -

- (a) the coverage of the proposal should not be confined to malignant mesothelioma and cases of benign and non-cancerous mesothelioma should be included;
- (b) the Administration should reduce the burden of proof on the part of the mesothelioma workers with less than five years of residence in Hong Kong, and simplify the relevant claims procedure; and
- (c) the Administration should set out clearly the criteria under which compensation would be granted to claimants suffering from mesothelioma, such as identifying the nature of trades associated with occupational exposure to asbestos against which claimants residing for less than five years in Hong Kong would be eligible for compensation.

5. The Administration responded that mesothelioma, in pathological term, often referred to malignant tumor developed in the mesothelium usually of the

lungs after exposure to asbestos. As for benign (i.e. non-cancerous) mesothelioma, it was unrelated to exposure to asbestos and the symptoms were different from malignant mesothelioma which would rapidly turn fatal once diagnosed. The PMB, given the responsibility to assess whether claimants were suffering from mesothelioma, should be able to differentiate between a malignant and a benign case.

6. The Administration pointed out that whether the legislative proposal should include cases of benign (i.e. non-cancerous) mesothelioma would involve a legal point of view, as the purpose of the statutory compensation scheme under PCO and the proposal was to provide compensation and benefits to pneumoconiotics and mesothelioma sufferers who had been exposed to asbestos dust and suffered from permanent and irreversible damages.

7. Regarding the burden of proof on the part of the mesothelioma workers with less than five years of residence in Hong Kong, the Administration understood that there would be practical difficulty for patients to provide proof of their specific employment and occupational exposure to asbestos some decades ago. Hence, under the proposal, it would be sufficient for those who resided in Hong Kong for less than five years to prove that they had worked in an occupation involving exposure to asbestos. The PMB, with its rich experience in assessing claims for compensation under PCO, would be able to identify whether claimants' occupations in the past involved exposure to asbestos.

Relevant papers

8. Members may wish to refer to the Administration's paper on "Proposal to make mesothelioma a compensable disease under the Pneumoconiosis (Compensation) Ordinance" (LC Paper No. CB(2)310/07-08(03)) for the Panel meeting on 15 November 2007 and the minutes of the meeting (LC Paper No. CB(2)630/07-08). The documents are available on the website of the Council (<http://www.legco.gov>).