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Panel on Manpower

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 18 December 2012**

Occupational safety performance in Hong Kong

Purpose

This paper highlights the major views and concerns of members of the Panel on Manpower ("the Panel") on occupational safety in Hong Kong in the Fourth Legislative Council ("LegCo").

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. In the past decade, the number of occupational injuries¹ decreased from 47 023 in 2002 to 40 578 in 2011, representing a drop of 13.7%. The number of industrial accidents² also decreased from 22 453 in 2002 to 13 658 in 2011, down by 39.2%. Most of the accidents, except those of the construction industry and manufacturing industry, were of minor nature and mainly due to "slip, trip or fall on the same level" and "incorrect manual lifting or carrying".

¹ Occupational injuries refer to injury cases in workplaces reported under the Employees' Compensation Ordinance, resulting in death or incapacity for work of three days.

² Industrial accidents refer to injuries and deaths arising from industrial activities in industrial undertakings as defined under the Factories and Industrial Undertakings Ordinance.

Deliberations of the Panel

3. The Panel has monitored closely the issue of safeguarding occupational safety in Hong Kong. The major views and concerns of members are summarized below.

Safety performance of the construction industry

4. Members noted with concern that the construction industry recorded the highest number of fatalities and accident rate among all industries and queried the effectiveness of preventive and enforcement measures adopted by the Administration in ensuring the occupational safety of construction workers.

5. According to the Administration, the construction industry was a high-risk sector, accounting for a large proportion of the more serious industrial accidents. LD would proactively strengthen cooperation with the Development Bureau and relevant departments to ensure proper attention to safety issues and due consideration of the occupational safety and health ("OSH") requirements from the design stage to every subsequent stage of project implementation and delivery. LD would also provide advice to relevant works departments and project clients at the planning stage of major projects.

6. In the light of commencement in sequence of major infrastructure projects, some members expressed concern that such works would put great pressure on the resources and manpower in the industry, and consequently at the expense of safe work practices. Members called upon LD to conduct more workplace inspections on construction sites to induce compliance with the OSH legislation and deter unsafe work practices.

7. The Administration advised that LD had established a special team to step up inspection and enforcement action, urging contractors to implement safety management systems on construction sites and integrate OSH elements into their method statements through participating in their project preparatory meetings and site safety management committee meetings. This apart, LD would continue to conduct publicity and promotional activities targeting the construction industry in collaboration with the industry, with a view to promoting safety awareness among construction workers. Members were also advised that as a new initiative, LD in collaboration with a workers' union organized work safety and health talks for construction workers at construction sites during the lunch time.

8. To further reduce the number of industrial and occupational accidents, some members considered that training on occupational safety should be

provided for new entrants to the construction industry.

9. The Administration advised that construction workers were required to receive safety training and complete the Mandatory Basic Safety Training (Construction Work) course (commonly known as the "Green Card" course) before commencing work. In addition, the Hong Kong Construction Association and the Hong Kong General Building Contractors Association were mobilizing their members to participate in a programme named "Caring of new construction workers" for taking greater care of and providing basic induction training to new workers. Under the programme, two types of workers were identified with the label of "P" (i.e. Probationer) for those who newly joined the industry or "N" (i.e. Newcomer) for those who were new to a construction site. Contractors would assign mentors to take care of workers who newly joined the industry and would also provide basic induction safety training to these workers and make arrangement to get them familiarized with the working environment of the site.

Safety of repair, maintenance, alteration and addition ("RMAA") works

10. Another issue of concern of the Panel was the increase in the number of accidents related to RMAA works. Members noted that of the 23 cases of construction fatalities in 2011, 10 cases were due to "fall of person from height", with over half of them involving workers falling from bamboo scaffolds and related to RMAA works. Given that RMAA works were expected to grow phenomenally with the implementation of the mandatory building inspection and window inspection schemes and the provision of government subsidies for owners of dilapidated buildings to carry out building repair and maintenance works, some members considered that the Administration should conduct more regular inspections, apart from surprise inspections, to workplaces to ensure RMAA works contractors' compliance with relevant safety legislation. Some members also took the view that a heavier penalty should be imposed for repeated non-compliance in order to achieve greater deterrent effect.

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. Since 2011 LD regularly wrote to construction contractors to keep them posted of the major types of accidents which occurred during the preceding few months at construction work sites and their causes. LD would take the opportunity to notify contractors in advance of its forthcoming special enforcement campaigns.

12. To forestall the rise of accidents in these work activities, LD held a Construction Safety Forum ("Forum") in March 2012 to consider, in conjunction with industry stakeholders, measures to enhance the occupational safety of the construction industry. Participants of the Forum arrived at a consensus on a number of systematic preventive and enforcement measures. One of the measures was the launch of the "OSH Star Enterprise - Pilot Scheme on RMAA Safety Accreditation" on 1 June 2012 jointly by LD and OSHC to encourage the industry to take practicable safety measures and improve working environment through subsidizing the cost of safety assessment, safety training and safety equipment. Enterprises accredited under the pilot scheme could enjoy up to 50% premium discount when procuring employees' compensation insurance under the Employees' Compensation Insurance Residual Scheme.

13. 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 in cases of their non-compliance. Having regard to the need to promote awareness of work safety to both employers and employees in the trade, LD had launched some tailor-made programmes for workers and had produced an Announcement in Public Interest appealing to workers' concern about safety at work.

14. There was a view that the substantial increase in the numbers of suspension notices ("SNs")/improvement notices ("INs") issued and prosecutions instituted had indicated that the Administration's strategy of improving safety through the self-regulation of contractors and employers in safety management failed to work effectively. Concern was raised over whether workers' representatives in safety committees could effectively discharge their duties of identifying, recommending and keeping under review measures to improve the safety and health of construction workers at sites. It was considered that the Administration should conduct a comprehensive review on the safety committee system.

15. The Administration advised that when officers of LD conducted special enforcement campaigns, they would, upon discovery of unsafe activities or conditions that might cause imminent risks of death or serious bodily injury, issue SNs/INs or take prosecution actions without warning in advance. This was one of the reasons why the numbers of SNs/INs issued and prosecutions instituted were higher than the figures in the past. The Administration further advised that the Factories and Industrial Undertakings (Safety Management) Regulation (Cap. 59 sub. leg. AF) required specified factories and industrial undertakings, employing 100 or more workers, to develop and implement a safety management system, including the establishment of a safety committee.

The safety committee system had all along been functioning well, with the active participation of workers' representatives.

Safety of lift and escalator maintenance and repair works

16. Noting the large number of lift incidents in recent years, members considered the level of penalty too low to achieve sufficient deterrent effect. 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.

17. 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.

Safety and health of employees in the catering industry

18. 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 OSH awareness of employers and employees in the industry.

19. 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. In the past few years, LD and OSHC had launched a number of sponsorship schemes to provide financial support to small and medium enterprises ("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

20. Members noted 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. 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) ("OSHO") provided that employers had a general duty to provide a safe and healthy workplace for employees, 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.

21. 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. As the construction process involved a number of inter-related steps, 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.

22. Concern was raised about the risk of construction workers, professional drivers and cleansing workers in the airport suffering from heat stroke while at work. Information was sought on whether employees who suffered from heat stroke were entitled to statutory compensation prescribed under the Employees' Compensation Ordinance (Cap. 282) ("ECO").

23. The Administration advised that under the existing law, employers were required to report cases of occupational injuries, fatal or non-fatal, arising from work accidents to LD. When filing such reports, some employers might, based on their observation, indicate that the employees' injuries might be heat stroke-induced. As symptoms of heat stroke were similar to those of some other diseases, whether an occupational injury was heat stroke-related could only be confirmed after doctors' diagnosis and LD's investigation of the case concerned. Employees suffering from occupational injuries were eligible for and could claim compensation under ECO, irrespective of whether the injuries were heat stroke-induced.

24. Members held the view that the Administration should investigate into cases of heat stroke at work and assess factors contributing to these incidents. Should the findings of the risk assessment indicate that the work environment of specific trades or industries was more prone to cause heat stroke at work, the Administration should give serious consideration to classifying heat stroke at

work as an occupational injury.

25. According to the Administration, it was the responsibility of employers to assess the risk of heat stroke to their employees working in a hot environment and to take appropriate preventive measures commensurate with the needs of different industries and jobs. Such measures included arranging outdoor work in cooler periods during daytime, providing adequate drinking water, providing a shelter at the workplace and rest areas to shield off direct sunlight, enhancing ventilation at the workplace, arranging for workers to take rest breaks at intervals, and providing relevant information, instructions, training and supervision.

26. Members were advised that during the summer of 2011, LD received a total of 25 notifications from employers on work injury cases that were suspected to be related to heat stroke. The breakdown of these 25 cases by occupation was: seven cases involved cleansing workers, four professional drivers and one construction site worker. Employees of the remaining 13 cases were engaged in jobs of different nature such as gardening, maintenance and goods handling. Concern was raised about the distinction between industrial and occupational accidents, and how cases of heat stroke at work were classified.

27. The Administration advised that the classification depended on the circumstances of each case. Generally speaking, the definition of the term "industrial accidents" referred to injuries arising from industrial activities in industrial undertakings, while the term "occupational injuries" was wider in scope, including injuries arising from any work accidents which resulted in incapacity for work of over three days. Given members' growing concern over the classification of occupational accidents, there was a view that the Administration should consider reviewing its current practice of reporting industrial accidents and include detailed information on suspected cases of workers suffering heat stroke at work in its papers to be provided to the Panel when the subject was discussed.

28. In response to members' request for the extension of the coverage of OSHO to professional drivers to enhance their occupational safety, the Administration advised that it had reviewed the existing legislation relating to professional drivers. The Road Traffic Ordinance (Cap. 374) ("RTO") covered road safety issues concerning all drivers (including professional drivers), and these included the design and maintenance of vehicles and roads, drivers' driving skills and attitude, the use of vehicle security devices as well as the behaviour of other road users. The Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap. 374 sub. leg. A) regulated the construction and maintenance of vehicles, including safety after alteration and

driver's accommodation providing adequate protection against bad weather, and the Road Traffic (Safety Equipment) Regulations (Cap. 374 sub. leg. F) regulated the safety equipment of vehicles (such as seat belts). In view of the scope of the provisions of RTO, OSHO did not cover the driver's seat of a vehicle. The Administration pointed out that it was difficult for employers of professional drivers to fully ensure the occupational safety of drivers while they were driving, as drivers' driving attitude, road conditions and the behaviour of other road users were beyond their control in a reasonably practicable manner. However, OSHO safeguarded employed drivers' OSH while they were carrying out non-driving work.

Relevant papers

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

Council Business Division 2
Legislative Council Secretariat
12 December 2012

Appendix

Relevant papers on Occupational Safety Performance in Hong Kong

Committee	Date of meeting	Paper
Panel on Manpower	21.1.2009 (Item III)	<u>Agenda</u> <u>Minutes</u>
Panel on Manpower	16.7.2009 (Item II)	<u>Agenda</u> <u>Minutes</u>
Panel on Manpower	22.10.2009 (Item III)	<u>Agenda</u> <u>Minutes</u>
Panel on Manpower	21.1.2010 (Item III)	<u>Agenda</u> <u>Minutes</u>
Legislative Council	5.5.2010	<u>Motion on "Medical check-ups for professional drivers"</u>
Legislative Council	12.5.2010	<u>Motion on "Protecting the safety and health of employees at work in inclement weather"</u>
Legislative Council	19.5.2010	Motion on "Reviewing occupational safety and health and employees' compensation system"
Panel on Manpower	20.5.2010 (Item IV)	<u>Agenda</u> <u>Minutes</u>
Legislative Council	2.6.2010	<u>Official Record of Proceedings</u> <u>(Question 8)</u>
Panel on Manpower	20.1.2011 (Item IV)	<u>Agenda</u> <u>Minutes</u>

Committee	Date of meeting	Paper
Panel on Manpower	17.6.2011 (Item IV)	<u>Agenda</u> <u>Minutes</u>
Legislative Council	6.7.2011	<u>Official Record of Proceedings</u> (Question 2)
Legislative Council	19.10.2011	<u>Official Record of Proceedings</u> (Question 7)
Legislative Council	14.12.2011	<u>Official Record of Proceedings</u> (Question 1)
Legislative Council	11.1.2012	<u>Official Record of Proceedings</u> (Question 10)
Legislative Council	28.3.2012	<u>Official Record of Proceedings</u> (Question 11)
Panel on Manpower	20.6.2012 (Item V)	<u>Agenda</u> <u>Minutes</u>
Panel on Manpower	11.7.2012 (Item IV)	<u>Agenda</u> <u>Minutes</u>

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