

FACTORIES AND INDUSTRIAL UNDERTAKINGS ORDINANCE

RESOLUTION

(Under section 7 of the Factories and Industrial
Undertakings Ordinance (Cap. 59))

RESOLVED that the Factories and Industrial Undertakings (Safety
Management) Regulation, made by the Commissioner for Labour
on 8 November 1999 , be approved.

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

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

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

"registered scheme operator" (註冊計劃營辦人) 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 (including a former 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 -

- (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 (including a former 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 -

- "45. 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) A decision of the 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

8 November 1999

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).