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Panel on Manpower

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 12 April 2012**

Occupational diseases in Hong Kong

Purpose

This paper summarizes past discussions by the Panel on Manpower ("the Panel") on occupational diseases in Hong Kong in the Fourth Legislative Council ("LegCo").

Background

2. The Employees' Compensation Ordinance (Cap. 282) ("ECO"), the Occupational Deafness (Compensation) Ordinance (Cap. 469) ("ODCO") and the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap. 360) ("PMCO") prescribe altogether 52 occupational diseases. Section 36(1) of ECO provides for the claim of compensation where a disease is not prescribed in these Ordinances but can be proved in individual cases to be a personal injury by accident arising out of and in the course of employment. All the 52 occupational diseases are also specified in Schedule 2 to the Occupational Safety and Health Ordinance (Cap. 509) ("OSHO") as notifiable occupational diseases. Medical practitioners are required to notify the Commissioner for Labour of cases of these occupational diseases.

3. According to the Administration, the number of confirmed cases of occupational diseases in 2009 and 2010 was 268 and 229 respectively. Occupational deafness, silicosis and tenosynovitis of the hand or forearm were the most common confirmed cases in 2010. The relevant figures are set out in **Appendix I**.

Deliberations of the Panel

List of compensable occupational diseases in the Second Schedule to ECO

4. Some members pointed out that as the service industry had become the mainstay in Hong Kong and the manufacturing sector was shrinking in recent decades, the Administration should review the list of compensable occupational diseases in the Second Schedule to ECO to examine whether its scope and coverage should be expanded in view of these changes. They considered that certain work-related diseases, such as musculoskeletal disorders and lower limb varicose vein, should be prescribed as occupational diseases.

5. The Administration advised that it reviewed the list of compensable occupational diseases from time to time and had updated the list in the light of international standards. Since 1991, there had been four amendments to the list, which included the addition of 13 new occupational diseases and expansion of the coverage of three occupational diseases. Mesothelioma was prescribed as a new occupational disease under PMCO in 2008. The Administration would continue with such reviews.

6. There was a suggestion that the Administration should commence a comprehensive review of the existing regulatory framework governing occupational safety and health of workers, with a view to mapping out more effective strategies and measures, such as introducing an insurance system, to strengthen the protection for workers against occupational diseases and work-related diseases.

7. The Administration advised that the proposal of setting up an insurance system was a new concept and should be considered with great care and prudence. Once a disease was prescribed as an occupational disease, workers suffering from the disease could claim compensation if they were engaged in the designated occupations. It was important to establish the casual relationship between a disease and the occupation.

Criteria for prescribing occupational diseases

8. Concern was raised that musculoskeletal disorders, such as back pain, tennis elbow and osteoarthritis of knee, which were common among domestic helpers, cashiers, computer operators and employees working in the airport, had not been prescribed as occupational diseases. The Administration advised that Hong Kong followed international practices and would make reference to the criteria adopted by the International Labour Organization in determining whether a disease should be prescribed as an occupational disease. Prescription of a disease as an occupational disease was based on the criteria of

whether workers engaged in a certain occupation in Hong Kong had a significant and recognized risk of contracting the disease; and whether the causal relationship between the disease and the occupation could be reasonably presumed or established in individual cases.

9. The Administration stressed that the latter criterion was particularly important in differentiating occupational diseases from work-related diseases. The 52 occupational diseases specified in ECO, ODCO and PMCO were diseases having specific or strong relationship with occupations, generally with only one causal agent, and recognized as such. Musculoskeletal disorders, on the other hand, were diseases with multiple causal agents. Six musculoskeletal diseases, including tenosynovitis of the hand or forearm, had already been prescribed as occupational diseases. Other musculoskeletal disorders, such as low back pain and shoulder-neck pain, which were resulted from the interaction of multiple risk factors, including obesity, lack of exercise, excessive force and awkward posture, were commonly found in the general population and not limited to workers engaged in a certain occupation. As these disorders could not satisfy the criteria for prescribing as occupational diseases, they were classified as work-related diseases instead.

10. There was a suggestion that the Administration should consider lowering the threshold for prescribing musculoskeletal disorders as occupational diseases so as to provide protection to more workers. According to the Administration, even if a disease was not prescribed as occupational disease and included in the list of compensable occupational diseases in the Second Schedule to ECO, an employee was protected by ECO and could apply for compensation under section 36(1) of ECO. However, it had to be proved in individual cases that the disease was a personal injury by accident arising out of and in the course of employment.

Occupational and work-related diseases among workers in the airport

11. Concerns were raised that many aircraft cleaning workers and cargo handling workers had developed musculoskeletal disorders after having worked in the airport for two to three years. Some members called on the Administration to conduct more workplace inspections in the airport to ensure that employers took improvement measures to prevent occupational and work-related diseases among aircraft cleaning workers and cargo handling workers. A suggestion was made to the Administration to conduct "tracking study" on these workers in order to understand whether there was a causal relationship between the occupations and musculoskeletal disorders suffered by workers engaging in aircraft cleansing or cargo handling work.

12. The Administration responded that the Labour Department ("LD") attached great importance to work-related musculoskeletal disorders developed among workers engaging in aircraft cleansing or cargo handling work. LD had been urging airline operators and ground handling service operators to implement preventive measures to safeguard the occupational health of their employees. It had also reviewed the risk assessments conducted by the three companies on cargo handling operations, with a view to ensuring that appropriate measures, such as the provision of mechanical devices and uniform with knee pads, had been taken to reduce the health risk caused by excessive exertion of the hands and forearms and prolonged kneeling. The Administration also advised that it had been promoting the prevention of work-related musculoskeletal disorders among office personnel and catering workers through various channels. Apart from publishing specific guidelines on prevention of musculoskeletal disorders for distribution to employers and employees, LD proactively carried out publicity and promotion among air transport workers at the airport.

13. Members noted that to ensure that occupational health requirements under the Factories and Industrial Undertakings Ordinance (Cap. 59) ("FIUO") and OSHO were complied with, staff of LD carried out surprise inspections at different workplaces regularly and took enforcement actions against irregularities identified. They cited two cases involving workers handling cargo at the airport and telephone operators in Hong Kong Jockey Club's off-course betting centres and commented that it was difficult to prove by surprise inspections the significant risk of contracting a particular occupational disease by people engaging in a specific industry or work process.

14. The Administration advised that enforcement of OSHO and FIUO and their subsidiary legislation was undertaken by Occupational Safety Officers and Occupational Hygienists under the supervision of medical practitioners specializing in occupational medicine. In carrying out surprise inspections at different workplaces, the inspection teams would make use of appropriate equipment to assess employees' risk of contracting a certain disease. During the inspections, LD officers observed whether mechanical devices were provided to help workers lift heavy loads and whether the workers had adopted a proper posture in handling cargoes. In assessing the noise exposure of the off-course betting centre operators in real-life situation, LD officers conducted the workplace inspections at a time when business activities were at a maximal level, and with the use of specialized equipment.

Heat stroke at work

15. Members noted that LD had started to collate figures on injury cases owing to heat stroke at work as confirmed by medical practitioners since May

2009. In 2009, there were a total of five such cases with four involving outdoor work and one involving indoor work. In 2010, there were two such cases which involved physical training and driving vehicles without air-conditioning respectively. Up to July in 2011, there were six suspected cases of heat stroke at work. Members had enquired whether employers were advised to make arrangements for their workers to take rest breaks at regular intervals.

16. The Administration advised that given the long summer days in Hong Kong, LD would step up law enforcement during the months between April and September, which was the peak season for heat stroke, and conduct a series of inspections to targeted workplaces with a higher risk of heat stroke, for example, construction sites, outdoor cleansing workplaces and container yards. LD would take out immediate enforcement actions if employers were found violating the relevant legal requirements, such as failure to provide employees with drinking water. LD had also published a guide on the prevention of heat stroke at work in a general hot environment and practical methods for abating the risk of heat stroke. To address the problem of heat stroke to professional drivers and workers in construction sites, LD would collaborate with relevant stakeholders to promote occupational safety and health messages among the drivers and workers. For the non-air-conditioned buses, the bus companies had plans to phase out all such buses in 2012.

17. In response to a member's suggestion that the Administration should consider legislating to provide for rest breaks for employees, the Administration advised that the introduction of specific legislation for the prevention of heat stroke at work was a complex issue, given the need to cater for different work activities, environment and processes which might pose a higher risk of heat stroke to employees. The existing occupational safety and health legislation had already been designed to have the flexibility to cover different work activities and environment for the general protection of the safety and health of workers, including the protection of workers from heat stroke at work.

Measures to prevent occupational and work-related diseases

18. Information was sought on the measures adopted by the Administration to help workers diagnosed with work-related diseases, including the kind of medical advice to be given to them, whether LD would inspect the working environment of these patients, and whether rest breaks for certain work types would be made compulsory.

19. According to the Administration, LD had been adopting a three-pronged approach, namely, education, publicity and promotion as well as law enforcement to safeguard occupational safety and health of the working

population. It had proactively educated employers and employees about the prevention of occupational and work-related diseases. On the other hand, risk assessment on occupational safety and health hazards made during LD's site inspections, the issuance of suspension notices and improvement notices, and prosecutions instituted against employers' malpractices were direct, specific and effective measures to induce employers to improve the working environment. If the situation so warranted, the Administration would make recommendations on the policies to ban work processes or the use of materials which jeopardized the health of workers.

20. On the arrangement of rest breaks, LD had issued a "Guide on Rest Breaks" to encourage employers and employees to work out suitable rest break arrangements between themselves. If a worker's health was found at risk because of continuous work, the employer would be requested to provide appropriate rest breaks to his employees. If the rest break arrangement was unreasonable, workers could lodge a complaint against the employer and LD would follow up on the case.

21. In response to an enquiry about the effectiveness of the Administration's publication and distribution of a "Guide on Rest Breaks" to prevent musculoskeletal disorders and the suggestion of making rest breaks a compulsory requirement for certain work types, the Administration advised that it would be difficult to make rest break a statutory requirement because different industries had different work practices peculiar to their own operational needs. The "Guide on Rest Breaks" sought to provide general guidance for all industries.

Confirmed cases of occupational diseases

22. According to the Administration, the two Occupational Health Clinics ("OHCs") of LD had provided 13 200 consultations in 2009 for patients, among whom about 2 500 were new patients. About 85% of the patients seeking consultations from OHCs were diagnosed with diseases or injuries caused by, related to or aggravated by work, and the remaining suffered from diseases or injuries unrelated to work. Among the new patients, 24 were diagnosed as suffering from occupational diseases prescribed in ECO.

23. Members were concerned whether the small number of confirmed cases of occupational disease was due to improved preventive measures or the high threshold adopted in the definition of occupational disease. They noted that in determining whether a patient was suffering from an occupational disease, a doctor in OHC would examine each case on its own merit, including the past occupations and medical history of the patient, and would conduct inspection to the patient's workplace if necessary.

24. The Administration responded that while it recognized members' concern, LD had to follow the principle that only diseases that were prescribed as occupational diseases would be considered for employee compensation. A disease should not be prescribed as an occupational disease merely because many workers suffered from it, as the disease might be caused by low awareness of occupational safety and health on the part of employees or inadequate preventive measures taken by employers.

Relevant papers

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

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Legislative Council Secretariat
2 April 2012

Occupational Diseases Confirmed in Hong Kong from 2001 to 2010

Occupational disease	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Occupational deafness*	121	114	74	52	60	51	47	58	77	70
Silicosis	122	110	74	69	68	109	67	65	86	61
Tenosynovitis of the hand or forearm	90	35	34	43	75	63	35	40	39	48
Gas poisoning	11	30	26	28	4	5	1	4	17	17
Mesothelioma [#]	-	-	-	-	-	-	-	1	15	12
Tuberculosis	41	29	30	42	30	18	16	25	18	11
Occupational dermatitis	24	29	10	7	10	8	7	3	10	5
Streptococcus suis infection	1	0	0	1	6	0	1	3	0	3
Asbestosis	9	9	6	4	2	7	2	5	5	1
Others	11	8	4	5	1	3	1	0	1	1
Total :	430	364	258	251	256	264	177	204	268	229

Notes

* : The coverage of compensation under the Occupational Deafness Compensation Ordinance was extended in April 2010 to employees who have developed noise-induced monaural hearing loss. As at end of 2010, there was a total of 510 such cases.

[#]: Mesothelioma was prescribed as a new occupational disease under the Pneumoconiosis and Mesothelioma (Compensation) Ordinance in April 2008.

**Relevant papers on
occupational diseases in Hong Kong**

Committee	Date of meeting	Paper
Legislative Council	29.10.2008	<u>Official Record of Proceedings (Question 1)</u>
Legislative Council	1.4.2009	<u>Official Record of Proceedings (Question 2)</u>
Panel on Manpower	21.5.2009 (Item III)	<u>Agenda Minutes</u>
Panel on Manpower	23.2.2010 (Item IV)	<u>Agenda Minutes</u>
Legislative Council	6.7.2011	<u>Official Record of Proceedings (Question 2)</u>
Panel on Manpower	12.7.2011 (Item III)	<u>Agenda Minutes</u>
Legislative Council	19.10.2011	<u>Official Record of Proceedings (Question 7)</u>

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