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Panel on Manpower

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 20 January 2012**

Review of the levels of compensation under the Employees' Compensation Ordinance, the Pneumoconiosis and Mesothelioma (Compensation) Ordinance and the Occupational Deafness (Compensation) Ordinance

Purpose

This paper provides background information and summarizes the discussions of the Panel on Manpower ("the Panel") on the Administration's review of the levels of compensation under the Employees' Compensation Ordinance (Cap. 282) ("ECO"), the Pneumoconiosis and Mesothelioma (Compensation) Ordinance¹ (Cap. 360) ("PMCO") and the Occupational Deafness (Compensation) Ordinance (Cap. 469) ("ODCO").

Background

2. ECO provides for the payment of compensation to employees and family members of the deceased employees for occupational diseases, injuries or deaths caused by accidents arising out of and in the course of employment. PMCO provides for the payment of compensation to persons and their family members in respect of incapacity or death resulting from pneumoconiosis and/or mesothelioma. ODCO provides for the compensation and other benefits of persons who have been exposed to noise in their working environment and have suffered noise-induced deafness.

3. It is an established practice for the Administration to review the levels of compensation provided for under ECO and PMCO every two years. Broadly speaking, adjustments are made mainly in the light of the wage movement as

¹ The Pneumoconiosis and Mesothelioma (Compensation) Ordinance was formerly known as the Pneumoconiosis (Compensation) Ordinance which was re-titled on 18 April 2008 to reflect the extension of the scope of the Ordinance to cover cancerous mesothelioma.

reflected by the Nominal Wage Index ("NWI") and price movement as reflected by the Consumer Price Index ("CPI") (A) in the intervening years.

Past discussions of the Panel

4. At the Panel meeting on 23 February 2010, the Administration briefed members on its proposal to increase the amounts of five compensation items under ECO in line with the findings of a biennial review held in 2007 and 2008 on the levels of compensation under ECO and PMCO.

Review findings for 2007 and 2008

5. Members noted that the review in 2007 and 2008 was the first time when NWI, over the 10-year period from 1999 to 2008, did not move in tandem with CPI(A), with the former having gone up by 2.34% and the latter having gone down by 6.88%. In order to avoid causing hardship to employees, the Committee on Employees' Compensation of the Labour Advisory Board had, in a spirit of collaboration and mutual understanding, recommended that the levels of compensation for the five relevant items under ECO be adjusted upwards by 2.34% and the amounts of compensation under ECO and PMCO should be kept unchanged at their existing levels in respect of those items which, according to the review findings, would have to be adjusted downwards. In line with past practice, it was also agreed that the levels of compensation for the relevant items under the two ordinances would not be revised upward until the cumulative rate of decrease in the price index had been offset by future increase.

Sufficiency of compensation for death and permanent total incapacity

6. While welcoming the proposal put forward by employer and employee representatives on the Labour Advisory Board ("LAB"), some members were of the view that the ceiling of monthly earnings for calculating compensation for death and permanent total incapacity, which was proposed to be increased from \$21,000 to \$21,500, was far from adequate for meeting household expenses. These members pointed out that the small increase of 2.34% in NWI reflected that the wages of elementary workers had decreased in real terms. Given that the employees concerned had already suffered total incapacity, the proposed increase might only slightly alleviate their situation.

7. The Administration advised members that the actual increase was not small. An employee who died or suffered from permanent incapacity as a result of a work injury or an occupational disease was entitled to a lump sum compensation calculated with reference to the employee's age, monthly earnings and permanent loss of earning capacity. The proposed ceiling of monthly

earnings for calculating compensation for death and permanent total incapacity at \$21,500 was a base figure to be multiplied by a factor which could be up to 84 or 96 months. Moreover, under the proposal, the minimum compensation for death would be increased from \$303,000 to \$310,000, and the minimum compensation for permanent total incapacity would be increased from \$344,000 to \$352,000.

Review mechanism

8. There were divided views over the review mechanism. While some members held the view that there should not be any downward adjustments for compensation items under ECO and PMCO, some other members were supportive of the prevailing review mechanism which allowed both upward and downward adjustments of the compensation levels.

9. The Administration explained that while the review mechanism allowed upward and downward adjustments, the Administration would take into account the nature of various compensation items in each review exercise. For instance, some items which involved the purchase of medical equipment or appliances would be adjusted according to price changes as reflected by CPI(A).

Comprehensive review of the employee compensation system

10. Some members suggested that the Administration should conduct a comprehensive review of the employee compensation system and introduce improvements to keep pace with the development of the society.

11. According to the Administration, the employee compensation system hinged on both the rights and benefits of the employees and the affordability of the employers. As it had been based on a no-fault system whereby compensation was payable irrespective of the degree of fault of the parties concerned, in determining the scope and levels of compensation, it was necessary to strike a reasonable balance between the interests of the employers and the employees. Any amendments to the existing system would require consultation with relevant stakeholders and consensus reached between employers and employees. In the view of the Administration, it was not advisable to make drastic changes to the existing compensation system, and it would be preferable to adopt a more prudent and pragmatic approach whereby individual items or specific areas would be reviewed, if necessary. Over the years, various legislative amendments had been made to relevant ordinances to progressively improve the rights and benefits of employees. For instance, the minimum compensation for permanent total incapacity had been raised from \$9,600 in 1970 to \$344,000 in 1998. The scope of employee compensation had also been expanded to cover more occupational diseases, such as the

inclusion of Severe Acute Respiratory Syndrome into the list of compensable occupational diseases in 2005 and the making of mesothelioma a compensable disease under PMCO in 2008. In February 2010, the coverage of ODCO had also been extended to cover noise-induced monaural hearing loss. The Administration assured members that it would continue to adopt an open attitude towards specific proposals to improve the employee compensation system.

Latest developments

12. According to the Administration, to ensure consistency in the compensation levels between ODCO and ECO, those under ODCO will also be reviewed in the two-year exercise starting from the years 2009 and 2010. In its letter to the Panel dated 29 December 2011, the Administration advised that it had reviewed the changes in the wage and price indices and other relevant factors in 2009 and 2010 to assess whether any changes in the compensation levels should be recommended. Having considered the review findings as well as the implications on employers and employees, LAB unanimously agreed at its meeting on 20 December 2011 to the following package of proposals -

- (a) in order not to affect the interests of employees or their families, the amounts for various compensation items under ECO and PMCO should be kept unchanged at their existing levels, notwithstanding the cumulative downward price movement;
- (b) the levels of compensation for five items under ECO could be adjusted upwards by 1.48%, and two items under ODCO could be adjusted upwards by 3.9% and 4.75% in accordance with the cumulative increase in wage movement; that one item under PMCO could be adjusted upwards by 4.09% with reference to the monthly wages and food provision for a foreign domestic helper. Furthermore, the reimbursable maximum for funeral expenses under ECO and PMCO could be adjusted upwards from \$35,000 to \$55,000 with reference to the latest cost information collected on funeral expenses; and
- (c) the cumulative negative price movement since the last adjustment in 1998 should be taken into account in future reviews, i.e. the relevant levels of compensation under ECO and PMCO would not be revised upwards until the cumulative rate of decrease in price movement is offset by future increase.

13. The Administration will brief members on the recommendations in paragraph 12 above at the Panel meeting on 20 January 2011.

Relevant papers

14. A list of the relevant papers on the Legislative Council website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
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**Relevant papers on
Review of the levels of compensation under the Employees' Compensation
Ordinance, the Pneumoconiosis and Mesothelioma (Compensation)
Ordinance and the Occupational Deafness (Compensation) Ordinance**

Committee	Date of meeting	Paper
Panel on Manpower	23.2.2010 (Item III)	<u>Agenda</u> <u>Minutes</u>

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