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Panel on Manpower

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 24 August 2021**

Occupational diseases and occupational health situation in Hong Kong

Purpose

This paper summarizes the past discussions by the Panel on Manpower ("the Panel") on occupational diseases and the occupational health situation in Hong Kong since the Fifth Legislative Council ("LegCo").

Background

2. According to the International Labour Organization ("ILO"), occupational diseases are diseases having specific or strong relationship with occupations, generally with only one causal agent. The Employees' Compensation Ordinance (Cap. 282) ("ECO"), the Occupational Deafness (Compensation) Ordinance (Cap. 469) and the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap. 360) prescribe a total of 52 occupational diseases, which are also specified in the Second Schedule 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.

3. According to the Administration, the number of confirmed cases of occupational disease was 216 in 2020. The common occupational diseases included occupational deafness, tenosynovitis of the hand or forearm, silicosis, mesothelioma and asbestosis.

Deliberations of the Panel

List of compensable occupational diseases

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 scope and coverage of the list of compensable occupational diseases in the Second Schedule to ECO in view of the socio-economic changes. Some members took the view that musculoskeletal disorders, such as back pain, shoulder-neck pain, adhesive capsulitis, tennis elbow and osteoarthritis of knees, which were common work-related diseases among domestic helpers, information technology practitioners and employees working in the airport, should be prescribed as occupational diseases if they were resulted from the employers' failure to provide proper training and equipment for workers to perform their duties. Expressing the view that mental health of employees was equally important to their physical health, some members considered that emotional disorders arising from work pressure should be categorized as an occupational disease as well.

5. The Administration advised that the Labour Department ("LD") would review 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 addition of 13 new occupational diseases and expansion of the coverage of three occupational diseases. The Administration further advised that Hong Kong would follow international practices and make reference to the criteria adopted by ILO 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 a causal relationship between the disease and the occupation could be reasonably presumed or established in individual cases.

6. The Administration explained that the 52 occupational diseases specified in the relevant Ordinances were diseases having specific or strong relationship with occupations, and generally with only one causal agent. Musculoskeletal disorders, on the other hand, were diseases with multiple causal agents. Nonetheless, 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 resulting from the interaction of multiple risk factors were commonly found in the general population and not limited to workers engaged in certain occupations. As these disorders could not satisfy the criteria for prescribing as occupational diseases, they were classified as work-related diseases instead. The

Administration further advised that emotional disorders did not satisfy the criteria for prescribing as occupational diseases as they could be caused by reasons other than work.

7. Some members expressed concern whether the Administration would consider lowering the threshold for prescribing a disease as an occupational disease such that an employee suffered from work-related disease or injury could apply for compensation under ECO. The Administration explained that 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. Therefore, the causation criterion was particularly important in differentiating occupational diseases from work-related diseases. The Administration further advised that even if a disease was not prescribed as an occupational disease, an employee was protected by ECO and could apply for compensation under section 36(1) of ECO.

Coronavirus disease 2019

8. Taking into account the COVID-19 pandemic and the existence of a clear causal relationship between the disease and the working environment of some occupations, many members held a strong view that employees contracted COVID-19 at work should be entitled to receive employees' compensation. At its meeting on 21 April 2020, the Panel passed two motions urging the Administration to, among others, list COVID-19 in the Second Schedule to ECO as an occupational disease immediately, and require employers to provide their employees with sufficient personal protective equipment so as to enhance the occupational health and safety.

9. Members were advised that the Administration would make reference to the ILO criteria and adopt an evidence-based approach to assess whether a particular disease should be listed as an occupational disease for employees' compensation. For an infectious disease that could transmit widely in the community, exposure to its infectious agent might not only occur in particular workplaces but generally in the community as well. It was imperative that the link between the disease and the occupation could be reasonably presumed or established in individual cases. As the outbreak situation of COVID-19 was still evolving in Hong Kong and globally, the Administration was keeping a close watch on the relevant medical and epidemiological data in order to make necessary recommendations.

10. The Administration also advised that although COVID-19 was currently not a compensable occupational disease prescribed under ECO, section 36 of ECO stipulated that an employee having contracted a disease not prescribed as

an occupational disease could still claim compensation from the employer under the Ordinance if it was an injury or death by accident arising out of and in the course of employment, and the employer was in general liable to pay compensation under ECO.

11. Some members were concerned that it would be difficult for employees to prove that their infection of COVID-19 was by accident arising out of and in the course of employment. Moreover, employees having contracted COVID-19 with unknown source would not be classified as work injury cases under ECO. These members were concerned about the assistance provided by LD to those employees who had contracted COVID-19 and pursued employees' compensation claims as well as the handling of such claims.

12. The Administration advised that LD had received 541 employees' compensation claims with employees suspected to have contracted COVID-19 arising out of and in the course of employment from January 2020 to 28 April 2021. However, over 20% of the employees concerned withdrew their claims due to various reasons, such as the employers were confirmed to have no liability for employees' compensation or the employees had fully recovered after taking sick leaves. Among the remaining cases, there were 11 employees' compensation claims settled after the employers made payments in accordance with the Certificate of Compensation Assessment and LD was actively following up on the other cases.

13. Regarding the handling of COVID-19 related employees' compensation claims, the Administration advised that LD would first collect relevant information from the employers and employees concerned as to whether the claims were work-related. It would then obtain medical reports and advice from the Centre for Health Protection of the Department of Health with reference to the contact tracing findings for considering whether the infection of COVID-19 was work-related. Both employers and employees concerned would be informed of LD's views on the likelihood and relevance of the case being work-related. The processing time of a claim hinged on the facts of the case and the availability of necessary information. Notwithstanding the Administration's response, members called on the Administration to expedite the processing of these employees' compensation claims.

Occupational deafness

14. Noting that the number of confirmed cases of occupational deafness topped those of all other occupational diseases from 2016 to 2020, some members asked why there was a significant decrease in the number of confirmed cases of occupational deafness from 308 in 2019 to 78 in 2020. They also

enquired about the Administration's plan in place to prevent employees from suffering from occupational disease.

15. The Administration explained that the suspension of hearing testing at designated hearing test centres of the Hospital Authority amid the COVID-19 outbreak by the Occupational Deafness Compensation Board ("ODCB") had attributed to the reduction in the number of confirmed cases of occupational deafness in 2020. Given that the testing services resumed normal from early 2021 onwards, the number of confirmed cases of occupational deafness was expected to reflect the actual situation after backlog cases were cleared. Members were also advised that ODCB had strengthened its publicity and educational efforts in respect of preventing occupational deafness and promoting rights and benefits of persons suffering from the occupational deafness in recent years.

Sudden death of employees at work

16. Some members expressed concern that sudden death of employees caused by overexertion at work was not covered in the list of 52 prescribed occupational diseases in the relevant ordinances. Noting that some neighbouring places had prescribed sudden death at workplace caused by cardiovascular diseases and cerebrovascular diseases ("CCVDs") as compensable diseases and drawn up relevant guidelines, these members enquired about the progress of LD's study on the workplace death cases with same causes and whether the Administration would consider introducing legislation to include workplace death cases in the list of compensable occupational diseases. Some members were concerned that in many cases of sudden death of employees who were caused by overexertion at work, family members of these deceased employees were not entitled to employees' compensation under the existing labour laws because the death was not caused by work accidents.

17. According to the Administration, the causes of sudden death not attributed to work accidents during the course of the employment were complex, and might involve a multitude of factors including personal health condition. ILO had not drawn up any definition or guidelines on workplace deaths caused by "overexertion at work", nor were there any internationally recognized criteria in this regard. LD had commissioned the Occupational Safety and Health Council ("OSHC") to conduct a study on employees' sudden death at work to understand the relationship between work situations and the death cases with focus on those caused by CCVDs. The study would analyze whether there was any possible relationship between the employees' death and their working condition as well as other personal factors, e.g. whether the working condition

could have directly caused the death or whether there could be other relevant circumstances at the same time. The study was completed in early 2021 and LD reported the key findings of the study to the Panel in June 2021. According to the Administration, the study findings revealed that none of the workplace CCVD death cases referred to OSHC for the study was found to have work-related risk factors alone. That said, LD would step up its efforts in strengthening, in the workplace setting, the awareness of employers and employees on the risk factors associated with CCVDs and the importance of proper management and prevention. The Administration further advised that if an employee died (including the case of sudden death) as a result of an accident arising out of and in the course of the employment, the existing ECO already required the employer to take up the liability to pay employees' compensation in accordance with the Ordinance.

Prevention of heat stroke at work

18. Given that Hong Kong was getting increasingly hot during summer, some members were concerned about the high risk of heat stroke to workers undertaking manual work and those who needed to work outdoors, such as construction workers, outdoor cleansing workers and security guards. They called on the Administration to step up its inspection work and enforcement actions to ensure that employers had taken appropriate preventive measures against heat stroke at outdoor workplaces in order to safeguard employees' occupational health.

19. The Administration advised that in addition to the publicity and promotion to enhance the awareness of employers and employees on the prevention of heat stroke at work, LD issued guidelines on rest breaks to employers and urged them to make rest break arrangements in consultation with their employees. Members were further advised that LD conducted 22 000 inspections targeting at outdoor workplaces with a higher risk of heat stroke in 2020. If employers were found to have failed to adopt appropriate measures to safeguard employees' occupational safety and health such as provision of suitable rest breaks, LD would take appropriate enforcement actions, including taking out prosecution against suspected offenders where there was sufficient evidence. According to the Administration, two improvement notices and 11 warning letters were issued from April to September 2020 for relatively minor problems, such as inadequate ventilation of workplaces and employers' failure in providing potable water in the vicinity of workplaces.

20. Noting that portable waist fans were effective in reducing heat stress and were more convenient for workers to carry at work, some members called on the Administration to increase the amount of subsidy and quota under the Portable

Waist Fan Sponsorship Scheme ("the Scheme") for small- and medium-sized enterprises ("SMEs") so that more workers could be benefitted. The Administration advised that the Scheme was jointly launched by LD and OSHC in April 2021 to sponsor SMEs in nine industries with a higher risk of heat stroke to buy portable waist fans at a discounted price and there was a quota of about 600 applications under the Scheme. As the Scheme received positive response, LD and OSHC were considering increasing the sponsorship quota to benefit more employees.

Clinical consultation service of occupational health clinics

21. Members noted with concern that there were only two OHCs located in Kwun Tong and Fanling serving all employees in Hong Kong, which was inconvenient for employees residing in other districts to travel afar for seeking clinical consultation. They considered that the Administration should set up more OHCs so as to meet the service needs. Some members were concerned about the establishment of the medical staff, usage and effectiveness of OHCs and called on the Administration to consider conducting a comprehensive review on the operation of OHCs and make necessary improvement.

22. The Administration responded that the two OHCs were located in proximity to various public transport means and were considered to be easily accessible from most areas. The medical staff of the Occupational Medicine Division (Clinical Services) of LD were responsible for conducting clinical consultations in the Kwun Tong and Fanling OHCs on a roster basis. They provided diagnosis and treatment in these two OHCs. According to the statistics kept by LD on the usage of OHCs, the average waiting time for new cases was around one to two weeks, which was considered acceptable. The Administration assured members that it would closely monitor the usage of OHCs, and would make appropriate adjustments if necessary.

Relevant papers

23. A list of the relevant papers on the LegCo website is in the **Appendix**.

Relevant papers on occupational health and diseases in Hong Kong

Committee	Date of meeting	Paper
Panel on Manpower	17.12.2013 (Item V)	Agenda Minutes
Panel on Manpower	17.6.2014 (Item V)	Agenda Minutes
Panel on Manpower	14.7.2015 (Item II)	Agenda Minutes
Panel on Manpower	15.3.2016 (Item V)	Agenda Minutes
Panel on Manpower	18.7.2017 (Item IV)	Agenda Minutes
Panel on Manpower	27.4.2018 (Item IV)	Agenda Minutes LC Paper No. CB(2)1990/17-18(01)
Legislative Council	29.5.2019	Official Record of Proceedings (Question 1)
Panel on Manpower	19.11.2019 (Item V)	Agenda Minutes
Panel on Manpower	21.4.2020 (Item V)	Agenda Minutes LC Paper No. CB(2)1381/19-20(02) (Annex C)
Panel on Manpower	18.5.2021 (Item V)	Agenda Minutes