

立法會
Legislative Council

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by the Administration)

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Panel on Manpower

**Minutes of special meeting
held on Wednesday, 12 April 2017, at 9:00 am
in Conference Room 2 of the Legislative Council Complex**

Members present :

- Hon LEUNG Yiu-chung (Chairman)
- Hon HO Kai-ming (Deputy Chairman)
- Hon Tommy CHEUNG Yu-yan, GBS, JP
- Hon CHAN Kin-por, BBS, JP
- Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
- Hon WONG Kwok-kin, SBS, JP
- Hon Paul TSE Wai-chun, JP
- Hon LEUNG Kwok-hung
- Hon Michael TIEN Puk-sun, BBS, JP
- Hon YIU Si-wing, BBS
- Hon Alice MAK Mei-kuen, BBS, JP
- Dr Hon KWOK Ka-ki
- Hon KWOK Wai-keung
- Hon Christopher CHEUNG Wah-fung, SBS, JP
- Dr Hon Fernando CHEUNG Chiu-hung
- Hon POON Siu-ping, BBS, MH
- Dr Hon CHIANG Lai-wan, JP
- Hon Andrew WAN Siu-kin
- Hon Jimmy NG Wing-ka, JP
- Hon SHIU Ka-fai
- Hon SHIU Ka-chun
- Dr Hon Pierre CHAN
- Hon LUK Chung-hung
- Hon Jeremy TAM Man-ho
- Hon Nathan LAW Kwun-chung
- Dr Hon LAU Siu-lai

Member attending : Hon KWONG Chun-yu

Member absent : Hon CHU Hoi-dick

[According to the Judgment of the Court of First Instance of the High Court on 14 July 2017, LEUNG Kwok-hung, Nathan LAW Kwun-chung, YIU Chung-yim and LAU Siu-lai have been disqualified from assuming the office of a member of the Legislative Council, and have vacated the same since 12 October 2016, and are not entitled to act as a member of the Legislative Council.]

Public Officers attending : Item I

Mr Carlson CHAN Ka-shun, JP
Commissioner for Labour

Mr Jeff LEUNG Wing-yan
Deputy Commissioner for Labour
(Occupational Safety and Health)

Mr Thomas CHAN Cheung-hing
Acting Assistant Commissioner for Labour
(Occupational Safety)

Mr MAK Ping-sang
Chief Occupational Safety Officer
(System and Support)
Labour Department

Mr Albert LEE Wai-bun
Project Manager, Hong Kong-Zhuhai-Macao Bridge
Hong Kong Project Management Office
Highways Department

Mr WONG Sai-fat
Deputy Director of Marine

Clerk in attendance : Miss Betty MA
Chief Council Secretary (2) 1

Staff in attendance : Ms Rita LAI
Senior Council Secretary (2) 1

Ms Mina CHAN
Council Secretary (2) 1

Miss Lulu YEUNG
Clerical Assistant (2) 1

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I. Occupational safety concerning the construction of Hong Kong-Zhuhai-Macao Bridge
(LC Paper Nos. CB(2)1173/16-17(01) to (03) and CB(2)1183/16-17(01) to (04))

The Chairman said that in the light of the spate of fatalities and injuries in connection with the construction of Hong Kong-Zhuhai-Macao Bridge ("HZMB") local related projects since the commencement of works in 2011, including the fatal accident at the works site under the "HZMB Hong Kong Link Road ("HKLR") - Section between HKSAR Boundary and Scenic Hill" project that happened on 29 March 2017 ("the Accident"), the special meeting was held to discuss measures to safeguard occupational safety of construction workers concerned and to prevent recurrence of similar accidents. The Chairman invited all attendees at the meeting to observe one minute's silence in mourning for those construction workers who died in the work accidents during the construction of HZMB local related projects.

2. Commissioner for Labour ("C for L") briefly took members through the occupational safety condition concerning the construction of HZMB local related projects (HKLR and Hong Kong Boundary Crossing Facilities ("HKBCF")) and Tuen Mun - Chek Lap Kok Link ("TM-CLKL"), as well as the work of relevant government departments in this aspect, as set out in the Administration's paper.

3. Members noted a background brief entitled "Occupational safety of the Hong Kong-Zhuhai-Macao Bridge local projects" prepared by the Legislative Council Secretariat.

4. Referring to the letters from Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr Jeremy TAM and Mr Nathan LAW respectively, the Chairman requested the Administration to provide written response to the enquiries and issues of concern raised therein concerning the

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occupational safety condition of construction of HZMB local related projects after the meeting.

5. Dr KWOK Ka-ki suggested and members agreed that another meeting would be held to receive deputations' views on the occupational safety concerning the construction of HZMB local related projects.

(Post-meeting note: The meeting was scheduled for 16 May 2017 to receive deputations' views.)

Follow-up on the Accident

6. In response to the Chairman's enquiry about the follow-up actions taken by the Administration after the occurrence of the Accident, C for L said that upon being notified of the Accident, the Labour Department ("LD") commenced immediate investigation and issued suspension notices ("SNs") to the contractors/employers concerned to suspend the associated work processes. The contractors/employers could not resume the work processes until LD was satisfied that safety measures to abate the relevant risks had been taken. LD was conducting investigation to identify the causes of the Accident, ascertain the liability of the duty holders and recommend improvement measures.

7. Project Manager, HZMB Hong Kong Project Management Office of the Highways Department ("HyD") ("PM/HyD") said that HyD was highly concerned about the Accident and expressed deepest condolence to the families of the two deceased construction workers. HyD accorded particular attention to occupational safety at construction sites, which should under no circumstances be compromised due to tight construction programme. HyD had set up an Independent Investigation Task Force ("the Task Force") to investigate the possible causes of the Accident to prevent recurrence of similar accidents and to develop improvement measures on site safety. The Task Force would submit a report to the Director of Highways in three months. HyD would publish the investigation findings at an opportune time and take follow-up actions as appropriate. Some initial findings had been reported to relevant law enforcement departments for follow-up.

8. Deputy Director of Marine supplemented that the Marine Department ("MD") had been maintaining a close liaison with HyD and LD, and conducted joint enforcement operations and inspections in respect of work safety of sea-based construction works from time to time.

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Occupational injuries and related counter measures

9. The Chairman, Mr LEUNG Kwok-hung, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr Andrew WAN, Mr KWONG Chun-yu and Dr LAU Siu-lai expressed grave concern about the considerable number of fatalities and injuries in connection with the construction of HZMB works projects. They queried about the effectiveness of the Administration's efforts in safeguarding occupational safety of construction workers and preventing recurrence of similar accidents. Dr KWOK and Mr WAN enquired about the counter measures taken by LD to safeguard construction workers' occupational safety. Mr WAN further sought information on LD's inspection work in connection with the HZMB local related projects and the relevant enforcement figures.

10. Mr POON Siu-ping expressed concern about whether LD had analyzed the causes of the 275 industrial accidents (up to 2016) since the commencement of the construction of the HZMB local related projects in 2011. Declaring that he was a member of the Occupational Safety and Health Council ("OSHC"), Mr POON was of the view that while OSHC was responsible for enhancing the occupational safety and health ("OSH") level in the construction industry through publicity and educational efforts, LD should step up enforcement action against non-compliance with the OSH legislation at work sites to ensure occupational safety of construction workers. In this connection, he sought information on the manpower resources deployed for inspection of work sites of the HZMB local related projects.

11. Dr CHIANG Lai-wan, Miss Alice MAK and Mr LUK Chung-hung expressed similar concern about an increasing number of fatalities and injuries in the construction industry, in particular those concerning the construction of HZMB works projects. Dr CHIANG queried whether it was attributed to catching up with the works progress at the expense of safe work practices. The Deputy Chairman raised a similar concern. Dr CHIANG sought information on the number of SNs issued in connection with the construction of HZMB local related projects since 2011.

12. In response to members' concerns and views, C for L said that the Administration expressed sorrow for the industrial fatalities and injuries in the course of construction of HZMB local related projects and was committed to working with the construction industry to improve

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construction safety performance. LD had been meeting with the major stakeholders, including representatives from the Development Bureau ("DevB") and HyD, relevant contractors and project consultants as well as representatives of construction workers, to discuss how to enhance the safety awareness of employers and employees, and remind the construction industry to take suitable and adequate safety measures. In addition, LD had been deploying additional manpower to step up inspection and enforcement, including strengthening the monitoring of work safety of major works projects through the creation of dedicated offices. At present, there were some 200 occupational safety officers in LD responsible for inspection of workplaces of various trades and industries.

13. C for L further said that as a number of the fatal accidents involved workers falling from height, LD had stepped up enforcement efforts and launched special enforcement operations targeting at work-at-height safety with special attention to scaffolding works and other high risk processes to deter unsafe work practices. Specifically, LD had completed a special enforcement operation in the last two weeks of March 2017. During the operation, 1 756 inspections were conducted, with nearly 200 SNs/improvement notices ("INs") issued and 132 prosecutions to be taken out against non-compliance with the OSH legislation. LD had also liaised with the Buildings Department in respect of provision of platforms for safe maintenance of air conditioners, anchoring devices for installation of suspended working platforms and other design safety initiatives in new buildings to facilitate safe conduct of external wall works. Furthermore, LD had launched a large-scale continuous Occupational Safety Enhancement Campaign "Construction Industry: Safety First" in April 2017 with various initiatives to remind the stakeholders of the construction industry, including project proponents, contractors, subcontractors, workers and safety practitioners, the importance of work safety, especially the risks of work-at-height, and taking appropriate safety precautions to prevent accidents.

14. In respect of the enforcement efforts against unsafe work practices of the HZMB local related projects, C for L advised that LD conducted a total of 1 384 inspections and issued 51 SNs and 230 INs with 329 prosecutions initiated/taken since the commencement of the works in 2011 till the first quarter of 2017. The number of days of work suspension arising from the issuance of SNs was 712 days. Besides, LD also issued Work Safety Alerts to contractors, workers' unions, and professional organisations of safety practitioners. The Alerts provided a

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brief account of the accidents to remind the industry to take appropriate safety measures to ensure the work safety of workers and to prevent recurrence of similar accidents. The information was also uploaded onto LD's website.

15. Dr Fernando CHEUNG and the Deputy Chairman expressed concern that the numbers of industrial fatalities and injuries in connection with the construction of HZMB works projects were much higher than those of other mega infrastructure projects. C for L pointed out that in 2016, the accident rate per 1 000 workers for HZMB local related projects was 22.9 whereas the overall accident rate per 1 000 workers was 34.5.

16. PM/HyD added that in addition to the existing contractual and legislative safety requirements, HyD had implemented the following safety measures under the HZMB local related project to further enhance site safety:

- (a) HyD had requested five contractors engaged in larger-scale contracts of HKBCF, HKLR and TM-CLKL to employ safety auditors accredited by OSHC to conduct audits on safety management systems and safety measures every six months. After reviewing the audit reports by OSHC, the audit reports would be submitted to HyD, the consultants' resident site staff ("RSS") and the contractors for review and follow-up actions. OSHC also conducted a surprise safety inspection between two safety audits to verify the site safety performance;
- (b) the directorate officers of HyD together with the senior management of the contractors also conducted dedicated safety inspection at monthly intervals. During the inspection, they visited the work sites and discussed safety issues with the frontline staff with particular emphasis on site safety and working environment;
- (c) the project engineers of HyD carried out cross-team safety audits on a quarterly basis to review the safety condition of other works contracts and the safety performance of RSS in implementation of safety management system, enabling exchange of experience and improving effectiveness of safety measures; and

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- (d) RSS had also strengthened their site inspection by arranging a monthly surprise site safety check by the consultants' senior management. The consultants had also arranged cross-contract audits by RSS at half-yearly intervals to share experience on site safety and to improve the site safety measures.

Through the implementation of the above safety management measures, HyD believed that the HZMB local related projects would be implemented safely. At the same time, HyD had urged again all RSS to step up their monitoring of the contractors' safety performance and required all contractors to strictly implement the safety management system and safety measures to ensure all operations were carried out safely.

17. The Chairman, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr POON Siu-ping and Mr Andrew WAN, however, held the view that the Administration's regulatory efforts and enforcement actions failed to address the work hazards in the construction of HZMB local related projects, having regard to the recurrence of similar work accidents. Mr LEUNG Kwok-hung considered the issuance of SNs ineffective as contractors would need to catch up the works progress which in effect would increase the work hazards posed to workers due to rushing to work. Dr CHEUNG was concerned about whether the Administration had conducted a review of the work safety concerning the construction of HZMB local related projects.

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18. Dr Fernando CHEUNG and Mr SHIU Ka-chun also expressed concern about work safety issues in respect of the construction of HZMB in the Mainland. The Administration was requested to provide information on the number of fatalities and injuries relating to industrial accidents of the HZMB Main Bridge.

Temporary working platforms

19. Mr LEUNG Kwok-hung, Mr Andrew WAN, Mr KWONG Chun-yu, Mr Jeremy TAM and Dr LAU Siu-lai were gravely concerned that collapse of temporary suspended working platform was noticed in the Accident and several other serious industrial accidents of the HZMB local related projects. In a number of these industrial fatalities, it was reported that workers' safety belts were attached to these temporary

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working platforms. These members expressed concern about whether such arrangement had been detected by LD's occupational safety officers during their worksite inspections. Mr TAM asked whether LD staff had inspected the safety condition of temporary working platforms before their use. The Chairman and Dr LAU sought clarification as to whether a temporary working platform was accepted as a secure structure for anchorage of safety harness. The Chairman also sought advice on the proper use of workers' safety harness.

20. Miss Alice MAK enquired whether there were clear guidelines governing safe operation of sea-based industrial activities.

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21. Mr SHIU Ka-chun requested the Administration to provide after the meeting information on the number of inspections conducted by LD to the temporary working platforms at the construction sites of the HZMB local related projects, together with the relevant number of SNs and INs issued, and the number of prosecutions initiated/taken.

22. Responding to members, C for L said that LD had conducted inspections of the worksites in the particular section of the HZMB local related project where the Accident took place. However, the LD's inspections were conducted before the Accident and that temporary working platform had not been erected at the time of such inspections. C for L further said that the relevant OSH legislation required that a safety belt should be attached continuously to a suitable and secure anchorage. The Guidance Notes on Classification and Use of Safety Belts and their Anchorage Systems ("GN") issued by LD described various types of anchorages complying with the legal requirements, including an independent lifeline attached to a secure anchorage point. To his knowledge, the temporary working platform concerned used at the time of the Accident was under suspension and therefore was not regarded as a suitable and secure anchorage under GN. That said, apart from the LD's investigation of the Accident, the Task Force of HyD was also investigating into the possible causes of the Accident and would submit its report to the Director of Highways in three months.

23. PM/HyD advised that RSS were responsible for vetting the contractors' planned method statements and risk assessments to ensure that the works were adequately supervised before and during construction. PM/HyD further advised that HyD considered that the Accident was serious and complex. It therefore decided to set up the Task Force to investigate the possible causes of the Accident to prevent recurrence of

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similar accidents. At the time of the Accident, the workers were dismantling a temporary working platform underneath the completed viaduct. It was the first time that the workers carried out such work arrangement. The relevant work arrangement would be the direction for investigation of the Accident.

24. In response to the follow-up enquiries from the Deputy Chairman and Miss Alice MAK, PM/HyD said that according to the contractors' planned works activities, no more new work procedure was noticed in the remaining construction of the HZMB works projects. When the works of the HZMB local related projects resumed, workers' safety belts should be attached to secure anchorage.

Rescue measures

25. Mr LEUNG Kwok-hung, Dr Fernando CHEUNG, Mr Andrew WAN, Mr SHIU Ka-chun, Mr KWONG Chun-yu and Mr Jeremy TAM enquired about the rescue measures taken after the occurrence of the Accident as well as the legislative and contractual requirements for contractors of the HZMB local related projects to provide on-site rescue measures in response to industrial accidents involving work over water during the construction of HZMB works projects. Specifically, these members enquired about the manpower resources, including lifeguards, provision of rescue vessels and their specifications, and response time required for rescue vessels to arrive at the accident scene in case of emergency. Dr CHEUNG also sought information on the number of fatalities due to drowning during the construction of HZMB works projects and enquired whether the Administration would consider making it mandatory for provision of on-site lifeguards for sea-based construction works.

26. C for L said that there were two cases of drowning among the fatalities in connection with the HZMB local related projects. PM/HyD advised that to enhance safety of workers working over/near water, the relevant contractor was requested to strictly require workers to wear life jackets. The contractor also implemented a series of safety measures for working over/near water, such as provision of guard-rails on board and edge of shore to prevent workers from falling into the sea. During the course of the works, the contractor would provide emergency vessels and rescue personnel to provide timely and appropriate supports. At the request of members, PM/HyD agreed to provide the above information in writing after the meeting. PM/HyD added that it was, however,

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noteworthy that as the causes of the Accident were still under investigation, specific information related to the Accident requested by members might not be suitable to be disclosed at this stage.

Site safety practitioners and safety training

27. Dr Fernando CHEUNG expressed concern about the independent role played by registered safety officers ("RSO") and whether they would be proactive in reporting the contractors' non-compliance with OSH requirements if they were engaged by the construction contractors concerned. In his view, site safety practitioners should be staffed by LD so as to plug the loophole.

28. C for L advised that the OSH legislation stipulated the legal obligations of duty holders undertaking construction works, including contractors' duty to ensure OSH of workers employed by them. Irrespective of whether the same contractor was responsible for design and construction of the works, the contractor's legal obligation to protect the workers' OSH remained unchanged. The contractors should assess the potential risks and have them properly addressed before commencement of the works and carry out the works safely in accordance with the formulated safety method statements and comply with the contract requirements and relevant OSH legislation and guidelines. LD, on the other hand, would perform the regulatory role in conducting site inspections and take enforcement actions against non-compliance with the OSH legislation as necessary.

29. The Chairman and Mr Andrew WAN sought clarifications about whether RSOs on the HZMB work sites had also performed the dual role of site safety supervisors as reported by the media.

30. C for L pointed out that under the Factories and Industrial Undertakings (Safety Officers and Safety Supervisors) Regulations (Cap. 59Z), a contractor employing 100 or more construction workers should employ a full-time RSO. The dedicated duty of an RSO was to give recommendations on relevant OSH measures and standards to the contractor, particularly assisting the contractor in establishing a safety management system to prevent accidents. A contractor should employ a safety supervisor on each construction site where the number of construction workers employed was 20 or more. PM/HyD supplemented that in accordance with the statutory requirements, the contractor concerned was required to employ three RSOs for the construction works of HKLR. At present, five RSOs were employed.

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31. The Deputy Chairman asked whether workers engaged for the HZMB local related projects were required to complete the marine industrial safety training (commonly known as the "Blue Card" course) of MD in addition to the Mandatory Basic Safety Training (Construction Work) (commonly known as "Green Card") courses.

32. Deputy Commissioner for Labour (OSH) responded that LD did not require workers undertaking the construction of HZMB works projects to be holders of Blue Card. In view of the risks of drowning, LD had conducted joint special enforcement operations with MD since 2014 to ensure work safety of sea-based construction works. During these operations, LD would examine whether the contractors had assessed the risks of workers falling into water and drowning while carrying out construction works near or over water, and whether secure fences and life-saving equipment were installed/provided at workplaces with such risks. LD also required the contractors to ensure workers at risk of drowning to wear life jackets at work. LD would step up inspections to construction sites involving works over or near water, and urge relevant contractors/employers to take adequate safety measures. LD would also organize safety talks for site supervisory staff and frontline workers of HZMB works projects in conjunction with relevant departments.

Level of penalty

33. Mr Andrew WAN considered that the maximum penalty for breaching the OSH legislation (i.e. a fine of \$500,000 and an imprisonment term of 12 months) too low to achieve the deterrent effect. Dr KWOK Ka-ki, Dr CHIANG Lai-wan, Mr WAN, Mr LUK Chung-hung and Dr LAU Siu-lai called on the Administration to consider introducing legislative amendments to the effect of enhancing the deterrent effect of the penalty.

34. Mr LUK Chung-hung pointed out that given the difficulties in proving that an employer had intentionally committed an offence under the Factories and Industrial Undertakings Ordinance (Cap. 59) ("the Ordinance"), no employer had so far been sentenced with an imprisonment term. Mr Michael TIEN shared a similar concern. Mr LUK enquired whether the Administration would conduct a review on the relevant provisions in the Ordinance to plug the loopholes. Drawing reference to the amount of fine imposed on contractors concerned for breaching the OSH legislation in cases of industrial fatalities and injuries

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in the past 10 years, Mr LUK took the view that the amount of fine was disproportionate to the contract value of the works projects. The Chairman and Mr Andrew WAN expressed similar concerns. Mr LUK requested the Administration to provide information on the number of appeals filed by LD in respect of the penalty imposed on convicted cases related to industrial accidents in the construction industry in the past years.

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35. C for L said that in order to raise the deterrent effect of court penalties, LD had been adopting different approaches to seek heavier penalties for duty holders. These included submitting comprehensive information to the court for reference in sentencing, such as the serious consequences arising from the accidents in question, the upward trend of the number of accidents concerned, and the highest penalty imposed on similar cases in the past. Depending on the circumstances of individual cases, LD would request the Department of Justice ("DoJ") to consider filing a review or an appeal to the court in respect of the conviction and the penalty when necessary to enhance the deterrent effect. C for L further said that LD would, in consultation with DoJ, review the provisions in relation to penalty under the OSH legislation, and amend the law if necessary to further enhance the deterrent effect of the penalty. At the request of the Chairman and Mr LUK Chung-hung, C for L agreed to provide information on the consideration of review of the penalty level for non-compliance with the OSH legislation after the meeting.

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Tender evaluation for public works contracts

36. Dr Fernando CHEUNG noted with concern that a subcontractor of one of the principal contractors for the HZMB works projects, namely China Harbour Engineering Company Limited ("the Contractor") had reportedly been assessed with poor safety performance for certain works projects in other places, but it was awarded with public works contracts.

37. Dr LAU Siu-lai expressed grave dissatisfaction that only 3% weighting was assigned for safety rating for assessing the tenderer's past safety performance in the formula for tender evaluation for public works contracts. Dr LAU held the view that such low weighting could hardly safeguard construction workers' occupational safety. Dr LAU was particularly concerned that the Contractor, which reportedly had extreme adverse records on occupational safety performance in various works projects in different countries/places since 2012, had been awarded contracts for the HZMB local related projects. Casting doubt about the

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effectiveness of the tender evaluation mechanism, Dr LAU enquired about whether the Administration would consider increasing the weighting of safety rating in the tender evaluation mechanism. PM/HyD said that members' views would be relayed to DevB.

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38. Mr Michael TIEN expressed the view that project consultants with poor safety records should be prohibited from bidding for consultancy contracts for public works projects for a longer period of time. He requested and PM/HyD agreed to provide information on the proportion of public works contracts awarded to two project consultants, namely Ove Arup & Partners Hong Kong Limited and AECOM Asia Company Limited, by HyD.

Motion

39. The Chairman put the following motion proposed by Mr Michael TIEN to vote:

"港珠澳大橋接二連三發生多宗致命意外，政府部門包括路政署、顧問公司和承建商各有責任。當意外發生後，如查明承建商違反相關法例或合約規定，路政署會記錄於報告中，有關安全的表現均是評標考慮之因素，亦會影響其參與競投工務工程合約的資格，社會普遍認為罰則過輕，未能起阻嚇作用。就此，本事務委員會促請政府加重刑罰，當有意外發生引致死亡事故，必須停止有關公司投標政府顧問合約一年，同時修例，若證明顧問公司和承建商疏忽，亦需負上刑事責任，以起警惕作用。"

(Translation)

"Regarding the series of fatal accidents occurred in the construction of the Hong Kong-Zhuhai-Macao Bridge, government departments including the Highways Department ("HyD"), the consultants and the contractors have their own responsibilities. After the occurrence of an accident, if contractors are found to have any violation of statutory or contractual requirements, HyD will record it in the reports. The contractors' safety performance is one of the factors for consideration in tender assessment, which may also affect the contractors' eligibility for tendering in public works contracts. The community generally considers the penalties too lenient to achieve any deterrent effect. In this regard, this Panel urges the Government to increase the penalties by forbidding the

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company concerned to tender in government consultancy contracts for one year after the occurrence of a fatal accident, and to introduce, for deterrence effect, legislative amendments to subject those consultants and contractors who are found to be negligent to criminal liability."

Nine members voted for the motion, and no member voted against it or abstained from voting. The Chairman declared that the motion was carried.

40. There being no other business, the meeting ended at 10:50 am.

Council Business Division 2
Legislative Council Secretariat
7 August 2017