

**Explanatory Notes for the Proposed CSAs under
Construction Industry Levy (Miscellaneous Amendments) Bill 2003**

Item	Clause	Section of the relevant Ordinance	Issue(s) Identified under the existing Bill	CSAs Proposed
<i>Items that will require CSAs</i>				
1.	3 & 16 36	Sections 2 and 34(2) of the Industrial Training (Construction Industry) Ordinance (ITCIO) Regulation 16(2) of the Pneumoconiosis (Compensation) (Assessment of Levy) Regulations (PCAR)	These relevant provisions refer to the “authorised person appointed under Section 4 of the Buildings Ordinance (BO)”. The Chinese rendition of “authorised person” under BO is “認可人士” which is different from “獲授權人” as currently provided in ITCIO and PCAR.	It is necessary to replace the Chinese rendition of the “authorised person appointed under section 4 of the Buildings Ordinance (BO)” (“獲授權人”) in ITCIO and PCAR by “認可人士” because the definition of “authorised person” in ITCIO and PCAR is borrowed from BO and the Chinese renditions of the term in these pieces of legislation must be consistent.
2.	4 20	New Section 2A(1) of ITCIO New Section 2A(1) of Pneumoconiosis (Compensation) Ordinance (PCO)	The new Section 2A(1)(a) under both ITCIO and PCO defines that the value of construction operations shall mean the consideration of the construction contract to which the construction operations relate. However, as presently drafted, this new section does not empower CITA or the Pneumoconiosis Compensation Fund Board (PCFB) to re-assess the consideration for the purposes of ITCIO or PCO in case that such a consideration is	To address the problem of undervalued contract, it is necessary to amend the new Section 2A(1)(a) under ITCIO and PCO respectively to enable CITA and PCFB to refer to the factors listed in Section 2A(2) when ascertaining the open market value of the construction operations if the consideration of the contract is undervalued.

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			undervalued.	
3.	5 21	New Section 3A of ITCIO New Section 3A of PCO	The legislative intent of the new Section 3A under ITCIO and PCO is to provide exemption under the two ordinances for construction operations the sole or principal purpose of which is to decorate, alter, repair, maintain or renovate domestic premises for use by the occupiers themselves. The new Sections 3A(1) and (2) have introduced the concept of ownership and various safeguards to ensure that only construction operations of domestic premises without commercial motives shall be exempted from ITCIO and PCO. This has unnecessarily complicated the issue and created considerable implementation difficulties. Upon further examination, it is proposed that the new Section 3A should be simplified through removal of reference to ownership and the various safeguards in Section 3A(2).	In view that the legislative intent is to exempt those construction operations for domestic premises occupied or to be occupied for residential purposes by the occupiers, it is not necessary to make any reference to ownership in the new Sections 3A(1) and (5). Likewise, it is also considered that the safeguards introduced under the new Section 3A(2) are no longer necessary.
4.	7	Section 7(1) of ITCIO	The Bill has introduced amendments to the existing Section 7(1) of ITCIO to reflect the proposed change in the composition	CSAs are required to reflect the revised composition of CITA Board at the Annex.

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			<p>of the CITA Board. However, following discussions at the Bills Committee, the current proposal is to introduce minimal changes to the existing composition of CITA Board. To make way for two representatives from the E&M industry to join the Board, seats for two representatives from the Building and Civil Engineering Industry Training Board of the Vocational Training Council will in future be deleted. All other representation will remain unchanged.</p>	
5.	<p>8 & 39</p> <p>22 & 40</p>	<p>Sections 21(5) and (6) and Clause 39 of ITCIO</p> <p>Sections 35(7) and (8) & Clause 40 of PCO</p>	<p>The new Sections 21(5) and (6) of ITCIO and new Sections 35(7) and (8) of PCO provide for the transitional arrangements in relation to changes to the specified levy rate and/or amount in the relevant Schedule under the two ordinances respectively. Clauses 39 and 40 of the Bill are the transitional provisions relating to the amendments of ITCIO and PCO respectively under the Bill. When determining the transitional arrangements, the underlying principle is that any impact on levy arising from the legislative</p>	<p>To use the contract date or the date on which construction operations commence, whichever is earlier, as the cut-off date for construction operations without a tender.</p>

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			<p>amendments should not affect those construction operations the price quotation for which could not have taken account of those impacts. Along this principle, the Bill has adopted the following –</p> <ul style="list-style-type: none"> • For construction operations with a tender, the changes in the specified levy rate and/or amount (Clauses 8 and 22) or the new legislation (Clauses 39 and 40) will not apply to construction operations which have a tender date before the effective date. • For construction operations without a tender, the changes in the specified levy rate and/or amount (Clauses 8 and 22) or the new legislation (Clauses 39 and 40) will not apply to construction operations if a commencement notice has been given under Section 24(1) of ITCIO or Regulation 4(1) of PCAR before the effective date. • If there are more than one 	

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			<p>commencement notice given, the changes in the specified levy rate and/or amount (Clauses 8 and 22) or the new legislation (Clauses 39 and 40) will not apply to construction operations unless all such notices were given before the effective date.</p> <p>However, upon further consideration, in the case of the construction operations without a tender, using the commencement notice date as a cut off point may unfairly treat those construction operations which have a late commencement date long after the contract was signed (i.e. the contract could not have included the impact on the changes in levy). As such, cases like this using contract date instead of commencement notice date as a cut off point can avoid the said problem.</p> <p>For construction operations that are not carried out under a construction contract, we propose to use the commencement date of</p>	

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			the construction operations as the cut off point.	
6.	10 & 11 30 & 31	Sections 24(1A), 24(2)& 25(2A) of ITCIO Regulations 4(2), 4(3) and 5(3) of PCAR	Section 24(1) of ITCIO and Regulation 4(1) of PCAR provide that contractor and authorised person shall each notify CITA or PCFB respectively within 14 days after construction operations commence. Notifications by the contractor and the authorised person are also required under Section 25(2) of ITCIO and Regulation 5(2) of PCAR when the construction operations complete. The new Sections 24(1A) and 25(2A) of ITCIO and Regulations 4(2) and 5(3) of PCAR provide that with the exception of term contract, the contractor and the authorised person, as the case may be, shall discharge their duties under Sections 24(1) and 25(2) under ITCIO or Regulations 4(1) and 5(2) of PCAR if the estimated total value of construction operations exceed the specified amount. However, the condition, “if it is reasonably estimated by or on behalf of the contractor	To amend the new Sections 24(1A) and 25(2A) of ITCIO and Regulations 4(2) and 5(3) of PCAR to provide that, except in the case of a term contract, Sections 24(1) and 25(1) and (2) of ITCIO and Regulations 4(1), 5(1) and 5(2) shall not apply if the estimated total value of the construction operations does not exceed the specified amount. For the new Section 24(2) of ITCIO and Regulation 4(3) of PCAR, amendment should be make to these provision in order to provide that every notice under Section 24(1) of ITCIO and Regulation 4(1) of PCAR shall state the estimated total value of the construction operations.

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			<p>concerned...”, fails to mention the responsibility of the authorised person as stipulated under Sections 24(1) and 25(2) of ITCIO and Regulations 4(1) and 5(2) of PCAR. Also, same problem is identified in the new Section 24(2) of ITCIO and Regulation 4(3) of PCAR which stipulate that every notice issued under Section 24(1) under ITCIO or Regulation 4(1) of PCAR shall state the total value of the construction operations “as estimated by or on behalf of the contractor concerned”.</p>	
7.	30 & 31	Regulations 4 & 5 of PCAR	<p>Under Regulations 4 & 5 of PCAR, contractors and authorised persons are required to submit notices to PCFB for various purposes. The existing provisions now provide that such notices should be submitted “in a form approved by the Board”. To reflect more accurately the existing practice that the form of such notices is in fact specified by the Board, it is proposed to amend the relevant provisions accordingly.</p>	<p>To amend Regulations 4(1), 5(1) and 5(2) by requiring contractors or authorised persons to submit notices to PCFB “in a form specified by the Board” instead of “in a form approved by the Board” and to update the Chinese text where necessary</p>

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8.	11 31	Section 25(1) of ITCIO Regulation 5(1) of PCAR	Section 25(1) of ITCIO and Regulation 5(1) of PCAR provide that payment notice should be given by the contractors to CITA or PCFB respectively within 14 days after the payment is made. However, this will create considerable administrative inconvenience to both the contractors and CITA in the case of term contracts as their payments are very frequent.	A separate treatment for term contract is proposed: where a payment is made under a term contract, the contractor shall, within the 14 th day of each calendar month, give notice to CITA and PCFB of all the payments in respect of the works orders made to the contractor in the last preceding calendar month.
9.	12 32	Section 26(9)(b) and (10)(c) of ITCIO Regulations 6(9)(b) and 6(10)(c) of PCAR	Section 26(9) and the new Section 26(10) of ITCIO and Regulation 6(9) and new Regulation 6(10) of PCAR set out the time limit within which assessment of levy or surcharge shall be imposed in the case of normal contracts and term contracts respectively. One of the time limits is that the imposition of assessment or surcharge shall be within “1 year after evidence of facts, sufficient in the opinion of the Authority (or the Board) to justify the making of the assessment, the imposition of the surcharge or the giving of notice in respect of the assessment or surcharge, as the case may be, under subsection/paragraph (8),	Delete “or the giving of the notice in respect of the assessment or surcharge...under subsection (8)” in Sections 26(9)(b) and 26(10)(c). Likewise, delete the same phrase under Regulations 6(9) and 6(10)(c) of PCAR.

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			<p>comes to its knowledge”. However, after further examination, it is considered that the justification for the giving of notice is not necessary given that considerations behind the making of assessment should predominantly be the same as those behind the giving of notices. In fact, the latter is only a stage of the former.</p>	
10.	18	Section 1(c)(i)(C) of Schedule 1 of ITCIO	<p>Schedule 1 sets out the definition of construction operations under the Bill. The policy intent of Section 1(c)(i)(C) of Schedule 1 is to define construction operations as, among others, construction, alteration, repair, maintenance, extension, demolition or dismantling of any industrial plant for purposes of land drainage, coast protection, water supply or defence and of any industrial installations for the same purposes. The existing English version of this part is “construction, alteration...or dismantling of – any industrial plant and installations for purposes of land drainage, coast protection, water supply or defence; or” while</p>	<p>To amend the English and the Chinese versions of Section 1(c)(i)(C) to properly reflect the actual meaning of this part.</p>

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			<p>the Chinese translation is “建造、改動、修葺、修理、保養、擴建、拆卸、或拆除任何工業裝置及以供土地排水、護岸、供水或防衛用途的裝設”。 It is proposed that both the English and Chinese versions of this section be refined to better reflect the legislative intent.</p>	
11.	18	Section 1(c)(i)(D) of Schedule 1 of ITCIO	<p>The policy intent of Section 1(c)(i)(D) of Schedule 1 is to introduce certain specific items the construction processes for which should be construed as construction operations. However, Section 1(c)(i)(D) as presently drafted has adopted the word “and” instead of “or” which does not conform with the format used in other paragraphs of the same subsections listing out similar items.</p>	<p>To amend Section 1(c)(i)(D) to conform it with other paragraphs of the subsection.</p>

Education and Manpower Bureau

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The CITA Board would continue to consist of 13 members appointed by the Chief Executive of whom –

- (i) 2 shall be persons nominated by the Hong Kong Construction Association Limited;
- (ii) 1 shall be a person nominated by the Hong Kong Federation of Electrical and Mechanical Contractors Limited (香港機電工程商聯會有限公司);
- (iii) 1 shall be a person nominated by the Hong Kong Institute of Architects;
- (iv) 1 shall be a person nominated by the Hong Kong Institute of Surveyors;
- (v) 1 shall be a structural engineer nominated by the Hong Kong Institution of Engineers;
- (vi) 1 shall be a civil engineer nominated by the Hong Kong Institution of Engineers;
- (vii) 1 shall be a person who holds office as an official of a trade union representing workers employed in the construction industry;
- (viii) 1 shall be a person who holds office as an official of a trade union representing E&M workers employed in the construction industry;
- (ix) 1 shall be a person nominated by the Executive Director of the Vocational Training Council;
- (x) 2 shall be public officers; and
- (xi) 1 shall be a person, not being a public officer or person connected with any of the organizations mentioned in the above.