

**立法會**  
*Legislative Council*

LC Paper No. CB(1)687/13-14

Ref. : CB1/BC/2/13

**Paper for the House Committee meeting on 10 January 2014**

**Report of the Bills Committee on  
Air Pollution Control (Amendment) (No. 2) Bill 2013**

**Purpose**

This paper reports on the deliberations of the Bills Committee on Air Pollution Control (Amendment) (No. 2) Bill 2013 ("the Bills Committee").

**Background**

2. Asbestos is a proven carcinogen which can cause asbestosis, lung cancer and mesothelioma<sup>1</sup> when inhaled. The World Health Organization ("WHO")'s International Agency for Research on Cancer ("IARC") has thus classified all types of asbestos as definite human carcinogen (Group 1).

3. Given its very high tensile strength and good heat and chemical resistance, asbestos had been widely used before the mid 1980s in friction, fireproofing, insulation and building materials. According to the Administration, these asbestos containing materials ("ACMs") or products pose little health risk as long as they are undisturbed. If they are exposed and disturbed, they can release very fine asbestos fibres which can remain airborne for a very long period of time.

4. The potential health risks associated with asbestos have led to the development of substitutes which are free of asbestos. Proven and safer substitutes are now available in many applications such as building materials, friction products, brake lining, seals and gaskets.

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<sup>1</sup> Mesothelioma is a rare form of cancer that develops from the protective lining that covers body's internal organs mainly caused by exposure to asbestos.

5. Given the potential health impact of asbestos and the availability of the asbestos free substitutes, many countries have already banned the import, sale, supply and use of asbestos in phases. For example, Germany banned asbestos in 1993 followed by the United Kingdom in 1999, Australia in 2003, the European Union in 2005 and South Korea in 2009. Banning asbestos to reduce the risk of exposure to asbestos has become an international trend.

#### Current regulatory control

6. Since 1996, the import and sale of the more hazardous blue asbestos (crocidolite) and brown asbestos (amosite) have been banned in Hong Kong under the Air Pollution Control Ordinance (Cap. 311) ("APCO"). To avert the release of asbestos fibres into the environment, the APCO requires the engagement of registered qualified professionals to conduct certain work involving ACMs and engage in asbestos related activities in accordance with the provisions of the APCO and a set of codes of practice. Besides, asbestos waste must be properly handled and disposed of in accordance with the Waste Disposal Ordinance (Cap. 354) ("WDO"). Since April 2008, a permit system to control the import, export, manufacturing and use of asbestos other than chrysotile has also been implemented under the Hazardous Chemicals Control Ordinance (Cap. 595) ("HCCO").

7. To further abate the risk of asbestos and better protect the public from exposure to environmental asbestos, the Administration considers it necessary to stop asbestos from entering Hong Kong by banning the import, transshipment, supply (including sale) and use of all forms of asbestos.

#### **The Bill**

8. The Bill proposes to amend the APCO so that, unless exempted, the use, supply (including sale), import and transshipment of asbestos and ACM are prohibited. It also proposes to amend the Factories and Industrial Undertakings (Asbestos) Regulation (Cap. 59AD) to tighten up the control on the use of asbestos in industrial undertakings, including prohibition of any work with chrysotile in an industrial undertaking and increase of the penalties for certain offences which relate to the use of or working with asbestos.

## **The Bills Committee**

9. At the House Committee meeting on 25 October 2013, members agreed to form a Bills Committee to scrutinize the Bill. The membership list of the Bills Committee is in **Appendix I**.

10. Under the chairmanship of Hon Kenneth LEUNG, the Bills Committee has held five meetings with the Administration and received views from the public and representatives of various organizations at the meeting held on 2 December 2013. A list of individuals/the organizations which have given views to the Bills Committee is in **Appendix II**.

## **Deliberations of the Bills Committee**

11. The Bills Committee in general supports the Bill and agrees that to better protect the public from exposure to environmental asbestos, it is necessary to stop asbestos from entering Hong Kong by banning the import, transshipment, supply (including sale) and use of all forms of asbestos. New sections 80(1) and 80(2) provide that any person who use, supply, import or tranship asbestos or ACM; or cause or permit the use, supply, import or transshipment of asbestos or ACM commits an offence and is liable on conviction to a fine of \$200,000 and to imprisonment for 6 months.

### Impact of the ban on the trade

12. Whilst supporting the legislative intent of the Bill, the Bills Committee has examined the likely impact of the proposed ban on the industry players and sought information on the quantity of goods in transit and transshipment which contained asbestos and ACM in recent years.

13. The Administration advises that the import and export of ACM have declined in the past five years as shown below:

	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
Import (Tonnes)	250.8	37.3	35.4	48.2	21.1
Export (Tonnes)	6	63.5	0.3	0.1	0.15

However, the Census and Statistics Department has not compiled statistics on goods in transit and transshipment which contain asbestos materials. The Administration envisages that the impact on the trade will be minimal.

Justifications for exemptions to and non-application of the proposed prohibition

14. The Bills Committee is concerned that the new provisions on one hand prescribe a total ban of asbestos in Hong Kong whilst on the other hand provides exemptions or for the circumstances to which the ban does not apply. The Bills Committee has examined the rationale behind as well as the factors to be taken into account when granting exemption, and the circumstances to which the ban does not apply.

*Proposed section 83 - Exemption from section 80*

15. The Bills Committee notes that the proposed section 83(1) provides that "the Authority<sup>2</sup> may exempt a person from a prohibition imposed under section 80(1) if the Authority considers that the exemption –

(a) is warranted; and

(b) would be unlikely to lead to a health risk to the community."

16. The Bills Committee notes that since the ban on amosite and crocidolite coming into operation in 1996, the Director of Environmental Protection ("DEP") has so far only granted exemptions for three registered asbestos laboratories in Hong Kong to import amosite and crocidolite to serve as reference standards and the total amount involved was less than 3 kilograms. They are kept and used under the controlled environment of accredited laboratories.

17. In considering whether an exemption is warranted under section 83(1)(a), the Administration advises that the Authority will take into account a number of factors, including whether an asbestos free substitute is available, whether there will be serious disruption to a public service if the application for exemption is not granted; and whether there will be serious safety problem or risk to human life if the application for exemption is not granted.

18. Regarding the factors to be considered under the proposed section 83(1)(b), the Administration points out that the Authority will take into account of the quantity of the asbestos or ACM involved; the precautionary measures to be taken to prevent release of asbestos into the air; the location and activity involved; and the likelihood the asbestos or ACM involved will

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<sup>2</sup> Authority (監督) is defined in section 2 of APCO to mean the public officer appointed under section 4(1) to be the air pollution control authority.

be disturbed.

19. At the request of the Bills Committee, the Administration has arranged to upload the said information in paragraph 18 above on the website of EPD for the information of the public.

*Proposed section 82 – Non-application of section 80*

20. The Bills Committee notices that despite the ban on using, supplying, importing and transshipping asbestos or ACM under the proposed new section 80, the proposed section 82 provides for the circumstances to which the ban does not apply. The proposed section 82(3) provides that section 80 is not applicable to import, supply or transshipment of ACM that is a proprietary Chinese medicine ("pCm") being registered, deemed registered or exempted under the Chinese Medicine Ordinance (Cap.549) ("CMO") and section 82(4) provides that section 80 does not prohibit a person who is exempted under section 158(1) of the CMO from conducting any of the activity as stated in section 82(4). The Bills Committee has studied the justifications for providing such a non-application provision in the Bill which seems to be contrary to the intent of the Bill. The Bills Committee has sought information on the demand for pCm which contain asbestos or ACM in Hong Kong and if there are substitutes to them.

21. The Bills Committee notes that 'tremolium' (陽起石) and 'actinolium' (陰起石) are the two types of Chinese herbal medicines ("Chm") that are ACM. As at 11 November 2013, a total of 36 pCm containing 'tremolium' were registered in Hong Kong. There is no record of registered pCm that has 'actinolium'. The Administration, with reference to the expert advice from the Department of Health ("DH"), explains that 'tremolium' has been used as one of the active ingredients in traditional formulation for a long time. There is no Chinese medicine theory to support replacing 'tremolium' with other Chm in the traditional formulary, and there is a lack of scientific support including comparison studies for such replacement. A comparable substitution therefore may not be possible. The Administration further advises that at present, there is no pharmaceutical product registered under the Pharmacy and Poisons Ordinance (Cap. 138) that contains asbestos or ACMs. DH does not have information on the trading or sales volume of pCm.

22. Dr Hon LEUNG Ka-lau has raised queries over the safety of taking such pCm containing ACM and whether some form of regulation should be imposed.

23. On the safety and usage of tremolium and actinolium and pCm containing these two Chm, DH has advised that the Chinese Medicines Board ("CMB") under the Chinese Medicine Council of Hong Kong ("CMCHK") had invited experts to provide opinions, and had in-depth discussion in response to the proposals of EPD to ban all forms of asbestos and amend the APCO. To conclude, CMB has recommended banning the use and prescribing of 'tremolium' and 'actinolium' in Chm but does *not* consider it necessary to ban registered pCm containing these ingredients. CMB recommends that the import and sale of pCm containing tremolium and actinolium which are in finished dose form and registered may continue.

24. The Bills Committee notes that according to expert opinions obtained, there is different pharmacological mechanism between the *inhalation* of asbestos and *ingestion* of asbestos. Hence, whether ingested asbestos will accumulate in the body and is carcinogenic has to make reference to authoritative international research. The Administration explains that according to the IARC Monograph Volume 100C<sup>3</sup> published by IARC, studies on exposure to asbestos in drinking-water and stomach, large intestine and colon cancer have concluded that the available data were inadequate to evaluate the cancer risk of asbestos in drinking-water. Also according to the Guidelines for Drinking-water Quality<sup>4</sup> of WHO, there is little evidence of the carcinogenicity of ingested asbestos in epidemiological studies of populations with drinking water containing high concentrations of asbestos. WHO is of the view that there is no consistent evidence that ingested asbestos is hazardous to health.

25. Some members of the Bills Committee have concerns that the workers outside Hong Kong who are engaged in the manufacturing process of pCm containing asbestos will be subject to health hazards. The Administration explains that the legislation of Hong Kong cannot be implemented outside the territory. Therefore, when the Bill was drafted, only the local situations can be considered for its implementation. On the protection of the health of workers outside Hong Kong who are engaged in pharmaceutical manufacturing and extraction and processing of raw materials, it should be the responsibility of the government of the relevant countries or regions to take effective measures to protect the concerned workers' health.

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<sup>3</sup> IARC. IARC Monograph Volume 100C (2012)

<http://monographs.iarc.fr/ENG/Monographs/vol100C/mono100C-11.pdf>

<sup>4</sup> WHO. Guidelines for Drinking-water Quality (4th edition) (2011)

[http://whqlibdoc.who.int/publications/2011/9789241548151\\_eng.pdf](http://whqlibdoc.who.int/publications/2011/9789241548151_eng.pdf)

*Labelling and proper disposal of pCm containing ACM*

26. The Bills Committee is also concerned about the labelling of the relevant pCm containing ACM and the proper disposal of pCm which is expired or not consumed. The Administration explains that DH has advised that according to section 26(2) of the Chinese Medicines Regulation (Cap. 549F), except as otherwise provided in section 26(3) and (4), a label on a package of a pCm to be sold in Hong Kong, shall include, inter alia, the following particulars, at least in Chinese –

- (a) the name of the medicine;
- (b) if –
  - (i) the medicine is composed of less than three kinds of active ingredients, the name of each kind of active ingredients; or
  - (ii) the medicine is composed of three or more kinds of active ingredients, the names of more than half of the total number of kinds of active ingredients.

27. The Administration advises that if a pCm is composed of less than three kinds of active ingredients with ACM being one of active ingredients, the name of the asbestos containing active ingredient shall appear on the label. On the other hand, if a pCm is composed of three or more kinds of active ingredients, the name of the asbestos containing active ingredient *may or may not* appear on the label as the registration holder only has to show the names of more than half of the total number of active ingredients.

28. Noting that under the current legislation, the name of the asbestos containing ingredient may or may not be displayed on the label, Hon TANG Ka-piu proposes to publicize all pCm which contain ACM because some members of the public might not know that certain pCm has ACM. The Administration undertakes to reflect this view to the CMB which is tasked with the regulation of Chinese medicines under the CMO for follow-up actions. Regarding the concern over the disposal of expired or unconsumed pCm with asbestos elements as stated in paragraph 26, the Administration explains that the WDO has provided a mechanism for disposing asbestos and ACM and remarks that the drug stores which sell pCm could be collection points.

*Proposed section 78 - Defences*

29. The Bills Committee notes that the proposed section 78(2) provides a

defence under the APCO and has sought the Administration's clarification on the form and style of drafting. The Environmental Protection Department ("EPD") and Department of Justice ("DoJ") have advised that section 78 provides a defence for a person charged under section 77 of the APCO in respect of any work in the premises or any part of the premises. The policy intent is to impose an evidential burden instead of a legal (or persuasive) burden on the defendant in relation to a fact that needs to be established for the defence. The proposed section 78(2) of the APCO provides that the defendant is taken to have established any fact that needs to be established for a defence under section 78(1) if there is sufficient evidence to raise an issue with respect to the fact, and the contrary is not proved by the prosecution beyond reasonable doubt. The proposed section 78(2) is added to the APCO to reflect the policy intent and make it explicit that merely an evidential burden is imposed on the defendant. This is in line with paragraph 6.2.18 of the Guide to Styles and Practices published by the Law Drafting Division. Also, since the proposed section 78(2) would expressly provide that section 78 of the APCO merely imposes an evidential burden on the defendant, it makes it clear that the offence is compatible with the right to be presumed innocent guaranteed by article 87(2) of the Basic Law, and article 11(1) of the Hong Kong Bill of Rights. Similar provisions to the new section 78(2) of the APCO can be found in section 4(5) of the Prevention of Child Pornography Ordinance (Cap. 579). Other precedents include section 43Q(5) of the Employment Ordinance (Cap. 57); section 44(6) of the Mandatory Provident Fund Schemes Ordinance (Cap 485) and section 141(5) of the Lifts and Escalators Ordinance (Cap 618).

### Ambiguity in the Chinese rendition

#### *Proposed section 78*

30. With respect to the Chinese rendition of the English text "...and could not have reasonably known", which appears as "亦按理不可能知悉" in section 78(b) and as "而按理亦不能知悉" in the proposed new sections 78(1)(b) and 81(1), the Bills Committee has requested the Administration to review whether it is appropriate to amend the rendition as such and whether the words "而按理亦不能知悉" are required to be put in brackets given that no brackets are found in its corresponding English text.

31. It is noted from DoJ that changing "按理亦不能知悉" to "按理亦不可能知悉" does not reflect the policy intent, since if the knowing of the presence of the ACM is factually impossible, there would not have been any prosecution in the first place, which leads to the plea of the defence by the defendant. In other words, if the possibility of knowing the presence of the material is an essential element of the defence, the defendant can never rely on



the defence. What the defendant failed to do or should have done, could only affect whether he or she could or could not know the presence of the material, which should be determined by the Court by a scale of reasonableness. The policy intent of the proposed section 78(1)(b) is that the defence is available to the defendant only if, in addition to establishing that he or she did not know the presence of the relevant material at the time of the offence, the defendant also needs to establish that the lack of the knowledge was reasonable.

32. It is also noted that in the Chinese text of the provision, the second element is put inside a pair of brackets. The reason for doing so is to enable the second element of the defence to be related to the first element in a more comprehensible manner in that on the whole the long provision is easier to understand.

*Proposed section 82(3)*

33. The Administration stresses that proposed sections 82(3) and 82(4) only apply in relation to ACM (as opposed to pure asbestos minerals) that is a pCm. In this regard, the Bills Committee has examined the Chinese rendition of the English text "..., ACM that is proprietary Chinese medicine...", which reads as "...屬中成藥的含石棉物料，..." in the proposed section 82(3). Some members are concerned that the Chinese rendition is not clear and may give the impression that the proposed section does not prohibit a person from importing and supplying ACM which is to be used to manufacture pCm.

34. The Bills Committee notes the advice of DoJ that the English text of the new section 82(3) reads "asbestos containing material *that is* proprietary Chinese medicine", and the Chinese text of the provision reads "屬中成藥的含石棉物料". The provision clearly refers to an ***asbestos containing material***<sup>5</sup> that is a ***proprietary Chinese medicine***<sup>6</sup> (but not something else). Since pCm is itself an ACM, if a person imports the medicine and uses it to 'manufacture' another kind of pCm, that person will commit an offence under the proposed section 80(1) for 'using'<sup>7</sup> an ACM. As such, the Administration submits that the Chinese text clearly reflects the policy intent and there is no ambiguity in its meaning.

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<sup>5</sup> "ACM" is a defined expression in section 2 of the Air Pollution Control Ordinance (Cap. 311), which is proposed to be amended by clause 3 of the Bill as "any material, substance or product which is made with or contains asbestos, as determined by a method approved by the Secretary".

<sup>6</sup> "Proprietary Chinese medicine" is a defined expression in the proposed new section 82(6): "has the meaning given by section 2(1) of the Chinese Medicine Ordinance (Cap. 549)". Under that Ordinance, a proprietary Chinese medicine must be "formulated in a finished dose form".

<sup>7</sup> "Use" is defined in the proposed section 80(5) to include "adding, mixing or inserting" asbestos containing material to, with, into any material, substance, product or article "for manufacturing or producing any product or substance".

Impact of the Bill on other legislative requirements relevant to the use of or working with asbestos

35. The Bills Committee notes that at present, under section 14 of the APCO, certain types of asbestos works which are specified in Schedule 1 to the APCO may nonetheless be carried out pursuant to a successful application of a licence made to the Authority, which is, in practice, the DEP. The Bills Committee has enquired whether the Authority still has any discretion to grant a licence under section 15(3) of the APCO after the Bill comes into operation.

36. The Administration explains that under section 15(3) of the APCO, the DEP, in exercising his discretion to grant or refuse to grant a licence shall –

- (a) have regard to the capacity of the applicant to provide and maintain the best practical means for the prevention of the emission from his premises of any pollutant;
- (b) have as his purpose the attainment and maintenance of any relevant air quality objective; and
- (c) have regard to whether the emission of noxious or offensive emissions would be, or likely to be, prejudicial to health.

The Administration advises that given the carcinogenic nature of asbestos, it would be nearly impracticable for an asbestos works to make its emissions not to be prejudicial to health, the fulfillment of which is a key consideration for the DEP to grant a licence as stipulated in section 15(3) of the APCO. As such, although the DEP has the discretion to grant or refuse a licence under section 15(3) of the APCO, the threshold to exercise the discretion in respect of asbestos works specified in item 19 of Schedule 1 to the APCO is very high. The passage of the Bill will raise the threshold further. In addition, retaining item 19 of Schedule 1 to the APCO will have the advantage that an asbestos works will be put into operation only with the express approval of the DEP. This will provide stronger safeguard to the public against the risk of asbestos. The Administration also confirms that there has been no manufacturing process in relation to asbestos and no specified process licence has been granted in Hong Kong so far under section 14 of APCO for asbestos works.

37. The Bills Committee notes that the use and import of five types of asbestos (specified asbestos) which are specified under the HCCO<sup>8</sup> are also

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<sup>8</sup> Part 1 of Schedule 2 to HCCO lists out type 2 chemicals which include five kinds of asbestos as follows: (a) actinolite, (b) anthophyllite, (c) amosite, (d) crocidolite and (e) tremolite

subject to a permit system provided in the HCCO. Under the system, a person must apply to the DEP for a permit if that person would like to import or use any of the specified asbestos and the DEP may attach, to the permit, any condition that the Director considers appropriate. Paragraph 2 of Part 2 of Schedule 2 to HCCO lists out the conditions<sup>9</sup> that the permit system does not apply to type 2 chemicals, which include asbestos. The Bills Committee has sought clarification of whether any inconsistency would arise in both the policy and practical implementation of these existing regulatory schemes vis-à-vis the general prohibition as proposed by the Bill.

38. The Administration advises that the HCCO has been enacted in the local context by transposing the requirements of the Stockholm Convention on Persistent Organic Pollutants or the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade. The HCCO introduces a permit system to regulate the hazardous chemicals listed in the aforementioned international conventions. For the control of asbestos, the scope of the HCCO is more limited than that of the APCO as the former does not apply to manufactured products, pesticides, foods, additive, pharmaceutical products, etc.. Hence, some common ACMs such as CACS are controlled under the APCO but not the HCCO.

39. The Bills Committee notes that the policy intention of the Bill is to ban all asbestos and ACM (e.g. manufactured products) except goods in transit and pCm as stated in the proposed section 82. Extension of the scope of exemption in the Bill to cover any asbestos or ACM which satisfies any of the provisions as stated in paragraph 2 of Part 2 of Schedule 2 to HCCO will result in the exemption of some common ACM such as CACS under the APCO. Such proposal is against the policy intention of the Bill.

40. It is further noted that section 10(3) of HCCO states that for the DEP to issue or renew a permit, DEP is to "have to regard to other enactments that govern the activity to which the application relates". Hence, in relation to asbestos that are regulated under a permit system under the HCCO, DEP shall

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<sup>9</sup> Paragraph 2(1) specifies that Sections 6(1), 7(1), 8(1) and 9(1) of HCCO do not apply to a Type 2 chemical if the chemical is, or is a part of, any of the following things— (a) any food as defined in section 2(1) of the Public Health and Municipal Services Ordinance (Cap 132); (b) any additive as defined in regulation 2(1) of the Food and Drugs (Composition and Labelling) Regulations (Cap 132 sub. leg. W); (c) any pharmaceutical product as defined in section 2(1) of the Pharmacy and Poisons Ordinance (Cap 138); (d) any radioactive substance as defined in section 2 of the Radiation Ordinance (Cap 303); (e) any waste as defined in section 2(1) of the WDO (Cap 354); (f) any chemical weapons as defined in section 2(1) of the Chemical Weapons (Convention) Ordinance (Cap 578); (g) any thing listed in Schedules I or II of the Single Convention on Narcotic Drugs, 1961 which was adopted on 30 March 1961, as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961 which was adopted on 24 March 1972; or (h) any thing listed in the Convention on Psychotropic Substances, 1971 which was adopted on 21 February 1971.

have regard to the ban stipulated in the Bill. An exemption granted under APCO would be the *prerequisite* before issuing a permit under the HCCO. Otherwise, DEP would decline to grant a permit for concerned asbestos under the HCCO. Hence, the HCCO will in no way affect the ban of asbestos proposed by the Bill. Consequential amendment to the HCCO is considered not necessary.

41. The Bills Committee notes that the Bill, apart from aiming to amend the APCO to ban asbestos, also proposes to make related amendments to the Factories and Industrial Undertakings (Asbestos) Regulation (Cap. 59 AD). When the Bill comes into operation, EPD will be responsible for enforcing the amended APCO to ban import, transshipment and supply of asbestos and ACM as well as their use in places other than industrial undertakings. The Labour Department ("LD") will be responsible for enforcing the amended Factories and Industrial Undertakings (Asbestos) Regulation (Cap. 59 AD) to ban work with asbestos in industrial undertakings.

#### Education and publicity programmes about the hazards of asbestos

##### *Extent of the problem of asbestos in Hong Kong*

42. The Bills Committee notes that before the 1980s, the use of ACM in buildings was very common. Corrugated asbestos cement sheets ("CACS") can be commonly found in the canopies and rooftop structures of many old buildings. Besides, the roofs of old village houses were also built in the past with CACS and some farmers even used CACS for partition of soil, irrigation, flooding prevention, etc. These CACS are the most commonly used low-risk ACM in which asbestos fibers are tightly bonded with structural materials.

43. In view of the harmful nature of the asbestos fibres to human health, the Bills Committee urges the Administration to conduct a territory-wide asbestos survey of all the buildings in Hong Kong. Some members, including Dr Hon Fernando CHEUNG and Hon POON Siu-ping also propose to introduce a labelling system for ACM in building structures or to set up a platform to publicize the list of buildings which have ACM.

44. The Administration however stresses that CACS, if in good condition and under normal circumstances, will not release asbestos fibres and thus pose no health risks to the residents or the public. It is suggested that in case a detailed asbestos survey is conducted, sampling work will inevitably disturb the ACM and asbestos fibers may be released as a result. Since ACM is safe under normal and undisturbed circumstances, EPD considers that conducting a territory-wide survey on ACM in buildings is not the most appropriate method

to deal with the problem.

45. The Administration also indicates that as the presence of ACM can only be ascertained after sampling and testing, and some such material may be concealed inside building structure and service installations and are not easily found and accessible, its presence can only be ascertained after assessment on the spot by a registered asbestos consultant. Taking account of the resources implications, property rights issue, professional and analytical capacity of the asbestos trade, the Administration expresses reservation in labelling all ACM in building structures.

46. The Bills Committee notes that under the present system, the respective owners, occupiers, owners' corporations, registered professionals or contractors have to initially explore presence of any suspected ACM in buildings when undertaking demolition and repair work. If suspected ACM is found, registered asbestos professionals shall be employed to conduct detailed asbestos survey. The Bills Committee is concerned about the burden posted on the general public and has sought information on the range of fees for carrying out the demolition works. The Administration advises that the cost of an asbestos removal works is determined by the market. The actual costs vary with the size and complexity of the works. For the more common removal works involving CACS, the cost could be significantly reduced if the owners in the same building join together to hire one registered asbestos contractor for the works. As an indicative reference, it may cost about \$6,000 per flat to remove a typical canopy or cage with CACS not longer than 5 metres in length, provided that scaffolding is available and there are more than ten such flats in the same building. Removal of a CACS canopy or cage for a single flat will be more expensive, at around \$10,000 as the individual owner needs to bear all the overhead costs.

47. Noting the relatively high cost involved in hiring professionals to remove CACS, Hon TANG Ka-piu and some deputations have proposed that the Administration could consider the granting of subsidy to owners of buildings and villagers in the New Territories to remove CACS.

48. According to the Administration, the premises owners and landlords are responsible to properly manage their premises and land. The landlords or owners and their contractors must comply with the relevant requirements of the APCO and the WDO for demolition and disposal of ACM. The government has provided loans and grants to eligible owners in need to alleviate their burdens in undertaking building maintenance, including the Building Safety Loan Scheme administered by the Buildings Department ("BD") and Building Maintenance Grant Scheme for Elderly Owners

administered by the Hong Kong Housing Society ("HKHS"). Besides, HKHS and the Urban Renewal Authority ("URA") also provide a Home Renovation Interest-free Loan for owners who need to repair their home. Since April 2011, HKHS and URA co-implemented a one-stop Integrated Building Maintenance Assistance Scheme. Owners can simply complete one set of application forms for making multiple applications to the aforementioned loans and grants.

49. The Administration further explains that since 2001 and whenever BD has launched comprehensive demolition scheme for unauthorized building work ("UBW"), EPD has all along taken concerted monitoring and follow-up actions and reminded the concerned owners of the possible existence of ACM in buildings and explained the regulatory requirements and guidelines in handling ACM. Furthermore, EPD would upon receiving demolition or alteration notice referral from BD give written reminders to the registered professionals and contractors about the requirements of handling ACM in accordance with the APCO.

*Old products or machinery being used might contain ACM*

50. Hon POON Siu-ping and Hon Cyd HO are concerned that products like brake lining or thermal insulation materials (containing ACM) may still be used in Hong Kong after the enactment of the Bill. They have requested the Administration to provide, in consultation with the construction industry, a list of machinery or products which consist of ACM for easy recognition by the trades. The Administration has accepted the request of the Bills Committee and uploaded the relevant list on EDP's webpage based on the available information from the construction industry and undertakes to update it as appropriate.

51. The Bills Committee takes note that EPD has issued around 13 000 notices over the past three years to help owners and occupiers understand whether the presence of ACM in UBW is possible and remind them to take proper measures for control and handling of ACM. Besides, EPD has conducted around 900 inspections per annum in relation to demolition of asbestos works. In the past three years, EPD handled about 50 prosecutions per year for noncompliance with the requirements for handling ACM under the APCO.

*Enhancement of awareness of construction workers on asbestosis and preventive measures*

52. Some members of the Bills Committee, including Dr Hon Fernando CHEUNG and Hon POON Siu-ping are concerned that certain workers employed by the sub-contractors, in particular the new comers, might not fully understand the hazards of asbestos fibres when carrying out demolition works of structures containing ACM. The Bills Committee has requested the Administration to step up the related publicity work.

53. The Bills Committee notes that to enhance public awareness of ACM, EPD has planned to work with Pneumoconiosis Compensation Fund Board ("PCFB") to publish a booklet about ACM to help the public and the workers better understand and identify the presence of ACM. The LD in collaboration with the Occupational Safety and Health Council and PCFB, have been organising various publicity, education and promotion activities to raise the awareness of construction workers, contractors and the general public on asbestosis and preventive measures, so as to avoid or reduce the chance of getting the disease. Besides, LD and PCFB also collaborate with non-governmental organisations and workers' unions to enhance the awareness of contractors, workers and the general public on the disease and preventive measures through promoting asbestosis prevention in the community and construction sites.

54. The Bills Committee also notes that EPD has been promoting the proper handling and disposal of ACM through various means, including posters, leaflets and educational videos which have been uploaded to EPD's webpage. In response to the recent attention to the use and disposal of CACS in rural areas, EPD has stepped up enforcement works and reminded the local villagers about the requirements on handling, removal and disposal of ACM under the APCO, and also designed and prepared a new set of poster and leaflet on "Proper Handling of CACS" for educational purpose.

**Committee Stage amendments**

55. No Committee Stage amendments to the Bill have been proposed by the Administration or the Bills Committee.

### **Resumption of Second Reading debate**

56. The Bills Committee supports the resumption of the Second Reading debate on the Bill at the Council meeting of 22 January 2014.

### **Advice Sought**

57. Members are invited to note the deliberations of the Bills Committee.

Council Business Division 1  
Legislative Council Secretariat  
9 January 2014



**Bills Committee on  
Air Pollution Control (Amendment) (No. 2) Bill 2013**

**Membership list**

**Chairman** Hon Kenneth LEUNG

**Members** Hon Cyd HO Sau-lan  
Hon CHAN Hak-kan, JP  
Dr Hon LEUNG Ka-lau  
Hon WU Chi-wai, MH  
Hon Charles Peter MOK  
Dr Hon Kenneth CHAN Ka-lok  
Dr Hon Fernando CHEUNG Chiu-hung  
Hon POON Siu-ping, BBS, MH  
Hon TANG Ka-piu  
Ir Dr Hon LO Wai-kwok, BBS, MH, JP

(Total : 11 Members)

**Clerk** Ms Sophie LAU

**Legal Adviser** Miss Evelyn LEE

**Bills Committee on  
Air Pollution Control (Amendment) (No. 2) Bill 2013**

**List of organisations/individuals that have submitted views to the  
Bills Committee**

*I. Organizations which have made oral representations to the Bills Committee*

1. HK Construction Industry Employees General Union
2. Fugro Technical Services Limited
3. Hong Kong Chinese Prepared Medicine Traders Association
4. The Chamber of Hong Kong Logistics Industry
5. Gammon Construction Limited
6. Construction Industry Council
7. Hong Kong Workers' Health Centre
8. Building Services Operation and Maintenance Executives Society
9. Hong Kong Yee Yee Tong Chinese Medicine Merchants Association Ltd.
10. Hong Kong Chinese Medicine Industry Association
11. Asbestos Removal Contractors (HK) Co. Ltd.
12. The Hong Kong Construction Association
13. The Hong Kong Institute of Marine Technology

*II. Organizations/individuals providing submissions only*

1. The Chinese Medicine Council of Hong Kong
2. The Hong Kong Institution of Engineers