

**Mandatory Provident Fund Schemes (Amendment) Bill 2002**

**Follow-up on matters raised at the Bills Committee meetings**

**on 11 and 12 June 2002**

**and Draft Committee Stage Amendments (CSAs)**

*Follow-up actions on the matters raised*

| <b>Follow-up actions required</b>   | <b>Administration's Response</b>  |
|---|---|
| To inform members of the economic implications if the minimum level of relevant income is adjusted to \$6000 per month. | <p>On the basis of the latest statistics (first quarter of 2002), if the level of minimum relevant income is increased from \$4,000 to -</p> <p>(a) \$5,000</p> <p>the reduction in MPF contributions in the first year would amount to less than 1% of the total annual contributions, or some \$173 million, and the effect on the increase in consumer spending was estimated at less than 0.01 of a percentage point of private consumption expenditure or GDP in the year of incidence.</p> <p>(b) \$6,000</p> <p>the reduction in MPF contributions in the first year would amount to less than 2.5% of the total annual contribution, or some \$583 million, and the effect on the increase in consumer spending was estimated at about 0.01 of a percentage point of private consumption expenditure or GDP in the year of incidence.</p> |
| Views of employers' associations on the provisions in the Bill.   | In short, all the 4 employers' associations consulted support the proposed amendments in the Bill. Their replies are at Annex A.  |
| Definition of "total incapacity" contained in other pieces of legislation.  | The definitions of "total incapacity" set out in the Employees' Compensation Ordinance (Cap. 282) and Pneumoconiosis (Compensation)   |

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|   | Ordinance (Cap. 360) are attached at Annex B. The definitions under these two Ordinances are different, as they were drafted for the specific purposes of those Ordinances. As explained at the Bills Committee meeting on 12.6.2002, the proposal in the Bill will not change the policy behind the definition of "total incapacity" in the Mandatory Provident Fund Schemes Ordinance. It merely ensures that a person who becomes totally incapacitated whilst being unemployed would be eligible to withdraw his accrued benefits. |
| To explore the possibility to refine the Chinese version of clause 6 of the Bill relating to treatment of monies-in-transit and to provide the early Chinese draft for members reference. | The previous drafts of the Chinese versions are attached at Annex C. We consider that the proposed Chinese provisions in the Bill fully reflect the English text.  |

### ***Draft Committee Stage Amendments (CSAs)***

A set of draft CSAs to amend the Bill are at Annex D

| <b>Amendments Proposed</b>  | <b>Background</b>   |
|---|---|
| <p><u>Clause 4(a)</u></p> <p>To simplify the Chinese provisions in proposed section 7A(7) relating to employees' contribution holidays.</p>   | <p>In response to the suggestions of Hon Cheng Kar-foo made at the Bills Committee meeting on 12 June 2002.</p>   |
| <p><u>Clause 11</u></p> <p>For the avoidance of doubt, we propose to revise the proposed section 43B(3) in respect of the daily fine on employers who have been convicted of the non-enrolment offence.</p> <p>We also propose to add the expression "Notwithstanding section 26 of the Magistrates Ordinance (Cap. 227)" at the beginning of section 43B(4) to clarify our intention to extend the</p> | <p>In response to the suggestions of the LegCo Legal Adviser (paragraph (d) in the letter dated 13 June 2002).</p> <p>In response to the suggestions of the LegCo Legal Adviser (the second last paragraph in the letter dated 13 June 2002).</p> |

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| <p>prosecution time bar by displacing the time limit imposed by the Magistrates Ordinance.</p>   |  |
| <p><u>New clause</u></p> <p>This is a consequential amendment to the proposed amendments which replace the reference to scheme merger and division with scheme restructuring. This new clause seeks to replace items 10 and 11 of the Schedule 6 to the Ordinance (which refers to scheme merger and division) with a new item which refers to restructuring of schemes.</p>   | <p>In response to the 3<sup>rd</sup> paragraph on page 1 of LegCo Legal Adviser's letter dated 30 May and the Administration's reply of 8 June 2002.</p> |
| <p><u>Schedule</u></p> <p><i>Item (a)</i><br/> In section 16, we propose to add a time frame within which the new employer must elect to have the employees' accrued benefits transferred. The new employer would be required to elect "within the permitted period", i.e., within 60 days from the date on which the employment with the new employer begins.</p> <p>The Chinese translation for the term "the last-mentioned scheme" is proposed to be amended to better reflect the English text.</p> <p><i>Items (c) and (d)</i><br/> Amendments to sections 20(b) and 21 are proposed to further clarify the provisions.</p> <p><i>Items (b) and (e)</i><br/> The proposed amendment seeks to ensure that the Chinese text matches the English version.</p> | <p>All these amendments are proposed in response to the suggestions put forward in the LegCo Legal Adviser's letter of 30 May 2002.</p>                  |

***Further CSAs being prepared***

We are also preparing CSAs which seek to further clarify the following provisions -

a) Sections 13 and 14 of the Schedule to the Bill, proposed sections 145(7A) and 146(9A) of the Mandatory Provident Fund Schemes (General) Regulation

The proposed provisions allow the notification of the cessation of employment by the employers to be lodged together with the remittance statements. It is necessary to further qualify that the “remittance statement” should be “the remittance statement in respect of the contribution period that ends immediately following the employees’ cessation of employment”.

b) Section 20 of the Schedule, proposed section 8(1) of the Schedule 1 to the Mandatory Provident Fund Schemes (General) Regulation

To further clarify the provision by stipulating that “an index-tracking collective investment scheme” is the one “approved by MPFA for the purposes of section 6A of Schedule 1 to the Mandatory Provident Fund Schemes (General) Regulation”.

The above draft CSAs will be submitted to the Committee shortly.

10 June 2002

Ms Susie Ho  
Deputy Secretary for Financial Services  
Government Secretariat  
18/F, Admiralty Centre Tower 1  
18 Harcourt Road  
Hong Kong

Dear Ms Ho,

**Mandatory Provident Fund Schemes (Amendment) Bill 2002**

Thank you for your letter of 5 June 2002 inviting our comments on the captioned Bill.

The Federation agrees with the proposed revision of the minimum level of relevant income from \$4000 to \$5000. We also support the establishment of a mechanism for periodic review of the minimum and maximum levels of relevant income. However, we have reservations about using the median wage as the sole basis for deciding the levels of adjustment. We believe that other factors, such as Hong Kong's overall economic situation and the affordability of employers, should be included as key components in the adjustment mechanism.

Yours sincerely,

V. C. Davies  
Director-General

c.c. Mr Victor Lo  
The Hon. Kenneth Ting  
Mr Andrew Leung

12 June 2002

Mr Stephen Ip  
Secretary for Financial Services  
Financial Services Bureau  
The Government of the HKSAR  
18/F, Admiralty Centre Tower 1  
18 Harcourt Road  
Hong Kong

Dear Stephen,

**Mandatory Provident Fund Schemes (Amendment) Bill 2002**

I write on behalf of the Hong Kong General Chamber of Commerce Chairman, Mr Christopher Cheng, in relation to the aforementioned Bill. I believe he recently had the opportunity to discuss this with you on an informal basis following your letter to the Chamber of 5 June 2002.

Although the time given for comments to be passed to the Bills Committee has been short, we have had an opportunity to briefly examine details of the Bill and on the basis of this examination do not believe there is anything of concern to us contained within it. We understand that its contents are the result of earlier recommendations for the MPF Schemes Operations Review Committee, on which all interested parties are represented.

As you would know, when some of the matters contained in the Bill were first raised towards the end of last year, our Chairman wrote to the MPFSA Managing Director, Mr Rafael Hui, expressing our concern that the ceiling for calculating monthly MPF contributions might be raised to \$30,000. But this proposal has been dropped.

The main aims of the present amendment Bill are that:

- the minimum income level for MPF payments will be adjusted to \$5,000 per month, but that the existing income level will be retained at \$20,000 per month for the coming four years,
- the failure of an employer to enrol his employees into MPF schemes is to be made a “continuing offence”, i.e. an offender can be prosecuted again if he fails to enrol his relevant employee after conviction,

- the investment provisions of the law have been amended to provide wider investment choice, and
- arrangements regarding employees' contribution holiday, MPF contribution remittance, and notification for cessation of employment etc. have been streamlined to simplify the administration and operation of MPF schemes.

We further understand that no amendments will be effective until the legislation process is completed, and there will be a 6-month transition period after the completion of the legislation process to allow time for employers and service providers to modify their systems.

Our thanks for consulting us on this matter.

Yours sincerely,

Eden Woon  
Director

c.c. Ms Susie Ho, Deputy Secretary (Financial Services) 2

2002 June 14

Financial Services Bureau  
18th Floor  
Admiralty Centre Tower 1  
18 Harcourt Road  
(Attn: Susie Ho)  
(Fax no.: 2527 8170)

Dear Ms. Ho,

**Mandatory Provident Fund Schemes (Amendment) Bill 2002**

Thank you for your letter of June 5 addressed to our President Mr. Chan Wing Kee, seeking the Association's comments on the captioned.

After careful study, we endorse in principle the recommendations put forward in the Bill 2002. In particular, the Association welcomes the proposal of uplifting the minimum level of relevant income from HK\$4,000 to \$5,000 and maintaining the present maximum level at \$20,000. Judging from the current economic situation, such amendments are appropriate to the extent that they on the one hand help to alleviate the financial burden on lower-paid employees, while on the other avoiding the imposition of additional obligation upon employers/employees who are subject to the upper limit of the MPF contribution.

The Association is also supportive of other proposed measures to streamline the MPF scheme administration, especially the change in the prosecution time-bar for non-compliance and the simplification of recovery procedure. However, we would like to stress that such statutory enforcements should not dilute MPFA's responsibility to proactively monitor and follow up irregular cases and to step up its efforts in enhancing the awareness of public through educational/promotional activities.

Thank you for your attention and please keep us informed of future developments. Should you have any queries, please feel free to contact me (tel no: 2542 8668) or Mr. Hilson Yan, our Manager for Industrial Development and Research at tel. No. 2542 8631.

With best regards,

Yours sincerely,

Francis Lau  
Executive Director

來函編號：G4/49C(2002)V

本會編號：(B)02-6-8

(傳真：2865 6778)

香港夏慤道 18 號  
海富中心第 1 座 18 樓  
財經事務局  
蘇貝茜助理局長 台啓

敬啓者：

### 2002 年強制性公積金計劃（修訂）條例草案

端接 6 月 5 日來函，欣悉立法會正研究修訂強積金條例，提高強積金制度的運作效率及效益，本會對此表示支持。

條例建議，在未來 4 年將強積金供款最低入息水平由每月 4,000 元調整為 5,000 元。本會認為，在現時香港經濟仍屬疲弱的情況下，草案之建議應可幫助舒緩低收入人士的負擔，亦對退休人士之保障影響不大，是充分考慮到社會人士訴求的務實辦法，對此本會表示贊同。

至於建議將供款最高入息水平維持在每月 20,000 元，本會表示歡迎。如按原調整機制之計算辦法，最高入息水平將提高至 30,000 元，僱主和僱員的供款均將有所增加。以目前的經濟情況而言，此舉將令工商各業，特別是中小企業僱主的營運成本上升，增加企業經營困難，窒礙經濟復甦。故此，本會認為維持供款最高入息水平 20,000 元不變符合目前社會及經濟現況。

對於建議強積金法例之檢討機制應具備靈活性，並需顧及經濟情況等因素，本會深表同意。因制定供款最高及最低入息水平涉及各方面因素，如按既定機制行事，則可能與實際情況脫節。靈活的檢討機制可令供款水平因應經濟情況變化而調整，既有利工商各業之經營，亦有助保障市民利益。

以上意見，謹供參考。

此致  
財經事務局  
蘇貝茜助理局長

香港中華總商會  
2002 年 6 月 14 日



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**Section of Enactment**

|          |     |          |   |                    |                     |
|----------|-----|----------|---|--------------------|---------------------|
| Chapter: | 282 | Title:   | EMPLOYEES'<br>COMPENSATION<br>ORDINANCE | Gazette<br>Number: | L.N. 245 of<br>2000 |
| Section: | 3   | Heading: | <b>Interpretation</b>                   | Version Date:      | 01/08/2000          |

**Remarks:**

Adaptation amendments retroactively made - see 56 of 2000 s. 3

- (1) In this Ordinance, unless the context otherwise requires- (Amended **52 of 2000** s. 3)
- "accident insurance business" (意外保險業務) means the business of effecting contracts of insurance against the liability of an employer for personal injury by accident to any employee in his employment arising out of and in the course of such employment; (Added 55 of 1969 s. 3)
- "Certificate for Funeral and Medical Attendance Expenses" (殯殮費和醫護費證明書) means a certificate issued under section 6E(1)(b); (Added **52 of 2000** s. 3)
- "Certificate of Compensation Assessment for Fatal Case" (致命個案補償評估證明書) means a certificate issued under section 6B(1)(b); (Added **52 of 2000** s. 3)
- "Certificate of Interim Payment" (臨時付款證明書) means a certificate issued under section 6C(1)(b); (Added **52 of 2000** s. 3)
- "cohabitee" (同居者), in relation to an employee, means any person who at the time of the accident concerned was living with the employee as the employee's wife or husband; (Added **52 of 2000** s. 3)
- "Commissioner" (處長) means the Commissioner for Labour; (Replaced 13 of 1966 Schedule. Amended 55 of 1969 s. 3; L.N. 142 of 1974)
- "compensation" (補償) means any of the following-
- (a) compensation payable under section 6, 7, 8, 9 or 10, including the expenses of the funeral and medical attendance payable under section 6(5); (Amended **52 of 2000** s. 3)
  - (b) medical expenses payable under section 10A;
  - (c) wages or salary payable under section 16I(3) or 36MA; (Amended 36 of 1996 s. 3)
  - (d) the cost of the supplying and fitting of a prosthesis or surgical appliance payable under section 36B, and the probable cost of repair and renewal thereof payable under section 36I;
  - (da) interim payment; (Added **52 of 2000** s. 3)
  - (e) any surcharge or interest payable under this Ordinance on the compensation referred to in paragraph (a), (b), (c), (d) or (da); (Replaced 76 of 1982 s. 3. Amended **52 of 2000** s. 3)
- "contract of apprenticeship" (學徒訓練合約) includes a contract of improvership or learnership; (Added 55 of 1969 s. 3)
- "Court" (法院) means-
- (a) in relation to any proceedings for the recovery of compensation in or required to be in the District Court, the District Court; or
  - (b) in relation to any proceedings for the recovery of compensation in any other court or tribunal, or

to be determined by the Commissioner, that court or tribunal, or the Commissioner, as the case may be; (Replaced 76 of 1982 s. 3)

"damages" (損害賠償) means any damages recoverable by an employee independently of this Ordinance in the case of personal injury to the employee by accident arising out of and in the course of his employment, and any interest payable on such damages; (Added 55 of 1969 s. 3. Amended 54 of 1991 s. 47)

"earnings" (收入) means any wages paid in cash to the employee by the employer and any privilege or benefit which is capable of being estimated in money and includes the value of any food, fuel, or quarters supplied to the employee by the employer if as a result of the accident the employee is deprived of such food, fuel or quarters; and any overtime payments or other special remuneration for work done, whether by way of bonus, allowance or otherwise, if of constant character or for work habitually performed and including tips if the employment be of such a nature that the habitual giving and receiving thereof is open and notorious and is recognized by the employer: but shall not include remuneration for intermittent overtime, or casual payments of a non-recurrent nature, or the value of a travelling allowance, or the value of any travelling concession or a contribution paid by the employer of an employee towards any pension or provident fund, or a sum paid to an employee to cover any special expenses entailed on him by the nature of his employment;

"employer" (僱主) includes the Government and any body of persons corporate or unincorporate and the legal personal representative of a deceased employer, and, where the services of an employee are temporarily lent or let on hire to another person by the person with whom the employee has entered into a contract of service or apprenticeship, the latter shall, for the purposes of this Ordinance, be deemed to continue to be the employer of the employee whilst he is working for that other person; and in relation to a person engaged, employed or paid through a club or hostel, the manager or members of the managing committee of the club or hostel shall, for the purposes of this Ordinance, be deemed to be the employer; (Amended 76 of 1982 s. 37; 68 of 1995 s. 2; 56 of 2000 s. 3)

"hospital" (醫院) means any hospital registered under the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap 165) or maintained by the Crown or which is a public hospital within the meaning of the Hospital Authority Ordinance (Cap 113); (Added 74 of 1977 s. 2. Amended 82 of 1991 s. 2)

"insurance company" (保險公司) and "insurer" (保險人) mean a person carrying on accident insurance business in Hong Kong and include-

(a) a company authorized under section 8 of the Insurance Companies Ordinance (Cap 41) to carry on class 13 of the classes of insurance business specified in Part 3 of the First Schedule to that Ordinance;

(b) an association of underwriters approved by the Governor in Council before 1 July 1994 or by the Insurance Authority on or after 1 July 1994 under section 6 of that Ordinance; (Amended 47 of 1995 s. 2)

(c) the society of underwriters known in the United Kingdom as Lloyd's; (Replaced 33 of 1990 s. 31)

"interim payment" (臨時付款) means an interim payment of compensation the subject of a determination under section 6C(1)(a); (Added 52 of 2000 s. 3)

"medical expenses" (醫療費)-

(a) in relation to medical treatment given in Hong Kong, means all or any of the following expenses incurred in respect of the medical treatment of an employee-

- (i) the fees of a medical practitioner, registered dentist, registered chiropractor, registered physiotherapist or registered occupational therapist;
- (ii) the fees for any surgical or therapeutic treatment;
- (iii) the cost of nursing attendance;
- (iv) the cost of hospital accommodation as an in-patient;
- (v) the cost of medicines, curative materials and medical dressings;

(b) in relation to medical treatment given outside Hong Kong, means such expenses incurred in respect of the medical treatment of an employee as the Commissioner, by certificate in writing issued under section 10B(1)(b), determines to be medical expenses; (Replaced 1 of 1995 s. 2)

"medical practitioner" (醫生) means a medical practitioner who-

- (a) is registered under the Medical Registration Ordinance (Cap 161); or  
(b) is deemed to be a registered medical practitioner by virtue of section 29(a) of the said Ordinance; (Replaced 13 of 1966 Schedule. Amended 34 of 1995 s. 45)
- "medical treatment" (醫治), in relation to an employee to whom a personal injury is caused by accident arising out of and in the course of his employment, means medical treatment of any kind whatsoever given to the employee-
- (a) in the case of medical treatment given in Hong Kong, by, or under the supervision of, a medical practitioner, registered dentist, registered chiropractor, registered physiotherapist or registered occupational therapist;
- (b) in the case of medical treatment given outside Hong Kong, by, or under the supervision of, a person who is allowed to practise medicine, surgery, dentistry, chiropractic, physiotherapy or occupational therapy in the place where such medical treatment is given, in a hospital, whether as an in-patient or other than as an in-patient, or elsewhere; (Added 74 of 1977 s. 2. Amended 1 of 1995 s. 2)
- "member of the family" (家庭成員), in relation to an employee, means a person who has any of the following relationships in respect of the employee, whether by blood or an adoption specified in subsection (2)-
- (a) a spouse or cohabitee;
- (b) a child;
- (c) a parent or grandparent; or
- (d) a grandson, granddaughter, stepfather, stepmother, stepson, stepdaughter, son-in-law, daughter-in-law, brother, sister, half-brother, half-sister, father-in-law, mother-in-law, brother-in-law, sister-in-law, and child of a brother or sister of the whole blood, any of whom has been living with the employee as a member of the same household and has been so living for the period of 24 months immediately preceding the accident concerned; (Replaced 52 of 2000 s. 3)
- "occupational disease" (職業病) means any of the diseases specified in the second column of the Second Schedule and any recurrence or sequelae thereof; (Added 19 of 1964 s. 3)
- "Ordinary Assessment Board" (普通評估委員會) means an Employees' Compensation (Ordinary Assessment) Board appointed under section 16D; (Added 76 of 1982 s. 3)
- "outworker" (外發工) means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, or repaired, or adapted for sale in his own home or on other premises not under the control or management of the person who gave out the materials or articles;
- "partial incapacity" (部分喪失工作能力) means, where the incapacity is of a temporary nature, such incapacity as reduces the earning capacity of an employee in any employment in which he was engaged at the time of the accident resulting in the incapacity, and, where the incapacity is of a permanent nature, such incapacity (which may include disfigurement) as reduces his earning capacity, present or future, in any employment which he was capable of undertaking at that time; (Amended 55 of 1969 s. 3; 49 of 1985 s. 2)
- "principal contractor" (總承判商) means a person referred to as a principal contractor in section 24; (Added 76 of 1982 s. 3)
- "registered dentist" (註冊牙醫) means a dentist who is admitted to the register of dentists under section 9 of the Dentists Registration Ordinance (Cap 156); (Added 74 of 1977 s. 2)
- "Review Certificate for Funeral and Medical Attendance Expenses" (殯殮費和醫護費審核證明書) means a certificate issued under section 6E(12)(c); (Added 52 of 2000 s. 3)
- "Review Certificate of Compensation Assessment for Fatal Case" (致命個案補償評估審核證明書) means a certificate issued under section 6D(6)(c); (Added 52 of 2000 s. 3)
- "Review Certificate of Interim Payment" (臨時付款審核證明書) means a certificate issued under section 6C(11)(c); (Added 52 of 2000 s. 3)
- "Special Assessment Board" (特別評估委員會) means an Employees' Compensation (Special Assessment) Board appointed under section 16E; (Added 76 of 1982 s. 3)
- "sub-contractor" (次承判商) means-

(a) any person who enters into a contract, express or implied, with a principal contractor to perform all or any part of the work which the principal contractor has undertaken to perform; and  
(b) any other person who enters into a contract, express or implied, to perform all or any part of the work which a sub-contractor within the meaning of paragraph (a) has undertaken to perform; (Added 76 of 1982 s. 3)

"total incapacity" (完全喪失工作能力) means such incapacity whether of a temporary or permanent nature as incapacitates an employee for any employment which he was capable of undertaking at the time of the accident resulting in such incapacity. (Amended 49 of 1985 s. 2)  
(Amended 44 of 1980 s. 15; **52 of 2000** s. 3)

(2) For the purposes of the definition of "member of the family" (家庭成員)-

(a) an adoption means an adoption-

(i) made under an adoption order made in accordance with the Adoption Ordinance (Cap 290);

(ii) to which section 17 of the Adoption Ordinance (Cap 290) applies; or

(iii) made in Hong Kong in accordance with Chinese law and custom before 1 January 1973; and

(b) any person so adopted shall be treated as the child of the adopter, and not as the child of any other person, and all relationships to the adopted person shall be deduced accordingly. (Added **52 of 2000** s. 3)

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塵埃沉着病判傷委員會；

“財政年度”(financial year)指委員會根據第29條訂定的期間；

“家庭成員”(member of the family)指—

(a) 配偶、子或女、父或母、兄或弟或姊或妹、祖父或祖母或外祖父或外祖母、孫或孫女或外孫或外孫女；

(b) 同居者，即在任何人死亡的日期如同該人的妻子或丈夫般與該人同住的人；及

(c) 在任何人死亡的日期以同一住戶成員身分與該人同住，並在緊接該日期之前2年的期間以此方式與該人同住的其他人；(由1993年第54號第2條代替)

“部分喪失工作能力”(partial incapacity)指按照附表4釐定的程度低於100%的喪失工作能力；(由1993年第54號第2條代替)

“基金”(Fund)指根據第27條設立的肺塵埃沉着病補償基金；

“處長”(Commissioner)指勞工處處長；

“喪失工作能力”(incapacity)指肺塵埃沉着病引致的喪失工作能力；

“最早診斷日期”(earliest diagnosed date)指根據第24(1)(a)(i)條裁定的日期，而該日期可以說是某人開始患有肺塵埃沉着病的日期；(由1993年第54號第2條增補)

“補償”(compensation)指本條例訂定的補償；

“僱主”(employer)包括女皇陛下香港政府及屬法團或並非法團組織的任何團體；(由1993年第54號第2條修訂)

“僱用”(employment)包括在任何行業、業務或專業中的自我僱用；

“罰款”(penalty)指根據第37(1A)條須繳的罰款；(由1983年第1號第2條增補)

“價值”(value)就建造工程及任何石礦場而言，指根據或按照根據第47條所訂立的規例而評估的建造工程及石礦產品的價值；

“徵款”(levy)指根據第35條徵收的徵款；

“醫治”(medical treatment)就患有肺塵埃沉着病的人而言，指由醫生給予該人(不論該人是否住院病人)或在醫生的監督下給予該人(不論該人是否住院病人)的不論屬何性質的醫治；(由1993年第54號第2條修訂)

“醫院”(hospital)指根據《醫院、護養院及留產院註冊條例》(第165章)註冊的醫院或由官方經辦的醫院或《醫院管理局條例》(第113章)所指的公營醫院；(由1991年第83號第2條修訂)

“醫療費”(medical expenses)指就任何人的醫治而招致的所有或任何下列開支—

(a) 醫生的收費；

(b) 任何外科收費或療法收費；

(c) 護理費用；

(d) 以住院病人身分入住醫院的費用；

(e) 藥物、治療物品及藥用敷料的費用。

(2) (由1993年第54號第2條廢除)

(由1993年第54號第2條修訂)

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▼  
 章： 360 標題： 肺塵埃沉着病(補償)條 憲報編號：  
 例  
 附表： 4 條文標題： 喪失工作能力程度 版本日期： 30/06/1997

[第2(1)、24(1)  
及49(5)條]

喪失工作能力程度

- 任何人的喪失工作能力程度，須藉參照該人因肺塵埃沉着病而導致的肺功能喪失而釐定，而肺功能的喪失，則須依照本附表藉參照該人的最大肺活量而評估，但第4段所適用者除外。
- 凡任何人因肺塵埃沉着病而致其最大肺活量百分率經評估為如下表內第1欄所示者，該人的喪失肺功能程度及喪失工作能力程度，除非第3段另有規定，須當作與最大肺活量百分率相對的第2欄及第3欄所分別指明者—

表

| 最大肺活量百分率 | 喪失肺功能程度 | 喪失工作能力程度 |
|----------|---------|----------|
| 95%或以上   | 5%或以下   | 5%       |
| 90-94%   | 6-10%   | 10%      |
| 85-89%   | 11-15%  | 15%      |
| 80-84%   | 16-20%  | 20%      |
| 75-79%   | 21-25%  | 30%      |
| 70-74%   | 26-30%  | 40%      |
| 65-69%   | 31-35%  | 50%      |
| 60-64%   | 36-40%  | 60%      |
| 55-59%   | 41-45%  | 70%      |
| 50-54%   | 46-50%  | 80%      |
| 49%或以下   | 51%或以上  | 100%     |

- 凡肺塵埃沉着病判傷委員會，在顧及任何與評估某人的肺功能有關的臨床檢驗的結果後，認為在第2段的表內與該人最大肺活量百分率相對的位置在第2欄內指明為該段的目的而評估的喪失肺功能程度，並不恰當地代表該人實際因肺塵埃沉着病而致的喪失肺功能程度，則可釐定該人的喪失工作能力程度為不屬於表內第3欄指明的與該最大肺活量百分率相對的位置的程度，但如此釐定的喪失工作能力

程度，不得高於或低於在表內第3欄所指明的程度5個百分點。

4. 凡任何人因身體受損狀況而不能全面參與可準確地評估其最大肺活量百分率的測驗，肺塵埃沉着病判傷委員會可顧及其他其認為適當的臨床檢驗，以評估該人肺功能的喪失，而該人的工作能力喪失程度，須當作在第2段的表內第3欄指明的與如此評估的肺功能喪失程度相對的位置的程度。

5. 在本附表中—

“最大肺活量百分率”(forced vital capacity percentage)指從某人肺部量得的最大肺活量值，而該量值是以該人的預計肺活量正常值的百分率表示的。

(附表4由1996年第4號第13條代替)

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**Section of Enactment**

|          |     |          |   |                          |
|----------|-----|----------|---|--------------------------|
| Chapter: | 360 | Title:   | PNEUMOCONIOSIS<br>(COMPENSATION)<br>ORDINANCE | Gazette<br>Number:       |
| Section: | 2   | Heading: | <b>Interpretation</b>                         | Version Date: 30/06/1997 |

- (1) In this Ordinance, unless the context otherwise requires-
- "Board" (委員會) means the Pneumoconiosis Compensation Fund Board established under section 25;
- "Commissioner" (處長) means the Commissioner for Labour;
- "compensation" (補償) means compensation as provided by this Ordinance;
- "construction works" (建造工程) has the meaning assigned to it in section 2(2) of the Industrial Training (Construction Industry) Ordinance (Cap 317);
- "contractor" (承建商) has the meaning assigned to it in section 2(1) of the Industrial Training (Construction Industry) Ordinance (Cap 317);
- "Court" (法院) means the District Court;
- "date of diagnosis" (判傷日期) means the date of a medical examination conducted under this Ordinance from which it is determined that a person to whom compensation is payable under section 4 is suffering from pneumoconiosis; (Added 54 of 1993 s. 2)
- "earliest diagnosed date" (最早診斷日期) means the date determined under section 24(1)(a)(i) as the date from which it can be said that a person has been suffering from pneumoconiosis; (Added 54 of 1993 s. 2)
- "employer" (僱主) includes Her Majesty in Her Government of Hong Kong and any body of persons corporate or unincorporated; (Amended 54 of 1993 s. 2)
- "employment" (僱用) includes any self-employment in any trade, business or profession;
- "financial year" (財政年度) means the period fixed by the Board under section 29;
- "Fund" (基金) means the Pneumoconiosis Compensation Fund established by section 27;
- "further penalty" (另加罰款) means the further penalty payable under section 37(1B); (Added 1 of 1983 s. 2)
- "hospital" (醫院) means any hospital registered under the Hospitals, Nursing Homes and Maternity Houses Registration Ordinance (Cap 165) or maintained by the Crown or which is a public hospital within the meaning of the Hospital Authority Ordinance (Cap 113); (Amended 83 of 1991 s. 2)
- "incapacity" (喪失工作能力) means incapacity resulting from pneumoconiosis;
- "levy" (徵款) means the levy imposed under section 35;
- "medical expenses" (醫療費) means all or any of the following expenses incurred in respect of the medical treatment of a person-
- (a) the fees of a medical practitioner;
  - (b) the fees for any surgical or therapeutic treatment;

- (c) the cost of nursing attendance;
- (d) the cost of hospital accommodation as an in-patient;
- (e) the cost of medicines, curative materials and medical dressings;
- "medical treatment" (醫治), in relation to a person who suffers from pneumoconiosis, means medical treatment of any kind whatsoever given to the person by, or under the supervision of, a medical practitioner, whether as an in-patient or otherwise; (Amended 54 of 1993 s. 2)
- "member of the family" (家庭成員) means-
- (a) a spouse, child, parent, brother or sister, grandparent or grandchild;
- (b) a cohabitee, that is to say, any person who at the date of death of a person was living with that person as that person's wife or husband; and
- (c) any other person who at the date of death of a person was living with that person as a member of the same household and had been so living for the period of 2 years immediately preceding that date; (Replaced 54 of 1993 s. 2)
- "partial incapacity" (部分喪失工作能力) means incapacity of a degree of less than 100% as determined in accordance with the Fourth Schedule; (Replaced 54 of 1993 s. 2)
- "penalty" (罰款) means the penalty payable under section 37(1A); (Added 1 of 1983 s. 2)
- "pneumoconiosis" (肺塵埃沉着病) 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;
- "Pneumoconiosis Medical Board" (肺塵埃沉着病判傷委員會) means the Pneumoconiosis Medical Board appointed under section 22;
- "quarry operator" (石礦場經營人) means-
- (a) in relation to a Government quarry, the person managing or in charge of that quarry;
- (b) in relation to a quarry other than a Government quarry, the person operating that quarry;
- (c) in relation to a stone crushing plant, the person operating that stone crushing plant;
- "surcharge" (附加費) means the surcharge imposable under this Ordinance; (Added 1 of 1983 s. 2)
- "total incapacity" (完全喪失工作能力) means incapacity to the degree of 100% as determined in accordance with the Fourth Schedule; (Replaced 54 of 1993 s. 2)
- "value" (價值) means in relation to construction works and to any quarry, the value of the construction works and the quarry products assessed under or in accordance with regulations made under section 47.
- (2) (Repealed 54 of 1993 s. 2)

(Amended 54 of 1993 s. 2)

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**Section of Enactment**



Chapter: 360    Title: PNEUMOCONIOSIS    Gazette  
 (COMPENSATION)    Number:  
 ORDINANCE  
 Schedule: 4    Heading: **DEGREE OF**    Version Date: 30/06/1997  
**INCAPACITY**

[sections 2(1),  
24(1) & 49(5)]

1. The degree of incapacity of a person shall be determined by reference to the person's loss of lung function resulting from pneumoconiosis, which loss shall, except where paragraph 4 applies, be assessed by reference to the forced vital capacity of the person in accordance with this Schedule.

2. Where as a result of pneumoconiosis the forced vital capacity percentage of a person is assessed to be as shown in column 1 of the Table below, the person's loss of lung function and incapacity shall, subject to paragraph 3, be deemed to be of the degree specified in column 2 and column 3 respectively opposite that forced vital capacity percentage-

| TABLE                            |                                 |                      |
|----------------------------------|---------------------------------|----------------------|
| Forced vital capacity percentage | Degree of loss of lung function | Degree of incapacity |
| 95% or above                     | 5% or below                     | 5%                   |
| 90-94%                           | 6-10%                           | 10%                  |
| 85-89%                           | 11-15%                          | 15%                  |
| 80-84%                           | 16-20%                          | 20%                  |
| 75-79%                           | 21-25%                          | 30%                  |
| 70-74%                           | 26-30%                          | 40%                  |
| 65-69%                           | 31-35%                          | 50%                  |
| 60-64%                           | 36-40%                          | 60%                  |
| 55-59%                           | 41-45%                          | 70%                  |
| 50-54%                           | 46-50%                          | 80%                  |
| 49% or below                     | 51% or above                    | 100%                 |

3. Where the Pneumoconiosis Medical Board is of the opinion, having regard to the findings of any clinical examination relevant to an assessment of a person's lung function, that the degree of the person's loss of lung function specified in column 2 of the Table in paragraph 2 opposite his forced vital capacity percentage as assessed for the purposes of that paragraph does not properly represent the actual degree of the person's loss of lung function as a result of pneumoconiosis, it may determine the person's degree of incapacity to be of a degree other than the degree specified in column 3 of the Table opposite that forced vital capacity percentage, but the degree of incapacity so determined shall not be greater than nor less than the degree specified in column 3 of the Table by more than 5 percentage points.

4. Where a person is incapable, by reason of impaired physical condition, of fully taking part in tests that would enable his forced vital capacity percentage to be accurately assessed, the Pneumoconiosis Medical Board shall assess the person's loss of lung function having regard to the findings of such other clinical examinations as it considers appropriate, and the person's incapacity shall be deemed to be of the degree specified in column 3 of the Table in paragraph 2 opposite the degree of loss of lung function so assessed.

5. In this Schedule-  
"forced vital capacity percentage" (最大肺活量百分率) means the measured value of the forced vital capacity of a person's lungs expressed as a percentage of the predicted normal value of that capacity of the person.

(Replaced 4 of 1996 s. 13)

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建議中的第 12(2A)條

第 1 稿

“(2A) 在第(2)款中對收入或利潤之提述並不包括從以下項目之存款存放而產生的利息 —

(a) (i) 某項註冊計劃的核准受託人就該計劃的某名成員所收取；而

(ii) 在有關期間還有待將供款或權益支付給該成員之帳戶，

的供款或權益；

(b) (i) 從成分基金轉移；及

(ii) 在有關期間還有待將權益支付給另一個成分基金，

的權益；

(c) (i) 從成分基金收到；及

(ii) 在有關期間 —

(A) 還有待將  
權益從有  
關註冊計  
劃提取；  
或

(B) 還有待將  
權益轉移  
至另一註  
冊計劃，

的權益。

## 第 2 稿

“(2A) 在第(2)款中對收入或利潤之提述，不包括將以下項目作存款存放所產生的利息 —

(a) (i) 某項註冊計劃的核准受託人就該計劃的某名成員所收取；並

(ii) 屬處於有待支付給該成員之帳戶的期間，

的供款或權益；

(b) (i) 從某個成分基金轉移；並

(ii) 屬處於有待轉入另一個成分基金作投資用的期間；

的權益；

(c) (i) 從某個成分基金收取；並

(ii) 屬處於有待 —

(A) 從有關註冊計劃提取的期間；或

(B) 屬處於有待轉移至另一註冊計劃的期間；

的權益。

| <u>Clause</u> | <u>Amendment Proposed</u>  |
|---------------|--|
| 4(a)          | <p>By deleting the proposed section 7A(7) and substituting -</p> <p>“(7) 如僱員(臨時僱員除外)的工資期 —</p> <p>(a) 不多於 1 個月,則就在有關時間之後受僱工作的第 30 日當日或之前開始的工資期而言,僱主不得根據第(2)(b)款,就該僱員在該工資期所賺取的有關入息作出扣除;</p> <p>(b) 多於 1 個月,則就由有關時間至有關時間之後受僱工作的第 30 日所在的公曆月的最後一日為止的期間而言,僱主不得根據第(2)(b)款,就該僱員在該期間所賺取的有關入息作出扣除。”.</p> |
| 11            | <p>By deleting the proposed section 43B(3) and (4) and substituting -</p> <p>“(3) An employer who is convicted of an</p>   |

offence against this section is liable -

(a) to a fine at level 6 and to imprisonment for 6 months on the first occasion on which the person is convicted of the offence; and

(b) to a fine of \$200,000 and to imprisonment for 12 months on each subsequent occasion on which the person is convicted of the offence and, in the case of an offence consisting of a failure by the employer to comply with the requirement imposed on the employer by section 7(1A), a daily penalty of \$500 for each day on which the offence is continued.

(4) Notwithstanding section 26 of the Magistrates Ordinance (Cap. 227), proceedings may be instigated for an

offence against this section within 6 months after the offence is discovered by, or comes to the notice of, the Authority."

New

By adding -

**"12A. Decisions which may be the subject of an appeal**

Schedule 6 is amended by repealing items 10 and 11 and substituting -

"10. A decision of the Authority to reject an application for its consent to the restructuring of one or more registered schemes."."

Schedule

(a) In section 16, in the proposed section 150A(b) -

(i) by adding "within the permitted period" after "scheme";

(ii) by deleting "(a)段所述" and substituting "上述註冊".

(b) In section 17, in the proposed section 164(5)(c), by deleting "在該成員失業的情

況下 - ” .

- (c) In section 20(b), in the proposed section 2(3), by adding “of this Schedule” after “section 6(b)(i), (ii) or (iii)” .
- (d) In section 21, by deleting “repealing “any” and substituting “direct”” and substituting “adding “direct” after “any”” .
- (e) In section 26, in the proposed section 4(3)(b) and (c), by deleting “或” and substituting “及” .