

For discussion on
15 December 2020

Legislative Council Panel on Manpower

Raising Penalties of Occupational Safety and Health Legislation

Purpose

This paper aims to brief Members on the revised amendment proposal of the Labour Department (“LD”) to raise the penalties of the occupational safety and health (“OSH”) legislation, and to invite Members’ views on the proposal.

Background

2. LD administers the Factories and Industrial Undertakings Ordinance (“FIUO”) (Cap. 59) and the Occupational Safety and Health Ordinance (“OSHO”) (Cap. 509) to safeguard the OSH of employees. The penalties of these legislation have not been amended for over 20 years. Currently, the maximum fines for OSH offences range from \$2,000 to \$500,000, much lower than those of other developed countries/regions¹.

3. Although the overall OSH performance in Hong Kong has greatly improved over the years², the improvement trend has clearly tapered off in recent years. Besides, the numbers of fatal industrial accidents have been hovering at some 20 cases in the past two decades or so with no sign of decreasing. To strengthen the deterrent effect of the penalties, LD has, subject to the circumstances of individual cases, requested the Department of Justice to seek review of or to appeal against the penalties³. The actual penalties are however still on the low side⁴. The community at large considers that the sentences handed down by the courts have failed to reflect the seriousness of the contraventions and are unable to pose sufficient deterrent effect

¹ Taking “Employer General Duty (“GD”) provisions” as an example, the maximum fine in Australia is approximately HK\$22 million after conversion. Details can be found at [Annex 1](#).

² The industrial accident rate per thousand workers has dropped from 55.1 in 1999 to 14.8 in 2019.

³ In the past six years, LD sought review of or appeal against the penalties of 46 cases.

⁴ For fatal accidents in the construction industry in 2019, the average fine for each summons was about \$20,700. For the 23 fatal cases with trials completed in the same year, the average fine imposed on each convicted defendant was about \$58,000.

on duty holders violating the law. This is also reflected in the high proportion of repeat OSH offenders among those convicted⁵.

4. Besides, there were a number of cases involving extremely serious OSH offences in recent years, where the duty holders involved were well aware of the high risk associated with the work concerned, but failed to take suitable safety measures. Such gross disregard to employees' safety resulted in death, severe disability of workers or other very serious consequences. LD considers that, for duty holders having committed extremely serious OSH offences, especially sizeable companies, the maximum fines should be high enough to achieve sufficient deterrence.

Preliminary proposal and consultation

5. In this connection, LD put forward a preliminary proposal to raise the maximum penalties of OSH legislation in 2019. The key elements are as follows:

- (a) aligning and increasing the maximum fines for the employer GD provisions and employee GD provisions⁶ to \$3 million⁷ and \$150,000 respectively; and increasing the maximum imprisonment terms of the employer GD provisions from six months to two years to bring them closer to those of the developed jurisdictions;
- (b) for extremely serious cases, LD may prosecute duty holders by invoking the employer GD provisions as indictable offences, with the relevant maximum fine pitched at 10% of the convicted entities' turnover or HK\$6 million (whichever is the higher), and the maximum imprisonment term at three years;
- (c) re-aligning the current seriousness categories of OSH offence provisions, and after considering the inflationary factor and the need to achieve a

⁵ For example, of the 969 convicted OSH offenders in 2019, about 34% of them were repeat offenders.

⁶ In the two OSH legislation, there are a total of eight employer GD provisions requiring employers/ proprietors of industrial undertakings/ 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. Their maximum fines are \$200,000 and \$500,000 respectively. There are another four employee GD provisions in the OSH legislation stipulating the basic OSH duties of employees to take care of themselves and other persons. Their maximum fines range from \$10,000 and \$25,000 to \$50,000. Due to their general nature, GD provisions are often invoked for prosecuting duty holders involved in serious OSH offences.

⁷ We have made reference to Singapore, the nature of economic activities of which is similar to that of Hong Kong. Her employer GD provisions carry a maximum fine of about HK\$3 million.

material increase, subjecting all the realigned maximum fines of the penalties (other than the employer and employee GD provisions, see paragraph 5(b) for details) to an across-the-board three-fold increase; and

- (d) apart from the small number of provisions mentioned in paragraphs 5(a) and (b), the imprisonment terms of the remaining provisions will remain unchanged, while the time-bar for issuing summonses for prosecutions taken out as summary offences will be extended from six months to one year⁸.

6. LD conducted extensive consultation on the preliminary proposal in 2019. Apart from the Legislative Council (“LegCo”) Panel on Manpower and the Labour Advisory Board, LD has also consulted various major chambers of commerce, explaining to them the preliminary proposal in detail and listening to their views. In addition, noting the construction sector’s concern about the proposal, LD has also consulted a number of trade associations, labour organisations and professional bodies from the construction industry. On the whole, both the business sector and the labour organisations agreed that there was a need to increase OSH penalties to enhance their deterrent effect. Labour organisations in general support the preliminary proposal, including setting the maximum fine of extremely serious offences at 10% of the convicted entities’ turnover as it can subject companies committing extremely serious OSH offences, regardless of their size, to penalties with sufficient deterrent effect. The business sector however expressed strong objection against this proposal, mainly worrying about that maximum fines without a cap may cause the fines actually handed down to become too high, hence causing excessive uncertainty to the detriment of business operations. They have therefore appealed for putting a cap for the maximum fines. Besides, on the seriousness categorisation of OSH offences, there were views requesting LD to adjust the categorisation of certain provisions.

Revised proposal

7. After careful consideration of the above-mentioned comments, LD has adjusted the amendment proposal as appropriate. The adjustment mainly involves-

- (a) maximum fine for extremely serious offences (see paragraph 5(b) above);

⁸ LD considers that the current maximum imprisonment terms of the provisions (ranging from three to 12 months) are sufficiently deterrent, and also notices that the concern of the general public is on the absence of immediate imprisonment sentences. LD considers that a more appropriate way to address the concern is to assist the courts in better understanding the seriousness and culpability of the cases, and therefore proposes to step up evidence collection for the offences and to extend the time-bar for issuing summonses from six months to one year to allow more time for LD to conduct more in-depth investigations.

and

- (b) re-alignment of seriousness categorisation of offence provisions (see paragraph 5(c) above).

Maximum fines for extremely serious offences

8. LD proposes to amend the employer GD provisions so that they can be invoked as indictable offences for extremely serious cases involving extremely high culpability or serious negligence and leading to serious consequences⁹, and be tried in courts of higher levels. In view of the grave concern expressed by employers about pitching the maximum fine at 10% of the turnover of the convicted entity without a cap, we now propose to modify the original turnover-pegged maximum fine to a maximum fine capped at \$50 million. In addition, to ensure that the fines handed down for the indictable offences are commensurate with convicted entities of different scales in order to achieve sufficient deterrent effect, we propose to add new provisions to require the courts to take the convicted entity's turnover into account in determining the fine level. We consider that the revised proposal balances employers' worries and the need to ensure penalties for extremely serious offences are sufficiently deterrent. The maximum imprisonment terms for indictable offences will remain at three years.

9. LD proposes that the turnover should refer to the income arising from a business entity's principal business activities in Hong Kong. The income and revenue that arise incidentally or are exceptional in nature should be excluded. The required turnover can be found in the convicted defendant's tax return filed with the Inland Revenue Department. A convicted defendant may also provide self-prepared audited turnover information in accordance with the relevant definition. As for the period of the turnover which the courts should refer to 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.

Re-alignment of seriousness categorisation of various OSH offences

10. At present, the penalties of the offences under FIUO and its subsidiary

⁹ Having made reference to the OSH legislation and related sentencing guidelines of some developed countries, LD considers 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](#)).

regulations are generally grouped into three different categories according to the seriousness of the breaches, with three different corresponding maximum fine levels-

- (a) minor offences : \$10,000
- (b) serious offences : \$50,000
- (c) very serious offences : \$200,000

In the course of the review, LD noted that a number of OSH provisions do not sit well with the above-mentioned seriousness categorisation. LD therefore proposed in the preliminary proposal that the seriousness categories of these offence provisions be appropriately re-aligned so as to ensure that the penalties can accurately reflect the seriousness of the offences nowadays.

11. During the consultation, some stakeholders raised comments on the re-alignment of the seriousness categorisation of certain provisions. In light of these comments, LD reassessed the seriousness categorisation of all the provisions (over 600) in accordance with the three seriousness categories as set out below. The seriousness of an offence is generally determined according to its possible consequence and the likelihood of its causing such a consequence-

- (a) “very serious offences” – refer to offences that will “very likely” cause a serious consequence (e.g. death, limb amputation); are related to a major deficiency in safety management system (“SMS”); or are related to the use of banned asbestos/prohibited carcinogen. Examples of such offences include absence of a safe working platform, acts/omissions leading to grave fire hazards, failure to develop, implement and maintain an SMS, etc.;
- (b) “serious offences” – refer to offences that fall between the “very serious” and “minor” categories; or are related to deficiency in SMS that is not a major one. Examples are failure to ensure that floors are free of loose materials, failure to provide effective mechanical exhaust, failure to convene safety committee meetings at least every three months, etc.; and
- (c) “minor offences” – refer to offences that will “likely” or “less likely” cause a minor to moderate consequence. Such offences include failing to keep records, failing to post certain warning notices, under-provision of first aid equipment, etc.

12. After the reassessment, we consider that the current maximum fines of 215 provisions do not accurately reflect their seriousness and have to be re-aligned (see table below and [Annex 3](#) for details).

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	145	70	215	424	639

13. Among the above-mentioned 215 offence provisions, 34 of them targeting at employees are classified as “very serious” according to the criteria described in paragraph 11. The proposed new maximum fines for these very serious offence provisions, according to the proposed scale of fine increase, should be \$600,000 (i.e. three times of the maximum fine of \$200,000 after realignment). However, taking into account the affordability of employees in general, \$600,000 could be too substantive an amount for them, and that the maximum fine of employee GD provisions is proposed to be raised to \$150,000 (see paragraph 5(a)), we recommend the proposed maximum fines of these 34 provisions be uniformly set at \$150,000. We consider this fine level can generate sufficient deterrent effect for employees.

14. As the re-alignment exercise described in paragraphs 11-13 above has led to the seriousness categories of some offences being raised or lowered, a total of 136 provisions will be subject to fine increases of more than three times of their current levels, while 13 others with increases less than three times. As shown in Annex 4, the largest penalty increase is 20 times of the original fine (involving one provision), while the smallest increase is 50%, and the penalties of 55 provisions will eventually be reduced by 25% to 70%.

15. Regarding the above revised legislative amendment proposals, LD is launching a new round of consultation to consult relevant stakeholders. Subject to stakeholders’ views and progress of law drafting, we will submit the Amendment Bill to LegCo as soon as possible. We are working towards completing the amendment exercise within the current term of Government for immediate commencement.

Advice Sought

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

Labour and Welfare Bureau
 Labour Department
 December 2020

**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.
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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.

215 Provisions with Seriousness Level Re-aligned

Serial no.	Current Seriousness Category [Fine (\$)]	Proposed Seriousness Category [Fine (\$)]*	Provision	Justifications for Re-alignment
<u>Offences with seriousness levels raised</u>				
1	Minor [10,000]	Serious [150,000]	Regulation 21 of Cap. 59A	These offences include (i) failing to maintain a clear passage in wharf; (ii) failing to provide and maintain adequate drinking water to persons employed to reduce the risk of heat stroke; (iii) employing a worker who is suffering illness to work in a compressed air working environment; (iv) failing to make full and proper use of eye protectors, safety helmets, ear protectors, etc.; (v) failing to make full and proper use of the protective clothing while handling dangerous substances; and; (vi) workers manufacturing dry batteries wilfully misuse any safety
2			Regulation 38 of Cap. 59A	
3			Regulation 3(3) of Cap. 59C	
4			Regulation 32(1) or (2) of Cap. 59F	
5			Regulation 36(1) of Cap. 59F	
6			Regulation 42(1) of Cap. 59F	
7			Regulation 56(1) of Cap. 59F	
8			Regulation 19 of Cap. 59G	
9			Regulation 6 of Cap. 59H	
10			Regulation 9 of Cap. 59H	
11			Regulation 10 of Cap. 59H	
12			Regulation 48(2) of Cap. 59I	
13			Regulation 66(1) of Cap. 59I	
14			Regulation 9 of Cap. 59K	

Serial no.	Current Seriousness Category [Fine (\$)]	Proposed Seriousness Category [Fine (\$)]*	Provision	Justifications for Re-alignment
15			Regulation 10 of Cap. 59K	facility.
16			Regulation 16 of Cap. 59L	
17			Regulation 24(2) of Cap. 59M	
18			Regulation 25(2) of Cap. 59M	
19			Regulation 26(3) of Cap. 59M	
20			Regulation 26(4) of Cap. 59M	
21			Regulation 27(3) of Cap. 59M	
22			Regulation 29 of Cap. 59M	
23			Regulation 32 of Cap. 59M	
24			Regulation 33(1) of Cap. 59M	
25			Regulation 33(2) of Cap. 59M	
26			Regulation 36 of Cap. 59M	
27			Regulation 13 of Cap. 59N	
28			Regulation 14 of Cap. 59N	
29			Regulation 15 of Cap. 59N	

Serial no.	Current Seriousness Category [Fine (\$)]	Proposed Seriousness Category [Fine (\$)]*	Provision	Justifications for Re-alignment
30			Regulation 9(2) or (3) of Cap. 59O	
31			Regulation 11 of Cap. 59P	
32			Regulation 12 of Cap. 59P	
33			Regulation 13 of Cap. 59P	
34			Regulation 14(3) of Cap. 59P	
35			Regulation 14(4) of Cap. 59P	
36			Regulation 15(2) of Cap. 59P	
37			Regulation 18(1) of Cap. 59P	
38			Regulation 12(2) of Cap. 59Q	
39			Regulation 6 of Cap. 59R	
40			Regulation 7 of Cap. 59R	
41			Regulation 9(2), (3) of Cap. 59R	
42			Regulation 11 of Cap. 59R	
43			Regulation 14(2) of Cap. 59R	
44			Regulation 8 of Cap. 59S	
45			Section 6(1) of Cap. 59T	
46			Section 9(2) of Cap. 59T	

Serial no.	Current Seriousness Category [Fine (\$)]	Proposed Seriousness Category [Fine (\$)]*	Provision	Justifications for Re-alignment
47			Section 10 of Cap. 59T	
48			Regulation 7(4) of Cap. 59V	
49			Regulation 13 of Cap. 59AB	
50			Regulation 14 of Cap. 59AB	
51			Regulation 15 of Cap. 59AB	
52			Section 10(4) of Cap. 59AD	
53			Section 12(3) of Cap. 59AD	
54			Section 13(3) of Cap. 59AD	
55			Section 22(1) of Cap. 59AD	
56			Section 22(2) of Cap. 59AD	
57			Section 5 of Cap. 59AG	
58			Section 5 of Cap. 59AI	
59			Section 16(1) of Cap. 509A	
60			Section 9 of Cap. 509B	
Sub-total: 60 provisions				
61	Minor	Very	Regulation 31 of Cap. 59F	These offences include

Serial no.	Current Seriousness Category [Fine (\$)]	Proposed Seriousness Category [Fine (\$)]*	Provision	Justifications for Re-alignment
62	[10,000]	Serious^ [150,000]	Regulation 35 of Cap. 59F	workers (i) wilfully altering, damaging, obstructing or otherwise impairing a means of escape or fire-fighting appliance; (ii) failing to wear a safety belt on construction site while working at height; and (iii) smoking while working in compressed air.
63			Regulation 37(1) of Cap. 59F	
64			Regulation 41 of Cap. 59F	
65			Regulation 46(1) or (2) of Cap. 59F	
66			Regulation 50 of Cap. 59F	
67			Regulation 51(1) of Cap. 59F	
68			Regulation 54(1) of Cap. 59F	
69			Regulation 31(2) of Cap. 59I	
70			Regulation 38I of Cap. 59I	
71			Regulation 53(1) of Cap. 59I	
72			Regulation 54(2) of Cap. 59I	
73			Regulation 34 of Cap. 59M	
74			Regulation 35 of Cap. 59M	
75			Regulation 16(3)(b) of Cap. 59N	
76			Regulations 13 and 18(2) of Cap. 59R	
77	Regulation 7(2) of Cap. 59V			

Serial no.	Current Seriousness Category [Fine (\$)]	Proposed Seriousness Category [Fine (\$)]*	Provision	Justifications for Re-alignment
Sub-total: 17 provisions				
78	Not Applicable [30,000]	Serious [150,000]	Regulation 17(1) of Cap. 59F	These offences include (i) permitting vehicles be driven by a person without a valid licence in a quarry; and (ii) permitting workers not wearing a safety helmet to go to or remain in a quarry.
79			Regulation 36(1) of Cap. 59F	
80			Regulation 38(1) or (2) of Cap. 59F	
81			Regulation 43(1) of Cap. 59F	
82			Regulation 44(1) of Cap. 59F	
83			Regulation 48(1) or (2) of Cap. 59F	
84			Regulation 56(1) of Cap. 59F	
Sub-total: 7 provisions				
85	Not Applicable [30,000]	Very Serious^ [150,000]	Regulation 29(1) of Cap. 59F	These offences include (i) failing to prohibit any person from entering a dangerous place or road in a quarry; and (ii) failing to ensure safety harness securely attached to an anchorage is worn by workers working on any top or face in a
86			Regulation 33(1) or (2) of Cap. 59F	
87			Regulation 37(1) of Cap. 59F	
88			Regulation 39(1) of Cap. 59F	
89			Regulation 45(1) of Cap. 59F	
90			Regulation 52(1) of Cap. 59F	

Serial no.	Current Seriousness Category [Fine (\$)]	Proposed Seriousness Category [Fine (\$)]*	Provision	Justifications for Re-alignment
91			Regulation 53(1) of Cap. 59F	quarry.
92			Regulation 54(1) of Cap. 59F	
Sub-total: 8 provisions				
93	Not Applicable [30,000]	Very Serious [600,000]	Regulation 18(1) of Cap. 59F	Failing to provide safety ropes or harnesses while workers are working at height at quarries.
Sub-total: 1 provision				
94	Serious [50,000]	Very Serious [^] [150,000]	Regulation 5(2) of Cap. 59V	These offences include employee (i) damaging or obstructing a means of escape from a workplace; and (ii) wilfully misusing or interfering an apparatus or electrical protective equipment.
95			Regulation 21(2) of Cap. 59W	
96			Regulations 26 and 32 of Cap. 59W	
97			Regulation 32(a) of Cap. 59W	
98			Regulation 32(b) of Cap. 59W	
99			Section 28(2) of Cap. 59AC	
100			Section 13 of Cap. 59AE	
101			Section 9(1) of Cap. 509A	
102			Section 11(1) of Cap. 509A	

Serial no.	Current Seriousness Category [Fine (\$)]	Proposed Seriousness Category [Fine (\$)]*	Provision	Justifications for Re-alignment
Sub-total: 9 provisions				
103	Serious [50,000]	Very Serious [600,000]	Regulation 44(1) or (2) of Cap. 59I	These offences include (i) failing to insulate and effectively protect live conductor; (ii) failing to ensure the stability of stacks of containers to prevent collapse; and (iii) failing to construct a spraying room or a spraying area in compliance with regulations to reduce the risk of gas explosion.
104			Regulation 53(2) of Cap. 59I	
105			Regulations 54(1) or (1A) of Cap. 59I	
106			Regulation 7C of Cap. 59J	
107			Regulation 8 of Cap. 59J	
108			Regulation 10A of Cap. 59K	
109			Regulation 10B of Cap. 59K	
110			Regulation 4 of Cap. 59N	
111			Regulation 6 of Cap. 59N	
112			Regulation 8 of Cap. 59N	
113			Regulations 13 and 18(1) of Cap. 59R	
114			Regulation 7(3) of Cap. 59V	
115			Regulations 10(1) or (2) of Cap. 59V	
116			Regulation 11 of Cap. 59V	
117	Regulation 12 of Cap. 59V			

Serial no.	Current Seriousness Category [Fine (\$)]	Proposed Seriousness Category [Fine (\$)]*	Provision	Justifications for Re-alignment
118			Regulation 5 of Cap. 59W	
119			Regulation 6 of Cap. 59W	
120			Regulation 10 of Cap. 59W	
121			Regulation 14 of Cap. 59W	
122			Regulation 19 of Cap. 59W	
123			Regulation 20 of Cap. 59W	
124			Regulation 21(1) of Cap. 59W	
125			Regulations 26 and 31(2) of Cap. 59W	
126			Regulations 26 and 31(4) of Cap. 59W	
127			Regulation 28(1) of Cap. 59W	
128			Regulation 14 of Cap. 59Z	
129			Regulation 16 of Cap. 59Z	
130			Regulation 20 of Cap. 59Z	
131			Section 22(b) of Cap. 59AC	
Sub-total: 29 provisions				
132	Not Applicable	Very Serious [600,000]	Sections 7 and 14(1)(a)(i) of Cap. 59AE	These offences include (i) failing to ensure a

Serial no.	Current Seriousness Category [Fine (\$)]	Proposed Seriousness Category [Fine (\$)]*	Provision	Justifications for Re-alignment
133	[100,000]		Sections 7 and 14(1)(a)(ii) of Cap. 59AE	person entering or remaining in a confined space (e.g. manhole or pipeline) is properly wearing an approved breathing apparatus to prevent inhalation of toxic gas; and (ii) failing to take action on audit report to improve the existing root deficiency of the safety management system promptly so as to ensure the system is fully implemented effectively.
134			Sections 8(d) and 14(1)(a)(i) of Cap. 59AE	
135			Sections 8(d) and 14(1)(a)(ii) of Cap. 59AE	
136			Sections 9 and 14(1)(a)(i) of Cap. 59AE	
137			Sections 9 and 14(1)(a)(ii) of Cap. 59AE	
138			Sections 10(2) and 14(1)(a)(i) of Cap. 59AE	
139			Sections 10(2) and 14(1)(a)(ii) of Cap. 59AE	
140			Sections 10(3) and 14(1)(a)(i) of Cap. 59AE	
141			Sections 10(3) and 14(1)(a)(ii) of Cap. 59AE	
142			Sections 11(2) and 14(1)(a)(i) of Cap. 59AE	
143			Sections 11(2) and 14(1)(a)(ii) of Cap. 59AE	
144			Section 16(1)(b) of Cap. 59AF	
145			Section 22(1)(b) of Cap. 59AF	
Sub-total: 14 provisions				
Total: The seriousness levels of the above <u>145 offences</u> are raised				

Serial no.	Current Seriousness Category [Fine (\$)]	Proposed Seriousness Category [Fine (\$)]*	Provision	Justifications for Re-alignment
<u>Offences with seriousness levels lowered</u>				
146	Not Applicable [30,000]	Minor [30,000]	Regulation 27(1) of Cap. 59F	Supervisor on duty in a quarry permitting persons without receiving sufficient instruction and training to work therein and failing to conduct routine inspection before work.
147			Regulations 28(1) or (2) of Cap. 59F	
Sub-total: 2 provisions				
148	Serious [50,000]	Minor [30,000]	Section 6BA(5) of Cap. 59	These offences include (i) failing to maintain hygiene in notifiable workplaces; (ii) failing to clearly mark maximum permissible speed of abrasive wheel in Chinese and English; and (iii) failing to conspicuously display a notice in an approved form regarding the safety officer employed in the industrial undertaking.
149			Regulation 32 of Cap. 59A	
150			Regulation 33 of Cap. 59A	
151			Regulation 34 of Cap. 59A	
152			Regulation 35(1) of Cap. 59A	
153			Regulation 36(1) of Cap. 59A	
154			Regulations 25(1) or (2) of Cap. 59F	
155			Regulation 8 of Cap. 59G	
156			Regulation 4 of Cap. 59H	

Serial no.	Current Seriousness Category [Fine (\$)]	Proposed Seriousness Category [Fine (\$)]*	Provision	Justifications for Re-alignment
157			Regulation 70(1A) of Cap. 59I	
158			Regulations 5(1) or (2) of Cap. 59L	
159			Regulation 6(1) of Cap. 59L	
160			Regulation 6 of Cap. 59O	
161			Regulation 12(1)(b) of Cap. 59O	
162			Regulation 11(4) of Cap. 59Q	
163			Regulation 8 of Cap. 59R	
164			Regulation 19A of Cap. 59Z	
165			Regulation 21(2) of Cap. 59Z	
166			Regulations 9(1) or (2) of Cap. 59AA	
167			Regulation 9(3) of Cap. 59AA	
168			Section 24 of Cap. 59AC	
169			Section 25 of Cap. 59AC	
170			Section 26 of Cap. 59AC	
171			Section 5(3) of Cap. 59AD	
172			Section 6(1) of Cap. 59AD	

Serial no.	Current Seriousness Category [Fine (\$)]	Proposed Seriousness Category [Fine (\$)]*	Provision	Justifications for Re-alignment
173			Section 6(3) of Cap. 59AD	
174			Section 6(4) of Cap. 59AD	
175			Section 17(3) of Cap. 59AD	
176			Section 13(1) of Cap. 509	
177			Section 14(2) of Cap. 509	
178			Sections 12(1), (2), (3) or (4) of Cap. 509A	
179			Section 13(1) of Cap. 509A	
180			Section 14(1) of Cap. 509A	
Sub-total: 33 provisions				
181	Not Applicable [100,000]	Minor [30,000]	Sections 26(1) or (2) of Cap. 509A	Failing to keep record of manual handling risk assessment.
Sub-total: 1 provision				
182	Not Applicable [100,000]	Serious [150,000]	Sections 8(a), (b) or (c) and 14(1)(a)(i) of Cap. 59AE	These offences include (i) failing to ensure a person stationed outside a confined space to maintain communication with the workers inside; and (ii) failing to prepare a
183			Sections 8(a), (b) or (c) and 14(1)(a)(ii) of Cap. 59AE	
184			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	
185			Sections 11(1) and 14(1)(a)(ii) of Cap. 59AE	written safety policy and establish safety committee.	
186			Section 9(1)(a) of Cap. 59AF		
187			Section 9(1)(b) of Cap. 59AF		
188			Section 10 of Cap. 59AF		
189			Section 14 of Cap. 59AF		
190			Section 16(1)(a) of Cap. 59AF		
191			Section 20 of Cap. 59AF		
192			Section 22(1)(a) of Cap. 59AF		
193			Section 24(2) of Cap. 59AF		
194			Section 27(1)(d) of Cap. 509A		
Sub-total: 13 provisions					
195	Very Serious [200,000]	Serious [150,000]	Regulations 34(1)(a) or (2) of Cap. 59I		These offences include (i) failing to undertake manual handling risk assessment; and (ii) failing to mark safe working load on hoists.
196			Regulation 41A of Cap. 59I		
197			Regulation 7A of Cap. 59J		
198			Regulations 7E(3) or (5) of Cap. 59J		
199			Regulation 7F of Cap. 59J		

Serial no.	Current Seriousness Category [Fine (\$)]	Proposed Seriousness Category [Fine (\$)]*	Provision	Justifications for Re-alignment
200			Regulation 12A of Cap. 59J	
201			Regulations 18(1)(ea), (eb) or (g) of Cap. 59J	
202			Regulation 18A of Cap. 59J	
203			Regulation 4 of Cap. 59O	
204			Regulation 5(1) of Cap. 59O	
205			Regulation 12(2) of Cap. 59O	
206			Section 13 of Cap. 59AC	
207			Section 19 of Cap. 59AC	
208			Sections 23(1), (2), (3) or (4) of Cap. 509A	
209			Section 24(1) of Cap. 509A	
210			Sections 25(1), (2) or (3) of Cap. 509A	
211			Sections 27(1) or (2) of Cap. 509A	
212			Sections 28(1), (2) or (3) of Cap. 509A	
213			Section 29(1) of Cap. 509A	
214			Sections 30(1) or (2) of Cap. 509A	
215			Sections 31(1), (2) or (3) of Cap. 509A	

Serial no.	Current Seriousness Category [Fine (\$)]	Proposed Seriousness Category [Fine (\$)]*	Provision	Justifications for Re-alignment
Sub-total: 21 provisions				
Total: The seriousness levels of the <u>70 offences</u> above are reduced.				

Notes :

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

^ These are “very serious” offences targeting at employees, the proposed fine is capped at \$150,000 (refer to paragraph 13 of the paper).

Cap. 59: Factories and Industrial Undertakings Ordinance

Cap. 59A: Factories and Industrial Undertakings Regulations

Cap. 59C: Factories and Industrial Undertakings (Blasting by Abrasives) Special Regulations

Cap. 59F: Quarries (Safety) Regulations

Cap. 59G: Factories and Industrial Undertakings (Woodworking Machinery) Regulations

Cap. 59H: Factories and Industrial Undertakings (Electrolytic Chromium Process) 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. 59L: Factories and Industrial Undertakings (Abrasive Wheels) 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. 59S: Factories and Industrial Undertakings (Protection of Eyes) Regulations

Cap. 59T: Factories and Industrial Undertakings (Noise at Work) Regulation

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. 59AG: Factories and Industrial Undertakings (Loadshifting Machinery) Regulation
Cap. 59AI: Factories and Industrial Undertakings (Gas Welding and Flame Cutting) Regulation
Cap. 509: Occupational Safety and Health Ordinance
Cap. 509A: Occupational Safety and Health Regulation
Cap. 509B: Occupational Safety and Health (Display Screen Equipment) Regulation

Proposed maximum fines
(including 215 provisions with their seriousness re-aligned)

Current fine (\$) (a)	Fine after seriousness re-alignment (\$) (b)	Increased fine (\$) * c = (b) x 3	Net change c/a	No. of provisions
2,000	2,000	6,000	3 times	1
10,000	10,000	30,000	3 times	72
10,000	50,000	150,000	15 times	61 [@]
10,000	200,000	150,000	15 times	17 [^]
25,000	50,000	150,000	6 times	1 [@]
30,000	10,000	30,000	unchanged	2
30,000	50,000	150,000	5 times	7
30,000	200,000	150,000	5 times	8 [^]
30,000	200,000	600,000	20 times	1
50,000	10,000	30,000	-40%	33
50,000	50,000	150,000	3 times	281 [@]
50,000	200,000	150,000	3 times	9 [^]
50,000	200,000	600,000	12 times	29
100,000	10,000	30,000	-70%	1
100,000	50,000	150,000	50%	13
100,000	100,000	300,000	3 times	4
100,000	200,000	600,000	6 times	14
200,000	50,000	150,000	-25%	21
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	5,000	15,000	3 times	1
50,000	50,000	150,000	3 times	1
			Total	692

* A three-fold increase from current fine or re-aligned fine generally

Notes:

1. Proposed maximum fines being more than three times of current levels are in **red**.
2. Proposed maximum fines being less than three times of current levels are in **blue**.
3. Proposed maximum fine being the same as the current level is in **purple**.
4. Proposed maximum fines being a reduction from current levels are in **green**.
5. # refers to provisions involving employer GD provisions (refer to paragraph 5(a) of the paper).
6. @ includes GD provisions of employees (refer to paragraph 5(a) of the paper).
7. ^ includes “very serious” offences targeted at employees (refer to paragraph 13 of the paper).