

**Motion on “Ensuring Occupational Safety”
at the Legislative Council Meeting
of 26 November 2014**

Progress Report

Purpose

At the Legislative Council (“LegCo”) Meeting held on 26 November 2014, the motion on “Ensuring Occupational Safety” moved by Hon POON Siu-ping as amended by Hon TANG Ka-piu was passed. The wording of the motion is at **Annex**. This paper briefs members on the progress of the subject.

Enhancing Occupational Safety

Stepping up Monitoring and Inspection

2. The Labour Department (“LD”) safeguards the occupational safety and health (“OSH”) of people at work through enforcement, publicity and promotion, as well as education and training with a view to minimizing hazards at workplaces, and fostering and developing a culture that attaches importance to OSH among different sectors and industries.

3. Through conducting workplace inspections, LD urges the relevant stakeholders to comply with the OSH legislation and deters unsafe work practices. Upon discovery of imminent risks of death or serious bodily injury to employees, LD will immediately issue improvement notices (“INs”) or suspension notices (“SNs”) or initiate prosecutions without prior warning.

4. Regarding the construction industry, apart from conducting over 50 000 regular site inspections each year, LD will from time to time launch special enforcement operations to deter unsafe work practices, with focus on high-risk processes such as lifting operations, work-at-height, electrical work, construction works at sea, etc. LD will take immediate enforcement actions upon discovery of breaches of safety legislation. LD launched a number of special enforcement operations in 2014, with a total of 500 SNs (348 in 2013) and 716 INs (590 in 2013) issued, and 745 prosecutions (652 in 2013) initiated.

As regards the enforcement figures for the construction industry as a whole (including the figures undertaken during special enforcement operations) in 2014, LD issued a total of 930 SNs (669 in 2013) and 1 395 INs (1 218 in 2013), and initiated 2 177 prosecutions (1 988 in 2013).

5. LD strives for systemic prevention of accidents at source through enhancing the liaison with proponents of major works projects, urging the contractors concerned to strengthen their site safety management systems in respect of high-risk processes (such as operation of heavy machinery, construction works at sea, etc.), strengthening the participation of professional resident site staff in monitoring work safety, and stepping up safety audits for major works projects. LD also tackles potential work hazards by strengthening the analysis of underlying systemic risks of serious construction accidents, instituting targeted inspections and enforcement actions, organizing thematic seminars on work safety (e.g. lifting operation, work-at-height, electrical work, etc.), and formulating relevant codes of practice on work safety.

6. To enhance OSH in container handling industry, LD officers regularly conduct surprise inspections to container terminals to inspect various work activities and high-risk processes at the terminals including operation of heavy machinery and equipment, cargo handling and other operations, in order to ensure that the duty-holders are complying with OSH legislation. In addition, LD from time to time launches special enforcement operations, with focus on high-risk processes for container handling industry to deter unsafe work practices. LD takes immediate enforcement actions without prior warning upon discovery of breaches of safety legislation.

Raising Deterrence of Penalties

7. Under the existing OSH legislation, offenders are liable to a maximum fine of \$500,000 and imprisonment for 12 months. The average fine in the past was of \$15,000 to \$20,000. Some stakeholders have expressed the view that the fines do not have deterrent effect. LD has reviewed the prosecution strategy since 2013, and will submit to the courts adequate information for reference in sentencing, including serious consequences that may be incurred by the accidents in question, the upward trend of the type of accidents concerned, and the highest fine imposed for similar cases in the past, etc. Depending on the circumstances of individual cases, LD will request the Department of Justice to consider filing a review or an appeal to the courts in respect of the conviction

and the penalty when necessary. It is noted that the fines imposed by the courts on conviction cases related to fatal industrial accidents in the construction industry increased notably in the past two years when compared with the past.

Enhancing Safety Standards

8. The existing Construction Sites (Safety) Regulations set out the safety standards for the contractors to conduct work-at-height on construction sites, and explicitly require them to ensure the safety of the workplaces for work-at-height through provision of suitable working platforms and fall protection equipment, ensuring the safety of bamboo scaffolds, etc. Pursuant to the general duties provisions of the Factories and Industrial Undertakings Ordinance, the contractors/ employers shall ensure the safety and health at work of their employees, including provision and maintenance of safe plant and systems of work; provision of necessary information, instruction, training and supervision; and provision and maintenance of a safe working environment, etc.

9. In May 2014, the Construction Industry Council (“CIC”) published the “Guidelines on Planking Arrangement for Providing Working Platforms on Bamboo Scaffolds” to delineate the responsibilities among principal contractors and sub-contractors on planking arrangements for providing working platforms on bamboo scaffolds, with a view to ensuring that suitable working platforms are available for use by workers carrying out works at the external wall. LD also updated, in June 2014, the “Code of Practice for Bamboo Scaffolding Safety” (“CoP”) accordingly. This CoP has a special legal status: although failure to observe any provision of this Code is not itself an offence, that failure may be taken by courts in criminal proceedings as a relevant factor in determining whether or not a person has breached the relevant safety and health legislation under the Factories and Industrial Undertakings Ordinance. LD will take into account the aforesaid Guidelines and CoP when enforcing safety regulations relating to the use of bamboo scaffolds for work-at-height.

10. Under the existing OSH legislation, owners of lifting appliances (including contractors of construction sites) shall adopt adequate measures to ensure the safe use of lifting appliances, including ensuring that the lifting appliances are of good construction and properly maintained; that stability is maintained during lifting operations; that the safe working load is not exceeded; and that regular inspections, thorough examinations and tests are conducted, etc.

In addition, the legislation requires that the lifting appliances shall only be operated by persons who hold recognized certificates with relevant experience and competence. Pursuant to the general duties provisions, the contractors and the employers shall, as far as reasonably practicable, ensure their employees' health and safety at work, and provide the operation personnel with necessary information, instruction, training and supervision. LD will review from time to time the existing regulatory regime regarding safe use of mobile cranes to enhance safety of lifting operations.

Education and Training

11. LD has enhanced the contents of the "Green Card" course by introducing case studies and analysis of serious accidents involving fall of persons from height, lifting operations, electrocution, etc.; and discussed with workers' unions how to further enhance the safety awareness of workers through advice and training. In recent years, LD has been releasing work safety alerts promptly after the occurrence of fatal or serious work accidents, giving a brief account of the accidents and reminding the industry to take safety precautionary measures through LD's website, emails and mobile applications to contractors, worker's unions, professional organizations of safety practitioners, workers, etc., with a view to preventing similar accidents.

Publicity, Promotion and Sponsorship Schemes

12. To motivate employers to genuinely shoulder the responsibility of ensuring employees' OSH, LD has been launching large-scale publicity and promotion activities and sponsorship schemes. As regards the construction industry, apart from launching the annual "Construction Industry Safety Award Scheme", LD organizes seminars with the industry, disseminates safety messages through the mass media, and pays visits to construction sites as well as arranges safety talks to raise the OSH awareness of employers and employees.

13. In 2015, LD will, in collaboration with the Occupational Safety and Health Council ("OSHC"), continue offering audits of safety management systems, safety training and subsidies for the purchase of fall arresting devices, to enhance the occupational safety standards of the renovation, maintenance, alteration and addition industry. OSHC will launch publicity activities to promote those safety conscious contractors, with a view to sustaining the

enhancement of the industry's occupational safety culture through market forces. In addition, LD, together with OSHC, launched the "Mobile Platform Sponsorship Scheme for Small-and-Medium Enterprises in 2013, subsidizing small-and-medium sized contractors to purchase mobile working platforms conforming to safety standards, with a view to minimizing the risk of workers falling from workplaces not too high above ground or from improper ladders. As at the end of 2014, OSHC had received over 1 700 applications and approved more than 1 580 applications, and around 17 300 workers had benefited from the scheme. LD is considering further extending the scope of the sponsorship scheme to cover those working platforms that can be used to undertake light duties at constrained work places.

14. As regards the work safety of practitioners in catering industry, OSHC will continue to launch the "Outstanding OSH Restaurant – Pilot Scheme on Catering Safety Accreditation" this year. Through participating in the "Accreditation Scheme for Catering Establishments with 5S Good Housekeeping", enterprises can improve the workplace safety and tidiness and cleanliness standards. The enterprises passing audits will be awarded a subsidy for the purchase of slip resistant shoes, cut resistant gloves and heat resistant gloves in compliance with the safety standards.

15. In addition, LD will continue to launch large-scale publicity and promotion activities to enhance OSH awareness in the construction industry and catering industry. The activities include organization of "Safety Award Schemes" for the industries, roving exhibitions, promotional visits, TV/radio broadcasts, radio programmes, fun days, experience-sharing sessions, etc.

16. LD also produces simple and easy-to-understand OSH promotional leaflets for the ethnic minorities workers, and collaborates with workers' unions and contractors' associations to conduct visits to construction sites, organize talks, etc., to raise their safety awareness.

Preventing Occupational Diseases

17. LD has been promoting employers' and employees' awareness of occupational safety and health, including the prevention of occupational and work-related diseases, through various activities such as organising health talks and seminars, distributing educational publications, broadcasting Announcements in the Public Interest on television and radio, publishing feature

articles in newspapers, and showing educational videos on mobile advertising media. In addition, LD has published two sets of publications about stretching exercises and aerobic exercises to encourage employees to exercise more during rest breaks and leisure time to prevent occupational diseases and work-related diseases. LD will continue to collaborate with OSHC and relevant employers' associations and workers' unions to promote occupational health by organising health talks, carnivals, occupational health award presentations and experience-sharing seminars, and workplace hygiene charter signing sessions.

Safeguarding Employees' Rights and Benefits

18. Section 15 of the Employees' Compensation Ordinance ("ECO") stipulates that an employer must notify the Commissioner for Labour of an accident or a prescribed occupational disease ("POD") within a statutory period using a prescribed form. The notice period for a fatal case is seven days whilst that for a non-fatal case is 14 days. An employer who contravenes the law is liable to a maximum fine of \$50,000.

19. ECO aims at providing protection for employees injured at work or suffering from a POD so that they are entitled to claim compensation from their employers. Employers cannot evade their responsibilities under ECO simply by classifying their employees as self-employed persons. If an employer intentionally attempts to change an employee's status into a self-employment by entering into a sub-contractor agreement, but in essence both parties maintain an employer-employee relationship, the employer still has to fulfill his obligation under ECO, including effecting compensation payment to the employee injured at work and taking out employees' compensation ("EC") insurance according to the law.

Reviewing the Scope of Occupational Disease

20. Occupational diseases are diseases having specific or strong relationship with occupations, generally with only one causal agent. In determining whether to include a disease as a POD under ECO, LD will consider whether the casual relationship between the disease and the occupation could be reasonably presumed or established in individual cases, including whether there is any medical evidence certifying the obvious and specific relationship between the disease and the occupation.

21. Besides, according to ECO, if an employee suffers incapacity arising from a POD and that disease is one due to the nature of any occupation in which he was employed at any time within the prescribed period immediately preceding the incapacity caused, he/she may claim compensation. ECO also stipulates that an employee may still claim compensation for a disease not specified in ECO if it is certified to be a personal injury by accident arising out of and in the course of employment. LD will, depending on individual cases, assist the employer and the employee to handle the compensation matter.

22. LD will, from time to time, review the scope of PODs under ECO pursuant to the established mechanism.

Work Injury Rehabilitation

23. As regards work injury rehabilitation, integrated treatment and rehabilitation services provided by hospitals and clinics under the management of the Hospital Authority are currently available for use by injured employees. Moreover, LD, in collaboration with the insurance industry, launched the Voluntary Rehabilitation Programme (“VRP”) in March 2003 to provide injured employees (including those of high-risk industries) with an additional channel to receive free rehabilitation services in the private sector through the insurers’ arrangements to facilitate their speedy recovery and early return to work under safe circumstances. The participating insurers will identify appropriate cases, initiate contacts with the injured employees and invite them to join VRP.

24. At present, there are 16 insurers participating in VRP. From its inception in March 2003 till the end of 2013, employees of over 12 700 work injury cases had participated in VRP, of which some 30% of the cases involved the construction industry.

Improving Work Injury Protection for Employees

25. All along, LD is deeply concerned about improving work injury protection for employees. According to the established mechanism, the levels of compensation under ECO, the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (“PMCO”) and the Occupational Deafness (Compensation) (“ODCO”) are reviewed every two years so as to provide reasonable protection for the following persons:

- (i) employees injured at work or suffering from PODs under ECO or their family members (in fatal cases);
- (ii) persons suffering from pneumoconiosis and/or mesothelioma or family members of persons who died of the diseases; and
- (iii) persons suffering from occupational deafness (“OD persons”).

26. Adjustments, if required, are generally made by reference to the changes in the wage and price levels and other relevant factors in the review period. Earlier, LD has conducted a review on the changes of the relevant indicators in the period from 2012 to 2013 pursuant to the established mechanism.

27. With a view to enhancing protection for OD persons under the financing scheme for hearing assistive devices under ODCO, LD will, starting from the review exercise conducted in 2014, review the first-time financing limit and aggregate financing limit every two years with reference to the experience of the Occupational Deafness Compensation Board in administering the scheme. This review will form part of the established biennial review of the levels of compensation under the above three Ordinances in future.

28. Based on the review findings, LD proposes to increase the amounts of a total of 18 compensation items under ECO, PMCO and ODCO, with the magnitude of increase ranging from 5.73% to 44.44%.

29. Taking into account the review findings and their implications for employers and employees, the Labour Advisory Board reached consensus on and supported the proposal at its meeting on 12 September 2014. The LegCo Panel on Manpower discussed the proposal at its meeting on 18 November 2014 and expressed support.

30. The Government has given notices to LegCo, intending to move three resolutions at the LegCo sitting on 4 February 2015 so as to increase the amounts of a total of 18 compensation items under ECO, PMCO and ODCO. It is hoped that LegCo will pass the three resolutions early so that the adjustments can commence as soon as practicable for the benefit of the persons concerned earliest possible.

Improving Work Injury Protection for Employees in High-risk Industries

31. The Government also shows much concern over the work injury

protection for employees in high-risk industries. The Chief Executive has proposed in his election manifesto to establish a special task force comprising employees, employers and representatives of LD to undertake a study on improving work injury protection for employees in high-risk industries. An inter-bureau/ departmental working group, set up to internally discuss how to take forward this manifesto item, is conducting an in-depth study on issues in relation to insurance, compensation for work injuries, therapy and rehabilitation, and will make recommendations to the relevant Government bureaux/ departments/ organisation on follow-up matters. It aims to announce the next phase of work during the first half of this year.

Proposal for the Establishment of a “Central EC Fund”

32. The proposal for the establishment of a central EC fund is a very complicated subject. The problems which may arise from this proposal should be carefully considered. One major argument for this proposal is that some employers of high-risk industries find it difficult to take out EC insurance for their employees in the private market. To help employers of high-risk industries take out EC insurance so as to improve work injury protection for the employees of these industries, the insurance industry, with the Government’s encouragement, set up the Employees’ Compensation Insurance Residual Scheme (“ECIRS”) in May 2007. In August 2011, the ECIRS Bureau played its role as the market of last resort for the first time since its inception and directly underwrote and issued EC insurance policies to employers who had encountered difficulties in procuring EC insurance. As at the end of 2014, a total of 632 applications were offered EC insurance either by ECIRS Bureau direct or individual member insurers, providing the employers concerned with the last-resort covers.

33. The amended motion proposed setting up a “central occupational insurance compensation fund” or “industry-based employees’ compensation funds” (such as “central EC fund for professional drivers”) so as to provide comprehensive compensation protection to people for all injuries and deaths or PODs arising from work, irrespective of the existence of an employer-employee relationship. ECO applies to full-time or part-time employees who are employed under employment contracts, but it is not applicable to persons who are not employees. The coverage of these proposals is too broad, deviating from the Government’s standing labour policy. In addition, they will have far-reaching implications for employers, employees, the insurance industry as

well as the whole community. As such, the Government at present has no plan to set up the abovementioned “central occupational insurance compensation fund” or “industry-based employees’ compensation funds”.

34. Overall speaking, given that the cost-effectiveness of a central EC fund has yet to be established, the current private industry mode of operation has been functioning well and that the current system can better cater for Hong Kong’s actual circumstances, it is not advisable to make any substantial change at present. The Government will continue to liaise with the relevant stakeholders and institutions with a view to further improving the current system.

Labour and Welfare Bureau
Labour Department
January 2015

**Motion on
“Ensuring occupational safety”
moved by Hon POON Siu-ping
at the Legislative Council meeting of 26 November 2014**

Motion as amended by Hon TANG Ka-piu

That, in recent years, the number of work injury accidents and fatal industrial accidents in Hong Kong remains high, but the existing legislation is unable to provide employees with comprehensive protection; taking the traffic and transportation industry as an example, the numbers of occupational injuries and deaths reach double digits every year, but owing to the lack of a clear employer-employee relationship, some professional drivers are not covered by the protection under the Employees’ Compensation Ordinance, and also the Occupational Safety and Health Ordinance does not cover the driver’s seat of a vehicle, rendering the regulation of occupational safety and health in respect of the traffic and transportation industry not comprehensive enough; in view of this, this Council urges the Government to establish a dedicated committee for comprehensively reviewing the policies on Hong Kong employees’ occupational safety and health, including the protection coverage of occupational diseases and improvement of the protection for workers in high-risk occupations (i.e. insurance, compensation, therapy and rehabilitation), etc., so as to reverse the existing policy of relying on the sectors to self-regulate occupational safety and health; specific proposals are as follows:

- (1) to step up regular monitoring and inspection of industrial establishments, impose severe penalties on law-breaking employers, and make public the items in respect of which prosecutions have been instituted by the Labour Department during inspection;
- (2) to enact dedicated legislation to provide for the work procedures, safety measures and criminal liabilities, etc. for work-at-height activities, so as to reduce the accidents of construction workers falling from height; and to specify a useful life for the machinery used in the construction industry to ensure its efficiency and safety;
- (3) to motivate employers to dutifully shoulder the responsibility for ensuring employees’ occupational safety and health, such as allocating resources for employees’ training, and providing facilities and a work environment that

ensure employees' occupational safety and health;

- (4) to stipulate that when employees, including subcontractors and self-employed persons, have accidents in workplaces and suffer from occupational diseases, employers, contractors or persons in charge of the construction sites must report such cases to the Administration, or else they will constitute a criminal offence, so as to protect employees' rights and interests;
- (5) to comprehensively review the Employees' Compensation Ordinance, including the addition of mental impairment in the category of injury under Schedule 1 and the classification of repetitive strain injury and heat stroke as prescribed occupational diseases under Schedule 2; and in addition to providing employees with financial compensation, to improve the mechanisms for prevention and rehabilitation of work injuries and occupational diseases, so as to assist injured employees in expeditious recovery and rejoining society; and
- (6) to set up a 'central occupational insurance compensation fund' or compensation funds for employees by industry (such as a 'central employees' compensation fund for professional drivers'), so as to provide comprehensive compensation protection to employees for all injuries and deaths or occupational diseases arising from work irrespective of the employer-employee relationship.