

**The Administration's Response to the concerns raised
by Members and submissions made by
11 Organizations at the meeting on 13.9.99
regarding the Factories and Industrial Undertakings
(Loadshifting Machinery) Regulation**

Introduction

At the invitation of the Legislative Council Subcommittee on Factories and Industrial Undertakings (Loadshifting Machinery) Regulation, the following 11 organizations, viz :-

1. Hong Kong Container Freight Station Association Limited (HKCFSA)
2. Construction Industry Training Authority (CITA)
3. Harbour Transportation Workers General Union (HTWGU)
4. Vocational Training Council (VTC)
5. Occupational Safety & Health Council (OSHC)
6. CityU SCOPE OSH Alumni Association (CSOAA)
7. Central Container Handling Safety Committee (CCHSC)
8. The Hong Kong Construction Association Ltd. (HKCAL)
9. Hong Kong Storehouses and Transportation Staff Association (HKSTSA)
10. Federation of Hong Kong and Kowloon Labour Unions (FHKKLU)
11. Society of Registered Safety Officers (SRSO)

have made written submissions on the proposed Regulation. They also presented their views at the Subcommittee meeting on 13 September 1999. The Administration notes that the submissions are, in general, supportive of the proposed Regulation. The following is the Administration's response to the submissions as well as some concerns raised by Members. Instead of addressing each submission individually, similar points raised by the

organizations have been grouped together and a collective response is given by the Administration.

Information on Serious Accidents

[SRSO - para. 2 in CB(2)2798/98-99(02)]

2. The Labour Department does not have statistics on non-fatal accidents involving loadshifting machinery before 1998. In 1998, it recorded 12 industrial accidents related to earth-moving machinery used on construction sites, of which 1 involved fatality. There were 88 industrial accidents in the same year arising from the operation of forklift trucks, including 3 fatal cases.

3. We have no detailed breakdown to show the causation in non-fatal accidents. As for accidents involving fatalities, there were 15 cases of accidents involving earth-moving machinery on construction sites and 7 cases involving forklift trucks in all industries between 1994-1998. From our observation of these cases, we believe that inadequate training of the machine operators, a lack of a safe system of work, and a lack of control of the safe operation and maintenance of the machines are the contributing factors to the accidents.

Purpose of Legislation

[SRSO - para. 2, 3 & 4 in CB(2)2798/98-99(02);

HKCFSA - para. 5 in CB(2)2756/98-99(05);

CSOAA - para. 3.4 in CB(2)2779/98-99(02)]

4. The Administration is of the view that introducing new legislation is necessary. The training proposed for the loadshifting machine operators involves competency and safety training, which has to be recognized by the Commissioner for Labour. On the other hand, a code of practice can only explain and supplement an existing regulation but cannot provide a mechanism for recognition of courses or stipulate the requirement for operators to be trained in such courses. Such requirements should be stipulated in a regulation.

5. Currently, there are specific provisions in the Construction Sites (Safety) Regulations and the Factories and Industrial Undertakings (Cargo and

Container Handling) Regulations requiring contractors or owners of the specified loadshifting equipment to ensure that the machines are operated by trained and competent persons. Besides, loadshifting machinery is normally operated in industrial undertakings, such as construction sites, warehouses or godowns. It is therefore appropriate and convenient for proprietors in the industrial sector to follow if we make the regulation under the Factories and Industrial Undertakings Ordinance.

Training Capacity

[CITA - para. 4 in CB(2)2716/98-99(02);

HKCFSA - para. 3, 4, 6 & 8 in CB(2)2716/98-99(01) and para. 2, 3 & 4 in CB(2)2756/98-99(05);

VTC - items 1 & 2 in CB(2)2756/98-99(03);

OSHC - para. 1 & 3 in CB(2)2756/98-99(04);

CSOAA - para. 3.2 in CB(2)2779/98-99(02);

CCHSC - para. 2 in CB(2)2779/98(03);

FHKKLU - item 3 in CB(2)2794/98-99(01);

HKSTSA - item 4 in CB(2)2779/98-99(05);

HKCA - item 3 in CB(2)2779/98-99(04)]

6. The Administration, based on the 1996 Report on the Manpower Survey conducted by the VTC in the Transport and Physical Distribution Industry, has earlier estimated that there are about 2,000 forklift truck operators in various industrial undertakings. However, in their submissions to the Subcommittee many organizations maintained that a forklift truck is often operated on a two or even three shifts basis. They have provided their own estimates on the number of forklift truck operators ranging between 3,000 and 8,000. In the absence of an authoritative estimate on the actual number of forklift truck operators, we have decided, for planning the implementation of the proposed Regulation, to revise the estimated number of forklift truck operators to 5,000. We will keep the estimated number of operators under constant review in the light of actual operational experience.

7. On the matter of training of forklift truck operators, the VTC and OSHC are currently offering courses for new hands and existing operators. The HTWGU is conducting courses for existing operators. The VTC has indicated that they are capable of providing about 400 training places (300 and 96 for existing and new operators respectively) each year, i.e. 600 in 18 months' time.

Including the 450 operators already trained in the past few years, VTC alone will, by the end of the proposed 18 months grace period, have trained more than 1,000 operators. Together with the 1,850 places each year provided by the OSHC and the HTWGU, we should have more than 3,700 training places from these training providers in 18 months. We have also received two letters of intent to run training courses from interested employers and organizations. Other large container handling establishments are also expected to provide in-house training for their own employees. We reckon that there will be sufficient capacity for training all the forklift truck operators within the proposed 18 months grace period. If it proves necessary, we will adjust the length of the grace period for the Regulation to ensure that the great majority of operators would have obtained the certificate before Regulation comes into effect.

8. The Administration agrees in principle with the suggestion to recognize the training of past graduates of CITA's courses on loadshifting machinery operations. Provided that the training has met the minimum requirement for these trainees to operate the machinery competently and safely, the Labour Department will consider giving retrospective recognition to the graduates.

9. We realize that some machinery such as locomotives and scrapers identified for Phase 2 implementation are not commonly used. However, our experience in the certification of operators of other machinery indicates that the owners of these machines will arrange for the training of their own operators in most instances and the Labour Department will monitor the training and recognize the courses if they meet the requirements of the training guidelines. We acknowledge CITA's expertise in this training area and will consult them in the development of the relevant training guidelines.

Training requirements

[OSHC - para. 2 in CB(2)2756/98-99(04);

HKSTSA - item 3 in CB(2)202779/98-99(05);

HTWGU - items 1 - 5 in CB(2)2756/98-99 (02);

SRSO - para. 5.2 & 5.3 in CB(2)2798/98-99(02);

CCHSC - para. 4d in CB(2)2779/98-99(03);

Concerns raised by Members at meeting on 13.9.1999 - para. 2]

10. The Administration will prepare training guidelines for the three types of training courses, i.e. new operators course, experienced operators course and revalidation course for the renewal of certificates. The guidelines will provide standards and specifications on course structure, content and duration, assessments, qualification of trainers, format of certificates and procedures of application, renewal arrangement, approval and on-going monitoring, etc. to ensure that a high quality of training is maintained. The training guidelines will be made available to any person who is interested in becoming an approved course provider.

11. In response to the request by Members of the Subcommittee at the meeting held on 13.9.99, the following table shows the proposed service requirements for attending the various training courses :

	Earth-moving equipment in construction industry	Forklift truck
New operators course	No previous experience required	No previous experience required
Experienced operators course	Not less than 3 years' service	Not less than 1 year's service
Revalidation course (for renewal of certificate)	Holder of valid certificate with 3 years active service in preceding 5 years	Holder of valid certificate with 2 years active service in preceding 5 years

12. With regard to the qualifications of the trainers, we intend that they should include the following:

- (a) A theory trainer should:
- i. be familiar with the local safety regulation related to the operation of the relevant machinery; and
 - ii. possess sound knowledge related to the prevention of injuries and property losses in connection with the use of such machinery.
 - iii. possess sound lecturing, instructing and assessment skill.

- (b) A practical trainer should:
- i. be able to identify defects and malfunction of the machine;
 - ii. have a good understanding of the construction, performance and limitation of the machine;
 - iii. have extensive practical experience in operating the machine;
 - iv. have skills to conduct basic operational tests on a machine, e.g. testing of brake system, steering and loading function; and
 - v. possess sound lecturing, instructing and assessment skill.

Subsidization of Training

[HKCFSA - para. 3 & 4 in CB(2)2756/98-99(05);

HKSTSA - para. 1 in CB(2)2779/98-99(05);

FHKKLU - item 1 in CB(2)2794/98-99(01);

OSHC - para. 4 in CB(2)2756/98-99(04);

CSOAA - para. 3.3 in CB(2)2779/98-99(02);

Concerns raised by Members at meeting on 13.9.1999 - para. 1]

13. The Administration is of the view that risks at work should be managed by those persons who create them, i.e. the employers and the workers. The Administration should be responsible for the provision of suitable standards (in a legal framework if necessary), promulgation and promotion of such standards and the enforcement of such standards. The General Duties provisions in the FIUO already require proprietors and employers to provide the necessary information, training and instructions to their workers. We therefore believe that in this vein, the proprietors of industrial undertakings and the owners of the machines should be responsible for the provision of training to the operators whom they employ. Such expenses should not be seen as pure expenditure but as an investment which will result in more efficient and safer operation with all the cost benefits that they bring. We do not consider that the Administration should subsidize the training which should be a necessary investment by the proprietors. It is also relevant to note that, since the introduction of the proposed Regulation, some organizations have expressed interest in becoming training providers and many proprietors have planned to provide their own in-house training. With the increased number of training providers, it is possible that the level of training costs may drop and thus reduce

the financial burden on the proprietors concerned in complying with the proposed Regulation.

Duties of Persons

*[CSOAA - para. 4 & 5 in CB(2)2779/98-99(02);
SRSO - para. 5.1 & 5.4 in CB(2)2798/99(02)]*

14. In the proposed Regulation, a “responsible person” is defined in section 2. Under section 4 of the proposed Regulation, the “responsible person” of a loadshifting machine has the duty to provide training to its operator. There are different modes of engagement of loadshifting machines in industrial undertakings and construction sites. For example, the proprietor of the undertaking may hire a machine together with its operator under a service contract from another proprietor who physically owns the machine. The definition of “responsible person” therefore has to be kept sufficiently broad to cover all possible situations. Basically, we intend to capture a person who is responsible for the overall management or control of the premises on which the machine operates. Under our proposed definition of “responsible person”, a proprietor or contractor who hires loadshifting machines to undertake work on his premises will very likely fall within the control of the proposed Regulation.

15. Regarding the example stated in CSOAA’s submission, we have no intention to hold a “responsible person” as defined in the proposed Regulation responsible for trespassers operating a loadshifting machine without permission, if he can show that he has taken sufficient precautionary measures to prevent trespasses into the site and unauthorized operation of the loadshifting machinery. The definition, though wide, is clear and has to be used by reference to the actual operation of the machine and the management of the activities on the premises.

16. The proposed Regulation requires the “responsible person” to ensure that loadshifting machines are operated only by persons who have received necessary training. If he fails, he will be prosecuted under section 3 of the proposed Regulation. In order to prove that the responsible person has failed in his statutory obligation in our prosecution, the fact that the operator does not have a valid certificate while he is operating the loadshifting machine must be established. In the light of this, occupational safety officers are empowered,

in section 6 of the proposed Regulation, to check whether the operator has a valid certificate. As regards untrained worker engaged in unauthorized operation of the machines concerned, he would be liable to prosecution under the general duties provisions, i.e. section 6B of the FIUO.

Application

***[CCHSC - para. 4 in CB(2)2779/98-99(03);
HKSTSA - para. 3 in CB(2)2779/98-99(05);]***

17. A front loader comes within the definition of a crane and is controlled by the Factories and Industrial Undertakings (Lifting Appliances and Lifting Gear) Regulations. It is used mainly for handling containers. It is therefore different from a forklift truck which primarily transports loose goods and bags of material on palettes. We have no intention to regulate front loaders by the proposed Regulation and do not consider it appropriate to allow a certificate for a forklift operator to interchange with that for a front loader operator as the skill level required is different.

18. The Administration does not consider it necessary to distinguish between a 3-ton forklift truck from a 30-ton forklift truck in relation to operator certification. The operation of a 3-ton forklift truck is basically similar to that of a 30-ton forklift truck, except that the operator of the 30-ton forklift truck may have to take extra care of the larger configuration of the truck and the weight and size of the load. An additional person may have to be assigned to assist an operator of a 30-ton forklift truck during its operation. However, the skills needed to operate a forklift truck are basically the same, regardless of the capacity of the equipment. The same certificate should apply to both trucks. We understand that in some states of Australia, they used to issue a separate forklift operator certificate for machines with capacity of greater than 10 tons. However, they have, for the reasons given above, adopted a one-certificate system already.

19. With regard to the liabilities for forklift trucks at a terminal, we wish to point out that as long as an operator is using a forklift truck on land within the terminal, the operator must possess a forklift truck certificate under the proposed Regulation, irrespective of whether or not he is a member of the ship's crew. The responsible person (who may be the management of the terminal or

the ship owner) shall ensure that an operator holds a valid certificate whenever he operates a forklift truck on land.

20. We consider that operators of loadshifting machines should be 18 years of age or over because it is consistent with the requirements in the FIUO and its subsidiary regulations which stipulate that operators of cranes, suspended working platforms, lifting appliances and hoists should attain that age before they can operate such kinds of machinery. In any case, persons below the age of 18 are not allowed to work on construction sites. For forklift trucks in industrial undertakings, proprietors should not employ young persons who are not yet 16 and a half years of age to operate such machines (persons of such age now should have attained the age of 18 after the grace period for the proposed Regulation has expired). If they are already in employment, the Labour Department is prepared to consider exemption on the circumstances of each individual case.

Exemption

[CCHSC - para. 3 in CB(2)2779/98-99(03);

HKSTSA - para. 6 & 7 in CB(2)2779/98-99(05);

FHKKLU – item 4 in CB(2)2794/98-99(01)]

21. The Administration does not consider it appropriate to exempt existing operators of loadshifting machinery from attending courses for experienced operators. Such training courses comprise theory and practical safety training elements and have an emphasis on updating and reinforcing their safety awareness and training them to operate the machine safely. This is similar to the arrangements for the training and certification of existing crane operators and workers using suspended working platforms under their respective regulations. Moreover, for those who are not regular machine operators, the experienced operators course serves to ensure the competency of the operators in handling loadshifting machine, both existing and new or improved model.

22. In addition, written test should be applied to all applicants. Research in training and development indicates that the inclusion of an assessment, however simple, at the end of any training session will significantly enhance the effectiveness of the training. Our experience also shows that trainees would

tend to pay more attention to the trainer when there is an assessment at the end of the training.

23. The Administration is not prepared to exempt those operators who are holding the Special Purpose Vehicle Driving licence issued under the Road Traffic Ordinance from the training and certification requirements because:

- a) the licence of this category is issued without undergoing a driving test;
- b) holder of this class of licence, though possessing valid driving licence of another class, may not have received proper training on the use of forklift truck, the training for such purpose may not include elements of safe operation of the equipment in an industrial undertaking environment;

Implementation

[SRSO - para. 9 in CB(2)2798/98-99(02);

HKCAL - para. 2 in CB(2)2779/98-99(04)]

24. The Administration intends to regulate the most commonly used loadshifting machinery in industrial undertakings. The control will be introduced in two phases. The first phase will cover 6 types of loadshifting machines, namely bulldozers, loaders, excavators, lorries and trucks used on construction sites and forklift trucks used in any industrial undertakings. The second phase will extend to cover 5 other types of loadshifting machines used in construction sites, namely compactors, dumpers, graders, locomotives and scrapers. We are prepared to consider including more loadshifting machinery under the control of the proposed Regulation where the need arises.

25. The proposed Regulation would come into operation 18 months after enactment. The commencement of the new Regulation, including the list of loadshifting machinery in the Phase I implementation, will be published in the Gazette and the public will also be informed through press release, newsletters, etc.

Offences and penalties

[FHKLU - para. 3 in CB(2)2794/98-99(01)]

26. There are similar penalties, i.e. \$10,000, for offences by employees failing to produce a required training certificate for inspection in the Factories and Industrial Undertakings (Amendment) Ordinance 1999 and in other subsidiary legislation under FIUO, such as the Factories and Industrial Undertakings (Cartridge-Operated Fixing Tools) Regulations and the Construction Sites (Safety) Regulations. Some regulations impose even heavier penalty for offence by employees, for example, in the case under the Factories and Industrial Undertakings (Confined Spaces) Regulation the penalty set is at \$50,000.

27. The Administration has no intention to impose strict liabilities on the machine operator to produce a certificate. Therefore, the use of such terms as "reasonable time and place" and "reasonable excuses" will facilitate the operator to produce his certificate at reasonable times and places depending on his case and allow him to provide reasonable excuses.

Consultation

[CCHSC - para. 8 in CB(2)2779/98-99(03);

Concerns raised by Members at meeting on 13.9.1999 - para. 3]

28. The Advisory Committee on Certification of Operators and Specified Plants and Equipment (ACCOSPE), which consists of representatives from a relevant workers union, the Hong Kong Construction Association, training institutions and safety professionals, has been consulted and has given its support to the proposed training and certification requirement. The Transport and Physical Distribution Training Board of the VTC, the Labour Advisory Board and its Committee on Occupational Safety and Health have also been consulted. We have also discussed with the Hong Kong Container Freight Station Association Ltd. These organizations have indicated their support for the Regulation. The Labour Department is currently consulting the industries concerned on the training guidelines mentioned in para 10 above for the relevant training courses.