

## **LEGISLATIVE COUNCIL BRIEF**

Industrial Training (Construction Industry) Ordinance (Cap. 317)

Pneumoconiosis (Compensation) Ordinance (Cap. 360)

### **Construction Industry Levy (Miscellaneous Amendments) Bill 2003**

#### **INTRODUCTION**

At the meeting of the Executive Council on 18 March 2003, the Council ADVISED and the Acting Chief Executive ORDERED that –

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the Construction Industry Levy (Miscellaneous Amendments) Bill 2003 at **Annex A**, which covers amendments to the Industrial Training (Construction Industry) Ordinance and corresponding amendments to the Pneumoconiosis (Compensation) Ordinance, should be introduced into the Legislative Council mainly to extend the levy imposed on construction operations to cover electrical and mechanical works in the construction industry.

#### **JUSTIFICATIONS**

2. According to the Hong Kong E&M Contractors' Association Limited (HKEMCA), E&M services have grown in importance in the construction industry in recent years. They now constitute up to

30% of the overall construction cost of a building. The skills required for these services have become more complex and specialised. As a result the HKEMCA now believes that the spectrum and capacity of E&M training courses as well as the categories and capacity of E&M trade tests need to be expanded. This would facilitate the provision of more well-trained workers to meet the needs of the industry. It would also help lift quality and productivity and improve site safety. To meet the cost of the training courses and trade tests, the HKEMCA has recommended that a levy should be imposed on E&M works in the construction industry.

3. While the primary objective of the extension of the construction industry levy is to address the industry's needs as stated in paragraph 2, the proposal will also facilitate the full implementation of the Construction Workers Registration System (CWRS). Under the proposed CWRS, construction workers will be required to pass relevant trade tests or intermediate trade tests, in order to be registered as skilled or semi-skilled workers respectively. As such, the extension of the construction industry levy will enable the requisite training and trade testing to be provided to E&M workers to tie in with the proposed CWRS.

4. In response to the industry's recommendation, the Education and Manpower Bureau (EMB) established a Steering Committee including representatives from the Hong Kong Construction Association Limited (HKCA), the HKEMCA, the Vocational Training Council (VTC), the Construction Industry Training Authority (CITA) and the Administration to examine the proposal to extend the existing levy to cover E&M works. On the basis of the deliberation of the Steering Committee, we recommend to put forward necessary legislative amendments to the ITCIO to bring into effect the proposal.

5. To extend the coverage of the levy, we propose to replace the current definition of “construction works” under the ITCIO, which specifically excludes E&M works, with a new definition of “construction operations”, which will encompass E&M works. The proposed definition of “construction operations”, as shown in the new Schedule 1 to the ITCIO under the proposed Bill will also list out in detail the intended coverage of the definition and will help remove ambiguity under the current definition of “construction works”, which has in the past given rise to dispute over whether certain works items such as design, compensation, attendancy, etc. should be covered by the levy.

6. With the proposed extension of the construction industry to cover E&M works, we also consider it appropriate to modify the composition of the CITA Board to include a representative from the E&M sector.

7. The additional levy collected from E&M works in the construction industry would be used by the CITA to expand the scope of construction industry related E&M training courses and to cover the costs of the corresponding trade tests. Hitherto the VTC has been providing some generic E&M training and trade testing. It is conceivable that the CITA may wish to engage the VTC or other suitable training organisations, as an agent in running some of the expanded programmes. To enable the CITA to do so, we propose to include a provision to allow the CITA to use other bodies as training agents in the provision of services. In future, the CITA will provide, both in-house and, if necessary, through other training agents it commissions, E&M training specific to the construction industry while the VTC will continue to provide generic E&M training which will continue to be subvented by government.

8. We also propose a number of other amendments to enhance the operation of the collection of levy by the CITA. These include:

- a) clarification of the treatment of term contract to enable the levy to be collected on the basis of the aggregate value of all construction operations under a term contract;
- b) exemption of certain types of construction operations in relation to domestic premises from the levy; and
- c) further clarification of the party responsible for the payment of the levy.

9. Since its enactment in 1980, the PCO has all along been adopting the same basis for the collection of construction levy as the ITCIO and the definition of “construction works” has the meaning as provided under the ITCIO. With the proposed replacement of the definition of “construction works” by “construction operations” under the ITCIO, we propose to make corresponding amendments to the PCO so that the same basis for the collection of construction levy as the ITCIO can be maintained.

## **OTHER OPTIONS**

10. An alternative option is for the government to provide direct subvention to fund the training and trade testing activities. We believe that the industry itself should bear the responsibility to fund activities which ultimately benefit the industry itself. In fact, the CITA is fully financed by the industry itself through the construction industry levy income. As an industry levy is already in place, it would be logical to extend its scope to cover E&M works.

11. The current proposal was initiated by the industry and widely agreed within the industry. It is considered the fairest option.

## **THE BILL**

12. Part One of the Bill makes amendments to the ITCIO and the main provisions are:-

- a) Clause 3 -- introduction of new definitions such as “construction contract” and “construction operations” and amendments to some of the existing definitions;
- b) Clause 6 -- provision of the authority for the CITA to involve other bodies as training agents to organise and provide training and trade testing for the construction industry;
- c) Clause 7 -- revision of the composition of the CITA Board to tie in with the expanded scope of the CITA’s function.
- d) Clause 8 – a change to the basis of the construction industry levy from value of construction works to value of construction operations, the scope of which is set out in the new Schedule1 to be added to the ITCIO.

13. Part Two of the Bill makes amendments to the PCO and its subsidiary legislation consequential to the change to the basis of the construction industry levy from construction works to construction operations. The main provisions are:-

- a) Clause 18 -- to introduce new definitions such as “construction contract” and “construction operations” and amendments to some of the existing definitions;
- b) Clause 21 – to change the basis of the construction industry levy from value of construction works to value of construction operations, the scope of which is set out in the new Schedule 1 under Clause 17 of the Bill;
- c) Clauses 25 to 34 - to make relevant amendments to the Pneumoconiosis (Compensation) (Assessment of

Levy) Regulations.

B The existing provisions being amended are at **Annex B**.

#### **LEGISLATIVE TIMETABLE**

14. The legislative timetable is

Publication in the Gazette	28 March 2003
First Reading and commencement of Second Reading debate	9 April 2003
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

#### **IMPLICATIONS OF THE PROPOSAL**

C 15. The proposal has economic and slight financial implications. Details are set out in **Annex C**. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The amendments will not affect the current binding effect of the ITCIO and PCO. It has no civil service, productivity, environmental or sustainability implications.

#### **PUBLIC CONSULTATION**

16. We have invited comments from representatives of major stakeholders in the construction industry. The Real Estate Developers Association (REDA) of Hong Kong has expressed some reservations about the timing of introducing the extended construction industry levy and the cost implications. Nevertheless, the additional cost implications are unlikely to be significant. First, the overall rate of construction industry levy will remain at 0.4% or 0.25% under the respective ordinances. Second, our estimates suggest that the consequential implications to the construction costs brought about by the expansion of the scope of the levy under the two ordinances will amount to an addition of approximately

0.08% of average construction costs or about \$800 for an overall construction contract with a value of \$1 million. In view of the envisaged benefits to the industry and the community as a whole, this proposal should be implemented as soon as possible. In fact, the proposal is welcomed by other major stakeholders in the construction industry including the HKCA, the HKEMCA, MTR Corporation Limited, Kowloon Canton Railway Corporation Limited, Hong Kong Housing Authority, Hong Kong Housing Society and Pneumoconiosis Compensation Fund Board (PCFB).

17. The Labour Advisory Board supported the proposed corresponding amendments to the PCO.

18. The Manpower Panel of the LegCo examined and discussed the proposal on 18 July 2002. Members of the Panel were generally agreeable to the proposal.

## **PUBLICITY**

19. We will issue a press release. A spokesman will be available to answer media and public enquiries.

## **BACKGROUND**

20. Under the ITCIO, construction works undertaken in Hong Kong and exceeding a value of \$1 million are subject to the construction industry levy which is now fixed at a rate of 0.4%. Part IV (section 21 – 28) of the existing Ordinance empowers the CITA to collect the levy on “construction works” as defined under sections 2(2) and 2(3) where E&M works are excluded. The construction industry levy now supports the training and trade testing activities for general construction workers provided by the CITA; while some generic training courses and trade tests for E&M workers are provided by the VTC with the support of government

subventions.

21. The PCO was enacted in 1980 to provide for the payment of compensation to those persons who were diagnosed to be suffering from pneumoconiosis. Under the PCO, a levy is imposed on construction works with value of more than \$1 million and quarry products. The current rate of levy is 0.25%. When the PCO was enacted, a decision was taken to link the definition of “construction works” under the PCO to that under the ITCIO. As such, the two ordinances adopt the same basis for collecting levy from the construction industry.

## **ENQUIRIES**

22. Enquiries on the brief should be made to Gary AU on telephone number 2810 2264.

Education and Manpower Bureau  
18 March 2003



**CONSTRUCTION INDUSTRY LEVY (MISCELLANEOUS  
AMENDMENTS) BILL 2003**

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## A BILL

To

Provide for miscellaneous amendments to the Industrial Training (Construction Industry) Ordinance, the Pneumoconiosis (Compensation) Ordinance and the Pneumoconiosis (Compensation) (Assessment of Levy) Regulations to reflect changes to the respective levy schemes under the two Ordinances, to amend the constitution and general powers of the Construction Industry Training Authority, to adapt certain provisions of the two Ordinances to bring them into conformity with the Basic Law and with Hong Kong's status as a Special Administrative Region of the People's Republic of China, and to provide for connected purposes.

Enacted by the Legislative Council.

### **1. Short title and commencement**

(1) This Ordinance may be cited as the Construction Industry Levy (Miscellaneous Amendments) Ordinance 2003.

(2) Subject to subsections (3) and (4), this Ordinance shall come into operation on the day on which it is published in the Gazette.

(3) Parts 1, 2 and 4 shall come into operation on a day to be appointed by the Secretary for Education and Manpower by notice published in the Gazette.

(4) Part 3 and Schedules 1 and 2 shall be deemed to have come into operation on 1 July 1997.

(5) Subsection (4) shall be subject to Article 12 of the Hong Kong Bill of Rights set out in Part II of the Hong Kong Bill of Rights Ordinance (Cap. 383).

## PART 1

### AMENDMENTS TO THE INDUSTRIAL TRAINING (CONSTRUCTION INDUSTRY) ORDINANCE

## **2. Long title amended**

The long title to the Industrial Training (Construction Industry) Ordinance (Cap. 317) is amended by repealing “works” and substituting “operations”.

## **3. Interpretation**

Section 2 is amended –

- (a) in subsection (1) –
  - (i) in the definition of “authorized person” –
    - (A) in paragraph (a) –
      - (I) by repealing “building or street works not carried out by or on behalf of” and substituting “construction operations not carried out for”;
      - (II) by repealing “, the authorized person appointed under section 4 of the Buildings Ordinance (Cap. 123)” and substituting –
        - “–
        - (i) the authorized person appointed under section 4 of the Buildings Ordinance (Cap. 123); or
        - (ii) if no such authorized person has been appointed, the person appointed under section 34(2)”;

- (B) in paragraph (b), by repealing “works carried out by or on behalf of” and substituting “operations carried out for”;
- (C) by repealing paragraph (c);
- (ii) in the definition of “construction industry”, by repealing “building works or construction works” and substituting “construction operations”;
- (iii) in the definition of “contractor” –
  - (A) in paragraph (a) –
    - (I) by repealing “building or street works not carried out by or on behalf of” and substituting “construction operations not carried out for”;
    - (II) by repealing “, the person appointed as contractor under section 9 of the Buildings Ordinance (Cap. 123)” and substituting –
      - “\_
      - (i) the person appointed as contractor under section 9 of the Buildings Ordinance (Cap. 123); or
      - (ii) if no such person has been appointed, the person carrying out the construction operations”;

- (B) in paragraph (b) –
  - (I) by repealing “works carried out by or on behalf of” and substituting “operations carried out for”;
  - (II) by repealing “works;” and substituting “operations;”;
- (C) by repealing paragraph (c);
- (D) by adding after paragraph (b) –
  - “whether the construction operations are carried out under a contract or otherwise;”;
- (iv) by repealing the definition of “employer” and substituting –
  - ““employer” (僱主) means a person for whom construction operations are carried out by a contractor, whether under a contract or otherwise;”;
- (v) in the definition of “levy”, by repealing everything after “industry levy” and substituting “imposed under section 21;”;
- (vi) by repealing the definition of “value” and substituting –
  - ““value” (價值), in relation to construction operations, has the meaning assigned to it in section 2A;”;
- (vii) by adding –
  - ““building” (建築物) has the meaning assigned to it in section 2(1) of the Buildings Ordinance (Cap. 123);



“construction contract” (建造合約) means  
a contract between an employer and a  
contractor under which the contractor  
carries out construction operations,  
but does not include a contract of  
employment;

“construction operations” (建造工程),  
subject to section 3A, has the meaning  
assigned to it in Schedule 1;

“contract of employment” (僱傭合約) has  
the meaning assigned to it in section  
2(1) of the Employment Ordinance  
(Cap. 57);

“specified amount” (指明數額) means the  
amount specified in Part 2 of Schedule  
2;

“specified rate” (指明徵款率) means the  
rate of levy specified in Part 1 of  
Schedule 2;

“term contract” (固定期合約) means a  
construction contract –

- (a) that provides for  
completion of all  
construction operations  
to which the contract  
relates within a  
specified period  
(whether or not such  
period may be

subsequently varied by agreement); and

- (b) under which a contractor carries out construction operations as required by the employer concerned by any notice from time to time issued within the specified period by or on behalf of the employer to the contractor under the contract;

“total value” (總價值), in relation to construction operations, has the meaning assigned to it in section 2B;

“works order” (施工通知) means a notice –

- (a) issued by or on behalf of an employer to a contractor under a term contract; and
- (b) by which the employer requires construction operations to be carried out by the contractor.”;

- (b) by repealing subsections (2), (3), (4) and (5) and substituting –

“(2) For the purposes of this Ordinance –

- (a) where a person carries out any construction operations for any other person under a contract of employment, the construction operations shall be regarded as carried out by –
  - (i) subject to subparagraph (ii), that other person; or
  - (ii) where the first-mentioned person is a contractor by virtue of paragraph (a)(i) of the definition of “contractor”, the first-mentioned person;
- (b) where a person carries out any construction operations for himself without arrangement (except under a contract of employment) for the carrying out of such operations by any other person, the first-mentioned person shall, apart from being the person who carries out the construction operations, also be regarded as the person for whom such operations are carried out,

and the definitions of “contractor” and “employer” and the other provisions of this Ordinance shall be construed accordingly.

(3) For the purposes of this Ordinance, a person shall be regarded as undertaking or carrying out construction operations if –

- (a) he manages, or arranges for, the carrying out of the construction operations by any other person for the employer concerned, whether by way of sub-contracting or otherwise; or
- (b) he provides his own labour or that of any other person for the carrying out of the construction operations.”.

#### **4. Sections added**

The following are added –

##### **“2A. Value of construction operations**

(1) For the purposes of this Ordinance, “value” (價值), in relation to construction operations, means –

- (a) where the construction operations are carried out under a construction contract, the consideration, or such part of the consideration as is attributable to such operations, that is stated in, or ascertainable by reference to, the contract; or
- (b) where the construction operations are not carried out under a construction contract, the reasonable

consideration to be expected on the open market in respect of the carrying out of such operations.

(2) Without limiting the generality of subsection (1), the Authority may, when ascertaining the value of any construction operations for the purposes of this Ordinance, have regard to all or any of the following matters –

- (a) the cost or value of materials used in the construction operations;
- (b) the cost or value of time, work and labour involved in the construction operations;
- (c) the equipment used in the construction operations;
- (d) such overhead costs incurred in relation to the construction operations as the Authority considers reasonable;
- (e) the reasonable profit to be expected on the open market in respect of the carrying out of the construction operations;
- (f) any other factors that the Authority considers appropriate.

## **2B. Total value of construction operations**

For the purposes of this Ordinance, “total value” (總價值), in relation to construction operations, means –

- (a) where the construction operations are carried out under a construction contract –
  - (i) in the case the construction contract is a term contract, the aggregate of the respective values of all construction operations carried out as required by works orders issued under the contract;

- (ii) in the case the construction operations are or form part of any construction operations that are carried out in stages, the aggregate of the respective values of all stages of the operations so carried out; or
  - (iii) in any other case, the value of the construction operations; or
- (b) where the construction operations are not carried out under a construction contract –
  - (i) in the case the construction operations are or form part of any construction operations that are carried out in stages, the aggregate of the respective values of all stages of the operations so carried out; or
  - (ii) in any other case, the value of the construction operations.”.

## 5. Section added

The following is added in Part I –

### “3A. Application to construction operations

- (1) Subject to subsection (2), this Ordinance does not apply to construction operations –
  - (a) which are carried out for a person who occupies or owns any domestic premises; and
  - (b) the sole or principal purpose of which is to decorate, alter, repair, maintain or renovate the premises or any part of the premises.
- (2) Where –
  - (a) a person occupies or owns more than one domestic premises in the same building;

- (b) at the same time, construction operations described in subsection (1) are carried out in respect of more than one of those premises or parts of more than one of those premises; and
- (c) the aggregate of the respective values of the construction operations so carried out exceeds the specified amount,

then notwithstanding subsection (1), this Ordinance applies to the construction operations.

(3) This Ordinance does not apply to any construction operations, or any type or description of construction operations, which are or is excluded from the application of this Ordinance by the Chief Executive in Council by order published in the Gazette.

(4) Without limiting the generality of subsection (3), an order made under that subsection may specify the circumstances under which or the purposes for which any construction operations, or any type or description of construction operations, referred to in the order are or is to be excluded from the application of this Ordinance.

(5) In this section –

- (a) “domestic premises” (住用處所) means premises used or intended to be used solely or principally for residential purposes and constituting a separate household unit;
- (b) a person shall be regarded as a person who occupies or owns a domestic premises if he intends to occupy or own the premises.”.

## **6. General powers of the Authority**

Section 6(1) is amended –

- (a) in paragraph (e), by repealing the full stop and substituting a semicolon;
- (b) by adding –
  - “(f) engage the services of other bodies to perform any of its functions under section 5(a) and (e).”.

## **7. Constitution of Authority**

Section 7(1) is amended –

- (a) by repealing paragraph (b);
- (b) in paragraph (e), by repealing “Structural Division of”;
- (c) by repealing paragraph (f) and substituting –
  - “(f) 1 shall be a person nominated by the Hong Kong E&M Contractors’ Association Limited;”;
- (d) in paragraph (h), by repealing “and”;
- (e) by repealing paragraph (i) and substituting –
  - “(i) 1 shall be a member of the academic staff of a university in Hong Kong; and
  - (j) 2 shall be persons from the construction industry.”.

## **8. Section substituted**

Section 21 is repealed and the following substituted –

### **“21. Imposition of construction industry levy**

(1) A levy, to be known as the construction industry levy, at the specified rate shall be imposed on the value of all construction operations undertaken or carried out in Hong Kong.



(2) Notwithstanding subsection (1), construction operations the total value of which does not exceed the specified amount shall not be liable to the levy.

(3) Subject to section 26(8A), the levy shall be payable in accordance with this Ordinance by every contractor who carries out construction operations.

(4) The Legislative Council may by resolution amend Schedule 2.

(5) Any amendment to Schedule 2 –

(a) shall come into effect on the expiration of the period of 30 days after the publication of the resolution in the Gazette; and

(b) shall not apply to any construction operations –

(i) the tender for which has been submitted to the employer concerned before the expiration of the period referred to in paragraph (a); or

(ii) if no such tender has been so submitted, a notice in respect of which has been given to the Authority under section 24(1) before the expiration of the period referred to in paragraph (a).

(6) For the purposes of subsection (5)(b)(ii), if more than one notice has been given to the Authority under section 24(1) in respect of any construction operations, subsection (5)(b)(ii) shall not apply unless all such notices have been so given before the expiration of the period referred to in subsection (5)(a).”.

## **9. Sections repealed**

Sections 22 and 23 are repealed.

**10. Contractor and authorized person to notify Authority when undertaking construction operations**

Section 24 is amended –

- (a) in subsection (1) –
  - (i) by repealing “works” wherever it appears and substituting “operations”;
  - (ii) in paragraph (a), by repealing “carrying out” and substituting “in respect of”;
  - (iii) by repealing “such a contractor carrying out” and substituting “the contractor in respect of the”;
  - (iv) by repealing “with construction” and substituting “with the construction”;
- (b) by repealing subsection (1A) and substituting –
 

“(1A) Except in the case of a term contract, subsection (1) shall not apply in respect of any construction operations if it is reasonably estimated by or on behalf of the contractor concerned that the total value of such operations does not exceed the specified amount.”;
- (c) in subsection (2), by repealing “estimated value of the construction works” and substituting “total value of the construction operations as estimated by or on behalf of the contractor concerned”.

**11. Notice by contractor and authorized person of payments made in respect of construction operations and of completion**

Section 25 is amended –

- (a) in subsections (1), (2) and (3), by repealing “works” wherever it appears and substituting “operations”;

- (b) in subsection (2), by repealing “being”;
- (c) by repealing subsection (2A) and substituting –
  - “(2A) Except in the case of a term contract, subsections (1) and (2) shall not apply in respect of any construction operations if it is reasonably estimated by or on behalf of the contractor concerned that the total value of such operations does not exceed the specified amount.”.

## 12. Assessment

Section 26 is amended –

- (a) in subsection (1) –
  - (i) by repealing “from the contractor”;
  - (ii) by repealing “works” wherever it appears and substituting “operations”;
  - (iii) by repealing “being”;
- (b) in subsection (2) –
  - (i) by repealing “to the contractor”;
  - (ii) by repealing “works” wherever it appears and substituting “operations”;
- (c) in subsection (3) –
  - (i) by repealing “works” wherever it appears and substituting “operations”;
  - (ii) by repealing “from the contractor”;
- (d) in subsection (4), by repealing “works” wherever it appears and substituting “operations”;
- (e) by adding –
  - “(4A) Notwithstanding subsections (1), (2) and (3), where construction operations are carried out under a term contract, the Authority may defer

the making of any assessment under subsection (1), (2) or (3) until such time as the Authority considers appropriate.”;

- (f) in subsection (5) –
  - (i) by repealing “from the contractor”;
  - (ii) by repealing “works” and substituting “operations”;
- (g) in subsection (6) –
  - (i) by repealing “from the contractor”;
  - (ii) by repealing “works” where it twice appears and substituting “operations”;
- (h) in subsection (7), by repealing “subsection (5)” and substituting “this section and payable by the contractor”;
- (i) by repealing subsection (8) and substituting –
  - “(8) Any assessment of levy or imposition of surcharge under this section shall be notified in writing by the Authority.
  - (8A) A levy or surcharge shall not be payable by a contractor –
    - (a) if he has not been notified by the Authority of an assessment of such levy or imposition of such surcharge, as the case may be, under subsection (8); or
    - (b) to the extent that the levy or surcharge, as the case may be, has been paid by any other contractor unless the levy or surcharge, as the case may be, may be required or ordered to be

refunded or repaid to that other contractor under section 27(1C), 29(4) or 30(4).”;

- (j) in subsection (9) –
  - (i) by repealing “An” and substituting “Subject to subsection (10), an”;
  - (ii) in paragraph (a), by repealing “works” and substituting “operations”;
  - (iii) in paragraph (b) –
    - (A) by repealing “or” and substituting a comma;
    - (B) by adding “or the giving of notice in respect of the assessment or surcharge, as the case may be, under subsection (8),” after “surcharge”;
- (k) by adding –
  - “(10) If construction operations are carried out under a term contract, an assessment or surcharge under this section shall be made or imposed within –
    - (a) 2 years after the completion of all construction operations to which the contract relates;
    - (b) 2 years after the expiration of the period within which all construction operations to which the contract relates have to be completed as provided for by the contract; or
    - (c) 1 year after evidence of facts, sufficient in the opinion of the

Authority 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 (8), comes to its knowledge,

whichever is the last to occur.

(11) For the purposes of this section, where the amount of levy due in respect of a stage of any construction operations is assessed under this section, the amount of levy shall be assessed as if such stage of the construction operations separately constitutes construction operations subject to payment of levy under this Ordinance.”.

### **13. Payment of levy**

Section 27(1C) is amended by adding “any levy or surcharge payable under subsection (1), or” after “part of”.

### **14. Recovery of levy**

Section 28(2) is amended by repealing “\$20,000” and substituting “the civil jurisdiction of the District Court as may from time to time be determined under the District Court Ordinance (Cap. 336)”.

### **15. Furnishing of information and production of documents**

Section 31 is amended –

- (a) in subsection (1) –

- (i) by repealing “works” wherever it appears and substituting “operations”;
- (ii) in paragraph (a), by repealing “being”;
- (b) in subsection (3)(aa), by repealing “works” and substituting “operations”.

**16. Appointment of authorized persons and notification of appointment of authorized persons or contractors**

Section 34 is amended –

- (a) in subsection (1) –
  - (i) by repealing “Where” and substituting “If any construction operations are to be carried out for”;
  - (ii) by repealing “is the employer in respect of any construction works”;
  - (iii) by repealing “works.” and substituting “operations.”;
- (b) in subsection (2) –
  - (i) by repealing “Every” and substituting “Subject to subsection (1), every”;
  - (ii) by repealing “by whom or on whose behalf construction works” and substituting “for whom construction operations”;
  - (iii) by repealing “works.” and substituting “operations.”;
- (c) in subsection (3) –
  - (i) by repealing everything before paragraph (a) and substituting –
    - “(3) Any person who has appointed an authorized person under subsection (2) shall, before the commencement of the

- construction operations concerned, inform the Authority of the respective names of –”;
- (ii) in paragraph (a), by repealing “subsection (2)” and substituting “that subsection”;
  - (iii) in paragraph (b), by adding “in respect of the construction operations” after “contractor”;
  - (d) in subsection (4) –
    - (i) by repealing “who is employed as a contractor in respect of construction works” and substituting “who is the contractor in respect of any construction operations to which this section applies”;
    - (ii) by repealing “works.” and substituting “operations.”.

#### **17. Section added**

The following is added –

##### **“37. Power to amend Schedule 1**

The Chief Executive in Council may, by order published in the Gazette, amend Schedule 1.”.

#### **18. Schedules 1 and 2 added**

The following are added –

##### **“SCHEDULE 1**

[ss. 2 & 37]

##### **CONSTRUCTION OPERATIONS**

1. For the purposes of this Ordinance, “construction operations” (建造工程) means operations of any of the following descriptions –

- (a) building works;



- (b) street works;
- (c) without limiting the generality of paragraphs (a) and (b) –
  - (i) construction, alteration, repair, maintenance, extension, demolition or dismantling of –
    - (A) any buildings, or other temporary or permanent structures forming, or to form, part of land;
    - (B) any works forming, or to form, part of land;
    - (C) any industrial plant and installations for purposes of land drainage, coast protection, water supply or defence; or
    - (D) any power-lines, telecommunication apparatus and pipe-lines,
 including, without limiting the generality of the foregoing, walls, pylons, aircraft runways, docks and harbours, railways, inland waterways, reservoirs, water-mains, wells and sewers;
  - (ii) supply and installation of fittings or equipment in any buildings, or other structures forming part of land, including, without limiting the generality of the foregoing, systems of heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, refuse collection, water supply, fire protection, security or communications, lift or escalator and other extra low voltage works;

- (iii) external or internal cleaning of any buildings, or other temporary or permanent structures forming part of land, to the extent that it is carried out in the course of construction, alteration, repair, maintenance, extension or restoration of such buildings or structures;
- (iv) painting or decorating any internal or external surfaces or parts of any buildings, or other temporary or permanent structures forming part of land;
- (v) operations which form an integral part of, or are preparatory to, or are for rendering complete, any of the operations described in paragraphs (a), (b) and (c)(i), (ii), (iii) and (iv), including, without limiting the generality of the foregoing, site clearance and investigation, earthmoving, excavation, tunnelling and boring, laying of foundations, erection, maintenance or dismantling of scaffolding, site restoration, landscaping and the provision of roadways and other access works.

2. Notwithstanding section 1, “construction operations” (建造工程) does not include operations of any of the following descriptions –

- (a) design, advice and consultation work, unless such design, advice and consultation work is incidental to any of the operations described in section 1;
- (b) manufacture of plant or machinery at a site for delivery of such plant or machinery to another site where the sole or principal activity at that other site is –

- (i) power generation; or
- (ii) the production, transmission, processing or bulk storage of any materials or manufactured products, including chemicals, pharmaceuticals, oil, gas, steel, food or drink or vehicles, which are intended for sale.

3. For the purposes of this Schedule –

“extra low voltage” (特低壓) means voltage normally not exceeding –

- (a) 50V root mean square alternating current; or
- (b) 120V direct current,

between conductors or between a conductor and earth;

“land” (土地) includes land under the sea.

## SCHEDULE 2

[ss. 2 & 21]

### LEVY

#### PART 1

#### SPECIFIED RATE

0.4% of the value of the construction operations concerned.

#### PART 2

#### SPECIFIED AMOUNT

\$1,000,000.”.

#### PART 2

AMENDMENTS TO THE PNEUMOCONIOSIS  
(COMPENSATION) ORDINANCE AND ITS  
SUBSIDIARY LEGISLATION

**Pneumoconiosis (Compensation) Ordinance**

**19. Interpretation**

Section 2 of the Pneumoconiosis (Compensation) Ordinance (Cap. 360) is amended –

- (a) in subsection (1) –
  - (i) by repealing the definition of “construction works”;
  - (ii) by repealing the definition of “value” and substituting –
    - ““value” (價值) –
      - (a) in relation to construction operations, has the meaning assigned to it in section 2A;
      - (b) in relation to quarry products, has the meaning assigned to it in section 2C;”;
  - (iii) by adding –
    - ““authorized person” (獲授權人) has the meaning assigned to it in section 2(1) of the Industrial Training (Construction Industry) Ordinance (Cap. 317);
    - “construction contract” (建造合約) has the meaning assigned to it in section 2(1)

of the Industrial Training (Construction Industry) Ordinance (Cap. 317);

“construction employer” (建造工程僱主)

means an employer as defined in section 2(1) of the Industrial Training (Construction Industry) Ordinance (Cap. 317);

“construction operations” (建造工程),

subject to section 3A, has the meaning assigned to it in Schedule 1 to the Industrial Training (Construction Industry) Ordinance (Cap. 317);

“contract of employment” (僱傭合約) has

the meaning assigned to it in section 2(1) of the Employment Ordinance (Cap. 57);

“quarry” (石礦場) means any works or

system of works the principal purpose of which is to –

- (a) extract from the earth any rock or stone for commercial purposes; or
- (b) crush rock or stone for commercial purposes;

“quarry products” (石礦產品) means all

crushed rock, stone and sand extracted or produced in a quarry;

“specified amount” (指明數額) means the amount specified in Part 1 of Schedule 5;

“specified rate” (指明徵款率) –

(a) in relation to construction operations, means the rate of levy specified in Division 1 of Part 2 of Schedule 5; or

(b) in relation to quarry products, means the rate of levy specified in Division 2 of Part 2 of Schedule 5;

“term contract” (固定期合約) has the meaning assigned to it in section 2(1) of the Industrial Training (Construction Industry) Ordinance (Cap. 317);

“total value” (總價值), in relation to construction operations, has the meaning assigned to it in section 2B;

“works order” (施工通知) has the meaning assigned to it in section 2(1) of the Industrial Training (Construction Industry) Ordinance (Cap. 317).”;

(b) by adding –

“(3) For the purposes of this Ordinance –

(a) where a person carries out any construction operations for any other person under a contract of

employment, the construction operations shall be regarded as carried out by –

- (i) subject to subparagraph (ii), that other person; or
  - (ii) where the first-mentioned person is a contractor by virtue of paragraph (a)(i) of the definition of “contractor” in section 2(1) of the Industrial Training (Construction Industry) Ordinance (Cap. 317), the first-mentioned person;
- (b) where a person carries out any construction operations for himself without arrangement (except under a contract of employment) for the carrying out of such operations by any other person, the first-mentioned person shall, apart from being the person who carries out the construction operations, also be regarded as the person for whom such operations are carried out,

and the definitions of “contractor” and “construction employer” and the other provisions of this Ordinance

shall be construed accordingly.

(4) For the purposes of this Ordinance, a person shall be regarded as undertaking or carrying out construction operations if –

- (a) he manages, or arranges for, the carrying out of the construction operations by any other person for the construction employer concerned, whether by way of sub-contracting or otherwise; or
- (b) he provides his own labour or that of any other person for the carrying out of the construction operations.”.

## **20. Sections added**

The following are added –

### **“2A. Value of construction operations**

(1) For the purposes of this Ordinance, “value” (價值), in relation to construction operations, means –

- (a) where the construction operations are carried out under a construction contract, the consideration, or such part of the consideration as is attributable to such operations, that is stated in, or ascertainable by reference to, the contract; or
- (b) where the construction operations are not carried out under a construction contract, the reasonable consideration to be expected on the open market in respect of the carrying out of such operations.



(2) Without limiting the generality of subsection (1), the Board may, when ascertaining the value of any construction operations for the purposes of this Ordinance, have regard to all or any of the following matters –

- (a) the cost or value of materials used in the construction operations;
- (b) the cost or value of time, work and labour involved in the construction operations;
- (c) the equipment used in the construction operations;
- (d) such overhead costs incurred in relation to the construction operations as the Board considers reasonable;
- (e) the reasonable profit to be expected on the open market in respect of the carrying out of the construction operations;
- (f) any other factors that the Board considers appropriate.

**2B. Total value of construction operations**

For the purposes of this Ordinance, “total value” (總價值), in relation to construction operations, means –

- (a) where the construction operations are carried out under a construction contract –
  - (i) in the case the construction contract is a term contract, the aggregate of the respective values of all construction operations carried out as required by works orders issued under the contract;
  - (ii) in the case the construction operations are or form part of any construction operations

- that are carried out in stages, the aggregate of the respective values of all stages of the operations so carried out; or
- (iii) in any other case, the value of the construction operations; or
- (b) where the construction operations are not carried out under a construction contract –
  - (i) in the case the construction operations are or form part of any construction operations that are carried out in stages, the aggregate of the respective values of all stages of the operations so carried out; or
  - (ii) in any other case, the value of the construction operations.

## **2C. Value of quarry products**

(1) For the purposes of this Ordinance, “value” (價值), in relation to quarry products, means the value of the quarry products.

(2) The Board may, when ascertaining the value of any quarry products for the purposes of this Ordinance, have regard to all or any of the following matters –

- (a) the type and volume of the quarry products;
- (b) the market price of the quarry products at the time of production.”.

## **21. Section added**

The following is added in Part I –

### **“3A. Application to construction operations**

(1) Subject to subsection (2), this Ordinance does not apply to construction operations –

- (a) which are carried out for a person who occupies or owns any domestic premises; and
  - (b) the sole or principal purpose of which is to decorate, alter, repair, maintain or renovate the premises or any part of the premises.
- (2) Where –
- (a) a person occupies or owns more than one domestic premises in the same building;
  - (b) at the same time, construction operations described in subsection (1) are carried out in respect of more than one of those premises or parts of more than one of those premises; and
  - (c) the aggregate of the respective values of the construction operations so carried out exceeds the specified amount,

then notwithstanding subsection (1), this Ordinance applies to the construction operations.

(3) This Ordinance does not apply to any construction operations, or any type or description of construction operations, which are or is excluded from the application of this Ordinance by the Chief Executive in Council by order published in the Gazette.

(4) Without limiting the generality of subsection (3), an order made under that subsection may specify the circumstances under which or the purposes for which any construction operations, or any type or description of construction operations, referred to in the order are or is to be excluded from the application of this Ordinance.

- (5) In this section –
- (a) “domestic premises” (住用處所) means premises used or intended to be used solely or principally for

- residential purposes and constituting a separate household unit;
- (b) a person shall be regarded as a person who occupies or owns a domestic premises if he intends to occupy or own the premises.”.

## **22. Section substituted**

Section 35 is repealed and the following substituted –

### **“35. Imposition of levy**

(1) A levy at the specified rate shall be imposed on the value of all construction operations undertaken or carried out in Hong Kong.

(2) Notwithstanding subsection (1), construction operations the total value of which does not exceed the specified amount shall not be liable to the levy.

(3) Subject to regulation 6(8A) of the Pneumoconiosis (Compensation) (Assessment of Levy) Regulations (Cap. 360 sub. leg. A), the levy imposed under subsection (1) shall be payable in accordance with this Ordinance by every contractor who carries out construction operations.

(4) A levy at the specified rate shall be imposed on the value of all quarry products.

(5) The levy imposed under subsection (4) shall be payable by every quarry operator of the quarry in which the quarry products are extracted or produced.

(6) The Legislative Council may by resolution amend Schedule 5.

(7) Any amendment to Schedule 5 –

- (a) shall come into effect on the expiration of the period of 30 days after the publication of the resolution in the Gazette; and
- (b) shall not apply to any construction operations –

- (i) the tender for which has been submitted to the construction employer concerned before the expiration of the period referred to in paragraph (a); or
- (ii) if no such tender has been so submitted, a notice in respect of which has been given to the Board under regulation 4(1) of the Pneumoconiosis (Compensation) (Assessment of Levy) Regulations (Cap. 360 sub. leg. A) before the expiration of the period referred to in paragraph (a).

(8) For the purposes of subsection (7)(b)(ii), if more than one notice has been given to the Board under regulation 4(1) of the Pneumoconiosis (Compensation) (Assessment of Levy) Regulations (Cap. 360 sub. leg. A) in respect of any construction operations, subsection (7)(b)(ii) shall not apply unless all such notices have been so given before the expiration of the period referred to in subsection (7)(a).”.

## **23. Rate of levy**

Section 36 is repealed.

## **24. Payment of levy and surcharge**

Section 37(1C) is amended by adding “any levy or surcharge payable under subsection (1), or” after “part of”.

## **25. Regulations**

Section 47 is amended –

- (a) in paragraph (b) –
  - (i) by repealing subparagraph (i);

- (ii) in subparagraphs (ii) and (iii), by repealing “works” and substituting “operations”;
- (iii) in subparagraph (vi), by repealing “employers” and substituting “construction employers”;
- (b) in paragraph (c), by repealing “employers” and substituting “construction employers”.

**26. Schedule 5 added**

The following is added –

“SCHEDULE 5 [ss. 2 & 35]

LEVY

PART 1

SPECIFIED AMOUNT

\$1,000,000.

PART 2

SPECIFIED RATE

**Division 1 – Construction operations**

0.25% of the value of the construction operations concerned.

**Division 2 – Quarry products**

0.25% of the value of the quarry products concerned.”.

**Pneumoconiosis (Compensation)(Assessment of Levy) Regulations**

## **27. Interpretation**

Regulation 2 of the Pneumoconiosis (Compensation) (Assessment of Levy) Regulations (Cap. 360 sub. leg. A) is amended –

- (a) by repealing the definitions of “authorized person”, “building works”, “quarry”, “quarry products” and “street works”;
- (b) in the definition of “quarry industry”, by repealing the semicolon at the end and substituting a full stop.

## **28. Part heading amended**

The heading to Part II is amended by repealing “WORKS” and substituting “OPERATIONS”.

## **29. Value of construction works**

Regulation 3 is repealed.

## **30. Contractor and authorized person to notify Board when undertaking construction operations**

Regulation 4 is amended –

- (a) in paragraph (1) –
  - (i) by repealing “works” wherever it appears and substituting “operations”;
  - (ii) in paragraph (a), by repealing “carrying out” and substituting “in respect of”;
  - (iii) by repealing “such a contractor carrying out” and substituting “the contractor in respect of the”;
  - (iv) by repealing “with construction” and substituting “with the construction”;
- (b) by repealing paragraph (2) and substituting –
  - “(2) Except in the case of a term contract,

paragraph (1) shall not apply in respect of any construction operations if it is reasonably estimated by or on behalf of the contractor concerned that the total value of such operations does not exceed the specified amount.”;

- (c) in paragraph (3), by repealing “estimated value of the construction works” and substituting “total value of the construction operations as estimated by or on behalf of the contractor concerned”.

### **31. Notice by contractor and authorized person of payments made in respect of construction operations and of completion**

Regulation 5 is amended –

- (a) in paragraphs (1), (2) and (4), by repealing “works” wherever it appears and substituting “operations”;
- (b) in paragraph (2), by repealing “being”;
- (c) by repealing paragraph (3) and substituting –

“(3) Except in the case of a term contract, paragraphs (1) and (2) shall not apply in respect of any construction operations if it is reasonably estimated by or on behalf of the contractor concerned that the total value of such operations does not exceed the specified amount.”.

### **32. Assessment**

Regulation 6 is amended –

- (a) in paragraph (1) –
  - (i) by repealing “from the contractor”;
  - (ii) by repealing “works” wherever it appears and substituting “operations”;



- (iii) by repealing “being”;
- (b) in paragraph (2) –
  - (i) by repealing “to the contractor”;
  - (ii) by repealing “works” wherever it appears and substituting “operations”;
- (c) in paragraph (3) –
  - (i) by repealing “works” wherever it appears and substituting “operations”;
  - (ii) by repealing “from the contractor”;
- (d) in paragraph (4), by repealing “works” wherever it appears and substituting “operations”;
- (e) by adding –
  - “(4A) Notwithstanding paragraphs (1), (2) and (3), where construction operations are carried out under a term contract, the Board may defer the making of any assessment under paragraph (1), (2) or (3) until such time as the Board considers appropriate.”;
- (f) in paragraph (5) –
  - (i) by repealing “from the contractor”;
  - (ii) by repealing “works” and substituting “operations”;
- (g) in paragraph (6) –
  - (i) by repealing “from the contractor”;
  - (ii) by repealing “works” where it twice appears and substituting “operations”;
- (h) in subsection (7), by repealing “paragraph (5)” and substituting “this regulation and payable by the contractor”;
- (i) by repealing paragraph (8) and substituting –

“(8) Any assessment of levy or imposition of surcharge under this regulation shall be notified in writing by the Board.

(8A) A levy or surcharge shall not be payable by a contractor –

- (a) if he has not been notified by the Board of an assessment of such levy or imposition of such surcharge, as the case may be, under paragraph (8); or
  - (b) to the extent that the levy or surcharge, as the case may be, has been paid by any other contractor unless the levy or surcharge, as the case may be, may be required or ordered to be refunded or repaid to that other contractor under section 37(1C) of the Ordinance or regulation 12(4) or 13(4).”;
- (j) in paragraph (9) –
  - (i) by repealing “An” and substituting “Subject to paragraph (10), an”;
  - (ii) in subparagraph (a), by repealing “works” and substituting “operations”;
  - (iii) in subparagraph (b) –
    - (A) by repealing “or” and substituting a comma;
    - (B) by adding “or the giving of notice in respect of the assessment or surcharge, as

the case may be, under paragraph (8),”  
after “surcharge”;

(k) by adding –

“(10) If construction operations are carried out under a term contract, an assessment or surcharge under this regulation shall be made or imposed within –

- (a) 2 years after the completion of all construction operations to which the contract relates;
- (b) 2 years after the expiration of the period within which all construction operations to which the contract relates have to be completed as provided for by the contract; or
- (c) 1 year after evidence of facts, sufficient in the opinion of 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 paragraph (8), comes to its knowledge,

whichever is the last to occur.

(11) For the purposes of this regulation, where the amount of levy due in respect of a stage of any construction operations is assessed under this regulation, the amount of levy shall be assessed as if

such stage of the construction operations separately constitutes construction operations subject to payment of levy under the Ordinance.”.

**33. Value of quarry products**

Regulation 7 is repealed.

**34. Furnishing of information and production of documents**

Regulation 14(1) is amended –

- (a) by repealing “An employer” and substituting “A construction employer”;
- (b) by repealing “works” wherever it appears and substituting “operations”;
- (c) by repealing “being”.

**35. Non-disclosure of information provided**

Regulation 15(2)(a) is amended –

- (a) by repealing “works” where it twice appears and substituting “operations”;
- (b) in sub-subparagraph (ii), by repealing “employers” and substituting “construction employers”.

**36. Appointment of authorized persons and notification of appointment of authorized persons or contractors**

Regulation 16 is amended –

- (a) in paragraph (1) –
  - (i) by repealing “Where” and substituting “If any construction operations are to be carried out for”;
  - (ii) by repealing “is the employer in respect of any construction works”;

- (iii) by repealing “works.” and substituting “operations.”;
- (b) in paragraph (2) –
  - (i) by repealing “Every” and substituting “Subject to paragraph (1), every”;
  - (ii) by repealing “by whom or on whose behalf construction works” and substituting “for whom construction operations”;
  - (iii) by repealing “works.” and substituting “operations.”;
- (c) in paragraph (3) –
  - (i) by repealing everything before subparagraph (a) and substituting –
    - “(3) Any person who has appointed an authorized person under paragraph (2) shall, before the commencement of the construction operations concerned, inform the Board of the respective names of –”;
  - (ii) in subparagraph (a), by repealing “paragraph (2)” and substituting “that paragraph”;
  - (iii) in subparagraph (b), by adding “in respect of the construction operations” after “contractor”;
- (d) in paragraph (4) –
  - (i) by repealing “who is employed as a contractor in respect of construction works” and substituting “who is the contractor in respect of any construction operations to which this regulation applies”;
  - (ii) by repealing “works.” and substituting “operations.”.

## PART 3

## ADAPTATION OF LAWS

## Adaptation of Industrial Training (Construction Industry) Ordinance

The Industrial Training (Construction Industry) Ordinance (Cap. 317) is amended in the manner indicated in Schedule 1.

# Adaptation of Pneumoconiosis (Compensation) Ordinance

The Pneumoconiosis (Compensation) Ordinance (Cap. 360) is amended in the manner indicated in Schedule 2.

## PART 4

## MISCELLANEOUS

### 39. Transitional provisions relating to Part 1

(1) Notwithstanding anything contained in Part 1 of this Ordinance, and in addition to and without derogating from section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), the amendments effected under this Ordinance shall not apply to any construction works—

- (a) the tender for which has been submitted to the employer concerned before the commencement date; or
- (b) if no such tender has been so submitted, a notice in respect of which has been given to the Authority under section 24(1) of the pre-amended Ordinance before the commencement date.

(2) For the purposes of subsection (1)(b), if more than one notice has been given to the Authority under section 24(1) of the pre-amended Ordinance in respect of any construction operations, subsection (1)(b) shall not apply unless all such notices have been so given before the commencement date.

(3) For the purposes of this section –

“Authority” (訓練局) has the same meaning as in section 2(1) of the pre-amended Ordinance;

“commencement date” (生效日期) means the day appointed under section 1(3) of this Ordinance as the day on which Part 1 of this Ordinance comes into operation;

“construction works” (建造工程) has the same meaning as in section 2(2) of the pre-amended Ordinance;

“employer” (僱主) has the same meaning as in section 2(1) of the pre-amended Ordinance;

“pre-amended Ordinance” (未經修訂條例) means the Industrial Training (Construction Industry) Ordinance (Cap. 317) at any time in force before the commencement date.

#### **40. Transitional provisions relating to Part 2**

(1) Notwithstanding anything contained in Part 2 of this Ordinance, and in addition to and without derogating from section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), the amendments effected under this Ordinance shall not apply to any construction works –

- (a) the tender for which has been submitted to the employer concerned before the commencement date; or
- (b) if no such tender has been so submitted, a notice in respect of which has been given to the Board under regulation 4(1) of the pre-amended Regulations before the commencement date.

(2) For the purposes of subsection (1)(b), if more than one notice has been given to the Board under regulation 4(1) of the pre-amended Regulations in respect of any construction operations, subsection (1)(b) shall not apply unless all such notices have been so given before the commencement date.

(3) For the purposes of this section –

“Board” (委員會) has the same meaning as in section 2(1) of the pre-amended Ordinance;

“commencement date” (生效日期) means the day appointed under section 1(3) of this Ordinance as the day on which Part 2 of this Ordinance comes into operation;

“construction works” (建造工程) has the same meaning as in section 2(1) of the pre-amended Ordinance;

“employer” (僱主) has the same meaning as in section 2(1) of the pre-amended Ordinance;

“pre-amended Ordinance” (未經修訂條例) means the Pneumoconiosis (Compensation) Ordinance (Cap. 360) at any time in force before the commencement date;

“pre-amended Regulations” (未經修訂規例) means the Pneumoconiosis (Compensation)(Assessment of Levy) Regulations (Cap. 360 sub. leg. A) at any time in force before the commencement date.

#### **41. Consequential amendments**

(1) The Resolution of the Legislative Council (Cap. 317 sub. leg. A) is repealed.

(2) The Resolution of the Legislative Council (Cap. 360 sub. leg. B) is repealed.

### **SCHEDULE 1**

[s. 37]

### **INDUSTRIAL TRAINING (CONSTRUCTION INDUSTRY) ORDINANCE**

1. Section 6(2) of the Industrial Training (Construction Industry) Ordinance (Cap. 317) is amended by repealing “Governor” and substituting “Chief Executive”.



2. Section 7(1), (2), (3), (4) and (5) is amended by repealing “Governor” wherever it appears and substituting “Chief Executive”.
3. Section 8(1) and (2) is amended by repealing “Governor” and substituting “Chief Executive”.
4. Section 15(1) and (2) is amended by repealing “Governor” wherever it appears and substituting “Chief Executive”.
5. Section 20(1) and (2) is amended by repealing “Governor” wherever it appears and substituting “Chief Executive”.
6. Section 36 is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.

## SCHEDULE 2

[s. 38]

### PNEUMOCONIOSIS (COMPENSATION) ORDINANCE

1. Section 25(2) of the Pneumoconiosis (Compensation) Ordinance (Cap. 360) is amended by repealing “Governor” and substituting “Chief Executive”.
2. Section 26(3) is amended by repealing “Governor” and substituting “Chief Executive”.
3. Section 29(1), (2), (3) and (5) is amended by repealing “Governor” wherever it appears and substituting “Chief Executive”.
4. Section 34 is amended –

- (a) in subsection (1), by repealing “Governor” where it twice appears and substituting “Chief Executive”;
  - (b) in subsection (2) –
    - (i) by repealing “Governor” and substituting “Chief Executive”;
    - (ii) by repealing “立法局” and substituting “立法會”.
5. Section 40 is amended by repealing “立法局” and substituting “立法會”.
6. Section 47 is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.
7. The Third Schedule is amended –
- (a) in paragraph 4, by repealing “Governor” wherever it appears and substituting “Chief Executive”;
  - (b) in paragraph 5(1) and (2), by repealing “Governor” and substituting “Chief Executive”.

### **Explanatory Memorandum**

This Bill amends the Industrial Training (Construction Industry) Ordinance (Cap. 317) (“ITCIO”), the Pneumoconiosis (Compensation) Ordinance (Cap. 360) (“PCO”) and the Pneumoconiosis (Compensation) (Assessment of Levy) Regulations (Cap. 360 sub. leg. A) (“PCAR”) for the following main purposes –

- (a) to change the basis for assessing the construction industry levy both for the purposes of the ITCIO and PCO from “construction works” to “construction operations”, as a result of which electrical and mechanical works in the construction industry will be subject to such levy;

- (b) to amend the constitution of the Construction Industry Training Authority (“CITA”) established under the ITCIO and to empower CITA to involve outside bodies in providing training courses for the construction industry and in assessing the standards of skills of any person in the industry;
  - (c) to adapt certain provisions of the ITCIO and PCO to bring them into conformity with the Basic Law and with Hong Kong’s status as a Special Administrative Region of the People’s Republic of China; and
  - (d) to make certain ancillary, minor or consequential changes to existing provisions of the ITCIO, PCO and PCAR.
- 2. Clause 1 states the short title of the Bill and provides for its commencement.
- 3. Part 1 (clauses 2 to 18) sets out amendments to the ITCIO.
- 4. Clause 3 amends section 2 to the ITCIO by, inter alia –
  - (a) amending certain existing definitions such as “authorized person”, “contractor” or “employer”;
  - (b) adding certain new definitions such as “construction contract”, “construction operations”, “term contract”, “total value” and “value”.
- 5. Clause 4 adds 2 new sections to the ITCIO –
  - (a) new section 2A provides for –
    - (i) the meaning of “value” of construction operations, which is the value to be used to determine the amount of levy payable by the contractor concerned under the ITCIO (“ITCIO levy”); and
    - (ii) the matters to be taken into account when ascertaining the value; and

- (b) new section 2B provides for the meaning of “total value”, which is the value to be used to determine whether or not the construction operations concerned are subject to ITCIO levy.

6. Clause 5 adds a new section 3A to the ITCIO, which sets out situations to which the ITCIO does not apply. In general, the ITCIO does not apply to renovation of any domestic premises unless it falls within the exception set out in the new section 3A(2).

7. Clause 7 amends section 7 of the ITCIO. The constitution of the CITA is changed to tie in with the expanded scope of the CITA’s functions.

8. Clause 8 replaces the existing section 21 of the ITCIO by a new provision. The rate of ITCIO levy and the threshold below which no ITCIO levy will be imposed are now set out in the new Schedule 2 to the ITCIO.

9. Clause 12 amends the existing section 26 of ITCIO. In particular, it adds a new subsection (8A) to this section to provide for situations under which any ITCIO levy or surcharge is not payable by a contractor.

10. Part 2 sets out amendments to the PCO (clauses 19 to 26) and PCAR (clauses 27 to 36) so as to introduce changes corresponding to those made to the ITCIO.

11. Clause 19 amends section 2(1) of the PCO by, inter alia –

- (a) amending the definition of “value”;
- (b) adding certain new definitions such as “construction contract”, “construction operations”, “term contract” and “total value” with reference to the same definitions in the ITCIO.

12. Clause 20 adds 3 new sections to the PCO –

- (a) new section 2A, as in clause 4 relating to the ITCIO, provides for –
  - (i) the meaning of “value” of construction operations, which is the value to be used to determine the

- amount of levy payable by the contractor concerned under the PCO (“PCO levy”); and
- (ii) the matters to be taken into account when ascertaining the value;
- (b) new section 2B, as in clause 4 relating to the ITCIO, provides for the meaning of “total value” which is the value to be used to determine whether or not the construction operations concerned are subject to PCO levy; and
- (c) new section 2C is taken from the existing regulation 7 of the PCAR and the amendment is a consequential change further to the relocation of the relevant provisions from the PCAR to the PCO.

13. Clause 21 adds a new section 3A to the PCO, which sets out situations to which the PCO does not apply. As in clause 5 relating to the ITCIO, in general, the PCO does not apply to renovation of any domestic premises unless it falls within the exception set out in the new section 3A(2).

14. Clause 22 replaces the existing section 35 of the PCO by a new provision. As in clause 8 relating to the ITCIO, the rate of PCO levy and the threshold below which no PCO levy will be imposed are now set out in the new Schedule 5 to the PCO.

15. Clause 32 amends the existing regulation 6 of the PCAR. As in clause 12 relating to the ITCIO, in particular, it adds a new paragraph (8A) to this regulation to provide for situations under which any PCO levy or surcharge is not payable by a contractor.

16. Part 3 (clauses 37 and 38) and Schedules 1 and 2 set out the provisions in the ITCIO and PCO to be adapted to bring them into conformity with the Basic Law and with Hong Kong’s status as a Special Administrative Region of the People’s Republic of China.

17. Part 4 (clauses 39 to 41) contains transitional provisions and consequential amendments.

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Chapter:	317	Title:	INDUSTRIAL TRAINING (CONSTRUCTION INDUSTRY) ORDINANCE	Gazette Number:	73 of 1999
		Heading:	<b>Long title</b>	Version Date:	26/11/1999

To provide for the establishment, functions and management of the Construction Industry Training Authority, for a levy to be paid by contractors in respect of construction works, and for connected purposes.

(Replaced 73 of 1999 s. 2)

[5 September 1975] *L.N. 215 of 1975*

(Originally 53 of 1975)

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Chapter:	317	Title:	INDUSTRIAL TRAINING (CONSTRUCTION INDUSTRY) ORDINANCE	Gazette Number:	73 of 1999
Section:	<b>2</b>	Heading:	<b>Interpretation and application</b>	Version Date:	26/11/1999

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

"Authority" (訓練局) means the Construction Industry Training Authority established by section 4;

"authorized person" (獲授權人) means-

- (a) in relation to building or street works not carried out by or on behalf of the Crown, the authorized person appointed under section 4 of the Buildings Ordinance (Cap 123);
- (b) in relation to construction works carried out by or on behalf of the Crown, the person appointed under section 34(1);
- (c) in relation to other construction works, the person appointed under section 34(2);

"building works" (建築工程) has the meaning assigned to it in section 2(1) of the Buildings Ordinance (Cap 123);

"chairman" (主席) means the chairman of the Authority appointed under section 8;

"construction industry" (建造業) means the industry in which building works or construction works are carried out;

"contractor" (承建商) means-

- (a) in relation to building or street works not carried out by or on behalf of the Crown, the person appointed as contractor under section 9 of the Buildings Ordinance (Cap 123);

- (b) in relation to construction works carried out by or on behalf of the Crown, the person carrying out the construction works;
  - (c) in relation to other construction works, the person carrying out the construction works;
- "employer" (僱主) means any person who contracts with a contractor for the undertaking of construction works, or at whose request, or on whose behalf, any such works are undertaken and any person claiming under him whose rights are acquired after the commencement of the works;
- "financial year" (財政年度) means the period fixed by the Authority under section 15(2);
- "further penalty" (另加罰款) means the further penalty payable under section 27(1B); (Added 7 of 1981 s. 2)
- "levy" (徵款) means the construction industry levy prescribed under section 22; (Amended 73 of 1999 s. 3)
- "member" (委員) means a member of the Authority appointed under section 7;
- "penalty" (罰款) means the penalty payable under section 27(1A); (Added 7 of 1981 s. 2)
- "street" (街道) has the meaning assigned to it in section 2(1) of the Buildings Ordinance (Cap 123);
- "street works" (街道工程) has the meaning assigned to it in section 2(1) of the Buildings Ordinance (Cap 123);
- "surcharge" (附加費) means the surcharge under section 26(7);
- "trade union" (職工會) means a trade union registered under the Trade Unions Ordinance (Cap 332);
- "value" (價值), in relation to any construction works, means the value of the construction works as assessed under this Ordinance.
- (2) Subject to subsections (3) and (4), for the purposes of this Ordinance "construction works" (建造工程) includes any kind of work involving or in connexion with- (Amended L.N. 235 of 1996)
- (a) building works;
  - (b) the laying out, construction, alteration or repair of any street, tunnel, airport runway, canal, reservoir, pipe-line, railway or tramway;
  - (c) trench works carried out by or for any public utility; and
  - (d) river training works.
- (3) Notwithstanding subsection (2) and subject to any order made under subsection (4), "construction works" (建造工程) shall not include-
- (a) the installation, repair and maintenance of any-
    - (i) air conditioning plant;
    - (ii) electricity supply system, including the wiring, appliances and fittings;
    - (iii) lift, escalator or belt conveyor system;
    - (iv) fire services installation or equipment;
  - (b) manufacture, repair or maintenance of movable furniture;
  - (c) demolition.
- (4) For the purposes of this Ordinance, the Governor may by order declare any works-
- (a) to be construction works; or
  - (b) not to be construction works.
- (5) This Ordinance shall not apply to any construction works which were begun before the commencement of this Ordinance.



Chapter:	317	Title:	INDUSTRIAL TRAINING (CONSTRUCTION INDUSTRY) ORDINANCE	Gazette Number:	
Section:	6	Heading:	<b>General powers of the Authority</b>	Version Date:	30/06/1997

(1) The Authority may do all such things as are necessary for, or incidental or conducive to, the better carrying out of the functions of the Authority and may in particular, but without prejudice to the generality of the foregoing-

- (a) hold, acquire or lease all kinds of property, whether movable or immovable;
- (b) subject to subsection (2), sell or otherwise dispose of all kinds of property whether movable or immovable;
- (c) enter into, assign or accept the assignment of, and vary or rescind any contract or obligation;
- (d) subject to subsection (3), meet expenditure on any item shown in the approved estimates of expenditure of the Authority, borrow or otherwise raise money on such security as may be necessary, and for that purpose, charge all or any of the property of the Authority;
- (e) make charges for the use of any facility or service provided by the Authority.

(2) The Authority shall not sell or otherwise dispose of land granted at nil premium by the Government except with the prior approval of the Governor.

(3) Except with the prior approval of the Financial Secretary, no sum shall be borrowed or otherwise raised under subsection (1)(d) which itself, or together with all other sums previously borrowed or otherwise raised under that subsection and still outstanding, exceeds, or in the aggregate exceeds, 10 per cent of the approved total estimated expenditure for the current financial year.

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Chapter:	317	Title:	INDUSTRIAL TRAINING (CONSTRUCTION INDUSTRY) ORDINANCE	Gazette Number:	73 of 1999
Section:	7	Heading:	<b>Constitution of Authority</b>	Version Date:	26/11/1999

(1) The Authority shall consist of 13 members appointed by the Governor of whom- (Amended 36 of 1991 s. 2)

- (a) 2 shall be persons nominated by the Hong Kong Construction Association Limited; (Amended L.N. 336 of 1988)
- (b) 2 shall be persons nominated by the Building and Civil Engineering Industry Training Board;
- (c) 1 shall be a person nominated by the Hong Kong Institute of Architects;
- (d) 1 shall be a person nominated by the Hong Kong Institute of Surveyors; (Amended 73 of 1999 s. 5)
- (e) 1 shall be a person nominated by the Structural Division of Hong Kong Institution of

Engineers; (Amended 60 of 1982 s. 2)

- (f) 1 shall be a civil engineer nominated by the Hong Kong Institution of Engineers;
- (g) 1 shall be a person who holds office as an official of a trade union representing workers employed in the construction industry;
- (ga) 1 shall be a person nominated by the Executive Director of the Vocational Training Council; (Added 36 of 1991 s. 2)
- (h) 2 shall be public officers; and (Amended 36 of 1991 s. 2)
- (i) 1 shall be a person, not being a public officer or person connected with any of the organizations mentioned in paragraphs (a) to (ga). (Amended 36 of 1991 s. 2)

(2) A member who is not a public officer appointed under subsection (1)(h) shall, unless his appointment is terminated or otherwise ceases, hold office for such period as the Governor may specify. (Amended L.N. 258 of 1975)

(3) On the expiration of his period of appointment or reappointment, as the case may be, any such member shall be eligible for reappointment for such further term as the Governor may specify.

(4) Any such member may at any time resign from office by giving notice in writing to the Governor, and he shall cease to be a member from the date specified in the notice or, if no date is specified, from the date of the receipt by the Governor of the notice.

(5) If any member other than the chairman is absent from Hong Kong or is for any other reason unable to exercise the powers or perform the duties of his office as member, the Governor may appoint another person to be a temporary member in his place during his absence or incapacity.

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Chapter:	317	Title:	INDUSTRIAL TRAINING (CONSTRUCTION INDUSTRY) ORDINANCE	Gazette Number:	73 of 1999
Section:	21	Heading:	<b>Imposition of construction industry levy</b>	Version Date:	26/11/1999

## PART IV

### LEVY

A levy, to be known as the construction industry levy, shall be imposed in accordance with this Ordinance on the value of all construction works undertaken in Hong Kong and shall be payable by every contractor who undertakes any such works.

(Amended 73 of 1999 s. 6)

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Chapter:	317	Title:	INDUSTRIAL TRAINING (CONSTRUCTION INDUSTRY) ORDINANCE	Gazette Number:	
Section:	22	Heading:	<b>Rate of levy</b>	Version Date:	30/06/1997

- (1) The Legislative Council may by resolution prescribe the rate of levy.
- (2) The rate of levy prescribed under subsection (1) shall be based on the value of construction works.
- (3) The rate of levy prescribed under subsection (1) shall come into effect 30 days after the publication of the resolution in the Gazette.
- (4) A resolution under subsection (1) may provide that construction works the value of which does not exceed an amount specified in the resolution shall not be liable to the levy.

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Chapter:	317	Title:	INDUSTRIAL TRAINING (CONSTRUCTION INDUSTRY) ORDINANCE	Gazette Number:	
Section:	23	Heading:	<b>Value of construction works</b>	Version Date:	30/06/1997

- (1) In ascertaining the value of construction works for the purposes of this Ordinance, regard shall be given to-
  - (a) in the case of construction works performed pursuant to a contract, the consideration, or such part of the consideration as is attributable to the construction works, payable to the contractor under the contract, which shall be evidence, but not conclusive evidence, of the value of the construction works;
  - (b) the cost or value of materials used in the construction works;
  - (c) the cost or value of time, work and labour involved in the construction works;
  - (d) the equipment used in the construction works;
  - (e) such overhead costs as may be considered reasonable;
  - (f) the reasonable profit to be expected on the open market in respect of the performance of such construction works;
  - (g) any other factors that may be prescribed.
- (2) In the case of any construction works to be undertaken or carried out in stages the total value of all stages of the construction works shall be the value of the construction works for the purposes of subsection (1).

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Chapter:	317	Title:	INDUSTRIAL TRAINING (CONSTRUCTION INDUSTRY) ORDINANCE	Gazette Number:	
Section:	24	Heading:	<b>Contractor and authorized person to notify Authority when undertaking construction works</b>	Version Date:	30/06/1997

(1) Within 14 days after any construction works have begun or such further time as the Authority may in any case allow-

(a) the contractor carrying out the construction works; and  
(b) the authorized person appointed in connection with the construction works,  
shall each give notice to the Authority in such form as the Authority may specify that he is such a contractor carrying out construction works or authorized person appointed in connection with construction works, as the case may be. (Amended 60 of 1982 s. 3)

(1A) Subsection (1) shall not apply in respect of any construction works the estimated value of which would render those works not liable to the levy as a result of a resolution under section 22. (Added 64 of 1976 s. 2)

(2) Every notice under subsection (1) shall state the estimated value of the construction works.

(3) Every contractor or authorized person who, without reasonable excuse, fails to give a notice when required to do so by subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of \$1000.

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Chapter:	317	Title:	INDUSTRIAL TRAINING (CONSTRUCTION INDUSTRY) ORDINANCE	Gazette Number:	
Section:	25	Heading:	<b>Notice by contractor and authorized person of payments made in respect of works etc. and of completion</b>	Version Date:	30/06/1997

(1) Where a payment or an interim payment is made to a contractor or for his benefit in respect of any construction works, the contractor shall, within 14 days after the payment is made or such further time as the Authority may in any case allow, give notice of it to the Authority in such form as the Authority may specify. (Amended 60 of 1982 s. 4)

(2) Not later than 14 days, or such further time as the Authority may in any case allow, after the completion of any construction works, or of any stage of the construction works (if the construction works are being undertaken or carried out in stages), the contractor and the authorized person appointed

in respect of the construction works shall each give notice of such completion to the Authority in such form as the Authority may specify. (Amended 60 of 1982 s. 4)

(2A) Subsections (1) and (2) shall not apply in respect of any construction works which are not liable to the levy as a result of a resolution under section 22. (Added 64 of 1976 s. 3)

(3) Every notice under subsection (1) or (2) shall state the value of the construction works or stage thereof in respect of which payment was made or the value of the works or stage thereof which have been completed, as the case may be.

(4) Every contractor or authorized person who without reasonable excuse fails to give a notice when required to do so by subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine of \$2000.

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Chapter:	317	Title:	INDUSTRIAL TRAINING (CONSTRUCTION INDUSTRY) ORDINANCE	Gazette Number:	
Section:	26	Heading:	<b>Assessment</b>	Version Date:	30/06/1997

(1) On receipt of a notice of payment under section 25(1), the Authority shall assess the amount of levy due from the contractor in respect of the construction works or the stage of the construction works (if the construction works are being undertaken or carried out in stages) to which the payment relates.

(2) Where more than one payment is made or to be made to the contractor in respect of construction works or a stage of the construction works, the assessment under subsection (1) shall be a provisional assessment and a final assessment shall be made on the final payment in respect of the construction works, each stage of the works or all stages of the works, as is appropriate.

(3) On receipt of a notice of completion of construction works or any stage thereof under section 25(2), the Authority shall, if no assessment under subsection (1) or (2) has been made, assess the amount of levy due from the contractor in respect of the construction works or the stage of the construction works.

(4) Where construction works are undertaken or carried out in stages the Authority may make a provisional assessment under subsection (3) on the completion of each stage of the construction works and make a final assessment on the completion of all stages of the construction works.

(5) The Authority may assess the amount of levy due from the contractor in respect of the construction works or stage thereof which have or has been completed notwithstanding that no notice has been given to the Authority under section 25.

(6) Where it appears to the Authority that an assessment of levy has been made at less than the proper amount, then, subject to subsection (9), the Authority may at any time make an additional assessment of levy due from the contractor in respect of construction works or a stage of construction works.

(7) If a contractor fails to give any notice required to be given by him under section 25 and does not give a reasonable excuse therefor within such period as the Authority may allow in any case, the Authority may, in addition to the levy assessed under subsection (5), impose a surcharge on the contractor not exceeding twice the amount of the levy so assessed.

(8) The Authority shall notify the contractor in writing of any assessment of levy or imposition of surcharge.

- (9) An assessment or surcharge under this section shall be made or imposed within-
- (a) 2 years after the completion of the works; or
  - (b) 1 year after evidence of facts, sufficient in the opinion of the Authority to justify the making of the assessment or the imposition of the surcharge comes to its knowledge, whichever is the later.

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Chapter:	317	Title:	INDUSTRIAL TRAINING (CONSTRUCTION INDUSTRY) ORDINANCE	Gazette Number:	
Section:	27	Heading:	<b>Payment of levy</b>	Version Date:	30/06/1997

(1) The amount of levy or surcharge specified in a notice given to a contractor under section 26(8) shall be paid by the contractor to the Authority within 28 days after the receipt by him of the notice.

(1A) If the amount of the levy or surcharge is not paid within the period specified in subsection (1) the contractor shall be liable to pay, in addition, a penalty of 5 per cent of the amount unpaid. (Added 7 of 1981 s. 4)

(1B) If the amount of the levy or surcharge including any penalty payable under subsection (1A) is not paid within 3 months after the expiry of the period specified in subsection (1) the contractor shall be liable to pay, in addition, a further penalty of 5 per cent of the amount unpaid. (Added 7 of 1981 s. 4)

(1C) The Authority may remit all or part of any penalty or further penalty payable under subsection (1A) or (1B) if, in the special circumstances of any case, it thinks it fair and reasonable to do so, and if the amount so remitted has been paid, it shall be refunded. (Added 7 of 1981 s. 4)

(2) Payment shall be made in accordance with subsections (1), (1A) and (1B) notwithstanding that the contractor may wish to object to the levy assessed or surcharge imposed under section 26. (Amended 7 of 1981 s. 4)

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Chapter:	317	Title:	INDUSTRIAL TRAINING (CONSTRUCTION INDUSTRY) ORDINANCE	Gazette Number:	
Section:	28	Heading:	<b>Recovery of levy</b>	Version Date:	30/06/1997

(1) Any amount of levy or surcharge, including the amount of any penalty or further penalty, due and payable under this Ordinance shall be recoverable as a debt due to the Authority. (Amended 7 of 1981 s. 5)

(2) An action under subsection (1) may be brought in the District Court notwithstanding that the

amount due exceeds \$20000.

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Chapter:	317	Title:	INDUSTRIAL TRAINING (CONSTRUCTION INDUSTRY) ORDINANCE	Gazette Number:	
Section:	31	Heading:	<b>Furnishing of information and production of documents</b>	Version Date:	30/06/1997

## PART VI

### MISCELLANEOUS

- (1) An employer, contractor or authorized person concerned in any construction works shall-
  - (a) provide the Authority, or an officer of the Authority authorized by it for the purposes of this section, within such time and in such form as the Authority or such officer may specify, with such information relating to the construction works (including any amount paid or payable in respect of the construction works or any work connected therewith), or the name and address of the person for or by whom the construction works are being undertaken, as the Authority or such officer may require;
  - (b) on being so required by the Authority or such officer, produce or cause to be produced any documents or records in his possession relating to the construction works (including any amount paid or payable in respect of the construction works) for inspection by the Authority or such officer and permit the Authority or such officer to take copies or make extracts from them or to remove them for a reasonable period.
- (2) Subject to subsection (3), no person shall disclose otherwise than to the Authority, or to an employee of the Authority in his official capacity, any information provided or obtained under subsection (1) (including information obtained from documents or records) without the consent of the person who provided it or from whom it was obtained.
- (3) Subsection (2) does not apply-
  - (a) to the disclosure of information in the form of a summary of similar information provided by or obtained from a number of employers, contractors or authorized persons if the summary is so framed as not to enable particulars relating to any particular contractor's business to be ascertained from it;
  - (aa) to the disclosure of information by the Authority to any person authorized or employed by it for the purpose of checking or ascertaining the value of construction works; (Added 7 of 1981 s. 8)
  - (ab) to the disclosure of information by the Authority to the Pneumoconiosis Compensation Fund Board established under the Pneumoconiosis (Compensation) Ordinance (Cap 360); or (Added 7 of 1981 s. 8)
  - (b) to any disclosure of information made for the purpose of any legal proceedings brought under this Ordinance, or for the purposes of any report of any such proceedings.
- (4) Any person who, without reasonable excuse, fails to comply with a requirement under subsection (1) when it is within his power to do so shall be guilty of an offence and shall be liable on

conviction to a fine of \$1000.

(5) Any person who intentionally discloses any information in contravention of subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine of \$2000.

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Chapter:	317	Title:	INDUSTRIAL TRAINING (CONSTRUCTION INDUSTRY) ORDINANCE	Gazette Number:	
Section:	34	Heading:	<b>Appointment of authorized persons</b>	Version Date:	30/06/1997

(1) Where the Crown is the employer in respect of any construction works, a person shall be appointed by or on behalf of the Crown to perform the functions of an authorized person under this Ordinance in respect of such construction works.

(2) Every person by whom or on whose behalf construction works are to be undertaken shall, if no authorized person has been appointed under section 4 of the Buildings Ordinance (Cap 123), appoint a person to be the authorized person under this Ordinance in respect of such construction works.

(3) Every person by whom or on whose behalf construction works, other than building or street works, are to be undertaken shall before the commencement of the works inform the Authority in writing of the names of-

- (a) the person appointed under subsection (2); and
- (b) the contractor.

(4) Every person who is appointed under subsection (2) or who is employed as a contractor in respect of construction works shall inform the Authority in writing of that fact before the commencement of the works.

(5) Any person who fails to comply with subsection (2), (3) or (4) shall be guilty of an offence and shall be liable on conviction to a fine of \$2000.

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

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

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

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

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

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

"contractor" (承建商) has the meaning assigned to it in section 2(1) of the Industrial Training



(Construction Industry) Ordinance (Cap 317);

"Court" (法院) means the District Court;

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

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

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

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

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

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

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

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

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

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

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

- (a) the fees of a medical practitioner;
- (b) the fees for any surgical or therapeutic treatment;
- (c) the cost of nursing attendance;
- (d) the cost of hospital accommodation as an in-patient;
- (e) the cost of medicines, curative materials and medical dressings;

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

"member of the family" (家庭成員) means-

- (a) a spouse, child, parent, brother or sister, grandparent or grandchild;
- (b) a cohabitee, that is to say, any person who at the date of death of a person was living with that person as that person's wife or husband; and
- (c) any other person who at the date of death of a person was living with that person as a member of the same household and had been so living for the period of 2 years immediately preceding that date; (Replaced 54 of 1993 s. 2)

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

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

"pneumoconiosis" (肺塵埃沉着病) means-

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

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

"quarry operator" (石礦場經營人) means-

- (a) in relation to a Government quarry, the person managing or in charge of that quarry;
- (b) in relation to a quarry other than a Government quarry, the person operating that quarry;
- (c) in relation to a stone crushing plant, the person operating that stone crushing plant;

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

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

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

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

(Amended 54 of 1993 s. 2)

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Chapter:	360	Title:	PNEUMOCONIOSIS (COMPENSATION) ORDINANCE	Gazette Number:	
Section:	35	Heading:	<b>Imposition of levy</b>	Version Date:	30/06/1997

## PART VII

### LEVY

(1) A levy shall be imposed in accordance with this Ordinance on the value of all construction works undertaken in Hong Kong on or after the date of commencement of this Part and shall be payable by every contractor who undertakes any such works.

(2) A levy shall be imposed in accordance with this Ordinance on the value of quarry products produced on or after the date of commencement of this Part and shall be payable by every quarry operator.

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Chapter:	360	Title:	PNEUMOCONIOSIS (COMPENSATION) ORDINANCE	Gazette Number:	
Section:	36	Heading:	<b>Rate of levy</b>	Version Date:	30/06/1997

(1) The Legislative Council may by resolution prescribe the rate of levy.

(2) The rate of levy prescribed under subsection (1) shall be based on the value of construction works or quarry products, as the case may be.

(3) A resolution under subsection (1) varying the rate of levy-

- (a) shall come into effect 30 days after the publication of the resolution in the Gazette; and
- (b) shall not apply to any construction works the tender for which was submitted before the

effective date of the resolution. (Replaced 54 of 1993 s. 31)

(4) A resolution under subsection (1) may provide that construction works the value of which does not exceed an amount specified in the resolution shall not be liable to the levy.

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Chapter:	360	Title:	PNEUMOCONIOSIS (COMPENSATION) ORDINANCE	Gazette Number:	
Section:	37	Heading:	<b>Payment of levy and surcharge</b>	Version Date:	30/06/1997

(1) The amount of levy, or of any surcharge that may be imposed in such circumstances as may be prescribed, shall be paid by the contractor or quarry operator, as the case may be, to the Board within such time as may be prescribed.

(1A) If the amount of the levy or surcharge is not paid within such time as may be prescribed under subsection (1) the contractor or quarry operator, as the case may be, shall be liable to pay, in addition, a penalty of 5 per cent of the amount unpaid. (Added 1 of 1983 s. 4)

(1B) If the amount of the levy or surcharge including any penalty payable under subsection (1A) is not paid within 3 months after the expiry of such period as may be prescribed under subsection (1) the contractor or quarry operator, as the case may be, shall be liable to pay, in addition, a further penalty of \$1000 or 5% of the amount unpaid, whichever is the greater. (Added 1 of 1983 s. 4. Amended 54 of 1993 s. 32)

(1C) The Board may remit all or part of any penalty or further penalty payable under subsection (1A) or (1B) if, in the special circumstances of any case, it thinks it fair and reasonable to do so, and, if the amount so remitted has been paid, it shall be refunded. (Added 1 of 1983 s. 4)

(2) Payment shall be made in accordance with subsections (1), (1A) and (1B) notwithstanding that the contractor or quarry operator may wish to object to the levy assessed or surcharge imposed under this Ordinance. (Amended 1 of 1983 s. 4)

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Chapter:	360	Title:	PNEUMOCONIOSIS (COMPENSATION) ORDINANCE	Gazette Number:	
Section:	47	Heading:	<b>Regulations</b>	Version Date:	30/06/1997

The Governor in Council may by regulation provide for-

- (a) (Repealed 54 of 1993 s. 39)
- (b) the method of assessing the levy payable under section 35, including-
  - (i) the valuation of construction works and quarry products;
  - (ii) the notification of construction works and quarry operations;
  - (iii) the notification of payments made in respect of construction works and quarry

- products;
- (iv) the imposition and amount of surcharges where there has been a failure to make a notification;
- (v) objections to assessments of levies and the imposition of surcharges and appeals;
- (vi) information to be supplied by employers, contractors, authorized persons or quarry operators;
- (vii) prohibiting, subject to such exceptions as may be prescribed, the disclosure of information; (Amended 1 of 1983 s. 7)
- (viii) the appointment of authorized persons for the purposes of this Ordinance;
- (c) records to be kept by employers, contractors and authorized persons or by quarry operators;
- (d) prescribing procedure and fees;
- (e) any matter which is to be or may be prescribed;
- (f) generally the better carrying out of the provisions and purposes of this Ordinance.

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Chapter:	360A	Title:	PNEUMOCONIOSIS (COMPENSATION) (ASSESSMENT OF LEVY) REGULATIONS	Gazette Number:	
Regulation:	2	Heading:	<b>Interpretation</b>	Version Date:	30/06/1997

In these regulations, unless the context otherwise requires-

"authorized person" (獲授權人) has the meaning assigned to it in section 2(1) of the Industrial Training (Construction Industry) Ordinance (Cap 317);

"building works" (建築工程) has the meaning assigned to it in section 2(1) of the Buildings Ordinance (Cap 123);

"quarry" (石礦場) means-

- (a) any works or system of works, the principal purpose of which is to extract from the earth for commercial purposes any rock or stone; or
- (b) any works or system of works the principal purpose of which is to crush rock or stone for commercial purposes;

"quarry industry" (石礦業) means the industry that is engaged in the operation of a quarry;

"quarry products" (石礦產品) means all crushed rock, stone and sand extracted or produced in a quarry;

"street works" (街道工程) has the meaning assigned to it in section 2(1) of the Buildings Ordinance (Cap 123).

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Chapter:	360A	Title:	PNEUMOCONIOSIS (COMPENSATION) (ASSESSMENT OF LEVY) REGULATIONS	Gazette Number:	
Regulation:	3	Heading:	<b>Value of construction works</b>	Version Date:	30/06/1997

## PART II

### CONSTRUCTION WORKS

(1) In ascertaining the value of construction works for the purpose of the Ordinance, regard shall be given to-

- (a) in the case of construction works performed pursuant to a contract, the consideration, or such part of the consideration as is attributable to the construction works, payable to the contractor under the contract, which shall be evidence, but not conclusive evidence, of the value of the construction works;
- (b) the cost or value of materials used in the construction works;
- (c) the cost or value of time, work and labour involved in the construction works;
- (d) the equipment used in the construction works;
- (e) such overhead costs as may be considered reasonable;
- (f) the reasonable profit to be expected on the open market in respect of the performance of such construction works;
- (g) any other factors that may be prescribed.

(2) In the case of any construction works to be undertaken or carried out in stages the total value of all stages of the construction works shall be the value of the construction works for the purposes of paragraph (1).

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Chapter:	360A	Title:	PNEUMOCONIOSIS (COMPENSATION) (ASSESSMENT OF LEVY) REGULATIONS	Gazette Number:	
Regulation:	4	Heading:	<b>Contractor and authorized person to notify Board when undertaking construction works</b>	Version Date:	30/06/1997

(1) Within 14 days after any construction works have begun or such further time as the Board may in any case allow-

- (a) the contractor carrying out the construction works; and
  - (b) the authorized person appointed in connection with the construction works,
- shall each give notice to, the Board in a form approved by the Board that he is such a contractor carrying

out construction works or authorized person appointed in connection with construction works, as the case may be.

(2) Paragraph (1) shall not apply in respect of any construction works the estimated value of which would render those works not liable to the levy as a result of a resolution under section 36 of the Ordinance.

(3) Every notice under paragraph (1) shall state the estimated value of the construction works.

(4) This regulation shall be complied with if a copy of a notice given to the Construction Industry Training Authority under section 24 of the Industrial Training (Construction Industry) Ordinance (Cap 317) is sent to the Board.

(5) Every contractor or authorized person who, without reasonable excuse, fails to give a notice when required to do so by paragraph (1) commits an offence and is liable to a fine of \$5000. (L.N. 32 of 1983)

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Chapter:	360A	Title:	PNEUMOCONIOSIS (COMPENSATION) (ASSESSMENT OF LEVY) REGULATIONS	Gazette Number:	
Regulation:	5	Heading:	<b>Notice by contractor and authorized person of payments made in respect of works etc. and of completion</b>	Version Date:	30/06/1997

(1) Where a payment or an interim payment is made to a contractor or for his benefit in respect of any construction works, the contractor shall, within 14 days after the payment is made or such further time as the Board may in any case allow, give notice of it to the Board in a form approved by the Board.

(2) Not later than 14 days, or such further time as the Board may in any case allow, after the completion of any construction works, or of any stage of the construction works (if the construction works are being undertaken or carried out in stages), the contractor and the authorized person appointed in respect of the construction works shall each give notice of such completion to the Board in a form approved by the Board.

(3) Paragraphs (1) and (2) shall not apply in respect of any construction works which are not liable to the levy as a result of a resolution under section 36 of the Ordinance.

(4) Every notice under paragraph (1) or (2) shall state the value of the construction works or stage thereof in respect of which payment was made or the value of the works or stage thereof which have been completed. as the case may be.

(5) This regulation shall be complied with if a copy of a notice given to the Construction Industry Training Authority under section 25 of the Industrial Training (Construction Industry) Ordinance (Cap 317) is sent to the Board.

(6) Every contractor or authorized person who without reasonable excuse fails to give a notice when required to do so by paragraph (1) or (2) commits an offence and is liable to a fine of \$5000. (L.N. 32 of 1983)

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Chapter:	360A	Title:	PNEUMOCONIOSIS (COMPENSATION) (ASSESSMENT OF LEVY) REGULATIONS	Gazette Number:	
Regulation:	6	Heading:	<b>Assessment</b>	Version Date:	30/06/1997

(1) On receipt of a notice of payment under regulation 5(1), the Board shall assess the amount of levy due from the contractor in respect of the construction works or the stage of the construction works (if the construction works are being undertaken or carried out in stages) to which the payment relates.

(2) Where more than one payment is made or to be made to the contractor in respect of construction works or a stage of the construction works, the assessment under paragraph (1) shall be a provisional assessment and a final assessment shall be made on the final payment in respect of the construction works, each stage of the works or all stages of works, as is appropriate.

(3) On receipt of a notice of completion of construction works or any stage thereof under regulation 5(2), the Board shall, if no assessment under paragraph (1) or (2) has been made, assess the amount of levy due from the contractor in respect of the construction works or the stage of the construction works.

(4) Where construction works are undertaken or carried out in stages the Board may make a provisional assessment under paragraph (3) on the completion of each stage of the construction works and make a final assessment on the completion of all stages of the construction works.

(5) The Board may assess the amount of levy due from the contractor in respect of the construction works or stage thereof which have or has been completed notwithstanding that no notice has been given to the Board under regulation 5.

(6) Where it appears to the Board that an assessment of levy has been made at less than the proper amount, then, subject to paragraph (9), the Board may at any time make an additional assessment of levy due from the contractor in respect of construction works or a stage of construction works.

(7) If a contractor fails to give any notice required to be given by him under regulation 5 and does not give a reasonable excuse therefor within such period as the Board may allow in any case, the Board may, in addition to the levy assessed under paragraph (5), impose a surcharge on the contractor not exceeding twice the amount of the levy so assessed.

(8) The Board shall notify the contractor in writing of any assessment of levy or imposition of surcharge.

(9) An assessment or surcharge under this regulation shall be made or imposed within-

(a) 2 years after the completion of the works; or

(b) 1 year after evidence of facts, sufficient in the opinion of the Board to justify the making of the assessment or the imposition of the surcharge comes to its knowledge,

whichever is the later.

Chapter:	360A	Title:	PNEUMOCONIOSIS (COMPENSATION) (ASSESSMENT OF LEVY) REGULATIONS	Gazette Number:	
Regulation:	7	Heading:	<b>Value of quarry products</b>	Version Date:	30/06/1997

### PART III

#### QUARRY INDUSTRY

In ascertaining the value of quarry products for the purposes of the Ordinance, regard shall be given to-

- (a) the type and volume of quarry products; and
- (b) the market price of the quarry products at the time of production.

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Chapter:	360A	Title:	PNEUMOCONIOSIS (COMPENSATION) (ASSESSMENT OF LEVY) REGULATIONS	Gazette Number:	
Regulation:	14	Heading:	<b>Furnishing of information and production of documents</b>	Version Date:	30/06/1997

### PART VI

#### MISCELLANEOUS

- (1) An employer, contractor or authorized person concerned in any construction works shall-
  - (a) provide the Board, or an officer of the Board authorized by it for the purposes of this regulation, within such time and in such form as the Board or such officer may specify, with such information relating to the construction works (including any amount paid or payable in respect of the construction works or any work connected therewith), or the name and address of the person for or by whom the construction works are being undertaken, as the Board or such officer may require;
  - (b) on being so required by the Board or such officer, produce or cause to be produced any documents or records in his possession relating to the construction works (including any amount paid or payable in respect of the construction works) for inspection by the Board or such officer and permit the Board or such officer to take copies or make extracts from them or to remove them for a reasonable period.
- (2) A quarry operator shall-
  - (a) provide the Board, or an officer of the Board authorized by it for the purposes of this



regulation, within such time and in such form as the Board or such officer may specify, with such information relating to the quarry operated by him (including any amount paid or payable in respect of the quarry products) as the Board or such officer may require;

- (b) on being so required by the Board or such officer, produce or cause to be produced any documents or records in his possession relating to the quarry operated by him (including any amount paid or payable in respect of the quarry products) for inspection by the Board or such officer and permit the Board or such officer to take copies or make extracts from them or to remove them for a reasonable period.

(3) Any person who, without reasonable excuse, fail to comply with a requirement under this regulation when it is within his power to do so commits an offence and is liable to a fine of \$1000.

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Chapter:	360A	Title:	PNEUMOCONIOSIS (COMPENSATION) (ASSESSMENT OF LEVY) REGULATIONS	Gazette Number:	
Regulation:	15	Heading:	<b>Non-disclosure of information provided</b>	Version Date:	30/06/1997

(1) Subject to paragraph (2), no person shall disclose otherwise than to the Board, or to an employee of the Board in his official capacity, any information provided or obtained under regulation 14 (including information provided or obtained from documents or records) without the consent of the person who provided it or from whom it was obtained.

(2) Paragraph (1) does not apply-

(a) in the case of construction works-

- (i) to the furnishing of information under section 31 of the Industrial Training (Construction Industry) Ordinance; (L.N. 32 of 1983)
- (ii) to the disclosure of information in the form of a summary of similar information provided by or obtained from a number of employers, contractors or authorized persons if the summary is so framed as not to enable particulars relating to any particular contractor's business to be ascertained from it;
- (iii) to the disclosure of information by the Board to any person authorized or employed by it for the purpose of checking or ascertaining the value of construction works; or (L.N. 32 of 1983)
- (iv) to the disclosure of information by the Board to the Construction Industry Training Authority established under the Industry Training (Construction Industry) Ordinance (Cap 317); (L.N. 32 of 1983)

- (b) in the case of quarry industry, to the disclosure of information in the form of a summary of similar information provided by or obtained from a number of quarry operators if the summary is so framed as not to enable particulars relating to any particular quarry operator's business to be ascertained from it;
- (c) to any disclosure of information made for the purpose of any legal proceedings brought under the Ordinance or these regulations, or for the purposes of any report of any such proceedings.

(3) Any person who intentionally discloses any information in contravention of this regulation commits an offence and is liable to a fine of \$2000.

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Chapter:	360A	Title:	PNEUMOCONIOSIS (COMPENSATION) (ASSESSMENT OF LEVY) REGULATIONS	Gazette Number:	
Regulation:	16	Heading:	<b>Appointment of authorized persons</b>	Version Date:	30/06/1997

(1) Where the Crown is the employer in respect of any construction works, a person shall be appointed by or on behalf of the Crown to perform the functions of an authorized person under these regulations in respect of such construction works.

(2) Every person by whom or on whose behalf construction works are to be undertaken shall, if no authorized person has been appointed under section 4 of the Buildings Ordinance (Cap 123), appoint a person to be the authorized person under these regulations in respect of such construction works.

(3) Every person by whom or on whose behalf construction works, other than building or street works, are to be undertaken shall before the commencement of the works inform the Board in writing of the names of-

(a) the person appointed under paragraph (2); and

(b) the contractor.

(4) Every person who is appointed under paragraph (2) or who is employed as a contractor in respect of construction works shall inform the Board in writing of that fact before the commencement of the works.

(5) Any person who fails to comply with paragraph (2), (3) or (4) commits an offence and is liable to a fine of \$2000.

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Chapter:	317A	Title:	RESOLUTION OF THE LEGISLATIVE COUNCIL	Gazette Number:	L.N. 317 of 1999
		Heading:	<b>Empowering section</b>	Version Date:	10/12/1999

(L.N. 271 of 1975)

Resolution made and passed by the Legislative Council under section 22 of the Industrial Training (Construction Industry) Ordinance (Cap 317) on 17 December 1975.

RESOLVED, pursuant to section 22 of the Industrial Training (Construction Industry) Ordinance (Cap 317), that-

(a) the rate of levy be 0.4% of the value of any construction works; and (L.N. 317 of

- 1999)
- (b) any construction works the value of which does not exceed \$1000000 be not liable to the levy. (L.N. 137 of 1985)

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Chapter:	360B	Title:	RESOLUTION OF THE LEGISLATIVE COUNCIL	Gazette Number:	
		Heading:	<b>Empowering section</b>	Version Date:	30/06/1997

(L.N. 340 of 1980)

Resolution made and passed by the Legislative Council under section 36 of the Pneumoconiosis (Compensation) Ordinance (Cap 360) on 3 December 1980.

RESOLVED, pursuant to section 36 of the Pneumoconiosis (Compensation) Ordinance (Cap 360), that-

- (a) the rate of levy be 0.25% of the value of any construction works; (L.N. 334 of 1985; L.N. 4 of 1987; L.N. 149 of 1988; L.N. 286 of 1993; L.N. 181 of 2000)
- (b) any construction works the value of which does not exceed \$1000000 be not liable to the levy; and (L.N. 136 of 1985)
- (c) the rate of levy be 0.25% of the value of any quarry products. (L.N. 334 of 1985; L.N. 4 of 1987; L.N. 149 of 1988; L.N. 286 of 1993; L.N. 181 of 2000)

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Chapter:	317	Title:	INDUSTRIAL TRAINING (CONSTRUCTION INDUSTRY) ORDINANCE	Gazette Number:	
Section:	<b>6</b>	Heading:	<b>General powers of the Authority</b>	Version Date:	30/06/1997

(1) The Authority may do all such things as are necessary for, or incidental or conducive to, the better carrying out of the functions of the Authority and may in particular, but without prejudice to the generality of the foregoing-

- (a) hold, acquire or lease all kinds of property, whether movable or immovable;
- (b) subject to subsection (2), sell or otherwise dispose of all kinds of property whether movable or immovable;
- (c) enter into, assign or accept the assignment of, and vary or rescind any contract or obligation;

- (d) subject to subsection (3), meet expenditure on any item shown in the approved estimates of expenditure of the Authority, borrow or otherwise raise money on such security as may be necessary, and for that purpose, charge all or any of the property of the Authority;
- (e) make charges for the use of any facility or service provided by the Authority.
- (2) The Authority shall not sell or otherwise dispose of land granted at nil premium by the Government except with the prior approval of the Governor.
- (3) Except with the prior approval of the Financial Secretary, no sum shall be borrowed or otherwise raised under subsection (1)(d) which itself, or together with all other sums previously borrowed or otherwise raised under that subsection and still outstanding, exceeds, or in the aggregate exceeds, 10 per cent of the approved total estimated expenditure for the current financial year.

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Chapter:	317	Title:	INDUSTRIAL TRAINING (CONSTRUCTION INDUSTRY) ORDINANCE	Gazette Number:	73 of 1999
Section:	7	Heading:	<b>Constitution of Authority</b>	Version Date:	26/11/1999

- (1) The Authority shall consist of 13 members appointed by the Governor of whom- (Amended 36 of 1991 s. 2)
  - (a) 2 shall be persons nominated by the Hong Kong Construction Association Limited; (Amended L.N. 336 of 1988)
  - (b) 2 shall be persons nominated by the Building and Civil Engineering Industry Training Board;
  - (c) 1 shall be a person nominated by the Hong Kong Institute of Architects;
  - (d) 1 shall be a person nominated by the Hong Kong Institute of Surveyors; (Amended 73 of 1999 s. 5)
  - (e) 1 shall be a person nominated by the Structural Division of Hong Kong Institution of Engineers; (Amended 60 of 1982 s.2)
  - (f) 1 shall be a civil engineer nominated by the Hong Kong Institution of Engineers;
  - (g) 1 shall be a person who holds office as an official of a trade union representing workers employed in the construction industry;
  - (ga) 1 shall be a person nominated by the Executive Director of the Vocational Training Council; (Added 36 of 1991 s. 2)
  - (h) 2 shall be public officers; and (Amended 36 of 1991 s. 2)
  - (i) 1 shall be a person, not being a public officer or person connected with any of the organizations mentioned in paragraphs (a) to (ga). (Amended 36 of 1991 s. 2)
- (2) A member who is not a public officer appointed under subsection (1)(h) shall, unless his appointment is terminated or otherwise ceases, hold office for such period as the Governor may specify. (Amended L.N. 258 of 1975)
- (3) On the expiration of his period of appointment or reappointment, as the case may be, any such member shall be eligible for reappointment for such further term as the Governor may specify.
- (4) Any such member may at any time resign from office by giving notice in writing to the Governor, and he shall cease to be a member from the date specified in the notice or, if no date is specified, from the date of the receipt by the Governor of the notice.

(5) If any member other than the chairman is absent from Hong Kong or is for any other reason unable to exercise the powers or perform the duties of his office as member, the Governor may appoint another person to be a temporary member in his place during his absence or incapacity.

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Chapter:	317	Title:	INDUSTRIAL TRAINING (CONSTRUCTION INDUSTRY) ORDINANCE	Gazette Number:	
Section:	8	Heading:	<b>Chairman of the Authority</b>	Version Date:	30/06/1997

- (1) The Governor shall appoint a member to be chairman of the Authority.
- (2) If the chairman is absent from Hong Kong or is for any other reason unable to act as chairman, the Governor may appoint another member to be chairman in his place during his absence or incapacity.

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Chapter:	317	Title:	INDUSTRIAL TRAINING (CONSTRUCTION INDUSTRY) ORDINANCE	Gazette Number:	
Section:	15	Heading:	<b>Estimates and financial year</b>	Version Date:	30/06/1997

(1) In each financial year, before a date to be appointed by the Governor, the Authority shall submit to the Governor a programme of its proposed activities and estimates of its income and expenditure for the next financial year:

Provided that the programme and estimates for the first financial year of the Authority shall be forwarded as soon as is practicable after the commencement of this Ordinance.

(2) The Authority may, from time to time, with the prior approval of the Governor, fix a period to be the financial year of the Authority.

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Chapter:	317	Title:	INDUSTRIAL TRAINING (CONSTRUCTION INDUSTRY) ORDINANCE	Gazette Number:	
Section:	20	Heading:	<b>Statements and reports to be laid on table of Legislative Council</b>	Version Date:	30/06/1997

(1) The Authority shall, within 6 months after the end of each financial year or such further time as the Governor may in any particular year allow, submit to the Governor a report on the activities of the Authority and copies of the statements prepared under section 18(2) and the report made under section 19(2).

(2) The Governor shall cause the reports and statements received by him under subsection (1) to be laid on the table of the Legislative Council.

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Chapter:	317	Title:	INDUSTRIAL TRAINING (CONSTRUCTION INDUSTRY) ORDINANCE	Gazette Number:	
Section:	36	Heading:	<b>Regulations</b>	Version Date:	30/06/1997

The Governor in Council may by regulation provide for-

- (a) records to be kept by employers, contractors and authorized persons;
- (b) information to be supplied by employers, contractors and authorized persons;
- (c) (Repealed 60 of 1982 s. 5)
- (d) any matter which is to be or may be prescribed;
- (e) generally for the better carrying out of the provisions and purposes of this Ordinance.

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Chapter:	360	Title:	PNEUMOCONIOSIS (COMPENSATION) ORDINANCE	Gazette Number:	
Section:	25	Heading:	<b>Establishment of Pneumoconiosis Compensation Fund Board</b>	Version Date:	30/06/1997

## PART V

## PNEUMOCONIOSIS COMPENSATION FUND BOARD

- (1) There is hereby established a board, to be known as the Pneumoconiosis Compensation Fund Board.
- (2) The Board shall consist of not more than 10 members appointed by the Governor of whom not more than 4 shall be public officers.
- (3) The Third Schedule shall have effect with respect to the Board.

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Chapter:	360	Title:	PNEUMOCONIOSIS (COMPENSATION) ORDINANCE	Gazette Number:	
Section:	26	Heading:	<b>Functions and powers of the Board</b>	Version Date:	30/06/1997

- (1) The Board shall have the following functions-
  - (a) to administer the Fund;
  - (b) to make recommendations to the Government with respect to the rate of levy; (Amended 65 of 1987 s. 2)
  - (ba) to conduct and finance educational, publicity, research and other programmes to prevent pneumoconiosis and to conduct and finance programmes for the rehabilitation of persons suffering from pneumoconiosis; (Added 65 of 1987 s. 2. Amended 54 of 1993 s. 28; 4 of 1996 s. 7)
  - (bb) to administer funds received from the Government and designated by the Government as ex gratia payments to persons diagnosed before the commencement of Part II to be suffering from pneumoconiosis; and (Added 54 of 1993 s. 28)
  - (c) to perform such other duties as are imposed on it by this Ordinance.
- (2) The Board may do all such things as are necessary for, or incidental or conducive to, the better carrying out of the functions of the Board and may in particular, but without prejudice to the generality of the foregoing-
  - (a) hold, acquire or lease all kinds of property, whether movable or immovable;
  - (b) subject to subsection (3), sell or otherwise dispose of all kinds of property whether movable or immovable;
  - (c) enter into, assign or accept the assignment of, and vary or rescind any contract or obligation;
  - (d) subject to subsection (4), meet expenditure on any item shown in the approved estimates of expenditure of the Board, borrow or otherwise raise money on such security as may be necessary, and for that purpose, charge all or any of the property of the Board;
  - (e) make charges for the use of any facility or service provided by the Board.
- (3) The Board shall not sell or otherwise dispose of land granted at nil premium by the Government except with the prior approval of the Governor.
- (4) Except with the prior approval of the Financial Secretary, no sum shall be borrowed or otherwise raised under subsection (2)(d) which itself, or together with all other sums previously borrowed or otherwise raised under that subsection and still outstanding, exceeds, or in the aggregate exceeds, 10 per cent of the approved total estimated expenditure for the current financial year.

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Chapter:	360	Title:	PNEUMOCONIOSIS (COMPENSATION) ORDINANCE	Gazette Number:	
Section:	29	Heading:	<b>Estimates and financial year</b>	Version Date:	30/06/1997

(1) In each financial year, before a date to be appointed by the Governor, the Board shall submit to the Governor a programme of its proposed activities and estimates of its income and expenditure for the next financial year.

(2) The Board may, from time to time, with the prior approval of the Governor, fix a period to be the financial year of the Board.

(3) The Governor may approve or reject the programme and estimates submitted to him under subsection (1) and, in the case of a rejection, may require the Board to resubmit, within such time as he may direct, the programme or estimates, or both, modified in such manner as he may direct. (Added 65 of 1987 s. 4)

(4) The Board shall comply with any requirement under subsection (3). (Added 65 of 1987 s. 4)

(5) The Board may from time to time vary the estimates submitted under subsection (1), even after their approval by the Governor, and if it does so shall inform the Governor in writing of the details of the variation. (Added 65 of 1987 s. 4)

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Chapter:	360	Title:	PNEUMOCONIOSIS (COMPENSATION) ORDINANCE	Gazette Number:	
Section:	34	Heading:	<b>Statements and reports to be laid on table of Legislative Council</b>	Version Date:	30/06/1997

(1) The Board shall, within 6 months after the end of each financial year or such further time as the Governor may in any particular year allow, submit to the Governor a report on the activities of the Board and copies of the statements prepared under section 32(2) and the report made under section 33(2).

(2) The Governor shall cause the reports and statements received by him under subsection (1) to be laid on the table of the Legislative Council.

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Chapter:	360	Title:	PNEUMOCONIOSIS (COMPENSATION) ORDINANCE	Gazette Number:	
Section:	40	Heading:	<b>Variation of compensation limits and daily rates for medical expenses</b>	Version Date:	30/06/1997

## PART VIII

### MISCELLANEOUS

The Legislative Council may by resolution amend-

- (a) any monetary amount specified in the First or Second Schedule;
- (b) Part II of the Second Schedule.

(Amended 54 of 1993 s. 35)

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Chapter:	360	Title:	PNEUMOCONIOSIS (COMPENSATION) ORDINANCE	Gazette Number:	
Section:	47	Heading:	<b>Regulations</b>	Version Date:	30/06/1997

The Governor in Council may by regulation provide for-

- (a) (Repealed 54 of 1993 s. 39)
- (b) the method of assessing the levy payable under section 35, including-
  - (i) the valuation of construction works and quarry products;
  - (ii) the notification of construction works and quarry operations;
  - (iii) the notification of payments made in respect of construction works and quarry products;
  - (iv) the imposition and amount of surcharges where there has been a failure to make a notification;
  - (v) objections to assessments of levies and the imposition of surcharges and appeals;
  - (vi) information to be supplied by employers, contractors, authorized persons or quarry operators;
  - (vii) prohibiting, subject to such exceptions as may be prescribed, the disclosure of information; (Amended 1 of 1983 s. 7)
  - (viii) the appointment of authorized persons for the purposes of this Ordinance;
- (c) records to be kept by employers, contractors and authorized persons or by quarry operators;
- (d) prescribing procedure and fees;
- (e) any matter which is to be or may be prescribed;
- (f) generally the better carrying out of the provisions and purposes of this Ordinance.

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Chapter:	360	Title:	PNEUMOCONIOSIS (COMPENSATION) ORDINANCE	Gazette Number:	
Schedule:	3	Heading:	<b>PNEUMOCONIOSIS S COMPENSATION FUND BOARD</b>	Version Date:	30/06/1997

[section 25]

1. Incorporation and states  
The Board shall be a body corporate with perpetual succession and capable of suing and being sued.
2. Status of Board  
The Board shall not act or be treated as the servant or agent of the Crown.
3. Seal
  - (1) The Board shall have a common seal, the affixing of which shall be authenticated by the signature of any 2 members.
  - (2) Any document purporting to be a document duly executed under the seal of the Board shall be received in evidence and shall, unless the contrary is proved, be deemed to be a document so executed.
4. Tenure of members
  - (1) A member of the Board who is not a public officer shall, unless his appointment is terminated or otherwise ceases, hold office for such period as the Governor may specify.
  - (2) On the expiry of his period of appointment or re-appointment, any member to whom sub-paragraph (1) applies shall be eligible for re-appointment for such further term as the Governor may specify.
  - (3) Any member to whom sub-paragraph (1) applies may at any time resign from office by giving notice in writing to the Governor, and he shall cease to be a member from the date specified in the notice or, if no date is specified, from the date of the receipt by the Governor of the notice.
  - (4) If any member of the Board, other than the chairman, is absent from Hong Kong or is for any other reason unable to exercise the powers or perform the duties of his office as member, the Governor may appoint another person to be a temporary member in his place during his absence or incapacity.
5. Chairman
  - (1) The Governor shall appoint a member to be chairman of the Board.
  - (2) If the chairman is absent from Hong Kong or is for any other reason unable to act as chairman, the Governor may appoint another member to be chairman in his place during his absence or incapacity.
6. Meetings and proceedings of the Board
  - (1) Meetings of the Board shall be held at such times and places as the chairman may appoint.
  - (2) A quorum shall be 5 members.
  - (3) At any meeting of the Board the chairman shall preside.
  - (4) If the chairman is absent from any meeting of the Board, the members present at the meeting shall elect one of their number to act as chairman in his place.
  - (5) The chairman or the member acting in his place shall have a deliberative vote on all matters

coming before the Board and in the case of an equality of votes he shall also have a casting vote.

(6) If a member has a pecuniary interest in any matter to be considered at a meeting of the Board and is present at such meeting, he shall as soon as practicable after the commencement of the meeting disclose to the Board the fact and nature of the interest.

(7) Such member shall, if so required by the meeting, withdraw from the meeting while the Board is considering the matter and in any case shall not vote thereon.

(8) Subject to this Schedule, the Board may determine its own procedure at meetings.

7. Transaction of business by circulation of papers

The Board may transact any of its business by the circulation of papers, and a resolution in writing which is approved in writing by a majority of the members shall be valid and effectual as if it had been passed at a meeting of the Board by the votes of its members so approving the resolution.

8. Committees

(1) Subject to sub-paragraph (2), the Board may appoint committees for the better discharge of its functions under this Ordinance.

(2) The Board shall appoint a committee, comprising 3 members of the Board, for the purpose of the determination of any objection under regulation 12 of the Pneumoconiosis (Compensation) (Assessment of Levy) Regulations (Cap 360 sub. leg.).

(3) The Board may in writing delegate to any committee appointed under sub-paragraph (1) or (2) or to any employee any of its powers and functions:

Provided that no delegation under this sub-paragraph shall preclude the Board from exercising or performing at any time any power or function so delegated.

(4) Each committee may determine its own procedure at meetings.

9. Appointment of employees and conditions of employment

The Board may appoint such employees as it thinks fit and determine all matters relating to their remuneration and terms and conditions of appointment or employment.

10. Staff benefits

(1) The Board may-

(a) grant, or make provision for the grant of, pensions, gratuities and retirement benefits, to its employees;

(b) provide other benefits for the welfare of its employees and their dependants;

(c) make payments, whether ex gratia or legally due, to the legal personal representative of a deceased employee or to any person who was dependent on such employee at his death.

(2) The Board may establish, manage and control or enter into an arrangement with any company or association for the establishment, management and control by such company or association either alone or jointly with the Board of any fund or scheme for the purpose of providing for the pensions, gratuities, benefits and payments referred to in sub-paragraph (1).

(3) The Board may make contribution to any fund or scheme referred to in sub-paragraph (1) and may require its employees to make contributions thereto.

(4) In this paragraph "employees" (僱員) includes any class of employee which the Board may specify and in sub-paragraph (1) includes former employees.

**Details of Implications of the Proposal**

**Economic Implications**

The additional annual levy collectable by expanding the scope of the construction industry levy to cover E&M works<sup>Note 1</sup> under the ITCIO is estimated at around \$46 million<sup>Note 2</sup> when the measure bears full effect, which may take up to five years. This is because the value of works at the initial stage of a construction project is typically small, picking up as the project progresses further. The CITA reckons that the proportion of levy collectable could have a progression of 5%, 25%, 65%, 90% and 100% during the first five-year period. The consequential cost increase in the industry is estimated to be on average around 0.05% of the overall construction cost.

2. As to extending the application of the PCO in parallel to E&M works, the additional annual levy collectable is estimated at around \$29 million<sup>Note 3</sup>, again with a progression during the initial few years. The resultant cost increase in the industry is estimated to be on average around 0.03% of the overall construction cost.

3. Taken together, there would thus be a 0.08% increase in the overall construction cost (in other words, the estimated additional costs would be \$812.5 for a \$1 million contract), over and above the current cost load of 0.57% on the overall construction cost due to the existing levy.

4. The existing construction industry levy is an effective, long established and widely accepted mechanism by which the industry contributes to its own manpower development. The income to be derived from the enlarged scope of the levy will be used to provide expanded training courses and trade tests for the E&M workers, with a

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<sup>Note 1</sup> E&M works represent roughly around 1/8 of the overall construction cost.

<sup>Note 2</sup> Levied at 0.4% of the value of E&M works in the construction contract, which is estimated in overall terms at \$11.5 billion per annum, this gives an annual sum of \$46 million.

<sup>Note 3</sup> Levied at 0.25% of the value of E&M works in the construction contract, which is estimated in overall terms at \$11.5 billion per annum, this gives an annual sum of \$29 million.

view to enhancing their quality, productivity and safety alertness. This will benefit directly the construction industry and then, albeit indirectly, the real estate sector and the community as a whole. Administration of this measure, which is based on the existing system, is not expected to impose any appreciable additional compliance effort on the construction industry.

### **Financial Implications**

5. The proposal to extend the construction industry levy to cover E&M workers in the construction industry to fund construction-related E&M training/trade testing, and other related legislative amendments will not give rise to recurrent financial or staffing implications for the Government, although the cost of Government construction contract will slightly increase due to expansion in the scope of the levy when at present E&M works is not included.

6. At present, some construction related E&M trade tests are funded by the Government through a capital sum which would cease on 31 March 2003. However as the E&M Levy has yet to be introduced, it will be necessary to continue with the current trade tests to meet the industry needs. EMB is discussing with relevant parties to resolve this funding issue.

7. After the passage of the Bill and the imposition of the E&M levy, there will be a lead-time before the building up of sufficient levy income to fund the expanded E&M trade tests and training. Hence, the CITA will need to identify a source of funding to start the expanded trade tests and training after the passage of the Bill. One of the possibilities is for the CITA to apply for a loan from either the Government or the commercial sector. If the CITA decides to apply for a loan from the Government, we will look at it separately upon receipt of the CITA's application through EMB. Initial indication is that a loan of some \$50 million may be required. The approval of the Finance Committee would be required if the Government eventually agrees to provide such a loan.