

For discussion on
19 March 2019

Legislative Council Panel on Manpower

Raising Penalties of Occupational Safety and Health Legislation

Purpose

This paper aims to brief Members on the preliminary amendment proposals of the Labour Department (“LD”) to raise the penalties of the Occupational Safety and Health (“OSH”) legislation, and invites Members’ views on the proposals.

Background

2. The current OSH legislation mainly includes the Factories and Industrial Undertakings Ordinance (“FIUO”) (Cap. 59) and the Occupational Safety and Health Ordinance (“OSHO”) (Cap. 509). The FIUO was enacted in 1955 to regulate industrial safety and health in industrial undertakings (including factories and construction sites, etc.) The Government made amendments and raised the penalties of the FIUO and its subsidiary regulations in 1994. The OSHO was then enacted in 1997, the scope of which covers OSH in non-industrial workplaces (including workplaces such as shops and offices, etc.). The penalties of the OSHO have remained unchanged since its enactment. Currently, contraventions of the above-mentioned legislation are summary offences.

3. The numbers of occupational fatalities have remained at a high level in recent years. There are views in the community that one of the major reasons is that the sentences for OSH offences are on the low side, which fail to reflect the seriousness of the contraventions and fail to pose sufficient deterrent effect on duty holders violating the law. The community therefore has been pressing the Government to review the maximum penalties of the OSH legislation. In this connection, the Chief Executive stated in the 2017 Policy Address that LD would review the penalties of the OSH legislation. LD is now consulting and collecting views from relevant stakeholders on the preliminary amendment proposals.

Justifications for Raising Penalties

Maximum Penalties on the Low Side

4. According to the current FIUO, OSHO and their subsidiary regulations, duty holders, upon conviction, are subject to a maximum fine of \$2,000 to \$500,000 and imprisonment of three to 12 months, depending on the seriousness of offences.

5. Nevertheless, comparing to the penalties of the OSH legislation in other advanced countries/ regions (such as the United States, Singapore, Australia, New Zealand and Ontario Province of Canada), the maximum fines of the OSH legislation in most of these places far exceed those of Hong Kong. For example, the maximum fine in Australia is approximately HK\$22 million after conversion, and there is no upper fine limit in the United Kingdom. In respect of imprisonment, the maximum imprisonment terms in Australia and New Zealand are both five years, while those in the United Kingdom and Singapore are both two years and those in the United States and Ontario Province of Canada are one year. By comparison, the penalties of the OSH legislation in Hong Kong are clearly on the low side.

Actual Sentences on the Low Side

6. To strengthen the deterrent effect of the penalties, LD has been making efforts to assist the courts to determine appropriate sentences, in particular to impose higher penalties on duty holders for serious cases. These efforts include striving to collect evidence during the case investigation process and, upon conviction, submitting sufficient information to the courts as reference for sentencing. Subject to the circumstances of individual cases, LD also requests the Department of Justice (“DoJ”) when necessary to seek a review of or to appeal against the penalties.

7. Although the amount of fines imposed by the courts has on the whole increased slightly in recent years, the actual penalties are still on the low side. Taking 2018 as an example, the average fine for each summons involving OSH offences was about \$10,500, while that for the construction industry was about \$10,000. As for fatal industrial accidents in the construction industry, the average fine for each summons was only about \$27,000.

8. As far as imprisonment is concerned, although LD will, depending on the circumstances of the case, institute prosecution by invoking from time to time provisions with imprisonment penalties, there have only been three cases of suspended imprisonment, with no case of immediate imprisonment for the convicted persons since the commencement of the legislation concerned.

Further Improvements in OSH Performance

9. Although the overall OSH performance in Hong Kong has been improving over the past years, with the industrial accident rate per thousand workers dropping from 64.7 in 1998 to 17.2 in 2017, the improvement trend has clearly tapered off in recent years. The accident rate per thousand workers even recorded a slight increase of 0.1 percentage point from 17.1 in 2016 to 17.2 in 2017. Besides, the numbers of fatal industrial accidents have been hovering at some 20 cases in the past few years with no sign of decreasing. A total of 29 fatal industrial accidents were recorded in 2017.

Proposed Amendment Directions

Increase Maximum Fine

(1) General Duty (“GD”) Provisions for Employers/ Proprietors/ Occupiers of Premises

10. Under the two above-mentioned pieces of OSH legislation, there are a total of 665 provisions that carry penalties and eight of them are GD¹ provisions for employers/ proprietors/ occupiers of premises. Given the general nature of the GD provisions, they can be enforced in a wide range of site conditions/ work procedures/ industries involving different risk levels. They are therefore often invoked in fatal or serious cases. In view of the fact that serious accidents involving duty holders’ blatant disregard for safety occurred from time to time in recent years, LD considers that there is a need to substantially increase the maximum fines of these GD provisions in order to achieve sufficient deterrent effect.

11. The aforesaid GD provisions for employers/ proprietors/ occupiers of premises were enacted under the FIUO and OSHO respectively. Nevertheless, there are obvious discrepancies² in their maximum fine levels – the maximum fines of the former are \$500,000 while those of the latter are \$200,000. Since the occurrence of serious or fatal accidents in recent years is no longer confined to industrial undertakings, LD proposes that the maximum fines of the GD provisions in the two pieces of OSH legislation are to be first aligned at \$500,000.

¹ Eight GD provisions in the OSH legislation require employers/ proprietors/ occupiers of premises to take care of their employees, which include the provision of safe system of work and plant, and necessary safety supervision, training, instruction and information. The other four provisions stipulate the basic OSH duties of employees to take care of themselves and other persons.

² The maximum fine for the GD provisions of the FIUO regulating proprietors was increased from \$200,000 to \$500,000 in 1997. In the same year, the maximum fine for the GD provisions of the OSHO regulating employers/occupiers of premises was set at \$200,000.

12. LD has made reference to the OSH legislation of the various overseas jurisdictions mentioned in paragraph 5 above and noticed that although their content is different from the OSH legislation of Hong Kong, they all have GD provisions. LD therefore considers that the penalties of the GD provisions of these countries/ regions can serve as a reference for the amendment of the penalties of GD provisions in Hong Kong. The maximum fines of the GD provisions of these jurisdictions, after conversion to Hong Kong dollar, range from HK\$1 million to about HK\$22 million (details at Annex 1). Among them, Singapore, whose nature of economic activities is similar to that of Hong Kong, adopts a maximum fine of about HK\$3 million³ for GD provisions for employers. With a view to raising the penalties against duty holders involved in serious OSH accidents, LD proposes to increase the aligned maximum fines for summary offences under GD provisions from HK\$500,000 to HK\$3 million.

(2) Indictable Offences

13. Although the above proposed amendments can enhance the deterrent effect of the penalties of OSH legislation, they may not have sufficient deterrent effect on sizeable companies, especially those convicted for very serious OSH offences. LD therefore proposes to further amend the GD provisions for employers/ proprietors/ occupiers of premises so that they can be invoked as indictable offences for extremely serious cases involving extremely high culpability or serious negligence and leading to serious consequences. It is also proposed that the maximum fines for these offences will be pegged to the turnover of the convicted entities and pitched at 10% of the turnover or HK\$6 million, whichever is the greater, and that the imprisonment term will also be set at a level with sufficient deterrent effect (see paragraph 29 below for details). According to the information gathered, the United Kingdom has developed a set of systematic sentencing guidelines for OSH offences. The guidelines require the courts to take into account the turnover of the convicted companies when determining sentences. The guidelines also clearly set out the range of fines applicable to convicted companies of different turnovers. Given there being no similar sentencing mechanism in Hong Kong's judicial system, LD proposes to set the maximum fines as a single percentage (i.e. 10%) of turnover.

(a) Extremely Serious Cases

14. LD proposes indictable offences be applicable to extremely serious cases of extremely high culpability or serious negligence which lead to serious consequences.

³ Upon first conviction, the maximum fine of GD provisions for employers in Singapore was SG\$500,000 (about HK\$ 3 million after conversion). For subsequent conviction of the same offence which causes the death of another person, the maximum fine is SG\$ 1 million (about HK\$ 6 million after conversion).

Having made reference to the OSH legislation and related sentencing guidelines of the United Kingdom, Singapore, Australia and New Zealand, LD's initial view is that offences of extremely high culpability can be defined as wilful or reckless acts or omissions. As for offences with serious consequences, LD considers that they may include those leading to the death or serious injury of worker(s). Among the accidents that happened in the past, three examples that may involve extremely serious offences are quoted for reference (see Annex 2). It must, however, be emphasised that the aforementioned are merely general considerations, and whether or not prosecution will eventually be taken out for a particular case as an indictable offence will depend on specific details of the case, evidence collected by LD, DoJ's advice and other relevant considerations.

(b) Maximum Fine Levels Pegged to Turnover of Convicted Entities

15. Turnover is an indicator of a company's scale of operation and is applicable to most operating entities. Using turnover as a sentencing reference can assist the courts in understanding the scale of operation of the convicted, and thus imposing a sentence with sufficient deterrent effect.

16. LD has made reference to a range of local and overseas legislation that pegs fine levels to turnover. It is noted that the maximum fine levels of certain offence provisions of the Competition Ordinance (Cap. 619) and the Telecommunications Ordinance (Cap. 106) of Hong Kong are pitched at 10% of the turnover, while most of the overseas legislation that pegs the maximum fine to "a certain percentage of turnover" also caps the fines at 10% of the turnover.

17. Notwithstanding this, if the maximum fines for indictable offences are only pegged to the turnover of the convicted entities, businesses with relatively lower turnover may face even lighter penalties than they do under the existing legislation. Such will deviate from the original intent of this legislative amendment exercise. LD therefore proposes to also stipulate a maximum fine for indictable offences under the GD provisions, which will be applicable to convicted entities with lower or no turnover. In this connection, LD proposes to take \$3 million, the recommended maximum fines of the GD provisions for summary offence, as a reference point (see paragraph 12 for details) and pitch the maximum fines of the GD provisions for indictable offences at \$6 million (i.e. twice of those for summary offences) or 10% of the turnover of the convicted company, whichever is the greater.

(c) Definition of Turnover

18. By making reference to the Inland Revenue Ordinance (Cap. 112) and the Hong Kong Accounting Standards, LD proposes that turnover should mean the income arising from a business entity's principal business activities. The income and revenue

that arise incidentally or are exceptional in nature should be excluded. As for the turnover of which period the courts should use as reference for sentencing, LD proposes that the courts should refer to the financial year within which the date of the offence committed by the convicted entity falls, so as to objectively reflect the scale of operation of the convicted entity at the time of the offence.

(3) Offence provisions other than GD provisions for Employers/ Proprietors/ Occupiers of Premises

19. LD has also reviewed the maximum fine levels of the 657 offence provisions other than the eight GD provisions for employers/ proprietors/ occupiers of premises of the two afore-mentioned pieces of OSH legislation, and proposes to raise them as appropriate to enhance their deterrent effect.

20. Among these 657 offence provisions, four of them are GD provisions concerning employees. The maximum fines of the two provisions in FIUO are \$25,000 and \$50,000 respectively, but those of OSHO are \$10,000 and \$50,000. Since the seriousness of the offences is the same, LD, for the sake of fairness, proposes to first align the maximum fines of these four offence provisions to \$50,000 before making further adjustment.

(4) Re-alignment of the seriousness categorisation of different contraventions

21. In 1994, LD conducted a comprehensive review of the penalties of the FIUO and its subsidiary regulations, covering 413 penalty provisions. The offences were grouped into three different categories according to the seriousness of the breaches, and assigned with three different maximum fine levels correspondingly:

- (a) Minor offences : \$10,000
- (b) Serious offences : \$50,000
- (c) Very serious offences : \$200,000

22. The seriousness of the offences is generally determined on the basis of four key factors, i.e. whether the offences directly cause harm to employees; imminence of the harm caused by the offences; seriousness of the harm; and the wilfulness of the offenders. The above three levels of seriousness can generally be articulated as follows:

- (a) Very serious offences - offences usually involving high-risk breaches that will highly likely cause, in a direct manner, an imminent and high risk of fatality or very serious bodily injury (e.g. limb amputation). Such offences include absence of a safe working platform or acts/ omissions leading to grave fire hazards, etc.

- (b) Serious offences - offences involving breaches falling between the “very serious” and “minor” categories. These offences will not normally give rise to imminent and/or very serious bodily harm, or the harm/ risk that may be caused will generally only arise after long-term exposure. Examples are failure to ensure that floors are free of loose materials and failure to provide effective mechanical exhaust, etc.
- (c) Minor offences - these offences generally involve administrative procedure requirements or minor offences which generally do not involve imminent or serious risks. The relationship between the breaches and the potential adverse consequences is indirect. These offences include not keeping records, not posting warning notices or labels and insufficient first aid equipment, etc.

23. LD considers that this methodology, which was adopted in the comprehensive review of penalties in 1994 to determine the maximum fines in accordance with the seriousness of the offences, is fair and reasonable, and therefore proposes to keep it. In the course of review for this amendment exercise, LD noted that a certain number of existing provisions do not sit well with the above-mentioned seriousness categorisation. In other words, the existing penalties of these provisions do not accurately reflect the seriousness of the offences. In this connection, LD considers that the seriousness categories of these offence provisions should be appropriately re-aligned (as reflected in the current maximum fine levels). The realignment will be determined in a reasonable and systematic manner according to the categorisation criteria mentioned in paragraph 22, so as to ensure that the penalties can accurately reflect the seriousness of the offences nowadays and to avoid inconsistency where offences of similar seriousness are assigned with different maximum fine levels.

24. Among the above-mentioned 657 provisions, there are eight provisions, including the four GD provisions for employees mentioned in paragraph 20 and four other provisions⁴, owing to their uniqueness, do not fit with the above-said seriousness categorisation. It is therefore proposed to adjust their penalties merely based on their current maximum fines (i.e. to have an across-the-board three-fold increase, see paragraph 26 below for details). Of the remaining 649 provisions, our review so far has revealed that about 128 provisions carry a maximum fine not accurately reflecting the seriousness of the offences. LD has therefore re-aligned the seriousness categories of these provisions in accordance with the categorisation criteria as described in paragraph 22 (see Annex 3 for details), and the re-alignment results are summarised in

⁴ Apart from the GD provisions for employees, the remaining four provisions are (i) breach of the requirement of suspension notice (current maximum fine being \$500,000), (ii) continuous breach of the requirement of suspension notice (current maximum daily fine being \$50,000), (iii) a continuing offence (current maximum daily fine being \$5,000), and (iv) registered safety auditors or the registered safety audit scheme operators do not report accurate personal data within the time limit (current maximum fine being \$2,000). Since the first three provisions are not specific to any particular risk, and the last provision does not involve any OSH risk, it is not appropriate to categorise them by seriousness.

the following table.

Table : Re-alignment of seriousness levels of penalty provisions

	Seriousness levels raised (a)	Seriousness levels lowered (b)	Total number of provisions re-aligned (a)+(b)	Remain unchanged	Total
No. of provisions	52	76	128	521	649

(5) Relativity of the three levels of maximum fines

25. LD has also examined whether the relativity of the current fine levels of the three seriousness categories needs to be revised. At present, the fines for serious offences (i.e. \$50,000) are five times those of minor offences (i.e. \$10,000); and the fines for very serious offences (i.e. \$200,000) are four times those of serious offences. Such fine relativity has been in use since the comprehensive review in 1994. Upon thorough consideration, LD considers that the relativity is still appropriate and does not see a strong reason to change it.

(6) Increase of maximum fines

26. With regard to the provisions other than the GD provisions for employers/ proprietors/ occupiers of premises, LD proposes an across-the-board increase in fines while maintaining the afore-mentioned fine relativity. In considering the degree of such across-the-board increase, LD considers that it should take into account the inflation level to-date since the enactment of provisions, and should result in a material increase to enhance the deterrent effect of penalties. In this connection, LD proposes that the maximum fines of the 657 provisions, other than those GD provisions for employers/ proprietors/ occupiers of premises, will have an across-the-board three-fold increase after the adjustments as mentioned in paragraphs 20, 23 and 24.

27. However, as the re-alignment exercise described in paragraphs 23 and 24 above raises or lowers the seriousness categories of some offences, 52 provisions will be subject to fine increases of more than three times of their current levels, and 17 others with an increase less than three times. Besides, as elaborated in paragraphs 12 and 20, maximum fines of ten GD provisions will also be increased by more than three times. As shown in Annex 4, the largest penalty increase is 15 times of the original fines while the smallest increase is 50%, and the penalties of 59 provisions will eventually be reduced by 25% to 70%.

Increase in Maximum Imprisonment Terms

28. In the course of the review, LD has also thoroughly examined whether there is a need to increase the maximum imprisonment terms. Since the commencement of the OSH legislation, there have only been three cases of suspended imprisonment, with no case of immediate imprisonment. LD is aware of the general view of the community that offenders committing serious OSH offences should be put behind bars in order to achieve sufficient deterrent effect. As the general public concern is the absence of such cases rather than the current maximum imprisonment terms being on the low side, LD does not recommend an across-the-board increase in the imprisonment terms of the provisions under the OSH legislation (except those of the GD provisions for employers, see paragraph 29 below for details). LD considers that a more effective way to address the problem is to assist the courts in better understanding the seriousness and culpability of the cases. LD therefore considers it necessary to step up evidence collection for the offences and proposes to extend the time-bar for issuing summonses from six months to one year, with a view to allowing sufficient time for LD to conduct more in-depth investigations into the cases and thus providing the courts with sufficient evidence for considering whether to impose immediate imprisonment penalty on convicted defendants.

29. Nevertheless, owing to the nature of the GD provisions (see paragraph 10 above), we consider it necessary to increase the maximum imprisonment term of the GD provisions for employers/ proprietors/ occupiers of premises. Noting that the existing maximum imprisonment term of six months is far less than those of overseas jurisdictions, which range from one to five years, LD recommends the maximum imprisonment term be increased from six months to two years to bring it closer with those of advanced jurisdictions. As regards those extremely serious cases tried as indictable offences, the maximum imprisonment term will be pitched at three years.

Summary of Major Proposed Amendments

30. LD's preliminary proposals on raising the penalties of the OSH legislation are summarised as follows:

- (a) the maximum fines under the GD provisions for prosecutions taken out as summary offences against employers/ proprietors/ occupiers of premises will be aligned and then subject to a six-fold increase, i.e. \$3 million (paragraph 12); while the imprisonment terms will be increased from six months to two years (paragraph 29);
- (b) for extremely serious cases, LD may prosecute the employers/ proprietors/ occupiers of premises contravening the law by invoking the GD provisions as indictable offences. The relevant maximum fines will be pitched at 10%

of the convicted entities' turnover or HK\$6 million (paragraph 13), while the maximum imprisonment term will be pitched at three years (paragraph 29);

- (c) having considered the inflationary factor and the need to achieve a material increase, all the maximum fines of the penalties (other than the penalties of GD provisions for employers/ proprietors/ occupiers of premises) will be subject to an across-the-board three-fold increase (paragraph 26); while the imprisonment terms (if applicable) of the relevant provisions will remain unchanged (paragraph 28); and
- (d) for prosecutions taken out as summary offences, the time-bar for issuing summonses will be extended from six months to one year (paragraph 28).

31. Regarding the above preliminary legislative amendment proposals, LD is studying amendment details and consulting relevant stakeholders. Subject to stakeholders' views and progress of law drafting, we expect to complete the legislative amendment within the term of the current Government.

Advice Sought

32. Members are invited to advise on the proposal as set out in this paper.

Labour and Welfare Bureau
Labour Department
March 2019

**Maximum Fine Level of Comparable GD Provisions for Employers of
OSH Legislation of Overseas Countries/Region**

Overseas Countries/Region	Maximum Fine (converted to HK\$)
Australia	About \$22,000,000
New Zealand	About \$16,000,000
Canada, Ontario	About \$9,000,000
Singapore	About \$3,000,000
The United States	About \$1,000,000

Note: In the United Kingdom, the maximum fine of GD provision is unlimited.

Cases that may involve extremely serious offences

Case 1

Circumstances

The accident happened when a number of workers were clearing up a heap of debris inside the lift shaft at an upper floor of a building under construction. The debris rested on a temporary platform erected inside the lift shaft at several floors below. The debris piled up to a height of several storeys. At the time of the accident when the workers had already cleared some of the debris, the platform suddenly collapsed. All the workers fell together with the debris and plunged tens of metres to their death.

Seriousness of culpability

Investigation revealed that:

- (1) The workplace was located at an upper floor inside the lift shaft. The contractors did not conduct any risk assessment to identify the hazards in relation to the work and no safe working method was formulated. Moreover, the weight of the debris and possible vibrations exerted on the platform during the clearing work were completely ignored. The contractors did not verify the erection record of the platform, and did not inspect the platform to ascertain whether the platform was of good structural integrity and able to support the debris and workers. It was found out after the accident that the estimated weight of the debris was over 20 tons, and the collapsed platform was only a bamboo scaffold that was not designed for holding debris.
- (2) In the course of the work, the contractors failed to ensure that the workers were using fall arresting equipment inside the lift shaft. Furthermore, no relevant safety information, instruction, training and supervision for the work were provided to the workers. The contractors paid no regard to the risk of fall of the workers in work-at-height activities.

Case 2

Circumstances

Two teams of workers were engaged in the installation of glass curtain wall at the middle level of a building under construction, and they worked in the same location of the external wall at two consecutive floor levels. Since there was only a single-row bamboo scaffold erected outside the building at the work location and no working platform was provided, they had to lay wooden planks between the single-row scaffold and the edges of the building to serve as footholds for doing their work. The accident happened when the wooden planks at the upper level suddenly fell and struck against the planks at the lower level. Except for one worker who was wearing a safety harness and did not fall, all the other workers fell onto 1/F or G/F, causing death and injuries.

Seriousness of culpability

Investigation revealed that:

- (1) The workers were tasked to install the glass curtain wall, but the contractors did not conduct task-specific risk assessments nor formulate safe work method and procedures for such high-risk work at the height. The contractors did not take into account that the single-row bamboo scaffold erected outside the building was inherently unsafe for work, and did not provide the workers concerned with the necessary safety information, instruction, training and supervision. It was gross negligence.
- (2) Although the contractor had long planned for the installation of glass curtain wall, arrangement for the provision of safe working platforms was not made prior to the commencement of work. As the workers involved lacked the experience for erecting working platform, they temporarily lay wooden planks at the work locations on their own. As the planks were not secured, the accident happened as a result.
- (3) Even though there were several independent lifelines provided at the exterior of the building, only one lifeline was available within the proximity of the work

location, which was obviously not sufficient for use by all workers at the same time.

Case 3

Circumstances

At the time of the accident, a bamboo scaffolding worker was erecting a truss-out bamboo scaffold at the external wall at an extremely high floor level of a building for conducting water-proofing work of the external wall. During the work, he was only standing on a metal bracket. The metal bracket was suddenly loosened from the external wall and the worker fell dozens of floors to the podium to his death.

Seriousness of culpability

Investigation revealed that:

- (1) The scaffolding worker was assigned to work outside the external wall at an extremely high floor level. However, the contractor responsible for the scaffolding work did not adopt any safety precautions for the scaffolding worker. Apart from failing to conduct risk assessment and nor to devise relevant safe work method for the scaffolding work, basic personal protective equipment (namely, full-body safety harness, secure anchorage point or independent lifeline) was also not provided to the workers. The deceased worker only used his own basic mountaineering equipment, and anchored the lanyard of the climbing rope to the louver rack of the air-conditioner at the external wall. At the time of the accident, since the equipment was not meant to substitute a fall-arresting system for industrial use, the climbing rope was subsequently torn off. The louver rack was also broken as it could not withstand the load, resulting to the worker falling to death.
- (2) At the time of the accident, the loosened metal bracket was only fixed by one expansion anchor bolt. The expansion anchor bolt was not up to standard and could not withstand the weight of the deceased.
- (3) The worker who was assigned to erect the bamboo scaffold was not a qualified bamboo scaffolding worker. There was no competent person on site to supervise and give instruction neither. The other workers on site did not possess any valid Mandatory Basic Safety Training Certificate (i.e. Green Card). The

contractor concerned did not provide necessary safety information, instruction, training and supervision to the workers. The potentially high risks associated with the erection and use of bamboo scaffold and the safety of the workers concerned were neglected.

128 Provisions with Seriousness Level Re-aligned

Serial no.	Current Seriousness Category [Fine (\$)]	Proposed Seriousness Category [Fine (\$)]*	Provision	Justifications for Re-alignment
1	Minor [10,000]	Serious [150,000]	Regulation 21 of Cap.59A	These offences are serious breaches including smoking in prohibited areas where inflammable substance is stored, failure to maintain means of escape free from obstruction and in safe condition, etc.
2			Regulation 53(1) of Cap.59I	
3			Regulation 54(2) of Cap.59I	
4			Regulation 9 of Cap.59K	
5			Regulation 10 of Cap.59K	
6			Regulation 34 of Cap.59M	
7			Regulation 35 of Cap.59M	
8			Regulation 16(3)(b) of Cap.59N	
9			Regulation 18(1) of Cap.59P	
10			Regulation 7(2) of Cap.59V	
Sub-total: 10 provisions				
11	Not Applicable# [30,000]	Serious [150,000]	Regulation 17(1) of Cap.59F	These offences are serious breaches that happen at quarries, including failure to inspect equipment periodically, use of defective equipment, driving vehicles without license, failure to ensure the use of personal protective
12			Regulation 18(1) of Cap.59F	
13			Regulation 27(1) of Cap.59F	
14			Regulations 28(1) and (2) of Cap.59F	
15			Regulation 29(1) of Cap.59F	
16			Regulations 33(1) and (2) of Cap.59F	

Serial no.	Current Seriousness Category [Fine (\$)]	Proposed Seriousness Category [Fine (\$)]*	Provision	Justifications for Re-alignment	
17			Regulation 36(1) of Cap.59F	equipment by workers, falling objects, etc.	
18			Regulation 37(1) of Cap.59F		
19			Regulations 38(1) and (2) of Cap.59F		
20			Regulation 39(1) of Cap.59F		
21			Regulation 43(1) of Cap.59F		
22			Regulation 44(1) of Cap.59F		
23			Regulation 45(1) of Cap.59F		
24			Regulations 48(1) and (2) of Cap.59F		
25			Regulation 52(1) of Cap.59F		
26			Regulation 53(1) of Cap.59F		
27			Regulation 54(1) of Cap.59F		
28			Regulation 56(1) of Cap.59F		
Sub-total: 18 provisions					
29	Serious [50,000]	Very Serious [600,000]	Regulations 53(2) of Cap.59I		These offences are very serious breaches including failure to properly maintain electrical apparatus, failure to protect conductor, failure to provide effective earthing for electrical apparatus, failure to
30			Regulations 54(1) and (1A) of Cap.59I		
31			Regulation 10A of Cap.59K		
32			Regulation 6 of Cap.59N		
33			Regulation 7(3) of Cap.59V		

Serial no.	Current Seriousness Category [Fine (\$)]	Proposed Seriousness Category [Fine (\$)]*	Provision	Justifications for Re-alignment
34			Regulation 5 of Cap.59W	ensure the stability of stacks of containers, etc.
35			Regulation 6 of Cap.59W	
36			Regulation 10 of Cap.59W	
37			Regulation 14 of Cap.59W	
38			Regulation 19 of Cap.59W	
39			Regulation 26 of Cap.59W	
40			Section 21 of Cap.59AC	
Sub-total: 12 provisions				
41	Not Applicable# [100,000]	Very Serious [600,000]	Sections 7 and 14(1)(a)(i) of Cap.59AE	These offences are very serious breaches involving work in confined spaces including failure to take safety precautions required for various stages of work as recommended in the risk assessment report, failure to provide sufficient number of workers, and failure to ensure sufficient supply of safety equipment, etc.
42			Sections 7 and 14(1)(a)(ii) of Cap.59AE	
43			Sections 8 and 14(1)(a)(i) of Cap.59AE	
44			Sections 8 and 14(1)(a)(ii) of Cap.59AE	
45			Sections 10(2) and 14(1)(a)(i) of Cap.59AE	
46			Sections 10(2) and 14(1)(a)(ii) of Cap.59AE	
47			Sections 10(3) and 14(1)(a)(i) of Cap.59AE	
48			Sections 10(3) and 14(1)(a)(ii) of Cap.59AE	
49			Sections 11(1) and 14(1)(a)(i) of Cap.59AE	

Serial no.	Current Seriousness Category [Fine (\$)]	Proposed Seriousness Category [Fine (\$)]*	Provision	Justifications for Re-alignment
50			Sections 11(1) and 14(1)(a)(ii) of Cap.59AE	
51			Sections 11(2) and 14(1)(a)(i) of Cap.59AE	
52			Sections 11(2) and 14(1)(a)(ii) of Cap.59AE	
Sub-total: 12 provisions				
Total: The seriousness levels of the above 52 offences are raised				
53	Serious [50,000]	Minor [30,000]	Regulations 18C(1), (2), (4) and (5) of Cap.59J	These offences are minor breaches mainly involving document related faults, including failure to exhibit various notices required to be displayed, failure to provide various statutory reports and certificates in a timely manner, failure to maintain health registers and failure to keep records of safety committee meetings etc.
54			Regulations 27(1), (2) and (4) of Cap.59M	
55			Regulation 27(3) of Cap.59M	
56			Regulation 30 of Cap.59M	
57			Regulation 7 of Cap.59N	
58			Regulation 6 of Cap.59O	
59			Regulation 8 of Cap.59R	
60			Regulation 9(2) of Cap.59V	
61			Regulation 21(2) of Cap.59W	
62			Regulation 25 of Cap.59W	
63			Regulation 27 of Cap.59W	
64			Regulation 19A of Cap.59Z	
65			Regulation 21(2) of Cap.59Z	

Serial no.	Current Seriousness Category [Fine (\$)]	Proposed Seriousness Category [Fine (\$)]*	Provision	Justifications for Re-alignment
66			Regulations 9(1) and (2) of Cap.59AA	
67			Regulation 9(3) of Cap.59AA	
68			Regulation 5 of Cap.59AB	
69			Regulation 6 of Cap.59AB	
70			Section 15(3) of Cap.59AC	
71			Section 22(a) of Cap.59AC	
72			Section 24 of Cap.59AC	
73			Section 25 of Cap.59AC	
74			Section 26 of Cap.59AC	
75			Section 5(3) of Cap.59AD	
76			Section 6(1) of Cap.59AD	
77			Section 6(3) of Cap.59AD	
78			Section 6(4) of Cap.59AD	
79			Section 13(2) of Cap.59AD	
80			Section 17(3) of Cap.59AD	
81			Section 19 of Cap.59AD	
82			Section 6(2) of Cap.59AE	
83			Section 11(1)(b) of Cap.59AF	
84			Section 11(1)(d) of Cap.59AF	
85			Section 16(3) of Cap.59AF	
86			Section 17 of Cap.59AF	

Serial no.	Current Seriousness Category [Fine (\$)]	Proposed Seriousness Category [Fine (\$)]*	Provision	Justifications for Re-alignment
87			Section 18 of Cap.59AF	
88			Section 19(1)(b) of Cap.59AF	
89			Section 23 of Cap.59AF	
90			Section 13(1) of Cap.509	
91			Section 14(2) of Cap.509	
92			Section 25(4)(a) of Cap.509	
93			Section 25(4)(b) of Cap.509	
Sub-total: 41 provisions				
94	Not Applicable# [100,000]	Minor [30,000]	Sections 26(1) and (2) of Cap.509A	Failure to keep record of assessment of manual handling operations.
Sub-total: 1 provision				
95	Not Applicable# [100,000]	Serious [150,000]	Sections 9 and 14(1)(a)(i) of Cap.59AE	These offences are serious breaches mainly involving failure to implement safety management requirements, including failure to comply with the duty in respect of safety policy, failure to establish safety committee and comply with related requirements, and failure to provide necessary assistance to registered safety
96			Sections 9 and 14(1)(a)(ii) of Cap.59AE	
97			Section 9(1)(a) of Cap.59AF	
98			Section 9(1)(b) of Cap.59AF	
99			Section 10 of Cap.59AF	
100			Section 12 of Cap.59AF	
101			Section 14 of Cap.59AF	
102			Section 16(1)(a) of Cap.59AF	
103	Section 16(1)(b) of Cap.59AF			

Serial no.	Current Seriousness Category [Fine (\$)]	Proposed Seriousness Category [Fine (\$)]*	Provision	Justifications for Re-alignment
104			Section 20 of Cap.59AF	auditors to carry out their work, etc. These offences also include failure to ensure the use of personal protective equipment in confined space.
105			Section 22(1)(a) of Cap.59AF	
106			Section 22(1)(b) of Cap.59AF	
107			Section 24(2) of Cap.59AF	
108			Section 29(1)(a) of Cap.59AF	
109			Section 29(1)(b) of Cap.59AF	
110			Section 32(1) of Cap.59AF	
111			Section 27(1)(d) of Cap.509A	
Sub-total: 17 provisions				
112	Very Serious [200,000]	Serious [150,000]	Regulations 34(1) and (2) of Cap.59I	These offences are serious breaches mainly involving failure to establish safety management system, failure to appoint registered safety auditor to conduct safety audit, failure to undertake risk assessment for manual handling operation, and failure to ensure that safe working load is marked on hoists, etc.
113			Regulation 7F of Cap.59J	
114			Regulation 3(1) and (2) of Cap.59AA	
115			Regulations 4 of Cap.59AA	
116			Section 8 of Cap.59AF	
117			Section 13(1) of Cap.59AF	
118			Section 13(2) of Cap.59AF	
119			Section 19(1)(a) of Cap.59AF	
120			Section 19(2) of Cap.59AF	
121			Sections 23(1), (2), (3) and (4) of Cap.509A	

Serial no.	Current Seriousness Category [Fine (\$)]	Proposed Seriousness Category [Fine (\$)]*	Provision	Justifications for Re-alignment
122			Section 24(1) of Cap.509A	
123			Sections 25(1), (2) and (3) of Cap.509A	
124			Sections 27(1) and (2) of Cap.509A	
125			Sections 28(1), (2) and (3) of Cap.509A	
126			Section 29(1) of Cap.509A	
127			Sections 30(1) and (2) of Cap.509A	
128			Sections 31(1), (2) and (3) of Cap.509A	
Sub-total: 17 provisions				
Total: The seriousness levels of the 76 offences above are reduced				

Notes :

* “Proposed Fine” refers to three times of the fine of the offence after seriousness re-alignment.

“Not Applicable” means that the fine levels of the original provisions have not undergone the seriousness categorization adopted in the 1994 penalty review exercise.

Cap. 59A: Factories And Industrial Undertakings Regulations

Cap. 59F: Quarries (Safety) Regulations

Cap. 59I: Construction Sites (Safety) Regulations

Cap.59J: Factories And Industrial Undertakings (Lifting Appliances And Lifting Gear) Regulations

Cap.59K: Factories And Industrial Undertakings (Cargo And Container Handling) Regulations

Cap.59M: Factories And Industrial Undertakings (Work In Compressed Air) Regulations

Cap.59N: Factories And Industrial Undertakings (Spraying Of Flammable Liquids) Regulations

Cap.59O: Factories and Industrial Undertakings (Goods Lifts) Regulations

Cap.59P: Factories and Industrial Undertakings (Dry Batteries) Regulations

Cap.59Q: Factories And Industrial Undertakings (Guarding And Operation Of Machinery) Regulations

Cap.59R: Factories And Industrial Undertakings (Cartridge-Operated Fixing Tools) Regulations

Cap.59V: Factories and Industrial Undertakings (Fire Precautions in Notifiable Workplaces)
Regulations

Cap.59W: Factories And Industrial Undertakings (Electricity)Regulations

Cap.59Z: Factories And Industrial Undertakings (Safety Officers And Safety Supervisors) Regulations

Cap.59AA: Factories And Industrial Undertakings (Carcinogenic Substances) Regulations

Cap.59AB: Factories And Industrial Undertakings (Dangerous Substances) Regulations

Cap.59AC: Factories And Industrial Undertakings (Suspended Working Platforms) Regulation

Cap.59AD: Factories and Industrial Undertakings (Asbestos) Regulation

Cap.59AE: Factories And Industrial Undertakings (Confined Spaces) Regulation

Cap.59AF: Factories And Industrial Undertakings (Safety Management) Regulation

Cap.509: Occupational Safety and Health Ordinance

Cap.509A: Occupational Safety And Health Regulation

Proposed maximum fines (including 128 provisions with seriousness re-aligned)

Current fines (\$) (a)	Fines after re- alignment of seriousness (\$) (b)	Fines increased to three times of the original fines (\$) c = (b) x 3 (except the items marked with #)	Net change c/a	No. of provisions
2,000	2,000	6,000	3 times	1
10,000	10,000	30,000	3 times	138
10,000	50,000	150,000 [@]	15 times	11
25,000	50,000	150,000 [@]	6 times	1
30,000	50,000	150,000	5 times	18
50,000	10,000	30,000	-40%	41
50,000	50,000	150,000 [@]	3 times	279
50,000	200,000	600,000	12 times	12
100,000	10,000	30,000	-70%	1
100,000	50,000	150,000	50%	17
100,000	200,000	600,000	6 times	12
200,000	50,000	150,000	-25%	17
200,000	200,000	600,000	3 times	106
200,000	500,000	3,000,000 [#]	15 times	4
500,000	500,000	1,500,000	3 times	1
500,000	500,000	3,000,000 [#]	6 times	4
5,000 (daily)	5,000 (daily)	15,000 (daily)	3 times	1
50,000 (daily)	50,000 (daily)	150,000 (daily)	3 times	1
			Total	665

Notes:

1. Provisions with seriousness increased are coloured red, provisions with seriousness decreased and with net increase in fine are coloured blue, while provisions with seriousness decreased and with net decrease in fine are coloured green.
2. “#” refers to provisions involving GD provisions of employers/ proprietors/ and occupiers of premises.
3. “@” refers to provisions involving GD provisions of employees.