

LEGISLATIVE COUNCIL BRIEF

Resolution of the Legislative Council under Section 36 of the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap. 360)

INTRODUCTION

Secretary for Labour and Welfare (“SLW”) has given notice to move a resolution (see **Annex A**) at the Legislative Council (“LegCo”) meeting of 30 May 2018. The resolution, which is to be moved under section 36 of the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap. 360) (“PMCO”), seeks to amend the levy threshold specified in Part 1 of Schedule 5 to PMCO from \$1 million to \$3 million.

JUSTIFICATIONS

2. The Pneumoconiosis Compensation Fund (“the Fund”) is set up under PMCO to provide payment of compensation to persons and their family members in respect of incapacity or death resulting from pneumoconiosis and/or mesothelioma. The Fund is managed by the Pneumoconiosis Compensation Fund Board (“PCFB”). Apart from compensation work, PCFB also conducts and finances educational, publicity, research and rehabilitation programmes in relation to pneumoconiosis and mesothelioma.

3. To finance the functions of PCFB, section 35 of PMCO provides for the imposition of a levy in respect of construction operations carried out in Hong Kong as well as quarry products extracted or produced. The current levy rate is set at 0.15% of the value of construction operations and the value of quarry products. Construction operations with total value not exceeding \$1 million are exempt from the payment of levy (i.e. the levy threshold), as set out in Part 1 of Schedule 5 to PMCO. The levy threshold has remained unchanged at \$1 million since June 1985.

4. In addition to the levy under PMCO, contractors are also required to pay two levies to the Construction Industry Council (“CIC”) under the Construction Industry Council Ordinance (Cap. 587) (“CICO”) and the Construction Workers Registration Ordinance (Cap. 583) (“CWRO”) at the respective rates of 0.5% and 0.03% of the value of construction operations. Like PMCO, the levy thresholds under CICO and CWRO have remained unchanged at \$1 million since June 1985 and February 2005 respectively.

CIC’s RECOMMENDATION TO AMEND THE LEVY THRESHOLDS

5. Taking into account the accumulative inflation over the past three decades or so¹, CIC completed a review on the levy thresholds under CICO and CWRO. As the same levy threshold also applies to PMCO, CIC, after having reached consensus among stakeholders of the construction industry², recommended that the levy thresholds under the three Ordinances be increased from \$1 million to \$3 million.

PROPOSAL

6. Having considered the recommendation of CIC and the financial position of PCFB, we propose to raise the levy threshold under PMCO from \$1 million to \$3 million. The proposal would reflect the current market situation and is in line with the legislative intent of exempting small-scale construction contracts from the levy net. The revised levy threshold will not apply retrospectively to construction works for which tendering is in progress or contracts which have commenced before the effective date of the amendment.

EFFECTIVE DATE AND LEGISLATIVE TIMETABLE

7. Under section 36 of PMCO, LegCo may by resolution revise the levy threshold specified in Part 1 of Schedule 5 to the Ordinance, and the amendment

¹ The cumulative inflation is estimated based on the Consumer Price Index, which has risen by about 220% from 1985 to 2017.

² Including professionals, academics, contractors, workers and independent persons.

shall come into effect on the expiry of a period of 30 days after the publication in the Gazette. Pursuant to the legislative timetable below, the new levy threshold under PMCO will come into effect on 2 July 2018. As proposed by the Development Bureau, the levy threshold amendment under CICO will have the same legislative timetable while the amendment under CWRO will be introduced into LegCo for negative vetting with the same proposed effective date of 2 July 2018. The legislative timetable in respect of PMCO is as follows —

Moving the motion at LegCo	30 May 2018
Gazettal of resolution (if passed before 1 pm on 31 May 2018)	1 June 2018
Effective date	2 July 2018 (30 days after gazettal of resolution)

IMPLICATIONS OF THE PROPOSAL

8. PCFB has assessed the impact of the levy threshold amendment based on seven-year (2011 to 2017) average figures. After the amendment, 26.2% of construction operations would no longer be subject to the levy under PMCO. PCFB would forgo levy income of around \$3.5 million annually, equivalent to 1% of its average annual levy income (\$349.3 million). Taking into account the average annual processing cost savings of \$0.23 million, the net reduction in the PCFB's annual income is around \$3.3 million. As at the end of 2017, the accumulated fund of the PCFB was \$2.37 billion³. Given the healthy financial position of the Fund, the proposed amendment of levy threshold would not affect the financial viability of PCFB in discharging its statutory functions.

9. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It does not affect the current binding effect of PMCO. There are no financial, civil service, productivity, environmental, family and gender implications. The proposed amendment of

³ The figure is subject to final auditing.

levy threshold would not entail significant economic implications in general, yet it would help alleviate the financial burden of contractors through excluding more low-value construction operations from the levy net. Other than these economic implications, the proposal has no sustainability implications.

PUBLIC CONSULTATION

10. PCFB agreed to the proposal to raise the levy threshold to \$3 million under PMCO at its meeting held on 8 February 2018. The Labour Advisory Board discussed the proposal on 14 March 2018 and its members had no objection. We submitted the proposal to the LegCo Panel on Development on 27 March 2018, and members of the Panel on Manpower and other LegCo members were invited to join the discussion. The meeting raised no objection to the proposal.

PUBLICITY

11. PCFB would inform individual contractors of the amended levy threshold by letter, and publicise the revised levy threshold on its website and newsletter to be distributed to the contractors.

ENQUIRIES

12. Enquiries on this brief can be addressed to Mr Simon Li, Assistant Commissioner for Labour (Employees' Rights and Benefits), at 2852 4083 or Ms Kate Tam, Senior Labour Officer (Employees' Compensation Division) (Central Services Section 1) of the Labour Department, at 2852 4035.

Labour and Welfare Bureau
Labour Department
May 2018

**Pneumoconiosis and Mesothelioma (Compensation)
Ordinance**

Resolution of the Legislative Council

Resolution made and passed by the Legislative Council under section 36 of the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap. 360) on 2018.

Resolved that the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap. 360) be amended as set out in the Schedule.

Schedule

**Amendment to Pneumoconiosis and Mesothelioma
(Compensation) Ordinance**

1. Schedule 5 amended (levy)

Schedule 5, Part 1—

Repeal

“\$1,000,000”

Substitute

“\$3,000,000”.

Clerk to the Legislative Council

2018

Explanatory Note

Under section 35 of the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap. 360) (*Ordinance*), if the total value of construction operations exceeds the amount specified in Part 1 of Schedule 5 to the Ordinance (*levy threshold*), the construction operations are subject to a statutory levy at the rate of 0.15% of the value of the construction operations.

2. This Resolution increases the levy threshold from \$1 million to \$3 million. Contractors of construction operations the total value of which does not exceed \$3 million are not liable to pay the levy.
3. The increase comes into effect on the expiry of 30 days after the publication in the Gazette of this Resolution (see section 36(2) and (5) of the Ordinance).

**Pneumoconiosis and Mesothelioma (Compensation)
Ordinance**

Resolution

(Under section 36 of the Pneumoconiosis and Mesothelioma
(Compensation) Ordinance (Cap. 360))

Resolved that the Pneumoconiosis and Mesothelioma (Compensation)
Ordinance (Cap. 360) be amended as set out in the Schedule.

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