

Annex II

**The Administration's response to issues raised
at the meeting of the Bills Committee on the
Factories and Industrial Undertakings (Amendment) Bill 1999
on 3 June 1999**

Item (1): The Bills Committee is much concerned as to whether the Administration can effectively enforce the Regulations in respect of non-compliance with the safety policies and safety management system which are to be determined by the companies themselves. Specifically, members requested the Administration to examine the following:

- whether the Administration can prosecute the proprietor or contractor for non-compliance with the proposed provisions in section 7(1)(oa):*
- whether there are specific benchmarks for the requirements (e.g. the frequency of review of safety policy statements and safety measures) under the proposed section 7(1)(oa); and*

whether other punitive or disciplinary measures (e.g. a fine, reduction of wages or holidays) can be imposed by the disciplinary board panel or disciplinary board under the proposed subsection 7(1)(od) having regard to consistency with related legislation and operational considerations.

Section 7(1) of Factories and Industrial Undertakings Ordinance provides the Commissioner with the power to make regulation in respect of different industrial undertakings but such existing power does not include all the power necessary to make the Safety Management Regulations. This is why we have proposed to add a section 7(1)(oa) to provide the Commissioner with the necessary additional power.

Specifically, in section 8 of the proposed Factories and Industrial Undertakings (Safety Management) Regulation, the proprietors and contractors of the relevant undertakings are required to develop, implement and maintain a safety management system. Penalty clauses have been built into the proposed regulation governing the development, implementation and maintenance of such system. If the proprietor or contractor does not comply with the said provisions, the Labour Department may prosecute them for the non-compliance under the regulation. Under the proposed regulation, the Labour Department will have the further information in the audit and review reports on the performance of the undertakings and it would make it easier for the Administration and the proprietors and contractors to work together to solve their safety problems.

The proposed Regulation has also provided for the frequency for conducting various reviews of policies and measures or has required that certain policies, statements or measures have to be reviewed if anything substantial therein has changed. A review or audit of the system will reveal how such reviews have been conducted and whether the system is lacking in such provisions or if no action has been taken in pursuance of such system requirements. As stipulated in the proposed Regulation, an action plan has to be drawn up in pursuance of the recommendations of a review or audit and sent to the Labour Department, we can come in to see how the remedial measures have been taken to improve the establishment's safety performance.

In the limited time available, the Law Draftsman has found that the following pieces of legislation have provided that a fine may be imposed by the Disciplinary Board:-

1. Section 41(2)(b) of the Electricity Ordinance (Cap. 406); and
2. Section 30(1)(vi) of the Estate Agents Ordinance (Cap. 511).

We shall propose a CSA to make it possible for a fine to be imposed by the Disciplinary Board under the Safety Management Regulation.

Item(2): The Bills Committee has requested the Administration to clarify whether the definition of "container handling" in the Fourth Schedule can adequately reflect the legislative intent, for example, whether the Bill will cover container handling performed on a ship or the loading or unloading of containers between the land and the sea.

Safe operation of the port is one of the principal functions of Marine Department. There are several pieces of legislation enforced by the Marine Department which are relevant to container handling performed on a ship. These include the Shipping and Port Control (Cargo Handling) Regulations, Merchant Shipping (Seafarers) (Safety Officials and Reporting of Accidents and Dangerous Occurrences) Regulation, Merchant Shipping (Safety) (Safety Management) Regulation, Port Control (Cargo Working Areas) Regulations and Freight Containers (Safety) Ordinance (not yet in operation). Generally speaking, the Labour Department will control the safety of container handling on land and the Marine department will control

such safety matters on a ship. Where an accident occurs which involves both land-based and sea-based operations, the current practice is for both departments to conduct a joint inspection to find out which department and ordinance or regulation should be a more appropriate vehicle to take action.

Education and Manpower Bureau

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