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Paper for the House Committee meeting on 15 June 2018

**Report of the Subcommittee on Proposed Resolutions under
Construction Industry Council Ordinance and
Pneumoconiosis and Mesothelioma (Compensation) Ordinance**

Purpose

This paper reports on the deliberations of the Subcommittee on Proposed Resolutions under Construction Industry Council Ordinance and Pneumoconiosis and Mesothelioma (Compensation) Ordinance ("the Subcommittee").

Background

2. Under sections 32(1) and 33 of the Construction Industry Council Ordinance (Cap. 587) ("CICO"), contractors are required to pay a levy at the rate of 0.5% (as specified in Part 2 of Schedule 5 to CICO) of the value of the construction operations carried out in Hong Kong to the Construction Industry Council ("CIC") to support its functions. Pursuant to section 32(3) of CICO, construction operations with a total value not exceeding the amount specified in Part 1 of Schedule 5 to CICO are not liable to the levy.

3. Separately, under section 35 of the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap. 360) ("PMCO"), contractors of construction operations and quarry operators are required to pay a levy at the rate of 0.15% (as specified in Part 2 of Schedule 5 to PMCO) of the value of the construction operations carried out in Hong Kong and the value of the quarry products extracted or produced respectively. The levy provides a source of income for the Pneumoconiosis Compensation Fund ("PCF") set up under PMCO to provide payment of compensation to persons and their family members in

respect of incapacity or death resulting from pneumoconiosis or mesothelioma (or both) and finance the statutory functions of the Pneumoconiosis Compensation Fund Board ("PCFB").¹ Pursuant to section 35(3) of PMCO, construction operations with a total value not exceeding the amount specified in Part 1 of Schedule 5 to PMCO are not liable to the levy.

4. The levy thresholds under CICO and PMCO have remained unchanged at \$1 million since 1985.

5. According to the Administration, taking into account the cumulative inflation based on the Consumer Price Index from 1985 to 2017, CIC has completed a review on the levy thresholds under CICO and the Construction Workers Registration Ordinance (Cap. 583) ("CWRO").² As the same levy threshold also applies to PMCO, CIC has recommended increasing the levy thresholds under the three ordinances from \$1 million to \$3 million after reaching consensus among the stakeholders of the construction industry. Subsequently, PCFB conducted a review of its financial position and agreed to CIC's recommendation.

The proposed resolutions

6. The Secretary for Development ("SDEV") and the Secretary for Labour and Welfare ("SLW") have respectively given notices to move two motions at the Legislative Council ("LegCo") meeting of 30 May 2018 under section 70 of CICO and section 36 of PMCO to raise the levy thresholds specified in Part 1 of Schedule 5 to CICO and PMCO from \$1 million to \$3 million respectively.³ The effect of such amendment is that construction operations of the total value not exceeding \$3 million are exempt from levy under CICO and PMCO.

¹ PCF is managed by PCFB.

² Apart from the levies under CICO and PMCO, contractors are also required to pay levies to CIC under CWRO at the rate of 0.03% of the value of the construction operations concerned. The levy imposed under CWRO is also subject to the same levy threshold of \$1 million.

³ According to the Administration, as regards the amendment under CWRO, it would be introduced into LegCo for negative vetting after the passage of the proposed resolutions under CICO and PMCO. To avoid confusion to contractors, the effective dates of the new levy thresholds under the three ordinances would be aligned.

7. Under section 70(2) and (5) of CICO and section 36(2) and (5) of PMCO, the proposed resolutions, if passed by LegCo, would come into effect on the expiry of the period of 30 days after gazettal of the resolutions.

The Subcommittee

8. At the meeting of the House Committee on 18 May 2018, Members agreed to form a subcommittee to study the proposed resolutions. At the request of the House Committee, SDEV and SLW have respectively withdrawn the notices for moving the motions as mentioned in paragraph 6 above in order to allow time for the Subcommittee to study the proposed resolutions.

9. The membership list of the Subcommittee is in the **Appendix**. Under the chairmanship of Hon HO Kai-ming, the Subcommittee has held one meeting with the Administration to scrutinize the proposed resolutions.

Deliberations of the Subcommittee

10. The Subcommittee does not object to the proposed resolutions, and notes that the stakeholders in the construction industry generally support raising the levy thresholds. In the course of deliberations, the Subcommittee has examined issues including related impact on the work of CIC, the statutory compensation under PMCO, and the mechanism for reviewing the levy thresholds. The Subcommittee's deliberations are set out in the ensuing paragraphs.

Impact on the work of Construction Industry Council

11. The Subcommittee raises no objection to raising the levy threshold under CICO, noting that the proposed raise in the levy threshold to \$3 million will have little impact on the work of CIC given its healthy financial position and that the proposal will help alleviate the financial burden of contractors by excluding low-value construction operations usually undertaken by small and medium enterprise contractors from the levy net. According to the Administration, the reduction in levy income only accounts for about 1% of CIC's annual levy income.

Statutory compensation under the Pneumoconiosis and Mesothelioma (Compensation) Ordinance

12. While members generally do not have strong views against the corresponding amendment of the levy threshold under PMCO, they are keenly concerned about how PCFB can make the best use of the accumulated fund under PCF, which amounts to \$2.37 billion as at the end of 2017,⁴ to better support the patients suffering from pneumoconiosis or mesothelioma (or both) (hereinafter referred to as "the patients concerned") as well as their families.

13. Members note from the Administration that the total annual expenditure/forecast expenditure of PCFB is \$272 million in 2017 and about \$293.6 million in 2018 respectively, whereas its annual total income/forecast income is \$421.7 million in 2017 and \$398.3 million in 2018 respectively, already taking into account the reduction in levy income after raising the levy threshold. In view of the sound financial position of PCFB with large amounts of annual surplus and given that the number of the patients concerned is declining (with only 72 new cases in 2017), members consider that there is much room to enhance the compensation provided to the patients concerned, both in terms of the amount and the items of compensation.

14. Many members consider that the prevailing compensation under PMCO is inadequate and the eligibility criteria for certain compensation items are too stringent. Dr KWOK Ka-ki has pointed out that, for example, the patients concerned can be entitled to a monthly compensation in respect of their degree of incapacity resulting from pneumoconiosis or mesothelioma (or both) under section 6 of PMCO. Yet, in accordance with the Fourth Schedule to PMCO, the patients concerned should be assessed with a forced vital capacity of 49% or below in the required medical examination in order to be determined as suffering from total (i.e. 100%) incapacity. Dr KWOK has criticized that the criteria are unreasonable. The Chairman and most members of the Subcommittee have demanded the Administration to squarely and proactively respond to the long-term and repeated appeals from the relevant patient groups and conduct a comprehensive review of the statutory compensation under PMCO.

⁴ According to the LegCo Brief on the proposed resolution under section 36 of PMCO (File Ref.: LD ECS1/50/24(C)) issued by the Labour and Welfare Bureau and the Labour Department in May 2018, the figure is subject to final auditing.

15. The Administration has advised that it has attached great importance to meeting the needs of the patients concerned over the years. The scope of the former Pneumoconiosis (Compensation) Ordinance has been extended to cover cancerous mesothelioma since 18 April 2008, following which the former Ordinance was re-titled as PMCO to reflect the extension. The compensation items under PMCO were also expanded to include, for example, the monthly compensation for pain, suffering and loss of amenities in 1996. This item is provided to the patients concerned irrespective of their degree of incapacity and its prevailing level of compensation is \$5,110 per month. As regards the level of compensation under individual compensation items, regular reviews are also conducted every one or two years. Apart from compensation work, PCFB also conducts and finances educational, publicity, research and rehabilitation programmes in relation to pneumoconiosis and mesothelioma. The expenses of PCFB for implementing rehabilitation programmes have increased from \$4.64 million in 2016 to \$16.8 million in 2017, representing a significant increase in the resource input on the rehabilitation front. PCFB has met and discussed with the relevant patient groups from time to time to gauge their demands and will continue to enhance its rehabilitation programmes.

16. The Subcommittee discussed at length the provision of medical expenses and expenses for medical appliances under PMCO. Dr KWOK Ka-ki has expressed grave disappointment that the maximum daily rate of reimbursable medical expenses payable under section 12 of PMCO currently at \$300/\$370⁵ (as specified in Part I of the Second Schedule to PMCO) is only sufficient for the patients concerned to seek medical treatment in public hospitals. Regarding the list of medical appliances specified in Part II of the Second Schedule to PMCO ("listed medical appliances") in respect of which reasonable expenses should be payable to the eligible patients concerned, Dr KWOK and most other members consider it unacceptable that the list has not been updated for many years.⁶ They have pointed out that many patients concerned have to use breathing machines and hoped the Administration to include such machines as listed medical appliances as soon as possible.

⁵ The maximum daily rate of reimbursable medical expenses for in-patient or out-patient treatment is \$300, and the maximum daily rate of reimbursable medical expenses for in-patient and out-patient treatment received on the same day is \$370.

⁶ The listed medical appliances are wheelchair, oxygen concentrator and its accessories, and oxygen cylinder and its accessories.

17. The Administration has advised that the maximum daily rates of reimbursable medical expenses were last increased in February 2018 and the issue has been deliberated thoroughly. According to the established mechanism, the maximum rates of medical expenses are linked to public healthcare service fees and charges. Regarding the listed medical appliances, the Labour Department ("LD") in collaboration with PCFB is undertaking a study to review the feasibility of expanding the list of medical appliances. The study is expected to be completed in 2018. Meanwhile, it is necessary to carefully study the safety and technical issues as well as the required accessories and ancillary appliances regarding the use of the proposed medical appliances to be included, such as breathing apparatus and sputum suction machines. Expert opinion is being sought on the safety and precautions of using the appliances as well as any follow-up guidance provided by medical professionals to patients and their carers required for ensuring the safe use of these appliances. Upon completion of the study, LD will consult PCFB and the Labour Advisory Board ("LAB") on the recommendations of the study, and introduce relevant legislative amendments to LegCo.

18. In the above connection, the Subcommittee has requested the Administration to provide information on the kinds of medical appliances covered in the above study and the study progress; the timetable for respectively consulting PCFB and LAB on the recommendations of the above study, and for introducing relevant legislative amendments to LegCo; and whether any interim administrative measures can be implemented to assist those patients concerned who need to use non-listed medical appliances, such as breathing machines. The Administration has provided relevant reference vide LC Paper No. CB(1)1109/17-18(02). In gist, the Administration has advised that the above study covered non-invasive positive pressure ventilation device and sputum suction device. LD aims to consult PCFB and LAB in the fourth quarter of 2018 on the proposal to expand the medical appliances under PMCO, and then submit the proposal to LegCo as soon as possible. While pending the relevant legislative process, LD will liaise with PCFB to explore any possibility in financing the use of medical appliances not yet listed in PMCO subject to the statutory ambit of PCFB and PMCO. LD will monitor the issue closely.

Mechanism for reviewing the levy thresholds

19. The Subcommittee has enquired why the levy thresholds have not been reviewed for more than 30 years and whether a regular review mechanism would be introduced.

20. According to the Administration, the proposal to raise the levy thresholds is made pursuant to a review by CIC. Taking into account the cumulative inflation based on the Consumer Price Index and the financial positions of CIC and PCFB, the review has concluded that there is room for a raise of the thresholds. Similar reviews will be conducted in future as and when necessary.

21. On the reason for setting the levy thresholds under CICO and PMCO at the same level, the Administration has advised that such arrangement aims to avoid confusion to contractors, otherwise the contractors concerned will have to determine whether a levy is payable under each of the ordinances separately in respect of the same construction contract.

Referral to the Panel on Manpower for follow-up

22. Given the ambit of the proposed resolutions under scrutiny by the Subcommittee, the Chairman and members of the Subcommittee generally consider that the wider policy issues relating to the review of the statutory compensation under PMCO largely fall outside the purview of the Subcommittee. The Subcommittee agrees that the Panel on Manpower ("the Panel") would be in a better position to take up the related issues (in particular issues referred to in paragraphs 12 to 18 above). After deliberations, the Subcommittee agrees that the relevant issues will be referred to the Panel for following up where appropriate, including deciding whether and when a public hearing shall be arranged to receive views from stakeholders, in particular the patients concerned, their families and relevant patient groups.

Recommendation

23. The Subcommittee has completed scrutiny of the proposed resolutions. It raises no objection to the proposed resolutions and will not proposed any amendments to the proposed resolutions.

24. The Subcommittee has been advised by the Administration that in addition to the proposed resolutions under CICO and PMCO, the legislative exercise also involves the amendment of levy threshold under CWRO, which will be introduced into LegCo for negative vetting after the passage of the proposed resolutions under CICO and PMCO. To avoid confusion to contractors paying the levies, the Administration intends to align the effective dates of the new levy thresholds under CICO, PMCO and CWRO.

In this connection, the Administration has subsequently advised the Subcommittee that SDEV and SLW will give fresh notices for moving the motions to seek LegCo's approval of the proposed resolutions at the Council meeting of 27 June 2018.

Advice sought

25. Members are invited to note the deliberations of the Subcommittee as set out above.

Council Business Division 1
Legislative Council Secretariat
13 June 2018

**Subcommittee on Proposed Resolutions under
Construction Industry Council Ordinance and
Pneumoconiosis and Mesothelioma (Compensation) Ordinance**

Membership list

Chairman Hon HO Kai-ming

Members Hon LEUNG Yiu-chung
Hon WONG Ting-kwong, GBS, JP
Dr Hon KWOK Ka-ki
Dr Hon Fernando CHEUNG Chiu-hung
Hon POON Siu-ping, BBS, MH
Dr Hon CHIANG Lai-wan, JP
Dr Hon Pierre CHAN

(Total : 8 members)

Clerk Ms Doris LO

Legal Adviser Ms Vanessa CHENG