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Panel on Manpower

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 17 May 2012**

**Latest review exercise 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 highlights the major views 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") raised at the meeting on 20 January 2012. The relevant discussion on the subject before the aforesaid meeting is contained in LC Paper No. CB(2)838/11-12(04).

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.

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.

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

4. At the Panel meeting on 20 January 2012, the Administration briefed members on its proposal to increase the amount of a total of 10 compensation items under ECO, PMCO and ODCO in line with the findings of the biennial review covering 2009 and 2010 on the levels of compensation under the three Ordinances. The Administration proposed that -

- (a) the amounts of compensation under ECO and PMCO be kept unchanged at their existing levels in respect of those items which, according to the review findings, would have to be revised downwards;
- (b) the level of compensation for five items under ECO, two items under ODCO and one item under PMCO be adjusted upwards in accordance with the review findings; and
- (c) the maximum amount of funeral expenses reimbursable under ECO and PMCO be adjusted upwards from \$35,000 to \$55,000 with reference to the latest cost information collected on funeral services.

Deliberations of the Panel

Adequacy of adjustment to the levels of compensation

5. Most members considered that the proposed 1.48% increase in the compensation level for the five relevant items under ECO far from sufficient and the proposed adjustment of compensation levels failed to reflect accurately the latest price movement. There was a view that the implementation of statutory minimum wage ("SMW") would have an impact on the wage and price movements. It was therefore necessary for the Administration to take into account the impact of SMW in future reviews of the compensation levels under the three Ordinances.

6. According to the Administration, the level of compensation for the five relevant items under ECO was normally adjusted according to the wage movement as reflected by NWI. As NWI decreased by 1% in 2009 but increased by 2.5% in 2010 according to the Census and Statistics Department,

the net increase in wage movement for 2009-2010 was 1.48%. It was the established practice of the Administration to review the levels of compensation provided for under ECO and PMCO every two years. For the current review, all relevant data were available for analysis in mid-2011. Time was needed to consult the Hong Kong Federation of Insurers ("HKFI"), the Occupational Deafness Compensation Board and the Pneumoconiosis Compensation Fund Board on the impact of the proposed increases in the levels of compensation under the three Ordinances. The review findings and proposals had to be discussed by the Labour Advisory Board ("LAB").

7. There was a concern that the amount of compensation for pain, suffering and loss of amenities ("PSLA") under PMCO had remained unchanged for about 13 years, and the daily maximum rates for medical expenses under ECO and PMCO were last revised in April 2003. It was considered that the maximum amounts of reimbursement for funeral and the daily maximum medical expenses under ECO and PMCO should be raised to \$85,000 and \$500 respectively.

8. The Administration advised that the findings of the review and the proposals to increase the amount of 10 compensation items under the three Ordinances had been discussed and endorsed by LAB. Any changes to the proposals in response to members' concerns had to be re-submitted to LAB for consideration. Consultation with the relevant fund Boards would also be required.

9. The Administration explained that the compensation for PSLA under PMCO, currently at the rate of \$3,180 per month, was normally adjusted by reference to price changes as reflected by CPI(A). In the current review, CPI(A) increased by 0.4% in 2009 and further by another 2.7% in 2010. Although the price movement for 2009-2010 was +3.11%, this was still not short of the cumulative negative change of 6.88% since the last adjustment of compensation levels between 1998 and 2008. Hence, the Administration decided to freeze the level of compensation for this item. As regards the daily maximum rates for medical expenses under ECO and PMCO, they were last revised on 4 April 2003 to align with the revision of the fee structure of public health care services in 2003. Since then, the charges in public hospitals and clinics for these treatments remained at the same level, and the daily limits for reimbursement were therefore frozen.

10. On the maximum amount of funeral expenses reimbursable under ECO and PMCO, the Administration advised that it was also subject to review every two years by reference to the movement of CPI(A). The rate had been frozen for around 10 years because the increases in CPI(A) over the years had yet to offset the cumulated rates of decrease since the last adjustment in 2000. When

setting the present maximum level for funeral expenses in 2000, an amount of \$10,000 was added on top of the estimated cremation costs to come up with the \$35,000 maximum level for funeral expenses, taking into account the expenses incurred by people who opted for cinerary urns in the private sector. According to the latest cost information collected in March 2011, funeral expenses ranged from \$26,250 to \$52,735, with \$39,493 in the middle. In proposing the increase from the current ceiling of \$35,000 to \$55,000, the Administration had allowed a 50% increase in the provision, i.e. from \$10,000 in 2000 to \$15,000 in 2011, to cater for the higher price of urns in the private sector.

11. The Panel passed two motions urging the Government to, among others, expeditiously make upward adjustment to the levels of compensation under various occupational compensation ordinances as well as the amounts for rendering compensation and support such as funeral and medical expenses, and raise the maximum amount of funeral expenses to \$85,000.

Comprehensive review of the employees' compensation system

12. Some members considered that the Administration should conduct a comprehensive review on ECO and introduce improvements, including facilitating the early rehabilitation of injured workers and promoting mediation of work injury claims, to keep pace with the developments in the society. The Administration responded that from time to time, the Administration reviewed the scope and levels of compensation under the three Ordinances with a view to identifying areas for further improvement.

13. In response to a suggestion of establishing compensation for pain arising from occupational deafness, the Administration advised that ODCO provided one-off compensation and benefits for people who suffered from noise-induced deafness by reason of their employment. The Administration would continue to adopt an open attitude towards specific proposals to improve ODCO.

14. The Panel passed a motion requesting the Government to provide an implementation timetable as well as the relevant details for the establishment of "Compensation for Pain arising from Occupational Deafness".

Economic implication of the upward adjustment

15. A concern was raised about the impact of the proposed increases on employees' compensation insurance ("ECI") premium. The Administration was urged to assess thoroughly the impact of upward adjustment of compensation levels provided under ECO when conducting biennial reviews in future.

16. The Administration advised that according to the actuarial studies engaged by HKFI, the combined impact of an 1.48% increase in the compensation level for the five relevant items and an upward adjustment of the maximum amount of funeral expenses to \$55,000 under ECO would result in an increase of insurance claims costs in the region of 0.051% to 0.343% which might in turn be translated into an increase of a similar range in the ECI premium. The cost implication on employers would be minimal. The Administration further advised that to alleviate the difficulties of enterprises, particularly those in high-risk industries, in taking out ECI, the insurance industry had launched the Employees' Compensation Insurance Residual Scheme starting from May 2007. The Scheme operated as the market of last resort for employers who were unable to acquire ECI cover from the open insurance market.

Relevant papers

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

Council Business Division 2
Legislative Council Secretariat
11 May 2012

**Relevant papers on
Latest 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	20.1.2012 (Item IV)	<u>Agenda</u> <u>Minutes</u>

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