

《2002年強制性公積金計劃（修訂）條例草案》

對法案委員會在2002年6月11及12日提出事宜的跟進 及委員會審議階段修正案擬稿

對提出事宜的跟進

所需的跟進	政府當局的回應
<p>告知成員如把最低有關入息水平調高至每月\$6,000後對經濟的影響。</p>	<p>根據2002年第1季的最新統計數字，如把最低有關入息水平由\$4,000提高至 -</p> <p>(a) \$5,000</p> <p>強積金供款款額在首年的減少將少於全年總供款額的1%（約\$1.73億）；估計私人消費開支或本地生產總值在作出調整當年的增幅將少於0.01個百分點。</p> <p>(b) \$6,000</p> <p>強積金供款款額在首年的減少將少於全年總供款額的2.5%（約\$5.83億）；估計私人消費開支或本地生產總值在作出調整當年的增幅將約為0.01個百分點。</p>
<p>僱主團體對條例草案條文的意見。</p>	<p>4個獲諮詢意見的僱主團體均贊成條例草案的擬議修訂。他們的回覆載於附件A。</p>
<p>其他法例對「完全喪失行為能力/工作能力」一詞的定義。</p>	<p>「完全喪失工作能力」一詞在《僱員補償條例》（第282章）及《肺塵埃沉着病（補償）條例》（第360章）中有不同定義（詳見附件B），以配合該等條例的特定目的。一如我們在2002年6月12日在法案委員會會議上所解釋，條例草案的擬議修訂，不會改變《強制性公積金計劃條例》中「完全喪失行為能力」一詞定義的政策原意。修訂的目的，僅為闡明任何人士在完全喪失行為</p>

	能力之前是失業的情況下，他仍可提取強積金帳戶內的累算權益。
探討改良條例草案第6條有關處理交接期款項的中文條文的可能性，並向成員提供最初的中文擬稿以作參考。	最初的中文擬稿載於附件C。我們認為條例草案的擬議中文條文能完全反映英文本的意思。

委員會審議階段修正案擬稿

修訂修例草案的委員會審議階段修正案擬稿載於附件D。

建議的修訂	背景
<u>第4(a)條</u> 把擬議第7A(7)條有關僱員免供款期的中文條文簡化。	回應鄭家富議員在2002年6月12日在法案委員會會議所提出的建議。
<u>第11條</u> 為免生疑問，我們建議修訂擬議第43B(3)條有關向被裁定沒有安排僱員參加強積金計劃的僱主施加每日罰款的條文。 我們亦建議在第43B(4)條開首加上「儘管有《裁判官條例》(第227章)第26條的規定」的詞句，以闡明我們擬把檢控期限延長，取代《裁判官條例》所施加的時限。	回應立法會法律顧問的建議 (2002年6月13日函件第(d)段)。 回應立法會法律顧問的建議 (2002年6月13日函件結尾倒數第2段)。
<u>新條款</u> 這是對擬議修訂的相應修訂，旨在把計劃合併及分拆的提述，代以計劃重組。此新條款旨在把條例附表6第10及11項(有關計劃合併及分拆)，由有關計劃重組的新項目所取代。	回應立法會法律顧問2002年5月30日函件第1頁第3段的內容，及我們在2002年6月8日的回覆。

<p><u>附表</u></p> <p>(a)項 我們建議在第16條加上時限，規定新僱主須「在特准限期內」(即新僱主僱用該僱員開始的日期起計的60日內)選擇將僱員的累算權益轉移。</p> <p>建議對「(a)段所述計劃」一詞作出修改以便更確切地反映英文本的意思。</p> <p>(c)及(d)項 建議修訂第20(b)及21條，以進一步闡明條文內容。</p> <p>(b)及(e)項 擬議修訂旨在確保中英文版內容相符。</p>	回應立法會法律顧問在2002年5月30日函件所提出的建議。
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其他正在擬寫的委員會審議階段修正案

我們為進一步闡釋下列條文而正在擬寫委員會審議階段修正案－

a)附表第13及14條，擬議修訂強制性公積金計劃（一般）規例第145(7A)及146(9A)條

建議的條文容許僱主藉在提交付款結算書時，將僱員終止受僱一事通知核准受託人。我們認為有需要進一步闡明「付款結算書」是指「在緊接僱員終止受僱後結束的供款期的付款結算書」。

b)附表第20條，擬議修訂強制性公積金計劃（一般）規例附表1的第8(1)條

進一步闡明「緊貼指數集體投資計劃」是指「積金局為施行《強制性公積金計劃（一般）規例》附表1第6A條而核准的緊貼指數集體投資計劃」。

上述委員會審議階段修正案擬稿稍後將呈交法案委員會審議。

10 June 2002

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

Dear Ms Ho,

Mandatory Provident Fund Schemes (Amendment) Bill 2002

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

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

Yours sincerely,

V. C. Davies
Director-General

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

12 June 2002

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

Dear Stephen,

Mandatory Provident Fund Schemes (Amendment) Bill 2002

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

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

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

The main aims of the present amendment Bill are that:

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

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

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

Our thanks for consulting us on this matter.

Yours sincerely,

Eden Woon

Director

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

2002 June 14

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

Dear Ms. Ho,

Mandatory Provident Fund Schemes (Amendment) Bill 2002

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

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

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

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

With best regards,

Yours sincerely,

Francis Lau
Executive Director

來函編號：G4/49C(2002)V
本會編號：(B)02-6-8

(傳真：2865 6778)

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財經事務局
蘇貝茜助理局長 台啓

敬啓者：

2002 年強制性公積金計劃（修訂）條例草案

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

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

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

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

以上意見，謹供參考。

此致
財經事務局
蘇貝茜助理局長

香港中華總商會
2002 年 6 月 14 日

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附件 B

[前一條文](#)

[下一條文](#)

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條文內容

▼
章： 282 標題： 僱員補償條例 憲報編號： L.N. 245 of 2000
條： 3 條文標題： 釋義 版本日期： 01/08/2000

附註：

具追溯力的適應化修訂一見2000年第56號第3條

(1) 在本條例中，除文意另有所指外一 (由2000年第52號第3條修訂)

“外發工” (outworker) 指由其他人發給物品或物料而在自己家中或其他不受上述的其他人控制或管理的處所進行工序的人，而工序是將該物品或物料裝配、清理、洗滌、修改、裝飾、加工或修理或為出售而改裝；

“收入” (earnings) 指僱主以現金付給僱員的任何工資，以及可作金錢估值的任何優惠或利益，包括僱員因意外而失去享有的任何由僱主所提供的食物、燃料或宿舍的價值；亦指超時工作付款或所作工作的其他特別酬金，不論是以花紅、津貼或其他形式發放，而屬固定性質者或為慣常執行的工作而發放者，而受僱從事的工作因其性質以致慣性地給予和收取小費的習慣是公開和公認，並得僱主認可的，則亦包括小費；但並不包括間歇性超時工作的酬金、臨時非經常性得款、交通津貼的價值、交通特惠的價值、僱主為僱員的退休金或公積金所分擔的供款或付給僱員以應付其受僱從事工作的性質所需的特別開支的款項；

“次承判商” (sub-contractor) 指—

(a) 任何與總承判商訂立合約(不論是明訂或隱含的)以進行總承判商所承擔進行的全部或部分工作的人；及

(b) 任何訂立合約(不論是明訂或隱含的)以進行(a)段所指的次承判商所承擔進行的全部或部分工作的其他人；(由1982年第76號第3條增補)

“同居者” (cohabitee) 就僱員而言，指在有關意外發生時與該僱員共同生活儼如其妻子或丈夫的人；(由2000年第52號第3條增補)

“完全喪失工作能力” (total incapacity) 指暫時或永久喪失工作能力，並因如此喪失工作能力而使僱員無能力擔任在引致如此喪失工作能力的意外發生時他有能力受僱擔任的任何工作者；(由1985年第49號第2條修訂)

“法院” (Court)—

(a) 如與在區域法院或規定在區域法院進行追討補償的法律程序有關，指區域法院；或(由1998年第25號第2條修訂)

(b) 如與在其他法庭或審裁處進行追討補償的法律程序有關，或與規定由處長對追

Annex B

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Section of Enactment

▼

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

Remarks:

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

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

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

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

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

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

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

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

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

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

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

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

"medical expenses" (醫療費)-

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

(i) the fees of a medical practitioner, registered dentist, registered chiropractor, registered physiotherapist or registered occupational therapist;

(ii) the fees for any surgical or therapeutic treatment;

(iii) the cost of nursing attendance;

(iv) the cost of hospital accommodation as an in-patient;

(v) the cost of medicines, curative materials and medical dressings;

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

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

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

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

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

(Amended 44 of 1980 s. 15; 52 of 2000 s. 3)

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

(a) an adoption means an adoption-

(i) made under an adoption order made in accordance with the Adoption Ordinance (Cap 290);
(ii) to which section 17 of the Adoption Ordinance (Cap 290) applies; or

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

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

[Previous section of enactment](#)

[Next section of enactment](#)

[Switch language](#)

[Back to the List of Laws](#)

雙語法例資料系統
Bilingual Laws Information System

English 繁體 簡體 繁體 Gi f 簡體 Gi f

前一條文

下一條文

轉換語言

返回法例名單

條文內容

▼
 章： 360 標題： 肺塵埃沉着病(補償)條 憲報編號： 25 of 1998
 例
 條： 2 條文標題： 釋義 版本日期： 01/07/1997

附註：
 具追溯力的適應化修訂一見1998年第25號第2條

(1) 在本條例中，除文意另有所指外—

“另加罰款” (further penalty) 指根據第37(1B)條須繳的另加罰款；(由1983年第1號第2條增補)

“石礦場經營人” (quarry operator)—

(a) 就任何政府石礦場而言，指管理或掌管該石礦場的人；

(b) 就任何非政府石礦場的石礦場而言，指經營該石礦場的人；

(c) 就任何碎石廠而言，指經營該碎石廠的人；

“完全喪失工作能力” (total incapacity) 指按照附表4釐定的程度達100%的喪失工作能力；(由1993年第54號第2條代替)

“判傷日期” (date of diagnosis) 指根據本條例而進行身體檢查的日期，而從該次檢查裁定根據第4條須獲支付補償的人患有肺塵埃沉着病；(由1993年第54號第2條增補)

“附加費” (surcharge) 指根據本條例可徵收的附加費；(由1983年第1號第2條增補)

“承建商” (contractor) 具有《工業訓練(建造業)條例》(第317章)第2(1)條給予該詞的涵義；

“法院” (Court) 指區域法院；(由1998年第25號第2條修訂)

“委員會” (Board) 指根據第25條設立的肺塵埃沉着病補償基金委員會；

“建造工程” (construction works) 具有《工業訓練(建造業)條例》(第317章)第2(2)條給予該詞的涵義；

“肺塵埃沉着病” (pneumoconiosis) 指—

(a) 由於游離矽石塵埃或含有游離矽石的塵埃而導致的肺部纖維化，不論該疾病是否與肺結核病或任何其他因暴露於該等塵埃而導致的肺或呼吸系統的疾病一併出現；或

(b) 由於石棉塵埃或含有石棉的塵埃而導致的肺部纖維化，不論該疾病是否與肺結核病或任何其他因暴露於該等塵埃而導致的疾病一併出現；

“肺塵埃沉着病判傷委員會” (Pneumoconiosis Medical Board) 指根據第22條委出的肺

塵埃沉着病判傷委員會；

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

“家庭成員” (member of the family) 指—

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

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

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

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

“基金” (Fund) 指根據第27條設立的肺塵埃沉着病補償基金；

“處長” (Commissioner) 指勞工處處長；

“喪失工作能力” (incapacity) 指肺塵埃沉着病引致的喪失工作能力；

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

“補償” (compensation) 指本條例訂定的補償；

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

“僱用” (employment) 包括在任何行業、業務或專業中的自我僱用；

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

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

“徵款” (levy) 指根據第35條徵收的徵款；

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

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

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

(a) 醫生的收費；

(b) 任何外科收費或療法收費；

(c) 護理費用；

(d) 以住院病人身分入住醫院的費用；

(e) 藥物、治療物品及藥用敷料的費用。

(2) (由1993年第54號第2條廢除)

(由1993年第54號第2條修訂)

[前一條文](#)

[下一條文](#)

[轉換語言](#)

[返回法例名單](#)

雙語法例資料系統
Bilingual Laws Information System

English 繁體 簡體 繁體 Gif 簡體 Gif

前一條文

下一條文

轉換語言

返回法例名單

條文內容

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

[第2(1)、24(1)
 及49(5)條]

喪失工作能力程度

1. 任何人的喪失工作能力程度，須藉參照該人因肺塵埃沉着病而導致的肺功能喪失而釐定，而肺功能的喪失，則須依照本附表藉參照該人的最大肺活量而評估，但第4段所適用者除外。

2. 凡任何人因肺塵埃沉着病而致其最大肺活量百分率經評估為如下表內第1欄所示者，該人的喪失肺功能程度及喪失工作能力程度，除非第3段另有規定，須當作與最大肺活量百分率相對的第2欄及第3欄所分別指明者—

表

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

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

程度，不得高於或低於在表內第3欄所指明的程度5個百分點。

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

5. 在本附表中—

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

(附表4由1996年第4號第13條代替)

[前一條文](#)

[下一條文](#)

[轉換語言](#)

[返回法例名單](#)

雙語法例資料系統
Bilingual Laws Information System

English 繁體中文 簡體中文 繁體英文 簡體英文

[Previous section of enactment](#)

[Next section of enactment](#)

[Switch language](#)

[Back to the List of Laws](#)

Section of Enactment



Chapter:	360	Title:	PNEUMOCONIOSIS (COMPENSATION) ORDINANCE	Gazette Number:
Section:	2	Heading:	Interpretation	Version Date: 30/06/1997

(1) In this Ordinance, unless the context otherwise requires-

"Board" (委員會) means the Pneumoconiosis Compensation Fund Board established under section 25;

"Commissioner" (處長) means the Commissioner for Labour;

"compensation" (補償) means compensation as provided by this Ordinance;

"construction works" (建造工程) has the meaning assigned to it in section 2(2) of the Industrial Training (Construction Industry) Ordinance (Cap 317);

"contractor" (承建商) has the meaning assigned to it in section 2(1) of the Industrial Training (Construction Industry) Ordinance (Cap 317);

"Court" (法院) means the District Court;

"date of diagnosis" (判傷日期) means the date of a medical examination conducted under this Ordinance from which it is determined that a person to whom compensation is payable under section 4 is suffering from pneumoconiosis; (Added 54 of 1993 s. 2)

"earliest diagnosed date" (最早診斷日期) means the date determined under section 24(1)(a)(i) as the date from which it can be said that a person has been suffering from pneumoconiosis; (Added 54 of 1993 s. 2)

"employer" (僱主) includes Her Majesty in Her Government of Hong Kong and any body of persons corporate or unincorporated; (Amended 54 of 1993 s. 2)

"employment" (僱用) includes any self-employment in any trade, business or profession;

"financial year" (財政年度) means the period fixed by the Board under section 29;

"Fund" (基金) means the Pneumoconiosis Compensation Fund established by section 27;

"further penalty" (另加罰款) means the further penalty payable under section 37(1B); (Added 1 of 1983 s. 2)

"hospital" (醫院) means any hospital registered under the Hospitals, Nursing Homes and Maternity Houses Registration Ordinance (Cap 165) or maintained by the Crown or which is a public hospital within the meaning of the Hospital Authority Ordinance (Cap 113); (Amended 83 of 1991 s. 2)

"incapacity" (喪失工作能力) means incapacity resulting from pneumoconiosis;

"levy" (徵款) means the levy imposed under section 35;

"medical expenses" (醫療費) means all or any of the following expenses incurred in respect of the medical treatment of a person-

(a) the fees of a medical practitioner;

(b) the fees for any surgical or therapeutic treatment;

(c) the cost of nursing attendance;

(d) the cost of hospital accommodation as an in-patient;

(e) the cost of medicines, curative materials and medical dressings;

"medical treatment" (醫治), in relation to a person who suffers from pneumoconiosis, means medical treatment of any kind whatsoever given to the person by, or under the supervision of, a medical practitioner, whether as an in-patient or otherwise; (Amended 54 of 1993 s. 2)

"member of the family" (家庭成員) means-

(a) a spouse, child, parent, brother or sister, grandparent or grandchild;

(b) a cohabitee, that is to say, any person who at the date of death of a person was living with that person as that person's wife or husband; and

(c) any other person who at the date of death of a person was living with that person as a member of the same household and had been so living for the period of 2 years immediately preceding that date; (Replaced 54 of 1993 s. 2)

"partial incapacity" (部分喪失工作能力) means incapacity of a degree of less than 100% as determined in accordance with the Fourth Schedule; (Replaced 54 of 1993 s. 2)

"penalty" (罰款) means the penalty payable under section 37(1A); (Added 1 of 1983 s. 2)

"pneumoconiosis" (肺塵埃沉着病) means-

(a) fibrosis of the lungs due to dust of free silica or dust containing free silica, whether or not such disease is accompanied by tuberculosis of the lungs, or any other disease of the pulmonary or respiratory organs caused by exposure to such dust; or

(b) fibrosis of the lungs due to dust of asbestos or dust containing asbestos, whether or not such disease is accompanied by tuberculosis of the lungs, or any other disease caused by exposure to such dust;

"Pneumoconiosis Medical Board" (肺塵埃沉着病判傷委員會) means the Pneumoconiosis Medical Board appointed under section 22;

"quarry operator" (石礦場經營人) means-

(a) in relation to a Government quarry, the person managing or in charge of that quarry;

(b) in relation to a quarry other than a Government quarry, the person operating that quarry;

(c) in relation to a stone crushing plant, the person operating that stone crushing plant;

"surcharge" (附加費) means the surcharge imposable under this Ordinance; (Added 1 of 1983 s. 2)

"total incapacity" (完全喪失工作能力) means incapacity to the degree of 100% as determined in accordance with the Fourth Schedule; (Replaced 54 of 1993 s. 2)

"value" (價值) means in relation to construction works and to any quarry, the value of the construction works and the quarry products assessed under or in accordance with regulations made under section 47.

(2) (Repealed 54 of 1993 s. 2)

(Amended 54 of 1993 s. 2)

[Previous section of enactment](#)

[Next section of enactment](#)

[Switch language](#)

[Back to the List of Laws](#)

雙語法例資料系統
Bilingual Laws Information System

English 繁體 簡體 繁體 Gif 簡體 Gif

[Previous section of
enactment](#)

[Next section of
enactment](#)

[Switch language](#) [Back to the List of
Laws](#)

Section of Enactment

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

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

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

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

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

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

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

5. In this Schedule-

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

(Replaced 4 of 1996 s. 13)

[Previous section of
enactment](#)

[Next section of
enactment](#)

[Switch language](#) [Back to the List of
Laws](#)

建議中的第12(2A)條

第1稿

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

- (a) (i) 某項註冊計劃的核准受託人就該計劃的某名成員所收取；而

(ii) 在有關期間還有待將供款或權益支付給該成員之帳戶，
的供款或權益；

(b) (i) 從成分基金轉移；
及

(ii) 在有關期間還有待將權益支付給另一個成分基金，
的權益；

(c) (i) 從成分基金收到；
及

(ii) 在有關期間 —

(A) 還有待將
權益從有
關註冊計
劃提取；或

(B) 還有待將
權益轉移
至另一註
冊計劃，

的權益。

第 2 稿

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

(a) (i) 某項註冊計劃的核准受託人就該計劃的某名成員所收取；並

(ii) 屬處於有待支付給該成員之帳戶的期間，

的供款或權益；

(b) (i) 從某個成分基金轉移；並

(ii) 屬處於有待轉入另一個成分基金作投資用的期間；

的權益；

(c) (i) 從某個成分基金收取；並

(ii) 屬處於有待 —

(A) 從有關註冊計劃提取的期間；或

(B) 屬處於有待轉移至另一註冊計劃的期間；

的權益。

條次

建議修正案

4(a) 刪去建議的第 7A(7)條而代以 —

“(7) 如僱員(臨時僱員除外)的工資期 —

(a) 不多於 1 個月，則就在有關時間之後受僱工作的第 30 日當日或之前開始的工資期而言，僱主不得根據第(2)(b)款，就該僱員在該工資期所賺取的有關入息作出扣除；

(b) 多於 1 個月，則就由有關時間至有關時間之後受僱工作的第 30 日所在的公曆月的最後一日為止的期間而言，僱主不得根據第(2)(b)款，就該僱員在該期間所賺取的有關入息作出扣除。”。

11 刪去建議的第 43B(3)及(4)條而代以 —

“(3) 僱主如被裁定犯了本條所訂罪行 —

(a) 首次定罪，可處第 6 級罰款及監禁 6 個月；及

(b) 其後每次定罪，可處罰款\$200,000 及監禁 12 個月，而如有有關罪行是由於該僱主沒有遵守第 7(1A)條施加於該僱主的規定所構成的，則可就該罪行持續的每一日另處\$500 每日罰款。

(4) 儘管有《裁判官條例》(第 227 章)第 26 條的規定，就本條所訂罪行而提起的法律程序，可在管理局發現或獲悉該罪行後 6 個月內提出。”。

新條文

加入 —

“12A. 可作為上訴標的之決定

附表 6 現予修訂，廢除第 10 及 11 項而代以 —

“10. 管理局拒絕要求管理局同意將一項或多於一項註冊計劃重組的申請的決定。”。

附表

(a) 在第 16 條中，在建議的第 150A(b)條中 —

(i) 在 “將” 之前加入 “在特准限期內”；

(ii) 刪去 “(a)段所述” 而代以 “上述註冊”。

(b) 在第 17 條中，在建議的第 164(5)(c)條中，刪去 “在該成員失業的情況下 —”。

(c) 在第 20(b)條中，在建議的第 2(3)條中，在 “第 6(b)(i)、(ii) 或(iii)條” 之前加入 “本附表”。

(d) 在第 21 條中，刪去在 “條中” 之後的所有字句而代以 “，在 “損失” 之前加入 “直接”。”。

(e) 在第 26 條中，在建議的第 4(3)(b)及(c)條中，刪去 “或” 而代以 “及”。