

LEGISLATIVE COUNCIL BRIEF

CERTIFICATION FOR EMPLOYEE BENEFITS (CHINESE MEDICINE) (MISCELLANEOUS AMENDMENTS) ORDINANCE 2006 (COMMENCEMENT) NOTICE 2010

INTRODUCTION

Pursuant to section 1(2) of the Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Ordinance 2006 (16 of 2006) (“Certification Ordinance”), the Secretary for Labour and Welfare has made the Commencement Notice at Annex to commence the not-yet-in-operation provisions under Part 3 and Part 4 of the Certification Ordinance.

JUSTIFICATIONS

2. Part 3 and Part 4 of the Certification Ordinance effect amendments to the Employees’ Compensation Ordinance (Cap. 282) (“ECO”) and the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap. 360) (“PMCO”) so that employees will become entitled to benefits under the two Ordinances if they seek treatment from registered Chinese medicine practitioners. The remaining not-yet-in-operation provisions are related to the registration of proprietary Chinese medicines (“pCm”). They cannot be commenced yet because the provisions relating to the registration of pCm under the Chinese Medicine Ordinance (Cap 549) (“CMO”) and the Chinese Medicines Regulation (Cap 549 sub. leg. F) (“CMR”) have not been in full operation.

3. Recently, the Secretary for Food and Health has made Commencement Notices to commence, among other specified provisions under the CMO and the CMR, the provisions relating to the registration of pCm on 3 December 2010. The Commencement Notices were gazetted on 8 October 2010 while the 28-day negative vetting period expired on

10 November 2010. As no resolution has been passed by the Legislative Council to amend the Commencement Notices or to extend the vetting period, we propose to commence the not-yet-in-operation provisions under Part 3 and Part 4 of the Certification Ordinance.

COMMENCEMENT NOTICE

4. The Commencement Notice aims to put into effect on 14 January 2011 the following provisions of the Certification Ordinance:
- i. the not-yet-in-operation provisions under section 15 of Part 3, relating to the adding of section 10AB(5) and (10)(e) to the ECO; and
 - ii. the not-yet-in-operation provisions under section 25 of Part 4, relating to the adding of section 12AA(4) and (9)(e) to the PMCO.

LEGISLATIVE TIMETABLE

5. The legislative timetable of the Commencement Notice is as follows -

Publication in the Gazette	19 November 2010
Tabling at the LegCo	24 November 2010
Date of Commencement	14 January 2011

IMPLICATIONS OF THE COMMENCEMENT NOTICE

6. Upon the commencement of the provisions referred to in paragraph 4 above, the employer (under the ECO) or the Pneumoconiosis Compensation Fund Board (under the PMCO) will not be liable to pay any cost of medicines relating to any pCm unless the pCm is registered, deemed to have been registered or exempted from registration under the CMO or the CMR. In addition, if the pCm prescribed is one that is exempted from registration under the CMO, the prescription should show the name and quantity of each Chinese herbal medicine contained in the pCm.

7. The Commencement Notice is in conformity with the Basic Law,

including the provisions concerning human rights. The Commencement Notice will not affect the current binding effect of the ECO and the PMCO. It has no productivity, environmental or sustainability implications.

PUBLICITY

8. A press release will be issued on 14 January 2011. A spokesman from the Labour Department (LD) will be made available to handle press enquiries.

BACKGROUND

9. The Certification Ordinance, passed by the Legislative Council on 28 June 2006, aims at amending the Employment Ordinance (Cap 57), the ECO, and the PMCO to recognise the medical treatment, examination and certification given by a registered Chinese medicine practitioner for the purpose of employees' entitlement to benefits under these three ordinances. Part 1, Part 2 and Part 5 of the Certification Ordinance were brought into operation on 1 December 2006. The majority of the provisions under Part 3 and Part 4 became effective on 1 September 2008. If the provisions mentioned in paragraph 4 come into operation on the proposed date, the Certification Ordinance will have come into full operation.

ENQUIRIES

10. Enquiries on this brief may be addressed to Mr. Ernest IP, Acting Assistant Commissioner for Labour (Employees' Rights and Benefits) of LD, at 2852 4083 or Mr. Raymond FONG, Acting Senior Labour Officer (Employees' Compensation) of LD, at 2852 3539.

Labour and Welfare Bureau
November 2010

Annex

Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Ordinance 2006 (Commencement) Notice 2010

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**Certification for Employee Benefits (Chinese Medicine)
(Miscellaneous Amendments) Ordinance 2006
(Commencement) Notice 2010**

Under section 1(2) of the Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Ordinance 2006 (16 of 2006), I appoint 14 January 2011 as the day on which the following provisions of the Ordinance come into operation—

- (a) section 15 (in so far as it relates to the adding of section 10AB(5) and (10)(e) to the Employees' Compensation Ordinance (Cap. 282)); and
- (b) section 25 (in so far as it relates to the adding of section 12AA(4) and (9)(e) to the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap. 360)).



Secretary for Labour and Welfare

12 November 2010