

**Information Paper for Legislative Council
Manpower Panel Meeting
on 7 January 1999**

Factories and Industrial Undertakings Ordinance
(Chapter 59)

**Factories and Industrial Undertakings
(Amendment) Bill 1999 and
Factories and Industrial Undertakings
(Safety Management) Regulation**

INTRODUCTION

At the meeting of the Executive Council on 5 January 1999, the Council ADVISED and the Chief Executive ORDERED that -

- (a) the Factories and Industrial Undertakings (Amendment) Bill 1999 (the Bill), at **Annex A**, should be introduced into the Legislative Council, to provide for mandatory safety training for persons employed in the construction and container handling industries and to expand the Commissioner for Labour's power to make regulations; and
- (b) after the Bill has been passed into law, the Factories and Industrial Undertakings (Safety Management) Regulation, at **Annex B**, which introduces a safety management system in selected industrial undertakings, should be made by the Commissioner for Labour under section 7 of the Factories and Industrial Undertakings Ordinance, subject to the approval of the Legislative Council.

BACKGROUND AND ARGUMENT

Mandatory safety training

(A) Current Position

2. Despite some improvements in recent years, the industrial accident rates for Hong Kong have remained unsatisfactorily high, particularly for the construction industry. In 1997, the average annual accident rate for the construction industry, at 227.4 cases per 1,000 workers, was 3.8 times higher than that for all industries. The construction industry also accounted for 41 out of a total of 58 fatal industrial accidents in 1997. The container handling industry is also a high risk sector. Ten workers were killed in workplace accidents in the three years of 1995 to 1997 alone.

3. It is widely recognised that basic induction safety training for workers helps to enhance their safety awareness at work and consequently the prevention of accidents in the workplace. As an illustration, as part of the Administration's efforts to enhance site safety, the contractors of the Public Works Programme (PWP) and Housing Authority (HA) projects have been required, since 1995 and 1996 respectively, to provide induction safety training to their site workers as part of the contract conditions. Between 1995 and 1997, the average annual accident rates in public sector construction sites were 78% lower than the corresponding figures in the private sector sites, where no safety training requirement is in place. It is believed that the provision of safety training to workers (as well as the implementation of safety management system) in public sector work sites is a major contributing factor to their significantly better safety records.

4. Under the FIUO, proprietors and contractors already have a general duty, including the provision of relevant instruction and training for their workers, to ensure the safety and health at work of all persons employed in an industrial undertaking. In practice, however, since there is no specific clause on mandatory provision of safety training in the FIUO, few proprietors and contractors in the private sector actually provide such training to their workers.

5. In order to promote the provision of safety training for workers, the Administration proposes that the FIUO should be amended to make safety training mandatory and that, as a first step, the requirement should apply to the construction and container handling industries. Both industries support the implementation of mandatory safety training. Appropriate training providers

are available to implement the proposal. The Construction Industry Training Authority (CITA) and the Vocational Training Council (VTC) are currently running safety training courses for workers of the construction and container handling industries respectively.

6. Of the estimated 80,000 workers in the construction industry in Hong Kong, some 35,000, who are mostly engaged in PWP and HA projects, have already received basic safety training by the CITA and have been issued with a certificate (popularly known as the “green card”). The “green card” is valid for three years and can be renewed upon its holder completing a refresher course and passing a test on safety at work. The CITA has the capacity to provide the training, in the form of a one-day course, for a maximum of 40,000 construction workers each year. The curriculum of the CITA course is at **Annex C**.

7. The proposed mandatory safety training requirement will also apply to professional engineers and technical staff working on construction sites. The C for L intends to provide them with the relevant certificate if their professional bodies confirm that their corporate members have already acquired the relevant training in the course of their studies. The Hong Kong Institute of Engineers supports this approach and the Labour Department is liaising with other professional bodies to make similar arrangements. As for those technical staff who are not qualified to obtain a certificate in this way, the CITA has prepared self-learning packages to enable them to get the relevant training and the certificate.

8. There are an estimated 16,000 workers in the container handling industry, of whom about 6,000 or 38% are employed by the four major container terminals in Hong Kong. The remaining 62% of the workers are employed in numerous small container storage yards and depots mainly located in the New Territories. The latter group is the primary target for safety training since employees in the major container terminals have been provided with training which will be recognisable for the purpose of the proposed training requirement. The VTC is currently running free one-day safety training courses for container handling workers, with the target of training 2,500 and 9,500 workers in 1998-99 and 1999-2000 respectively. Graduates from the VTC training courses also receive the “green card”.

(B) The proposal

9. We propose to amend the FIUO to the effect that, subject to the provision of a grace period, all persons employed on construction sites and container handling depots, except those engaged in office administration and activities unconnected with the construction or container handling work activities, as the case may be, should be required to receive basic safety training. Safety training courses provided by the CITA and VTC for construction and container handling workers and the certificates issued to their graduates will be recognised by the Administration for the purpose of the new requirement. After the grace period, proprietors and contractors of construction work and container handling operations can only employ workers who are holders of a valid certificate. The workers concerned will also be required to carry the certificate with them while at work. The maximum penalties on the proprietors/contractors and workers for breaching the law are \$50,000 and \$10,000 fines respectively.

A Safety Management System

(A) Current Position

10. The Administration published in July 1995 a Consultation Paper on the Review of Industrial Safety in Hong Kong which, among other things, recommended that we should change our strategy on industrial safety from focusing on enforcement to promoting safety management. The review re-affirmed that the primary responsibility for safety at work rests with those who create the risks and those who work with such risks, i.e. the proprietors and the workers respectively. The ultimate goal is self-regulation by the proprietors and their workforce, which is the key to attaining long-term improvements in safety standards. This goal is best achieved by the Government providing a legislative framework requiring proprietors to adopt a safety management system at the workplace. Government will encourage the self-regulation approach through education, training, promotion of safety concepts and a better understanding of the full cost of accidents. The recommendation on a safety management system received general support during the public consultation period and was subsequently endorsed by the former Executive Council on 21 November 1995.

11. The Consultation Paper proposed that a safety management system for Hong Kong should cover six main areas, namely, company safety policy, safety plan, safety committee, safety audit or review, general safety training and

special safety training. To facilitate implementation by proprietors and contractors, we have developed these six main areas of the safety management system into 14 process elements in the proposed Regulation. A brief description of these 14 process elements, which are subject to regular audits or review, are at **Annex D**. It is important to note that safety management system as a concept or as a matter of practice, is not entirely new to the local construction industry, the major utility companies and some large industrial undertakings. It has been a requirement for Airport Core Projects, HA and PWP contracts which record much better safety performance than the industry average. The Hong Kong and China Gas Company Ltd, the China Light and Power Company and the Mass Transit Railway Corporation, for example, already implement a safety management system covering all these elements.

(B) The proposal

12. We propose to introduce the Regulation to initially require contractors or proprietors in relation to construction sites, shipyards, factories and other designated industrial undertakings with 100 or more workers, as well as construction projects with contract value of \$100 million or more, to adopt ten of the 14 process elements of the safety management system, i.e. elements (i) to (x) at Annex D, and to carry out safety audits of their safety management system. Designated industrial undertakings are those involved in the generation and transmission of electricity, town gas or liquefied petroleum gas and in the handling of containers. Construction sites and industrial undertakings employing 50 to 99 workers each will be required to adopt eight of the 14 process elements of the safety management system, i.e. elements (i) to (viii) at Annex D, and to carry out safety reviews, which are less stringent than safety audits. The estimated number of the above two categories of undertakings which will be required to implement the safety management system are 800 and 700 respectively. Industrial undertakings employing less than 50 workers will be exempted for the time being. A phased implementation of these process elements will allow the industries being affected to get accustomed to the new system and to prepare for the additional elements. This will also allow sufficient safety practitioners and medical professionals to be trained to take up the additional functions. This approach has the support of the Labour Advisory Board. We intend to review the implementation of the proposed safety management system one year after the Regulation has come into force to decide on the appropriate time to bring the remaining four elements into operations, as well as extending the requirement to industrial undertakings employing less than 50 workers.

(C) Power to make Regulations

13. We need to expand the C for L's regulation-making power under section 7 of the FIUO to provide for -

- (a) the registration of safety auditors who will undertake audits of safety management systems required to be implemented by proprietors or contractors under the Regulation; and
- (b) the specification of the quality and performance of safety auditors, the safety review officers and the person or body running the safety auditor training schemes.

Accordingly, we propose to amend section 7 of the FIUO to give new power to the C for L for making the relevant regulations. In accordance with this section, all new regulations to be made by the C for L under the section will be submitted to the Chief Executive and subject to the approval of the Legislative Council.

14. The introduction of a new legislation on mandatory safety training and safety management system into the Legislative Council in the current legislative session is among our Policy Commitments in 1997.

THE BILL

15. The main provisions of the Bill are -

- (a) **clause 3** empower the C for L to recognise safety training courses for relevant industrial undertakings and requires mandatory safety training for construction workers and container handling workers; and
- (b) **clause 5** expands the regulation-making power of the C for L to require proprietors or contractors to develop management systems that relate to the safety of personnel in their relevant industrial undertakings.

THE REGULATION

16. The main sections of the Regulation provide for:-
- (a) the registration of persons who may conduct safety audits and of persons who may operate schemes to train persons to be safety auditors etc. (**sections 3 to 7**);
 - (b) the imposition of duties on proprietors and contractors to develop, implement and maintain a safety management system; to prepare written safety policy; and to establish safety committee in respect of their relevant industrial undertakings etc. (**sections 8 to 12**);
 - (c) the appointment of registered safety auditors or safety review officers; the conduct of audits or reviews and the submission of audit or review reports; and action to be taken by proprietors and contractors on the audit or review reports etc. (**sections 13 to 24**);
 - (d) the disciplining (including the suspension or cancellation of registration) of registered safety auditors and registered scheme operators by a disciplinary board etc. (**sections 25 to 29**);
 - (e) appeals to the Administrative Appeals Board by persons aggrieved by certain decisions of the C for L or the disciplinary board (**sections 30 and 31**); and
 - (f) the power of the C for L to inspect the conduct of safety audits and safety reviews; and the offences against the Regulation etc. (**sections 32 to 37**).

IMPLEMENTATION

17. Taking into account the training capacity available and to allow all workers in the construction and cargo handling industries to undertake safety training, we propose that there should be a grace period of 14 months before the mandatory safety training requirement comes into effect. The other parts of the Bill, including those empowering the C for L to make regulations, will come into effect immediately upon enactment.

18. As regards the safety management system, we propose to provide a grace period of 12 months before the Regulation, upon enactment, comes into

effect. This will allow time for the Administration to launch education and promotion campaigns on the safety management system, for the affected proprietors and contractors to understand the new legislation and for them, as well as the training bodies for the construction industry, to make the necessary preparation. The Administration will provide the necessary guidance and advice on compliance with the new requirements.

LEGISLATIVE TIMETABLE

19. The Bill will be gazetted on 15 January 1999 and introduced into the Legislative Council for First Reading on 27 January 1999.

HUMAN RIGHTS IMPLICATIONS

20. The Department of Justice advises that the Bill and the Regulation are consistent with the human rights provisions of the Basic Law.

FINANCIAL AND STAFFING IMPLICATIONS

21. There are no financial or staffing implications for Government. The additional workload arising from the introduction of the Regulation will be absorbed within Labour Department's existing resources.

ECONOMIC IMPLICATIONS

22. For existing PWP and HA construction projects, their contractors already have contractual duty to provide safety training to workers engaged on their sites, which account for roughly half of the total local construction workforce. Tenderers for new public works contracts effective after the enactment of the Bill are expected to reflect the costs for providing the safety training in their bids, but those are not expected to have a significant impact on the overall contract costs. For the private sector, the contractors and, in some cases, the workers themselves would bear the cost of \$100 per person in attending the safety training course run by the CITA. Since the VTC is running the safety training course for container handling workers free of charge, the cost implications on the container handling industry should be minimal.

23. As regards the implementation of a safety management system, the

additional cost burden on large employers in the industrial and construction sectors is mainly the cost of hiring new safety staff for the system. Assuming that, on average, each affected employer has to hire one additional safety officer to perform the required duties, the additional staff cost involved will amount to around 0.2% and 0.1% of the annual operating cost of the affected firms in the industrial and construction sectors respectively.

24. On the other hand, the proposed mandatory safety training and safety management system will be beneficial to the industries concerned and the community at large through fewer deaths and injuries from industrial accidents, less stoppages of and disruptions to work, savings in medical costs and compensation payments, as well as lower insurance premium and civil claims.

PUBLIC CONSULTATION

25. The Labour Advisory Board (LAB) and its Committee on Occupational Safety and Health (COSH) have been consulted and supported the proposal on mandatory safety training. The Hong Kong Construction Association (HKCA) and the Hong Kong Construction Industry Employees General Union have also been consulted. Both lent their support in principle on the understanding that providing training and co-operating with the employer in attending training is a shared responsibility between employers and employees, who are equally liable under the general duties provision in the FIUO. The container handling industry has also been consulted. Representatives of the four major container terminals, the Container Depot and Repair Association (an association of smaller container depot operators), and the Container Transportation Employees General Union generally supported the proposal.

26. The introduction of a safety management system in Hong Kong was widely supported during the public consultation exercise on the Consultation Paper in 1995. The LAB and COSH have also been consulted on the proposed provisions of the Regulation and both supported the implementation of a safety management system to enhance industrial safety. In a number of seminars and briefings on many occasions since 1996, affected contractors and proprietors have been briefed on the 14 process elements in the proposed safety management system.

PUBLICITY

27. A press release will be issued when the Bill is gazetted on 15 January 1999 and a spokesman will be available to handle media enquiries.

Education and Manpower Bureau
5 January 1998

**FACTORIES AND INDUSTRIAL UNDERTAKINGS
(AMENDMENT) BILL 1999**

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**FOURTH SCHEDULE
SPECIFIED INDUSTRIAL UNDERTAKINGS**

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Container Handling) Regulations**

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A BILL

To

Amend the Factories and Industrial Undertakings Ordinance.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Factories and Industrial Undertakings (Amendment) Ordinance 1999.

2. Interpretation

Section 2 (1) of the Factories and Industrial Undertakings Ordinance (Cap. 59) is amended -

- (a) in the definition of "industrial undertaking", by repealing paragraph (fa) and substituting - "(fa) container handling;"
- (b) in the definition of "夾角接頭", by repealing "垛" and substituting "疊";
- (c) by adding -
 ""container handling" (貨櫃處理作業) means the
 loading, unloading, handling, stacking, unstacking,
 storing, keeping or maintaining of containers;"

3. Section added

The following is added -

"6BA. Proprietor of relevant industrial undertaking not to employ, etc. relevant person who does not have relevant certificate

(1) In this section -

"appointed day" (指定日期) means the day appointed by the Secretary for Education and Manpower by notice in the Gazette for the purposes of subsections (5) and (7);

"certificate" (證明書) means a certificate referred to in subsection (2) ;

"relevant certificate" (有關證明書), in relation to a relevant person employed at a relevant industrial undertaking, means the certificate issued to the person in respect of his attendance at the safety training course which relates to that undertaking;

"relevant industrial undertaking"(有關工業經營) means an industrial undertaking the subject of a notice under subsection (2) ;

"relevant person" (有關人士), in relation to a relevant industrial undertaking, means a person the subject of a notice under subsection (2) in the case of that undertaking;

"relevant safety training course" (有關安全訓練課程), in relation to a relevant person, means the safety training course the subject of a notice under subsection (2) in the case of the class of persons to which that person belongs.

(2) The Commissioner may, by notice in the Gazette, or by notice in writing published in such other manner as the Commissioner thinks fit, recognize a safety training course -

- (a) for a class of persons employed at an industrial undertaking specified in the Fourth Schedule; and
- (b) in respect of which a certificate is issued to a person who attends the course.

(3) A certificate issued to a person who attends a safety training course which is subsequently recognized under subsection (2) shall, unless otherwise provided in the notice under that subsection recognizing the course, for the purposes of this Ordinance have the same effect as a certificate issued to a person who attends the course on or after the day on which the course is so recognized.

(4) Where the Commissioner is satisfied that a relevant person has undergone training -

- (a) equivalent to the training provided by a relevant safety training course; and
- (b) of a standard not less than the standard of the training provided by that course,

then -

- (i) the Commissioner may issue or cause to be issued to the person a certificate in the same terms as the certificate that would have been issued to the person if he had attended that course; and
- (ii) the certificate so issued shall, for the purposes of this Ordinance, have the same effect as a certificate issued to a person who has attended that course.

(5) On and from the appointed day, every proprietor of a relevant industrial undertaking shall not employ, or shall cease

to employ, at the undertaking a relevant person who does not have a relevant certificate or whose relevant certificate has expired.

(6) A certificate shall expire on the day specified in the certificate or, if no such day is so specified, on the expiration of 3 years after the day on which it was issued.

(7) On and from the appointed day, it shall be the duty of every relevant person employed at a relevant industrial undertaking who has a relevant certificate which is valid to -

- (a) carry the certificate with him while at work at the undertaking;
- (b) produce the certificate upon demand by an occupational safety officer, the proprietor of the undertaking or an agent of the proprietor authorized by the proprietor for the purpose.

(8) Where a relevant certificate which is valid has been lost, defaced or destroyed, the relevant person to whom it was issued shall, unless he has ceased to be employed at a relevant industrial undertaking, as soon as is reasonably practicable make an application to the Commissioner to be issued a replacement relevant certificate in the same terms.

(9) The Commissioner shall issue or cause to be issued a replacement relevant certificate pursuant to an application under subsection (8) upon being satisfied that the relevant certificate which it will replace has in fact been lost, defaced or destroyed.

(10) A replacement relevant certificate issued pursuant to an application under subsection (8) shall, for the purposes of this Ordinance, have the same effect as the relevant certificate which it replaces.

(11) A proprietor who contravenes subsection (5) commits an offence and is liable to a fine at level 5.

(12) A relevant person who, without reasonable excuse, contravenes subsection (7) commits an offence and is liable to a fine at level 3."

4. Meaning of "at work" (工作时)

Section 6C is amended by repealing "and 6B" and substituting ", 6B and 6BA".

5. Power of Commissioner to make regulations, etc.

Section 7 (1) is amended by adding -

"(oa) without prejudice to the generality of paragraph (o), requiring proprietors and contractors (including any class of proprietors and contractors) -

- (i) to develop, implement and maintain any management system that relate to the safety of personnel in their industrial undertakings;
- (ii) to prepare and revise safety policy statements in relation to the general safety policy of their industrial undertakings and make such statements available to persons employed;
- (iii) to establish safety committees to identify, recommend and keep under review measures to improve the safety and health of persons employed;
- (iv) to employ, or otherwise use the services of, persons specified in regulations made under this

- section to assess the effectiveness of any management system referred to in subparagraph (i) as implemented;
- (ob) in relation to any registration of persons referred to in paragraph (oa) (iv) or who operate schemes to train those persons (including any class of those persons) -
 - (i) the keeping of a register;
 - (ii) the specification of conditions (including requirements) for registration;
 - (iii) the recognition by the Commissioner of any scheme having regard to the scheme operator;
 - (iv) the better and more effectual carrying out of the scheme of registration;
 - (oc) means of assessing the performance of persons referred to in paragraph (ob);
 - (od) the appointment of a disciplinary board panel and a disciplinary board by the Secretary for Education and Manpower with -
 - (i) all such powers that are necessary for the purposes of conducting any hearing before the board;
 - (ii) power to exonerate or discipline the person concerned (including the power of cancellation of registration, suspension of registration or reprimanding the person concerned);
 - (iii) power to make any order with respect to costs;
 - (oe) decisions in relation to which appeals may be made to the Administrative Appeals Board (including consequentially

amending the Schedule to the Administrative Appeals Board Ordinance (Cap. 442));".

6. Commissioner may amend the Schedules

Section 8 is amended by repealing "or Third Schedule" and substituting ", Third or Fourth Schedule".

7. Liability of proprietor

Section 13(3) is amended by adding "or 6BA(12)" after "section 6B".

8. Civil liability

Section 19(a) is amended by repealing "or 6B" and substituting ", 6B or 6BA".

9. Schedule added

The following is added -

"FOURTH SCHEDULE [ss. 6BA & 8]
SPECIFIED INDUSTRIAL UNDERTAKINGS

1. Construction work.
2. Container handling."

**Consequential Amendments
Factories and Industrial Undertakings Regulations**

10. Repair, maintenance and safety

Regulation 39(3) of the Factories and Industrial Undertakings Regulations (Cap. 59 sub. leg.) is amended by repealing "垛" and substituting "叠".

Construction Sites (Safety) Regulations

11. Safe guarding the edges of excavations, etc.

Regulation 41(a) of the Construction Sites (Safety) Regulations (Cap. 59 sub. leg.) is amended by repealing "垛" and substituting "叠".

12. Materials kept on construction sites

Regulation 52(2) (a) and (b) is amended by repealing "垛" and substituting "叠".

**Factories and Industrial Undertakings (Cargo and
Container Handling) Regulations**

13. Title amended

The title to 《工廠及工業經營（貨物及貨櫃搬運）規例》（第 59 章，附屬法例） is amended by repealing "及貨櫃搬運" and substituting "搬運及貨櫃處理作業".

14. Interpretation

Regulation 2 is amended -

- (a) by repealing the definition of "container handling";
- (b) in the definition of "東主", in paragraph (b), by repealing "搬運" and substituting "處理作業".

15. Maintenance and use of fork-lift trucks

Regulation 7(1) is amended by repealing "以搬運貨物或貨櫃" and substituting "搬運貨物或進行貨櫃處理作業".

16. Safe means of stacking or unstacking

Regulation 10 is amended by repealing "凡貨物或貨品的堆垛或拆垛，或與其相關的搬運工作，如無穩固貨物或貨品的方法協助即不能安全地進行" and substituting "凡在沒有穩固有關於貨物或貨品的方法協助下，貨物或貨品的堆疊、或堆疊貨物或貨品的移去，或與其相關的搬運工作或處理作業即不能安全地進行".

17. Stability of stacks of containers

Regulation 10A is amended -

- (a) in subparagraph (a), by repealing "貨櫃的堆垛拆垛，或與其相關的搬運" and substituting "貨櫃的堆疊、堆疊的貨櫃的移去，或與其相關的處理作業";
- (b) in subparagraphs (b) and (c), by repealing "垛" and substituting "疊".

18. Offences of persons employed

Regulation 18 is amended by repealing "或從事搬運貨物或貨櫃" and substituting "搬運貨物或進行貨櫃處理作業的人，或任何從事搬運貨物或貨櫃處理作業".

Explanatory Memorandum

The main purposes of this Bill are to amend the Factories and Industrial Undertakings Ordinance (Cap. 59) to -

- (a) define the term "container handling" (clause 2);
- (b) add a new section 6BA (clause 3) to, *inter alia* -
 - (i) empower the Commissioner for Labour to recognize safety training courses for industrial undertakings specified in the new Fourth Schedule (clause 9); and
 - (ii) require a proprietor of a relevant industrial undertaking, from a day to be appointed by the Secretary for Education and Manpower by notice in the Gazette, not to

employ, or cease to employ, at the undertaking a relevant person who either does not have a certificate issued for attending a recognized safety training course or whose certificate for so attending has expired; and

- (c) expand the Commissioner for Labour's power to make regulations to include, *inter alia*, requiring proprietors and contractors to develop, implement and maintain management systems that relate to the safety of personnel in their industrial undertakings (clause 5).

**FACTORIES AND INDUSTRIAL UNDERTAKINGS
(SAFETY MANAGEMENT) REGULATION**

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**FACTORIES AND INDUSTRIAL UNDERTAKINGS
(SAFETY MANAGEMENT) REGULATION**

(Made under section 7 of the Factories and
Industrial Undertakings Ordinance
(Cap. 59) subject to the approval
of the Legislative Council)

**PART I
PRELIMINARY**

1. Commencement

This Regulation shall come into operation on a day to be appointed by the Commissioner for Labour by notice in the Gazette.

2. Interpretation

- (1) In this Regulation, unless the context otherwise requires -
- "construction site"(建築地盤) means a place where construction work is undertaken and also any area in the immediate vicinity of any such place which is used for the storage of materials or plant used or intended to be used for the purpose of the construction work;
- "copy" (文本), in relation to any document, includes the original of the document;
- "designated undertaking" (指定經營) means an industrial undertaking involving any of the following activities -
- (a) the generation, transformation and transmission of electricity;

- (b) the generation and transmission of town gas, or liquefied petroleum gas, within the meaning of section 2 of the Gas Safety Ordinance (Cap. 51);
or
- (c) container handling;

"disciplinary board" (紀律審裁委員會) means a disciplinary board appointed under section 27 (1) ;

"disciplinary board panel"(紀律審裁委員團) means the disciplinary board panel appointed under section 26 (1) ;

"registered" (注冊) means registered under section 6(1) as a safety auditor or scheme operator;

"registered person"(注冊人士) means a registered safety auditor or registered scheme operator;

"registered safety auditor" (注冊安全審核員) means a person registered as a safety auditor;

"registered scheme operator" (注冊計劃營辦人) means a person registered as a scheme operator;

"relevant industrial undertaking" (有關工業經營), in relation to a proprietor or contractor specified in Schedule 3, means the industrial undertaking specified in that Schedule (and howsoever worded) in connection with the proprietor or contractor, as the case may be;

"safety audit"(安全審核) means an arrangement for -

- (a) collecting, assessing and verifying information on the efficiency, effectiveness and reliability of a safety management system (including the elements specified in Schedule 4 contained in the system); and

(b) considering improvements to the system;

"safety audit report" (安全審核報告) means a report compiled by a registered safety auditor after the completion of a safety audit;

"safety auditor" (安全審核員) means a person who conducts or proposes to conduct safety audits;

"safety committee" (安全委員會) means a safety committee established under section 10;

"safety management" (安全管理) means the management functions connected with the carrying on of an industrial undertaking that relate to the safety of personnel in the undertaking, including -

(a) the planning, developing, organizing and implementing of a safety policy; and

(b) the measuring, auditing or reviewing of the performance of those functions;

"safety management system" (安全管理制度) means a system which provides safety management in an industrial undertaking;

"safety review" (安全查核) means an arrangement for -

(a) reviewing the effectiveness of a safety management system (including the elements specified in Schedule 4 contained in the system); and

(b) considering improvements to the effectiveness of the system;

"safety review officer" (安全查核員) means a person who is appointed to conduct a safety review under section 19(1) (a);

"safety review report" (安全查核報告) means a report compiled by a safety review officer after the completion of a safety review;

"scheme" (計劃) means a scheme to train persons to be safety auditors;

"scheme operator" (計劃營辦人) means a person who operates or proposes to operate a scheme;

"shipyard" (船廠) means any yard or dry dock (including the precincts thereof) in which ships or vessels, except ships or vessels afloat, are constructed, reconstructed, maintained, repaired, refitted, finished or broken up.

(2) Subject to section 16(4), a reference in Part IV to a registered safety auditor does not include a registered safety auditor whose registration is for the time being suspended under this Regulation.

(3) For the avoidance of doubt, it is hereby declared that -

- (a) compliance with subsection (1), (2), (3) or (4) of section 8 by a proprietor or contractor in respect of a relevant industrial undertaking specified in Part 1, 2, 3 or 4 of Schedule 3 shall not be treated as compliance with that subsection, or another subsection of that section, by the proprietor or contractor, as the case may be, in respect of any other relevant industrial undertaking specified in the same Part, or another Part, of that Schedule;
- (b) where a proprietor or contractor is required under this Regulation to develop, implement and maintain in respect of the relevant industrial undertaking a safety management system which contains 1 or more of the elements specified in Schedule 4, that requirement does

not extend to any of those elements contained in provisions which have not commenced.

PART II
REGISTRATION AS SAFETY AUDITOR
OR SCHEME OPERATOR

3. Register

(1) The Commissioner shall establish and maintain a register in 2 parts in which he shall cause to be kept -

- (a) in Part 1, particulars of the names and addresses of all persons registered as safety auditors and such other matters, if any, as he thinks fit;
- (b) in Part 2, particulars of the names and addresses of all persons registered as scheme operators (including particulars of the schemes for which they are so registered) and such other matters, if any, as he thinks fit.

(2) The register shall be available for inspection by the public free of charge at such offices of the Government as the Commissioner may direct, during the hours when those offices are open to the public.

(3) The Commissioner shall enter in the register -

- (a) any amendment he considers necessary for the purposes of preserving the accuracy of the register in respect of the address or any other particulars relating to -
 - (i) a person whose name appears therein;
 - (ii) a scheme identified therein; and

- (b) where the registration of a person whose name appears therein is suspended under this Regulation, the period of time that registration is suspended.
- (4) The Commissioner shall remove from the register the name of a person -
 - (a) who dies;
 - (b) who requests in writing that his name be removed; or
 - (c) whose registration is cancelled under section 29(2) (b).
- (5) Where any information -
 - (a) supplied to the Commissioner by a person whose name appears in the register (and whether or not the information was supplied before, on or after the person's name appeared in the register); and
 - (b) entered in the register pursuant to subsection (1), ceases to be accurate, then that person shall, not later than 21 days after the day on which the inaccuracy occurs, give notice in writing to the Commissioner of the inaccuracy together with such particulars as will enable the Commissioner to amend the register to remove the inaccuracy.

4. Eligibility for registration

- (1) A person is eligible for registration as a safety auditor if the person complies with the requirements of Schedule 1.
- (2) A person is eligible for registration as a scheme operator if the person and the scheme comply with the requirements of Schedule 2 respectively applicable to them.

5. Application for registration

An application by a person for registration shall be made in the approved form to the Commissioner.

6. Determination of application

(1) Subject to subsection (2), the Commissioner may, in his discretion, register a person as a safety auditor or scheme operator subject to such conditions, if any, in relation to that registration as he thinks fit.

(2) The Commissioner shall not register a person unless he is satisfied that, in respect of the registration sought, the person is -

- (a) eligible to be so registered;
- (b) competent to be so registered; and
- (c) fit and proper to be so registered.

7. Commissioner to serve notice of decision on applicant

(1) Where the Commissioner registers or refuses to register a person, he shall forthwith serve notice in writing of his decision on that person.

(2) Where the Commissioner refuses to register a person or registers a person subject to conditions, the notice referred to in subsection (1) shall include -

- (a) an adequate statement of the reasons for the refusal or the conditions, as the case may be; and
- (b) a copy of section 30.

PART III

SAFETY MANAGEMENT SYSTEM, SAFETY POLICY
AND SAFETY COMMITTEE

**8. Duty of proprietor and contractor to develop, etc.
safety management system**

(1) A proprietor or contractor specified in Part 1 of Schedule 3 shall develop, implement and maintain in respect of the relevant industrial undertaking a safety management system which contains the elements specified in Schedule 4.

(2) A proprietor or contractor specified in Part 2 of Schedule 3 shall develop, implement and maintain in respect of the relevant industrial undertaking a safety management system which contains the elements specified in Part 1 of Schedule 4.

(3) A proprietor or contractor specified in Part 3 of Schedule 3 shall develop, implement and maintain in respect of the relevant industrial undertaking a single safety management system which contains the elements specified in Schedule 4.

(4) A proprietor or contractor specified in Part 4 of Schedule 3 shall develop, implement and maintain in respect of the relevant industrial undertaking a single safety management system which contains the elements specified in Part 1 of Schedule 4.

**9. Duty of proprietor and contractor in respect of safety
policy**

(1) Subject to subsections (2) and (3), a proprietor or contractor specified in Schedule 3 shall -

- (a) prepare and revise as often as may be necessary a written policy statement in relation to the safety policy of the relevant industrial undertaking;
- (b) bring such statement and any revision of it to the notice of all the workers in the undertaking;
- (c) keep a copy of the statement; and
- (d) make a copy of the statement available for inspection upon request by an occupational safety officer.

(2) Without prejudice to the generality of any of the elements specified in Schedule 4, the policy statement required under subsection (1) shall include -

- (a) a statement of the proprietor's or contractor's general policy with regard to the safety and health of the workers in the relevant industrial undertaking;
- (b) the system of allocation of responsibilities for the carrying out of the policy; and
- (c) the arrangements as to how the responsibilities are to be executed.

(3) The proprietor or contractor shall cause the safety policy of the relevant industrial undertaking to be reviewed -

- (a) not less than once in each 2 years period commencing on the date on which the proprietor or contractor, as the case may be, first complied with subsection (1) (b) in respect of the undertaking;
- (b) as soon as is practicable after the proprietor or contractor, as the case may be, alters the policy statement required under subsection (1) -

- (i) in respect of any particulars referred to in subsection (2) (a), (b) or (c) relating to the undertaking; and
- (ii) for a reason not arising out of a review under paragraph (a) or this paragraph.

10. Duty of proprietor and contractor to establish safety committee

A proprietor or contractor specified in Part 1 or 3 of Schedule 3 shall -

- (a) establish not less than one safety committee having the function of identifying, recommending and keeping under review measures to improve the safety and health of the workers in the relevant industrial undertaking; and
- (b) implement, so far as is reasonably practicable, any measures recommended by any safety committee so established in relation to matters of safety and health at work of the workers in the undertaking.

11. Composition, etc. of safety committee

(1) A proprietor or contractor required by section 10 to establish a safety committee shall ensure that -

- (a) not less than half the members of the committee (and irrespective of whether they are nominated or elected) represent workers in the relevant industrial undertaking;

- (b) the committee is provided with a written statement setting out rules governing its membership, terms of reference and meeting procedures;
- (c) the committee meets at least once every 3 months; and
- (d) the committee keeps records of its meetings -
 - (i) for not less than 5 years after the date of the meeting to which the record concerned relates;
 - (ii) which are available for inspection upon request by an occupational safety officer.

(2) Only matters relating to the safety and health at work of the workers in the relevant industrial undertaking shall be discussed at any meeting of a safety committee established in respect of the undertaking.

12. Protection of safety committee members

A proprietor, contractor or employer shall not -

- (a) terminate, or threaten to terminate, the employment of; or
- (b) in any way discriminate against,

a worker by reason of the fact that the worker has performed his function as a member of a safety committee.

PART IV
SAFETY AUDITS

13. Appointment of registered safety auditor to conduct safety audit

(1) A proprietor or contractor specified in Part 1 or 3 of Schedule 3 shall appoint a registered safety auditor to conduct a safety audit in relation to the relevant industrial undertaking.

(2) Subject to subsection (3), the proprietor or contractor referred to in subsection (1) shall ensure that safety audits are conducted -

- (a) where the relevant industrial undertaking involves construction work, not less than once in each 6 months period beginning with the commencement of this section (or, where the undertaking comes into existence after that commencement, beginning with the day on which it comes into existence) but, in any case, not later than 6 months after the last safety audit report was submitted under section 15 in respect of the undertaking;
- (b) in any other case, not less than once in each 12 months period beginning with that commencement (or, where the relevant industrial undertaking comes into existence after that commencement, beginning with the day on which it comes into existence) but, in any case, not later than 12 months after the last safety audit report was submitted under section 15 in respect of the undertaking.

(3) The Commissioner may, where he thinks it is necessary to do so after having regard to all the circumstances of the case, require in writing a proprietor or contractor referred to in subsection (1) to cause a safety audit to be conducted in relation to the relevant industrial undertaking at an interval shorter than the period specified in subsection (2).

14. Facilities to be provided by proprietor or contractor for purposes of safety audit

The proprietor or contractor who has appointed a registered safety auditor to conduct a safety audit shall -

- (a) provide all such assistance, facilities and information as may be necessary for the audit; and
- (b) if the auditor is an employee of the proprietor or contractor, as the case may be, ensure that the auditor is not required to carry out other work of a nature or to the extent that would prevent the efficacious conduct of the audit.

15. Submission of safety audit report

- (1) A registered safety auditor shall submit a safety audit report -
 - (a) not later than 28 days after completing the audit; and
 - (b) to the proprietor or contractor who appointed him.
- (2) A registered safety auditor shall keep a copy of a safety audit report submitted under subsection (1) by him for a period of not less than 5 years after so submitting the report.

16. Action to be taken on safety audit report

(1) The proprietor or contractor to whom a safety audit report has been submitted under section 15 shall -

- (a) read and countersign the report, and record the date of his countersignature, as soon as practicable after receiving the report;
- (b) if the report contains recommendations for improvements to the safety management system to which it relates -
 - (i) draw up a plan for the improvements within 14 days after receiving the report; and
 - (ii) implement the plan as soon as is practicable;
- (c) if a plan referred to in paragraph (b) is drawn up, submit a copy of the report together with a copy of the plan to the Commissioner within 21 days after receiving the report; and
- (d) keep a copy of the report and the plan, if any, for a period of not less than 5 years after the date of countersignature referred to in paragraph (a).

(2) The Commissioner may request in writing a registered safety auditor to submit to him a copy of a safety audit report prepared by the auditor.

(3) A registered safety auditor the subject of a request under subsection (2) shall comply with the request not later than 21 days after receiving the request.

(4) In subsections (2) and (3), "registered safety auditor"(註冊安全審核員) includes -

- (a) a registered safety auditor whose registration is for the time being suspended under this Regulation;
- (b) a former registered safety auditor.

17. Obligation to produce safety audit report, etc. for inspection, etc.

A proprietor or contractor shall -

- (a) at all reasonable times make available a safety audit report or plan required to be kept by him under section 16 for inspection by any occupational safety officer who requests to see it;
- (b) permit an occupational safety officer to make a copy of the report or plan;
- (c) provide a copy of the report or plan to the Commissioner not later than 14 days after receiving a written request from the Commissioner to do so;
- (d) provide the Commissioner with a copy of any document -
 - (i) which supports any matter specified or referred to in the report or plan; and
 - (ii) not later than 14 days after receiving a written request from the Commissioner to do so.

18. Registered safety auditor to notify Commissioner of proposed safety audit

A registered safety auditor shall give notice in the approved form to the Commissioner

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- (a) of the date on, and the time and place at, which the safety auditor will commence conducting a safety audit; and
- (b) not less than 14 days before that date.

PART V
SAFETY REVIEWS

19. Appointment of safety review officer to conduct safety review

- (1) A proprietor or contractor specified in Part 2 or 4 of Schedule 3 shall -
 - (a) appoint, in the approved form, a person (who may be an employee of the proprietor or contractor), being a person who is capable of competently carrying out a safety review, to be the safety review officer to conduct a safety review in relation to the relevant industrial undertaking; and
 - (b) cause a copy of the appointment to be displayed -
 - (i) in a conspicuous position at each place where the undertaking is carried on; and
 - (ii) as soon as practicable after making the appointment.
- (2) Subject to subsection (3), the proprietor or contractor referred to in subsection (1) shall ensure that safety reviews are conducted -
 - (a) where the relevant industrial undertaking involves construction work, not less than once in each 6 months period beginning with the commencement of this section

(or, where the undertaking comes into existence after that commencement, beginning with the day on which it comes into existence) but, in any case, not later than 6 months after the last safety review report was submitted under section 21;

- (b) in any other case, not less than once in each 12 months beginning with that commencement (or, where the relevant industrial undertaking comes into existence after that commencement, beginning with the day on which it comes into existence) but, in any case, not later than 12 months after the last safety review report was submitted under section 21.

(3) The Commissioner may, where he thinks it is necessary to do so after having regard to all the circumstances of the case, require in writing a proprietor or contractor referred to in subsection (1) to cause a safety review to be conducted in relation to the relevant industrial undertaking at an interval shorter than the period specified in subsection (2).

20. Facilities to be provided by proprietor or contractor for purposes of safety review

The proprietor or contractor who has appointed a safety review officer to conduct a safety review shall -

- (a) provide all such assistance, facilities and information as may be necessary for the review; and
- (b) if the officer is an employee of the proprietor or contractor, as the case may be, ensure that the officer is not required to carry out other work of a nature or

to the extent that would prevent the efficacious conduct of the review.

21. Submission of safety review report

- (1) A safety review officer shall submit a safety review report -
 - (a) not later than 28 days after completing the review; and
 - (b) to the proprietor or contractor who appointed him.
- (2) A safety review officer shall keep a copy of a safety review report submitted under subsection (1) by him for not less than 3 years after so submitting the report.

22. Action to be taken on safety review report

- (1) The proprietor or contractor to whom a safety review report has been submitted under section 21 shall -
 - (a) read and countersign the report, and record the date of his countersignature, as soon as practicable after receiving the report;
 - (b) if the report contains recommendations for improvements to the safety management system to which it relates -
 - (i) draw up a plan for the improvements within 14 days after receiving the report; and
 - (ii) implement the plan as soon as is practicable;
 - (c) if a plan referred to in paragraph (b) is drawn up, submit a copy of the report together with a copy of the plan to the Commissioner within 21 days after receiving the report; and

- (d) keep a copy of the report and the plan, if any, for a period of not less than 5 years after the date of countersignature referred to in paragraph (a).

(2) The Commissioner may request in writing a safety review officer or former safety review officer to submit to him a copy of a safety review report prepared by the safety review officer or former safety review officer, as the case may be.

(3) A safety review officer or former safety review officer the subject of a request under subsection (2) shall comply with the request not later than 21 days after receiving the request.

23. Obligation to produce safety review report, etc. for inspection, etc.

A proprietor or contractor shall -

- (a) at all reasonable times make available a safety review report or plan required to be kept by him under section 22 for inspection by any occupational safety officer who requests to see it;
- (b) permit an occupational safety officer to make a copy of the report or plan;
- (c) provide a copy of the report or plan to the Commissioner not later than 14 days after receiving a written request from the Commissioner to do so;
- (d) provide the Commissioner with a copy of any document -
 - (i) which supports any matter specified or referred to in the report or plan;

- (ii) not later than 14 days after receiving a written request from the Commissioner to do so.

24. Replacement of safety review officer

(1) Where the Commissioner has reason to believe that a safety review officer is not capable of competently carrying out a safety review, or has, without reasonable excuse, contravened any of the provisions of the Ordinance (including any regulations made under the Ordinance) applicable to a safety review officer, he may, by written notice -

- (a) served on the proprietor or the contractor who appointed the officer and a copy thereof served on the officer;
- (b) setting out an adequate statement of the reasons for that belief; and
- (c) accompanied by a copy of section 30,

direct the proprietor or contractor, as the case may be, to appoint another safety review officer -

- (i) to take the place of the first-mentioned officer; and
- (ii) before the expiry of such time being not less than 14 days as is specified in the notice.

(2) The proprietor or contractor on whom a notice is served under subsection (1) shall comply with the direction specified in the notice before the expiry of the time specified in the notice.

PART VI

DISCIPLINE OF REGISTERED SAFETY AUDITORS
AND REGISTERED SCHEME OPERATORS

25. Commissioner may refer matter to disciplinary board

Where the Commissioner -

- (a) considers that there is evidence that a registered safety auditor or registered scheme operator -
 - (i) has failed to comply with any of the provisions of the Ordinance (including any regulations made under the Ordinance) applicable to a registered safety auditor or registered scheme operator; or
 - (ii) has obtained registration by fraud or on the basis of inaccurate or misleading information; or
- (b) has ceased to be satisfied that the registered safety auditor or registered scheme operator is -
 - (i) competent to be so registered; or
 - (ii) fit and proper to be so registered,

the Commissioner may refer the matter for hearing by a disciplinary board.

26. Disciplinary board panel

(1) The Secretary for Education and Manpower shall appoint members to a disciplinary board panel based on the following numbers and categories -

- (a) not more than 5 persons from organizations that he considers represent the interests of registered safety auditors;
 - (b) not more than 5 persons from organizations that he considers represent the interests of registered scheme operators;
 - (c) not more than 5 persons from organizations that he considers represent the interests of employers in the construction industry;
 - (d) not more than 5 persons from organizations that he considers represent the interests of employers in industries other than the construction industry;
 - (e) not more than 5 persons from organizations that he considers represent the interests of employees in the construction industry;
 - (f) not more than 5 persons from organizations that he considers represent the interests of employees in industries other than the construction industry.
- (2) A public officer is not eligible for appointment to the disciplinary board panel.
 - (3) A member shall be appointed for a term of 3 years and may be reappointed at the end of any term.

27. Disciplinary board

- (1) Within 21 days after receipt of notice of a matter from the Commissioner under section 25, the Secretary for Education and Manpower shall appoint a disciplinary board -
 - (a) to hear the matter; and

- (b) consisting of 1 member from each category of the disciplinary board panel.
- (2) The members shall elect a chairman from among themselves.

28. Proceedings before disciplinary board

- (1) The chairman of the disciplinary board shall notify the registered person concerned and the Commissioner of the time and place of its hearing into the matter.
- (2) The registered person concerned and the Commissioner may each be represented by an agent or legal representative at a proceeding before the disciplinary board.
- (3) A legal adviser may be present at proceedings of the disciplinary board to advise the chairman on any legal matter.
- (4) Subject to subsection (5), the disciplinary board shall have power to regulate its procedures.
- (5) The quorum for a meeting of the disciplinary board shall be 4 members of the board.

29. Disciplinary board powers

- (1) The disciplinary board may, by notice under the signature of the chairman -
 - (a) order a person to attend before the board and give evidence;
 - (b) order a person to produce documents;
 - (c) authorize a person to inspect -
 - (i) any work carried out for the purposes of a safety audit which has been conducted by a registered safety auditor;or

(ii) the conduct of a scheme.

(2) After concluding its hearing, the disciplinary board may exonerate the registered person concerned or may do one or more of the following -

- (a) reprimand the registered person;
- (b) cancel the registration of the registered person;
- (c) suspend the registered person's registration for a specified period of time.

(3) The disciplinary board may make any order it thinks fit with regard to the payment of costs of the proceedings under this section and the costs of the Commissioner or of the registered person.

(4) The disciplinary board shall give notice in writing of its decision to the registered person concerned and the notice shall set out the reasons for the decision and be accompanied by a copy of section 30.

PART VII

APPEALS AND PUBLICATION OF CANCELLATION OR SUSPENSION OF REGISTRATION

30. Appeals

- (1) A person who is aggrieved by a decision -
 - (a) of the Commissioner to refuse to register the person or to register a person subject to conditions;
 - (b) of the Commissioner under section 24 (1) to require the appointment of another safety review officer; or
 - (c) of the disciplinary board under section 29(2) (a), (b) or (c),

may, within 28 days of being notified by the Commissioner or the disciplinary board, as the case may be, of any such decision, appeal to the Administrative Appeals Board.

(2) A decision requiring the appointment of another safety review officer under section 24(1) or cancelling registration under section 29(2) (b) or suspending registration under section 29(2) (c) that is appealed against under subsection (1) shall be suspended in its operation as from the day on which the appeal is made until such appeal is disposed of, withdrawn or abandoned unless such suspension would, in the opinion of the Commissioner (in the case of that appointment) or the disciplinary board (in the case of that cancellation or suspension) be contrary to the public interest and the notice of the decision contains a statement to that effect.

(3) In the case of an appellant who is or was a registered safety auditor or safety review officer, the Commissioner shall cause written notice of the determination of the appeal by the Administrative Appeals Board, together with a statement of the decision, to be served -

- (a) on the proprietor or contractor of the industrial undertaking, if known to the Commissioner, where the appellant last conducted a safety audit or safety review (whether in whole or in part); and
- (b) as soon as practicable after the determination.

31. Publication of cancellation or suspension of registration

Where the disciplinary board cancels registration under section 29(2) (b) or suspends registration under section 29(2) (c), the Commissioner shall cause notice thereof to be published in the Gazette -

- (a) if no appeal is made under section 30(1), on the expiry of the period of 28 days referred to in that section;
- (b) if an appeal is made under section 30(1), on the confirmation, if any, of its decision by the Administrative Appeals Board.

PART VIII
MISCELLANEOUS

32. Duty of registered safety auditor, etc. not to disclose information

(1) A person who is or was a registered safety auditor or a safety review officer shall not, except in the circumstances specified in subsection (2), disclose or give to another person any information that has come to his knowledge or into his possession in the course of the performance of his functions under this Regulation.

(2) A person who is or was a registered safety auditor or safety review officer may disclose or give any information referred to in subsection (1) to another person -

- (a) for the purpose of the performance of his functions under this Regulation; or
- (b) pursuant to an order of a magistrate or court under subsection (3).

(3) Where in any proceedings a magistrate or court considers that the justice of the case so requires, the magistrate or court may order the disclosure or giving of any information referred to in subsection (1).

33. Commissioner may inspect safety audit, etc.

- (1) Subject to subsection (3), the Commissioner may inspect -
 - (a) the conduct of any safety audit;
 - (b) the conduct of any safety review;
 - (c) the conduct of any scheme (including any written or oral examinations).
- (2) Subject to subsections (3) and (4), the Commissioner may, for the purposes of assessing the performance of a registered safety auditor or safety review officer, conduct a safety audit or safety review in relation to an industrial undertaking in respect of which the registered safety auditor or safety review officer has conducted a safety audit or safety review, as the case may be.
- (3) The Commissioner shall not exercise his power under subsection (1) or (2) in such a way as to unduly disrupt the operations of any industrial undertaking or scheme.
- (4) The Commissioner shall not exercise his power under subsection (2) unless he has given written notice -
 - (a) of his intention to exercise the power;
 - (b) to the proprietor or contractor concerned; and
 - (c) not less than 14 days before exercising the power.
- (5) Where the Commissioner exercises his power under subsection (1) or (2), the proprietor, contractor or scheme operator concerned, shall, without charge, afford the Commissioner such assistance, facilities and information as the Commissioner may reasonably require for the purposes of the inspection, safety audit or safety review concerned.

34. Offences

(1) A registered person who contravenes section 3(5) commits an offence and is liable on conviction to a fine at level 1.

(2) Any person who contravenes any of the provisions of section 8, 13(1) or (2) or 19(1) (a) or (2) commits an offence and is liable on conviction to a fine of \$200,000 and to imprisonment for 6 months.

(3) Any person who contravenes any of the provisions of section 9(1) (a) or (b), 10, 12, 14, 16(1) (a), 20, 22(1) (a), 24(2) or 32(1) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 3 months.

(4) Any person who contravenes any of the provisions of section 9(1) (c) or (d) or (3), 11(1) (a) or (b) or (d), 15, 16(1) (c) or (d) or (3), 17, 18, 19(1) (b), 21, 22(1) (c) or (d) or (3), 23 or 33(5) commits an offence and is liable on conviction to a fine at level 5.

(5) A proprietor or contractor who, without reasonable excuse, contravenes section 11(1) (c) commits an offence and is liable on conviction to a fine at level 5.

(6) Any person who, without reasonable excuse, contravenes section 16(1) (b), 22(1) (b) or 29(1) (a) or (b) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 3 months.

(7) Any person who obstructs a person authorized under section 29(1) (c) to carry out an inspection referred to in that section, or who obstructs the Commissioner in the exercise of his power under section 33(1) or (2), commits an offence and is liable on conviction to a fine at level 5.

35. Defence

It shall be a defence for a proprietor or contractor charged with an offence under section 16(1) (b) or 22(1) (b) in any case where a recommendation specified in a safety audit report or safety review report has not been implemented or fully implemented to show that, in all the circumstances of the case -

- (a) it was impracticable (including economically impracticable) to implement or fully implement, as the case may be, the recommendation; and
- (b) the proprietor or contractor, as the case may be, took adequate steps to improve the safety management system to which the report relates in view of the concern with that system to which the recommendation relates.

36. Power of Commissioner to specify forms

(1) Subject to subsection (2), the Commissioner may specify the form of any document required under this Regulation to be in the approved form and the form of such other documents required for the purposes of this Regulation as he thinks fit.

(2) The Commissioner's power under subsection (1) shall be subject to any express requirement under this Regulation for a form, whether approved or otherwise, to comply with that requirement, but that requirement shall not restrict the exercise of that power in respect of that form to the extent that, in the opinion of the Commissioner, his exercise of that power in respect of that form does not contravene that requirement.

(3) The Commissioner's power under subsection (1) may be exercised in such a way as to -

- (a) include in the specified form of any document referred to in that subsection a statutory declaration -
 - (i) to be made by the person completing the form; and
 - (ii) as to whether the particulars contained in the form are true and correct to the best of that person's knowledge and belief;
 - (b) specify 2 or more forms of any document referred to in that subsection, whether as alternatives, or to provide for particular circumstances or particular cases, as the Commissioner thinks fit.
- (4) A form specified under this section shall be -
- (a) completed in accordance with such directions and instructions as are specified in the form;
 - (b) accompanied by such documents as are specified in the form; and
 - (c) if the completed form is required to be provided to -
 - (i) the Commissioner;
 - (ii) another person on behalf of the Commissioner; or
 - (iii) any other person,so provided in the manner, if any, specified in the form.

37. Service of notices

A notice (howsoever described) which is required to be served under this Regulation, or which may be served under this Regulation,

on a person (howsoever described) shall, in the absence of evidence to the contrary, be deemed to be so served if -

- (a) in the case of an individual, it is -
 - (i) delivered to him;
 - (ii) left at his last known address for service, or at his last known place of residence or business, in Hong Kong;
 - (iii) sent by post to him at his last known address for service, or at his last known postal address, in Hong Kong; or
 - (iv) sent by telex, facsimile transmission or other similar method to him at his last known address for service, or at his last known postal address, or at his last known place of residence or business, in Hong Kong;
- (b) in the case of a company, it is -
 - (i) given to or served on an officer of the company;
 - (ii) left at the company's last known address for service, or at its last known place of business, in Hong Kong;
 - (iii) sent by post to the company at its last known address for service, or at its last known postal address, in Hong Kong; or
 - (iv) sent by telex, facsimile transmission or other similar method to the company at its last known address for service, or at its

last known postal address, or at its last known place of business, in Hong Kong;

- (c) in the case of a partnership, it is -
 - (i) delivered, left or sent in accordance with paragraph (a) in respect of any partner who is an individual; or
 - (ii) given, served, left or sent in accordance with paragraph (b) in respect of any partner which is a company;
- (d) in the case of a person ("attorney") holding a power of attorney under which the attorney is authorized to accept service in respect of another person, it is -
 - (i) delivered, left or sent in accordance with paragraph (a) where the attorney is an individual;
 - (ii) given, served, left or sent in accordance with paragraph (b) where the attorney is a company;
 - (iii) delivered, left or sent in accordance with paragraph (a) in respect of any partner who is an individual where the attorney is a partnership; or
 - (iv) given, served, left or sent in accordance with paragraph (b) in respect of any partner which is a company where the attorney is a partnership.

Consequential Amendments

Administrative Appeals Board Ordinance

38. Schedule amended

The Schedule to the Administrative Appeals Board Ordinance (Cap. 442) is amended by adding -

- "42. Factories and Industrial Undertakings (Safety Management) Regulation (L.N. [] of 1999)
- (a) A decision of the Commissioner for Labour to refuse to register a person under section 6 or to register a person under that section subject to conditions.
 - (b) A decision of the Commissioner for Labour under section 24(1) to require the appointment of a new safety review officer.
 - (c) disciplinary board under section 29(2) to reprimand a registered person, cancel the registration of a registered person or suspend the registration of a registered person."

SCHEDULE 1

[s. 4(1)]

ELIGIBILITY TO BE REGISTERED AS SAFETY AUDITOR

1. Subject to section 3, the person shall -
 - (a) be a registered safety officer under the Factories and Industrial Undertakings (Safety Officers and Safety Supervisors) Regulations (Cap. 59 sub. leg.);
 - (b) have not less than 3 years' full-time experience, in the 5 years period immediately preceding the application concerned under section 5 of the Regulation, in a managerial post responsible for industrial safety and health matters in respect of an industrial undertaking;
 - (c) subject to section 2, occupy, at the time of the application concerned under section 5 of this Regulation, the managerial post referred to in paragraph (b), or a like post;
 - (d) have successfully completed -
 - (i) a scheme conducted by a registered scheme operator; or
 - (ii) before the commencement of this Schedule, a scheme recognized by the Commissioner for the purposes of this Schedule; and
 - (e) understand the requirements under legislation in Hong Kong relating to industrial safety and health matters.
2. The Commissioner may, by written notice, exempt a person from the requirement of section 1(c).

3. In the case, but only in the case, of an application under section 5 of this Regulation made before the expiration of 6 months immediately following the commencement of this Schedule, the person shall -

- (a) have not less than 18 month's full-time experience, in the 3 years immediately preceding that commencement, in a managerial post responsible for industrial safety and health matters in respect of an industrial undertaking; and
- (b) have successfully completed a scheme recognized by the Commissioner for the purposes of this Schedule.

SCHEDULE 2

[s. 4(2)]

ELIGIBILITY TO BE REGISTERED AS SCHEME OPERATOR

1. The scheme provides such theoretical and practical training as is necessary to ensure that a person successfully completing the scheme will thereby acquire the competence and skills required for conducting safety audits efficiently and effectively.
2. The scheme operator has, or has access to, the qualifications and experience which enable the operator to provide that training.

SCHEDULE 3

[ss. 2(1) & (3), 8,
9(1), 10, 13(1)
& 19(1)]

PROPRIETORS AND CONTRACTORS WHO ARE REQUIRED
TO HAVE SAFETY MANAGEMENT SYSTEMS

PART 1

1. A contractor in relation to construction work having an aggregate of 100 or more workers in a day working in a single construction site.
2. A contractor in relation to construction work with a contract value of \$100 million or more.
3. A proprietor of a shipyard business having an aggregate of 100 or more workers in a day working in a single shipyard.
4. A proprietor of a factory having an aggregate of 100 or more workers in a day working in a single factory.
5. A proprietor of a designated undertaking having an aggregate of 100 or more workers in a day working in a single workplace.

PART 2

1. A contractor in relation to construction work having an aggregate of 50 or more but less than 100 workers in a day working in a single construction site.
2. A proprietor of a shipyard business having an aggregate of 50 or more but less than 100 workers in a day working in a single shipyard.
3. A proprietor of a factory having an aggregate of 50 or more but less than 100 workers in a day working in a single factory.
4. A proprietor of a designated undertaking having an aggregate of 50 or more but less than 100 workers in a day working in a single workplace.

PART 3

1. A contractor in relation to construction work having an aggregate of 100 or more workers in a day working in 2 or more construction sites.
2. A proprietor of a shipyard business having an aggregate of 100 or more workers in a day working in 2 or more shipyards.
3. A proprietor of a factory having an aggregate of 100 or more workers in a day working in 2 or more factories.
4. A proprietor of a designated undertaking involving any one or more of the activities specified in paragraph (a) of the definition of "designated undertaking" in section 2(1) of this Regulation, having an aggregate of 100 or more workers in a day working in 2 or more workplaces.
5. A proprietor of a designated undertaking involving any one or more of the activities specified in paragraph (b) of the definition of "designated undertaking" in section 2(1) of this Regulation, having an aggregate of 100 or more workers in a day working in 2 or more workplaces.
6. A proprietor of a designated undertaking involving any one or more of the activities specified in paragraph (c) of the definition of "designated undertaking" in section 2(1) of this Regulation, having an aggregate of 100 or more workers in a day working in 2 or more workplaces.

PART 4

1. A contractor in relation to construction work having an aggregate of 50 or more but less than 100 workers in a day working in 2 or more construction sites.
2. A proprietor of a shipyard business having an aggregate of 50 or more but less than 100 workers in a day working in 2 or more shipyards.
3. A proprietor of a factory having an aggregate of 50 or more but less than 100 workers in a day working in 2 or more factories.
4. A proprietor of a designated undertaking involving any one or more of the activities specified in paragraph (a) of the definition of "designated undertaking" in section 2(1) of this Regulation, having an aggregate of 50 or more but less than 100 workers in a day working in 2 or more workplaces.
5. A proprietor of a designated undertaking involving any one or more of the activities specified in paragraph (b) of the definition of "designated undertaking" in section 2(1) of this Regulation, having an aggregate of 50 or more but less than 100 workers in a day working in 2 or more workplaces.
6. A proprietor of a designated undertaking involving any one or more of the activities specified in paragraph (c) of the definition of "designated undertaking" in section 2(1) of this Regulation, having an aggregate of 50 or more but less than 100 workers in a day working in 2 or more workplaces.

SCHEDULE 4

[ss. 2(1) & (3),
8 & 9(2)]

ELEMENTS OF SAFETY MANAGEMENT SYSTEM

PART 1

1. A safety policy which states the commitment of the proprietor or contractor to safety and health at work.
2. A structure to assure implementation of the commitment to safety and health at work.
3. Training to equip personnel with knowledge to work safely and without risk to health.
4. In-house safety rules to provide instruction for achieving safety management objectives.
5. A programme of inspection to identify hazardous conditions and for the rectification of any such conditions at regular intervals or as appropriate.
6. A programme to identify hazardous exposure or the risk of such exposure to the workers and to provide suitable personal protective equipment as a last resort where engineering control methods are not feasible.
7. Investigation of accidents or incidents to find out the cause of any accident or incident and to develop prompt arrangements to prevent recurrence.
8. Emergency preparedness to develop, communicate and execute plans prescribing the effective management of emergency situations.

PART 2

1. Evaluation, selection and control of sub-contractors to ensure that sub-contractors are fully aware of their safety obligations and are in fact meeting them.
2. Safety committees.

PART 3

1. Evaluation of job related hazards or potential hazards and development of safety procedures.
2. Promotion, development and maintenance of safety and health awareness in a workplace.
3. A programme for accident control and elimination of hazards before exposing workers to any adverse work environment.
4. A programme to protect workers from occupational health hazards.

Commissioner for Labour

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Explanatory Note

This Regulation is made under section 7 of the Factories and Industrial Undertakings Ordinance (Cap. 59) and provides for the following -

- (a) the registration of persons who may conduct safety audits (see the definitions of "safety audit" and "safety auditor" in section 2(1) and the provisions of Part II and Schedule 1);
- (b) the registration of persons who may operate schemes to train persons to be safety auditors (see the definitions of "scheme" and "scheme operator" in section 2(1) and the provisions of Part II and Schedule 2);
- (c) the imposition, on proprietors and contractors specified in Schedule 3, of duties to develop, implement and maintain a safety management system, to prepare and revise a written safety policy and to establish a safety committee in respect of their relevant industrial undertakings (see the definitions of "relevant industrial undertaking", "safety management" and "safety management system" in section 2(1) and the provisions of Part III and Schedules 3 and 4);
- (d) the appointment of registered safety auditors by proprietors and contractors specified in Part 1 or 3 of Schedule 3, the conduct by the auditors of safety audits of the relevant industrial undertakings of the proprietors and contractors, the submission by the auditors of safety audit reports to the proprietors and contractors and the action to be taken by the proprietors and contractors on those reports (see the

definition of "safety audit report" in section 2(1) and the provisions of Part IV);

- (e) the appointment of safety review officers by the proprietors and contractors specified in Part 2 or 4 of Schedule 3, the conduct by the officers of safety reviews of the relevant industrial undertakings of the proprietors and contractors, the submission by the officers of safety review reports to the proprietors and contractors, the action to be taken by the proprietors and contractors on those reports and the replacement of safety review officers in compliance with a direction by the Commissioner for Labour (see the definitions of "safety review", "safety review officer" and "safety review report" in section 2(1) and the provisions of Part V);
- (f) the disciplining (including the suspension or cancellation of registration) of registered safety auditors and registered scheme operators by a disciplinary board appointed by the Secretary for Education and Manpower where, for example, the Commissioner for Labour believes the auditor or operator concerned may have contravened provisions applicable to the auditor or operator (see the provisions of Part VI);
- (g) appeals to the Administrative Appeals Board by persons aggrieved by certain decisions of the Commissioner for Labour or the disciplinary board, and the publication of a notice where the registration of a safety auditor

or scheme operator is cancelled or suspended (see the provisions of Part VII); and

- (h) the duty of present and former registered safety auditors and safety review officers not to disclose information obtained in the course of the performance of their functions, the power of the Commissioner for Labour to inspect the conduct of, *inter alia*, safety audits and safety reviews, and offences against the Regulation and other miscellaneous matters (see the provisions of Part VIII).

Construction Industry Training Authority
One-day Safety Training Course for Construction Workers
(Construction Industry Safety Card Course)

Contents		Duration	Time
1.	Introduction	25 min.	8:20a.m. - 8:45a.m.
1.1	The Development and Trend of Construction Safety in Hong Kong		
1.2	The Objectives of Safety Training and Concept of Tool-box Talks		
1.3	Basic Safety Rules at Work		
2.	Safety Regulations related to Construction Site	25 min.	8:45a.m. - 9:10a.m.
2.1	Factories & Industrial Undertaking Ordinances		
2.2	Construction Sites (Safety) Regulations		
2.3	General Duties of Proprietors & Persons employed		
2.4	Offences and Penalties relating to Contravention of Construction Site Safety Regulations		
3.	Basic Concepts in Site Safety	50 min.	9:10a.m. - 10:00a.m.
3.1	Characteristics of Construction Works and their Potential Hazards		
3.2	Causes of Accidents and Principles of Accident Prevention		
3.3	Accident Emergency Procedure and First-Aid Equipment		
3.4	Accidents Reporting Procedures		
Break		15 min.	10:00a.m. - 10:15a.m.
4.	Accident Prevention and Safety at Work (I)	2 hours	10:15a.m. - 12:15p.m.
4.1	Safety in Site Formation		
4.2	Safe Working Environment and Good Housekeeping		
4.3	Fire Prevention		
4.4	Safe Use of Electricity		
4.5	Safety in Excavation		
4.6	Manual Lifting & Handling		
Lunch		1 hour	12:15p.m. - 1:15p.m.
4.	Accident Prevention and Safety at Work (II)	2 hours	1:15p.m. - 3:15p.m.
4.7	Safety in Scaffolds, Working Platforms & Ladders		
4.8	Personal Protective Equipment		
4.9	Confined Space (Caisson)		
4.10	Safety in Lifting Operation		
4.11	Prevention of Pneumoconiosis		
4.12	Welding and Cutting Safety		
Break		10 min.	3:15p.m. - 3:25p.m.
5.	Course Review and Test	55 min.	3.25p.m. - 4.20p.m.

Total : 7 hours

Process elements of a safety management system

The following is a brief description of the 14 key process elements of the safety management system proposed for Hong Kong :

- (i) *Safety policy*
The policy sets out in clear and unambiguous terms in writing the management's approach and commitment to safety and health. It includes the procedure for the communication, implementation and maintenance of the policy at all levels of the organisation. The policy should be reviewed periodically and amended as necessary.
- (ii) *Safety organisation*
This element defines clearly the safety and health responsibilities of all levels of staff to ensure that safety and health commitments are being implemented. It also sees to it that sufficient manpower resources are provided to implement the management commitments and external assistance is acquired if necessary.
- (iii) *Safety training*
Safety training equips personnel with the knowledge, skill and attitudes which will enable them to perform their duties in a safe manner. It includes procedures to ensure that all personnel, in particular new recruits and personnel transferred to new assignments, are given proper safety and health training relevant to their duties. It also includes programmes developed to identify training needs to ensure that appropriate training is provided to the personnel concerned.
- (iv) *In-house safety rules*
This element is to provide all personnel with a common understanding of their obligations and responsibilities with respect to the achievement of safety management objectives. In-house safety rules and regulations should give clear instructions to personnel in all areas. Safety rules and regulations should be documented, reviewed and revised as necessary and communicated to all appropriate levels of the organisation.

- (v) *Programme of inspection of hazardous conditions*
This programme provides or establishes procedure to identify hazardous conditions and their rectification. It includes planning and conducting of inspections, developing inspection check-lists, recording all hazards and a scheme for preventive and immediate corrective actions.

- (vi) *Personal protection programme*
This element is concerned with the use of personal protective equipment which comes in as the last line of defence after considering other control methods. It includes identifying actual or potential exposures to hazards, selecting suitable equipment to prevent or reduce the hazards, and ensuring the proper use of such equipment. The element also covers record keeping, enforcement of standards compliance, and regular monitoring of the programme.

- (vii) *Accident/incident investigation*
An investigation provides a means to find out what has caused an accident and to develop arrangements to prevent recurrence. It includes reporting, recording and investigation of accidents, keeping of accident statistics, analysing accident causes and making recommendations to prevent recurrence. This element should include a scheme to ensure that recommendations are implemented promptly.

- (viii) *Emergency preparedness*
This element is to develop and communicate plans which prescribe the effective management of emergency situations. It includes establishing procedures to identify, describe and respond to emergency situations, establishing a programme of drills and exercises to test and evaluate the preparedness for emergency actions, and establishing an effective programme to provide first-aid and emergency treatment to victims of an accident.

- (ix) *Evaluation, selection and control of sub-contractors*
This element will ensure that sub-contractors are fully aware of their safety obligations and that only sub-contractors who can meet these obligations are employed. It includes clearly defining safety responsibilities and obligations of sub-contractors before they start work, making sub-contractors' personnel aware of safety rules and

regulations and instructions and procedures for safe working practices, and establishing procedures to evaluate a subcontractor's safety performance.

(x) *Safety committees*

This is a forum for persons with responsibilities for work safety and health to formally address issues and take appropriate actions in relation to the achievement of the safety management objectives. Its members should be able to represent all aspects of the operation of the industrial undertaking or construction site and should be competent in their tasks. They should be committed to safety and health in the workplace, and given the necessary support so that they can effectively perform their duties. The decisions and actions proposed by the safety committee should be effectively communicated to those persons responsible for their implementation.

(xi) *Evaluation of job related hazards*

This element is to provide a means where job related hazards or potential hazards are identified and evaluated on which basis safety working procedures are to be developed. It includes training of personnel to perform the task, establishing and maintaining procedures to ensure that safe working practices so developed are followed, establishing and maintaining a list of all safe working procedures, and reviewing and evaluating safe work procedures periodically to ensure their relevance and appropriateness to the tasks being performed.

(xii) *Promotion of safety and health awareness*

The aim of this element is to develop a safety and health culture in the workplace. Activities employed may include display of the company safety policy, posters or other visual material, promulgation of safety performance statistics, and organisation of safety talks and video shows and award schemes to recognise and give credit to good safety performance by individuals, teams, sections, and departments of the organisation.

(xiii) *Programme for accident control and elimination of hazards*

This element is concerned with accident control and hazards elimination before workers are exposed to any adverse work environment. It includes formulation of policy on review of

engineering projects at the conception and design stages, setting of parameters for processes and materials to take account of any changes and development of a regular monitoring mechanism.

(xiv) *Programme on protection of occupational health*

This programme should include regular monitoring, reduction of exposure through technological and administrative control measures, selection, provision and maintenance of suitable personal protective equipment and supervision of their use, pre-employment and periodic medical examinations of all exposed workers, and training and education of workers.

Regular safety audits and safety reviews

2. Proper implementation of the above process elements are crucial to the effective operation of a safety management system. They should be checked from time to time through a system of safety audit or review. A safety audit is a systematic critical appraisal of all potential hazards and existing preventive measures to check whether existing safety and health standards have fulfilled statutory requirements and whether remedial measures need to be taken. Safety audits may be conducted by qualified in-house or external auditors and should be carried out at regular intervals.

3. Smaller undertakings may carry out regular safety reviews instead of very structured audits to check whether they have taken all necessary measures to ensure the safety and health of all persons at work. Safety reviews in our proposed safety management system may be conducted by the company's in-house staff responsible for safety and health at work.