

INFORMATION NOTE

Mechanism for imposing levy under the Pneumoconiosis and Mesothelioma (Compensation) Ordinance and the Construction Industry Council Ordinance

1. Introduction

1.1 This information note provides an overview on the *Pneumoconiosis¹ and Mesothelioma² (Compensation) Ordinance ("PMCO")* (Cap. 360) and the *Construction Industry Council Ordinance ("CICO")* (Cap. 587), the governing bodies and levy set out under these two Ordinances, the construction operations subject to levy, the financial position of the governing bodies, as well as the proposed change in levy rates to implement the Government initiative in attracting manpower in the construction industry.

2. Imposition of levy under the Pneumoconiosis and Mesothelioma (Compensation) Ordinance

2.1 The former *Pneumoconiosis (Compensation) Ordinance ("PCO")* came into operation on 1 January 1981 to establish a scheme for compensating persons or their family members in respect of incapacity or death resulting from pneumoconiosis. The Ordinance was amended to add mesothelioma as a compensable disease, and renamed as *PMCO* to reflect the extension in scope to cover cancerous mesothelioma effective from 18 April 2008.

¹ In accordance with section 2 of *PMCO*, pneumoconiosis means (a) fibrosis of the lungs due to dust of free silica or dust containing free silica, whether or not such disease is accompanied by tuberculosis of the lungs, or any other disease of the pulmonary or respiratory organs caused by exposure to such dust; or (b) fibrosis of the lungs due to dust of asbestos or dust containing asbestos, whether or not such disease is accompanied by tuberculosis of the lungs, or any other disease caused by exposure to such dust.

² In accordance with section 2 of *PMCO*, mesothelioma means a primary malignant neoplasm of the mesothelial tissue due to dust of asbestos or dust containing asbestos, whether or not such disease is accompanied by tuberculosis of the lungs or by any other disease caused by exposure to such dust.

2.2 Established in 1980 as a statutory body under *PCO*, the Pneumoconiosis Compensation Fund Board ("Board") is responsible for administering the Pneumoconiosis Compensation Fund ("Fund") set up under *PMCO*. The functions of the Board include:

- (a) making recommendations to the Government with respect to the rate of levy collected from the construction and quarry industries and electrical and mechanical works;
- (b) conducting and financing educational, publicity, research and other programmes to prevent pneumoconiosis and mesothelioma, as well as conducting and financing programmes for the rehabilitation of persons suffering from the above diseases; and
- (c) administering funds received from the Government and designated by the Government as ex-gratia payments to persons diagnosed before 1 January 1981 to be suffering from pneumoconiosis.

2.3 Under *PMCO*, the Fund consists of moneys received from the Government as well as from levy, surcharge and penalty. The Fund is vested in the Board which has the authority to pay, inter alia, compensation, medical examination fees, medical expenses and expenses for medical appliances to eligible persons as stated under paragraph 2.11.

Levy

2.4 The rate and scope of levy imposed has undergone various changes during the past three decades. When first implemented in 1981 under *PCO*, the levy was initially fixed at the rate of 0.2%. It was imposed on all construction works undertaken in Hong Kong with value exceeding HK\$250,000 and on quarry products produced since 4 January 1981. On 1 June 1985, the threshold of construction works subject to levy was raised from HK\$250,000 to HK\$1 million. The levy rate was increased from 0.2% to 0.25% on 18 June 2000 and has remained unchanged since then. In 2004, *PCO* was further amended to impose levy on electrical and mechanical works.

2.5 For the construction industry, it is the responsibility of the contractor to pay levy to the Board. As such, a contractor is required to give notice of commencement of construction operations to the Board. Construction operations refer to any of the followings³:

- (a) building works;
- (b) street works;
- (c) construction, alteration, repair, maintenance, extension, demolition or dismantling of buildings or structures, power-lines, telecommunications apparatus or pipelines;
- (d) supply and installation of fittings or equipment in any building or structures;
- (e) external or internal cleaning of any buildings or structures, which is carried out in the course of construction or maintenance of such buildings or structures;
- (f) painting or decorating any external or internal surfaces or parts of any buildings or structures; and
- (g) operations which form an integral part of, or are preparatory to any of the above operations.

2.6 The Board will issue a notice of assessment which specifies the amount of levy payable by the contractor. The contractor is required to settle the payment within 28 days after receipt of notice of assessment. If levy is not settled before the due date, a 5% penalty will be imposed on the contractor.

³ In accordance with section 2 of *PMCO*, "construction operations" has the meaning assigned to it in section 2(1) of *CICO*.

Objections and appeals

2.7 Any person who is notified of an assessment of levy may object to the assessment by a notice of objection in writing to the Board within 21 days after receipt of the notice. The notice of objection shall state precisely the grounds of objection and shall be accompanied by all written statements and other documentary evidence relied upon by the objector in support of the objection. The objection will then be considered by the appropriate committee of the Board.

2.8 The Board will notify the objector of the decision of the committee within 28 days after receipt of the notice of objection. An objector who is aggrieved with the Board's decision may appeal to the Court against the decision within 30 days after receipt of the notification.

Financial position

2.9 From 2006 to 2010, the Fund has been running a surplus, with the accumulated surplus totalling more than HK\$1 billion in 2010. **Table 1** presents the total income, total expenditure and accumulated Fund carried forward from 2006 to 2010.

Table 1 – Income and expenditure of the Fund from 2006 to 2010

(HK\$'000)	2006	2007	2008	2009	2010
Total income	188,952	211,315	230,942	250,233	283,091
Total expenditure	178,036	168,594	162,350	173,653	170,212
Surplus for the year	10,916	42,721	68,592	76,580	112,879
Accumulated fund carried forward	866,599	908,990	976,887	1,042,211	1,130,870

Source: Pneumoconiosis Compensation Fund Board (2010).

Compensation

2.10 In accordance with *PMCO*, the following compensation is provided to eligible persons:

- (a) monthly compensation for pain, suffering and loss of amenities;
- (b) monthly compensation for incapacity;
- (c) compensation for period prior to date of diagnosis;
- (d) compensation for care and attention;
- (e) expenses for medical treatment;
- (f) expenses for medical appliances;
- (g) compensation for death resulting from pneumoconiosis or mesothelioma (or both);
- (h) compensation for bereavement; and
- (i) funeral expenses.

2.11 Under section 4 of *PMCO*, compensation shall be payable to:

- (a) any person suffering from pneumoconiosis and/or mesothelioma, in respect of any incapacity resulting from the above disease or diseases and any pain, suffering and loss of amenities arising from the above disease or diseases; and where any such person dies, to the members of his or her family; and
- (b) a person resident in Hong Kong (or the members of the family of a person who was resident in Hong Kong) for five years or more at the date of the notification of his or her claim (or at the date of his or her death), or resident in Hong Kong (or who was resident in Hong Kong) for less than five years at such date if he or she contracted pneumoconiosis and/or mesothelioma in Hong Kong.

2.12 Instead of receiving a lump-sum amount from 1981 to 1993, eligible persons now receive a life-long compensation of a minimum HK\$3,180 per month up to HK\$24,900. They could also enjoy other benefits such as reimbursement of fees related to medical expenses, medical appliances covering wheelchair and oxygen concentrator. Total compensation payment increased 20 times to HK\$145.9 million in 2010 when compared with the amount paid in 1981.

3. Imposition of levy under the Construction Industry Council Ordinance

The Construction Industry Council

3.1 The Construction Industry Council ("CIC") was formed on 1 February 2007 with the mission to strengthen the sustainability of the construction industry in Hong Kong by providing a communication platform, increasing awareness of health and safety as well as improving skills development.

3.2 To propagate improvements across the entire industry, CIC is empowered to, inter alia, formulate codes of conduct, administer registration and rating schemes, facilitate adoption of construction standards, promote good practices and make recommendations with respect to the rate of the levy imposed under *CICO*.

Levy

3.3 In accordance with section 32 of *CICO*, a "Construction Industry Levy" at the rate of 0.4% is imposed in respect of construction operations over the value of HK\$1 million carried out in Hong Kong.

3.4 Levy is payable by contractors executing construction operations which have the same meaning as those prescribed under *PMCO* (see paragraph 2.5). The contractor and the authorized person of a construction operation are each required to inform CIC that they are the contractor and authorized person of the operation vide a notice of commencement to be given within 14 days of the commencement of the operation, as well as to give notice of completion within 14 days after completion of the construction operation. During the construction, the contractor is also required to give notice of payment within 14 days after a payment is received in respect of any stage or part of the construction.

3.5 CIC will assess the amount of the levy payable upon receiving notices of payment and completion. Upon the completion of assessment, CIC will issue to concerned contractors notice of assessment advising on the amount of levy payable. Contractors are required to pay within 28 days of receiving such notices. If the amount of the levy is not fully paid within 28 days after receipt of the notice of assessment, a penalty of 5% of the unpaid amount will be imposed on the contractor concerned.

Objections and appeals

3.6 A contractor may object to the levy imposed within 21 days of receiving the notice of assessment. The notice of objection should be made in writing to CIC, stating the grounds of objection with all written statements and other documentary evidence relied on by the objector.

3.7 The notice of objection will then be forwarded to the Objections Committee of CIC for consideration. An objector who is aggrieved by a decision of the Objections Committee may appeal to the District Court against that decision. Nevertheless, the objector would have to pay the levy, surcharge, penalty or further penalty first even though he or she intends to make an objection.

Financial position

3.8 The construction industry levy has been a main source of income of CIC since its establishment. In 2010, the construction industry levy amounted to HK\$298.39 million, accounting for about 84.9% of the total income of the year. **Table 2** below sets out the total income, total expenditure and surplus of CIC from 2008 to 2010.

Table 2 – Income and expenditure of CIC from 2008 to 2010

(HK\$ '000)	2008	2009	2010
Levy income (% of total income)	251,098 (84.3%)	266,582 (85.4%)	298,393 (84.9%)
Total income	297,844	312,034	351,407
Total expenditure	223,168	238,290	259,952
Surplus for the year	74,676	73,744	91,455

Source: Construction Industry Council (2008), Construction Industry Council (2009) and Construction Industry Council (2010).

4. Recent development

4.1 The heavy investment in infrastructure projects by the Government in recent years has brought about a substantial increase in demand for construction workers. As such, the Government has implemented various initiatives to attract more people to join the construction industry. In 2010, the Government sought the approval of the Finance Committee of the Legislative Council for a HK\$100 million funding to support CIC to enhance training and trade testing for prospective fresh blood and in-service construction personnel, and to enhance promotion and publicity activities of the construction industry.

4.2 The Financial Secretary further announced in the 2011-2012 Budget that an additional HK\$220 million was earmarked to support CIC in enhancing manpower training to bring fresh blood into the industry to meet the demand of future infrastructure developments. The funding proposal was approved by the Finance Committee on 20 April 2012.

4.3 To step up the recruitment effort, the Administration will consult the Panel on Development at the meeting on 22 May 2012 in respect of the effect of the technical amendments to *PMCO* and *CICO* for increasing the *CICO* levy rate by 0.1 percentage point to 0.5% while at the same time reducing *PMCO* levy rate by 0.1 percentage point to 0.15%. With the overall levy rate remaining unchanged under this synchronized arrangement, the Administration intends to provide additional resources to CIC to conduct new initiatives to attract more new blood to join the construction industry and to nurture a quality construction team, so as to support the sustainable and long-term development of the industry.

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