

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

**Supplementary Background Information on the
Pneumoconiosis (Compensation) (Amendment) Bill 2008**

Introduction

At present, malignant mesothelioma is not a prescribed occupational disease under the Employees' Compensation Ordinance (Cap. 282) ("ECO"). Under the Pneumoconiosis (Compensation) Ordinance ("PCO") that provides compensation to pneumoconiosis patients or their family members in respect of incapacity or death resulting from the disease, pneumoconiosis is defined as fibrosis of the lungs due to exposure to asbestos or silica dust. Notwithstanding the medical evidence on the causal relationship between asbestos exposure and development of malignant mesothelioma, the disease is currently not compensable under the PCO unless the patients also suffer fibrosis of the lungs at the same time.

2. The Pneumoconiosis (Compensation)(Amendment) Bill 2008 ("the Bill") aims to amend the PCO to make malignant mesothelioma a compensable disease under the PCO. The proposal is justified on the basis that malignant mesothelioma and pneumoconiosis share the following common characteristics:

- (a) they share a common cause, i.e. inhalation of asbestos dust;
- (b) they cause permanent and irreversible damages as well as pain and suffering to the patients;
- (c) they are progressive in nature; and
- (d) they have long latent period and it is not possible to precisely identify the period of employment causing the diseases for the purpose of claiming compensation from individual employers.

Compensation and benefits for malignant mesothelioma sufferers under the proposal

3. The statutory scheme established under the PCO provides, where applicable,

pneumoconiotics with a full range of compensation and benefits. In the case of death resulting from pneumoconiosis, the family members of the deceased are also eligible for compensation for death and funeral expenses. The Bill proposes to provide to eligible malignant mesothelioma patients the same compensation and benefits as those for pneumoconiotics. At present, the compensation and benefits payable to pneumoconiotics under the PCO are as follows:

- (a) **Compensation for incapacity** arising from pneumoconiosis until the death of the pneumoconiotic concerned. Compensation for total incapacity is \$18,930 per month.
- (b) **Compensation for incapacity prior to date of diagnosis** payable in respect of the period from the earliest diagnosed date of the disease to the date of diagnosis (subject to a maximum of 24 months) for incapacity arising from pneumoconiosis.
- (c) **Compensation for pain, suffering and loss of amenities** resulting from pneumoconiosis, at a monthly rate of \$3,180, payable until the death of the pneumoconiotic concerned.
- (d) **Compensation for constant attention**, at a monthly rate of \$4,160, payable to pneumoconiotics whose incapacity is of such nature that they are unable to perform the essential actions of life without the care and attention of others.
- (e) **Payment of medical expenses** for medical treatments in connection with pneumoconiosis, subject to a daily ceiling of \$200 for out-patient or in-patient treatment in any one day or \$280 for out-patient and in-patient treatment received on the same day.
- (f) **Payment of expenses for medical appliances** (i.e. wheelchair, oxygen concentrator and its accessories, oxygen cylinder and its accessories) that are necessary for the incapacity arising from pneumoconiosis.
- (g) **Compensation for death** payable to family members of

pneumoconiotics who die as a result of pneumoconiosis. The minimum amount of compensation is \$100,000.

- (h) **Compensation for bereavement** payable to the family members of a deceased pneumoconiotic where at the time of his death no certificate on the amount of compensation has been issued by the Pneumoconiosis Compensation Fund Board (“PCFB”) under the Ordinance. The amount of compensation is \$100,000.
- (i) **Funeral expenses** subject to a ceiling of \$35,000, payable on a reimbursement basis to any person who has incurred expenses for the funeral of a pneumoconiotic who dies as a result of the disease.

Collective liability of employers under a non-fault compensation scheme

4. The employees' compensation system in Hong Kong operates on the principle of employers' liability, either on an individual or a collective basis. Employers are liable to pay compensation to their employees (and their family members in fatal cases) for incapacities resulted from accidents arising out of and in the course of employment or arising from prescribed occupational diseases. Under the ECO, the liability to pay compensation as a result of work injuries and fatalities and prescribed occupational diseases rests with individual employers. Under the PCO and the Occupational Deafness (Compensation) Ordinance, collective liability schemes to respectively provide compensation to employees who contract pneumoconiosis and occupational deafness have been established. These three compensation-related ordinances adopt the no-fault principle and compensation is payable irrespective of the degree of fault of the parties concerned. In determining the scope and level of compensation to be responsible by the employers, therefore, it is necessary to strike a reasonable balance between the interests of the employers and the employees.

5. Insofar as the collective liability scheme established under the PCO is concerned, payment of compensation and benefits is financed by a levy, currently at the rate of 0.25%, of the value of construction operations and quarry products collected from the construction and quarrying industries. The proposals to extend the

scope of the PCO to cover malignant mesothelioma and to provide the same compensation and benefits to malignant mesothelioma patients as those for pneumoconiotics have been thoroughly deliberated by the PCFB and received its support.

Concerns of Members of the Panel on Manpower

6. At its meeting on 15 November 2007, the Panel on Manpower was consulted on the legislative proposal. Members were generally supportive of the proposal. Some members, however, considered that the coverage of the proposal should not be confined to malignant mesothelioma and cases of benign and non-cancerous mesothelioma should be included. They also considered that the Administration should reduce the burden of proof on the part of the mesothelioma patients with less than 5 years of residence in Hong Kong.

Malignant mesothelioma vis-à-vis benign and non-cancerous mesothelioma

7. The primary consideration in proposing amendments to the PCO to make malignant mesothelioma compensable under the PCO is the causal relationship between the disease and exposure to asbestos. According to a medical survey on malignant mesothelioma in Hong Kong conducted in 2004-05 (“Malignant mesothelioma in Hong Kong” by Kwok C. Chang, Chi C. Leung, Cheuk M. Tam, Wai C. Yu, David S. Hui, Wah K. Lam, Respiratory Medicine, February 2005), three quarters of malignant mesothelioma patients with occupational history available had occupational asbestos exposure. This is consistent with international findings that around 80% of malignant mesothelioma patients had past asbestos exposure, and supportive of a definite link between occupational asbestos exposure and malignant mesothelioma.

8. In the light of the concerns of some Members of the Panel on Manpower, we have sought further medical opinion and are given to understand that there is no medical evidence to support the causal relationship between benign and non-cancerous mesothelioma and exposure to asbestos. As such, benign and non-cancerous mesothelioma does not satisfy the main criteria all along adopted in determining

whether a disease should be prescribed as an occupational disease. In the absence of such medical evidence, the proposed extension of the coverage of the legislative amendments to net in benign and non-cancerous mesothelioma would constitute a fundamental departure from the established principle of employees' compensation by delinking the relationship between employment and entitlement to compensation. Therefore, we remain of the view that only malignant mesothelioma should be covered under this exercise.

Residence and occupational requirements

9. We have proposed to subject the malignant mesothelioma patients to the same eligibility criteria as the pneumoconiotics under the PCO for the purpose of application for compensation, i.e. to be eligible for compensation under the PCO, a person diagnosed as suffering from malignant mesothelioma should have to be resident in Hong Kong for five years or more; malignant mesothelioma patients with less than five years' residence are also eligible if they contracted the disease in Hong Kong. We have not proposed to specify a minimum period of employment in any occupations involving the handling of asbestos because the long latent period between exposure to asbestos and development of malignant mesothelioma makes it very difficult for patients to provide proof of their specific employment and occupational exposure to asbestos some decades ago. Also, under the PCO, a pneumoconiotic is eligible for compensation if he fulfils the residence requirement. Any additional requirement imposed on malignant mesothelioma patients may be considered discriminatory.

10. Given the long latent period of the disease which can be 30 to 40 years or even longer, malignant mesothelioma patients should have very little difficulty in fulfilling the requirement of five years' residence in Hong Kong. In fact, the same requirement is now applicable to patients of pneumoconiosis with a relatively shorter latent period. Since the enactment of the PCO in 1981, no application for compensation by a pneumoconiotic has been rejected on the ground of failure to fulfil the eligibility requirement pertaining to residence or employment in Hong Kong.

11. The Bill affords equal treatment to malignant mesothelioma patients and pneumoconiotics both in terms of eligibility requirements as well as compensation and

benefits. Any adjustment to the eligibility criteria for malignant mesothelioma patients would have read-across implications on the treatment for pneumoconiotics. We remain of the view that the same set of eligibility criteria should be applicable to malignant mesothelioma patients and pneumoconiotics.

Labour and Welfare Bureau/Labour Department
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