

C012-E

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 subcontracting 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--

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(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

37. Adaptation of Industrial Training (Construction Industry) Ordinance

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

38. 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.