

立法會

Legislative Council

LC Paper No. CB(2) 2621/98-99

Ref : CB2/PL/MP
Tel : 2869 9594
Date : 22 July 1999
From : Clerk to Panel
To : Hon LEE Kai-ming, SBS, JP (Chairman)
Hon LAU Chin-shek, JP (Deputy Chairman)
Hon Kenneth TING Woo-shou, JP
Hon James TIEN Pei-chun, JP
Hon David CHU Yu-lin
Hon HO Sai-chu, SBS, JP
Hon Michael HO Mun-ka
Hon LEE Cheuk-yan
Dr Hon LUI Ming-wah, JP
Hon Ronald ARCULLI, JP
Hon CHAN Kwok-keung
Hon CHAN Yuen-han
Hon CHAN Wing-chan
Hon CHAN Kam-lam
Dr Hon LEONG Che-hung, JP
Hon LEUNG Yiu-chung
Hon SIN Chung-kai
Hon Andrew CHENG Kar-foo
Hon SZETO Wah

LegCo Panel on Manpower

Follow-up to meetings on 7 January and 22 April 1999

I enclose the Administration's response to members' requests at the above meetings on the following -

- (a) the submission of Hong Kong Confederation of Trade Unions on the Factories and Industrial Undertakings (Amendment) Bill 1999 and Factories and Industrial Undertakings (Safety Management) Regulation; and
- (b) information on target construction companies put on a watchlist and causes for fatal accidents in the construction industry.

(Raymond LAM)
for Clerk to Panel

Encl.

c.c. Hon Fred LI Wah-ming, JP (Non-Panel Member)

Hon MA Fung-kwok (Non-Panel Member)

Hon Christine LOH (Non-Panel Member)

Hon Jasper TSANG Yok-sing, JP (Non-Panel Member)

Hon Emily LAU Wai-hing, JP (Non-Panel Member)

Hon LAW Chi-kwong, JP (Non-Panel Member)

ALA5

教育統籌局的信頭

Letterhead of EDUCATION AND MANPOWER BUREAU

本局檔號 Our Ref.: EMBCR 14/581/94 IX
來函檔號 Your Ref.:

21 July 1999

Clerk to Panel on Manpower
LegCo Secretariat
Legislative Council
8 Jackson Road
Central Hong Kong

(Attn: Mrs Sharon Tong)

Dear Mrs Tong,

LegCo Panel on Manpower
List of follow-up action required of the Administration

I refer to the captioned list ref. LC Paper No. CB(2) 2601/98-99(01) on position as at 16 July 1999. I wish to provide responses to items no. 3 and 12 on the list which fall under the purview of the Occupational Safety Division of this Bureau.

Item 3

We have already provided written response to the submission from the Hong Kong Confederation of Trade Union (HKCTU) on the Factories and Industrial Undertakings (Amendment) Bill 1999 and Factories and Industrial Undertakings (Safety Management) Regulation to the relevant Legislative Council Bills Committee on 15 May 1999. Hon Lee Cheuk-yan who represents the HKCTU is a member of the Bills Committee.

Item 12

Please refer to Appendices I and II on the Administration's responses on the watchlist of target construction companies and causes of fatal accidents in the construction industry.

Yours sincerely,

(Herman Cho)

for Secretary for Education and Manpower

(The Administration's response to the submission of Hong Kong Confederation of Trade Unions can be found in paragraphs 25 to 28)

**The Administration's Response to submissions made by
14 Organizations regarding the
Factories and Industrial Undertakings (Amendment) Bill 1999**

INTRODUCTION

At the invitation of the Legislative Council Bills Committee on the Factories and Industrial Undertakings (Amendment) Bill 1999, a total of 14 organizations (**See Annex**) have made written submissions on the Bill and the proposed Factories and Industrial Undertakings (Safety Management) Regulation. Some of them also presented their views at the Bills Committee meeting on 20 April 1999. The Administration is glad to note that the submissions are, in general, supportive of the Bills and Regulation. The following is the Administration's response to the submissions. It is divided into two parts, the first part covers the Bill and the second part covers the proposed Regulation. Instead of addressing each submission individually, similar points raised by the organizations are grouped together and a collective response is given by the Administration.

**I. FACTORIES AND INDUSTRIAL UNDERTAKINGS (AMENDMENT) BILL
1999**

A. Coverage

*[HKFTU Para. 2 in CB(2)1742/98-99(03);
HKCDRA Point 5 in CB(2)1716/98-99(02);]*

The Administration shares the view that safety is important to all industries irrespective of their operating processes and accident rates. We have consulted widely many related organizations, including the Hong Kong Container Depot and Repairer Association Ltd., before preparing the Factories and Industrial Undertakings (Amendment) Bill 1999. The construction industry and the container handling industry have been chosen as the first industries to implement mandatory safety training because of their higher accident rates.

*[HKCDRA Points 1 and 3 in CB(2)1716/98-99(02);
HKIE Para. 2.1 in CB(2)1716/98-99(04).]*

2. The definition of the two industries are clear in the proposed legislation as they are modelled on existing legislation. For example, “Container Handling” is an existing definition in the Factories and Industrial Undertakings (Cargo and Container Handling) Regulations, “Construction work” and “Construction sites” are defined in the Factories and Industrial Undertakings Ordinance and Construction Sites (Safety) Regulations respectively. There should be no confusion as to the coverage of this Bill.

[HKCDRA Points 2 & 4 in CB(2)1716/98-99(02)]

3. The intention of the Bill is to require those persons involved in container handling activities to undergo basic safety training. There is no requirement to cover those handling goods or cargoes into containers as they are involved in “cargo handling” as defined in the Factories and Industrial Undertakings (Cargo and Container Handling) Regulations. It is not appropriate to amend the definition of “container handling” to cover ‘maintenance or repair’ work as they are not considered to be container handling activities. Also, drivers of container-trucks who are not engaged in container handling activity are not covered under this Bill.

B. Introduction of Safety Training

[SRSO para. 2 in CB(2)1716/98-99(05)]

4. The Administration is aware that improvements to occupational safety and health are contributed by a number of factors. We have not claimed that the 78% difference in accident rates quoted in paragraph 3 of the Legislative Council Brief was the result of introducing mandatory safety training in public sector construction sites alone. The last sentence in the same paragraph in the Brief stated our belief that the provision of safety training to the workers, as well as the implementation of safety management system, are the major contributing factors to the better safety records in public sector work sites.

[SRSO para. 3 in CB(2)1716/98-99(05)]

5. The General Duties provisions (Section 6A) of the Factories and Industrial Undertakings Ordinance require a proprietor to provide all the necessary information, instruction, training and supervision to his employees. Notwithstanding the introduction of the Bill, proprietors would continue to be required to provide, wherever appropriate, training and instruction as stipulated under the General Duties provisions of the Ordinance. This point will be highlighted in our future publicity on the new provisions of the Bill.

6. The General Duties provisions provide for general requirements as to safety and health at work and the Labour Department relies on such provisions to take prosecution where specific provisions are not available. However, if specific legal provisions appropriate to a certain situation are available, then we would use such specific provisions to lay the charges.

[HKIE Para.2.2 in CB(2)1716/98-99(04)]

7. The HKIE has rightly pointed out that under the Bill, the Commissioner for Labour has the power to specify different training for different people. However, he cannot go beyond the Fourth Schedule in the Bill and require employees in industries other than construction and container handling to undergo the specified training. Besides, the Commissioner has no intention to specify different training for different employees by setting different syllabus.

[SRSO para. 4 in CB(2)1716/98-99(05);

HKCA para.2 in CB(2)1732/98-99(01).]

8. The Administration welcomes the participation of different companies, trade unions, and training institutions in providing training course to meet the requirements as provided in the law. All persons interested in running the courses may apply to the Commissioner for Labour for approval of their courses.

[HKFTU Para.3 in CB(2)1742/98-99(03)]

9. The Administration agrees that supervision of training is important. To monitor the quality of training, training organizations are required to submit information on course materials, trainers' particulars, and training facilities and arrangements, etc. at the time of application for approval of their courses. The Administration may from time to time check the conduct of the courses, including tests, and may inspect any relevant documents or records such as the training materials, test papers and attendance records, etc. If the training is found to be below the required standards, the Commissioner for Labour may withdraw the recognition of the course.

C. Duties of Employer and Employee

[HKIE Para.1.5 in CB(2)1716/98-99(04)]

10. The Bill has provided a clear delineation of duties between a proprietor and his employee. The proprietor should employ a person who has a relevant certificate and the person should obtain and carry the certificate with him while at work. For breaching a statutory duty, it is our usual practice that the workers will be liable to be prosecuted if we are satisfied that a proprietor has provided all the training, accessories and supervision to his workers but the workers still commit an offence.

[FHKCLU Point 3 in CB(2)1742/98-99(01)]

11. The maximum penalty of \$10,000 for not carrying the green card while at work is the same as similar offences under other safety regulations. The offences for failing to wear a safety helmet under section 48(2) of the Construction Sites (Safety) Regulations or operating a cartridge-operated fixing tool without a certificate under section 11(1) and 18(2) of the FIU (Cartridge-Operated Fixing Tools) Regulations also carry a maximum penalty of \$10,000. However, it should be borne in mind that the actual fine payable has to be decided by the magistrate presiding.

*[FHKKLU Points 1&2 in CB(2)1742/98-99(01);
HKFTU Para. 2 in CB(2)1742/98-99(03).]*

12. Although the Bill does not state specifically that the employer should arrange their employees to attend the refresher courses for renewal of the relevant certificate and pay for the training courses, the General Duties provisions in the Factories and Industrial Undertakings Ordinance has made it a duty for the proprietor to provide the necessary training for his employees. We would expect proprietors either to provide such training in house or to send his employees to attend external training course.

D. Others

*[HKSMBA Points 1&3 in CB(2)1742/98-99(02);
HKGCC Para 3 in CB(2)1742/98-99(04)]*

13. The Administration is very mindful of the financial implications of new legislation on the business sector. However, we believe that the proposed legislation should in the long run reduce the operating cost of the business sector through a reduction in the number of accidents and the associated reduction in the insurance premium, loss of manpower, improvement of productivity and corporate image etc.

[HKSMBA Point 4 in CB(2)1742/98-99(02)]

14. There are existing and effective monitoring mechanisms in place and the Administration has no intention to build in additional mechanism in the Bill.

[HKIE Para. 1.4 CB(2)1716/98-99(04)]

15. There are frequent meetings between the various government departments, such as the Housing Department, the Buildings Department, the Labour Department and the Works Bureau to discuss enforcement and other matters. However, it should be noted that the Labour Department is primarily responsible for occupational safety while the other government departments are responsible for building safety, mechanical safety or performance of the works

contract as the case may be, and their activities have different emphasis and address to different issues.

II. FACTORIES AND INDUSTRIAL UNDERTAKINGS (SAFETY MANAGEMENT) REGULATION

A. Coverage

[HKFTU - para. 2 in CB(2)1742/98-99(03)

SRSO - s. 5 in CB(2)1716/98-99(05)]

16. The Administration will review the Factories and Industrial Undertakings (Safety Management) Regulation one year after the Regulation come into force to decide whether to extend it to other establishments, which may include those in the non-industrial sector.

[HKGCC - para. 8 in CB(2)1742/98-99(04);

FHKI - para. 4 in CB(2)1732/98-99(02);

HKOSHA — 1st para. 3 in CB(2)1716/98-99(06);

HKCA — point 1 in CB(2)1732/98-99(01)]

17. Notwithstanding that the accident rate in the manufacturing sector has significantly declined in the past few years, the number of accidents is still high when compared with other more developed countries.

18. It should be noted that the current applicable law, viz the Factories and Industrial Undertakings Ordinance and its regulations, are minimum standards. It is our intention to move away from the current prescriptive approach to a goal-setting one, thereby leaving a lot more room for duty holders to fulfil the legal obligations having regard to the nature and relative severity of hazards in their own trade. The proposed Regulation on safety management is introduced in line with this objective. It provides a legal framework for various industries to manage their own safety and health problems in a structured manner through a number of process elements. The elements proposed in the initial stage are all essential ones and inter-related. It would not therefore be appropriate to set different process element requirements for different industries because a fragmented and piece-meal approach will not be able to achieve an effective system.

19. The Administration recognizes that some industries, such as the construction industry, have their own unique characteristics. However, in order to implement the policy that, at the initial stage, larger industrial undertakings and those which are more accident-prone will be required to take up more process elements under the safety management system, the proposed Regulation has adopted employment sizes as a simple and clear criterion for the purpose of application of the relevant provisions.

20. By managing an effective system to prevent occupational injuries, businesses and manufacturers should be able to cut overall operating costs, increase productivity, remain competitive and, more importantly, offer better protection to the safety and health of their employees at work.

[HKCDRA - point 3 in CB(2)1716/98-99(02)]

21. The Administration would like to use the following example to clarify whether an industrial undertaking should implement a safety management system (SMS). If a proprietor employs three groups of workers, says 30, 51 & 101 workers in three different places or construction sites respectively, he has to implement the SMS under the following circumstances - (i) in the place or site with 101 workers under S.8(1) of the proposed Regulation; (ii) in the place or site with 51 workers under S.8(2); and (iii) collectively in the whole organization under S.8(3). We base our interpretation on section 2(3) of the proposed Regulation and we do not agree that there is ambiguity in the coverage.

B. Registration as Safety Auditor or Scheme Operator

(a) Eligibility for registration of safety auditor

[SRSO - para. 6.2.1 in CB(2)1716/98-99(05)]

22. The Administration considers that a minimum experience of 3 years in a 5-year period in a managerial post responsible for industrial safety and health matters should be sufficient.

[SASA - point. 2 in CB(2)/1716/98-99(03);

HKOSHA -s. 4 in CB(2)1716/98-99(06)]

23. The section which allows a lower requirement for registration of safety auditor in the first six months of the commencement of the Schedule is considered appropriate in order to encourage serving personnel to apply for registration as a safety auditor. This will ensure a sufficient supply of registered safety auditors at the initial stage. We have to bear in mind that the number of safety auditors who will be performing the auditing functions will always be less than those on the register.

(b) Register

[OSHC, Para. 27 in CB(2)1757/98-99(01)]

24. Publication of a list of Registered Safety Auditors in the Government Gazette requires constant updating and involves a lot of administrative efforts. We intend to follow the current practice in the enforcement of the Factories and Industrial Undertakings (Safety Officers and Safety Supervisors) Regulation, i.e. making the register available for inspection by the public free of charge at the offices responsible for the registration.

C. Safety Committee

(a) Functions and power of workers' representatives in safety committees

[HKCTU -para. 1 in CB(2)1029/98-99(01)]

25. Under section 10 of the proposed Regulation, a Safety Committee has the function of identifying, recommending and keeping under review measures to improve the safety and health of the workers in the undertaking.

26. As the proposed Regulation aims at providing a legal framework for the establishment of a safety management system, the details of the process elements of the system, such as the establishment of a Safety Committee need not be stipulated in the Regulation. The intention is that the duty holders should have the flexibility to devise and implement the process elements to achieve the goal of an effective and safe system of work as they deem fit. This is in line with our new strategy of improving safety through self-regulation. In this vein, the functions and powers of a Safety Committee will not be stipulated in the proposed Regulation. They will be included in the Code of Practice on Safety Management which will cover other details on the Safety Committee as well as

the other 13 process elements. The Code is under preparation and its draft will be sent to parties concerned for comments after the Regulation is approved by the Legislative Council.

(b) Protection of workers' representatives in safety committee

[HKCTU -para. 2 in CB(2)1029/98-99(01)]

27. The Administration agrees to consider building into the proposed Regulation the protection of workers' representatives in safety committees from dismissal arising from their involvement in the committees.

(c) Right to refuse work on ground of occupational hazard

[HKCTU -para. 3 in CB(2)1029/98-99(01)]

28. The Secretary for Education and Manpower, when moving the motion on the Factories and Industrial Undertakings (Confined Spaces) Regulation at the Legislative Council on 20.1.99, noted that the Administration agreed with the proposal in principle but would have to consider at the same time how to define circumstances of imminent and serious danger and whether it would be necessary to provide for a mechanism to resolve problems on the spot. We propose to describe in the Code of Practice for this Regulation the circumstances which would pose imminent and serious danger to the life or health of a worker. The Code will also provide a mechanism to deal with the question of whether a workers should refrain from working on such grounds. We are currently preparing a draft code and will consult parties concerned.

(d) Composition, etc. of safety committee

[SASA —point 4a in CB(2)1716/98-99(03)]

29. We consider that the term “worker” under section 11(1)(a) of the proposed Regulation should refer to workers who do not have a managerial function. The other half of the members on the Safety Committee should be determined by the proprietor and we may make suggestions in the Code of Practice for this proposed Regulation.

D. Safety Audits and Safety Reviews

(a) Appointment of registered safety auditor to conduct safety audit

*[SASA – point 1 in CB(2)1716/98-99(03);
SRSO - para. 6.3 in CB(2)1716/98-99(05);
HKOSHA - para. 3 in CB(2)1716/98-99(06)]*

30. The proposal to allow in-house safety auditors to undertake the audit of a company has been based on the recommendation in the 1995 Consultation Paper on the Review of Industrial Safety in Hong Kong. We believe that the best way to maintain the impartiality of an auditor would be to regulate his conduct and we have made appropriate provisions in this regard in the proposed Regulation. As long as the in-house auditor is not required to carry out other work of a nature or to the extent that would prevent the efficacious conduct of the audit, he should be able to conduct an independent audit.

(b) Submission of safety audit report

[SASA – point 4b in CB(2)1716/98-99(03)]

31. There is a need for both the proprietor and safety auditor to keep a copy of audit report for different reasons. The auditor should keep such report because it is a record of his work and may be required to be inspected by another authorised person, such as the Commissioner for Labour. The employer has to keep such record because it shows the state of affairs of his organization at a certain time and may indicate recommendations requiring his follow-up actions.

(c) Action to be taken on safety audit report

[SASA – point 4c in CB(2)1716/98-99(03)]

32. We do not agree that there is a duplication of power because the Commissioner may need to demand production of a copy of the audit report from a proprietor or a safety auditor for different purposes.

(d) Registered safety auditor to notify Commissioner of proposed safety audit

*[HKOSHA - para. 7 in CB(2)1716/98-99(06);
SASA - point 4d in CB(2)1716/98-99(03)]*

33. Registered safety auditor is the person who determines the timing and the arrangements for the audit. He should be the suitable person, not the

proprietor, to give notification to the Commissioner for conducting the safety audit.

(e) The Requirements for Safety Review Officer

[HKOSHA - para. 5 in CB(2)1716/98-99(06);

HKCA - point 4 in CB(2)1732/1998-99(01)

SASA — point 3 in CB(2)1716/98-99(03)]

34. The requirements for safety review officer will be specified in the relevant Code of Practice in order not to make the Regulation overly complicated.

(f) production of reports in court proceedings

[HKOSHA- para. 6 in CB(2)1716/98-99(06)]

35. In the case of a prosecution for a breach of safety legislation, the Labour Department would normally rely on evidence collected specific to the offence concerned. However, where the need arises we do not consider that the safety audit or review report should be precluded from being produced as evidence in court in the Regulation.

(g) Commissioner may inspect safety audit, etc.

[SASA —point 4f in CB(2)1716/98-99(03)]

36. The purpose of section 33 is to enable the Commissioner for Labour to assess the performance of a registered safety auditor or safety review officer. Unless information is required from the auditor or review officer, we do not consider it necessary to notify the safety auditor or review officer when an independent checking by the Commissioner is conducted.

E. Disciplinary board panel

[OSHC - para. 28 in Paper No. CB(2)1757/98-99(01)]

37. The Administration would expect the members of the disciplinary board to exercise their powers, including the cancellation of registration of a safety auditor, etc, in a fair and prudent manner. Hence we do not agree that new provision should be added in the proposed Regulation to release the legal

liabilities of the disciplinary board members. It is noted that no such provision is found in the Engineers Registration Ordinance, Architects Registration Ordinance, Buildings Ordinance, Lifts and Escalators (Safety) Ordinance and Medical Registration Ordinance where disciplinary procedures are provided.

[SASA – point 4e in CB(2)1716/98-99(03)]

38. The provision is to allow the Secretary for Education and Manpower to draw from members of the panel when forming a Disciplinary Board under section 27 of the proposed Regulation. Under section 28(5) of the proposed Regulation, the quorum for a meeting of the disciplinary board is 4 members only.

F. Others

(a) Recovery of full medical cost of work accidents

[SRSO - para. 5 in CB(2)1716/98-99(05)]

39. At present, employers are required by law to take out insurance policies for their employees medical costs and compensation arising from accidents. The proposal on recovery of the full medical costs of work accidents from the employers and contractors does not appear to be practicable.

(b) Offences

[HKOSHA - para. 2 in CB(2)1716/98-99(06);

HKCA - point 2 in CB(2)1732/98-99(01)]

40. The imprisonment terms in the proposed Regulation only deals with the so-called “hardware” requirements in implementing a safety management system, such as establishment of a safety committee, countersigning a safety audit report, etc. They do not touch on the performance in relation to the process elements in the system. We do not agree with the observation of these organizations.

Education and Manpower Bureau
May 1999

1. Hong Kong Confederation of Trade Unions (HKCTU)
2. Construction Industry Training Authority (CITA)
3. Hong Kong Container Depot & Repair Association (HKCDRA)
4. The Society of Accredited Safety Auditors Ltd (SASA)
5. The Hong Kong Institution of Engineers (HKIE)
6. Society of Registered Safety Officers (SRSO)
7. The Hong Kong Occupational Safety and Health Association (HKOSHA)
8. Hong Kong Small and Medium Business Association (HKSMBA)
9. Hong Kong Federation of Trade Unions (HKFTU)
10. The Hong Kong General Chamber of Commerce (HKGCC)
11. Hong Kong Construction Association Ltd (HKCA)
12. Federation of Hong Kong Industries (FHKI)
13. Federation of Hong Kong and Kowloon Labour Unions (FHKKLU)
14. Occupational Safety and Health Council (OSHC)

**Progress in work safety of some construction companies
put on the watchlist**

<i>Company</i>	<i>No. of reported occupational injuries in</i>					
	<i>97 Q4</i>	<i>98 Q1</i>	<i>98 Q2</i>	<i>98 Q3</i>	<i>98 Q4</i>	<i>1998 (whole year)</i>
(1)	212	177	179	252	135	736
(2)	137	122	111	95	71	391
(3)	103	94	53	56	46	246
(4)	97	64	65	41	26	196

Companies (1) to (4) have shown some improvement over the past twelve months, showing their commitment to reduce the incidents of injuries in response to our enforcement and advisory visits. On the other hand, there are some companies which are less responsive, as shown below:

<i>Company</i>	<i>No. of reported occupational injuries in</i>					
	<i>97 Q4</i>	<i>98 Q1</i>	<i>98 Q2</i>	<i>98 Q3</i>	<i>98 Q4</i>	<i>1998 (whole year)</i>
1	91	80	93	107	102	381
2	39	30	38	69	76	212
3	15	22	43	59	63	189

These companies will be subject to closer monitoring and more vigorous enforcement actions in 1999.

Causes for fatal accidents in the construction industry (1996-1998)

Fatalities by causation	1996	1997
Machinery	2	3
Transport	1	2
Gassing, poisoning & other toxic substances	---	1
Electricity	4	4
Fall of person	33	20
Stepping on, striking against or struck by objects	1	---
Falling objects	8	9
Fall of ground	1	---
Miscellaneous	1	2
Total	51	41

Fatalities by type of accident	1998
Trapped in or between objects	2
Struck by moving vehicle	3
Trapped by collapsing or overturning object	4
Contact with electricity or electric discharge	5
Fall of person from height	31
Striking against fixed or stationary object	1
Struck by falling object	9
Striking against or struck by moving object	1
Total	56

(*Note: The accident figures for 1997 and before were based on reported cases to the Labour Department. The figures for 1998 were based on cases occurred in the year.)