

ASBESTOS ADMINISTRATION COMMITTEE

General Rules and Procedures

Part A

Terms of Reference

Name

1. The name of the committee shall be the Asbestos Administration Committee (hereafter called 'the Committee').

Appointment of the Committee

2. The Committee is appointed by the Authority, that is, the Director of Environmental Protection under section 52 of the Air Pollution Control Ordinance (Cap.311) (hereafter called 'the Ordinance').

Composition of the Committee

3. In accordance with section 54 of the Ordinance, the Committee is composed of a Chairman and 10 Members, with a Senior Environment Protection Officer of the Environment Protection Department to act as Secretary of the Committee.

Functions of the Committee

4. The functions of the Committee are set out in section 53 of the Ordinance, as follows:

- (a) to assist the Authority in processing applications for entry in the registers of asbestos consultants, asbestos contractors, asbestos supervisors and asbestos laboratories which are kept and maintained by the Authority under section 51 of the Ordinance (hereafter called 'the registers');
- (b) to hear complaints of a disciplinary nature against persons whose names are on any of the registers and make recommendations that it sees fit to the Authority;
- (c) to carry out other functions and duties of the Authority relating to asbestos, its use and disposal that the Authority may delegate in writing to it.

5. The Committee shall assist the Authority in considering applications for inclusion in the registers in accordance with section 57 of the Ordinance.

6. The Committee shall conduct disciplinary inquiries in accordance with sections 62 to 68 of the Ordinance.

7. Relevant sections of the Ordinance are at Appendix A.

Part B Administration

Chairman of Meetings

8. The Committee Chairman or, if he is not available, the Deputy Chairman, shall chair a Committee meeting. A meeting will not be held if neither of them is present within 15 minutes of the time appointed for the meeting.

Appointment of Deputy Chairman

9. The Deputy Chairman of the Committee shall be the Member who is a Principal Environment Protection Officer of the Environment Protection Department.

Meeting Notices

10. All meetings of the Committee are called by individual notices to the Members.

Quorum

11. Attendance of the Chairman or, if he is not available, the Deputy Chairman and at least 5 Members shall form a quorum. Members should confirm their attendance with the Secretary before a meeting; otherwise, the Secretary will assume their absence for the purpose of determining whether there will be a quorum present at the meeting. The meeting will not be held unless a quorum is present within 15 minutes after the time appointed for the meeting.

12. A quorum is not formed if there are less than 3 non-official members among those present.

Decision

13. Decision of the Committee shall be made by simple majority of votes by the Members present at the meeting and excluding the person chairing the meeting.

14. In the case of an equality of votes, the person chairing the meeting shall have a casting vote.

Declaration of Interest

15. When a Member has a potential conflict of interests, whether direct or indirect, in a matter placed before the Committee or sub-committee, he should make full disclosure of his interest, either verbally during a Committee or sub-committee meeting or in writing to the Chairman or Secretary before the meeting. To assist Members to identify potential conflict of interests, ICAC's guideline is attached at Appendix B for Members' reference.

16. The Chairman, or the person chairing the meeting, shall decide in each case the extent to which that Member may participate in connection with the matter.

17. A Member shall be excluded from the discussion and decision on a disciplinary proceeding if the Member has a pecuniary interest, either directly or indirectly, in any party involved in the proceeding.

Confidentiality

18. All Members shall maintain confidentiality on all information provided in relation to application for registration and disciplinary complaint.

Minutes of Meeting

19. Minutes of the proceedings of a meeting of the committee shall be drawn up and entered in a file kept for that purpose, and shall be confirmed and signed at the same or next meeting of the Committee, by the person presiding thereat. Any minutes purporting to be signed and confirmed shall be received in evidence without further proof.

Approval of a Matter by Circulation

20. The Committee may approve a matter by circulation to Members, if the Chairman so orders. The paper seeking approval of the Committee is circulated to all Members. Every Member present in Hong Kong before the deadline for reply must give his approval in writing. If the number of returns from Members is less than the number of a quorum or if any Member requests for discussion, then the Secretary will arrange the matter to be discussed at a meeting.

Appointment of Sub-committee

21. The Committee shall have power to appoint sub-committees to which it may delegate such duties as it thinks fit.

22. Each sub-committee shall compose of at least 3 members all elected from the Committee. The Secretary shall act as secretary of all sub-committees.

23. Decisions and recommendations of sub-committees shall require endorsement of the Committee.

24. Sub-committees can make their own rules and procedures.

Standing Orders

25. The Committee may make standing orders for the regulation of its proceedings, and may vary or revoke any such orders. The standing orders can be suspended when a notice of such intention is given.

Applicability

26. The Committee shall observe this Rules and Procedures in the conduct of its business.

Amendment to this Rules of Procedures

27. The Committee has power to:

- (a) amend Part B this Rules and Procedures; and
- (b) introduce other rules and procedures

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(Part VIII added 13 of 1993 s. 32)

Section:	51	Registers of asbestos consultants, etc.		30/06/1997
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- (1) The Authority shall keep registers of-
- (a) asbestos consultants for natural persons who are qualified to perform the duties and functions of a registered asbestos consultant;
 - (b) asbestos contractors for natural persons, companies and other bodies corporate which are qualified to perform the duties and functions of a registered asbestos contractor;
 - (c) asbestos supervisors for natural persons who are qualified to perform the duties and functions of a registered asbestos supervisor;
 - (d) asbestos laboratories for all laboratories which are qualified to perform the duties and functions of a registered asbestos laboratory together with details of the natural persons, companies and other bodies corporate that have an interest in a registered asbestos laboratory.
- (2) The Authority shall maintain a copy of the registers for inspection by the public free of charge during business hours.

(Part VIII added 13 of 1993 s. 32)

Section:	52	Appointment of the Administration Committee		30/06/1997
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- (1) The Authority shall appoint an Administration Committee to be known as the Asbestos Administration Committee.
- (2) A member of the Administration Committee-
- (a) shall be appointed for 2 years or a lesser period that may be specified in the terms of his appointment;
 - (b) may resign by giving notice in writing to the Authority; and
 - (c) may be reappointed.
- (3) Where a member of the Administration Committee is precluded by temporary absence or incapacity from carrying out his functions as a member, the Authority may appoint another person, with similar qualifications as set out in section 54 as the precluded member, to hold office in the place of the member during the period of absence or incapacity.

(Part VIII added 13 of 1993 s. 32)

Section:	53	Functions of the Administration Committee		30/06/1997
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The Administration Committee shall-

- (a) assist the Authority in processing applications for entry in the registers as set out in this Part;
- (b) hear complaints of a disciplinary nature against persons whose names are on any of the registers and make recommendations that it sees fit in accordance with this Part; and
- (c) carry out other functions and duties of the Authority relating to asbestos, its use and disposal that the Authority may delegate in writing to it.

(Part VIII added 13 of 1993 s. 32)

Section:	54	Composition and meeting of the Administration Committee		30/06/1997
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- (1) The Administration Committee shall consist of-
- (a) an Assistant Director of Environmental Protection as Chairman;
 - (b) a Principal Environmental Protection Officer of the Environmental Protection Department;
 - (c) a representative of the Commissioner for Labour;
 - (d) a representative of the Director of Housing;
 - (e) a representative of the Director of Architectural Services;
 - (f) an architect nominated by The Hong Kong Institute of Architects;
 - (g) an engineer nominated by The Hong Kong Institution of Engineers;
 - (h) a surveyor nominated by The Hong Kong Institute of Surveyors;
 - (i) 3 members appointed by the Authority who are not employed in the Civil Service.
- (2) A Senior Environmental Protection Officer of the Environmental Protection Department shall act as Secretary of the Administration Committee.
- (3) The Administration Committee shall meet at the times and places as the Authority may direct.
(Part VIII added 13 of 1993 s. 32)

Section:	55	Application for registration		30/06/1997
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- (1) A person may apply to the Secretary of the Administration Committee to have his name entered in a register in a form approved by the Authority with the fee set by the Authority and published in the Gazette.
- (2) The Authority shall not enter the name of a person, company, body corporate or laboratory in a register unless the Authority is satisfied that the person is qualified to perform the duties and functions required of a person entered in the register.
(Part VIII added 13 of 1993 s. 32)

Section:	56	Restriction on entry on certain registers, etc.		30/06/1997
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- (1) The Authority shall not enter the name of a registered asbestos consultant or of a registered asbestos laboratory on the register of asbestos contractors or the register of asbestos supervisors.
- (2) The Authority shall not enter the name of a registered asbestos contractor or of a registered asbestos supervisor on the register of asbestos consultants or the register of asbestos laboratories.
- (3) The Authority may refuse to register, or may remove from the relevant register, an asbestos consultant or an asbestos laboratory if the person or owner holds a pecuniary interest, either directly or indirectly, in a registered asbestos contractor or a registered asbestos supervisor.
- (4) The Authority may refuse to register, or may remove from the relevant register, an asbestos contractor or an asbestos supervisor if the person or owner holds a pecuniary interest, either directly or indirectly, in a registered asbestos consultant or a registered asbestos laboratory.
(Part VIII added 13 of 1993 s. 32)

Section:	57	Function of Administration Committee in registration		30/06/1997
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- The Administration Committee shall assist the Authority in considering applications for inclusion in the registers by-
- (a) examining the qualifications of an applicant;
 - (b) making inquiries and conducting tests that the Administration Committee considers necessary to ascertain whether an applicant has the appropriate experience;
 - (c) conducting a professional interview, if the Administration Committee considers it necessary, with an applicant; and
 - (d) advising the Authority as to the acceptance, deferral or rejection of an application for entry on the registers.
(Part VIII added 13 of 1993 s. 32)

Section:	58	Registration	30/06/1997
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(1) The Authority shall, within 3 months after the receipt of advice from the Administration Committee as to the acceptance, deferral or rejection of an application-

- (a) enter in the appropriate register, the name of the applicant; or
- (b) defer the application for a period not exceeding 12 months; or
- (c) refuse the application.

(2) The Authority shall inform an applicant of his decision and reasons for his decision in the case of a deferral or rejection under subsection (1) immediately after making the decision.

(Part VIII added 13 of 1993 s. 32)

Section:	59	Annual registration fee	30/06/1997
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A registered person, company or laboratory shall pay the prescribed annual fee for continued registration within the prescribed period.

(Part VIII added 13 of 1993 s. 32)

Section:	60	Removal of names from registers	30/06/1997
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The Authority may remove from a register-

- (a) the name of a person who is deceased;
- (b) the name of a person who, or a company, body corporate or laboratory which, in the opinion of the Authority has ceased to carry on relevant business;
- (c) the name of a person who, or a company, body corporate or laboratory which, has not paid the prescribed annual fee within the prescribed period;
- (d) a name at the request of the person, company, body corporate or laboratory.

(Part VIII added 13 of 1993 s. 32)

Section:	61	Restoration of names to registers	30/06/1997
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(1) A person, company, body corporate or laboratory whose name has been removed from a register under section 60(c) may apply to the Authority in writing within 2 years from the date of the removal for restoration of the name to the register.

(2) Subject to the payment of the prescribed fee to restore a name, the Authority shall restore the name to the register.

(Part VIII added 13 of 1993 s. 32)

Section:	62	Disciplinary proceedings	30/06/1997
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Where it appears to the Authority or a member of the Administration Committee that-

- (a) a registered asbestos consultant, registered asbestos contractor, registered asbestos supervisor or registered asbestos laboratory; or
- (b) a director, partner or owner of a registered asbestos contractor or registered asbestos laboratory, has committed neglect or misconduct that-
 - (i) renders the person, company, body corporate or laboratory unfit to continue to be entered on the relevant register; or
 - (ii) makes further entry of the person, company, body corporate or laboratory on the relevant register prejudicial to the administration of this Ordinance; or
 - (iii) renders the person, company, body corporate or laboratory deserving of censure,

the Authority or the member may refer the matter to the Administration Committee which may conduct an inquiry.

(Part VIII added 13 of 1993 s. 32)

Section:	63	Legal adviser		30/06/1997
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The Administration Committee may appoint a legal adviser to advise it on any points of law or procedure that may arise before, during or after a disciplinary inquiry.

(Part VIII added 13 of 1993 s. 32)

Section:	64	Rules of procedure		30/06/1997
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The Administration Committee may make rules providing for the conduct of its inquiries and for other matters relating to the investigation of an alleged court conviction, neglect or misconduct.

(Part VIII added 13 of 1993 s. 32)

Section:	65	Notice of hearing		30/06/1997
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(1) The Administration Committee shall not hear evidence regarding a complaint leading to disciplinary proceedings against a registered person unless the person is given 28 days' notice of the date, time and place of the hearing and the reason for the hearing.

(2) The registered person who is the subject of a hearing, and the directors, partners and proprietors of a registered asbestos contractor or registered asbestos laboratory, are entitled to hear and to have access to all evidence produced at the hearing and to cross-examine witnesses adducing the evidence.

(Part VIII added 13 of 1993 s. 32)

Section:	66	Finding and recommendation of Administration Committee		30/06/1997
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(1) After an inquiry, the Administration Committee shall advise the Authority whether or not it is satisfied that the person, company, body corporate or laboratory has committed neglect or misconduct referred to in section 62 and, where appropriate, make a recommendation as to penalty that should be imposed.

(2) The Authority shall advise the registered person, company, body corporate or laboratory of the findings and recommendation of the Administration Committee and the order of the Authority under section 67.

(Part VIII added 13 of 1993 s. 32)

Section:	67	Order of the Authority		30/06/1997
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(1) The Authority may, on receiving the recommendation of the Administration Committee, order-

- (a) that the name of the person, company, body corporate or laboratory be removed, either permanently or for a specified period, from the relevant register;
- (b) that the person, company, body corporate or laboratory be reprimanded;
- (c) that a shareholder, director or other officer of a company or body corporate be reprimanded;
- (d) that the findings and order be published in the Gazette.

(2) The Authority may make an order as to the payment of the costs of the inquiry, the costs of the Authority and the costs of any person in respect of whom the inquiry is held.

(3) Costs awarded under this section are recoverable as a civil debt.

(Part VIII added 13 of 1993 s. 32)

Section:	68	Power of the Administration Committee		30/06/1997
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(1) For the purpose of an inquiry under this Part, the Administration Committee has the following powers-

- (a) to hear, receive and examine evidence on oath;
- (b) to summon a person to attend the inquiry either as the person whose conduct is the subject of the inquiry or to give evidence or produce any document or other thing in his possession and to examine him as a witness or require him to produce any document or other thing in his possession, subject to all lawful exceptions;
- (c) to admit or exclude the public or any member of the public from the inquiry;

- (d) to admit or exclude the press from the inquiry;
- (e) to order the inspection of any premises or ship not used solely for dwelling purpose;
- (f) to enter upon and view any premises or ship not used solely for dwelling purpose;
- (g) to award any person summoned to attend the inquiry as a witness an amount which in the opinion of the Administration Committee has been reasonably expended by him in connection with his attendance.

(2) The Chairman shall sign summonses to witnesses.

(3) No person is required to answer a question or produce a document or other thing which, in the opinion of the Administration Committee, may tend to incriminate him.

(4) A witness is, in respect of evidence given by him before the Administration Committee, entitled to the same immunities and privileges to which he would be entitled as if he were giving evidence in court.

(5) A person who-

- (a) having been summoned by the Administration Committee to attend as a witness or to produce a document or other thing under this section without reasonable excuse refuses or fails to do so;
- (b) attends as a witness before the Administration Committee and, without lawful excuse, refuses or fails to answer a question put to him by the Administration Committee;
- (c) fraudulently obtains registration as a registered asbestos consultant, contractor, supervisor or laboratory for himself or any other person;
- (d) obtains registration as a registered asbestos consultant, contractor, supervisor or laboratory for himself or any other person by means of any misleading, false or fraudulent representation or statement, either orally or in writing,

commits an offence and is liable to a fine of \$50000 and to imprisonment for 1 year.

(Part VIII added 13 of 1993 s. 32)

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Declaration of Interests by Members of Advisory Committees

When a Member of this Committee has a potential conflict of interests in a matter placed before the Committee, he should make full disclosure of his interest. The basic principle to be observed is that Members' advice should be disinterested and impartial and it is the responsibility of each Member to judge and decide if the situation warrants a declaration, and to seek a ruling from the Chairman in case of doubt.

It is impossible to define or describe all the situations that would call for such a declaration, because each individual case differs, and because of the difficulty of catering for unusual and unforeseen circumstances. On the other hand, it is not intended that a member should make a declaration of interest simply because the Committee is considering a matter in which he has knowledge or experience. The following may assist Members to identify potential conflicts of interest:

- Pecuniary interests in a matter under consideration by the Committee, held either by the Member or by any close relative of his, should be declared. Members are themselves the best judge to who, in the particular circumstances, is a "close relative".
- A directorship, partnership, advisory or client relationship, employment or other significant connection with a company, firm, club, association, union or other organisation which is connected with, or the subject of, a matter under consideration by the Committee, should be declared.
- Similarly, some friendships might be so close as to warrant declaration in order to avoid situations where an objective observer might believe a Member's advice to have been influenced by the closeness of the association.
- A Member who, as a barrister, solicitor, accountant or other professional adviser, has personally or as a member of a company, advised or represented or had frequent dealings with any person or body connected with a matter under consideration by the Committee, should make a declaration.
- Any interest likely to lead an objective observer to believe that the Member's advice might have been motivated by personal interest rather than a duty to give impartial advice, should be declared.

Declarations of interest may be made verbally during a Committee meeting or in writing to the Chairman or Secretary before the meeting. However, should a Member form the view that a conflict of interest renders it impossible for him to proffer impartial advice, or that he has been given access to information which he ought not to have, he should notify the Secretary or Chairman immediately and/or return any Committee paper concerned. The Chairman will then decide on the matter.