

LEGISLATIVE COUNCIL BRIEF

Pneumoconiosis (Compensation) Ordinance
(Chapter 360)

PNEUMOCONIOSIS (COMPENSATION) (AMENDMENT) BILL 2008

INTRODUCTION

A At the meeting of the Executive Council on 11 December 2007, the Council ADVISED and the Chief Executive ORDERED that the Pneumoconiosis (Compensation) (Amendment) Bill 2008, at **Annex A**, should be introduced into the Legislative Council to amend the Pneumoconiosis (Compensation) Ordinance (Cap. 360) ("PCO"):

- (a) to extend its coverage to make malignant mesothelioma compensable under the PCO;
- (b) to subject the malignant mesothelioma sufferers to the same eligibility criteria as the pneumoconiotics under the PCO for the purpose of applying 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 sufferers with less than five years' residence are also eligible if they contracted the disease in Hong Kong;
- (c) to provide to eligible malignant mesothelioma sufferers the same compensation and benefits as those for pneumoconiotics;
- (d) to empower the Pneumoconiosis Medical Board ("PMB") to assess whether the claimants are suffering from malignant mesothelioma and the degree of incapacity, and to determine the cause of death of the sufferers in fatal cases; and
- (e) to amend the title of the PCO to reflect the extension of its coverage to include malignant mesothelioma.

JUSTIFICATIONS

2. Malignant mesothelioma is a rare cancerous form of tumour which has a strong association with occupational exposure to asbestos. The latent period between exposure to asbestos and development of malignant mesothelioma ranges from 30 to 40 years or even longer. It is a serious disease that is difficult to diagnose and poorly responsive to therapy. Once diagnosed, cases of malignant mesothelioma often rapidly turn fatal. Patients of malignant mesothelioma may have great pain and suffering. Shortness of breath and severe chest pain are common symptoms.

3. Malignant mesothelioma and pneumoconiosis share the following common characteristics:

- (a) both diseases share a common cause, i.e. inhalation of asbestos dust;
- (b) both diseases are progressive in nature;
- (c) both diseases 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; and
- (d) both diseases cause permanent and irreversible damages as well as pain and suffering to the patients.

4. As malignant mesothelioma and pneumoconiosis share a common cause and some common characteristics, it is reasonable to provide the same compensation and benefits to malignant mesothelioma sufferers and pneumoconiotics, to be financed by the same funding source¹. Also, the tremendous difficulty in pinpointing the precise period of employment that has caused malignant mesothelioma renders it impracticable to provide for compensation on the basis of individual employer's liability. It is reasonable for the statutory compensation scheme under the PCO to take up the responsibility to compensate malignant mesothelioma patients on the basis of collective liability of employers.

5. In view of the long latent period between exposure to asbestos and development of malignant mesothelioma, there will be practical difficulty for patients to provide proof of their specific employment and occupational exposure to asbestos some decades ago. Nevertheless, medical advice is that the disease has a strong association with occupational exposure to asbestos. Also, under the PCO, a pneumoconiotic is eligible for compensation if he fulfils the residence requirement. It is reasonable to apply the same eligibility criteria to malignant mesothelioma sufferers.

¹ The statutory compensation scheme established under the PCO is financed by a levy on the construction and quarrying industries.

THE BILL

6. The main object of the Bill is to extend the coverage of the PCO to make malignant mesothelioma compensable under the PCO. The proposed amendments subject malignant mesothelioma sufferers to the same eligibility criteria and pay them the same benefits as the pneumoconiosis sufferers under the PCO. Explanatory notes on the more important clauses of the Bill are set out in its Explanatory Memorandum.

LEGISLATIVE TIMETABLE

7. The legislative timetable will be –

Publication in the Gazette	11 January 2008
First Reading and commencement of Second Reading debate	30 January 2008
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

8. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The Bill will not affect the current binding effect of the PCO. The proposal has no productivity, environmental or sustainability implications. There are no staffing or civil service implications for the Government. As the compensation scheme under the PCO is financed by a levy on the construction and quarrying industries, the proposal will also carry no financial implications for the Government.

9. The proposal is expected to increase the annual compensation payouts by about \$7 million. The additional expenditure can be readily absorbed by resources available under the compensation scheme under the PCO. The proposal would involve no adjustment in the rate of levy on the contract values in the construction industry and the product values in the quarrying industry and thus is expected to have no impact on their operating costs. Detailed assessment is set out at **Annex B**.

B

PUBLIC CONSULTATION

10. The Pneumoconiosis Compensation Fund Board and the Labour Advisory Board (“LAB”) were consulted on the proposal on 18 September 2007 and 10 October 2007 respectively. The proposal received the unanimous support of the two Boards. The LAB in particular advised that the legislative exercise to implement the proposal should be accorded priority so that the benefits for the malignant mesothelioma sufferers can be improved as early as

possible. The LegCo Panel on Manpower was consulted on 15 November 2007 and Members were generally supportive of the proposal.

PUBLICITY

11. A press release will be issued on 9 January 2008. A spokesman from the Labour Department ("LD") will be made available to handle press enquiries.

BACKGROUND

12. At present, malignant mesothelioma is not a prescribed occupational disease under the Employees' Compensation Ordinance (Cap. 282). Under the PCO which provides for 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 that malignant mesothelioma is also caused by inhalation of asbestos dust, the patients are not entitled to compensation under the PCO unless they suffer from fibrosis of the lungs at the same time. To safeguard the rights of malignant mesothelioma sufferers, there is an obvious need to amend the PCO to make malignant mesothelioma compensable under the PCO.

13. At present, the statutory compensation scheme under the PCO provides, where applicable, pneumoconiotics with a full range of compensation including compensation for incapacity, compensation for pain, suffering and loss of amenities, compensation for constant attention, payment of medical expenses and payment of expenses for medical appliances. In the case of death resulting from pneumoconiosis, the family members of the pneumoconiotics are also eligible for compensation for death and funeral expenses. The compensation and benefits available under the PCO are summarised at **Annex C**.

C

14. The statutory compensation scheme operates under a system of collective liability. It 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. Construction operations with total value not exceeding \$1 million are exempted from payment of the levy.

ENQUIRIES

15. Enquiries on this brief should be addressed to Mr. Stanley NG, Assistant Commissioner for Labour (Employees' Rights and Benefits), on 2852 4083 or Ms. Femia LAU, Senior Labour Officer (Employees' Compensation) of LD, on 2852 4035.

Labour and Welfare Bureau
9 January 2008

**PNEUMOCONIOSIS (COMPENSATION) (AMENDMENT)
BILL 2008**

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A BILL

To

Amend the Pneumoconiosis (Compensation) Ordinance and its subsidiary legislation to provide compensation to, or in respect of, persons suffering from malignant mesothelioma; and to make consequential and technical amendments.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title

This Ordinance may be cited as the Pneumoconiosis (Compensation) (Amendment) Ordinance 2008.

PART 2

AMENDMENTS TO THE PNEUMOCONIOSIS (COMPENSATION) ORDINANCE AND ITS SUBSIDIARY LEGISLATION

2. Long title amended

The long title to the Pneumoconiosis (Compensation) Ordinance (Cap. 360) is amended by adding “or malignant mesothelioma (or both)” after “pneumoconiosis”.

3. Short title amended

Section 1 is amended by adding “and Malignant Mesothelioma” after “Pneumoconiosis”.

4. Interpretation

(1) Section 2(1) is amended, in the definition of “authorized person”, in paragraph (b), by adding “and Malignant Mesothelioma” after “Pneumoconiosis”.

(2) Section 2(1) is amended by repealing the definition of “date of diagnosis” and substituting –

““date of diagnosis” (判傷日期) –

(a) in relation to the pneumoconiosis suffered by a person, means the date of a medical examination conducted under this Ordinance from which it is determined that the person is suffering from the disease; and

(b) in relation to the mesothelioma suffered by a person, means the date of a medical examination conducted under this Ordinance from which it is determined that the person is suffering from the disease;”.

(3) Section 2(1) is amended by repealing the definition of “earliest diagnosed date” and substituting –

““earliest diagnosed date” (最早診斷日期) –

(a) in relation to the pneumoconiosis suffered by a person, means the date determined under section 24(1)(a)(i) or (b)(iii) as the date from which it can be said that the person has been suffering from the disease; and

(b) in relation to the mesothelioma suffered by a person, means the date determined under section 24(1)(a)(i) or (b)(iii) as the date from which it can be said that the person has been suffering from the disease;”.

(4) Section 2(1) is amended, in the definition of “incapacity”, by adding “or mesothelioma (or both)” after “pneumoconiosis”.

(5) Section 2(1) is amended, in the definition of “medical treatment”, by adding “or mesothelioma (or both)” after “pneumoconiosis”.

(6) Section 2(1) is amended by adding –

““mesothelioma” (間皮瘤) means malignant mesothelioma which is a primary malignant neoplasm of the mesothelial tissue due to dust of asbestos or dust containing asbestos, whether or not such disease is accompanied by tuberculosis of the lungs or by any other disease caused by exposure to such dust;”.

5. Entitlement to compensation

(1) Section 4(1)(a) is repealed and the following substituted –

“(a) to any person suffering from pneumoconiosis or mesothelioma (or both), in respect of any incapacity resulting from the above disease or diseases and any pain, suffering and loss of amenities arising from the above disease or diseases; and”.

(2) Section 4(2) is repealed and the following substituted –

“(2) For a person suffering from pneumoconiosis (whether or not he is also suffering from mesothelioma), compensation in respect of his pneumoconiosis shall be payable under subsection (1) only where the date of diagnosis of his

pneumoconiosis or the date of his death occurs on or after 1 January 1981.”.

(3) Section 4 is amended by adding –

“(2A) For a person suffering from mesothelioma (whether or not he is also suffering from pneumoconiosis), compensation in respect of his mesothelioma shall be payable under subsection (1) only where the date of diagnosis of his mesothelioma or the date of his death occurs on or after the date of commencement of the Pneumoconiosis (Compensation) (Amendment) Ordinance 2008 (of 2008).”.

(4) Section 4(3)(a) is amended by repealing “the date of commencement of this Part” and substituting “1 January 1981”.

(5) Section 4(3)(c) is amended by adding “or mesothelioma (or both)” after “pneumoconiosis”.

(6) Section 4(4)(a) is amended by adding “or mesothelioma (or both)” after “pneumoconiosis”.

(7) Section 4(4)(b) is amended by adding “or mesothelioma (or both)” after “pneumoconiosis”.

(8) Section 4 is amended by adding –

“(4A) For the purposes of paragraph (c) of subsection (3), where a person referred to in that paragraph is paid pension or gratuity in respect of either pneumoconiosis or mesothelioma, his entitlement to compensation for the other of the 2 diseases shall not be affected.”.

6. Compensation for death resulting from pneumoconiosis

(1) Section 5 is amended, in the heading, by adding “**or mesothelioma (or both)**” after “**pneumoconiosis**”.

(2) Section 5(1) is amended by adding “or mesothelioma (or both)” after “pneumoconiosis”.

(3) Section 5(2) is amended by adding “(whether as compensation in respect of pneumoconiosis or mesothelioma (or both))” after “section 6”.

7. Compensation for bereavement

(1) Section 5A(1) is amended by adding “or mesothelioma (or both)” after “pneumoconiosis”.

(2) Section 5A(1) is amended by adding “in respect of any of the above diseases” after “section 15B(1)”.

8. Funeral expenses

Section 5B is amended by adding “or mesothelioma (or both)” after “pneumoconiosis”.

9. Compensation for incapacity subsequent to date of diagnosis

(1) Section 6(1) is amended by adding “or mesothelioma (or both)” after “from pneumoconiosis”.

(2) Section 6(1)(b) is amended by adding “or mesothelioma (or both)” after “pneumoconiosis”.

10. Compensation for incapacity prior to date of diagnosis

(1) Section 10 is amended by renumbering it as section 10(1).

(2) Section 10(1) is amended by repealing “Where incapacity results from pneumoconiosis” and substituting “Subject to subsections (2) and (3), where incapacity results from pneumoconiosis or mesothelioma (or both)”.

(3) Section 10 is amended by adding –

“(2) Where –

(a) a person has not previously received compensation under this Ordinance;

(b) subsequently the Pneumoconiosis Medical Board determines on a certain

date that the person is suffering from both pneumoconiosis and mesothelioma; and

- (c) there are different earliest diagnosed dates for the 2 diseases,

then for the purposes of calculating the compensation payable under subsection (1) –

- (d) the earlier of the 2 earliest diagnosed dates shall be taken as the earliest diagnosed date for both diseases under that subsection; and

- (e) the degree of incapacity of the person at the date of diagnosis resulting from both diseases as determined by the Pneumoconiosis Medical Board shall be the degree of incapacity for determining the multiplier in paragraph 2 of Part III of the First Schedule.

(3) Where a person has already received compensation under this Ordinance in respect of either pneumoconiosis or mesothelioma (“the first disease”) and the Pneumoconiosis Medical Board subsequently made a determination that the person is also suffering from the other of the 2 diseases (“the second disease”), then for the purposes of calculating the compensation payable under subsection (1) in respect of the second disease –

- (a) the earliest diagnosed date of the second disease shall be taken as the earliest diagnosed date for that disease under that subsection; and

- (b) the degree of incapacity of the person for determining the multiplier in paragraph 2 of Part III of the First Schedule shall be the difference between –
- (i) the aggregate degree of incapacity of the person resulting from both pneumoconiosis and mesothelioma at the date of diagnosis of the second disease as determined by the Pneumoconiosis Medical Board; and
 - (ii) the degree of incapacity of the person resulting from the first disease as determined by the Pneumoconiosis Medical Board on the basis of the last medical examination of the person under this Ordinance.”.

11. Compensation for constant attention

Section 11(1) is amended by adding “or mesothelioma (or both)” after “pneumoconiosis”.

12. Payment of expenses for medical treatment

(1) Section 12(1) is amended by adding “or mesothelioma (or both)” after “from pneumoconiosis”.

(2) Section 12(1) is amended by repealing “his pneumoconiosis” and substituting “the above disease or diseases suffered by him”.

(3) Section 12(2)(b) is repealed and the following substituted –

“(b) in respect of a disease mentioned in subsection (1) shall be payable only in respect of the period subsequent to the date of diagnosis of that disease;”.

13. Payment of expenses for medical appliances

(1) Section 12A(1) is amended by adding “or mesothelioma (or both)” after “from pneumoconiosis”.

(2) Section 12A(1) is amended by repealing “person’s pneumoconiosis” and substituting “above disease or diseases suffered by him”.

(3) Section 12A(2)(b) is repealed and the following substituted –

“(b) in respect of a disease mentioned in subsection (1) shall be payable only in respect of the period subsequent to the date of diagnosis of that disease.”.

14. Claims for expenses for medical treatment and medical appliances

(1) Section 12B(3) is amended by repealing “his pneumoconiosis” and substituting “the pneumoconiosis or mesothelioma (or both) suffered by him”.

(2) Section 12B(3) is amended by repealing “of pneumoconiosis” and substituting “of the pneumoconiosis or mesothelioma (or both) suffered by him”.

15. Common law damages

(1) Section 13(1) is amended by adding “or mesothelioma (or both)” after “pneumoconiosis”.

(2) Section 13(2) is amended by adding “or mesothelioma (or both)” after “pneumoconiosis”.

(3) Section 13(3A) is amended by adding “or mesothelioma (or both)” after “pneumoconiosis”.

(4) Section 13(3B) is amended by adding “or mesothelioma (or both)” after “pneumoconiosis”.

(5) Section 13(4) is amended by adding “or mesothelioma (or both)” after “pneumoconiosis”.

(6) Section 13(5) is amended by adding “or mesothelioma (or both)” after “pneumoconiosis”.

(7) Section 13(7) is amended by adding “or mesothelioma (or both)” after “pneumoconiosis”.

(8) Section 13(8) is amended by repealing “, other than compensation” and substituting “in respect of the pneumoconiosis, other than compensation in respect of the pneumoconiosis”.

(9) Section 13 is amended by adding –

“(8A) Where after the commencement of the Pneumoconiosis (Compensation)(Amendment) Ordinance 2008 (of 2008), a person is awarded damages for death or disability resulting from mesothelioma in a judgment of a court in Hong Kong the whole of the person’s entitlement to compensation or other payment under this Ordinance in respect of the mesothelioma, other than compensation in respect of the mesothelioma payable prior to the date of such judgment, shall by virtue of this section be extinguished.”.

(10) Section 13(9) is repealed and the following substituted –

“(9) In this section “death or disability resulting from pneumoconiosis or mesothelioma (or both)” (肺塵埃沉着病或間皮瘤(或兩者)引致的死亡或殘疾) means death, disability, pain and suffering or any other loss or damage of any kind resulting from pneumoconiosis or mesothelioma (or both); and “death or disability resulting from pneumoconiosis” (肺塵埃沉着病引致的死亡或殘疾) and “death or disability resulting from mesothelioma” (間皮瘤引致的死亡或殘疾) shall be construed accordingly.”.

16. Section added

The following is added immediately after section 13A –

“13B. Certain sections do not confer additional compensation to persons with both diseases

For the avoidance of doubt, where –

- (a) a person is suffering from both pneumoconiosis and mesothelioma; and
- (b) the person or the members of his family is or are entitled to compensation or other payment under section 5, 5A, 5B, 6(1)(b) or 11,

the amount of compensation or other payment payable to the person or the members of his family under each of those sections shall not be higher than the amount the person or the members of his family would have been entitled to under that section had the person been only suffering from one of the above diseases.”.

17. Claims for compensation

(1) Section 14(1)(a) is amended by adding “or mesothelioma (or both)” after “pneumoconiosis”.

(2) Section 14(1)(b) is amended by repealing “dies (whether as a result of pneumoconiosis or from a cause other than pneumoconiosis)” and substituting “or mesothelioma (or both) dies (whether as a result of the above disease or diseases or from a cause other than the above disease or diseases)”.

(3) Section 14(1) is amended, in the Chinese text, by repealing “的範圍內” and substituting “範圍內”.

(4) Section 14 is amended by adding –

“(1A) Where –

- (a) a person has been determined by the Pneumoconiosis Medical Board to be suffering from either pneumoconiosis or mesothelioma; and

- (b) that person subsequently suffers from the other of the 2 diseases and he wishes to make a further claim for compensation for that other disease,

instead of notifying the Commissioner under this section in respect of the further claim, he shall request the Pneumoconiosis Medical Board to conduct a further medical examination, and section 23A applies to the request accordingly.”.

18. Commissioner to determine certain matters and issue certificate

(1) Section 15(1)(a) is amended by adding “or mesothelioma (or both)” after “suffers from pneumoconiosis”.

(2) Section 15(1)(a) is amended by repealing “suffered from pneumoconiosis” and substituting “suffered from the above disease or diseases”.

19. Interim payments of compensation to family members

Section 15A(1)(a) is amended by adding “or mesothelioma (or both)” after “pneumoconiosis”.

20. Board to pay compensation to Government in certain circumstances

Section 19 is amended by adding “or mesothelioma (or both)” after “pneumoconiosis”.

21. Further medical examination

(1) Section 23A(1) is amended by adding “or mesothelioma (or both)” after “pneumoconiosis”.

(2) Section 23A(1) is amended by repealing “whether there has been any increase in the degree of his incapacity.” and substituting –

“–

- (a) whether there has been any increase in the degree of his incapacity; or
- (b) (if he has previously been determined by the Pneumoconiosis Medical Board to be suffering from either pneumoconiosis or mesothelioma only) whether he is also suffering from the other of the 2 diseases (referred to in this section as “the second disease”) and whether there has been any increase in the degree of his incapacity.”.

(3) Section 23A(2)(a) is amended by repealing “under this section for a further medical examination” and substituting “for a further medical examination for the purposes of subsection (1)(a)”.

(4) Section 23A(2)(b) is amended by repealing “an examination under this section” and substituting “the further medical examination”.

(5) Section 23A(3)(a) is amended by repealing “under this section” and substituting “for a further medical examination for the purposes of subsection (1)(a)”.

(6) Section 23A(3) is amended by repealing “an examination under this section” and substituting “the further medical examination”.

(7) Section 23A is amended by adding –

“(3A) A request for a further medical examination for the purposes of subsection (1)(b) shall not be made unless the request is supported by an opinion given by a registered medical practitioner attending the person to the effect that the person is suffering from the second disease, and on receipt of such a request and such an opinion, the further medical examination shall be conducted by the Pneumoconiosis Medical Board as soon as practicable.”.

(8) Section 23A(4) is amended by repealing “section 6(1)(b)” and substituting “section 6(1)(a)(ii)”.

(9) Section 23A(4) is amended by repealing “an examination conducted under this section, other than an early examination referred to in subsection (3),” and substituting “a further medical examination conducted under this section”.

(10) Section 23A(4)(a) is amended by repealing “where the request for examination under this section was” and substituting “in the case of a request for a further medical examination for the purposes of subsection (1)(a)”.

22. Determination of incapacity or cause of death

(1) Section 24(1)(a) is amended by adding “or mesothelioma (or both)” after “from pneumoconiosis”.

(2) Section 24(1)(a)(i) is amended, in the Chinese text, by repealing “此病” and substituting “上述疾病”.

(3) Section 24(1)(a)(ii) is amended by repealing “pneumoconiosis” and substituting “above disease or diseases”.

(4) Section 24(1)(b)(i) is amended, in the Chinese text, by repealing “檢驗” and substituting “檢查”.

(5) Section 24(1)(b)(ii) is amended by repealing the full stop and substituting “; and”.

(6) Section 24(1)(b) is amended by adding –
 “(iii) (if the examination is conducted for the purposes of section 23A(1)(b)) determine whether the person suffers from the second disease referred to in that section and the date from which it can be said that the person has been so suffering.”.

(7) Section 24 is amended by adding –

“(1A) Where a person is suffering from both pneumoconiosis and mesothelioma, the Pneumoconiosis Medical Board shall, in determining the degree of incapacity of the person, take into account the effect of both diseases on the person as a whole, and in any event, the degree of incapacity determined in respect of the person shall not exceed 100%.”.

(8) Section 24(2)(a) is amended by adding “or mesothelioma” after “that the person was suffering from pneumoconiosis”.

(9) Section 24(2)(a) is amended by repealing “pneumoconiosis at” and substituting “the above disease or diseases at”.

(10) Section 24(2)(b) is amended by repealing “suffering from pneumoconiosis” where it twice appears and substituting “suffering from pneumoconiosis or mesothelioma (or both)”.

(11) Section 24(2)(b) is amended by repealing “resulted from pneumoconiosis” and substituting “resulted from the above disease or diseases”.

23. Functions and powers of the Board

(1) Section 26(1)(ba) is amended by adding “and mesothelioma” after “prevent pneumoconiosis”.

(2) Section 26(1)(ba) is amended by repealing “from pneumoconiosis” and substituting “from the above diseases”.

(3) Section 26(1)(bb) is amended by repealing “the commencement of Part II” and substituting “1 January 1981”.

24. Payment of levy and surcharge

Section 37(2) is amended by adding “and Malignant Mesothelioma” after “Pneumoconiosis”.

25. Subrogation

Section 40A(1) is amended by adding “or mesothelioma” after “pneumoconiosis”.

26. Application to claims prior to the 1993 amending Ordinance

(1) Section 49(4)(d) is amended, in the Chinese text, by repealing “弓|致” and substituting “弓|致的”.

(2) Section 49(4)(e) is amended, in the Chinese text, by repealing “弓|致” and substituting “弓|致的”.

27. Amounts of compensation

The heading of Part I of the First Schedule is amended by adding “OR MESOTHELIOMA (OR BOTH)” after “PNEUMOCONIOSIS”.

28. Expenses for medical treatment and medical appliances

(1) The Second Schedule is amended, in paragraph 1 of Part I, by adding “in respect of pneumoconiosis or mesothelioma (or both)” before “as an in-patient”.

(2) The Second Schedule is amended, in paragraph 2 of Part I, by adding “in respect of pneumoconiosis or mesothelioma (or both)” before “other than as an in-patient”.

(3) The Second Schedule is amended, in paragraph 3 of Part I, by adding “in respect of pneumoconiosis or mesothelioma (or both)” before “on any day”.

29. Pneumoconiosis Compensation Fund Board

(1) The Third Schedule is amended, in the Chinese text, in paragraph 6(6), by repealing “的情況下” and substituting “範圍內”.

(2) The Third Schedule is amended, in paragraph 8(2), by adding “and Malignant Mesothelioma” after “Pneumoconiosis”.

30. Degree of incapacity

(1) The Fourth Schedule is amended, in paragraph 1, by adding “suffering from pneumoconiosis” after “of a person”.

(2) The Fourth Schedule is amended by adding –

“1A. The degree of incapacity of a person suffering from mesothelioma or from both pneumoconiosis and mesothelioma shall be determined by reference to –

(a) the person’s loss of lung function resulting from mesothelioma or from both pneumoconiosis and mesothelioma (as the case may be), which loss shall, except where paragraph 4 applies, be assessed by reference to the forced vital capacity of the person in accordance with this Schedule; and

(b) the person’s loss of other bodily functions (if any) resulting from mesothelioma, which loss shall be assessed by reference to the findings of such other clinical examinations as the Pneumoconiosis Medical Board considers appropriate.”.

(3) The Fourth Schedule is amended, in paragraph 2, by adding “or mesothelioma (or both),” after “pneumoconiosis”.

(4) The Fourth Schedule is amended, in paragraph 3, by adding “or mesothelioma (or both)” after “pneumoconiosis”.

(5) The Fourth Schedule is amended, in the Chinese text, in paragraph 4, by adding “的結果” after “檢驗”.

(6) The Fourth Schedule is amended by adding –

“4A. The degree of incapacity of a person determined in accordance with this Schedule shall not exceed 100%, even though he suffers from both pneumoconiosis and mesothelioma.”.

- (a) by repealing “P.C.A. No. _____ of 19 ____” and substituting “P.M.M.C.A. No. _____ of ____”;
- (b) by adding “and Malignant Mesothelioma” after “Pneumoconiosis”;
- (c) by repealing “Dated the day of 19.....” and substituting “Dated the day of”.

PART 3

CONSEQUENTIAL AMENDMENTS

Specification of Public Offices

36. Schedule amended

The Schedule to the Specification of Public Offices (Cap. 1 sub. leg. C) is amended, in column 2, by repealing “Pneumoconiosis (Compensation) Ordinance” where it appears opposite to “Commissioner for Labour” in column 1 and substituting “Pneumoconiosis and Malignant Mesothelioma (Compensation) Ordinance”.

Employment Ordinance

37. Specified Ordinances

The Fourth Schedule to the Employment Ordinance (Cap. 57) is amended, in item 7, by adding “and Malignant Mesothelioma” after “Pneumoconiosis”.

Pensions Ordinance

38. Pensions to dependants when an officer dies on duty

Section 18(6) of the Pensions Ordinance (Cap. 89) is amended by adding “and Malignant Mesothelioma” after “Pneumoconiosis”.

Pensions Regulations

39. Officers retiring on account of injuries

Regulation 31(6) of the Pensions Regulations (Cap. 89 sub. leg. A) is amended by adding “and Malignant Mesothelioma” after “Pneumoconiosis”.

Legal Aid (Assessment of Resources and Contributions) Regulations

40. Rules for computing disposable capital

Schedule 2 to the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91 sub. leg. B) is amended, in rule 12(*b*), by adding “and Malignant Mesothelioma” after “Pneumoconiosis”.

Pension Benefits Ordinance

41. Grant of additional pension on account of injuries

Section 15(3) of the Pension Benefits Ordinance (Cap. 99) is amended by adding “and Malignant Mesothelioma” after “Pneumoconiosis”.

42. Dependant pension

Section 19(9) is amended by adding “and Malignant Mesothelioma” after “Pneumoconiosis”.

Births and Deaths Registration Ordinance

43. Forms

The Second Schedule to the Births and Deaths Registration Ordinance (Cap. 174) is amended, in Form 18, in Part III, by repealing paragraph 2(7)(*a*) and substituting –

- “(a) the death was caused by –
 - (i) an occupational disease, within the meaning of section 3 of the Employees’ Compensation Ordinance (Cap. 282);
 - or

- (ii) pneumoconiosis, or mesothelioma, within the meaning of section 2(1) of the Pneumoconiosis and Malignant Mesothelioma (Compensation) Ordinance (Cap. 360), or both of those diseases; or”.

Auxiliary Forces Pay and Allowances (Pensions) Regulation

44. Exclusion from application

(1) Section 8(a) of the Auxiliary Forces Pay and Allowances (Pensions) Regulation (Cap. 254 sub. leg. I) is amended by adding “and Malignant Mesothelioma” after “Pneumoconiosis”.

(2) Section 8(b) is amended by adding “and Malignant Mesothelioma” after “Pneumoconiosis” where it twice appears.

Employees’ Compensation Ordinance

45. Saving in case of diseases other than occupational diseases

Section 36(2)(a) of the Employees’ Compensation Ordinance (Cap. 282) is repealed and the following substituted –

- “(a) pneumoconiosis or mesothelioma (or both) in respect of which compensation is recoverable under the Pneumoconiosis and Malignant Mesothelioma (Compensation) Ordinance (Cap. 360); or”.

Pension Benefits (Judicial Officers) Ordinance

46. Grant of additional pension on account of injuries

Section 15(3) of the Pension Benefits (Judicial Officers) Ordinance (Cap. 401) is amended by adding “and Malignant Mesothelioma” after “Pneumoconiosis”.

47. Dependant pension

Section 20(9) is amended by adding “and Malignant Mesothelioma” after “Pneumoconiosis”.

Coroners Ordinance**48. Schedule 1 amended**

Schedule 1 to the Coroners Ordinance (Cap. 504) is amended, in Part 1, by repealing paragraph 7(a) and substituting –

- “(a) the death was caused by –
- (i) an occupational disease, within the meaning of section 3 of the Employees’ Compensation Ordinance (Cap. 282);
or
 - (ii) pneumoconiosis, or mesothelioma, within the meaning of section 2(1) of the Pneumoconiosis and Malignant Mesothelioma (Compensation) Ordinance (Cap. 360), or both of those diseases; or”.

49. Properly interested persons

Schedule 2 is amended, in paragraph 6, by repealing everything after “have been caused by” and substituting –

- “–
- (a) any injury received in the course of his employment; or
 - (b) any of the following diseases which may have been contracted in the course of his employment –
 - (i) an occupational disease, within the meaning of section 3 of the Employees’ Compensation Ordinance (Cap. 282);
 - (ii) pneumoconiosis, or mesothelioma, within the meaning of section 2(1) of the Pneumoconiosis

and Malignant Mesothelioma (Compensation) Ordinance (Cap. 360); or

- (iii) any other disease (whether described as an occupational disease or otherwise).”.

Construction Workers Registration Ordinance

50. Provision of information and production of documents

(1) Section 31(3)(a)(ii) of the Construction Workers Registration Ordinance (Cap. 583) is amended by adding “and Malignant Mesothelioma” after “Pneumoconiosis”.

(2) Section 31(3)(e) is amended by adding “and Malignant Mesothelioma” after “under the Pneumoconiosis”.

Construction Industry Council Ordinance

51. Protection of information given under sections 59 and 60

(1) Section 61(2)(a) of the Construction Industry Council Ordinance (Cap. 587) is amended by adding “and Malignant Mesothelioma” after “Pneumoconiosis”.

(2) Section 61(2)(e) is amended by adding “and Malignant Mesothelioma” after “under the Pneumoconiosis”.

Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Ordinance 2006

52. Long title amended

The long title to the Certification for Employee Benefits (Chinese Medicine)(Miscellaneous Amendments) Ordinance 2006 (16 of 2006) is amended by adding “and Malignant Mesothelioma” after “Pneumoconiosis” wherever it appears.

53. Part heading amended

The heading of Part 4 is amended by adding “AND MALIGNANT MESOTHELIOMA” after “PNEUMOCONIOSIS”.

54. Interpretation

Section 23(1) is amended by adding “and Malignant Mesothelioma” after “Pneumoconiosis”.

55. Section added

(1) Section 25 is amended, in the new section 12AA(1), by adding “or mesothelioma (or both)” after “from pneumoconiosis”.

(2) Section 25 is amended, in the new section 12AA(1)(a), by repealing “his pneumoconiosis” and substituting “the above disease or diseases suffered by him”.

56. Claims for medical expenses and expenses for medical appliances

(1) Section 26(3) is amended, in the new section 12B(3)(e)(i), by repealing “his pneumoconiosis” and substituting “the pneumoconiosis or mesothelioma (or both) suffered by him”.

(2) Section 26(3) is amended, in the new section 12B(3)(e)(ii), by adding “or mesothelioma (or both)” after “pneumoconiosis”.

(3) Section 26(3) is amended, in the new section 12B(3)(f), by repealing “his pneumoconiosis” and substituting “the pneumoconiosis or mesothelioma (or both) suffered by him”.

57. Further medical examination

Section 28 is amended, in the new section 23A(3)(a), by repealing “under this section” and substituting “for a further medical examination for the purposes of subsection (1)(a)”.

Explanatory Memorandum

The purpose of this Bill is to amend the Pneumoconiosis (Compensation) Ordinance (Cap. 360) (“the Ordinance”) and its subsidiary legislation to provide compensation to, or in respect of, persons suffering from malignant mesothelioma (“mesothelioma”). The main provisions of the Bill are explained below.

2. The Bill is divided into 3 Parts.

Part 1

3. Part 1 provides for the short title to the Bill. The Bill when enacted will come into operation on the day on which it is published in the Gazette.

Part 2

4. Clauses 2 and 3 amend the long title and short title to the Ordinance to reflect the inclusion of mesothelioma under the Ordinance.

5. Clause 4 adds a definition for “mesothelioma” in section 2(1) of the Ordinance. The definition of “date of diagnosis” and “earliest diagnosed dates” are extended to cover persons suffering from mesothelioma.

6. Clause 5 amends section 4 of the Ordinance to provide compensation to a person suffering from mesothelioma. Compensation in respect of his mesothelioma shall only be payable where the date of diagnosis of his mesothelioma or the date of his death occurs on or after the date of commencement of the Bill when enacted.

7. Clauses 6 to 14 amend sections 5, 5A, 5B, 6, 10, 11, 12, 12A and 12B of the Ordinance to provide that the compensation and other payment payable under those sections are also payable to persons suffering from mesothelioma. New provisions are added in section 10 of the Ordinance to set out the methods for calculating the compensation payable for incapacity prior to the date of diagnosis for persons suffering from both pneumoconiosis and mesothelioma.

8. Clause 17(4) provides that where a person suffering from either pneumoconiosis or mesothelioma is subsequently found to be suffering from the other of the 2 diseases and wishes to claim compensation, instead of making another claim under section 14 of the Ordinance, he shall make a request for a further medical examination under section 23A of the Ordinance.

9. Clause 21 amends section 23A of the Ordinance to provide that a person suffering from either pneumoconiosis or mesothelioma may request the Pneumoconiosis Medical Board to conduct a further medical examination to determine whether he is also suffering from the other of the 2 diseases (“the second disease”) and whether there has been any increase in the degree of his incapacity, but the request has to be supported by a medical opinion that the person is suffering from the second disease. Clause 22 amends section 24 of the Ordinance to empower the Pneumoconiosis Medical Board to conduct a further medical examination to determine whether a person is suffering from the second disease.

10. For a person suffering from both pneumoconiosis and mesothelioma, the new section 24(1A) of the Ordinance (added by clause 22(7)) provides that the degree of incapacity determined by the Pneumoconiosis Medical Board in respect of such person shall not exceed 100%.

11. Clause 30 amends the Fourth Schedule to the Ordinance to provide for a mechanism to determine the degree of incapacity of a person suffering from mesothelioma, or from both pneumoconiosis and mesothelioma.

Part 3

12. Part 3 (clauses 36 to 57) contains consequential amendments to the following Ordinances and subsidiary legislation –

- (a) Specification of Public Offices (Cap. 1 sub. leg. C);
- (b) Employment Ordinance (Cap. 57);
- (c) Pensions Ordinance (Cap. 89);
- (d) Pensions Regulations (Cap. 89 sub. leg. A);

- (e) Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91 sub. leg. B);
- (f) Pension Benefits Ordinance (Cap. 99);
- (g) Births and Deaths Registration Ordinance (Cap. 174);
- (h) Auxiliary Forces Pay and Allowances (Pensions) Regulation (Cap. 254 sub. leg. I);
- (i) Employees' Compensation Ordinance (Cap. 282);
- (j) Pension Benefits (Judicial Officers) Ordinance (Cap. 401);
- (k) Coroners Ordinance (Cap. 504);
- (l) Construction Workers Registration Ordinance (Cap. 583);
- (m) Construction Industry Council Ordinance (Cap. 587); and
- (n) Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Ordinance 2006 (16 of 2006).

**Financial Implications of the Amendment Proposal on
the Pneumoconiosis Compensation Fund Board**

According to the Hong Kong Cancer Registry of the Hospital Authority, there were on average 12 new cases of mesothelioma per year during the 10-year period from 1995 to 2004. The patients in some of these cases might suffer concurrently from pneumoconiosis with fibrosis of the lungs. Compensation should already have been paid to these patients under the PCO. On the other hand, in view of the more common industrial use of asbestos from the 1960's to 1970's and the long latent period between asbestos exposure and development of mesothelioma, it is envisaged that the number of new mesothelioma cases will not decrease during the next 10 years.

2. Taking into account these factors, it is estimated that about 10 new mesothelioma claims without fibrosis of the lungs will be received by the PCFB every year. The additional compensation payout is estimated to be \$7 million (or \$700,000 per case) per year. As at the end of September 2007, the cumulative balance of the PCFB stood at about \$996 million. Judging from the present financial position of the PCFB, there will be no need to adjust the levy collected from the construction and quarrying industries if the proposal is implemented.

**Compensation provided under
the Pneumoconiosis (Compensation) Ordinance**

- (a) **Compensation for incapacity** arising from pneumoconiosis until the death of the pneumoconiotic concerned. Compensation for total incapacity is \$18,930 per month (for the year 2007).
- (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 for incapacity arising from pneumoconiosis.
- (c) **Compensation for pain, suffering and loss of amenities** resulting from pneumoconiosis, at a monthly rate of \$3,180, is payable until the death of the pneumoconiotic concerned.
- (d) **Compensation for constant attention**, at a monthly rate of \$4,160, is 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** that are necessary for the incapacity arising from pneumoconiosis.
- (g) **Compensation for death** 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 under the Ordinance. The amount of compensation is \$100,000.
- (i) **Funeral expenses**, subject to a ceiling of \$35,000, is reimbursable to any person who has incurred expenses for the funeral of a pneumoconiotic who dies as a result of the disease.