

ASBESTOS ADMINISTRATION COMMITTEE RULES OF PROCEDURE FOR DISCIPLINARY PROCEEDINGS

PART I INTRODUCTION

Introduction

- 1 These *Rules of Procedure* are made by the Asbestos Administration Committee under section 64 of the Air Pollution Control Ordinance to provide for the conduct of its disciplinary inquiries.
- 2 These Rules should be read together with sections 51 to 68 of the Air Pollution Control Ordinance.

Interpretation

- 3 In these rules, unless the context otherwise requires –

“Chairman” means the Chairman of the Committee.

“Committee” means the Asbestos Administration Committee established under section 52 of the Ordinance.

“complainant” means the Authority or a member of the Committee who refers a matter to the Committee under section 62 of the Ordinance.

“complaint” means a matter referred to the Committee under section 62 of the Ordinance.

“day” means calendar days

“legal adviser” means the legal adviser to the Committee appointed under section 63 of the Ordinance.

“Ordinance” means the Air Pollution Control Ordinance (Cap. 311)

“respondent” means a person named in section 62(a) or (b) of the Ordinance against whom a complaint is received.

“Secretary” means the Secretary of the Committee.

PART II HANDLING OF COMPLAINT

Complaint Investigation

- 4 When the Committee receives a complaint referred by the Authority or a member of the Committee under section 62 of the Ordinance, the Committee shall decide whether an inquiry shall be held.

Decision shall be made by simple majority of the votes of all members by circulation. In case of equal votes, the Chairman shall have a second or casting vote.

The Committee needs not inform the respondent at the stage of investigation.

- 5 If the Committee decides to dismiss the complaint without holding an inquiry, the Secretary shall notify the complainant and may notify the respondent accordingly and inform them of the reasons thereof.

Neither the complainant nor the respondent has any right of access to any information or document relating to the case submitted to the Committee by any other person, if the Committee decides that no inquiry is to be held in respect of the case.

PART III PROCEEDINGS PREPARATORY TO HEARING

Legal Adviser

- 6 The Committee may appoint a legal adviser as set out in section 63 of the Ordinance to advise the Committee on any points of law or procedure that may arise before, during or after a disciplinary inquiry.
- 7 The legal adviser may advise the Committee on any question of law as to evidence, procedure or any other matter in any hearing in the presence of every party of the proceedings. If the advice is tendered after the Committee has commenced to deliberate as to its decision, every such party shall be informed of the advice.

Notice of hearing

- 8 Should the Committee decide to hold a hearing of an inquiry, the Committee shall fix a date, time and place for holding the hearing.
- 9 A notice of hearing and a copy of these *Rules of Procedure* shall be sent to the respondent by registered post addressed to the last known place of business or residence of the respondent, at least 28 days before the hearing as set out in section 65 of the Ordinance.

The Committee shall also send a copy of the notice of hearing to the complainant.

- 10 The notice of hearing shall specify the date, time and place of the hearing. It shall also state in the form of complaint the matters into which hearing is to be held.

The respondent shall respond to the notice by indicating in writing, within 3 weeks of the notice, the language he wishes to use in the hearing and whether he wishes to plead guilty or not.

If the respondent pleads guilty, the complainant will outline the facts of the case, and both parties shall agree on the facts. If the facts admitted by the respondent are not consistent with an unequivocal plea of guilty, the respondent is deemed to have pleaded not guilty in writing.

- 11 Where before the hearing or at any stage of the hearing it appears to the Committee that a notice of hearing is defective, the Chairman may give such directions for the amendment of the notice as he may consider necessary. The Secretary shall notify the respondent and the complainant of the amendment accordingly.

Adjournment of hearing to another date

- 12 The Chairman of the Committee may, at any time, adjourn any hearing to such date or any other date as he thinks fit.
- 13 The Chairman must give written notice of any such adjournment to the respondent and the complainant.

Documents available to Committee, respondent and complainant

- 14 The respondent and the complainant shall furnish to each other and to the Secretary, not less than 10 days before the date of a hearing, documents he intends to rely upon at the hearing.

If the respondent submits materials in languages other than Chinese and English, he should provide a certified translation and bear the translation costs himself.

- 15 The Committee may, at any time before the hearing of an inquiry, upon application by either party, request the other party to produce any material, record (in whatever form) or document which is relevant to the case or the issues of the case alleged to be in the possession of that party. On failure to produce the material, record or document, the party who applies for the production may prove it or the content of it by any alternative method.

Witness

- 16 Under section 68(3) of the Ordinance, no person is required to answer a question or produce a document or other thing which, in the opinion of the Committee, may tend to incriminate him.
- 17 Under section 68(4) of the Ordinance, a witness is, in respect of evidence given by him before the Committee, entitled to the same immunities and privileges to which he would be entitled as if he were giving evidence in court.

Legal representation

- 18 The complainant and the respondent may be represented by a solicitor or counsel at the hearing.

Record of Proceedings

- 19 The Committee shall keep a record of the proceedings and may appoint a court reporter to prepare a verbatim record of the proceedings if it considers appropriate.

PART IV PROCEEDINGS AT HEARING OF THE COMMITTEE

Preliminaries

- 20 The Chairman opens the meeting and records the names of the complainant and the respondent.
- 21 If the respondent is not present, the Secretary should produce evidence that the Committee has served on the respondent a notice of hearing in accordance with rule 10. If the Committee is satisfied with such evidence, it may proceed with the hearing in the absence of the respondent.
- 22 The Chairman reads out the notice of hearing and asks the respondent whether he admits the complaint. The Chairman then enters the pleas of the respondent, i.e. pleas of guilty or not guilty.
- 23 If the respondent pleads guilty, the complainant will outline the facts of the case. The Chairman then asks the respondent if he agrees with the facts so outlined and records what he says. If the respondent disputes the facts so outlined, the Chairman may ask both parties to agree on the facts. If the facts admitted by respondent are not consistent with an unequivocal plea of guilty, the Chairman may enter a plea of not guilty for the respondent.
- 24 If the Chairman enters a plea of guilty, the same procedure as applicable to proceedings following a finding of “guilty” by the Committee after a full hearing subsequent to a plea of not guilty as described below shall apply.
- 25 If the respondent pleads not guilty, the Chairman shall inform the respondent of his rights to examine his own witnesses, to re-examine his own witnesses (but only upon matters arising out of the cross-examination by the complainant), to cross-examine the complainant’s witnesses, and to give evidence on his behalf.
- 26 Here, the respondent may object to the complaint on a point of law. Any other party may reply to that objection, and the respondent is permitted to answer such reply.

If the objection is upheld by the Committee, the complaint to which such objection relates is considered only subject to such objection.

Complainant's case

27 The complainant presents the case against the respondent, adduces the evidence and closes the case.

28 The Committee may receive and consider any material, whether by way of oral evidence given on oath, written statements, documents or otherwise.

The Committee may decline to admit the evidence of any deponent to a document who is not present for, or who declines to submit to cross-examination.

29 Every witness shall be examined by the party producing him and may then be cross-examined by the other party. The party producing the witness may then re-examine the witness only upon matters arising out of such cross-examination.

The Chairman and members of the Committee through the Chairman may put questions to the parties or witnesses.

Respondent's case

30 The respondent may submit -

(1) that sufficient evidence has not been adduced upon which the Committee can find that the facts alleged in the complaint have been proved;

(2) that the facts alleged are not such as to constitute the complaint.

31 Where a submission in rule 30 is made, the complainant may make a reply and the respondent may answer such reply. The Committee shall determine whether the submission shall be upheld.

If the Committee –

(1) upholds the submission, the respondent is not guilty of that complaint;

(2) rejects the submission, the Chairman of the Committee shall call upon the respondent to state his case.

32 The respondent adduces evidence in support of his case. Witnesses called by the respondent are subject to cross-examination by the complainant and re-examination by the respondent (but only upon matters arising out of the cross-examination). Rules 28 and 29 shall apply accordingly.

33 When the respondent has closed his case, the complainant may address the Committee. Then the respondent may address the Committee in reply.

PART V
DECISION AND RECOMMENDATION OF THE COMMITTEE

Decision

- 34 The Committee adjourns, and the room is clear of parties to decide whether
- (1) to postpone its decision; or
 - (2) the facts alleged in any complaint have been proved to its satisfaction and whether the respondent is guilty of the complaint.

Decision shall be made by simple majority of the votes and in case of equal votes, the Chairman shall have a second or casting vote.

- 35 The Chairman calls back all parties into the meeting room and announces the Committee's decision.

- 36 The complainant may produce the records of any previous order of the Committee and any warning letters made against the respondent. The Chairman asks the respondent to confirm such records.

The respondent may, by way of mitigation, adduce evidence as to the circumstances leading to such previous orders.

- 37 If the Committee's finding is 'guilty', the Chairman shall ask the respondent if he wishes to put forward any plea of mitigation.

- 38 The Committee may make an award of witness expenses which is reasonable in the circumstances under section 68(1)(g) of the Ordinance.

Recommendation

- 39 After an inquiry, the Committee shall advise the Authority whether or not it is satisfied that the respondent has committed neglect or misconduct referred to in section 62 of the Ordinance.

- 40 The Committee shall, where appropriate, make a recommendation as to the payment of the costs and penalty that should be imposed. The penalty may be one or more of the following as the circumstances warrant:

- (1) that the name of the respondent be removed, either permanently or for a specified period, from the relevant register;
- (2) that the respondent be reprimanded;
- (3) where applicable, that a shareholder, director or other officer of a company or body corporate be reprimanded;
- (4) that its findings and any order which may be made by the Authority under section 67 of the Ordinance be published in the Gazette.

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