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Panel on Manpower

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 20 January 2011**

Occupational Safety Performance in Hong Kong

Purpose

This paper summarizes past discussions by the Panel on Manpower ("the Panel") on occupational safety in Hong Kong.

Deliberations of the Panel on Manpower

2. The Panel discussed Hong Kong's occupational safety performance at its meetings on 20 May 2004, 16 June 2005, 15 June 2006, 21 December 2006, 21 June 2007, 20 December 2007, 21 January 2009, 16 July 2009, 22 October 2009, 21 January 2010 and 20 May 2010. The deliberations are summarized in the following paragraphs.

3. According to the Administration, the Labour Department ("LD") attached great importance to enhancing occupational safety, and was committed to ensuring that risks to the safety of people at work were properly managed and addressed through legislation, law enforcement, promotion, education and training. Through the concerted efforts of all parties concerned, including employers, employees, contractors, safety professionals and the Government, there had been steady improvement in Hong Kong's occupational safety performance in recent years.

Requirement to report occupational injuries

4. Some members said that many contractors in the construction industry had deliberately not reported occupational injuries in order to maintain a good safety record and a better chance of winning contracts. They asked whether

the Administration would consider adopting measures, such as making it mandatory for medical doctors to report occupational injuries, to address the problem.

5. The Administration responded that there were statutory requirements on the notification of occupational diseases and most occupational injuries had been reported. It was tackling the problem through law enforcement, publicity and education.

Causes for industrial accidents

6. Some members asked whether the Administration had carried out case studies to identify the causes for industrial accidents. They considered that such information could help the Administration plan and enhance the publicity and education programmes on industrial safety for targetted groups and industries.

7. The Administration responded that it had conducted in-depth analyses on fatal industrial accidents. Case analyses had been provided to trade unions, training institutes, the media and occupational safety officers for dissemination to relevant sectors.

Work-related injuries of self-employed persons

8. Some members suggested that consideration should be given to making it mandatory for all work-related injuries to be reported to LD, including those of self-employed persons.

9. The Administration stressed that careful consideration should be given to the idea of requiring self-employed persons to report work injuries since it would require introduction of new legislation to give effect to the requirement. The likely impact of this policy should be fully assessed, and the agreement of all stakeholders had to be sought before implementation. The Administration added that in deciding whether a person was self-employed, the court would take into account all relevant facts of a case, including the circumstances, the evidence and precedent cases, if any, before concluding its judgment.

10. Some members considered that the Administration should compile work injury statistics from a wider perspective, and provide members with figures which covered all accidents occurring on construction sites, regardless of whether the injuries were related to employees or employers. With such information, members could have a more comprehensive picture of the safety performance of the construction industry.

Occupational safety of persons working at height

11. Some members were concerned about fatalities caused by falling of workers from height.

12. The Administration advised that LD would continue to seek improvements in work-at-height safety in the construction industry in close partnership with relevant stakeholders, including the Occupational Safety and Health Council ("OSHC"), the Construction Industry Council ("CIC"), trade associations, labour unions, professional bodies as well as other government bureaux/departments. It would -

- (a) in light of the expected increase in new works owing to the commencement of major infrastructure projects, continue to focus its enforcement efforts on work-at-height safety, with emphasis on scaffolding works, use of ladders and working platforms, and step up cooperation with the Development Bureau and relevant departments to ensure proper attention to safety issues from the design stage to every subsequent stage of project implementation and delivery;
- (b) in anticipation of the growth in repair, maintenance, alteration and addition ("RMAA") works owing to the ageing of buildings and various initiatives of the Government to accelerate minor works for creation of jobs, step up enforcement, publicity and promotional efforts targetting work-at-height, scaffolding safety, and RMAA works;
- (c) in collaboration with CIC, identify measures to enhance site safety of working in lift shaft. CIC had established a task force on the issue and would engage relevant stakeholders including relevant government departments, trade associations and labour unions on the development of practical guidelines. LD would take enforcement actions as necessary to ensure that requirements as spelt out in the guidelines were adopted by the industry;
- (d) in view of the importance of fostering a strong safety culture among employers and employees, especially in respect of the highly hazardous work-at-height processes, continue to target publicity and promotion in this area, including organizing publicity campaigns targetting work-at-height, scaffolding safety, and RMAA works; and
- (e) in view of the large proportion of small and medium-sized

contractors undertaking RMAA works in Hong Kong, continue to work in collaboration with OSHC to promote the sponsorship schemes to provide small and medium-sized contractors with financial assistance to improve their safety performance in relation to work-at-height.

Industrial accidents related to the operation of tower cranes

13. Some members asked about the measures taken by the Administration to minimize industrial accidents related to the operation of tower cranes after a fatal accident in July 2007.

14. The Administration advised that an Informal Task Force on Safety of Tower Cranes ("ITF") established by CIC had conducted a systemic and thorough process review of tower crane operations from pre-erection, to installation, operation and maintenance. Having concluded its study in end-2007, ITF formulated a set of Guidelines on Safety of Tower Cranes ("the Guidelines") setting out the good practices for enhancing the safety of tower crane operations for adoption by the construction industry. The Guidelines were published in June 2008 and amended in early 2010.

15. The Administration informed members that -

- (a) LD had included in its enforcement work promotion of compliance with the recommendations set out in the Guidelines. A number of special promotional/enforcement campaigns had been conducted;
- (b) between July and October 2008, LD launched a promotional campaign to assess the situation of compliance with the Guidelines and to encourage compliance. A special technical team of LD had checked all 210 tower cranes in operation at construction sites to encourage commitment by stakeholders to adopting the measures set out in the Guidelines. Although some duty holders were not yet able to comply with the measures at the time, it was noted that many duty holders were taking active steps towards compliance. The result was encouraging; and
- (c) LD had further followed up to gauge the compliance situation with a special enforcement campaign between November and December 2008. Where imminent risks of death or serious bodily injury were detected, LD officers would issue suspension notices to ensure speedy rectification.

RMAA works safety

16. According to information provided by the Administration, most RMAA works were of a small-scale and scattered in nature, and undertaken by small contractors within a relatively short time span. The contractors were generally less conversant with the occupational safety and health legislation and their workers were less aware of safety precautionary measures. RMAA works had soared in recent years because of the tightening of enforcement against unauthorized building structures and the ageing of buildings. The growing trend was expected to continue in the coming years due to the proposed introduction of the Mandatory Building Inspection and Window Inspection Schemes by the Buildings Department, and the launch of various subsidy schemes to encourage maintenance of old buildings.

17. Some members expressed concern that owners and occupiers of premises undergoing RMAA works would be liable for workers' occupational safety, if accidents occurred at their home. They pointed out that in a case where a worker was employed by a contractor, the contractor rather than the owner/occupier of the premises should be responsible for the former's occupational safety. They also expressed concern about occupational injuries in the catering industry and pointed out that many of these injuries resulted from overwork due to manpower shortage.

18. The Administration advised that an owner/occupier could be subject to civil liabilities when an accident occurred in the conduct of RMAA works at home. The questions were whether an employer-employee relationship could be established between the worker and the contractor and whether the owner/occupier had any control over the work site. LD had established with the Hong Kong Association of Property Management Companies, Housing Department, Hong Kong Housing Society and Urban Renewal Authority a referral mechanism to enable the collection of intelligence on RMAA works, and facilitate prompt and targetted enforcement actions on such high-risk activities. In the past year, over 1 000 cases involving RMAA works had been referred to LD by property management companies, Hong Kong Housing Society, Urban Renewal Authority and other sources. Apart from regular inspections, LD had also conducted inspections in evenings and during holidays. In addition, it had collaborated with District Councils to promote RMAA safety.

19. Some members were concerned that the number of fatalities arising from RMAA works had accounted for a considerable proportion of all construction fatalities. They enquired about the conviction rate for prosecutions instituted against non-compliance of safety standards.

20. The Administration advised that for cases where legal proceedings had been concluded, the conviction rate was 85%. According to the law, an employer who failed to provide safe workplaces for employees might be subject to legal sanction. Likewise, employees had the responsibility to comply with safety measures when carrying out works. However, legal proceedings were rarely instituted against workers when there was non-compliance. There was hence a need to promote awareness of work safety to both employers and employees in the trade. In this connection, LD had provided some tailor-made programmes for workers. For example, during a gathering for workers, LD would deliver safety talks before dinner started. There was also Announcement in Public Interest appealing to workers' concern about safety at work.

21. A member considered that in light of the expected increase in new works owing to the commencement of major infrastructure projects and an upsurge of RMAA works owing to the ageing of buildings, there was a need for the Administration to introduce new and targetted measures to step up occupational safety and health. The member suggested that the Administration should consider imposing a statutory requirement on the private sector to reserve 2% of the construction budget for occupational safety purposes.

22. The Administration advised that unlike works in construction sites, RMAA works might be dispersed in living quarters in high-rise buildings, very small in scale and might last for a short time. These presented challenges to enforcement since LD might not even have information on the existence of some of the projects. To address the problems, LD had launched a series of intensive promotion and publicity campaigns, targetting at work-at-height and RMAA works to enhance the safety awareness of all parties involved. Apart from continuing with the promotion activities, LD would also step up enforcement to ensure occupational safety in RMAA and construction works in the coming year. Major initiatives of LD would include -

- (a) targetting promotion and publicity campaigns on work-at-height and RMAA works safety to heighten safety awareness among contractors and construction workers and cultivate a positive safety culture among them;
- (b) organizing promotional activities in collaboration with OSHC, the Hong Kong Association of Property Management Companies ("HKAPMC"), the Hong Kong Housing Society, and District Councils/District Offices to enhance awareness of contractors, employers, employees, property management personnel and property owners on RMAA safety;

- (c) targetting small contractors, who took up the bulk of RMAA works in LD's promotion efforts, including capitalising on the Buildings Department's mandatory registration scheme for small contractors;
- (d) establishing a referral mechanism with HKAPMC, the Housing Department and the Hong Kong Housing Society to enable the collection of intelligence on RMAA works, and facilitate prompt and targetted enforcement actions on such high-risk activities;
- (e) collaborating with CIC to develop relevant practical safety guidelines for the construction industry;
- (f) continuing the sponsorship schemes in collaboration with OSHC to provide financial assistance to assist small and medium sized contractors to purchase fall-arresting equipment and provide relevant free training to their employees; and
- (g) conducting inspections in evenings and during holidays, apart from paying regular surprise inspections. LD would take out prosecutions and serve improvement notices/suspension notices to secure compliance with relevant safety legislation and remove imminent risks of death or serious bodily injury.

Occupational safety under hot weather

23. Some members expressed concern about the occupational safety of cleaning workers working in an enclosed area such as an aircraft cabin under very hot weather.

24. The Administration responded that LD had conveyed to cleaning contractors about the ventilation problem in aircraft cabins. Remedial measures, such as opening the cabin doors and using blowers to enhance the ventilation, had subsequently been taken to improve the working environment.

25. Members noted that in 2008, CIC released the "Guidelines on Site Safety Measures for Working in Hot Weather" to promote the awareness of contractors and construction workers of the risk associated with working in hot weather, and recommended specific practices and measures for reference by the industry. Some members considered that the Administration should step up site inspection to prevent non-compliance with the guidelines. As the Occupational Safety and Health Ordinance provided that employers had the general duty to provide a safe and healthy workplace for employees, members asked about the application of general duty, the party which had the authority to

determine the scope of the general duty, and whether the power to order suspension of work under very hot weather, such as by a foreman, could be regarded as a general duty exercised on behalf of the employer. A member took the view that the general duty should include suspension of work under extremely hot weather in order to ensure the safety of workers.

26. Some members expressed concern about the guidelines being only applicable to the construction industry, but not other industries such as laundries and restaurants where workers were exposed to a higher risk of heat stroke in summer. They also noted that the guidelines were not legally binding. As regards the checklist for assessing the risk of heat stroke, some members pointed out that an employer might not take any action even if an assessment indicated that there was a risk of heat stroke. Similarly, a worker might not be granted rest breaks even if the assessment indicated that he was subject to a risk of heat stroke.

27. The Administration responded that LD had stepped up site inspection in very hot weather. The concept of general duty followed a common sense approach under which a reasonable person was expected to deal with a matter in a reasonable manner having regard to the circumstances surrounding the case. As to whether suspension of work was necessary under very hot weather, it would depend on the circumstances. The employers' associations of the construction industry had earlier taken action to inform the media about the provision of rest breaks to construction workers working in hot weather as appropriate. The Administration informed members that the construction process involved a number of inter-related steps and the delay of one step might affect the entire process. Suspension of work on a continuous basis, say two to three consecutive days due to very hot weather warning announced by the Hong Kong Observatory, would affect not only the construction schedule but also the livelihood of construction workers who were paid on a daily basis.

28. The Administration pointed out that the checklist developed by LD provided guidance for employers to assess the risk of heat stroke at workplaces. If there were discrepancies in the assessments, it could be resolved through discussion by the parties and agreement on the appropriate preventive measures to be taken. The checklist had also provided examples of preventive measures, such as a rest break after 20 to 40 minutes of work for construction workers under extremely hot weather.

On-site safety officer ("SO")

29. Some members considered that in order to reduce accidents in construction sites, there was a need for the Administration to review the employment policy of on-site safety officers. An employer or a contractor was

currently required to employ an on-site safety officer to monitor compliance with safety measures in the construction site. Given that an on-site safety officer who reported his employer's non-compliance with safety measures might result in his dismissal, he could hardly discharge his duties with due diligence. These members suggested that on-site safety officer should be recruited by LD and be accountable to LD, while his wages would be paid by the employer or contractor.

30. The Administration advised that -

- (a) under the Factories and Industrial Undertakings (Safety Officers and Safety Supervisors) Regulations (Cap. 59Z), the proprietor of an industrial undertaking, which included a construction site, had to engage a full time SO to assist him in promoting the safety and health of persons employed therein. The primary responsibility for ensuring the safety and health of those at work at the construction site, under the Factories and Industrial Undertakings Ordinance (Cap. 59) and its subsidiary legislation, fell on the principal contractor, who had the duty, among other things, to provide and maintain a system of work that was safe and without risks to health. The principal contractor, in discharging his legal and other obligations in the construction project, would have to engage such professional support and other helpers as necessary, e.g. architects, engineers, surveyors, project management staff, to assist him. In no circumstances would these professional support and helpers be taking over or mitigating his legal responsibilities;
- (b) the primary role of an SO, being one of the professional supporting staff of the principal contractor, was to advise the principal contractor, including the top management and line management, of safety and health practices, requirements and standards. An SO served as a resource person and an in-house consultant assisting the management in instituting a safety management system and formulating safety preventive measures to enhance site safety. An SO would have to monitor compliance and implementation of safety plans and programmes. The ultimate objective of all such work was to enable the principal contractor to fulfil his legal obligations under the occupational safety and health laws. An SO did not have any regulatory role. As such, it was appropriate for the SO to be accountable to his employer in performing his job functions.;
- (c) safety and health issues were intimately intertwined with the basic functioning of an organization, and must be a management

responsibility. SO's primary role was to advise on safety and health practices, requirements and standards; and

- (d) making an SO accountable to LD which was responsible for enforcing the occupational safety and health legislation would undoubtedly put him in a very awkward position in the company. The conflicting roles of an in-house safety adviser and an agent of the law enforcement authority would hamper the effective discharge of his functions and, more importantly, adversely affect candid communication on problem identification and risk prevention between him and other personnel in his company.

Recent measures to enhance occupational safety

31. According to the Administration, LD would continue to proactively promote the safety and health of our workforce through the three-pronged approach of enforcement, promotion and publicity, and work in close partnership with relevant stakeholders, including the OSHC, CIC, trade associations, labour unions, professional bodies as well as District Councils and other government bureaux/departments. LD would -

- (a) in the light of the expected increase in new works owing to the commencement of major infrastructure projects as well as upsurge of RMAA works owing to the ageing of buildings and various initiatives by the Government to accelerate minor works for creation of jobs -
 - (i) continue to focus its enforcement efforts on work-at-height safety, with emphasis on scaffolding works, use of ladders, electrical safety and working platforms;
 - (ii) step up cooperation with the Development Bureau and relevant departments to ensure proper attention to safety issues from the design stage to every subsequent stage of project implementation and delivery;
 - (iii) step up publicity and promotional efforts targetting RMAA works, work-at-height, electrical safety and scaffolding safety;
- (b) continue to work in collaboration with CIC to develop practical guidelines to enhance site safety of working in lift shaft. LD would take enforcement actions as necessary to ensure that requirements as spelt out in the guidelines are adopted by the

industry;

- (c) in view of the importance of fostering a strong safety culture among employers and employees, especially in respect of the highly hazardous work-at-height processes, continue to target publicity and promotion in this area, including organising publicity campaigns; and
- (d) in view of the large proportion of small and medium-sized enterprise contractors undertaking RMAA works in Hong Kong, continue to work in collaboration with OSHC to promote the sponsorship schemes to provide small and medium enterprise contractors with financial assistance to improve their safety performance in relation to work-at-height.

Relevant papers

32. Members are invited to access the Legislative Council website at <http://www.legco.gov.hk> to view the relevant papers and minutes of meetings.

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