

**CONSTRUCTION INDUSTRY LEVY (MISCELLANEOUS
AMENDMENTS) ORDINANCE 2004**

CONTENTS

| Section | Page |
|---------------------------------------|------|
| 1. Short title and commencement | A69 |

PART 1

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

| | |
|--|-----|
| 2. Long title amended | A71 |
| 3. Interpretation | A71 |
| 4. Sections added | |
| 2A. Value of construction operations | A77 |
| 2B. Total value of construction operations | A79 |
| 5. Section added | |
| 3A. Application to construction operations | A81 |
| 6. General powers of the Authority | A81 |
| 7. Constitution of Authority | A83 |
| 8. Section substituted | |
| 21. Imposition of construction industry levy | A83 |
| 9. Sections repealed | A85 |
| 10. Contractor and authorized person to notify Authority when undertaking construction operations | A85 |
| 11. Notice by contractor and authorized person of payments made in respect of construction operations and of completion | A85 |
| 12. Assessment | A87 |
| 13. Payment of levy | A91 |
| 14. Recovery of levy | A91 |
| 15. Furnishing of information and production of documents | A91 |
| 16. Appointment of authorized persons and notification of appointment of authorized persons or contractors | A91 |
| 17. Section added | |
| 37. Power to amend Schedule 1 | A93 |
| 18. Schedules 1 and 2 added | |
| Schedule 1 Construction operations | A95 |
| Schedule 2 Levy | A97 |

Section

Page

PART 2

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

Pneumoconiosis (Compensation) Ordinance

| | | |
|-----|--|------|
| 19. | Interpretation | A97 |
| 20. | Sections added | |
| | 2A. Value of construction operations | A103 |
| | 2B. Total value of construction operations | A103 |
| | 2C. Value of quarry products | A105 |
| 21. | Section added | |
| | 3A. Application to construction operations | A105 |
| 22. | Section substituted | |
| | 35. Imposition of levy | A107 |
| 23. | Rate of levy | A109 |
| 24. | Payment of levy and surcharge | A109 |
| 25. | Regulations | A109 |
| 26. | Schedule 5 added | |
| | Schedule 5 Levy | A109 |

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

| | | |
|-----|--|------|
| 27. | Interpretation | A111 |
| 28. | Part heading amended | A111 |
| 29. | Value of construction works | A111 |
| 30. | Contractor and authorized person to notify Board when undertaking construction operations | A111 |
| 31. | Notice by contractor and authorized person of payments made in respect of construction operations and of completion | A113 |
| 32. | Assessment | A115 |
| 33. | Value of quarry products | A117 |
| 34. | Furnishing of information and production of documents | A117 |
| 35. | Non-disclosure of information provided | A119 |
| 36. | Appointment of authorized persons and notification of appointment of authorized persons or contractors | A119 |

CONSTRUCTION INDUSTRY LEVY
(MISCELLANEOUS AMENDMENTS) ORDINANCE

Ord. No. 3 of 2004

A67

| Section | | Page |
|--------------------|---|------|
| PART 3 | | |
| ADAPTATION OF LAWS | | |
| 37. | Adaptation of Industrial Training (Construction Industry) Ordinance | A121 |
| 38. | Adaptation of Pneumoconiosis (Compensation) Ordinance | A121 |
| PART 4 | | |
| MISCELLANEOUS | | |
| 39. | Transitional provisions relating to Part 1 | A121 |
| 40. | Transitional provisions relating to Part 2 | A123 |
| 41. | Consequential amendments | A125 |
| Schedule 1 | Industrial Training (Construction Industry) Ordinance | A125 |
| Schedule 2 | Pneumoconiosis (Compensation) Ordinance | A125 |

HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE No. 3 OF 2004

L.S.

TUNG Chee-hwa
Chief Executive
19 February 2004

An Ordinance 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.

[20 February 2004]

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Construction Industry Levy (Miscellaneous Amendments) Ordinance 2004.

(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 attributable to such operations, as 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) Notwithstanding subsection (1)(a), if in a particular case the consideration attributable to the construction operations concerned as determined in accordance with that subsection is below the reasonable consideration to be expected on the open market in respect of the carrying out of such operations, that subsection shall be deemed to contain a reference to the reasonable consideration described in this subsection instead of the consideration described in that subsection.

(3) For the purposes of subsections (1)(b) and (2), the Authority may, when ascertaining the reasonable consideration as referred to in those subsections in respect of the carrying out of any construction operations, 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) This Ordinance does not apply to construction operations—
 - (a) which are carried out for a person who occupies any domestic premises or part of any domestic premises; and
 - (b) the sole or principal purpose of which is to decorate, alter, repair, maintain or renovate the premises or such part of such premises.
- (2) 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.
- (3) Without limiting the generality of subsection (2), 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.
- (4) 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 a domestic premises if he intends to occupy 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) and substituting—

“(b) 1 shall be a person nominated by the Hong Kong Federation of Electrical and Mechanical Contractors Limited;”;

(b) in paragraph (e), by repealing “person nominated by the Structural Division of” and substituting “structural engineer nominated by the”;

(c) by adding before paragraph (ga)—

“(gaa) 1 shall be a person who holds office as an official of a trade union representing electrical and mechanical workers employed in 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 if, before the expiration of the period referred to in paragraph (a)—

(i) the tender for the construction operations has been submitted to the employer concerned;

(ii) no tender for the construction operations has been submitted to the employer concerned, but a construction contract in respect of the construction operations has been entered into; or

- (iii) no tender for the construction operations has been submitted to the employer concerned and no construction contract in respect of the construction operations has been entered into, but the construction operations have been commenced.”.

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 that the total value of such operations does not exceed the specified amount.”;
- (c) in subsection (2), by repealing “value of the construction works” and substituting “total value of the construction operations”.

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 (1), by repealing “Where” and substituting “Subject to subsection (1A), where”;
- (c) by adding—

- “(1A) Where any payment or interim payment is made in any calendar month to a contractor or for his benefit in respect of any construction operations that are carried out under a term contract, the contractor shall, within 14 days after the last day of that month 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.”;
- (d) in subsection (2), by repealing “being”;
- (e) 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 that the total value of such operations does not exceed the specified amount.”;
- (f) in subsections (3) and (4), by repealing “or (2)” and substituting “, (1A) or (2)”.

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”;
- (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 or the imposition of the surcharge 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) by repealing subsection (2) and substituting—

“(2) Subject to subsection (1), every person for whom construction operations 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 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 or any industrial installations for purposes of land drainage, coast protection, water supply or defence; or
 - (D) any power-lines, telecommunication apparatus or 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 attributable to such operations, as 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) Notwithstanding subsection (1)(a), if in a particular case the consideration attributable to the construction operations concerned as determined in accordance with that subsection is below the reasonable consideration to be expected on the open market in respect of the carrying out of such operations, that subsection shall be deemed to contain a reference to the reasonable consideration described in this subsection instead of the consideration described in that subsection.

(3) For the purposes of subsections (1)(b) and (2), the Board may, when ascertaining the reasonable consideration as referred to in those subsections in respect of the carrying out of any construction operations, 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) This Ordinance does not apply to construction operations—
 - (a) which are carried out for a person who occupies any domestic premises or part of any domestic premises; and
 - (b) the sole or principal purpose of which is to decorate, alter, repair, maintain or renovate the premises or such part of such premises.
- (2) 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.

(3) Without limiting the generality of subsection (2), 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.

(4) 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 a domestic premises if he intends to occupy 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 if, before the expiration of the period referred to in paragraph (a)—

(i) the tender for the construction operations has been submitted to the construction employer concerned;

- (ii) no tender for the construction operations has been submitted to the construction employer concerned, but a construction contract in respect of the construction operations has been entered into; or
- (iii) no tender for the construction operations has been submitted to the construction employer concerned and no construction contract in respect of the construction operations has been entered into, but the construction operations have been commenced.”.

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 “approved” and substituting “specified”;

- (iv) by repealing “such a contractor carrying out” and substituting “the contractor in respect of the”;
- (v) 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 that the total value of such operations does not exceed the specified amount.”;
- (c) in paragraph (3), by repealing “value of the construction works” and substituting “total value of the construction operations”.

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 (1)—
 - (i) by repealing “Where” and substituting “Subject to paragraph (1A), where”;
 - (ii) by repealing “approved” and substituting “specified”;
- (c) by adding—
 - “(1A) Where any payment or interim payment is made in any calendar month to a contractor or for his benefit in respect of any construction operations that are carried out under a term contract, the contractor shall, within 14 days after the last day of that month or such further time as the Board may in any case allow, give notice of it to the Board in a form specified by the Board.”;
- (d) in paragraph (2)—
 - (i) by repealing “being”;
 - (ii) by repealing “approved” and substituting “specified”;
- (e) 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 that the total value of such operations does not exceed the specified amount.”;
- (f) in paragraphs (4) and (6), by repealing “or (2)” and substituting “, (1A) or (2)”.

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”;
- (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 or the imposition of the surcharge 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) by repealing paragraph (2) and substituting—

“(2) Subject to paragraph (1), every person for whom construction operations 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 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 if, before the commencement date—

- (a) the tender for the construction works has been submitted to the employer concerned;
- (b) no tender for the construction works has been submitted to the employer concerned, but a construction contract in respect of the construction works has been entered into; or

(c) no tender for the construction works has been submitted to the employer concerned and no construction contract in respect of the construction works has been entered into, but the construction works have been commenced.

(2) For the purposes of this section—

“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 if, before the commencement date—

(a) the tender for the construction works has been submitted to the employer concerned;

(b) no tender for the construction works has been submitted to the employer concerned, but a construction contract in respect of the construction works has been entered into; or

(c) no tender for the construction works has been submitted to the employer concerned and no construction contract in respect of the construction works has been entered into, but the construction works have been commenced.

(2) For the purposes of this section—

“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.

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”.