

香港城市大學專業進修學院職安健舊生會的信頭
Letterhead of CityU SCOPE OSH Alumni Association

Our ref. COSHAA99013

8 September

Clerk to Subcommittee
Legislative Council Subcommittee
on Regulations relating to Occupational Safety and Health
3/F Citibank Tower
3 Garden Road
Hong Kong

Dear Sir,

Proposed Factories and Industrial Undertakings
(Loadshifting Machinery) Regulation

Our Association, CityU SCOPE OSH Alumni Association, is an association of graduates and students of occupational safety and health courses run by the City University of Hong Kong. Our members represent a wide spectrum of trades in Hong Kong, such as container terminals operators, construction companies, properties development companies, banking institutes, lift companies, etc. Our common interest is to promote safety and health in the workplace.

We are writing to express our views on the captioned proposed Regulation. We hope that the Chairman of the Subcommittee will give due consideration to our views when he examines the proposed Regulation.

We generally support the captioned proposed Regulation providing for training and certification requirements for operators of specific loadshifting machines. The reasons for our support are as follows:

1. Between 1994 and 1998, there were a total of twenty-two fatal accidents in Hong Kong relating to loadshifting machines. As we all know, this figure just represents the tip of an ice-berg. The numbers of injuries and dangerous occurrences is much higher. These incidences (fatal accidents, injuries and dangerous occurrences) are losses to the society as a whole. There are losses in productivity; resources are spent on compensations and legal actions; the affected individuals and their families are affected by physical and psychological

suffering, just to cite a few examples. We believe that mandatory training of operators of loadshifting machinery would be a positive and effective step to reduce such losses. The financial and other related resources spent on training represent only a fraction of what the society will otherwise lose from such accidents.

2. We see that there is an imminent need to require machine operators to undergo proper training. The Hong Kong SAR Government is going to implement a vast amount of infrastructure projects in coming years. The use of more sophisticated and powerful machines as one of the means to increase efficiency and productivity will be the general trend. Proper training to ensure competence is essential. There will be a lot of newcomers engaging in construction industries. Such newcomers are particularly prone to accidents, so proper training is all the more important.
3. We also believe that the captioned proposed Regulation will benefit the workers of Hong Kong. Formalised training organized by recognized institutes will enhance their qualifications and productivity. Their opportunities for employment and terms of employment would be improved as well.
4. The legal obligations on operators, employers and contractors regarding the training and competence of operators are not well defined under the Factories and Industrial Undertakings Regulation on Construction Site Safety. Therefore, operators are not well protected, employers / contractors have no clear guidance to follow, and the enforcement party (Labour Department) has difficulty exercising its authority to rectify the existing mal-practice.

There are, however, one or two areas in the proposed Regulation that require refinement. For example, 'responsible person' has basically been defined as a person who is having the management of or is in charge of the machine, including the contractor, if appropriate. Subcontracting and hiring plants are common in construction sites, however, the proposed Regulation has not clearly defined the extent of duty of these parties, i.e. the principal contractors, subcontractors, or hired plant owners with regard to the provision of training under S.4. Similarly, there is no clear indication of extent of liability of these parties in S.8.

We also believe that S.8(1) imposing an absolute liability on a responsible person is too stringent. There are often cases beyond the control of a responsible person, even when he has exercised reasonable measures. For a simple example, a youngster may out of curiosity enter into a construction site and operates a truck or other loadshifting machines. There has been a similar incident in which a bus was driven by a youngster. We consider that there should be a proviso in the Regulation to allow a responsible person to defend himself when S.8(1) is breached and let the court to make the judgement.

We hope that the above opinions and recommendations will be duly considered by the Chairman of the Subcommittee and adopted in finalizing the proposed Regulation. We urge the early enactment of the Regulation so as to enhance the occupational safety of Hong Kong's workers and benefit Hong Kong society as a whole.

Yours faithfully,

Lawrence HO
Chairman of the Executive Committee
CityU SCOPE OSH Alumni Association