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Panel on Manpower

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 17 December 2019**

Occupational safety performance in Hong Kong

Purpose

This paper gives an account of the past discussions by the Panel on Manpower ("the Panel") on Hong Kong's occupational safety performance since the Fifth Legislative Council ("LegCo").

Background

2. According to the Administration, the number of occupational injuries (including industrial and non-industrial accidents)¹ in the first half of 2018 was 16 811, representing a drop of 1.6% over 17 092 in the same period of 2017. The injury rate per 1 000 employees was 11.0 in the first half of 2018, down by 2.9% when compared with 11.3 in the same period of 2017. The number of industrial accidents² for all sectors in the first half of 2018 was 5 014, down by 3.6% when compared with 5 200 in the same period of 2017; while the accident rate per 1 000 workers decreased by 4.4% from 16.2 to 15.5. The accidents mainly involved "slip, trip or fall on the same level" and "incorrect manual lifting or carrying".

¹ Occupational injuries (including industrial and non-industrial accidents) refer to injury cases in workplaces reported under the Employees' Compensation Ordinance (Cap. 282), resulting in death or incapacity for work of over three days.

² Industrial accidents refer to injuries and deaths arising from industrial activities in industrial undertakings as defined under the Factories and Industrial Undertakings Ordinance (Cap. 59).

Deliberations of the Panel

Industrial accidents in the food and beverage services sector

3. Some members expressed concern about the effectiveness of the publicity and educational efforts put in place by the Administration in addressing industrial accidents in the food and beverage services sector. According to the Administration, with a view to consolidating its efforts in publicity and promotion, education, training, research and sponsorship schemes for the catering industry, the Occupational Safety and Health Council ("OSHC") established the Catering Safety and Health Steering Committee in 2015 to further promote and enhance the work safety standards of the industry. In addition, OSHC continued to implement the "OSH Star Enterprises Catering OSH Enhancement Pilot Scheme" to further improve the work safety of the catering industry practitioners, and to encourage the industry to improve tidiness and cleanliness standards at workplaces. Members were also advised that the Labour Department ("LD") would conduct special enforcement operations targeting at the occupational safety and health ("OSH") of the catering industry.

Site safety of public works projects

4. Members noted with grave concern about the fatalities and injuries since the commencement of the Hong Kong-Zhuhai-Macao Bridge ("HZMB") project in 2011. Some members queried whether such accidents had occurred because employers/contractors sought to catch up with works progress at the expense of safe work practices and the Administration's monitoring measures failed to achieve its purpose. Members took a strong view that the Administration should conduct investigation into the causes of such accidents as well as draw up preventive measures and take specific enforcement actions against unsafe work practices. They also called on the Administration to improve the occupational safety of construction workers and prevent recurrence of similar accidents.

5. According to the Administration, LD had been closely monitoring the occupational safety of HZMB local projects. It had completed the investigation work of the fatal accident occurred on 29 March 2017 and, after consulting the Department of Justice, initiated prosecutions against the duty holders who were suspected to have contravened the OSH legislation. In addition, LD had in conjunction with the Marine Department organized talks and seminars on marine industrial safety for the resident site staff and frontline workers of HZMB projects. Members were also advised that given the commencement of various mega infrastructure projects in recent years, LD established a dedicated office in 2011, which was specifically tasked with inspecting these projects and conducting related law enforcement work.

Safety of working at height

6. Given that most of the construction fatal accidents were related to fall of persons from height, members were concerned about the preventive measures adopted by the Administration to reduce risks associated with working at height, in particular the risk involved in the use of truss-out scaffolds and suspended working platforms.

7. According to the Administration, the Construction Industry Council ("CIC") had issued the revised Guidelines on Planking Arrangement for Providing Working Platforms on Bamboo Scaffolds ("the Guidelines") in September 2017 and revised the Code of Practice for Bamboo Scaffolding Safety ("CoP"). LD would make reference to the Guidelines and CoP when enforcing safety legislation relating to the use of bamboo scaffolds. In addition, LD had in collaboration with OSHC launched the Safety Helmets with Y-type Chin Straps Sponsorship Scheme for small and medium-sized enterprises ("SMEs") in April 2017, which provided subsidy to SMEs engaged in the construction industry to purchase safety helmets with Y-type chin straps that conformed to safety standards. It was highlighted that some large and medium enterprises in the construction industry had taken their own initiative to purchase safety helmets with Y-type chin straps for their employees.

8. Members expressed concern how the Administration would strengthen the work safety of workers undertaking maintenance works on external walls of existing buildings and new buildings. Noting that the Buildings Department ("BD") planned to make legislative amendment to the Buildings (Construction) Regulations (Cap. 123B) ("the Regulations"), members also asked about the details and progress of the legislative proposal.

9. The Administration advised that the Committee on Construction Site Safety under CIC had formed a Task Force, comprising members from relevant government departments (including LD and BD) and industry stakeholders including representatives of relevant trade associations and workers' unions, to follow up the design safety for works on external walls of buildings. LD had also been working closely with BD in revising its Practice Notes to require developers when constructing new buildings to provide air-conditioner platforms with suitable guard-rails to facilitate air-conditioner maintenance, and devices to facilitate cleaning and repair at buildings with curtain walls. The Administration further advised that BD was studying the legislative amendment of the Regulations, including introduction of requirements to mandate provision of adequate safety facilities in building design to facilitate future repair and maintenance works on external walls. The direction of the legislative amendment was to stipulate the requirements for duty holders undertaking work-at-height (including works on external walls), including provision of safe working platforms for workers working at height with a view to safeguarding

the occupational safety of them. As regards existing buildings, LD had recently started to step up engagement with property management companies and further enhanced the promotion work to owners' corporations to raise their awareness on the common hazards associated with repair and maintenance works, including work-at-height safety.

10. Members also expressed concern about the specific measures drawn up by the Administration to enhance work safety in respect of minor maintenance works on external walls engaged by property management companies. The Administration advised that LD had been encouraging the contractors employed by property management companies and tenants to use suitable working platforms for above ground work and raise the awareness of workers engaging in renovation and repair works to use safe working platforms. To this end, LD in collaboration with the Hong Kong Association of Property Management Companies and OSHC launched a scheme in January 2018 to provide free of charge light-duty working platforms to property management companies for lending to contractors/workers working in properties under their management.

Worksite inspections

11. Noting that the number of fatal accidents in the construction industry had been increasing, members were concerned about LD's monitoring efforts and difficulties in manpower deployment for worksite inspections. The Administration advised that LD had and would continue to bid for additional manpower resources in the resources allocation exercises for stepping up inspection and enforcement targeting at the construction industry. Apart from conducting in-depth surprise inspections targeting work sites with high risk processes or poor safety performance, LD would continue to adopt a risk-based approach in devising measures to enhance OSH performance of the construction industry. Specifically, LD would participate in site safety management committee meetings of public works projects so as to appreciate more accurately the projects' OSH conditions and risks, with a view to devising more focused inspection strategies accordingly. LD would also enhance the promotion of the complaint channel to encourage construction workers to report unsafe working condition so that LD could conduct prompt and targeted inspections.

On-site safety officers

12. Concern was raised about whether registered safety officers ("RSOs"), who were employed by construction contractors, would be proactive in reporting their employers' non-compliance with OSH requirements. There was a view that the Administration should make it mandatory for construction contractors to engage RSOs through an intermediary agency so as to ensure their independent role.

13. According to the Administration, RSOs were reminded of the importance of taking proactive steps to ensure that their employers/clients were fully aware of the potential adverse implications and consequences of refusing to accept or neglecting their advice. Should there be sufficient evidence that an RSO had failed to perform his duties, LD would activate the registration suspension/cancellation process for the safety officer concerned under the registration system for RSOs. The Administration was of the view that the requirement of engaging RSOs by contractors had achieved the desired outcome for the former to render assistance to contractors in establishing safety management systems to prevent accidents. The Administration added that under the law, duty holders of construction projects were not prohibited from engaging RSOs through an intermediary agency.

Raising penalties of the occupational safety and health legislation

14. Members noted with concern that the construction industry topped all industries in terms of the number of industrial fatalities and accident rate. 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 OSH legislation. The Panel passed a motion at the special meeting on 12 April 2017 urging the Administration to, among others, increase the penalties by forbidding the companies concerned to tender in public works 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.

15. At the Panel meeting on 17 July 2018, members were briefed on the broad directions proposed by LD to raise the penalties of OSH legislation. According to the Administration, the overall objective was to raise the deterrence to an appropriate level. The Administration would make reference to the penalty levels under similar legislation in other jurisdictions and relevant overseas experience on instituting prosecution against offences of similar nature and take into account the actual situation in Hong Kong when working out the legislative amendment details.

16. Members were updated at the Panel meeting on 19 March 2019 on the Administration's preliminary proposed amendments to, among others, increase the maximum fine of the general duty ("GD") provisions in the OSH legislation to \$6 million or 10% of the turnover of the convicted company, whichever was the greater. Noting that no employer who was convicted of violating the OSH legislation had so far been sentenced with immediate imprisonment term, most members urged the Administration to expedite the introduction of the relevant

legislative proposals to increase the deterrent effect. Some other members, however, took a strong view that the proposed increase of the maximum fine levels of contravening the GD provisions in the OSH legislation were too drastic. They considered that the legislative proposals, if enacted, would seriously affect the operation of SMEs and the business environment.

17. The Administration advised that comparing to the penalties of the OSH legislation in other advanced countries/regions, the penalties of the OSH legislation in Hong Kong, which had not been revised for over 20 years, were on the low side. To strengthen the deterrent effect of the penalties, LD had been making efforts to assist the courts to determine appropriate sentences, in particular to impose higher penalties on duty holders for serious cases. Although the amount of fines imposed by the court had on the whole increased slightly in recent years, the actual penalties were still on the low side and did not have sufficient deterrent effect to propel the improvement of OSH performance. While respecting the independence of the Judiciary, the Administration believed that the Judiciary would accordingly impose heavier penalties on OSH offences following the enactment of the relevant legislative proposals. According to the Administration, the proposal of amending the penalty levels for breaching the GD provisions in the OSH legislation would only be applicable to extremely serious cases of extremely high culpability or serious negligence which led to serious consequences.

18. In response to members' enquiry about the legislative timetable, the Administration advised that LD had consulted the Labour Advisory Board in February 2019 and would meet with various trade associations and labour unions, in particular those in the construction industry. Subject to the stakeholders' views and progress of law drafting, the Administration expected to finalize the legislative amendments within the term of the current Government.

Relevant papers

19. A list of the relevant papers on the LegCo website is in the **Appendix**.

Appendix

Relevant papers on Occupational safety performance in Hong Kong

Committee	Date of meeting	Paper
Panel on Manpower	18.12.2012 (Item IV)	Agenda Minutes
Panel on Manpower	25.1.2013 (Item V)	Agenda Minutes
Panel on Manpower	16.4.2013 (Item V)	Agenda Minutes
Panel on Manpower	19.11.2013 (Item V)	Agenda Minutes
Panel on Manpower	17.12.2013 (Item V)	Agenda Minutes
Legislative Council	18.12.2013	Official Record of Proceedings (Question 13)
Legislative Council	8.1.2014	Official Record of Proceedings (Question 21 and 22)
Panel on Manpower	15.4.2014 (Item IV)	Agenda Minutes LC Paper No. CB(2)1836/13-14(01)
Legislative Council	16.4.2014	Official Record of Proceedings (Question 6)
Legislative Council	30.4.2014	Official Record of Proceedings (Question 2)
Legislative Council	11.6.2014	Official Record of Proceedings (Question 1)

Committee	Date of meeting	Paper
Panel on Manpower	17.6.2014 (Item V)	Agenda Minutes
Panel on Manpower	18.11.2014 (Item IV)	Agenda Minutes
Panel on Manpower	17.3.2015 (Item IV)	Agenda Minutes
Panel on Manpower	16.6.2015 (Item IV)	Agenda Minutes
Panel on Manpower	14.7.2015 (Item II)	Agenda Minutes
Panel on Manpower	17.11.2015 (Item IV)	Agenda Minutes
Legislative Council	3.2.2016	Official Record of Proceedings (Question 15)
Panel on Manpower	15.3.2016 (Item V)	Agenda Minutes
Panel on Manpower	21.6.2016 (Item III)	Agenda Minutes
Panel on Manpower	15.11.2016 (Item V)	Agenda Minutes LC Paper No. CB(2)866/16-17(01)
Legislative Council	16.11.2016	Official Record of Proceedings (Question 19)
Legislative Council	30.11.2016	Official Record of Proceedings (Question 1)
Legislative Council	11.1.2017	Official Record of Proceedings (Question 4)

Committee	Date of meeting	Paper
Panel on Manpower	23.1.2017 (Item III)	Agenda Minutes
Panel on Manpower (Special meeting)	12.4.2017 (Item I)	Agenda LC Paper No. CB(2)1357/16-17(05)
Panel on Manpower	16.5.2017 (Item V)	Agenda Minutes
Panel on Manpower	20.6.2017 (Item IV)	Agenda Minutes
Panel on Manpower	18.7.2017 (Item V)	Agenda Minutes
Panel on Manpower	19.12.2017 (Item V)	Agenda Minutes
Panel on Manpower	17.7.2018 (Item II & III)	Agenda Minutes
Panel on Manpower	15.1.2019 (Item III)	Agenda Minutes
Panel on Manpower	19.3.2019 (Item III)	Agenda Minutes

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