

Chapter:	360	PNEUMOCONIOSIS AND MESOTHELIOMA (COMPENSATION) ORDINANCE	Gazette Number	Version Date
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		Long title	6 of 2008	18/04/2008
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To establish a scheme for compensating persons or their family members in respect of incapacity or death resulting from pneumoconiosis or mesothelioma (or both) and for purposes connected therewith.

(Amended 4 of 1996 s. 2; 6 of 2008 s. 2)

[Sections 1, 2, 25 to 34 (inclusive) and 36 and the Third Schedule } 7 November 1980

Remaining provisions } 1 January 1981 *L.N. 321 of 1980*

(Originally 51 of 1980)

Part:	I	PRELIMINARY	6 of 2008	18/04/2008
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Section:	1	Short title	6 of 2008	18/04/2008
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This Ordinance may be cited as the Pneumoconiosis and Mesothelioma (Compensation) Ordinance.

(Amended 6 of 2008 s. 3)

Section:	2	Interpretation	L.N. 140 of 2008	01/09/2008
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Remarks:

Adaptation amendments retroactively made-see 2 of 2012 s. 3

- (1) In this Ordinance, unless the context otherwise requires-
- "authorized person" (獲授權人), in relation to construction operations, means-
- the authorized person appointed or nominated under section 4 of the Buildings Ordinance (Cap 123) in respect of the construction operations; or
 - if no authorized person is appointed under that section, the person appointed in accordance with the Pneumoconiosis and Mesothelioma (Compensation) (Assessment of Levy) Regulations (Cap 360 sub. leg. A) in respect of the construction operations; (Replaced 12 of 2006 s. 84. Amended 6 of 2008 s. 4)
- "Board" (委員會) means the Pneumoconiosis Compensation Fund Board established under section 25;
- "carry out" (進行) has the meaning assigned to it in section 2(1) of the Construction Industry Council Ordinance (Cap 587); (Added 12 of 2006 s. 84)
- "Commissioner" (處長) means the Commissioner for Labour;
- "compensation" (補償) means compensation as provided by this Ordinance;
- "construction contract" (建造合約) has the meaning assigned to it in section 2(1) of the Construction Industry Council Ordinance (Cap 587); (Added 3 of 2004 s. 19. Amended 12 of 2006 s. 84)
- "construction employer" (建造工程聘用人) means an employer as defined in section 2(1) of the Construction Industry Council Ordinance (Cap 587); (Replaced 12 of 2006 s. 84)
- "construction operations" (建造工程) has the meaning assigned to it in section 2(1) of the Construction Industry Council Ordinance (Cap 587); (Replaced 12 of 2006 s. 84)
- "contractor" (承建商) has the meaning assigned to it in section 2(1) of the Construction Industry Council Ordinance (Cap 587); (Amended 12 of 2006 s. 84)
- "Court" (法院) means the District Court;
- "date of diagnosis" (判傷日期)-

- (a) in relation to the pneumoconiosis suffered by a person, means the date of a medical examination conducted under this Ordinance from which it is determined that the person is suffering from the disease; and
- (b) in relation to the mesothelioma suffered by a person, means the date of a medical examination conducted under this Ordinance from which it is determined that the person is suffering from the disease; (Replaced 6 of 2008 s. 4)

"earliest diagnosed date" (最早診斷日期)-

- (a) in relation to the pneumoconiosis suffered by a person, means the date determined under section 24(1)(a)(i) or (b)(iii) as the date from which it can be said that the person has been suffering from the disease; and
- (b) in relation to the mesothelioma suffered by a person, means the date determined under section 24(1)(a)(i) or (b)(iii) as the date from which it can be said that the person has been suffering from the disease; (Replaced 6 of 2008 s. 4)

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

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

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

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

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

"hospital" (醫院) means any hospital registered under the Hospitals, Nursing Homes and Maternity Houses Registration Ordinance (Cap 165), any hospital maintained by the Government, any military hospital or any public hospital within the meaning of the Hospital Authority Ordinance (Cap 113); (Amended 83 of 1991 s. 2; 2 of 2012 s. 3)

"incapacity" (喪失工作能力) means incapacity resulting from pneumoconiosis or mesothelioma (or both); (Amended 6 of 2008 s. 4)

"levy" (徵款)-

- (a) in relation to construction operations, means the levy referred to in section 35(1); and
- (b) in relation to quarry products, means the levy referred to in section 35(7); (Replaced 12 of 2006 s. 84)

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

- (a) the fees of a registered medical practitioner or registered Chinese medicine practitioner; (Amended 16 of 2006 s. 23)
- (b) the fees for any surgical or therapeutic treatment;
- (c) the cost of nursing attendance;
- (d) the cost of hospital accommodation as an in-patient;
- (e) subject to section 12AA, the cost of medicines, curative materials and medical dressings; (Amended 16 of 2006 s. 23)

"medical treatment" (醫治), in relation to a person who suffers from pneumoconiosis or mesothelioma (or both), means medical treatment of any kind whatsoever given to the person by, or under the supervision of, a registered medical practitioner or registered Chinese medicine practitioner, whether as an in-patient or otherwise; (Amended 54 of 1993 s. 2; 16 of 2006 s. 23; 6 of 2008 s. 4)

"member of the family" (家庭成員) means-

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

"mesothelioma" (間皮瘤) means a primary malignant neoplasm of the mesothelial tissue due to dust of asbestos or dust containing asbestos, whether or not such disease is accompanied by tuberculosis of the lungs or by any other disease caused by exposure to such dust; (Added 6 of 2008 s. 4)

"notice of assessment" (評估通知) means a notice of assessment described in section 35(6); (Added 12 of 2006 s.

84)

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

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

"pneumoconiosis" (肺塵埃沉着病) means-

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

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

"quarry" (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; (Added 3 of 2004 s. 19)

"quarry operator" (石礦場經營人) means-

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

"quarry products" (石礦產品) means all crushed rock, stone and sand extracted from or produced in a quarry; (Added 3 of 2004 s. 19. Amended 12 of 2006 s. 84)

"registered Chinese medicine practitioner" (註冊中醫) has the meaning assigned to it by section 2 of the Chinese Medicine Ordinance (Cap 549); (Added 16 of 2006 s. 23)

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

"term contract" (固定期合約) has the meaning assigned to it in section 2(1) of the Construction Industry Council Ordinance (Cap 587); (Added 3 of 2004 s. 19. Amended 12 of 2006 s. 84)

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

"total value" (總價值), in relation to any construction operations, means the total value of the construction operations as defined in section 39D; (Replaced 12 of 2006 s. 84)

"value" (價值)-

- (a) in relation to any construction operations, means the value of the construction operations as determined under section 39C; and
- (b) in relation to any quarry products, means the value of the quarry products as determined under section 39E; (Replaced 12 of 2006 s. 84)

"works order" (施工通知) has the meaning assigned to it in section 2(1) of the Construction Industry Council Ordinance (Cap 587). (Added 3 of 2004 s. 19. Amended 12 of 2006 s. 84)

(Amended 54 of 1993 s. 2; 3 of 2004 s. 19; 12 of 2006 s. 84)

(2) Without affecting the generality of the definitions of "construction employer" and "contractor" under subsection (1), the following applies for the purposes of construing those terms-

- (a) where a person carries out construction operations for any other person under a contract of employment-
 - (i) if the first-mentioned person is appointed as contractor under section 9 of the Buildings Ordinance (Cap 123) in respect of the construction operations, he (and not that other person) is the contractor in respect of the construction operations; and
 - (ii) if the first-mentioned person is not appointed as contractor under section 9 of the Buildings Ordinance (Cap 123) in respect of the construction operations, the first-mentioned person is not the contractor in respect of the construction operations;
- (b) where a person carries out construction operations for himself without any arrangement for the carrying out of the construction operations by any other person, the first-mentioned person is both the construction employer and the contractor in respect of the construction operations;
- (c) where a person carries out construction operations for himself with the assistance, under a contract of

employment, of one or more other persons none of whom is appointed as contractor under section 9 of the Buildings Ordinance (Cap 123) in respect of the construction operations, the first-mentioned person is both the construction employer and the contractor in respect of the construction operations.
(Repealed 54 of 1993 s. 2. Added 12 of 2006 s. 84)

(3)-(4) (Repealed 12 of 2006 s. 84)

Note:

For transitional provisions relating to the amendments made by 3 of 2004, please see section 40 of the Construction Industry Levy (Miscellaneous Amendments) Ordinance 2004 (3 of 2004), which section is reproduced as follows-

“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.” .

* Commencement date: 1 June 2004.

Section:	2A	(Repealed 12 of 2006 s. 84)	6 of 2008	18/04/2008
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Section:	2B	(Repealed 12 of 2006 s. 84)	6 of 2008	18/04/2008
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Section:	2C	(Repealed 12 of 2006 s. 84)	6 of 2008	18/04/2008
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Section:	3	Application to the Crown	6 of 2008	18/04/2008
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This Ordinance shall be binding on the Crown.

Section:	3A	(Repealed 12 of 2006 s. 84)	6 of 2008	18/04/2008
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Part:	II	COMPENSATION	6 of 2008	18/04/2008
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Section:	4	Entitlement to compensation	6 of 2008	18/04/2008
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Remarks:

Adaptation amendments retroactively made-see 2 of 2012 s. 3

- (1) Subject to this section, and except where otherwise provided, compensation shall be payable-
 - (a) to any person suffering from pneumoconiosis or mesothelioma (or both), in respect of any incapacity resulting from the above disease or diseases and any pain, suffering and loss of amenities arising from the above disease or diseases; and (Replaced 6 of 2008 s. 5)
 - (b) where any such person dies, and subject also to section 17(1), to the members of his family. (Replaced 54 of 1993 s. 3)

(2) For a person suffering from pneumoconiosis (whether or not he is also suffering from mesothelioma), compensation in respect of his pneumoconiosis shall be payable under subsection (1) only where the date of diagnosis of his pneumoconiosis or the date of his death occurs on or after 1 January 1981. (Replaced 6 of 2008 s. 5)

(2A) For a person suffering from mesothelioma (whether or not he is also suffering from pneumoconiosis), compensation in respect of his mesothelioma shall be payable under subsection (1) only where the date of diagnosis of his mesothelioma or the date of his death occurs on or after the date of commencement* of the Pneumoconiosis (Compensation) (Amendment) Ordinance 2008 (6 of 2008). (Added 6 of 2008 s. 5)

- (3) No compensation shall be payable-
 - (a) where ex gratia compensation has been or will be paid by the Government for any incapacity or death resulting from pneumoconiosis diagnosed before 1 January 1981; (Amended 6 of 2008 s. 5)
 - (b) (Repealed 54 of 1993 s. 3)
 - (c) to a person in the service of or formerly in the service of the Government who, in consequence of incapacity resulting from pneumoconiosis or mesothelioma (or both) contracted in the discharge of his duties, is paid pension or gratuity which would not be payable if such incapacity were contracted otherwise than in the discharge of his duties, or in the case of his death, where such pension or gratuity is paid to the members of his family, under any Ordinance or regulation providing for the grant of such pension or gratuity; (Amended 6 of 2008 s. 5)
 - (d) to members of the Chinese People's Liberation Army; (Amended 2 of 2012 s. 3)
 - (e) to a person in the civil employment of Her Majesty, otherwise than in Her Government of Hong Kong, who has been engaged in a place outside Hong Kong.

- (4) Subsection (1) shall not apply otherwise than to-
 - (a) a person resident in Hong Kong for 5 years or more at the date of the notification of his claim under section 14(1)(a), or resident in Hong Kong for less than 5 years at such date if he contracted pneumoconiosis or mesothelioma (or both) in Hong Kong; or
 - (b) the members of the family of a person who was resident in Hong Kong for 5 years or more at the date of his death, or who was resident in Hong Kong for less than 5 years at such date if he contracted pneumoconiosis or mesothelioma (or both) in Hong Kong. (Replaced 54 of 1993 s. 3. Amended 6 of 2008 s. 5)

(4A) For the purposes of paragraph (c) of subsection (3), where a person referred to in that paragraph is paid pension or gratuity in respect of either pneumoconiosis or mesothelioma, his entitlement to compensation for the other of the 2 diseases shall not be affected. (Added 6 of 2008 s. 5)

- (5) For the purposes of subsection (4), residence in Hong Kong for 5 years or more may be proved-
 - (a) by the production to the Commissioner of the identity card issued under the Registration of Persons Ordinance (Cap 177) to the person in question; and
 - (b) by the production of such other evidence as may be required by the Commissioner.

(Amended 54 of 1993 s. 3)

Note:

* **Commencement date: 18 April 2008.**

Section:	5	Compensation for death resulting from pneumoconiosis or mesothelioma (or both)*	6 of 2008	18/04/2008
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(1) Subject to this section, where a person dies as a result of pneumoconiosis or mesothelioma (or both) and is survived by any member of his family, the compensation payable shall be a lump sum amount in accordance with Part I of the First Schedule. (Amended 6 of 2008 s. 6)

(2) Where compensation has been paid pursuant to section 6 (whether as compensation in respect of

pneumoconiosis or mesothelioma (or both)) to a person referred to in subsection (1) there shall be deducted from the amount payable under subsection (1) to that person the current value of any amounts so paid as compensation. (Amended 6 of 2008 s. 6)

(3) Where the amount otherwise payable under this section would be less than the amount specified in Part V of the First Schedule, the amount payable under this section shall be the amount so specified.

(4) For the purposes of subsection (2) the current value of any amounts paid under section 6 shall be-

- (a) in the case of any amounts paid within the period of 12 months preceding the person's death, those amounts;
- (b) in the case of any amounts paid during consecutive 12 month periods preceding the period referred to in paragraph (a), the sum of the amounts paid in any such period increased by reference to the percentage increase (if any) in the Consumer Price Index (A) during the period beginning with the earliest month in the period and ending with the month in which the death occurred.

(5) In this section "Consumer Price Index (A)" (甲類消費物價指數) means the index of that name compiled by the Commissioner for Census and Statistics.

(Replaced 54 of 1993 s. 4)

Note:

* (Amended 6 of 2008 s. 6)

Section:	5A	Compensation for bereavement	6 of 2008	18/04/2008
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(1) Where a person who was suffering from pneumoconiosis or mesothelioma (or both) dies and at the time of his death no certificate had been issued by the Board under section 15B(1) in respect of any of the above diseases, compensation for bereavement shall be payable to the members of his family who survive him. (Amended 6 of 2008 s. 7)

(2) Compensation payable under this section shall be-

- (a) in the form of a lump sum amount in accordance with Part V of the First Schedule;
- (b) in addition to any compensation that may be payable under section 5.

(Added 54 of 1993 s. 4)

Section:	5B	Funeral expenses	6 of 2008	18/04/2008
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Where a person to whom compensation is payable under section 4 dies as a result of pneumoconiosis or mesothelioma (or both), the reasonable expenses of the funeral of the deceased person as provided in Part VI of the First Schedule shall be payable by the Board to any person who has incurred such expenses.

(Added 54 of 1993 s. 4. Amended 6 of 2008 s. 8)

Section:	6	Compensation for incapacity subsequent to date of diagnosis	6 of 2008	18/04/2008
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(1) Where incapacity results from pneumoconiosis or mesothelioma (or both), the compensation payable in respect of the period beginning from the date of diagnosis shall be- (Amended 6 of 2008 s. 9)

(a) an amount calculated by reference to the degree of such incapacity, as follows-

- (i) for the period of any total incapacity, a monthly amount in accordance with Part II of the First Schedule; or
- (ii) for the period of any partial incapacity, a monthly amount equal to such percentage of the compensation payable in the case of total incapacity as is proportionate to the degree of partial incapacity of the person as determined from time to time under this Ordinance; and

*(b) a monthly amount as specified in Part IIA of the First Schedule as compensation for any pain, suffering and loss of amenities arising from the pneumoconiosis or mesothelioma (or both), which amount shall be payable regardless of the degree of such pain, suffering or loss. (Replaced 4 of 1996 s. 4. Amended 6 of 2008 s. 9)

(2) Compensation under this section shall be payable until death.

(Replaced 54 of 1993 s. 5)

Note:

* Please note section 14 of 4 of 1996. It reads as follows-

"14. Transitional

For the avoidance of doubt it is declared that no amount shall be payable under section 6(1)(b) of the principal Ordinance as amended by this Ordinance in respect of any period prior to the date of commencement of this Ordinance."

4 of 1996 commenced operation on 1 April 1996.

Section:	7	(Repealed 54 of 1993 s. 6)	6 of 2008	18/04/2008
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Section:	8	(Repealed 54 of 1993 s. 6)	6 of 2008	18/04/2008
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Section:	9	(Repealed 54 of 1993 s. 6)	6 of 2008	18/04/2008
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Section:	10	Compensation for incapacity prior to date of diagnosis	6 of 2008	18/04/2008
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(1) Subject to subsections (2) and (3), where incapacity results from pneumoconiosis or mesothelioma (or both), the compensation payable in respect of the period from the earliest diagnosed date to the date of diagnosis shall be a lump sum amount in accordance with Part III of the First Schedule, and such amount shall be payable regardless of the degree of incapacity of the person during that period. (Amended 6 of 2008 s. 10)

(2) Where-

- (a) a person has not previously received compensation under this Ordinance;
- (b) subsequently the Pneumoconiosis Medical Board determines on a certain date that the person is suffering from both pneumoconiosis and mesothelioma; and
- (c) there are different earliest diagnosed dates for the 2 diseases,

then for the purposes of calculating the compensation payable under subsection (1)-

- (d) the earlier of the 2 earliest diagnosed dates shall be taken as the earliest diagnosed date for both diseases under that subsection; and
- (e) the degree of incapacity of the person at the date of diagnosis resulting from both diseases as determined by the Pneumoconiosis Medical Board shall be the degree of incapacity for determining the multiplier in paragraph 2 of Part III of the First Schedule. (Added 6 of 2008 s. 10)

(3) Where a person has already received compensation under this Ordinance in respect of either pneumoconiosis or mesothelioma ("the first disease") and the Pneumoconiosis Medical Board subsequently made a determination that the person is also suffering from the other of the 2 diseases ("the second disease"), then for the purposes of calculating the compensation payable under subsection (1) in respect of the second disease-

- (a) the earliest diagnosed date of the second disease shall be taken as the earliest diagnosed date for that disease under that subsection; and
- (b) the degree of incapacity of the person for determining the multiplier in paragraph 2 of Part III of the First Schedule shall be the difference between-
 - (i) the aggregate degree of incapacity of the person resulting from both pneumoconiosis and mesothelioma at the date of diagnosis of the second disease as determined by the Pneumoconiosis Medical Board; and
 - (ii) the degree of incapacity of the person resulting from the first disease as determined by the Pneumoconiosis Medical Board on the basis of the last medical examination of the person under this Ordinance. (Added 6 of 2008 s. 10)

(Replaced 54 of 1993 s. 7)

Section:	11	Compensation for constant attention	6 of 2008	18/04/2008
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(1) Where the incapacity which results from pneumoconiosis or mesothelioma (or both) is of such a nature that the person is unable to perform the essential actions of life without the care and attention of another person, in addition to any compensation under the other provisions of this Ordinance, compensation in respect of such care and attention shall be payable under this section. (Amended 6 of 2008 s. 11)

(1A) Compensation under this section shall not be payable in respect of any continuous period in excess of 1 month for which a person is receiving medical treatment as an in-patient in a hospital unless the Board in its discretion otherwise directs. (Added 54 of 1993 s. 8)

(2) Compensation under this section shall be a monthly amount in accordance with Part IV of the First Schedule.

(Amended 54 of 1993 s. 8)

Section:	12	Payment of medical expenses	L.N. 140 of 2008	01/09/2008
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(1) Subject to this section, a person who suffers from pneumoconiosis or mesothelioma (or both) and to whom compensation is payable under section 4 shall be entitled to the reasonable medical expenses in respect of such medical treatment as is reasonably necessary in connection with the above disease or diseases suffered by him. (Amended 16 of 2006 s. 24; 6 of 2008 s. 12)

(2) Medical expenses under this section- (Amended 16 of 2006 s. 24)

(a) shall be payable in accordance with Part I of the Second Schedule;

(b) in respect of a disease mentioned in subsection (1) shall be payable only in respect of the period subsequent to the date of diagnosis of that disease; (Replaced 6 of 2008 s. 12)

(c) shall not be payable where the person's employer, if any, provides a reasonable level of medical treatment free of charge to the person and the person fails, without reasonable excuse, to submit himself for such treatment. (Amended 16 of 2006 s. 24)

(3) Medical expenses shall not cease under subsection (2)(c) to be payable-

(a) in respect of medical treatment given to a person by, or under the supervision of, a registered medical practitioner unless the medical treatment provided free of charge to him by the person's employer covers medical treatment given by, or under the supervision of, a registered medical practitioner; or

(b) in respect of medical treatment given to a person by, or under the supervision of, a registered Chinese medicine practitioner unless the medical treatment provided free of charge to him by the person's employer covers medical treatment given by, or under the supervision of, a registered Chinese medicine practitioner. (Added 16 of 2006 s. 24)

(4) Medical expenses under this section shall not be payable in respect of medical treatment given in a place outside Hong Kong unless-

(a) the medical treatment was given lawfully under the law of that place by, or under the supervision of, a registered medical practitioner or registered Chinese medicine practitioner in that place; and

(b) the medical treatment was medical treatment that might have been given lawfully by him or under his supervision (as the case may be) in the course of his practice in Hong Kong. (Added 16 of 2006 s. 24)

(Replaced 54 of 1993 s. 9)

Section:	12AA	Cost of medicines	L.N. 154 of 2010	14/01/2011
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(1) Subject to the other provisions of this section, the medical expenses that a person who suffers from pneumoconiosis or mesothelioma (or both) and to whom compensation is payable under section 4 is entitled to— (Amended 6 of 2008 s. 55)

(a) include the cost of medicines to the extent that the medicines are prescribed medicines for such medical treatment as is reasonably necessary in connection with the above disease or diseases suffered by him; but (Amended 6 of 2008 s. 55)

(b) do not include the cost of any tonic or substance that is prescribed for the purpose of the maintenance of general health only.

(2) For the purposes of this section, a reference to prescribed medicines is a reference to—

(a) medicines prescribed by a registered medical practitioner; or

- (b) Chinese herbal medicines or proprietary Chinese medicines prescribed by a registered Chinese medicine practitioner.
- (3) A person referred to in subsection (1) is not entitled to any cost of medicines relating to any pharmaceutical product or substance that is required to be registered under the Pharmacy and Poisons Ordinance (Cap 138) unless it is so registered.
- (4) A person referred to in subsection (1) is not entitled to any cost of medicines relating to any proprietary Chinese medicine unless the proprietary Chinese medicine—
- (a) is registered under section 121 of the Chinese Medicine Ordinance (Cap 549);
 - (b) is deemed to have been registered under section 128 of that Ordinance;
 - (c) is exempted from registration by virtue of section 158(6) of that Ordinance;
 - (d) is exempted from registration by virtue of section 37 of the Chinese Medicines Regulation (Cap 549 sub. leg. F); or
 - (e) is a substance or product that is registered under the Pharmacy and Poisons Ordinance (Cap 138).
- (5) A person referred to in subsection (1) is not entitled to any cost of medicines relating to any Chinese herbal medicine unless the Chinese herbal medicine—
- (a) is sold to the person concerned by a person who—
 - (i) is the holder of a retailer licence issued under section 114 of the Chinese Medicine Ordinance (Cap 549); or
 - (ii) is deemed, under section 118(1) of that Ordinance, to have been granted such a licence; or
 - (b) is sold by a registered Chinese medicine practitioner for the purpose of administering, as described in section 158(2) of that Ordinance, to the person concerned who is a patient under that Chinese medicine practitioner's direct care.
- (6) A person referred to in subsection (1) is not entitled to any cost of medicines relating to medicines dispensed pursuant to the same prescription on a second or subsequent occasion unless—
- (a) the prescription contains a direction that the medicines are to be dispensed for a stated number of times; and
 - (b) the medicines are dispensed in accordance with that direction.
- (7) Where the medical expenses for the medical treatment of a person referred to in subsection (1) include the cost of medicines, the Board may request the person to produce to it the prescription for the medicines and the receipt for the payment of that cost. The person is not entitled to the cost of medicines if the person fails, without reasonable excuse, to comply with the request.
- (8) A prescription given by a registered medical practitioner and produced for the purposes of subsection (7) must show—
- (a) the name of the medical practitioner;
 - (b) the name of the patient to whom the prescription is given;
 - (c) the trade name or pharmacological name and dosage of each medicine prescribed; and
 - (d) the date on which the prescription is given.
- (9) A prescription given by a registered Chinese medicine practitioner and produced for the purposes of subsection (7) must show—
- (a) the name of the Chinese medicine practitioner;
 - (b) the name of the patient to whom the prescription is given;
 - (c) if any Chinese herbal medicine is prescribed, its name and quantity;
 - (d) if any proprietary Chinese medicine registered under section 121 of, or deemed to have been registered under section 128 of, the Chinese Medicine Ordinance (Cap 549) is prescribed, its product name and dosage;
 - (e) if any proprietary Chinese medicine exempted from registration by virtue of section 158(6) of the Chinese Medicine Ordinance (Cap 549) is prescribed, the name and quantity of each Chinese herbal medicine that is contained in the proprietary Chinese medicine; and
 - (f) the date on which the prescription is given.
- (10) A receipt for the payment of the cost of medicines produced for the purpose of subsection (7) must show—
- (a) the name and address of the person by whom the prescribed medicines were sold;
 - (b) the date of sale; and
 - (c) the name, quantity and price of the prescribed medicines sold.
- (11) For the purposes of this section—

“Chinese herbal medicine” (中藥材) means—

- (a) a Chinese herbal medicine specified in Schedule 1 or 2 to the Chinese Medicine Ordinance (Cap 549); or
- (b) any other material of herbal, animal or mineral origin customarily used by the Chinese for medicinal purpose;

“proprietary Chinese medicine” (中成藥) has the meaning assigned to it by section 2 of the Chinese Medicine Ordinance (Cap 549).

(Added 16 of 2006 s. 25)

Section:	12A	Payment of expenses for medical appliances	6 of 2008	18/04/2008
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(1) Subject to this section, a person who suffers from pneumoconiosis or mesothelioma (or both) and to whom compensation is payable under section 4 shall be entitled to the reasonable expenses of the use or supply of medical appliances where such use or supply is reasonably necessary in connection with any incapacity arising from the above disease or diseases suffered by him. (Amended 6 of 2008 s. 13)

(2) Expenses for medical appliances under this section—

- (a) shall be payable only in respect of medical appliances of a kind specified in Part II of the Second Schedule;
- (b) in respect of a disease mentioned in subsection (1) shall be payable only in respect of the period subsequent to the date of diagnosis of that disease. (Replaced 6 of 2008 s. 13)

(Added 54 of 1993 s. 10)

Section:	12B	Claims for medical expenses and expenses for medical appliances	L.N. 140 of 2008	01/09/2008
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(1) A person claiming medical expenses under section 12 or claiming expenses for medical appliances under section 12A shall serve on the Board a request in writing for the payment of such expenses together with a receipt for the payment for the treatment or appliances concerned. (Replaced 16 of 2006 s. 26)

(2) The Board shall determine within 21 days of the receipt of a request made under subsection (1) whether or not the expenses referred to in the request are payable under this Ordinance and shall—

- (a) in the case of a claim for medical expenses— (Amended 16 of 2006 s. 26)
 - (i) pay to the person, on the date that payment of compensation determined under section 15B is next due to that person, such amount as it determines to be payable; and
 - (ii) where the amount so determined is less than the amount specified in the request under subsection (1), inform the person in writing of its determination;
- (b) in the case of a claim for expenses for medical appliances—
 - (i) inform the person in writing of its determination and the amount of such expenses, if any, that are payable; and
 - (ii) within a further 7 days pay the amount from the Fund to the person.
- (3) For the purposes of determining a person’s claim under subsection (2), the Board—
 - (a) may require the person to inform the Board in writing, within a reasonable period of time as specified by the Board, whether any medical treatment was given in Hong Kong or outside Hong Kong;
 - (b) may require the registered medical practitioner or registered Chinese medicine practitioner whom the person claims to be the one that gave the person medical treatment to inform the Board in writing, within a reasonable period of time as specified by the Board, whether he did give the medical treatment to the person, whether the medical treatment was given in Hong Kong or outside Hong Kong, and whether the medical treatment was medical treatment that met the requirements in section 12(4);
 - (c) may seek advice, from such persons as in the opinion of the Board may be competent for the purposes, as to whether any medical treatment was medical treatment that met the requirements in section 12(4);
 - (d) may require the person to submit to the Board, within a reasonable period of time as specified by the Board, a medical report that meets the requirements in subsection (4);
 - (e) may seek from the Pneumoconiosis Medical Board or a registered medical practitioner an opinion as to

- (i) whether any medical treatment received by the person from a registered medical practitioner was reasonably necessary in connection with the pneumoconiosis or mesothelioma (or both) suffered by him; and
- (ii) whether the use by or supply to the person of any medical appliance was reasonably necessary in connection with incapacity arising as a result of pneumoconiosis or mesothelioma (or both); and (Amended 6 of 2008 s. 56)
- (f) may seek from a registered Chinese medicine practitioner an opinion as to whether any medical treatment received by the person from a registered Chinese medicine practitioner was reasonably necessary in connection with the pneumoconiosis or mesothelioma (or both) suffered by him. (Amended 6 of 2008 s. 56)

(Replaced 16 of 2006 s. 26)

- (4) The medical report referred to in subsection (3)(d) shall be prepared—
 - (a) in the case of a claim for medical expenses, by the registered medical practitioner or registered Chinese medicine practitioner who attends the person; or
 - (b) in the case of a claim for expenses for medical appliances, by the registered medical practitioner who attends the person,

and shall set out the diagnosis, particulars of the medical treatment or medical appliances concerned, and such other particulars as the Board may reasonably require. (Replaced 16 of 2006 s. 26)

(5) Where under subsection (3)(e) or (f) the Board seeks an opinion from the Pneumoconiosis Medical Board, a registered medical practitioner or a registered Chinese medicine practitioner in respect of a person's claim, the Board

- (a) may furnish the medical report submitted by the person under subsection (3)(d) to the Pneumoconiosis Medical Board, medical practitioner or Chinese medicine practitioner; and
- (b) may require the person to appear before the Pneumoconiosis Medical Board, medical practitioner or Chinese medicine practitioner for the purposes of answering queries reasonably related to the medical expenses or expenses for medical appliances claimed. (Added 16 of 2006 s. 26)

(6) The period that begins on the day a requirement is imposed under subsection (3)(a), (b) or (d) or (5)(b) and ends on the day the requirement is complied with shall not count towards the period of 21 days referred to in subsection (2). (Added 16 of 2006 s. 26)

(7) Where a person, without reasonable excuse, fails to comply with a requirement imposed under subsection (3)(d) or (5)(b), the Board may determine that the person is not eligible for the medical expenses or expenses for medical appliances claimed. (Added 16 of 2006 s. 26)

(8) A person who submits a medical report as required under subsection (3)(d)—

- (a) may claim from the Board the expenses paid by him as the fees charged by his registered medical practitioner or registered Chinese medicine practitioner for preparing the report; and
- (b) shall support the claim by producing the receipt for payment of those expenses.

The Board shall pay to the person those expenses to the extent that they are reasonably incurred. (Added 16 of 2006 s. 26)

(Added 54 of 1993 s. 10)

Section:	13	Common law damages	6 of 2008	18/04/2008
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(1) Nothing in this Ordinance shall diminish or extinguish any right to damages for death or disability resulting from pneumoconiosis or mesothelioma (or both).

(2) Subject to subsection (4), where any person has paid damages for death or disability resulting from pneumoconiosis or mesothelioma (or both) pursuant to a judgment of any court in Hong Kong, he shall be entitled to recover from the Fund the amount of such damages and interest thereon together with the amount of any costs ordered by the court to be paid by that person.

(3) Subject to subsection (4), where any person is liable to pay damages or interest in the circumstances described in subsection (2), at any time before the damages or interest are paid, the person entitled to the damages or the person liable to pay them may apply to the Board for the amount of such damages, interest and costs to be paid from the Fund to the person entitled to the damages in satisfaction of the judgment.

(3A) Subject to subsection (4), where any person has, with the written consent of the Board, paid an amount in settlement of a claim for damages for death or disability resulting from pneumoconiosis or mesothelioma (or both) or

for costs and interest in respect of such a claim (whether by money paid into court which has been accepted in accordance with Order 22 of the Rules of the High Court (Cap 4 sub. leg. A) or otherwise), he shall be entitled to recover from the Fund the amount of such payment. (Added 54 of 1993 s. 11. Amended 25 of 1998 s. 2)

(3B) Subject to subsection (4), where any person has undertaken to pay an amount in settlement of a claim for damages for death or disability resulting from pneumoconiosis or mesothelioma (or both) or for costs and interest in respect of such a claim (whether by payment into court in an action for such damages or otherwise), the Board may, on such conditions as it sees fit, pay such amount from the Fund. (Added 54 of 1993 s. 11)

(4) Notwithstanding subsections (2), (3), (3A) and (3B), where a claim is made against any person for damages for death or disability resulting from pneumoconiosis or mesothelioma (or both), the Fund shall not be liable to pay such damages or any costs- (Amended 6 of 2008 s. 15)

- (a) unless the person claimed against has, within 30 days of the receipt of the claim, given written notice thereof to the Board;
- (b) unless the person claimed against defends the claim diligently or, where the Board takes over and conducts the defence or settlement of the claim, assists the Board in so defending or settling the claim; (Replaced 54 of 1993 s. 11)
- (ba) where the Board has not taken over the defence of the claim, if the person claimed against fails repeatedly and without good cause to comply with any reasonable request of the Board for information concerning the conduct of the defence of the claim; (Added 54 of 1993 s. 11)
- (c) if the person claimed against has, without the written consent of the Board, made any admission of liability or offered or promised to pay any damages or costs.

(5) Where any claim is made against any person for damages for death or disability resulting from pneumoconiosis or mesothelioma (or both), then, subject to subsection (4), the Board may take over and conduct in the name of that person the defence or settlement of the claim and settle the claim on his behalf.

(6) Where any damages, interest or costs have been paid by or recovered from the Fund under subsection (2), (3), (3A), (3B) or (5), the Board shall be subrogated to all such rights and remedies that the person who has paid, or who was liable to pay, damages, may have against any other person in respect of the liability for such damages; and the Board shall be entitled to enforce such rights and remedies in the name of the Board.

(7) In assessing damages to be paid for death or disability resulting from pneumoconiosis or mesothelioma (or both), the court shall take into account any compensation that has been paid or is payable.

(8) Where after the commencement of the Pneumoconiosis (Compensation) (Amendment) Ordinance 1993 (54 of 1993), a person is awarded damages for death or disability resulting from pneumoconiosis in a judgment of a court in Hong Kong the whole of the person's entitlement to compensation or other payment under this Ordinance in respect of the pneumoconiosis, other than compensation in respect of the pneumoconiosis payable prior to the date of such judgment, shall by virtue of this section be extinguished. (Added 54 of 1993 s. 11)

(8A) Where after the commencement* of the Pneumoconiosis (Compensation) (Amendment) Ordinance 2008 (6 of 2008), a person is awarded damages for death or disability resulting from mesothelioma in a judgment of a court in Hong Kong the whole of the person's entitlement to compensation or other payment under this Ordinance in respect of the mesothelioma, other than compensation in respect of the mesothelioma payable prior to the date of such judgment, shall by virtue of this section be extinguished. (Added 6 of 2008 s. 15)

(9) In this section "death or disability resulting from pneumoconiosis or mesothelioma (or both)" (肺塵埃沉着病或間皮瘤(或兩者)引致的死亡或殘疾) means death, disability, pain and suffering or any other loss or damage of any kind resulting from pneumoconiosis or mesothelioma (or both); and "death or disability resulting from pneumoconiosis" (肺塵埃沉着病引致的死亡或殘疾) and "death or disability resulting from mesothelioma" (間皮瘤引致的死亡或殘疾) shall be construed accordingly. (Replaced 6 of 2008 s. 15)

(Amended 54 of 1993 s. 11; 6 of 2008 s. 15)

Note:

* **Commencement date: 18 April 2008.**

Section:	13A	Payments in addition to compensation	6 of 2008	18/04/2008
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Amounts payable under sections 5B, 12 and 12A shall be payable in addition to any compensation payable under this Ordinance.

(Added 54 of 1993 s. 12)

Section:	13B	Certain sections do not confer additional compensation to persons with both diseases	6 of 2008	18/04/2008
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For the avoidance of doubt, where-

- (a) a person is suffering from both pneumoconiosis and mesothelioma; and
- (b) the person or the members of his family is or are entitled to compensation or other payment under section 5, 5A, 5B, 6(1)(b) or 11,

the amount of compensation or other payment payable to the person or the members of his family under each of those sections shall not be higher than the amount the person or the members of his family would have been entitled to under that section had the person been only suffering from one of the above diseases.

(Added 6 of 2008 s. 16)

Part:	III	CLAIMS FOR PAYMENT OF COMPENSATION*	6 of 2008	18/04/2008
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Note:

*** (Amended 54 of 1993 s. 13)**

Section:	14	Claims for compensation	6 of 2008	18/04/2008
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(1) Where-

- (a) a person suffers from pneumoconiosis or mesothelioma (or both) and wishes to claim compensation; or
- (b) a person who suffers from pneumoconiosis or mesothelioma (or both) dies (whether as a result of the above disease or diseases or from a cause other than the above disease or diseases) and any member of his family wishes to claim compensation,

the person, or the member of his family, as the case may be, shall as soon as practicable notify the Commissioner of his claim in such form as the Commissioner may specify. (Amended 6 of 2008 s. 17)

(1A) Where-

- (a) a person has been determined by the Pneumoconiosis Medical Board to be suffering from either pneumoconiosis or mesothelioma; and
- (b) that person subsequently suffers from the other of the 2 diseases and he wishes to make a further claim for compensation for that other disease,

instead of notifying the Commissioner under this section in respect of the further claim, he shall request the Pneumoconiosis Medical Board to conduct a further medical examination, and section 23A applies to the request accordingly. (Added 6 of 2008 s. 17)

(2) On receipt of a notice under subsection (1), the Commissioner shall, subject to subsection (3)-

- (a) request the Pneumoconiosis Medical Board to examine the person for the purpose of determining the matters referred to in section 24(1)(a); or
- (b) in the case of the death of a person, request the Pneumoconiosis Medical Board to make a determination under section 24(2) in respect of the deceased person.

(3) Where the Commissioner is satisfied that the claimant is a person other than a person referred to in section 4(4), he may decline to act under subsection (2), but shall in such case inform the claimant in writing of his decision and the reasons for the decision.

(Replaced 54 of 1993 s. 14)

Section:	15	Commissioner to determine certain matters and issue certificate	6 of 2008	18/04/2008
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(1) Where the Commissioner receives a certificate issued by the Pneumoconiosis Medical Board under section 24 in respect of a claim under section 14(1), and-

- (a) the certificate states that the person claiming compensation suffers from pneumoconiosis or mesothelioma (or both) or (in the case of the death of a person) that the deceased person suffered from the above disease or diseases at the time of his death; and (Amended 6 of 2008 s. 18)
- (b) in the case of a claim under section 14(1)(a), the person claiming compensation has not previously

received compensation under this Ordinance, the Commissioner shall determine the matters set out in subsection (2) and shall issue a certificate stating his determination as to those matters.

(2) The matters to be determined by the Commissioner and stated in a certificate issued under subsection (1) are-

- (a) whether the claimant is a person referred to in section 4(4); and
- (b) in the case of a claim under section 14(1)(b), the names of the members of the family to whom compensation is payable pursuant to section 17, and the relationship of each such member of the family to the deceased person.

(3) A certificate issued under subsection (1) shall be sent to-

- (a) the person or any member of the family claiming compensation under section 14(1) and any person named in the certificate for the purposes of subsection (2)(b); and
- (b) the Board.

(4) An application by any person for a review pursuant to section 19D of a decision of the Commissioner as to any matter required to be determined by the Commissioner and stated in a certificate issued by the Commissioner under this section shall be brought-

- (a) in the case of a claim made under section 14(1)(a), within 14 days after the person's receipt of the Commissioner's certificate; or
- (b) in the case of a claim made under section 14(1)(b), within 3 months after the person's receipt of the Commissioner's certificate,

or within such longer period as the Commissioner may allow.

(5) Following his review of a decision referred to in subsection (4), the Commissioner shall issue to the persons referred to in subsection (3) and to the applicant for the review a certificate stating the result of the review.

(Replaced 54 of 1993 s. 15)

Section:	15A	Interim payments of compensation to family members	6 of 2008	18/04/2008
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- (1) Where in the case of a claim by a member of the family of a person who has died-
 - (a) a certificate has been issued by the Pneumoconiosis Medical Board stating that the person's death resulted from pneumoconiosis or mesothelioma (or both); and (Amended 6 of 2008 s. 19)
 - (b) a certificate has been issued by the Commissioner stating that the claimant is a person referred to in section 4(4)(b),

the Board shall, subject to subsection (3), make interim payments from the Fund of an amount equal to the average monthly earnings as defined in Part VII of the First Schedule.

(2) Interim payments under this section-

- (a) shall be payable to the members of the family named in the certificate pursuant to section 15(2)(b) and shall be payable to such members in the same proportion as if it were compensation to which section 17(1) applied; (Amended 4 of 1996 s. 5)
- (b) shall be payable-
 - (i) as to the first such payment, within 21 days after receipt by the Board of the Commissioner's certificate;
 - (ii) as to each subsequent payment, within 30 days of the preceding payment becoming payable;
- (c) shall cease to be payable-
 - (i) upon the Board receiving notice that an application has been made for review of the Commissioner's decision as to any matter referred to in section 15(2)(b); or
 - (ii) upon the expiration of the period allowed under section 15(4) for an application for review, whichever first occurs.

(3) Any amount paid from the Fund pursuant to subsection (1)-

- (a) shall be deducted from the compensation payable under this Ordinance to the members of the family;
- (b) shall not be recoverable from the person to whom it is paid, unless such payment has been obtained by fraud or other improper means.

(Added 54 of 1993 s. 15)

Section:	15B	Board to determine amount of compensation	6 of 2008	18/04/2008
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- (1) Where a certificate is issued by-
 - (a) the Commissioner under section 15(1) in respect of a claim under section 14(1); or
 - (b) the Pneumoconiosis Medical Board under section 24(4) in respect of a medical examination under section 23A,

the Board shall determine the amounts of compensation, if any, payable to the person or members of the family and shall issue to the claimant, and (in the case of the death of a person) to any member of the family named in the Commissioner's certificate, a certificate showing the calculation of those amounts.

- (2) A certificate referred to in subsection (1) shall be issued by the Board-
 - (a) within 14 days after the expiry of the time limited for the making of an application for review of the decision of the Commissioner or the Pneumoconiosis Medical Board as to any matter referred to in the certificate; or
 - (b) where any such application for review has been made, within 14 days after receipt by the Board of the certificate of the Commissioner issued under section 15(5) or of the Pneumoconiosis Medical Board issued under section 24(6).

(3) An application by any person for a review pursuant to section 19D of a decision of the Board as to any matter required under this section to be determined by the Board and stated in a certificate issued by the Board shall be made within 14 days after the person's receipt of the certificate, or within such longer period as the Commissioner may allow.

- (4) Following its review of any decision referred to in subsection (3), the Board shall issue a certificate-
 - (a) stating that the original determination of amounts is confirmed; or
 - (b) stating the revised determination of the amounts of compensation and showing the calculation of those amounts.

(Added 54 of 1993 s. 15)

Section:	15C	Payment of compensation	6 of 2008	18/04/2008
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- (1) The Board shall pay from the Fund compensation within 7 days after payment is due.
- (2) For the purposes of subsection (1), and subject to subsection (3), payment of compensation to any person is

due-

- (a) in the case of an initial payment of an amount shown in a certificate issued by the Board under section 15B(1), on the 14th day after-
 - (i) the issue of that certificate; or
 - (ii) where an application for review of a decision of the Board as referred to in section 15B(3) has been made, the issue of the Board's certificate under section 15B(4);
- (b) in the case of monthly payments of compensation pursuant to section 6 or for care and attention, subsequent to the initial payments of such compensation, on the last day of the month for which the payment is made.

- (3) In respect of a claim under section 14(1)(b) by the member of the family of a person who has died-
 - (a) where an application has been made under section 15(4) for a review of a decision of the Commissioner as to any matter referred to in section 15(2)(b), payment of compensation shall not be due until such review, or any appeal in respect of such matter, has been finally determined, or any time allowed for the bringing of such appeal has expired and no appeal has been commenced; or
 - (b) where no such application has been made, payment of compensation is due-
 - (i) on the 14th day after the issue of a certificate by the Board under section 15B(1); or
 - (ii) where an application for review of any decision of the Board under section 15B(1) has been made, on the 14th day after the issue of the Board's certificate under section 15B(4).

(4) Where the period in respect of which the compensation pursuant to section 6 or for care and attention is payable is less than 1 month, the amount of compensation payable shall be pro rata to the period. (Amended 4 of 1996 s. 6)

(Added 54 of 1993 s. 15)

Section:	16	Persons entitled to payment of compensation	6 of 2008	18/04/2008
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(1) The compensation shall be payable to or for the benefit of a person, or, in the case of the death of a person, to or for the benefit of the members of his family as provided by this Ordinance. (Amended 54 of 1993 s. 16)

(2)-(3) (Repealed 54 of 1993 s. 16)

Section:	17	Distribution and payment of compensation	6 of 2008	18/04/2008
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(1) Compensation payable to the members of the family of a deceased person shall be paid in the following manner-

- (a) if the deceased leaves a spouse or cohabitee but does not leave-
 - (i) a child; or
 - (ii) any member of family who had been residing with him for the period of 2 years immediately preceding his death,
 the compensation shall be paid to the spouse or cohabitee or both;
- (b) if the deceased leaves a spouse or cohabitee and a child or children, whether or not persons mentioned in paragraph (a)(ii) also survive, the compensation shall be paid-
 - (i) as to 75%, to the spouse or cohabitee or both;
 - (ii) as to 25%, to the child or children;
- (c) if the deceased leaves no child but does leave a spouse or cohabitee and one or more persons mentioned in paragraph (a)(ii), the compensation shall be paid-
 - (i) as to 75%, to the spouse or cohabitee or both;
 - (ii) as to 25%-
 - (A) where the persons mentioned in paragraph (a)(ii) include one parent or both parents (whether or not other members of the family also survive), to the parent or parents; or
 - (B) where the deceased leaves no parent, to the persons mentioned in paragraph (a)(ii);
- (d) if the deceased leaves a child or children but no spouse or cohabitee, the compensation shall be paid to the child or children;
- (e) if the deceased leaves no spouse or cohabitee and no child, the compensation shall be paid to one or other of the following persons mentioned in paragraph (a)(ii)-
 - (i) to the parents of the deceased; but if no parent survives; then
 - (ii) to the brothers and sisters of the deceased; but if no brother or sister survives; then
 - (iii) to the grandparents of the deceased; but if no grandparent survives; then
 - (iv) to the grandchildren of the deceased; but if no grandchild survives; then
 - (v) to the other members of the family of the deceased.

(2) Where compensation is payable to 2 or more persons under the same paragraph or subparagraph of subsection (1) (including any case where compensation is payable to both the spouse and the cohabitee of a deceased person), equal amounts of compensation shall be paid to each such person.

(3) No compensation shall be payable to a member of the family of a deceased person except as provided in this section.

(4) Any other compensation payable under this Ordinance-

- (a) shall be paid by the Board to the person entitled to the compensation; or
- (b) if the compensation is payable under section 6, 10 or 11, may be paid by the Board to the Commissioner, who shall invest such compensation for the benefit of the person entitled to the compensation, in such manner as the Commissioner thinks fit.

(5) The Board may pay from the Fund an amount direct to a person or a member of a person's family on account of a claim which is pending settlement or determination, and the Board may deduct the payment or part of it from the compensation payable under this Ordinance to the person or member of his family.

(Replaced 54 of 1993 s. 17)

Section:	18	Limitation of time for claiming compensation	6 of 2008	18/04/2008
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(1) Subject to subsection (2), a claim for compensation or other payment under Part II in respect of the death of a person shall be made within 24 months after the date of such death. (Replaced 54 of 1993 s. 18)

(2) Notwithstanding subsection (1), the Commissioner or the Board, as the case may be, may receive any claim

for compensation or other payment in any case after the expiry of the period specified in that subsection if he or it is satisfied that there was reasonable excuse for the failure to make a claim within such period. (Amended 54 of 1993 s. 18)

Section:	19	Board to pay compensation to Government in certain circumstances	6 of 2008	18/04/2008
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Where a person in the service of, or formerly in the service of, the Government is paid pension for incapacity, or in the case of the death of such person who was suffering from pneumoconiosis or mesothelioma (or both) where pension is paid to the members of his family, under any Ordinance providing for the grant of such pension, the Board shall pay to the Government from the Fund a sum of money equal to the amount of money that would have been payable as compensation had that person not been disqualified to claim compensation by reason of section 4(3)(c).

(Amended 54 of 1993 s. 19; 6 of 2008 s. 20)

Section:	19A	Verification by Board of persons receiving compensation	6 of 2008	18/04/2008
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(1) Where the Board has reason to believe that a person entitled to receive any monthly payment of compensation for incapacity or care and attention to be paid by the Board has died, it may withhold such payment until it has ascertained whether or not the person is still alive.

(2) The Board may, by notice sent by registered post to the last known address of any person who is entitled to receive compensation in the form of monthly payments, require such person to appear before the Board in person and to furnish proof of identity, and where a person fails to comply with such a requirement the Board may, unless the person has furnished to the Board a reasonable excuse for his failure to so comply, withhold further payment of compensation until the Board's requirement is complied with.

(Added 54 of 1993 s. 20)

Section:	19B	Excess payments of compensation	6 of 2008	18/04/2008
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Where the Board has paid to any person an amount of compensation in excess of the amount to which he is entitled under this Ordinance, the Board may deduct such amount of excess payment from any compensation payable-

- (a) to that person for incapacity; or
- (b) in consequence of the death of that person.

(Added 54 of 1993 s. 20)

Section:	19C	Claims for compensation etc. under this Ordinance	6 of 2008	18/04/2008
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Nothing in this Ordinance shall be construed as providing for a claim to be made in respect of compensation or other payment under this Ordinance except in the manner provided in this Part.

(Added 54 of 1993 s. 20)

Part:	IIIA	REVIEWS AND APPEALS	6 of 2008	18/04/2008
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(Part IIIA added 54 of 1993 s. 21)

Section:	19D	Reviews	6 of 2008	18/04/2008
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(1) Subject to this section, any person who is dissatisfied with a decision of the Commissioner, the Board or the Pneumoconiosis Medical Board made in the exercise of powers conferred under this Ordinance may apply to the Commissioner, the Board or the Pneumoconiosis Medical Board (as the case may be) for a review of that decision.

(2) An application under this section for a review of any decision shall-

- (a) be made by notice in writing;
- (b) state the grounds upon which the decision should be reviewed;
- (c) be made-

(i) where any period is specified in this Ordinance for the making of an application for a review in

any case, within the period so specified; or

- (ii) where no such period is specified, within 1 month of receipt by the applicant of notice of such decision, or within such further period as the Commissioner may allow.

(3) On receipt of an application under subsection (1) the Commissioner, the Board or the Pneumoconiosis Medical Board shall review the decision in question and, after giving the applicant and any other interested person the opportunity of making written submissions, may affirm, vary or rescind the decision and shall give notice of his or its decision to the applicant and such other person.

(4) In subsection (3), "interested person" (有利害關係的人) means-

- (a) any person to whom notice of the decision under review was given;
- (b) such other person as may be specified in regulations made under section 47.

(Added 54 of 1993 s. 21)

Section:	20	Appeals	6 of 2008	18/04/2008
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(1) Subject to this section, an appeal shall lie to the Court from any decision of the Commissioner, the Board or the Pneumoconiosis Medical Board. (Amended 54 of 1993 s. 22)

(2) Except with the leave of the Court (which shall not be granted unless in the opinion of the Court some substantial question of law is involved in the appeal) no appeal shall lie if the amount in dispute is less than \$5000. (Amended 54 of 1993 s. 22)

(3) No appeal shall lie from any decision-

- (a) unless an application for review under section 19D in respect of that decision has first been determined; or
- (b) in any case in which an order has been made by the Court giving effect to an agreement come to by the parties. (Replaced 54 of 1993 s. 22)

(4) Subject to subsections (5) and (6), no appeal shall lie from any decision after the expiration of 6 months from the determination of a review in relation to that decision. (Replaced 54 of 1993 s. 22)

(5) Subject to subsection (6), no appeal shall lie from any decision of the Commissioner as to a matter referred to in section 15(2)(b) after the expiration of 1 month from the determination of a review in relation to that decision. (Added 54 of 1993 s. 22)

(6) The Court may, if it thinks fit, extend the time within which to appeal under this section notwithstanding that that time has elapsed. (Added 54 of 1993 s. 22)

(7) On an appeal under this section, the Court may confirm, vary or reverse any decision of the Commissioner, the Board or the Pneumoconiosis Medical Board, and may make any further order, including any order as to costs, as it thinks fit. (Added 54 of 1993 s. 22)

(8) In this Part, "decision" (決定) includes a determination, and the power conferred on the Court under subsection (7) to confirm, vary or reverse any decision includes the power to determine the amount of compensation or other moneys payable under this Ordinance. (Added 54 of 1993 s. 22)

(9) The Board may, for the purpose of the protection of the Fund, and on such terms as it sees fit, enter into a compromise of any appeal or proposed appeal and may make any payment from the Fund for that purpose. (Added 54 of 1993 s. 22)

Section:	21	Power of Commissioner etc. to submit questions of law	6 of 2008	18/04/2008
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(1) The Commissioner, Board, Pneumoconiosis Medical Board or Court may, if he or it thinks fit, submit any question of law for the decision of the Court of Appeal. (Amended 54 of 1993 s. 23)

(2) Such submission shall be made in such form and in such manner as if it were a submission under section 22 of the Employees' Compensation Ordinance (Cap 282), and any rules of court made under that Ordinance relating to submissions under that section shall apply, with such changes as may be necessary, to a submission under this section.

Part:	IV	MEDICAL EXAMINATIONS	6 of 2008	18/04/2008
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Section:	22	Appointment of Pneumoconiosis Medical Board	L.N. 140 of 2008	01/09/2008
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The Director of Health shall appoint a board to be known as the Pneumoconiosis Medical Board which shall consist of- (Amended L.N. 76 of 1989)

- (a) 2 registered medical practitioners; and (Amended 16 of 2006 s. 27)
- (b) the Occupational Health Consultant, or a Senior Occupational Health Officer or an Occupational Health Officer. (Amended L.N. 248 of 1982; 54 of 1993 s. 24)

Section:	23	Medical examination	6 of 2008	18/04/2008
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(1) The Pneumoconiosis Medical Board shall, if requested under this Ordinance to conduct a medical examination of any person, give notice in writing to such person requiring him to submit himself to a medical examination on such date and at such time and place as is specified in the notice. (Amended 54 of 1993 s. 25)

(2) Where a person who receives a notice under subsection (1) is employed, he shall as soon as possible notify his employer (if any) of the date, time and place for the medical examination.

(3) For the purpose of attending to undergo a medical examination an employer shall grant to the person referred to in this section the necessary leave of absence from work and the employer shall pay the person the wages or salary in respect of such absence from work or the wages or salary he would have earned if he had worked during such period.

(4) Any employer who without reasonable excuse contravenes subsection (3) commits an offence and is liable to a fine of \$10000. (Amended 54 of 1993 s. 25)

Section:	23A	Further medical examination	L.N. 140 of 2008	01/09/2008
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(1) A person who has previously been determined by the Pneumoconiosis Medical Board to be suffering from pneumoconiosis or mesothelioma (or both) resulting in partial incapacity and who is in receipt of compensation under this Ordinance may, subject to this section, request the Pneumoconiosis Medical Board to conduct a further medical examination for the purpose of determining- (Amended 6 of 2008 s. 21)

- (a) whether there has been any increase in the degree of his incapacity; or
- (b) (if he has previously been determined by the Pneumoconiosis Medical Board to be suffering from either pneumoconiosis or mesothelioma only) whether he is also suffering from the other of the 2 diseases (referred to in this section as "the second disease") and whether there has been any increase in the degree of his incapacity.

(2) Subject to subsection (3)-

- (a) a request for a further medical examination for the purposes of subsection (1)(a) shall not be made until after the expiry of a period of 21 months from the date of the last such examination or an examination under section 23(1) or 49(5); and
- (b) the further medical examination shall be conducted by the Pneumoconiosis Medical Board within 6 months after the request is made.

(3) Where-

- (a) a request for a further medical examination for the purposes of subsection (1)(a) is supported by- (Amended 6 of 2008 s. 57)
 - (i) an opinion given by a registered medical practitioner attending the person to the effect that the person's health has deteriorated such that total incapacity or death is likely to occur before the period of 21 months referred to in subsection (2) has elapsed; or
 - (ii) an opinion given by a registered Chinese medicine practitioner attending the person to the effect that the person's health has deteriorated such that death is likely to occur before the period of 21 months referred to in subsection (2) has elapsed; and (Replaced 16 of 2006 s. 28)
- (b) the Pneumoconiosis Medical Board considers that the deterioration in the person's health is such that an early examination is warranted,

the Pneumoconiosis Medical Board shall conduct the further medical examination as soon as practicable.

(3A) A request for a further medical examination for the purposes of subsection (1)(b) shall not be made unless the request is supported by an opinion given by a registered medical practitioner attending the person to the effect that the person is suffering from the second disease, and on receipt of such a request and such an opinion, the further medical examination shall be conducted by the Pneumoconiosis Medical Board as soon as practicable. (Added 6 of

2008 s. 21)

(4) For the purposes of section 6(1)(a)(ii), a determination of the degree of incapacity by the Pneumoconiosis Medical Board under section 24(1)(b)(i) on the basis of a further medical examination conducted under this section shall be treated as having been made- (Amended 6 of 2008 s. 21)

- (a) in the case of a request for a further medical examination for the purposes of subsection (1)(a) made at any time during the period of 6 months beginning on the expiry of the period of 21 months referred to in subsection (2)(a), on a date 2 years after the date of the last such examination or the date of diagnosis, as the case may be; or
- (b) in any other case, on the date on which the request under this section is made.

(Added 54 of 1993 s. 26. Amended 6 of 2008 s. 21)

Section:	24	Determination of incapacity or cause of death	6 of 2008	18/04/2008
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(1) Where a person submits himself to a medical examination in accordance with section 23(1), the Pneumoconiosis Medical Board shall-

- (a) in the case of an examination for the purposes of section 14(2), determine whether the person is suffering from pneumoconiosis or mesothelioma (or both), and if so- (Amended 6 of 2008 s. 22)
 - (i) determine the date from which it can be said that the person has been so suffering;
 - (ii) determine in accordance with the Fourth Schedule the degree of incapacity resulting from the above disease or diseases; and
 - (iii) determine whether the person is unable to perform the essential actions of life without the care and attention of another person; and
- (b) in the case of an examination for the purposes of section 23A-
 - (i) determine whether the degree of incapacity as determined in accordance with the Fourth Schedule has increased since the date of the last examination under section 23(1) or 23A, and if so the extent of such increase;
 - (ii) determine whether the person has, since the date of his last examination under section 23(1) or 23A, become unable to perform the essential actions of life without the care and attention of another person; and
 - (iii) (if the examination is conducted for the purposes of section 23A(1)(b)) determine whether the person suffers from the second disease referred to in that section and the date from which it can be said that the person has been so suffering. (Added 6 of 2008 s. 22)

(Amended 6 of 2008 s. 22)

(1A) Where a person is suffering from both pneumoconiosis and mesothelioma, the Pneumoconiosis Medical Board shall, in determining the degree of incapacity of the person, take into account the effect of both diseases on the person as a whole, and in any event, the degree of incapacity determined in respect of the person shall not exceed 100%. (Added 6 of 2008 s. 22)

(2) In the case of death, the Pneumoconiosis Medical Board shall, at the request of the Commissioner, determine-

- (a) if no determination has previously been made under subsection (1)(a) that the person was suffering from pneumoconiosis or mesothelioma, whether the person was suffering from the above disease or diseases at the time of his death; and
- (b) in the case of any person previously determined under subsection (1)(a) to be suffering from pneumoconiosis or mesothelioma (or both), or determined under paragraph (a) to have been suffering from pneumoconiosis or mesothelioma (or both) at the time of his death, whether the person's death resulted from the above disease or diseases. (Amended 6 of 2008 s. 22)

(3) A determination by the Pneumoconiosis Medical Board, if not unanimous, shall be that of the majority of the members of the Pneumoconiosis Medical Board.

- (4) The Pneumoconiosis Medical Board shall issue a certificate of its determination made under this section to-
 - (a) the person, or in the case of the death of a person, to the member of his family, who has claimed under section 14(1);
 - (b) except in the case of a determination under subsection (1)(b), the Commissioner; and
 - (c) the Board.

(5) An application by any person for a review pursuant to section 19D of any decision of the Pneumoconiosis Medical Board as to any matter required to be determined by the Pneumoconiosis Medical Board under this section

shall be made within 14 days after the receipt of the certificate issued by the Pneumoconiosis Medical Board under subsection (4) or within such further period as the Pneumoconiosis Medical Board may allow.

(6) Following its review of any decision referred to in subsection (5), the Pneumoconiosis Medical Board shall issue to the persons referred to in subsection (4) a certificate stating-

- (a) that the original determination is confirmed; or
- (b) a revised determination.

(Replaced 54 of 1993 s. 27)

Section:	25	Establishment of Pneumoconiosis Compensation Fund Board	6 of 2008	18/04/2008
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PART V

PNEUMOCONIOSIS COMPENSATION FUND BOARD

(1) There is hereby established a board, to be known as the Pneumoconiosis Compensation Fund Board.

(2) The Board shall consist of not more than 10 members appointed by the Chief Executive of whom not more than 4 shall be public officers. (Amended 3 of 2004 s. 38)

(3) The Third Schedule shall have effect with respect to the Board.

Part:	V	PNEUMOCONIOSIS COMPENSATION FUND BOARD	6 of 2008	18/04/2008
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Section:	26	Functions and powers of the Board	6 of 2008	18/04/2008
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(1) The Board shall have the following functions-

- (a) to administer the Fund;
- (b) to make recommendations to the Government with respect to the rate of levy; (Amended 65 of 1987 s. 2)
- (ba) to conduct and finance educational, publicity, research and other programmes to prevent pneumoconiosis and mesothelioma and to conduct and finance programmes for the rehabilitation of persons suffering from the above diseases; (Added 65 of 1987 s. 2. Amended 54 of 1993 s. 28; 4 of 1996 s. 7; 6 of 2008 s. 23)
- (bb) to administer funds received from the Government and designated by the Government as ex gratia payments to persons diagnosed before 1 January 1981 to be suffering from pneumoconiosis; and (Added 54 of 1993 s. 28. Amended 6 of 2008 s. 23)
- (c) to perform such other duties as are imposed on it by this Ordinance.

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

- (a) hold, acquire or lease all kinds of property, whether movable or immovable;
- (b) subject to subsection (3), sell or otherwise dispose of all kinds of property whether movable or immovable;
- (c) enter into, assign or accept the assignment of, and vary or rescind any contract or obligation;
- (d) subject to subsection (4), meet expenditure on any item shown in the approved estimates of expenditure of the Board, borrow or otherwise raise money on such security as may be necessary, and for that purpose, charge all or any of the property of the Board;
- (e) make charges for the use of any facility or service provided by the Board.

(3) The Board shall not sell or otherwise dispose of land granted at nil premium by the Government except with the prior approval of the Chief Executive. (Amended 3 of 2004 s. 38)

(4) Except with the prior approval of the Financial Secretary, no sum shall be borrowed or otherwise raised under subsection (2)(d) which itself, or together with all other sums previously borrowed or otherwise raised under that subsection and still outstanding, exceeds, or in the aggregate exceeds, 10 per cent of the approved total estimated expenditure for the current financial year.

Part:	VI	FINANCIAL PROVISIONS	6 of 2008	18/04/2008
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Section:	27	Establishment of Pneumoconiosis Compensation Fund	6 of 2008	18/04/2008
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- (1) There is hereby established a Pneumoconiosis Compensation Fund which shall consist of-
- (a) any moneys recovered by way of levy, surcharge, penalty and further penalty; (Amended 1 of 1983 s. 3)
 - (aa) any moneys recovered by the Board from a third party in accordance with section 40A; (Added 54 of 1993 s. 29)
 - (b) any moneys provided by the Government for the purposes of the Fund; and
 - (c) any other moneys lawfully received by the Board for its purposes.
- (2) The Fund shall be vested in the Board.

Section:	28	Payments by the Board from the Fund	L.N. 140 of 2008	01/09/2008
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The Board shall pay from the Fund the following-

- (a) compensation under this Ordinance;
- (aa) fees charged by the Pneumoconiosis Medical Board, a registered medical practitioner or a registered Chinese medicine practitioner for, or in connection with, giving an opinion for the purposes of section 12B; (Added 16 of 2006 s. 29)
- (ab) expenses paid as the fees charged by a registered medical practitioner or registered Chinese medicine practitioner for preparing a medical report for the purposes of section 12B; (Added 16 of 2006 s. 29)
- (b) damages, interest and costs payable or settled under section 13;
- (ba) any sums, including costs, payable in respect of an appeal, or the compromise of an appeal or a proposed appeal, under section 20; (Added 54 of 1993 s. 30)
- (c) any sums payable under section 19;
- (ca) funeral expenses payable under section 5B; (Added 54 of 1993 s. 30)
- (d) medical expenses and expenses for medical appliances; (Replaced 54 of 1993 s. 30. Amended 16 of 2006 s. 29)
- (e) medical examination fees for medical examinations under section 23;
- (ea) expenses incurred by the Board for the purposes of section 26(1)(ba); (Added 65 of 1987 s. 3)
- (f) expenses incurred by the Board for the purposes of this Ordinance, including fees charged by the Financial Secretary for services provided to the Board by the Government; (Amended 54 of 1993 s. 30)
- (g) any other sums payable by the Board by virtue of or under this Ordinance.

Section:	29	Estimates and financial year	6 of 2008	18/04/2008
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(1) In each financial year, before a date to be appointed by the Chief Executive, the Board shall submit to the Chief Executive a programme of its proposed activities and estimates of its income and expenditure for the next financial year.

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

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

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

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

(Amended 3 of 2004 s. 38)

Section:	30	Bank account	6 of 2008	18/04/2008
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(1) The Board shall open and maintain an account with a bank approved by the Director of Accounting Services.

(2) The Board shall pay all moneys received by it into the account referred to in subsection (1).

Section:	31	Investment of funds	6 of 2008	18/04/2008
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All funds of the Board that are not immediately required may be-

- (a) deposited on fixed term or call deposit or in a savings account in any bank nominated by the Financial Secretary either generally or in any particular case, for that purpose; or
- (b) subject to the prior approval of the Financial Secretary, invested in such investments as the Board thinks fit.

Section:	32	Accounts	6 of 2008	18/04/2008
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(1) The Board shall maintain proper accounts and records of all income and expenditure.

(2) After the end of each financial year, the Board shall cause to be prepared statements of income and expenditure during the previous financial year and of the assets and liabilities of the Board on the last day thereof.

Section:	32A	Power to write off	6 of 2008	18/04/2008
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(1) The Board may write off the whole or any part of any debt due to the Board which it reasonably considers irrecoverable.

(2) Any write-off under subsection (1) shall take effect for accounting purposes alone and shall not extinguish any right of the Board to recover the debt which has been written off.

(Added 65 of 1987 s. 5)

Section:	33	Auditors	6 of 2008	18/04/2008
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(1) The Board shall appoint auditors, who shall be entitled at any time to have access to all books of account vouchers and other financial records of the Board and to require such information and explanations thereof as they may think fit.

(2) The auditors shall audit the statements prepared under section 32(2) and shall report thereon to the Board.

Section:	34	Statements and reports to be laid on table of Legislative Council	6 of 2008	18/04/2008
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(1) The Board shall, within 6 months after the end of each financial year or such further time as the Chief Executive may in any particular year allow, submit to the Chief Executive a report on the activities of the Board and copies of the statements prepared under section 32(2) and the report made under section 33(2).

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

(Amended 3 of 2004 s. 38)

Part:	VII	LEVY	6 of 2008	18/04/2008
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Section:	35	Imposition of levy	6 of 2008	18/04/2008
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(1) A levy at the rate specified in Division 1 of Part 2 of Schedule 5 is to be imposed in respect of construction operations carried out in Hong Kong.

(2) The levy referred to in subsection (1) is to be assessed and paid according to this Ordinance.

(3) Construction operations the total value of which does not exceed the amount specified in Part 1 of Schedule

5 are not liable to the levy.

(4) Subject to subsection (5), the levy is payable by a contractor of any construction operations which are subject to the payment of a levy.

(5) A contractor is liable to make a payment pursuant to subsection (4) only if the Board gives him a notice of assessment.

(6) A notice of assessment shall be in writing and shall specify the amount of the levy payable by the contractor.

(7) A levy at the rate specified in Division 2 of Part 2 of Schedule 5 is to be imposed in respect of quarry products.

(8) The levy referred to in subsection (7) is to be assessed and paid according to this Ordinance.

(9) The levy is payable by the quarry operator of the quarry from or in which the quarry products are extracted or produced.

(Replaced 12 of 2006 s. 84)

Section:	36	Power to amend Schedule 5	6 of 2008	18/04/2008
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(1) The Legislative Council may by resolution amend Schedule 5.

(2) Any amendment to Schedule 5 shall come into effect on the expiry of the specified period.

(3) Despite the coming into effect of any amendment to Part 1 or Division 1 of Part 2 of Schedule 5, Schedule 5 as it was before such amendment continues to apply to the construction operations to which this subsection applies.

(4) Subsection (3) applies to the following construction operations—

(a) construction operations the tender for which had been submitted to the construction employer before the expiry of the specified period;

(b) other construction operations carried out under a construction contract, if the contract had been entered into before the expiry of the specified period or the construction operations had commenced before the expiry of that period; and

(c) construction operations other than those referred to in paragraphs (a) and (b), that had commenced before the expiry of the specified period.

(5) In this section, "specified period" (指明期間), in relation to a particular amendment made under subsection (1), means the period of 30 days after the publication in the Gazette of that amendment.

(Repealed 3 of 2004 s. 23. Added 12 of 2006 s. 84)

Section:	37	Payment of levy and surcharge	6 of 2008	18/04/2008
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(1) The amount of levy, or of any surcharge that may be imposed in such circumstances as may be prescribed, shall be paid by the contractor or quarry operator, as the case may be, to the Board within such time as may be prescribed.

(1A) If the amount of the levy or surcharge is not fully paid within such time as may be prescribed under subsection (1) the contractor or quarry operator, as the case may be, shall be liable to pay, in addition, a penalty of 5 per cent of the amount unpaid. (Added 1 of 1983 s. 4. Amended 12 of 2006 s. 84)

(1B) If the amount of the levy or surcharge including any penalty payable under subsection (1A) is not fully paid within 3 months after the expiry of such period as may be prescribed under subsection (1) the contractor or quarry operator, as the case may be, shall be liable to pay, in addition, a further penalty of \$1000 or 5% of the amount unpaid, whichever is the greater. (Added 1 of 1983 s. 4. Amended 54 of 1993 s. 32; 12 of 2006 s. 84)

(1C) The Board may waive or refund the whole or any part of a levy, surcharge, penalty or further penalty if it considers it fair and reasonable to do so in the special circumstances of a particular case. (Replaced 12 of 2006 s. 84)

(1D) If an amount waived under subsection (1C) has already been paid to the Board, the Board shall refund it. (Added 12 of 2006 s. 84)

(1E) If, in respect of any construction operations, the Board receives more than the proper amount of the levy due to more than one contractor paying the whole or part of amount due, the Board shall refund the excess to the contractor entitled to the refund. (Added 12 of 2006 s. 84)

(2) Payment shall be made in accordance with subsections (1), (1A) and (1B) notwithstanding that the contractor or quarry operator may wish to make an objection under the Pneumoconiosis and Mesothelioma (Compensation) (Assessment of Levy) Regulations (Cap 360 sub. leg. A). (Amended 1 of 1983 s. 4; 12 of 2006 s. 84;

Section:	38	Recovery of levy	6 of 2008	18/04/2008
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(1) Any amount of levy or surcharge, including the amount of any penalty or further penalty, due and payable under this Ordinance shall be recoverable as a debt due to the Board. (Amended 1 of 1983 s. 5)

(2) An action under subsection (1) may be brought in the Court notwithstanding that the amount due exceeds the civil jurisdiction of the Court as may from time to time be determined under the District Court Ordinance (Cap 336).

(3) Where an amount due under subsection (1) is within the jurisdiction of the Small Claims Tribunal established under the Small Claims Tribunal Ordinance (Cap 338), an action under that subsection may be brought in that Tribunal. (Added 54 of 1993 s. 33)

Section:	39	Evasion of payment of levy	6 of 2008	18/04/2008
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Any person who is knowingly concerned in, or in the taking of steps with a view to, the fraudulent evasion of the payment of a levy, whether due from him or from any other person, commits an offence and is liable to a fine of \$10000 or 20 times the amount of levy that was or was intended to be evaded by his conduct, whichever is the greater.
(Amended 54 of 1993 s. 34)

Section:	39A	Application to certain construction operations	6 of 2008	18/04/2008
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(1) This Ordinance does not apply to construction operations that are carried out both—

- (a) for a person who occupies a domestic unit or part of a domestic unit; and
- (b) for the sole or principal purpose of decorating, altering, repairing, maintaining or renovating the unit or any part of the unit.

(2) In this section, "domestic unit" (住用單位) means any premises used or intended to be used solely or principally for residential purposes and constituting a separate household unit.

(3) For the purposes of this section, a person is regarded as a person who occupies a domestic unit if he intends to occupy the unit.

(Added 12 of 2006 s. 84)

Section:	39B	Power of Chief Executive in Council to exclude certain construction operations from application of this Ordinance	6 of 2008	18/04/2008
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(1) The Chief Executive in Council may, by order published in the Gazette, exclude any construction operations from the application of this Ordinance.

(2) An order under subsection (1) may exclude particular construction operations or a type or description of construction operations.

(3) An order under subsection (1) may specify the circumstances in which or the purposes for which the exclusion applies.

(Added 12 of 2006 s. 84)

Part:	VIIA	VALUE OF CONSTRUCTION OPERATIONS AND QUARRY PRODUCTS, ETC.	6 of 2008	18/04/2008
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(Part VIIA added 12 of 2006 s. 84)

Section:	39C	Value of construction operations	6 of 2008	18/04/2008
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(1) In relation to any construction operations, the value of the construction operations is—

- (a) if the construction operations are the subject of a construction contract—
 - (i) the consideration attributable to the construction operations, that is stated in the contract; or
 - (ii) the consideration attributable to the construction operations, that is ascertainable by reference to

the contract; or

- (b) in any other case, the reasonable consideration to be expected in the open market for the carrying out of the construction operations.

(2) Notwithstanding subsection (1)(a), if the consideration attributable to any construction operations as determined in accordance with that subsection is below the reasonable consideration to be expected in the open market for the carrying out of the construction operations, the consideration of the construction operations is to be the reasonable consideration referred to in subsection (1)(b).

(3) For the purposes of this section, the Board may, in a particular case, have regard to any or all of the following matters when ascertaining the reasonable consideration to be expected in the open market for the carrying out of the construction operations concerned—

- (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 in the open market for the carrying out of the construction operations;
- (f) any other factors that the Board considers appropriate.

(Part VIIA added 12 of 2006 s. 84)

Section:	39D	Total value of construction operations	6 of 2008	18/04/2008
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(1) For the purposes of this Ordinance, "total value" (總價值), in relation to construction operations carried out under a construction contract, means—

- (a) if the contract is a term contract under which works orders are issued, the aggregate of the values of all construction operations carried out as required by those works orders;
- (b) if the contract is not a term contract described in paragraph (a), but a contract under which the construction operations are or form part of any construction operations that are carried out in stages, the aggregate of the values of all stages of the construction operations so carried out; and
- (c) in any other case, the value of the construction operations.

(2) For the purposes of this Ordinance, "total value" (總價值), in relation to construction operations that are not carried out under a construction contract, means—

- (a) if the construction operations are or form part of any construction operations that are carried out in stages, the aggregate of the values of all stages of the construction operations so carried out; and
- (b) in any other case, the value of the construction operations.

(Part VIIA added 12 of 2006 s. 84)

Section:	39E	Value of quarry products	6 of 2008	18/04/2008
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(1) For the purposes of this Ordinance, "value" (價值), in relation to any quarry products, means the value of the quarry products.

(2) The Board may have regard to any or all of the following matters when ascertaining the value of any quarry products—

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

(Part VIIA added 12 of 2006 s. 84)

Part:	VIII	MISCELLANEOUS	6 of 2008	18/04/2008
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Section:	40	Variation of compensation limits and daily rates for medical expenses	6 of 2008	18/04/2008
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The Legislative Council may by resolution amend-

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

(Amended 54 of 1993 s. 35)

Section:	40A	Subrogation	6 of 2008	18/04/2008
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(1) Where any payment is made by the Board under section 5A to a member of the family of a deceased person, all the rights and remedies of the member of the family with respect to compensation or damages against a third party, if any, whose act or default not connected with pneumoconiosis or mesothelioma has caused or contributed to the death of the deceased person shall, to the extent of the amount of the payment made by the Board, be transferred to and vested in the Board for the benefit of the Fund, and the Board may exercise such rights and remedies either by joining in an action begun by the member of the family against the third party or by instituting separate proceedings.
(Amended 6 of 2008 s. 25)

(2) Where the amount of any such compensation or damages to which a member of the deceased's family is entitled exceeds the amount of any such payment under section 5A made by the Board, nothing in this section shall affect the rights or remedies of the member of the family in respect of the amount of the excess.

(Added 54 of 1993 s. 36)

Section:	40B	Administration of ex gratia payments	6 of 2008	18/04/2008
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(1) Where the Board, in pursuance of the function referred to in section 26(1)(bb), receives from the Government moneys designated as ex gratia payments to persons suffering from pneumoconiosis, the Board shall-

- (a) hold the moneys in a separate account;
- (b) distribute the moneys in the manner stipulated by the Government from time to time as to-
 - (i) the amount of any payment;
 - (ii) the person to whom any payment should be made;
 - (iii) the conditions subject to which any payment may be made;
- (c) subject to the prior approval of the Financial Secretary, invest the moneys as the Board thinks fit.

(2) The Board may deduct from moneys received from the Government under this section its expenses incurred in performing its function under section 26(1)(bb).

(3) Part VI shall not apply to moneys referred to in this section.

(Added 54 of 1993 s. 36)

Section:	40C	Certificate to be evidence	6 of 2008	18/04/2008
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A certificate purporting to be issued under section 15, 15B or 24 and to be signed by or for the Commissioner, the Board or the Pneumoconiosis Medical Board as the case may be shall be admissible in evidence without further proof on its production in any court and-

- (a) until the contrary is proved, it shall be presumed that the certificate is so issued and signed;
- (b) if admitted in evidence, shall be evidence of the matters stated in the certificate.

(Added 54 of 1993 s. 36)

Section:	40D	Survival of entitlement to compensation and payment under the Ordinance	L.N. 140 of 2008	01/09/2008
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(1) Where a person who is entitled to compensation or other payment dies before the issue of a certificate by the Board under section 15B or a determination by the Board under section 12B, the entitlement of that person to compensation or other payment under this Ordinance shall not survive his death, and the legal personal representative of the deceased person shall have no claim to such compensation or other payment.

(2) Notwithstanding any other law, where a person claiming compensation under section 14(1)(a) dies before

the payment of any compensation to which that person is entitled by virtue of a certificate issued by the Board under section 15B, or before the payment of any medical expenses or expenses for medical appliances to which that person is entitled by virtue of a determination made by the Board under section 12B, the legal personal representative of the deceased person shall have no right to payment of such compensation or expenses, and any such amounts shall be payable- (Amended 16 of 2006 s. 30)

- (a) except where paragraph (b) applies, to the members of the deceased person's family as if they were compensation to which section 17(1) applied;
- (b) in the case of expenses which were incurred by another person for the benefit of the person claiming compensation or were paid for by another person on his behalf, to that other person. (Replaced 4 of 1996 s. 8)

(3) Notwithstanding any law, where a person claiming compensation under section 14(1)(b) dies before the payment of any compensation to which that person is entitled by virtue of a certificate issued by the Board under section 15B, the legal personal representative of the deceased person shall have no right to payment of the compensation, and any such amount shall be dealt with by the Board as if that person had died before the issue of the certificate.

(4) Part III shall apply to any claim by a member of family for an amount referred to in subsection (2) as if such claim were a claim for compensation under section 14(1)(b).

(Added 54 of 1993 s. 36)

Section:	40E	Payment of medical expenses etc. to other persons	6 of 2008	18/04/2008
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(1) Where a person who is entitled to any medical expenses under section 12 or expenses for the use or supply of medical appliances under section 12A dies before a determination has been made by the Board under section 12B in respect of those expenses, any person who had incurred such expenses for the benefit of the deceased person or had paid for such expenses on his behalf, or any person having a claim against the estate of the deceased person in respect of such expenses, shall be entitled to payment of those expenses by the Board.

(2) A person claiming payment of expenses from the Board under this section shall serve on the Board a request in writing for such payment together with such documentary evidence of his claim as the Board may require.

(3) The Board shall-

- (a) within 21 days of receipt of a request under subsection (2), determine whether or not the expenses specified in the request are payable under this section and inform the person in writing of the amount, if any, it determines to be payable;
- (b) within a further 7 days, pay from the Fund to the person any amount so determined to be payable.

(Added 4 of 1996 s. 9)

Section:	41	Compensation not to be assigned, charged or attached	6 of 2008	18/04/2008
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Compensation shall not be capable of being assigned, charged or attached, and shall not pass to any other person by operation of law nor shall any claim be set off against such compensation.

Section:	42	Supply of particulars	6 of 2008	18/04/2008
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(1) For the purposes of determining any matter to be determined under this Ordinance, the Board or the Commissioner may require-

- (a) any person claiming compensation or other payment, or the employer or previous employer of such person;
- (b) in the case of the death of a person, any previous employer of the deceased person,

to provide such particulars as the Board or the Commissioner may think necessary for the purposes of this Ordinance, and particulars under this section shall be provided orally, or in writing, or by the production of documents as the Board or the Commissioner may direct. (Replaced 54 of 1993 s. 37)

(2) (Repealed 54 of 1993 s. 37)

(3) Any person or employer who, without reasonable excuse, fails or refuses to provide any particulars required to be provided under this section, or who wilfully and with intent to deceive provides any particulars which are false in any material particular, commits an offence and shall be liable to a fine of \$5000. (Amended 54 of 1993 s. 37)

Section:	43	Evidence by certificate etc.	6 of 2008	18/04/2008
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A certificate purporting to be signed by an officer of the Board authorized for the purposes of section 44-

- (a) that any notice required by or under this Ordinance has or has not been given or has or has not been given at any date; or
- (b) that any amount of levy, surcharge, penalty or further penalty due under this Ordinance has not been paid, (Amended 1 of 1983 s. 6)

shall be sufficient evidence of that fact until the contrary is proved.

Section:	44	Authentication and production in evidence of documents	6 of 2008	18/04/2008
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(1) Any notice or other document given or issued by the Board may be signed by an officer of the Board, authorized by the Board for the purposes of this subsection.

(2) Any document purporting to be a notice or other document given or issued by the Board and purporting to be signed by an officer of the Board authorized under subsection (1) shall be received in evidence and shall until the contrary is proved be deemed to be such a notice or other document.

Section:	45	False statements	6 of 2008	18/04/2008
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Any person who-

- (a) with intent to deceive, produces, supplies or sends for the purposes of this Ordinance or otherwise makes use for those purposes of any document or record which is false in a material particular; or
- (b) in providing any information for the purposes of this Ordinance, makes any statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular,

commits an offence and is liable to a fine of \$10000 or 20 times the amount of any levy that was or was intended to be evaded by his conduct, whichever is the greater.

(Amended 54 of 1993 s. 38)

Section:	46	Jurisdiction of Court	6 of 2008	18/04/2008
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(1) Where the Board does not pay compensation or any other payment which it is required by this Ordinance to pay, such compensation or other payment shall be recoverable as a debt due from the Board.

(2) Subject to subsection (3), an action under subsection (1) may be brought in the Court notwithstanding that the amount due exceeds the civil jurisdiction of the Court as may from time to time be determined under the District Court Ordinance (Cap 336).

(3) Notwithstanding subsection (2), where any amount to be recovered from the Board is within the jurisdiction of the Small Claims Tribunal established under the Small Claims Tribunal Ordinance (Cap 338), an action for the recovery of the amount shall be brought in that Tribunal.

(4) The Chief Justice may make rules regulating proceedings before and appeals to the Court under this Ordinance and for the fees payable in respect of such proceedings and appeals.

Section:	47	Regulations	6 of 2008	18/04/2008
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The Chief Executive in Council may by regulation provide for- (Amended 3 of 2004 s. 38)

- (a) (Repealed 54 of 1993 s. 39)
- (b) the assessment of levy, including- (Amended 12 of 2006 s. 84)
 - (i) (Repealed 3 of 2004 s. 25)
 - (ii) the notification of construction operations and quarry operations; (Amended 3 of 2004 s. 25)
 - (iii) the notification of payments made in respect of construction operations and quarry products; (Amended 3 of 2004 s. 25)
 - (iv) the imposition and amount of surcharges where there has been a failure to make a notification;
 - (v) objections to assessments of levies and the imposition of surcharges and appeals;
 - (vi) the information that is to be supplied by construction employers, contractors, authorized persons

- or quarry operators; (Amended 3 of 2004 s. 25; 12 of 2006 s. 84)
- (vii) prohibiting, subject to such exceptions as may be prescribed, the disclosure of information; (Amended 1 of 1983 s. 7)
- (viii) the appointment of authorized persons for the purposes of this Ordinance;
- (c) the records that are to be kept by construction employers, contractors and authorized persons or by quarry operators; (Amended 3 of 2004 s. 25; 12 of 2006 s. 84)
- (d) prescribing procedure and fees;
- (e) any matter which is to be or may be prescribed;
- (f) generally the better carrying out of the provisions and purposes of this Ordinance.

Note:

For transitional provisions relating to the amendments made by 3 of 2004, please see section 40 of the Construction Industry Levy (Miscellaneous Amendments) Ordinance 2004 (3 of 2004), which section is reproduced as follows-

“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.” .**

*** Commencement date: 1 June 2004.**

Section:	47A	Financial Secretary may charge fees	6 of 2008	18/04/2008
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(1) The Financial Secretary may charge fees for any service provided to the Board by the Government, but except as provided in subsection (2) shall not charge a fee for any service provided in the discharge of a duty under this Ordinance. (Amended 4 of 1996 s. 10)

(2) Fees may be charged under subsection (1) for services provided to the Board by the Government in the discharge of a duty under Part IV. (Added 4 of 1996 s. 10)

(Added 54 of 1993 s. 40)

Section:	48	Application to deaths prior to commencement of the Pneumoconiosis (Compensation) (Amendment) Ordinance 1986	6 of 2008	18/04/2008
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Subject to section 4(2), amendments made by the Pneumoconiosis (Compensation) (Amendment) Ordinance 1986 ("the amending Ordinance") (15 of 1986) shall apply in the case of the death of a person suffering from pneumoconiosis who died from a cause other than pneumoconiosis before the commencement of the amending Ordinance as they apply in the case of such a death which occurs after such commencement.

(15 of 1986 s. 5 incorporated)

Section:	49	Application to claims prior to the 1993 amending Ordinance	6 of 2008	18/04/2008
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(1) In this section-
"amending Ordinance" (修訂條例) means the Pneumoconiosis (Compensation) (Amendment) Ordinance 1993 (54 of 1993);

"Ordinance as amended" (經修訂的本條例) means this Ordinance as amended by the amending Ordinance or by any Ordinance coming into operation after the commencement of the amending Ordinance; (Amended 4 of 1996 s. 11)

"Ordinance prior to its amendment" (修訂前的本條例) means this Ordinance prior to its amendment by the amending Ordinance.

(2) Subject to this section, any person who was entitled immediately prior to the commencement of the amending Ordinance to compensation under section 6 of this Ordinance prior to its amendment pursuant to a certificate issued by the Commissioner under section 15 may at any time apply to the Board, in a form approved by the Board, to receive compensation in accordance with section 6 of this Ordinance as amended and other payments for the period beginning from the date of such application, and in the case of compensation under section 6(1)(a) such compensation shall be payable in respect of the difference between- (Amended 4 of 1996 s. 11)

- (a) the degree of the person's incapacity as determined from time to time for the purposes of this Ordinance as amended; and
- (b) the degree of his permanent incapacity as assessed for the purposes of this Ordinance prior to its amendment and in respect of which compensation has been paid or is payable at the time of such application pursuant to a certificate issued by the Commissioner under section 15 of this Ordinance prior to its amendment.

(3) Where an application is made under this section-

- (a) compensation in respect of such degree of permanent incapacity as is referred to in subsection (2)(b) and other payments shall continue to be payable to the person in accordance with this Ordinance prior to its amendment;
- (b) except as provided in paragraph (a), the whole of the person's entitlement to compensation or other payment under this Ordinance prior to its amendment shall, by virtue of such application, be extinguished.

(4) Subsection (2) shall not apply-

- (a) in any case where the person is-
 - (i) applicant in appeal proceedings brought under this Ordinance before the commencement of the amending Ordinance; or
 - (ii) appellant in proceedings further to an appeal brought under this Ordinance before the commencement of the amending Ordinance, where such proceedings are still before the Court;
- (b) to any person who, since the commencement of the amending Ordinance, has commenced an appeal under section 20 from a decision of the Board made under this Ordinance prior to its amendment;
- (c) to any person who, since a date 6 months after the commencement of the amending Ordinance, in an appeal brought by him under this Ordinance prior to its amendment, has taken any proceeding in furtherance of such appeal, other than a proceeding taken for the purpose of or in connection with the withdrawal of the person's appeal;
- (d) to any person who has at any time received damages for death or disability resulting from pneumoconiosis within the meaning of section 13; or
- (e) to any person who, since a date 6 months after the commencement of the amending Ordinance, has taken any step in furtherance of proceedings for damages for death or disability resulting from pneumoconiosis within the meaning of section 13 other than a proceeding taken for the purpose of or in connection with the withdrawal of the proceedings.

(5) Where a person has applied under subsection (2), the Pneumoconiosis Medical Board shall determine the degree of the person's incapacity in accordance with the Fourth Schedule of this Ordinance as amended, and-

- (a) in making such determination the Pneumoconiosis Medical Board may examine the person or may have regard to any examination conducted by it within the preceding 6 months; and
- (b) any such examination shall, for the purpose of section 24 (including the issue of a certificate under

section 24(4)), be treated as an examination conducted for the purposes of section 23A.

(6) Except as regards-

(a) section 11 of the amending Ordinance as it amends section 13 of this Ordinance; and

(b) section 22 of the amending Ordinance as it adds section 20(7) to (9) of this Ordinance,

and except as otherwise provided in this section, the amendments made by the amending Ordinance do not apply to any person to whom a certificate had been issued by the Commissioner pursuant to section 12 or 15 prior to the commencement of the amending Ordinance, and the provisions of this Ordinance in force immediately before the commencement of the amending Ordinance shall continue to apply to such person.

(7) For the purposes of this Ordinance as amended, the date of diagnosis of a person who has made an application under subsection (2) shall be deemed to be the date on which such application was made.

(8) An application under subsection (2) made within 6 months after the date of commencement of the amending Ordinance shall, for the purposes of that subsection and subsection (3), be deemed to have been made on the date of commencement of the amending Ordinance.

(Added 54 of 1993 s. 41)

Section:	50	Transitional provisions in relation to certain construction operations	6 of 2008	18/04/2008
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(1) The amendments to this Ordinance, including its subsidiary legislation, as effected by sections 6 to 25 (except section 13) of Schedule 6 to the Construction Industry Council Ordinance (Cap 587) ("the amendments") do not apply to the following construction operations—

(a) construction operations the tender for which had been submitted to the construction employer before the commencement day;

(b) other construction operations carried out under a construction contract, if the contract had been entered into before the commencement day or the construction operations had commenced before the commencement day; and

(c) construction operations other than those referred to in paragraphs (a) and (b), that had commenced before the commencement day.

(2) The pre-amended Ordinance continues to apply to the construction operations referred to in subsection (1).

(3) In this section—

*"commencement day" (生效日期) means the day on which sections 6 to 25 of Schedule 6 to the Construction Industry Council Ordinance (Cap 587) come into operation;

"pre-amended Ordinance" (修訂前的本條例) means this Ordinance, including its subsidiary legislation, as in force immediately before the commencement of the amendments.

(Added 12 of 2006 s. 84)

Note:

* **Commencement day: 1 January 2008.**

Section:	51	Transitionals for Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Ordinance 2006	L.N. 140 of 2008	01/09/2008
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(1) A reference in any provision of this Ordinance to medical treatment given by or under the supervision of a registered Chinese medicine practitioner or to an opinion given by him does not include any treatment or opinion so given before the commencement of the provision of the 2006 Ordinance that amends that provision of this Ordinance.

(2) No provision in section 12AA shall affect the entitlement to any cost of medicines if the medicines were prescribed before the commencement of that provision of section 12AA.

(2A) Despite subsection (2), as soon as any provision of section 12AA(4), (5) and (9)(d) and (e) ("relevant provision") has commenced, the relevant provision shall apply for the purpose of determining the entitlement to cost of medicines that is incurred on or after the commencement of the relevant provision, regardless of when the medicines are prescribed. (Added 10 of 2008 s. 63)

(2B) In subsections (2) and (2A), the commencement of a provision of section 12AA means the day appointed for the coming into operation of section 25 of the 2006 Ordinance in so far as that section 25 relates to the adding of

that provision of section 12AA. (Added 10 of 2008 s. 63)

(3) The amendments made by any provision of the 2006 Ordinance to sections 12B and 28 do not apply to medical expenses and expenses for medical appliances incurred before the commencement of that provision of that Ordinance. Those sections as were in force immediately before that commencement shall continue to apply to those expenses as if those sections had not been amended by that provision of that Ordinance.

(4) In this section, "2006 Ordinance" (《2006年條例》) means Part 4 of the Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Ordinance 2006 (16 of 2006).

(Added 16 of 2006 s. 31. Amended 10 of 2008 s. 63)

Schedule:	1	AMOUNTS OF COMPENSATION	L.N. 127 of 2012	21/07/2012
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[sections 5, 5A, 5B, 6, 10, 11, 15A & 40]

PART I

COMPENSATION FOR DEATH RESULTING FROM PNEUMOCONIOSIS OR MESOTHELIOMA (OR BOTH)

(Amended 6 of 2008 s. 27)

1. An amount calculated according to the formula-
(Average yearly earnings x Age factor x 55%) x 110%,
rounded up to the nearest \$10.

2. In paragraph 1-
"Age factor" (年齡因數) means the multiplier specified in column 2 of the Table below opposite the deceased's age at the time of his death as shown in column 1-

TABLE

Age (in years)	Multiplier
below 40	15
40-41	14
42-43	13
44-45	12
46-47	11
48-49	10
50-51	9
52-53	8
54-55	7
56-57	6
58-59	5
60 and above	4

"Average yearly earnings" (每年平均收入) means the average yearly earnings, as defined in Part VII of this Schedule, in the year in which the deceased died.

PART II

COMPENSATION FOR TOTAL INCAPACITY

An amount equal to the average monthly earnings as defined in Part VII of this Schedule for the period to which the payment relates, rounded up to the nearest \$10.

(Replaced 4 of 1996 s. 12)

PART IIA

COMPENSATION FOR PAIN, SUFFERING
AND LOSS OF AMENITIES

\$3220.

(Part IIA added 4 of 1996 s. 12. Amended L.N. 286 of 1998; L.N. 127 of 2012)

PART III

COMPENSATION FOR PERIOD PRIOR TO DATE OF DIAGNOSIS

1. An amount calculated according to the formula-
Average monthly earnings x No. of months x Multiplier,
rounded up to the nearest \$10. (Replaced 4 of 1996 s. 12)

2. In paragraph 1-

"Average monthly earnings" (毎月平均収入) means the average monthly earnings, as defined in Part VII of this
Schedule, for the month of January in the year in which the date of diagnosis falls;

"Multiplier" (乗數) means the percentage specified in column 2 of the Table below opposite the degree of incapacity
of the person at the date of diagnosis as shown in column 1-

TABLE

Degree of incapacity	Multiplier
not more than 30%	7%
more than 30% but not more than 60%	15%
more than 60%	25%

"No. of months" (月數) means the number of full months, not exceeding 24, in the period from the earliest diagnosed
date to the date of diagnosis.

PART IV

COMPENSATION FOR CARE AND ATTENTION

\$4520.

(Amended L.N. 567 of 1995; L.N. 286 of 1998; L.N. 127 of 2012)

PART V

COMPENSATION FOR BEREAVEMENT

\$101390.

(Amended L.N. 286 of 1998; L.N. 127 of 2012)

PART VI

FUNERAL EXPENSES

An amount not exceeding \$70000, payable against any sum actually spent for the burial or cremation of the deceased and for any ceremony connected with his burial or cremation.

(Amended L.N. 464 of 1993; L.N. 567 of 1995; L.N. 286 of 1998; L.N. 365 of 2000; L.N. 127 of 2012)

PART VII

INTERPRETATION

In this Schedule-

"average monthly earnings" (每月平均收入) means, in respect of any period, an amount equal to 26 times the overall average daily wage earned by persons or classes of persons engaged in Government building and construction works as ascertained by the Commissioner for Census and Statistics and applicable to 1 January of the year in which the period falls;

"average yearly earnings" (每年平均收入) means, in respect of any period, an amount equal to 12 times the average monthly earnings for that period.

(Replaced 54 of 1993 s. 42)

Schedule:	2	MEDICAL EXPENSES AND EXPENSES FOR MEDICAL APPLIANCES*	L.N. 140 of 2008	01/09/2008
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[sections 12(2), 12A(2) & 40]

PART I

MEDICAL EXPENSES UNDER SECTION 12

(Replaced 16 of 2006 s. 32)

1. Subject to paragraph 3, where a person is given medical treatment in respect of pneumoconiosis or mesothelioma (or both) as an in-patient in a hospital, the expenses payable are- (Amended 6 of 2008 s. 28)

(a) the total amount of the medical expenses; or

(b) the total amount at the rate of \$200 for each day of stay in the hospital,

whichever total amount is the less.

2. Subject to paragraph 3, where a person is given medical treatment in respect of pneumoconiosis or mesothelioma (or both) other than as an in-patient in a hospital, the expenses payable are- (Amended 6 of 2008 s. 28)

(a) the total amount of the medical expenses; or

(b) the total amount at the rate of \$200 for each day on which medical treatment is given,

whichever total amount is the less.

3. Where a person is given medical treatment in respect of pneumoconiosis or mesothelioma (or both) on any day both as an in-patient in a hospital and other than as an in-patient in a hospital, the daily rate for the purposes of this Schedule shall be \$280.

(Amended 6 of 2008 s. 28)

(Amended L.N. 322 of 1985; L.N. 391 of 1987; L.N. 387 of 1989; L.N. 434 of 1991; 54 of 1993 s. 43; L.N. 464 of 1993; L.N. 567 of 1995; L.N. 286 of 1998; L.N. 99 of 2003; 16 of 2006 s. 32)

PART II

MEDICAL APPLIANCES UNDER SECTION 12A

1. Wheelchair.

2. Oxygen concentrator and its accessories.
3. Oxygen cylinder and its accessories.

(Added 54 of 1993 s. 43)

Note:

* (Replaced 16 of 2006 s. 32)

Schedule:	3	PNEUMOCONIOSIS COMPENSATION FUND BOARD	6 of 2008	18/04/2008
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[section 25]

1. Incorporation and states

The Board shall be a body corporate with perpetual succession and capable of suing and being sued.

2. Status of Board

The Board shall not act or be treated as the servant or agent of the Crown.

3. Seal

(1) The Board shall have a common seal, the affixing of which shall be authenticated by the signature of any 2 members.

(2) Any document purporting to be a document duly executed under the seal of the Board shall be received in evidence and shall, unless the contrary is proved, be deemed to be a document so executed.

4. Tenure of members

(1) A member of the Board who is not a public officer shall, unless his appointment is terminated or otherwise ceases, hold office for such period as the Chief Executive may specify.

(2) On the expiry of his period of appointment or re-appointment, any member to whom sub-paragraph (1) applies shall be eligible for re-appointment for such further term as the Chief Executive may specify.

(3) Any member to whom sub-paragraph (1) applies may at any time resign from office by giving notice in writing to the Chief Executive, and he shall cease to be a member from the date specified in the notice or, if no date is specified, from the date of the receipt by the Chief Executive of the notice.

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

(Amended 3 of 2004 s. 38)

5. Chairman

(1) The Chief Executive shall appoint a member to be chairman of the Board.

(2) If the chairman is absent from Hong Kong or is for any other reason unable to act as chairman, the Chief Executive may appoint another member to be chairman in his place during his absence or incapacity.

(Amended 3 of 2004 s. 38)

6. Meetings and proceedings of the Board

(1) Meetings of the Board shall be held at such times and places as the chairman may appoint.

(2) A quorum shall be 5 members.

(3) At any meeting of the Board the chairman shall preside.

(4) If the chairman is absent from any meeting of the Board, the members present at the meeting shall elect one of their number to act as chairman in his place.

(5) The chairman or the member acting in his place shall have a deliberative vote on all matters coming before the Board and in the case of an equality of votes he shall also have a casting vote.

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

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

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

7. Transaction of business by circulation of papers

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

8. Committees

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

(2) The Board shall appoint a committee, comprising 3 members of the Board, for the purpose of the determination of any objection under regulation 12 of the Pneumoconiosis and Mesothelioma (Compensation) (Assessment of Levy) Regulations (Cap 360 sub. leg. A). (Amended 6 of 2008 s. 29)

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

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

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

9. Appointment of employees and conditions of employment

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

10. Staff benefits

(1) The Board may-

- (a) grant, or make provision for the grant of, pensions, gratuities and retirement benefits, to its employees;
- (b) provide other benefits for the welfare of its employees and their dependants;
- (c) make payments, whether ex gratia or legally due, to the legal personal representative of a deceased employee or to any person who was dependent on such employee at his death.

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

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

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

Schedule:	4	DEGREE OF INCAPACITY	6 of 2008	18/04/2008
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[sections 2(1), 24(1) & 49(5)]

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

(Amended 6 of 2008 s. 30)

1A. The degree of incapacity of a person suffering from mesothelioma or from both pneumoconiosis and mesothelioma shall be determined by reference to-

- (a) the person's loss of lung function resulting from mesothelioma or from both pneumoconiosis and mesothelioma (as the case may be), which loss shall, except where paragraph 4 applies, be assessed by reference to the forced vital capacity of the person in accordance with this Schedule; and
- (b) the person's loss of other bodily functions (if any) resulting from mesothelioma, which loss shall be assessed by reference to the findings of such other clinical examinations as the Pneumoconiosis Medical Board considers appropriate.

(Added 6 of 2008 s. 30)

2. Where as a result of pneumoconiosis or mesothelioma (or both), the forced vital capacity percentage of a person is assessed to be as shown in column 1 of the Table below, the person's loss of lung function and incapacity shall, subject to paragraph 3, be deemed to be of the degree specified in column 2 and column 3 respectively opposite that forced vital capacity percentage- (Amended 6 of 2008 s. 30)

TABLE

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

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

(Amended 6 of 2008 s. 30)

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

4A. The degree of incapacity of a person determined in accordance with this Schedule shall not exceed 100%, even though he suffers from both pneumoconiosis and mesothelioma.

(Added 6 of 2008 s. 30)

5. In this Schedule-

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

(Fourth Schedule replaced 4 of 1996 s. 13)

Schedule:	5	LEVY	L.N. 132 of 2012	20/08/2012
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[sections 35 & 36]
(Amended 12 of 2006 s. 84)

PART 1

SPECIFIED AMOUNT

\$1000000.

PART 2

SPECIFIED RATE

Division 1-Construction operations

0.15% of the value of the construction operations concerned. (Amended L.N. 132 of 2012)

Division 2-Quarry products

0.15% of the value of the quarry products concerned. (Amended L.N. 132 of 2012)

(Schedule 5 added 3 of 2004 s. 26)

Note:

This Schedule is added by 3 of 2004. For transitional provisions, please see section 40 of the Construction Industry Levy (Miscellaneous Amendments) Ordinance 2004 (3 of 2004), which section is reproduced as follows-

“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.” .

* Commencement date: 1 June 2004.