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**Panel on Manpower**

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for the meeting on 17 July 2018**

**Penalties of occupational safety and health legislation**

Issues relating to penalties of occupational safety and health ("OSH") legislation had been raised in the context of discussions by the Panel on Manpower ("the Panel") on occupational safety performance in Hong Kong. According to the Administration, breaching the OSH legislation would be liable to a maximum fine of \$500,000 and an imprisonment term of 12 months while the fines imposed by the court on convicted cases related to fatal industrial accidents in the construction industry was on average \$28,000 in 2016.

2. Members noted that the construction industry topped all industries in terms of the number of industrial fatalities and accident rate. In the first half of 2017, there were 1 816 industrial accidents in the construction industry, rose by 3.3% when compared with 1 758 in the same period of 2016. Most members called for the imposition of heavier penalty on convicted cases related to fatal industrial accidents in the construction industry so as to increase the deterrent effect against non-compliance with the OSH legislation. The Panel passed a motion at the special meeting on 12 April 2017 urging the Government to, among others, increase the penalties by forbidding the companies concerned to tender in government contracts for one year after the occurrence of a fatal accident, and to introduce legislative amendments to subject those consultants and contractors who were found to be negligent in their safety performance to criminal liability so as to further enhance the deterrence effect.

3. The Administration advised that in order to raise the deterrent effect of court penalties, the Labour Department ("LD") had been adopting different approaches to seek heavier penalties for duty holders. In a bid to raise the level of penalty for non-compliance with safety requirements, LD had since 2011 submitted comprehensive information to the court for reference in sentencing. Depending on the circumstances of individual cases, LD would request the Department of Justice ("DoJ") to consider filing reviews or appeals to the court in respect of the conviction and the penalty to increase the deterrent effect. According to the Administration, the fines imposed by the court on convicted

cases related to fatal industrial accidents in the construction industry had increased in recent years when compared with the past. LD would, in consultation with DoJ, review provisions in relation to penalty under the OSH legislation, and amend the law if necessary to further enhance the deterrent effect of the penalty.

4. At the policy briefing cum meeting of the Panel on 17 October 2017, members were advised that LD was conducting a review of penalties under the OSH legislation and seeking the views of DoJ. It aimed to come up with a preliminary direction for amending the legislation within 2017.

5. During the discussion on the occupational safety performance in Hong Kong at the Panel meeting on 19 December 2017, members expressed concern about the progress of the review of the penalties under the OSH legislation and the relevant legislative timetable. The Administration advised that although the penalties for duty holders contravening OSH legislation had increased in recent years through a range of efforts of LD, LD considered that the current penalties for duty holders contravening OSH legislation were too low to reflect the seriousness of the offences and the consequences of the accidents, and failed to generate sufficient deterrent effect to improve the overall OSH performance. LD was therefore reviewing the penalty levels of the OSH legislation, including the imprisonment term. While the Administration would continue to file reviews or appeals to the court in respect of the conviction and penalty when necessary, it was considering to raise the maximum fines of OSH legislation so that the court could hand down penalties at a level commensurate with the seriousness of the offences. The increase would also help send a clear signal to the Judiciary that the Administration took such OSH offences seriously. The Administration was considering whether it was appropriate to increase the maximum fines by pegging them with the financial means of the convicted, thus enabling the court to impose penalties with sufficient deterrent effect to alert the industry. In addition, the prosecution strategies, the relevant threshold and time-bar for prosecution of the offences would be reviewed as well. The review therefore involved quite a lot of issues. While LD could not commit to a concrete legislative timetable, LD aimed to complete the review as soon as possible and would consult the Panel in due course.

6. The Administration will brief the Panel on the preliminary direction for raising penalties of OSH legislation at its meeting on 17 July 2018.