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Panel on Manpower

Background brief prepared by the Legislative Council Secretariat for the meeting on 21 May 2009

A review of occupational diseases in Hong Kong

Purpose

This paper summarizes past discussions by the Panel on Manpower (the Panel) on occupational diseases in Hong Kong.

Background

2. In Hong Kong, the Employees' Compensation Ordinance (Cap. 282) (ECO), the Occupational Deafness (Compensation) Ordinance (Cap. 469) and the Pneumoconiosis (Compensation) Ordinance (Cap. 360) prescribe altogether 51 occupational diseases. Section 36(1) of ECO also enables 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 51 occupational diseases are also specified in Schedule 2 to the Occupational Safety and Health Ordinance (Cap. 509) as notifiable occupational diseases. Medical practitioners are required to notify the Commissioner for Labour of cases of these occupational diseases.

Confirmed occupational diseases in 2007

3. According to the Administration, the most common occupational diseases confirmed in 2007 were silicosis, occupational deafness, tenosynovitis of hand or forearm and tuberculosis. The relevant figures are set out in the **Appendix**.

Deliberations of the Panel

4. The Panel discussed occupational diseases in Hong Kong at its meetings on 20 May 2004, 16 June 2005, 15 June 2006, 21 December 2006, 21 June 2007 and 20 December 2007. The discussions are summarized in the following paragraphs.

5. The Administration informed the Panel that employees could claim for compensation under ECO if it could be established that a disease was a prescribed occupational disease, and was due to the nature of any specified occupation in which the employee was engaged at any time within the prescribed period immediately preceding the incapacity so caused. In determining whether a disease should be prescribed as an occupational disease, the Labour Department (LD) would make reference to the criteria adopted by the International Labour Organization (ILO), i.e. the disease would impose significant and recognized risks to workers engaged in a particular occupation; and the link between the disease and the occupation could be reasonably presumed or established in individual cases. The Occupational Health Service (OHS) of LD would make reference to international standards in the diagnosis of occupational diseases, which would require medical judgment and scientific proof. In determining whether a disease in individual cases should be considered to be an occupational disease, it was necessary to establish a causal relationship between the disease and the occupation. The process involved was a complicated one.

6. Some members considered that the Administration should establish an appeal mechanism or mediation channel to enable an employee to lodge an appeal against the result of the diagnosis on whether his illness was an occupational disease.

7. The Administration responded that there was a difference between adjudication of disputes through an appeal channel, which would take into consideration objective evidence, and the settling of disputes through mediation, which would be a process of negotiation. Nevertheless, LD would examine appeal mechanisms, if any, in other jurisdictions and consider the need, in consultation with the industries, to set up a similar mechanism in Hong Kong, taking into account international practice.

8. Some members considered that the Administration should include medical professionals in the proposed appeal mechanism to adjudicate disputes arising from LD's decision. The fact that the adjudication would involve medical judgment and scientific proof should not deter the Administration from considering the setting up of an appeal mechanism. They said that provisions for reviewing the decision of the Occupational Health Clinics (OHCs) of LD could save the need to take cases direct to court, which would involve complicated procedures.

9. Some members queried whether the figures provided by OHS could accurately reflect the situation of occupational diseases in Hong Kong. To their knowledge, cases of occupational diseases such as tenosynovitis of hand or forearm and tuberculosis were on the rise in other places. They asked why the number of such kind of occupational diseases had dropped in Hong Kong in 2007.

10. The Administration responded that the two OHCs provided treatment for employees who were diagnosed with occupational diseases or suspected of suffering from diseases related to work. Notwithstanding the possible existence of different opinions on whether an illness should be identified as an occupational disease, a disease would only be so classified if there was sufficient proof to verify objectively that it was a prescribed occupational disease under ECO. In fact, the total number of consultations of the two OHCs had risen significantly.

11. The Administration added that data on occupational diseases had been compiled on the basis of cases diagnosed by OHCs and those reported by medical practitioners, employers and employees, which were subsequently confirmed. Since the opening of the OHC in Fanling, there had been a significant increase in the number of consultations. The increase apparently revealed growing health awareness among employees, who would seek medical advice for their health problems at an early stage.

12. Some members asked about the progress of the Administration's follow-up work on the issue of overnight work which was regarded as probably carcinogenic to humans by the International Agency for Research on Cancer of the World Health Organization (WHO).

13. The Administration responded that there had not yet been conclusive medical evidence to prove that overnight work was carcinogenic. Taking into account the interest in the WHO's report, LD was working on a guide on overnight shift-work arrangements, and was seeking comments from relevant parties on the draft.

14. Some members pointed out that there was a huge gap between the numbers of consultations at the two OHCs and that confirmed as occupational diseases. For instance, there were only 35 confirmed cases of tenosynovitis of hand or forearm in 2007. In order to reflect the real situation of occupational diseases in Hong Kong, they considered that the Administration should review and update the definition of occupational diseases in accordance with international standard. They pointed out that musculoskeletal disorders, which constituted over 80% of patients seeking consultations from OHCs, had been listed as occupational disease by ILO.

15. The Administration advised that, in determining whether a disease should be prescribed as an occupational disease, LD would make reference to the criteria adopted internationally. For most cases of musculoskeletal disorders of the hand or forearm, there was no conclusive evidence to prove that they were caused by a specific occupation. Nevertheless, LD would look into the latest position of ILO in respect of occupational musculoskeletal disorders, and study the need to include other musculoskeletal disorders of the hand or forearm in the list of occupational diseases prescribed in ECO in consultation with medical experts.

16. Some members enquired about the measures taken/to be taken by the Administration to address the problem of non-compliance with safety standards.

17. The Administration responded that it had been adopting a multi-pronged approach to enhance the safety awareness of employers and employees in various industries through publicity and education. The Administration would step up workplace inspections to ensure that employers and workers were mindful of safety and health at work.

18. Some members pointed out that musculoskeletal disorders had become endemic in Hong Kong, as many people employed in different occupations, such as machine operators in the container transportation industry and flight attendants, were suffering from lower-back/shoulder-neck pain or cramp of hand caused by prolonged postures or repetitive movements. They queried why the Government continued to preclude job-related or work-aggravated tenosynovitis, e.g. shoulder bursitis or tendonitis, from the list of occupational diseases. They considered the Administration not responsive enough in addressing the changing needs of the community in promoting occupational health. They said that the crux of the problem was that it had become prevalent that most jobs demanded long working hours. To alleviate the adverse impact of long working hours on employees' health, they suggested that the Administration should conduct an overall review of the policies relating to occupational safety and health, and consider, by enactment of legislation, setting standard working hours and stipulating the requirement of rest periods during a working day.

19. The Administration responded that -

(a) it would constantly review and update the list of compensable occupational diseases, taking into account the position of ILO and other countries. New disease would be added to the list if and when there was conclusive evidence that the disease concerned would pose significant recognized risk to workers in a specific occupation;

(b) the ILO list annexed to the List of Occupational Diseases Recommendation, 2002 was established mainly for the purpose of prevention, recording and notification; and

(c) in carrying out workplace inspections to supermarkets, LD had advised employers that they should arrange periodic rest breaks for their employees, and if prolonged standing was required, provide a high chair for them so that they could sit down to work.

20. 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 to see whether its scope and coverage should be expanded in view of these changes. They

asked about the number of people who had applied for compensation under section 36(1) of ECO in the past two to three years, as well as the number of successful claims made during the period.

21. The Administration responded that it reviewed the list of compensable occupational diseases from time to time and had updated the list in the light of international standards. When first introduced in 1964, the list contained 21 prescribed occupational diseases. Since 1991, LD had made four amendments to the list, which included the addition of 13 occupational diseases and expansion of the coverage of three occupational diseases. The latest amendment was made in February 2005 to include Severe Acute Respiratory Syndrome (SARS) and avian influenza A. The Administration would continue with such reviews. Although SARS was not on the list of compensable occupational diseases at the time of the outbreak in 2003, SARS patients could still claim compensation successfully under section 36(1) of ECO.

Relevant papers

22. Members are invited to access the Legislative Council's website at http://www.legco.gov.hk to view the Administration's papers for the meetings of the Panel on Manpower on 20 May 2004, 16 June 2005, 15 June 2006, 21 December 2006, 21 June 2007 and 20 December 2007, and the relevant minutes of the meetings.

Council Business Division 2
Legislative Council Secretariat
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Appendix

Occupational Diseases Confirmed in Hong Kong from 1998 to 2007

Occupational disease	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Silicosis	104	137	105	122	110	74	69	68	109	67
Occupational deafness	631	388	206	121	114	74	52	60	51	47
Tenosynovitis of hand or forearm	71	54	81	90	35	34	43	75	63	35
Tuberculosis	39	57	39	41	29	30	42	30	18	16
Occupational dermatitis	34	21	17	24	29	10	7	10	8	7
Asbestosis	5	15	11	9	9	6	4	2	7	2
Gas poisoning	57	57	36	11	30	26	28	4	5	1
Compressed air illness	3	3	6	11	4	2	0	1	1	0
Others	4	2	3	1	4	2	6	6	2	2
Total :	**948**	**734**	**504**	**430**	**364**	**258**	**251**	**256**	**264**	**177**
Incidence rate (per 100 000 employed workers) :	**39.7**	**30.4**	**20.1**	**17.1**	**14.8**	**10.9**	**10.3**	**10.3**	**10.5**	**6.8**