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Panel on Manpower

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 17 June 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.

Background

2. According to the Administration, the Labour Department ("LD") attaches great importance to enhancing occupational safety, and is committed to ensuring that risks to the safety of people at work are 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 has been steady improvement in Hong Kong's occupational safety performance in recent years.

Deliberations of the Panel

3. The Panel has been very concerned about occupational safety in Hong Kong. It has regularly discussed the subject at 15 meetings between April 1999 and January 2011. The deliberations of the Panel are summarized in the following paragraphs.

Requirement to report occupational injuries

4. Some members were concerned that many contractors in the construction industry did not report occupational injuries deliberately, in order to maintain a good safety record and therefore a better chance of winning contracts. There was a suggestion that the Administration should consider adopting measures, such as making it mandatory for medical doctors to report occupational injuries, to address the problem.

5. The Administration advised that there were statutory requirements on the notification of occupational injuries and most occupational injuries had been reported. It would continue to tackle the problem through law enforcement, publicity and education.

Causes for industrial accidents

6. Members sought information on whether the Administration had conducted case studies to identify the causes for accidents which occurred in different industries. They considered that such information could help the Administration to plan and enhance the publicity and education programmes on industrial safety for targeted groups and industries.

7. According to the Administration, 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. There was a suggestion that the reporting to LD of work-related injuries, including those of self-employed persons, should be made mandatory. Some members called on the Administration to provide work injury statistics which covered all accidents occurring on construction sites, regardless of whether the injuries were related to employees or employers.

9. The Administration advised that careful consideration should be given to requiring self-employed persons to report work injuries since it would necessitate the introduction of new legislation to achieve the purpose. While the likely impact of this policy should be fully assessed, the agreement of all stakeholders should also be sought before implementation.

Occupational safety of persons working at height

10. Members were deeply concerned about the fatalities caused by falling of workers from height.

11. According to the Administration, 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. In view of the anticipated increase in new works owing to the commencement of major infrastructure projects, the Administration would 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.

Safety of Repair, Maintenance, Alteration and Addition ("RMAA") works

12. Concern had been raised over the increase in the number of accidents related to RMAA works. To ensure RMAA works contractors' compliance with relevant safety legislation, members considered that the Administration should conduct more regular inspections, apart from paying surprise inspections, to workplaces. In case of non-compliance constituting an offence for repeated breach of the law, a heavier penalty should be imposed in order to achieve greater deterrent effect.

13. The Administration advised that the construction industry, which recorded the highest injury/accident rate, remained a major area of concern in respect of occupational safety and health performance. LD had launched promotion and publicity campaigns vigorously, focusing on construction safety, RMAA works safety, scaffolding safety, catering safety, cargo and container handling safety. Where circumstances warranted, LD had taken rigorous enforcement actions and issued improvement notices/suspension notices to ensure compliance with relevant safety legislation and to remove imminent risks of death or serious bodily injury.

14. Members were concerned whether LD had any difficulties in planning and conducting safety inspections targetting RMAA works, since RMAA works were usually small in scale and carried out at the home of members of the public or old buildings under renovation, which might not come to the notice of LD.

15. The Administration advised that most RMAA works were small in scale, scattered in nature and very often undertaken by small contractors within a relatively short span of time. Small RMAA contractors were generally less conversant with the occupational safety and health legislation and their workers were less aware of the need to take safety precautionary measures. All these presented challenges to enforcement since LD might not have information on the existence of some of the projects. With the introduction of the Mandatory Building Inspection and Window Inspection Schemes by the Buildings Department ("BD") and the launch of various sponsorship schemes to encourage the maintenance of dilapidated buildings, the anticipated growth in RMAA works would bring challenges to enforcement and promotion of work safety. To address the problems, LD would continue to work closely with BD, trade associations and workers' unions to promote safety and health at work through initiatives such as publicity campaigns and targetted programmes. Apart from continuing with the promotion activities, LD had established referral systems with the Housing Department, the Hong Kong Housing Society, the Urban Renewal Authority and the Hong Kong Association of Property Management Companies to collect intelligence on RMAA works to facilitate prompt and targetted enforcement actions on such high-risk work activities. In the past few years, cases involving RMAA works had been referred to LD through the established mechanism. At the community level, LD also collaborated with District Councils and property management companies to promote RMAA works safety.

16. Another concern of members was the number of fatalities arising from RMAA works accounting for a considerable proportion of all construction fatalities. Members were concerned about the conviction rate for prosecution against non-compliance of safety standards.

17. According to the Administration, cases where legal proceedings had been concluded, had a conviction rate of 85%. An employer who failed to provide safe workplaces for employees might be subject to legal sanction. 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 a need to promote awareness of work safety to both employers and employees in the trade. In this connection, LD had launched some tailor-made programmes for workers. It had produced Announcement in Public Interest appealing to workers' concern about safety at work.

Industrial accidents related to the operation of tower cranes

18. Members sought information on the measures taken by the Administration to minimize industrial accidents related to the operation of tower cranes after a fatal accident in July 2007.

19. According to the Administration, an Informal Task Force on Safety of Tower Cranes ("ITF") established by CIC had conducted a systemic and thorough review of tower crane operations from pre-erection, to installation, operation and maintenance. Having concluded its study by the end of 2007, ITF had 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.

Safety of lift and escalator maintenance and repair works

20. Noting the large number of lift incidents in recent years, members considered the level of penalty too low to provide sufficient deterrence. They suggested that the Administration should introduce legislative amendments to enhance regulatory control over lift and escalator safety and to increase the penalty levels to deter malpractice and substandard works.

21. According to the Administration, the Electrical and Mechanical Services Department ("EMSD") was responsible for lift safety while LD was responsible for occupational safety of workers engaged in lift installation, repair and maintenance works. To ensure the safety of workers carrying out maintenance works at lifts, LD had all along been working closely with EMSD. The Administration emphasized that it attached great importance to the safety of lifts.

Safety and health of employees in the catering industry

22. Noting that the catering industry continued to rank top among all industries in terms of the number of accidents, members sought information on the preventive measures adopted by the Administration in promoting the occupational safety and health awareness of employers and employees in the industry.

23. According to the Administration, the increase in the number of accidents in the catering industry was mainly due to the relatively large workforce in the sector, and "injury by hand tool", "injury whilst lifting or carrying" and "contact with hot surface or substance" were the major causes of occupational injuries in the industry. LD had joined hands with OSHC to launch publicity campaigns

to bring relevant safety messages to employees in the catering industry. LD and OSHC had in the past few years launched a number of sponsorship schemes to provide financial support to SMEs to purchase the necessary safety equipment. Among others, there was a scheme to provide subsidies for the purchase by SME catering establishments of cut-resistant gloves and slip-resistant shoes for kitchen frontline workers. These sponsorship schemes aimed to foster safety awareness and change work habits, and ultimately reduce the number of work accidents.

Occupational safety under hot or inclement weather

24. Concerns were raised over the occupational safety of cleaning workers working in an enclosed area, such as an aircraft cabin, under very hot weather. The Administration advised that CIC had released in 2008 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.

25. Members called on the Administration to step up site inspection to prevent non-compliance with the guidelines. As the Occupational Safety and Health Ordinance (Cap. 509) provided that employers had a general duty to provide a safe and healthy workplace for employees, members sought information about 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. There was a suggestion that the general duty should include suspension of work under extremely hot weather in order to ensure the safety of workers.

26. According to the Administration, 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 taken action to inform the media about the provision of rest breaks to construction workers working in hot weather as appropriate. The Administration advised 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.

On-site safety officer

27. Members noted that an employer or a contractor was required to employ an on-site safety officer to monitor compliance with safety measures in the construction site. Concern was raised as to whether an on-site safety officer could discharge his duties with due diligence, as he might be in fear of dismissal upon reporting his employer's non-compliance with safety measures. There was a suggestion that in order to reduce accidents in construction sites, the Administration should review the employment policy of on-site safety officers, such that on-site safety officers would be recruited by LD and be accountable to LD while his wages be paid by the employer or contractor.

28. The Administration advised that 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 safety officer 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 primary role of a safety officer, being one of the professional supporting staff of the principal contractor, was to advise the principal contractor, including the top management and line management, on safety and health practices, requirements and standards. The safety officer would have to monitor compliance and implementation of safety plans and programmes. The ultimate objective was to enable the principal contractor to fulfil his legal obligations under the occupational safety and health laws. A safety officer did not have any regulatory role. As such, it was appropriate for him to be accountable to his employer in performing his job functions. Making a safety officer 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 adversely affect candid communication on problem identification and risk prevention between him and other personnel in his company.

Relevant papers

29. A list of the relevant papers on the Legislative Council website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
13 June 2011

**Relevant papers on
Occupational Safety Performance in Hong Kong**

Committee	Date of meeting	Paper
Legislative Council	11.11.1998	Official Record of Proceedings (Question 6)
Panel on Manpower	22.4.1999 (Item VI)	Agenda Minutes
Legislative Council	12.5.1999	Official Record of Proceedings (Questions 9 and 20)
Legislative Council	7.7.1999	Official Record of Proceedings (Question 7)
Legislative Council	23.2.2000	Motion on "The system of long-term employment for construction workers"
Panel on Manpower	25.5.2000 (Item VII)	Agenda Minutes
Panel on Manpower	15.2.2001 (Item IV)	Agenda Minutes
Legislative Council	7.3.2001	Official Record of Proceedings (Question 14)
Legislative Council	25.4.2001	Motion on "Effective protection of statutory rights and benefits of employees"
Legislative Council	16.10.2002	Official Record of Proceedings (Question 2)

Committee	Date of meeting	Paper
Legislative Council	2.7.2003	Official Record of Proceedings (Question 1)
Legislative Council	10.3.2004	Official Record of Proceedings (Question 5)
Panel on Manpower	20.5.2004 (Item II)	Agenda Minutes
Legislative Council	1.6.2005	Official Record of Proceedings (Question 11)
Panel on Manpower	16.6.2005 (Item V)	Agenda Minutes
Legislative Council	30.11.2005	Official Record of Proceedings (Question 14)
Panel on Manpower	15.6.2006 (Item IV)	Agenda Minutes
Panel on Manpower	21.12.2006 (Item V)	Agenda Minutes
Legislative Council	31.1.2007	Official Record of Proceedings (Question 18)
Legislative Council	30.5.2007	Official Record of Proceedings (Question 6)
Panel on Manpower	21.6.2007 (Item VI)	Agenda Minutes
Panel on Manpower	20.12.2007 (Item III)	Agenda Minutes
Panel on Manpower	21.1.2009 (Item III)	Agenda Minutes

Committee	Date of meeting	Paper
Panel on Manpower	16.7.2009 (Item II)	Agenda Minutes
Panel on Manpower	22.10.2009 (Item III)	Agenda Minutes
Panel on Manpower	21.1.2010 (Item III)	Agenda Minutes
Legislative Council	5.5.2010	Motion on "Medical check-ups for professional drivers"
Legislative Council	12.5.2010	Motion on "Protecting the safety and health of employees at work in inclement weather"
Legislative Council	19.5.2010	Motion on "Reviewing occupational safety and health and employees' compensation system"
Panel on Manpower	20.5.2010 (Item IV)	Agenda Minutes
Legislative Council	2.6.2010	Official Record of Proceedings (Question 8)
Panel on Manpower	20.1.2011 (Item IV)	Agenda Minutes

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