

立法會
Legislative Council

LC Paper No. CB(2)877/99-00

(These minutes have been
seen by the Administration)

Ref : CB2/BC/14/98

**Bills Committee on
Factories and Industrial Undertakings (Amendment) Bill 1999**

**Minutes of Meeting
held on Tuesday, 20 April 1999 at 4:30 pm
in the Chamber of the Legislative Council Building**

Members Present : Hon Ronald ARCULLI, JP (Chairman)
Hon Kenneth TING Woo-shou, JP
Hon HO Sai-chu, JP
Hon LEE Kai-ming, JP
Dr Hon LUI Ming-wah, JP
Hon HUI Cheung-ching
Hon CHAN Wing-chan
Hon LEUNG Yiu-chung
Hon Howard YOUNG, JP
Hon Andrew CHENG Kar-foo

Members Absent : Hon Cyd HO Sau-lan
Hon LEE Cheuk-yan
Dr Hon LEONG Che-hung, JP

Member Attending : Hon James TIEN Pei-chun, JP

Public Officers Attending : Mr Herman CHO
Principal Assistant Secretary for Education and Manpower

Mr Franco KWOK
Assistant Secretary for Education and Manpower
Mr William SIU

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Assistant Commissioner for Labour

Ms Lonnie NG
Senior Government Counsel

Attendance by : Construction Industry Training Authority
Invitation

Mr CHAN Ka-kui, JP
Chairman

Mr Albert Y C TONG
Executive Director

Hong Kong Container Depot and Repairer Association
Limited

Mr Roger LAU
Chairman

The Society of Accredited Safety Auditors Limited.

Mr LEUNG Wai-kwong
Honorable Treasurer

Hong Kong Institution of Engineers

Ir Simon KUM
Chairman of Safety Specialist Group

Society of Registered Safety Officer

Mr Rheo LAM Chun-kow
Assistant Safety Officer

The Hong Kong Occupational Safety and Health
Association

Mr WONG Wai-yin
President

Mr Y K KAM
Member of Executive Council

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Occupational Safety & Health Council

Mr TANG Wah-shing
Executive Director

The Hong Kong Small & Medium Business Association

Mr Simon K B SHI
President

Mr Bally S H CHAN
Vice President

Hong Kong Construction Industry Employees General Union

Mr POON To-chuen
Chairman

The Federation of Hong Kong and Kowloon Labour Unions

Mr CHAN Wai-lun
Vice-Chairman

Mr WAN Koon-sun
Vice-Chairman

Mr POON King-shun
Vice-Director of Labour

The Hong Kong Construction Association Limited

Mr Louis WONG
Vice President

Mr Patrick CHAN
Secretary General

Mr Peter TONG
Member, Labour Training, Health & Safety Committee

Clerk in Attendance : Mrs Constance LI
Chief Assistant Secretary (2) 2

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Staff in : Mr Stanley MA
Attendance Senior Assistant Secretary (2) 6

I. Confirmation of minutes of meeting
[LC Paper No. CB(2)1712/98-99]

The minutes of meeting held on 9 March 1999 were confirmed.

II. Meeting and discussion with deputations and the Administration

2. The Chairman informed members that up to 20 April 1999, 14 written submissions had been received and 12 organizations would like to give oral representation to the Bills Committee.

3. At the Chairman's invitation, representatives of the 12 deputations presented their views and responded to members' questions. The discussion was summarized below.

Construction Industry Training Authority (CITA)
[Paper No. CB(2)1716/98-99(01)]

4. Mr CHAN Ka-kui of CITA said that CITA supported the Bill and the proposed Factories and Industrial Undertakings (Safety Management) Regulation (the Regulation) as the proposed legislation would enhance the safety management practices and awareness in the construction industry. He said that CITA was capable of providing 50 000 safety training places for construction workers each year and some 72 000 construction workers had been trained by CITA so far.

5. Mr CHAN Wing-chan asked about the mobile safety training service operated by CITA. Mr CHAN Ka-kui of CITA informed members that the service was welcomed by workers and proprietors because the training could be arranged on the construction site. There were at present three vans providing such service five days a week, and more than 5 000 workers were now on the waiting list. Workers who completed the training on the construction site would be issued a certificate immediately afterwards. In response to members, he agreed to provide the number of workers who had attended the course so far.

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(*Post-meeting note* : CITA had subsequently provided the information vide LC Paper No. CB(2)1796/98-99.)

Hong Kong Container Depot and Repairer Association Limited (CDAR)
[Paper No. CB(2)1716/98-99(02)]

6. Mr Roger LAU said that CDRA represented over 80% of the container storage yards in Hong Kong and it supported the Bill which could reduce industrial accidents in container handling industry. He also made the following suggestions in respect of individual provisions in the Bill -

- (a) it would be more appropriate to use "maintenance or repair" instead of "keeping or maintaining" in Clause 2(c) of the Bill;
- (b) the phrase "loading and unloading" of containers could be interpreted to cover a wide range of container handling activities including those carried out in the streets. The Bill should therefore clearly define the scope of container handling activities to be brought under regulation of the Bill;
- (c) it should be made clear in the legislation whether the exemption of industrial undertakings employing less than 50 workers referred to the company or the workplace;
- (d) the requirement of additional safety auditors or safety review officers would add financial burden to small industrial undertakings and contractors;
- (e) temporary workers performing container handling duties under emergency situations should be exempted from the mandatory training requirement; and
- (f) to ensure smooth implementation of the proposed legislative requirements, the Government should consider extending the period and widening the scope of consultation.

7. Mr Andrew CHENG asked Mr Roger LAU to explain the reasons for his suggestions. Mr Andrew CHENG also expressed reservation about CDRA's proposal to exempt temporary workers from attending the one-day safety course. Referring to the suggestion at paragraph 6(a) above, Mr Roger LAU of CDRA explained that "storing" already carried the meaning of "keeping and maintaining". As the work of container handling operators included storage, repair and maintenance of the containers, the suggestion was only to reflect the actual work performed by the trade. On the proposed exemption for temporary workers at paragraph 6(e), he explained that workers

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at container terminals and storage yards worked on 12-hour shifts round the clock, and temporary workers were required at times to cover permanent staff on leave. He said it was not uncommon for truck drivers to be temporarily assigned to perform container handling duties as leave reserve. Moreover, some temporary workers might also be hired during emergencies and typhoon. There would be practical difficulties to ensure that all these temporary workers had the green card.

8. Mr LEE Kai-ming agreed with CDRA that the coverage of "loading and unloading" of containers should be clarified as these activities could be carried out in depots, factories and at roadside. As regards the mandatory training requirement, he considered that this should cover truck drivers and temporary workers who were required to take part in container handling activities from time to time. Nevertheless, he suggested a longer grace period for these temporary workers and truck drivers to attend safety training in view of their high mobility .

Federation of Hong Kong Industries (FHKI)
[Paper No. CB (2)1732/98-99(02)]

9. Mr Kenneth TING of FHKI referred to the written submission and indicated support of the Bill. He drew members' attention to FHKI's views concerning the application of safety management system in manufacturing factories. He pointed out that the manufacturing industry was now undergoing difficult times as the aggregate order in January 1999 was 20% less than that of the corresponding month in the previous year. Implementation of the proposed Regulation would have adverse effect on the manufacturing industry and the unemployment rate. He strongly urged the Administration to consider exempting the manufacturing factories from the proposed Regulation.

Society of Accredited Safety Auditors Limited (SASA)
[Paper No .CB(2)1716/98-99(03)]

10. Mr LEUNG Wai-kwong of SASA highlighted the following points in the submission -

- (a) proprietors should not be allowed to appoint their employees to perform the duties of Safety Auditors or Safety Review Officers in order to maintain the impartiality of safety auditors;
- (b) SASA objected to lowering the requirements for Safety Review Officers and Safety Auditors in the first six months of implementation of the Regulation. It proposed a minimum requirement of recognised safety management training and two

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years relevant experience for registration as safety officers and safety review officers; and

- (c) the Chinese name of Safety Auditor should be "審核師" instead of "審核員".

11. Mr LEUNG also drew members' attention to the technical amendments proposed for sections 11(1)(a), 15(2), 16, 17, 18, 26, 33(4) and Schedule 3 as detailed in the submission.

Hong Kong Institution of Engineers (HKIE)

[Paper No. CB(2)1716/98-99(04)]

12. Mr Simon KUM said that HKIE supported the Bill and requested members to note HKIE's suggestions as detailed in its submission.

Society of Registered Safety Officers (SRSO)

[Paper No. CB(2)1716/98-99(05)]

13. Mr Rheo LAM said that SRSO supported the changes proposed in the Bill. He also made the following points -

- (a) SRSO was of the view that the comparatively lower industrial accident rate in 1995-1997 on the public construction sites was not the sole effect of safety training but rather the result of continuous efforts over the years in promoting safety concepts and practices on these sites. SRSO believed that companies with a strong management commitment to safety practices would have less industrial accidents;
- (b) to ensure adequate training places for workers, Government should also approve other institutions such as trade unions and associations, and companies which employed safety officers to run safety training courses for workers;
- (c) the proposed safety management system should also be extended to other business and undertakings such as hospitals, banks, supermarkets, tertiary education institutions and the civil service;
- (d) Government should consider recovering medical costs arising from work accidents from employers and contractors instead of putting the burden on society;
- (e) Registered Safety Auditor should possess at least five years post-registration experience as a registered Safety Officer;

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- (f) to maintain independence of the Safety Auditors, they should be recruited from outside the companies concerned; and
- (g) the Code of Practice and criteria for registration as safety officers and auditors should be publicized for general information one year before commencement of the Regulation.

Hong Kong Occupational Safety and Health Association (OSHA)
[Paper No.CB(2)1716/98-99(06)]

14. Mr WONG Wai-yin said that OSHA supported the Bill in general and highlighted the following views in the submission -

- (a) it would be too harsh to impose a penalty of imprisonment for failure to comply with the proposed Regulations, and a fine would suffice;
- (b) the Regulations should set out clearly how the requirements should be applied to different industries in view of their different mode of operation;
- (c) Safety Officer or Safety Review Officer must be independent and impartial for carrying out their monitoring functions effectively; and
- (d) the professional competence of safety officers and auditors were important as their reports would be admissible evidence in the court; it was therefore unacceptable to allow a lower qualification in section 3 of Schedule 1 for appointment of Safety Auditor in the first six months of implementation.

15. Mr Y K KAM of OSHA supplemented that -

- (a) the need for adoption of all the 14 process elements might vary depending on the nature of operation of different industries; for instance, the construction industry might not need to adopt all 14 elements;
- (b) Government should define certain important terms in the proposed legislation, for example, the criteria for registration of safety auditor, the nature and content of a safety policy statement, and the frequency of safety audit and safety review; and

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- (c) OSHA considered that the requisite safety audit training was more important than familiarity with Hong Kong laws for a registered Safety Officer or Auditor to carry out his/her duties.

Occupational Safety and Health Council (OSHC)

[Paper No. CB(2)1757/98-99(01)]

16. Mr TANG Wah-shing of OSHC said that OSHC strongly supported the proposed mandatory safety training for workers of the construction and the cargo/container handling industries, as this was in accordance with the international trend. He said that many overseas countries had established standards on safety management, such as the Guide in Occupational Health and Safety Management System (BS8800) in the United Kingdom and the Guidelines in Occupational Health and Safety Management System (AS/NZS 4804) in Australia and New Zealand. He added that many other countries were now in the process of drafting their own standards.

17. Mr TANG of OSHC added that based on OSHC's experience in implementing safety audit schemes in Housing Authority and public construction projects, the 14 process elements were feasible and effective, and the benefits of adopting these elements could be seen in about nine months.

18. Mr TANG of OSHC also made suggestions to improve the proposed Regulation, for example, publicizing the Register of Safety Auditors in the Gazette annually and on Labour Department's homepage on the Internet. OSHC also suggested that legislation should be in place to protect members of the Disciplinary Board from any legal liabilities which might arise as a result of discharging their duties and functions.

Hong Kong Small and Medium Business Association (SMBA)

[Paper Nos. CB(2)1742/98-99(02) and CB(2)1757/98-99(02)]

19. Mr Simon SHI of SMBA said that the association supported the Bill but suggested excluding container handling workers who worked outside container terminals and storage yards from the mandatory training requirement. He added that the industries had been subject to increasing legislative constraints in recent years, and the new requirements would add financial burden to small and medium size factories.

20. Mr Bally CHAN of SMBA added that the association supported the policy objectives of educating and promoting industrial safety among proprietors and employees. He opined that the manufacturing factories now remaining in Hong Kong involved mostly low-risk production processes and should therefore be exempted from regulation under the proposed Bill.

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Hong Kong Construction Industry Employees General Union (CIEGU)

21. Mr Poon To-chuen of CIEGU expressed support for the proposed legislation which imposed mandatory safety training on workers in the construction industry in view of the high accident rate and the number of fatal cases on construction sites. He expressed concern that some recognised safety course providers allegedly did not conduct safety training before issuing the training certificate. He said that there had been complaints that certain construction contractors had refused to recognise the safety cards issued by other approved organizations and had required their workers to pay \$50 for the issue of a special card without the need to attend a safety course. He urged the Labour Department to monitor these safety courses and investigate the complaints.

22. Mr Poon of CIEGU also made the following comments -

- (a) a safe working environment and safety procedures in the workplace were equally important as safety training; and the proprietor's representatives on the Safety Management Committee should have the full authority to implement the recommendations;
- (b) Safety Management Committee should meet as frequently as possible and not less than once a month in view of the fast progress of construction work;
- (c) independent safety auditors should be appointed to ensure objectivity in auditing work; and
- (d) the industries should adopt all the 14 process elements from the commencement date of the proposed Regulation.

23. Referring to complaints that some contractors allegedly did not recognize the green cards issued by other approved institutions, Mr Patrick CHAN of HKCA said that there might be some misunderstanding. He clarified that HKCA previously organized a two-hour compulsory training course for those workers employed by contractors engaging in public construction projects as required by the Government. Contractors performing jobs under these public works contracts had contractual obligation to require workers to obtain the card issued by HKCA before they could be allowed to work on the public construction sites concerned.

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Federation of Hong Kong and Kowloon Labour Unions (FHKKLU)
[Paper No. CB(2)1742/98-99(01)]

24. Mr WAN Koon-sun said that FHKKLU was in support of the Bill. He highlighted the following suggestions in the submission -

- (a) the Bill should specify that proprietors of the concerned industries and factories must pay their workers for attending the mandatory safety training and the course fees. The Administration should also provide subsidies to the authorized training organizations to reduce the course fees;
- (b) the Bill should require employers to arrange renewal of green cards for their workers before expiration. To save resources, employees who were certified by their employers or trade unions to have very good safety record over a reasonable period should be exempt from attending the refresher course for renewal of green card. Some grace period should also be allowed for employees to renew their green cards; and
- (c) the maximum penalty of \$10,000 for workers who forgot to carry the green card while at work was too harsh.

25. Mr POON King-shun of FHKKLU added that the Government should devise a convenient system for renewal of green cards, so that workers would not be punished for failure to renew their green card in time.

Hong Kong Construction Association Limited (HKCA)
[Paper No. CB(2)1732/98-99(01)]

26. Mr Louis WONG said that HKCA strongly supported the Bill and the proposed Regulation. He said that HKCA was one of the forerunners in promoting safety management. The following points in the submission were highlighted -

- (a) members of HKCA should continue to be accepted as authorized organizations to conduct safety training for construction workers, and companies employing registered safety officers should also be allowed to conduct safety training courses for their employees;
- (b) the requirement to conduct safety audit or review should be based on the contract value rather than the number of employees, for example, safety review for contracts between \$50 million-\$100 million and safety audit for contracts over \$100 million;

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- (c) the penalty of imprisonment for offences under section 34 would be too harsh;
- (d) the same requirements should apply to sections (1) and (3) of Schedule 1 to the proposed Regulation; while the grace period for registration should be extended from 6 months to 18 months to ensure sufficient supply of safety personnel; and
- (e) the requirements for Safety Review Officer should be specified in detail.

27. Referring to HKCA's suggestion at paragraph 26(b) above, Mr Patrick CHAN of HKCA suggested that sections 1 and 2 in both Part 1 and Part 2 of Schedule 3 to the proposed Regulation should be combined by adding the word "or" in between. Mr Peter TONG added that the concept of green card was originally proposed by HKCA. The Labour and Safety Committee of HKCA had been endeavoring to promote safety practices and management in workplaces of the construction industry.

Other issues discussed

Worker's right to refuse dangerous assignment

28. Mr LEUNG Yiu-chung asked whether the deputations attending the meeting had any views or suggestions on the right of workers to refuse duties which posed a potential danger to their lives and health. Mr Roger LAU of CDRA responded that the container handling industry did not have particular problem in this respect as the working environment was relatively stable and the work procedures standardized. Mr Louis WONG of HKCA said that construction work would involve some degree of risk and contractors should assess the risks and discuss with workers the necessary safety measures. Where necessary, the Safety Committees could hold urgent meetings to resolve any disagreement. Mr Patrick CHAN of HKCA supplemented that the legislative intent was to encourage employees to identify areas of potential hazards in the workplace with a view to eliminating such dangers. This would require the joint efforts of both employers and employees.

Appointment of Safety Auditor

29. As some deputations had expressed reservations about appointment of proprietor's employees as Safety Auditors, Mr HUI Cheung-ching urged the Administration to consult the concerned organizations on alternatives and to consider ways to ensure the independence of Safety Auditors.

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30. Assistant Commissioner for Labour responded that during consultation on the Review of Industrial Safety in Hong Kong in July 1995, Government had given careful consideration to the pros and cons of allowing employers to appoint their employees as Safety Auditors. It was then considered that the registered Safety Officers and Auditors being professionals should abide by their code of ethics and maintain impartiality in making the review reports. The proposal was therefore put forward to provide flexibility and to enable sufficient supply of qualified safety auditor at the initial stage of implementation. He agreed nevertheless to consider the views of deputations on the issue.

31. The Chairman pointed out that professional bodies such as the Hong Kong Society of Accountants had their codes of ethics and disciplinary procedures. He advised the Administration to examine whether similar disciplinary measures or penalty should also be imposed on Registered Safety Officers for breaches of the code of conduct.

The Administration's response to deputations' views

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32. The Chairman requested and the Administration agreed to provide a written response to the 14 written submissions and views expressed by deputations after the meeting.

Date of next meeting

33. Members agreed to hold the next meeting on 11 May 1999 at 10:45 am.

(Post-meeting note : At the request of the Administration, the next meeting was subsequently re-scheduled to 21 May 1999 at 8:30 am.)

III. Any other business

34. There being no other business, the meeting ended at 6:30 pm.

Legislative Council Secretariat

12 January 2000